ASSET PURCHASE AGREEMENT

**APA#1**

**THIS ASSET PURCHASE AGREEMENT**

is dated July 13, 2011 ("Agreement") and is between Global Mining, Corp., a company administered under the laws of Sweden ("Seller") and Precious Metal Miners Corp., a Delaware corporation ("Buyer").

**WHEREAS**, Seller owns all of the assets set forth on

Schedule A

hereto, including rights in the mines set forth on

Schedule A

(the "Assets");

**WHEREAS**, Seller desires to sell, and Buyer desires to buy, all of the Assets on the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the foregoing premises and the respective representations, warranties, covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the parties agree as follows:

**ARTICLE I**

**PURCHASE AND SALE OF ASSETS**

1.1 Agreement to Buy and Sell.

Subject to the terms and conditions set forth in this Agreement, Seller hereby agree to sell, transfer and deliver to Buyer on the Closing Date (as hereinafter defined), and Buyer agrees to purchase on the Closing Date, all of their rights, title and interest in and to the Assets, free and clear of any claims, liabilities, security interests, mortgages, liens, pledges, conditions, charges or encumbrances of any nature whatsoever.

1.2 Liabilities.

Buyer shall not assume, pay or discharge or in any respect be liable for any liability, obligation, commitment or expense of Seller. Without limitation of the foregoing and notwithstanding anything in this Agreement to the contrary, Buyer shall not assume, pay or discharge, and shall not be liable for, and Seller shall discharge, as well as indemnify and hold Buyer harmless from and against, any liability, loss, commitment, obligation or expense of Seller incident to, or arising out of:

(a)

the negotiation and preparation of, or performance under this Agreement or the Assignment and Bill of Sale, including, without limitation, costs incurred in connection with the assignment and sale of the Assets

(b)

any claims, actions, suits, proceedings, liabilities, fines, penalties, deficiencies or judgments existing on the Closing Date or arising any time thereafter as a result of or in connection with the use of the Assets, including, without limitation, the ownership or use of the Assets by Seller and their conduct of their business up to and including the Closing Date; or

(c)

any tax liabilities of any nature whatsoever of Seller on account of this Agreement or the operations of Seller up to and including the Closing Date.

1.3 Purchase Price.

(a)

The Buyer will grant and deliver to the Seller an aggregate of 3,000,000 shares of its common stock. :

(i) One Million and Five Hundred Thousand (1,500,000) shares at Closing;

(ii) Seven Hundred Fifty Thousand (750,000) shares within three (6) months of the Closing;

(iii) Seven Hundred Fifty Thousand (750,000) shares within nine (12) months of the Closing; and

**ARTICLE II**

**SELLER REPRESENTATIONS**

Seller represents to Buyer as of the date of this Agreement and as of the Closing Date as follows:

2.1 Organization.

The Seller is an entity duly organized, validly existing, and in good standing under the laws of the Sweden, with all power and authority necessary to own or use its assets and conduct its business as it is now being conducted. The Seller is duly qualified to do business as a foreign corporation in, and is in good standing under the laws of, each state or other jurisdiction in which the failure to be so qualified or in good standing would have a material adverse effect on (i) its ability to perform its obligations under this Agreement or (ii) the assets, financial position, or results of operations of the Seller.

2.2 Authority.

The Seller has full power and authority to execute and deliver this Agreement and the Assignment and Bill of Sale and to perform its obligations hereunder and thereunder. The execution and delivery of this Agreement and the Assignment and Bill of Sale and performance by the Seller of its obligations hereunder and thereunder have been duly authorized by the shareholders and the board of directors of the Seller and no other proceedings on the part of the Seller is necessary with respect thereto.

2.3 Enforceability.

This Agreement and the Assignment and Bill of Sale constitute the valid and binding obligations of Seller, except as enforceability is limited by (i) any applicable bankruptcy, insolvency, reorganization, moratorium, or similar law affecting creditors' rights generally or (ii) general principles of equity, whether considered in a proceeding in equity or at law.

2.4 No Violations.

The execution and delivery of this Agreement and the Assignment and Bill of Sale by Seller and the performance of her obligations hereunder and thereunder do not:

(i) conflict with, result in a breach of, constitute a default under (or an event that, with notice or lapse of time or both, would constitute a default under), accelerate the performance required by, result in the creation of any lien or encumbrance ("Lien") on any of the properties or assets of Seller under, or create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under, any contract to which Seller is a party or by which any properties or assets of Seller is bound, or

(ii) to Seller's or Seller's Knowledge, contravene, conflict with, or violate any federal, state, local, municipal, foreign, international, multinational, or other administrative order, constitution, law, ordinance, principle of common law, regulation, statute, or treaty or award, decision, injunction, judgment, order, ruling, subpoena, or verdict of any court, arbitral tribunal, administrative agency, or other Governmental Authority to which either Seller is subject.

For purposes of this Agreement an individual will be deemed to have "Knowledge" of a particular fact or other matter if:

(i) such individual is actually aware of such fact or other matter; or

(ii) a prudent individual could be expected to discover or otherwise become aware of such fact or other matter in the course of conducting a reasonably comprehensive investigation concerning the existence of such fact or other matter. Any individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization, Governmental Authority or authority or any other entity ("Person") other than an individual will be deemed to have "Knowledge" of a particular fact or other mater if any individual who is serving, or who has at any time served, as a director, officer, partner, executor, or trustee of such Person (or any similar capacity) has, or at any time had, Knowledge of such fact or other matter.

A "Governmental Authority" shall be any:

(i) nation, state, county, city, town, village, district, or other jurisdiction of any nature;

(ii) federal, state, local, municipal, foreign, or other government;

(iii) governmental or quasi-governmental authority of any nature (including any governmental agency, branch, department, official, or entity and any court or other tribunal, including an arbitral tribunal);

(iv) multi-national organization or body; or

(v) body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory, or taxing power of any nature.

2.5 Consents.

Other than consent of its shareholders, the Seller is not required to obtain the approval, ratification, filing, declaration, waiver, consent or other authorization ("Consent") of any Person, including the Consent of any party to any agreement, contract, obligation, promise, arrangement, or undertaking that is legally binding to which the Seller is party, in connection with execution and delivery of this Agreement, and the Assignment and Bill of Sale and performance of its obligations hereunder and thereunder.

2.6 [Intentionally Omitted.]

2.7 Assets.

The Seller has good and marketable title to all of the Assets, or the use thereof:

(i) is not subject to any easements or restrictions or to any mortgages, liens, pledges, charges, encumbrances or encroachments, or to any rights of others of any kind of nature whatsoever;

(ii) does not encroach or infringe on the property or rights of another; or

(iii) does not contravene any applicable law or ordinance or any other administrative regulation or violates any restrictive covenant or any provision of law. There are no agreements or arrangements between the Seller on the one hand and any third person which have any effect upon the Seller's title to or other rights respecting its assets. Further, and not in limitation of any of the foregoing provisions of this Section 2.7:

(a)

the Seller has the full right and power to transfer the Assets;

(b)

the Seller has the exclusive right to bring actions for the infringement of, and each has taken all actions and made all applicable applications and filings pursuant to relevant Federal, state and local law required to perfect and protect its interest and proprietary rights in all of the Assets;

(c)

The Seller does not have any present or future obligation or requirement to compensate any person with respect to any of the Assets, whether by the payment of royalties or not, or whether by reason of the ownership, use, license, lease, sale or any commercial use or any disposition whatsoever of any of its assets; and

(d)

none of the present or former employees of the Seller own directly or indirectly, or has any other right or interest in, in whole or in part, any of the Assets.

2.9 Condition of Property.

All of the Assets are suitable for the purposes for which they are used, are in good operating condition and in reasonable repair, free from any known defects, except for normal wear and tear and such minor defects as do not interfere with the continued use thereof.

2.10 Compliance With Law.

The Seller is not in violation of any laws, governmental orders, rules or regulations, whether federal, state or local, to which it or any of its properties are subject, which may have a material adverse affect as to it or the Assets.

2.11Litigation.

There are no actions, suits, proceedings or investigations pending or, to the knowledge of the Seller threatened against or affecting the Assets whether at law or in equity or admiralty or before or by any U.S. federal, state, municipal or other governmental department, commission, board, agency, court or instrumentality, domestic or foreign; the Seller is not operating under, subject to, in violation of or in default with respect to, any judgment, order, writ, injunction or degree of any court or federal, state, municipal or other governmental department, commission, board, agency or instrumentality domestic or foreign related to the Assets. No inquiries have been made directly to the Seller by any governmental agency which might form the basis of any such action, suit, proceeding or investigation.

2.12 Brokers.

No Person has acted as broker, finder, or investment advisor for Seller or has entered into any contract with ether or any Affiliate of either to act as such.

**ARTICLE III**

**BUYER REPRESENTATIONS**

Buyer represents to Seller as of the date of this Agreement and as of the Closing Date as follows:

3.1 Organization and Good Standing.

Buyer is an entity duly organized, validly existing, and in good standing under the laws of the State of Delaware, with all power and authority necessary to own or use its assets and conduct its business as it is now being conducted. Buyer is duly qualified to do business as a foreign corporation in, and is in good standing under the laws of, each state or other jurisdiction in which the failure to be so qualified or in good standing would have a material adverse effect on

(i) its ability to perform its obligations under this Agreement or

(ii) its assets, financial position, or results of operations.

3.2 Authority.

Buyer has full power and authority to execute and deliver this Agreement and the Assignment and Bill of Sale and to perform its obligations hereunder. Execution and delivery of this Agreement and the Assignment and Bill of Sale by Buyer and performance by each of its obligations hereunder and thereunder has been duly authorized by the board of directors of Buyer and no other proceedings on the part of Buyer is necessary with respect thereto. The Shares have been duly authorized and validly issued.

3.3 Enforceability.

This Agreement and the Assignment and Bill of Sale constitutes the valid and binding obligation of Buyer, enforceable in accordance with each of their terms, except as enforceability is limited by (i) any applicable bankruptcy, insolvency, reorganization, moratorium, or similar law affecting creditors' rights generally, or (ii) general principles of equity, whether considered in a proceeding in equity or at law.

3.4 Consents.

Buyer is not required to obtain the Consent of any Person, including the Consent of any party to any Contract to which it is party, in connection with execution and delivery of this Agreement and performance of its obligations hereunder.

3.5 No Violations.

Execution and delivery by Buyer of this Agreement and the Assignment and Bill of Sale and performance of its obligations hereunder and thereunder do not:

(i) violate any provision of its organizational documents as currently in effect;

(ii) conflict with, result in a breach of, constitute a default under (or an event that, with notice or lapse of time or both, would constitute a default under), accelerate the performance required by, result in the creation of any Lien on any of it properties or assets under, or create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under, any Contract to which it is a party or by which any of its properties or assets are bound; or

(iii) to the knowledge of Buyer, contravene, conflict with, or violate any law or order to which it is subject.

**ARTICLE IV**

**THE CLOSING**

4.1 Closing.

The parties shall hold the closing of the transactions contemplated by this Agreement (the "

Closing") at 10:00 A.M. Eastern Time on July 13, 2011 or at such other time and place as the parties agree (the date of the Closing, the "Closing Date ").

4.2 Deliveries by Seller to Buyer.

At or before the Closing, Seller shall deliver to Buyer the following:

(a)

an Assignment and Bill of Sale substantially in the form annexed hereto as Exhibit A duly executed by Seller; and

(b)

resolutions adopted by the shareholders of Seller authorizing Seller to execute and deliver this Agreement and the Assignment and Bill of Sale;

(c)

resolutions adopted by the board of directors of Seller authorizing Seller to execute and deliver this Agreement and the Assignment and Bill of Sale and to perform its obligations hereunder and thereunder;

(d)

a certificate of the President of Seller that the representations and warranties of Buyer set forth herein are true and correct on and as of the Closing Date as though such representations and warranties were made as of such date.

4.3 Deliveries by Buyer to Seller.

At or before the Closing, Buyer shall deliver to Seller the following:

(a)

resolutions adopted by the board of directors of Buyer authorizing Buyer to execute and deliver this Agreement and the Assignment and Bill of Sale and to perform its obligations hereunder and thereunder;

(b)

the Assignment and Bill of Sale duly executed by Buyer;

(c)

a certificate of the President of Buyer that the representations and warranties of Buyer set forth herein are true and correct on and as of the Closing Date as though such representations and warranties were made as of such date;

(d)

One Million and Five Hundred Thousand (1,500,000) shares of the Buyer's common stock.

4.4 Conditions to Buyer's Obligation.

Buyer's obligation to purchase the Assets shall be subject to satisfaction, on or before the Closing Date, of the following conditions:

(a)

Representations and Warranties Correct; Performance.

The representations and warranties of Seller contained in this Agreement (including the Exhibits and Schedules hereto) in connection with the transactions contemplated by this Agreement shall betrue, complete and accurate when made and on and as of the Closing Date as though such representations and warranties were made at and as of such date. Seller shall have duly and properly performed, complied with and observed each of its covenants, agreements and obligations contained in this Agreement to be performed, complied with and observed on or before the Closing Date.

(b)

Purchase Permitted by Applicable Laws.

The purchase of and payment for the Assets to be purchased by Buyer hereunder shall not be prohibited by any applicable law or governmental regulation.

(c)

Proceedings; Receipt of Documents.

All corporate and other proceedings taken or required to be taken by Seller in connection with the transactions contemplated hereby and all documents incident thereto shall have been taken and shall be reasonably satisfactory in form and substance to Buyer, and Buyer shall have received all such information and such counterpart originals or certified or other copies of such documents as Buyer may reasonably request.

(d)

No Adverse Decision.

There shall be no action, suit, investigation or proceeding pending or threatened by or before any court, arbitrator or administrative or governmental body which seeks to restrain, enjoin, prevent the consummation of or otherwise affect the transactions contemplated by this Agreement or questions the validity or legality of any such transactions or seeks to recover damages or to obtain other relief in connection with any such transactions.

(e)

Approvals and Consents.

Seller shall have obtained all authorizations, consents, rulings, approvals, licenses, franchises, permits and certificates, or exemptions therefrom, by or of all governmental authorities and non-governmental administrative or regulatory agencies having jurisdiction over the parties hereto, this Agreement, the Assets, or the transactions contemplated hereby, including, without limitation, all third parties pursuant to existing agreements or instruments by which Seller may be bound, which are required for the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, at no cost or other adverse consequence to Buyer and all thereof shall be in full force and effect at the time of Closing.

**ARTICLE V**

**POST CLOSING COVENANTS**

5.1

If at any time within the first two years of the Closing, the Asset mining operations result in the discovery (as such term is defined by industry best practices such as JORC, 43-101) of either One Million (1,000,000) ounces of gold or Ten Million (10,000,000) ounces of silver, then Buyer shall issue to Seller an additional Five Million Five Hundred Thousand (5,500,000) shares of its common stock upon such discovery, such number of shares to be the post forward split amount.

5.2

Buyer hereby grants to Seller a 5% net smelter returns royalty on the gross mineral production from the Assets until such time as it no longer owns or operates the Assets. The royalty shall be payable within 45 days of the end of each year at the end of each year. The royalty shall be a percent of the proceeds received from any final product produced from mining operations of the Buyer on the Assets less sale and brokerage costs, transportation costs, smelting, refining, sampling/assaying costs, processing costs and extraction taxes.

5.3

The Seller shall provide a consulting prospector, or engineer acceptable to the Buyer to act as VP of Exploration for the public company to oversee activities related to the Assets. This Buyer shall eneter into a consulting agreement with such individual that shall have a minimum term of one year, with an option to renew for an additional one year and provide for compensation of Ten Thousand Dollars (US$10,000) per month Any amounts paid to the consultant will be applied against and reduce the amount of the Work Commitment.

5.4

The Buyer shall provide a work commitment (the "Work Commitment") for the Assets in the amount of Eight Hundred Fifty Thousand Dollars (US $850,000) to be paid over a fifteen month period commencing on the Closing . The Work Commitment shall provide that the Buyer is required to with the following terms:

(a)

spend at least Three Hundred Fifty Thousand Dollars (US $350,000) within 3 months of the Closing (the "Three Month Period") for the commencement and continuation of exploration of the Assets for the express purpose of advancing the geologic knowledge of the Assets.

(b)

spend at least a minimum of Five Hundred Thousand Dollars (US $500,000) within the following 12 months after the termination of the Three Month Period for the express purpose of advancing the geologic knowledge of the Assets.

(c)

All exploration and mine development work will be conducted as part of the Work Commitment will be in accord with the best practices and usual standards of professional conduct with the express focus of further exploring and defining mineral resources and mining reserves.

(d)

The required amount of the Work Commitment shall be reduced by the payment made pursraund to Section 1.2(b) and any amounts paid to a consultant in accordance with Section 5.3.

**ARTICLE VI**

**INDEMNIFICATION**

6.1 Indemnification of Buyer by Seller.

Seller shall severally indemnify Buyer against:

(a)

any and all liability, loss, claim, settlement payment, cost and expense, interest, award, judgment, damages (including punitive damages), diminution in value, fines, fees and penalties or other charge which are not expressly assumed by Buyer as herein provided ("Losses").

(b)

any and all liabilities, losses, damages, claims, costs and reasonable expenses suffered by Buyer (whether awarded against Buyer or paid by Buyer in settlement of a claim) resulting from any misrepresentation, breach of a warranty, or non-fulfillment of any covenant or agreement on the part of

Seller

contained in this Agreement or the Assignment and Bill of Sale or in any statement, attachment, schedule, exhibit or certificate furnished or to be furnished by

Seller

to Buyer pursuant hereto or in connection with the transactions contemplated hereby; and

(c)

any and all any court filing fee, court cost, arbitration fee or cost, witness fee, and each other fee and cost of investigating and defending or asserting a claim for indemnification under this article, including, without limitation, in each case, attorneys' fees, other professionals' fees, and disbursements ("Litigation Expenses") (Losses and Litigation Expenses are collectively, "Indemnifiable Losses") incident to any of the foregoing.

6.2 Right to Rely Despite Investigation.

Buyer is entitled to rely fully upon the representations of Seller contained in this Agreement, despite in each instance any right of such party to investigate fully the affairs of the other party, and any knowledge of facts determined or determinable by such party as a result of its investigation or right of investigation.

6.3 Party Claims.

(a) Buyer shall notify Seller if it is seeking indemnification in writing, and with reasonable promptness, of any claim (a "Claim").

(b) In the notice delivered under Section 8.9(a), Buyer shall include the following:

(1)

a description of any claim, or any event, or fact known to Buyer that gives rise or may give rise to a claim, by Buyer against Seller under this Agreement, including the nature and basis of the claim, event, or fact and the amount of any claim, to the extent known; and

(2)

the following statement:

*"Buyer's claim is conclusively deemed a liability of Seller if Seller does not dispute its liability by written notice to Buyer before the end of the 30-day period following delivery to Seller of the notice of this claim."*

(c)

It is a condition to Seller's obligation to indemnify Buyer with respect to a Claim that Buyer perform its obligations under Sections 6.3(a) and 6.3 (b), but failure to satisfy that condition relieves Seller of its obligation to indemnify with respect to a Claim only to the extent that Seller actually has been prejudiced by Buyer's failure to give notice as required.

(d)

Seller has the right, by written notice, for a 30-day period, to dispute its liability to Buyer with respect to a Claim. The 30-day period begins the day after delivery to Seller of Buyer's notice under Section 6.3(a) and ends at midnight at the end of the 30th day.

(e)

If Seller timely disputes its liability to Buyer with respect to a Claim, Seller and Buyer shall negotiate in good faith to resolve the dispute.

(f)

The Claim described in the notice is conclusively deemed a Loss of Seller if (i) Buyer has provided Seller notice in accordance with Section 5.3(b) and (ii) Seller does not dispute its liability as provided in Section 6.3(d).

(g)

If a Claim has been deemed a Loss in accordance with Section 5.3(f), Seller shall pay the amount of the Loss to Buyer (i) on demand or (ii) on the later date when the amount of the Loss (or a portion of it) becomes finally determined if Buyer estimated the amount of the Loss (or any portion of it) in its notice.

(h)

In addition to making the payment under Section 6.3(g), Seller shall make any other payments required by this article, including, without limitation, the payment of the Buyer's Litigation Expenses.

6.4 Non-Party Claims.

(a) If any Person other than a party to this Agreement brings any Proceeding against Buyer (a "

Non-Party Claim") with respect to which Seller may have liability, Buyer must promptly notify Seller in writing of the Non-Party Claim and deliver to Seller a copy of the claim, process, and all legal pleadings with respect to the Non-Party Claim. Receipt of this notice is a condition to Seller's liability with respect to the Non-Party Claim.

(b)

If Seller wishes to assume the defense of the Non-Party Claim, it must do so by sending notice of the assumption to Buyer. Seller's assumption of the defense acknowledges its obligation to indemnify. Promptly after sending the notice, Seller shall choose and employ independent legal counsel of reputable standing. After sending the notice, Seller is entitled to contest, pay, settle or compromise the Non-Party Claim as it determines, subject to Section 6.4(e).

(c)

Buyer is entitled to participate in the defense of a Non-Party Claim and to defend a Non-Party Claim with counsel of its own choosing and without the participation of Seller if (i) Seller fails or refuses to defend the Non-Party Claim on or before the 60th day after Buyer has given written notice to Seller of the Non-Party Claim or (ii) representation of Seller and Buyer by the same counsel would, in the opinion of that counsel, constitute a conflict of interest.

10

(d)

Seller shall pay for the Litigation Expenses incurred by Buyer to and including the date Buyer assumes the defense of the Non-Party Claim. Upon Seller's assumption of the defense of the Non-Party Claim, Seller's obligation ceases for any Litigation Expenses Buyer subsequently incurs in connection with the defense of the Non-Party Claim, except that Seller is liable for Buyer's Litigation Expenses if (i) Buyer has employed counsel in accordance with Section 6.4(c) or (ii) Seller has authorized in writing the employment of counsel and stated in that authorization the dollar amount of Litigation Expenses for which Seller is obligated.

(e)

If Seller assumes the defense of a Non-Party Claim, it may not affect any compromise or settlement of the Non-Party Claim without the consent of Buyer, and Buyer has no liability with respect to any compromise or settlement of any Non-Party Claim effected without its consent, except that Seller may effect a compromise or settlement of any Non-Party Claim without an Buyer's consent if the following three conditions are met: (i) there is no finding or admission of any violation of law or any violation of the rights of any person and no effect on any other claim that may be made against Buyer; (ii) the sole relief provided is monetary damages that are paid in full by Sellers; and (iii) the compromise or settlement includes, as an unconditional term, the claimant's or the plaintiff's release of Buyer, in form and substance satisfactory to Buyer, from all liability in respect of the Non-Party Claim.

**ARTICLE VII**

**TERMINATION**

7.1 Termination.

This Agreement may be terminated as follows, at any time prior to the Closing:

(a)

by written agreement of the parties;

(b)

by either party if the Closing has not occurred by the date for the Closing stated in this Agreement, except that the right to terminate this Agreement in accordance with this clause (b) will not be available to any party whose failure to fulfill any obligation under this Agreement has been the cause of, or resulted in, the failure of the Closing to occur on or prior to that date;

(c)

by either party if a Governmental Authority issues a non-appealable final Order having the effect of permanently restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement, except that the right to terminate this Agreement pursuant to this clause (c) will not be available to any party whose failure to comply with this Agreement has contributed materially to the issuance of that Order;

(d)

by Buyer, if any representation of Seller set forth in this Agreement was inaccurate when made or becomes inaccurate as of the Closing Date; and

(e)

by Seller, if any representation of Buyer set forth in this Agreement was inaccurate when made or becomes inaccurate as of the Closing Date.

7.2 Effect of Termination.

If this Agreement is terminated in accordance with section 7.1, all provisions of this Agreement will cease to have any effect , except that if this Agreement is terminated by a party because another party fails to perform or comply with any of the obligations that it is required to perform or to comply with under this Agreement or because any representation of another party set forth in this Agreement was inaccurate when made or becomes inaccurate such that the representations are inaccurate on the Closing Date, the terminating party's right to indemnification under Article V will survive that termination unimpaired.

**ARTICLE VIII**

**MISCELLANEOUS**

8.1 Reasonable Efforts.

Subject to the conditions of this Agreement, each of the parties shall use the efforts that a reasonable person in the position of the promisor would make so as to achieve that goal as expeditiously as possible ("Reasonable Efforts") to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary or advisable under applicable Laws to consummate the transactions contemplated by this Agreement as promptly as practicable including but not limited to (i) taking such actions as are necessary to obtain any required approval, consent, ratification, filing, declaration, registration, waiver, or other authorization ("Consents") and (ii) satisfying all conditions to Closing at the earliest possible time.

8.2 Transaction Costs.

Each party shall pay its own fees and expenses (including without limitation the fees and expenses of its representatives, attorneys, and accountants) incurred in connection with negotiation, drafting, execution, and delivery of this Agreement.

8.3 Assignment.

No party may assign any of its rights or delegate any performance under this Agreement except with the prior written consent of the other party.

8.4 Binding.

This Agreement binds, and inures to the benefit of, the parties and their respective permitted successors and assigns.

8.5 Governing Law.

The laws of the State of Delaware (without giving effect to its conflict of laws principles) govern all matters arising out of this Agreement, including without limitation tort claims.

8.6 Entirety of Agreement.

This Agreement constitute the entire agreement of the parties concerning the subject matter hereof and supersedes all prior agreements, if any.

8.7 Further Assurances.

Each party shall execute and deliver such additional documents and instruments and perform such additional acts as the other party may reasonably request to effectuate or carry out and perform all the terms of this Agreement and the transactions contemplated hereby, and to effectuate the intent of this Agreement.

8.8 Jurisdiction; Service of Process.

Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, any of this Agreement must be brought against any of the parties in the courts of the State of Texas and each party hereto waives any objection to venue laid therein. Process in any such action or proceeding may be served by sending or delivering a copy of the process to the party to be served at the address and in the manner provided for the giving of notices in Section 8.9. Nothing in this Section 8.8, however, affects the right of any party to serve legal process in any other manner permitted by law.

8.9 Notices.

(a) Every notice or other communication required or contemplated by this Agreement must be in writing and sent by one of the following methods:

(1)

personal delivery, in which case delivery will be deemed to occur the day of delivery;

(2)

certified or registered mail, postage prepaid, return receipt requested, in which case delivery will be deemed to occur the day it is officially recorded by the U.S. Postal Service as delivered to the intended recipient; or

(3)

next-day delivery to a U.S. address by recognized overnight delivery service such as Federal Express, in which case delivery will be deemed to occur upon receipt.

(b)

In each case, a notice or other communication sent to a party must be directed to the address for that party set forth below, or to another address designated by that party by written notice:

If to Seller:

Global Mining Corp.

Ellen Keys gata 21,

129 52 Hägersten, Sweden

If to Buyer:

Precious Metal Miners Corp.

3419 West Elm Street

Suite 400

Scottsdale, AZ 85257

8.10

References to Time.

All references to a time of day in this Agreement are references to the time in the State of Delaware.

8.11 Amendment.

This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties.

8.12 Counterparts.

This Agreement may be executed in several counterparts, each of which is an original and all of which together constitute one and the same instrument.

8.13 No Third-Party Rights.

Nothing expressed or referred to in this Agreement gives any Person other than the parties to this Agreement any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provision of this Agreement, and this Agreement and all of its provisions are for the sole and exclusive benefit of the parties to this Agreement and their successors and permitted assigns. The undersigned are signing this Agreement on the date stated in the introductory clause.

PRECIOUS METAL MINERS CORP.

By:

|s|Fred Roper

Name: Fred Roper

Title: President

GLOBAL MINING CORP.

By:

|s|Steven Drayton

Name: Steven Drayton

Title: Director

**EXHIBITA**

**ASSIGNMENT AND BILL OF SALE**

**KNOW ALL MEN BY THESE PRESENTS**, that Global Mining, Ltd., a company administered under the laws of Sweden, with its principal place of business at Ellen Keys gata 21, 129 52 Hägersten, Sweden ("Seller"), for and in consideration of the purchase price provided for in that certain Asset Purchase Agreement, dated July 13, 2011 (the "Purchase Agreement") between Seller and Precious Metal Miners Corp., a Delaware corporation with its principal place of business at 3419 West Elm Street, Suite 400, Scottsdale, AZ 85257 ("Buyer") and other good and valuable consideration in full payment for the assets hereinafter specified, the receipt and sufficiency of which is hereby acknowledged, has granted, bargained, sold and by these presents does grant, bargain, sell, convey and deliver to Buyer, and its successors and assigns, the assets set forth below (collectively, the "Assets"):

***A seventy-five percent (75%) interest in and to the three (3) mining concessions in the project area known as "Monte de’l Reunion", these are Reunion, Exploitation title No. 14330 and Sabor Exploitation title No. 14578 and Buenavista Exploitation title issued No. 143356, which approximate 340.49 hectares in total located in the Municipality of Hermosillo, State of Colima, Mexico.***

**TO HAVE AND TO HOLD** the said assets unto Buyer, its successors and assigns, to and for its own use, forever.

1. Seller warrants to Buyer, its successors and assigns, that at the time of delivery of this Assignment and Bill of Sale to Buyer, Seller has good and valid title to said assets and good and lawful right to grant, bargain, sell, convey and deliver said assets as aforesaid and that the title to said assets are as of the date of delivery of said assets to Buyer, free and clear of all claims, liens, pledges, security interests and other encumbrances of any nature whatsoever. Seller further warrants that upon delivery of this Assignment and Bill of Sale to Buyer, Buyer shall have good and valid legal title to the assets described in this Assignment and Bill of Sale, free and clear of all claims, liens, pledges, security interests and other encumbrances of any nature whatsoever.

2. Buyer shall not assume, pay or discharge or in any respect be liable for any liability, obligation, commitment or expense of Seller, including without limitation, the following liabilities and obligations of Seller incident to, or arising out of:

(a)

the negotiation and preparation of, or performance under this Agreement, the Assignment and Bill of Sale, including, without limitation, costs incurred in connection with the assignment and sale of the Assets

(b)

any claims, actions, suits, proceedings, liabilities, fines, penalties, deficiencies or judgments existing on the Closing Date or arising any time thereafter as a result

of or in connection with the conduct of the business of Seller, including, without limitation, the ownership or use of the Assets by Seller and Seller's conduct of its business up to and including the Closing Date; or

(c)

any tax liabilities of any nature whatsoever of Seller on account of this Agreement or the operations of Seller up to and including the Closing Date.

3.

Seller agrees to execute and deliver to Buyer such other documents and instruments of sale, conveyance, transfer and assignment, satisfactory in form and substance to Buyer, as may be reasonably requested by Buyer in order to effect Seller's assignment of Assets hereunder.

**IN WITNESS WHEREOF**,

the parties hereto have caused these presents to be executed as of the 13 day of July, 2011.

PRECIOUS METAL MINERS CORP.

By:

|s|Fred Roper

Name: Fred Roper

Title: President

GLOBAL MINING, LTD.

By:

|s|Lawrence Welch

Name: Lawrence Welch

Title: Director

**APA#2**

**ASSET PURCHASE AGREEMENT**

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is made as of the 15th day of June, 2006 by and between YAMAGUCHI CO., LTD. ("Purchaser"), a Japanese corporation, and LINENS LLC, a Delaware limited liability company ("Seller").

RECITALS :

A. Seller is in the business of manufacturing and selling commercial laundry, pressing and finishing equipment and related equipment and accessories. Seller manufactures and sells pressing and finishing equipment and related accessories under the "FINPRESS" trade name and trademark (collectively, the "Products").

B. Seller desires to sell, and Purchaser desires to purchase from Seller, certain of the intellectual property and intangible assets of Seller that relate to the Products, on the terms and conditions set forth in this Agreement.

AGREEMENTS:

In consideration of the premises and the mutual agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**1. Sale and Transfer of Assets.** Subject to the terms and conditions of this Agreement, and in reliance on the representations, warranties and covenants of the parties contained herein, Seller hereby sells, transfers, assigns and delivers to Purchaser, and Purchaser hereby purchases from Seller as of the Effective Time (as defined below), the following assets of Seller (tangible and intangible) to the extent the same relate to the Products (collectively, the "Purchased Assets"):

(a) Intellectual Property.

(i) all intellectual property rights relating to the Products, including those patents set forth on Schedule I hereto and all applications and registrations related to the foregoing;

(ii) all trade names, trademarks, and domain names that are used in connection with the manufacture, sale and distribution of the Products and all applications (to the extent transferable) and registrations related to the foregoing, and specifically including, but not limited to, all right title and interest of Seller in and to the trademark FINPRESS and all registrations and applications for registration thereof anywhere in the world, including those specifically set forth on Schedule I hereto, and all goodwill of Seller's business (as it relates to the Products) relating to the foregoing;

(iii) all copyrights (if any), writings and designs;

(iv) all inventions, trade secrets, research and developments and improvements, including all confidential information relating to the foregoing;

(v) any and rights and claims related to the foregoing, including any and all infringement claims against any third parties relating thereto (whether occurring prior to or after the date of this Agreement).

All of the forgoing are hereinafter sometimes collectively referred to as the "Intangible Assets."

(b) Technology, Records and Documents . All technologies, technical information, specifications, drawings and blueprints (including, but not limited to, those drawings identified in Schedule I attached hereto), processes and procedures (as they currently exist) in whatever form (whether oral, written, machine readable, visual or conceptual) developed, related to and/or used in connection with the design and manufacture of the Products, including such documents and information used by Seller in the manufacture of the Products, including any research and development records and documents and information otherwise in the possession of Seller related thereto (collectively, "Technical Information"). The term "Technical Information" shall also mean and include any such information which is owned by or in the possession and control of Seller's affiliated and related companies relating to the Products; and

(c) Books and Files . All books, records and files (as they currently exist), related to the foregoing.

**2. Retained Assets.** All other assets and properties related to the Products, including without limitation machinery, equipment, furniture, fixtures and all other tangible personal property, inventory (whether raw materials, work-in-process or finished goods), supplies, accounts receivable, contract rights and all other assets not specifically enumerated in Section 1 above, shall be retained by and remain the property of Seller.

**3. Liabilities.** Purchaser shall not in any manner assume or be liable or responsible for any of the liabilities, debts, or obligations of Seller of any nature whatsoever, whether actual, contingent or accrued, known or unknown ("Excluded Liabilities"), which Excluded Liabilities shall be retained by, and be the sole and exclusive obligation of, Seller. Seller shall be solely and exclusively responsible for (and shall indemnify Purchaser from and against) and shall pay any and all United States federal, state and local sales, use, transfer, transfer gains or similar taxes payable in connection with the sale of the Purchased Assets.

**4. Purchase Price; Payment; Allocation.** The purchase price for the Purchased Assets shall be One Million Two Hundred Thousand Dollars ($1,200,000.00) (the "Purchase Price"). The Purchase Price shall be paid in full at the Closing by wire transfer to an account designated by Seller. The Purchase Price will be allocated, for tax purposes, among the Purchased Assets as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| Brand (trademark, logo) |  | $ | 138,400 |
| Patents |  | $ | 52,200 |
| Drawings, Intellectual Prop. |  | $ | 140,000 |
| Goodwill and other intangibles |  | $ | 869,400 |
| Total |  | $ | 1,200,000 |

**5. Closing.** The closing of the transactions contemplated by this Agreement shall take place simultaneously with the execution of this Agreement by the parties hereto (the "Closing"), and shall be effective as of 12:01 A.M. on the date of this Agreement ("Effective Time"). The Closing will take place at the offices of Miller, Green and Wilson, Dallas, Texas. All matters at the Closing shall be considered to take place simultaneously and no delivery of any document shall be deemed complete until all transactions and delivery of documents are completed.

**6. Representations and Warranties of Seller.** Seller represents and warrants to Purchaser that as of the date of this Agreement:

(a) Authorization of Agreement . Seller is a limited liability company validly existing under the laws of the State of Delaware. Seller (a) has all necessary limited liability company power and authority to manufacture and sell the Products, (b) possesses all licenses, franchises, rights and privileges necessary to manufacture and sell the Products, and (c) has all necessary power and authority to execute and deliver this Agreement and the other agreements and ancillary documents to be executed and delivered pursuant to this Agreement and to consummate the transactions provided for herein and therein. The execution, delivery and performance of this Agreement have been duly authorized by all requisite action of Seller's members, managers or other governing body. The execution and delivery of this Agreement and the other agreements to be executed and delivered pursuant to this Agreement and the consummation of the transactions contemplated hereby and thereby do not and will not, with or without the giving of notice or the passage of time, conflict with, result in or constitute a breach, default, right to accelerate or loss of rights under, or result in the creation of any lien, charge or encumbrance pursuant to any law, rule, regulation, statute, order, judgment or decree or any contract, agreement, lease, license or instrument to which Seller is a party or by which Seller or the Purchased Assets are bound or affected. This Agreement is, and each other agreement and document to be executed by Seller pursuant hereto will be, when so executed, a valid and binding obligation of Seller, enforceable in accordance with its terms.

(b) Title to Purchased Assets . Except with respect to the Intangible Assets, as to which Seller only makes the representations and warranties provided in Section 6(d) below and except for Liens (as defined below) all of which will be terminated at or prior to Closing, Seller owns all right, title and interest in and to the Purchased Assets and has good and marketable title, solely and exclusively, to all Purchased Assets, free and clear of any and all mortgages, security interests, title retention agreements, options or warrants to purchase, rights of first refusal, liens, easements, encumbrances, restrictions, claims or rights of ownership (whether express or implied, written or oral), and other burdens or claims of ownership rights or interests (or options to purchase any such rights or interests) of any nature whatsoever ("Liens"). None of the Purchased Assets is subject to any restriction with respect to the transferability thereof and Seller has the full power and right to sell, assign, convey and deliver the Purchased Assets to Purchaser as contemplated hereby.

(c) Litigation and Proceedings . There are no causes of action, investigations, inquiries, suits, actions or legal, administrative, arbitrative or other proceedings, or any claims or demands ("Claim") pending or, to Seller's knowledge, threatened against the Purchased Assets or against Seller with respect to or affecting the Purchased Assets, and/or Seller's right, title or interest therein.

(d) Intangible Assets .

(i) Seller owns and has good and marketable title, solely and exclusively, to the patents (and all applications therefore), copyrights, registrations relating to all the registered trademarks, registered service marks and trade names, and the domain names included within the Intangible Assets in each case as set forth on Schedule I hereto, and Seller's interest in the Intangible Assets is free and clear of any and all mortgages, security interests, title retention agreements, options or warrants to purchase, rights of first refusal, liens, easements, encumbrances or restrictions. None of the Intangible Assets is subject to any restriction with respect to the transferability thereof and Seller has the full power and right to sell, assign, convey and deliver the Intangible Assets to Purchaser as contemplated hereby. To Seller's knowledge, no third party is using the trade mark or trade name Finpress (or any mark confusingly similar thereto) in violation of Seller's rights in and to the Finpress mark in relation to the Products.

(ii) Except for annuity, maintenance, renewal and other similar or related fees, there are no royalties, honoraria, fees or other payments payable by Seller to any person by reason of the ownership, use, license, sale, disposition or use of the Intangible Assets and no agreement, understanding or arrangement of any nature whatsoever exists relative thereto.

(iii) No claim of infringement or other claim has been made, asserted, or, to the knowledge of Seller, threatened by or against Seller to the effect that any Intangible Asset or any Product currently manufactured, designed or sold by Seller (and/or its affiliated and related companies) interferes or has interfered with, infringes on or has infringed upon, misappropriates, unfairly competes or otherwise conflicts with any intellectual property rights of any other person. No claim of misappropriation or misuse of any invention, trade secret or other proprietary rights included among the Intangible Assets (including any claim that Seller must license or refrain from using any intellectual property rights of any third party), has been made, asserted, or, to the knowledge of Seller, threatened by or against Seller.

(iv) There is currently no dispute, action, suit or proceeding pending, or to the knowledge of Seller, threatened which challenges the legality, validity, enforceability, registration, use or ownership of any Intangible Assets.

(e) Seller has not entered into any agreement or arrangement with any third party granting any right, title or license in and to the Purchased Assets (or the right to use any of the Purchased Assets) in any manner whatsoever, including, but not limited to any trademark license, patent license or other right and/or privilege in connection with the Purchased Assets.

(f) " Knowledge" of Seller . When used in this Section in reference to Seller, the terms "knowledge," "known" or "know" shall mean facts, circumstances, information and data actually known to the Chief Executive Officer, Chief Financial Officer, Chief Legal Officer or any member or director of Seller as of the date of this Agreement.

(g) Seller has complied with and is operating in compliance with all laws, rules, regulations, and orders applicable to Seller and the conduct of its business as it relates to the Products, and the ownership or operation of its properties, the violation of which would have a material adverse effect upon the Purchased Assets.

(h) Seller and the members, managers, officers, directors or agents of Seller have not employed any investment banker, business consultant, broker or finder, or incurred any liability for any investment banking, business consultant, brokerage or finders' fees or commissions in connection with the transactions contemplated herein.

(i) No filing with, and no permit, authorization, consent or approval of, any governmental or regulatory agency is necessary in connection with the execution, delivery or performance by Seller of this Agreement or for the consummation by Seller of the transaction contemplated by this Agreement. All statutory requirements for the valid consummation by Seller of the transaction contemplated by this Agreement have been fulfilled; all authorizations, consents and approvals of all federal, state, local and foreign governmental agencies and authorities required to be obtained in order to permit consummation by Seller and Purchaser of the transactions contemplated by this Agreement have been obtained.

**7. Representations and Warranties of Purchaser.** Purchaser represents and warrants to Seller that as of the date of this Agreement:

(a) Corporate Organization . Purchaser is a corporation validly existing under the laws of the jurisdiction of its incorporation. Purchaser has all corporate power and authority necessary to own, operate and lease its properties and carry on its businesses as now conducted.

(b) Authorization of Agreement . Purchaser has all necessary corporate power and authority to execute and deliver this Agreement and the other ancillary agreements and documents to be executed and delivered pursuant to this Agreement and to consummate the transactions provided for therein. The execution and delivery of this Agreement and the other agreements to be executed, delivered and performed pursuant to this Agreement by Purchaser, and the performance by it of the obligations to be performed thereunder, have been duly authorized by all necessary and appropriate corporate action. The execution and delivery of this Agreement and the other ancillary agreements and documents to be executed and delivered pursuant to this Agreement and the consummation of the transactions contemplated thereby do not and will not conflict with or result in a breach of, or constitute a default under, the terms or conditions of Purchaser's Articles of Incorporation or By-Laws (or similar governing document or agreement), or any law, rule, regulation, statute, order, judgment or decree or any agreement or instrument to which Purchaser is a party or by which Purchaser or its assets are bound or affected. This Agreement is, and each other ancillary agreement and document to be executed by Purchaser pursuant hereto will be when so executed, a valid and binding obligation of Purchaser, enforceable in accordance with its terms, except that enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and by general equitable principles.

**8. Limitations on Buyer's Rights to Sell Certain Products.**

(a) Notwithstanding the sale of the Purchased Assets (including the trademark and trade name FINPRESS) to Purchaser hereunder, Purchaser agrees, for itself and its direct and indirect subsidiaries, affiliates, successors and assigns, that it will not, directly or indirectly, engage in the manufacture, sale or distribution of washers, washer extractors, standard dryers or tumbler dryers, in each case bearing the trademark FINPRESS (or any derivation thereof or name or mark confusing similar thereto) anywhere within the world, for a period of twenty (20) years from and after the date of this Agreement. To the extent that Purchaser shall enter into a licensee agreement with a licensee granting such licensee the right to manufacture Products bearing the Finpress trademark, any such license shall contain a provision restricting such licensee from manufacturing washers, washer extractors, standard dryers or tumbler dryers under the Finpress trademark.

(b) If the provisions of this Section 8 shall be adjudicated by a court of competent jurisdiction to be invalid, prohibited or unenforceable for any reason, such provision, as to such jurisdiction, shall be ineffective, without invalidating the remaining provisions of this Section 8 or affecting the validity or enforceability of this Section 8 or affecting the validity or enforceability of such provision in any other jurisdiction. Notwithstanding the foregoing, if such provision could be more narrowly drawn so as not to be invalid, prohibited or unenforceable in such jurisdiction, it shall, as to such jurisdiction, be so narrowly drawn, without invalidating the remaining provisions of this Section 8 or affecting the validity or enforceability of such provision in any other jurisdiction.

(c) In the event of the breach or threatened breach by Purchaser (or its affiliates, successors or assigns) of any of the provisions of this Section 8, Seller, in addition and supplementary to other rights and remedies existing in its favor, may apply to any court of law or equity of competent jurisdiction for specific performance and/or injunctive or other relief in order to enforce or prevent any violations of the provisions hereof (without posting a bond or other security).

**9. Trademark License to Seller; Seller's Continuing Business.**

(a) Purchaser will grant to Seller a royalty free, paid up, world-wide, non-transferable license (the "Seller License") to use the trade name and/or trademark FINPRESS on or in connection with (i) the sale of service and repair parts and components for a period of ten (10) years from the date of this Agreement; and (ii) the sale of Products and related goods, through October 31, 2006, to allow Seller to deplete its current finished goods inventories of such Products and related goods. Notwithstanding the foregoing, Seller shall not, at any time following the Closing, use the FINPRESS trade name in conjunction with Seller's corporate or business name or the name of any division or subsidiary of Seller. The Seller License shall be in the form of Exhibit A attached hereto.

(b) Nothing in this Agreement shall prohibit Seller from manufacturing, selling or distributing any goods or products of any kind whatsoever that are competitive with the business of Purchaser; provided however that, in any event, following the Closing, Seller shall cease the use of the trademark FINPRESS (and any mark that is confusingly similar thereto) in connection with the sale of any goods or products (except to the extent permitted by the Seller License).

**10. Closing Deliveries; Removal of Assets.**

(a) Purchaser's Deliveries at Closing . Purchaser shall deliver or cause to be delivered to Seller the following documents at or prior to Closing:

(i) Seller License duly executed by Purchaser; and

(ii) Payment of the Purchase Price in the manner provided in Section 4 above.

(b) Seller's Deliveries at Closing . Seller shall deliver or cause to be delivered to Purchaser the following documents at or prior to Closing:

(i) A Bill of Sale and Assignment duly executed by Seller, in form reasonably satisfactory to Purchaser and its counsel, transferring and conveying all right, title and interest in and to the Purchased Assets (together with possession and control of the Purchased Assets, provided however that the drawings referenced in Schedule I shall be delivered to purchaser no later than thirty (30) days after the Closing);

(ii) Assignments of the patents, trademarks, trade names, domain names included among the Purchased Assets, in form reasonably acceptable to Purchaser and its counsel and suitable for recording, as appropriate, in the respective jurisdictions to which they apply;

(iii) A receipt for the Purchase Price; and

(iv) Releases/terminations of all mortgages, security interests and other liens against the Purchased Assets in form and substance satisfactory to Purchaser and its counsel.

(c) Removal of Purchased Assets . Purchaser shall arrange for and bear all costs (not including the costs of Seller's personnel or occupancy costs of Seller's premises) incurred in connection with the removal of the Purchased Assets from Seller's premises. Seller will cooperate with Purchaser in the removal of the Purchased Assets from Seller's premises, including, without limitation, by providing Purchaser with reasonable access to Seller's premises after the Closing (provided that such access is pre-arranged with Seller in advance and during normal working hours of Seller); provided that Purchaser shall complete its removal of the Purchased Assets from Seller's premises not later than thirty (30) days following the Closing, or as otherwise mutually agreed to by Seller and Purchaser after the Closing.

**11. Survival of Representations and Warranties; Indemnification.**

(a) Survival . All representations and warranties of a party contained in this Agreement or in any certificate or other document delivered pursuant hereto shall survive the Closing Date for a period of one (1) year following the Closing, except for the representations and warranties contained in Subsections 6(a), 6(b) and 6(d)(i) and 7(a) and 7(b), which shall survive indefinitely (the period of survival of any representation or warranty being referred to as its "Survival Period").

(b) Indemnity . From and after the Closing, the parties shall indemnify each other as provided in this Section 11. The party seeking indemnification is sometimes referred to herein as the "Indemnified Party" and the party from which indemnification is sought is sometimes referred to as the "Indemnifying Party." For purposes of this Agreement, "Damages" shall mean any losses, liabilities, damages, costs and/or expenses (including reasonable out-of-pocket attorneys' fees and expenses) actually incurred in connection with any actions, suits, demands, assessments, judgments and settlements, in any such case reduced by the amount of insurance proceeds recovered from any person or entity with respect thereto. The indemnification obligations of Purchaser and Seller under this Section 11 shall constitute the sole and exclusive remedies of Seller and Purchaser, respectively, for the breach of any covenant, agreement, representation or warranty in this Agreement by Seller or Purchaser, as the case may be, and, Seller and Purchaser shall not be entitled to rescission of this Agreement or to any further indemnification rights or claims of any nature whatsoever in respect thereof, all of which such rights and/or claims are hereby waived by Purchaser and Seller.

(c) Seller's Indemnification Covenants . Seller will indemnify Purchaser and its officers, directors, agents, employees and affiliates ("Purchaser Indemnitees") and hold them harmless from and against Damages sustained or incurred by them as a result of, arising out of or incidental to:

(i) any breach or inaccuracy of any representation or warranty made by Seller in this Agreement or in any certificate or other document or instrument delivered by Seller to Purchaser in connection with the transactions contemplated hereby;

(ii) any failure of Seller to comply with, or any breach or nonfulfillment by Seller of, any covenant of Seller set forth in this Agreement or in any certificate or other document or instrument delivered by Seller to Purchaser in connection with the transactions contemplated hereby;

(iii) any failure of Seller to timely pay, perform or discharge when due any Excluded Liabilities; and

(iv) any and all claims asserted, or actions brought against, Purchaser relating to any products sold by Seller prior to the date of this Agreement or thereafter pursuant to the Seller License granted to Seller.

(d) Purchaser's Indemnification Covenants . Purchaser will indemnify Seller and its officers, directors, agents, employees and affiliates ("Seller Indemnitees") for and hold them harmless from and against Damages sustained or incurred by them as a result of, arising out of or incidental to:

(i) any breach or inaccuracy of any representation or warranty made by Purchaser in this Agreement or in any certificate or other document or instrument delivered by Purchaser to Seller in connection with the transactions contemplated hereby; or

(ii) any failure of Purchaser to comply with, or any breach or nonfulfillment by Purchaser of any covenant of Purchaser set forth in this Agreement, or in any certificate or other document or instrument delivered by Purchaser to Seller in connection with the transactions contemplated hereby;

(iii) any claim, demand, liability or obligation arising from or related to the Purchased Assets, Purchaser's conduct of its business or the production or sale of any Products by Purchaser, its affiliates, successors or assigns, or any other act or omission of Purchaser occurring subsequent to the Effective Time; provided, however, that Purchaser shall not be required to indemnify Seller with respect to any claims alleging any infringement by the Intangible Assets upon the intellectual property rights of any third parties, to the extent such infringement relates to (i) Products that are manufactured or sold by Seller or (ii) Products that are manufactured or sold by Purchaser, provided, in the case of this clause (ii), that the Product(s) that is the subject of any such claim(s) was manufactured strictly in accordance with the Technical Information and without any modifications thereto.

(e) Claims for Indemnification . Promptly upon an Indemnified Party's obtaining knowledge of any facts causing it to believe that it has or will have a claim for indemnification against any Indemnifying Party or Parties hereunder, the Indemnified Party shall give written notice of such claim (a "Claim Notice") to the Indemnifying Party or Parties. Such written notice shall set forth the nature and (to the extent then known) the amount of Damages incurred by or threatened against the Indemnified Party. Notwithstanding the foregoing, the right of indemnification hereunder shall not be affected by any failure of the Indemnified Party to give or by its delay in giving such notice unless, and then only to the extent that, the rights of the Indemnifying Party are prejudiced as a result of such failure or delay.

(f) Limitations on Indemnification .

(i) Notwithstanding any other provision of this Agreement, Purchaser shall not be entitled to make a claim against Seller under Section 11(c)(i), and Seller shall not be entitled to make a claim against Buyer under Section 11(d)(i), respectively, until the aggregate amount of Damages arising under Section 11(c)(i) or 11(d)(i), as the case may be, exceeds Fifty Thousand Dollars ($50,000.00) (the "Indemnification Threshold"). In the event that the aggregate amount of Damages recoverable from an Indemnifying Party exceeds the Indemnification Threshold, such party shall be responsible for all such Damages, but only to the extent they exceed the Indemnification Threshold, and subject to the Indemnification Cap (as defined below).

(ii) Notwithstanding any other provision of this Agreement, (A) the aggregate indemnification obligations of Seller under Section 11(c) and (B) the indemnification obligation of Buyer under Section 11(d), respectively, will not exceed an aggregate of One Million Two Hundred Thousand Dollars ($1,200,000.00) (the "Indemnification Cap").

(iii) The obligation of Seller to indemnify under Section 11(c)(i) shall expire on the date on which the Survival Period applicable to the representation or warranty in question expires in accordance with Section 11(a); provided that a Purchaser Indemnitee's right to indemnification shall be preserved as to any matter as to which it has delivered a Claim Notice to Seller prior to the expiration of such Survival Period.

**12. Product Liability Claims.** In addition to any other provisions of, and obligations of the parties under, this Agreement: (a) Seller shall indemnify, defend and hold Purchaser harmless from and against any and all product liability claims asserted against Purchaser arising from or attributable to any goods or products manufactured, distributed or sold by Seller, and (b) Purchaser shall indemnify, defend and hold Seller harmless from and against any and all product liability claims asserted against Seller arising from or attributable to any goods or products manufactured, distributed or sold by Purchaser.

**13. Confidentiality.** All confidential or proprietary information or work product relating to the Purchased Assets which is known to Seller as of the Closing will be the sole property of Purchaser. Seller shall take reasonable steps to protect all of the following from misuse, loss, theft, or accidental disclosure in accordance with Seller's internal policies and procedures with regard to its own confidential and proprietary information: (i) the Technical Information, and (ii) to the extent included among the Purchased Assets, all inventions, trade secrets, research and developments and improvements, including all confidential information relating to the foregoing.

**14. Miscellaneous.**

(a) Notices . All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be given or made (and shall be deemed to have been duly given or made upon receipt) by delivery in person, by an internationally recognized overnight courier service, by facsimile or registered or certified mail (postage prepaid, return receipt requested) to the respective parties hereto at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 14(a)):

|  |  |  |
| --- | --- | --- |
| if to Seller: |  | Linens LLC P.O. Box 384 Gerid Rd, Dallas, Texas 72588 Attn: Vice President Chief Financial Officer  Facsimile No: (414) 384-7395 |
| with a copy to: |  | Miller ,Green and Wilson, Dallas, TX, 75205,  Attention Robert L. Gardener, Facsimile No. (214) 448-3846 |
| if to Purchaser: |  | Yamaguchi Co., Ltd.c/o Yamaguchi USA, 1713 Birchtree Valley Rd, Scottsdale, AZ, 85252  Attention: President Facsimile No. (480) 957-3846 |
| With a copy to: |  | Tardon, Kerrr and Smith, Ltd. 1319 Bakersfiled Rd,  Scottsdale , AZ 85254 Attention: William S. Herr  Facsimile NO: (480) -647-8475 |

Notwithstanding the foregoing, written notice given to any person shall be effective upon its actual receipt by the person entitled to receive it.

(b) Public Announcements . Except for disclosures by the parties to their respective lenders, investors and professional advisors, and except for Seller's public filings as required by the Securities and Exchange Commission, neither party hereto shall make, or cause to be made, any press release or public announcement in respect of this Agreement or the transactions contemplated hereby or otherwise communicate with any news media without the prior written consent of the other party unless otherwise required by law, regulation or applicable stock exchange rule or regulation, and the parties hereto shall cooperate as to the timing and contents of any such press release, public announcement or communication.

(c) Severability . If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by reason of any law or public policy, all other terms and provisions of this Agreement shall nevertheless remain in full force and effect for so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to either party hereto. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

(d) Entire Agreement . This Agreement, together with Seller License and all other agreements, documents and instruments to be delivered or executed at Closing, constitute the entire agreement of the parties hereto with respect to the subject matter hereof and thereof and supersedes all prior agreements and undertakings, both written and oral, between Seller and Purchaser with respect to the subject matter hereof and thereof.

(e) Assignment . This Agreement may not be assigned by operation of law or otherwise without the express written consent of Seller and Purchaser (which consent may be granted or withheld in the sole discretion of Seller or Purchaser); provided, however, that (i) Purchaser or Seller may assign this Agreement or any of their respective rights and obligations hereunder to one or more of their respective affiliates and (ii) either party may assign this Agreement to a person or entity which acquires and succeeds to the business of such party (as it relates to this Agreement) substantially as a going concern, in each case without the consent of the other party, provided that Purchaser and Seller shall remain liable for all of their respective obligations under this Agreement.

(f) Amendment . This Agreement may not be amended or modified except (a) by an instrument in writing signed by, or on behalf of, Seller and Purchaser or (b) by a waiver in accordance with Section 14(g).

(g) Waiver . Any party to this Agreement may (i) extend the time for the performance of any of the obligations or other acts of the other party, (ii) waive any inaccuracies in the representations and warranties of the other party contained herein or in any document delivered by the other party pursuant hereto or (iii) waive compliance with any of the agreements of the other party or conditions to such party's obligations contained herein. Any such extension or waiver shall be valid only if set forth in an instrument in writing signed by the party to be bound thereby. Any waiver of any term or condition shall not be construed as a waiver of any subsequent breach or a subsequent waiver of the same term or condition, or a waiver of any other term or condition of this Agreement. The failure of any party hereto to assert any of its rights hereunder shall not constitute a waiver of any of such rights. All rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available.

(h) Disclaimer . EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS AGREEMENT, SELLER DOES NOT MAKE AND HAS NOT MADE ANY OTHER EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WITH RESPECT TO THE PURCHASED ASSETS THEMSELVES (INCLUDING THE VALUE, CONDITION OR USE OF ANY PURCHASED ASSET), ANY BUSINESS OPPORTUNITIES INVOLVING THE PRODUCTS OR THE USE OF THE PURCHASED ASSETS, OR OTHERWISE WITH RESPECT TO ANY OTHER INFORMATION PROVIDED TO PURCHASER, INCLUDING, WITHOUT LIMITATION, AS TO THE PROBABLE SUCCESS OR PROFITABILITY OF THE OWNERSHIP OR USE OF THE PURCHASED ASSETS BY PURCHASER AFTER THE CLOSING.

(i) Governing Law . This Agreement shall be governed by, and construed in accordance with, the laws of the State of Wisconsin applicable to contracts executed in and to be performed in that State. All actions and proceedings arising out of or relating to this Agreement shall be heard and determined exclusively in any state or federal court in the State of Wisconsin. The parties hereto hereby

(a) submit to the exclusive jurisdiction of any Wisconsin state or federal court for the purpose of any action arising out of or relating to this Agreement brought by any party hereto, and

(b) irrevocably waive, and agree not to assert by way of motion, defense, or otherwise, in any such action, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the action is brought in an inconvenient forum, that the venue of the action is improper, or that this Agreement or the transactions contemplated by this Agreement may not be enforced in or by any of the above-named courts.

(j) Waiver of Jury Trial . EACH OF THE PARTIES HERETO HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH OF THE PARTIES HERETO HEREBY (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

(k) Benefit . This Agreement shall be binding upon and inure to the benefit and burden of and shall be enforceable by Seller and Purchaser and their respective successors and permitted assigns.

(l) Counterparts . This Agreement may be executed and delivered (including by facsimile transmission) in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original, but all of which taken together shall constitute one and the same agreement.

(m) Costs/Expenses . Except as otherwise provided herein, each party shall pay its own costs and expenses incurred in connection with this Agreement and the transaction contemplated hereby, even if the transactions contemplated hereby are not consummated or closed.

(n) Bulk Sales Compliance . Seller represents that the Purchased Assets do not constitute the majority of (or a substantial part of) Seller's assets, and accordingly the transactions contemplated by this Agreement are not subject to the Wisconsin Bulk Sales Law.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| SELLER: | | |  | PURCHASER: | | |
| LINENS LLC. | | |  | YAMAGUCHI CO., LTD. | | |
| By: |  | |s|Henry F. Johnson |  | By: |  | |s|Satoshi Sato |
|  |  | Henry F. Johnson |  |  |  | Satoshi Sato |
| Its: |  | VP-CFO |  | Its: |  | President |

**APA#3**

**ASSET PURCHASE AGREEMENT**

**This ASSET PURCHASE AGREEMENT** (the "Agreement" ), entered into this 25th day of July, 2012, is by and among BOSTON GLOBAL SERVICES CORP., a Massachusetts corporation with a principal place of business at 1329 Fairwaterview Dr., Suite 340, Hamilton, Ontario, L8E 2S2 ("Boston" ) and SUPREME SERVICES CORP., a New Jersey corporation with a principal place of business at 1329 Fairwaterview Dr., Suite 340, Hamilton, Ontario, L8E 2S2 ( "Trenton", and collectively with Boston, the "Purchasers" , and each individually, a "Purchaser" ), ABCD INTERNATIONAL-BOSTON, Inc, a Massachusetts corporation with a principal place of business at 548 Everret Street, Cambridge, Massachusetts 02139 ( "ABCD Boston ), ABCD INTERNATIONAL - Trenton, INC., a New Jersey corporation with a principal place of business at 1483 Fenton Avenue, Trenton NJ, 08604 ( "ABCD Trenton" and collectively with ABCD Boston, the "Sellers" and each individually, a "Seller" ) and ABCD INTERNATIONAL INCORPORATED, a Delaware corporation with a principal place of business at 313 South Benington Lane,Columbus, OH 43820 ( "Shareholder" ). Sellers, Shareholder and Purchasers are collectively referred to herein as the "Parties".

WITNESSETH

WHEREAS, Purchasers desire to purchase from Sellers, and Sellers desire to sell and transfer to Purchasers, substantially all of the assets as well as certain of the liabilities of the Business (as defined herein) upon the terms and conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained in this Agreement, and for other valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the Parties hereby agree as follows:

**ARTICLE 1 DEFINITIONS**

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

(a) "Accounts Payable" means (i) all bona fide accounts payable of Sellers related to the Business set forth on Schedule 1.1(a) or incurred in the ordinary course of the Business since the date of such schedule (exclusive of any accounts payable to Affiliates of any Seller so designated on Schedule 1.1(a)(i) ) and (ii) all liabilities with respect to which checks have been written on bank accounts of Sellers prior to the Closing Date, which are so designated on Schedule 1.1(a), which have not cleared as of the Closing Date and are not included in the lists of accounts payable on Schedule 1.1(a) .

(b) "Accounts Receivable" means all bona fide accounts receivable, notes receivable, and other amounts payable to Sellers or the Shareholder, including billed work in process and the Delinquent Receivables, in connection with the Business, as of the Closing Date, set forth on Schedule 1.1(b) or incurred in the ordinary course of the Business. 1 (c) "Accrued Liabilities" means all accrued expenses of Sellers related to the Business set forth on Schedule 1.1(c) or incurred in the ordinary course of the Business since the date of such schedule, including, but not limited to, (i) sick pay, paid time off, and personal days earned or incurred prior to the Closing Date, whenever payable and (ii) short term disability or other benefits earned by or incurred to employees of the Sellers prior to the Closing Date.

(d) "Affiliate" means, as to any Person, any other Person who directly or indirectly controls, is under common control with or is controlled by such Person. As used in this definition, "control" (including, "controlled by" and "under common control with") means possession, directly or indirectly, of power to direct or cause the direction of management or policies of such Person (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise).

(e) "Agreement" means, unless the context otherwise requires, this Asset Purchase Agreement together with the Schedules and Exhibits attached hereto, and the certificates and instruments to be executed and delivered in connection herewith.

(f) "Assumed Contracts" means all Contracts, customer orders, customer contracts, customer quotes, requests for proposals and requests for quotes of the Business delivered on or prior to the Closing Date or to be delivered following the Closing Date, set forth on Schedule 1.1(f) or incurred in the ordinary course of the Business since the date of such schedule.

(g) "Assumed Liabilities " means (i) the Accounts Payable of Sellers other than those set forth on Schedule 1.1(g) , (ii) the Deferred Liabilities, (iii) the Accrued Liabilities, and (iv) liabilities under the Assumed Contracts arising or performed after the Closing Date (other than any liability which results from, arises out of or relates to any breach of contract, tort, infringement or violation of law with respect to periods prior to the Closing Date).

(h) "Business" means the design-build services in connection with the establishment, design, repair and maintenance of wireless communication networks and systems currently conducted directly by the Sellers or Shareholder, throughout the world. For purposes of this definition, currently conducted by the Shareholder means in support of the business of the Sellers and excludes all other subsidiaries of the Shareholder.

(i) "Business Records" means originals or true copies of all operating data and financial records of Sellers relating to the Business, including accounting and bookkeeping books and records, purchase and sale orders and invoices, sales and sales promotional data, advertising materials, marketing analyses, past and present price lists, past and present customer service files, credit files, written operating methods and procedures, other financial information related to the Purchased Assets, reference catalogues, insurance files, personnel records, records relating to potential acquisitions and other financial records, on whatever media, pertaining to the Business, or to customers or suppliers of, or any other parties having contracts or other business relationships with, the Business. For purposes of clarity, communications of the Shareholder as well as correspondence and communications that are subject to a legally recognized privilege (such as the attorney-client privilege) or represent materials tendered to the Sellers pursuant to a non-disclosure agreement are not deemed "Business Records" for purposes of this Agreement.

(j) "Cash" means all cash of Sellers.

(k) "Charter Documents" means each Parties' articles or certificate of incorporation and bylaws in effect on the date hereof.

(l) "Closing Date" means the date that the Closing occurs as determined by the mutual agreement of the Parties.

(m) "COBRA" means the provisions of Part 6 of Subtitle B of Title I of ERISA and Section 4980B of the Code and all regulations thereunder.

(n) "Code" means the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder.

(o) "Confidential Information" has the meaning set forth in Section 6.7(d) . 2 (p) "Contracts" means any agreement, contract, license, lease, instrument, note, bond, mortgage, indenture, guarantee or other legally binding commitment or obligation, whether oral or written, as listed on Schedule 1.1(p) .

(q) "Customer Lists" means the benefit the Sellers' relationships with customers and all past and current customer lists and lists of potential customers of the Business (collectively, the "Customers", and each a "Customer" ).

(r) "Deferred Liabilities" means all bona fide deferred liabilities of Sellers related to the Business set forth on Schedule 1.1(r) or incurred in the ordinary course of the Business since the date of such schedule (exclusive of any deferred liabilities payable to Affiliates of any Seller, which shall be expressly designated as such on Schedule 1.1(r) ).

(s) "Delinquent Receivables" means all bona fide accounts receivable, notes receivable, and other amounts payable to Sellers or the Shareholder in connection with the Business, except those owed to Sellers or the Shareholder by Motorola Solutions, Inc. or any Affiliate of Motorola Solutions, Inc., that are 120 days or more past due as of the Closing Date as listed on Schedule 1.1(s) .

(t) "Directly Competitive" means engaging in or providing products, goods, services, support or technology similar to those provided by the Business, including, without limitation, engaging in or providing such products, goods, services, support or technology (x) in the Sellers' wireless business, market and service segments and/or (y) that compete with the Sellers' products, goods, services, support or technology as of the Closing Date; provided, however, that Sellers or Shareholder shall be permitted to engage in "wireless business activities" solely directly relating to the completion of electrical power or specialty construction projects only, in (A) their Seattle, Suisun City, Trenton, Australia and China operations or (B) any future businesses acquired by Sellers substantially similar to the Seattle, Suisun City, Trenton, Australia and China operations. For purposes of this Section 1.1(t) , "wireless business activities" as it pertains to the electrical power or specialty construction projects, would involve applications such as the Seattle operation performing in-building wireless voice installation work or the Suisun City operation or Trenton operation performing installation of nurse call or wireless video surveillance as part of an electrical contracting project.

(u) "Encumbrance" means any claim, lien, pledge, option, charge, easement, security interest, right-of-way, encroachment, reservation, restriction, encumbrance, or other right of any Person, or any other restriction or limitation of any nature whatsoever, affecting title to any of the Purchased Assets.

(v) "Enforceability Limitations" means (i) bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect relating to creditors' rights and (ii) the discretion of the appropriate Governmental Authority with respect to commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

(w) "Environmental Claim" means any notice of violation, notice of potential or actual responsibility or liability, or Proceeding (including those for contribution and/or indemnity) by any Governmental Authority or other Person for any damage (including personal injury, tangible or intangible property damage, natural resource damage, indirect or consequential damages, investigative costs, removal, response or remediation costs, nuisance, pollution, contamination or other adverse effects on the environment or for fines, penalties or restrictions or conditions on environmental Permits) resulting from or relating to the following conditions, circumstances or acts existing or occurring before the Closing Date:

(i) the presence of, a Release or threatened Release into the environment of, or exposure to, any Hazardous Substances, at, in, by or from any of the Facilities,

(ii) the generation, manufacture, processing, distribution, use, handling, transportation, storage, treatment or disposal of any Hazardous Substances at or in connection with the operation of any of the Facilities,

(iii) the violation, or alleged violation, of any Environmental Laws at or in connection with the operation of any of the Facilities, or

(iv) the non-compliance or alleged non-compliance with any Environmental Laws at or in connection with the operation of any of the Facilities.

(x) "Environmental Laws" means any applicable Governmental Requirements and any licenses, permits, notices or other requirements issued pursuant thereto, enacted, promulgated or issued by any Governmental Authority in any jurisdiction, in effect as of the Closing Date, relating to pollution or protection of public health or the environment (including any air, surface water, groundwater, land surface or sub-surface strata, whether outside, inside or under any structure), or to the identification, reporting, generation, manufacture, processing, distribution, use, handling, treatment, storage, disposal, transporting, presence, Release or threatened Release of, any Hazardous Substances. Without limiting the generality of the foregoing, Environmental Laws include the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Toxic Substances Control Act, as amended, the Hazardous Materials Transportation Act, as amended, the Resource Conservation and Recovery Act, as amended, the Clean Water Act, as amended, the Safe Drinking Water Act, as amended, the Clean Air Act, as amended, the Occupational Safety and Health Act, as amended and all similar or analogous laws enacted, promulgated or lawfully issued by any Governmental Authority.

(y) "ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder.

(z) "Excluded Assets" means the following assets of Sellers:

(i) any rights of Sellers under this Agreement and the other Transaction Documents;

(ii) any Tax records of Sellers, subject to applicable law; 3 (iii) any Insurance of Sellers;

(iv) any rights specifically relating to Excluded Contracts, the Employee Benefit Plans and the documents evidencing or otherwise relating to the foregoing; and

(v) the items described on Schedule 1.1(z)(v) .

(aa) "Excluded Contracts" means those Contracts set forth on Schedule 1.1(aa) .

(bb) "Excluded Liabilities" means any claims, lawsuits, liabilities, obligations, trade payables or any other debts or obligations of Sellers, the Shareholder or the Business incurred or existing on or prior to the Closing Date, whether the same are known, unknown, accrued, contingent or otherwise, including, without limitation, the following:

(i) any liability or obligation of the Sellers or the Shareholder arising out of or in connection with the negotiation or preparation of this Agreement or any Transaction Document prepared in connection herewith or the consummation and performance of the transactions contemplated hereby;

(ii) the accounts payables of the Sellers and the Shareholder, except for the Accounts Payables;

(iii) any liabilities or obligations associated with the Excluded Assets;

(iv) any amounts owed to or for the benefit of employees of Sellers or the Shareholder, including, but not limited to, amounts relating to wages, commissions, benefits, vacations, or severance pay which relate to services performed prior to the Closing Date;

(v) any liability or obligation under the Excluded Contracts and other agreements to which any Seller or the Shareholder is a party accruing prior to the Closing Date, to the extent not an Assumed Contract;

(vi) any claim, liability or obligation of the Sellers or the Shareholder, or any consolidated group of which any Seller or the Shareholder is a member or shareholder, for any federal, state, county or local Taxes of any and all types, or any interest or penalties thereon, accrued for, applicable to or arising from any period prior to the Closing Date;

(vii) any liability or obligation arising out of or in connection with the Business and operations of the Sellers, the Shareholder or the Purchased Assets prior to the Closing Date;

(viii) any liability or obligation for any borrowings of any Seller or the Shareholder, including all short-term or long-term debt, except as otherwise provided herein;

(ix) any liability or obligation of any Seller or the Shareholder to any Affiliate, any shareholder or any shareholder's affiliated entities or family members;

(x) by reason of or for any default, breach or penalty, whether known or unknown, any liability or obligation under any agreement, contract or other arrangement or commitment of any Seller or the Shareholder arising prior to the Closing Date;

(xi) any liabilities arising from a breach of contract, tort, trademark, violation of federal or state law, fraud, or for any other claim with respect to the Purchased Assets sold or products or services sold or provided by any Seller or the Shareholder, and any and all actions threatened or pending in any court of competent jurisdiction, administrative tribunal and/or arbitration tribunal, relating to actions of Sellers' or the Shareholder's operation of the Business prior to the Closing Date;

(xii) any liability or obligation arising out of or in connection with any action, suit, claim, charge, complaint, proceeding or investigation to the extent that it relates to events occurring prior to the Closing Date; and

(xiii) any liabilities and obligations to any holders of any shares of capital stock or any options, warrants or other rights to purchase securities of a Seller or the Shareholder. (cc)

"Facilities" means any real property ever owned or leased by Sellers or any of their predecessors.

(dd) "Financial Statements" means (a) the audited, consolidated balance sheet of Sellers as of April 30, 2011 and the related statement of operations (including related notes, if any) for the twelve (12) months ended April 30, 2011, (b) the unaudited, consolidated balance sheet of Sellers as of April 30, 2012 and the related statement of operations (including related notes, if any) for the twelve (12) months ended April 30, 2012, and (c) the estimated consolidated balance sheet of Sellers as of June 30, 2012 and the estimated related statement of operations (including related notes, if any) for the two (2) months ended June 30, 2012 (the "Interim Financial Statements" ), as delivered to the Purchasers.

(ee) "GAAP" means, with respect to all accounting matters and issues, generally accepted accounting principles as in effect from time to time in the United States applied (to the extent applicable) consistent with the Financial Statements.

(ff) "Goodwill" means the goodwill of the Business.

(gg) "Governmental Authority" means any federal, state, local or foreign government, or any political subdivision of any of the foregoing, or any court, agency or other entity, body, organization or group, exercising any executive, legislative, judicial, quasi-judicial, regulatory or administrative function of government, or any supranational body.

(hh) "Governmental Requirement" means any published law, statute, regulation, ordinance, rule, directive or code, and any order, judgment, writ, injunction, decree or award of any Governmental Authority, in each case, now in effect.

(ii) "Hazardous Substances" means any pollutants, contaminants, substances, hazardous and/or toxic chemicals, carcinogens, wastes, and any ignitable, corrosive, reactive, toxic or other hazardous substances or materials, whether solids, liquids or gases (including petroleum and its derivatives, PCBs, asbestos, radioactive materials, waste waters, sludge, slag and any other substance, material or waste), as defined in or regulated by any Environmental Laws or as determined by any Governmental Authority.

(jj) "Indemnified Party" means any Seller and Shareholder pursuant to Section 9.4 or any Purchaser pursuant to Section 9.2 .

(kk) "Indemnifying Party" means any Seller or the Shareholder pursuant to Section 9.2 or any Purchaser pursuant to Section 9.4 .

(ll) "Intellectual Property" means all intellectual property, including, without limitation,

(i) all inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto and all patents, patent applications and patent disclosures, together with all reissuances, continuations, continuations-in-part, revisions, extensions and re-examinations thereof,

(ii) all trademarks and service marks (other than those identified as "DEAD" by the United States Patent and Trademark Office as of the date of this Agreement), trade dress, logos, trade names and corporate names (other than those identified as "INACTIVE" or otherwise discontinued), together with all translations, adaptations, derivations and combinations thereof and including all goodwill associated therewith, and all applications, registrations and renewals in connection therewith,

(iii) all copyrightable works, copyrights and all applications, registrations and renewals in connection therewith,

(iv) all mask works and all applications, registrations and renewals in connection therewith,

(v) all trade secrets and confidential business information (including ideas, know-how, compositions, supplier lists, pricing and cost information and business and marketing plans and proposals),

(vi) all computer software (including data and related documentation and software installed on hard disk drives) other than (A) off-the-shelf computer software subject to shrink-wrap or click-wrap licenses or (B) Microsoft Exchange Online and other email hosting services,

(vii) all copies and tangible embodiments of any of the foregoing (in whatever form or medium),

(viii) all website URLS and website domain names, other than that of the Shareholder,

(ix) Customer files and Supplier files, and

(x) any testimonial releases provided to Purchasers. Notwithstanding anything else to the foregoing, Intellectual Property shall not include "WPCS", "WPCS International Incorporated" or any variation thereof, but shall include Boston Global Services, Inc. and Quality Communications Alarm Company, Inc.

(mm) "Inventory" means all raw material, work-in-process and finished goods inventories of the Business, wherever located, as listed on Schedule 1.1(mm) .

(nn) "Knowledge" means the actual knowledge of any officer or director of Seller or Shareholder, or the knowledge of any fact or matter which any person would reasonably be expected to become aware of in the course of performing the duties and responsibilities as an officer, director or shareholder of any Seller or as an officer or director of the Shareholder.

(oo) "Losses" means all losses, liabilities, deficiencies, damages (including indirect or consequential damages), encumbrances, fines, penalties, claims, costs and expenses (including all fines, penalties and other amounts paid pursuant to a judgment, compromise or settlement), court costs and reasonable legal and accounting fees and disbursements.

(pp) "Material Adverse Effect" means:

(i) with respect to any Seller, an effect that is or would reasonably be expected to be materially adverse (A) to the Business or the Purchased Assets, results of operations or financial condition of such Seller; or (B) to such Seller's ability to perform any of its material obligations under this Agreement or to consummate the transactions contemplated in this Agreement; or

(ii) with respect to Purchasers, an effect that is or would reasonably be expected to be materially adverse (A) to the business, results of operation or financial condition of Purchasers; or (B) to Purchasers' ability to perform any of its material obligations under this Agreement or to consummate the transactions contemplated in the Agreement; provided, however, that in determining whether a Material Adverse Effect has occurred there shall be excluded any effect on the referenced Party the cause of which is: (A) general changes in conditions in the financial markets or in the global or United States economy so long as any such change does not materially affect the referenced Party to a materially different extent than other similarly situated Persons, (B) any action or omission of any Purchaser or any Seller in contemplation of the transactions set forth in the Agreement, and (C) the announcement or disclosure of the transactions contemplated hereby.

(qq) "Other Current Assets" means all current assets of the Business, including those listed on Schedule 1.1(qq) .

(rr) "Permits" means all permits, licenses, consents, franchises, approvals and other authorizations required from any Governmental Authority, including, without limitation, the State of New Jersey, the State of Connecticut, or any city, county or other jurisdiction in connection with the operation of the Business or the ownership of the Purchased Assets, which is necessary to conduct the Business as presently conducted, as set forth on Schedule 4.6(b) .

(ss) "Person" means any Governmental Authority, individual, association, joint venture, partnership, corporation, limited liability company, trust or other entity.

(tt) "Proceeding" means any claim, demand, action, suit, litigation, dispute, inquiry, order, writ, injunction, judgment, assessment, decree, grievance, arbitral action, investigation or other proceeding.

(uu) "Purchased Assets" means all right, title and interest of Sellers in and to all of the assets of Sellers relating to the Business of whatsoever nature, tangible or intangible, real or personal, including the following (except to the extent an Excluded Asset):

(i) the Cash;

(ii) the Accounts Receivable;

(iii) all interest in and claims and rights under the Assumed Contracts, including unbilled work in progress;

(iv) the Leases;

(v) the Business Records;

(vi) the Customer Lists;

(vii) the Supplier Lists;

(viii) the Goodwill;

(ix) the Other Current Assets;

(x) the Intellectual Property owned by Sellers or used in the Business, in whole or in part;

(xi) the telephone and facsimile numbers used in the Business;

(xii) the Tangible Personal Property;

(xiii) the Inventory;

(xiv) all refund and deposits with respect to Tax Liabilities for all periods prior to the Closing Date from any Governmental Authority and business credits and/or refunds;

(xv) prepaid expenses, credits, security and other deposits, and rights to refunds or reimbursements, including, without limitation, those items relating to the Purchased Assets and listed on Schedule 4.24 (collectively, the "Deposits" );

(xvi) all of Sellers right, title and interest in all software utilized or planned to be utilized by either Seller in the operation of the Business, except Microsoft Exchange Online and other email hosting services;

(xvii) the Permits, to the extent the same are transferable;

(xviii) all rights and interests to any covenant not to compete granted to any Seller by any other Person; and

(xix) all other assets related to the Business, except the Excluded Assets.

(vv) "Purchase Price" means the consideration set forth in Section 2.4(a) below. (ww)

"Related Person" means any shareholder, director, officer or employee of any Seller or any other direct or indirect beneficial owner of any Seller, any Person related to any such shareholder, director, officer, employee or beneficial owner by blood or marriage, or any limited liability company, partnership, corporation, trust or other entity in which any such person has a substantial interest as a member, partner, shareholder, trustee or otherwise. (xx)

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migrating, dumping or disposing into the environment which could give rise to an Environmental Claim or which is required to be reported pursuant to 40 C.F.R. 302 or 355, or any analogous Environmental Law. (yy)

"Representative" means any officer, director, principal, attorney, accountant, agent, employee or other representative of any Person. (zz)

"Securities Laws" means the Securities Act of 1933, as amended, and the Securities Exchange Act of 1934, as amended. (aaa)

"Shareholder" means ABCD International Incorporated. (bbb)

"Supplier Lists" means the benefit of all of Sellers' relationships with suppliers and all past and current supplier lists and lists of potential suppliers of the Business (collectively, the "Suppliers", and each a "Supplier" ). (ccc)

"Tangible Personal Property" means all tangible personal property of the Business owned or leased by any Seller or in which any Seller has any interest, including, without limitation, all Inventory, computer hardware, furniture and fixtures, transportation equipment, vehicles, equipment, machinery, servers, ancillary equipment, parts, components, cosigned material, resale products, leasehold improvements, tooling, supplies and other tangible assets, where ever located, together with any transferable manufacturer or vendor warranties related thereto, including the listed on Schedule 1.1(ccc) . 6 (ddd)

"Tax" means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, startup, occupation, premium, windfall profits, environmental (including taxes under Code Section 59A), customs duties, capital stock, franchise, profits, withholding, social security (or similar), health, unemployment, disability, real property, personal property, intangible property, sales, use, transfer, registration, value added, goods and services, alternative or add-on minimum, estimated, or other tax or similar obligation of any kind whatsoever, including any interest, penalty or addition thereto, whether disputed or not. (eee)

"Tax Liability" means liability for any Taxes owing by Sellers to any Governmental Authority attributable to the operations and activities of, or otherwise incurred by or existing with respect to, Sellers for any period ending on or prior to the Closing Date, including Taxes computed through the Closing Date with respect to any partial year on a closing-of-the-books basis as if such partial year ended at the close of business on the Closing Date. (fff)

"Tax Return" means any return, declaration, report, claim for refund or information return or statement relating to Taxes, including any schedule or attachment thereto, and any amendment thereof. (ggg)

"Transaction Documents" means this Agreement, the Escrow Agreement and the bills of sale, assignments, instruments and other documents described in Sections 3.1(a) and 3.2(b) .

1.2 Other Defined Terms. The following terms shall have meanings defined for such terms in the sections set forth below:

|  |  |  |
| --- | --- | --- |
| Term |  | Section |
| "Additional Escrowed Funds" |  | 2.4(a)(iii) |
| "Adjustment Date" |  | 2.5(c) |
| "Basket" |  | 9.3(b) |
| "Cap" |  | 9.3(c) |
| "Casualty" |  | 10.5 |
| "Casualty Amount" |  | 10.5 |
| "Claims Period" |  | 9.1(a) |
| "Closing" |  | 3.1 |
| "Closing Date Balance Sheet" |  | 2.5(b) |
| "Closing Date NABSV" |  | 2.5(b) |
| "Closing Payment" |  | 2.4(a)(i) |
| "Commission" |  | 6.10 |
| "Consent" |  | 2.4(a)(iii) |
| "Consent Delivery Date" |  | 2.4(a)(iii) |
| "Disclosure Schedules" |  | Article 4 |
| "Employee Benefit Plans" |  | 4.12(a) |
| "Escrow Agreement" |  | 2.4(a)(iv) |
| "Escrowed Funds" |  | 2.4(a)(iii) |
| "Estimated Closing Day Balance Sheet" |  | 2.5(b) |
| "Estimated NABSV" |  | 2.5(b) |
| "First Escrow Account" |  | 2.4(a)(ii) |
| "Independent Accounting Firm" |  | 2.5(b) |
| "Initial Escrow Funds" |  | 2.4(a)(ii) |
| "Initial Independent Accounting Firm" |  | 2.5(b) |
| "Insurance" |  | 4.15 |
| "ISRA" |  | 4.21(f) |
| "Lease Assignments" |  | 6.6 |
| "Leases" |  | 4.14(a) |
| "Material Contracts" |  | 4.18(a) |
| "NABSV" |  | 2.5(a) |
| "Net Asset Balance Sheet Value" |  | 2.5(a) |
| "Non-Transferable Assets" |  | 3.4 |
| "Potential Acquisition" |  | 6.16 |
| "Purchasers' Claims Period" |  | 9.1(c) |
| "Purchaser Indemnified Party" |  | 9.2(a) |
| "Purchaser Indemnifying Party" |  | 9.4 |
| "Qualified Individual" |  | 6.9 |
| "Resolution Period" |  | 2.5(b) |
| "Second Escrow Account" |  | 2.4(a)(iii) |
| "Second Independent Accounting Firm" |  | 2.5(b) |
| "Seller Indemnified Party" |  | 9.4 |
| "Target NABSV" |  | 2.5(a) |
| "Target Net Asset Balance Sheet Value" |  | 2.5(a) |
| "Seller Indemnifying Party" |  | 9.2(a) |
| "Third Independent Accounting Firm" |  | 2.5(b) |
| "Third Party Claim" |  | 9.5(b) |

1.3 Usage of Terms . Except where the context otherwise requires, words importing the singular number include the plural number and vice versa. Use of the word "including" means "including, without limitation."

1.4 References to Articles, Sections, Exhibits and Schedules . All references in this Agreement to Articles, Sections (and other subdivisions), Exhibits and Schedules refer to the corresponding Articles, Sections (and other subdivisions), Exhibits and Schedules of or attached to this Agreement, unless the context expressly, or by necessary implication, otherwise requires.

**ARTICLE 2 PURCHASE AND SALE OF PURCHASED ASSETS**

2.1 Transfer of Purchased Assets . Subject to the terms and conditions contained in this Agreement, on the Closing Date, Sellers and the Shareholder, as applicable, shall sell, convey, transfer, assign and deliver, or cause to be sold, transferred, assigned and delivered, to Purchasers, and Purchasers shall purchase and acquire from Sellers or the Shareholder, as applicable, all of the Purchased Assets, free and clear of any Encumbrances, and Sellers and the Shareholder, as applicable, shall retain the Excluded Assets.

2.2 Assumed Liabilities . On the Closing Date, Purchasers shall assume and agree to pay or perform in accordance with their terms the Assumed Liabilities, and no other liabilities of Sellers or the Shareholder.

2.3 Excluded Liabilities . On the Closing Date, Sellers and the Shareholder shall retain and pay or perform in accordance with their terms the Excluded Liabilities, and Purchasers shall not assume any obligation for or in respect of the Excluded Liabilities.

2.4 Consideration .

(a) As consideration for the sale, transfer, assignment, conveyance and delivery of the Purchased Assets, Purchasers shall assume the Assumed Liabilities and shall pay Sellers an amount equal to Five Million Five Hundred Thousand Dollars ($5,500,000) less the amount by which (i) the Estimated NABSV (as defined below) based on the Estimated Closing Date Balance Sheet (as defined below) is less than the Target NABSV (as defined below), and (ii) the amount by which the Closing Date NABSV (as defined below) based on the Closing Date Balance Sheet (as defined below) is less than the Estimated NABSV (as so adjusted, the " Purchase Price "), subject to adjustment as set forth herein, as follows:

(i) On the Closing Date, the Purchasers shall pay Four Million Nine Hundred Thousand Dollars ($4,900,000) of the Purchase Price to the Sellers (the " Closing Payment "), less the amount by which the Estimated NABSV is less than the Target NABSV, which shall be paid by cash and/or wire transfer of immediately available funds into an account designated by the Sellers;

(ii) On or prior to the Adjustment Date (as hereinafter defined), in order to satisfy any amounts which the Sellers may be required to deliver to the Purchasers as a result of a deficiency in the NABSV pursuant to the terms hereof and pursuant to Sections 2.4(a)(ii), 2.4(a)(iii) and 6.10 hereof, Two Hundred Fifty Thousand Dollars ($250,000) of the Purchase Price (the " Initial Escrowed Funds ") shall be deposited by the Purchasers into an escrow account maintained by Seller's counsel (the " First Escrow Account ") until the later of (1) the Closing Date NABSV shall have been determined and a deficiency in the NABSV shall have been paid, (2) any amount of Returned Receivables shall have been paid from the Escrow Account to the Purchasers, and (3) any amounts payable to the Purchasers pursuant to Section 2.4(a)(iii) shall have been so paid, and any remaining amount of the Initial Escrowed Funds shall be paid to the Sellers; and

(iii) On or prior to the Adjustment Date, the Purchasers shall deposit an additional Three Hundred Fifty Thousand Dollars ($350,000) of the Purchase Price (the " Additional Escrowed Funds " and, together with the Initial Escrowed Funds, the " Escrowed Funds ") into a second escrow account maintained by Seller's counsel (the " Second Escrow Account " and, together with the First Escrow Account, the " Escrow Account "), subject to delivery by the Sellers to the Purchasers of the consents to assignment listed on Schedule 2.4(a)(iii) (each, a " Consent "), in a form reasonably acceptable to the Purchasers, and payment in full of all amounts otherwise payable to the Purchasers pursuant to Section 2.4(a)(ii) hereof. For each Consent received by the Purchasers as of the Adjustment Date, and for each Consent received by the Purchasers following the Adjustment Date but prior to the Consent Delivery Date (as defined below), the Additional Escrowed Funds, to the extent remaining, shall be paid to the Sellers in an amount equal to the amount set forth opposite each such Consent on Schedule 2.4(a)(iii) . The remainder of the Escrowed Funds, if any, shall be held in escrow until the earlier of: (x) the receipt of all remaining Consents by the Purchasers; or (y) ninety (90) days after the Closing Date (the " Consent Delivery Date "); provided , that , (1) if the Purchasers have not received all Consents as of the Consent Delivery Date, any Escrowed Funds allocated to such Consents as set forth on Schedule 2.4(a)(iii), if any, shall be paid to the Purchasers, (2) any amounts due to the Purchasers with respect to a deficiency in the NABSV pursuant to Section 2.4(a)(ii) in excess of the Initial Escrow Funds shall be paid to the Purchasers from the Additional Escrowed Funds, (3) if any amounts due to the Purchasers pursuant to Sections 2.4(a)(ii) or (iii) are in excess of the amount of the remaining Escrowed Funds, the Sellers shall pay such excess to the Purchasers on the Adjustment Date or the Consent Delivery Date, as applicable, by wire transfer of immediately available funds, cashier's check or certified check, and (4) if any Escrow Funds are required to be paid to the Purchasers from the Additional Escrow Funds as a result of a deficiency in NABSV, any funds which otherwise would be payable to the Sellers under Section 2.4(a)(iii) will be reduced accordingly.

(iv) The Escrowed Funds shall be held in accordance with the terms and conditions set forth in the escrow agreement attached hereto as Exhibit 2.4(a)(iv) (the " Escrow Agreement ").

2.5 Net Asset Balance Sheet Value Adjustment .

(a) Net Asset Balance Sheet Value; Targeted Net Asset Balance Sheet Value . For purposes of this Agreement, " Net Asset Balance Sheet Value " or " NABSV " means the total assets minus the total liabilities of the Sellers, excluding intercompany loans due to or from the Sellers and customer lists and accumulated amortization of same, in each case computed in accordance with GAAP and consistent with historical practice. For purposes of this Agreement, " Target Net Asset Balance Sheet Value " or " Target NABSV " means $3,300,000.

(b) Estimated NABSV; Preliminary NABSV Adjustment . Not less than two (2) business days prior to the Closing Date, the Sellers shall provide to the Purchasers a calculation of the NABSV as of June 30, 2012 (the " Estimated NABSV "), together with a copy of the balance sheet of the Company as of June 30, 2012 upon which such calculation is based (the " Estimated Closing Date Balance Sheet "), which shall be prepared in a manner consistent with the preparation of the Financial Statements. At the Closing, if the Estimated NABSV is less than the Target NABSV, the Purchase Price shall be decreased on a dollar-for-dollar basis in the amount of such shortfall (the " NABSV Adjustment ").

(c) NABSV; Resolution Procedures . Not later than forty (40) days after the Closing Date, the Purchasers shall prepare and deliver to the Sellers their calculation of the NABSV as of the Closing Date (the " Closing Date NABSV "), together with a copy of the balance sheet upon which such calculation is based (the " Closing Date Balance Sheet "). If the Sellers object in any way either to the Purchasers' calculation of the Closing Date NABSV or to the Closing Date Balance Sheet, then the Sellers shall notify the Purchasers in writing of such objection within thirty (30) days following their receipt of the Closing Date NABSV. If, for any reason, the Sellers fail to give the Purchasers notice of any such objection within such 30-day period, then, for purposes of this Section 2.5(c) , Purchasers' calculation of the Closing Date NABSV shall be deemed to be the actual NABSV and shall be used as the basis for making any further adjustments to the Purchase Price described in Section 2.5(d) . If, however, the Sellers notify the Purchasers of such an objection within such 30-day period, then the Sellers and the Purchasers shall, for a period of time not to exceed twenty (20) days (unless otherwise agreed in writing by the Parties) after the date upon which the Purchasers receive the Sellers' objection notice (such period of time being hereinafter referred to as the " Resolution Period "), work together diligently and in good faith to resolve any and all such objections. If, at or before the end of the Resolution Period, the Sellers and the Purchasers resolve their disputes regarding the calculation of the Closing Date NABSV or the Closing Date Balance Sheet, as applicable, then the calculation of the Closing Date NABSV as so agreed to by the Sellers and the Purchasers shall be deemed to be the actual NABSV and shall be used as the basis for making any further adjustments to the Purchase Price described in Section 2.5(d) . If, at the end of the Resolution Period, the Sellers and the Purchasers have not resolved their disputes regarding the calculation of the Closing Date NABSV or the Closing Date Balance Sheet, as applicable, then such disputes shall, within five (5) days after the expiration of the Resolution Period, be submitted to an independent, nationally recognized accounting firm mutually appointed by the Sellers and the Purchasers (the " Initial Independent Accounting Firm ") for final determination. If the Sellers and the Purchasers cannot agree on the Initial Independent Accounting Firm, each of the Sellers and the Purchasers shall, at their own respective cost, appoint a second independent, nationally recognized accounting firm (each, a "Second Independent Accounting Firm" ) within an additional five (5) day period. If either the Sellers or the Purchasers fail to appoint a Second Independent Accounting Firm during such 5-day period, the other Party's Second Independent Accounting Firm shall solely be responsible for the determination of the dispute, which shall be final, binding and conclusive on the Parties hereto. If each Party appoints a Second Independent Accounting Firm, and such Second Independent Accounting Firms agree on the Closing Date NABSV or the Closing Date Balance Sheet, as applicable, they shall jointly render a written report thereof, which shall be final, binding and conclusive on the Parties hereto. If such Second Independent Accounting Firms do not agree on the Closing Date NABSV or the Closing Date Balance Sheet, as applicable, within fifteen (15) days following their appointment, they shall mutually appoint a third independent, nationally recognized accounting firm (the "Third Independent Accounting Firm" , and together with the Initial Independent Accounting Firm and each Second Independent Accounting Firm, the "Independent Accounting Firm" ), which shall determine the dispute, which determination shall be final, binding and conclusive on the Parties hereto. The Independent Accounting Firm shall only have the authority to resolve matters expressly submitted to it for resolution. If the Independent Accounting Firm determines that the Closing Date NABSV is greater than five percent (5%) more than the Closing Date NABSV as determined by the Purchasers pursuant to this Section 2.5(c) , the Party whose calculation of the Closing Date NABSV pursuant to this Section 2.5(c) differed by the larger margin from the Closing Date NABSV as determined by the Independent Accounting Firm shall pay the costs and expenses of the Independent Accounting Firm and any attorneys' fees and other expenses incurred by the other Party in its calculation of the Closing Date NABSV. If the Independent Accounting Firm determines that the Closing Date NABSV is equal to or less than five percent (5%) more than the Closing Date NABSV as determined by the Purchasers pursuant to this Section 2.5(c) , then the Sellers shall pay the costs and expenses of the Independent Accounting Firm and any attorneys' fees and other expenses incurred by the Purchasers in their calculation of the Closing Date NABSV. The Independent Accounting Firm's resolution of any disputes hereunder shall be made within thirty (30) days of the submission of such dispute thereto, shall be set forth in a written statement delivered to the Sellers and the Purchasers, shall be conclusive and binding on the Parties for all purposes and shall be used as the basis for making any further adjustments to the Purchase Price described in Section 2.5(d) .

(d) Further Adjustment to Purchase Price . If the Closing Date NABSV, as determined pursuant to Section 2.5(c) , exceeds the Target NABSV, as determined pursuant to Section 2.5(b) , then the Purchasers, jointly and severally, shall pay to the Sellers an amount equal to (i) the difference between such Target NABSV and such Closing Date NABSV, plus (ii) any amount paid to Purchasers pursuant to Section 2.5(b). If the Closing Date NABSV, as determined pursuant to Section 2.5(c) , is less than the Target NABSV, as determined pursuant to Section 2.5(b) , then the Sellers, jointly and severally, shall pay to the Purchasers an amount equal to (i) the difference between such Target NABSV and such Closing Date NABSV, less (ii) any amount paid to Purchasers pursuant to Section 2.5(b). Any amounts owed to the Sellers or the Purchasers, as applicable, pursuant to this Section 2.5(d) shall be paid to the Sellers or Purchasers, as applicable, within three (3) days of the final determination thereof (the " Adjustment Date ") first from the Escrowed Funds pursuant to the terms of the Escrow Agreement, and if any amounts due to the Purchasers exceed the amount of the Escrowed Funds, such excess shall be paid to the Purchasers by the Sellers on the Adjustment Date by wire transfer of immediately available funds, cashier's check or certified check.

(e) The Sellers and the Purchasers agree to treat any payments made pursuant to Section 2.5(d) as an adjustment to the NABSV Adjustment and the Purchase Price for all Tax purposes and to cooperate in connection with the preparation and filing of any Tax Return, claim for refund or other required or optional filings relating to any Tax matters related thereto, the preparation of any Tax audit related thereto, the preparation of any Tax protest related thereto or the prosecution or defense of any Proceeding relating to any such Tax matters, in each case in accordance with Section 6.11 . 10

(f) Notwithstanding anything in this Section 2.5 to the contrary, if the Closing Date NABSV is not more or less than $25,000 from the Estimated NABSV, no further adjustment to the Purchase Price shall be made pursuant to Section 2.5(d).

2.6 Taxes; Proration . Sellers will be responsible for the payment of any sales, use, transfer, excise, stamp or other similar Taxes and all recording fees and similar charges imposed by reason of the transfer of the Purchased Assets pursuant to this Agreement and any deficiency, interest or penalty with respect to such Taxes. Sellers shall remit the same to the applicable taxing authorities. Sellers agree to notify the Purchasers promptly of receipt of any bills or other communications relating to such Taxes, fees and charges and shall prepare and file, and shall fully cooperate with the other Parties with respect to the preparation and filing of, any returns or other filings relating to such Taxes, fees and charges.

2.7 Allocation of Purchase Price . The Purchase Price shall be allocated as set forth on Schedule 2.7 hereto in accordance with Section 1060 of the Code. Each of the Parties hereto agrees to prepare and file all tax returns (including IRS Form 8594) in a manner consistent with such allocation and to report this transaction for Federal and State income tax purposes in accordance with such allocation of the Purchase Price and shall use their reasonable efforts to sustain such allocation in any subsequent tax audit or dispute. Notwithstanding anything in this Agreement to the contrary, the Sellers shall be responsible for the aggregate amount of any and all transfer, sales, value-added, use, excise or similar taxes that may be payable in connection with the sale or purchase of the Purchased Assets.

**ARTICLE 3 CLOSING**

3.1 Closing . The closing of the transactions contemplated by this Agreement will be held at 10:00 a.m. local time on the Closing Date at the offices of Sichenzia Ross Friedman Ference LLP or any other place as Purchasers and Sellers shall mutually agree (the "Closing" ). The Closing will be effective as of 11:59 p.m. eastern time on the Closing Date.

(a) Conveyances at Closing . Upon the terms and conditions contained in this Agreement, on the Closing Date, Sellers and the Shareholder shall deliver to Purchasers (i) one or more bills of sale conveying in the aggregate all of the Purchased Assets, (ii) one or more assignments of the Intellectual Property owned by Sellers or used in the Business in recordable form, (iii) one or more assignments of the Assumed Contracts of Sellers and the Shareholder, (iv) such other instruments as are reasonably requested by Purchasers to enable title to vest in Purchasers in and to the Purchased Assets in accordance with the provisions of this Agreement and (v) such other documents and agreements as are contemplated in Article 8 of this Agreement. In each case, Trenton shall purchase and acquire the Purchased Assets of ABCD Trenton and of the Shareholder relating thereto, and Hartford shall purchase and acquire the Purchased Assets of ABCD Boston and of the Shareholder relating thereto.

(b) All of such instruments will be in form and substance, and will be executed and delivered in a manner, reasonably satisfactory to Purchasers and Sellers, but will not diminish the status of title to the Purchased Assets required to be delivered pursuant to this Agreement.

3.2 Assumptions at Closing .

(a) Upon the terms and conditions contained in this Agreement, on the Closing Date, Purchasers will deliver to Sellers and the Shareholder (i) one or more bills of sale acquiring in the aggregate all of the Purchased Assets, (ii) one or more assignments of the Assumed Contracts of Sellers and the Shareholder, (iii) an assumption of the Assumed Liabilities, (iv) such other instruments of assumption evidencing Purchasers' assumption of the Assumed Contracts and Assumed Liabilities as Sellers reasonably deem necessary and (v) such other documents and agreements as are contemplated by Article 7 of this Agreement. In each case, Trenton shall assume the Assumed Contracts of ABCD Trenton and of the Shareholder relating thereto and the Assumed Liabilities of ABCD Trenton, and Trenton shall assume the Assumed Contracts of ABCD Boston and of the Shareholder relating thereto and the Assumed Liabilities of ABCD Boston.

(b) All such instruments will be in form and substance, and will be executed and delivered in a manner, reasonably satisfactory to Sellers and Purchasers, but will not increase or decrease the Assumed Contracts and Assumed Liabilities required to be assumed by Purchasers pursuant to this Agreement.

3.3 Certificates and Other Document . Each of the Parties shall deliver or cause to be delivered the certificates and other documents and items described in Articles 6, 7 and 8 .

3.4 Non-Transferable Assets . The Parties understand and agree that certain Purchased Assets may not be immediately transferable or assignable to Purchasers, and Purchasers may in their sole discretion allow Sellers to retain certain of such assets after the Closing Date (the "Non-Transferable Assets" ), and this Agreement will not constitute an assignment of any such Non-Transferable Assets. In such event, (i) Sellers shall use its best efforts to obtain any consent or authorization which may be required to transfer or assign the Non-Transferable Assets to Purchasers or to remove or eliminate any impediment preventing the transfer or assignment of the Non-Transferable Assets to Purchasers, (ii) Sellers shall grant to Purchasers full use and benefit of its interest in the Non-Transferable Assets to the extent permitted by the terms of or applicable to such Non-Transferable Assets, it being the intent of the Parties that, to the extent not inconsistent with the foregoing, Purchasers shall have the benefit of the Non-Transferable Assets as though it were the sole owner thereof, (iii) Sellers shall take all actions necessary to preserve the value of the Non-Transferable Assets, (iv) Sellers shall not transfer or assign the Non-Transferable Assets to any Person other than Purchasers or Purchasers' assigns, (v) Sellers shall transfer or assign the Non-Transferable Assets to Purchasers at the earliest date, if any, on which such transfer or assignment can be effected and (vi) subject to clauses (i) through (iv) above, Purchasers will be responsible for obligations relating to such Non-Transferable Assets arising or occurring on or after the Closing Date as if they had been transferred or assigned to Purchasers in accordance with the terms of this Agreement. Upon the request of Purchasers, Sellers shall enforce, for the account and on behalf of Purchasers, any rights of Sellers arising under or in connection with any Non-Transferable Asset.

**ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF SELLERS**

Except as set forth under the corresponding section of the disclosure schedules delivered concurrently herewith (the "Disclosure Schedules" ), which Disclosure Schedules shall (i) segregate all disclosed items by whether they relate to ABCD Trenton or ABCD Boston, and (ii) be deemed a part hereof and shall qualify any representation, warranty or otherwise made herein to the extent of the disclosure contained in the corresponding section of the Disclosure Schedules, each Seller and Shareholder, jointly and severally, hereby represent and warrant to the Purchasers, and acknowledge that such representations and warranties are material inducements to the Purchasers entering into this Agreement, as follows:

4.1 Organization and Authority of Sellers to Conduct Business . Each Seller and the Shareholder is duly organized, validly existing and in good standing under the laws of the state in which it is incorporated. Schedule 4.1 sets forth each jurisdiction where each Seller is qualified to do business. Each Seller is duly licensed or qualified to do business as a foreign corporation and is in good standing in all States in which the character of the Purchased Assets or nature of the Business requires it to be so licensed or qualified and in which the failure to qualify and be in good standing would not have a Material Adverse Effect on the Business, financial condition or operations of such Seller. Each Seller has full corporate power and authority to conduct the Business as it is presently being conducted and to own, operate and lease its properties and assets therein, to execute and deliver this Agreement, to sell, convey, transfer, assign and deliver the Purchased Assets to the Purchasers and to consummate the transactions contemplated by this Agreement.

4.2 Subsidiaries . No Seller has any subsidiaries and no Seller owns, directly or indirectly, capital stock or other voting securities of any corporation or other Person.

4.3 Power and Authority; Binding Effect . Subject to any consents required under Sections 4.5 and 4.6 below, each Seller and the Shareholder has all necessary power and authority and has taken all action necessary to authorize, execute and deliver this Agreement and the Transaction Documents, to consummate the transactions contemplated by this Agreement and the Transaction Documents, and to perform its obligations under this Agreement and the Transaction Documents. Each Seller and the Shareholder has delivered to Purchasers copies of all resolutions of such Seller's and the Shareholder's board of directors and/or shareholders with respect to the transactions contemplated by this Agreement and the Transaction Documents, certified by the Secretary of such Seller and the Shareholder, in form reasonably satisfactory to counsel for Purchasers. Subject to any consents required under Sections 4.5 and 4.6 below, no other action on the part of any Seller or the Shareholder is required to authorize the execution and delivery of this Agreement and the Transaction Documents and to consummate the transactions contemplated hereby. This Agreement and the Transaction Documents has been duly executed and delivered by Sellers and the Shareholder and constitutes a legal, valid and binding obligation of each Seller and the Shareholder, enforceable in accordance with its terms, except as such enforcement may be limited by the Enforceability Limitations.

4.4 Title; Condition of Tangible Personal Property .

(a) Sellers have and at the Closing the Purchasers will receive, good, valid and marketable title, free and clear of all Encumbrances to all of the Purchased Assets except (a) liens for Taxes not yet due and payable, and (b) such imperfections of title, easements and Encumbrances, if any, as are not material in character, amount or extent. The Purchased Assets, together with any properties, assets and rights licensed or leased by Sellers or the Shareholder, as applicable, and disclosed in Schedule 4.4(a) , constitute all tangible and intangible assets that Sellers have used, held or are necessary in connection with the operation of the Business as conducted on the date hereof. There are no facts or conditions affecting any Purchased Assets which would reasonably be expected to materially interfere with the current use, occupancy or operation of such Purchased Assets. Except as set forth on Schedule 4.4 , Sellers have conducted the Business only through Sellers or the Shareholder and not through any other divisions or any direct or indirect subsidiaries and no part of the Business is operated by Sellers through any entity other than Sellers or the Shareholder.

(b) The Tangible Personal Property is operational and in a condition adequate and sufficient for use in the Business as it has been conducted to date and as it shall be conducted in the future by Purchaser, ordinary wear and tear excepted.

4.5 No Conflict; Governmental Authorization; Required Filings and Consents .

(a) Except as set forth on Schedule 4.5(a) , neither the execution, delivery and performance of this Agreement or the Transaction Documents by any Seller and the Shareholder nor the consummation of any of the transactions contemplated by this Agreement or the Transaction Documents do, or will, directly or indirectly (with or without notice or lapse of time or both), (i) contravene, violate or conflict with any Seller's or the Shareholder's Charter Documents, (ii) result in any breach of, violate or constitute a default (or an event which with notice or lapse of time or both would become a default) under, terminate or cancel or give to others any rights of termination, acceleration or cancellation of (with or without notice or lapse of time or both), any contract, agreement, indenture or other instrument to which any Seller and/or Shareholder is a party or by which the Business is bound, or (iii) result in the creation of an Encumbrance of any nature whatsoever on any of the properties or Purchased Assets of any Seller or the Shareholder or materially affect the Business or (iv) result in the termination of any material license, franchise, lease or permit to which any Seller or Shareholder is a party or by which it or the Purchased Assets are bound.

(b) The execution and delivery of this Agreement and the Transaction Documents by each Seller and Shareholder does not, and the performance of this Agreement and the Transaction Documents, the consummation of the transactions contemplated by the Agreement and the Transaction Documents by such Seller and the Shareholder will not, require any consent of or filing with or notification to, any Governmental Authority or any other Person.

4.6 Compliance with Laws and Permits .

(a) To the Knowledge of Seller, except as set forth on Schedule 4.6(a) , Sellers have been at all times during the last three (3) years, and Sellers are now being, operated in compliance with applicable Governmental Requirements of the federal government, the State of such Seller's incorporation and any State where each Seller is qualified to do business, and are not aware of any instances of non-compliance which could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on any Seller, the Business or the Purchased Assets of any Seller, and no written notice has been received by any Seller or Shareholder alleging such non-compliance. This Section 4.6 does not apply to environmental or pollution-related Governmental Requirements or matters, it being the intent and agreement of the Parties that such matters be exclusively the subject of Section 4.21 .

(b) Schedule 4.6(b) identifies all Permits issued in connection with the Business and currently in effect, and includes (i) the Governmental Authority that issued the Permit, (ii) the expiration date of each Permit, and (iii) the fact that the Permit is not transferable to Purchasers, if applicable. To the Sellers' Knowledge, the Sellers hold and are in compliance with all Permits and the Permits constitute all permits, consents, licenses, franchises, authorizations and approvals required, used in the operation of or necessary to conduct the Business of Seller as currently conducted. All of the Permits are valid and in full force and effect, no material violations have been experienced, noted or recorded and no material violations are expected, and no Proceeding is pending or, to the Knowledge of Seller, threatened to revoke or limit any of the Permits.

4.7 Financial Statements; Unknown Liabilities .

(a) Sellers have delivered to Purchasers the Financial Statements. The Financial Statements fairly present the financial condition and the results of operations of Sellers as of their respective dates and for the periods then ended in accordance with GAAP consistently applied. The books and records of Sellers from which the Financial Statements were prepared fairly reflect the assets, liabilities and operations of Sellers and the Financial Statements are in conformity therewith.

(b) There are, and as of the Closing Date there will be, no liabilities or obligations of any nature, whether absolute, accrued, contingent, known, matured, unmatured or otherwise, and whether or not required to be disclosed or provided for in financial statements in accordance with GAAP, including without limitation, material unreserved negative contractual obligations, litigation or contingent liabilities other than customary service and product warranty obligations, which are not material in nature, of Sellers except (i) liabilities and obligations reflected in the Financial Statements, (ii) liabilities relating to facts, circumstances or events specifically disclosed on the Disclosure Schedules, and (iii) liabilities and obligations incurred between the date of the Interim Financial Statements and the Closing Date in the ordinary course of the Business of Sellers (none of which results from, arises out of or relates to any breach of contract, breach of contractual warranty, tort, infringement or violation of Governmental Requirement).

4.8 Tax Matters .

(a) (i) Sellers have correctly and timely filed all Tax Returns that were required by law to be filed on or prior to the Closing Date, (ii) to the best of the Seller's Knowledge, as of the Closing Date, each Seller will have in good faith withheld and accrued or paid to the proper authority all Taxes required to have been withheld and accrued or paid, (iii) all such Tax Returns were correct and complete in all material respects when filed, (iv) except as set forth on Schedule 4.8(a) , Sellers are not currently the beneficiary of any extension of time within which to file any Tax Return and (v) no notice has been received by Sellers and no claim has been made within the last five (5) years by any Governmental Authority with respect to the Business or in a jurisdiction where Sellers do not file Tax Returns that they are or may be subject to taxation by that jurisdiction. There are no Encumbrances on any of the Purchased Assets that arose in connection with any failure (or alleged failure) to pay any Tax, except for inchoate liens for Taxes not yet due and payable.

(b) There is no material dispute or claim concerning any Tax Liability arising from the Business or the Purchased Assets, either (i) claimed or raised by any Governmental Authority in writing or (ii) as to which Seller has Knowledge. Schedule 4.8(b) lists all income Tax Returns filed with respect to the Business for any taxable period ended on or after April 30, 2006, indicates those Tax Returns which have been audited, and indicates those Tax Returns that currently are the subject of audit. Sellers have delivered to Purchasers correct and complete copies of all income Tax Returns, examination reports and statements of deficiencies assessed against or agreed to by Sellers for any taxable period ended on or after April 30, 2006.

4.9 Intellectual Property .

(a) Schedule 4.9 lists all of the Intellectual Property that is owned by Sellers or used in the conduct of the Business as of the date of this Agreement. Except as set forth on Schedule 4.9 and except for standardized software generally available to the public, Sellers own, free and clear of any Encumbrances, or have a right and/or license to use, as the case may be, all Intellectual Property used by the Business.

(b) Except as provided in Schedule 4.9 , no claim has been asserted or, to Sellers' Knowledge, threatened in writing by any Person, to the effect that (i) the Intellectual Property owned by Sellers or used in the Business, or the manufacture, use or sale of any products by the Business would infringe or infringes or misappropriates the Intellectual Property rights of any Person, or (ii) challenging or questioning the validity or effectiveness of any license or agreement with respect to the Intellectual Property owned by Sellers or used in the Business. Sellers have paid all filing fees, maintenance fees and other amounts that have been required to be paid and that were due and owing as of the date hereof under applicable Government Requirements with respect to the Intellectual Property owned by Sellers or used in the Business, or under any Assumed Contract relating to the Intellectual Property owned by Sellers or used in the Business.

(c) Except as set forth on Schedule 4.9 , to the Knowledge of Seller, no Person nor such Person's business or products has infringed, or misappropriated any Intellectual Property owned by Sellers or used in the Business, or currently is infringing, or misappropriating any Intellectual Property owned by Sellers or used in the Business.

(d) To Seller's Knowledge, no employee or consultant of Sellers is subject to or otherwise restricted by any employment, nondisclosure, assignment of inventions, non-solicitation of employees or non-competition agreement between such employee or consultant and a third party that has been violated or will be violated as a result of any of the transactions contemplated by this Agreement.

(e) Except as provided in Schedule 4.9 , Sellers have not granted any license or otherwise transferred any Intellectual Property owned by Sellers or used in the Business to any Person, or agreed to indemnify any third party with respect to any alleged infringement or misappropriation of any third party's Intellectual Property by Sellers or the Business. Except as provided in Schedule 4.9 , no Seller is bound by or a party to any options, licenses or Contracts of any kind relating to the Intellectual Property rights of any other Person, except for standardized licensed software generally available to the public.

4.10 Litigation . Except as set forth on Schedule 4.10 , currently there is, and during the last two (2) years there was, no Proceeding pending or, to the Knowledge of Sellers, threatened (a) against Sellers, or their respective properties, assets or business, or (b) relating to the Business or the Purchased Assets and against or relating to the Shareholder or any director, officer or employee of Sellers or the Shareholder or which could impair or have a Material Adverse Effect on the Business or the Purchased Assets or which could impair the Sellers' or the Shareholder's ability to execute, deliver and perform their/its obligations hereunder.

4.11 Labor Matters .

(a) Schedule 4.11(a) identifies for each current full and part time employee of Sellers, whether employed directly by a Seller or by the Shareholder, his or her (i) name, (ii) position or job title, (iii) hire date, (iv) his or her base compensation and bonus compensation anticipated to be earned during the calendar year ending December 31, 2012, (v) his or her current base compensation, (vi) a description of all employee perquisites or other benefit practices not set forth in Sellers' Employee Benefit Plans or in agreements listed on Schedule 4.12 , and (vii) a description of Sellers' severance pay policy with respect to such employees.

(b) Except as set forth on Schedule 4.11(b) , Sellers and the Shareholder represent and warrant that:

(i) Sellers have no obligations under any written or oral labor agreement, collective bargaining agreement or other agreement with any labor organization or employee group and no labor unions or other organizations or groups represent or purport to represent any employees of Sellers;

(ii) Sellers are not engaged in any unfair labor practice and there is no unfair labor practice charge or labor disputes or other employee-related or employment-related complaint against Sellers pending or subject to any grievance, procedure, arbitration or litigation or, to the Knowledge of Seller, threatened before any Governmental Authority;

(iii) Sellers are not experiencing, nor have Sellers experienced during the two (2) years immediately preceding the date of the Agreement, a labor strike, labor disturbance, slowdown, picketing, concerted refusal to work overtime, work stoppage or other material labor dispute or arbitration, nor, to the Knowledge of Seller, is any such labor strike, labor disturbance, slowdown, work stoppage or other material labor dispute or arbitration threatened against any Seller;

(iv) No organizational campaign is being conducted or, to the Knowledge of Seller, contemplated and there is no pending or, to the Knowledge of Seller, threatened petition before any Governmental Authority or other dispute as to the representation of any employees of Sellers;

(v) Each employee of Sellers and the Shareholder is an employee "at will" other than those employees party to employment agreements as disclosed on Schedule 4.18 ; and

(vi) There are no known claims against Sellers or the Shareholder by employees or former employees of the Business for unpaid wages or benefits, wrongful termination, accidental injury or death, sexual harassment or discrimination or violation of any Governmental Requirement.

(c) Sellers and the Shareholder have complied with, and are currently in compliance with, all applicable Governmental Requirements relating to any of its employees or consultants (including any Governmental Requirement of the Occupational Safety and Health Administration), and neither Sellers nor the Shareholder has received within the past two (2) years any written notice of failure to comply with any such Governmental Requirement which has not been rectified.

(d) Except as set forth on Schedule 4.11(d) , neither Sellers nor the Shareholder has terminated the employment of any employee during the ninety (90) days preceding the date of this Agreement, excluding voluntary resignation and termination for cause of the employees so indicated on Schedule 4.11(d) .

(e) Each Seller and the Shareholder has complied, and will have complied up to the Closing, in all material respects with all laws affecting the employment relationship, including without limitation, the Worker Adjustment and Retraining Notification Act of 1988, as amended, if applicable.

4.12 Employee Benefits . With respect to the Employee Benefits:

(a) Schedule 4.12 lists all written or oral (i) "employee benefit plans," as defined in Section 3(3) of ERISA whether or not subject to ERISA, (ii) all employee schemes, programs, policies, contracts and all bonus, incentive, fringe benefit, profit-sharing, pension or retirement, deferred compensation, stock bonus, stock purchase, restricted stock, stock option or other equity based arrangement, medical, life insurance, disability, accident, salary continuation, severance, accrued leave, vacation, sick pay, sick leave, supplemental retirement and unemployment benefit plans, programs, arrangements, commitments and/or practices (whether or not insured) for which Sellers make or are required to make payments, transfers, or contributions in respect of current or former officers, directors or employees of Sellers or the Shareholder (with respect to employees of the Shareholder who work primarily for a Seller), and (iii) employment, consulting, termination, change in control and severance policies, plans, programs, contracts or agreements, in each case for active, retired or former officers, employees or directors of the Business (collectively, "Employee Benefit Plans" ) or with respect to which the Business would reasonably be expected to incur any liability.

(b) To the Knowledge of Sellers, each Employee Benefit Plan is in compliance with its terms and the requirements of any applicable Governmental Requirement, except where the failure to comply will not have a Material Adverse Effect. Sellers do not have any commitment to create, modify or terminate any Employee Benefit Plan and have not communicated to any current or former employee, officer or director of Seller or the Shareholder any information or commitment to modify any Employee Benefit Plan or to establish or implement any other employee retirement benefit or compensation arrangement.

(c) Compliance; Liability

(i) No Employee Benefit Plan is subject to Section 412 of the Code or Section 302 or Title IV of ERISA. None of the Purchased Assets is subject to any lien in favor of, or enforceable by, the Pension Benefit Guaranty Corporation.

(ii) No liability has been or is expected to be incurred by Sellers or the Shareholder under or pursuant to Title I or IV of ERISA or the penalty, excise tax or joint and several liability provisions of the Code relating to employee benefit plans that would reasonably be expected, following the Closing, to become a liability of the Purchasers or of any employee benefit plan established or contributed to by the Purchasers and, to the Knowledge of Sellers, no event, transaction or condition with respect to any Employee Benefit Plan has occurred or exists that would reasonably be expected to result in any such liability to the Business or, following the Closing, the Purchasers.

(iii) Each of the Employee Benefit Plans has been operated and administered in all material respects in compliance with any applicable Governmental Requirement, except for any failure so to comply that, individually or together with all other such failures, has not had and would not reasonably be expected to result in a material liability or obligation on the part of the Business.

(iv) There are no outstanding liabilities of any Seller or the Shareholder with respect to any labor union-sponsored pension fund or any person employed by a supplier of any Seller or the Shareholder regarding any labor union-sponsored pension funds for which either Purchasers may have any liability.

(d) No Acceleration of Benefits . Except as set forth in Schedule 4.12(d), the consummation of the transactions contemplated by this Agreement will not by itself entitle any employee, officer or director or former employee, officer or director or any independent contractor of the Business to severance or similar pay or accelerate the time of payment or vesting or trigger any payment of funding (through a grantor trust or otherwise) or compensation or benefits under, increase the amount payable or trigger any other material obligation pursuant to, any Employee Benefit Plan. The consummation of the transactions contemplated hereby will not (either alone or upon the occurrence of other acts or events) give rise to any payment or benefit to any employee, officer or director that will alone or upon the occurrence of additional acts or events result in any payment that would, constitute an "excess parachute payment" within the meaning of Section 280G or Section 4999 of the Code or the regulations promulgated thereunder.

(e) Except as set for on Schedule 4.12 , neither Sellers nor the Shareholder have ever maintained or contributed to, or had any obligation to contribute to any, nor is any Employee Benefit Plan a, "multiple employer plan" (within the meaning of the Code or ERISA) or any "multiemployer plan" (as defined in Section 4001(a)(3) of ERISA) as a result of which the Purchasers could have any liability.

(f) Each Employee Benefit Plan intended to be qualified under Section 401(a) of the Code and the trust, if any forming apart thereof, is so qualified and has received a favorable IRS determination letter as to the tax-qualified status of the plan and trust as to form under Section 501(a) of the Code, and nothing has occurred since the date of such determination letter that would reasonably be expected to adversely affect such qualification or tax exempt status.

(g) To the Knowledge of Seller, neither any Employee Benefit Plan, nor any other Person has engaged in a "prohibited transaction" as defined in ERISA Section 406 or Code Section 4975, with respect to such Employee Benefit Plan, for which no individual or class exemption exists.

(h) There are no Proceedings pending or, to the Knowledge of Seller, threatened (other than routine claims for benefits) with respect to any Employee Benefit Plan, its related assets or trust, or any fiduciary, administrator or sponsor of such Employee Benefit Plan.

4.13 Transactions with Related Persons .

(a) Except as set forth on Schedule 4.13 , no Related Person is presently, or at any time during the past two (2) years has been, a party to any transaction with any Seller, including, without limitation, any Contract (a) providing for the furnishing of services to or by, (b) providing for the rental or sale of real or personal property to or from, or (c) otherwise requiring payments to or from (other than for services as employees of the Business) such Related Person. Except as set forth on Schedule 4.13 , all such transactions with Related Persons have been and are on an arms-length basis providing for substantially the same payment and performance terms as would reasonably be expected to be negotiated with an independent third party. Except as set forth on Schedule 4.13 , there is no outstanding amount owing (including pursuant to any advance, note or other indebtedness instrument) from Sellers to any Related Person or from any Related Person to Sellers.

(b) No Related Person, ( i ) owns, directly or indirectly, and whether on an individual, joint or other basis, any equity interest in ( x ) any material property or asset, real or personal, tangible or intangible, used in or held for use in connection with or pertaining to the Business other than the Purchased Assets, or ( y ) any Person, that is a Supplier, Customer or competitor of the Business, or ( ii ) serves as an officer or director of any Person that is a Supplier, Customer or competitor of the Business.

4.14 Real Property .

(a) Sellers do not, nor have they ever, owned any real property. Schedule 4.14 contains an accurate and complete list of all leases, subleases and any other agreements relating to the use or occupancy of real property (collectively, the "Leases" ), including all amendments, supplements and other modifications thereto to which any Seller is a party or bound or to which the Shareholder is a party or bound with respect to property used by any Seller in connection with the Business. Sellers have delivered true and correct copies of all leases currently in effect. Sellers or the Shareholder, as applicable, have good valid and insurable title to all valid leasehold interests in all leased real property described in each Lease set forth in Schedule 4.14 (or required to be set forth in Schedule 4.14 ), free and clear of any and all Encumbrances such that Sellers or the Shareholder, as applicable, will, on the Closing Date, convey good, valid and insurable title to Purchasers. Each Lease is in full force and effect; all rents and additional rents due to date on each such Lease have been paid; in each case, the lessee has been in peaceable possession since the commencement of the original term of such Lease and is not in default thereunder and no waiver, indulgence or postponement of the lessee's obligations thereunder has been granted by the lessor; and there exists no default or event, occurrence, condition or act (including the transfer of the Purchased Assets hereunder) which, with the giving of notice, the lapse of time or the happening of any further event or condition, would become a default under such Lease. To the Knowledge of Seller, the Sellers or the Shareholder, as applicable, have not violated and are not currently in violation of any of the terms or conditions under any such Leases in any material respect, and, to the Knowledge of Seller, all of the covenants to be performed by any other party under any such Lease have been fully performed.

(b) Current Use . To the Knowledge of Sellers, the use and operation of the real property leased by Sellers or the Shareholder, as applicable, in the conduct of the Business as currently conducted do not violate in any material respect any Governmental Requirement (except that compliance with Environmental Laws is covered in Section 4.21 ), covenant, condition, restriction, easement, license, permit or agreement or order of any Governmental Authority.

(c) Conformance; Proceedings . Neither Sellers nor the Shareholder (to the extent it involves the Business) has received any written notice of a pending or anticipated change in any applicable building, zoning, subdivision and other land use and similar Governmental Requirement affecting the leased real property described in the Leases that could reasonably be expected to have or result in a Material Adverse Effect, or a material adverse effect upon the ownership, alteration, use, occupancy or operation of the leased real property or any portion thereof. No current use by Sellers or the Shareholder, as applicable, of the leased real property described in the Leases is dependent upon a nonconforming use or other governmental approval, the absence of which would materially limit the use, value, occupancy or operation of the leased real property or other Purchased Assets of the Business.

(d) Condemnation . Neither Sellers nor the Shareholder (to the extent it involves the Business) have received any written notice from any Governmental Authority of any pending, threatened or contemplated condemnation proceeding affecting the leased real property or any part thereof or of any sale or other disposition of the leased real property or any portion thereof in lieu of condemnation.

(e) No Option . Except as set forth on Schedule 4.14(e), neither Sellers nor the Shareholder (to the extent it involves the Business) own or hold, and have not granted, and are not obligated, under any option, right of first offer, right of first refusal or other contractual right to purchase, acquire, lease, sell or dispose of the leased real property or any portion thereof or interest therein or any other real property, in each case, except as may be provided in the Leases.

4.15 Insurance . There is set forth on Schedule 4.15 a list and brief description of all insurance policies on the date hereof held by the Sellers with respect to its properties, assets and business, or on which they pay premiums, including, without limitation, life insurance and title insurance policies, which description includes the premiums payable by it thereunder ( "Insurance" ) and each such policy is currently in full force and effect and will be as of the Closing Date. Schedule 4.15 also sets forth, in the case of any life insurance policy held by the Sellers, the name of the insured under such policy, the cash surrender value thereof and any loans thereunder. All such insurance premiums in respect of such coverage have been paid in full, or if not due, properly accrued on the Financial Statements. All claims, if any, made against the Sellers that are covered by such policies have been, or are being, settled or defended by the insurance companies that have issued such policies. Each Seller is in material compliance with respect to its obligations under any insurance policy maintained by it, and to Sellers' Knowledge, no Seller has ever been denied insurance coverage. No Seller has any self-insurance or co-insurance programs. The insurance policies set forth on Schedule 4.15 are reasonable and customary for a business of the size and nature of the Business.

4.16 Accounts Receivable . All of the Accounts Receivable set forth on Schedule 1.1(b) are bona fide receivables, are reflected on the books and records of Sellers, arose in the ordinary course of the Business and will be collected in the ordinary course of the Business consistent with past collection practices at their full face value net of reserves for doubtful accounts. There is no right of offset against any of the Accounts Receivable and no agreement for deduction or discount has been made with respect to any of the Accounts Receivable other than ordinary course trade discounts.

4.17 Accounts Payable . The Accounts Payable reflected on the Financial Statements have arisen in bona fide arm's length transactions in the ordinary course of Business. Except as set forth on Schedule 4.17 , there are no unpaid invoices or bills representing amounts alleged to be owed by Sellers, or other alleged obligations of Sellers, which Sellers have disputed or determined to dispute or refuse to pay.

4.18 Material Contracts .

(a) Schedule 4.18 sets forth a list of all Material Contracts. " Material Contracts " means all written or oral Contracts to which any Seller or the Shareholder (to the extent it involves the Business) is currently a party to or bound by and that constitute:

(i) Any Contract for the purchase of materials, supplies, goods, services, or personal property from any supplier or for the furnishing of services to Sellers that involve future aggregate annual payments by any Seller or the Shareholder (to the extent it involves the Business) of $25,000 or more;

(ii) Any non-competition agreement, profit-sharing agreement or any other agreement or obligation which purports to restrict the conduct of any business by Sellers, or the ability of Sellers to operate in any geographic area;

(iii) Any Contract or plans, including any employment, compensation, non-competition, non-solicitation, incentive, retirement, loan or severance arrangements, with any current or former shareholder, director or officer or current employee of Sellers or the Shareholder (to the extent it involves the Business). Sellers and the Shareholder hereby represent and warrant that neither Sellers nor the Shareholder are a party to any Contracts that provide for the provision of any severance, benefit or any other payments by Seller to its former employees;

(iv) Any agreement, joint venture, product development, research and development, partnership, limited liability company or similar agreements or arrangements involving a sharing of profits, losses, costs or liabilities by Sellers with any other Person;

(v) Indentures, loan or credit agreements, security agreements and other agreements and instruments relating to the borrowing or guarantee of money or extension of credit in any case in excess of $10,000;

(vi) Any standby letter of credit, performance or payment bond, guarantee arrangement or surety bond of any nature involving amounts in excess of $25,000;

(vii) Other Contracts not in the ordinary course of business;

(viii) Any Contract for the sale or lease of any of the assets of Sellers outside the ordinary course of the Business or for the grant to any Person of any preferential rights to purchase or lease any of their assets;

(ix) Any Contract pursuant to which the transactions contemplated by this Agreement would amend or modify such Contract, or would trigger the payment of revenues or fees to the counterparty of such Contract;

(x) Any Contract (A) relating to the acquisition, issuance, voting, registration, sale or transfer of any securities, (B) providing any Person with any preemptive right, right of participation, right of maintenance or any similar right with respect to any securities, or (C) providing Sellers with any right of first refusal with respect to, or right to repurchase or redeem, any securities;

(xi) Any Contract imposing any confidentiality obligation on Sellers or containing "standstill" or similar provisions (A) to which any Governmental Authority is a party or under which any Governmental Authority has a right or obligation, or (B) directly or indirectly benefiting any Governmental Authority (including any subcontract or other contract between Sellers and any contractor or subcontractor to any Governmental Authority); or

(xii) Any Contract or arrangement to allocate, share or otherwise indemnify for Taxes.

(b) Except as set forth on Schedule 4.18 , (i) each Material Contract is, to the Knowledge of Sellers and the Shareholder, valid and binding on each Seller or the Shareholder, as applicable, and, to the Knowledge of Sellers and the Shareholder, each other party thereto, and is in full force and effect, except where such failure to be valid and binding or to be in full force and effect would not, individually or in the aggregate, have a Material Adverse Effect; (ii) Sellers and the Shareholder and, to the Knowledge of Sellers and the Shareholder, each other party thereto, have performed all material obligations required to be performed by it to date under each Material Contract, except where such failure to perform would not result in a Material Adverse Effect; and (iii) no Seller nor the Shareholder nor, to the Knowledge of Sellers or the Shareholder, any other party thereto, has violated or defaulted in any material respect or terminated or given or received notice of, any material violation or default or any termination under or non-renewal of (nor, to the Knowledge of Sellers or the Shareholder, does there exist any condition which with the passage of time or the giving of notice or both would result in such a violation, default, termination or non-renewal under) any Material Contract, except where such violation or default would not individually or in the aggregate, have a Material Adverse Effect. Sellers have provided, or made available, to Purchasers true and correct copies of each Material Contract.

4.19 Customers . No Customer of the Business has informed Sellers that it intends to terminate or materially reduce its relationship with Sellers, and to the Knowledge of Sellers there are no material problems or disputes with any Customer of the Business. To the Knowledge of Sellers, Sellers have good business relationships with each of their Customers. Except as set forth on Schedule 4.19 , Sellers do not expect that the consummation of a sale of the Purchased Assets will, or is likely to, disrupt the existing relationships with any Customer of the Business.

4.20 Suppliers . No Supplier of the Business has informed Sellers that it intends to terminate or materially reduce its relationship with Sellers, and to the Knowledge of Sellers, there are no material problems or disputes with any Supplier of the Business. To the Knowledge of Sellers, Sellers have good business relationships with each of their Suppliers. Except as set forth on Schedule 4.20 , Seller believes that the consummation of a sale of the Purchased Assets will not, or is unlikely to, disrupt the existing relationships with any Supplier of the Business.

4.21 Environmental . Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect:

(a) Sellers are, and at all times Sellers have been, in compliance with all applicable Environmental Laws with respect to the Purchased Assets and the operation of the Business and have obtained and are in compliance with all applicable material environmental Permits with respect to the Business or the Purchased Assets. Sellers have not received any written communication, whether from a Governmental Authority, citizens group, employee or otherwise, alleging a violation, liability or potential liability, that the Business is not in such compliance, and, to the Knowledge of Seller, there are no past or present actions, activities, circumstances, conditions, events or incidents that are reasonably likely to prevent or interfere with such compliance in the future.

(b) There is no Environmental Claim pending or, to the Knowledge of Seller, threatened, against Sellers. All Hazardous Substances at any time used, generated or disposed of by the Sellers have been disposed of in accordance with Environmental Laws.

(c) There are no past or present actions, omissions, activities, circumstances, conditions, events or incidents, including, without limitation, the Release or presence of any Hazardous Substances, which could form the basis of any Environmental Claim against Sellers.

(d) Seller has made available to Purchasers true, complete and correct copies and results of any reports, studies, analyses, tests or monitoring possessed by Sellers pertaining to Hazardous Substances in, on, beneath or adjacent to any property or assets currently or formerly owned, operated, occupied or leased or used in connection with the Business, or regarding Sellers' compliance with applicable Environmental Laws.

(e) The transactions contemplated hereunder require no notice or approval from any Governmental Authority with jurisdiction over the environment in order to transfer control in any environmental Permit.

(f) The transactions contemplated hereunder are not subject to compliance with the New Jersey Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq . ( "ISRA" ). No premises occupied by either Seller is an "industrial establishment" as defined in ISRA.

4.22 Absence of Certain Changes . From April 30, 2012 to the date hereof, except as set forth on Schedule 4.22 , disclosed in the Financial Statements or otherwise contemplated by this Agreement, Sellers and the Shareholder have conducted the Business in all material respects in the ordinary course and consistent with past practice and there has not been:

(a) Any material loss, damage or destruction to, or any material interruption in the use of, any of the assets of any Seller (whether or not covered by insurance) that constitutes a Material Adverse Effect;

(b) Any change in the business, financial condition or operations of any Seller that has had a Material Adverse Effect;

(c) Any change relating to employees, including, without limitations, any increase in the compensation, granting of bonuses payable or to become payable by any Seller or the Shareholder, hiring new employees except in the ordinary course of the Business consistent with past practice; 21

(d) Except in the ordinary course of Business, any sale or transfer or other disposition by any Seller of any assets, Tangible Personal Property or Intellectual Property, any mortgage or pledge or creation of any Encumbrance relating to any such property, any lease of equipment or any cancellation of any debt or claim;

(e) Any change of the methods of accounting or accounting practices, business or manner of conducting business of Sellers or any other event or development that has had, or would have individually or in the aggregate, a Material Adverse Effect;

(f) Any other transaction not in the ordinary course of the Business or not otherwise consistent with the past practices of Sellers;

(g) any material transactions with Affiliates of Sellers, including without limitation the Shareholder, relating to the Business or the Purchased Assets, which are not listed on Schedule 4.22 hereto;

(h) any waiver by Sellers of any right of material value;

(i) any acquisition by Sellers of all of any part of the assets, properties, capital stock or business of any other Person;

(j) any material change by Sellers to its business policies regarding advertising, marketing, pricing, sales or returns;

(k) any material expenditures by Sellers in connection with the Business, except in the ordinary course of the Business;

(l) any incurrence by Sellers of any material debt in connection with the Business, except in the ordinary course of the Business; and

(m) any dividend or distribution declared or paid on the capital stock of either Seller. 4.23 Inventories .

Except as set forth on Schedule 4.23 , (a) the Inventory is in the physical possession of Sellers, and (b) none of the Inventory is pledged as collateral or held on consignment by others. The Inventory has been, determined and valued on a first-in first-out basis (but not in excess of net realizable value), in accordance with GAAP, applied on a basis consistent with the Financial Statements. The Inventory was acquired or produced by Sellers in the ordinary course of the Business. Except as reflected in the reserve for unsalable or obsolete inventory reflected in the Financial Statements, the Inventory is good and merchantable and is of a quality and quantity presently useable and salable by Seller in the ordinary course of the Business consistent with past practice, except for such failures of inventory to meet standards or requirements as would not, individually or in the aggregate, have a Material Adverse Effect.

4.24 Deposits . Attached as Schedule 4.24 is a true, correct and complete list of all Deposits of Seller as of the date hereof, setting forth the amount of each Deposit. 4.25 Backlog . The value of the Sellers' sales order backlog has not materially decreased since May 8, 2012. 4.26 No Brokers . Sellers have not entered into any agreement, arrangement or understanding with any Person which will result in any obligation by Purchasers to pay any finder's fee, brokerage commission or similar payment in connection with the transactions contemplated by this Agreement.

4.27 Disclosure . The inclusion of any item on any Disclosure Schedule shall constitute disclosure for all purposes under this Agreement and all such information is deemed to be fully disclosed to the Purchaser, and shall not be construed as an indication of the materiality or lack thereof of such item.

4.28 No Untrue Statement . None of the representations and warranties made by any Seller and/or the Shareholder pursuant to this Agreement contain any untrue statement of material fact or omits to state a material fact necessary, in light of the circumstance under which it was made, in order to make any such representation not misleading in any material respect.

**ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF PURCHASERS**

Except as set forth under the corresponding section of the Disclosure Schedules, which Disclosure Schedules shall be deemed a part hereof and shall qualify any representation, warranty or otherwise made herein to the extent of the disclosure contained in the corresponding section of the Disclosure Schedules, each Purchaser represents and warrants to the Sellers, and acknowledges that such representations and warranties are material inducements to the Sellers entering into this Agreement, as follows:

5.1 Organization and Good Standing . Such Purchaser is duly organized, validly existing and in good standing under the laws of the state in which it is incorporated. Such Purchaser has full corporate power and authority to conduct its business as presently being conducted and to own, operate and lease its properties and assets therein and to execute and deliver this Agreement, to purchase the Purchased Assets which it is purchasing from the Sellers and to consummate the transactions contemplated by this Agreement.

5.2 Power and Authority; Binding Effect . Each Purchaser has all necessary power and authority and has taken all action necessary to authorize, execute and deliver this Agreement and the Transaction Documents, to consummate the transactions contemplated by this Agreement and the Transaction Documents, and to perform its obligations under this Agreement and Transaction Documents. Each Purchaser has delivered to Sellers copies of all resolutions of such Purchaser's board of directors and/or shareholders with respect to the transactions contemplated by this Agreement and the Transaction Documents, certified by the Secretary of such Purchaser, in form reasonably satisfactory to counsel for Sellers. No other action on the part of such Purchaser is required to authorize the execution and delivery of this Agreement and to consummate the transactions contemplated hereby. This Agreement and the Transaction Documents have been duly executed and delivered by such Purchaser and constitutes a legal, valid and binding obligation of such Purchaser, enforceable in accordance with its terms, except as such enforcement may be limited by the Enforceability Limitations.

5.3 No Conflict or Violation . Neither the execution, delivery and performance of this Agreement or the Transaction Documents by such Purchaser, nor the consummation of any of the transactions contemplated by this Agreement or the Transaction Documents do, or will, directly or indirectly (with or without notice or lapse of time or both), (i) contravene, violate or conflict with such Purchaser's Charter Documents, (ii) result in any breach of violate or constitute a default (or an event which with notice or lapse of time or both would become a default) under, terminate or cancel or give to others any rights of termination, acceleration or cancellation of (with or without notice or lapse of time or both), any contract, agreement, indenture or other instrument to which such Purchaser is a party, or (iii) result in the creation of an Encumbrance of any nature whatsoever on any of the properties of such Purchaser, or (iv) result in the termination of any license, franchise, lease or permit to which such Purchaser is a party.

5.4 Consents and Approvals . No consent, approval or authorization of, or declaration, filing or registration with, any Person is required to be made or obtained by such Purchaser in connection with the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement, which consent, authorization or approval, declaration, filing or registration has not been obtained or made on the date hereof.

5.5 No Proceedings . There is no Proceeding pending or, to the knowledge of such Purchaser, threatened against, relating to or affecting in any adverse manner the transactions contemplated by this Agreement.

5.6 No Brokers . Such Purchaser has not entered into any agreement, arrangement or understanding with any Person which will result in the obligation to pay any finder's fee, brokerage commission or similar payment in connection with the transactions contemplated by this Agreement.

5.7 No Other Agreements . Except as set forth on Schedule 5.7 , such Purchaser has not entered into any agreement, arrangement, promise or understanding with any Seller or with any of Seller's current or former employees, agents, Representatives or Related Persons, which may or will result in the remittance of any fee, commission, consideration, compensation, equity, security, "kickback", or remuneration of any nature to such persons, directly or indirectly, in connection with the transactions contemplated by this Agreement.

5.8 Insurance . Such Purchaser has begun the process of obtaining insurance binders and will use its best efforts to have its insurance policies in place as soon as practicable following the Closing. Purchasers shall present Sellers with copies of said policies upon receipt thereof.

5.9 Patriot Act . Such Purchaser certifies that neither such Purchaser nor any of its Affiliates has been designated, and is not owned or controlled, by a "suspected terrorist" as defined in Executive Order 13224. Such Purchaser hereby acknowledges that the Sellers seek to comply with all applicable laws concerning money laundering and related activities. In furtherance of those efforts, such Purchaser hereby represents, warrants and agrees that: (i) none of the Purchase Price paid or will be paid to the Sellers has been or shall be derived from, or related to, any activity that is deemed criminal under United States law; and (ii) no contribution or payment by such Purchaser or any of its Affiliates to the Sellers or Shareholder, to the extent that they are within such Purchaser's and/or its Affiliates' control shall cause the Sellers or the Shareholder to be in violation of the United States Bank Secrecy Act, the United States International Money Laundering Control Act of 1986 or the United States International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001. Such Purchaser agrees to provide Sellers and the Shareholder any additional information regarding such Purchaser or any of its Affiliates that the Sellers or the Shareholder reasonably request to ensure compliance with all applicable laws concerning money laundering and similar activities.

**ARTICLE 6 COVENANTS AND AGREEMENTS**

Sellers and Purchasers each covenant and agree with the other as follows:

6.1 Consents . Subject to Section 6.2(a) below, between the date of this Agreement and the Closing Date, the Parties will cooperate with each other in obtaining the consents identified in Schedule 6.1 to this Agreement.

6.2 Cooperation .

(a) Subject to the terms and conditions of this Agreement, each Party shall each use its respective commercially reasonable efforts, in good faith, to take or cause to be taken all action reasonably necessary or desirable on its part so as to permit consummation of the transactions contemplated by this Agreement on or at the earliest reasonably practicable date including, without limitation, (i) to authorize, approve or permit the full and complete sale, conveyance, assignment or transfer of Purchased Assets, free and clear of any Encumbrances, and (ii) any consents or approvals of third persons as contemplated by Section 6.1 , above. Without limiting the generality of the foregoing, subject to the terms and conditions of this Agreement, each Party shall cooperate and take such action and execute such other and further documents and instruments of transfer and assumption as reasonably may be requested from time to time after the Closing Date by any other Party to carry out the transfer of the Purchased Assets and the Business as contemplated by and otherwise effectuate the terms and provisions and intent of this Agreement. Subject to the terms and conditions of this Agreement, no Party hereto shall knowingly take or fail to take any action that would substantially impair the prospects of, or materially delay, completing the transactions contemplated by this Agreement.

(b) Unless prohibited by applicable law, Sellers or the Shareholder, as applicable, shall give prompt notice to Purchasers, and Purchasers shall give prompt notice to Sellers, of (i) the occurrence, or failure to occur, of any event known to it which occurrence or failure would be reasonably likely to cause any representation or warranty contained in this Agreement to be untrue or inaccurate at any time from the date hereof to the Closing Date such that the conditions set forth in Section 7.1 or Section 8.1 , as applicable, would not be met if such failure to be true or accurate were to occur or be continuing on the Closing Date, and (ii) any material failure of any Party known to such Party, as the case may be, to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder, and each Party shall use commercially reasonable efforts to remedy such failure.

(c) In the event that this Agreement is terminated without the transactions contemplated hereby having been consummated, upon the request of Sellers, Purchasers will and will cause their Representatives to promptly redeliver or cause to be redelivered, all copies of documents and information furnished by Sellers, as the case may be, or their Representatives to such Party and their Representatives in connection with this Agreement or the transactions contemplated hereby and destroy or cause to be destroyed all notes, memoranda, summaries, analyses, compilations and other writings related thereto or based thereon prepared by Purchasers or their Representatives.

(d) Each Party shall provide and shall request its auditors to provide the other Party with such historical financial information regarding it (and related audit reports and consents) as the other Party may reasonably request for disclosure purposes under the Securities Laws.

6.3 Press Releases . Sellers and Purchasers shall agree with each other in writing prior to Closing as to the form and substance of any press release related to this Agreement, and shall consult each other as to the form and substance of other public disclosures related thereto; provided, however, that nothing contained herein shall prohibit either Party, following notification to the other Party or after the Closing, from making any disclosure which is required by any Governmental Requirement.

6.4 Actions Pending the Closing .

(a) From the date hereof until the Closing Date, and except as otherwise provided for by this Agreement, or consented to or approved by Purchasers, Sellers and the Shareholder shall operate the Business in the ordinary course and shall use commercially reasonable efforts to maintain intact and preserve in all material respects Sellers' business organization, the Purchased Assets, their properties, the Business and their relationships with Customers, Suppliers, employees and other Persons in the usual, regular and ordinary course in substantially the same manner as heretofore conducted. Sellers shall promptly notify Purchasers of any material changes to the Business, or Sellers' operations, financial position, assets or prospects.

(b) Without limiting the generality of Section 6.4(a) , above, from the date hereof until the Closing Date, Sellers shall not, except with the prior written consent of Purchasers and except as expressly contemplated or permitted by this Agreement:

(i) carry on the Business other than in the usual, regular and ordinary course in substantially the same manner as heretofore conducted;

(ii) incur any indebtedness in an amount greater than $25,000 other than in the ordinary course of the Business;

(iii) amend their Charter Documents;

(iv) waive or release any material right or cancel or compromise any material debt or claim;

(v) liquidate or sell or dispose of any Purchased Assets or acquire any material assets other than inventory in the usual, regular and ordinary course in substantially the same manner as heretofore conducted;

(vi) increase the rate of compensation of, pay or agree to pay any bonus to, or provide any other employee benefit or incentive to, any of their directors, officers or employees or directors, officers or employees of the Shareholder providing services to either Seller, except in a manner consistent with past practice or as required by law or contractual obligation in effect as of the date hereof;

(vii) knowingly take any action, or knowingly fail to take any action, that would render any representation, warranty, covenant or agreement in this Agreement inaccurate or breached such that the conditions in Section 8.1 or Section 8.2 will not be satisfied; or

(viii) agree or consent to do any of the foregoing.

6.5 Sellers' Employees .

(a) After the Closing Date (or as soon thereafter as may be practicable), Purchasers shall (i) honor the terms of the existing employment agreements with Walt Mitcher ("Mitcher") and Helen Miller ("Miller"), which agreements are being assumed by the Purchasers, and (ii) offer employment to substantially all of Sellers' employees on such terms and conditions (including benefits) as may be determined by Purchasers in their reasonable discretion but which in the aggregate shall be comparable to the terms and conditions under which such Sellers' employees were employed prior to the Closing Date. Notwithstanding anything herein to the contrary, this Section 6.5 shall not be construed to limit the ability of Purchasers to terminate the employment of any employee at any time for any reason or to review employee benefits programs from time to time and to make such changes as they deem appropriate.

(b) Sellers and the Shareholder will use all reasonable efforts to facilitate the transfer of the Sellers' employees to Purchasers, including Fortier and Ambrosino, and will waive, or cause to be waived, any non-competition, non-solicitation or non-disclosure or similar obligations any such employee granted to or for the benefit of the Sellers or any other agreement, arrangement or provision that would restrict the activities in which such employees could engage in connection with their employment by the Purchasers. Notwithstanding any provision of this Agreement, nothing herein shall confer on any employee any right to continued employment, except as may be provided by law.

(c) Seller and the Shareholder, as applicable, shall remain fully responsible for any severance, benefits, costs or liabilities arising out of the termination of any of its employees on or prior to the Closing Date. Seller and the Shareholder, as applicable, shall also remain fully responsible for any benefits, cost or liabilities incurred or accrued prior to the Closing with respect to each employee that may be retained by Purchasers.

6.6 Lease Assignment . At Closing, subject to Section 3.4, the Sellers and the Shareholder, as applicable, shall execute and deliver to Purchasers an assignment of the Leases which shall include the applicable Landlord's consent and estoppel, executed by such landlord and dated the Closing Date, in such form and with such terms as are reasonably acceptable to Purchasers (collectively, the "Lease Assignments" ).

6.7 Non-Competition and Confidentiality .

(a) In consideration of the Purchase Price and Purchasers' covenants set forth in this Agreement, each Seller and Shareholder agrees that, for the period beginning on the Closing Date and ending five (5) years thereafter, it will not directly or indirectly, participate, engage in any business or activity which is, Directly Competitive with the Business.

(b) For a period of five (5) years beginning on the Closing Date, each Seller and the Shareholder shall not in any manner, directly, indirectly, individually, in partnership, jointly or in conjunction with any Person, (i) recruit or solicit or attempt to recruit or solicit, on its behalf or on behalf of any other Person, any employee of the Purchasers or an Affiliate of the Purchasers, as an employee or consultant; (ii) encourage any Person (other than a Purchaser or an Affiliate of a Purchaser) to recruit or solicit any employee of a Purchaser or an Affiliate of a Purchaser; (iii) otherwise encourage any employee of a Purchaser or an Affiliate of a Purchaser to discontinue his or her employment by a Purchaser or an Affiliate of a Purchaser; (iv) solicit any customer of a Purchaser, Sellers or an Affiliate of any Party who is or has been a customer on or prior to the Closing Date for the purpose of providing, distributing, marketing or selling products or services similar to those sold or provided by the Purchasers; or (v) persuade or attempt to persuade any customer or supplier of a Purchaser or an Affiliate of a Purchaser to terminate or modify such customer's or supplier's relationship with a Purchaser or an Affiliate of a Purchaser.

(c) Each Seller and the Shareholder acknowledges that the covenants contained in this Section 6.7 were a material and necessary inducement for the Purchasers to agree to the transactions contemplated by this Agreement and that the Sellers realized significant monetary benefit, directly or indirectly, from these transactions, and that a violation of any of the terms of this Section 6.7 will cause irreparable and continuing damage to Purchasers, the amount of which will be impossible to estimate or determine and which cannot be adequately remedied by an action at law. Therefore, the Purchasers shall have the right to seek an injunction, restraining order or other equitable relief, including, without limitation, specific performance, from any court of competent jurisdiction without posting a bond or similar security in the event of any breach or attempted breach of this Section 6.7 , and each Seller and Shareholder hereby consents to the granting by any court of an injunction or other equitable relief, without the necessity of actual monetary loss being proved, in order that the breach or threatened breach of such provisions may be effectively restrained. The rights and remedies provided by this Section 6.7 are cumulative and in addition to any other rights and remedies which Purchasers may have hereunder or at law or in equity or otherwise.

(d) Each Seller and the Shareholder agrees that it shall not, and it shall take all commercially reasonable efforts to cause its directors, officers, employees and shareholders and their Affiliates to not, use for itself or others, or publish, disclose or otherwise reveal or divulge, any Confidential Information (as such term is defined below). Each Seller and the Shareholder shall, and shall take all commercially reasonable efforts to cause its directors, officers, employees and shareholders and their Affiliates to, (1) maintain all Confidential Information in the strictest confidence and keep the same secret using at least the same degree of care as it uses for its personal confidential information, (2) retain all Confidential Information in trust in a fiduciary capacity for the sole and absolute benefit of the Purchasers, and (3) refrain from using or allowing to be used any Confidential Information for its own benefit or for the benefit of any third party, provided, however , that in the event disclosure of Confidential Information is requested (i) by a Governmental Authority under color of law or applicable regulation, (ii) pursuant to subpoena or other compulsory process, or (iii) otherwise as may be required by law, each such Seller and the Shareholder, to the extent lawfully possible, will (X) give the Purchasers at least five (5) days prior written notice before its disclosure, and (Y) provide the Purchasers with copies of any written responsive materials. For purposes of this Agreement, " Confidential Information " shall mean non-public information concerning the financial data, strategic business plans, product development (or other proprietary product data), Customer Lists, customer information, Supplier Lists, supplier information, costs, pricing, materials, supplies, venders, products, services, information relating to governmental relations, discoveries, practices, processes, methods, marketing plans, Intellectual Property and other material non-public, proprietary and confidential information of each Seller and the Shareholder relating to the Business or the Purchased Assets, that, in any case, is not otherwise generally available to the public and has not been disclosed by the Purchasers to others not subject to confidentiality agreements. Confidential information does not include information that (i) is already known to a Seller and/or the Shareholder on a non-confidential basis at the time of disclosure to such Seller and/or the Shareholder; (ii) becomes known to a Seller and/or the Shareholder from a source other than Purchasers, provided , that , to the Knowledge of the Sellers and Shareholder, such source has not entered into a confidentiality agreement with either Purchaser with respect to such information or obtained the information from an entity or Person who is a party to a confidentiality agreement with either Purchaser, and without a breach of this Agreement or without a breach of duty owed by any other Person or entity to either Purchaser; (iii) is proven by competent evidence by a Seller and/or the Shareholder that it was independently conceived or discovered by such Seller and/or the Shareholder without reference to or use of the Confidential Information; or (iv) has become publicly known and made generally available through no wrongful act of a Seller and/or the Shareholder.

(e) In case any one or more of the terms or provisions contained in this Section 6.7 shall for any reason be held invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other terms or provisions hereof, but such term or provision shall be deemed modified or deleted as or to the extent required by applicable law, and such modification or deletion shall not affect the validity of the other terms or provisions of this Section 6.7 or any other terms or provisions of this Agreement. In addition, if any one or more of the restrictions contained in this Section 6.7 shall for any reason be held to be unreasonable with regard to time, duration, geographic scope or activity, the parties contemplate and hereby agree that such restriction shall be modified and shall be enforced to the extent compatible with applicable law.

6.8 Access to Records and Personnel .

(a) For a period of six (6) years after the Closing Date, Sellers and their Representatives will have reasonable access to (including the right to make copies of) all Business Records, including, without limitation, books and records of Sellers transferred to Purchasers hereunder, relating to the Purchased Assets or the Business prior to the Closing Date and to all former employees of Sellers having knowledge with respect thereto, to the extent that such access may reasonably be required in connection with matters relating to (i) liabilities of Sellers not assumed by Purchasers hereunder, (ii) all matters as to which Sellers are required to provide indemnification under this Agreement, or (iii) the preparation of any Tax Returns required to be filed by Sellers with respect to any periods prior to the Closing. Such access will be afforded by Purchasers upon receipt of reasonable advance notice and during normal business hours, provided such access does not unduly disrupt Purchasers' normal business operations. Sellers will be solely responsible for any costs or expenses incurred by it pursuant to this Section 6.8(a) . If Purchasers wish to dispose of any of such Business Records, including, without limitation, books and records, prior to the expiration of the six-year period, Purchasers shall, prior to such disposition, give Sellers 90 days' written notice, at the expense of Sellers, to segregate and remove such books and records as Sellers may select.

(b) For a period of six (6) years after the Closing Date, Purchasers and their Representatives will have reasonable access to (including the right to make copies of) all of the Business Records, including, without limitation, books and records relating to the Purchased Assets or the Business which Sellers or any of their Representatives are permitted to retain after the Closing Date. Such access will be afforded by Sellers and their Representatives upon receipt of reasonable advance notice and during normal business hours. Purchasers will be solely responsible for any costs and expenses incurred by it pursuant to this Section 6.8(b) . If Sellers or their Representatives wish to dispose of any of such Business Records, including, without limitation, books and records, prior to the expiration of such six-year period, it shall, prior to such disposition, give Purchasers 90 days' written notice, at Purchasers' expense, to segregate and remove such books and records as Purchasers may select. 6.9 Continuation Health Care Coverage . On and after the Closing, Sellers will make available to all Qualified Individuals (as hereafter defined) COBRA continuation health coverage. Sellers also will notify any Qualified Individual of his or her right to obtain COBRA continuation health coverage from Sellers. For purposes of this Section 6.9 , "Qualified Individual" means any employee or qualified beneficiary of Seller who, prior to the date of Closing or as a result of the transactions contemplated under this Agreement, has or had incurred a Qualifying Event (as defined by COBRA) and who has elected, or may elect to have COBRA continuation coverage.

6.10 Collection of Delinquent Receivables . On the sixtieth (60th) day following the Closing Date (the "Return Date" ), Purchasers shall have the right to return to Sellers, and Sellers shall have the obligation to purchase from Purchasers, any Delinquent Receivables selected by Purchasers to be returned (the "Returned Receivables" ), for an amount equal to the face value thereof. The aggregate repurchase price for such Returned Receivables shall be paid to Purchasers from the Escrowed Funds; provided, however, if any amounts due to the Purchasers exceed the amount of Escrowed Funds, such excess shall be paid to the Purchasers by the Sellers within three (3) days by wire transfer, cashier's check or certified check. For ninety (90) days subsequent to the Return Date, Sellers hereby grant to Purchasers the exclusive right, on their behalf, to collect on any of the Returned Receivables. Purchasers shall be entitled to receive a commission of 10% (the " Commission ") on any monies collected with respect to any such Returned Receivables. Purchasers shall promptly remit any such funds received to Sellers, minus the Commission, as promptly as possible, but not more than five (5) business days after receipt. Any funds held by the Purchasers beyond the permitted five (5) business day period shall accrue interest at the rate of ten percent (10%) per annum until payment is received by the Sellers. The Sellers and the Sellers' accountant shall have access upon reasonable prior notice during normal business hours to inspect and make and retain copies of Purchasers' relevant books and records relating to the Returned Receivables for the purpose of ascertaining Purchasers' compliance with this Section 6.10 .

6.11 Cooperation in Litigation and Taxes . Sellers and the Shareholder shall provide the Purchasers, and the Purchasers shall provide the Sellers, with such cooperation as may reasonably be requested in connection with (a) the defense of any Proceeding relating to the Purchased Assets or the Business whether existing on the Closing Date or arising thereafter out of, or relating to, an occurrence or event happening on or prior to the Closing Date, or (b) Taxes relating to the Purchased Assets or the Business.

6.12 Accounts Receivable and Accounts Payable . At the Closing, all of the Accounts Receivable as of the Closing Date shall become the sole property of the Purchasers. All of Sellers' and the Shareholder's accounts payable as of the Closing Date shall remain the sole property and/or liability of Sellers and the Shareholder, except for the Accounts Payable, which the Purchasers are expressly assuming. Within two (2) business days after the Closing Date, Purchasers and Sellers shall jointly notify all Customers who have an outstanding balance with Sellers as of the Closing Date that all payments with respect thereto shall be paid directly to the Purchasers. All monies received by Sellers on or subsequent to the Closing Date for services rendered or products or goods delivered or provided on or prior to the Closing Date or arising from the Purchasers' ownership and operation of the Purchased Assets until the Closing shall be held by Sellers for the benefit of the Purchasers and paid over to the Purchasers within five (5) business days of receipt. Sellers shall hold all such funds as a fiduciary for the Purchasers and shall safeguard and transfer such funds to the Purchasers, together with all statements and supporting documentation, within the time limitations established hereby. Any funds held by the Sellers beyond the permitted five (5) business day period shall accrue interest at the rate of ten percent (10%) per annum until payment is received by the Purchasers. The Purchasers and the Purchasers' accountant shall have access upon reasonable prior notice during normal business hours to inspect and make and retain copies of Sellers' relevant books and records relating to the Accounts Receivables for the purpose of ascertaining Sellers' compliance with this Section 6.12 .

6.13 Licenses and Permits . Sellers shall use its commercially reasonable best efforts to assist the Purchasers in obtaining licenses and the Permits to conduct the Business, if and to the extent necessary.

6.14 Transition . For ninety (90) days following the Closing, Sellers and the Shareholder shall use their commercially reasonable efforts, at no cost to Sellers and the Shareholder, to encourage Sellers' Customers, clients, Suppliers, and other business associates to maintain the same business relationships with Purchasers after the Closing as they maintained with Sellers prior to the Closing. Within two (2) business days following the Closing Date, Sellers and Purchasers jointly shall deliver a letter to each of Sellers' Customers, clients, Suppliers, and other business associates notifying them of the change in the ownership of the Business and Purchased Assets, and that all correspondence and payments relating to the Business shall thereafter be delivered to the Purchasers. Sellers and the Shareholder will refer to Purchasers all customer inquiries and customer prospects relating to the Business of Sellers, including those received through Sellers' or the Shareholder's website. Sellers and the Shareholder agree to use their best efforts to take such actions as may be necessary to entitle Purchasers to use Sellers' telephone and facsimile numbers, marketing collateral materials and business forms. Sellers and the Shareholder agree to provide access to Sellers' Microsoft Exchange Servers to provide such services currently provided by Shareholder or its Affiliates to Sellers, including, but not limited to remote email access and remote access to the accounting software systems as currently provided to Sellers, and to forward to the Purchasers any mail or e-mails received by them after the Closing that relate to the Purchased Assets, the Assumed Liabilities or the operation of the Business after the Closing or otherwise properly relates to the Purchasers and not the Sellers. The Purchasers agree to forward to Sellers any mail or e-mails received by the Purchasers after the Closing that relate to the Excluded Assets or the Excluded Liabilities or otherwise properly relates to the Sellers and/or the Shareholder and not the Purchasers.

6.15 Sellers' Existence . Until the Sellers and the Shareholder have fully satisfied their obligations pursuant to this Agreement, Sellers and the Shareholder shall continue to validly exist as corporations, in good standing under the laws of the states of their incorporations, and the Sellers and the Shareholder shall take all necessary action, including the payment of any filing and other fees to maintain such existence. 6.16 Exclusivity .

(a) From the date hereof until the earlier of (i) the Closing Date, or (ii) the termination of this Agreement, Sellers and the Shareholder, and their Representatives, officers, directors and shareholders shall not, directly or indirectly, engage in any negotiations concerning, or provide any Confidential Information or data to, or have any discussions with, any Person relating to a proposed sale and purchase of the Business or the Purchased Assets (a "Potential Acquisition" ), or otherwise knowingly encourage or facilitate any effort or attempt to make or implement a Potential Acquisition.

(b) Sellers and the Shareholder shall immediately cease and cause to be terminated any existing activities, discussions or negotiations with any Person conducted heretofore with respect to any Potential Acquisition. Sellers and the Shareholder agree that they will take the necessary steps to promptly inform its/their Representatives of the obligations undertaken in this Section 6.16 .

**ARTICLE 7 CONDITIONS TO OBLIGATIONS OF SELLERS**

The obligations of Sellers and the Shareholder to deliver the Purchased Assets and to consummate the transactions contemplated by this Agreement are subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions (any of which, in Sellers' absolute and sole discretion, may be waived in whole or in part without impairing or affecting any right of indemnification or other right or remedy under this Agreement):

7.1 Representations and Warranties . The representations and warranties of Purchasers set forth in Article 5 hereof shall be true and correct in all material respects as of the date of this Agreement and as of the Closing Date as though made on and as of the Closing Date (or on the date when made in the case of any representation and warranty which specifically relates to an earlier date), except as otherwise contemplated by this Agreement or consented to in writing by Sellers.

7.2 Covenants . Purchasers shall have in all material respects performed all obligations and complied with all covenants required by this Agreement to be performed or complied with at or prior to the Closing Date.

7.3 No Proceedings . No Proceeding will be pending, threatened or anticipated against Purchasers or Sellers seeking to enjoin, or adversely affecting, the consummation of the transactions contemplated by this Agreement.

7.4 Payment . Sellers shall have received the Closing Payment.

7.5 Escrow Funds and Agreement . Purchasers shall have deposited the Escrowed Funds pursuant to the Escrow Agreement and Sellers will have received the Escrow Agreement executed by the Purchasers and the escrow agent.

7.6 Closing Certificate . Each Purchaser shall have delivered to Sellers a certificate, dated the Closing Date and signed by such Purchaser's respective chairman, chief executive officer, president, executive vice president or senior vice president to the effect that each of the representations and warranties made by such Purchaser in this Agreement are true and correct in all material respects (provided that any representations and warranties qualified by materiality shall be true and correct in all respects) when made and on and as of the Closing Date with the same effect as though such representations and warranties had been made or given on and as of the Closing Date, and that such Purchaser has performed and complied in all material respects with all of its obligations and covenants under this Agreement which are to be performed or complied with by it on or prior to the Closing Date.

7.7 Closing Documents . Purchasers shall have made or caused to be made delivery to Sellers and the Shareholder of the items set forth in Section 3.2(a) .

7.8 Secretary's Certificate . A certificate of the secretary of each Purchaser certifying the signatures of all officers of such Purchaser executing this Agreement or any other agreement, document or instrument contemplated hereby and certifying as true and accurate the attached copies of: (1) such Purchaser's certificate of incorporation as in effect at the time of the Closing, (2) such Purchaser's by-laws as in effect at the time of the Closing, and (3) resolutions approved by the board of directors of such Purchaser, in their capacity as such, authorizing the Agreement, the Schedules and Exhibits thereto and the transactions contemplated thereby.

7.9 Proceedings and Documentation . All corporate and other proceedings of the Purchasers in connection with the transactions contemplated by this Agreement, and all documents and instruments incident to such proceeding, shall be reasonably satisfactory in substance and form to Sellers and Sellers' counsel, and Sellers and Sellers' counsel shall have received all such receipts, documents and instruments, or copies thereof, certified if requested, to which Sellers are entitled and as may be reasonably requested.

7.10 Certificate of Existence . Each Purchaser shall have delivered to the Sellers a Certificate of Existence or Good Standing Certificate, certified by the Secretary of State of each Purchaser's state of incorporation and dated not more than 10 days prior to the Closing Date.

**ARTICLE 8 CONDITIONS TO PURCHASERS' OBLIGATIONS**

The obligation of Purchasers to consummate the transactions contemplated by this Agreement is subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions (any of which, in Purchasers' absolute and sole discretion, may be waived in whole or in part without impairing or affecting any right of indemnification or other right or remedy under this Agreement):

8.1 Representations and Warranties . The representations and warranties of Sellers and Shareholder set forth in Article 4 hereof shall be true and correct in all material respects as of the date of this Agreement and as of the Closing Date as though made on and as of the Closing Date (or on the date when made in the case of any representation and warranty which specifically relates to an earlier date), except as otherwise contemplated by this Agreement or consented to in writing by Purchasers.

8.2 Covenants . Sellers and the Shareholder shall have in all material respects performed all obligations and complied with all covenants required by this Agreement to be performed or complied with at or prior to the Closing Date including, but not limited, obtaining the third-party consents set forth on Schedule 6.1 .

8.3 No Proceedings . No Proceeding will be pending, threatened or anticipated against any Party seeking to enjoin, or adversely affecting, the transactions contemplated by this Agreement.

8.4 Escrow Agreement . Purchasers will have received the Escrow Agreement executed by the Sellers and the escrow agent.

8.5 Seller Closing Certificate . Each Seller shall have delivered to Purchasers a certificate, dated the Closing Date and signed by such Seller's respective chairman, chief executive officer, president, executive vice president or senior vice president to the effect that each of the representations and warranties made by such Seller in this Agreement are true and correct in all material respects (provided that any representations and warranties qualified by materiality shall be true and correct in all respects) when made and on and as of the Closing Date with the same effect as though such representations and warranties had been made or given on and as of the Closing Date, and that such Seller has performed and complied in all material respects with all of its obligations and covenants under this Agreement which are to be performed or complied with by it on or prior to the Closing Date.

8.6 Shareholder Closing Certificate . The Shareholder shall have delivered to Purchasers a certificate, dated the Closing Date and signed by the Shareholder's respective chairman, chief executive officer, president, executive vice president or senior vice president to the effect that each of the representations and warranties made by the Shareholder in this Agreement are true and correct in all material respects (provided that any representations and warranties qualified by materiality shall be true and correct in all respects) when made and on and as of the Closing Date with the same effect as though such representations and warranties had been made or given on and as of the Closing Date, and that the Shareholder has performed and complied in all material respects with all of its obligations and covenants under this Agreement which are to be performed or complied with by it on or prior to the Closing Date.

8.7 Lease Assignments. Purchasers will have received the Lease Assignments .

8.8 No Material Adverse Effect . No Seller shall have had, since the date of this Agreement, suffered any business interruption, damage to or destruction of its properties, or other incident, occurrence, or event (other than the decision to enter into this Agreement) that, individually or in the aggregate, has had or could reasonably be expected to have a Material Adverse Effect.

8.9 Closing Documents . Sellers and the Shareholder shall have made or caused to be made delivery to Purchasers of the items set forth in Section 3.1(a) .

8.10 Seller Secretary's Certificate . A certificate of the secretary of each Seller certifying the signatures of all officers of each Seller executing this Agreement or any other agreement, document or instrument contemplated hereby and certifying as true and accurate the attached copies of: (1) such Seller's certificate of incorporation as in effect at the time of the Closing, (2) such Seller's by-laws as in effect at the time of the Closing, and (3) resolutions approved by the board of directors and shareholders of such Seller, in their capacity as such, authorizing the Agreement, the Schedules and Exhibits thereto and the transactions contemplated thereby. 30 8.11 Shareholder Secretary's Certificate . A certificate of the secretary of the Shareholder certifying the signatures of all officers of the Shareholder executing this Agreement or any other agreement, document or instrument contemplated hereby and certifying as true and accurate the attached copies of: (1) the Shareholder's certificate of incorporation as in effect at the time of the Closing, (2) the Shareholder's by-laws as in effect at the time of the Closing, and (3) resolutions approved by the board of directors of the Shareholder, in their capacity as such, authorizing the Agreement, the Schedules and Exhibits thereto and the transactions contemplated thereby. 8.12 Proceedings and Documentation . All corporate and other proceedings of each Seller and the Shareholder in connection with the transactions contemplated by this Agreement, and all documents and instruments incident to such proceedings, shall be reasonably satisfactory in substance and form to Purchasers and Purchasers counsel, and Purchasers and Purchasers' counsel shall have received all such receipts, documents and instruments, or copies thereof, certified if requested, to which Purchasers are entitled and as may be reasonably requested. 8.13 Consents . All required consents, permits and approvals shall have been obtained by Sellers and/or the Shareholder. 8.14 Possession of Assets . Sellers and the Shareholder shall have delivered to Purchasers all Customer Lists, Supplier Lists, Intellectual Property and other items contemplated hereby so as to put Purchasers into full possession of all of the Purchased Assets, free and clear of any and all Encumbrances. 8.15 Certificate of Existence . Each Seller shall have delivered to the Purchasers a Certificate of Existence or Good Standing Certificate, dated not more than 10 days prior to the Closing Date and certified by the Secretary of State of (i) each Seller's state of incorporation and (ii) states in which such Seller is qualified to do business as a foreign corporation, provided that, such foreign qualifications may be delivered by Sellers to the Purchasers within three (3) business days after the Closing Date. 8.16 Certificate of Existence . The Shareholder shall have delivered to the Purchasers a Certificate of Existence or Good Standing Certificate, certified by the Secretary of State of the Shareholder's state of incorporation and dated not more than 10 days prior to the Closing Date.

**ARTICLE 9 SURVIVAL AND INDEMNIFICATIONS**

9.1 Survival of Representations, Warranties, Covenants and Agreements .

(a) All representations, warranties, agreements and indemnities of Sellers and the Shareholder contained in this Agreement will survive the Closing Date; provided, that no claim for any misrepresentation or breach of a representation or warranty may be asserted at any time after the second anniversary of the date of this Agreement, except that (i) a claim for any misrepresentation or breach of a representation or warranty contained in Section 4.1 (Organization and Authority of Sellers to Conduct Business), Section 4.3 (Power and Authority; Binding Effect), Section 4.4(a) (Title; Condition of Tangible Personal Property), and Section 4.26 (Brokers) and any claim that any Seller and/or the Shareholder engaged in a fraudulent activity, or committed a fraud, may be asserted at any time, and (ii) a claim for any misrepresentation or breach of a representation or warranty contained in Section 4.8 (Tax Matters), Section 4.11 (Labor Matters), Section 4.12 (Employee Benefits) and Section 4.21 (Environmental) may be asserted until the expiration of the applicable statute of limitations period (the period applicable to such representations and warranties shall be referred to as the "Claims Period" ). Any claim made by a Purchaser with respect to the representations and warranties of Sellers and/or the Shareholder and their predecessors contained in this Agreement must be initiated by such Purchaser during the applicable Claims Period. All of the representations and warranties of Sellers and/or the Shareholder contained in this Agreement will in no respect be limited or diminished by any past or future inspection, investigation, examination or possession on the part of any Purchaser or their Representatives.

(b) All covenants and agreements of Sellers and the Shareholder contained in this Agreement (including, but not limited to, the obligation of Sellers and the Shareholder, as applicable, to convey the Purchased Assets to Purchasers free and clear of any Encumbrance, the obligations of Sellers set forth in Section 3.4 hereof and the indemnification obligations of Sellers and the Shareholder set forth in Section 9.2 ) will survive the Closing Date until fully performed or discharged.

(c) All representations and warranties of Purchasers contained in this Agreement will survive the Closing Date; provided, that no claim for any misrepresentation or breach of a representation or warranty may be asserted at any time after the second anniversary of the date of this Agreement ( "Purchasers' Claims Period" ). All covenants and agreements of Purchasers contained in this Agreement (including the indemnification obligations of Purchasers set forth in Section 9.4 ) will survive the Closing Date until fully performed or discharged.

9.2 Indemnification by Sellers and the Shareholder .

(a) Subject to the terms and conditions contained in this Agreement, following the Closing, Sellers and the Shareholder, jointly and severally (the "Seller Indemnifying Party" ) shall indemnify and hold harmless, Purchasers and their Affiliates and their respective Representatives, officers, directors, employees, agents, successors and assigns (each a "Purchaser Indemnified Party" ), from and against any and all Losses, claims, damages, costs and expenses, interest, awards, judgments and penalties (including reasonable attorneys' and consultants' fees and expenses and cost of investigation) actually suffered or incurred by them, arising out of or resulting from:

(i) Subject to Section 9.1(a) above, the misrepresentation or breach of any representation or warranty made by any Seller or the Shareholder contained in this Agreement;

(ii) the breach of any covenant or agreement by any Seller or the Shareholder contained in this Agreement or the nonfulfillment of any agreement or covenant made by any Seller or the Shareholder herein;

(iii) any debt liability or obligation of any Seller or the Shareholder not included in the Assumed Liabilities;

(iv) any Employee Benefit Plan;

(v) any Environmental Claim or any violation of any Environmental Laws which occurred or relate to time periods or events on or prior to the Closing Date;

(vi) any liability, payment or obligation in respect of any Tax Liabilities owing by any Seller, the Shareholder or any of their predecessors of any kind or description (including interest and penalties with respect thereto);

(vii) the use, operation, ownership and/or exploitation of the Purchased Assets and/or the Business on or prior to the Closing Date; and

(viii) the Excluded Assets, the Excluded Liabilities and the Excluded Contracts.

9.3 Limits on Indemnification .

(a) The right of Purchasers to be indemnified pursuant to Section 9.2 shall be the sole and exclusive remedy with respect to any Loss of whatever kind and nature, in law, equity or otherwise, known or unknown, which Purchasers have now or may have in the future, including without limitation, any Losses attributable to any inaccuracy or breach of any representation or warranty to the Purchasers at or prior to Closing, or any failure to perform the covenants, agreements or undertakings contained in this Agreement, any Disclosure Schedule or certificate delivered pursuant hereto or any agreement or other document contemplated hereby, other than as a result of actual fraud by any Seller or the Shareholder, and except as otherwise provided herein. The Parties acknowledge that (A) except as expressly provided in Article 4 , the Sellers and the Shareholder have not made and are not making any representations, warranties or commitments whatsoever regarding the subject matter of this Agreement, express or implied, and (B) except as expressly provided in Article 4 , Purchasers are not relying and have not relied on, any representations, warranties, projections, assumptions or commitments whatsoever regarding the subject matter of this Agreement, express or implied.

(b) Without limiting the effect of any other limitation contained in this Section 9.3 , the indemnification provided for in this Article 9 shall not apply, and Purchasers shall not be entitled to exercise any indemnification rights under this Agreement, except to the extent that the aggregate amount of the Losses against which Purchasers would otherwise be entitled to be indemnified under this Article 9 exceeds $50,000 (the "Basket" ). If the aggregate amount of such Losses exceeds the Basket, then Purchasers shall, subject to the other limitations contained herein, be entitled to be indemnified for the entire amount of such Losses, without regard to the Basket.

(c) Except as set forth in this Section 9.3(c) , the Sellers' and the Shareholder's indemnity obligations for Losses under this Article 9 shall be limited, in the aggregate, to the Purchase Price, as adjusted (the "Cap" ) except in the case of fraud, intentional misrepresentation, intentional breach of representation or warranty or with respect to Section 4.4(a) hereof, which shall be unlimited. The sum of any amounts paid from the Escrowed Funds to Purchasers in connection with any Losses under this Article 9 shall be counted towards the Cap for the purposes of this Article 9 .

(d) Nothing in this Section 9.3 shall limit any remedy any Purchaser may have against any Seller or the Shareholder for fraud committed by such Seller or the Shareholder under applicable laws.

9.4 Indemnification by Purchasers . Subject to the terms and conditions contained in this Agreement, following the Closing, Purchasers, jointly and severally (the "Purchaser Indemnifying Party" ) shall indemnify and hold harmless, Sellers and their Affiliates and their respective Representatives, officers, directors, employees, agents, successors and assigns (each a "Seller Indemnified Party" ) from and against any and all Losses claims, damages, costs and expenses, interest, awards, judgments and penalties (including reasonable attorneys' and consultants' fees and expenses and costs of investigation), actually suffered or incurred by them, arising out of or resulting from:

(a) the misrepresentation or breach of any representation or warranty made by any Purchaser contained in this Agreement, including, without limitation, any Purchaser's failure to satisfy any requirements of the Assumed Liabilities subsequent to the Closing Date provided for hereunder;

(b) the breach of any covenant or agreement by Purchasers contained in this Agreement or nonfulfillment of any agreement or covenant made by any Purchaser herein; or

(c) the use, operation, ownership and/or exploitation of the Purchased Assets by any Purchaser subsequent to the Closing Date.

9.5 Notice of Loss; Third Party Claims .

(a) Subject to Section 9.1 above, in the event that an Indemnified Party proposes to make a claim for indemnification pursuant to Sections 9.2 or 9.4 hereof (other than a Third Party Claim as discussed below), the Indemnified Party will deliver, on or prior to the date upon which the applicable representations, warranties, indemnities or covenants may be asserted pursuant to Section 9.1 , written notice to the Indemnifying Party which states (i) that a Loss has occurred, (ii) the provisions of this Agreement in respect of which such right of indemnification is claimed or arises, and (iii) each individual item of Loss or other claim, in reasonable detail, including the amount and date of such Loss (to the extent reasonably ascertainable).

(b) If the Indemnified Party shall receive notice of any action, audit, demand or assessment (each, a "Third Party Claim" ) against it or which may give rise to a claim for indemnification pursuant to Sections 9.2 or 9.4 , the Indemnified Party shall promptly give the Indemnifying Party written notice of such Third Party Claim; provided, however, that the failure to provide such written notice shall not release the Indemnifying Party from any of its obligations under this Article 9 except to the extent that the Indemnifying Party is materially prejudiced by such failure (but in no event shall any such failure or delay extend the Claims Period set forth in Section 9.1 above).

(c) If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party hereunder against any Losses that may result from such Third Party Claim, then the Indemnifying Party shall be entitled to assume and control the defense of such Third Party Claim at its expense and through counsel of its choice if it gives notice of its intention to do so to the Indemnified Party within 10 days of the receipt of such notice from the Indemnified Party; provided, however, that if there exists or is reasonably likely to exist a conflict of interest that would, in the reasonable judgment of counsel to the Indemnifying Party, make it inappropriate for the same counsel to represent both the Indemnified Party and the Indemnifying Party, then the Indemnified Party shall be entitled to retain its own counsel in each jurisdiction for which the Indemnified Party determines counsel is required at the expense of the Indemnifying Party and such counsel shall be entitled to full participation in the defense of or prosecution of counterclaims related to any such claim and the Indemnifying Party shall direct its counsel to reasonably cooperate in connection therewith. If the Indemnifying Party does not acknowledge in writing its obligation to indemnify the Indemnified Party hereunder against any Losses that may result from such Third Party Claim within 10 days, or the Indemnifying Party fails or refuses to promptly assume and defend such Third Party Claim, then the Indemnified Party shall be entitled to assume and control the defense of such Third Party Claim at the Indemnifying Party's expense and through counsel of the Indemnified Party's choice.

(d) Notwithstanding anything herein to the contrary, in the event of any Third Party Claim brought by, on behalf of or for the benefit of any Affiliate of the Indemnifying Party, then the Indemnified Party shall control the defense thereof, at the expense of the Indemnifying Party, notwithstanding the Indemnifying Party's obligation to indemnify the Indemnified Party therefor.

(e) In the event that the Indemnifying Party exercises the right to undertake any such defense against any such Third Party Claim as provided above, the Indemnified Party shall cooperate with the Indemnifying Party in such defense and make available to the Indemnifying Party, at the Indemnifying Party's expense, all witnesses, pertinent records, materials and information in the Indemnified Party's possession or under the Indemnified Party's control relating thereto as is reasonably required by the Indemnifying Party. Similarly, in the event the Indemnified Party is, directly or indirectly, conducting the defense against any such Third Party Claim, the Indemnifying Party shall cooperate with the Indemnified Party in such defense and make available to the Indemnified Party, at the Indemnifying Party's expense, all such witnesses, records, materials and information in the Indemnifying Party's possession or under the Indemnifying Party's control relating thereto as is reasonably required by the Indemnified Party. No such Third Party Claim may be settled by the Indemnifying Party or Indemnified Party without the prior written consent of the other, which shall not be unreasonably withheld or delayed.

**ARTICLE 10 MISCELLANEOUS**

10.1 Termination .

This Agreement may be terminated:

(a) At any time on or prior to the Closing Date, by the mutual consent in writing of the Parties hereto;

(b) At any time on or prior to the Closing Date, by Purchasers in writing if any Seller or the Shareholder has, or by Sellers in writing if any Purchaser has, in any material respect, breached (a) any material covenant or agreement contained herein or (b) any material representation or warranty contained herein, and in either case (x) such breach has not been cured within ten (10) days after the date on which written notice of such breach is given to the Party committing such breach and (y) such breach would entitle the non-breaching Party not to consummate the transactions contemplated hereby;

(c) At any time, by any Party hereto in writing, if any Governmental Authority of competent jurisdiction shall have issued a final, nonappealable order enjoining or otherwise prohibiting the transactions contemplated herein;

(d) By any Party hereto in writing, if the Closing Date has not occurred by July 27, 2012, unless the failure of the Closing to occur by such date shall be due to the failure of the Party seeking to terminate this Agreement to perform or observe the covenants and agreements set forth herein.

10.2 Effect of Termination . In the event this Agreement is terminated pursuant to Section 10.1 , this Agreement shall become void and have no effect, except that (a) the provisions relating to confidentiality set forth in Section 6.7(c), (d) and (e) shall survive any such termination, and (b) a termination pursuant to Section 10.1(b) shall not relieve the breaching Party from liability for an uncured willful breach of such covenant or agreement or representation or warranty giving rise to such termination.

10.3 Waiver . Except where not permitted by applicable Governmental Requirements, Purchasers and Sellers, by written instrument signed by such Party, may at any time extend the time for the performance of any of the obligations or other acts of Sellers or the Shareholder, on the one hand, or Purchasers, on the other hand, and may waive (a) any inaccuracies of such Parties in the representations or warranties contained in this Agreement or any document delivered pursuant hereto or thereto, (b) compliance with any of the covenants, undertakings or agreements of such Parties, or satisfaction of any of the conditions precedent to its obligations, contained herein or (c) the performance by such Parties of any of its obligations set out herein or therein. No such waiver or extension shall be effective unless specifically made in writing and any waiver by a Party of any breach of or failure to comply with any of the provisions of this Agreement by the other Party shall not be construed as, or construe a continuing waiver of, or a waiver of any other breach of, or failure to comply with, any other provision of this Agreement.

10.4 Further Assurances . Both before and after the Closing Date, each Party will cooperate in good faith with each other Party and will take all appropriate action and execute any agreement, instrument or other writing of any kind which may be reasonably necessary or advisable to carry out and confirm the transactions contemplated by this Agreement.

10.5 Risk of Loss . Risk of loss with respect to any property or assets of Sellers or the Shareholder, as applicable, will be borne by Sellers or the Shareholder, as applicable, at all times prior to the Closing and will pass to Purchasers only upon transfer to Purchasers at Closing of title to the Purchased Assets; notwithstanding the foregoing, risk of loss with respect to any Non-Transferable Assets will also pass to Purchaser at Closing. If any of the Tangible Personal Property is lost, damaged or destroyed by fire, theft, casualty or any other cause or causes prior to the Closing (a "Casualty" ), Sellers shall promptly notify Purchasers in writing of such Casualty and the details thereof and shall answer promptly any reasonable requests from Purchasers for details or information. Purchasers shall thereafter proceed with the Closing, except that in the event of a Casualty to the Tangible Personal Property, the Purchase Price will be reduced by the dollar amount (based upon replacement value) of the Casualty loss (and any insurance proceeds received or receivable as a result of such Casualty will be payable to Sellers); provided, however, that if such Casualties materially interfere or have a Material Adverse Effect, in Purchasers' reasonable discretion, with the operation of or on the Business, Purchasers may terminate this Agreement. Purchasers must exercise its option to terminate by written notice to Sellers within fifteen (15) days or the number of days remaining to the Closing, whichever is less, after the later of Purchasers receiving (a) written notice of any such Casualty and (b) satisfactory responses to all of its reasonable requests, if any, for details or information. If this Agreement is not terminated by Purchasers pursuant to this Section 10.5 and if Purchasers and Sellers are unable to agree as to the dollar amount of the loss (based upon replacement value) or the insurance proceeds to be recovered, the Parties shall proceed with the Closing as scheduled, except that Purchasers shall place in escrow (to be held pending agreement as to the final amount) an amount (based upon estimated replacement value of the damaged or destroyed property) as determined by a firm selected by independent accountants to be agreed upon by the Parties (the "Casualty Amount" ). The Casualty Amount shall be held in escrow until the dispute has been resolved following the Closing either by agreement of Purchasers and Sellers or otherwise. In the event that the actual Casualty loss is greater than or less than the Casualty Amount held in escrow, to the extent necessary, the Parties shall make appropriate adjustment payments.

10.6 Notices . Unless otherwise provided in this Agreement, any agreement, notice, request, instruction or other communication to be given hereunder by any Party to another must be in writing and (a) delivered personally (such delivered notice to be effective on the date it is delivered), (b) mailed by certified mail, postage prepaid (such mailed notice to be effective three (3) business days after the date it is mailed), (c) deposited with a reputable overnight courier service (such couriered notice to be effective one (1) business day after the date it is sent by courier) or (d) sent by electronically confirmed facsimile or email transmission (such facsimile or email transmission notice to be effective on the date that confirmation of such facsimile or email transmission is received), with a confirmation sent by way of one of the above methods, as follows: If to Sellers or the Shareholder, addressed to:

A

With copies to:

B

C

With a copy to:

D

Any Party may designate in a writing to any other Party any other address or facsimile number to which, and any other Person to whom or which, a copy of any such notice, request, instruction or other communication should be sent.

10.7 Choice of Law . This Agreement is governed by and will be construed, interpreted and the rights of the Parties determined in accordance with the laws of the State of New York without regard to principles of conflicts of law, except that, with respect to matters of law concerning the internal corporate affairs of any corporate entity which is a Party to or the subject of this Agreement, the law of the jurisdiction under which the respective entity was organized will govern.

10.8 Expenses . Each Party hereto shall bear and pay all costs, fees and expenses incurred by it in connection with this Agreement and the transactions contemplated in this Agreement, including, but not limited to, the costs, fees and expenses of its own financial consultants, accountants and counsel. 36

10.9 Headings . The headings of the Articles and Sections of this Agreement are inserted for convenience of reference only and will not affect the meaning or interpretation of this Agreement.

10.10 Entire Agreement; Oral Modification . This Agreement contains the entire agreement between the Parties to this Agreement with respect to the subject matter of this Agreement and supersedes each course of conduct previously pursued, accepted or acquiesced in, and each written or oral agreement and representation previously made, by the Parties to this Agreement with respect to the subject matter of this Agreement; and no amendment, modification, termination or attempted waiver of any of the provisions hereof shall be binding unless in writing and signed by all of the Parties hereto.

10.11 Successors and Assigns; Third Party Beneficiaries . Except as otherwise provided in this Agreement, the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the Parties. Nothing in this Agreement, express or implied, is intended to create, and shall not be construed as creating, any rights enforceable by any person not a Party to this Agreement, and it is the express intent of the Parties that no third party shall have any enforceable rights under this Agreement.

10.12 Severability . If any provision of this Agreement is for any reason determined to be invalid, such provision shall be deemed modified so as to be enforceable to the maximum extent permitted by law consistent with the intent of the Parties as expressed in this Agreement, and such invalidity shall not affect the remaining provisions of this Agreement, which shall continue in full force and effect.

10.13 Counterparts . This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which taken together will constitute one and the same instrument. Any Party may execute this Agreement by facsimile signature and the other Parties will be entitled to rely on such facsimile signature as evidence that this Agreement has been duly executed by such Party. Any Party executing this Agreement by facsimile signature shall immediately forward to the other Parties an original signature page by overnight mail.

10.14 Consent to Jurisdiction and Venue . Each Party to this Agreement hereby (i) consents to submit himself, herself or itself to the personal jurisdiction of the Federal courts of the United States located in the Southern District of New York or, if such courts do not have jurisdiction over such matter, to the applicable courts of the State of New York located in New York County, (ii) irrevocably agrees that all actions or proceedings arising out of or relating to this Agreement will be litigated in such courts and (iii) irrevocably agrees that he, she or it will not institute any Proceeding relating to this Agreement or any of the transactions contemplated hereby in any court other than such courts. Each Party to this Agreement accepts for himself, herself or itself and in connection with his, her or its properties, generally and unconditionally, the exclusive jurisdiction and venue of the aforesaid courts and waives any defense of lack of personal jurisdiction or inconvenient forum or any similar defense, and irrevocably agrees to be bound by any non-appealable judgment rendered thereby in connection with this Agreement.

10.15 Waiver of Jury Trial . THE PARTIES HERETO WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. THE PARTIES AGREE THAT ANY OF THEM MAY FILE A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED-FOR AGREEMENT AMONG THE PARTIES TO IRREVOCABLY WAIVE TRIAL BY JURY AND THAT ANY ACTION OR PROCEEDING WHATSOEVER AMONG THEM RELATING TO THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY WILL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

10.16 Independence of Covenants and Representations and Warranties . All covenants under this Agreement will be given independent effect so that if a certain action or condition constitutes a default under a certain covenant, the fact that such action or condition is permitted by another covenant will not affect the occurrence of such default, unless expressly permitted under an exception to such initial covenant. In addition, all representations and warranties under this Agreement will be given independent effect so that if a particular representation or warranty proves to be incorrect or is breached, the fact that another representation or warranty concerning the same or similar subject matter is correct or is not breached will not affect the incorrectness or a breach of such initial representation or warranty.

IN WITNESS WHEREOF , the Parties to this Agreement have executed or caused this Agreement to be executed on the day and year indicated at the beginning of this Agreement.

|  |  |
| --- | --- |
| PURCHASERS: | BOSTON GLOBAL SERVICES CORP. By: |s|UMA Bill Nay Name: Bill NayReddy Title: President |
|  | SUPREME SERVICES CORP. By: |s|UMA CHENNAREDDY REDDY Name: Bill Nay Title: President |
| SELLERS: | WPCS INTERNATIONAL - TRENTON, INC. By: |s|MAX BURGER Name: Max Burger Title: Chief Financial Officer |
|  | WPCS INTERNATIONAL - Trenton, INC. By: |s|MAX BURGER Name: Max Burger Title: Chief Financial Officer |
| SHAREHOLDER: | WPCS INTERNATIONAL INCORPORATED By: |s|MAX BURGER Name: Max Burger Title: Chief Financial Officer |

**APA#4**

**ASSET PURCHASE AGREEMENT**

between

Stellar Movies INC.

(a Wyoming corporation)

and

Stellar Movies, GmbH,

(a German Registered Company)

THIS ASSET PURCHASE AGREEMENT (this Agreement), dated June 1, 2008, between related sister Companys Stellar Movies GmbH, a German Registered Company, (Seller herein) and Stellar Movies Inc., a Nevada corporation, (Buyer herein), is made with reference to the following provisions, and shall be effective upon payment of the Purchase Price and execution of this Agreement.

**RECITALS**

A. The Seller owns certain motion picture rights, copyrights and licenses as well as certain brands and business concepts and certain rights to ongoing business and contracts as more fully detailed in Schedules A, B, C and D attached hereto and made part of this Agreement (Assets).

B. Seller desires to transfer and sell the Assets and the Buyer desires to acquire the Assets and assume all of Sellers right, title and interest in and to the Assets and Seller is agreed to accept shares of common stock in the Buyer as full consideration for the Assets.

C. The Buyer and Seller agree that upon execution of the document and payment of the Purchase Price, title to the Assets shall immediately pass to Buyer and Buyer shall have complete use, control and benefit of the Assets and Seller shall become the majority and controlling shareholder of Buyer.

**AGREEMENT**

NOW, THEREFORE, in consideration of the mutual agreements, warranties and representations contained in this Agreement, the parties hereby agree as follows. Incorporation of Recitals The recitals and prefatory phrases and paragraphs set forth above are hereby incorporated in full and made part of this Agreement.

**ASSET PURCHASE AND CONSIDERATION**

1. Assets. Seller agrees to sell and transfer, and Buyer agrees to purchase the Assets free and clear of all liens, claims and encumbrances, except solely for the assumption of Sellers obligations to complete two (2) feature documentary motion pictures and for any guild residuals or profit participations that may be due, in connection with the motion picture rights and licenses acquired hereunder, and as more fully detailed in the Schedules attached hereto.

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4. Assignment of Rights. Seller will assign and Buyer will accept and assume all of Sellers rights, title and interest in and to the Assets and any contracts in connection therewith.

5. Purchase Price. The purchase price for the Assets shall be the issuance by Buyer to Seller of 38,000,000 shares of Buyers common stock and 2,500,000 shares of Buyers preferred stock (Shares).

6. Execution and Closing. The consummation of the transaction contemplated by this Agreement shall occur immediately upon the execution of this Agreement and the receipt of Seller of the Shares at which time Buyer shall be delivered all required materials in connection with the conveyance of the Assets and at which time Buyer shall assume full control of the Assets. After execution of this Agreement, Seller will provide, at its own expense, full delivery to Buyer of any and all materials, elements, agreements and physical properties and materials that may be required herein for Buyer to effectively and efficiently assume all right, title and benefits of the acquired Assets. Should it be required by Buyer, the Seller shall provide assignments, such bills of sale and instruments of transfer and conveyance as shall be reasonably be required by Buyer for the transfer to Buyer of all right, title and interest of Seller in and to the Assets. The parties shall also deliver to each other such officer certificates and other instruments as may be reasonably required to effect the transaction contemplated herein.

**ASSET LIABILITY, BUYERS REPRESENTATIONS AND ISSUANCE OF SHARES**

7. Asset Liability. Buyer shall not assume or be responsible for any liabilities or obligations of Seller, except for those assumed obligations described herein, including without limitation, any liabilities which Seller was obligated to satisfy prior to execution Date, or for any tax liability of the Seller . Buyer shall take all Assets transferred by this Agreement free of any liens, claims, and encumbrances existing or claimed to exist on the Assets.

8. Buyers Representations. The Seller acknowledges and agrees that the Shares being issued to Seller hereunder, as the Purchase Price, are being issued by the Buyer as a private Company and there shall be no tradable exchange for the Shares unless and until Buyer makes successful filings with the SEC and FINRA to allow Buyers common stock to be traded in the public market. Seller further acknowledges that it understands that it is the Buyers intent to make such filings but that Buyer has no obligation, whatsoever, to Seller or anyone related to Seller to make any such filings and it shall do so in its sole discretion and judgment. In the event that Buyer eventually becomes a publicly traded Company Seller acknowledges that the Shares issued to Seller hereunder will be issued in accordance with rule 144 of the Securities Act and, as such, Seller further acknowledges and agrees that all Shares issue hereunder will be restricted securities within the meaning of the Securities Act.

9. Issuance of Shares. The Seller acknowledges that the Buyer has not agreed and has no obligation to register the resale of the Shares under the Securities Act. Seller acknowledges and agrees that any and all certificates representing the Shares, to be issued hereunder, may be endorsed with restrictive legends. Seller acknowledges that it is a related Company to Buyer and is, therefore, familiar with the details of Buyers financial condition and that Seller represents that it is sophisticated and experienced in financial matters and that the Shares being issued hereunder are for Sellers own account and that the issuance of the Shares have not been reviewed by the SEC or any securities regulatory authorities.

**OTHER REPRESENTATIONS OF THE SELLERS AND BUYER**

10. Other Representations of the Seller. Seller hereby represents and warrants to Buyer as follows:

(a) Title to the Purchase Assets. Seller is the lawful owner and has good and marketable title to all of the Assets and hereby grants indemnification unto Buyer and its successors and assigns against claims of any third parties. Seller is a duly authorized corporation under the laws of Germany, validly existing and in good standing. This Agreement has been duly authorized by the Board of Directors of Seller and constitutes the binding and enforceable obligation of Seller. Seller has authority to sell and transfer the Assets, which are free and clear from any liens or encumbrances. Additionally, Seller has received all consents regarding the acquisition from any entities whose consents are necessary, including but not limited to, any and all governmental regulatory agencies whose consents are necessary, holders of notes, company affiliates, and corporate consents.

(b) Sellers Liabilities. Seller represents that it does not have any liability or obligation (direct or indirect, contingent or absolute, known or unknown, mature or unmatured of any nature whatsoever, whether arising out of contract, tort, statute or other (Liabilities), except: (i) as specifically disclosed in a Schedule hereto to be provided to the Seller on or before the date hereof, which is incorporated herein by reference; (ii) liabilities incurred in the ordinary course of business which will not individually or in the aggregate be materially adverse to, or result in a material increase in the current or long term liabilities or obligations of Seller . To the best knowledge of the Seller, upon due inquiry, there is no basis for assertion against Seller of any liabilities.

(c) Compliance with Laws. Seller has complied with and is not in default under any applicable law, ordinance regulation or order, the violation of which would materially and adversely affect the Assets. There is no litigation proceeding or investigation pending or known to be threatened which might materially and adversely effect the Assets.

(d) Taxes. Seller has duly filed all federal, state, local, and foreign tax returns, if any, necessary to be filed by it and has duly paid all taxes (including any interest or penalties) which are or will be due or payable with respect to taxes. There are no known or proposed penalty, interest or deficiency assessments with respect to taxes that require payment by, relate to or could adversely affect the purchased Assets.

(e) Completeness of Statements. No representation or warranty in this Agreement and no statement set forth in any schedule attached hereto contains any untrue statement of any material fact, or omits to state any material fact necessary to make the statements contained therein not misleading.

(f) Operation in the Ordinary Course. During the period of Sellers ownership up and to and including the date hereof: (i) there has been no damage destruction or loss or any event materially adversely affecting the Assets, and (ii) there has been no sale or other disposition of the Assets except as disclosed herein.

11. Representation and Warranties of the Buyer. Buyer represents and warrants to Seller that Buyer is a corporation duly organized, validly existing and in good standing under the laws of Wyoming, and this agreement has been duly authorized by the Board of Directions of Buyer and constitutes the valid binding and enforceable obligation of the Buyer .

12. Notice of Default. In the event of default by either party, the non-defaulting party shall provide written notice of default to the defaulting party. Such notice of default shall provide ninety (90) days for the defaulting party to cure the default.

13. Commissions and Finders Fees. Buyer and the Seller each hereby represent and warrant that neither of them have retained or used the services of any individual, firm or corporation in such manner as to entitle such individual, firm or corporation to any compensation for brokers or finders fees with respect to the transactions contemplated hereby for which the other may be liable.

14. Governing Law. By executing this Agreement, the parties agree that this Agreement shall be governed by and construed in accordance with the laws of the state of Wyoming. It is the intention of the parties that this Agreement and any dispute arising out of this agreement be governed and construed, by any Court or judicial body, under the laws of Wyoming. Furthermore the parties recognize and declare that Wyoming has the most significant relationship to this Agreement and any dispute that may arise from it and that any other claimed venue or claimed jurisdiction has no legitimate interest in this Agreement or any dispute arising from.

15. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the respective successors of Seller and Buyer and their assigns. Buyer may freely assign its rights under this Agreement without the consent of Seller or any party related to Seller.

16. Entire Agreement. This Agreement sets forth the entire Agreement and understanding of Seller and the Buyer with respect to the subject matter hereof and supersedes all prior contemporaneous written or oral agreements, understandings or representations which are not specifically contained herein. The parties hereto are related parties and the Agreement was drafted by a related party and they therefore consent that the terms of this Agreement shall not be construed for or against either party. This Agreement may be amended or modified only by a written instrument signed by Seller and the Buyer or their successors in interest.

17. Disputes. The parties agree to attempt to resolve any claim or dispute arising out of or relating to this Agreement by mediation and good faith reasonable negotiation prior to resorting to litigation or other judicial process. In the event this Agreement is placed in the hands of an attorney for enforcement, the prevailing party shall be entitled to recover court costs and their reasonable attorney fees.

18. Publicity. Prior to the Closing Date, no notices to third parties (including press releases) or to any employees, suppliers or customers of Buyer or Seller (other than key management and other persons whose knowledge is required), shall be made by any party hereto unless mutually agreed to, planned and coordinated jointly among the parties hereto except as may be required by regulatory bodies.

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

20. No Third Party Beneficiaries. The terms and provisions contained in this Agreement (including the documents and the instruments referred to herein) are not intended to confer upon any person other than the parties and any successor in interest of the parties hereto any rights or remedies hereunder.

21. Further Assurances. From and after the date of execution, upon the request of any party, the other party shall do, execute, acknowledge and deliver all such further acts, assurances, deeds, assignments, transfers, conveyances and other instruments and papers as may be reasonably required or appropriate to carry out the transactions contemplated by this Agreement.

22. Amendment. This Agreement maybe amended, or any provision of this Agreement may be waived, provided that any such amendment or waiver is set forth in a writing executed by Seller and Buyer or their assigns or respective successors in interest. No course of dealing between or among any persons having any interest in this Agreement will be deemed effective to modify, amend or discharge any part of this Agreement or any rights or obligations of any person under or by reason of this Agreement.

23. Waiver. No waiver by either party of any breach of a provision of this Agreement shall be a waiver of any subsequent breach, whether of the same or a different provision of this Agreement.

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement as of the date first above written.

|  |  |  |
| --- | --- | --- |
| BUYER : |  | SELLERS : |
| Stellar Movies Inc |  | Stellar Movies, GmbH |
| By |  |  |
| Mr. Fritz Langer |  | Mr. Fritz Langer |
| CEO |  | Managing Director |
| Witness: |  | Norm S. Berliner |

**APA#5**

**ASSET PURCHASE AGREEMENT**

This Asset Purchase Agreement (this"Agreement") is entered as of July 27, 2011 ("Agreement Date" ), by and between Visiform Corporation, Inc. a Missouri corporation having its principalplace of business at 345 King’s Highway, St. Louis, MO 63030 and its subsidiaries ("Seller" ), and Optincrease, Inc., a Virginia corporation having its principal place of business at 1340 Eitteljorg Avenue, Indianapolis, IN 46205 and its subsidiaries

("Purchaser" ). Each of Seller and Purchaser shall be referred to herein as a

"Party" and shall be collectively referred to as the"Parties" . Capitalized terms that are used, whether in the singular or plural, shall have the meanings set forth in Section 1 (Definitions) or, if not set forth in Section 1 , the meaning designated in places throughout the Agreement.

**W I T N E S S E T H:**

WHEREAS, Seller wishes to sell, and Purchaser wishes to purchase certain intellectual property of Seller, as more particularly described herein, all upon the terms and subject to the conditions set forth below;

NOW, THEREFORE, in consideration of the mutual covenants and other good and valuable consideration described herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto covenant and agree as follows.

**1. Definitions.**

1.1. Certain Definitions . For purposes of this Agreement, in addition to the terms that are defined parenthetically elsewhere in this Agreement, the following terms shall have the following meanings:

(a) RESERVED.

(b) RESERVED.

(c) "Action" shall mean any claim, dispute, action (including any action seeking injunctive or other equitable relief), arbitration, mediation, litigation, proceeding, suit, or governmental investigation, and any appeal therefrom.

(d) "Affiliate" shall mean an entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, a Party, as the case may be, as of or after the Closing Date and only for the period of such control. For purposes of this definition only, the term "control" means the possession of the power to direct or cause the direction of the management and policies of an entity, whether by ownership of voting stock or partnership interest, by contract or otherwise, including direct or indirect ownership of more than fifty percent (50%) of the voting interest in the entity in question.

(e) "Assignment Agreement" shall mean the agreement transferring to the Purchaser the Seller's Transferred IP, in the form mutually agreed by the Parties prior to the Closing Date as attached hereto as Exhibit A .

(f) "Books and Records" shall mean all, to the extent not originals, true and complete copies of all file (prosecution) histories and copies of documents relating to, issuance, ownership, maintenance, enforcement, and/or defense of any patents, patent applications, and invention disclosures , whether on paper or in electronic format, related to Transferred Assets.

(g) "Closing Date" shall mean the date when consummation of the transactions and associated Assignment Agreements contemplated by this Agreement occurs .

(h) "Confidential Information" shall mean all information and materials received by either Party from the other Party pursuant to this Agreement (including the terms of this Agreement subject to Section 7.1 ), other than that portion of such information or materials that by reasonable evidence is shown to have been

(i) publicly disclosed by the disclosing Party, either before or after it becomes known to the receiving Party;

(ii) known to the receiving Party, without obligation to keep it confidential, prior to when it was received from the disclosing Party;

(iii) subsequently disclosed to the receiving Party by a Third Party lawfully in possession thereof without obligation to keep it confidential;

(iv) publicly disclosed other than by the disclosing Party and without breach of an obligation of confidentiality with respect thereto; or

(v) independently developed by the receiving Party without the aid, application or use of, or reference to, Confidential Information of the disclosing Party.

(i) "Control" or "Controlled" shall mean, with respect to any particular assets described in this Agreement to which this term is applied, that the Seller owns or has a license to such asset pursuant to an executed, written agreement with a third party.

(j) "Field of Use" shall mean the use of Robotics to perform diagnostic or therapeutic procedures for medical purposes.

(k) "Governmental Authority" shall mean any nation, territory, or government (or union thereof), foreign, domestic, or multinational, any state, local, or other political subdivision thereof, and any bureau, court, tribunal, board, commission, department, agency, or other entity exercising executive, legislative, judicial, regulatory, or administrative functions of government, including all taxing authorities, and all other entities exercising regulatory authority over manufacture, testing, marketing, use, sale, handling, storage, or distribution of medical products or devices.

(l) " Know-How " shall mean all data and information owned or Controlled by Seller and maintained in confidence by Seller, including all processes, plans, designs, research, operating manuals, methods, compounds, formulae, discoveries, developments, designs, drawings, technology, techniques, procedures, specifications, inventions, computer programs, and any other scientific or technical data or information conceived, memorialized, developed, and/or reduced to practice, in each case whether or not patentable in any jurisdiction. Know-How shall be and continue to be Confidential Information.

(m) "Laws" shall mean all applicable laws, statutes, rules, regulations, guidelines, ordinances, and other pronouncements having the effect of law in any nation, state, province, county, city, or other political subdivision, domestic or foreign.

(n) "Liability" or "Liabilities" shall mean any debt, liability, commitment, or obligation of any kind, character, or nature whatsoever, whether known or unknown, secured or unsecured, accrued, fixed, absolute, potential, contingent, or otherwise, and whether due or to become due, including any liability for taxes.

(o) "Lien" shall mean any lien, statutory lien, pledge, mortgage, deed of trust, security interest, charge, covenant, claim, restriction, right, option, conditional sale, or other title retention agreement or encumbrance of any kind or nature.

(p) "Material Adverse Effect" means any change, effect, event, occurrence or state of facts that is, or would reasonably be expected to be, materially adverse to the business, properties, assets, financial condition or results of operations of a party.

(q) "Person" shall mean an individual, corporation, partnership, limited partnership, limited liability company, unincorporated association, trust, joint venture, union, or other organization or entity, including a Governmental Authority.

(r) "Robotic(s)" shall mean any medical system or component thereof whose actuation is powered and under computed control, in whole or in part. Computed control means control by any device that performs computations to effect such control, and includes by way of non-limited example, control using a microprocessor, microcontroller, digital signal processor, field programmable gate array, programmable logic device, optical computer, and any other form of programmable control that performs computations.

(s) "Seller's Business" shall mean the development, manufacture and sale of optical components and products for various applications including, but not limited to, medical, industrial, and military applications.

(t) "Territory" shall mean all countries worldwide.

(u) "Transfer" shall mean any sale, transfer, conveyance, assignment, grant, delivery or other disposition, and "Transfer" or "Transferred" , used as a verb, shall each have a correlative meaning.

(v) "Transferred Intellectual Property" or "Transferred IP" shall include (i) all United States patents and corresponding foreign patents and patent applications including all divisionals, continuations, reissues, and continuations-in-part thereof; (ii) all inventions (iii) all claims, proceedings, and cause of actions relating to any of the foregoing in (i)-(ii);that are Controlled and/or conceived by Seller up to one year from the date of the Closing Date. Transferred Intellectual Property shall not include any of Seller's trademarks or any of Seller's Know-How other than that disclosed in 1.1(v)(i)-1.1(v)(iii).

**2. Purchase and Sale of Assets; Purchase Price; Release, Grant Back License .**

2.1. Purchase and Sale of Assets . Subject to the terms and conditions of this Agreement, and on the basis of the covenants, representations, and warranties set forth herein, at and as of the Closing Date, the Seller shall Transfer to the Purchaser, and the Purchaser shall purchase and accept from the Seller all of the right, title, and interests of the Seller in and to the following assets, free and clear of all Liens, (collectively, the "Transferred Assets" ):

(a) Transferred Intellectual Property set forth on Schedule 1 as such may be amended from time to time by agreement of the Parties; and

(b) any claims and causes of action arising out of the those items set forth in subsection (a) immediately above as such claims and causes of action exist as of the Closing Date (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due), including escrows relating to the foregoing, as shown in Schedule 2 .

2.2. Assumption of Liabilities . Subject to the terms and conditions of this Agreement, and as of the Closing Date, the Purchaser shall assume only those Liabilities arising directly out of ownership of any of the Transferred Assets (the "Assumed Liabilities" ), but only to the extent such Liabilities arise after the Closing Date.

2.3. Excluded Liabilities . Except for the Assumed Liabilities, the Purchaser shall not assume any, and shall have no liability, responsibility, or obligation whatsoever, at any time, for (and the Seller and its Affiliates shall retain and pay, perform, and discharge when due) any and all other Liabilities of the Seller or any of its Affiliates arising prior to, as of, or after the Closing Date (the "Excluded Liabilities" ), including but not limited to any Liability, arising from or relating to, the use or operation by the Seller or any of its Affiliates of any of the Transferred Assets and/or any products or services commercialized by the Seller.

2.4. Release from Seller. Seller and its Affiliates, for themselves and their successors and assigns, agree to irrevocably release, acquit and forever discharge Purchaser, its Affiliates, and its and their officers, directors, employees, agents, representatives, shareholders, customers, vendors and its and their successors and assigns from any and all claims arising from obligations and activities under the Manufacturing Services Agreements between Seller and Purchaser dated September 19, 1997 and June 19, 1998 including infringements of the Transferred Assets and any other Seller's intellectual property, including but not limited to Know-How, by-products and their derivatives and improvements designed and developed under the Manufacturing Services Agreements between Seller and Purchaser dated September 19, 1997 and June 19, 1998.

2.5. Consideration; Payment . The consideration for the Seller's Transfer to the Purchaser of the Transferred Assets and the Seller's promises and performance of its obligations under this Agreement and the Assignment Agreements shall equal a total of Two Million Five Hundred Thousand Dollars (US $2,500,000) in readily available funds (the "Purchase Price" ). The Purchase Price shall be paid to Seller on the Closing Date.

2.6. Transfer Taxes . Notwithstanding anything herein to the contrary, the Seller and its Affiliates shall be solely liable for, and shall pay when due, any transfer, gains, documentary, sales, use, registration, stamp, value-added, or other similar taxes payable by reason of the transactions contemplated under this Agreement, and the Seller or its Affiliates shall file, at their expense, all necessary tax returns and other documentation with respect to all taxes.

2.7. Allocation of Purchase Price . By mutual agreement of the parties, the Purchase Price will be allocated to broad categories constituting components of the Transferred Assets (the "Allocation" ). Each party will report the transactions consummated hereby in accordance with the agreed upon Allocation (except to the extent modifications are necessary to reflect changes in the Transferred Assets and Assumed Liabilities between the Closing Date and the date of the Allocation) for all federal, state, local and other tax purposes, but such allocation will not constrain reporting for other purposes.

2.8. Grant Back License. Purchaser hereby grants to Seller a royalty-free, paid-up, worldwide, transferrable (subject to the limitations of Section 7.5 ), non-exclusive license under the Transferred Intellectual Property to directly and indirectly make, use, develop, modify, improve, substitute, iterate, combine, distribute, offer for sale, and sell, import and export products outside the Field of Use throughout the Territory. Seller shall only have the right to grant sublicenses on such terms as Seller may negotiate with its customers/users and with its vendors/suppliers in Seller's supply chain. Any such sublicense shall only be outside the Field of Use. Any sublicensee shall be either (i) not engaged in pending or imminent litigation with Purchaser or (ii) engaged in pending or imminent litigation with Purchaser but has an existing customer or supply business relationship with Seller prior to the pending or imminent litigation with Purchaser which existing customer or supply business relationship is not or has not been expanded as a result of the pending or imminent litigation. Purchaser shall also grant Seller a royalty-free, paid-up, worldwide, transferrable (subject to the limitations of Section 7.5 ), non-exclusive license under the Transferred Intellectual Property to directly and indirectly make, use, develop, modify, improve, substitute, iterate, combine, distribute, offer for sale, and sell, import and export products and services for in vitro procedures utilizing genomic and/or proteomic lab-on-a-chip or other similar benchtop diagnoses, both inside and outside the Field of Use throughout the Territory.

2.9. Purchaser shall give Seller thirty (30) days notice of its decision to abandon any patent or patent application identified as Transferred IP subject to this Agreement. Seller shall then have the option of taking whatever action is needed to avoid abandonment and, if Seller elects to avoid abandonment, Purchaser shall assign all right, title and interest to Seller in such patent or patent application. Under this Section 2.10 , Seller shall grant back to Purchaser an irrevocable, fully paid, royalty free, perpetual exclusive license with the right to enforce in such patent or patent application to directly and indirectly make, use, develop, modify, improve, substitute, iterate, combine, distribute, offer for sale, and sell, import and export products and services within the Field of Use throughout the Territory.

**3. Representations and Warranties of the Seller .** Seller hereby represents and warrants to the Purchaser as of the date hereof and as of the Closing Date as follows:

3.1. Organization and Good Standing . The Seller is a corporation duly organized, validly existing, and in good standing under the laws of the jurisdiction in which it is incorporated and is in material compliance with all Laws. Seller has corporate power to own its properties and to conduct its business as currently owned and conducted. Seller has two subsidiaries: Visitotal, Inc.(MO) and Plant’s Visiform Corporation, Limited ( Hong Kong) n

3.2. Power and Authority . The Seller has the corporate power and authority to execute and deliver this Agreement and all Assignment Agreements to which it is a party, perform its obligations hereunder and thereunder, and consummate the transactions contemplated hereby and thereby. The execution and delivery by the Seller of this Agreement and all Assignment Agreements, the performance by it of its obligations hereunder and thereunder, and the consummation by it of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate actions on the part of the Seller and its Affiliates. This Agreement and all Assignment Agreements to which the Seller or any of its Affiliates is a party constitutes (or will constitute upon the execution thereof) the legal, valid, and binding obligation of the Seller or its Affiliates, as applicable, enforceable against the Seller or its Affiliates in accordance with its terms, subject to bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium, or similar Laws relating to or affecting the rights and remedies of creditors generally. This Agreement has been duly executed and delivered by the Seller.

3.3. No Violation . Neither the execution and delivery by the Seller of this Agreement or any Assignment Agreements to which the Seller or its Affiliates is a party, nor the performance by the Seller or its Affiliates, as applicable, of its obligations hereunder or thereunder, nor the consummation by the Seller of the transactions contemplated hereby or thereby, will (i) contravene any provision of the articles of organization and bylaws of the Seller, (ii) contravene any provision of the articles of organization, bylaws, or similar organizational documents of any Affiliate of the Seller; (iii) with or without the giving of notice or the lapse of time or both, violate, be in conflict with, constitute a default under, permit the termination of, cause the acceleration of the maturity of any debt or obligation of the Seller (other than debts or obligations paid at the Closing Date), (iv) require the consent of any other party to, constitute a breach of, create a Liability or loss of a benefit under, or result in the creation or imposition of any Lien upon any of the Transferred Assets under, any agreement to which the Seller or its Affiliates is a party or by which it is bound; and (v) violate or conflict with, any Law or any judgment, decree, or order of any Governmental Authority to which the Seller or its Affiliates is subject or by which the Seller or any of its assets or properties is bound.

3.4. Transferred Intellectual Property. Schedule 1 contains a true and complete list of all worldwide patents, pending patent applications, and inventions, included in the Transferred Intellectual Property to be transferred to Purchaser as part of the Transferred Assets. The Seller owns or has licensed such Transferred Intellectual Property free and clear of all Liens. Other than the items listed in Schedule 1 , there are no additional patents, pending patent applications, or inventions related to the Seller's Business and naming as an inventor any Seller employee who was an employee of Seller at the time of invention or any consultant/contractor who performed work for Seller at the time of invention and who was obligated to assign such invention to Seller. The Seller has no knowledge of any adversarial proceedings or any claims that are currently being asserted or threatened by any Person involving or challenging the Seller's ownership of any Transferred Intellectual Property. The Seller has diligently paid or will pay all Transferred Intellectual Property's maintenance fees due before the Closing Date.

3.5. Actions .

(a) To the knowledge of the Seller, there is no Action pending or threatened against the Seller or any of its Affiliates, that (i) questions or challenges the validity of this Agreement or the other Assignment Agreements or any action taken or proposed to be taken by the Seller or any of its Affiliates pursuant hereto or thereto or in connection with the transactions contemplated hereby or thereby, or (ii) relates to any of the Transferred Assets that if adversely determined, could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;

(b) To the knowledge of the Seller, there is no outstanding judgment, order, decree, writ, award, stipulation, or injunction of any Governmental Authority against the Seller or any of its Affiliates or any of their respective assets or businesses, which, if adversely determined, could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

3.6. Taxes .

(a) All sales, use, payroll withholding, unemployment compensation and similar taxes, and any other taxes the nonpayment of which would result in a tax Lien on any Transferred Asset have been paid or will be paid when due, or adequate deposits have been made with the appropriate taxing authorities with respect thereto, and there are no Liens for taxes on any Transferred Asset.

(b) The Seller has not received any written notice from any Governmental Authority of any pending examination or any proposed tax deficiency, addition, assessment, demand for payment, or adjustment the nonpayment of which could result in a tax Lien on any Transferred Asset.

3.7. Title to Property . Seller has good title to or otherwise owns all of the Transferred Assets (whether personal, mixed, tangible, or intangible), to the Seller's knowledge, free and clear of all Liens, and upon Transfer of the Transferred Assets pursuant hereto, the Purchaser will have good title to and ownership of all of the Transferred Assets (whether personal, mixed, tangible, or intangible) free and clear of all Liens.

3.8. No License of Transferred IP. Seller has not licensed or entered into any agreement to license any of the Transferred IP to a third party except as disclosed in Exhibit B .

3.9 Approvals . No Approval of any Governmental Authority or any third party is required to be made, obtained, or given by or with respect to the Seller in connection with the execution or delivery by the Seller or any of its Affiliates, as applicable, of this Agreement and the Assignment Agreements, the performance by Seller or any of its Affiliates of its obligations hereunder or thereunder, or the consummation by Seller or any of its Affiliates of the transactions contemplated hereby or thereby, including without limitation the Transfer of the Transferred Assets to the Purchaser, except where the failure to make, obtain, or give such Approval could not reasonably be expected to have a Material Adverse Effect.

3.10. Material Information . No Executive Officer of Seller is aware of any material information that could cause a Material Adverse Effect on the value of the Transferred Assets

**4. Representations and Warranties of the Purchaser.** The Purchaser hereby represents and warrants to the Seller as of the date hereof and as of the Closing Date as follows:

4.1. Organization and Good Standing . The Purchaser is a corporation duly organized, validly existing, and in good standing under the laws of the jurisdiction in which it is incorporated and is in material compliance with all Laws. Purchaser has corporate power to own its properties and to conduct its business as currently owned and conducted.

4.2. Power and Authority . The Purchaser has the corporate power and authority to execute and deliver this Agreement to which it is a party, perform its obligations hereunder and thereunder, and consummate the transactions contemplated hereby and thereby. The execution and delivery by the Purchaser of this Agreement, the performance by it of its obligations hereunder and thereunder, and the consummation by it of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate actions on the part of the Purchaser and its Affiliates. This Agreement to which the Purchaser or any of its Affiliates is a party constitutes (or will constitute upon the execution thereof) the legal, valid, and binding obligation of the Purchaser or its Affiliates, as applicable, enforceable against the Purchaser or its Affiliates in accordance with its terms, subject to bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium, or similar Laws relating to or affecting the rights and remedies of creditors generally. This Agreement has been duly executed and delivered by the Purchaser.

4.3. No Violation . Neither the execution and delivery by the Purchaser of this Agreement to which it is a party, nor the performance by it of its obligations hereunder or thereunder, nor the consummation by it of the transactions contemplated hereby or thereby, will (i) contravene any provision of the certificate of incorporation or bylaws of the Purchaser; (ii) with or without the giving of notice or the lapse of time or both, violate, be in conflict with, constitute a default under, permit the termination of, cause the acceleration of the maturity of any debt or obligation of the Purchaser under, require the consent of any other party to, constitute a breach of, create a Liability or loss of a benefit under, or result in the creation or imposition of any Lien upon any of the properties or assets of the Purchaser under, any contract to which it is a party or by which it or any of its assets or properties are bound, other than such violations, conflicts, defaults, terminations, accelerations, breaches, Liabilities, or loss of benefits which could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect; or (iii) violate, conflict with, or require any approval under, any Law or any judgment, decree, or order of any Governmental Authority to which the Purchaser is subject or by which it or any of its assets or properties are bound, other than such violations, conflicts, or noncompliance with such requirements which could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

4.4. Actions .

(a) To the knowledge of the Purchaser, there is no Action pending or threatened against the Purchaser or any of its Affiliates, that (i) questions or challenges the validity of this Agreement or any action taken or proposed to be taken by the Purchaser or any of its Affiliates pursuant hereto or thereto or in connection with the transactions contemplated hereby or thereby that if adversely determined, could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;

(b) To the knowledge of the Purchaser, there is no outstanding judgment, order, decree, writ, award, stipulation, or injunction of any Governmental Authority against the Purchaser or any of its Affiliates or any of their respective assets or businesses, which, if adversely determined, could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

4.5. Approvals . No Approval of any Governmental Authority or other third party is required to be made, obtained, or given by or with respect to the Purchaser in connection with the execution or delivery by it of this Agreement and the Assignment Agreements, the performance by it of its obligations hereunder or thereunder, or the consummation it of the transactions contemplated hereby or thereby, except where the failure to make, obtain, or give such Approvals could not have, individually or in the aggregate, a Material Adverse Effect.

4.6. Financing . The Purchaser will have available funds sufficient to pay the Purchase Price and related expenses of the transactions contemplated by this Agreement.

**5. Additional Covenants and Agreements.**

5.1. Specific Performance; Injunctive Relief. Each of the Parties hereto acknowledges, understands, and agrees that any breach or threatened breach by it or any of its Affiliates of any of their respective obligations hereunder or under the Assignment Agreements will cause irreparable injury to the other Party and that money damages will not provide an adequate remedy therefor. Accordingly, in the event of any such breach or threatened breach, the non-breaching Party shall have the right and remedy (in addition to any other rights or remedies available at law or in equity) to have the provisions of such Sections specifically enforced by, and to seek injunctive relief and other equitable remedies in, any court having competent jurisdiction.

5.2. Further Assurances. In addition to the actions, documents, and instruments specifically required to be taken or delivered by this Agreement and the Assignment Agreements, whether on or before or from time to time after the Closing Date, and without further consideration, each Party hereto shall take such other actions, and execute and deliver such other documents and instruments, as the other Party hereto or its counsel may reasonably request and at the expense of the requesting Party in order to effectuate and perfect the transactions contemplated by this Agreement and the Assignment Agreements, including without limitation such actions as may be necessary to Transfer to the Purchaser and to place the Purchaser in possession or control of all of the rights, properties, assets, and businesses intended to be sold, transferred, conveyed, assigned, and delivered hereunder.

5.3. Post-Closing Rights and Obligations.

(a) Seller shall transfer all Books and Records in its possession to Purchaser within 10 calendar days after the Closing Date or 10 calendar days after they are generated.

(b) Seller agrees to cooperate with Purchaser in any lawsuit that Purchaser brings against a third party to enforce Purchaser's rights in the Transferred Assets and to be joined as a party to such lawsuit by Purchaser if (i) it is requested by Purchaser and (ii) if Purchaser agrees to (A) reimburse all of Seller's reasonable litigation expenses, including attorney fees, in such lawsuit, and (B) pay a reasonable hourly consulting fee for use of Seller's personnel in connection with such lawsuit.

(c) Regarding the filing and prosecution of patent applications and maintenance of patents which constitute the Transferred Assets, Purchaser shall assume the responsibility and the costs (including attorney fees) following the Closing Date. For a period of one year from the Closing Date, Seller shall notify Purchaser of all patent inventions and shall execute all necessary documents to assign, convey, or transfer all right, title, and interest to these inventions to Purchaser, subject to the terms of this Agreement. Upon request, Seller shall assist and cooperate with Purchaser in the aforementioned filing, prosecution, and maintenance of the Transferred Assets.

(d) Purchaser shall have the right to sublicense the Transferred Assets to a third party with whom Purchaser is engaged in pending or imminent litigation (whether in or outside the Field of Use) without any restriction, and to Purchaser's Affiliates, customers/users, and vendors/suppliers in Purchaser's supply chain or to any third party for any reason in the Field of Use without any restriction.

(e) Regarding any other third party (distinguishable from Affiliates, customers/users, vendors/suppliers mentioned in Section 5.3 (d) ), Purchaser shall have the right without any restriction to sublicense such other third party with whom Purchaser engages in settlement negotiation of any pending and/or imminent litigation. Any monetary recoveries or settlement amounts received by Purchaser as a result of litigation under this Section 5.3(e) shall go first to reimbursing Purchaser for its costs and expenses incurred in such action, and then to reimbursing Seller for its costs and expenses incurred in such action, with any remaining amounts to be shared Pro Rata between Purchaser and Seller based on the number of infringed valid patents from the Transferred Assets involved in the relevant litigation and the number of other infringed valid patents owned and/or controlled by Purchaser involved in the relevant litigation.

(f) Seller shall give notice to Purchaser of any claim of patent infringement outside the Field of Use against a third party whom Purchaser has not previously licensed under the Transferred IP. Purchaser shall have a right of first refusal to proceed against such third party. If Purchaser does not bring suit within thirty (30) days after receiving notice, Seller shall have the right to request in writing that Purchaser allows Seller to proceed with an infringement lawsuit against such third party, at Seller's own costs, and that Purchaser joins Seller, if necessary, as a party to the lawsuit. Purchaser shall have sole discretion in granting such consents. Failure of Purchaser to respond in writing to Seller's request within sixty (60) calendar days will be deemed Purchaser's consent. If Purchaser grants such consents, Purchaser agrees to provide reasonable assistance to Seller in connection with any such lawsuit. Any monetary recoveries or settlement amounts received by Seller as a result of litigation under this Section 5.3(f) shall go first to reimbursing Seller for its costs and expenses incurred in such action, and then to reimbursing Purchaser for its costs and expenses incurred in such action, with any remaining amounts to be shared equally between Purchaser and Seller. In addition, Seller shall:

(i) provide Purchaser with copies of all pleadings and other documents proposed to be initially filed or served by Seller in sufficient time to allow for review and comment by Purchaser.

(ii) as reasonably requested by Purchaser, regularly provide the Purchaser with copies of all pleadings and other documents proposed to be filed or served by Seller and other material submissions and correspondence in any way related to such prosecution of such infringement, as applicable, in sufficient time to allow for review and comment by Purchaser;

(iii) provide Purchaser and its counsel with a reasonable opportunity to consult with Seller and its counsel regarding the filing, service of process, and contents of any documents proposed to be filed or served by Seller and other material submissions and correspondence in any way related to such prosecution of such Infringement or in connection therewith, and Seller shall give consideration to the reasonable requests of Purchaser regarding the same; and

(iv) reimburse all of Purchaser's reasonable expenses, including attorney fees, and pay a reasonable hourly consulting fee for use of Purchaser's personnel, in connection with litigation involving the Transferred IP that Purchaser is required to join as an indispensable party.

5.4. Confidentiality.

(a) The Seller shall keep confidential, and not use or disclose to others, any Confidential Information of or obtained from, the Purchaser or its representatives, pursuant to this Agreement or the Assignment Agreements, to the extent that such Confidential Information is not or does not become readily available to the public other than as a result of disclosure by the Purchaser or its representatives or is not required to be disclosed by applicable Law or Governmental Authority.

(b) The Purchaser shall keep confidential, and not use or disclose to others, any Confidential Information of or obtained from, the Seller or its representatives, pursuant to this Agreement or the Assignment Agreements, to the extent that such Confidential Information is not or does not become readily available to the public other than as a result of disclosure by the Seller or its representatives or is not required to be disclosed by applicable Law or Governmental Authority.

**6. Indemnification .**

6.1. Indemnification by the Seller. The Seller and its successors and assigns shall jointly and severally indemnify and hold harmless and defend the Purchaser, and its Affiliates, successors, and permitted assigns, and the representatives of each of them, from and against any and all damages incurred thereby or caused thereto based on, arising out of or resulting from:

(a) any Excluded Liability as defined in Section 2.3;

(b) the inaccuracy in or a breach of a representation and warranty of the Seller contained herein or in any Assignment Agreements, which individually or in the aggregate has a Material Adverse Effect;

(c) the breach of any covenant or agreement of the Seller contained herein or in any Assignment Agreements; and

(d) any taxes required to be paid by the Seller to a Governmental Authority, which taxes were required to be, but were not, paid out of the Purchase Price.

6.2. Indemnification by the Purchaser. Purchaser and its successors and assigns shall indemnify and jointly and severally hold harmless and defend the Seller, and its Affiliates, successors, and permitted assigns, and the representatives of each of them, from and against any and all damages incurred thereby or caused thereto based on, arising out of or resulting from:

(a) the inaccuracy in or a breach of a representation and warranty of the Purchaser contained herein or in Assignment Agreements, which individually or in the aggregate has a Material Adverse Effect;

(b) any Assumed Liabilities as defined in Section 2.2; and

(c) the breach of any covenant or agreement of the Purchaser contained herein.

6.3. Notice and Payment of Claims. The indemnified Party shall notify the indemnifying Party promptly after becoming aware of, and shall provide to the indemnifying Party as soon as practicable thereafter any and all information and documentation in the possession or control of the indemnified Party, necessary to support and verify, any damages that the indemnified Party shall have determined have given rise to, or could reasonably be expected to give rise to, a claim for indemnification hereunder; provided, however, that the right of the indemnified Party to indemnification shall be reduced in the event of its failure to give timely notice only to the extent the indemnifying Party is prejudiced thereby.

6.4. Matters Involving Third Parties.

(a) If any third party shall commence a third party Action against any indemnified Party with respect to matters which may give rise to a claim for indemnification against any Indemnifying Party under this Section 6 , the indemnified Party shall notify the indemnifying Party thereof in writing as soon as practicable, but in no event more than 15 calendar days after the indemnified Party shall have been served with legal process or otherwise received notice of the commencement of such Action; provided, however, that the right of the indemnified Party to indemnification shall be reduced in the event of its failure to give timely notice only to the extent the indemnifying Party is prejudiced thereby.

(b) The indemnifying Party shall have the right to defend the indemnified Party against the third party Action with counsel and other representatives of its choice so long as (i) the indemnifying Party shall notify the indemnified Party in writing within the 15 calendar day period after its receipt of notice of the third party Action; that it will indemnify the indemnified Party from and against any damages the indemnified Party may suffer arising out of the third party Action; and (ii) the indemnifying Party diligently conducts the defense of the third party Action in the reasonable opinion of the indemnified Party. In the event the indemnifying Party does not comply with clauses (i) or (ii) of the preceding sentence, the indemnified Party may defend against the third party Action, preserving its rights to indemnification hereunder including, without limitation, for the cost of such defense.

(c) So long as the indemnifying Party is diligently conducting the defense of the third party Action in accordance with Section 6.4(b) above, (i) the indemnified Party may retain separate co-counsel, at its sole cost and expense, and participate in the defense of the third party Action, (ii) the indemnified Party shall not consent to the entry of any judgment or enter into any settlement with respect to the third party Action without the prior written consent of the indemnifying Party, which consent shall not be unreasonably withheld or delayed, (iii) the indemnified Party shall fully cooperate within reason with the indemnifying Party's defense of such third party Action including, without limitation, providing any and all required information and documents and access to representatives of the indemnified Party with knowledge of issues relevant to the claim or litigation (any such activities required to discharge this obligation to cooperate shall be incurred at the sole expense of the indemnified Party), and (iv) the indemnifying Party shall not consent to the entry of any judgment or enter into any settlement with respect to the third party Action without the prior written consent of the indemnified Party, which consent shall not be unreasonably withheld or delayed.

(d) Notwithstanding any contradiction in Section 6.4 (a) --(c) , an indemnified Party shall be entitled to assume the defense of any third party Action (and the indemnifying Party shall be liable for the reasonable fees and expenses incurred by the indemnified Party in defending such claim) if the third party Action seeks an order, injunction, or other equitable relief or relief for other than money damages against the indemnified Party, which the indemnified Party determines, after conferring with its counsel, cannot be separated from any related claim for money damages and which, if successful, would materially adversely affect the properties or the business of the indemnified Party; provided, however, if such equitable relief portion of such third party Action can be so separated from that for money damages, the indemnifying Party shall be entitled to assume the defense of the portion relating to money damages.

6.5 Threshold Amount. Indemnification claims for losses made by either party shall be available only if and to the extent the aggregate amount of all such claims made by such party exceeds $25,000.

**7. Miscellaneous .**

7.1. Public Announcement . Except as required by applicable Law or any Governmental Authority with competent jurisdiction, neither Party hereto, nor any of their respective Affiliates and representatives, shall issue any press release or make any public announcement or disclosure with respect to this Agreement or the transactions contemplated hereby without the prior written consent of the other Party hereto, which consent shall not be unreasonably withheld. The Seller and the Purchaser shall agree on the content of any press release announcing the execution of this Agreement and the consummation of the transactions contemplated hereby prior to any press release. Notwithstanding the foregoing, the Seller may publish such information as it reasonably believes is necessary to comply with federal and state law and any other regulatory requirements including the requirements of any stock exchange.

7.2. Amendment; Waiver . Neither this Agreement, nor any of the terms or provisions hereof, may be amended, modified, supplemented, or waived except by a written instrument signed by all of the Parties hereto (or, in the case of a waiver, by the Party granting such waiver). No waiver of any of the terms or provisions of this Agreement shall be deemed to be or shall constitute a waiver of any other term or provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver. No failure of a Party hereto to insist upon strict compliance by another Party hereto with any obligation, covenant, agreement, or condition contained in this Agreement shall operate as a waiver of, or estoppel with respect to, any subsequent or other failure. Whenever this Agreement requires or permits consent by or on behalf of a Party hereto, such consent shall be given in a manner consistent with the requirements for a waiver of compliance as set forth in this Section 7.2 .

7.3. Fees and Expenses . Each of the Parties hereto shall bear and pay all fees, costs, and expenses incurred by it or any of its Affiliates in connection with the origin, preparation, negotiation, execution, and delivery of this Agreement and the Assignment Agreements and the transactions contemplated hereby or thereby (whether or not such transactions are consummated), including, without limitation, any fees, expenses, or commissions of any of its representatives.

7.4. Notices . All notices, requests, demands, and other communications required or permitted under this Agreement shall be in writing and mailed or facsimiled or delivered by hand or courier service:

(a) If to the Seller:

Visiform Corporation

345 Kings Highway,

St. Louis, MO 63030

Attention: Chief Executive Officer

Facsimile No.: 314-201-3429

(b) If to the Purchaser:

Optincrease, Inc.

1340 Eitteljorg Avenue,

Indianapolis, IN 46205

Attention: General Counsel

Facsimile No.: 317-403-5733

7.5. Assignment and Transfer.

(a) This Agreement and all of the terms and provisions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

(b) This Agreement and/or any of the rights, interests, or obligations hereunder of Seller may be assigned and/or transferred by Seller only with the prior written consent of Purchaser, which consent shall be withheld only if the successor in interest either is a direct competitor of Purchaser in the Field of Use or is engaged in pending or imminent litigation with Purchaser. Seller may assign and/or transfer all of its rights hereunder to any successor in interest (whether by merger, acquisition, asset purchase or otherwise) to all or substantially all of the business of Seller only with the prior written consent of Purchaser, which consent shall be withheld only if the successor in interest either is a direct competitor of Purchaser in the Field of Use or is engaged in pending or imminent litigation with Purchaser.

(c) Neither this Agreement nor any of the rights, interests, or obligations hereunder of Purchaser may be assigned and/or transferred by Purchaser without the prior written consent of Seller, which consent shall not be unreasonably withheld or delayed except that the Purchaser may, without the consent of the Seller, assign and/or transfer all of its rights hereunder to any successor in interest (whether by merger, acquisition, asset purchase or otherwise) to all or substantially all of the business of the Purchaser.

(d) If one Party requires consent under Sections 7.5(b)-(c) of the other to assign and / or transfer rights, interests, or obligations hereunder, that Party will request in writing consent of the other Party, who must respond in writing within sixty (60) calendar days. Failure to respond to the request for consent within sixty (60) calendar days will be deemed consent.

7.6. Governing Law; Consent to Jurisdiction .

(a) This Agreement and the legal relations among the Parties hereto shall be governed by and construed under the substantive laws of the United States of America and the State of Illinois, without regard to conflict of laws rules.

(b) Each Party to this Agreement hereby irrevocably submits to the exclusive jurisdiction of any state or federal court sitting or located in the State of Illinois in any Action arising out of or relating to this Agreement or the other Assignment Agreements.

7.7. Headings . The headings contained in this Agreement and the schedules hereto are for convenience of reference only and shall not constitute a part hereof or define, limit, or otherwise affect the meaning of any of the terms or provisions hereof.

7.8. Entire Agreement . Other than as set forth in this Section 7.8 or any other Assignment Agreements, this Agreement and the Assignment Agreements embody the entire agreement and understanding between the Parties hereto with respect to the subject matter hereof and supersede all prior agreements, commitments, arrangements, negotiations or understandings, whether oral or written, between the Parties hereto, their respective Affiliates or any of the representatives of any of them with respect thereto, except as specifically referenced. There are no agreements, covenants, or undertakings with respect to the subject matter of this Agreement and the Assignment Agreements other than those expressly set forth or referred to herein or therein and no representations or warranties of any kind or nature whatsoever, express or implied, are made or shall be deemed to be made herein by the Parties hereto except those expressly made in this Agreement and the Assignment Agreements.

7.9. Severability. Each term and provision of this Agreement constitutes a separate and distinct undertaking, covenant, term, and/or provision hereof. In the event that any term or provision of this Agreement shall be determined by a court of competent jurisdiction to be unenforceable, invalid or illegal in any respect, such unenforceability, invalidity or illegality shall, to the fullest extent permitted by law, not affect any other term or provision hereof, but this Agreement shall be construed as if such unenforceable, invalid or illegal term or provision had never been contained herein. Moreover, if any term or provision of this Agreement shall for any reason be held by a court of competent jurisdiction to be excessively broad as to time, duration, activity, scope or subject, the Parties request that it be construed, by limiting and reducing it, so as to be enforceable to the fullest extent permitted under applicable law.

7.10. No Third Party Beneficiaries. Except as and to the extent otherwise provided herein, nothing in this Agreement is intended, nor shall anything herein be construed, to confer any rights, legal or equitable, in any Person other than the Parties hereto and their respective successors and permitted assigns.

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

IN WITNESS WHEREOF , the Parties have executed, or caused their duly authorized representatives to execute, this Asset Purchase Agreement as of the date first written above.

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|  | VISIFORM CORPORATION | | | | | | | |
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|  |  | | | | | | | |
|  | By: | |s|Max E. Johnson | | | | | | |
|  |  | Name: | | | | | Max E. Johnson |
|  |  | Title: | | | | Chief Executive Officer | | |
|  |  | | | | | | | |
|  |  | | | | | | | |
|  | OPTINCREASE, INC. | | | | | | | |
|  |  | | | | | | | |
|  |  | | | | | | | |
|  | By: | | |s|Henry S. Ford | | | | | |
|  | Name: | | | | Henry S. Ford | | | |
|  | Title: | | | SVP G.C. | | | | |

**Schedule 1**

**Visiform Corp. Patent Portfolio Listing (Provided by Seller)**

UNITED STATES PATENTS

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Patent No. |  | Title |  | Granted |
| xxx |  | High Resolution … |  | xxx |
| xxx |  | Medical … |  | xxx |
| xxx |  | Viewing … |  | xxx |
| xxx |  | Quick … |  | xxx |
| xxx |  | Quick … |  | xxx |
| xxx |  | Endoscope … |  | xxx |
| xxx |  | Stereoscopic … |  | xxx |
| xxx |  | Autoclavable Endoscope |  | xxx |
| xxx |  | Acylindrical … |  | xxx |
| xxx |  | A … |  | xxx |
| xxx |  | Optical … |  | xxx |
| xxx |  | Convergence … |  | xxx |
| xxx |  | Repairable … |  | xxx |
| xxx |  | Acylindrical … |  | xxx |
| xxx |  | Endoscope … |  | xxx |

PENDING UNITED STATES PATENT APPLICATIONS

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Ser. No. |  | Title |  | Filed |
| xxx |  | Maximizing … |  | xxx |
| xxx |  | Adjustment … |  | xxx |

PATENTS IN CHINA AND GERMANY

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Country |  | Patent No. |  | Title |  | Grant/Filing Date |
| CN |  | xxx |  | Acylindrical … |  | xxx |
| EP-DE |  | xxx |  | Acylindrical … |  | xxx |
| CN |  | xxx |  | Optical … |  | xxx |

PENDING APPLICATION IN CHINA

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Country |  | Application No. |  | Title |  | Date |
| CN |  | xxx |  | Acylindrical … |  | xxx |

**Schedule 2**

**Transferred Cause of Actions**

NONE

**Exhibit A-1**

**Assignment Agreement**

For good and valuable consideration, the receipt of which is hereby acknowledged, and subject to the reservations stated in an Asset Purchase Agreement between the parties dated on or about July 27, 2011, Visiform Corporation, Inc., a Missouri corporation having a place of business at 345 King’s Highway, St. Louis, MO 63030, (hereinafter "ASSIGNOR"), hereby grants and assigns to Optincrease, Inc., a a Virginia corporation having its principal place of business at 1340 Eitteljorg Avenue, Indianapolis, IN 46205, (hereinafter "ASSIGNEE"), all of ASSIGNOR'S right, title and interest in and to the following United States Letters Patent:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Patent No. |  | Title |  | Granted |
| xxx |  | High Resolution … |  | xxx |
| xxx |  | Medical … |  | xxx |
| xxx |  | Viewing … |  | xxx |
| xxx |  | Quick … |  | xxx |
| xxx |  | Quick … |  | xxx |
| xxx |  | Endoscope … |  | xxx |
| xxx |  | Stereoscopic … |  | xxx |
| xxx |  | Autoclavable … |  | xxx |
| xxx |  | Acylindrical … |  | xxx |
| xxx |  | A … |  | xxx |
| xxx |  | Optical … |  | xxx |
| xxx |  | Convergence … |  | xxx |
| xxx |  | Repairable … |  | xxx |
| xxx |  | Acylindrical … |  | xxx |
| xxx |  | Endoscope … |  | xxx |

(hereinafter "ASSIGNED PATENTS"), to have and to hold the same, unto ASSIGNEE for its own use and enjoyment and for the use and enjoyment of its successors and assigns, for the full term or terms of all such rights, subject to any rights, licenses, immunities or covenants not to sue under each of the ASSIGNED PATENTS reserved by ASSIGNOR set forth in the above-identified Asset Purchase Agreement. As of the effective date, these assigned rights include any and all damages for infringement of any of the Assigned Patents accruing before, on and after the effective date and the right to sue therefore under such ASSIGNED PATENTS.

IN WITNESS WHEREOF, ASSIGNOR has caused this Assignment Agreement to be duly signed on its behalf.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Signature: | | |s|Max E. Johnson |  | Date: | 7/27/11 |
|  | | |  |  |  |
| Name: | Max E. Johnson | |  |  |  |
| Title | Chief Executive Officer | |  |  |  |

|  |  |  |  |
| --- | --- | --- | --- |
| State of Missouri) | | |  |
| )SS:  City of St. Louis ) |  |  | | |  |  |

Before me this 27th day of July, 2011, personally appeared to me Max E. Johnson known to be the person who is described in and who signed the foregoing Assignment and acknowledged to me that he/she signed the same of his/her own free will for the purpose therein expressed.

|  |  |  |
| --- | --- | --- |
| |s| Melinda B. Welter  Notary Public |  |  |

**END OF EXHIBIT A-1**

**Exhibit A-2**

**Assignment Agreement**

For good and valuable consideration, the receipt of which is hereby acknowledged, and subject to the reservations stated in an Asset Purchase Agreement between the parties dated on or about July 27, 2011, Visiform Corporation, Inc. a Missouri corporation having its principal business at 345 King’s Highway, St. Louis, MO 63030 , (hereinafter "ASSIGNOR"), hereby grants and assigns to Optincrease, Inc., a Virginia corporation having its principal place of business at 1340 Eitteljorg Avenue, Indianapolis, IN 46205, (hereinafter "ASSIGNEE"), all of ASSIGNOR'S right, title and interest in and to the following Provisional Applications for United States Letters Patent:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Ser. No. |  | Title |  | Filed |
| xxx |  | Maximizing … |  | xxx |
| xxx |  | Adjustment … |  | xxx |

(hereinafter "ASSIGNED U.S. APPLICATONS"), to have and to hold the same, unto ASSIGNEE for its own use and enjoyment and for the use and enjoyment of its successors and assigns, for the full term or terms of all such rights, subject to any rights, licenses, immunities or covenants not to sue under each of the ASSIGNED U.S. APPLICATIONS reserved by ASSIGNOR set forth in the above-identified Asset Purchase Agreement. As of the effective date, these assigned rights include any and all damages for infringement of any of the Assigned Patents accruing before, on and after the effective date and the right to sue therefore under such U.S. APPLICATIONS.

IN WITNESS WHEREOF, ASSIGNOR has caused this Assignment Agreement to be duly signed on its behalf.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Signature: | | |s|Max E. Johnson |  | Date: | 7/27/11 |
|  | | |  |  |  |
| Name: | Max E. Johnson | |  |  |  |
| Title | Chief Executive Officer | |  |  |  |

|  |  |  |  |
| --- | --- | --- | --- |
| State of Missouri | ) |  |  |
|  | ) | S.S. |  |
| City of St. Louis | ) |  |  |

Before me this 27 day of July, 2011, personally appeared to me Max E. Johnson known to be the person who is described in and who signed the foregoing Assignment and acknowledged to me that he/she signed the same of his/her own free will for the purpose therein expressed.

|  |  |  |
| --- | --- | --- |
| |s|Melinda B. Welter |  | Notary Public |

**END OF EXHIBIT A-2**

**Exhibit A-3**

**Assignment Agreement**

For good and valuable consideration, the receipt of which is hereby acknowledged, and subject to the reservations stated in an Asset Purchase Agreement between the parties dated on or about July 27, 2011, Visiform Corporation, Inc., a Missouri corporation having its principal business at 345 King’s Highway, St. Louis, MO 63030, (hereinafter "ASSIGNOR"), hereby grants and assigns to Optincrease, Inc., a Virginia corporation having its principal place of business at 1340 Eitteljorg Avenue, Indianapolis, IN 46205, (hereinafter "ASSIGNEE"), all of ASSIGNOR'S right, title and interest in and to the following foreign patents and patent applications:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Country |  | Patent No. |  | Title |  | Grant/Filing Date | |
| CN |  | xxx |  | Acylindrical … |  | xxx |
| EP-DE |  | xxx |  | Acylindrical .. |  | xxx |
| CN |  | xxx |  | Optical … |  | xxx |

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Country |  | Application No. |  | Title |  | Date |
| CN |  | xxx |  | Acylindrical … |  | xxx |

(hereinafter "ASSIGNED FOREIGN PATENTS AND PATENT APPLICATIONS"), to have and to hold the same, unto ASSIGNEE for its own use and enjoyment and for the use and enjoyment of its successors and assigns, for the full term or terms of all such rights, subject to any rights, licenses, immunities or covenants not to sue under each of the ASSIGNED FOREIGN PATENTS AND PATENT APPLICATIONS reserved by ASSIGNOR set forth in the above-identified Asset Purchase Agreement. As of the effective date, these assigned rights include any and all damages for infringement of any of the Assigned Patents accruing before, on and after the effective date and the right to sue therefore under such ASSIGNED FOREIGN PATENTS AND PATENT APPLICATIONS.

IN WITNESS WHEREOF, ASSIGNOR has caused this Assignment Agreement to be duly signed on its behalf.

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Signature: | | | |s|Max E. Johnson |  | | Date: | 7/27/11 | |
|  | | | |  | |  |  | |
| Name: | | Max E. Johnson | | |  | | |  | |  |
| Title | Chief Executive Officer | | |  | |  |  | |

|  |  |  |  |
| --- | --- | --- | --- |
| State of Missouri | ) |  |  |
|  | ) | S.S. |  |
| City of St,.Louis | ) |  |  |

Before me this 27 day of July, 2011, personally appeared to me Max E. Johnson known to be the person who is described in and who signed the foregoing Assignment and acknowledged to me that he/she signed the same of his/her own free will for the purpose therein expressed.

|  |  |  |
| --- | --- | --- |
| |s|Melinda B. Welters |  | Notary Public |

**END OF EXHIBIT A-3**

**Exhibit B**

NONE

**APA#6**

**ASSET PURCHASE AGREEMENT**

THIS ASSET PURCHASE AGREEMENT (the "Agreement") is entered into as of the 20th day of January , 2011, by and between LITTLE FOODS. Ltd., a British Columbia corporation ("SELLER") and, INTERNATIONAL FINANCE Inc. ("Buyer") with respect to the following:

**R E C I T A L S**

WHEREAS, Seller holds all right, title and interest in the assets set forth on Schedule A hereto (the "Assets") commonly referred to as PATENT Assets;

WHEREAS, Buyer desires to purchase from Seller and Seller desires to sell to Buyer for the amount of the Purchase Price, as defined herein, all of Seller's right, title, and interest in the Assets (the "Acquisition");

WHEREAS, Buyer and Seller desire to enter into this Agreement to effect the Acquisition;

WHEREAS, in connection with the Acquisition, Buyer and Sellers desire to make certain representations, warranties, covenants and other agreements.

**AGREEMENT**

NOW, THEREFORE, in consideration of the premises and the mutual representations, warranties, covenants and agreements hereinafter set forth, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, and upon the terms and subject to the conditions hereinafter set forth, Buyer and Seller hereby agree as follows:

**1. SALE AND PURCHASE OF ASSETS .**

1.1 Sale of Assets . On the terms and subject to the conditions of this Agreement and for the Purchase Price set forth herein, Seller hereby agrees at the Closing (as defined below) to sell, convey, assign, transfer and deliver to Buyer, and Buyer hereby agrees to purchase and acquire from Seller, all of Seller's rights, title and interest in the Assets, free and clear of any debts or encumbrances, except as provided for in Schedule "B". Seller represents and warrants to Buyer that it has expended no less than US$1,500,000 in acquiring or developing these assets and the parties hereto agree that the value of these assets is no less than $1,500,000. In addition, Buyer will also receive all cash on hand of Seller, which shall be no less than $100,000, at time of Closing.

1.2 Purchase Price . Subject to the terms and conditions of this Agreement, and in full consideration for the Assets, Buyer shall deliver to Seller at the Closing 35,000,000 shares of the Buyer's common stock, par value $.001, in restricted form.

\*\*\*

1.4 Closing .

1.4.1 Closing Date . The closing of the purchase and sale of the Assets (the "Closing") shall take place on \_\_\_\_\_\_\_\_\_\_\_ \_\_\_, 2011, at Buyer's place of business, or at such place, date and time as Buyer and Seller may agree in writing (the "Closing Date").

1.4.2 Seller's Deliveries at Closing . At the Closing, Seller shall deliver, or cause to be delivered, to Buyer at the Seller's sole cost, in the manner and form, and to the locations, reasonably specified by Buyer:

(a) An executed Bill of Sale (the "Bill of Sale") for the Assets substantially in the form of Exhibit C;

(b) Certified resolutions of Seller authorizing consummation of the transactions contemplated by this Agreement;

(c) Such other duly executed, good and sufficient instruments of sale, conveyance, assignment or transfer, in form and substance reasonably acceptable to Buyer's counsel, executed by Seller, reasonably necessary so as to vest in Buyer good and valid title in and to the acquired Assets (including, with respect to any Assets located or to be located in any jurisdiction, one or more bills of sale or similar conveyance documents as may be required under the law of the applicable jurisdiction to validly convey, assign, and transfer such Assets); and

(d) Simultaneously with such deliveries, Seller shall take such steps as are necessary to put Buyer in actual possession and control of the Assets.

1.4.3 Buyer's Deliveries at Closing . At the Closing, Buyer shall deliver or cause to be delivered to Sellers the Purchase Price against delivery of the items specified in Section 1.4.2. Specifically, with regard to the Shares to be issued:

(a) Seller understands that the Shares have not been, and will not be, registered under the Securities Act, by reason of a specific exemption from the registration provisions of the Securities Act which depends upon, among other things, the bona fide nature of the investment intent and the accuracy of Seller's representations as expressed herein. Seller understands that the Shares are "restricted securities" under applicable U.S. federal and state securities laws and that, pursuant to these laws, Seller must hold the Shares indefinitely unless they are registered with the Securities and Exchange Commission and qualified by state authorities, or an exemption from such registration and qualification requirements is available. Seller acknowledges that Buyer has no obligation to register or qualify the Shares for resale. Seller further acknowledges that if an exemption from registration or qualification is available, it may be conditioned on various requirements including, but not limited to, the time and manner of sale, the holding period for the Shares, and on requirements relating to Buyer which are outside of Seller's control, and which Buyer is under no obligation and may not be able to satisfy.

(b) Seller further understands that the Shares and any securities issued in respect of or in exchange for the Shares, will bear the following legend:

"THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AND HAVE BEEN ACQUIRED FOR INVESTMENT AND NOT WITH A VIEW TO, OR IN CONNECTION WITH, THE SALE OR DISTRIBUTION THEREOF. NO SUCH TRANSFER MAY BE EFFECTED WITHOUT AN EFFECTIVE REGISTRATION STATEMENT RELATED THERETO OR AN OPINION OF COUNSEL IN A FORM SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED UNDER THE SECURITIES ACT OF 1933."

1.5 Post-Closing Obligations.

1.5.1 Name Change and other Corporate Changes . Buyer will use its best effort to cause its name to be changed to "Comfortfoods Inc.", implement its previously approved reverse stock split and cause its Articles of Incorporation to be amended, all as more particularly described in Buyer's Preliminary 14C as filed with the Securities and Exchange Commission on November 19, 2010. All Shares to be issued hereunder shall be post-split shares after the implementation of the hundred-for-one reverse stock split.

**2. REPRESENTATIONS AND WARRANTIES OF SELLER .**

Seller hereby represents and warrants to Buyer as follows.

2.1 Organization. Seller is duly organized, validly existing and in good standing under the laws of British Columbia, Canada. Seller has all requisite power to own and use the properties owned and used by it and to carry on its business as currently conducted. Seller has delivered a true, correct and complete copy of its Articles of Incorporation, as amended to date and in full force and effect on the date hereof, or of any other document legally governing the operation of its business, to Buyer. The operations now being conducted by Seller relating to its business or the Assets have not now and have never been conducted under any other name. Seller is not in violation of any of the provisions of its Articles of Incorporation or other governing document.

2.2 Authorization. Seller has all requisite power and authority to enter into this Agreement and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary action on the part of Seller, and no further action is required on the part of Seller or its stockholders, if any, to approve, adopt or authorize this Agreement, or any of the transactions contemplated hereby. This Agreement has been duly executed and delivered by Seller and, assuming the due authorization, execution and delivery by Buyer, constitutes a valid and binding obligation of Seller, enforceable against Seller in accordance with its terms.

2.3 Noncontravention .

(a) The execution and delivery of this Agreement does not, and the consummation of the transactions contemplated hereby will not, (i) conflict with any provision of Seller's Articles of Incorporation or other governing document, (ii) conflict with, or result in (with or without notice or lapse of time or both) any violation of, or default under, or give rise to a right of termination, cancellation, modification or acceleration of any obligation or loss of any benefit (any such event, a "Conflict") under any material contract to which Seller is a party or applicable to Seller or to the Assets, or (iii) violate any judgment, order, decree, statute, law, ordinance, rule or regulation applicable to Seller's business or the Assets.

(b) The execution and delivery of this Agreement, and the consummation of the transactions contemplated hereby, does not require any notice under any existing contract of Seller.

2.4 Consents . No consent, waiver, approval, order or authorization of, or registration, declaration or filing with, any governmental entity or any third party is required by, or with respect to, Seller in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby.

2.5 Absence of Certain Changes or Events . As of the date hereof, there has not been, occurred or arisen:

(a) The commencement, settlement or notice, or, to Seller's knowledge, threat, of any lawsuit, proceeding or other investigation against Seller related to its business or the Assets, or any reasonable basis for any of the foregoing;

(b) Waiver or release of any right or claim of Seller related to Seller's business or the Assets;

2.6 Brokers' and Finders' Fees . Buyer has no liability or obligation to pay any fees or commissions to any broker or finder with respect to the transactions contemplated hereby for which Buyer could become liable or obligated. Seller will indemnify and hold Buyer harmless against all claims for brokers' finders' fees made or asserted by any party claiming to have been employed by Seller or any shareholder, director, officer, employee or agent of Seller and all costs and expenses (including the reasonable fees of counsel) of investigating and defending such claims.

2.7 Compliance with Laws . Seller is in compliance with all applicable foreign, federal, state or local statutes, laws and regulations with respect to the conduct or operation of Seller's business and the Assets.

2.8 Title to Property; Condition of Property; Absence of Liens . Seller has good and valid title to, and is the true and lawful owner of, the Assets and has all necessary power and authority to transfer the Assets to Buyer free and clear of all liens, pledges, charges, mortgages, easements, security interests, equities, rights of way, covenants, restrictions, claims or other encumbrance of any kind whatsoever (any of which, a "Lien"), other than Liens for taxes not yet due and payables. The Assets are in good operating condition and repair, normal wear and tear excepted, and are otherwise suitable for the conduct of Seller's business as it is currently conducted.

2.9 Restrictions on Business Activities . There is no agreement (not to compete or otherwise), commitment, judgment, injunction, order or decree relating to Seller's business or the Assets or otherwise binding upon Seller's business or the Assets which has or may have the effect of prohibiting or impairing any practice of Seller's business, or any acquisition of property by Buyer in connection with the operation or use of the Assets. Seller has not entered into nor is bound by any agreement which places any restrictions upon Seller, or which, after the Closing, would place any restrictions upon Buyer, with respect to selling or 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 the market.

2.10 Absence of Powers of Attorney . There are no outstanding powers of attorney executed on behalf of Seller affecting Seller's business or the Assets.

2.11 Bulk Transfer Laws . There are no current or past creditors of Seller to whom any law, rule or regulation requires the delivery of notice or from whom any form of consent is required in conjunction with undertaking the transactions contemplated by this Agreement.

2.12 Complete Copies of Materials . Seller has delivered true and complete copies of each existing document that has been requested by Buyer or its counsel in connection with this Agreement or the transactions contemplated hereby.

2.13 Representations Complete . To the knowledge of Seller, none of the representations or warranties made by Seller, nor any statement made in any Exhibit, schedule, certificate or instrument furnished by Seller pursuant to this Agreement contains any untrue statement of a material fact, or omits to state any material fact necessary in order to make the statements contained herein or therein, in light of the circumstances under which made, not misleading.

2.14 Confidentiality, Non Competition . Seller acknowledge that: (i) the business of Buyer and Seller is intensely competitive and that Seller possess knowledge of confidential information of Seller, including, but not limited to, the manner in which services are performed or offered to be performed for customers, the service needs of actual or prospective customers, pricing information, information concerning the creation, acquisition or disposition of products and services, personnel information and other trade secrets, in each case to the extent not available from public sources or already in the public domain (the "Confidential Information"); (ii) the direct and indirect disclosure of any such Confidential Information would place Buyer at a competitive disadvantage and would do damage, monetary or otherwise, to Buyer's business; (iii) the Confidential Information constitutes a trade secret of Seller that is being acquired by Buyer; (iv) the engaging by Seller in any of the activities prohibited by this Section 2.14 may constitute improper misappropriation and/or use of such information and trade secrets; and (v) Seller agreement to this confidentiality and non-competition provision is a material inducement for Buyer to enter into its agreement to purchase the assets of Seller. Accordingly, Buyer and Seller agree as follows:

(a) For purposes of this Section 2.14, Buyer shall be construed to include Buyer and its parents, subsidiaries and affiliates.

(b) Seller shall not, directly or indirectly, whether individually, as a director, stockholder, owner, partner, employee, principal or agent of any business, or in any other capacity, make known, disclose, furnish, make available or utilize any of the Confidential Information, unless and until such Confidential Information shall become general public knowledge through no fault of Seller. Seller agrees to return all Confidential Information in its possession, including all photocopies, extracts and summaries thereof, and any such information stored electronically on tapes, computer disks or in any other manner to Buyer at any time upon request by Buyer.

(c) Seller shall not for a period of five years from and after the Closing Date, directly or indirectly, for his or its benefit or for the benefit of any other person, firm or entity, do any of the following:

(i) Operate or participate, either directly or indirectly, whether individually, as a director, stockholder, owner, partner, employee, principal or agent, any business within one hundred miles of the principle business address of Buyer that is in "Competition" with Buyer. For purposes of this Agreement, "Competition with Buyer" shall mean engaging in, or otherwise directly or indirectly being employed by or acting as a consultant or lender to, or being a director, officer, employee, principal, agent, stockholder, member, owner or partner of, or permitting his or its name to be used in connection with the activities of any other LIKE business or organization which competes, directly or indirectly, with the business of Buyer as the same shall be constituted as of the Closing Date.

(ii) Solicit from any customer doing business with Seller or Buyer as of the Closing Date, business of the same or of a similar nature to the business of Seller or Buyer with such customer;

(iii) Solicit from any known potential customer of Buyer or Seller business of the same or of a similar nature to that which has been the subject of a known written or oral bid, offer or proposal by Buyer or Seller, or of substantial preparation with a view to making such a bid, proposal or offer, within six (6) months prior to the Closing Date;

(iv) Solicit the employment or services of, or hire, any person who was known to be employed by or was a known consultant to Buyer or Seller as of the Closing Date or within six (6) months prior thereto; or

(v) Otherwise interfere with the business or accounts of Buyer from and after the Closing Date.

(d) Seller acknowledges that the foregoing non-competition agreement is of a special and unique character, which gives this Agreement a peculiar value to Buyer, the loss of which may not be reasonably or adequately compensated for by damages in an action at law, and that a material breach or threatened breach by Seller of any of the provisions contained in this Section 2.14 will cause Buyer irreparable injury. Seller therefore agree that Buyer shall be entitled, in addition to any other right or remedy, to a temporary, preliminary and permanent injunction, without the necessity of proving the inadequacy of monetary damages or the posting of any bond or security, enjoining or restraining Seller from any such violation or threatened violations.

(e) Seller further acknowledges and agrees that due to the uniqueness of the confidential information it will possess, the covenants set forth in this Section 2.14 are reasonable and necessary for the protection of the business and goodwill of Buyer.

2.15 Seller shall be responsible and shall indemnify Buyer for any and all Sales tax, Worker's Compensation, Liability insurance obligations and any other liabilities accrued and or/collected and owed in connection with all operations of the Seller's business which is the subject of the asset sale herein up to noon on the closing date.

**3. REPRESENTATIONS AND WARRANTIES OF BUYER .**

Buyer hereby represents and warrants to Seller that:

3.1 Organization. Buyer is incorporating a duly organized, validly existing and in good standing Business entity under the laws of Nevada. Buyer has all requisite power to own and use the properties owned and used by said entity and to carry on its business as currently conducted. Buyer is not in violation of any of the provisions of its Articles of Incorporation or other governing document. Buyer has full authority to bind said business entity and shall personally guarantee any and all agreements made in advance of the formal creation of said entity.

3.2 Authorization. Buyer has all requisite power and authority to enter into this Agreement and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary action on the part of Buyer, and no further action is required on the part of Buyer or its stockholders, if any, to approve, adopt or authorize this Agreement, or any of the transactions contemplated hereby. This Agreement has been duly executed and delivered by Buyer and, assuming the due authorization, execution and delivery by Seller, constitutes a valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms.

3.3 Non-contravention .

(a) The execution and delivery of this Agreement does not, and the consummation of the transactions contemplated hereby will not, (i) conflict with any provision of Buyer's Articles of Incorporation or other governing document, (ii) conflict with, or result in (with or without notice or lapse of time or both) any violation of, or default under, or give rise to a right of termination, cancellation, modification or acceleration of any obligation or loss of any benefit (any such event, a "Conflict") under any material contract to which Buyer is a party or applicable to Buyer, or (iii) violate any judgment, order, decree, statute, law, ordinance, rule or regulation applicable to Buyer's business.

(b) The execution and delivery of this Agreement, and the consummation of the transactions contemplated hereby, does not require any notice under any existing contract of Buyer.

3.4 Consents . No consent, waiver, approval, order or authorization of, or registration, declaration or filing with, any governmental entity or any third party is required by, or with respect to, Buyer in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby.

**4. COVENANTS AND AGREEMENTS**

4.1 Conduct of Seller Prior to the Closing . Between the date of this Agreement and the Closing, unless otherwise agreed in writing by Buyer, Seller will not enter into any contract or agreement relating to the Assets.

4.2 Notice of Certain Events . Buyer and Seller shall give prompt notice to the other of: (a) the occurrence or non-occurrence of any event, the occurrence or non-occurrence of which is likely to cause any representation or warranty of such party contained in this Agreement to be untrue or inaccurate at or prior to the Closing, and (b) any failure of such party to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder. Notwithstanding anything in the immediately preceding sentence to the contrary, the delivery of any notice pursuant to this Section 4.2 shall not (i) limit or otherwise affect any remedies available to the party receiving such notice or (ii) constitute an acknowledgment or admission of a breach of this Agreement. No disclosure by any party pursuant to this Section 4.2 shall be deemed to prevent or cure any misrepresentation, breach of warranty or breach of covenant.

4.3 Reasonable Efforts . Subject to the terms and conditions provided in this Agreement, the parties shall use commercially reasonable efforts to promptly take, or cause to be taken, all actions, and to do promptly, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate and effectuate the transactions contemplated hereby, to obtain all necessary waivers, consents and approvals and to effect all necessary registrations and filings and to remove any injunctions or other impediments or delays, legal or otherwise, in order to consummate and effectuate the transactions contemplated by this Agreement for the purpose of securing to the parties hereto the benefits contemplated by this Agreement.

4.4 Additional Documents, Further Assurances and Cooperation; Power of Attorney .

(a) Each party, at the request of the other party, shall execute and deliver such other instruments and do and perform such other acts and things as may be reasonably necessary to effect the consummation of this Agreement and the transactions contemplated hereby. After the Closing, each party will use its reasonable efforts to cooperate to execute such applications, specifications, oaths, assignments and other instruments, and take such other reasonable actions, which are necessary to apply for or perfect the other party's interest (i) in the case of Sellers, in the Purchase Price and (ii) in the case of Buyer, in the Assets.

(b) Effective at the Closing, Seller hereby constitutes and appoints Buyer the true and lawful attorney of Seller, with full power of substitution, in the name of Seller or Buyer, but on behalf of and for the benefit of Buyer and at Seller's cost and expense:

(i) to demand and receive from time to time any and all of the Assets and to make endorsements and give receipts and releases for and in respect of the same and any part thereof;

(ii) to institute, prosecute and settle any and all actions or proceedings that Buyer may deem proper in order to collect, assert or enforce any claim, right or title of any kind in or to the Assets;

(iii) to defend or settle any or all actions proceedings in respect of any of the Assets; and

(iv) to do all such acts and things in relation to the matters set forth in the preceding clauses (i) through (iii) as Buyer shall deem necessary or desirable. Seller hereby acknowledges that the appointment hereby made and the powers hereby granted are coupled with an interest and are not and shall not be revocable by it in any manner or for any reason. Seller shall deliver to Buyer at the Closing an acknowledged power of attorney to the foregoing effect executed by Seller.

4.5 Transfer Taxes . Buyer shall each pay 100% of the Transfer Taxes imposed or levied by reason of, in connection with or attributable to, this Agreement or the transactions contemplated hereby. Buyer will remit the Transfer Taxes to Seller upon the later to occur of the Closing or the mutual determination of the amount of Transfer Taxes due and payable in connection with or attributable to, this Agreement or the transactions contemplated hereby. The parties shall cooperate with each other to the extent reasonably requested and legally permitted to minimize any such Transfer Taxes. As used herein, "Transfer Taxes" shall mean all sales, use, value-added, gross receipts, excise, registration, stamp, duty, transfer and other similar taxes and governmental fees.

**5. CONDITIONS TO THE CLOSING**

5.1 Conditions to Each Party's Obligation . The respective obligations of Buyer and Seller to effect the Acquisition shall be subject to the satisfaction at or prior to the Closing of the following conditions:

(a) No Injunctions or Restraints . No temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal restraint or prohibition preventing the consummation of the Acquisition shall be in effect, nor shall any proceeding brought by an administrative agency or commission or other governmental entity seeking any of the foregoing be pending.

(b) No Order . No governmental entity shall have enacted, issued, promulgated, enforced or enacted 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 Acquisition or the other transactions contemplated by this Agreement illegal or otherwise prohibit the consummation of any of the foregoing.

(c) Authority Relating to this Agreement. All corporate and other proceedings required to be taken by or on behalf of Buyer and Seller to authorize the execution, delivery and carrying out of this Agreement and to sell, transfer and deliver the Assets to Buyer and to purchase and accept the Assets from Seller in accordance with this Agreement shall have been duly and properly taken.

(d) Consents . Seller and Buyer shall have received all permits and authorizations necessary for the execution of this Agreement, the transfer of the Assets to Buyer, and the consummation of the transactions contemplated by this Agreement.

5.2 Condition to Buyer's Obligation . The obligation of Buyer to effect the transactions contemplated hereby shall be subject to the satisfaction at or prior to the Closing of each of the following conditions, any of which may be waived, in writing, exclusively by Buyer:

(a) Representations and Warranties . The representations and warranties of Seller in this Agreement shall have been true and correct on the date of this Agreement and shall have been true and correct in all material respects on and as of the Closing.

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

(c) Litigation . There shall be no material action, suit, proceeding, arbitration, or governmental or regulatory investigation or audit of any nature pending or threatened against (i) Seller, its properties or any of its officers or directors arising out of, or in any way connected with, the transactions contemplated hereby, or (ii) Seller's business or Assets.

(d) Third Party Consents . Buyer shall have received all consents, waivers, approvals, and assignments necessary to effect the Acquisition.

(e) Delivery of Records . Buyer's inspection of, and reasonable satisfaction with, the assets, financial and other records, contracts, and leases of the business which shall promptly be made available for Buyer's inspection.

(f) Release of Liens . Buyer shall have received from Seller a duly and validly executed copy of all agreements, instruments, certificates and other documents, in form and substance reasonably satisfactory to Buyer, that are necessary or appropriate to evidence the release of all Liens, if any, on the Assets.

(g) No Material Adverse Effect . There shall not have occurred any event or condition of any character that has had or is reasonably likely to have a Material Adverse Effect. "Material Adverse Effect" shall mean any change, event or effect that has been or is reasonably expected to be materially adverse to (i) the Assets, (ii) the Seller's business or its condition (financial or otherwise) or operations, or (iii) the Seller's ability to consummate the transactions contemplated hereby.

(h) Certificate of Seller . Buyer shall have received a certificate, validly executed by an executive officer of Seller for and on its behalf, to the effect that:

(i) All representations and warranties made by Seller in this Agreement were true and correct on the date of this Agreement and are true and correct in all material respects on and as of the Closing.

(ii) All covenants and obligations under this Agreement to be performed or complied with by Seller on or prior to the Closing have been so performed or complied with in all material respects; and

(iii) The conditions to the obligations of Buyer set forth in this Section 5.2 have been satisfied (unless otherwise waived in accordance with the terms of this Agreement).

5.3 Condition to Seller's Obligation . The obligation of Seller to effect the transactions contemplated hereby shall be subject to the satisfaction at or prior to the Closing of each of the following conditions, any of which may be waived, in writing, exclusively by Seller:

(a) Representations and Warranties . The representations and warranties of Buyer in this Agreement shall have been true and correct on the date of this Agreement and shall have been true and correct in all material respects on and as of the Closing.

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

(c) Certificate of Buyer . Seller shall have received a certificate, validly executed by an executive officer of Buyer for and on its behalf, to the effect that:

(i) All representations and warranties made by Buyer in this Agreement were true and correct on the date of this Agreement and are true and correct in all material respects on and as of the Closing.

(ii) All covenants and obligations under this Agreement to be performed or complied with by Buyer on or prior to the Closing have been so performed or complied with in all material respects; and

(iii) The conditions to the obligations of Seller set forth in this Section 5.3 have been satisfied (unless otherwise waived in accordance with the terms of this Agreement).

**6. INDEMNIFICATION**

6.1 Indemnification . Seller agrees to indemnify and hold the Buyer harmless against all losses incurred, accrued or sustained by the Buyer, directly or indirectly, as a result of (a) any breach of a representation or warranty of Seller contained in this Agreement or in any certificate, instrument, or other document delivered pursuant to this Agreement, (b) any failure by Seller to perform or comply with any covenant applicable to it contained in this Agreement, or (c) Seller's failure to deliver to Buyer any of the Assets.

**7. TERMINATION, AMENDMENT AND WAIVER**

7.1 Termination . In accordance with the procedure set forth in Section 7.2, this Agreement may be terminated and the Acquisition abandoned at any time prior to the Closing:

(a) By the mutual written agreement of the parties;

(b) By Buyer, if it is not in material breach of its obligations under this Agreement and there has been a breach of any representation, warranty, covenant or agreement contained in this Agreement on the part of Seller or if any of the conditions to closing applicable to Buyer have not been satisfied as of the Closing Date; or

(c) By Seller, if it is not in material breach of its obligations under this Agreement and there has been a breach of any representation, warranty, covenant or agreement contained in this Agreement on the part of Buyer or if any of the conditions to closing applicable to Seller have not been satisfied as of the Closing Date.

7.2 Procedure for and Effect of Termination .

(a) In the event of the termination of this Agreement by any of the parties in accordance with Section 7.1, written notice to the non-terminating party shall be given by the terminating party in accordance with Section 8.1.

(b) In the event of the termination of this Agreement as provided in Section 7.1, this Agreement shall forthwith become void and there shall be no liability or obligation on the part of Buyer or Seller, or their respective officers, directors or stockholders, provided that each Party shall remain liable for any fraud, intentional misrepresentation or willful or intentional breach of this Agreement prior to its termination, and provided further that in the event of a termination of this Agreement for any reason other than the default of Buyer, Seller shall remain obligated for the return of the deposit provided by Buyer pursuant to Paragraph 1.2 above.

7.3 Amendment . This Agreement may be amended by the parties only by the execution and delivery of an instrument in writing signed on behalf of both parties.

7.4 Extension; Waiver . At any time prior to the Closing, Buyer, on the one hand, and Seller, 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, (b) waive any inaccuracies in the representations or warranties made to such party contained herein or in any certificate, instrument or other document delivered pursuant the this Agreement, on or prior to the Closing Date, (c) waive compliance with any of the agreements or conditions for the benefit of such party contained herein and (d) waive any conditions to the Closing contained herein. No such waiver shall operate as a waiver of any further or other inaccuracies or breaches. Any agreement on the part of a party to any such extension or waiver shall be valid only if set forth in a written instrument and signed and delivered on behalf of such party.

**8. MISCELLANEOUS**

8.1 Notices . All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally or by pre-paid overnight or same-day commercial messenger or courier service, or mailed by registered or certified mail (return receipt requested) or sent via facsimile (with acknowledgment of complete transmission) to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

(a) if to Buyer, to:

INTERNATIONAL FINANCE, INC. Attn: George Michel, CEO 9675 Bridgeport Street. San Diego, CA, 92102

With a copy to (which shall not constitute notice):

Fred McKittrick,Mercer, Olin and Frank LL.P. 27587 Fenton Way,San Diego, CA, 92306

|  |  |  |
| --- | --- | --- |
|  | (b) | if to Seller, to: LITTLE FOODS. LTD. Attn: Ines Parkerand Anton Dvorcek 1659 453 West 12th Avenue,Vancouver, BC V5Y 1V4 |

All such notices, requests and other communications will (a) if delivered personally to the address as provided in this Section 8.1, be deemed given upon delivery, (b) if delivered by facsimile transmission to the facsimile number as provided for in this Section 8.1, be deemed given upon facsimile confirmation, and (c) if delivered by messenger or courier to the address as provided in this Section 8.1, be deemed given on the earlier of the first business day following the date sent by such messenger or courier or upon receipt (in each case regardless of whether such notice, request or other communication is received by any other person to whom a copy of such notice is to be delivered pursuant to this Section 8.1). Any party from time to time may change its address, facsimile number or other information for the purpose of notices to that party by giving notice specifying such change to the other parties hereto.

8.2 Entire Agreement . This Agreement, the Exhibits and the documents and instruments and other agreements among the parties referenced herein or therein constitute the entire agreement among the parties with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof and thereof.

8.3 No Third Party Beneficiaries . This Agreement is solely for the benefit of (a) Buyer and its successors and permitted assigns with respect to the obligations of Seller under this Agreement and (b) Seller and their successors and permitted assigns with respect to the obligations of Buyer under this Agreement. This Agreement shall not be deemed to confer upon or give to any other third party any remedy, claim, right to reimbursement, cause of action or other right, unless expressly provided for in this Agreement.

8.4 Headings . The headings and table of contents used in this Agreement have been inserted for convenience of reference only and do not define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of any provision of, or scope or intent of, this Agreement nor in any way effect this Agreement.

8.5 Severability . In the event that any provision of this Agreement or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement will continue in full force and effect and the application of such provision to other persons or circumstances will be interpreted so as reasonably to effect the intent of the parties. 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.

8.6 Governing Law . This Agreement shall be governed by and construed in accordance with the laws of the State of Nevada without regard to the conflict of law provisions thereof. If a dispute arises with respect to this Agreement, or otherwise between the parties, each party agrees to attempt to resolve the dispute first by mediation and thereafter by arbitration before a single arbitrator in accordance with the rules of JAMS/Endispute. Any mediation or arbitration shall take place in Las Vegas, Nevada unless the parties otherwise agree in writing. In any arbitration, the arbitrator shall have the right to award reasonably incurred attorneys' fees and expenses relating to the dispute to the prevailing party.

8.7 Consent to Jurisdiction . Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the jurisdiction of any Nevada state court, or Federal court of the United States of America, sitting in Clark County, Nevada, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or the agreements delivered in connection herewith or the transactions contemplated hereby or thereby or for recognition or enforcement of any judgment relating thereto.

8.8 Waiver of Jury Trial . EACH OF BUYER AND SELLER HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, ROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF BUYER OR SELLERS IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT THEREOF, INCLUDING THE REPUDIATION OF THIS AGREEMENT.

8.9 Assignment . No party may assign or delegate either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of the other party. Subject to the immediately preceding sentence, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

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

8.11 Fees and Expenses . Subject to Section 6.1 all fees, costs and expenses incurred by a party in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such fees, costs and expenses, including fees, costs and expenses of any broker, finder, attorney or other similar agent.

8.12 Specific Performance . The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in any court of the United States or any state having jurisdiction, this being in addition to any other remedy to which they are entitled at law or in equity.

8.13 Exhibits and Schedules . The Exhibits and Schedules to this Agreement form an integral part of this Agreement and are hereby incorporated by reference into this Agreement wherever reference is made to them to the same extent as if they were set out in full.

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

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

Seller:

LITTLE FOODS. LTD.

By: |s| Ines Parker Ines Parker

By: |s| Anton Dvorcek Anton Dvorcek, Jan 20th 2011

Buyer:

INTERNATIONAL FINANCE, INC.

By: |s|George Michel George Michel, CEO

**SCHEDULE "A"**

**ASSETS BEING ACQUIRED**

1. $6000 worth of Baby Food purchased from Shopathome Network.

2. $100,000 product development contract with Choochootrain FoodsIncorporated. 3. $30,000 interest bearing note with Make it Good Laboratories Inc. 4. $100,000 cash held on account. 5. $8159.20 raw materials purchased from Choochootrain Foods Incorporated. 6. All Patents and Trademarks listed on the following 7 pages named Schedule "A".

**SCHEDULE A (Patents and Tademarks)**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| PATENT, INC. PATENTS | | | | |
| Docket Number | Country | App. Number | Patent No. | Title |
| xxx | US | xxx | xxx | xxx |
| xxx | US | xxx | n/a | xxx |
|  |  |  |  |  |
| xxx | US | xxx | xxx | Xxxxxx |
| xxx | US | xxx | xxx | Xxxxxx |
| xxx | PCT | xxx | n a | Xxx |
| xxx | CA | xxx | n/a | Xxx |
| xxx | EP | xxx | n/a | Xxx |
| xxx | US | xxx | xxx | Xxx |
| xxx | US | xxx | xxx | Xxx |
| xxx | PCT | xxx | n/a | Xxx |
| xxx | AU | xxx | n/a | Xxx |
| xxx | BR | awaiting receipt | n/a | Xxx |
| xxx | Canda | awaiting receipt | n/a | Xxx |
| xxx | CN | xxx | n/a | Xxx |
| xxx | CO | n/a | n/a | Xxx |
| xxx | EP | xxx | n/a | Xxx |
| xxx | IL | xxx | n/a | Xxx |
| xxx | KR | xxx | n/a | Xxx |

\* \* \*

**SCHEDULE "B"**

**DEBT OBLIGATIONS BEING ACQUIRED**

1. $14,605.65 Trenton LLP (patent attorneys)

2. $12,638.00 Choochootrain Foods Inc. (resin purchase)

**APA#7**

**ASSET PURCHASE AGREEMENT**

by and between

INFOYIELD CORP.

and

LORRAINE MEDICAL INTERNATIONAL LIMITED

Dated as of March 10, 20XX

-----------Page Break-----------

**TABLE OF CONTENTS**

|  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  | | | | | | |  | |  | |
| ARTICLE I Definitions and Interpretations | | | | | | |  | |  |
| Section 1.1 Certain Definitions | | | | | | |  | |  |
| ARTICLE II Closing | | | | | | |  | |  |
| Section 2.1 Closing | | | | | | |  | |  |
| Section 2.2 Assets to be Sold | | | | | | |  | |  |
| Section 2.3 Assumption of Liabilities | | | | | | |  | |  |
| Section 2.4 Purchase Price | | | | | | |  | |  |
| Section 2.5 Excluded Assets | | | | | | |  | |  |
| Section 2.6 Allocation of Purchase Price | | | | | | |  | |  |
| Section 2.7 Transfer Taxes and Value Added Tax; Bulk Sales | | | | | | |  | |  |
| Section 2.8 Non-Assignability of Assets | | | | | | |  | |  |
| Section 2.9 Delivery by Seller | | | | | | |  | |  |
| Section 2.10 Delivery by Buyer | | | | | | |  | |  |
| Section 2.11 Net Working Capital Adjustments; Accounts Receivable Adjustments | | | | | | |  | |  |
| ARTICLE III Representations and Warranties of Seller | | | | | | |  | |  |
| Section 3.1 Qualification, Organization, Selling Subsidiaries, etc | | | | | | |  | |  |
| Section 3.2 Corporate Authority Relative to this Agreement; No Violation | | | | | | |  | |  |
| Section 3.3 Title to Property | | | | | | |  | |  |
| Section 3.4 Completeness of Assets | | | | | | |  | |  |
| Section 3.5 Financial Statements | | | | | | |  | |  |
| Section 3.6 Absence of Undisclosed Liabilities | | | | | | |  | |  |
| Section 3.7 Absence of Certain Changes or Events | | | | | | |  | |  |
| Section 3.8 Inventory | | | | | | |  | |  |
| Section 3.9 Assumed Agreements and Material Contracts | | | | | | |  | |  |
| Section 3.10 Intellectual Property Rights | | | | | | |  | |  |
| Section 3.11 Compliance with Laws; Permits | | | | | | |  | |  |
| Section 3.12 Investigations; Litigation | | | | | | |  | |  |
| Section 3.13 Regulatory Compliance | | | | | | |  | |  |
| Section 3.14 Taxes | | | | | | |  | |  |
| Section 3.15 Labor Matters | | | | | | |  | |  |
| Section 3.16 Employee Benefit Plans | | | | | | |  | |  |
| Section 3.17 Environmental Laws and Regulations | | | | | | |  | |  |
| Section 3.18 Insurance | | | | | | |  | |  |
| Section 3.19 Brokerage Fees | | | | | | |  | |  |
| Section 3.20 Relationships with Related Persons | | | | | | |  | |  |
| ARTICLE IV Representations and Warranties of Buyer | | | | | | |  | |  |
| Section 4.1 Qualification; Organization | | | | | | |  | |  |
| Section 4.2 Corporate Authority Relative to this Agreement; No Violation | | | | | | |  | |  |
| Section 4.3 Investigations; Litigation | | | | | | |  | |  |
| Section 4.4 Sufficient Funding | | | | | | |  | |  |
| Section 4.5 No Other Information | |  | | | |  | |
| Section 4.6 Access to Information; Disclaimer | |  | | | |  | |
| Section 4.7 No Approval Required | |  | | | |  | |
| Section 4.8 Brokerage Fees | |  | | | |  | |
| ARTICLE V Conditions to Closing | |  | | | |  | |
| Section 5.1 Conditions Precedent to Buyer's Obligations | |  | | | |  | |
| Section 5.2 Conditions Precedent to Seller's Obligations | |  | | | |  | |
| ARTICLE VI Certain Covenants | |  | | | |  | |
| Section 6.1 Conduct of Business | |  | | | |  | |
| Section 6.2 Investigation | |  | | | |  | |
| Section 6.3 Control of Operations | |  | | | |  | |
| Section 6.4 Notification of Certain Matters | |  | | | |  | |
| Section 6.5 Public Announcements | |  | | | |  | |
| Section 6.6 Third Party Consents; Regulatory Approvals; Access | |  | | | |  | |
| Section 6.7 Industrial Site Recovery Act | |  | | | |  | |
| ARTICLE VII Post-Closing Covenants | |  | | | |  | |
| Section 7.1 Employee Matters | |  | | | |  | |
| Section 7.2 Books and Records; Access | |  | | | |  | |
| Section 7.3 Insurance | |  | | | |  | |
| Section 7.4 Payments from Third Parties | |  | | | |  | |
| Section 7.5 Further Assurances | |  | | | |  | |
| Section 7.6 Tax Matters | |  | | | |  | |
| Section 7.7 Covenant Not to Compete | |  | | | |  | |
| Section 7.8 Non-Solicitation | |  | | | |  | |
| ARTICLE VIII Termination | |  | | | |  | |
| Section 8.1 Termination or Abandonment | |  | | | |  | |
| Section 8.2 Effect of Termination | |  | | | |  | |
| ARTICLE IX Miscellaneous | |  | | | |  | |
| Section 9.1 No Survival of Representations and Warranties | |  | | | |  | |
| Section 9.2 Schedule Updates | |  | | | |  | |
| Section 9.3 Amendments; Waivers | |  | | | |  | |
| Section 9.4 Assignment; Binding Effect | |  | | | |  | |
| Section 9.5 Severability | |  | | | |  | |
| Section 9.6 Notices | |  | | | |  | |
| Section 9.7 Headings | |  | | | |  | |
| Section 9.8 Interpretation | |  | | | |  | |
| Section 9.9 Counterparts; Effectiveness | |  | | | |  | |
| Section 9.10 Entire Agreement; No Third-Party Beneficiaries | |  | | | |  | |
| Section 9.11 Payment of Expenses |  | |  |  |
| Section 9.12 Governing Law |  | |  |  |
| Section 9.13 Jurisdiction; Enforcement |  | |  |  |
| Section 9.14 WAIVER OF JURY TRIAL |  | |  |  |
| Section 9.15 No Recourse |  | |  |  |
| Section 9.16 Determination by Seller |  | |  |  |

SCHEDULES

|  |  |  |
| --- | --- | --- |
| 1.1(a) |  | Acquired Assets |
| 1.1(b) |  | Agreed List of Employees |
| 1.1(c) |  | Assumed Agreements |
| 1.1(d) |  | Excluded Agreements |
| 1.1(e) |  | Excluded Assets |
| 1.1(f) |  | Excluded IP Assets |
| 1.1(g) |  | Individuals for Seller's Knowledge |
| 1.1(h) |  | Individuals for Buyer's Knowledge |
| 1.1(i) |  | Products |
| 1.1(j) |  | Transferred Copyrights and Know-How |
| 1.1(k) |  | Transferred Patents |
| 1.1(l) |  | Transferred Trademarks |
| 2.6 |  | Purchase Price Allocation |
| 3.2(b) |  | Seller Approvals |
| 3.2(c) |  | Exceptions to No Violation |
| 3.3 |  | Exceptions to Title to Property |
| 3.4(a) |  | Exceptions to Completeness of Assets |
| 3.8 |  | Inventory |
| 3.9 |  | Material Contracts |
| 3.10 |  | Intellectual Property Rights |
| 3.11(e) |  | Product Recalls, Field Corrections and Corrective Actions |
| 3.11(f) |  | FDA and Governmental Reporting and Investigations |
| 3.11(h) |  | Notices and Correspondence from Governmental Entities |
| 3.12 |  | Legal Proceedings, etc. |
| 3.15 |  | Collective Agreements |
| 3.16(a) |  | Seller Benefit Plans |
| 3.16(c) |  | Seller Foreign Plans |
| 3.16(e) |  | Title IV Plans |
| 3.20 |  | Relationships with Related Persons |
| 4.2(b) |  | Buyer Approvals |
| 5.1(f) |  | Required Consents |
| 6.1(a) |  | Conduct of Patient Monitoring Business |
| 6.1(b) |  | Certain Events or Changes |
| 7.1(b) |  | Severance Plans and Policies |
| 7.1(e) |  | Retirement Plans |
| 7.8 |  | Non-Solicitation |

EXHIBITS

|  |  |  |
| --- | --- | --- |
| Exhibit A |  | Form of Trademark License Agreement |
| Exhibit B |  | Form of Transition Manufacturing Agreement |
| Exhibit C  Exhibit D |  | Form of Transition Services Agreement  Financial Statements |

DEFINED TERMS

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Agreement |  | |  | |
| Allocation Schedule |  | |  | |
| Oasis 338 Election |  | |  | |
| Asset Transfer and Assumption Agreements |  | |  | |
| Bills of Sale |  | |  | |
| Buyer |  | |  | |
| Buyer Approvals |  | |  | |
| Buyer Change of Control |  | |  | |
| Buyer Competing Business |  | |  | |
| Buyer Material Adverse Effect |  | |  | |
| Buyer Savings Plan |  | |  | |
| Buyer's Report |  | |  | |
| Closing |  | |  | |
| Closing Date |  | |  | |
| Closing Date Net Working Capital |  | |  | |
| Consent |  | |  | |
| Continuation Period |  | |  | |
| Contract Assignments |  | |  | |
| Copyright and Know-How Assignments |  | |  | |
| Current Assets |  | |  | |
| Current Liabilities |  | |  | |
| ERISA |  | |  | |
| Estimated Closing Date Net Working Capital |  | |  | |
| Estimated Net Working Capital Deficiency |  | |  | |
| Estimated Net Working Capital Excess |  | |  | |
| FDA |  | |  | |
| FFDCA |  | |  | |
| Final Closing Date Net Working Capital |  | |  | |
| Final Net Working Capital Deficiency |  | |  | |
| Final Net Working Capital Excess |  | |  | |
| FIRPTA Certificate |  | |  | |
| Foreign Corrupt Practices Act |  | |  | |
| HSR Act |  | |  | |
| Independent Accounting Firm |  | |  | |
| Interim Balance Sheet Date |  | |  | |
| Inventory Summary |  | |  | |
| ISRA |  | |  | |
| Leave Employees |  | |  | |
| Material Adverse Effect |  | |  | |
| Material Contracts |  | |  | |
| Multiemployer Plan  Net Working Capital Dispute Notice |  | |  | |
| New Plans | |  | |  | |
| NIH | |  | |  | |
| Non-Compete Expiration Date | |  | |  | |
| OIG | |  | |  | |
| Patent Assignments | |  | |  | |
| Resolution Period | |  | |  | |
| Savings Plan | |  | |  | |
| Seller | |  | |  | |
| Seller Approvals | |  | |  | |
| Seller Benefit Plans | |  | |  | |
| Seller Change of Control | |  | |  | |
| Seller Competing Business | |  | |  | |
| Seller Permits | |  | |  | |
| Seller's Additional Environmental Obligations | |  | |  | |
| Seller's ISRA Obligations | |  | |  | |
| Target Closing Date Net Working Capital | |  | |  | |
| Tax Incentive | |  | |  | |
| Termination Date | |  | |  | |
| Total Consideration | |  | |  | |
| Trademark Assignments | |  | |  | |
| Transfer Date | |  | |  | |
| Transfer Period | |  | |  | |
| Transferred Employees | |  | |  | |

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**ASSET PURCHASE AGREEMENT**

This Asset Purchase Agreement (this " Agreement "), dated as of March 10, 20XX , is made by and between Infoyield Corp., a Delaware corporation (sometimes referred to herein as " Seller "), and Lorraine Medical International Limited, an exempted company with limited liability under the Companies Law of the Cayman Islands (sometimes referred to herein as " Buyer ").

**WITNESSETH:**

WHEREAS, Seller, through direct and indirect Subsidiaries (as defined below), is currently engaged in the Patient Monitoring Business (as defined below); and

WHEREAS, Seller and the Selling Subsidiaries (as defined below) own, and Seller and the Selling Subsidiaries desire to sell to Buyer, and Buyer desires to purchase from Seller and the Selling Subsidiaries, the Purchased Assets (as defined below), and Buyer is willing to assume the Assumed Liabilities (as defined below), upon the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in view of the foregoing premises and in consideration of the mutual covenants, agreements, representations and warranties herein contained, the parties hereto agree as follows:

**ARTICLE I DEFINITIONS AND INTERPRETATIONS**

Section 1.1 Certain Definitions For purposes of this Agreement, the following terms will have the following meanings when used herein: " Accounts Receivable " shall mean the trade accounts receivable (including interest thereon) of the Patient Monitoring Business accrued in the ordinary course of business, excluding any intercompany accounts receivable and intercompany loan balances receivable other than any intercompany accounts receivable arising from the intercompany sale of goods of the Patient Monitoring Business, including parts and components, that are owing from Seller or any Affiliate of Seller, as determined in accordance with the Accounting Standards. For the avoidance of doubt, Accounts Receivable shall be $0 for purposes of the Estimated Closing Date Net Working Capital and Final Closing Date Net Working Capital. " Accounting Standards " shall mean GAAP. " Acquired Assets" shall mean the tangible and intangible assets of the Patient Monitoring Business that are described on the Schedule of Acquired Assets attached hereto as Schedule

1.1(a) that are owned by Seller and the Selling Subsidiaries, but specifically excluding the Excluded Assets, with such changes therein between the date hereof and the Closing Date as shall have occurred in the ordinary course of business in transactions not inconsistent with any of Seller's representations, warranties, covenants and agreements set forth herein.

" Affiliate" shall mean, as to any Person, any other Person which, directly or indirectly, controls, or is controlled by, or is under common control with, such Person. As used in this definition, " control " (including, with its correlative meanings, " controlled by " and " under common control with ") shall mean the possession, directly or indirectly or as trustee or executor, of the power to direct or cause the direction of management or policies of a Person, whether through the ownership of securities or partnership as trustee or executor by Contract or otherwise.

" Agreed List of Employees " shall mean the list of employees attached hereto as Schedule 1.1(b) , as agreed by Buyer and Seller, as such list may be amended thereby between the date hereof and the Closing, and the employees that shall be Transferred Employees pursuant to applicable laws; provided, however, that such list shall be deemed to omit any person whose employment with Seller or the Selling Subsidiaries terminates prior to the Closing Date (for the avoidance of doubt, not to include those persons terminated on the Closing Date in accordance with this Agreement). " Agreement " shall mean this Agreement and all exhibits and schedules hereto.

" Appropriate Remediation Standard " means the remediation standards, guidelines, policies, regulations, ordinances or other requirements of Environmental Laws imposed by an applicable Governmental Entity with jurisdiction consistent with the industrial use of the property as of the Closing Date. " Oasis " shall mean Oasis Medical AB.

" Oasis Stock " shall mean all outstanding share capital of Oasis owned by Infoyield International B.V. Netherlands Filial, a wholly-owned subsidiary of Seller. " Asset Transfer and Assumption Agreements " shall have the meaning set forth in Section 2.2(b).

" Assumed Agreements " shall mean those supply agreements, license agreements, consulting agreements and all other Contracts and Contract rights, whether written or oral, to which Seller or one of the Selling Subsidiaries is a party to the extent relating to the operation and conduct of the Patient Monitoring Business or any of the Purchased Assets and that are listed or described on the Schedule of Assumed Agreements attached hereto as Schedule 1.1(c) (including all rights, title, interests in, and claims of Seller or Seller Subsidiaries thereunder), with such other agreements and changes therein between the date hereof and the Closing Date as shall have been entered into or have occurred in accordance with this Agreement, but specifically excluding the Excluded Agreements.

" Assumed Liabilities " shall mean the following obligations and liabilities:

(a) all liabilities and obligations of the Patient Monitoring Business and the Purchased Assets that are expressly included, or expressly reserved for, in the calculation of Estimated Closing Date Net Working Capital and, when agreed in accordance with this Agreement, Final Closing Date Net Working Capital and all liabilities and obligations of the Patient Monitoring Business and the Purchased Assets arising out of events or conditions occurring on or after the Closing Date (including in each case, without limitation, all such obligations and liabilities with respect to the Patient Monitoring Business and the Purchased Assets under all Assumed Agreements) (except to the extent relating to receivables not included in the calculation of Estimated Closing Date Net Working Capital and, when agreed in accordance with this Agreement, Final Closing Date Net Working Capital), other than with respect to Taxes which are governed by (g) of this definition of "Assumed Liabilities";

(b) all liabilities and obligations under the Assumed Agreements to the extent assigned to Buyer in accordance with this Agreement other than liabilities and obligations arising under or relating to breaches of such Assumed Agreements of which Seller had Knowledge prior to or on the Closing Date, other than with respect to Taxes which are governed by (g) of this definition of "Assumed Liabilities";

(c) to the extent not included in clause (a) above, all trade payables outstanding as of the Closing Date to the extent relating to goods or services to be provided on or after the Closing Date in connection with the Purchased Assets;

(d) all liabilities arising out of the manufacture, marketing, distribution or sale of any Product by Buyer or its Affiliates on or after the Closing Date (including, without limitation, liability for product returns, warranty obligations and other product liabilities with respect to such Products, regardless of the legal theory asserted) and all liabilities arising out of the sale on or after the Closing Date by Buyer or its Affiliates of Products that were manufactured by Seller prior to the Closing;

(e) all liabilities resulting from any claim of intellectual property infringement to the extent arising out of the manufacture, use or sale of the Products or the other Purchased Assets by Buyer or its Affiliates on or after the Closing;

(f) liability for all costs (including costs, charges and expenses of customers and associated shipping expenses to such customers, and all customer claims or deductions and costs associated with damaged products) associated with the return of any Products sold by the Patient Monitoring Business prior to the Closing Date;

(g) all liabilities and obligations for Taxes relating to the ownership or operation of the Patient Monitoring Business or the Purchased Assets after the Closing Date;

(h) all obligations of Buyer contained in this Agreement and the Transaction Documents;

(i) all liabilities or obligations arising under Environmental Law and to the extent relating to (i) violations of Environmental Laws prior to the Closing in connection with the Patient Monitoring Business, (ii) the release (as such term is defined under CERCLA) of Hazardous Substances on or prior to the Closing in connection with the Patient Monitoring Business at, on, under or from any property owned, leased, or otherwise used by Seller or the Selling Subsidiaries in connection with the Patient Monitoring Business (the " Real Property ") (except for Seller's ISRA Obligations and Seller's Additional Environmental Obligations), or any off-site location at which Hazardous Substances generated or originating from any Real Property and transported off-site prior to the Closing came to be located, (iii) the exposure of any person to Hazardous Substances used at or generated in connection with the Patient Monitoring Business, or originating from any Real Property, prior to the Closing; and

(j) all other liabilities based upon Buyer's ownership, operation or use of the Patient Monitoring Business or the Purchased Assets on or after the Closing Date that are not Excluded Liabilities; other than with respect to Taxes which are governed by (g) of this definition of "Assumed Liabilities".

" Base Purchase Price " means $240 million.

" Bills of Sale " shall have the meaning set forth in Section 2.2(b).

" Books and Records " shall mean all books, ledgers, files, reports, plans and other documents and operating records of Seller and the Selling Subsidiaries primarily related to or maintained primarily by the Patient Monitoring Business, whether or not in electronic form, other than books and records which under applicable Law are required to be retained by the company in possession of such books and records.

" Business Day " shall mean any day on which the principal offices of the SEC in Washington, DC are open to accept filings or, in the case of determining a date when any payment is due, any day on which banks are not required or authorized by Law to close in New York, NY.

" CFIUS " shall mean the Committee on Foreign Investment in the United States.

" Closing " shall have the meaning set forth in Section 2.1.

" Closing Date " shall have the meaning set forth in Section 2.1.

" Code " shall mean the U.S. Internal Revenue Code of 1986, as amended from time to time.

" Confidentiality Agreement " shall mean that certain confidentiality agreement dated November 20, 2007, by and between Buyer and Seller.

" Contract Assignments " shall have the meaning set forth in Section 2.2(b).

" Contracts " shall mean any contracts, agreements, purchase orders, licenses, notes, bonds, mortgages, indentures, commitments, leases or other instruments or obligations, whether written or oral.

" Conveyancing Documents " means the deeds (including special warranty deeds (or their local equivalent) and assignment and assumption of lease agreements and such other documents required to transfer the title of Seller or the applicable Selling Subsidiaries, as the case may be, in the Transferred Real Property, to be entered into by Seller and Buyer as of the Closing Date in such form and upon such terms and conditions as shall be mutually agreed upon by Seller and Buyer.

" Copyrights " shall mean all copyrights, applications and registrations and renewals therefor. " Disclosure Schedules " shall mean the schedules referenced in the table of contents and referred to throughout this Agreement and attached hereto.

" DPA " shall mean Section 721 of the Defense Production Act of 1950 (50 U.S.C. App. § 2170).

" Environmental Law " shall mean any applicable Law relating to pollution or protection of the environment (including ambient air, soil, sediment, surface water or groundwater), in effect as of the date of this Agreement.

" Environmental Permit " shall mean any federal, state, local, provincial, or foreign permits, licenses, approvals, consents or authorizations required or issued by any Governmental Entity under or in connection with any Environmental Law, including without limitation, any and all orders, consent orders or binding agreements issued by or entered into with a Governmental Entity under any applicable Environmental Law.

" ERISA Affiliate " shall mean any entity that is considered a single employer with Seller or a Selling Subsidiary under Section 414 of the Code or a member of the same group as Seller or a Selling Subsidiary pursuant to Section 4001(a)(14) or 4001(b)(1) of ERISA.

" Excluded Agreements " shall mean the agreements relating to the Non-PM Business and the agreements listed on the Schedule of Excluded Agreements attached hereto as Schedule 1.1(d) , including but not limited to all inter-company agreements between Seller and its Affiliates.

" Excluded Assets " shall mean all Accounts Receivable as of the Closing Date, all cash and cash equivalents of Seller and its Subsidiaries (other than Oasis ), all Tax assets (including, but not limited to, net operating losses, Tax credits, Tax refunds, and the right to receive any of the foregoing) of Seller and, with respect to any Pre-Closing Tax Period, all such Tax Assets of Oasis (in each case, except as otherwise provided in Section 7.6(c)), all assets relating to any Seller Benefit Plan, Seller Foreign Plan or collective bargaining, labor or employment agreement or other similar arrangement, the Non-PM Business and/or the property described on the Schedule of Excluded Assets attached hereto as Schedule 1.1(e) .

" Excluded IP Assets " shall mean the Intellectual Property assets listed on Schedule 1.1(f) .

" Excluded Liabilities " shall mean every liability and obligation of Seller and its Affiliates, whether accrued, absolute, contingent or otherwise, other than Assumed Liabilities, including:

(a) all liabilities and obligations of the Patient Monitoring Business and the Purchased Assets arising out of events or conditions occurring prior to the Closing Date (whether or not claims are made before or after the Closing Date) but not expressly included or expressly reserved for in the calculation of Estimated Closing Date Net Working Capital and, when agreed in accordance with this Agreement, Final Closing Date Net Working Capital (including, without limitation, all obligations and liabilities with respect to the Patient Monitoring Business and the Purchased Assets under all Excluded Agreements) that are not Assumed Liabilities other than those liabilities and obligations specifically referenced in subparts (c) and (e) hereto;

(b) all liabilities resulting from any claim of intellectual property infringement arising out of the manufacture, use or sale prior to the Closing of the Products or the other Purchased Assets by Seller or its Affiliates (but, for the avoidance of doubt, not including liabilities arising out of the sale on or after the Closing Date by Buyer or its Affiliates of Products that were manufactured by Seller prior to the Closing);

(c) all payables outstanding as of the Closing Date to the extent relating to goods or services that have been provided prior to the Closing Date in connection with the Purchased Assets, except to the extent (i) representing payments for good or services to be delivered or rendered in connection with the Purchased Assets after the Closing Date or (ii) expressly included or expressly reserved for in the calculation of Estimated Closing Date Net Working Capital and, when agreed in accordance with this Agreement, Final Closing Date Net Working Capital;

(d) other than to the extent taken into account in the calculation of Closing Date Net Working Capital, all liabilities and obligations for Taxes relating to the ownership or operation of the Patient Monitoring Business or the Purchased Assets (including, for the avoidance of doubt, Taxes of Oasis ) attributable to any Pre-Closing Tax Period and any obligations or liabilities for Taxes of Seller, its Affiliates (not including Oasis for any period beginning after the Closing Date) and any of the Selling Subsidiaries (including, for the avoidance of doubt, any Transfer Taxes which are the responsibility of Seller as provided in Section 2.7 and any other Taxes resulting from the transactions contemplated by this Agreement), other than any Transfer Tax to the extent required to be paid by Buyer as provided in Section 2.7 (Sales and Transfer Taxes and Fees);

(e) any liability or obligation associated with or related to any Excluded Assets;

(f) any liabilities or obligations of Seller or any of its Affiliates incurred, arising from or out of the negotiation, preparation and execution of this Agreement and the transactions contemplated hereby;

(g) except as otherwise expressly assumed in this Agreement, all liabilities arising out of or relating to any employee grievance against Seller whether or not the affected employees are hired by Buyer, to the extent a claim with respect to a liability relates to the period prior to the Closing, including any liabilities or obligations of Seller in connection with any Seller Benefit Plan, Seller Foreign Plan, or collective bargaining, labor or employment agreement or other similar arrangement or obligations in respect of retiree health benefits, including any liability for any payments of any kind whatsoever under ERISA, or any comparable Laws;

(h) any liabilities or obligations to stockholders or former stockholders of Seller; (i) any liabilities or obligations arising out of or resulting from Seller's compliance or non-compliance with any Law or order;

(j) any liabilities or obligations under the Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§ 2101-2109 (the " WARN Act" ) (or similar state statutory scheme);

(k) Seller's ISRA Obligations and Seller's Additional Environmental Obligations;

(l) all liabilities and obligations arising out of, relating to, or resulting from the facts, circumstances or events in respect of, (x) the matter styled as Patricia Leone v. Infoyield Corp. (N.J. Super. Ct., Essex Co. Docket # ESX-L-9251-07) and (y) the matter styled as The General Hospital Corporation d/b/a Massachusetts General Hospital, and Welch Allyn Protocol, Inc. v. Infoyield Corp. (D. Mass, Civil Action No. 07-12256); and

(m) any liabilities of Seller with respect to vacation accruals.

" Financial Statements " means the (a) unaudited Divisional Balance Sheets of the Patient Monitoring Business as of December 31, 2007 and June 30, 2007 and (b) unaudited Operating Results of the Patient Monitoring Business as of December 31, 2007, June 30, 2007, and June 30, 2006.

" FIRPTA Certificate " shall have the meaning set forth in Section 5.1(i).

“Fixtures and Equipment " shall mean all furniture, fixtures, furnishings, machinery, tooling, vehicles, equipment (including telephone lines and telecommunication equipment) and other tangible personal property owned by Seller or a Selling Subsidiary and primarily used or held for use in the operation of the Patient Monitoring Business at the manufacturing, research and development and warehousing facility located in Mahwah, New Jersey, the central warehouse facility in Hoevelaken, The Netherlands, and the sales offices in CrÃ©teil, France, Huntingdon, United Kingdom and Bensheim, Germany; provided , however , that the term . . . .

" Fixtures and Equipment " shall not include any Inventory, supplies or property which is real property, or property which reverts to any landlord under any lease.

“ GAAP " shall mean generally accepted accounting principles in the United States, consistently applied.

" Governmental Entity " shall mean any United States or foreign governmental or regulatory agency, commission, court, body, entity or authority.

" Hazardous Substances " shall mean any hazardous, acutely hazardous or toxic substance or waste, pollutant or contaminant defined and regulated as such under Environmental Law, including the federal Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") or the Resource Conservation and Recovery Act, as amended.

" Income Tax " shall mean all Taxes based upon, or measured by, or calculated with respect to, (x) net income or net receipts, proceeds or profits, or (y) multiple bases (including, but not limited to, corporate franchise and occupation Taxes) if such Tax is primarily based upon, measured by, or calculated with respect to one or more bases described in clause (x) above.

" Income Tax Return " shall mean a Tax Return in respect of an Income Tax.

" Intellectual Property Rights " shall mean any and all intellectual property rights and other similar proprietary rights in any jurisdiction, whether registered or unregistered, whether owned or held for use under license, including all rights and interests pertaining to or deriving from any patents or patent applications, trademarks, trade names, service marks, logos, or works of authorship, copyrights, know-how and trade secrets, including in each case any registrations of, applications to register, and renewals and extensions of, any of the foregoing.

" Inventory " shall mean the inventory of all Products held for sale by the Base PM Business, including all raw materials, components, work in progress, spare parts, finished goods and all other materials and supplies to be used or consumed in the production of finished goods, all inventory in respect of business and operations relating to the servicing, warranty and repair of Seller's and its Subsidiaries' products and accessories to the extent relating to the Base PM Business.

" Knowledge " shall mean (a) with respect to Seller, the actual knowledge of the individuals listed on Schedule 1.1(g) and (b) with respect to Buyer, the actual knowledge of the individuals listed on Schedule 1.1(h) ; in each case, after due inquiry.

" Law " shall mean any applicable law (including common law), statute, rule, regulation, judgment, code, ordinance, order, policies, guidances, guidelines or decree administered or issued by any Governmental Entity, including the Food and Drug Administration.

" Lien " shall mean any lien, claim, mortgage, encumbrance, pledge, security interest, easement, covenant, restriction, equity or charge of any kind.

" Material Adverse Change " shall mean any fact, circumstance, event, change, effect or development occurring after the date hereof that has a Material Adverse Effect.

" Material Adverse Effect " shall mean any fact, circumstance, event, change, effect or occurrence that (i) has or would be reasonably likely to have, individually or in the aggregate, a material adverse effect on the assets, liabilities, business, results of operations or condition (financial or otherwise) of the Patient Monitoring Business or (ii) that would be reasonably likely to prevent or materially delay or materially impair the ability of Seller or any of the Selling Subsidiaries to consummate the transactions contemplated hereby; provided , however , that none of the following shall be deemed either alone or in combination with any of the following to constitute a Material Adverse Effect: (m) any changes in, or conditions, events or occurrences that result in a change to, the industry in which the Patient Monitoring Business operates (excluding any such change, condition, event or occurrence that has a materially disproportionate effect on the Patient Monitoring Business compared with other companies operating in the same industry); (n) any changes in, or conditions, events or occurrences that result in a change to, the United States economy or capital, financial or securities markets generally (including effects on such economy or markets resulting from any regulatory or political conditions or developments, any natural disaster or any acts of terrorism, sabotage, military action or war (whether or not declared) or any escalation or worsening thereof but excluding any such change, condition, event or occurrence that has a materially disproportionate effect on the Patient Monitoring Business compared with other companies operating in the same industry); (o) any changes in the price or trading volume of Seller's stock on NASDAQ Global Select Market (but excluding any fact, change, effect, event or occurrence that caused or contributed to such change in market price or trading volume); (p) any adverse effect resulting from any change in GAAP or any applicable United States or foreign, federal, state or local laws, statutes, ordinances, rules, regulations or agency requirements of any Governmental Entity, or regulatory requirements, in each case, proposed, adopted or enacted after the date hereof, or the interpretation or enforcement thereof (but excluding any such change that has a materially disproportionate effect on the Patient Monitoring Business compared with other companies operating in the same industry); (q) any changes, developments, events, effects, conditions, occurrences, actions or omissions (including the loss or departure of employees or any termination, reduction, loss, or similar negative development in the relationship of Seller or any of the Selling Subsidiaries with its customers, suppliers, vendors or other business partners or employees or any cancellation of or delay in customer orders), in each case resulting from the announcement or pendency of this Agreement, the transactions contemplated hereby or the proposal thereof; (r) the failure of Seller to meet internal or analysts' expectations or projections with respect to the Patient Monitoring Business; (s) the failure of Seller or any of the Selling Subsidiaries to receive any necessary approvals from a Governmental Entity for any Product or invention or the failure of the Seller or any of the Selling Subsidiaries to launch or release, or announce the launch or release, of any Product or invention; and (t) any legal proceedings made or brought by any of the current or former stockholders of Seller (on their own behalf or on behalf of Seller), or otherwise under the General Corporation Law of the State of Delaware, arising out of or related to this Agreement and any of the transactions contemplated hereby.

" Non-PM Business " shall mean the business of Seller and its Affiliates prior to the Closing other than the Patient Monitoring Business.

" Orders " shall mean any orders, judgments, injunctions, awards, decrees or writs handed down, adopted or imposed by, including any consent decree, settlement agreement or similar written agreement with, any Governmental Entity.

" Patent Assignments " shall have the meaning set forth in Section 2.2(b).

" Patents " shall mean, in any and all countries, patents and patent applications, invention disclosures, utility models and industrial designs, together with all continuations, continuations-in-part, divisionals, renewals, reissues, extensions, and reexaminations, and any application that claims priority to any of the foregoing.

" Patient Monitoring Business " shall mean the business and operations of Seller and the Selling Subsidiaries that are primarily related to its patient monitoring business (including, without limitation, the manufacturing, design, installation, configuration, distribution, and sale of physiological monitors and monitoring systems) (the " Base PM Business ") and certain of the business and operations relating to the servicing, warranty and repair of the Seller's and its Subsidiaries' products and accessories contemplated under the Transition Services Agreement; provided , however , that the Patient Monitoring Business shall not include that portion of the business and operations relating to the servicing, warranty and repair of Cardiac Assist and InterVascular products and accessories that will not be subject to the Transition Services Agreement.

" Permitted Liens " shall mean (a) statutory liens for Taxes not yet due or delinquent (or which may be paid without interest or penalties) or the validity or amount of which is being contested in good faith by appropriate proceedings and for which adequate reserves have been established in accordance with GAAP, (b) mechanics', carriers', workers', repairers' and other similar liens arising or incurred in the ordinary course of business relating to obligations as to which there is no default on the part of Seller or the validity or amount of which is being contested in good faith by appropriate proceedings, or pledges, deposits or other liens securing the performance of bids, trade Contracts, leases or statutory obligations (including workers' compensation, unemployment insurance or other social security legislation) and (c) all covenants, conditions, restrictions, easements, charges, rights-of-way and similar matters set forth in any state, local or municipal franchise of Seller which do not materially interfere with the continued use of the property for the purposes for which the property is currently being used and do not materially affect the validity of title of such property

" Person " shall mean an individual, corporation, partnership, limited liability company, association, trust, unincorporated organization or any other entity or group (as such term is used in Section 13 of the Securities Exchange Act of 1934, as amended).

" Pre-Closing Tax Period " shall mean any taxable period ending on or before the Closing Date and the portion of any Straddle Period ending on and including the Closing Date.

" Products " shall mean products manufactured, marketed, distributed or sold in connection with the Base PM Business that are described on the Schedule of Products attached hereto as Schedule 1.1(i) .

" Property Taxes " means real, personal and intangible ad valorem property Taxes.

" Purchase Price " shall mean the Base Purchase Price less the Estimated Net Working Capital Deficiency or plus the Estimated Net Working Capital Excess, as the case may be, and as may be further adjusted pursuant to Section 2.11.

" Purchased Assets " shall mean, collectively, the Acquired Assets, the Assumed Agreements, the Products, the Transferred Real Property, the Transferred IP Assets and the Oasis Stock. For the avoidance of doubt, the Purchased Assets exclude the Excluded Assets.

" Regulatory Law " shall mean any and all state, federal and foreign statutes, rules, regulations, orders, decrees, administrative and judicial doctrines and other Laws requiring notice to, filings with, or the consent, clearance or approval of, any Governmental Entity, or that otherwise may cause any restriction, in connection with the transactions contemplated hereby.

" SEC " shall mean the Securities and Exchange Commission.

" Seller Foreign Plan " means each material plan, program or contract that is subject to or governed by the laws of any jurisdiction other than the United States, and which would have been treated as a Seller Benefit Plan had it been a United States plan, program or contract.

" Seller SEC Documents " shall mean all forms, documents, certifications, statements and reports, including any amendments thereto, that Seller has filed with, or otherwise transmitted to, the SEC as it is required to file with, or otherwise transmit to, the SEC prior to the date hereof.

" Selling Subsidiaries " shall mean Infoyield International B.V. Netherlands Filial, Infoyield BV, Infoyield GmbH, Infoyield Medical Co., Ltd., Infoyield SARL and Infoyield Belgium SPRL, Infoyield Investment Corp. and Infoyield Trademark Corp.

" Straddle Period " shall mean any taxable period beginning before and ending after the Closing Date.

" Subsidiary " or " Subsidiaries " of any party shall mean any corporation, partnership, association, trust or other form of legal entity of which (i) more than 50% of the outstanding voting securities are on the date hereof directly or indirectly owned by such party or (ii) such party or any Subsidiary of such party is a general partner (excluding partnerships in which such party or any Subsidiary of such party does not have a majority of the voting interests in such partnership).

" Tax " and Taxes " shall mean (i) any and all federal, state, local or foreign or provincial taxes, imposts, levies or other assessments, including all net income, gross receipts, capital, sales, use, ad valorem, value added, transfer, franchise, profits, inventory, capital stock, license, withholding, payroll, employment, social security, unemployment, excise, severance, stamp, occupation, property and estimated taxes, customs duties, fees, assessments and charges of any kind whatsoever, including any and all interest, penalties, fines, additions to tax or additional amounts imposed by any Governmental Entity in connection with respect thereto and (ii) any transferee liability or obligations with respect to any items in clause (i) above, whether by contract, as a successor or otherwise.

" Tax Returns " shall mean any return, report or similar filing (including any attached schedules, supplements and additional or supporting material) filed or required to be filed with respect to Taxes, including any information return, claim for refund, amended return or declaration of estimated Taxes (and including any amendments with respect thereto).

" Taxing Authority " shall mean the United States Internal Revenue Service or any other taxing authority, whether domestic or foreign, including any state, county, local or foreign government or any subdivision or taxing agency thereof.

" Trademark Assignments " shall have the meaning set forth in Section 2.2(b).

" Trademark License Agreement " shall mean the Trademark License Agreement by and among Seller and certain of its Subsidiaries, on the one hand, and Buyer, on the other hand, dated as of the Closing Date, substantially in the form of Exhibit A attached hereto.

" Trademarks " shall mean all trademarks, service marks, trade dress, logos, slogans, trade names, service names, domain names, corporate and business names, and all applications, registrations, and renewals therefor.

" Transaction Documents " shall mean the Asset Transfer and Assumption Agreements, the Transition Manufacturing Agreement, the Trademark License Agreement and the Transition Services Agreement.

" Transfer Taxes" shall mean any transfer, documentary, sales, use, real property gains, stamp, registration, and other such similar Taxes and fees. For the avoidance of doubt, Transfer Taxes shall not include value added Tax.

" Transferred Copyrights and Know-How " shall mean the intellectual property listed on Schedule 1.1(j) .

" Transferred IP Assets " shall mean the Transferred Patents, the Transferred Trademarks and the Transferred Copyrights and Know-How.

" Transferred Patents " shall mean the Patents listed on Schedule 1.1(k) .

" Transferred Real Property " shall mean real property interests in the manufacturing, research and development and warehousing facility located in Mahwah, New Jersey and the central warehouse facility in Hoevelaken, The Netherlands (including, in each case, all improvements, structures, fixtures and appurtenant thereto).

" Transferred Trademarks " shall mean the Trademarks listed on Schedule 1.1(l) hereto. " Transition Manufacturing Agreement " shall mean the Transition Manufacturing Agreement to be executed by and between Seller and Buyer as of the Closing Date, substantially in the form of Exhibit B attached hereto.

" Transition Services Agreement " shall mean the Transition Services Agreement be executed by and between Seller and Buyer as of the Closing Date, substantially in the form of Exhibit C attached hereto.

**ARTICLE II CLOSING**

Section 2.1 Closing The closing of the purchase and sale of the Purchased Assets and the assumption of the Assumed Liabilities (the " Closing ") shall take place at the offices of Dechert LLP, 30 Rockefeller Plaza, New York, New York, 10112, on or before the second Business Day the satisfaction of all of the conditions to Closing set forth in Article V (or at such other place and time as the parties may mutually agree) (sometimes referred to herein as the " Closing Date "). The parties hereto specifically acknowledge that time is of the essence with respect to the Closing. All activities of the Patient Monitoring Business on the Closing Date shall be to the account of Seller.

Section 2.2 Assets to be Sold

(a) On the Closing Date, and subject to the terms and conditions of this Agreement, Seller shall sell, assign and transfer, and will cause the Selling Subsidiaries to sell, assign and transfer, to Buyer all of Seller's and the Selling Subsidiaries' right, title and interest in and to the Purchased Assets, free and clear of all Liens other than Permitted Liens, as provided herein.

(b) Such transfers will be effected by Seller or one or more Selling Subsidiaries, as the case may be, transferring to Buyer, in each case, as shall be mutually agreed upon by Seller and Buyer, pursuant to (i) one or more bills of sale as shall be necessary to transfer to Buyer good and valid title to all the Acquired Assets other than Transferred Real Property, free and clear of all Liens other than Permitted Liens (the " Bills of Sale "), (ii) one or more assignment and assumption agreements as shall be necessary to assign and transfer to Buyer all the Assumed Agreements (or portions thereof relating to the Patient Monitoring Business or the Purchased Assets) to be assigned and transferred to Buyer at the Closing (the " Contract Assignments "), (iii) the Conveyancing Documents, (iv) one or more general assignments as shall be necessary to assign to Buyer all of the rights to the Transferred Trademarks (the " Trademark Assignments "); provided , however , that it shall be Buyer's responsibility to prepare any applicable country trademark assignments and to record them, at its own expense, following execution by Seller (or the applicable Selling Subsidiaries), (v) one or more general assignments as shall be necessary to assign to Buyer all of the rights to the Copyrights comprised in the Transferred Copyrights and Know-How (the " Copyright and Know-How Assignments "); provided , however , that it shall be Buyer's responsibility to prepare any applicable country copyright assignments and to record them, at its own expense, following execution by Seller (or the applicable Selling Subsidiaries), and (vi) one or more general assignments as shall be necessary to assign to Buyer all of the rights to the Transferred Patents (the " Patent Assignments " and, together with the Bills of Sale, the Contract Assignments, the Conveyancing Documents, the Trademark Assignments and the Copyright and Know-How Assignments, the " Asset Transfer and Assumption Agreements "); provided , however , that it shall be Buyer's responsibility to prepare any applicable country-specific intellectual property assignments and to record them, at its own expense, following execution by Seller (or the applicable Selling Subsidiaries).

(c) If any separate agreements are necessary for the sale, assignment and transfer of any Purchased Assets outside of the United States, such agreements shall be on terms wholly consistent with and as close as reasonably possible to the terms of this Agreement. Without limiting the foregoing, the parties shall arrange for such separate agreements providing for the sale, assignment and purchase of the Purchased Assets located in Belgium, France, Germany, the United Kingdom and the Netherlands to be prepared and entered into by the respective local Selling Subsidiaries and Buyer or its Affiliates prior to the Closing Date. Each party shall be responsible for its own legal costs in connection with this Section 2.2.

(d) All risk of loss with respect to the Purchased Assets (whether or not covered by insurance) shall be on Seller up to and including the Closing Date, whereupon such risk of loss shall pass to Buyer.

Section 2.3 Assumption of Liabilities

(a) At the Closing, Buyer shall assume the Assumed Liabilities and shall agree to pay, perform and discharge the Assumed Liabilities, and shall promptly reimburse Seller for the performance by Seller (or its Affiliates) of any such obligation the performance of which by Buyer is not accepted by the obligee in the exercise of such obligee's lawful rights. Buyer is not assuming any debt, liability or obligation of Seller or any Affiliate of Seller, other than the Assumed Liabilities, and Seller and its Affiliates shall retain all other liabilities and obligations of Seller and its Affiliates, whether accrued, absolute, contingent or otherwise, including, without limitation, the Excluded Liabilities.

(b) Buyer's assumption of the obligations with respect to Assumed Agreements, subject to the ongoing obligations of the parties post-Closing pursuant to Section 2.8, shall be evidenced by Buyer's execution and delivery of the Contract Assignments.

Section 2.4 Purchase Price. Subject to the terms and conditions of this Agreement, the consideration to be paid by Buyer for the Purchased Assets shall be an amount equal to the Purchase Price plus the assumption of the Assumed Liabilities by Buyer. The Purchase Price shall be paid in the manner and at the time set forth in Sections 2.10 and 2.11.

Section 2.5 Excluded Assets Notwithstanding anything in this Agreement to the contrary, Seller shall not and does not agree to sell, assign or deliver to Buyer, and Buyer shall not purchase, acquire or obtain under this Agreement or the transactions contemplated hereby any right, title or interest in or to any of the Excluded Assets.

Section 2.6 Allocation of Purchase Price Prior to Closing, the parties shall agree to an allocation of the consideration (the " Total Consideration ," which shall include the Purchase Price and the assumption of the relevant Assumed Liabilities which are treated under the Tax Laws of the relevant jurisdiction as part of the total consideration received in exchange for the sale of the Purchased Assets) among the Seller and the Selling Subsidiaries and the portion of the Total Consideration allocated to each such entity among the Purchased Assets transferred by such entity to Buyer or its Affiliates, in each case, in accordance with applicable Tax Law and substantially in the form set forth in Schedule 2.6 ; provided, however, that the parties may agree to modify the form provided in Schedule 2.6 (including to the extent that an agreed upon allocation is required with respect to a specific Purchased Asset) (the agreed upon allocation, the " Allocation Schedule "). Except as otherwise required by Law, (i) the Allocation Schedule will apply for U.S. and foreign Tax purposes, and (ii) Buyer and Seller and their respective subsidiaries will (A) act in accordance with the Allocation Schedule in the preparation of financial statements and the filing of all Tax Returns and (B) take no position inconsistent with the Allocation Schedule for all Tax purposes.

Section 2.7 Transfer Taxes and Value Added Tax; Bulk Sales

(a) Subject to any obligation imposed by Law or Governmental Entity, Seller and Buyer agree to fully and reasonably cooperate to minimize the impact of all Transfer Taxes and value added Tax levied on the sale, assignment or transfer of the Purchased Assets to be sold and transferred as provided herein. All Transfer Taxes resulting from the transactions contemplated by this Agreement shall be borne equally by Buyer and Seller.

(b) Buyer hereby waives compliance by Seller and its Affiliates with the provisions of the bulk transfer and bulk sales Laws of any applicable jurisdictions; provided , that , that Seller shall indemnify and hold harmless Buyer, its Affiliates and each of their respective successors and assigns from and against any and all losses of any such Persons, directly or indirectly, as a result of, or based upon or arising from the failure to comply with any such Laws; and provided , however that nothing in this Agreement will prevent either party from asserting as a bar or defense in any action or proceeding brought under any bulk sales or bulk transfer Law that such Law does not apply to the transactions contemplated by this Agreement.

Section 2.8 Non-Assignability of Assets To the extent that the sale, assignment, transfer, conveyance or delivery or attempted sale, assignment, transfer, conveyance or delivery to Buyer of any Purchased Asset or Assumed Agreement is prohibited by any Law or would require any governmental or third party authorizations, approvals, consents or waivers (" Consent ") and such Consent shall not have been obtained prior to the Closing, this Agreement shall not constitute a sale, assignment, transfer, conveyance or delivery, or any attempted sale, assignment, transfer, conveyance or delivery, thereof. For a period (the " Transfer Period ") beginning on the Closing Date (or, if earlier, the Non-Compete Expiration Date) and ending on the earlier of (a) one year from such date or (b) Seller consummates a Seller Change of Control (provided, however, that the Transfer Period shall not, in any case, be less than six months), Seller agrees to use its commercially reasonable efforts to obtain or satisfy, at the earliest practicable date, all Consents to facilitate the full and expeditious transfer of legal title, or Seller's or its Selling Subsidiaries' rights, as the case may be, to the Purchased Assets as of the Closing Date; provided , however , that neither Seller nor Buyer shall be required to pay any consideration therefor, nor shall Seller have any obligation to extend or renew any such Assumed Agreement that may expire during such period. If the necessary Consent is obtained, Seller shall assign and transfer any such Purchased Asset or Assumed Agreement to Buyer at no additional cost, and Buyer shall thereupon assume all obligations and liabilities of Seller under any such Assumed Agreement in accordance with the terms of this Agreement. If the necessary Consent is not obtained within such period, Seller's obligations to Buyer with respect to such Purchased Asset or Assumed Agreement shall expire, Seller shall be free to terminate any such Assumed Agreement in accordance with its terms, and under no circumstances shall the Purchase Price be reduced on account of the failure to obtain any such Consent. If any such Consents are not obtained and/or satisfied by the time of the Closing and Buyer in its sole discretion waives such requirement, then, at Seller's expense:

(a) Seller shall continue to use such commercially reasonable efforts to obtain same,

(b) Seller shall at the Closing enter into such arrangements as Buyer may reasonably request in order to provide to Buyer the benefit of any the non-transferred items, until such items have been transferred to Buyer (or its Affiliate, as applicable), if ever, whether by assignment, novation or otherwise and

(c) Buyer shall perform such non-transferred items as subcontractor to Seller (to the extent subcontracting is permissible under the relevant item) or, where subcontracting is not permissible, as agent for Seller, until such items have been transferred to Buyer (or its Affiliate, as applicable), if ever, whether by assignment, novation or otherwise. Nothing herein shall be construed as an attempt to transfer any Contract, Permit, Approval or other Purchased Asset which by its terms requires Consent to do so unless such Consent has been obtained. Buyer shall grant Seller a license to any and all Purchased Assets to the extent the same are necessary for Seller to continue to perform its obligations under any such Assumed Agreement.

Section 2.9 Delivery by Seller At the Closing, Seller will deliver, or cause to be delivered, to Buyer the following (unless delivered previously): (a) stock certificates and stock powers with respect to the Oasis Stock duly executed to Buyer, free and clear of any Liens; (b) the Secretary's Certificate referred to in Section 5.1(c) hereof; and (c) duly executed counterparts of the Transaction Documents.

Section 2.10 Delivery by Buyer At the Closing, Buyer will deliver, or cause to be delivered, to Seller (or one or more of Seller's Affiliates, as designated by Seller) the following (unless previously delivered): (a) the Base Purchase Price less the Estimated Net Working Capital Deficiency or plus the Estimated Net Working Capital Excess, as the case may be, by transfer of immediately available funds (to such account as Seller may direct by written notice delivered to Buyer at least three (3) Business Days prior to the Closing Date); (b) the Secretary's Certificate referred to in Section 5.2(c) hereof; and (c) duly executed counterparts of the Transaction Documents.

Section 2.11 Net Working Capital Adjustments; Accounts Receivable Adjustments

(a) Estimated Closing Date Net Working Capital Adjustment . At least three (3) Business Days prior to the Closing Date, Seller shall provide Buyer with a good faith estimate of the Closing Date Net Working Capital (the " Estimated Closing Date Net Working Capital "). The amount, if any, by which the Estimated Closing Date Net Working Capital is less than $49,132,000 (the " Target Closing Date Net Working Capital ") is the " Estimated Net Working Capital Deficiency " and the amount, if any, by which the Estimated Closing Date Net Working Capital exceeds the Target Closing Date Net Working Capital is the " Estimated Net Working Capital Excess ." Seller shall make available to Buyer all work papers and other books and records utilized in calculating the Estimated Closing Date Net Working Capital.

(b) Post-Closing Closing Date Net Working Capital Adjustment . As promptly as practicable, but in no event later than ninety (90) days after the Closing Date, Buyer shall notify Seller in writing of its final determination of the Patient Monitoring Business' actual (rather than estimated) Closing Date Net Working Capital (sometimes referred to herein as the " Buyer's Report "), which determination shall set forth in reasonable detail Buyer's calculation of the Closing Date Net Working Capital. The Buyer's Report shall also set forth, and explain in reasonable detail, any differences between Buyer's calculation of the Closing Date Net Working Capital and Seller's Calculation of the Estimated Closing Date Net Working Capital. The Closing Date Net Working Capital shall be calculated in accordance with the Accounting Standards. A copy of all work papers and other books and records utilized in the preparation of the Buyer's Report shall be made available to Seller at such time. Seller will notify Buyer in writing (the " Net Working Capital Dispute Notice ") within thirty (30) days after receiving the Buyer's Report if Seller disagrees with the Buyer's calculation of the Closing Date Net Working Capital as set forth in the Buyer's Report, which notice shall set forth in reasonable detail the basis for such disagreement, the amounts involved and Seller's calculation of the Closing Date Net Working Capital. If no Net Working Capital Dispute Notice is received by Buyer within such thirty (30) day period, the Buyer's calculation of the Closing Date Net Working Capital as set forth in the Buyer's Report shall be final and binding upon the parties hereto. Seller and Buyer will give each other and their respective representatives reasonable access during normal business hours and upon reasonable notice to the personnel, books and records of the Seller and its Affiliates, on the one hand, and the Buyer and its Affiliates, on the other hand, relating to the Closing Date Net Working Capital to assist Buyer in the preparation of the Buyer's Report and to assist Seller in the preparation of any Net Working Capital Dispute Notice.

(c) Upon receipt by Buyer of a Net Working Capital Dispute Notice, Seller and Buyer shall negotiate in good faith to resolve any disagreement with respect to the Closing Date Net Working Capital set forth in the Net Working Capital Dispute Notice. To the extent Buyer and Seller are unable to agree with respect to the Closing Date Net Working Capital within thirty (30) days after receipt by Buyer of the Net Working Capital Dispute Notice (the " Resolution Period "), Buyer and Seller shall promptly but not later than five (5) Business Days after the expiration of the Resolution Period submit the issues as to the proper amount of the Closing Date Net Working Capital for a binding determination to any internationally recognized accounting firm that is not an affiliate of, or engaged as the accounting firm for, any of Seller, Buyer and their respective Affiliates (an " Independent Accounting Firm ") that is mutually acceptable to Seller and Buyer, or, if no such agreement is reached within five (5) Business Days after the expiration of the Resolution Period, each of Seller and Buyer shall select an Independent Accounting Firm, whereupon such Independent Accounting Firms shall jointly select a third Independent Accounting Firm. Such accounting firm selected by Seller and Buyer, or by the two Independent Accounting Firms, as the case may be, may consider only items disputed by the Net Working Capital Dispute Notice and matters affected thereby, and its determination of the Final Closing Date Net Working Capital (as defined below) shall not be less than the Closing Date Net Working Capital set forth in the Buyer's Report or more than the Closing Date Net Working Capital set forth in the Net Working Capital Dispute Notice. Such accounting firm's determination shall be made within thirty (30) days after their selection, shall be set forth in a written statement as to the dispute and the resulting computation of the Closing Date Net Working Capital delivered to Buyer and Seller, shall be final, binding and conclusive and shall constitute an arbitral award upon which a judgment may be entered in any court having jurisdiction thereof. The amount of the Closing Date Net Working Capital as agreed upon by Seller and Buyer, as deemed agreed upon pursuant to the next-to-last sentence of Section 2.11(b) or as determined by such accounting firm in accordance herewith, shall be the " Final Closing Date Net Working Capital ." The fees and expenses of such accounting firm shall be paid by the party (either Seller or Buyer) whose latest offer or position as to an acceptable amount for the Closing Date Net Working Capital at the time the issue is submitted to such accounting firm is furthest away from the Final Closing Date Net Working Capital as determined by such accounting firm.

(d) If the Final Closing Date Net Working Capital is less than the Estimated Closing Date Net Working Capital, the amount equal to the difference between the two (the " Final Net Working Capital Deficiency ") shall be paid by Seller to Buyer within ten (10) Business Days after the amount of the Final Net Working Capital Deficiency has been determined. If the Final Closing Date Net Working Capital is more than the Estimated Closing Date Net Working Capital, the amount equal to the difference between the two (the " Final Net Working Capital Excess ") shall be paid by Buyer to Seller within ten (10) Business Days after the amount of the Final Net Working Capital Excess has been determined.

(e) The amount of Final Net Working Capital Deficiency or Final Net Working Capital Excess, if any, paid pursuant to Section 2.11(d) , shall be treated as an adjustment to the Purchase Price.

(f) The following terms shall have meanings set forth below: (i) " Current Assets " shall mean, as of a specified date, all of the current assets of the Patient Monitoring Business (including, for the avoidance of doubt, Inventory), other than Excluded Assets (which Excluded Assets shall include, for the avoidance of doubt, Accounts Receivable), as determined in accordance with GAAP; (ii) " Current Liabilities " shall mean, as of a specified date, all of the current liabilities of the Patient Monitoring Business, other than Excluded Liabilities, as determined in accordance with GAAP; and (iii) " Closing Date Net Working Capital " shall mean, as of the closing of business on the Closing Date, (a) the Current Assets minus (b) the Current Liabilities, all as determined for the Patient Monitoring Business as of the closing of business on the Closing Date and in accordance with GAAP.

**ARTICLE III REPRESENTATIONS AND WARRANTIES OF SELLER**

Buyer acknowledges and agrees that the Purchased Assets are sold "as is, where is" and Buyer agrees to accept the Purchased Assets in the condition they are in at the place they are located on the Closing Date based on its own inspection, examination and determination with respect to all matters, and without reliance upon any express or implied representations or warranties of any nature made by, on behalf of or imputed to Seller, except for such representations and warranties as are expressly set forth in this Agreement. Without limiting the generality of the foregoing, Buyer acknowledges that Seller makes no representation or warranty with respect to (i) any forecasts, projections, estimates or budgets delivered or made available to Buyer of future revenues, future results of operations (or any component thereof), future cash flows or future financial condition (or any component thereof) or (ii) any other information or documents made available to Buyer or its counsel, accountants or advisors, except as expressly set forth in this Agreement or the Schedules or Exhibits hereto. BUYER AGREES THAT THE REPRESENTATIONS AND WARRANTIES GIVEN HEREIN BY SELLER ARE IN LIEU OF, AND BUYER HEREBY EXPRESSLY WAIVES ALL RIGHTS TO, ANY IMPLIED WARRANTIES WHICH MAY OTHERWISE BE APPLICABLE BECAUSE OF THE PROVISIONS OF THE UNIFORM COMMERCIAL CODE OR ANY OTHER STATUTE, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Except (1) as disclosed in the Seller SEC Documents filed prior to the date of this Agreement (other than any forward looking disclosures set forth in any risk factor section, any disclosures in any section relating to forward looking statements and any other disclosures included therein to the extent they are primarily predictive or forward-looking in nature) or (2) as explicitly set forth in the Disclosure Schedules attached hereto (it being agreed that disclosure of any item in any Disclosure Schedule shall also be deemed disclosure with respect to any other Disclosure Schedule to which such disclosure is reasonably apparent), Seller represents and warrants to Buyer as follows:

Section 3.1 Qualification, Organization, Selling Subsidiaries, etc.

(a) Each of Seller and the Selling Subsidiaries is duly organized, validly existing and in good standing under the Laws of the jurisdiction in which it is organized. Each of Seller and the Selling Subsidiaries has the corporate, partnership or similar power and authority, as applicable, to own, lease and operate its properties and to carry on its business as presently conducted, except where the failure to have such power or authority would not have a Material Adverse Effect.

(b) Each of Seller and the Selling Subsidiaries is qualified to do business or licensed and, where applicable as a legal concept, is in good standing as a foreign corporation in each jurisdiction where the ownership, leasing or operation of its assets or properties or conduct of its business requires such qualification, except where the failure to be so qualified or in good standing would not have a Material Adverse Effect. (c) The authorized capital stock or other equity interests of Oasis consists of SEK 1,000,000 share capital, par value SEK 0.04 per share. As of the date hereof, (i) SEK 632,135 of Oasis Stock were issued and outstanding, and (ii) no shares of Oasis Stock were held in treasury. The shares of Oasis Stock are duly authorized, validly issued, fully paid and nonassessable and are not subject to any pre-emptive or subscription rights (and were not issued in violation of any preemptive or subscription rights). Seller, directly or indirectly through one or more wholly owned Subsidiaries of Seller, beneficially owns and has good and valid title to all the Oasis Stock, free and clear of all Liens. There are (i) no options, warrants, or similar rights to purchase any of the shares or other equity interests of Oasis , and no obligations binding upon any of Seller or its Affiliates (including Oasis ) to issue, sell, redeem, purchase or exchange any of its capital stock or any other equity interest or any right relating thereto, and (ii) no shareholders' agreements, voting agreements, voting trusts or other agreements or rights of third parties with respect to or affecting Oasis or any of its shares of capital stock or other equity interests. Seller has delivered or made available to Buyer prior to the date hereof true and complete copies of the certificate of incorporation, bylaws, and each other organizational document of Oasis , each as in effect as of the date hereof.

Section 3.2 Corporate Authority Relative to this Agreement; No Violation

(a) Seller has the requisite corporate power and authority to execute and deliver this Agreement, to perform its obligations under this Agreement and to consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by the Board of Directors of Seller, and no other corporate proceedings on the part of Seller (including, for the avoidance of doubt, the vote or approval of the stockholders of Seller) are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Seller and, assuming this Agreement constitutes the valid and binding agreement of Buyer, constitutes the valid and binding agreement of Seller, enforceable against Seller in accordance with its terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar Laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding in equity or at Law) and any implied covenant of good faith and fair dealing.

(b) Other than the approvals set forth in Schedule 3.2(b) (collectively, the " Seller Approvals "), no authorization, consent or approval of, or filing with, any Governmental Entity is necessary, under applicable Law, in connection with the execution, delivery and performance of this Agreement by Seller or for the consummation by Seller of the transactions contemplated hereby, except for such authorizations, consents, approvals, permits, actions, notifications or filings that, if not obtained or made, would not have a Material Adverse Effect.

(c) Except as described in Schedule 3.2(c) , the execution and delivery by Seller of this Agreement does not, the performance by Seller of its obligations under this Agreement will not, and the consummation of the transactions contemplated hereby and compliance with the provisions hereof by Seller will not (with or without notice or lapse of time, or both), (i) result in any violation of, or default under, require consent under, or give rise to a right of termination, cancellation or acceleration of any obligation or to the loss of any benefit under (A) any Assumed Agreement, or result in the creation of any Lien upon any of the Purchased Assets, or (B) to the extent not covered in (A), any loan, guarantee of indebtedness or credit agreement, note, bond, mortgage, indenture, lease, agreement, Contract, instrument, permit, Seller Permit, concession, franchise, right or license binding upon Seller or any of the Selling Subsidiaries or result in the creation of any Lien upon any of the properties or assets of Seller or any of the Selling Subsidiaries; (ii) conflict with or result in any violation of any provision of the certificate or articles of incorporation or bylaws or other equivalent organizational document of Seller or any of the Selling Subsidiaries; or (iii) assuming that the consents and approvals referred to in Schedule 3.2(c) are duly obtained, conflict with or violate any applicable Laws, other than, in the case of clauses (i) and (iii), as would not have a Material Adverse Effect.

Section 3.3 Title to Property Except as set forth in Schedule 3.3 , as otherwise provided in this Agreement or the Transaction Documents, and except for such defects of title as do not materially interfere with the use of such property in the ordinary course of business, Seller or a Selling Subsidiary owns, leases or has the legal right to use all of the Purchased Assets (other than the Transferred IP Assets, which is the subject of Section 3.10) and has good, valid and transferable title to (or in the case of leased Purchased Assets, valid leasehold interest in or valid and enforceable lease agreements regarding) all Purchased Assets (other than the Transferred IP Assets, which is the subject of Section 3.10). All of the material Purchased Assets are free of all Liens other than (i) Permitted Liens and (ii) Liens disclosed in any Seller SEC Document.

Section 3.4 Completeness of Assets

(a) Except for the Excluded Assets, the information technology systems, infrastructure and software retained by Seller pursuant to the Transition Services Agreement and as set forth in Schedule 3.4(a) , the Purchased Assets, together with the rights granted to Buyer pursuant to this Agreement and the Transaction Documents, and any other agreements to be entered into pursuant hereto or thereto, will constitute on the Closing Date all of the assets and rights (other than employees) used by Seller and the Selling Subsidiaries to conduct the Patient Monitoring Business in the same manner as such business is currently conducted by Seller and the Selling Subsidiaries.

(b) The tangible assets included in the Purchased Assets, taken as a whole, have been maintained in accordance with normal industry practice, are in good operating condition and repair (subject to normal wear and tear and other impairments of value which do not materially interfere with the use of such assets in the ordinary course of business), and are suitable for the purposes for which they are presently used.

Section 3.5 Financial Statements Attached hereto as Exhibit D are true, complete and correct copies of the Financial Statements. The Financial Statements (including the notes thereto) fairly present in all material respects (a) the assets and liabilities of the Patient Monitoring Business as of December 31, 2007 (the " Interim Balance Sheet Date ") and June 30, 2007 and (b) the revenues and expenses of the Patient Monitoring Business for the six-month period ended December 31, 2007 and the fiscal years ended June 30, 2007 and June 30, 2006. The Financial Statements (i) are prepared from, and in accordance with, the books and records of Seller and the Seller Subsidiaries and (ii) reflect in all material respects the costs and expenses of the Patient Monitoring Business as if the Patient Monitoring Business was independent and not affiliated with any other corporation or business. Notwithstanding the foregoing, Buyer acknowledges that the Financial Statements were prepared solely for the purpose of this Agreement and for the internal management purposes of Seller and that the Patient Monitoring Business was not conducted on a stand-alone basis as a separate entity during the periods indicated in the Financial Statements and that the allocations and estimates included in the Financial Statements are not necessarily indicative of the costs that would have resulted if the Patient Monitoring Business had been operated and conducted on a stand-alone basis as a separate entity during such periods. Other than as set forth in this Section 3.5, Seller makes no representations with regard to the Financial Statements or the other financial information of the Patient Monitoring Business (including any estimates, projections, plans or budgets).

Section 3.6 Absence of Undisclosed Liabilities Except (i) as reflected or reserved against in the Financial Statements; (ii) for transactions contemplated by this Agreement or the financing of such transactions; (iii) for liabilities and obligations incurred in the ordinary course of business since the Interim Balance Sheet Date; and (iv) for liabilities not required by GAAP to be disclosed on Seller's consolidated balance sheets, the Patient Monitoring Business has no liabilities or obligations of any nature, whether or not accrued, contingent or otherwise, whether known or unknown and whether due or to become due, that would have a Material Adverse Effect.

Section 3.7 Absence of Certain Changes or Events Since December 31, 2007, except as otherwise required or contemplated by this Agreement, the Patient Monitoring Business has been conducted, in all material respects, in the ordinary course of business and there has not been a Material Adverse Effect.

Section 3.8 Inventory All of the Inventory is valued at the lower of cost or market, the cost thereof being determined on a first-in, first-out basis, except as disclosed in the Financial Statements. Attached hereto as Schedule 3.8 is a summary of the Inventory as of December 31, 2007 (the " Inventory Summary "). Except as disclosed on Schedule 3.8 , all of the Inventory reflected in the Inventory Summary and all such Inventory acquired since the Interim Balance Sheet Date consist of items of a quality and quantity useable and saleable in the ordinary course of business within a reasonable period of time at normal profit margins. Except as set forth in Schedule 3.8 , (i) none of the Inventory (whether parts/raw materials, work-in-process or finished goods) reflected in the Inventory Summary and (ii) none of the Inventory acquired after the Interim Balance Sheet Date is obsolete or otherwise not saleable within a twelve-month period (and to the extent obsolete or otherwise not saleable, has been written off or written down to net realizable value in the Financial Statements or on the accounting records of Seller as of the Closing Date, as the case may be). All of the Inventory (whether parts/raw materials, work-in-process or finished goods) reflected in the Inventory Summary and all such Inventory acquired after the Interim Balance Sheet Date are of such quality as to meet or exceed the Base PM Business' internal standards and any applicable governmental quality control standards. The Inventory levels with respect to the Base PM Business are not excessive and have been maintained at the levels required for the operation of the Base PM Business as conducted prior to and as of the date of hereof and these levels will be adequate for the operation of the Base PM Business after the Closing in the manner consistent with the operation of the Base PM Business immediately prior to the Closing.

Section 3.9 Assumed Agreements and Material Contracts

(a) Except for this Agreement, the Seller Benefit Plans, as disclosed in any Seller SEC Documents, as disclosed in Schedule 3.9 , neither Seller nor any of the Selling Subsidiaries is a party to or bound by, as of the date hereof, any Contract (i) that is material to the operation of the Patient Monitoring Business or (ii) any Contract that involves, or could reasonably be expected to involve, payment by or to Seller and any of the Selling Subsidiaries in respect of the Patient Monitoring Business in excess of $150,000, and (iii) that contains any provision that prior to or following the Closing would by its terms materially restrict or alter the conduct of the Patient Monitoring Business of, or purport to materially restrict or alter the conduct of the Patient Monitoring Business, except for agreements the primary purpose of which is to create a real property interest (all contracts of the type described in this Section 3.9(a) being referred to herein as " Material Contracts ").

(b) Seller has delivered or made available to Buyer a correct and complete copy of each Material Contract.

(c) (i) Each Material Contract is valid and binding on Seller and any of the Selling Subsidiaries to the extent Seller or such Selling Subsidiary is a party thereto, and, to the Knowledge of Seller, each other party thereto, as applicable, and is in full force and effect, except where the failure to be valid, binding and in full force and effect would not have a Material Adverse Effect and (ii) neither Seller nor any of the Selling Subsidiaries has received written notice of, or otherwise has Knowledge of, the existence of any event or condition which constitutes, or, after notice or lapse of time or both, will constitute, a material default on the part of Seller or any of the Selling Subsidiaries under any such Material Contract.

Section 3.10 Intellectual Property Rights Except as set forth on Schedule 3.10 :

(a) Except for such defects of title as do not materially interfere with the use of such property in the ordinary course of business, Seller owns the exclusive right, title and interest to the Transferred IP Assets, free and clear of all Liens, conditions, adverse claims or other restrictions (other than Permitted Liens, any licenses granted by Seller or any of the Selling Subsidiaries to third parties and implied or express licenses granted by the Seller or any of the Selling Subsidiaries in connection with the commercial sale of products), and except for the Excluded Assets, the information technology systems, infrastructure and software retained by Seller pursuant to the Transition Services Agreement and the rights and restrictions subject of the Transaction Documents, the Transferred IP Assets constitute all of the material Intellectual Property Rights used by Seller and the Selling Subsidiaries in the Patient Monitoring Business as currently conducted. To the Knowledge of the Seller, none of the Transferred IP Assets is or has been involved in any opposition, cancellation, interference, reissue or reexamination proceeding.

(b) Seller has not received in the past two (2) years any written notice alleging that any Transferred IP Assets are invalid or unenforceable, or challenging Seller's ownership of or right to use any such rights. To the Knowledge of Seller, each of the registrations of Patent, Trademarks and Copyrights included in the Transferred IP Assets is held and/or recorded in the name of Seller, is valid and in full force and effect, except as would not, individually or in the aggregate, have a Material Adverse Effect. (c) To the Knowledge of Seller, the products and services and the business of the Patient Monitoring Business as currently conducted by Seller do not infringe, misappropriate or violate the Intellectual Property Rights of any third party. Seller has not received any written notice in the past two (2) years alleging that the Patient Monitoring Business is infringing, misappropriating or violating the Intellectual Property Rights of any third party, and Seller or any of the Selling Subsidiaries is not and has not in the past two (2) years been a party to any action or proceeding in which it was asserted that Seller or any of the Selling Subsidiaries, in its Patient Monitoring Business, infringed, misappropriated or violated the Intellectual Property Rights of any third party, in each case except as would not, individually or in the aggregate, have a Material Adverse Effect. Except as set forth on Schedule 3.10(c) , neither Seller nor any of the Selling Subsidiaries has taken any action or failed to take any action that could result in the abandonment, cancellation, forfeiture, relinquishment, invalidation, waiver or unenforceability of any material Transferred IP Assets, except as would not have a Material Adverse Effect.

(d) Seller has taken commercially reasonable steps to protect and maintain all of the material Transferred IP Assets.

(e) To the Knowledge of Seller, except as would not, individually or in the aggregate, have a Material Adverse Effect, no third party is infringing on, misappropriating or otherwise violating any Transferred IP Assets. In the last two (2) years, Seller has not sent any notice to or asserted or threatened in writing any action or claim against any Person involving or relating to any Transferred IP Assets.

(f) To the Knowledge of Seller, no funding, facilities, or personnel of any Governmental Entity or educational institution, were used, directly or indirectly, to develop or create, in whole or in part, any of the Transferred IP Assets.

(g) To the Knowledge of Seller, neither Seller, the Selling Subsidiaries nor their respective Affiliates are bound by, and no Transferred IP Assets is subject to, any agreement or arrangement containing any covenant or other provision that in any way limits or restricts the ability of Seller or the Seller Subsidiaries to use, exploit, assert, or enforce any Transferred IP Assets in the manner currently used, exploited, asserted or enforced by Seller and the Selling Subsidiaries, except as would not reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 3.10(g) , Seller has not transferred ownership of (whether a whole or partial interest), or granted any exclusive right to use, any Transferred IP Assets to any Person.

(h) For purposes of this Section 3.10, Knowledge of Seller shall in no event be construed to require the search of any patent, prior art, trademark or copyright databases, or performance of any search, clearance, analysis or other investigation of any patents, copyrights, trademarks or other Intellectual Property rights.

(i) The representations contained in this Section 3.10 shall be the exclusive representations and warranties with respect to intellectual property matters.

Section 3.11 Compliance with Laws; Permits

(a) Except where such non-compliance, default or violation would not have a Material Adverse Effect, Seller and each of the Selling Subsidiaries, since June 30, 2004, has been and is in compliance with and has not been and is not in default under or in violation of any Law applicable to the Seller or any of the Selling Subsidiaries, including: (i) the Federal Food, Drug and Cosmetic Act, as amended, ("FFDCA") and the regulations promulgated thereunder; (ii) any applicable Food and Drug Administration (" FDA ") investigational device exemption, premarket approval or 510(k) premarket notification; (iii) the applicable provisions of FDA's good manufacturing practice requirements, as set forth at 21 C.F.R. Parts 820; and (iv) any applicable state or foreign Laws or regulations governing the distribution medical devices.

(b) Seller and all of the Selling Subsidiaries are in material compliance with all applicable requirements of the FDA and any state or foreign Governmental Entity with authority over the development, investigation, manufacture, labeling, storage, testing, distribution, and marketing of medical devices under the FFDCA, and all applicable similar state and foreign Laws, and each of their applicable implementing regulations, except for such instances of noncompliance which individually or in the aggregate have not had and would have a Material Adverse Effect.

(c) Except as would not have a Material Adverse Effect, Seller and the Selling Subsidiaries have not received, and to the Knowledge of Seller, no licensor or distribution partner of a Product has received, any notice from the FDA or any other Governmental Entity that it has commenced, or threatened to initiate, any action to withdraw approval, place sales, marketing, or production restrictions on, or request the recall of any Product currently marketed by Seller or the Selling Subsidiaries.

(d) There has been and there is no pending, threatened or anticipated, FDA, other federal, state, local, or foreign government agency proceeding or investigation relating to Seller's or the Selling Subsidiaries' development, investigation, manufacture, labeling, storage, testing, distribution, and marketing of any Product, except for such proceedings or investigations which individually or in the aggregate have not had and would have a Material Adverse Effect.

(e) Except as set forth in Schedule 3.11(e) , in the three (3) years preceding the date of this Agreement, none of the Products tested, manufactured, packaged, labeled, marketed, or distributed or sold by or on behalf of Seller or any of the Selling Subsidiaries are or have been subject to a recall or field correction, whether voluntary or otherwise, or are or have been subject to device removal or correction reporting requirements, and neither Seller nor any of the Seller Subsidiaries has received notice, either completed or pending, of any proceeding seeking a recall, removal, or corrective action of any Products, except for such recalls, device removal or correction reporting requirements which individually or in the aggregate have not had and would have a Material Adverse Effect.

(f) Except as set forth on Schedule 3.11(f) , neither Seller, any of the Seller Subsidiaries, nor any employee or agent of Seller or any of the Seller Subsidiaries have made an untrue statement of material fact or fraudulent statement to FDA or any other governmental or regulatory authority with respect to any Product tested, manufactured, distributed, or sold by Seller or any of the Seller Subsidiaries, or failed to disclose a material fact required to be disclosed to any governmental or regulatory authority with respect to any Product, or has ever been investigated by the FDA, National Institutes of Health ("NIH"), Office of the Inspector General for the Department of Health and Human Services ("OIG"), Department of Justice or other comparable governmental authority for data or healthcare program fraud with respect to respect to any Product.

(g) Seller and the Selling Subsidiaries are in possession of all authorizations, licenses, permits, exceptions, consents, approvals, franchises, licenses, variances, exemptions, certificates, product listings, registrations, orders, approvals, clearances and other authorizations of any Governmental Entity necessary for Seller and the Selling Subsidiaries to carry on the Patient Monitoring Business as it is now being conducted (including those which are required for the conduct of its testing, manufacturing, marketing, sales, and distribution activities) (the " Seller Permits "), except where the failure to have any of the Seller Permits would not have a Material Adverse Effect. Except as would not have Material Adverse Effect, all Seller Permits are in full force and effect. As of the date of this Agreement, none of the Seller Permits have been withdrawn, revoked, suspended or cancelled nor is any such withdrawal, revocation, suspension or cancellation pending or, to the Knowledge of Seller, threatened in writing, and Seller has been and is in compliance in all material respects with the terms of the Seller Permits and any conditions placed thereon.

(h) Except as set forth on Schedule 3.11(h) or as would not have a Material Adverse Effect, no Governmental Entity has issued any notice, warning letter, regulatory letter, untitled letter, or other written communication or correspondence to Seller or any of the Selling Subsidiaries, alleging that the Seller or any of the Selling Subsidiaries is or was in violation of any Law, order or Seller Permit applicable to the research, development, testing, manufacturing, packaging, labeling, marketing, distribution, sales, and/or commercialization of any Product by Seller or any of the Selling Subsidiaries, or alleging that Seller or any of the Selling Subsidiaries was or is the subject of any pending or threatened administrative agency or government entity investigation, proceeding, review, or inquiry, or that there are circumstances currently existing which might reasonably be expected to lead to any loss of or refusal to renew any of the Seller Permits held by Seller or any of the Selling Subsidiaries.

Section 3.12 Investigations; Litigation Except as described in Schedule 3.12 or, if adversely determined, would result in a material change in, or limitation on, the conduct or operations of Seller or the Selling Subsidiaries in respect of the Patient Monitoring Business, there are no (a) investigations or proceedings pending (or, to the Knowledge of Seller, threatened) by any Governmental Entity with respect to Seller or any of the Selling Subsidiaries and primarily relating to the Patient Monitoring Business or affecting the Purchased Assets or (b) actions, suits or proceedings pending against Seller or any of the Selling Subsidiaries and primarily relating to the Patient Monitoring Business or affecting the Purchased Assets, and in each case, to Seller's Knowledge, there is no basis for such investigations, proceedings, actions, or suits. There are no orders, judgments or decrees of, any Governmental Entity against Seller or any of the Selling Subsidiaries. Except as set forth on Schedule 3.12 , there is no material unsatisfied judgment, penalty or award against Seller or any of the Selling Subsidiaries, and neither Seller nor any of the Selling Subsidiaries is subject to any orders that have had or would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 3.13 Regulatory Compliance

(a) Since February 1, 2003, there have been no adverse negative past performance evaluations or ratings by the U.S. Government or any other Governmental Entity, or any voluntary disclosures under the Foreign Corrupt Practices Act of 1977 (the " Foreign Corrupt Practices Act ") or any other comparable foreign Law, any enforcement actions or threats of enforcement actions, or facts that, in each case, could result in any adverse or negative performance evaluations related to the Foreign Corrupt Practices Act or any other comparable foreign Law. Neither the U.S. Government nor any other person has notified Seller or any of the Selling Subsidiaries in writing of any actual or alleged violation or breach of the Foreign Corrupt Practices Act or any other comparable foreign Law. Since February 1, 2003, none of Seller and the Selling Subsidiaries has undergone or is undergoing any audit, review, inspection, investigation, survey or examination of records relating to Seller's or any of the Selling Subsidiaries' compliance with the Foreign Corrupt Practices Act or any other comparable foreign Law. Except as would not result in a material change in, or limitation on, the conduct or operations of Seller or the Selling Subsidiaries in respect of the Patient Monitoring Business, Seller and the Selling Subsidiaries are not now, nor since February 1, 2003 has any employee of the Patient Monitoring Business, violated or are in violation of the Foreign Corrupt Practices Act, or are or have been under any administrative, civil or criminal investigation or indictment and are not party to any litigation involving alleged false statements, false claims or other improprieties relating to Seller's or any of the Selling Subsidiaries' compliance with the Foreign Corrupt Practices Act or any other comparable foreign Law;

(b) Except as would not result in a material change in, or limitation on, the conduct or operations of Seller or the Selling Subsidiaries in respect of the Patient Monitoring Business, none of Seller, any of the Selling Subsidiaries or any of their employees is, or since February 1, 2003, has been, in violation of any Law applicable to its business, properties or operations and relating to: (1) the use of corporate funds relating to political activity or for the purpose of obtaining or retaining business; (2) payments to government officials or employees from corporate funds; or (3) bribes, rebates, payoffs, influence payments or kickbacks (including 42 U.S.C. 1320 a-7b(b), as amended or any applicable state anti-kickback or other similar foreign, federal or state Law); and

(c) Except as would not result in a material change in, or limitation on, the conduct or operations of Seller or the Selling Subsidiaries in respect of the Patient Monitoring Business, none of Seller, any of the Selling Subsidiaries or any of their officers, directors or employees have violated or are in violation of, or have been convicted of, charged with or are being investigated for a Medicare, Medicaid or other state health payment program related offense, or been subject to any order or consent decree of, or material criminal or civil fine or penalty imposed by, any Governmental Entity with respect to any such program.

Section 3.14 Taxes Except as would not, individually or in the aggregate, have a Material Adverse Effect, (i) Seller and each of the Selling Subsidiaries have timely filed or caused to be filed (taking into account any extension of time within which to file) all Tax Returns required to be filed by any of them in connection with the Patient Monitoring Business or the Purchased Assets (including, for the avoidance of doubt, Tax Returns of Oasis ) on or before the Closing Date and all such Tax Returns are true, correct and complete; (ii) all Taxes with respect to the Patient Monitoring Business or the Purchased Assets (including, for the avoidance of doubt, Taxes of Oasis ) have been duly and timely paid, other than (A) any unpaid Taxes of Seller or any of the Selling Subsidiaries for the Patient Monitoring Business or the Purchased Assets in respect of any Pre-Closing Tax Period that did not, as of the date of the most recent financial statements contained in the Seller SEC Documents filed prior to the date hereof, exceed the reserve for Taxes (excluding any reserve for deferred Taxes established to reflect timing differences between book and Tax income) for the Patient Monitoring Business or the Purchased Assets set forth in the most recent balance sheet contained therein and (B) any such Taxes as are being contested in good faith and for which adequate reserves have been provided on the Seller's financial statements in accordance with GAAP; (iii) there are no audits, examinations, investigations or other proceedings pending or threatened in writing in respect of Taxes or Tax assessments of Seller or any of the Selling Subsidiaries for the Patient Monitoring Business or the Purchased Assets, each in respect of any Pre-Closing Tax Period; (iv) there are no Liens for Taxes on any of the assets of the Patient Monitoring Business other than Permitted Liens; (v) none of the Purchased Assets to be transferred to Buyer by any of the Selling Subsidiaries are "United States real property interests" within the meaning of Section 897 of the Code; and (vii) Oasis is resident for the purposes of Tax only in the jurisdiction in which it is incorporated and does not have a permanent establishment or permanent representative or other taxable presence in any other jurisdiction; is in full compliance with all terms and conditions of any Tax exemption, Tax holiday or other Tax reduction agreement or order (each, a "Tax Incentive"), and the consummation of the transactions contemplated by this Agreement will not have any adverse effect on the continued validity and effectiveness of any such Tax Incentive.

Section 3.15 Labor Matters Except for such matters which would not have a Material Adverse Effect, neither Seller nor any of the Selling Subsidiaries has received written notice during the past two (2) years of the intent of any Governmental Entity responsible for the enforcement of labor, employment, occupational health and safety or workplace safety and insurance/workers compensation Laws to conduct an investigation of Seller or any of the Selling Subsidiaries relating to the Patient Monitoring Business and, to the Knowledge of Seller, no such investigation is in progress. Except for such matters that would not have a Material Adverse Effect, (a) there are no (and have not been during the two (2) year period preceding the date hereof) strikes or lockouts with respect to any employees of Seller engaged in the Patient Monitoring Business or any of the Selling Subsidiaries; (b) there is no unfair labor practice, labor dispute (other than routine individual grievances) or labor arbitration proceeding pending or, to the Knowledge of Seller, threatened against Seller or any of the Selling Subsidiaries with respect to any employees engaged in the Patient Monitoring Business; and (c) there is no slowdown or work stoppage in effect or, to the Knowledge of Seller, threatened with respect to any employees engaged in the Patient Monitoring Business. Except as set forth on Schedule 3.15 , neither Seller nor any Subsidiaries of Seller is party to any collective bargaining agreement or any other type of collective agreement with any type of local, national or supernational union or other workers' representatives with respect to any employees engaged in the Patient Monitoring Business. To the Knowledge of Seller, no union or other workers' representative is currently engaged in any organizational activities or requests or elections for representation with respect to employees of Seller or any of its Subsidiaries engaged in the Patient Monitoring Business.

Section 3.16 Employee Benefit Plans

(a) Schedule 3.16(a) lists all material Seller Benefit Plans. " Seller Benefit Plans " means all compensation or employee benefit plans, programs, policies, agreements or other arrangements, whether or not "employee benefit plans" (within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (" ERISA "), whether or not subject to ERISA), providing cash- or equity-based incentives, health, medical, dental, disability, accident or life insurance benefits or vacation, severance, retirement, pension or savings benefits, that are sponsored, maintained or contributed to by Seller or any of its Subsidiaries for the benefit of employees on the Agreed List of Employees or any other employees, directors or consultants employed or formerly employed by, or providing services to, the Patient Monitoring Business or its predecessors in the United States and all employment agreements or arrangements providing compensation, vacation, severance or other benefits to any employee on the Agreed List of Employees or any other employee or consultant employed or formerly employed by, or providing services to, the Patient Monitoring Business or its predecessors in the United States. True and complete copies of each Seller Benefit Plan document have been made available to the Buyer.

(b) At no time since December 31, 2001, has Seller or any ERISA Affiliate, been required to contribute, or incurred any withdrawal liability, within the meaning of Section 4201 of ERISA, to any Multiemployer Plan nor does Seller, any Selling Subsidiary or any ERISA Affiliate have any potential withdrawal liability arising from a transaction described in Section 4204 of ERISA, which resulted, or could reasonably be anticipated to result, in a Material Adverse Effect. No Acquired Assets are subject to liens under Section 430(k) the Code or Section 303(k) of ERISA.

(c) Schedule 3.16(c) lists all material Seller Foreign Plans other than plans, programs or contracts which Seller contributes to that are sponsored or maintained by a Governmental Entity. All Seller Foreign Plans maintained, contributed to or sponsored by (or required to be maintained, contributed to or sponsored by) Oasis have been operated, in all material respects, in accordance with their terms and applicable Law, and all material required contributions have been made with respect thereto.

(d) Except for such claims which would not have a Material Adverse Effect, no material action, dispute, suit, claim, arbitration, or legal, administrative or other proceeding (other than claims for benefits in the ordinary course) is pending or, to the Knowledge of Seller, threatened, with respect to any Seller Benefit Plan (other than a "multiemployer plan" (within the meaning of Section 4001(a)(3) of ERISA) (a " Multiemployer Plan ")) by any current or former employee of the Patient Monitoring Business.

(e) Except as would not have a Material Adverse Effect, none of Seller, any Selling Subsidiary or any ERISA Affiliate has incurred or is subject to any liability (contingent or otherwise) under Section 4069 of ERISA, whether as a result of the transactions contemplated by this Agreement or otherwise. Except as would not have a Material Adverse Effect, Seller, the Selling Subsidiaries and the ERISA Affiliates have complied in all respects with Section 4980B of the Code and Part 6 of Title I of ERISA. Schedule 3.16(e) lists all benefit plans maintained or required to be contributed to by Seller or any ERISA Affiliate that have at any time since December 31, 2001 been subject to Title IV of ERISA.

(f) The Savings Plan has been established and administered in compliance with its terms and in compliance with ERISA and the Code to the extent applicable thereto, except for such non-compliance which would not have a Material Adverse Effect. The Seller Savings Plan has received a favorable determination letter from the United States Internal Revenue Service that has not been revoked and to the Knowledge of Seller, no fact or event has occurred since the date of such determination letter from the United States Internal Revenue Service that would affect adversely its qualified status.

(g) All bonuses payable to Transferred Employees (as defined in Section 7.1(a)) for service during the 2007 fiscal year or earlier fiscal years shall have been paid by Seller to such Transferred Employees prior to the Closing Date.

Section 3.17 Environmental Laws and Regulations

(a) Since February 1, 2003, (i) Seller and each of the Selling Subsidiaries have conducted and are currently conducting their respective businesses in material compliance with all applicable Environmental Laws, and possess and are in material compliance with all required Environmental Permits; (ii) to Seller's Knowledge, there has been no release (as such term is defined in CERCLA) of any Hazardous Substance at, on, under, or from any Real Property in any manner that would give rise to any reporting, investigative, or remedial obligation of Seller or any Selling Subsidiaries under applicable Environmental Laws; (iii) neither Seller nor any of the Selling Subsidiaries has received in writing any notices, demand letters or requests for information which remain pending or unresolved from any federal, state, local or foreign or provincial Governmental Entity asserting that Seller or any of the Selling Subsidiaries is in violation of, or liable under, any Environmental Law with respect to the disposal or release at or transportation to any other property of Hazardous Substance generated by Seller or any Selling Subsidiaries; and (iv) neither Seller nor the Selling Subsidiaries are subject to, or, to the Knowledge of Seller, have been threatened with any suit, proceeding, settlement, court order, administrative order, judgment or written claim arising under any Environmental Law which remains pending or unresolved.

(b) Seller has provided to, or made available for review by, Buyer all non-routine, material environmental reports, assessments, studies, investigations or audits in its possession or control relating to the Transferred Real Property.

(c) The representations and warranties in this Section 3.17 are the exclusive representations and warranties in this Agreement with respect to environmental matters, including without limitation, Hazardous Substances and Environmental Laws.

Section 3.18 Insurance As of the date hereof, Seller and each of the Selling Subsidiaries are insured in respect of the Patient Monitoring Business against such losses and risks and in such amounts as are customary in the industry in which the Patient Monitoring Business operates. Neither Seller nor any of the Selling Subsidiaries is in breach or default of any such insurance policies, and no written notice of cancellation or termination has been received with respect to any such policy. No event or condition relating to the Patient Monitoring Business or the Purchased Assets, other than an event or condition included in subparts (a) through (h) of the definition of "Material Adverse Effect" in Section 1.1 , has occurred that, in and of itself, is reasonably likely, after the date of this Agreement, to result in a material upward adjustment in premiums under any insurance policies maintained by Seller and the Selling Subsidiaries.

Section 3.19 Brokerage Fees Except for Lehman Brothers Inc., there is no Person that might be entitled to any brokerage commission, finder's fee or similar compensation in connection with the transactions contemplated by this Agreement based on any arrangement or agreement made by or on behalf of Seller or an Affiliate thereof.

Section 3.20 Relationships with Related Persons Except as disclosed in Schedule 3.20 , no (i) Affiliates of Seller or any of the Selling Subsidiaries (other than wholly-owned Subsidiaries of Seller or any Selling Subsidiary) or (ii) persons with whom such transaction, arrangement, understanding or Contract would be required to be disclosed under Item 404 of Regulation S-K of the Securities Exchange Act of 1934, as amended, has any interest in any Purchased Asset, except in his, her or its capacity as a stockholder of Seller.

**ARTICLE IV REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to Seller as of the date hereof as follows:

Section 4.1 Qualification; Organization

(a) Buyer is a company validly existing and in good standing under the Laws of its jurisdiction of organization. Buyer has all requisite corporate power and authority to own, lease and operate its properties and assets and to carry on its business as presently conducted, except where the failure to have such power or authority would not, individually or in the aggregate, have a Buyer Material Adverse Effect (as defined below). Buyer has furnished to Seller a complete and correct copy of its amended and restated memorandum and articles of association and bylaws as currently in effect

(b) Buyer is qualified to do business and is in good standing as a foreign corporation in each jurisdiction where the ownership, leasing or operation of its assets or properties or conduct of its business requires such qualification, except where the failure to be so qualified or in good standing would not, individually or in the aggregate, prevent or materially delay or materially impede the ability of Buyer to consummate the transactions contemplated hereby (a " Buyer Material Adverse Effect "). The organizational or governing documents of Buyer, as previously provided to Seller, are in full force and effect. Buyer is not in violation of its organizational or governing documents.

Section 4.2 Corporate Authority Relative to this Agreement; No Violation

(a) Buyer has all requisite corporate power and authority to execute and deliver this Agreement, to perform its obligations under this Agreement and to consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by the Board of Directors of Buyer and no other corporate proceedings on the part of Buyer are necessary to authorize the consummation of the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Buyer and, assuming this Agreement constitutes the valid and binding agreement of Seller, this Agreement constitutes the valid and binding agreement of Buyer, enforceable against Buyer in accordance with its terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar Laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding in equity or at Law) and any implied covenant of good faith and fair dealing.

(b) Other than the approvals set forth in Schedule 4.2(b) (collectively, the " Buyer Approvals "), no authorization, consent or approval of, or filing with, any Governmental Entity is necessary in connection with the execution, delivery and performance of this Agreement by Buyer and for the consummation by Buyer of the transactions contemplated by this Agreement. (c) None of the execution, delivery or performance of this Agreement by Buyer, the consummation by Buyer of the transactions contemplated hereby or compliance by Buyer with any of the provisions of this Agreement will (i) violate or conflict with or result in any breach of any provision of the organizational documents of Buyer, or (ii) violate any order, writ, injunction, decree, statute, rule or regulation applicable to Buyer, any of its Subsidiaries, or any of their properties or assets, except (other than in the case of clause (i)) where such violations, breaches or defaults would not, individually or in the aggregate, have a Buyer Material Adverse Effect.

Section 4.3 Investigations; Litigation There are no suits, claims, actions, proceedings, arbitrations, mediations or investigations pending or, to the Knowledge of Buyer, threatened against Buyer or any of its Subsidiaries, that challenges the transactions contemplated by this Agreement, other than any such suit, claim, action, proceeding or investigation that would have, individually or in the aggregate, a Buyer . . . .Material Adverse Effect. As of the date hereof, neither Buyer nor any of its Subsidiaries nor any of their respective properties is or are subject to any order, writ, judgment, injunction, decree or award that would have, individually or in the aggregate, a Buyer Material Adverse Effect.

Section 4.4 Sufficient Funding Buyer has sufficient funds on hand and will have sufficient funds on hand at Closing, to consummate the transactions contemplated by, and to perform its obligations under, this Agreement.

Section 4.5 No Other Information Buyer acknowledges that Seller makes no representations or warranties as to any matter whatsoever except as expressly set forth in Article III. The representations and warranties set forth in Article III are made solely by Seller, and no Representative of Seller shall have any responsibility or liability related thereto.

Section 4.6 Access to Information; Disclaimer Buyer acknowledges and agrees that it (a) has had an opportunity to discuss the Patient Monitoring Business with the management of Seller; (b) has had reasonable access to the books and records of Seller and the Selling Subsidiaries; (c) has been afforded the opportunity to ask questions of and receive answers from officers of Seller; and (d) has conducted its own independent investigation of Seller and the Selling Subsidiaries, the Patient Monitoring Business and the transactions contemplated hereby, and has not relied on any representation, warranty or other statement by any Person on behalf of Seller or any of the Selling Subsidiaries, other than the representations and warranties of Seller expressly contained in Article III of this Agreement and that all other representations and warranties are specifically disclaimed.

Section 4.7 No Approval Required No consent of the holders of any class or series of capital stock of Buyer is necessary to approve this Agreement and the transactions contemplated hereby.

Section 4.8 Brokerage Fees Except for UBS Securities, LLC, there is no Person that might be entitled to any brokerage commission, finder's fee or similar compensation in connection with the transactions contemplated by this Agreement based on any arrangement or agreement made by or on behalf of Buyer or any Affiliate thereof.

**ARTICLE V CONDITIONS TO CLOSING**

Section 5.1 Conditions Precedent to Buyer's Obligations All of the obligations of Buyer hereunder are subject to fulfillment, prior to or at the Closing, of the following conditions (compliance with which or the occurrence of which may be waived in whole or in part by Buyer in writing):

(a) The representations and warranties of Seller contained herein (i) that are not qualified as to materiality or Material Adverse Effect shall be accurate, true and correct in all material respects on and as of the Closing Date, except for such representations and warranties made as of a specified date, which shall be accurate, true and correct in all material respects as of the date specified and (ii) that are qualified as to materiality or Material Adverse Effect shall be accurate, true and correct in all respects on and as of the Closing Date, except for such representations and warranties made as of a specified date, which shall be accurate, true and correct in all respects as of the date specified; and Buyer shall have received a certificate of an officer of Seller dated the Closing Date, certifying that this condition has been satisfied.

(b) Seller shall have performed and complied in all material respects with all the terms, provisions and conditions of this Agreement to be complied with and performed by Seller at or before the Closing, and Buyer shall have received a certificate of an officer of Seller dated the Closing Date, certifying that this condition has been satisfied.

(c) Subject, in the case of matters related to the HSR Act, to Section 6.6. hereto, no statute, rule or regulation shall have been enacted or promulgated by any Governmental Entity, nor shall any suit, action or proceeding have been instituted and remain pending, or have been threatened and remain so by any Governmental Entity at what would otherwise be the Closing Date, which prohibits or restricts or would prohibit or restrict (if successful) the consummation of the transactions contemplated hereby or which would not permit the Patient Monitoring Business as presently conducted to continue materially unimpaired following the Closing Date, and there shall be no order or injunction of a court of competent jurisdiction in effect preventing the consummation of the transactions contemplated hereby. Notwithstanding the foregoing, however, any matters related to the HSR Act shall be governed by Section 6.6 hereto.

(d) Seller shall have received all of the Seller Approvals, including, for the avoidance of doubt: (i) All applicable waiting periods (and any extensions thereof) under the HSR Act shall have expired or otherwise been terminated; (ii) Either (A) the CFIUS shall have provided notice to the effect that review or investigation of the transaction contemplated hereby has been concluded, and that a determination has been made that there are no issues of national security of the United States sufficient to warrant further investigation under the DPA, or (B) the President of the United States shall not have taken action to block or prevent the consummation of the transaction contemplated hereby under the DPA and the applicable period of time for the President to take such action shall have expired; and (iii) Seller shall have fully complied with ISRA to the extent required prior to Closing and delivered to Buyer a "No Further Action" letter, "Negative Declaration," "De Minimis Quantity Exemption" or "Remediation Agreement," as those terms are defined under ISRA from the NJDEP with respect to the Transferred Real Property in New Jersey.

(e) To the extent not covered by (d) above, all other applicable waiting periods (and any extensions thereof) under any other applicable Regulatory Laws will have expired or otherwise been terminated, and the parties hereto will have received all other authorizations, consents and approvals of all Governmental Entities (including under any applicable Regulatory Laws) in connection with the execution, delivery and performance of this Agreement and the transactions contemplated hereby.

(f) (i) Seller shall have obtained the Consents, in form and substance reasonably satisfactory to Buyer, listed on Schedule 5.1(f) , and (ii) such other Consents, in form and substance reasonably satisfactory to Buyer, the failure of which to obtain would, individually or in the aggregate, have a Material Adverse Effect.

(g) There shall have been no Material Adverse Change.

(h) Seller shall have provided Buyer with a properly executed statement in form reasonably acceptable to Buyer for purposes of satisfying Buyer's obligations under Treasury Regulation §1.1445-2(b)(2). To the extent any of the Selling Subsidiaries transfers a "United States real property interest" (within the meaning of Section 897(c)(1) of the Code) to Buyer pursuant to this Agreement, such Selling Subsidiary shall have provided Buyer with a properly executed statement in form reasonably acceptable to Buyer for purposes of satisfying Buyer's obligations under Treasury Regulation §1.1445-2 (the statement in this and the preceding sentence, each, a " FIRPTA Certificate "). If Seller or any of such Selling Subsidiaries fails or refuses to furnish an applicable FIRPTA Certificate, Buyer shall be entitled to withhold from the portion of consideration otherwise payable pursuant to this Agreement at Closing allocable solely to the portion of the Purchased Assets transferred to Buyer directly by Seller or such Selling Subsidiary, as applicable (in each case, as determined for U.S. federal income tax purposes), the amount required to be so withheld from such portion of the consideration pursuant to Section 1445(a) of the Code. (i) Seller and the Selling Subsidiaries shall have duly executed and delivered counterparts of the Transaction Documents.

Section 5.2 Conditions Precedent to Seller's Obligations All of the obligations of Seller hereunder are subject to the fulfillment, prior to or at the Closing, of the following conditions (compliance with which or the occurrence of which may be waived in whole or in part by Seller in writing):

(a) The representations and warranties of Buyer contained herein (i) that are not qualified as to materiality or Material Adverse Effect shall be accurate, true and correct in all material respects on and as of the Closing Date, except for such representations and warranties made as of a specified date, which shall be accurate, true and correct in all material respects as of the date specified and (ii) that are qualified as to materiality or Material Adverse Effect shall be accurate, true and correct in all respects on and as of the Closing Date, except for such representations and warranties made as of a specified date, which shall be accurate, true and correct in all respects as of the date specified; and Seller shall have received a certificate of an officer of Buyer dated the Closing Date, certifying that this condition has been satisfied.

(b) Buyer shall have performed and complied in all material respects with all the terms, provisions and conditions of this Agreement to be complied with and performed by Buyer at or before the Closing; and Seller shall have received a certificate of an officer of Buyer dated the Closing Date, certifying that this condition has been satisfied.

(c) No statute, rule or regulation shall have been enacted or promulgated by any Governmental Entity, nor shall any suit, action or proceeding have been instituted and remain pending, or have been threatened and remain so by any Governmental Entity at what would otherwise be the Closing Date, which prohibits or restricts or would prohibit or restrict (if successful) the consummation of the transactions contemplated hereby, and there shall be no order or injunction of a court of competent jurisdiction in effect preventing the consummation of the transactions contemplated hereby.

(d) Buyer shall have received all of the Buyer Approvals, including, for the avoidance of doubt: (i) All applicable waiting periods (and any extensions thereof) under the HSR Act shall have expired or otherwise been terminated; and (ii) Either (A) the CFIUS shall have provided notice to the effect that review or investigation of the transaction contemplated hereby has been concluded, and that a determination has been made that there are no issues of national security of the United States sufficient to warrant further investigation under the DPA, or (B) the President of the United States shall not have taken action to block or prevent the consummation of the transaction contemplated hereby under the DPA and the applicable period of time for the President to take such action shall have expired.

(e) To the extent not covered by (d) above, all other applicable waiting periods (and any extensions thereof) under any other applicable Regulatory Laws will have expired or otherwise been terminated, and the parties hereto will have received all other authorizations, consents and approvals of all Governmental Entities (including under any applicable Regulatory Laws) in connection with the execution, delivery and performance of this Agreement and the transactions contemplated hereby.

(f) Buyer shall have duly executed and delivered counterparts of the Transaction Documents.

**ARTICLE VI CERTAIN COVENANTS**

Section 6.1 Conduct of Business

(a) From and after the date hereof and prior to the Closing Date or the date, if any, on which this Agreement is earlier terminated pursuant to Article VIII (the " Termination Date "), and except (i) as may be otherwise required by applicable Law; (ii) with the prior written consent of Buyer; (iii) as expressly permitted by this Agreement; or (iv) as disclosed in Schedule 6.1(a) , Seller shall, and shall cause each of the Selling Subsidiaries to, (A) conduct the Patient Monitoring Business in all material respects in the ordinary course consistent with past practice; (B) use commercially reasonable efforts to maintain and preserve intact its present business organization, rights and franchises, goodwill and advantageous business relationships for the Patient Monitoring Business (including relationships with key customers and suppliers) and to retain the services of its key officers and key employees of the Patient Monitoring Business and (C) take no action that is intended to or that would reasonably be expected to materially adversely affect or materially delay the ability of any of the parties hereto from obtaining any necessary approvals of any regulatory agency or other Governmental Entity required for the transactions contemplated hereby, performing its covenants and agreements under this Agreement or consummating the transactions contemplated hereby or otherwise materially delay or prohibit consummation of the transactions contemplated hereby.

(b) Without limiting Section 6.1(a) , Seller agrees with Buyer that from the date of this Agreement until the earlier of (x) the Termination Date and (y) the Closing Date, except as set forth in Schedule 6.1(b) or as otherwise expressly permitted by this Agreement, Seller shall not, and shall not permit any of the Selling Subsidiaries to, without the prior written consent of Buyer:

(i) make any new capital expenditures for the Patient Monitoring Business not contemplated by the capital expenditure budget for the Patient Monitoring Business having an aggregate value in excess of $1 million for any consecutive 12-month period, except as set forth in Schedule 6.1(b) ;

(ii) allow the levels of raw materials, supplies or other materials included in the Inventory to vary materially from the levels customarily maintained;

(iii) incur, assume, guarantee, or become obligated with respect to any debt, excluding intercompany debt in an amount not to exceed $5 million, other than pursuant to Seller's existing credit facilities or under short-term debt or overdraft facilities, in each case as in effect as of the date hereof;

(iv) except in the ordinary course of business but provided that Seller first consults with Buyer, enter into, renew, extend, materially amend or terminate any Material Contract or Contract which if entered into prior to the date hereof would be a Material Contract;

(v) except to the extent required by Law (including Section 409A of the Code) or by Contracts or by Seller Benefit Plans or by Seller Foreign Plans in existence as of the date hereof or as disclosed in Schedule 6.1(b) , (A) increase the compensation or benefits of any of the employees of the Patient Monitoring Business or on the Agreed List of Employees except in the ordinary course of business; (B) pay any pension, severance or retirement benefits to any employees of the Patient Monitoring Business or on the Agreed List of Employees not required by any existing plan or agreement; or (C) enter into any material compensation or benefit plan, program, policy, arrangement or agreement with any employees of the Patient Monitoring Business or on the Agreed List of Employees;

(vi) waive, release, assign, settle or compromise any material claim, action or proceeding in respect of the Patient Monitoring Business or the Purchased Assets, other than in the ordinary course of business but provided that Seller first consults with Buyer prior to any such waiver, release, assignment, settlement or compromise;

(vii) take any action that is intended or would reasonably be expected to result in any of the conditions to the Closing set forth in Article V not being satisfied or materially delaying the satisfaction of such conditions;

(viii) implement or adopt any material change in its Tax or financial accounting principles, practices or methods for the Patient Monitoring Business (including with respect to Oasis ), other than as required by GAAP, applicable Law or regulatory guidelines;

(ix) with respect to Oasis , (A) make or change any Tax election, (B) adopt or change any method of Tax accounting, (C) file any amended Tax Return or (C) surrender any right to claim a Tax refund, or offset or other reduction in Tax liability;

(x) make any acquisition (by merger, consolidation, acquisition of stock or assets or otherwise) of any Person, or make any loan, advance, capital contribution to, or investment in, any other Person and that relates to, or following such transaction, would constitute part of, the Patient Monitoring Business, except purchases of inventory, components or, property, plant or equipment (including engineering development equipment) in the ordinary course of business; provided, that, the actions listed on Schedule 6.1(b) shall not be deemed to be prohibited by this Section 6.1(b);

(xi) dispose of, or create any Lien on any Purchased Assets (other than the sale of Inventory in the ordinary course of business);

(xii) fail to pay any premiums due and payable for material insurance policies and/or fail to use commercially reasonable efforts to keep material insurance policies in full force and effect; and

(xiii) agree to take, make any commitment to take, or adopt any resolutions of its Board of Directors in support of, any of the actions prohibited by this Section 6.1(b). (c) From and after the date hereof and prior to the Closing Date or the Termination Date, if any, and except (i) as may be otherwise required by applicable Law or (ii) as expressly contemplated or permitted by this Agreement, Buyer shall take no action that is intended to or that would reasonably be expected to materially adversely affect or materially delay the ability of any of the parties hereto from obtaining any necessary approvals of any regulatory agency or other Governmental Entity required for the transactions contemplated hereby, performing its covenants and agreements under this Agreement or consummating the transactions contemplated hereby or otherwise materially delay or prohibit consummation of the transactions contemplated hereby.

Section 6.2 Investigation

(a) From the date hereof until the Closing Date and subject to the requirements and prohibitions of applicable Laws, Seller shall (i) provide to Buyer, its counsel, financial advisors, auditors and other authorized representatives prompt reasonable access during normal business hours to the offices, properties (including for the purpose of conducting a Phase I site assessment), books and records of Seller and the Selling Subsidiaries for the Patient Monitoring Business; (ii) furnish to Buyer, its counsel, financial advisors, auditors and other authorized representatives such financial and operating data and other information regarding the Patient Monitoring Business as such persons may reasonably request and (iii) instruct the employees, counsel, financial advisors, auditors and other authorized representatives (other than directors who are not employees) of Seller and the Selling Subsidiaries to cooperate reasonably during normal business hours with Buyer in its investigation of the Patient Monitoring Business, except that nothing herein shall require Seller or any of the Selling Subsidiaries to disclose any information that would reasonably be expected to involve any sampling for Hazardous-Substances or cause a risk of a loss of privilege to Seller or any of the Selling Subsidiaries and, in all cases, will be at the expense of Parent. Any investigation pursuant to this Section 6.2(a) shall be conducted in such manner as not to interfere unreasonably with the conduct of the Patient Monitoring Business. No information or knowledge obtained by Buyer in any investigation pursuant to this Section 6.2(a) shall affect or be deemed to modify any representation or warranty made by Seller in Article III.

(b) Buyer hereby agrees that all information provided to it or its counsel, financial advisors, auditors and other authorized representatives in connection with this Agreement and the consummation of the transactions contemplated hereby shall be treated in accordance with, the Confidentiality Agreement as if it had been provided prior to the date of this Agreement.

Section 6.3 Control of Operations Without in any way limiting any party's rights or obligations under this Agreement, the parties understand and agree that (a) nothing contained in this Agreement shall give Buyer, directly or indirectly, the right to control or direct the Patient Monitoring Business prior to the Closing and (b) prior to the Closing, Seller and the Selling Subsidiaries shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over the operation of the Patient Monitoring Business.

Section 6.4 Notification of Certain Matters The parties hereto shall give prompt notice to each other of

(a) any notice or other communication received by such party from any Governmental Entity in connection with the transactions contemplated hereby or from any person alleging that the consent of such person is or may be required in connection with the transactions contemplated hereby;

(b) any actions, suits, claims, investigations or proceedings commenced or, to such party's Knowledge, threatened against, relating to or involving or otherwise affecting such party or any of its Subsidiaries which relate to the transactions contemplated hereby; and

(c) the discovery of any fact or circumstance that, or the occurrence or non-occurrence of any event the occurrence or non-occurrence of which, would cause or result in any of the conditions to the Closing set forth in Article V not being satisfied or satisfaction of those conditions being materially delayed; provided , however , that the delivery of any notice pursuant to this Section 6.4 shall not (x) cure any breach of, or non-compliance with, any other provision of this Agreement or (y) limit the remedies available to the party receiving such notice.

Section 6.5 Public Announcements Seller and Buyer will consult with and provide each other the opportunity to review and comment upon any press release or other public statement or comment prior to the issuance of such press release or other public statement or comment relating to this Agreement or the transactions contemplated hereby and shall not issue any such press release or other public statement or comment prior to such consultation except as may be required by applicable Law or by obligations pursuant to any listing agreement with any national securities exchange.

Section 6.6 Third Party Consents; Regulatory Approvals; Access

(a) Subject to the provisions of this Agreement, each of the parties hereto shall use its reasonable best efforts to take promptly, or to cause to be taken, all actions, and to do promptly, or to cause to be done, and to assist and to cooperate with the other parties in doing, all things necessary, proper or advisable under applicable Laws to consummate and make effective the transactions contemplated hereby, including (i) the obtaining of all necessary actions or nonactions, waivers, consents, clearances, approvals and expirations or terminations of waiting periods from Governmental Entities and the making of all necessary registrations and filings and the taking of all steps as may be necessary to obtain an approval, clearance, or waiver from, or to avoid an action or proceeding by, any Governmental Entity, including the Seller Approvals and the Buyer Approvals; (ii) the obtaining of all necessary consents, approvals or waivers from third parties; (iii) the defending of any lawsuits or other legal proceedings, whether judicial or administrative, challenging this Agreement or the consummation of the transactions contemplated hereby; and (iv) the execution and delivery of any additional instruments reasonably necessary to consummate the transactions contemplated hereby; provided, however, that in no event shall Seller be required to pay prior to the Closing any material fee, penalties or other consideration to any third party to obtain any consent or approval required for the consummation of the transactions contemplated hereby under any Contract.

(b) Subject to the provisions of this Agreement, Seller and Buyer shall (i) promptly, but in no event later than ten (10) Business Days after the date hereof, and in any event, prior to the expiration of any applicable legal deadline, file any and all Notification and Report Forms required under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the " HSR Act ") and make any other filings under any other applicable Regulatory Law, with respect to the transactions contemplated hereby, and use reasonable best efforts to cause the expiration or termination of any applicable waiting periods under the HSR Act and any other applicable Regulatory Law; (ii) use reasonable best efforts to cooperate with each other in (A) determining whether any filings are required to be made with, or consents, permits, authorizations, waivers, clearances, approvals, and expirations or terminations of waiting periods are required to be obtained from, any third parties or other Governmental Entities in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby and (B) timely making all such filings and timely obtaining all such consents, permits, authorizations or approvals; (iii) supply to any Governmental Entity as promptly as practicable any additional information or documents that may be requested pursuant to any Regulatory Law or by such Governmental Entity; and (iv) use reasonable best efforts to take, or cause to be taken, all other actions and do, or cause to be done, all other things necessary, proper or advisable to consummate and make effective the transactions contemplated hereby within one hundred eighty (180) days of the date hereof. Without limiting the foregoing, such reasonable best efforts shall include, but are not limited to, taking all such further action as may be necessary to resolve such objections, if any, including the divestiture of the assets of Buyer, without limitation, as the United States Federal Trade Commission, the Antitrust Division of the United States Department of Justice, state antitrust enforcement authorities or competition authorities of any other nation or other jurisdiction or any other person may assert under Regulatory Law with respect to the transactions contemplated hereby.

(c) Notwithstanding the timeframe in Section 6.6(b), Seller and Buyer shall cooperate to enable the parties to jointly prepare and file, as soon as practicable after execution of this Agreement by both parties, and in any event within twenty (20) Business Days following the date hereof, with CFIUS, a notice of the transactions contemplated by this Agreement and the transactions contemplated hereby, and shall furnish any supplemental information requested by CFIUS in connection therewith pursuant to the DPA, and the applicable regulations thereto.

(d) Subject to applicable legal limitations and the instructions of any Governmental Entity, Seller and Buyer shall keep each other apprised of the status of matters relating to the completion of the transactions contemplated hereby, including promptly furnishing the other with copies of notices or other communications received by Seller or Buyer, as the case may be, or any of their respective Affiliates, from any third party and/or any Governmental Entity with respect to such transactions. Seller and Buyer shall permit counsel for the other party reasonable opportunity to review in advance, and consider in good faith the views of the other party in connection with, any proposed written communication to any Governmental Entity. Each of Seller and Buyer agrees not to participate in any substantive meeting or discussion, either in person or by telephone, with any Governmental Entity in connection with the transactions contemplated hereby unless it consults with the other party in advance and, to the extent not prohibited by such Governmental Entity, gives the other party and its counsel the opportunity to attend and participate.

(e) Subject to and in furtherance and not in limitation of the covenants of the parties contained in this Section 6.6, if any administrative or judicial action or proceeding, including any proceeding by a private party, is instituted (or threatened to be instituted) challenging the transactions contemplated by this Agreement as violative of any Regulatory Law, each of Seller and Buyer shall cooperate in all respects with each other and shall use their respective reasonable best efforts to contest and resist any such action or proceeding and to have vacated, lifted, reversed or overturned any decree, judgment, injunction or other order, whether temporary, preliminary or permanent, that is in effect and that prohibits, prevents or restricts consummation of the transactions contemplated hereby.

Section 6.7 Industrial Site Recovery Act Seller shall comply in all respects at its sole expense with the New Jersey Industrial Site Recovery Act (" ISRA ") with respect to all real properties owned, leased or operated in New Jersey by Seller and/or any of its Selling Subsidiaries in connection with the transactions contemplated by this Agreement prior to the Closing Date or the Termination Date, to the extent applicable, including without limitation, preparing, filing and executing all required notices, forms and agreements with the New Jersey Department of Environmental Protection ("Seller's ISRA Obligations ") and shall comply in all respects at its sole expense with any Environmental Laws applicable to any release of Hazardous Substances identified in Buyer's Phase I Environmental Site Assessment of the Transferred Real Property located in Orlin, New Jersey (" Seller's Additional Environmental Obligations "); provided, however:

(a) Seller's ISRA Obligations and Seller's Additional Environmental Obligations shall be limited to meeting the Appropriate Remediation Standard. To the extent acceptable to Governmental Entities, the parties agree to utilize institutional controls and engineering controls (including, without limitation, capping, signs, fences and deed restrictions on the use of real property or groundwater) to meet the Appropriate Remediation Standard and to cooperate in obtaining all necessary approvals of the use of such controls.

(b) Seller's ISRA Obligations and Seller's Additional Environmental Obligations shall not include the investigation or remediation of any release of Hazardous Substances occurring on or after the Closing Date or to the extent such investigation or remediation results or arises from Buyer's exacerbation of any release of Hazardous Substances which occurred prior to the Closing Date.

(c) After the Closing Date, Buyer shall provide Seller, and Seller's consultants, contractors, agents and representatives with reasonable access to the Transferred Real Property in Mahwah, New Jersey, to allow Seller to complete Seller's ISRA Obligations and Seller's Additional Environmental Obligations at reasonable times and upon reasonable advance notice.

(d) After the Closing Date, Seller shall take reasonable precaution to minimize any interference with or disruption of Buyer's operations at the Transferred Real Property in Mahwah, New Jersey caused by Seller's ISRA Obligations and Seller's Additional Environmental Obligations.

(e) Seller shall keep Buyer reasonably informed of the progress of Seller's ISRA Obligations and Seller's Additional Environmental Obligations, including providing Buyer with copies of material correspondence and reports submitted to any Governmental Entity and any correspondence received from any Governmental Entity.

**ARTICLE VII POST-CLOSING COVENANTS**

Section 7.1 Employee Matters

(a) Effective as of the Closing, the employees listed on the Agreed List of Employees shall become employees of Buyer on terms of employment in accordance with Section 7.1(b) below. All such employees who become employed by Buyer or one of its Subsidiaries effective as of the Closing or thereafter are hereinafter referred to as the " Transferred Employees ." Employment with Buyer of Transferred Employees shall commence immediately on the Closing Date, except that employment of individuals on leave of absence or short-term disability leave, maternity leave, salary continuation and extension type of leave, military leave or workers compensation (" Leave Employees "), except as otherwise provided by Law, shall become effective as of the date they first present themselves for active work with the Buyer; provided, however, that Buyer, except to the extent otherwise required by Law, shall have no obligation to hire Leave Employees unless such individuals first present themselves for active work with Buyer within six (6) months following the Closing Date. For purposes hereof, Leave Employees who accept an offer of employment from Buyer shall be deemed to be Transferred Employees as of the date they accept employment with Buyer.

(b) For the period ending on December 31st of the calendar year immediately following the calendar year that includes the Closing Date (the " Continuation Period "), Buyer shall provide, or shall cause to be provided, to each Transferred Employee, compensation and benefits that are substantially comparable, in the aggregate, to the compensation and benefits provided to Transferred Employees immediately before the Closing (excluding any retiree welfare benefits, compensation or benefits provided pursuant to equity-based awards or any defined benefit plans and any payments or benefits that would become payable upon a change of control of Seller). Notwithstanding any other provision of this Agreement to the contrary, (A) Buyer shall or shall cause its Subsidiaries to provide the Transferred Employees whose employment with Buyer terminates during the Continuation Period with severance benefits that are at least equal to levels of base salary provided as severance under Seller's broad-based severance policy as such policy is in effect immediately prior to the Closing (to the extent that the benefits under such policy as of the Closing Date are not more generous than the benefits provided thereunder as of the date of this Agreement), as set forth on Schedule 7.1(b) and (B) during such Continuation Period, severance benefits offered by Buyer to the Transferred Employees shall be determined without taking into account any reduction after the Closing in base salary paid to the Transferred Employees. The Buyer Savings Plan described in Section 7.1(e) shall be a savings-type defined contribution plan intended to be tax-qualified under Section 401(a) of the Code and shall accept rollover contributions and provide a loan feature.

(c) For all purposes (including purposes of vesting, eligibility to participate, benefit accrual and level of benefits) under the employee benefit plans of Buyer and its Subsidiaries providing benefits to any Transferred Employees established during the Continuation Period (the " New Plans "), each Transferred Employee shall be credited with his or her years of service with the Seller before the Closing, provided that the foregoing shall not apply with respect to benefit accrual under any defined benefit pension plan or to the extent that its application would result in a duplication of benefits with respect to the same period of service. All such periods of employment have been provided to Buyer, specified by employee, prior to the Closing Date. In addition, and without limiting the generality of the foregoing, (A) each Transferred Employee shall be immediately eligible to participate, without any waiting time, in any and all New Plans to the extent coverage under such New Plan is analogous to a Seller Benefit Plan or Seller Foreign Plan in which such Transferred Employee participated immediately before the consummation of the transactions contemplated hereby and (B) for purposes of each New Plan providing medical, dental, pharmaceutical and/or vision benefits to any Transferred Employee, Buyer shall cause all pre-existing condition exclusions and actively-at-work requirements of such New Plan to be waived for such Transferred Employee and his or her covered dependents, unless such conditions would not have been waived under the analogous plan of Seller or the Selling Subsidiaries in which such Transferred Employee participated immediately prior to the Closing and Buyer shall cause any eligible expenses incurred by such Transferred Employee and his or her covered dependents under the Seller Benefit Plan or Seller Foreign Plan to be taken into account under the corresponding New Plan for purposes of satisfying all deductible, coinsurance and maximum out-of-pocket requirements applicable to such Transferred Employee and his or her covered dependents for the applicable plan year as if such amounts had been paid in accordance with such New Plan.

(d) Buyer and Seller agree to use the "alternate procedure" specified in Revenue Procedure 2004-53 for reporting the wages of the Transferred Employees and the payment of FICA taxes with respect to the Transferred Employees. As soon as administratively feasible following the Closing Date, Seller shall provide Buyer the information required for reporting wages on Form W-2 for each Transferred Employee for the year in which the Closing Date occurs.

(e) As soon as reasonably practical following the Closing Date, Buyer shall establish a defined contribution plan (or cover Transferred Employees under an existing defined contribution plan sponsored by Buyer) (the " Buyer Savings Plan ") for the benefit of Transferred Employees who, as of the Closing Date, are participants in the Amended and Restated Infoyield Corp. 401(k) Savings and Supplemental Retirement Plan of Seller (the " Savings Plan "). Seller shall fully vest all Transferred Employees in their account balances under the Savings Plan and all other retirement plans of Seller or the Selling Subsidiaries (as set forth on Schedule 7.1(e) ) intended to qualify under Section 401(a) of the Code as of the Closing Date. As soon as practical following the Closing Date (the " Transfer Date "), in accordance with Code Section 414(1), Seller shall cause the trustee of the Savings Plan to transfer directly to the Buyer Savings Plan to transfer the full account balances of each of the Transferred Employees who is a participant under the Savings Plan valued as of the valuation date under the Savings Plan coincident with the Transfer Date or the Business Day immediately preceding the Transfer Date. The value of the account balance of each Transferred Employee will be transferred in cash and marketable securities (or such other form as may be agreed by Buyer and Seller) to the Buyer's Savings Plan, except that the value of any outstanding participant loans, which any such Transferred Employee has as of the Transfer Date will be transferred in kind. Notwithstanding that the Closing will occur prior to the Transfer Date, the Savings Plan will not default any outstanding loan of any Transferred Employee, whose account balance under the Savings Plan will be transferred to the Buyer Savings Plan pursuant to this Section 7.1(e). In no event, however, shall such transfer take place until the furnishing to Buyer by Seller of a favorable determination letter from the Internal Revenue Service with respect to the qualification of the Savings Plan under Section 401(a) of the Code on which Seller is entitled to rely as of the Transfer Date.

(f) Seller and Buyer shall reasonably cooperate, to the extent permitted by Law, with Buyer's attempts to obtain information relating to the Transferred Employees employment with the Patient Monitoring Business, excluding making available to Buyer such employees' personnel files and performance evaluations (all of which files and evaluations shall be- transferred as of the Closing). To the extent permitted by Law, Seller and Buyer shall provide each other with access to information necessary in order to carry out the provisions of this Section 7.1, including, without limitation, making available all information regarding base wages, compensation and bonus and benefit entitlements of the individuals on the Agreed List of Employees during their employment with Seller as of the date of this Agreement.

(g) Seller shall retain liability for all earned but untaken vacation and/or paid time off credited to each Transferred Employee by Seller or the Selling Subsidiaries as of the Closing Date.

(h) Nothing in this Section 7.1 or any other provision of this Agreement (i) shall be construed to modify, amend or, except as is otherwise provided in Section 7.1(b) with respect to Buyer's 401(k) plan, establish any benefit plan, program, or arrangement or in any way limit, and Seller and Selling Subsidiaries shall take no action after the date hereof that would limit, the ability of the parties hereto or any other Person to modify, amend, or terminate any of the Seller Benefit Plans, Seller Foreign Plans or New Plans as may be allowed under the terms of such plans or applicable Law or (ii) confers or is intended to confer upon any Transferred Employee (or any beneficiary or dependent thereof) any rights, including any right to employment or continued employment for any period of time by reason of this Agreement, or any right to a particular term or condition of employment, compensation or benefits.

Section 7.2 Books and Records; Access

(a) Seller agrees to deliver, or cause to be delivered, to Buyer as soon as practicable after the Closing, copies of all material books, records and other documents of Seller or its Affiliates to the extent related to the Patient Monitoring Business and the Purchased Assets as Buyer may reasonably request; provided that any portions thereof that do not relate to the Patient Monitoring Business or the Purchased Assets may be redacted from the copies delivered to Buyer. From and after the Closing, Seller will permit Buyer and its duly authorized representatives access, during normal business hours and upon reasonable notice, to all Contracts, books, records and other data of Seller or its Affiliates to the extent relating to the Purchased Assets and Assumed Liabilities conveyed and assumed at the Closing (to the extent that such Contracts, books, records and data were not previously delivered to Buyer); provided that any portions thereof that do not relate to the Patient Monitoring Business or the Purchased Assets may be redacted from the copies to which such access is permitted. In addition, Seller agrees that, from and after the Closing, Buyer or its authorized representatives may, at Buyer's cost and expense, make copies of Seller's or its Affiliates' books and records (or redacted portions thereof) to the extent related to the Patient Monitoring Business, including the pricing information of the Products, to the extent that such books and records were not delivered to Buyer.

(b) From and after the Closing Date and for a period of seven (7) years, in connection with the preparation of Tax Returns (including Tax Returns relating to the calendar year in which the Closing occurs) or in connection with any Tax, regulatory or accounting investigation, inquiry or review or any pending or threatened third party action or injury that is related to the ownership of the Purchased Assets or the operation of the Patient Monitoring Business prior to the Closing, upon reasonable prior notice, and except as determined in good faith to be appropriate to ensure compliance with any applicable Laws and subject to any applicable privileges (including the attorney-client privilege) and contractual confidentiality obligations, the Buyer shall, and shall cause Oasis and its representatives to, (i) afford Seller and its Affiliates reasonable access, during normal business hours, to the offices, properties, books and records of the Buyer and Oasis in respect of Oasis , the Patient Monitoring Business, the Purchased Assets and the Assumed Liabilities, (ii) furnish to Seller and its Affiliates such additional financial and other information regarding Oasis , the Patient Monitoring Business, the Purchased Assets and the Assumed Liabilities as Seller may from time to time reasonably request and (iii) make available to Seller and its Affiliates the employees of Buyer and Oasis in respect of Oasis , the Patient Monitoring Business, the Purchased Assets and the Assumed Liabilities whose assistance, expertise, testimony, notes and recollections or presence is necessary to assist Seller in connection with Seller's inquiries for any of the purposes referred to above, including, at Seller's sole cost, the presence of such persons as witnesses in hearings or trials for such purposes; provided , however , that such investigation shall not unreasonably interfere with the business or operations of Buyer or any of its Affiliates; and provided further , that the external auditors and accountants of Buyer or its Affiliates shall not be obligated to make any work papers and data available to any Person unless and until such Person has signed a customary confidentiality agreement relating to such access to work papers in form and substance reasonably acceptable to such auditors or accountants. Seller shall be obligated to pay for Buyer's costs in satisfying any of its obligations pursuant to this Section 7.2(b).

(c) The rights under this Section 7.2 to receive, copy or have access to Contracts, books, records, Tax Returns, work schedules and other documents and data shall survive until the later to occur of the expiration of the statute of limitations for the imposition of Tax with respect to the years to which such Contracts, books, records, documents and data pertain, or seven (7) years from the year to which such Contracts, books, records, documents and data pertain, provided that such access or copying shall not unduly interfere with the business and affairs of the party or applicable Affiliate(s) permitting such access or copying. Neither party shall be obligated hereunder to disclose to the other party any information the disclosure of which would violate any Law.

Section 7.3 Insurance As of the Closing Date the coverage under all insurance policies related to the Patient Monitoring Business shall continue in force only for the benefit of Seller and its Affiliates, and not for the benefit of Buyer or its Affiliates. As of the Closing Date Buyer agrees to arrange for its own insurance policies with respect to the Purchased Assets and the Assumed Liabilities covering all periods and agrees not to seek, through any means, to benefit from any of Seller's or its Affiliates' insurance policies which may provide coverage for claims relating in any way to the Patient Monitoring Business.

Section 7.4 Payments from Third Parties In the event that, on or after the Closing Date, either party shall receive any payments or other funds due to the other pursuant to the terms hereof or otherwise, then the party receiving such funds shall promptly forward such funds to the proper party. The parties acknowledge and agree there is no right of offset regarding such payments and a party may not withhold funds received from third parties for the account of the other party in the event there is a dispute regarding any other issue under this Agreement.

Section 7.5 Further Assurances

(a) Each of Buyer and Seller shall use commercially reasonable efforts to cause all conditions to its and the other parties' obligations hereunder to be timely satisfied and to perform and fulfill all obligations on its part to be performed and fulfilled under this Agreement and the other Transaction Documents to which it is a party, to the end that the transactions contemplated herein shall be effected substantially in accordance with its terms as soon as reasonably practicable. Each of Buyer and Seller shall execute and deliver during the Transfer Period such further certificates, agreements and other documents and take such other actions as the other party may reasonably request to consummate or implement the transactions contemplated hereby or under the other Transaction Documents or to evidence such events or matters, including (i) transferring to Buyer any Purchased Assets which was not transferred to Buyer at the Closing Date and any asset, right, benefit or other property which is not a Purchased Asset but that the parties mutually agree to transfer to Buyer and (ii) transferring back to Seller any asset, right, benefit or other property which is not a Purchased Asset but was transferred to Buyer at Closing.

(b) Seller agrees to use reasonable efforts, and instruct its employees, auditors or other authorized representatives to use reasonable efforts, to cooperate with requests to furnish to Buyer, auditors or other authorized representatives of Buyer financial information regarding the Patient Monitoring Business as such persons may reasonably request for the purposes of Buyer's preparation of standalone historical financial statements in respect of the Patient Monitoring Business.

(c) At any time from the Effective Date through the Transfer Period, upon the request of Buyer, the parties shall meet to discuss in good faith any concerns over the completeness of the lists of patent applications included in the schedule of Transferred Patent Rights. If the parties determine that any unpublished patent application owned by Seller or the Selling Subsidiaries as of the Effective Date exclusively relates to the Patient Monitoring Business (as determined based on the independent claims of such application) and has been omitted from such schedule, the parties shall amend such schedule to include such omitted unpublished patent applications. If the parties determine that any unpublished patent application owned by Seller or the Selling Subsidiaries as of the Effective Date primarily relates to the Patient Monitoring Business (as determined based on the independent claims of such application) and has been omitted from such schedule, the parties shall work together in good faith to put in place appropriate arrangements between the parties relating to such unpublished patent applications, including licenses thereto.

(d) All cash collected on or after the Closing Date with respect to Accounts Receivable which constitute Excluded Assets shall belong to, and if received by Buyer and/or any of its Affiliates, shall be received for the benefit and the account of, Seller, and Buyer shall (and shall cause each of their respective Affiliates to), on a weekly basis, transfer and remit to Seller all such amounts received by or paid to Buyer and/or any of their Affiliates. By way of clarification, to the extent Buyer and/or any of its Affiliates receives cash from a distributor which has accounts receivables owing to Buyer and/or any of its Affiliates and Accounts Receivable owing to Seller, such cash (to the extent of the outstanding Accounts Receivable from such distributor) shall be received for the benefit and the account of, Seller, and Buyer shall (and shall cause each of their respective Affiliates to), on a weekly basis, transfer and remit to Seller all such amounts.

Section 7.6 Tax Matters

(a) Seller shall timely file, or cause to be filed, all Tax Returns (other than Income Tax Returns) related to the Purchased Assets (solely for purposes of this Section 7.6 and except as otherwise provided in Section 7.6(b), the term "Purchased Assets" shall exclude the Oasis Stock) and all Tax Returns of Oasis required to be filed by Seller, the Selling Subsidiaries, or Oasis on or before the Closing Date (after taking into account any extensions) and shall pay all Taxes shown due on such Tax Returns. Buyer shall timely file, or cause to be filed, (i) all Tax Returns related to the Purchased Assets (other than Income Tax Returns) and (ii) all Tax Returns of Oasis for the taxable periods, or portions thereof, ending on, before or including the Closing Date which have not been filed prior to or on the Closing Date and Buyer shall remit to the proper taxing authority all Taxes shown due thereon.

(b) Buyer shall not have the right to file any amended Tax Return with regard to the Purchased Assets or Oasis for any Pre-Closing Tax Period (other than a Straddle Period) without Seller's consent. Seller shall have the right to file any amended Tax Returns with regard to the Purchased Assets or Oasis with respect to any Pre-Closing Tax Period (other than a Straddle Period). Either party shall have the right to file an amended Tax Return with regard to the Purchased Assets with respect to any Straddle Period, provided that in the event that any such filing proposed by one party would affect the obligations of the other party under this Agreement, then the party proposing to amend such Tax Return shall obtain the written consent of the other party, which consent shall not be unreasonably withheld. Notwithstanding any other provision in this Section 7.6, Seller shall not have the right to file any amended Tax Return with regard to the Purchased Assets (including, for this purpose, Oasis Stock) for any Pre-Closing Tax Period if such amendment is reasonably likely to result in increased Taxes to Buyer, unless Buyer consents.

(c) With respect to Tax refunds: (i) Seller shall be entitled to any refunds or credits (including interest paid therewith) received in respect of any Tax liability (x) of Oasis or (y) with regard to the Purchased Assets, in each case in respect of any Pre-Closing Tax Period; provided that Seller shall not be entitled to any such refund or credit- (including interest paid therewith) to the extent such refund or credit was taken into account in determining the Estimated Closing Date Net Working Capital or any adjustment thereto under Section 2.11 hereto or otherwise to the extent Buyer actually pays the Tax for which such refund or credit is owed. (ii) Except as provided in Section 7.6(c)(i), Buyer shall be entitled to any refunds (including interest paid therewith) in respect of any Tax liability of Oasis or with regard to the Purchased Assets. (iii) Notwithstanding anything to the contrary herein, if a Taxing Authority subsequently disallows any item or refund with respect to which a party has received payment from the other party pursuant to this Section 7.6(c), such recipient party shall promptly pay (or cause to be paid) to the other party the full amount of such item or refund (including any interest paid therewith).

(d) For purposes of this Agreement, income, deductions, and other items in respect of a Straddle Period shall be calculated by treating the Closing Date as the last day of a taxable period, and the portion of any such Tax that is allocable to the taxable period that is so deemed to end on and include the Closing Date shall be allocated based on an actual closing of the books of the relevant entity as of the Closing Date; provided , however , that in closing books, Taxes (such as Property Taxes) that are not imposed on income, receipts, or otherwise on a transactional basis and exemptions, allowances or deductions that are calculated on an annual basis (including but not limited to, depreciation and amortization deductions) shall be allocated on a daily basis.

(e) Nothing contained in this Agreement shall prohibit Seller, prior to the Closing Date, from making, or causing to be made, an election under Treasury Regulation section 301.7701-3 with respect to Oasis .

(f) Buyer shall not make, or cause to be made, an election under Treasury Regulation section 301.7701-3 with respect to Oasis that goes into effect, and as to which the transactions described in Treasury Regulation section 301.7701-3(g) occur, on or prior to the Closing Date without the consent of Seller.

(g) With the consent of Seller, which consent may be granted or withheld by Seller in its sole discretion, Buyer shall not make, nor allow any Affiliate to make, the election permitted to be made under Section 338(g) of the Code with respect to Oasis (the " Oasis 338 Election "). However, if requested by Seller, Buyer shall, at Seller's expense, make the Oasis 338 Election. If the Oasis 338 Election is made, Buyer shall provide written notice to Seller of the filing of such election, which notice shall contain the information required by Treasury Regulations section 1.338-2(e)(4), and shall be furnished in the time and manner set forth therein.

(h) Buyer shall not, and shall not permit any Affiliate to, during the period from the Closing until December 31, 20XX , cause Oasis to (i) enter into a transaction which would directly or indirectly result, for United States federal income tax purposes, in a dividend distribution to Buyer or its Affiliates or an inclusion to income to Seller for U.S. tax purposes or (ii) engage in any activity or transaction which could be considered out of the ordinary course of business for Oasis for the calendar year that includes the Closing Date. In addition, Buyer agrees that it shall promptly provide Seller with any information reasonably requested by Seller related to the foreign tax credits claimed by, or available to, Seller (or the affiliated group of which Seller is the parent). If Buyer, in accordance with Section 7.6(g), makes the Oasis 338 Election, then Buyer's obligations in the first sentence of this Section 7.6(h) shall be null and void.

Section 7.7 Covenant Not to Compete

(a) Seller agrees that for a period (such period, the " Non-Compete Expiration Date ") between the Closing Date and the earliest to occur of (i) the third anniversary of the Closing Date; (ii) the first anniversary of the date of a Buyer Change of Control; and (iii) the first anniversary of the date of a Seller Change of Control, Seller shall not, and shall cause its Affiliates not to, directly or indirectly, manage, operate, control, engage or acquire any ownership interest in any firm, corporation, partnership, proprietorship or other business entity that engages in a business in competition with Buyer with respect to the Base PM Business, as the Base PM Business has been conducted during the twelve (12) month period preceding the date of this Agreement, on a worldwide basis (each a " Seller Competing Business "); provided , however , that it shall not be a violation of this Section 7.7(a) for Seller or any of its Affiliates (i) to own, directly or indirectly, solely as an investment, securities of any Person that are traded on a national securities exchange (or a securities exchange outside the U.S.) if Seller or any of its Affiliates (A) is not a controlling Person or a member of a group that controls such Person and (B) does not, directly or indirectly, own more than 5% of the voting securities of such Person, (ii) to directly or indirectly acquire any Person that includes a Seller Competing Business that, at the time of such acquisition, constituted less than 20% of the assets or revenue of such Person, provided that Seller disposes of such Seller Competing Business within twelve (12) months after the closing date of such acquisition (regardless of whether such twelve (12) month period extends beyond the Non-Compete Expiration Date) or (iii) provide services pursuant to the Transition Services Agreement. Also, in the event that from the period between the Closing Date until the Non-Compete Expiration Date, Seller completes a business combination transaction with a Person that is engaged in any Seller Competing Business, which transaction results in such Person beneficially owning more than 50% of the voting power of the voting securities of Seller outstanding immediately prior to the consummation of such transaction (a " Seller Change of Control "), such Person and its Affiliates (other than Seller (or the surviving entity of Seller or successor in interest of Seller or its assets) and its Subsidiaries) shall not be subject to the restrictions in this Section 7.7(a) and Buyer and its Affiliates shall not be subject to the restrictions in Section 7.7(b). For avoidance of doubt, nothing in this Section 7.7(a) shall prevent Seller or any of its Affiliates from operating, and it shall not be a violation of this Section 7.7(a) for Seller or any of its Affiliates to operate, the Non-PM Business.

(b) Buyer agrees that until the Non-Compete Expiration Date, Buyer shall not, and shall cause its Affiliates not to, directly or indirectly, manage, operate, control, engage or acquire any ownership interest in any firm, corporation, partnership, proprietorship or other business entity that engages in a business in competition with Seller with respect to the Non-PM Business, as the Non-PM Business has been conducted during the twelve (12) month period preceding the date of this Agreement, on a worldwide basis (each a " Buyer Competing Business "); provided , however , that it shall not be a violation of this Section 7.7(b) for Buyer or any of its Affiliates (i) to own, directly or indirectly, solely as an investment, securities of any Person that are traded on a national securities exchange (or a securities exchange outside the U.S.) if Buyer or any of its Affiliates (A) is not a controlling Person or a member of a group that controls such Person and (B) does not, directly or indirectly, own more than 5% of the voting securities of such Person, (ii) to directly or indirectly acquire any Person that includes a Buyer Competing Business that, at the time of such acquisition, constituted less than 20% of the assets or revenue of such Person, provided that Buyer disposes of such Buyer Competing Business within twelve (12) months after the closing date of such acquisition (regardless of whether such twelve (12) month period extends beyond the Non-Compete Expiration Date) or (iii) provide services pursuant to the Transition Services Agreement, or use the marks subject of, and pursuant to, the Trademark License Agreement. Also, in the event that from the period between the Closing Date until the Non-Compete Expiration Date, Buyer completes a business combination transaction with a Person that is engaged in any Buyer Competing Business, which transaction results in such Person beneficially owning more than 50% of the voting power of the voting securities of Buyer outstanding immediately prior to the consummation of such transaction (a " Buyer Change of Control "), such Person and its Affiliates (other than Buyer (or the surviving entity of Buyer or successor in interest of Buyer or its assets) and its Subsidiaries) shall not be subject to the restrictions in this Section 7.7(b) and Seller and its Affiliates shall not be subject to the restrictions in Section 7.7(a). For avoidance of doubt, nothing in this Section 7.7(b) shall prevent Buyer or any of its Affiliates from operating, and it shall not be a violation of this Section 7.7(b) for Buyer or any of its Affiliates to operate the Patient Monitoring Business.

Section 7.8 Non-Solicitation

(a) For a period of two (2) years following the Closing Date, Buyer will not, and will cause all of its Subsidiaries and its and such Subsidiaries' respective officers and directors not to, and shall not authorize or permit its Representatives to, directly or indirectly, hire, retain, employ or solicit to employ or hire or retain any of the employees of Seller and its Affiliates as of the Closing Date or any time during the twelve (12) month period ending on the Closing Date; provided , however , that this provision shall not apply to (i) general solicitations of employment not specifically directed towards employees of Seller and its Affiliates or (ii) any such individual whose employment relationship is terminated by Seller or any of its Affiliates following the Closing.

(b) Except with respect to the individuals set forth on Schedule 7.8 , for a period of two (2) years following the Closing Date, Seller will not, and will cause all of its Subsidiaries and its and such Subsidiaries' respective officers and directors not to, and shall not authorize or permit its Representatives to, directly or indirectly, hire, retain, employ or solicit to employ or hire or retain any of the employees of Buyer and its Affiliates as of the Closing Date (including, for this purpose, the persons on the Agreed List of Employees) or any time during the twelve (12) month period ending on the Closing Date; provided , however , that this provision shall not apply to (i) general solicitations of employment not specifically directed towards employees of Buyer and its Affiliates or (ii) any such individual whose employment relationship is terminated by Buyer or any of its Affiliates following the Closing.

**ARTICLE VIII TERMINATION**

8.1 Termination or Abandonment This Agreement may be terminated and the transactions contemplated hereby may be abandoned at any time:

(a) by either Seller (by action duly authorized by the Board of Directors of Seller, or an authorized committee thereof) or Buyer (by action of the Board of Directors of Buyer, or an authorized committee thereof) if there has been a breach or failure to perform by the other party of any representation, warranty, covenant or agreement set forth in this Agreement, which breach or failure to perform (1) in the case of a breach or failure to perform by Seller, would give rise to the failure of a condition set forth in Section 5.1, and (2) in the case of a breach or failure to perform by Buyer, would give rise to the failure of a condition set forth in Section 5.2 (and in each case such breach is not reasonably capable of being cured or such condition is not reasonably capable of being satisfied within seven (7) Business Days after the receipt of notice thereof by the defaulting party from the non-defaulting party, it being understood and agreed that this Agreement may not be terminated pursuant to this Section 8.1(a)(i) during, or following, such period of seven (7) Business Days if such breach is cured during such period); provided , however , that the right to terminate this Agreement is not available to the non-breaching party if the other party is at that time in material breach of this Agreement;

(b) by either Buyer or Seller, if a court of competent jurisdiction or other Governmental Entity shall have issued a final, non-appealable order, decree or ruling in each case permanently restraining, enjoining or otherwise prohibiting the transactions contemplated hereby;

(c) by mutual written consent of Buyer and Seller duly authorized by the Board of Directors of Seller and the Board of Directors of Buyer, or authorized committee thereof; or

(d) by either Buyer or Seller if the Closing shall not have occurred on or before September 30, 20XX , unless the failure to consummate such Closing is the result of a wilful and material breach of any Transaction Agreement by the party seeking to terminate this Agreement; provided, however, that the passage of such period shall be tolled for any part thereof during which any party shall be subject to a non-final order, decree, ruling or action restraining, enjoining or otherwise prohibiting the consummation of such Closing.

Section 8.2 Effect of Termination In the event of the termination of this Agreement as provided in Section 8.1, written notice thereof shall forthwith be given to the other party specifying the provision hereof pursuant to which such termination is made, and this Agreement shall forthwith become null and void, except that the Confidentiality Agreement shall survive in accordance with its terms and Sections 8.2, 9.11, 9.12, 9.13 and 9.14 shall also survive such termination, provided, however, that nothing herein shall relieve any party from liability for any breach of this Agreement prior to the date of such termination. The parties hereto acknowledge and agree that any breach or threatened breach of the terms of this Agreement would give rise to irreparable harm for which money damages would not be an adequate remedy and accordingly the parties agree that, in addition to any other remedies, each party shall be entitled to enforce the terms of this Agreement by a decree of specific performance without the necessity of proving the inadequacy of money damages as a remedy.

**ARTICLE IX MISCELLANEOUS**

Section 9.1 No Survival of Representations and Warranties None of the representations and warranties in this Agreement or in any instrument delivered pursuant to this Agreement shall survive the Closing, other than the representations and warranties in (a) Sections 3.2(a), 3.19, 4.2, and 4.8, which shall survive indefinitely.

Section 9.2 Schedule Updates Seller may, from time to time prior to or at the Closing, by notice in accordance with the terms of this Agreement, supplement, amend or create any Schedule corresponding to the representations and warranties contained in Article III in order to add information or correct previously supplied information. No such supplemental, amended or additional Schedule shall be deemed to cure any breaches of a representation or warranty on or prior to the Closing; however, if the Closing occurs, such supplement, amendment or addition will be effective to cure and correct for all purposes any breach of any representation, warranty or covenant which would have existed if Seller had not made such supplement, amendment or addition, and all references to any Schedule hereto which is supplemented or amended as provided in this Section 9.2 shall for all purposes include such added information or corrected information. Buyer and Seller may, from time to time prior to or at the Closing, agree in accordance with

Section 9.3 to supplement or amend any Schedule corresponding to the definitions contained in Article I or the covenants or agreements. Section 9.3 Amendments; Waivers At any time prior to the Termination Date, any provision of this Agreement may be amended or waived if, and only if, such amendment or waiver is in writing and signed, in the case of an amendment, by Buyer and Seller, or in the case of a waiver, by the party against whom the waiver is to be effective. Notwithstanding the foregoing, no failure or delay by Buyer or Seller in exercising any right hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise of any other right hereunder.

Section 9.4 Assignment; Binding Effect Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto without the prior written consent of the other parties, except that Buyer may assign, in its sole discretion, in whole or in part, its rights, interest and obligations under this Agreement to one or more direct or indirect wholly owned subsidiaries of Buyer without the prior written consent of Seller, but no such assignment shall relieve Buyer of its obligations hereunder to the extent any such subsidiary does not satisfy its obligations hereunder.

Section 9.5 Severability Any term or provision of this Agreement that is invalid or unenforceable shall be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to any party. Upon any such determination, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the fullest extent possible.

Section 9.6 Notices Any notice, request, instruction or other communication to be given hereunder by either party to the other party shall be in writing and delivered personally, by nationally recognized overnight courier service, sent by postpaid registered or certified mail, or by fax: if to

Seller, addressed to: Infoyield Corp.

Address

Attention: PaulSamur

Fax: xxx-xxx-xxx With a copy to: Horton LLP

Address

Attention: Liam Nuston, Esq.

Fax: xxx-xxx-xxx

and if to Buyer, to: Lorraine Medical International Limited

Lorraine Building, Address, P.R. China

Attention: Tom Matthews, General Counsel

Fax: +xxx-xxx-xxx With a copy to: Shannon and Biggs

Address

Hong Kong S.A.R.

Attention: Gant F. Sorensen, Esq

Fax: xxx-xxx-xxx

or to such other address for either party as such party shall hereafter designate by like notice.

Section 9.7 Headings Headings of the Articles and Sections of this Agreement are for convenience of the parties only and shall be given no substantive or interpretive effect whatsoever.

Section 9.8 Interpretation

(a) Unless otherwise provided herein all monetary values stated herein are expressed in United States currency.

(b) Each accounting term set forth herein and not otherwise defined shall have the meaning accorded it under GAAP as applied on a consistent basis by Seller. For the avoidance of doubt, in the event of any discrepancy between GAAP and the provisions of this Agreement, the provisions of this Agreement shall control.

(c) Whenever conversion of payments from any foreign currency for a particular date shall be required, such conversion shall be made at the exchange rate as published in the Wall Street Journal as of such date. Whenever conversion of payments from any foreign currency for a particular period shall be required, such conversion shall be made at the average of the exchange rates published in the Wall Street Journal for the beginning and the end of the relevant period.

(d) The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. Except where expressly indicated otherwise, references in this Agreement to any Article, Section or Exhibit refer to Articles, Sections or Exhibits of this Agreement and any sub-section thereof and any provision contained therein. The words "or" or "any" are not exclusive and "such as," "include" or "including" are not limiting. References to this "Agreement" include all Exhibits and other attachments hereto, which are incorporated into this Agreement by reference.

Section 9.9 Counterparts; Effectiveness This Agreement may be executed and delivered in one or more counterparts (including by facsimile), each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument, and shall become effective when one or more counterparts have been signed by each of the parties and delivered (by fax or otherwise) to the other parties.

Section 9.10 Entire Agreement; No Third-Party Beneficiaries This Agreement (including the exhibits hereto) and the Confidentiality Agreement constitute the entire agreement and supersede all other prior agreements and understandings between the parties with respect to the subject matter hereof and thereof and is not intended to and shall not confer upon any person other than the parties hereto any rights or remedies hereunder.

Section 9.11 Payment of Expenses All costs and expenses associated with this Agreement and the transactions contemplated thereby, including the fees of counsel and accountants, shall be borne by the party incurring such expenses. Buyer will pay one-half and Seller will pay one-half of all filing fees associated with compliance with HSR.

Section 9.12 Governing Law This Agreement, and all claims or causes of action (whether at Law, in contract or in tort) that may be based upon, arise out of or relate to this Agreement or the negotiation, execution or performance hereof, shall be governed by and construed in accordance with the Laws of the State of Delaware without giving effect to conflicts of laws principles that would result in the application of the law of any other state.

Section 9.13 Jurisdiction; Enforcement The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that prior to the termination of this Agreement in accordance with Article VIII the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in the state court of the State of New York located in New York City or, if under applicable Law exclusive jurisdiction over such matter is vested in the federal courts, any court of the United States located in the State of State of New York, this being in addition to any other remedy which they are entitled at Law or in equity. In addition, each of the parties hereto irrevocably agrees that any legal action or proceeding with respect to this Agreement and the rights and obligations arising hereunder, or for recognition and enforcement of any judgment in respect of this Agreement and the rights and obligations arising hereunder brought by the other party hereto or its successors or assigns, shall be brought and determined exclusively in any federal or state court located in the State of New York. Each of the parties hereto hereby irrevocably submits with regard to any such action or proceeding for itself and in respect of its property, generally and unconditionally, to the personal jurisdiction of the aforesaid courts and agrees that it will not bring any action relating to this Agreement or any of the transactions contemplated hereby in any court other than the aforesaid courts. Each of the parties hereto hereby irrevocably waives, and agrees not to assert, by way of motion, as a defense, counterclaim or otherwise, in any action or proceeding with respect to this Agreement, (a) any claim that it is not personally subject to the jurisdiction of the above named courts for any reason other than the failure to serve in accordance with this Section 9.13; (b) any claim that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise); and (c) to the fullest extent permitted by the applicable Law, any claim that (i) the suit, action or proceeding in such court is brought in an inconvenient forum, (ii) the venue of such suit, action or proceeding is improper or (iii) this Agreement, or the subject mater hereof, may not be enforced in or by such courts.

Section 9.14 WAIVER OF JURY TRIAL EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING BETWEEN THE PARTIES HERETO ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 9.15 No Recourse This Agreement may only be enforced against, and any claims or causes of action that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement may only be made against the corporate entities that are expressly identified as parties hereto.

Section 9.16 Determination by Seller Whenever a determination, decision or approval by Seller is called for in this Agreement, such determination, decision or approval must be authorized by Seller's Board of Directors.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first above written.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  |  | LORRAINE MEDICAL INTERNATIONAL LIMITED | | |  |  |
|  |  | By: |  | |s|Name |  |  |
|  |  | Name: |  | Name |  |  |
|  |  | Title: |  | Chairman and CEO |  |  |
|  |  | INFOYIELD CORP. | | |  |  |
|  |  | By: |  | |s|Name |  |  |
|  |  | Name: |  | Name |  |  |
|  |  | Title: |  | Chairman of the Board and |  |  |
|  |  |  |  | Chief Executive Officer |  |  |

**APA#8**

**ASSET PURCHASE AGREEMENT**

THIS ASSET PURCHASE AGREEMENT is entered into as of March 9, 2012, by and among LIGHTFLASH CORPORATION, a Delaware corporation (" Seller "), LFC, LLC, a Delaware limited liability company (" LFC "), LIGHTFLASH HOLDINGS ESPANA, S.L., a Spanish company (" LFH "), LFS, LLC, a Delaware limited liability company (" LFS " and together with LFC and LFH, the " Stock Selling Subsidiaries "), the Asset Subsidiaries (as defined below) and

TECHMECCORP HOLDING BV, a Netherlands corporation (" TECHMEC BV ") and TECHMEC ENGINEERING PVT. LTD., an Indian company (" Techmec " and, together with Techmec BV, " Buyer ").

**RECITALS:**

A. Seller's lighting business designs, develops, manufactures, markets and sells (i) automotive exterior lighting products, including front lighting systems, rear lighting systems and auxiliary lamps, reflectors, front and rear side markers, license lamps and back-up lamps and (ii) in addition, solely with respect to the business conducted by Autosoft (as defined below), automobile interior lighting products, automobile interior products, non-automobile lighting, climate control and refrigerator moldings (collectively, the " Business ");

B. Autosoft S.A. de C.V., a corporation organized and existing in accordance with the laws of Mexico (" Autosoft "), is an indirect wholly-owned subsidiary of Seller owned by Grupo Lightflash, S. de R.L. de C.V. and Lightflash Holdings, LLC;

C. LFH and LFC are wholly-owned subsidiaries of Seller that, following completion of the Caramice Restructuring, will together own all of the outstanding ownership interests of Budice Investments s.r.o., a Czech limited liability company(" Caramice ");

D. LFS is a wholly-owned subsidiary of Seller that owns fifty percent (50%) of the ordinary shares of Lightflash TYC Corporation, a British Virgin Island international business corporation (" VTYC " and together with Caramice, the " Stock Group ");

E. Each of the companies listed in Schedule E (the " Asset Subsidiaries ") is a direct or indirect wholly-owned subsidiary of Seller that owns assets that are used primarily in connection with the operation of the Business;

F. The Business is carried on through Seller, the Asset Subsidiaries, the Existing Caramice Companies and the members of the Stock Group;

G. Seller and each of the Stock Selling Subsidiaries, as the case may be, desires to sell or cause the Asset Subsidiaries to sell to Buyer and Buyer desires to purchase from Seller, the Stock Selling Subsidiaries and the Asset Subsidiaries (i) all of the Stock Selling Subsidiaries' capital stock in each entity comprising the Stock Group and (ii) except for the Proprietary Rights, all of the assets that are used primarily to conduct the Business as currently operated including the Maquila Assets from Autosoft's IMMEX Program and, (iii) with respect to the Proprietary Rights, all the Proprietary Rights used exclusively to conduct the Business (the sales and purchases set forth in clauses (i), (ii) and (iii) of this Recital G , the " Transaction "); and

H. Without limiting the generality of the foregoing, the transfer of the assets held by Lightflash Technical Services Centre Private Limited, an Indian corporation (" LFTSC "), will be accomplished by virtue of a slump sale of a going concern under the terms of a transfer of business agreement between LFTSC and Buyer's designee (the " Transfer of Business Agreement ").

Therefore, in consideration of the premises and the mutual promises herein made, and in consideration of the representations, warranties and covenants herein contained, the Parties agree as follows:

**ARTICLE 1**

**DEFINITIONS**

Capitalized terms have the meanings set forth in Appendix A, unless defined elsewhere in this Agreement.

**ARTICLE 2**

2.1 Transaction; Transferred Assets . At the Closing: Stock . Seller and each relevant Stock Selling Subsidiary shall sell to Buyer (or its Affiliated designee), and Buyer (or its Affiliated designee) shall purchase from Seller and each relevant Stock Selling Subsidiary, all of the outstanding ownership interests of Caramice (" Caramice Stock ") and all of LFS's interest in VTYC (" VTYC Stock " and together with the Caramice Stock, the " Stock "), in each case, free and clear of any Liens or restrictions on transfer, except those imposed by applicable Law. Assets . Seller shall, and shall cause each Asset Subsidiary to, sell to Buyer (or its Affiliated designees) all of their respective right, title and interest in and to all assets (other than the Stock) of Seller or the Asset Subsidiaries that are used or held for use primarily to conduct the Business as currently operated (but solely as to the Proprietary Rights, the Proprietary Rights used exclusively in the conduct of the Business) (" Assets " and together with the Stock, the " Transferred Assets "), including:

(a) all parcels of Real Property (other than Real Property that is subject to the Caramice Facility Lease);

(b) all (i) personal property, including, but not limited to, all machinery, equipment, computer hardware, vehicles, tools, dies, repair and replacement parts, and office furniture, fixtures and equipment owned by Seller or the Asset Subsidiaries (including all assets permanently or temporarily imported into Mexico and used primarily to conduct the Business by the Asset Subsidiaries), except to the extent disposed of prior to the Closing Date as permitted by Section 7.1 of the Agreement, the Maquila Assets and the Mexican Assets (each as identified on Section 2.1(b) of the Disclosure Schedule) and (ii) additional items as are acquired prior to the Closing Date (" Personal Property ");

(c) all inventory of raw materials, work-in-process and finished goods, existing on the Closing Date, whether in Seller's or any Asset Subsidiary's possession, in transit to or from Seller or any Asset Subsidiary, or held by any Third Party (" Inventory "), supplies and spare parts;

(d) all purchase orders, sales orders and other agreements, contracts and commitments of any sort (" Contracts ") and all rights and claims thereunder;

(e) books and records, including originals (or, to the extent the same may not be transferred in accordance with applicable Law, complete and correct copies) of all personnel records of the Transferred Employees, all subject to consent of such Transferred Employees when required by applicable Law;

(f) all patents, trademarks, trade names, service marks, copyrights, and any applications therefor, technology, know-how, trade secrets, inventory, ideas, algorithms, databases, processes, computer software programs or applications, tangible or intangible proprietary information or material and other intellectual property rights (" Intellectual Property ") used exclusively in the Business, including, but not limited to, those items identified on Section 2.1(f) of the Disclosure Schedule (together with the Intellectual Property and Proprietary Software, " Proprietary Rights ");

(g) all prepaid expenses, credits, deferred charges, advance payments, security deposits and other deposits, and pre-paid items related to the Business or the other Transferred Assets;

(h) all permits, licenses (excluding licenses under Proprietary Rights), approvals, consents, franchises, and other governmental authorizations or approvals to the extent transferable under applicable Law (" Permits ");

(i) all claims, actions and suits and defenses, except those relating to Excluded Assets or Retained Liabilities, whether choate or inchoate, known or unknown, contingent or noncontingent, including all rights pursuant to all warranties, representations and guarantees made by suppliers, manufacturers and contractors in connection with products or services purchased in respect of the Business, except those relating to Excluded Assets or Retained Liabilities;

(j) the right to receive and retain mail and other communications relating to the Business;

(k) except as provided in Article 11, the Assumed Employee Benefit Plans, including all assets held by or on behalf of Seller, any Asset Subsidiary or such Assumed Employee Benefit Plans in trust, reserve or otherwise to fund, and all insurance policies funding, any of the liabilities under such Assumed Employee Benefit Plans; and

(l) all assets identified on Section 2.1(l) of the Disclosure Schedule as Transferred Assets.

2.2 Excluded Assets . Notwithstanding Section 2.1 , the following assets (" Excluded Assets ") are retained by

Seller and the Asset Subsidiaries and are not included in the Assets:

(a) all cash (other than petty cash located at the Real Property), cash equivalents, marketable securities and bank accounts;

(b) all trade and other accounts receivable, including those that are owed by Seller or any Subsidiary or Affiliate of Seller;

(c) all intellectual property owned, licensed or used by Seller or any Asset Subsidiary that is not used exclusively in the conduct of the Business, including, but not limited to: (i) the trade names and trademarks "Lightflash" and "Lightflash Corporation" (" Lightflash Marks ") and any other trade names, trademarks, corporate names and logos incorporating in any way these names; and (ii) the Proprietary Rights listed on Section 2.2(c)(ii) of the Disclosure Schedule;

(d) (i) all claims, proceedings, rights of action and defenses under Chapter 5 of the Title 11 of the United States Code that derive from or were originated as a result of Seller's Chapter 11 bankruptcy reorganization filed on May 25, 2009, and (ii) all claims and rights relating to any of the Excluded Assets or the Retained Liabilities;

(e) all assets that have been transferred or disposed of by Seller or any Asset Subsidiary prior to the Closing Date in transactions permitted by this Agreement, including Section 7.1;

(f) all rights to the refund of any Tax paid by Seller or any Asset Subsidiary prior to the Closing Date;

(g) all agreements, contracts and commitments of Seller, any Stock Selling Subsidiary, Asset Subsidiary or member of the Stock Group other than the Contracts;

(h) copies or originals, as the case may be, of all books and records that Seller, the Stock Selling Subsidiaries or the Asset Subsidiaries are required by the applicable Laws to retain in their possession;

(i) all Employee Benefit Plans that are not Assumed Employee Benefit Plans, including all assets held by or on behalf of Seller, any Asset Subsidiary or such Employee Benefit Plans in trust, reserve or otherwise to fund, and all insurance policies funding, any of the liabilities under such Employee Benefit Plans; and

(j) all assets identified on Section 2.2(j) of the Disclosure Schedule as Excluded Assets.

2.3 Transfer of Maquila Assets . Seller and Buyer agree that following the execution of this Agreement, they will take all reasonable steps necessary in order to complete the virtual transfer of the Maquila Assets from Autosoft's IMMEX Program to Buyer's IMMEX Program, including the submission to Mexican customs, the Mexican Treasury Department and the Mexican Department of the Economy all such documents, customs declarations pedimentos, manifests, invoices, notices and other material necessary to effect such transfer (the " IMMEX Transfer ") no later than ten (10) Business Days following the Closing Date. After the Closing Date, Seller shall cause Autosoft to notify the Mexican Treasury Department, the Mexican Department of the Economy and such other Mexican government authorities as necessary, of the closing of Autosoft's branches or establishments and provide a copy of such filings to Buyer, if applicable.

2.4 Caramice Restructuring . Prior to the Closing, Seller shall effect the Caramice Restructuring and shall cause all assets (other than Real Property that is subject to the Caramice Facility Lease) to the extent owned by the Existing Caramice Companies that, if they were Asset Subsidiaries, would constitute Assets pursuant to Section 2.1 (and, if permitted by Law, excluding any assets that, if the Existing Caramice Companies were Asset Subsidiaries, would constitute Excluded Assets pursuant to Section 2.2 ) to be transferred to Caramice.

2.5 Non-Transferability of Certain Assets .

(a) Notwithstanding Section 2.1 , if there are Assets that are not assignable without the consent of Third Parties (" Non-Transferable Assets "), and these consents are not obtained by the Closing Date, the Non-Transferable Assets will not be assigned without that consent.

(b) Seller and the Asset Subsidiaries shall, and Seller shall cause the Asset Subsidiaries to, (a) cooperate in good faith with Buyer to enter into any reasonable arrangement designed to provide to Buyer the benefit of the Non-Transferable Assets, including, but not limited to, the enforcement for the benefit and at the expense of Buyer of any rights in connection with any of these assets, (b) hold all monies paid thereunder in trust for the account of Buyer and (c) promptly remit all such money without set-off of any kind whatsoever to Buyer. Except as advanced by Buyer, Seller is not required to pay any monies to Third Parties in connection with its obligations under this Section.

(c) To the extent that Buyer receives the benefits of any Non-Transferable Asset, Buyer shall perform the obligations of Seller relating to that Non-Transferable Asset.

**ARTICLE 3**

**LIABILITIES**

3.1 Assumed Liabilities . At the Closing, in addition to the liabilities for which Buyer will become liable by virtue of the acquisition of the VTYC Stock (but not the Caramice Stock), Buyer shall assume the following liabilities and obligations of Seller, the Asset Subsidiaries and the Existing Caramice Companies to the extent arising out of the Business (" Assumed Liabilities "):

(a) other than (i) Indebtedness or (ii) any other Retained Liabilities, all liabilities and obligations that exist at the Closing and are of a type reflected in the Financial Information;

(b) all liabilities and obligations in respect of the Contracts and Permits that are Assets arising after the Closing Date, but excluding any liability thereunder to the extent arising out of (i) a breach that occurred on or prior to the Closing or (ii) any event occurring or state of facts existing on or prior to the Closing which with the notice or lapse of time would constitute a breach of any term or condition of any such Contract or Permit;

(c) all liabilities and obligations in respect of customer warranty or recall claims for products sold by Buyer or the Business on or following the Closing;

(d) all product liability and similar claims for injury to person or property (including death) in connection with any products sold by Buyer on or after the Closing;

(e) all liabilities and obligations related to or arising under any Assumed Employee Benefit Plan or otherwise assumed by Buyer under Article 11 ;

(f) all liabilities and obligations in respect of the matters described in Article 15 , except to the extent that Seller is obligated under Article 15 to indemnify Buyer;

(g) all liabilities and obligations expressly assumed by Buyer pursuant to the PRTLA;

(h) all liabilities and obligations identified on Section 3.1(h) of the Disclosure Schedule; and

(i) all liabilities and obligations arising from processes used or products manufactured, used, imported or offered for sale, or sold by the Buyer after the Closing that conflict with, misappropriate, infringe or otherwise violate any intellectual property of any third party including any allegations of same.

3.2 Retained Liabilities . Notwithstanding Section 3.1, Seller, the Asset Subsidiaries and the Existing Caramice Companies shall be responsible for all of the liabilities and obligations not hereby expressly assumed by Buyer and Buyer shall not assume, or in any way be liable or responsible for, any liabilities or obligations of Seller or its Affiliates or any other Person except for those liabilities and obligations expressly assumed by Buyer pursuant to the terms of Section 3.1 above, which assumed liabilities shall include all liabilities and obligations assumed by virtue of the acquisition of the VTYC Stock (but not the Caramice Stock) except as expressly excluded below. All such liabilities and obligations not expressly assumed by Buyer are referred to herein collectively as the "Retained Liabilities". Without limiting the generality of the foregoing, Seller, the Asset Subsidiaries and the Existing Caramice Companies shall retain and timely pay and discharge the following liabilities, all of which shall be Retained Liabilities for all purposes of this Agreement:

(a) (i) all liabilities arising out of any claim, proceedings or rights of action that derive from or were originated as a result of Seller's Chapter 11 bankruptcy reorganization filed on May 25, 2009, including any obligation of Seller to make distributions to holders of allowed claims under its plan of reorganization filed on May 25, 2009, and (ii) all liabilities and obligations arising out of the Excluded Assets (except in relation to certain license rights expressly assumed by Buyer pursuant to the PRTLA);

(b) all accounts payable and accrued expenses that arose on or prior to the Closing that exist at the Closing (including "Sundry Payable and Accrued Sundry" of the type set forth in the Financial Information);

(c) all Taxes payable with respect to the Business, the Transferred Assets (including the Stock) or the Assumed Liabilities for any period prior to the Closing (including any deferred Tax liability of the type set forth in the Financial Information) provided that VTYC will remain solely liable for all Taxes payable with respect to the Business conducted by it;

(d) all Indebtedness of Seller, the Asset Subsidiaries, the Existing Caramice Companies, the Stock Selling Subsidiaries or Caramice, except for liabilities and obligations identified on Section 3.1(h) of the Disclosure Schedule;

(e) all liabilities and obligations for product liability claims or recalls for injury to person (including death) or property in connection with any products sold by the Business, Seller, an Asset Subsidiary, a Stock Selling Subsidiary or Caramice prior to the Closing;

(f) all liabilities and obligations of the Business in respect of customer warranty or recall claims for products sold prior to the Closing by the Seller, an Asset Subsidiary, a Stock Selling Subsidiary or member of the Stock Group; and

(g) all Excluded Employee Liabilities.

**ARTICLE 4**

**PURCHASE PRICE; TRANSFER OF STOCK**

4.1 Purchase Price . The purchase price for (a) the Transferred Assets, and (b) the prepaid rent payment required under the Caramice Facility Lease (the " Caramice Lease Payment ") is $92,000,000 (" Purchase Price "). The Purchase Price is subject to adjustment pursuant to Sections 4.5 and 18.4 below.

4.2 Escrow Deposit at Signing; Payments at Closing .

(a) Promptly following the execution of this Agreement (but in no event more than three (3) Business Days following the date of execution of this Agreement), Buyer shall deposit an additional amount of US $5,000,000 in cash (the " Escrow Deposit ") into the escrow account (the " Escrow Account ") held by Citibank, NA (the " Escrow Agent ") that currently holds Buyer's prior cash deposit of US $3,000,000 (the " Initial Deposit " and, together with the Escrow Deposit, the " Deposit Amounts ").

(b) At the Closing: (i) Buyer (or its Affiliated designee) shall wire transfer an amount equal to the Purchase Price, minus the Deposit Amounts to a bank account or accounts designated by Seller, and (ii) Escrow Agent shall disburse the Deposit Amounts to Seller by wire transfer of immediately funds to a bank account or accounts designated by Seller.

4.3 Transfer of Stock . At the Closing:

(a) LFS, Buyer and VTYC shall execute an agreement to effect the transfer of the VTYC Stock to Buyer free and clear of any Liens or restrictions on transfer, except those imposed by applicable Law (the " VTYC Transfer Agreement "); and

(b) LFH, LFC and Buyer shall execute an agreement to effect the transfer of the Caramice Stock to Buyer free and clear of any Liens or restrictions on transfer, except those imposed by applicable Law (the " Czech Transfer Agreement ").

4.4 Purchase Price Allocation . The parties agree that, following the date of this Agreement, the parties shall negotiate in good faith to reach agreement, within ninety (90) days after execution hereof, on an allocation of the Purchase Price among the Transferred Assets and the Caramice Lease Payment. The parties further agree that such allocation shall include a separate allocation as to the Assets owned by Autosoft, including the applicable Mexican Value Added Tax on the Mexican Assets and the improvements on the Mexican Real Property, and that such allocation for the Autosoft Assets shall, in all events, be prepared prior to the Closing Date. Seller agrees that, on or before the sixtieth (60th) day after the execution hereof, Seller shall send to Buyer a written proposal for such allocation, and Buyer agrees that it shall notify Seller of any additions or revisions to such allocation within ten (10) Business Days after receipt thereof. In the event of any such proposed additions or revisions, Buyer and Seller shall attempt to reach agreement on all or the greatest portion possible of such allocation.

4.5 Inventory Adjustment .

(a) Within forty-five (45) calendar days after the Closing Date, Seller shall cause to be prepared and delivered to Buyer

(i) a statement (the " Inventory Statement ") setting forth the Closing Date Inventory and the components and calculations thereof as of 11:59 p.m., Detroit time, on the Closing Date, prepared in accordance with the policies, practices and methodologies used in the preparation of, and provided in the format used for, the reference inventory statement (the " Reference Inventory Statement ") attached as Section 4.5 of the Disclosure Schedule, which is consistent with the policies, procedures and methodologies adopted for historical periods (i.e., calendar years ended December 31, 2010 and December 31, 2011) and

(ii) a statement (the " Inventory Adjustment Statement ") setting forth the calculation of the amount by which the Closing Date Inventory as shown on the Inventory Statement either (A) exceeds the Target Inventory (as such amount may be adjusted below, the " Inventory Excess Amount ") or (B) is less than the Target Inventory (as such amount may be adjusted below, the " Inventory Deficiency Amount ").

(b) After receipt of the Inventory Statement and the Inventory Adjustment Statement, Buyer will have sixty (60) calendar days to review the Inventory Statement and the Inventory Adjustment Statement. Seller will give, or cause to be given, to Buyer reasonable access to all documents, records, facilities and employees of Seller and its Affiliates used in their preparation to the extent such employees are employed by Seller or its Affiliates at such time. Not later than sixty (60) calendar days following the date of receipt of the Inventory Statement and the Inventory Adjustment Statement, Buyer shall provide Seller with a notice (a " Dispute Notice ") listing those items, if any, to which Buyer takes exception, which notice shall also

(i) specifically identify, and provide a reasonably detailed explanation of the basis upon which Buyer has delivered such list, including , without limitation, the applicable provisions of this Agreement on which the dispute set forth in such Dispute Notice is based,

(ii) set forth the amount of Closing Date Inventory that Buyer has calculated based on the information contained in the Inventory Statement and

(iii) specifically identify Buyer's proposed adjustment(s).

Unless Buyer delivers the Dispute Notice to Seller setting forth the specific items

disputed by Buyer on or prior to the sixtieth (60th) day after Buyer's receipt of the Inventory Statement and the Inventory Adjustment Statement, Buyer will be deemed to have accepted and agreed to the Inventory Statement and the Inventory Adjustment Statement and such statements (and the calculations contained therein) will be final, binding and conclusive. If Buyer timely provides Seller with a Dispute Notice, Seller and Buyer will, within fifteen (15) days following receipt of such Dispute Notice by Seller (the " Resolution Period "), attempt to resolve their differences with respect to the items specified in the Dispute Notice (the " Disputed Items "), and all other undisputed items (and all calculations relating thereto) will be final, binding and conclusive. Any written resolution by Seller and Buyer during the Resolution Period as to any Disputed Items will be final, binding and conclusive.

(c) If Seller and Buyer do not resolve all Disputed Items by the end of the Resolution Period, then all Disputed Items remaining in dispute shall be submitted within fifteen (15) days after the expiration of the Resolution Period to Philip Marlow LLP (the " Neutral Arbitrator "); provided that if at such time either Seller or Buyer shall discover a bona fide conflict with respect to the Neutral Arbitrator or the Neutral Arbitrator resigns or expressly states its refusal for any reason to resolve the Disputed Items in accordance with this Section 4.5 , the parties shall submit the matter to another independent accounting firm of international reputation reasonably acceptable to both Seller and Buyer to resolve the remaining matters in dispute, and such firm shall be the Neutral Arbitrator for all purposes of this Section 4.5(c) . The Neutral Arbitrator shall act as an arbitrator to determine only those Disputed Items remaining in dispute, consistent with this Section 4.5 , and shall request a statement from each of Seller and Buyer regarding such remaining Disputed Items. The Neutral Arbitrator will consider only those Disputed Items that Seller on the one hand and Buyer on the other hand are unable to resolve. In resolving any disputed item, the Neutral Arbitrator may not assign a value to any item greater than the greatest value for such item claimed by any party or less than the smallest value for such item claimed by any party. The scope of the disputes to be arbitrated by the Neutral Arbitrator is limited to whether the preparation of the Inventory Statement and the Inventory Adjustment Statement were done in accordance with GAAP and, the Reference Inventory Statement consistently applied, and whether there were mathematical errors in the preparation of the Inventory Statement and the Inventory Adjustment Statement, and the Neutral Arbitrator is not to make any other determination. All fees and expenses relating to the work, if any, to be performed by the Neutral Arbitrator will be allocated between Seller and Buyer in the same proportion that the aggregate amount of the Disputed Items so submitted to the Neutral Arbitrator that is unsuccessfully disputed by such party (as finally determined by the Neutral Arbitrator) bears to the total amount of such Disputed Items so submitted by such party. In addition, the parties shall give the Neutral Arbitrator access to all documents, records, facilities and employees as reasonably necessary to perform its function as arbitrator. The Neutral Arbitrator will deliver to Seller and Buyer a written determination (such determination to include a work sheet setting forth all material calculations used in arriving at such determination and to be based solely on information provided to the Neutral Arbitrator by Seller and Buyer) of the Disputed Items submitted to the Neutral Arbitrator within thirty (30) days after receipt of such Disputed Items (or as soon thereafter as practicable), which determination will be final, binding and conclusive, and judgment may be entered on the award.

(d) The final, binding and conclusive Inventory Statement and Inventory Adjustment Statement, in each case, based either upon agreement by Seller and Buyer, the written determination delivered by the Neutral Arbitrator in accordance with this Section 4.5 or Seller's failure to notify Buyer, in accordance with this Section 4.5, of its objections to either the Inventory Statement or the Inventory Adjustment Statement (or any calculations contained therein) will be the " Conclusive Inventory Statement " and the " Conclusive Inventory Adjustment Statement ," respectively. If either Seller or Buyer fails to submit a statement regarding any Disputed Items submitted to the Neutral Arbitrator within the time determined by the Neutral Arbitrator or otherwise fails to give the Neutral Arbitrator access as reasonably requested, then the Neutral Arbitrator shall render a decision based solely on the evidence timely submitted and the access afAjaxed to the Neutral Arbitrator by Seller and Buyer.

(e) (A) Buyer shall pay an aggregate amount, if any, equal to the Inventory Excess Amount, if any, set forth on the Conclusive Inventory Adjustment Statement plus the Interest Amount on such Inventory Excess Amount, which amount shall be paid to Seller, or (B) Seller shall pay an aggregate amount, if any, equal to the Inventory Deficiency Amount, if any, set forth on the Conclusive Inventory Adjustment Statement plus the Interest Amount on such Inventory Deficiency Amount. Any required payment under this Section 4.5(e) shall be paid on the third (3rd) Business Day following the determination of the Conclusive Inventory Statement in immediately available funds by (a) check or wire transfer to such bank account or accounts as Seller (in the case of a Inventory Excess Amount) may specify, or (b) wire transfer to such bank account or accounts as Buyer (in the case of a Inventory Deficiency Amount) may specify. Any Inventory Excess Amount (including any Interest Amount thereon) shall be deemed to be an increase in the Purchase Price and any Inventory Deficiency Amount (including any Interest Amount thereon) shall be deemed to be a decrease in the Purchase Price for purposes of this Agreement.

**ARTICLE 5**

**REPRESENTATIONS AND WARRANTIES OF SELLER**

Except as set forth in the Disclosure Schedule, Seller represents and warrants to Buyer, as to itself, the Stock Selling Subsidiaries, the Asset Subsidiaries, the Existing Caramice Companies, the Lightflash Sale Entities and the Lightflash Operating Companies (which defined terms, for purposes of this Article 5, shall in each case (except where expressly indicated) (x) exclude VTYC, as to which no representation or warranty is made unless expressly indicated, and (y) shall be deemed to include the Existing Caramice Companies only prior to the completion of the Caramice Restructuring and Caramice only from and after the completion of the Caramice Restructuring) that:

5.1 Organization, Existence and Standing. Seller, each Stock Selling Subsidiary, each Asset Subsidiary and each member of the Stock Group (together, " Lightflash Sale Entities " and each, a " Lightflash Sale Entity "), including VTYC, is a corporation or limited liability company duly incorporated or formed and validly existing under the Laws of the jurisdiction of its incorporation or formation and has full corporate or organizational power and authority to: (a) own or lease the Transferred Assets owned or leased by it; and (b) carry on the Business as now conducted by it.

5.2 Qualification. Each Lightflash Sale Entity (including VTYC) is duly qualified to do business, if applicable, and is in good standing in all jurisdictions where the nature of the Transferred Assets owned or leased by it, or the conduct of the Business conducted by it, requires it to be qualified, except where the failure to be qualified would not reasonably be expected to result in a Material Adverse Change.

5.3 Capitalization.

(a) Upon completion of the Caramice Restructuring and as of immediately prior to the Closing, the registered capital of Caramice: (i) will be duly authorized and validly issued in compliance with all applicable Laws; (ii) will be fully paid and nonassessable; and (iii) will be wholly-owned, beneficially and of record, in part by LFH and in part by LFC free and clear of any Liens or restrictions on transfer, except those imposed by applicable Law.

(b) The authorized capital stock of VTYC consists solely of ordinary shares, of which 50% are owned, beneficially and of record, by LFS. All of the VTYC ordinary shares held by LFS: (i) are duly authorized, validly issued, fully paid and nonassessable, (ii) were issued in compliance with all applicable Laws; and (iii) are owned, beneficially and of record by LFS free and clear of any Liens or restrictions, except those imposed by federal and state securities Laws.

(c) There are no outstanding securities (whether debt or equity) convertible into or exercisable or exchangeable for any capital stock or equity interests in any member of the Stock Group, and there are no outstanding options, warrants, preemptive rights or other rights permitting or requiring any Person to subscribe for, or acquire or purchase, or permitting any member of the Stock Group to issue, any other equity securities.

5.4 Corporate Authority. Seller, each Asset Subsidiary and each Stock Selling Subsidiary have all requisite corporate power and authority to enter into this Agreement and the Related Agreements to which it is a party and to carry out its obligations hereunder and thereunder. Except for actions relating to the Caramice Restructuring, Seller, each Asset Subsidiary and each Stock Selling Subsidiary have taken all corporate or organizational actions needed to execute, deliver and consummate this Agreement and the Related Agreements and to perform its obligations hereunder and thereunder, and no other proceedings or actions on the part of it is necessary to authorize such execution, delivery and performance. This Agreement has been, and the Related Agreements when executed will be, duly executed by each of Seller, each Asset Subsidiary and each Stock Selling Subsidiary and constitute the legal, valid and binding obligations of Seller, each Asset Subsidiary and each Stock Selling Subsidiary (to the extent they are a party to this Agreement or a Related Agreement), except as applicable bankruptcy, insolvency, reorganization or similar Laws relating to enforcement of creditors' rights and remedies or other equitable principles limit enforceability.

5.5 Financial Information. The Financial Information attached to Section 5.5 of the Disclosure Schedule was derived from the books and records of Seller, the Stock Group, the Existing Caramice Entities, the Asset Subsidiaries (except VGTI) and the Stock Selling Subsidiaries and presents fairly, in all material respects, the financial condition of the Business as of the dates shown, the results of the Business' operations for the periods then ended, and changes in financial position of the Business for the periods then ended.

5.6 Real Property.

(a) A legal description of each parcel of real property currently used in the operation of the Business and owned in fee by (i) Seller, the Asset Subsidiaries (except VGTI) or a member of the Stock Group (together, " Lightflash Operating Companies " and each a " Lightflash Operating Company ") and (ii) the Existing Caramice Companies is set forth on Section 5.6(a) of the Disclosure Schedule (collectively, the " Owned Real Property "). Except as set forth on Section 5.6(a) of the Disclosure Schedule, a Lightflash Operating Company or one of the Existing Caramice Companies has good and marketable title to each parcel of Owned Real Property and to all of the buildings, structures and other improvements thereon, free and clear of all Liens, except for Real Property Permitted Exceptions. The Seller has made available to Buyer copies of any title insurance policies (the " Title Policies ") (together with copies of any documents of record that are listed as exceptions to title on such policies to the extent such documents are in Seller's possession) currently insuring each parcel of Owned Real Property, and copies of the most recent surveys of the same, and, to Seller's Knowledge, any photographs, drawings, and maps of the Owned Real Property (to the extent such documents are in Seller's possession). The Owned Real Property owned by the Existing Caramice Companies includes the land and buildings that will be leased to Caramice under the Caramice Facility Lease.

(b) Section 5.6(b) of the Disclosure Schedule sets forth the address of each parcel of leasehold or sub-leasehold estate and any and all other rights to use or occupy any land, buildings, structures, improvements or other interest in real property currently used in the operation of the Business and held by or for a Lightflash Operating Company (except VGTI) or one of the Existing Caramice Companies (the " Leased Real Property " and together with the Owned Real Property, the " Real Property "), as well as a true and complete list of all leases, licenses, subleases and other occupancy agreements, together with any amendments or modifications thereto and any documents or instruments affecting in any material respect the rights or obligations thereunder of any of the parties thereto, pursuant to which the Lightflash Operating Company party thereto has the right to use or occupy the Leased Real Property (the " Tenant Leases "). True and complete copies of the Tenant Leases have been delivered to Buyer prior to the date hereof. With respect to each parcel of Leased Property,

(i) each Tenant Lease is legal, valid, binding and enforceable against the lessor thereunder and is in full force and effect and has not been modified;

(ii) neither the Lightflash Operating Company that is a party thereto nor, to Seller's Knowledge, any other party to such Tenant Lease, is in breach or default under such lease, and no event has occurred or circumstance exists that, with the delivery of notice, passage of time or both, would constitute such a breach or default or permit the termination, modification or acceleration of rent under any Tenant Lease;

(iii) the possession and quiet enjoyment of the Leased Real Property under any Tenant Lease by the Lightflash Operating Company that is a party thereto has not been disturbed;

(iv) no security deposit or portion thereof deposited with respect to any Tenant Lease has been applied in respect of a breach of or default under such lease by the Lightflash Operating Company that is a party thereto;

(v) the Lightflash Operating Company that is a party thereto has not subleased, licensed, or otherwise granted any Person the right to use or occupy such parcel of Real Property or any portion thereof, or collaterally assigned or granted any other Lien in any such lease or any interest therein;

(vi) the Lightflash Operating Company that is a party thereto has a valid leasehold interest in such Tenant Lease and the improvements thereon, free and clear of all Liens, except for Real Property Permitted Exceptions;

(vii) all required deposits and rents due to date pursuant to each Tenant Lease have been paid in full;

(viii) the Lightflash Operating Company that is a party thereto has not prepaid rent or any other amounts due under a Tenant Lease more than thirty (30) days in advance; and

(ix) no party has any rights of offset against any rents, required security deposits and additional rents payable under a Tenant Lease.

(c) The Real Property constitutes all of the real property used by any Lightflash Operating Company and the Existing Caramice Companies in connection with the operation of the Business. All improvements, systems, equipment, machinery and fixtures on the Owned Real Property are adequate and suitable in all material respects for the present and continued use, operation and maintenance thereof as now used, operated or maintained ordinary wear and tear excepted. All improvements on the Owned Real Property constructed by or on behalf of the applicable Lightflash Operating Company and the Existing Caramice Companies were constructed, to the Knowledge of Seller, in compliance in all material respects with applicable Laws, ordinances and regulations affecting such Real Property. With respect to the Real Property,

(i) there are no rights of first refusal, reversionary rights, purchase options, rights of first offer and the like, recorded or unrecorded, affecting any portion of the Real Property;

(ii) all Real Property has reasonable access to public roads and utilities, and (iii) the Real Property and its continued use, occupancy and operation as currently used, occupied and operated, does not in any material respect constitute a nonconforming use under any applicable building, zoning, subdivision and other land use and similar Laws, regulations and ordinances.

(d) The Lightflash Operating Companies and the Existing Caramice Companies have not received any written notice of any condemnation, requisition or taking by a governmental entity with respect to the Real Property, and there are no pending or, to Seller's Knowledge, threatened condemnation or eminent domain proceedings involving the Real Property.

5.7 Title to Personal Property. A Lightflash Operating Company has good and marketable title to all of the Personal Property included in the Transferred Assets free and clear of all Liens, except for Personal Property Permitted Exceptions or Liens to be released at Closing.

5.8 Condition and Sufficiency of Transferred Assets.

(a) Except for reasonable wear and tear, the Transferred Assets currently used in the operation of the Business are in suitable condition and repair for the purposes for which they are presently used in the Business; and

(b) together with Buyer's rights under the Related Agreements, the Transferred Assets are sufficient to conduct the Business as presently operated.

5.9 Contracts.

(a) Section 5.9(a) of the Disclosure Schedule sets forth a complete and correct list of the following types of Contracts to which a Lightflash Operating Company is party in effect as of the date of this Agreement used primarily to conduct the Business or related to the Transferred Assets, except purchase orders that are electronically generated from the purchasing system of a Lightflash Operating Company or a customer, supplier or vendor (collectively, " Material Contracts "):

(i) any Contract under which payments to or by any Lightflash Operating Company in any calendar year exceed $500,000, except Contracts cancelable by that Lightflash Operating Company, without penalty, on less than sixty (60) days prior written notice;

(ii) any Contract relating to any direct or indirect Indebtedness or any equipment lease agreements or security arrangements with respect to personal property under which payments to or by any Lightflash Operating Company exceed $500,000, except Contracts cancelable by that Lightflash Operating Company, without penalty, on less than sixty (60) days prior written notice;

(iii) any consulting or management services contract or any confidentiality or proprietary rights agreements under which payments to or by any Lightflash Operating Company in any calendar year exceed $500,000;

(iv) any Contract with any sales agent, sales representative, franchisee or distributor under which payments to or by any Lightflash Operating Company in any calendar year exceed $500,000;

(v) any Contract requiring the payment of royalties or similar payments in excess of $500,000;

(vi) any Contract with any governmental authority under which payments to or by any Lightflash Operating Company in any calendar year exceed $500,000;

(vii) any Contract between Seller or any of its Affiliates, on the one hand, and any other Affiliate of Seller, on the other hand, that will not be terminated effective as of the Closing Date;

(viii) any Contract for the sale of any material assets, material property or material rights and providing for payment in excess of $500,000;

(ix) any Contract that (A) materially limits the freedom of any Lightflash Operating Company to compete in any line of business or with any Person or in any area, (B) requires the purchase or use of all or substantially all of its requirements of a particular product from a supplier or vendor, or (C) grants any Person the right to obtain services, or requires any Lightflash Operating Company to provide services, on a "most favored nation" basis;

(x) any Contract involving any resolution or settlement of any actual or threatened litigation, arbitration, claim or other dispute which has not been fully performed, in each case providing for aggregate payments under each such Contract in excess of $500,000 during its remaining term following the Closing Date;

(xi) any Contracts relating to capital expenditures, including for purchases of equity, assets or properties of another Person (other than purchase orders for such items in the ordinary course of business) in each case requiring aggregate payments in excess of $500,000 during its remaining term following the Closing Date;

(xii) any joint venture, partnership, strategic alliance, limited liability company, teaming, cooperation and any other similar Contract involving a sharing of profits or losses, costs or liabilities or any other Contract that relates to the formation, creation, operation, disposition, management or control of any Person that is a legal entity;

(xiii) any material Contract pertaining to Proprietary Rights (other than for the use of commercially available software); and

(xiv) any Contract for the lease, sublease, license or occupancy of real property.

(b) Each Material Contract is in full force and effect and is valid, binding and enforceable in accordance with its terms as to the respective Lightflash Operating Company that is a party to that Agreement, and to Seller's Knowledge, the other parties to the Material Contract.

(i) Each Lightflash Operating Company has in all material respects performed and is performing all its obligations under the Material Contracts to which it is a party;

(ii) No Lightflash Operating Company, nor, to Seller's Knowledge, any other party, is in default of any material obligation under any of the Material Contracts to which such Lightflash Operating Company is a party;

(iii) No Lightflash Operating Company has received any written notice of default under any of the Material Contracts, nor to Seller's Knowledge has any event occurred that with notice or lapse of time or both would constitute a material default by any Lightflash Operating Company under any Material Contract to which such Lightflash Operating Company is a party; and

(iv) To Seller's Knowledge, no Lightflash Operating Company has received any written notice of intent to terminate any Material Contract to which such Lightflash Operating Company is a party.

5.10 Proprietary Rights .

(a) A Lightflash Operating Company owns, licenses or otherwise possesses legally enforceable rights to use the Proprietary Rights and such ownership, licenses, or other rights in the Proprietary Rights will continue to be valid and in full force and effect after the execution, delivery and performance of this Agreement;

(b) No Lightflash Operating Company or VGTI nor, to Seller's Knowledge, any other party, is in default of any material obligation under any license, sublicense or other agreement relating to Proprietary Rights;

(c) The Lightflash Operating Companies or VGTI have not granted any right or interest to any Person in connection with any of the Proprietary Rights;

(d) The Lightflash Operating Companies or VGTI are not obligated to pay any amount to any Person in order to use any of the Proprietary Rights;

(e) Except for routine patent prosecutions in various patent offices: (i) none of the Proprietary Rights is subject to any pending or, to Seller's Knowledge, threatened challenge, claim or dispute; and (ii) none of the Proprietary Rights has during the prior five years been the subject of any challenge, claim or dispute.

(f) None of the Proprietary Rights is subject to any outstanding order, decree, judgment or stipulation, or has been adjudged invalid or unenforceable;

(g) To Seller's Knowledge: (i) the operation of the Business and the ownership of the Transferred Assets does not infringe upon, misappropriate or otherwise violate any Third Party's proprietary rights; (ii) none of the Proprietary Rights is being infringed by any Third Party; and (iii) all registrations pertaining to the Proprietary Rights are valid and enforceable.

(h) No Third Party has notified a Lightflash Operating Company in writing that it believes the Business or the Proprietary Rights infringe, misappropriate or otherwise violate any proprietary right of such Third Party.

(i) All Proprietary Rights created by current or former employees, consultants or contractors of any Lightflash Operating Company and material to the Business have been fully transferred to such Lightflash Operating Company or VGTI.

(j) Section 5.10(j) of the Disclosure Schedule sets forth all software, databases, algorithms and programs (" Software ") owned or purported to be owned by any Lightflash Operating Company, or created by or on behalf of any Lightflash Operating Company and held by VGTI (collectively, " Proprietary Software "). Either a Lightflash Operating Company or VGTI owns all right, title and interest in and to the Proprietary Software, and no Proprietary Software is subject to any "copyleft" or other obligation or condition (including any obligation or condition under any "open source" license such as the GNU Public License, Lesser GNU Public License or Mozilla Public License) that:

(i) requires or conditions the use or distribution of such Proprietary Software or the disclosure, licensing or distribution of any source code for any portion of such Proprietary Software; or

(ii) otherwise imposes any material limitation, restriction or condition on the right or ability of the Lightflash Operating Companies to use or distribute any such Proprietary Software.

(k) Section 5.10(k) of the Disclosure Schedule sets forth all: (a) Assignable Software, (b) Transition Services Software and (c) any Software that is material to operation of the Business and not Assignable Software or Transition Services Software. Assignable Software means rights to software under an existing license permitting Lightflash to assign such rights (or portions thereof) to Buyer as listed in Section 5.10(k) of the Disclosure Schedule. Transition Services Software means rights to software under an existing license permitting Lightflash to provide software related services to Buyer for a limited period as listed in Section 5.10(k) of the Disclosure Schedule.

(l) The Lightflash Operating Companies have taken all commercially reasonable steps to maintain the confidentiality of their proprietary processes and other material trade secrets (including the source code for the Proprietary Software) including by requiring all employees and other Third Parties with access to such trade secrets to execute confidentiality agreements. To Seller's Knowledge, none of such trade secrets has been disclosed to any Third Party, except pursuant to written and enforceable confidentiality obligations or, where commercially required, pursuant to disclosures to any customer pertaining solely to such customer's products.

5.11 Taxes.

(a) Seller and each of the Existing Caramice Companies and Asset Subsidiaries has filed all required material Tax Returns and Tax reports with respect to the Business or the Transferred Assets and all material Taxes shown to be due on those returns and reports have been paid.

(b) Seller has adequately reserved in accordance with applicable Law, if any, or Seller's accounting practices, for the payment of all Taxes with respect to periods ended on or before the Closing Date for which Tax Returns and Tax Reports with respect to the Business or the Transferred Assets have not yet been filed.

(c) There are no Liens for Taxes (other than for current real and personal property taxes not yet due and payable) on the Transferred Assets.

(d) Seller and each of the Asset Subsidiaries and Existing Caramice Companies know of no proposed additional Tax assessment against them with respect to the Business or the Transferred Assets.

(e) Seller and each of the Asset Subsidiaries and Existing Caramice Companies have withheld and paid all Taxes with respect to the Business or the Transferred Assets required to be withheld with respect to amounts paid or owing to any employee, creditor, independent contractor or other Third Party.

(f) Caramice has filed with the appropriate Taxing Authorities all material Tax Returns that it was required to file, and those returns are true, correct, and complete in all material respects. Caramice has paid, accrued, or otherwise adequately reserved for the payment of all material Taxes that are due or will be due with respect to periods ended on or before the Closing Date for which Tax Returns have not yet been filed.

(g) No Taxing Authority (i) is auditing any material Taxes or Tax Return of Caramice or (ii) has asserted in writing any material deficiencies or assessments with respect to Caramice.

(h) Caramice has not executed any outstanding agreements, consents or waivers extending the statutory period of limitations applicable to the assessment of any Taxes or deficiencies against it, and Caramice is not a party to any agreement providing for the allocation or sharing of Taxes.

(i) No claim has been made by any Tax authority in a jurisdiction where Caramice has not filed a Tax Return that it is or may be subject to Tax by such jurisdiction, nor to Seller's knowledge is any such assertion threatened.

(j) Caramice is not a party to any agreement, whether written or unwritten, providing for the payment or sharing of Taxes, payment for Tax losses, entitlements to refunds or similar Tax matters.

(k) Seller, the Asset Subsidiaries, the Existing Caramice Companies and Caramice have complied with all applicable conditions and performed all obligations in connection with any Tax incentive or benefit held by such entity. No such incentive or benefit, to the extent such benefit will be held by Buyer or any of its Subsidiaries following the Closing, is subject to forfeiture or denial as a result of any failure by any of Seller, the Asset Subsidiaries, the Existing Caramice Companies or Caramice to comply with any applicable conditions or perform any obligations under any applicable Law with respect to such incentives or benefits.

(l) There no proceedings or Tax claims of any nature under the Indian Income Tax Act, 1961, as amended (the " Income Tax Act "), pending against Seller or any of the Asset Subsidiaries.

5.12 Environmental Matters . Except (i) for matters that would not reasonably be expected to result in material costs or liabilities to the Business and except as set forth in Section 5.12 of the Disclosure Schedule, (ii) as to the operations of VTYC, as to which no representation or warranty pursuant to this Section 5.12 is made, and (iii) as to Caramice, for matters in existence on, arising from or related to actions, conditions or circumstances prior to the Caramice Legacy Date (" Legacy Caramice Matters "):

(a) the operations of the Business are, and for the past 5 years have been, in compliance with Environmental Laws, including compliance with all required Permits;

(b) there has not been a Release of Hazardous Materials on the Real Property, or at any other location used by Seller for operation of the Business prior to the Closing Date, in amounts that could reasonably be expected to result in cleanup obligations or other liabilities under Environmental Laws;

(c) no claims under Environmental Laws that remain unresolved have been asserted in writing against any Lightflash Operating Company; and

(d) Seller has made available to Buyer all documents in its possession or control relating to environmental conditions on the Real Property or otherwise relating to liabilities of the Business under Environmental Laws.

5.13 No Breach of Contract; No Violations of Law; No Prior Approval . The execution, delivery and performance of this Agreement or any Related Agreement and the consummation of the transactions contemplated hereby and thereby will not:

(a) be a breach of or a default under (with due notice or lapse of time or both): (i) the applicable Governing Documents of Seller, the Asset Subsidiaries, the Existing Caramice Companies, the Stock Selling Subsidiaries or any member of the Stock Group (including VTYC); (ii) any agreement or instrument to which Seller, the Asset Subsidiaries, the Existing Caramice Companies, the Stock Selling Subsidiaries or any member of the Stock Group is a party (including the Contracts) or permit the termination of any provision of, or result in the termination of, the acceleration of the maturity of, or the acceleration of the performance of any obligation of Seller, the Asset Subsidiaries, the Existing Caramice Companies, the Stock Selling Subsidiaries or any member of the Stock Group thereunder, other than breaches or defaults that would not reasonably be expected to result in a Material Adverse Change to the Business; or (iii) any Law applicable to Seller, the Asset Subsidiaries, the Existing Caramice Companies, the Stock Selling Subsidiaries or any member of the Stock Group or the Transferred Assets, other than breaches or defaults that would not reasonably be expected to result in a Material Adverse Change to the Business;

(b) violate any order, judgment or decree of any court or any governmental authority applicable to Seller, the Asset Subsidiaries, the Existing Caramice Companies, the Stock Selling Subsidiaries or any member of the Stock Group or any of the Transferred Assets;

(c) create a Lien upon any of the Transferred Assets;

(d) result in the cancellation, material modification, revocation or suspension of any Permit; or

(e) require a filing with or Permit from any governmental authority, except any filing required by Antitrust Law or any filing that would not reasonably be expected to be material to the Business.

5.14 Litigation.

(a) Other than as set forth on Section 5.14(a) of the Disclosure Schedule, there is no pending or, to Seller's Knowledge, threatened Proceeding relating to the Business or any of the Transferred Assets (other than as may apply to VTYC) as of the date hereof.

(b) Except as set forth on Section 5.14(b) of the Disclosure Schedule, none of the Proceedings set forth in Section 5.14(a) of the Disclosure Schedule arose outside the ordinary course of the operation of the Business and there is adequate insurance coverage applicable with respect to such Proceedings.

(c) There is no existing or, to Seller's Knowledge, threatened order, writ, judgment, award or decree of any governmental authority or arbitrator that applies to the Business, the Stock or the Transferred Assets (other than as may apply to VTYC).

5.15 Finders, Brokers and Investment Bankers . Lierman Inc. is the only broker or investment banker acting on behalf of Seller or any of its Affiliates in connection with the transactions contemplated by this Agreement and Seller will pay its fees. No other broker, finder, financial advisor or investment banker who has acted on behalf of Seller has the right to receive any commission, finder's fee or similar payment in connection with the transactions contemplated by this Agreement.

5.16 Absence of Changes. Except as set forth in Section 5.16 of the Disclosure Schedule or as expressly permitted by this Agreement, between the date of December 31, 2011 and the date of this Agreement, and except as to VTYC, as to which no representation or warranty pursuant to this Section 5.16 is made: (i) the Business has been operated in the ordinary course and in a manner consistent with past practice (ii) there has been no Material Adverse Change, and (iii) the Business has not sold or transferred any Transferred Assets, other than sales of Inventory in the ordinary course of business. Except as set forth in Section 5.16 of the Disclosure Schedule, between the date of December 31, 2011 and the date of this Agreement, no action has been taken (or has failed to be taken) that, if taken (or failed to be taken) after the date hereof, would constitute a violation of Section 7.1 .

5.17 Permits. Except for those matters addressed by Section 5.12:

(a) The Lightflash Operating Companies have, and are in compliance in all material respects with, all Permits that are required to own the Transferred Assets and to conduct the Business as presently conducted.

(b) To the Knowledge of Seller, no Permit is subject to any pending or threatened administrative or judicial proceeding to suspend, restrict, withdraw, terminate revoke, cancel or declare such Permit invalid in any respect.

5.18 Compliance with Laws. Except for those matters addressed by Section 5.12:

(a) The Lightflash Operating Companies have operated and conducted the Business in all material respects in accordance with all applicable Laws, regulations, orders and other requirements of all courts and other governmental authorities having jurisdiction over or otherwise applicable to a Lightflash Operating Company or the Business.

(b) Neither the ownership of the Transferred Assets nor operation of the Business as it is presently conducted violates any applicable order, Law or regulation (other than as may apply to VTYC).

(c) No Lightflash Operating Company has received any written notice from any governmental authority of any violation or any order, Law or regulation other than as may apply to VTYC.

(d) Autosoft's IMMEX Program has been operated and conducted, and complies, in all material respects with all applicable Laws.

(e) The Lightflash Operating Companies have complied in all material respects with Czech Republic law #418/2011, collection of laws, on the criminal liability of legal entities, as amended (the "Criminal Liability Act"). No Lightflash Operating Company has received any written notice of the initiation of any criminal proceedings, and, to Seller's knowledge, no criminal proceedings are threatened against any Lightflash Operating Company under the Criminal Liability Act. No Lightflash Operating Company has been held liable for any criminal acts, nor have any measures been initiated against any Lightflash Operating Company, under the Criminal Liability Act.

5.19 No Undisclosed Liabilities; Stock Group Indebtedness.

(a) Except (i) as set forth in the Financial Information, (ii) for Liabilities incurred since December 31, 2011 in the ordinary course of business consistent with past practice or (iii) as set forth in Section 5.19(a) of the Disclosure Schedule, following completion of the Caramice Restructuring, Caramice will have no Liabilities which, individually or in the aggregate, would reasonably be expected to be material to the Business.

(b) As of the Closing Date, Caramice will not have any Indebtedness, other than Indebtedness between a member of the Stock Group, on the one hand, and Seller and its Affiliates, on the other hand, which will be satisfied in full at or prior to the Closing.

(c) As of the Closing, Caramice will not hold any Liability or obligation other than (i) Liabilities or obligations that would be Assumed Liabilities pursuant to Section 3.1 if such liabilities or obligations were held by an Asset Subsidiary as of the Closing, or (ii) Liabilities set forth on Section 5.19(c) of the Disclosure Schedule relating to the Business to be transferred with the assets that were transferred to Caramice by the Existing Caramice Companies prior to the Closing in connection with the Caramice Restructuring pursuant to Section 2.4.

5.20 Employees; Labor Relations.

(a) Each Lightflash Operating Company, as the case may be, shall pay each Business Employee his salary or wages earned through the Closing Date and those liabilities shall be Retained Liabilities.

(b) Except as set forth in Section 5.20(b) of the Disclosure Schedule, no Business Employee is covered by any collective bargaining agreement between a Lightflash Operating Company and any labor organization or is covered by any labor agreement and, to Seller's Knowledge, there are no activities and proceedings of any labor organization to organize any Business Employees who are not already covered by a collective bargaining agreement.

(c) No Business Employees other than Business Employees of VTYC, as to which no representative or warranty pursuant to this Section 5.20(c) is made are currently engaged in any work stoppages, strikes, slowdowns or lockouts and, to Seller's Knowledge, none is threatened and no Lightflash Operating Company has experienced any work stoppages, strikes, slowdowns, material disputes or lockouts within the last three years by or with respect to the Business Employees.

(d) The Business other than to the extent conducted by VTYC, as to which no representation or warranty pursuant to this Section 5.20(d) is made has no workers' compensation proceedings other than standard, non-material, employee medical, temporary total, permanent partial and applications for increase in permanent partial disability benefits.

(e) (i) The Lightflash Operating Companies are in material compliance with all applicable Laws regarding employment practices with respect to Business Employees, including all applicable Laws relating to wages, hours, collective bargaining, employment discrimination, civil rights, safety and health, workers' compensation, pay equity, classification of employee, and the collection and payment of withholding, social security and other Taxes, (ii) there are no material charges with respect to or relating to the Lightflash Operating Companies pending before any national, state, local, or foreign agency responsible for the prevention of unlawful employment practices, and (iii) none of the Lightflash Operating Companies has received written notice from any national, state, local, or foreign agency responsible for the enforcement of labor or employment Laws of an intention to conduct an investigation of the Lightflash Operating Companies and to Seller's Knowledge no such investigation is in progress.

(f) Seller has provided to Buyer a list of all Business Employees (other than those employed by VTYC) and has provided Buyer with the information listed below for each of those identified Business Employees and a copy of any agreement between Seller and any of those identified Business Employees. (i) job classification or title; (ii) location; (iii) base compensation; (iv) 2010 bonus compensation, if any, and 2011 target bonus compensation; and (v) hire date.

(g) When supplemented by the services available to Buyer under the Related Agreement, the Business Employees set forth in Section 5.20(f) of the Disclosure Schedule are, collectively, sufficient to, and have the capacity to, conduct the Business as presently operated by the Lightflash Companies.

5.21 Employee Benefits.

(a) Section 5.21(a) of the Disclosure Schedule lists each Business Employee Benefit Plan by a Lightflash Operating Company with respect to the Business (a " Business Employee Benefit Plan ") and separately identifies each such plan maintained (i) primarily for Business Employees or (ii) by the Stock Group. Seller has made available to Buyer a copy or description of each Business Employee Benefit Plan (including any amendments thereto) and all material related agreements or contracts.

(b) Each Business Employee Benefit Plan has been established, maintained, administered, and funded in all material respects according to its terms, the terms of any labor agreement, and the requirements of applicable Law. Each Business Employee Benefit Plan intended to qualify for special tax treatment meets all requirements for such treatment and nothing has occurred that could reasonably be expected to affect such treatment. Each Business Employee Benefit Plan required to be funded is fully funded on both a plan termination basis and a continuing operation basis.

(c) There are no actions, suits, arbitrations or other proceedings (other than non-material, routine claims for benefits) with respect to the Business Employees and the Business Employee Benefit Plans, and to Seller's Knowledge, none is threatened. No Business Employee Benefit Plan is the subject of any pending or, to the Seller's Knowledge, threatened investigation or audit by any governmental authority.

(d) All required payments (including all employer and employee contributions and insurance premiums) due under each Business Employee Benefit Plan as of the date of this Agreement have been made as required either by Law or under such Business Employee Benefit Plan.

(e) With respect to Title IV of ERISA and Section 302 of ERISA: (i) the Lightflash Operating Companies and their respective ERISA Affiliates have not incurred any liability thereunder that has not been satisfied in full; and (ii) no condition exists that presents a risk to the Lightflash Operating Companies, the Buyer or any of their respective ERISA Affiliates of incurring a liability thereunder.

(f) No Business Employee Benefit Plan that is a Pension Plan is (i) a "multiemployer plan" within the meaning of Section 3(37) of ERISA and the Lightflash Operating Companies do not have, and are not reasonably expected to incur, any withdrawal liability under ERISA for any complete or partial withdrawal from any multiemployer plan contributed to by the Lightflash Operating Companies or any ERISA Affiliate or (ii) subject to Section 412 of the Code or Title IV or Section 302 of ERISA. No Business Employee Benefit Plan provides retiree health, life or other welfare benefits except as may be required by Section 4980B of the Code and Section 601 of ERISA, any other applicable Law or at the expense of the participant or the participant's beneficiary.

(g) Except as provided in Article 11, neither the execution and delivery of this Agreement nor the consummation of transactions contemplated by this Agreement, will (either alone or in conjunction with any other event) result in, cause the accelerated vesting or delivery of, or increase the amount or value of, any payment or benefit to any Business Employee, entitle any Transferred Employee to severance pay, unemployment compensation or any other payment or result in any breach or violation of, or a default under, any of the Business Employee Benefit Plans.

(h) Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated by this Agreement will (either alone or in conjunction with any other event) cause Buyer or its Affiliates to incur any liabilities under Title IV of ERISA or Section 4980B of the Code. Except as provided in Article 11, no event has occurred in connection with any Employee Benefit Plan that has, will or may reasonably result in any liability for which Buyer or its Affiliates may be responsible, whether by operation of Law, by contract or otherwise.

5.22 Insurance. Section 5.22 of the Disclosure Schedule sets forth a complete and correct list of all policies of insurance that are owned or held by Seller, the Stock Selling Subsidiaries, the Existing Caramice Companies, the Asset Subsidiaries, Caramice or any Lightflash Operating Company (other than VTYC, as to which no representation or warranty pursuant to this Section 5.22 is made) to the extent it is insuring the Business, the Transferred Assets or the Assumed Liabilities (the " Insurance Policies "). The insurance provided under the Insurance Policies is in such amounts and with such deductibles as are set forth in Section 5.22 of the Disclosure Schedule. As of the date of this Agreement, the Insurance Policies are in full force and effect, and all premiums due and payable thereon have been paid in full, and no written notice of cancellation or termination has been received with respect to any such Insurance Policy (which has not been replaced on substantially similar terms prior to the date of such cancellation). There are no pending claims under the Insurance Policies by any of Seller, the Stock Selling Subsidiaries, the Existing Caramice Companies, the Asset Subsidiaries, any member of the Stock Group or any Lightflash Operating Company as to which the insurers have denied or disputed liability except for such claims which would not be reasonably likely to be, either individually or in the aggregate, material to the Business, taken as a whole.

5.23 Inappropriate Payments. The Seller, the Existing Caramice Companies, the Asset Subsidiaries, the Stock Selling Subsidiaries, Caramice, the Lightflash Operating Companies and to Seller's Knowledge, VTYC, and, to Seller's Knowledge, its and their respective officers, directors, employees, agents, Affiliates or representatives have complied with all applicable anti-corruption or anti-bribery laws of federal, state, local and foreign governments (and all agencies thereof) with respect to the operation of the Business or the ownership of the Transferred Assets, including the FCPA and article 222 and 222 bis of the Mexican Federal Criminal Code and rules, regulations, codes, plans, injunctions, judgments, orders, decrees, rulings, and charges thereunder, and no action, suit, proceeding, hearing, investigation, charge, complaint, claim, demand, or notice has been filed or commenced against any of them alleging any failure to comply.

5.24 DISCLAIMER. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN ARTICLE 5 OF THIS AGREEMENT, SELLER EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, INCLUDING AS TO THE CONDITION, VALUE OR QUALITY OF THE BUSINESS OR THE TRANSFERRED ASSETS AND SELLER SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, USAGE, SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO THE TRANSFERRED ASSETS OR ANY PART THEREOF, INCLUDING WITHOUT LIMITATION, THE MAQUILA ASSETS AND THE MEXICAN ASSETS, OR AS TO THE WORKMANSHIP THEREOF, OR THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR PATENT, IT BEING UNDERSTOOD THAT SUCH TRANSFERRED ASSETS ARE BEING ACQUIRED "AS IS, WHERE IS" ON THE CLOSING DATE, AND IN THEIR PRESENT CONDITION, AND BUYER SHALL RELY ON THEIR OWN EXAMINATION AND INVESTIGATION THEREOF.

**ARTICLE 6**

**REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer makes the following representations and warranties to Seller:

6.1 Organization, Existence and Standing of Buyer . Each Buyer and each of Buyer's Affiliates that will receive Assets or directly acquire Stock as part of the Transaction (" Buyer Affiliates ") are corporations or other entities duly organized and validly existing under the Laws of the jurisdiction of their incorporation and have full corporate or other power and authority to: (a) own or lease its assets; and (b) carry on its business as it is now conducted.

6.2 Corporate Authority. Buyer has all requisite corporate power and authority to enter into this Agreement and the Related Agreements and to carry out is obligations hereunder and thereunder. Buyer has taken all corporate or similar actions needed to execute, deliver and consummate this Agreement and the Related Agreements and to perform its obligations hereunder and thereunder, and no other proceedings or actions on the part of it is necessary to authorize such execution, delivery and performance. This Agreement has been, and the Related Agreements when executed will be, duly executed by Buyer and constitute the legal, valid and binding obligations of Buyer and Buyer Affiliates, as applicable, except as applicable bankruptcy, insolvency, reorganization or similar Laws relating to enforcement of creditors' rights and remedies or other equitable principles limit enforceability.

6.3 No Breach of Contract; No Violations of Law; No Prior Approval. The execution, delivery and performance of this Agreement or any Related Agreement and the consummation of the transactions contemplated hereby and thereby will not:

(a) be a breach of or a default under (with due notice or lapse of time or both): (i) Buyer's applicable Governing Documents; (ii) any agreement or instrument to which Buyer is a party, or permit the termination of any provision of, or result in the termination of, the acceleration of the maturity of, or the acceleration of the performance of any obligation of Buyer thereunder, other than breaches or defaults that would not reasonably be expected to prevent or materially delay the Closing or otherwise prevent Buyer from complying with the terms and provisions of this Agreement; or (iii) any Law applicable to Buyer, other than breaches or defaults that would not reasonably be expected to prevent or materially delay the Closing or otherwise prevent Buyer from complying with the terms and provisions of this Agreement;

(b) violate any provision of Law, or any order, judgment or decree of any court or any governmental authority applicable to Buyer;

(c) create a Lien upon any of the Transferred Assets; or

(d) require a filing with or Permit from any governmental authority, except any filings or Permits the failure to make or obtain that would not reasonably be expected to prevent or materially delay the Closing or otherwise prevent Buyer from complying with the terms and provisions of this Agreement.

6.4 Litigation. There is no pending, or to Buyer's knowledge, threatened Proceeding relating to Buyer that would, if adversely determined, result in a Buyer Material Adverse Change.

6.5 Finders, Brokers and Investment Bankers. Citigroup Global Markets Inc. is the only broker or investment banker acting on behalf of Buyer or any of its Affiliates in connection with the transactions contemplated by this Agreement and Buyer will pay its fees. No other broker, finder, financial advisor or investment banker who has acted on behalf of Buyer has the right to receive any commission, finder's fee or similar payment in connection with the transactions contemplated by this Agreement.

6.6 Financing .

(a) Section 6.6(a) of the Disclosure Schedule sets forth true, accurate and complete copies of the executed debt commitment letters dated on or about the date hereof among Buyer and Citigroup Global Markets Asia Limited, Export Import Bank of India, Bank of Baroda, ICICI Bank Limited and Keno Finance Limited (the " Debt Commitment Letters "), pursuant to which, and subject to the terms and conditions thereof, the parties thereto have committed to provide the amounts set forth therein for the purpose of funding the transactions contemplated by this Agreement and the Related Agreements (the " Debt Financing ").

(b) The Debt Commitment Letters are in full force and effect and have not been withdrawn or terminated or otherwise amended, supplemented or modified in any respect, except for any such amendments, supplements or modifications which are not material and which are not adverse to Seller. No withdrawal, termination, amendment or modification is contemplated by Buyer, or to Buyer's knowledge, the parties to the Debt Financing. The Debt Commitment Letters, in the forms so delivered, are legal, valid and binding obligations of Buyer and, to the knowledge of Buyer, the other parties thereto subject to the effect of any applicable bankruptcy, reorganization, insolvency, moratorium, rehabilitation, liquidation, fraudulent conveyance, preferential transfer or similar Laws now or hereafter in effect relating to or affecting creditors' rights and remedies generally and subject, as to enforceability, to the effect of general equitable principles (regardless of whether enforcement is sought in a proceeding in equity or at law). There are no other agreements, side letters or arrangements relating to the Debt Commitment Letters, other than fee letters with the parties to the Debt Commitment Letters that address solely the fees payable by Buyer in connection with the Debt Financing and any "market flex" arrangements, nor are there any agreements, side letters or arrangements that could adversely affect or impair the availability of the Debt Financing. Buyer has fully paid any and all commitment fees or other fees required (if any) by the Debt Commitment Letters required to be paid on or before the date of this Agreement. The conditions precedent to the obligations of the parties to the Debt Commitment Letters to make the Debt Financing available to Buyer on the terms therein consist solely of the conditions expressly set forth in the Debt Commitment Letters. As of the date of this Agreement, assuming the accuracy of the representations and warranties set forth in Article 5 hereto, Buyer does not know of any facts or circumstances that may be expected to result in Buyer's inability to satisfy any of the conditions to closing set forth in the Debt Commitment Letters to be satisfied by Buyer on or before the Closing Date. As of the date of this Agreement, to the knowledge of Buyer no event has occurred which, with or without notice, lapse of time or both, would constitute a default or breach on the part of Buyer under any term or condition of the Debt Commitment Letters.

(c) The aggregate proceeds from the Debt Financing constitute all of the financing required by Buyer for the consummation of the transactions contemplated hereby, and are sufficient for the satisfaction of all of Buyer's obligations under this Agreement in an amount sufficient to consummate the transactions contemplated by this Agreement and the Related Agreements.

6.7 Acknowledgement of Buyer. In connection with Buyer's investigation of the Business and the Transferred Assets, Buyer has received from or on behalf of Seller certain projections, including projected statements of operating revenues and income from operations of the Business and certain business plan information of the Business. Buyer acknowledges that there are uncertainties inherent in attempting to make such estimates, projections and other forecasts and plans, that Buyer is familiar with such uncertainties, that Buyer is taking full responsibility for making its own evaluation of the adequacy and accuracy of all estimates, projections and other forecasts and plans so furnished to it (including the reasonableness of the assumptions underlying such estimates, projections and forecasts), and that, except in respect of cases involving fraud, Buyer shall have no claim against Seller, the Asset Subsidiaries, the Existing Caramice Companies, the Stock Selling Subsidiaries, any member of the Stock Group, any of their respective Affiliates or any other Person with respect thereto. Accordingly, Seller makes no representations or warranties whatsoever with respect to such estimates, projections and other forecasts and plans (including the reasonableness of the assumptions underlying such estimates, projections and forecasts), and Buyer has not relied thereon.

6.8 DISCLAIMER. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN ARTICLE 6 OF THIS AGREEMENT, BUYER HAS NOT MADE ANY REPRESENTATIONS OR WARRANTIES, EITHER EXPRESS OR IMPLIED, CONCERNING THE SUBJECT MATTER OF THIS AGREEMENT.

**ARTICLE 7**

**COVENANTS OF SELLER**

7.1 Operating the Business .

(a) Except as set forth on Section 7.1 of the Disclosure Schedule, Seller shall, and shall cause the Lightflash Operating Companies to (or in the case of VTYC, use commercially reasonable efforts to cause VTYC to)

(i) conduct the operations of the Business in the ordinary course and in substantially the same manner as they have previously been conducted (and in accordance with applicable budgets) and

(ii) to use its commercially reasonable efforts to preserve intact its Business organization, assets, and relationships with Third Parties related to the Business and keep available the services of the present key employees of the Business, in each case, during the period from the date of this Agreement until the Closing Date. Notwithstanding the foregoing, the Lightflash Operating Companies are permitted to use any cash, cash equivalents, and other short term liquid investments of the Business to pay dividends or distributions, repay loans, or other payments to its Affiliates.

(b) From the date of this Agreement until the Closing Date, Seller shall cause the Lightflash Operating Companies to (or in the case of VTYC, use commercially reasonable efforts to cause VTYC to), not take any of the following actions relating to the Transferred Assets:

(i) other than in connection with the Caramice Restructuring, enter into, materially amend or terminate any Material Contract, or waive, release or assign any material rights or material claims thereunder;

(ii) other than in connection with the Caramice Restructuring, transfer, sell, lease, sublease or otherwise grant any right to use or occupy, or grant any option to transfer, sell, sublease or lease, or grant any security interest in, or otherwise create or permit any material Lien (other than a Real Property Permitted Exception) in or on any of the Real Property;

(iii) other than in connection with the Caramice Restructuring, (A) issue, sell, transfer, pledge, grant, dispose of, encumber or deliver any equity securities of any class or any securities convertible into or exercisable or exchangeable for voting or equity securities of any member of the Stock Group or any Stock Selling Subsidiary or (B) adjust, split, combine or reclassify, or subject to recapitalization, any equity securities of any member of the Stock Group or any Stock Selling Subsidiary, in each case to the extent that such member of the Stock Group or any Stock Selling Subsidiary is not a direct or indirect wholly owned Subsidiary of Seller following such transaction;

(iv) other than in connection with the Caramice Restructuring, merge or consolidate any member of the Stock Group or any Asset Subsidiary with any other Person, or restructure, recapitalize, reorganize or adopt any other corporate or legal entity reorganization, otherwise alter its legal structure or form or completely or partially liquidate any member of the Stock Group or any Asset Subsidiary;

(v) dissolve or liquidate or permit or allow the filing of a petition for relief under any bankruptcy provisions of applicable Law;

(vi) except as required by applicable Law or the terms of any Business Employee Benefit Plan or Material Contract as in effect on the date hereof, (A) grant, pay, announce or accelerate (including accelerate the vesting of) any incentive awards, retention or other bonus, equity-based or similar compensation or severance or termination pay or grant or announce any increase in the salaries, bonuses or other compensation and benefits payable to any Business Employee (other than non-material annual, promotion-related or merit-based increases in salary and/or bonus in the ordinary course of business consistent with past practice with respect to employees who are not officers), (B) increase the benefits under any Business Employee Benefit Plan, (C) amend or terminate any Business Employee Benefit Plan; provided that the renewal of an expiring Business Employee Benefit Plan on substantially the same terms shall not be prohibited by this clause (C,) (D) extend an offer of employment to, or hire, any Person for a vice president or more senior position, or any position with an annual "all-in" compensation target equal to or greater than $150,000 (other than offers of employment made to fill vacancies in the ordinary course of business consistent with past practice) to regularly and consistently provide services to the Business or terminate any key employee to the Business (other than a termination for cause) or (E) establish, adopt or enter into any additional employee benefit plan, policy, agreement, or arrangement that would be a Business Employee Benefit Plan if it were in existence on the date hereof;

(vii) other than in connection with the Caramice Restructuring, transfer, sell, lease, dividend, grant an exclusive license in respect of, surrender, divest, cancel, abandon or allow to lapse or expire or otherwise dispose of or subject to any Lien any asset of the Business or disclose any of their material trade secrets, other than dispositions of Inventory in the ordinary course of business consistent with past practice or dividends of cash from a member of the Stock Group to a Stock Selling Subsidiary;

(viii) commence, settle or compromise any Proceeding or threatened Proceeding that, individually or in the aggregate, would be reasonably expected to adversely affect in a material way the post-Closing operation of the Business or business of Buyer or any of its Affiliates;

(ix) except as required by applicable GAAP, CAS, IFRS or other applicable accounting standards or by applicable Law, change any of their material accounting principles or practices;

(x) amend any previously filed Tax Return, or make, change or revoke any election or method of accounting with respect to Taxes;

(xi) cause any member of the Stock Group to enter into a new line of business; or

(xii) agree in writing or otherwise to do any of the foregoing actions contained in this clause (b).

7.2 Access; Furnishing Information.

(a) From the date hereof through to the Closing, Seller shall permit (and shall use commercially reasonable efforts to cause VTYC to permit) Buyer and its Affiliates, through its respective officers, employees, counsel, accountants, consultants, financing sources and other representatives, to the extent not prohibited by applicable Law, to have reasonable access during regular business hours, on reasonable prior written notice and in a manner so as not to unreasonably interfere with the normal operations of the Business, to the books and records, contracts, properties, facilities, accounts, consultants, advisors, management and personnel of Seller, the Stock Selling Subsidiaries and the Lightflash Operating Companies, in each case related to the Business, as Buyer may reasonably request. Seller and Buyer and their respective employees and representatives shall cooperate with the other's employees and representatives, as the case may be, in connection with such access. Any such access shall be subject to the terms and conditions of the Confidentiality Agreement.

(b) Seller shall make available to Buyer, from time to time as Buyer may reasonably request, copies of those records retained by Seller, the Asset Subsidiaries, the Existing Caramice Companies or the Stock Selling Subsidiaries relating to the Business that are reasonably required for Buyer to: (i) defend against or assert claims related to the conduct of the Business by Seller, the Asset Subsidiaries, the Existing Caramice Companies or the Stock Selling Subsidiaries prior to the Closing Date; and (ii) to handle tax and financial audits involving the Business. (iii) This obligation shall continue until the fifth (5th) anniversary of the Closing Date and, in the case of records that may reasonably be required to handle tax audits or Environmental Claims, until expiration of the applicable statute of limitations. (iv) Buyer shall hold these records in confidence, except to the extent disclosure thereof is required to defend or assert these claims and to handle these audits, and return them to Seller, the Asset Subsidiaries, the Existing Caramice Companies or the Stock Selling Subsidiaries, as the case may be, promptly upon the conclusion of their use by Buyer.

(c) Upon Buyer's reasonable request, Seller shall use commercially reasonable efforts to arrange for Buyer to contact or meet any client, customer (including the five largest (by revenue) customers of the Business), supplier (including the five largest (by dollar amount) BOM suppliers of the Business), distributor, or other material business relation of any Lightflash Operating Company or Stock Selling Subsidiary or any labor union, in each case, regarding the Business and Seller shall use commercially reasonable efforts to participate in all calls and other contacts and attend in person meetings. For the avoidance of doubt, prior to the Closing Buyer shall not contact any client, customer, supplier, distributor or other material business relation of any Lightflash Operating Company or Stock Selling Subsidiary or any labor union regarding the Business except pursuant to a request made in accordance with this Section 7.2(c) .

7.3 Eliminating Intercompany Items. Before the Closing, Seller shall cause all payables, receivables, liabilities, and other obligations between the Business, on the one hand, and Seller and its Affiliates, on the other hand, to be eliminated, except pursuant to a Related Agreement or to the extent described on Section 7.3 of the Disclosure Schedule.

7.4 Covenant Not to Compete or Solicit .

(a) From the Closing Date until the fifth (5th) anniversary of the Closing Date, Seller may not, and shall cause each Noncompetition Party not to, directly or indirectly participate or engage in any manner in (including through the control of an entity that, directly or indirectly, is primarily engaged in) the design, development, manufacture, marketing or sale of automotive exterior lighting products, automobile interior lighting products (excluding any lighting components provided as part of another device, such as a speedometer or radio), and non-automobile lighting, including front lighting systems, rear lighting systems and auxiliary lamps, reflectors, front and rear side markers, license lamps and back-up lamps ("Competitive Business ") in any of the jurisdictions listed on Section 7.4(a) of the Disclosure Schedule. Effective as of the Closing Date, neither Seller nor any Noncompetition Party shall use "Lightflash" or any confusingly similar name in conjunction with the word "Lighting" for any purpose. Notwithstanding the foregoing, Seller or any Noncompetition Party may:

(i) continue to design, manufacture, develop or sell electronics control modules, lighting components and lighting subcomponents, or market or perform component and subcomponent assembly, whether or not marketed to, performed for or used in a Competitive Business;

(ii) continue any type of business currently conducted by it that is not a Competitive Business or part of the Business, without any limitation as to jurisdiction;

(iii) continue to hold a non-controlling interest in each entity listed on Section 7.4(a)(iii) of the Disclosure Schedule without regard to whether that entity or its affiliates are engaged in a Competitive Business;

(iv) make an equity investment in any company that at the time of such equity investment or thereafter conducts a Competitive Business, if that investment (A) does not result in a greater than 35% equity ownership in such company, and (B) such company (or any of such company's Affiliates) does not, at the time of such equity investment or following such equity investment, utilize the Lightflash Marks or Seller's or any Noncompetition Party's technology;

(v) acquire any Person that conducts a Competitive Business if either:

(A) in the calendar year prior to the acquisition, the consolidated revenues of that Person (" Target ") from its Competitive Business do not constitute (1) more than 20% of the total consolidated revenues of Target, and (2) more than 5% of the sum of (x) Seller's total consolidated revenues in the calendar year prior to the acquisition, plus (y) Target's total consolidated revenues in the calendar year prior to the acquisition; or

(B) (i) the Noncompetition Party uses commercially reasonable efforts to transfer the portion of the acquired business that constitutes a Competitive Business within 12 months from the consummation of such acquisition and (ii) by 18 months after the consummation of such acquisition, the Noncompetition Party transfers the portion of the acquired business that constitutes a Competitive Business. The Noncompetition Party may determine the terms and conditions of the transfer in its sole discretion; or

(vi) hold and make passive indirect investments, through a publicly traded mutual fund or similar investment, in publicly traded securities or other equity interests; provided that (a) Seller and the Noncompetition Parties do not actively participate in or control, directly or indirectly, any investment or other decisions with respect to such investment and (b) the equity interests of Seller and the Noncompetition Parties in any such passive indirect investment do not exceed five percent (5%) of the outstanding shares or interests in any Competitive Business and Seller.

(b) From the date of this Agreement until the third (3rd) anniversary of the Closing Date, Seller may not, and shall cause each Noncompetition Party not to, directly or indirectly, induce or attempt to induce to leave the employ of Buyer or any of its Affiliates, or solicit, employ, hire or engage, or attempt to employ, hire or engage as a consultant, any of the Business Employees set forth on Section 7.4(b) of the Disclosure Schedule; provided that neither

(i) generalized searches through media advertisement or employment firms in each case that are not directed to such personnel nor

(ii) hiring or solicitation of such individuals following a termination of employment or notification of termination of employment shall constitute a violation of the foregoing.

**ARTICLE 8**

**COVENANTS OF BUYER**

8.1 Making Records and Personnel Available.

(a) Following the Closing Date, from time to time as Seller, the Asset Subsidiaries or Stock Selling Subsidiaries may reasonably request, Buyer shall make available to Seller, the Asset Subsidiaries, the Stock Selling Subsidiaries and the Existing Caramice Companies such employees of the Business and copies of the records transferred to Buyer to the extent maintained or in the possession or control of Buyer for the sole purposes of allowing Seller, the Asset Subsidiaries, the Stock Selling Subsidiaries and the Existing Caramice Entities (i) to defend against or assert claims related to the conduct of the Business by Seller, the Asset Subsidiaries, the Stock Selling Subsidiaries and the members of the Stock Group prior to the Closing Date; and (ii) to handle tax and financial audits involving the Business.

(b) This obligation will continue until the fifth (5th) anniversary of the Closing Date and, in the case of records and personnel that may reasonably be required to handle tax audits and employee claims, until expiration of the applicable statute of limitations.

(c) All such information shall be treated as confidential information pursuant to the terms of the Confidentiality Agreement, and returned to Buyer promptly upon the conclusion of its use by Seller, the Asset Subsidiaries and the Stock Selling Subsidiaries, as the case may be. Notwithstanding anything to the contrary in this Agreement, (A) Buyer shall not be required to disclose any information if such disclosure would be reasonably likely to jeopardize any attorney-client privilege or other legal privilege, (B) any such access provided to Seller, the Asset Subsidiaries or Stock Selling Subsidiaries pursuant to this Section 8.1 shall be conducted at the expense of the requesting entity, in accordance with applicable Law (including any applicable antitrust, bank regulatory or competition Law), fiduciary duty or any binding agreement entered into prior to the date hereof, at a reasonable time, under the supervision of Buyer's personnel and in such a manner as to maintain confidentiality and not to unreasonably interfere with the normal operations of Buyer and its Affiliates and (C) Buyer will not be required to provide to Seller, the Asset Subsidiaries or Stock Selling Subsidiaries access to or copies of any records or files (including, but not limited to, any personnel file of any employee of Buyer or any of its Affiliates) the disclosure of which could subject Buyer or any of its Affiliates to risk of liability or violation of applicable Law.

**ARTICLE 9**

**MUTUAL COVENANTS**

9.1 Efforts to Consummate; HSR Act and Other Filings.

(a) Subject to the terms and conditions herein provided, each of Seller, Stock Selling Subsidiaries, Asset Subsidiaries and Buyer shall use, and Seller shall cause the Asset Subsidiaries to use, commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things reasonably necessary, proper or advisable to consummate and make effective as promptly as practicable the transactions contemplated by this Agreement.

(b) Prior to the Closing, each of Seller, the members of the Stock Group, the Stock Selling Subsidiaries, the Asset Subsidiaries and Buyer shall use, and Seller shall cause the Asset Subsidiaries to use, commercially reasonable efforts to obtain, and to cooperate with each other, upon each other's request, in any reasonable manner in connection with one of such party's obtaining, any consents and waivers with respect to the transactions contemplated hereby in connection with any Contract or any other consents and approvals as are necessary in connection with the transactions contemplated hereby; provided , that in connection with obtaining any consent, Seller, any Stock Selling Subsidiary, member of the Stock Group or any Asset Subsidiary shall not make or agree to make any material payment, divestiture or undertaking or grant any material accommodation that will adversely affect Buyer or its Affiliates (including the members of the Stock Group) after the Closing without the prior written consent of Buyer.

(c) In connection with the transactions contemplated by this Agreement, Seller and Buyer shall prepare and file the following filings within twenty (20) Business Days after this Agreement is signed (unless a filing is required by applicable Law to be made by an earlier date, in which case Seller and Buyer shall prepare and file such filing by such earlier date): (i) any filings set forth on Section 9.1(c)(i) of the Disclosure Schedule to the extent required under any Antitrust Laws (" Antitrust Filings "); and (ii) any other filings set forth on Section 9.1(c)(ii) of the Disclosure Schedule required to be made under any other applicable Law (" Other Filings "). Seller and Buyer shall use commercially reasonable best efforts to obtain an early termination of any applicable waiting period under the Antitrust Filings and Other Filings and to resolve any objections asserted by any Antitrust Authority regarding the transactions contemplated by this Agreement. Without limiting the foregoing, in no event shall Buyer be required to (A) sell, license or otherwise dispose of, or hold separate and agree to sell, license or otherwise dispose of, any material entity, asset or facility of Buyer or any of its Affiliates (including any Affiliate of Buyer after the Closing (including the members of the Stock Group)) or (B) terminate, amend or assign existing relationships and contractual rights and obligations, in each case to the extent any of the actions set forth in clauses (A) through (B) above, individually or in the aggregate, would reasonably be likely to materially impair the ability of Buyer or any of its Affiliates (including the members of the Stock Group) to continue to conduct their respective businesses (including the Business) following the Closing substantially in the manner conducted immediately prior to the Closing (after giving effect to any changes relating to the Business as contemplated by this Agreement and the Related Agreements).

(d) Seller and Buyer shall:

(i) supply the other with any information needed to make the Antitrust Filings or Other Filings;

(ii) notify the other promptly if they receive: (A) comments in connection with the Antitrust Filings or Other Filings; or (B) requests for amendments or supplements to the Antitrust Filings or Other Filings or for additional information;

(iii) supply the other with copies of all correspondence with a government official about the transactions contemplated by this Agreement, the Antitrust Filings or Other Filings;

(iv) respond as promptly as practicable to inquiries or requests made by a governmental authority relating to the transactions contemplated by this Agreement, the Antitrust Filings or Other Filings; (v) cause all documents that it files to comply in all material respects with all applicable requirements of Law; and

(vi) promptly inform the other if an event occurs that requires an amendment or supplement to the Antitrust Filings or Other Filings and cooperate with each other in filing the amendment or supplement. (e) Seller and Buyer shall each pay one half (1/2) of all filing fees required in connection with the Antitrust Filings or Other Filings.

9.2 Payments and Communications Received. Each Party shall promptly deliver to the other any cash, checks with appropriate endorsements (using their best efforts not to convert checks into cash), or other property or communications that it receives that belongs to the other Party, including any payments of accounts receivable and insurance proceeds.

9.3 Further Assurances. Each Party shall, at its own expense, execute and deliver such other instruments of conveyance and transfer the other Party reasonably requests to effectuate the transactions contemplated by this Agreement, the Related Agreements or the Caramice Restructuring.

9.4 Preparation and Filing of Tax Returns; Payment of Taxes.

(a) For any taxable period ending on or before the Closing Date, Seller shall submit the Tax Returns for Caramice (and any additional information regarding those Tax Returns as may reasonably be requested by Buyer) to Buyer (and Caramice) for filing at least thirty (30) calendar days in advance of the due date of the filing to allow Buyer and Caramice to review, comment, and object to the Tax Return based on Buyer's reasonable review.

(i) All Caramice Tax Returns for taxable periods ending on or before the Closing Date shall be prepared in a manner consistent with historical practice, except to the extent otherwise required by Law.

(ii) In the event of any objection by Buyer with respect to Caramice Tax Returns for taxable periods ending on or before the Closing Date, Buyer and Seller shall negotiate in good faith in an attempt to resolve the objection to the reasonable satisfaction of both parties and, if they are unable to resolve the dispute within five (5) Business Days, Buyer shall cause Caramice to file the disputed Tax Return in the manner prescribed by Seller; except if Buyer is advised by counsel that the filing of any Tax Return and the reporting on that Tax Return in the manner proposed by Seller may subject Buyer to any penalties, Buyer may cause Caramice to file that Tax Return in a manner which shall be as consistent as possible with the position taken by Seller but which would not subject Buyer or Caramice to a material risk of the imposition of penalties in the view of Buyer's counsel.

(iii) Seller shall make or cause to be made all payments required with respect to any Tax Returns referred to in this Section 9.4(a). Buyer shall promptly reimburse Seller for the amount of any taxes paid by Seller to the extent those Taxes are attributable (as determined under Section 9.5 hereof) to taxable periods (or portions thereof) beginning after the Closing Date.

(b) Except as otherwise provided by Section 9.4(e), Buyer shall be responsible for the preparation and filing of all other Tax Returns for the Business that are due after the Closing Date and that are not legally required to be filed by Seller, including all Tax Returns related to Mexican Taxes related to customs, IMMEX Program compliance, and foreign trade related matters. Buyer shall make all payments required with respect to those Tax Returns, provided that Seller shall be responsible for the portion of those Taxes as required by Section 9.5 of this Agreement.

(c) Any Tax Return to be prepared and filed for a taxable period beginning before the Closing Date and ending after the Closing Date (a " Straddle Period ") shall be prepared on a basis consistent with the last previous similar Tax Return and in a manner consistent with applicable Law.

(i) Buyer shall consult with Seller concerning each Tax Return for a Straddle Period.

(ii) Buyer shall provide Seller with a copy of each proposed Tax Return (and any additional information regarding that Tax Return as may reasonably be requested by Seller) at least twenty (20) days prior to the filing of that Tax Return. (d) Buyer shall be responsible for the payment of any and all Taxes not incurred in the ordinary course of business attributable to the acts or omissions of Buyer or Buyer's Affiliates occurring after the Closing on the Closing Date. (e) Seller shall be responsible for the preparation and filing of all Tax Returns for Seller for all periods (including the consolidated, unitary, and combined Tax Returns for Seller) which include the operations of the Businessfor any period (or portion thereof).

9.5 Allocation of Certain Taxes.

(a) Buyer and Seller agree that if Seller or Caramice is permitted but not required under applicable foreign, state, or local Tax Laws to treat the Closing Date as the last day of a taxable period, Buyer and Seller shall treat the Closing Date as the last day of a taxable period and make all applicable elections under such Tax Laws required to achieve such treatment.

(b) Any Taxes for a Straddle Period shall be paid by Buyer to the relevant Taxing Authority, and the Taxes for that period shall be apportioned for purposes of Section 9.4 between Seller and Buyer based on the provisions of Section 9.5(c) hereof.

(c) For purposes of this Agreement:

(i) Seller shall retain all obligations and liabilities for Taxes with respect to the Transferred Assets and the Business related to any period (or portion thereof) that ends on or before the Closing Date (" Pre-Closing Period ");

(ii) Buyer shall be responsible for all obligations and liabilities for Taxes related to any period (or portion thereof) that ends after the Closing Date;

(iii) In the case of any income, sales or gross receipts (or similar) Taxes of Caramice that are payable with respect to a Straddle Period, the portion of the Taxes relating to a Pre-Closing Period shall be determined on the basis of a closing of the books and records of Caramice as of the Closing Date.

(iv) In the case of any Taxes with respect to the Transferred Assets of the Business (including Taxes other than income, sales, gross receipts, or similar Taxes of Caramice) that are payable with respect to a Straddle Period: (A) the portion of Taxes relating to a Pre-Closing Period shall be equal to the product of all Taxes that are payable with respect to a Straddle Period multiplied by a fraction the numerator of which is the number of days in the taxable period from the commencement of the period through and including the Closing Date and the denominator of which is the number of days in the Straddle Period; except that, (B) appropriate adjustments shall be made to reflect specific events that can be identified and allocated as occurring on or prior to the Closing Date or occurring after the Closing Date.

9.6 Refunds and Carrybacks.

(a) Seller shall be entitled to any refunds (including any interest paid thereon) or credits of Taxes of Caramice attributable to taxable periods ending (or deemed pursuant to Section 9.5(c) to end) on or before the Closing Date, including any credit attributable to any overpayment of estimated Taxes paid by Caramice on or prior to the Closing Date to the extent such overpayment of estimated Taxes exceeds the liability for such Tax allocated to Seller under Section 9.5(c).

(b) Buyer and/or its Affiliates, as the case may be, shall be entitled to any refunds (including any interest paid thereon) or credits of Taxes of Caramice attributable to taxable periods beginning (or deemed pursuant to Section 9.5(c) to begin) after the Closing Date.

(c) Buyer shall promptly forward to, or reimburse, Seller for any refunds (including any interest paid thereon) or credits due Sellers after receipt thereof, and Seller shall promptly forward to Buyer or reimburse Buyer for any refunds (including any interest paid thereon) or credits due Buyer after receipt thereof.

(d) Buyer and Seller agree that, with respect to any Tax, Caramice shall not carry back any item of loss, deduction, or credit which arises in any taxable period ending after the Closing Date to any taxable period ending on or before the Closing Date.

9.7 Cooperation on Tax Matters; Tax Audits.

(a) Buyer and Seller and their respective Affiliates shall cooperate (and, in the case of VTYC, Seller shall use its commercially-reasonable efforts to cause VTYC to cooperate) in the preparation of all Tax Returns for any Tax periods for which any of them could reasonably require the assistance of the other in obtaining any necessary information.

(i) Cooperation shall include, but not be limited to, furnishing prior years' Tax Returns or return preparation packages to the extent related to the Business illustrating previous reporting practices or containing historical information relevant to the preparation of those Tax Returns, and furnishing other information within that party's possession requested by the party filing the Tax Returns as is relevant to their preparation.

(ii) Cooperation and information also shall include provision of powers of attorney for the purpose of signing Tax Returns and defending audits and promptly forwarding copies of appropriate notices and forms or other communications received from or sent to any applicable governmental authority responsible for the imposition of Taxes (the " Taxing Authority ") which relate to the Business, and providing copies of all relevant Tax Returns to the extent related to the Business, together with accompanying schedules and related workpapers, documents relating to rulings or other determinations by any Taxing Authority and records concerning the ownership and Tax basis of property, which the requested party may possess.

(iii) Buyer and Seller and their respective Affiliates shall make their respective employees and facilities available on a mutually convenient basis to explain any documents or information provided hereunder.

9.8 Tax Audits.

(a) Each of Seller and the Asset Subsidiaries, as applicable, shall have the right, at its own expense, to control any audit or examination by any Taxing Authority (" Tax Audit "), initiate any claim for refund, contest, resolve and defend against any assessment, notice of deficiency, or other adjustment or proposed adjustment relating to any and all Taxes for any taxable period ending on or before the Closing Date with respect to the Business.

(b) (i) Except as provided in Section 9.8(b)(ii), Buyer shall have the right, at its own

expense, to control any other Tax Audit, initiate any other claim for refund, and contest, resolve and defend against any other assessment, notice of deficiency, or other adjustment or proposed adjustment relating to Taxes with respect to the Business; except that, with respect to any state, local, or foreign Taxes for any Straddle Period, Buyer shall consult with Seller with respect to the resolution of any issue that would affect any Seller or Asset Subsidiary, and not settle that issue, or file any amended Tax Return relating to a Straddle Period, without the consent of Seller or the affected Asset Subsidiary, which may not be unreasonably withheld. In addition, (i) Seller and the affected Asset Subsidiary shall have the right, at their own expense, to participate in any such Tax Audit and (ii) Buyer shall promptly inform Seller and the affected Subsidiary, of any meeting or other proceeding relating to such Tax Audit, shall provide Seller and the affected Asset Subsidiary with copies of any proposed written submission to the relevant Taxing Authority relating to such Tax Audit at least ten (10) days prior to submission, and shall consider in good faith any suggestions made by Seller or the affected Asset Subsidiary, with respect to such submission.

(ii) In the event of any Tax Audit for a Straddle Period in which Seller or an Asset Subsidiary has at issue a larger amount of Taxes for which it is responsible than Buyer, Seller and the affected Asset Subsidiary shall have the right, at their own expense, to control the conduct of such Tax Audit, provided that Seller and the affected Asset Subsidiary shall consult with Buyer with respect to the resolution of any issue that would affect Buyer, and not settle that issue, or file any amended Tax Return relating to that issue, without the consent of Buyer, which may not be unreasonably withheld.

(c) Where consent to a settlement is withheld by Seller pursuant to this Section, Seller may continue or initiate any further proceedings at its own expense, provided that any liability of Buyer, after giving effect to this Agreement, shall not exceed the liability that would have resulted had Seller not withheld its consent.

9.9 Lightflash Marks. Buyer acknowledges and agrees that it does not have and, upon consummation of the transactions contemplated by this Agreement, will not have, any right, title, interest, license or other right to use the Lightflash Marks, except as provided in the PRTLA.

9.10 Disclosure Generally. Headings in the Disclosure Schedule have been inserted for convenience of reference only and shall not be deemed to affect or alter the express description of the representations and warranties contained in this Agreement. Any information set forth in any Disclosure Schedule or incorporated in any section of this Agreement shall be considered to have been set forth in each other Disclosure Schedule to the extent such information is disclosed in a way as to make its relevance to the information called for by such other section reasonably clear on its face. The inclusion of information in the Disclosure Schedule shall not be construed as or constitute an admission or agreement that a violation, right of termination, default, liability or other obligation of any kind exists with respect to any item, nor shall it be construed as or constitute an admission or agreement that such information is material to Seller, the Asset Subsidiaries, the Stock Selling Subsidiaries, the Stock Group or the Business. Neither the specifications of any dollar amount in any representation, warranty or covenant contained in this Agreement nor the inclusion of any specific item in the Disclosure Schedule is intended to imply that such amount, or higher or lower amounts, or the item so included or other items, are or are not material, and no Person shall use the fact of the setting forth of any such amount or the inclusion of any such item in any dispute or controversy between the parties as to whether any obligation, item or matter not described herein or included in the Disclosure Schedule is or is not material for purposes of this Agreement. All Disclosure Schedules attached hereto are incorporated herein and expressly made a part of this Agreement as though completely set forth herein.

9.11 Financing Activities.

(a) Buyer shall use its commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable to (i) maintain in effect the Debt Financing and the Debt Commitment Letters, (ii) arrange and obtain the proceeds of the Debt Financing on terms and conditions described in the Debt Commitment Letters, (iii) enter into definitive financing agreements with respect to the Debt Financing, so that such agreements are in effect on the Closing Date, (iv) satisfy on a timely basis all conditions and covenants in the Debt Commitment Letters to be satisfied by Buyer, and (v) consummate the Debt Financing at the Closing. Buyer shall (upon request) keep Seller reasonably informed of material developments in respect of the Debt Financing process relating to this transaction. Without Seller's prior written approval, prior to the Closing Buyer shall not amend, supplement or modify, or agree to amend, supplement or modify, the Debt Commitment Letters, in any manner that would reasonably be expected to materially impair, delay or prevent the funding of the Debt Financing or the occurrence of the transactions contemplated under this Agreement.

(b) In the event that any portion of the Debt Financing becomes unavailable in the manner or from the sources contemplated in the Debt Commitment Letters (or any definitive financing agreement relating thereto), (i) Buyer shall promptly notify Seller and (ii) Buyer shall use its commercially reasonable efforts until the Termination Date to arrange to obtain any such portion from alternative sources (on terms, which in the aggregate, are not less favorable to Buyer) (the " Alternative Financing " and, together with the Debt Financing, the " Financings "), as promptly as practicable following the occurrence of such event, including by entering into definitive agreements with respect thereto. Buyer shall keep Seller reasonably informed on a current basis in reasonable detail of the status of Buyer's efforts to arrange or obtain the proceeds of the Debt Financing.

(c) Prior to the Closing, Seller shall, and shall cause its Subsidiaries and Affiliates to, and shall use commercially reasonable efforts to cause its Affiliates' and Subsidiaries' respective directors, officers, employees, representatives and advisors (including legal, financial and accounting advisors) to, provide to Buyer such cooperation with the Financings as may be reasonably requested by Buyer, which cooperation shall include (provided, that such requested cooperation does not (x) interfere with the ongoing operations of Seller and its Affiliates, (y) cause any representation, warranty or covenant in this Agreement to be inaccurate or breached or (z) cause any Closing condition set forth in Article 10 to fail to be satisfied), but not be limited to: (i) participation in a reasonable number of meetings, presentations, due diligence sessions; (ii) as promptly as reasonably practicable, furnishing Buyer and its Financings sources with financial and other information regarding the Business; provided, that, none of Seller or any of its respective Subsidiaries or Affiliates shall be required to pay any commitment or other similar fee or incur any other liability in connection with the Financings prior to the Closing. Buyer acknowledges and agrees that neither Seller nor any of its respective Affiliates or any of their respective directors, officers, employees, representatives and advisors (including legal, financial and accounting advisors) shall have any responsibility for, or incur any liability to any Person under or in connection with, the arrangement of the Financings that Buyer may raise in connection with the transactions contemplated by this Agreement.

(d) Buyer shall promptly, upon Seller's request, reimburse Seller for all reasonable and documented out-of-pocket costs (including reasonable attorneys' fees) incurred by Seller or any of its Affiliates in connection with the cooperation of Seller contemplated by Section 9.11(c) and shall indemnify and hold harmless Seller, its Affiliates and their respective directors, officers, employees and representatives from and against any and all losses, damages, claims, costs or expenses suffered or incurred by any of them in connection with the arrangement of the Debt Financing or any Alternate Financing and any information used in connection therewith.

9.12 Tax Withholding. Notwithstanding anything in this Agreement to the contrary, Buyer shall be entitled to deduct and withhold from the consideration otherwise payable to Seller pursuant to this Agreement, such amounts as are required to be deducted and withheld with respect to the making of such payments under any provision of U.S. federal, state, local and/or non-U.S. Tax law, and to the extent that amounts are so withheld by Buyer, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Seller. Buyer shall provide Seller notice of any anticipated amounts to be withheld under this Section 9.12 at least 10 calendar days in advance of the Closing Date. Prior to Closing, Buyer and Seller shall negotiate in good faith to attempt to minimize or avoid any amounts being withheld under this Section 9.12, including by potentially restructuring all or a portion of the transactions contemplated by this Agreement in a manner that is not materially disadvantageous to Buyer. Buyer and Seller currently anticipate that withholding will be required by China with respect to the sale of the shares of VTYC and that no additional withholding will be required in connection with the transactions contemplated by this Agreement. This conclusion is based on the assumption that each of the entities acquiring the Transferred Assets will be a legal entity resident in the same country as that of the Lightflash Sale Entity from which it is purchasing the applicable Transferred Assets, except that the Maquila Assets and some or all of the Intellectual Property, will be acquired by a legal entity resident in the Czech Republic. In the event that Buyer proposes a change to this acquisition structure, and such change results in the imposition of a withholding Tax that would not otherwise have been imposed in the absence of such change, the parties agree to treat such withholding Tax as a transfer Tax subject to Article 13 and not as a withholding Tax subject to this Section 9.12.

9.13 Additional Related Agreements. Following the date hereof, the Parties shall negotiate in good faith the terms and conditions of, and use their respective commercially reasonable efforts to enter into, as of the Closing Date, the agreements set forth on Section 9.13 of the Disclosure Schedule and any other agreement or forms as may be mutually agreed between the Parties (the " Additional Related Agreements "). Any such Additional Related Agreements shall be deemed to be "Related Agreements" for all purposes hereunder.

**ARTICLE 10**

**CONDITIONS PRECEDENT**

10.1 Conditions Precedent to Seller's, the Asset Subsidiaries' and Stock Selling Subsidiaries' Performance. Seller, the Asset Subsidiaries and the Stock Selling Subsidiaries are obligated to consummate the transactions described in this Agreement on the Closing Date and to perform their other covenants and agreements according to the terms and conditions of this Agreement if, on or before the Closing Date, each of the conditions set forth in this Section 10.1 is satisfied:

(a) Representations and Warranties of Buyer.

(i) The Buyer Fundamental Representations shall be true and correct in all respects when made and on the Closing Date as though made as of the Closing Date; provided that, any representations and warranties that are made as of a specified date shall continue on the Closing Date to be true and complete in all respects as of the specified date.

(ii) Buyer's representations and warranties (other than the Buyer Fundamental Representations) in this Agreement that are qualified as to materiality or Buyer Material Adverse Change are true and complete in all respects (without giving effect to any qualification as to "materiality" or "Buyer Material Adverse Change" set forth therein) when made and on the Closing Date as though made as of the Closing Date, except to the extent that the failure of such representations and warranties to be true and correct would not, in the aggregate, reasonably be expected to have a Buyer Material Adverse Change; provided that, any representations and warranties in this Agreement that are qualified as to materiality or Buyer Material Adverse Change that are made as of a specified date shall continue on the Closing Date to be true and complete in all respects as of the specified date (without giving effect to any qualification as to "materiality" or "Buyer Material Adverse Change" set forth therein), except to the extent that the failure of such representations and warranties to be true and correct as of such specified dates have not had and would not, in the aggregate, reasonably be expected to have a Buyer Material Adverse Change.

(iii) Buyer's representations and warranties (other than the Buyer Fundamental Representations) in this Agreement that are not qualified as to materiality or Buyer Material Adverse Change are true and complete in all material respects when made and on the Closing Date as though made as of the Closing Date; provided that, any representations and warranties that are made as of a specified date shall continue on the Closing Date to be true and complete in all material respects as of the specified date.

(b) Performance of Buyer. Buyer has performed, satisfied and complied with all of its covenants and agreements, and satisfied all of its obligations and conditions required by this Agreement and the Related Agreements to be performed, complied with, or satisfied on or before the Closing Date, in each case, in all material respects.

(c) Absence of Litigation. No order, statute, rule, regulation, executive order, stay, decree, judgment or injunction shall have been enacted, entered, promulgated or enforced by any court or other governmental authority which restrains or prohibits the transactions contemplated by this Agreement or the Related Agreements. Seller, the Stock Selling Subsidiaries and the Asset Subsidiaries shall use their commercially reasonable efforts to have any of the foregoing vacated, dismissed or withdrawn by the Closing Date.

(d) Buyer Certificate. Buyer has delivered a certificate in a form mutually agreed by the Parties, dated as of the Closing Date and signed by a duly authorized officer, certifying that the conditions specified in Section 10.1(a) and Section 10.1(b) are fulfilled.

(e) Approvals. All waiting periods, if any, under Antitrust Laws relating to the transactions contemplated in this Agreement and the Related Agreements set forth on Section 9.1(c)(i) of the Disclosure Schedule have expired or terminated early and all material antitrust approvals required to be obtained prior to the Closing in connection with the transactions contemplated in this Agreement and the Related Agreements have been obtained.

(f) Caramice Restructuring. The Caramice Restructuring has been completed; provided this item will only be a condition precedent to Seller's performance if Seller has complied in all material respects with its obligation under Section 9.1(a) with respect to effecting the Caramice Restructuring.

10.2 Conditions Precedent to Buyer's Performance. Buyer is obligated to consummate the transactions described in this Agreement on the Closing Date and to perform its other covenants and agreements according to the terms and conditions of this Agreement if, on or before the Closing Date, each of the conditions set forth in this Section 10.2 is satisfied:

(a) Representations and Warranties.

(i) The Seller Fundamental Representations shall be true and correct in all respects when made and on the Closing Date as though made as of the Closing Date; provided that, any representations and warranties that are made as of a specified date shall continue on the Closing Date to be true and complete in all respects as of the specified date.

(ii) Seller's representations and warranties (other than the Seller Fundamental Representations) in this Agreement that are qualified as to materiality or Material Adverse Change are true and complete in all respects (without giving effect to any qualification as to "materiality" or "Material Adverse Change" set forth therein) when made and on the Closing Date as though made as of the Closing Date, except to the extent that the failure of such representations and warranties to be true and correct would not, in the aggregate, reasonably be expected to have a Buyer Material Adverse Change; provided that, any representations and warranties in this Agreement that are qualified as to materiality or Material Adverse Change that are made as of a specified date shall continue on the Closing Date to be true and complete in all respects (without giving effect to any qualification as to "materiality" or "Material Adverse Change" set forth therein) as of the specified date, except to the extent that the failure of such representations and warranties to be true and correct as of such specified dates have not had and would not, in the aggregate, reasonably be expected to have a Material Adverse Change.

(iii) Seller's representations and warranties (other than the Seller Fundamental Representations) in this Agreement that are not qualified as to materiality or Material Adverse Change are true and complete in all material respects when made and on the Closing Date as though made as of the Closing Date; provided that, any representations and warranties that are made as of a specified date shall continue on the Closing Date to be true and complete in all material respects as of the specified date.

(b) Performance of Seller . Seller, the Stock Selling Subsidiaries and the Asset Subsidiaries have performed, satisfied, and complied with all of their respective covenants and agreements and satisfied all of their respective obligations and conditions required by this Agreement and any Related Agreement to be performed, complied with or satisfied on or before the Closing Date, in each case, in all material respects.

(c) Absence of Litigation. No order, statute, rule, regulation, executive order, stay, decree, judgment or injunction shall have been enacted, entered, promulgated or enforced by any court or other governmental authority which restrains or prohibits the transactions contemplated by this Agreement or the Related Agreements. Buyer shall use its commercially reasonable efforts to have any of the foregoing vacated, dismissed or withdrawn by the Closing Date.

(d) Seller Certificate. Seller, the Stock Selling Subsidiaries and the Asset Subsidiaries have delivered a certificate substantially in a form mutually agreed by the Parties, dated as of the Closing Date and signed by a duly authorized officer, certifying that the conditions specified in Section 10.2(a) and Section 10.2(b) are fulfilled.

(e) Consents. Seller, the Asset Subsidiaries, the Stock Selling Subsidiaries or the Stock Group have obtained and delivered to Buyer the consents and approvals required in connection with the transactions contemplated in this Agreement and the Related Agreements that are set forth on Section 10.2(e) of the Disclosure Schedule; which consents shall be in full force and effect on the Closing Date.

(f) Stock. The Stock Selling Subsidiaries have delivered (i) provided that Buyer does not exercise the VTYC Withdrawal Right, certificates representing all of the VTYC Stock, accompanied by appropriate stock powers or similar instruments of transfer duly endorsed in blank by the registered owners of the certificates, as required to permit Buyer to acquire the Stock free and clear of any Lien, and (ii) an extract from the Czech Commercial Registry evidencing the Caramice Stock free and clear of any Lien.

(g) Approvals . All waiting periods, if any, under Antitrust Laws relating to the transactions contemplated in this Agreement and the Related Agreements set forth on Section 9.1(c)(i) of the Disclosure Schedule have expired or terminated early and all material antitrust approvals required to be obtained prior to the Closing in connection with the transactions contemplated in this Agreement and the Related Agreements have been obtained.

(h) Caramice Restructuring. The Caramice Restructuring has been completed.

(i) IMMEX Program. All the necessary steps have been taken so that the IMMEX Transfer can be completed on the Closing Date, except for any filings, notices and other administrative steps required for the IMMEX Transfer that would customarily be completed after the Closing Date in accordance with Section 2.3 and do not prohibit Buyer from operating the portion of the Business involving the Maquila Assets after the Closing Date in the same manner that such Business is operated by Autosoft prior to the Closing Date.

(j) Indian Tax Certificate . Seller shall have delivered to Buyer a Certificate under Section 281 of the Income Tax Act in the form attached hereto as Exhibit M .

10.3 Waiving Conditions. Seller and the Stock Selling Subsidiaries may waive any of the conditions set forth in Section 10.1 and Buyer may waive any of the conditions set forth in Section 10.2, in whole or in part, each in its sole and absolute discretion.

**ARTICLE 11**

**EMPLOYEES AND EMPLOYEE BENEFITS**

11.1 Employment.

(a) At the Closing, Buyer shall (or shall cause an Affiliate to) continue the employment of all Business Employees (with the exception of employees of VTYC) on Section 11.1(a)(1) of the Disclosure Schedule who transfer to Buyer pursuant to the sale of Stock and shall provide compensation and benefits to such Business Employees in accordance with the requirements of applicable Law. Effective as of the Closing, Buyer shall (or shall cause an Affiliate to) offer employment to all of the Business Employees set forth on Section 11.1(a)(2) of the Disclosure Schedule who do not otherwise transfer to Buyer pursuant to the sale of the Stock and, subject to the requirements of applicable Law, provide for a period of twelve (12) months following the Closing Date compensation and benefits (excluding equity-based incentive compensation, defined benefit retirement plans and retiree medical benefits) to such Business Employees that, taken as a whole, are no less favorable in the aggregate to the compensation and benefits (excluding equity-based incentive compensation, defined benefit retirement plans and retiree medical benefits) received by such Business Employees immediately prior to the Closing Date, including base salary or base wages that are at least equal to the base salary or base wages payable to such Business Employees immediately prior to the Closing Date; provided, however, that (i) any offer of employment shall be contingent upon the occurrence of the Closing and (ii) if any Business Employee is on disability (long term or short term) leave or on leave of absence on the Closing Date, such offer of employment shall be effective upon the return of any such employee to active employment within six months after the Closing Date, unless otherwise required by Law. Business Employees who affirmatively accept the Buyer's or its Affiliate's offer of employment, if applicable, and commence working for the Buyer or its Affiliate (including Business Employees who continued to be employed by the Stock Group) on the Closing Date (or, with respect to such employees on leave, within such six-month period) are hereinafter referred to as "Transferred Employees". Subject to the requirements of applicable Law, offers of employment to Business Employees may be made by Buyer or its Affiliate on an "at-will" basis; provided that, any such "at-will" employment offers will (i) be contingent on the Closing occurring; (ii) be subject to and in compliance with the Buyer's standard human resources, ethics and compliance policies and procedures; (iii) supersede any prior employment agreements with Seller or any of its Affiliates; and (iv) in the discretion of Buyer, be contingent on the employee (A) completing, in a manner reasonably satisfactory to the Buyer, an employment application (including work status verification), (B) passing a standard background check, and (C) signing such restrictive covenants and other contractual provisions as the Buyer or its Affiliate may in its discretion require in the ordinary course of its business; provided, that nothing in this Section 11.1 shall be construed as to confer upon any Transferred Employee any right to continued employment for any period or continued receipt of any specific employee benefit, or to prevent the Buyer or its Affiliate from terminating the employment of any Transferred Employee at any time after the Closing Date for any reason (or no reason). From the date of this Agreement until the Closing Date, Buyer and Seller agree to use commercially reasonable efforts to cooperate with such other Party to update Section 11.(a)(1) and Section 11.1(a)(2) of the Disclosure Schedules and consider in good faith any proposed revisions thereto of such other Party.

(b) Notwithstanding the foregoing, a Subsidiary of Buyer (which Subsidiary will be the same entity that acquires the Autosoft Assets) will become the employer as of the Closing Date, of the active and inactive employees employed by Autosoft (as determined under Mexican Federal Labor Law (the " MFLL ")) as of the Closing Date (all such current workers are separately identified in Section 11.1(a)(2) of the Disclosure Schedule, which will be updated no later than five (5) days prior to the Closing Date, and are referred hereafter as " Autosoft Personnel ") and will do so by carrying out an "employer substitution" as provided for in the MFLL and Social Security Law. For the purposes of this section "inactive employees" means those employees set forth on Section 11.1(b) of the Disclosure Schedule on leave for maternity, illness, injury or other similar reason, but are expected to return to work. Accordingly, (i) subject to the provisions of the MFLL, no severance will be payable to the Autosoft Personnel who are transferred by Autosoft pursuant to such employer substitution, (ii) the Subsidiary of Buyer will maintain the labor conditions and recognize the seniority of all Autosoft Personnel and agrees to pay them after the date of this Agreement upon the same basis as the salaries, fringe benefits and any other compensation, which they are receiving as of the date of the Closing Date, to the extent required under the MFLL and (iii) Autosoft shall, at the time required by applicable Law, pay the mandatory Mexican profit sharing accrued to the Closing Date in accordance to the MFLL. If any (i) wages or fringe or labor payments due to any Autosoft Personnel for services rendered prior to the date of this Agreement, and/or (ii) social security payments ( cuotas obrero-patronales ) due to the Mexican Social Security Institute (" IMSS ") and/or contributions to the National Workers' Housing Fund Institute (" INFONAVIT ") and the National Pension Fund System ("SAR"), with respect to any period of time ending on or prior to the Closing Date, are not paid by Autosoft, Seller agrees to cause Autosoft to either (a) pay the applicable and due amounts directly to them; or (b) deliver to Buyer's affiliate all amounts necessary to make such payments so that Buyer's affiliate may pay the same on the next succeeding payment date, with the understanding that Buyer's affiliate shall provide Autosoft with the corresponding payment receipts issued by the Autosoft's personnel and/or the corresponding authorities, as applicable, within five (5) calendar days after payment of such. Seller (for itself and on behalf of Autosoft) and Buyer agree to provide each other information and assistance, and execute such documents as are reasonably necessary and required by applicable Mexican Law related to the employer substitution, including but not limited to agreements with the union and notices to each of the Autosoft Personnel, as well as notices to the IMSS, INFONAVIT, SAR and any other governmental agency, within the time periods established by applicable Mexican Law. Autosoft and Buyer's affiliate will jointly file the applicable notices to effectuate the transfer of Autosoft Personnel mentioned herein.

(c) As of the Closing Date, the Buyer or its Affiliate shall assume and maintain the Assumed Employee Benefit Plans for the benefit of the Transferred Employees and the Seller and the Buyer shall cooperate with each other to take all actions and execute and deliver all documents and furnish all notices necessary to establish the Buyer or its Affiliate as the sponsor of such Assumed Employee Benefit Plans. Notwithstanding the foregoing, to the extent permitted by the applicable Law, and subject to the terms of any labor agreement, including, without limitation, any collective bargaining agreement, the Buyer or its Affiliate may, in its sole discretion, amend, suspend, or terminate any such Assumed Employee Benefit Plan at any time in accordance with its terms.

(d) With respect to any "employee benefit plan" maintained by Buyer or any of Buyer's Subsidiaries (including any vacation, paid time off and severance plans) in which Transferred Employees participate after the Closing Date, for all purposes, including determining eligibility to participate, level of benefits, benefit accruals (other than benefit accrual under any defined-benefit pension plan or similar arrangements) and vesting, each Transferred Employee's service with Seller, the Asset Subsidiaries or a member of the Stock Group (as well as service with any predecessor employer of Seller, the Asset Subsidiaries or a member of the Stock Group to the extent service with such predecessor employer is recognized by Seller, the Asset Subsidiaries or such member of the Stock Group) shall be treated as service with Buyer or any of Buyer's Subsidiaries to the same extent that such service was recognized as of the Closing under a comparable Business Employee Benefit Plan in which the Transferred Employee participated; provided, that such crediting of service does not result in any duplication of benefits.

(e) Buyer shall waive, or cause to be waived, any pre-existing condition limitation, exclusions, actively-at-work requirements and waiting periods under any welfare benefit plan maintained by Buyer or any of its Subsidiaries (other than the Business Employee Benefit Plans) in which the Transferred Employees (and their eligible dependents) will be eligible to participate from and after the Closing Date to the extent such conditions and exclusions were satisfied or did not apply to such employees under the Business Employee Benefit Plans prior to the Closing. Buyer shall use commercially reasonable efforts to recognize, or cause to be recognized, the dollar amount of all expenses incurred by each Transferred Employee (and his or her eligible dependents) during the calendar year in which the Closing Date occurs for purposes of satisfying such year's deductible and co-payment limitations under the relevant welfare benefit plans in which they will be eligible to participate from and after the Closing Date.

(f) Notwithstanding the foregoing, the employment by Buyer of all Business Employees who are employed by LFTSC shall in all respects be undertaken in accordance with the Transfer of Business Agreement.

11.2 Severance Payment Responsibilities. Except as specifically provided otherwise in this Section 11.2, and subject, as to employees of LFTSC, to the Transfer of Business Agreement, as of the Closing Date, Buyer shall assume all liabilities, responsibilities and obligations for severance payments or other separation benefits to which any Transferred Employee may be or become entitled, or claim to be entitled, after the Closing Date. The severance payments and separation

benefits provided by Buyer to any Transferred Employee on and after the Closing shall comply with the requirements of applicable Law. Notwithstanding the foregoing, Buyer shall provide, or cause an Affiliate of Buyer to provide, each Transferred Employee who is terminated without cause during (a) the twelve (12) month period following the Closing or (b) such mandatory period, if longer, during which severance related payments are required by applicable Law to be paid, with severance benefits equal to the separation pay and benefits under Seller's (or Seller's applicable Affiliate's) severance program in effect on the Closing Date or as otherwise required by applicable Law. For purposes of the calculation of the foregoing severance pay and benefits, employment service and compensation with both Seller and Seller's Affiliates and Buyer and Buyer's Affiliates shall be aggregated and recognized.

11.3 COBRA. The Seller shall be responsible for providing, and shall assume all liabilities in respect of, the provision of COBRA Continuation Coverage and all other legally mandated continuation of health care coverage for all MA Qualified Beneficiaries and any other Business Employees, including Transferred Employees, and any of their covered dependents who become eligible for such coverage on or prior to the Closing Date and for the maximum period that any MA Qualified Beneficiary is eligible for COBRA Continuation Coverage, Seller shall maintain, or cause an ERISA Affiliate to maintain, a "group health plan," within the meaning of Section 5000(b)(1) of the Code, to provide COBRA Continuation Coverage to each such MA Qualified Beneficiary in accordance with Section 4980B of the Code and Sections 601 through 608 of ERISA.

11.4 WARN. The Seller shall be solely responsible for obligations (including notice) under WARN that arise based in any part on events that occur prior to, on or after the Closing with respect to any Business Employees that are not Transferred Employees. For the avoidance of doubt, the Seller shall be solely responsible for any liabilities arising under WARN in connection with the transactions contemplated herein.

11.5 Employee Communications. Prior to making any written communications to the Business Employees pertaining to compensation or benefit matters that are affected by the transactions contemplated by this Agreement, Seller shall provide Buyer with a copy of the intended communication, Buyer shall have a reasonable period of time to review and comment on the communication, and Buyer and the Seller shall cooperate in providing any such mutually agreeable communication.

11.6 Cooperation. Following the date hereof, the Parties shall, and shall cause their Affiliates to, use their respective commercially reasonable efforts to cooperate with respect to any employee, employee compensation or benefits matters that the Parties reasonably agree require the cooperation of both Parties and that are not the subject of a specific agreement in any other provision of this Agreement, including the taking of any actions necessary to give effect to the provisions of this Agreement, including, without limitation, Articles 2 and 3.

11.7 No Amendment; No Third Party Beneficiaries. Nothing contained in this Article 11 , express or implied, is intended to constitute an amendment to or any other modification of any Business Employee Benefit Plan or Assumed Employee Benefit Plan. Further, this Article 11 shall be binding upon and inure solely to the benefit of each of the parties to this Agreement, and nothing in this Article 11 , express or implied, is intended to confer upon any other Person any rights or remedies of any nature whatsoever under or by reason of this Article 11.

11.8 Labor Negotiations . Prior to the Closing Date, the Seller shall update the Buyer on a current basis (but not less frequently than once weekly) regarding any substantive negotiations or discussions with Trade Union KOVO (or any other labor union) in connection with active bargaining over the terms and conditions for any successor collective bargaining agreement applicable to the Business Employees and/or the extension or amendment of an existing collective bargaining agreement applicable to the Business Employees.

**ARTICLE 12**

**CLOSING**

12.1 Closing Date. The Closing will take place at Lightflash Corporation, One Village Center Drive, Van Buren Township, Michigan 48111 at 10:00 a.m. on the second Business Day following the date on which the last of the conditions set forth in Article 10 is satisfied or waived. The parties may mutually agree in writing to have the Closing at another place and time. The Closing will be effective as of 12:01 a.m. Detroit time on the day the Closing occurs (" Closing Date ").

12.2 Deliveries by Buyer. At the Closing (unless a different date is expressly specified below), Buyer shall deliver to Seller or each Asset Subsidiary as appropriate:

(a) the Purchase Price required by Section 4.1 of this Agreement;

(b) the Assumption Agreement in the form of Exhibit D;

(c) the VTYC Transfer Agreement;

(d) the Czech Transfer Agreement in a form to be mutually agreed to by the Parties;

(e) the Maquila Assets Bill of Sale in the form of Exhibit E;

(f) the Mexico Real Property Deed in the form of Exhibit F;

(g) the Transfer of Business Agreement in the form of Exhibit G and all deliverables required under the Transfer of Business Agreement;

(h) the Transition Services Agreement in the form of Exhibit H with any modifications thereto as may be agreed between Buyer and Seller prior to the Closing Date; provided that Buyer shall have the right to update Exhibit A to the Transition Services Agreement upon written notice to the Seller prior to the Closing Date to remove or reduce any Services (as such term is defined therein) and the costs corresponding to such removed Services, and Seller agrees to notify Buyer in writing prior to the Closing Date to the extent that any such Services to be removed or reduced are interdependent with other Services and require termination of other aspects of the Services;

(i) the Caramice Facility Lease in the form of Exhibit I , which will be signed and become effective on the day following the Closing;

(j) the PRTLA in the form of Exhibit J;

(k) the Purchase and Supply Agreement in the form of Exhibit K;

(l) the India Contract Manufacturing Agreement in the form of Exhibit L; and

(m) all other documents required to be delivered by Buyer under this Agreement or any Related Agreement.

12.3 Deliveries by Seller. At the Closing, Seller, the Stock Selling Subsidiaries and the Asset Selling Subsidiaries, as applicable, shall deliver to Buyer:

(a) certificates representing the Stock, or with respect to the Caramice Stock, other evidence of the transfer of ownership;

(b) a general assignment and bill of sale in the form of Exhibit C;

(c) assignments of Seller's ownership rights to each of the Proprietary Rights in form satisfactory to counsel for Buyer and Seller and in recordable form to the extent necessary to assign these rights;

(d) a special warranty deed (or the local equivalent) for the Real Property subject to the Real Property Permitted Exceptions and in form acceptable for filing with and recording in the records of the jurisdiction where the Real Property is located;

(e) an assignment of Seller's leasehold interest in the Leased Real Property identified on Section 5.6(c) of the Disclosure Schedule, in form satisfactory to counsel for Buyer and Seller and in recordable form to the extent necessary to assign such interest;

(f) the VTYC Transfer Agreement;

(g) the Czech Transfer Agreement;

(h) the Maquila Assets Bill of Sale in the form of Exhibit E;

(i) the Mexico Real Property Deed in the form of Exhibit F , duly executed by Autosoft's legal representative before a Mexican Notary Public;

(j) the Mexican formal invoices ( facturas ) issued by Autosoft as owner of the Mexican Assets, in compliance with the applicable Mexican tax Laws;

(k) the Transfer of Business Agreement in the form of Exhibit G and all deliverables required under the Transfer of Business Agreement;

(l) the Transition Services Agreement in the form of Exhibit H with any modifications thereto as may be agreed between Buyer and Seller prior to the Closing Date; provided that Buyer shall have the right to update Exhibit A to the Transition Services Agreement upon written notice to the Seller prior to the Closing Date to remove or reduce any Services (as such term is defined therein) and Seller agrees to notify Buyer in writing prior to the Closing Date to the extent that any such Services to be removed or reduced are interdependent with other Services and require termination of other aspects of the Services;

(m) the Caramice Facility Lease in the form of Exhibit I , which will be signed and will become effective on the day following the Closing;

(n) the PRTLA in the form of Exhibit J;

(o) the Purchase and Supply Agreement in the form of Exhibit K;

(p) the India Contract Manufacturing Agreement in the form of Exhibit L ; and

(q) all other documents required to be delivered by Seller under this Agreement or any Related Agreement.

**ARTICLE 13**

**SALES AND TRANSFER TAXES**

Any sales, use, transfer, and documentary taxes (and any similar taxes), as well as any recording and filing fees imposed by any foreign, federal, state, local or other Taxing Authority as a result of the consummation of the transactions contemplated by this Agreement, including but not limited to the transfer of the Transferred Assets and the Stock, and the assumption of the Assumed Liabilities, shall be borne equally by Buyer and Seller. In the event that such taxes discussed in this Article 13 are assessed at a greater amount on either Buyer or Seller (calculated by including taxes assessed on a related party of either Buyer or Seller), the other party agrees that it will promptly provide reimbursement for the excess amount of such taxes assessed. In the event any tax subject to this Article 13 (including any value-added tax) is recoverable in whole or in part by Buyer subsequent to the consummation of the transactions contemplated by this Agreement, such tax shall nevertheless be borne equally by Buyer and Seller in the first instance, provided, however, that in the event of any subsequent recovery of such tax by Buyer, Buyer shall promptly notify Seller of such recovery and promptly pay to Seller fifty percent (50%) of any such recovery. Notwithstanding anything else to the contrary in this Agreement, Seller, the Asset Subsidiaries and the Stock Selling Subsidiaries will solely bear their own income (and any similar) taxes (including capital gains taxes) that result from the sale of stock or Transferred Assets.

**ARTICLE 14**

**SURVIVAL OF REPRESENTATIONS, WARRANTIES AND COVENANTS**

14.1 Survival. The representations, warranties, covenants and agreements contained in this Agreement and delivered in any certificate delivered pursuant to this Agreement will survive the Closing only for the applicable period set forth in this Article.

14.2 Representations and Warranties. All of the representations and warranties contained in this Agreement terminate at 5:00 p.m. Detroit, Michigan, time on the fifteen month anniversary of the Closing Date, except: (a) the representations and warranties in Section 5.11 (Taxes) terminate upon the expiration of the applicable statute of limitations; (b) the representations and warranties in Section 5.12 (Environmental Matters) terminate on the Closing Date except that the representations and warranties in Section 5.12(d) shall terminate on the five (5) year anniversary of the Closing Date; (c) the representations and warranties in Section 5.19(c) shall terminate on the five (5) year anniversary of the Closing Date; and (d) the representations and warranties in Section 5.1 (Organization, Existence and Standing of Seller), Section 5.2 (Qualification), Section 5.3 (Capitalization), Section 5.4 (Corporate Authority), Section 5.7 (Title to Personal Property), Section 5.15 (Finders, Brokers and Investment Bankers), Section 5.19(b) (Stock Group Indebtedness) (collectively, the " Seller Fundamental Representations ") and Section 6.1 (Organization, Existence and Standing of Buyer), Section 6.2 (Corporate Authority) and Section 6.5 (Finders, Brokers and Investment Bankers) (collectively, the " Buyer Fundamental Representations ") survive indefinitely.

14.3 Covenants and Agreements. Covenants and agreements that do not have specific time periods of applicability survive the Closing Date indefinitely. Covenants and agreements that have specific time periods of applicability survive the Closing Date for the periods prescribed.

14.4 Notice of Claim. No party is obligated to indemnify the other for breach of any representation, warranty, covenant or agreement unless notice of a claim for indemnification with respect to that breach has been delivered to it as provided in Article 1 5 or Article 16 , as the case may be, prior to the end of the applicable survival period.

**ARTICLE 15**

**ENVIRONMENTAL MATTERS**

15.1 Environmental Indemnity. Seller shall defend, indemnify and hold harmless Buyer and its Affiliates, and their respective officers, directors, employees, agents (" Buyer's Indemnified Persons ") from and against any and all Losses arising under Environmental Laws related to ownership of the Real Property or operation of the Business prior to the Closing Date (" Environmental Liabilities ") that arise from:

(a) an Environmental Claim for the Legacy Caramice Matters by a governmental authority or other Third Party not acting at the behest of Buyer, which is not resolved by the actions of Ministry of Finance or other applicable Czech authority in accordance with its undertakings in the Indemnity Agreements; provided each of Buyer and, following the Closing, Caramice, has complied with its obligations under Section 15.2 below and in the Caramice Facility Lease by providing assistance to and cooperating with Seller, Lightflash - Caramice, s.r.o. and Lightflash - Caramice Services s.r.o. in connection with their performance of the respective obligations under the Indemnity Agreements;

(b) any other Environmental Claim by a governmental authority or other Third Party not acting at the behest of Buyer, other than any claim addressed in Section 15.1(a) above, or

(c) violation of any Environmental Law where notification to a governmental authority is required, other than any claim addressed in Section 15.1(a) above; provided, however, that in no event shall Seller be liable pursuant to this Article 15 for any Losses arising from the operations of VTYC.

15.2 Indemnity Procedures.

(a) Seller shall have the right to direct, through counsel, consultants and contractors of its choosing, the defense, settlement, negotiation and resolution, including any related remedial or response action (" Resolution ") of any Environmental Liabilities, at Seller's expense.

(b) If Seller elects to direct the Resolution of any Environmental Liability, Buyer may participate at Buyer's own expense in the Resolution. Seller shall provide reasonable advance notice to Buyer regarding Seller's plan for Resolution and shall consider in good faith any reasonable alternatives proposed by Buyer. Buyer shall cooperate fully with Seller with respect to the Resolution. If Seller elects to direct the Resolution of any Environmental Liability, Buyer shall not settle or otherwise pay any Losses for the Environmental Liability, unless Seller consents in writing.

(c) If Seller does not elect to direct the Resolution of any Environmental Liability, or if Seller fails to prosecute or withdraws from the Resolution, Buyer may direct the Resolution at Seller's expense. If Buyer assumes the direction of any Resolution and proposes to settle the Environmental Liability or to forego an available appeal, then Buyer will give Seller prompt notice and Seller may participate in the Resolution of the Environmental Liability.

(d) Nothing in this Agreement shall prevent Buyer from directing in accordance with applicable Environmental Law the Resolution of any condition where: (i) it is necessary to prevent an imminent hazard to human health or the environment; and (ii) time would not permit Seller to assume the direction of the Resolution; provided, however, that Buyer shall immediately notify Seller of any condition that it asserts falls within this Section 15.2(d) and any actions taken in response thereto.

(e) For the avoidance of doubt, in the event of any inconsistency between the procedures required under the Indemnity Agreements and this Section 15.2, the procedures of the Indemnity Agreements shall apply. Buyer shall without undue delay and at its own expense, provide or ensure that Caramice provides any assistance reasonably requested from time to time by the Seller or Existing Caramice Companies in writing in connection with any and all of the Seller's or Existing Caramice Companies' obligations under the Indemnity Agreements or in connection with performance under the Indemnity Agreements that would be commercially reasonable if Buyer or Caramice were the owner of the real property benefiting from the Indemnity Agreements.

15.3 Indemnity Limitations.

(a) Seller shall have indemnification obligations under Article 15 only to the extent of the Lowest-Cost Commercially Reasonable Resolution. Buyer may elect a Resolution other than the Lowest-Cost Commercially Reasonable Resolution if it agrees to pay any additional costs associated with the alternative.

(b) Seller shall have no indemnification obligations under this Article 15 to the extent Losses result from:

(i) any Change in use of the Real Property after the Closing Date by Buyer or any subsequent owner;

(ii) any sampling by Buyer after the Closing Date, unless the sampling is (A) required by Environmental Law, (B) in response to any Environmental Claim by a governmental authority or other Third Party, (C) in response to a material development or discovery after the Closing that would likely lead to a requirement to undertake sampling, or (D) to complete the scope of work, if any, as mutually agreed between the Buyer and Seller prior to Closing, for the establishment of baseline environmental conditions on Real Property;

(iii) any exacerbation of preexisting contamination due to activities by Buyer or any subsequent owner; and

(iv) any gross negligence of Buyer or a material breach of this Agreement.

(c) No claim may be asserted against Seller under Article 15 unless Buyer provides notice to Seller describing in reasonable detail the basis of the claim or action before the third anniversary of the Closing Date. Once notice is properly made, Seller's indemnity obligations will continue until that claim is satisfied in accordance with this Agreement.

15.4 Exclusive Remedy and Release. Seller's obligations under Article 15 are Buyer's exclusive remedy for any Environmental Liabilities and any other claims arising under Environmental Laws, and Buyer waives, and unconditionally releases Seller from, any remedies that Buyer may otherwise have against Seller under any Environmental Laws, including, but not limited to, any claims under the Comprehensive Environmental Response, Contamination and Liability Act, as amended, 42 U.S.C. 9601 et seq., or common Law. Notwithstanding the foregoing, claims for fraud or intentional misrepresentation are not be limited by this Section 15.4. 15.5 Relation to Article 16. The terms of Article 16 (other than Section 16.3 and Section 16.9) shall apply to this Article 15 except as set forth in such Article 16 or to the extent there is a conflict, in which event the terms of Article 15 shall control.

**ARTICLE 16**

**GENERAL INDEMNIFICATION**

16.1 Indemnification of Buyer. Subject to this Article, Seller shall indemnify Buyer's Indemnified Persons against all Losses incurred by Buyer's Indemnified Persons as a result of:

(a) any breach of a representation, warranty, covenant or agreement of Seller or the Stock Selling Subsidiaries contained in this Agreement; or

(b) the assertion against Buyer of any of the Retained Liabilities.

16.2 Indemnification of Seller. Subject to this Article, Buyer shall indemnify Seller, the Asset Subsidiaries, the Stock Selling Subsidiaries and their Affiliates, and their respective officers, directors, employees, agents (" Seller's Indemnified Persons ") against any Losses incurred by Seller's Indemnified Persons as a result of:

(a) any breach of any representation, warranty, covenant or agreement of Buyer contained in this Agreement; or

(b) the assertion against Seller, the Asset Subsidiaries or the Stock Selling Subsidiaries or any member of the Stock Group of any of the Assumed Liabilities.

16.3 Deductible Amount.

(a) A Party has no right to indemnification unless it can bring claims in the aggregate amount exceeding $500,000, in which case Losses will be indemnified only to the extent they exceed that amount.

(b) The limitation for claims in this Section 16.3 does not apply to claims relating to the Seller Fundamental Representations and the representations and warranties of Seller in Section 5.11 (Taxes), Section 5.19(c) , the Buyer Fundamental Representations, Section 9.4 , Section 9.5 , Article 15 , Assumed Liabilities, Retained Liabilities, claims brought pursuant to Section 16.1(b) or any breach following the Closing Date of a covenant or agreement set forth herein.

(c) The parties hereto hereby acknowledge and agree that solely for purposes of determining the amount of Losses resulting from a breach of any representation or warranty for purposes of this Article 16 (but not for the purposes of determining whether any representation or warranty has been breached), any and all "Buyer Material Adverse Change", "Material Adverse Change", "materiality" and similar exceptions and qualifiers set forth in any such representations and warranties shall be disregarded.

16.4 Procedures for Claims.

(a) Within thirty (30) days after it becomes aware of a claim for which it intends to seek indemnification under this Article 16 , a Party shall provide notice of the claim to the other Party, stating: (i) the amount claimed to be due; (ii) the basis of the claim; and (iii) the provisions of this Agreement under which the claim is asserted.

(b) Within thirty (30) calendar days after receipt of this notice, a Party shall by notice to the other Party concede or deny liability in whole or in part.

(c) The Parties shall use reasonable good faith efforts to resolve any dispute over a claim brought under this Article for thirty (30) days after a Party provides notice denying liability in whole or in part. If any dispute over a claim is not settled by the Parties within such thirty (30) day period, it shall be referred to an executive nominated by each of Buyer and Seller who has authority to settle such dispute who shall endeavor in good faith to resolve such dispute for an additional period of thirty (30) days prior to the commencement of any legal action in respect of such disputed claim.

16.5 Third Party Claims.

(a) If a Party may be responsible for a claim made against the other Party (" Third Party Claim "), it may assume and conduct the defense of the Third Party Claim using counsel selected by it so long as the Third Party Claim involves solely monetary damages (" Litigation Condition "). If the Party wishes to assume and conduct the defense, it shall notify the other Party within thirty (30) days of receipt of notice from the other Party of the commencement of the lawsuit.

(b) If a Party does not assume the defense of a Third Party Claim, the other Party may defend the claim in the manner it deems appropriate, including, but not limited to, settling the claim after giving notice of the proposed settlement to the other Party.

(c) If a Party has assumed the defense of a Third Party Claim, it is not liable for any legal expenses subsequently incurred by the other Party in connection with that defense. However, the Party that originally assumed the defense will be liable for all reasonable expenses incurred by the other Party in connection with the defense if: (i) the Litigation Condition ceases to be met; or (ii) the other Party assumed its own defense because the defending Party failed to take reasonable steps to defend diligently the Third Party Claim within 30 days (or shorter period as may be required to defend diligently the Third Party Claim) after being notified that the other Party believed the defending Party had failed to take reasonable steps, and, in either case.

(d) a Party that has assumed defense of a Third Party Claim shall not consent to a settlement of, or the entry of any judgment arising from, the claim unless the other Party consents in writing to the settlement or judgment, which consent may not be unreasonably withheld.

16.6 Exclusive Remedy. Except as otherwise provided for in this Agreement, including the rights of the parties hereunder to specific performance or other equitable relief pursuant to Section 19.12, following the Closing Date, the indemnification provided by this Article is the exclusive remedy for the Parties with respect to this Agreement (other than those matters addressed by Article 15) and the transactions contemplated by this Agreement and the Related Agreements. Notwithstanding the foregoing, claims for fraud or intentional misrepresentation are not be limited by this Section 16.6.

16.7 Payment of Amounts. A Party shall pay in immediately available funds any amounts due and owing to the other Party as a result of any occurrence that gives rise to indemnification under this Article. All indemnification payments are adjustments to the Purchase Price.

16.8 Insurance Offset. The amount of any Losses suffered by a Party will be reduced by the net effect of any insurance coverage that may be realized by that Party in respect of the Losses. This reduction, if any, will be applied as follows: (a) all Losses shall be paid or reimbursed promptly upon determination; and (b) the Party incurring the Losses shall reimburse the other Party for the coverage effect of insurance, if any, upon the date of recovery of any insurance proceeds. 16.9 Maximum Amount of Any Indemnification.

(a) Notwithstanding any provision to the contrary in this Agreement, the aggregate liability of Seller (i) under this Article 16 of this Agreement for Losses related to breaches of representations and warranties (other than Seller Fundamental Representations, and the representations and warranties of Seller in Section 5.11 (Taxes), Section 5.19(c) and Section 5.12(d) ) contained in this Agreement and (ii) under Section 15.1(a) shall not exceed 10% of the Purchase Price (the " Maximum Amount "); provided , that , should Buyer incur Losses related to breaches of the representations and warranties of Seller under Section 15.1(a) in an amount that, when added to the aggregate amount of all other Losses incurred by Buyer that are subject to the limitation of this Section 16.9(a) , exceeds the Maximum Amount (the amount of such excess, the " Excess Caramice Environmental Losses "), Seller shall indemnify Buyer for the amount of such Excess Caramice Environmental Losses, up to a maximum aggregate amount of Five Million Dollars ($5,000,000).

(b) Notwithstanding any provision to the contrary in this Agreement, the aggregate liability of Buyer under this Article 16 of this Agreement for Losses related to breaches of representations and warranties (other than Buyer Fundamental Representations) shall not exceed the Maximum Amount.

**ARTICLE 17**

**EXPENSES**

Except as otherwise expressly set forth in this Agreement, each of the Parties shall pay its own expenses incurred by it in negotiating, preparing, closing and performing this Agreement and the Related Agreements, including any legal and accounting fees, whether or not the transactions contemplated hereby are consummated.

**ARTICLE 18**

**TERMINATION; VTYC REVIEW PERIOD**

18.1 Termination of Agreement.

(a) The Parties may terminate this Agreement prior to the Closing as provided below:

(i) the Parties may terminate this Agreement by mutual written consent; (ii) Seller may terminate this Agreement by giving written notice to Buyer if any of the conditions precedent under Section 10.1 are not capable of being fulfilled; (iii) Buyer may terminate this Agreement by giving written notice to Seller if any of the conditions precedent under Section 10.2 are not capable of being fulfilled; (iv) Buyer or Seller may terminate this Agreement by giving written notice to the other if the Closing shall not have occurred on or before July 31, 2012 (the " Termination Date") because of the failure of any condition precedent under Section 10.1 or 10.2 ; provided , however, that if the only condition set forth in Section 10.1 or Section 10.2 that remains to be satisfied as of the Termination Date is the IMMEX Program described in Section 10.2(i) , then such Termination Date may be extended by any Party (provided that such Party has not breached its obligations under Section 2.3 in any material respect or in any manner that shall have proximately caused the failure of the condition set forth in Section 10.2(i) ) for an additional thirty-one (31) days and the "Termination Date" shall be deemed to be August 31, 2012 for all purposes under this Agreement; provided , further , that if the only condition set forth in Section 10.1 or Section 10.2 that that remains to be satisfied as of August 31, 2012 is the IMMEX Program described in Section 10.2(i) , then such extended Termination Date may be extended by any Party (provided that such Party has not breached its obligations under Section 2.3 in any material respect or in any manner that shall have proximately caused the failure of the condition set forth in Section 10.2(i) ) for an additional thirty (30) days and the "Termination Date" shall be deemed to be September 30, 2012, for all purposes under this Agreement; (v) Seller may terminate this Agreement if (A) all of the conditions set forth in Sections 10.1 and 10.2 have been and continue to be satisfied or waived (other than those conditions that by their terms are to be satisfied at Closing), and (B) Buyer (1) fails to consummate the Closing within five (5) Business Days following the date on which the Closing should have occurred; or (2) notifies Seller in writing that the Debt Financing or the Alternative Financing is unavailable; provided that any termination of this Agreement by Seller under Section 18.1(a)(iv) shall be deemed to be a termination under this Section 18.1(a)(v) if the Seller was entitled to terminate this Agreement under this Section 18.1(a)(v) at the time of such termination.

(b) Notwithstanding the foregoing, no Party may terminate this Agreement under Sections 18.1(a)(ii) through 18.1(a)(v) if the basis for termination or the reason for the failure of the Closing to be consummated results from a breach by the Party of any of its agreements or covenants contained in this Agreement.

18.2 Effect of Termination. If either Party terminates this Agreement under Section 18.1, all obligations of the Parties under this Agreement or the Related Agreements will terminate without any liability of either Party to the other Party with the exception of: (i) the provisions of this Article 18 , Section 7.2(a) , Section 8.1(c) , Article 17 , Section 18.3 and Article 19 , each of which provisions shall survive such termination and remain valid and binding obligations of the parties, and (ii) any liability for any intentional or willful breach by a party hereto of any of its representations or warranties contained in, or failure to perform any of its obligations under, this Agreement prior to such termination. For this purpose "intentional" means an action or omission that the breaching party knows or reasonably should have known is or would result in a breach of this Agreement. The Confidentiality Agreement dated August 12, 2011 (the " Confidentiality Agreement ") will survive the termination of this Agreement for any reason.

18.3 Payment of the Deposit Amounts. In the event that this Agreement is validly terminated or validly deemed terminated pursuant to Section 18.1(a)(v), then in such event Seller and Buyer shall jointly instruct the Escrow Agent to immediately disburse to the Seller the Deposit Amounts by wire transfer of immediately available funds within three Business Days following such termination. In the event a final judgment or decree is entered by a court of competent jurisdiction that Seller was entitled to the Deposit Amounts and did not receive the Deposit Amounts when due, Buyer shall also reimburse Seller for all reasonable costs and expenses incurred by Seller (including attorney's fees) after the date such Deposit Amounts become due in connection with the collection under and enforcement of this Section 18.3 (the " Enforcement Costs "). In the event that the Deposit Amounts are paid to Seller, the payment of the Deposit Amounts and Enforcement Costs, if any, shall be the sole and exclusive remedy of each of Seller, the Stock Selling Subsidiaries, the Asset Subsidiaries, the members of the Stock Group and the respective Affiliates thereof and their respective officers, directors, employees, agents, successors and assigns for, and in no event shall Seller, the Stock Selling Subsidiaries, the Asset Subsidiaries, the members of the Stock

Group and the respective Affiliates thereof or their respective officers, directors, employees, agents, successors and assigns (x) seek to recover any other money damages or seek any other remedy for, any and all claims, causes of action, damages or liabilities in connection with or arising out of this Agreement or (y) be permitted or entitled to receive the grant of an injunction, specific performance, other equitable relief or payment of monetary damages. In the event that the Deposit Amounts and Enforcement Costs, if any, are paid to Seller, each of Seller, the Stock Selling Subsidiaries, the Asset Subsidiaries, the members of the Stock Group hereby expressly waives, and shall cause their respective Affiliates to waive, any and all other rights or causes of action it or its respective Affiliates may have against Buyer or its Affiliates now or in the future under any Law or otherwise in connection with or arising out of this Agreement.

18.4 VTYC Review Period.

(a) Buyer shall have a period of thirty (30) calendar days, commencing as of the date hereof (the " VTYC Review Period "), to: (i) conduct such further reasonable and customary due diligence investigation of VTYC and the portion of the Business conducted thereby as it may reasonably determine to undertake (including site visits and environmental sampling if agreed by VTYC based on an initial environmental assessment), and (ii) conduct discussions with the holders of equity interests in VTYC other than LFS (the " VTYC Counterparties ") with respect to the transfer of the VTYC Stock to Buyer or its designated Affiliate.

(b) During the VTYC Review Period, Seller shall use its commercially reasonable efforts to facilitate the production to Buyer and its representatives of such information, documents and materials relating to VTYC and the portion of the Business conducted thereby as may be reasonably requested by Buyer and its representatives. In addition, Seller shall arrange for Buyer and its representatives to meet with representatives of the VTYC Counterparties to discuss the proposed transfer of the VTYC Stock.

(c) During the VTYC Review Period, Buyer may elect to exercise the VTYC Withdrawal Right if: (i) the information provided to Buyer during the VTYC Review Period is not sufficient, in Buyer's commercially reasonable judgment, to enable Buyer and its representatives to conduct a reasonably adequate due diligence review of VTYC and the portion of the Business conducted thereby; provided, that Buyer shall have the right to elect to extend the VTYC Review Period for an additional fifteen (15) calendar days to facilitate its receipt of such information (and thereafter the VTYC Review Period may be extended by mutual agreement between the Buyer and Seller); (ii) information made available to Buyer during the VTYC Review Period relating to the business, assets, liabilities, operations, results of operations, or financial condition of VTYC provides a reasonable basis for concluding that the due diligence information provided to Buyer prior to the date hereof in respect of VTYC and the portion of the Business conducted thereby materially misstated, or failed to disclose, a material liability or other fact that would reasonably be viewed as having a material negative impact in the value of the VTYC Stock. For the avoidance of doubt, Buyer and Seller agree that a negative change on the value of the VTYC Stock in the amount of $2,000,000 or more shall be deemed to be a "material negative impact" for purposes of this Section 18.4(c)(ii); or (iii) during the VTYC Review Period, Buyer shall have been unable to reach a commercially reasonable agreement with the VTYC Counterparties in respect of the transfer of the VTYC Stock to Buyer or its designated Affiliate in connection with the Closing of the Transaction; provided , however , that in connection with reaching a commercially reasonable agreement with the VTYC Counterparties, Buyer shall not be required to: (x) make or agree to make any payment, (y) undertake or grant any material accommodation that will adversely affect Buyer or its Affiliates (including the members of the Stock Group) or (z) enter into (1) any agreement with the VTYC Counterparties that is materially different from any of the agreements in effect on the date hereof by and between the VTYC Counterparties and Seller or any of Seller's Affiliates, except as set forth on Section 18.4(c)(iii)(z) of the Disclosure Schedule, or (2) any other agreement with the VTYC Counterparties that is materially adverse to the business of Buyer or the Business. If, during the VTYC Review Period, Buyer does not elect to exercise the VTYC Withdrawal Right and is unable to reach an agreement with the VTYC Counterparties that would permit LFS to deliver the VTYC Stock to Buyer on the Closing Date, the obligation of LFS to deliver the VTYC Stock pursuant to Section 10.2(f) shall be deemed waived by Buyer and shall not be a condition precedent to Buyer's obligations hereunder.

(d) Buyer may exercise the VTYC Withdrawal Right at any time from and after the date hereof until 5:00 pm, Detroit, Michigan time, on the final day of the VTYC Review Period upon written notice to Seller pursuant to Section 19.1 below.

(e) Upon the receipt by Seller of Buyer's written notice of exercise of the VTYC Withdrawal Right:

(i) the Purchase Price payable pursuant to Section 4.1 for the Transferred Assets shall be reduced by the amount of Twenty Million U.S. Dollars (US $20,000,000) and the Maximum Amount (as such term is defined in Section 16.9(a) , above) shall be proportionately reduced;

(ii) LFS shall cease to be a "Stock Selling Subsidiary" for all purposes hereunder or under any Related Agreement;

(iii) the VTYC Stock shall cease to be a "Transferred Asset" for all purposes hereunder or under any Related Agreement, and shall be deemed to be an "Excluded Asset" for all purposes hereunder and thereunder;

(iv) the defined terms "Assets", "Stock", "Stock Group", "Transferred Assets", "Lightflash Sale Entity" or "Lightflash Operating Company" shall be deemed in all respects to exclude the VTYC Stock or VTYC, as the case may be, and no representation, warranty or covenant in respect of VTYC or the VTYC Stock shall be deemed to have been made or given by Seller hereunder or under any Related Agreement;

(v) the defined term "Assumed Liabilities" shall be deemed in all respects to exclude any liabilities and obligations related to the VTYC Stock or VTYC, as the case may be, and the definition of "Retained Liabilities" shall be deemed to include any and all liabilities and obligations related to the VTYC Stock and VTYC;

(vi) Section 4.3(a) shall be void and of no further force and effect and the execution and delivery of the VTYC Transfer Agreement shall not be a requirement of or a condition to Closing; and

(vii) the continued ownership by LFS of the VTYC Stock shall be a permitted exception to the covenants set forth in Section 7.4 by virtue of clause (a)(iii) thereof.

**ARTICLE 19**

**MISCELLANEOUS**

19.1 Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given:

(a) on the date of service if served personally on the party to whom notice is to be given;

(b) on the day of transmission if sent via facsimile transmission or email in Adobe (.pdf) format and confirmation of receipt is obtained promptly after completion of transmission;

(c) on the day of delivery by Federal Express or similar overnight courier or the Express Mail service maintained by the United States Postal Service or

(d) on the day of delivery, if mailed to the party to whom notice is to be given, by first class mail, registered or certified, postage prepaid and properly addressed, to the party as follows:

|  |  |
| --- | --- |
| If to Seller: | c/o Lightflash Corporation Address U.S. Attention: Tom Hunks Facsimile: xxx-xxx-xxx Email: With a copy (which shall not constitute notice to Seller) to: Neimann LLP Address, USA Attention: Fred Furmer Facsimile: (xxx-xxx-xxx Email: |
| If to Buyer: | c/o Techmec Engineering Private Limited B-24 / 25, Address, India Attention: Harry Gupta Facsimile: xxx-xxx-xxx Email: sachdev.sanjay@Techmecgroup.com With a copy (which shall not constitute notice to Buyer) to: Keller, French and Dinmore LLP USA Attention: Conrad Conrads Facsimile: xxx-xxx-xxx Email: xxx-xxx-xxx |

19.2 Waiver. None of the provisions of this Agreement may be waived except in writing. A Party may enforce any provision of this Agreement even if it has not previously enforced that provision or any other provisions of this Agreement.

19.3 Headings. The article and section headings set forth in this Agreement are for convenience only and are not considered as part of this Agreement, nor affect in any way the meaning or interpretation of the terms and provisions of this Agreement.

19.4 Successors and Assigns. The terms and conditions of this Agreement inure to the benefit of and are binding upon the respective successors and permitted assigns of the Parties. Neither Party, without the express written consent of the other Party, may assign this Agreement; provided, however, (i) without the consent of the Seller, Buyer may assign this Agreement or any of its rights or interests hereunder as collateral to any lender, or agent or trustee acting for the lenders, in connection with a secured financing undertaken by Buyer or any of its Affiliates, and (ii) either Party may assign all or part of its rights and obligations under this Agreement to one or more of its Subsidiaries. No assignment pursuant to either clause (i) or clause (ii), above, will relieve the assigning Party of any of its obligations hereunder.

19.5 Enforceability. The Parties intend this Agreement to be enforced as written. However, if a court determines that a provision of this Agreement is: (a) unlawful, the provision will be severed from this Agreement and the remainder of this Agreement will remain in full force and effect; or (b) invalid or unenforceable: (i) the provision will remain in effect in any other circumstances, (ii) the Agreement will otherwise remain valid and enforceable, and (iii) the court may reduce the duration or area, or both, of the provision, if the invalidity or unenforceability is because of the duration or area covered stated in the provision and in its amended form the provision will then be enforceable.

19.6 No Third Party Beneficiaries or Right to Rely . Notwithstanding anything to the contrary in this Agreement:

(a) nothing in this Agreement is intended to grant to any Third Party (including, but not limited to, to any former, current or future employees or officers of any Party or any of their shareholders, dependents or beneficiaries, any Subsidiary or any labor union) any rights, as a third party beneficiary or otherwise, except that Buyer's Indemnified Persons are intended third party beneficiaries of applicable provisions of Article 15 and Article 16 and Seller's Indemnified Persons are intended third party beneficiaries of the applicable provisions of Article 16 ;

(b) no Third Party may rely on any of the representations, warranties, covenants or agreements contained in this Agreement; and

(c) no Party will incur any liability or obligation to any Third Party because of any reliance by that Third Party on any representation, warranty, covenant or agreement in this Agreement.

19.7 Counterparts. This Agreement may be executed in more than one counterpart. Each counterpart is an original and together constitute one and the same agreement. A signature to this Agreement delivered by facsimile or other electronic means is valid.

19.8 Time of Essence. Time is of the essence with respect to this Agreement.

19.9 No Strict Construction. The language used in this Agreement is the language chosen by the Parties to express their mutual intent. No rule of strict construction will be applied against either Party.

19.10 Public Announcements. No party shall make any press release or public announcement concerning the transactions contemplated by this Agreement without the prior written approval of the other parties, unless a press release or public announcement is required by Law. If any such announcement or other disclosure is required by Law, the disclosing party shall give the nondisclosing party or parties prior notice of, and an opportunity to comment on, the proposed disclosure.

19.11 Currency/Method of Payment. Unless otherwise specifically provided in this Agreement, (a) all references to amounts of money are lawful money of the United States, and (b) all payments of money shall be made in immediately available funds.

19.12 Specific Enforcement. The parties agree that irreparable damage would occur in the event that any provision of this Agreement was not performed in accordance with its specific terms or was otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in any court of competent jurisdiction, this being in addition to any other remedy to which they are entitled at Law or in equity, whether pursuant to this Agreement or otherwise.

19.13 Governing Law. This Agreement shall be construed, performed and enforced in accordance with, and governed by, the Laws of the State of Michigan (without giving effect to the principles of conflicts of Laws thereof). Any legal action or proceeding with respect to this Agreement or the transactions contemplated hereby may be brought in any court of the State of Michigan having jurisdiction thereof or in the United States District Court for the Eastern District of Michigan, and by execution and delivery of this Agreement, each of the Parties consents to the exclusive jurisdiction of those courts. Each of the Parties irrevocably waives any objection, including any objection to the laying of venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the bringing of any action or proceeding in such jurisdiction in respect of this Agreement or the transactions contemplated hereby.

19.14 Miscellaneous. As used in this Agreement, the Disclosure Schedule, the Exhibits and the Related Agreements: (a) the singular and plural include each other; (b) each gender includes both genders; (c) words and phrases defined in this Agreement have the same meaning in the Disclosure Schedule, Exhibits and Related Agreements unless specifically provided to the contrary; (d) the terms "hereof," "herein," "hereby," and derivative or similar words refer to this entire Agreement as a whole and not to any other particular article, section or other subdivision; (e) the words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation;" and (f) "shall," "will," or "agrees" are mandatory, and "may" is permissive.

19.15 Entire Agreement; Amendment. This Agreement, together with the Related Agreements and the Confidentiality Agreement constitutes the sole understanding of the Parties and supersedes all other prior agreements and understandings, oral or written, between the Parties with respect to these matters. The Disclosure Schedule hereto and any documents and instruments delivered pursuant to any provision hereof are expressly made a part of this Agreement as fully as though completely set forth herein. No modification of this Agreement is binding unless the modification is in writing and duly executed by the Parties.

19.16 Bulk Transfer Laws. Buyer acknowledges that Seller shall not comply with the provisions of any so-called bulk sales or transfer Laws of any applicable jurisdiction (including Article 6 of the Uniform Commercial Code) in connection with the sale of Acquired Assets and the other transactions contemplated by this Agreement, and Buyer hereby waives Seller's failure to comply with such Laws.

IN WITNESS WHEREOF, the parties have caused this Asset Purchase Agreement to be executed by their respective officers or employees thereunto duly authorized as of the date first above written.

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| --- |
| LIGHTFLASH CORPORATION |
| By: |s|Name Name: Name Title: Vice President and General Counsel |
| LFS, LLC |
| By: |s|Name Name: Name Title: Assistant Secretary |
| LFC, LLC |
| By: |s|Name Name: Name Title: Assistant Secretary |
| AUTOSOFT S.A. DE C.V. |
| By: |s|Name Name: Name Title: Power of Attorney |
| LIGHTFLASH GLOBAL TECHNOLOGIES, INC. |
| By: |s|Name Name: Name Title: Vice President |
| LIGHTFLASH ELECTRONICS CORPORATION |
| By: |s|Name Name : Name Title: Assistant Secretary |

|  |
| --- |
| LIGHTFLASH HOLDINGS ESPANA, S.L. By: |s|Name Name: Name Title: Director By: |s|Name Name: Name Title: Director By: |s|Name Name: Name Title: Chairman and Director |

|  |
| --- |
| TECHMECCORP HOLDING BV |
| By: /s/Name Name: Name Title: Director |

TECHMEC ENGINEERING PVT. LTD.

By: |s|Name Name: Name Title: Managing Director

**APPENDIX A**

**DEFINED TERMS**

"Additional Related Agreements" shall have the meaning set forth in Section 9.13 .

"Affiliate" means, with respect to any Person, at the time in question, any other Person controlling, controlled by or under common control with the Person. For purposes of this definition, "control" (including, but not limited to, the terms "controlling," "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

"Agreement" means this Asset Purchase Agreement.

"Alternative Financing" shall have the meaning set forth in Section 9.11(b) .

"Antitrust Authority" means any national, super-national or other entity with antitrust jurisdiction over the transactions contemplated by this Agreement under Antitrust Law.

"Antitrust Filings" has the meaning set forth in Section 9.1(c)(i) .

"Antitrust Law" means statutes, regulations, administrative and judicial doctrines and other Laws intended to effect, encourage or restrain competition.

"Asset Subsidiaries" has the meaning set forth in Recital E .

"Assets" has the meaning set forth in Section 2.1 .

"Assignable Software" has the meaning set forth in Section 5.10(k) .

"Assumed Employee Benefit Plan" shall mean the Business Employee Benefit Plans (or the portion thereof) listed on Section 11.1(c) of the Disclosure Schedule.

"Assumed Liabilities" has the meaning set forth in Section 3.1 .

"Assumption Agreement" means an agreement in the form set forth on Exhibit D under which Buyer assumes the Assumed Liabilities.

"Caramice" shall have the meaning set forth in Recital C .

"Caramice Facility Lease" means an agreement in the form set forth on Exhibit I providing for the lease to Caramice of certain land and buildings currently owned by the Existing Caramice Companies.

"Caramice Lease Payment" shall have the meaning set forth in Section 4.1 .

"Caramice Legacy Date" means June 25, 1993, being the effective date of the purchase agreement relating to Caramice entered into between The Fund of National Property of the Czech Republic and AjaxAjax Motor Company, the predecessor-in-interest to Seller.

"Caramice Restructuring" means the project of transformation to be completed in accordance with the Company Conversion Act and other applicable Law of the Czech Republic and Section 2.4 of this Agreement that will result in Lightflash-Caramice, s.r.o. and Lightflash-Caramice Services, s.r.o. transferring the assets and liabilities related to the portion of the Business conducted in the Czech Republic to Caramice prior to the Closing and acquiring all necessary licenses or Permits required for the operation of the portion of the Business conducted in the Czech Republic.

"Caramice Stock" shall have the meaning set forth in Section 2.1 .

"Business" has the meaning set forth in Recital A .

"Business Day" shall mean a day other than a Saturday, Sunday or other day on which banks in the State of Michigan are required or authorized to close.

"Business Employee Benefit Plan" shall have the meaning set forth in Section 5.21(a) .

"Business Employees" means the Persons employed by the Lightflash Operating Companies who regularly and consistently provide services to the Business, including Persons who spent a majority of their time providing services to the Business and part time providing services to other businesses of such Lightflash Operating Companies.

"Buyer" shall have the meaning set forth in the Preamble .

"Buyer Affiliates" shall have the meaning set forth in Section 6.1 .

"Buyer Fundamental Representations" shall have the meaning set forth in Section 14.2(d) .

"Buyer Material Adverse Change" means any change, effect, circumstance or event that has been, is or is reasonably likely to be materially adverse to the business, assets, liabilities, operations, results of operations, or financial condition of Buyer and Buyer's Affiliates, taken as a whole. However, "Buyer Material Adverse Change" does not include: (a) any change affecting economic or financial conditions generally (global, national, or regional, as applicable); (b) any change caused by the announcement of the Transaction; (c) any changes in national or international political conditions or instability; or (d) any change of Laws; except, in the case of clauses (a), (c) and (d), to the extent such change, effect, circumstance or event has a disproportionate adverse effect on Buyer and Buyer's Affiliates as compared to other Persons engaged in the same business.

"Buyer's Indemnified Persons" has the meaning set forth in Section 15.1 .

"Autosoft" shall have the meaning set forth in Recital B .

"Autosoft Personnel" has the meaning set forth in Section 11.1(b) .

"CAS" means the Chinese accounting standards.

"Change" means, for purposes of Article 15 (a) voluntary closure (or involuntary closure that does not arise out of Environmental Laws) of all or a portion of the Real Property or the Business; or (b) change in use of the Real Property from its current industrial use to any other use; provided, however, for the avoidance of doubt, that use of the Real Property for the lighting business, including any expansion of such business, shall not constitute a "Change."

"Closing" means the closing of the transactions contemplated by this Agreement.

"Closing Date" has the meaning set forth in Section 12.1 .

"Closing Date Inventory" means, as of as of 11:59 p.m., Detroit time, on the Closing Date, the amount of Inventory as of such time, determined in accordance with GAAP, consistently applied.

"COBRA Continuation Coverage" shall mean the continuation coverage requirements under Section 4980B of the Code and Part 6 of Title I of ERISA or any similar provision under other applicable Law.

"Competitive Business" has the meaning set forth in Section 7.4(a) .

"Conclusive Inventory Adjustment Statement" has the meaning set forth in Section 4.5(d) .

"Conclusive Inventory Statement" has the meaning set forth in Section 4.5(d) .

"Confidentiality Agreement" has the meaning set forth in Section 18.2 .

"Contracts" has the meaning set forth in Section 2.1(d) .

"Criminal Liability Act" has the meaning set forth in Section 5.18(e) .

"Czech Transfer Agreement" has the meaning set forth in Section 4.3(b) .

"Debt Commitment Letters" shall have the meaning set forth in Section 6.6(a) .

"Debt Financing" shall have the meaning set forth in Section 6.6(a) .

"Deposit Amounts" shall have the meaning set forth in Section 4.2(a) .

"Dispute Notice" has the meaning set forth in Section 4.5(b) .

"Disputed Items" has the meaning set forth in Section 4.5(b) .

"Employee Benefit Plan" shall mean each "employee benefit plan," as defined in Section 3(3) of ERISA (including any "multiemployer plan" as defined in Section 3(37) of ERISA) and each profit-sharing, bonus, stock option, stock purchase, restricted stock units/shares, stock ownership, pension, retirement, severance, deferred compensation, excess benefit, supplemental unemployment, post-retirement medical or life insurance, welfare, incentive, sick leave or other leave of absence, short- or long-term disability, salary continuation, medical, hospitalization, life insurance, other insurance plan, or other employee benefit plan, program or arrangement, whether written or unwritten, qualified or non-qualified, funded or unfunded, foreign or domestic, maintained, sponsored or contributed to by the Lightflash Sale Entities or their Affiliates.

"Environmental Claim" means any claim, complaint, notice, information request, order or decree in each case received or issued in writing alleging any liability under or violation of Environmental Law.

"Enforcement Costs" has the meaning set forth in Section 18.3 .

"Environmental Laws" means all applicable Laws including, but not limited to, common law, rules, ordinances, orders, directives, permits, approvals, decisions or decrees, and regulations relating to pollution or protection of human health or the environment, including but not limited to, Laws relating to Releases or threatened Releases of Hazardous Materials or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, Release, disposal, presence, transport or handling of Hazardous Materials as such Laws exist at the Closing Date.

"Environmental Liabilities" has the meaning set forth in Section 15.1 .

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder.

"ERISA Affiliate" means any Person that at any relevant time is or was considered a single employer with Seller, the Asset Subsidiaries, the Stock Selling Subsidiaries or the Stock Group under Section 414 of the Code or under ERISA Section 4001(b), or part of the same "controlled group" as Seller, the Asset Subsidiaries, the Stock Selling Subsidiaries or the Stock Group for purposes of ERISA Section 302(d)(3).

"Escrow Account" shall have the meaning set forth in Section 4.2(a) .

"Escrow Agent" shall have the meaning set forth in Section 4.2(a) .

"Escrow Deposit" shall have the meaning set forth in Section 4.2(a) .

"Excess Caramice Environmental Losses" has the meaning set forth in Section 16.9(a) .

"Excluded Assets" has the meaning set forth in Section 2.2 .

"Excluded Employee Liabilities" shall mean (i) any payments, compensation, benefits or entitlements that the Seller or any of its Affiliates owes or is obligated to provide, whether currently, prospectively or contingent basis, whether pre-Closing, as of Closing, or post-Closing, with respect to any Business Employee, including wages, other remuneration, holiday or vacation pay, bonus, severance pay (statutory or otherwise), commissions, post-employment medical or life obligations, pension contributions, insurance premiums, and Taxes, (ii) any Liabilities, payments, obligations, costs, expenses or disbursements related to current or former Business Employees or any other employees, directors or consultants, including under, or with respect to, ERISA, WARN, COBRA Continuation Coverage, right or actions under any labor or similar Laws that is incurred, accrued or arising prior to, or in connection with, the Closing, (iii) any Employee Benefit Plan (other than an Assumed Employee Benefit Plan) and any liabilities, payments, obligations, costs, expenses or disbursements of the Seller or any of its Affiliates which arises under or relates to any Employee Benefit Plan (other than an Assumed Employee Benefit Plan) or any other employee benefit plan or arrangement, including liability with respect to, or arising under (a) any such plan that is subject to Title IV of ERISA, Sections 302 or 303 of ERISA, Sections 412, 430 and 4971 of the Code, (b) COBRA Continuation Coverage or (c) any other statute or regulation that imposes liability on a so-called "controlled group" basis with or without reference to any provision of Section 414 of the Code or Section 4001 of ERISA, including by reason of the Seller's affiliation with any of its ERISA Affiliates or Buyer being deemed a successor to any ERISA Affiliate of the Seller; and (iv) any Liabilities, payments, obligations, costs, expenses or disbursements incurred in connection with the termination of employment or other service relationship of any Business Employee or other employee, director or consultant of the Seller, the Stock Selling Subsidiaries, the Stock Group, the Asset Subsidiaries or any of their its Affiliates or ERISA Affiliates, regardless of whether or not such Business Employee becomes a Transferred Employee, arising under any Employee Benefit Plan or other severance policy or agreement or under any applicable Law or otherwise (other than any severance as may be offered by Buyer or its Affiliates to any Transferred Employee or any severance obligations arising under applicable Law as a result of a termination by Buyer or its Affiliates of any Transferred Employee after the Closing).

"Existing Caramice Companies" means, collectively, Lightflash - Caramice, s.r.o. and Lightflash - Caramice Services, s.r.o.

"FCPA" means the Foreign Corrupt Practices as of 1977, as amended.

"Financial Information" means the financial information relating to the Business attached to Section 5.5 of the Disclosure Schedule.

"Financings" has the meaning set forth in Section 9.11(b) .

"GAAP" means United States applicable generally accepted accounting principles.

"Governing Documents" means the legal document(s) by which any Person (other than an individual) establishes its legal existence or which govern its internal affairs. For illustrative purposes only, the "Governing Documents" of a corporation are its certificate of incorporation or articles of incorporation and bylaws, the "Governing Documents" of a limited partnership are its limited partnership agreement and certificate of limited partnership and the "Governing Documents" of a limited liability company are its operating agreement and certificate of formation.

"Hazardous Materials" includes: (a) any element, compound or chemical that is defined, listed or otherwise classified as a contaminant, pollutant, toxic pollutant, toxic or hazardous substance, extremely hazardous substance or chemical, hazardous waste, medical waste, special waste, or solid waste under Environmental Laws; (b) petroleum, petroleum-based or petroleum-derived products; and (c) polychlorinated biphenyls.

"IFRS" means the international financial reporting standards.

"IMMEX Program" means an authorization issued by the Mexican Department of Economy ( SecretarÃ­a de EconomÃ­a ) for a business entity to temporarily import goods and equipment under a foreign commerce program, for further export.

" IMMEX Transfer " shall have the meaning set forth in Section 2.3 .

"IMSS" shall have the meaning set forth in Section 11.1(b) . "Income Tax Act" has the meaning set forth in Section 5.11(l) .

"Indebtedness" shall mean (without duplication), as to any Person, (a) all obligations for the payment of principal, interest, penalties, fees or other Liabilities for borrowed money (including guarantees and notes payable) and collection costs thereof, incurred or assumed, (b) all obligations with respects to deposits, holdbacks or advances, (c) any Liability relating to any capitalized lease obligation, (d) any obligations to reimburse the issuer of any letter of credit, surety bond, debentures, promissory notes, performance bond or other guarantee of contractual performance, in each case to the extent drawn or otherwise not contingent, (e) all obligations under conditional sale or other title retention agreements relating to the property or assets included in the Transferred Assets, (f) all indebtedness of Third Parties secured by an Lien on property included in the Transferred Assets, (g) any obligation that, in accordance with GAAP, would be required to be reflected as debt on a balance sheet of Seller or any of its Subsidiaries, (h) all obligations for the deferred purchase price of assets, property or services included in the Transferred Assets, (i) any pre-Closing Tax Liabilities, and (j) all Indebtedness of others referred to in clauses (a) through (i) above guaranteed directly or indirectly in any manner by such Person, or in effect guaranteed directly or indirectly by such Person through an agreement to pay or purchase such Indebtedness, to advance or supply funds for the payment or purchase of such Indebtedness or otherwise to assure a creditor against loss, in each case including all accrued interest and prepayment penalties, if any.

"Indemnity Agreements" shall mean collectively, (i) the Purchase Agreement dated June 25, 1993 between the National Property Fund (" NPF ") and AjaxAjax Motor Company, a Delaware corporation, and (ii) the Remediation Implementation Agreement dated November 24, 2009 among the Czech Republic - Ministry of Finance (as successor to the NPF), Lightflash International Holdings, Inc., a Delaware corporation, Lightflash - Caramice, s.r.o. and Lightflash - Caramice Services s.r.o.

"India Contract Manufacturing Agreement" means an agreement in the form set forth on Exhibit L providing for Buyer to provide certain manufacturing services to Lightflash Automotive (India) Private Ltd.

"INFONAVIT" shall have the meaning set forth in Section 11.1(b) .

"Initial Deposit" shall have the meaning set forth in Section 4.2(a) . "Insurance Policies" has the meaning set forth in Section 5.22 .

Intellectual Property" has the meaning set forth in Section 2.1(f) .

"Interest Amount" means interest on the Inventory Deficiency Amount or the Inventory Excess Amount, as applicable, accruing from the Closing Date to the date of payment of such Inventory Deficiency Amount or Inventory Excess Amount, as applicable, at a rate equal to the U.S. dollar prime rate per annum as quoted by Bloomberg on the Closing Date. Such Interest Amount shall be calculated based on a year of 365 days and the number of days elapsed since the Closing Date.

"Inventory" has the meaning set forth in Section 2.1(c) .

"Inventory Adjustment Statement" has the meaning set forth in Section 4.5(a) .

"Inventory Deficiency Amount" has the meaning set forth in Section 4.5(a) .

"Inventory Excess Amount" has the meaning set forth in Section 4.5(a) .

"Inventory Statement" has the meaning set forth in Section 4.5(a) .

"Knowledge" means the actual knowledge of Person A, B, C, D E and F, in each case after reasonable inquiry.

"Law" means any provision of law, regulation, rule or other legal requirement of any agency, division, subdivision, audit group, procuring office or governmental or regulatory authority in any event or any adjudicatory body thereof, of the United States, any state thereof or any foreign government.

"Leased Real Property" has the meaning set forth in Section 5.6(b) .

"Legacy Caramice Matters" has the meaning set forth in Section 5.12 .

"Liability" shall mean any indebtedness, liability, claim, loss, damage, deficiency, obligation or responsibility, fixed or unfixed, choate or inchoate, liquidated or unliquidated, secured or unsecured, absolute, contingent or otherwise, whether or not accrued, whether known or unknown, disputed or undisputed, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise, and whether or not the same is required to be accrued on the financial statements of such Person.

"Lien" means any lien (statutory or other), mortgage, hypothecation, charge, pledge, security interest, restriction (including any restriction on use), reservation or condition on transferability, lease, title retention agreement, conditional sale agreement, equitable interest, license, option, encumbrance, right of way, easement, encroachment, servitude, defect of title or other claim, encroachment or other encumbrance of any nature, right of first option, right of first refusal, restriction on voting (in the case of any security or equity interest), transfer, receipt of income or exercise of any other attribute of ownership or any other claim or charge similar in purpose or effect to any of the foregoing.

"Litigation Condition" has the meaning set forth in Section 16.5(a) .

"Loss" means any loss, Liability, expense (including, but not limited to, reasonable fees and expenses of outside counsel), diminution in value, deficiencies, interest, penalty, imposition, assessment, fine, cost or damage, but shall not include lost profits or remote or speculative damages.

"Lowest-Cost Commercially Reasonable Resolution" , which shall mean, with respect to investigation, remediation, removal, corrective action, containment, monitoring and/or other Resolution, the lowest cost methods permitted by applicable Environmental Laws determined from the view of a reasonable business person acting without regard to the availability of indemnification to achieve compliance with Environmental Laws (taking all relevant circumstances into consideration, including, but not limited to, the lowest-cost method that would minimize exposure to additional Losses or Environmental Claims that would be subject to indemnification). Lowest-Cost Commercially Reasonable Resolution shall include, where appropriate, the use of

risk-based remedies, institutional or engineering controls, or deed restrictions, provided those measures do not: (A) interfere with the operations of the Business as conducted; or (B) materially restrict the ability to use the Real Property for industrial purposes, including expansion.

"MA Qualified Beneficiary" shall mean, in connection with the transactions contemplated hereby, any Person who is, or becomes an "MA qualified beneficiary" within the meaning of Treasury Regulation Section 54.4980B-9.

"Maquila Assets" means the assets imported into Mexico by Autosoft on a temporary basis as set forth on Section 2.1(b) of the Disclosure Schedule.

"Maquila Assets Bill of Sale" means a bill of sale, in the form set forth on Exhibit E , under which Autosoft transfers the Maquila Assets to Buyer in accordance with the applicable Mexican customs Laws.

"Material Adverse Change" means any change, effect, circumstance or event that (i) has been, is or is reasonably likely to be, materially adverse to the business, assets, liabilities, operations, results of operations, or financial condition of the Business, taken as a whole, or (ii) materially adversely affects the ability of Seller, the Asset Subsidiaries or the Stock Selling Subsidiaries to perform their respective obligations under this Agreement or consummate the transactions contemplated by this Agreement. However,

"Material Adverse Change" does not include: (a) any change affecting economic or financial conditions generally (global, national, or regional, as applicable); (b) any change affecting the automotive industries of which the Business is a part generally; (c) any change caused by the announcement of the transaction; (d) any changes in national or international political conditions or instability; or (e) any change of Laws; except, in the case of clauses (a), (b), (d) and (e), to the extent such change, effect, circumstance or event has a disproportionate adverse effect on the Business as compared to other Persons in the same industry as the Business.

"Material Contracts" has the meaning set forth in Section 5.9(a) .

"Maximum Amount" has the meaning set forth in Section 16.9(a) .

"Mexican Assets" means the assets owned by Autosoft that have been purchased in Mexico or permanently imported into Mexico and as set forth on Section 2.1(b) of the Disclosure Schedule.

"Mexican Real Property" means the Real Property owned by Autosoft which will be conveyed to a Subsidiary of Buyer. "Mexico Real Property Deed" means the Mexican deed of property for the Real Property owned by Autosoft, in the form set forth on Exhibit F , conveying title to such Real Property to a Subsidiary of Buyer.

"MFLL" has the meaning set forth in Section 11.1(b) .

"Neutral Arbitrator" has the meaning set forth in Section 4.5(c) .

"Noncompetition Party" means Seller and, as of any time, any entity that is a direct or indirect Subsidiary of Seller.

"Non-Transferable Assets" has the meaning set forth in Section 2.5(a) .

"Other Filings" has the meaning set forth in Section 9.1(c)(ii) .

"Owned Real Property" has the meaning set forth in Section 5.6(a) .

"Party" means Buyer or Seller, referred to individually, and "Parties" means Buyer and Seller referred to collectively.

"Pension Plan" has the meaning set forth in Section 3(2) of ERISA.

"Permits" has the meaning set forth in Section 2.1(h) .

"Permitted Exceptions" means the Real Property Permitted Exceptions and the Personal Property Permitted Exceptions.

"Person" means an individual, corporation, limited liability company, partnership, association, estate, trust, unincorporated organization, governmental or quasi-governmental authority or body or other entity or organization.

"Personal Property" has the meaning set forth in Section 2.1(b) .

"Personal Property Permitted Exceptions" means the following: (a) Liens for taxes not yet due and payable or that are being contested in good faith; (b) Liens reflected in the Financial Information; and (c) Liens or imperfections of title that do not reduce the value or interfere with the present use of the Transferred Assets.

"Pre-Closing Period" shall have the meaning set forth in Section 9.5(c)(i) .

"Proceeding" means an investigation, claim, action, suit, dispute or proceeding by or before any court, arbitrator or governmental authority.

"Proprietary Rights" has the meaning set forth in Section 2.1(f) .

"Proprietary Software" shall have the meaning set forth in Section 5.10(j) .

"PRTLA" means the Proprietary Rights Transfer and License Agreement in the form of Exhibit J hereto.

"Purchase and Supply Agreement" means the Purchase and Sale Agreement in the form of Exhibit K hereto.

" Purchase Price" has the meaning set forth in Section 4.1 .

"Real Property" has the meaning set forth in Section 5.6(b) .

"Real Property Permitted Exceptions" means the following: (a) Liens for taxes or assessments, whether general or special, that are not yet due and payable or for which adequate reserves have been established, as reflected in the Financial Information and that are being contested in good faith; (b) easements for electricity, water, gas and telephone lines, which are not violated by the current use or occupancy of the Real Property to which they apply; (c) any Laws, regulations or ordinances (including, but not limited to, those related to or affecting zoning, building and environmental matters) adopted or imposed by any governmental authority, which are not violated by the current use or occupancy of the Real Property to which they apply or the operation of the business of the Lightflash Operating Companies; (d) mechanic's, materialmen's, worker's or other similar Liens imposed by Law and arising in the ordinary course of business for amounts that are (i) not delinquent and would not, in the aggregate, have a Material Adverse Change; or (ii) being contested in good faith by appropriate proceedings and for which adequate reserves have been established; (e) provided the following does not have, individually or in the aggregate, a materially adverse affect upon the use or operation of the Real Property as currently used and operated and provided further, that the following arise or have arisen in the ordinary course of business: (i) any matters that would be revealed by an accurate survey of the Real Property; and (ii) any covenant, condition, restriction, easement or matter of record; and (f) other Liens that cost, individually or in the aggregate, less than $25,000 to remove.

"Reference Inventory Statement" has the meaning set forth in Section 4.5(a) . "Related Agreements" means the Transfer of Business Agreement, the VTYC Transfer Agreement, the Czech Transfer Agreement, the PRTLA, and the other related agreements contemplated by this Agreement that are attached to this Agreement as Exhibits.

"Release" means any release, spill, emission, discharge, leaking, pumping, injection, deposit, disposal, dispersal, leaching or migration of Hazardous Materials into the environment (including, but not limited to, ambient air, surface water, groundwater and surface or subsurface strata).

"Resolution" has the meaning set forth in Section 15.2(a) .

"Resolution Period" has the meaning set forth in Section 4.5(b) .

"Retained Liabilities" has the meaning set forth in Section 3.2 .

"SAR" shall have the meaning set forth in Section 11.1(b) .

"Seller" shall have the meaning set forth in the Preamble.

"Seller Fundamental Representations" shall have the meaning set forth in Section 14.2(d) .

"Seller's Indemnified Persons" has the meaning set forth in Section 16.2 .

"Software" shall have the meaning set forth in Section 5.10(j) .

"Stock" shall have the meaning set forth in Section 2.1 .

"Stock Group" has the meaning set forth in Recital D .

"Stock Selling Subsidiaries" has the meaning set forth in the Preamble .

"Straddle Period" has the meaning set forth in Section 9.4(c) .

"Subsidiary" means any Person, the capital stock or other equity interests of which represent more than 50% of the general voting power under ordinary circumstances of such Person, which is directly or indirectly owned or controlled by another Person.

"Target" has the meaning set forth in Section 7.4(a)(v)(A) .

"Target Inventory" means $35,500,000.

"Tax" or "Taxes" means any federal, state, local, or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Tax Code 59A), customs duties, capital stock, franchise, profits, withholding, social security, unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not.

"Tax Audit" has the meaning set forth in Section 9.8(a) .

"Taxing Authority" has the meaning set forth in Section 9.7(a)(ii) .

"Tax Code" means the Internal Revenue Code of 1986, as amended.

"Tax Return" means any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

"Tenant Leases" has the meaning set forth in Section 5.6(b) .

"Termination Date" has the meaning set forth in Section 18.1(a)(iv) .

"Third Party" means any Person not a signatory to this Agreement.

"Third Party Claim" has the meaning set forth in Section 16.5(a) .

"Title Policies" has the meaning set forth in Section 5.6(a) .

"Transaction" has the meaning set forth in Recital G .

"Transfer of Business Agreement" has the meaning set forth in Recital H .

"Transferred Assets" has the meaning set forth in Section 2.1 .

"Transferred Employees" has the meaning set forth in Section 11.1(a) .

"Transition Services Agreement" means an agreement in the form set forth on Exhibit H under which Seller and the Asset Subsidiaries provide transition services to Buyer.

"Transition Services Software" has the meaning set forth in Section 5.10(k) .

"Lightflash Marks" has the meaning set forth in Section 2.2(c)(i) .

"Lightflash Operating Company" and "Lightflash Operating Companies" have the meaning set forth in Section 5.6(a) .

"Lightflash Sale Entity" and "Lightflash Sale Entities" have the meaning set forth in Section 5.1(a) . "LFH" shall have the meaning set forth in the Preamble .

"LFC" shall have the meaning set forth in the Preamble .

"VGTI" shall mean Lightflash Global Technologies, Inc.

"LFS" shall have the meaning set forth in the Preamble .

"LFTSC" shall have the meaning set forth in Recital H .

"VTYC" shall have the meaning set forth in Recital D .

"VTYC Counterparty" shall have the meaning set forth in Section 18.4(a)(ii) .

"VTYC Review Period" has the meaning set forth in Section 18.4(a) .

"VTYC Stock" has the meaning set forth in Section 2.1 .

"VTYC Transfer Agreement" has the meaning set forth in Section 4.3(a) .

"VTYC Withdrawal Right" shall mean the right of Buyer, pursuant to the terms and subject to the conditions set forth in Section 18.4(c) , to elect to (i) decline to acquire the VTYC Stock as a Transferred Asset and (ii) not assume any liabilities (except with respect to the license and service obligations under the PRTLA) related to VTYC or the VTYC Stock hereunder.

"WARN" shall mean the Worker Adjustment and Retraining Notification Act of 1988, as amended, and any similar provision under other applicable Law.

**APA#9**

**ASSET PURCHASE AGREEMENT**

**FOR THE ACQUISITION OF THE ABC COAL MINE**

**May 19, 2010**

**TABLE OF CONTENTS**

ARTICLE I PURCHASE AND SALE OF ASSETS; ASSUMPTION OF LIABILITIES 1

1.01 Transfer of the Assets 1

1.02 Excluded Assets 2

1.03 Liabilities 3

ARTICLE II PURCHASE PRICE; CLOSING 3

2.01 Purchase Price 3

2.02 Allocation 4

2.03 Manner of Effecting Sale 4

2.04 Closing and Closing Date 4

2.05 Method of Payment; Currency 4

ARTICLE III REPRESENTATIONS AND WARRANTIES OF EQUITY HOLDERS 5

3.01 Power, Authority and Organization of the Equity Holders 5

3.02 No Conflict 5

3.03 Ownership of the Company 5

3.04 Absence of Other Claims 5

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF EACH EQUITY HOLDER AND THE COMPANY REGARDING THE COMPANY 6

4.01 Organization and Authorization 6

4.02 Absence of Other Claims 6

4.03 No Conflict 6

4.04 Required Consents and Approvals 7

4.05 No Violation of Law 7

4.06 Financial Statements 7

4.07 No Undisclosed Liabilities 7

4.08 Real Property 8

4.09 Personal Property 8

4.10 Indebtedness 9

4.11 Litigation 9

4.12 Employees 9

4.13 Labor Disputes 9

TABLE OF CONTENTS (continued)

4.14 Environmental Matters 9

4.15 Required Licenses and Permits 10

4.16 Insurance Policies 10

4.17 Suppliers and Customers 10

4.18 Contracts and Commitments 11

4.19 Agreements in Full Force and Effect 11

4.20 Absence of Certain Changes and Events 12

4.21 Tax Matters 12

4.22 Brokerage 13

4.23 Disclosure 13

ARTICLE V REPRESENTATIONS AND WARRANTIES OF THE BUYER 13

5.01 Organization 13

5.02 Authorization 13

5.03 No Conflict 13

5.04 Brokerage 14

5.05 Mineall Stock 14

5.06 SEC Documents 14

5.07 Financial Statements 14

ARTICLE VI COVENANTS OF THE EQUITY HOLDERS AND THE COMPANY 15

6.01 Pre-Closing Operations of the Company 15

6.02 Access; Inspection 15

6.03 Interim Financials 16

6.04 Transfer Taxes 16

6.05 Preparation of Supporting Documents 16

6.06 Notice of Breach or Potential Breach 16

6.07 Acquisition Proposals 17

6.08 Development Costs, Taxes, Utilities, Assessments and Similar Adjustments 17

ARTICLE VII COVENANTS OF THE PARTIES 18

7.01 Approvals of Third Parties; Satisfaction of Conditions to Closing 18

7.02 Confidentiality 18

7.03 Employee Benefits Plans 19

7.04 Casualty 19

7.05 Condemnation 19

ARTICLE VIII CONDITIONS TO OBLIGATIONS OF THE EQUITY HOLDERS AND THE COMPANY 20

8.01 Representations and Warranties Accurate at Closing Date 20

8.02 Litigation 20

8.03 Required Governmental Approvals 20

ARTICLE IX CONDITIONS TO OBLIGATIONS OF THE BUYER 21

9.01 Representations and Warranties Accurate at Closing Date 21

9.02 No Material Change 21

9.03 Litigation 21

9.04 Required Governmental Approvals 21

9.05 Other Necessary Consents 21

9.06 Opinion of Counsel to the Equity Holders and the Company 22

9.07 Actions by the Company 22

9.08 Due Diligence Review 22

9.09 Financing 22

9.10 Real Property Title Insurance 22

9.11 Subsifresh Governing Documents; Profit Sharing Agreement 22

9.12 Development Agreement 22

9.13 Certificates 22

9.14 Documents Satisfactory in Form and Substance 23

ARTICLE X INDEMNIFICATION 23

10.01 Indemnification Generally 23

10.02 Indemnity Claims 24

10.03 Threshold 24

10.04 Cap 24

10.05 Notice of Claim 24

10.06 Defense 25

10.07 Right to Indemnification Not Affected by Knowledge 25

10.08 Set-off 25

ARTICLE XI TERMINATION PRIOR TO CLOSING 26

11.01 Termination of Agreement 26

11.02 Termination of Obligations 26

ARTICLE XII DEFINED TERMS; INTERPRETATION OF AGREEMENT 27

12.01 Defined Terms 27

12.02 Language 29

12.03 Including 29

12.04 Gender and Number 29

12.05 References 29

ARTICLE XIII MISCELLANEOUS 29

13.01 No Liens Created 29

13.02 Entire Agreement 29

13.03 Amendment 29

13.04 Parties Bound by Agreement; Successors and Assigns 29

13.05 Counterparts and Facsimile 30

13.06 Headings 30

13.07 Modification and Waiver 30

13.08 Expenses 30

13.09 Notices 30

13.10 Governing Law; Jurisdiction 31

13.11 Public Announcements 31

13.12 No Third-Party Beneficiaries 31

13.13 Severability 31

13.14 Further Assurances 32

13.15 Enforcement 32

**ASSET PURCHASE AGREEMENT**

THIS ASSET PURCHASE AGREEMENT (this " Agreement "), is made and entered into as of the 19 th day of May, 2010, by and among XY City ABC Coal Co., Ltd., a limited liability company formally incorporated under the laws of the People's Republic of China (the " Company "), XY City Investment Group Co., Ltd., a limited liability company formally incorporated under the laws of the People's Republic of China (" Equity Holder 1 "), Peng Wang, an individual resident of the People's Republic of China (" Equity Holder 2 "), and Wei Fang, an individual resident of the People's Republic of China (" Equity Holder 3 ") (Equity Holder 1, Equity Holder 2 and Equity Holder 3 each, an " Equity Holder " and collectively, the " Equity Holders "), and Mineall International Holding Group Inc., a corporation incorporated under the laws of the State of Nevada, USA (the " Buyer ").

**W I T N E S S E T H :**

WHEREAS , the Equity Holders own all of the issued and outstanding equity interests of the Company, which owns the XY City ABC Coal Mine located in ABC, , People's Republic of China (the " ABC Coal Mine ");

WHEREAS , upon and subject to the terms and conditions contained herein, the Company desires to sell to the Buyer, and the Buyer desires to purchase from the Company, substantially all of the assets of the Company related to the ABC Coal Mine;

and

WHEREAS , certain defined terms used in this Agreement are set forth in Article XII below; NOW,

THEREFORE , in consideration of the mutual representations, warranties, covenants and agreements herein contained, and upon and subject to the terms and the conditions hereinafter set forth, the parties do hereby agree as follows:

**ARTICLE I**

**PURCHASE AND SALE OF ASSETS; ASSUMPTION OF LIABILITIES**

1.01 Transfer of the Assets . Upon the terms and subject to the conditions of this Agreement, at the Closing (as defined herein), the Company shall sell, convey, assign, and transfer to the Buyer, and the Buyer shall purchase, accept and take from the Company, all of the assets, properties and rights of every kind, nature, character and description, whether real, personal or mixed, whether tangible or intangible, whether accrued, contingent or otherwise relating to or utilized in connection with the ABC Coal Mine, directly or indirectly, in whole or in part, in existence on the date hereof and any additions thereto on or before the Closing Date, whether or not carried on the books and records of the Company and wherever located, including, without limitation, the following assets, properties and rights (such assets, properties and rights, but specifically not including the Excluded Assets (as defined herein), being referred to as the " Assets "): (a) all Real Property (as defined herein); (b) all machinery, equipment, tools, furniture, office equipment, computer hardware, supplies, materials, vehicles and other items of tangible personal property of every kind owned or leased by the Company, together with any express or implied warranty by the manufacturers or sellers or lessors of any item or component part thereof and all maintenance records and other documents relating thereto; (c) all inventories of the Company; (d) all of the Company's rights and benefits in and to all contracts, leases, licenses and other agreements relating to the ABC Coal Mine, and all outstanding offers or solicitations made by or to the Company to enter into any such contract, lease, license or other agreement; (e) all consents, licenses, registrations or permits issued, granted, given or otherwise made available to the Company by or under the authority of any federal, state, local or foreign governmental authority, in each case to the extent transferable to the Buyer; (f) all of the intangible rights and property of the Company, going concern value, goodwill, telephone, telecopy and e-mail addresses and listings; (g) originals or copies of all of the Company's business records which arise from or which are used in connection with the operation of the ABC Coal Mine, including lists of suppliers and customers, accounting records (including ancillary records, paid invoices and work papers related thereto), correspondence, computer and billing tapes, files, research data and other records; (h) all insurance benefits, including rights and proceeds, arising from or relating to the Assets or the Assumed Liabilities (as defined herein) prior to the Closing Date; (i) all claims of the Company against third parties relating to the Assets, whether choate or inchoate, known or unknown, contingent or noncontingent; and (j) all rights of the Company relating to deposits and prepaid expenses, claims for refunds and rights to offset in respect thereof that do not constitute Excluded Assets.

1.02 Excluded Assets . Notwithstanding anything herein to the contrary, the Assets shall not include the following assets, properties and/or rights (the " Excluded Assets "), which shall remain the property of the Company after the Closing: (a) all personnel records and other records that the Company is required by law to retain in its possession; (b) all claims for the refund of Taxes (as defined herein) and other governmental charges of whatever nature; and (c) all rights of the Company under this Agreement.

1.03 Liabilities . It is understood and agreed that the Buyer shall not assume or become liable for the payment of any debts, liabilities, losses, accounts payable, bank indebtedness, mortgages or other obligations of the Company, whether the same are known or unknown, now existing or hereafter arising, of whatever nature or character, whether absolute or contingent, liquidated or disputed; provided , however , that if mutually agreed upon by the parties, at the Closing, the Buyer and the Company may enter into an assignment and assumption agreement to be executed in a form acceptable to the Buyer (the " Assignment and Assumption Agreement "), pursuant to which the Buyer would assume certain specific obligations of the Company arising after the Closing Date under each of the agreements listed in the Assignment and Assumption Agreement (the " Assumed Liabilities ").

**ARTICLE II**

**PURCHASE PRICE; CLOSING**

2.01 Purchase Price . The aggregate purchase price for the Assets (the " Purchase Price ") shall be comprised of the Cash Payment, the Share Issuance, and the Mining Profit Share, which will be payable as follows:

(a) Cash Payment . On the Closing Date, the Buyer shall pay to the Company the sum of Thirty Million Dollars ($30,000,000) (the " Cash Payment ").

(b) Share Issuance . On the Closing Date, the Buyer shall issue or caused to be issued to the Company ten million (10,000,000) shares of stock of Mineall International Holding Group Inc. (the " Share Issuance "), which stock is traded on The OTC Bulletin Board (OTCBB: XX) (the " Mineall Stock "). Notwithstanding the foregoing, if the average closing price per share of Mineall Stock over the 10-day period ending on the day prior to the Closing Date (the " Mineall Stock Price ") is greater than $7.00 per share, then the number of shares issued to the Company in respect of the Share Issuance shall be reduced to that number of shares determined by dividing (i) Seventy Million Dollars ($70,000,000) by (ii) the Mineall Stock Price, with such number of shares rounded upward to the next whole number of shares. By way of example, if the Mineall Stock Price is $7.25, then the Buyer shall issue 9,655,173 shares of Mineall Stock to the Company in respect of the Share Issuance ($70,00,000/$7.25 = 9,655,172.41 shares, rounded upward).

(c) Mining Profit Share . On the Closing Date the Buyer and the Company will execute a separate written instrument (or instruments) in a form reasonably acceptable to the Buyer conveying to the Company the ongoing right to receive thirty percent (30%) of the net profits from the operation of the ABC Coal Mine following the Closing Date (the " Mining Profit Share "). The parties acknowledge and agree that the Mining Profit Share may be effectuated by either of the following: (i) The Buyer may form a new subsidiary (" Subsifresh ") and assign this Agreement (and all rights and obligations hereunder) to Subsifresh in accordance with Section 13.04 below. In such event, Subsifresh would acquire the Assets on the Closing Date pursuant to the terms of this Agreement and would issue the Company equity interests in Subsifresh representing thirty percent (30%) of the then outstanding equity interests. In such event, the Company will be required to execute such documents and instruments (including without limitation a shareholders agreement between and among the shareholders of Subsifresh) as Subsifresh or the other shareholders of Subsifresh deem reasonably necessary or appropriate (collectively, the " Subsifresh Governing Documents "); or 3 (ii) The Buyer may remain the purchaser of the Assets as provided hereunder. In such event, the parties hereto would negotiate and enter into a separate profit sharing agreement on the Closing Date in a form reasonably acceptable to the Buyer (the " Profit Sharing Agreement ").

2.02 Allocation . Within 90 days after the Closing Date, the Buyer shall prepare (or have prepared) and deliver to the Company for the Company's review, the Buyer's proposed allocation of the Purchase Price among the Assets (the " Proposed Allocation "). The Buyer and the Company shall thereafter attempt to reach agreement regarding the allocation of the Purchase Price among the Assets. In the event the Buyer and the Company agree as to the allocation of the Purchase Price among the Assets within thirty (30) days following the date the Company receives the Proposed Allocation, then the Buyer and the Company will file their respective income tax returns in the USA and China as applicable (including Form 8594 in the USA, if applicable) on the basis of such agreed upon allocation, and neither shall thereafter take a tax return position inconsistent with such agreed upon allocation unless such inconsistent position shall arise out of or through an audit or other inquiry or examination by the Internal Revenue Service or other taxing authority. In the event the Buyer and the Company cannot agree as to the allocation of the Purchase Price among the Assets within such thirty (30) day period, then the Buyer and the Company shall each make its own good faith allocation of the Purchase Price among the Assets and shall file its income tax returns in the USA and China as applicable (including Form 8594 in the USA, if applicable) in a manner consistent with such good faith allocation.

2.03 Manner of Effecting Sale . The sale, conveyance, transfer, assignment and delivery of the Assets by the Company to the Buyer shall be effected by a Bill of Sale in a form reasonably acceptable to the Buyer (and, if applicable, the Assignment and Assumption Agreement) and such deeds, endorsements, assignments, transfers and other instruments of transfer and conveyance in such form, including, without limitation, warranties of title, as the Buyer or the Buyer's attorney shall reasonably request.

2.04 Closing and Closing Date . Subject to the satisfaction or waiver of the conditions set forth herein, the consummation of the purchase and sale of the Assets (the " Closing ") shall take place at 10:00 a.m. (California time) on June 30, 2010 in the offices of Address; CA, USA, or on such other date and at such other time and place as the parties shall agree in writing (the " Closing Date "). The Buyer shall commence to own and control the Assets as of 12:01 a.m. on the Closing Date. 2.05 Method of Payment; Currency. All monetary payments under this Agreement shall be made in cash or by wire transfer of immediately available federal funds to an account designated in writing by the party receiving such payment. All payments under this Agreement shall be paid in U.S. Dollars.

**ARTICLE III**

**REPRESENTATIONS AND WARRANTIES OF EQUITY HOLDERS**

The Equity Holders, jointly and severally, represents and warrants to the Buyer as follows:

3.01 Power, Authority and Organization of the Equity Holders . The Equity Holders have the right, power and capacity to execute, deliver and perform this Agreement and to consummate the transactions contemplated hereby. Equity Holder 1 is a limited liability company, duly organized, validly existing and in good standing under the laws of the People's Republic of China and has all requisite power and authority, corporate or otherwise, to carry on and conduct its business as it is now being conducted. The execution, delivery and performance of this Agreement, and the consummation of the transactions contemplated hereby, have been duly and validly authorized by all necessary company action on the part of Equity Holder 1. This Agreement has been duly and validly executed and delivered by the Equity Holders and constitutes the Equity Holders' legal, valid and binding obligation, enforceable in accordance with its terms.

3.02 No Conflict . The execution and delivery of this Agreement by the Equity Holders, the consummation of the transactions contemplated herein by the Equity Holders, and the performance of the covenants and agreements of the Equity Holders will not, with or without the giving of notice or the lapse of time, or both, (a) violate or conflict with any of the provisions of any charter document of Equity Holder 1; (b) violate, conflict with or result in a breach or default under or cause termination of any term or condition of any mortgage, indenture, contract, license, permit, instrument, trust document, or other agreement, document or instrument to which the Equity Holders are a party or by which the Equity Holders or any of their properties may be bound; or (c) violate any provision of law, statute, rule, regulation, court order, judgment or decree, or ruling of any governmental authority, to which the Equity Holders are a party or by which the Equity Holders or their properties may be bound.

3.03 Ownership of the Company . The Equity Holders own, in the aggregate, of record and beneficially, good and valid title to all of the equity of the Company (the " Equity "), and such Equity (a) is validly issued, fully paid and nonassessable, (b) is free and clear of any liens, restrictions, claims, equities, charges, options, rights of first refusal or encumbrances, with no defects of title whatsoever, and (c) constitutes all of the issued and outstanding equity of the Company. The Equity Holders have full and exclusive power, right and authority to vote the Equity. The Equity Holders are not a party to or bound by any agreement affecting or relating to their right to vote the Equity.

3.04 Absence of Other Claims . No prior offer, issue, redemption, call, purchase, sale, merger, transfer, involvement in any transfer, negotiation or other transaction of any nature or kind with respect to any equity of the Company or Equity Holder 1 has given or may give rise to (a) any valid claim or action by any person (including, without limitation, any former or present holder of any of the Equity or any other equity of the Company or Equity Holder 1) which is enforceable against the Company or Equity Holder 1, or the Buyer; or (b) any valid interest in the Company, and, to the knowledge of the Equity Holders, no fact or circumstance exists which could give rise to any such right, claim, action or interest on behalf of any person.

**ARTICLE IV**

**REPRESENTATIONS AND WARRANTIES OF EACH EQUITY HOLDER AND THE COMPANY REGARDING THE COMPANY**

Each Equity Holder and the Company hereby, jointly and severally, represent and warrant to the Buyer as follows:

4.01 Organization and Authorization .

(a) The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the People's Republic of China and has all requisite power and authority, corporate or otherwise, to carry on and conduct its business as it is now being conducted and to own or lease its properties and assets, and is duly qualified and in good standing in the territories in which the operation of its business so require it to be qualified.

(b) The Company has no subsidiaries, and the Company does not own any capital stock or other securities or have any other investment in any person or other entity.

(c) The copies of the charter documents of the Company that have been previously delivered to the Buyer are the complete, true and correct charter documents and bylaws of the Company in effect as of the date hereof. The minutes of meetings and the stock books of the Company that have previously been delivered to the Buyer are the complete, true and correct records of directors' and equity holders' meetings and equity issuances through and including the date hereof and, reflect all transactions and other matters required to be reflected in such records, as well as such other matters customarily contained in records of such type.

(d) The Company has the right, power and capacity to execute, deliver and perform this Agreement and to consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement by the Company, and the consummation of the transactions contemplated hereby, have been duly authorized by all necessary corporate action on the part of the Company. This Agreement has been duly and validly executed and delivered by the Company and constitutes the Company's legal, valid and binding obligation, enforceable in accordance with its terms.

4.02 Absence of Other Claims . There is not outstanding, nor is the Company bound by, any subscriptions, options, preemptive rights, warrants, calls, commitments or agreements or rights of any character requiring the Company to issue or entitling any person or entity to acquire any additional equity security of the Company, including any right of conversion or exchange under any outstanding security or other instrument, and the Company is not obligated to issue or transfer any equity security for any purpose.

4.03 No Conflict . The execution and delivery of this Agreement by the Company, the consummation of the transactions contemplated herein by the Company, and the performance of the covenants and agreements of the Company, subject to fulfillment of the conditions set forth in Section 9.05 hereof, will not, with or without the giving of notice or the lapse of time, or both, (a) violate or conflict with any of the provisions of any charter document of the Company; or (b) violate, conflict with or result in a breach or default under or cause termination of any term or condition of any mortgage, indenture, contract, license, permit, instrument, trust document, will, or other agreement, document or instrument to which the Company is a party or by which the Company or its properties may be bound; or (c) violate any provision of law, statute, regulation, court order or ruling of any governmental authority, to which the Company is a party or by which it or its properties may be bound; or (d) result in the creation or imposition of any lien, claim, charge, restriction, security interest or encumbrance of any kind whatsoever upon any asset of the Company.

4.04 Required Consents and Approvals . Except as noted by the Company to the Buyer in writing prior to the Closing Date, no consent or approval is required by virtue of the execution hereof by the Company or the consummation of any of the transactions contemplated herein by the Company to avoid the violation or breach of, or the default under, or the creation of a lien on assets of the Company pursuant to the terms of, any regulation, order, decree or award of any court or governmental agency or any lease, agreement, contract, mortgage, note, license, or any other instrument to which the Company is a party or to which it or any of its property or assets is subject.

4.05 No Violation of Law . The Company is not, has not been and will not be (by virtue of any past or present action, omission to act, contract to which it is a party or any occurrence or state of facts whatsoever) in violation of any applicable local, state or federal law, ordinance, regulation, order, injunction or decree, or any other requirement of any governmental body, agency or authority or court binding on it, or relating to its property or business or its advertising, sales or pricing practices (including, without limitation, any antitrust laws and regulations), and the Company will not hereafter suffer or incur any loss, liability, penalty or expense (including, without limitation, attorneys' fees) by virtue of any such violation.

4.06 Financial Statements . The Company has delivered to the Buyer the balance sheet of the Company as of April 30, 2010 (the " Balance Sheet "), and the related statements of income, retained earnings, and cash flows for the four-month period then ended (the " Financial Statements "). The Financial Statements are true, correct and complete and present fairly the financial position of the Company as of the dates thereof, and the related results of its operations for the period then ended. The Financial Statements are true, correct and complete and present fairly the financial position of the Company as of the date thereof, and the related results of its operations for the periods then ended. The Financial Statements have been prepared in accordance with generally accepted accounting principles applied on a consistent basis.

4.07 No Undisclosed Liabilities . Except as and to the extent reflected and adequately reserved against in the Balance Sheet, the Company had no liability or obligation whatsoever, whether accrued, absolute, contingent or otherwise. Since the date on which the Company took possession of the ABC Coal Mine, the Company has not incurred any liability or obligation whatsoever, except for liabilities and obligations incurred by the Company in the Ordinary Course of Business.

4.08 Real Property .

(a) The Company has delivered to the Buyer or will deliver to the Buyer prior to the Closing a complete and accurate list and description of all the real property that the Company owns or leases, has agreed (or has an option) to purchase, sell or lease, or may be obligated to purchase, sell or lease (" Real Property "). With respect to each parcel of Real Property, the Company has made available to the Buyer true, correct and complete copies of the deed evidencing the Company's ownership of such parcel, each mortgage or other encumbrance thereon reflected in a written instrument, each instrument (if any) evidencing a grant by or to the Company of an option to purchase or lease such parcel, each lease and leasehold mortgage (if any) with respect to such parcel, and any title policies or commitments and surveys with respect to such parcel.

(b) The Company (i) has good and marketable fee simple title to all of the Real Property; and (ii) owns such Real Property free and clear of all title defects or objections, liens, restrictions, claims, charges, security interests, easements or other encumbrances of any nature whatsoever, including any mortgages, leases, chattel mortgages, conditional sales contracts, collateral security arrangements and other title or interest retention arrangements.

(c) No Real Property is subject to (i) any governmental decree or order (or threatened or proposed order known to the Company) to be sold or taken by public authority; or (ii) any rights of way, building use restrictions, exceptions, variances, reservations or limitations of any nature whatsoever, not of record.

4.09 Personal Property .

(a) The Company has delivered to the Buyer or will deliver to the Buyer prior to the Closing a complete and accurate list and description of all the personal property that the Company owns or leases, has agreed (or has an option) to purchase, sell or lease, or may be obligated to purchase, sell or lease, the net book value of which, as properly reflected in the books and records of the Company, on an individual, item-by-item basis, exceeds $1,000 (the " Personal Property ").

(b) The Company (i) has good and valid title to all the personal and mixed, tangible and intangible properties and assets which it purports to own or which it uses in the conduct of its business, and all the personal properties and assets reflected, but not shown as leased or encumbered, on the Balance Sheet (except for inventory and assets sold in the Ordinary Course of Business and supplies consumed in the Ordinary Course of Business); and (ii) owns such personal property free and clear of all title defects or objections, liens, restrictions, claims, charges, security interests, easements, or other encumbrances of any nature whatsoever, including any mortgages, leases, chattel mortgages, conditional sales contracts, collateral, security arrangements and other title or interest retention arrangements. All properties and assets of the Company are in the possession of the Company and located at the ABC Coal Mine.

(c) The structures and equipment owned or leased by the Company are structurally sound with no known material defects, are in good and safe operating condition and repair and are adequate for the uses to which they are being put. 8 (d) The Company has delivered to the Buyer or will deliver to the Buyer prior to the Closing a complete and accurate list of all leases (including any capital leases) and lease-purchase arrangements (other than Real Property leases) pursuant to which the Company leases personal property from others and which (i) require the Company to pay, for rent and any obligatory improvements, more than $10,000 in any single year or $25,000 during the entire term of such lease or lease-purchase arrangement (including any renewal term that the Company may not avoid by refusing to renew in its sole discretion); or (ii) provide for a purchase option for a price of more than $10,000. Such list specifies which of such leases, if any, are capital leases. All leases that are required to be capitalized by GAAP have been so accounted for in the Financial Statements. The Company has made available to Buyer a true, correct, and complete copy of each of the items required to be listed pursuant to the foregoing.

4.10 Indebtedness . The Company has delivered to the Buyer or will deliver to the Buyer prior to the Closing a complete and accurate list and description of all instruments or other documents relating to any direct or indirect indebtedness for borrowed money of the Company, as well as indebtedness by way of lease-purchase arrangements, guarantees, undertakings on which others rely in extending credit and all conditional sales contracts, chattel mortgages and other security arrangements with respect to personal property used or owned by the Company. The Company has made available to Buyer a true, correct, and complete copy of each of the items required to be listed pursuant to the foregoing.

4.11 Litigation . There are no claims, suits, actions, investigations, indictments or informations, proceedings or arbitrations, grievances or other procedures (including grand jury investigations, actions or proceedings, and product liability and workers' compensation suits, actions or proceedings) pending, or to the knowledge of Equity Holders or the Company, threatened, before any court, commission, arbitration tribunal, or judicial, governmental or administrative department, body, agency, administrator or official, grand jury, or any other forum for the resolution of grievances, against the Company or involving any of its property or business.

4.12 Employees . The Company has no employees. All construction and development work in connection with the ABC Coal Mine is, has been and will through the Closing Date be performed on behalf of the Company by subcontractors of the Company.

4.13 Labor Disputes . Neither the Company nor any Equity Holder knows or has reason to know of any labor strike or other labor trouble actually pending, being threatened against, or affecting the Company or the construction or development of the ABC Coal Mine.

4.14 Environmental Matters .

(a) The Company is in full compliance with all applicable Environmental Laws;

(b) The Company has all permits, licenses and other approvals required under the Environmental Laws with respect to the Real Property and the operations thereon;

(c) There are no past, pending or threatened Environmental Claims relating to the Company's operations or the Real Property;

(d) Hazardous Materials have not at any time been present, generated, used, treated, managed, recycled, stored or Released at, on, in or under, or transported to or from the Real Property;

(e) Hazardous Materials have not at any time been Released at, on, in or under any other property in the vicinity or area of the Real Property;

(f) There are not now and never have been any underground storage tanks located at, on or under the Real Property; there is no asbestos contained in, forming part of, or contaminating any part of the Real Property; and no polychlorinated biphenyls (PCBs) are used, stored, located at or contaminate any part of the Real Property;

(g) There are no pending or threatened Environmental Claims at any treatment, storage or disposal facility that has received Hazardous Materials from or generated at the Real Property; and

(h) There are no past or present facts, actions, activities, circumstances, conditions, occurrences, events or incidents, including the Release or presence of Hazardous Materials, that could (A) form the basis of an Environmental Claim against or involving the Company or the Real Property, (B) cause the Real Property to be subject to any restrictions on or affect its ownership, occupancy, use or transferability under any applicable Environmental Law, (C) require the filing or recording of any notice or restriction relating to the presence of Hazardous Materials in the real estate records in the county or municipality in which the Real Property is located, other than any customary disclosure requirements in connection with the transfer of the Real Property, or (D) prevent or interfere with the construction, operation or maintenance of the Real Property.

4.15 Required Licenses and Permits . The Company has all licenses, permits or other authorizations of governmental authorities (including all construction, development and mining permits) necessary for the construction and development of the ABC Coal Mine and the excavation of at least 143 million tons of coal from the ABC Coal Mine. The Company has delivered to the Buyer a correct and complete list of all such licenses, permits and other authorizations and has made available to the Buyer true, correct and complete copies of all such written licenses, permits and authorizations.

4.16 Insurance Policies . The Company has delivered to the Buyer or will deliver prior to the Closing a complete and accurate list and description of all insurance policies in force naming the Company, or any contractors thereof as an insured or beneficiary or as a loss payable payee, or for which the Company has paid or is obligated to pay all or part of the premiums. The Company has made available to Buyer or will make available prior to the Closing true, correct, and complete copies of each of each such policy.

4.17 Suppliers and Customers . The Company is not engaged in any dispute with any supplier or customer to the Company. The Company does not know or have any reason to believe that the consummation of the transactions contemplated hereunder will have any adverse effect on the business relationship of the Company with any such supplier or customer.

4.18 Contracts and Commitments . The Company has delivered to the Buyer or will deliver prior to the Closing a complete and accurate list and description of the following:

(a) Any agreement or contract that is material to the construction, development or operation of the ABC Coal Mine, or to its operations or prospects;

(b) Any contracts or commitments of the Company that continue for a period of more than six (6) months from the date hereof or require payments, in the aggregate, in excess of $25,000;

(c) Any outstanding contract, written or oral, with any officer, agent, consultant, advisor, salesman, manufacturer's representative, distributor, dealer, subcontractor, or broker that is not cancelable by the Company, on notice of not longer than thirty (30) days and without liability, penalty or premium of any kind;

(d) Any outstanding loan or loan commitment to any person, and any factoring, credit line or subordination agreement;

(e) Any power of attorney outstanding or any contract, commitment or liability (whether absolute, accrued, contingent or otherwise), as guarantor, surety, co-signer, endorser, co-maker, indemnitor in respect of the contract or commitment of any other person, corporation, partnership, joint venture, association, organization or other entity;

(f) Any contracts or agreements with any director, officer or equity holder of the Company, or with any person related to any such person or with any company or other organization in which any director, officer, or shareholder of the Company, or anyone related to any such person, has a direct or indirect financial interest;

(g) Any contract or agreement containing covenants limiting the freedom of the Company to compete in any line of business in any geographic area or requiring the Company to share any profits;

(h) Any contract, agreement or other arrangement entitling any person or other entity to any profits, revenues or cash flows of the Company or requiring any payments or other distributions based on such profits, revenues, or cash flows; and

(i) Any presently existing contract, agreement or other arrangement that has had or may in the future have a material adverse effect upon the construction, development or operation of the ABC Coal Mine. The Company has made available to the Buyer or will make available prior to the Closing true, correct and complete copies of all contracts, agreements, plans, leases, policies and licenses referred to above.

4.19 Agreements in Full Force and Effect . All contracts, agreements, plans, leases, policies and licenses referred to in this Article IV are valid and binding, and are in full force and effect and are enforceable in accordance with their terms, except to the extent that the validity or enforceability thereof may be limited by bankruptcy, insolvency, reorganization and other similar laws affecting creditors' rights generally. Neither the Company nor any Equity Holder has any knowledge of any pending or threatened bankruptcy, insolvency or similar proceeding with respect to any party to such agreements, and no event has occurred which (whether with or without notice, lapse of time or the happening or occurrence of any other event) would constitute a default thereunder by the Company, or to the knowledge of the Company or any Equity Holder, any other party thereto.

4.20 Absence of Certain Changes and Events . Since the date on which the Company took possession of the ABC Coal Mine, the Company has operated only in the Ordinary Course of Business, and has not:

(a) suffered any damage or destruction adversely affecting the construction, development or operation of the ABC Coal Mine;

(b) incurred, assumed or guaranteed any liability or obligation (absolute, accrued, contingent or otherwise) other than in the Ordinary Course of Business;

(c) permitted any of its assets to be subjected to any mortgage, lien, security interest, restriction, charge or other encumbrance of any kind;

(d) entered into any material commitment or transaction, other than in the Ordinary Course of Business, affecting the construction, development or operation of the ABC Coal Mine; or

(e) agreed in writing, or otherwise, to take any action described in this Section.

4.21 Tax Matters.

(a) Returns Filed and Taxes Paid .

(i) all Returns required to be filed by or on behalf of the Company have been duly filed on a timely basis and such Returns are true, complete and correct;

(ii) all Taxes shown to be payable on the Returns or on subsequent assessments with respect thereto have been paid in full on a timely basis, and no other Taxes are payable by the Company with respect to items or periods covered by such Returns (whether or not shown on or reportable on such Returns) or with respect to any period prior to the date of this Agreement;

(iii) the Company has withheld and paid over all Taxes required to have been withheld and paid over, and complied with all information reporting and backup withholding requirements, including maintenance of required records with respect thereto, in connection with amounts paid or owing to any employee, creditor, independent contractor, or other third party; and

(iv) there are no liens on any of the assets of the Company with respect to Taxes, other than liens for Taxes not yet due and payable. With respect to any period for which Returns have not yet been filed, or for which Taxes are not yet due and owing, the Company has made due and sufficient accruals for such Taxes on the Financial Statements.

(b) Tax Deficiencies; Audits; Statutes of Limitations .

(i) the Returns of the Company have never been audited by a government or taxing authority, nor is any such audit in process, pending or threatened (either in writing or verbally, formally or informally);

(ii) no deficiencies exist or have been asserted (either in writing or verbally, formally or informally) or are expected to be asserted with respect to Taxes of the Company, and the Company has not received notice (either in writing or verbally, formally or informally) or expects to receive notice that it has not filed a Return or paid Taxes required to be filed or paid by it;

(iii) the Company is neither a party to any action or proceeding for assessment or collection of Taxes, nor has such event been asserted or threatened (either in writing or verbally, formally or informally) against the Company or any of its assets;

(iv) no waiver or extension of any statute of limitations is in effect with respect to Taxes or Returns of the Company; and

(v) the Company has disclosed on its federal income tax returns all positions taken therein that could give rise to a substantial understatement penalty.

4.22 Brokerage . No broker, agent, or finder has rendered services to the Company or the Equity Holders in connection with the transactions contemplated under this Agreement.

4.23 Disclosure . No representations, warranties, assurances or statements by any Equity Holder or the Company in this Agreement and no statement contained in any document (including the Financial Statements and the Schedules), certificates or other writings furnished or to be furnished by any Equity Holder or the Company (or caused to be furnished by any Equity Holder or the Company) to the Buyer or any of its representatives pursuant to the provisions hereof contains or will contain any untrue statement of material fact, or omits or will omit to state any fact necessary, in light of the circumstances under which it was made, in order to make the statements herein or therein not misleading.

**ARTICLE V**

**REPRESENTATIONS AND WARRANTIES OF THE BUYER**

The Buyer hereby represents and warrants to the Company and the Equity Holders as follows:

5.01 Organization . The Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Nevada, USA and has all requisite corporate power and authority to effect the transactions contemplated hereunder.

5.02 Authorization . The Buyer has the right, power and capacity to execute, deliver and perform this Agreement and to consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement, and the consummation of the transactions contemplated hereby, have been duly and validly authorized by all necessary corporate action on the part of the Buyer. This Agreement has been duly and validly executed and delivered by the Buyer and constitutes the Buyer's legal, valid and binding obligation, enforceable in accordance with its terms.

5.03 No Conflict . The execution and delivery of this Agreement by the Buyer, the consummation of the transactions contemplated herein by the Buyer, and the performance of the covenants and agreements of the Buyer will not, with or without the giving of notice or the lapse of time, or both, (a) violate or conflict with any of the provisions of any charter document or bylaw of the Buyer; (b) violate, conflict with or result in breach or default under or cause termination of any term or condition of any mortgage, indenture, contract, license, permit, instrument, trust document, or other agreement, document or instrument to which the Buyer is a party or by which the Buyer or any of its properties may be bound; or (c) violate any provision of law, statute, rule, regulation, court order, judgment or decree, or ruling of any governmental authority, to which the Buyer is a party or by which the Buyer or its properties may be bound.

5.04 Brokerage . No broker, agent, or finder has rendered services to the Buyer in connection with the transactions contemplated under this Agreement.

5.05 Mineall Stock . The shares of Mineall Stock to be issued pursuant to this Agreement will be duly authorized, validly issued, fully paid and non-assessable, free and clear of all liens and encumbrances and adverse claims other than (a) restrictions imposed by state or federal securities laws or (b) liens, pledges, options, charges, restrictions or other encumbrances created by the recipient of such Mineall Stock. The shares of Mineall Stock to be issued pursuant to this Agreement will not have been issued in violation of any preemptive rights or rights of first refusal or similar rights. The shares of Mineall Stock to be issued pursuant to this Agreement will be issued pursuant to an exemption to registration requirements under the federal and applicable state securities laws, assuming the accuracy of the investor suitability representations of the Company and each Equity Holder as the recipients of such Mineall Stock.

5.06 SEC Documents . The Buyer has filed all forms, reports and documents with the Securities and Exchange Commission (the " SEC ") that have been required to be filed by it prior to the date hereof (all such forms, reports and documents, together with all exhibits and schedules thereto, the " SEC Reports "). Each SEC Report complied as of its filing date as to form in all material respects with the applicable requirements of the Securities Act of 1933, as amended (the " Securities Act "), or the Securities Exchange Act of 1934, as amended (the " Exchange Act "), as the case may be, each as in effect on the date such SEC Report was filed. True and correct copies of all SEC Reports filed prior to the date hereof are publicly available in the Electronic Data Gathering, Analysis and Retrieval (EDGAR) database of the SEC. As of its filing date (or, if amended or superseded by a filing prior to the date of this Agreement, on the date of such amended or superseded filing), each SEC Report did not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading.

5.07 Financial Statements . The financial statements of the Buyer, including the notes thereto, included in the SEC Documents (the " Buyer Financial Statements ") complied as to form in all material respects with applicable accounting requirements and with the published rules and regulations of the SEC with respect thereto as of their respective dates, and were prepared in accordance with US GAAP applied on a basis consistent throughout the periods indicated and consistent with each other (except as may be indicated in the notes thereto or, in the case of unaudited statements included in Quarterly Reports on Form 10-Q, as permitted by Form 10-Q under the Exchange Act). The Financial Statements fairly present in all material respects the consolidated financial condition and operating results of the Buyer at the dates and during the periods indicated therein (subject, in the case of unaudited statements, to normal, recurring year-end audit adjustments).

**ARTICLE VI**

**COVENANTS OF THE EQUITY HOLDERS AND THE COMPANY**

6.01 Pre-Closing Operations of the Company . The Equity Holders and the Company hereby covenant and agree that, except as consented to in writing by the Buyer, pending the Closing, the Company will operate and conduct itself, and the Equity Holders shall cause the Company to operate and conduct itself, only in the Ordinary Course of Business. Pursuant thereto and not in limitation of the foregoing:

(a) The Company shall continue to construct and develop the ABC Coal Mine in

accordance with the construction and development plans and timelines previously provided to the Buyer.

(b) No material contract or commitment of any kind relating to the Company or the ABC Coal Mine shall be entered into without the prior written consent of the Buyer (for purposes hereof, the word "material" shall refer to any contract or commitment which, if it had been entered into prior to execution of this Agreement, would have been required to be disclosed to the Buyer pursuant to Sections 4.09(e), 4.10, 4.16 or 4.18).

(c) The Company shall maintain its assets in their present state of repair (ordinary wear and tear excepted) and shall preserve the relationships with the customers, licensors, suppliers, distributors and brokers with whom it has business relations.

(d) The Company shall not take any of the following actions after the date of this Agreement without the prior written consent of the Buyer:

(i) Amend any charter document, operating agreement or other governing document of the Company;

(ii) Solicit or entertain any offer for, or sell or agree to sell, or participate in any business combination with respect to, any of the equity securities of the Company;

(iii) Do any act, omit to do any act or permit any act within the Equity Holders' or the Company's control which will cause any representation or warranty made herein to be untrue as of the Closing or prevent the Equity Holders or the Company from complying with any obligation contained in this Agreement or any obligations contained in any contract; or

(iv) Take any affirmative action, or fail to take any reasonable action within its control, as a result of which any changes or events listed in Section 4.20 is likely to occur.

6.02 Access; Inspection . From the date of this Agreement through the Closing Date, the Company shall (a) provide the Buyer and its designees (e.g., officers, counsel, accountants, actuaries, and other authorized representatives) with such information as the Buyer or its designees may from time to time reasonably request with respect to the Company, the ABC Coal Mine or the transactions contemplated by this Agreement; (b) provide the Buyer and its designees, access during regular business hours and upon reasonable notice to the books, records, offices, personnel, counsel, accountants and actuaries of the Company, as the Buyer or its designees may from time to time reasonably request; and (c) permit the Buyer and its designees to make such inspections of the ABC Coal Mine and any records or properties related thereto as the Buyer may reasonably request. Any investigation shall be conducted in such a manner so as not to interfere unreasonably with the construction, development or operation of the ABC Coal Mine. No such investigation shall limit or modify in any way the Equity Holders' or the Company's obligations with respect to any breach of their representations, warranties, covenants or agreements contained herein.

6.03 Interim Financials . As promptly as practicable after each regular accounting period ending prior to the Closing Date, the Company will deliver to the Buyer periodic financial reports in the form which it customarily prepares for its internal purposes concerning the Company and, if available, unaudited statements of the financial position of the Company as of the last day of each accounting period and statements of income and changes in financial position of the Company for the period then ended.

6.04 Transfer Taxes . All sales or transfer taxes, including but not limited to, stock transfer taxes, document recording fees, real property transfer taxes, sales and excise taxes, arising out of or in connection with the consummation of the transactions contemplated hereby shall be paid by the Company or the Equity Holders.

6.05 Preparation of Supporting Documents . In addition to such actions as the Company may otherwise be required to take under this Agreement or applicable law to consummate this Agreement and the transactions contemplated hereby, the Equity Holders and the Company shall take such action, shall furnish such information, and shall prepare, or cooperate in preparing, and execute and deliver such certificates, agreements and other instruments as the Buyer may reasonably request from time to time, before, at or after the Closing, with respect to compliance with obligations of the Buyer, the Equity Holders or the Company in connection with the transactions contemplated herein. Any information so furnished by the Equity Holders or the Company shall be true, correct and complete in all material respects and shall not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

6.06 Notice of Breach or Potential Breach . The Equity Holders and the Company shall promptly notify the Buyer in writing of (a) any change, circumstance, event, fact or condition that causes or constitutes a breach of any of the representations or warranties of the Equity Holders or the Company made as of the date of this Agreement, (b) the occurrence after the date of this Agreement of any change, circumstance, event, fact or condition that would cause or constitute a breach of any such representation or warranty had that representation or warranty been made as of the time of the occurrence of, or the Company's or any Equity Holder's discovery of, such change, circumstance, event, fact or condition, or (c) any change, circumstance, event, fact or condition which prevents or is reasonably likely to prevent the Equity Holders or the Company from complying with any of their obligations hereunder. Should any such change, circumstance, event, fact or condition require any change or update to any Schedule or list provided to the Buyer in accordance with this Agreement, the Company and the Equity Holders shall promptly deliver to the Buyer a supplement to such Schedule or list specifying such change. Notwithstanding the foregoing, no such notice or disclosure pursuant to this Section 6.06 shall affect any of the Buyer's rights under Article IX, Article X or Article XI.

6.07 Acquisition Proposals . Prior to the Closing or the termination of this Agreement, the Company and the Equity Holders shall not, and shall not permit the Company or any officer, director, employee or agent of the Company to (a) solicit, initiate or encourage submission of proposals or offers, or accept any offers, from any person or entity relating to any acquisition or purchase of all or a material amount of the assets of, or any equity interest in, or any merger, consolidation or business combination with, the Company (an " Acquisition Proposal "), or (b) participate in any discussions or negotiations regarding, or furnish to any other person or entity any information with respect to, or otherwise cooperate in any way with or assist, facilitate or encourage any Acquisition Proposal by any other person or entity. The Company and/or the Equity Holders shall notify the Buyer in writing of any Acquisition Proposal within twenty-four hours of receipt or awareness of such Acquisition Proposal. Such notification shall specify, in reasonable detail, the terms of such Acquisition Proposal

6.08 Development Costs, Taxes, Utilities, Assessments and Similar Adjustments .

(a) The Company and the Equity Holders shall be responsible for the payment of all costs and expenses, including without limitation taxes and utilities charges, related to the construction and development of the ABC Coal Mine, whether incurred before or after the Closing Date. In furtherance of the foregoing, the Company, the Equity Holders and the Buyer will negotiate in good faith a Development Agreement to be entered into among the parties as of the Closing Date (the " Development Agreement").

(b) The Company and the Equity Holders shall be responsible for the payment of the following, whether incurred before or after the Closing Date: (i) all federal, state and other taxes imposed upon the Company's net income from the transactions contemplated hereunder (including but not limited to federal taxes based upon depreciation recapture and federal taxes based upon the recapture of investment tax credit); (ii) taxes payable by the Company on gross income from the sale of the Assets to the Buyer hereunder; (iii) all sales and use taxes imposed on the purchase, sale, use or transfer of property by the Company prior to and as a result of the Closing; (iv) any penalties, interest, or similar charges with respect to the foregoing taxes enumerated in this Section; and (v) realty transfer taxes imposed on the conveyance of the Real Property, as well as any filing or recording fees or mortgage taxes applicable to such transfer.

**ARTICLE VII**

**COVENANTS OF THE PARTIES**

The Company, the Equity Holders and the Buyer, respectively, hereby covenant to and agree with one another as follows:

7.01 Approvals of Third Parties; Satisfaction of Conditions to Closing . The Company, the Equity Holders and the Buyer will use their reasonable, good faith efforts, and will cooperate with one another, to secure all necessary consents, approvals, authorizations and exemptions from governmental agencies and other third parties, including, without limitation, all consents required by Sections 9.04 and 9.05 hereof. If any consent or approval is not obtained prior to or on the Closing Date, and such consent or approval relates to the transfer or assignment to the Buyer of a lease, contract or other agreement that constitutes an Asset (a " Company Contract "), the Company shall hold such Company Contract in trust for the use and benefit of the Buyer, and shall take such other action as may be reasonably requested by the Buyer in order to place the Buyer in the same position as if such consents or approvals had been obtained. The Company and the Equity Holders will use their reasonable, good faith efforts to cause or obtain the satisfaction of the conditions specified in Article IX. The Buyer will use its reasonable, good faith efforts to cause or obtain the satisfaction of the conditions specified in Article VIII.

7.02 Confidentiality.

(a) The Company and the Equity Holders shall hold in confidence and not directly or indirectly use, copy, reveal, report, publish, disclose or transfer any Confidential Information to any person or entity except as necessary to carry out its obligations under this Agreement, or utilize any of the Confidential Information for any purpose not explicitly authorized hereunder, except that the Company and the Equity Holders may disclose Confidential Information to their employees, consultants and financial and legal advisors (hereinafter " Consultants "), provided such Consultants have a need to know and have executed nondisclosure agreements obligating such Consultants to keep the Confidential Information confidential, or are otherwise bound by similar confidentiality obligations. The limitations contained in this Section 7.02 shall be effective upon the Closing and shall remain in effect for two (2) years following the Closing Date.

(b) In the event the Company or any of the Equity Holders becomes legally compelled to disclose any of the Confidential Information, such party will provide to the Buyer prompt notice so that the Buyer may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Section 7.02. In the event that such protective order or other remedy is not obtained, or compliance with the provisions of this Section 7.02 is waived, such party will furnish only that portion of the Confidential Information which is legally required, and to the extent requested by the Buyer, will exercise its best efforts to obtain a protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information.

(c) The injury that Disclosing Party will suffer in the event of a breach of any covenant or agreement contained herein by the Company or any of the Equity Holders cannot be compensated by monetary damages alone, and the parties therefore agree that the Buyer, in addition to and without limiting any other remedies or rights which it may have either under this Agreement or otherwise, shall have the right to obtain an injunction against the Company or any of the Equity Holders, as applicable, from any court of competent jurisdiction, enjoining any such breach. The covenants and agreements contained in this Section 7.02 shall inure to the benefit of, and may be enforced by, the Buyer and its successors and assigns.

7.03 Employee Benefits Plans . The Buyer shall not adopt, assume or otherwise become responsible for, either primarily or as a successor employer, any assets or liabilities of any employee benefit plans, arrangements, commitments or policies currently provided by the Company. If and to the extent that the Buyer is deemed by law or otherwise to be liable as a successor employer for such purposes, the Company and the Equity Holders shall jointly and severally indemnify the Buyer for the full and complete costs, fees and other liabilities which result.

7.04 Casualty . The Company shall bear the risk of any loss or damage or destruction to any of the Assets from fire or other casualty or cause at all times prior to the Closing. Upon the occurrence of any loss or damage to any material portion of the Assets as a result of fire, casualty, or other causes prior to the Closing, the Company shall immediately notify the Buyer of the same in writing, stating with particularly the extent of loss or damage incurred, the cause thereof, if known, and the extent to which restoration, replacement, and repair of the Assets lost or destroyed will be reimbursed under any insurance policy with respect thereto. The Buyer shall have the option, but not the obligation, exercisable within ten (10) days after receipt of such notice from the Company, to: (a) Postpone the Closing until such time as such Assets have been completely repaired, replaced, or restored; (b) Elect to consummate the Closing and accept the Assets in their "then" condition, in which event the Company shall assign to the Buyer all rights under any insurance claim covering the loss and pay over to the Buyer any proceeds under any such insurance policy theretofore received by the Company with respect thereto; or (c) Terminate this Agreement, whereupon this Agreement shall be of no further force or effect and neither the Company nor the Buyer shall have any further rights, duties, or obligations hereunder, except as set forth in Section 11.02 hereof.

7.05 Condemnation . If prior to the Closing any of the Company's real property shall have been taken by condemnation in any proceeding by a public authority or other body vested with the power of eminent domain or shall have been acquired by a public or quasi-public body for public purposes, or if condemnation proceedings therefor shall have been instituted, the Company shall give the Buyer prompt notice of such occurrence. If such condemnation takes, or proposes to take, all of the Company's real property, the Buyer may terminate this Agreement by giving the Company notice to such effect within ten (10) days after the Company's notice to the Buyer of such occurrence, with the date of the Closing to be extended, if necessary, to provide such a ten (10) day period. If the Buyer shall so elect to terminate this Agreement, the parties hereto shall have no further rights, duties, or obligations hereunder, except as set forth in Section 11.02 hereof. If the taking or proposed taking is to include such portion of the Company's real property as shall, in the Buyer's judgment, materially and substantially interfere with the Buyer's intended uses of the Assets, then the Buyer may terminate cancel this agreement by giving the Company written notice to such effect within ten (10) days after receipt of the Company's notice of such occurrence, with the date of the Closing to be extended, if necessary, to provide such ten (10) day period. If the Buyer shall so elect, this Agreement shall be terminated and the parties hereto shall have no further rights, duties, or obligations hereunder, except as set forth in Section 11.02 hereof. If this Agreement is not terminated as provided above, this Agreement shall remain in full force and effect and the purchase contemplated herein, less any portion of the Company's real property taken by eminent domain or condemnation, or sold in lieu thereof, shall be consummated without reduction of the Purchase Price. In such event, the Company shall, at the Closing, assign, transfer, and set over unto the Buyer all of the Company's right, title and interest in and to any awards or proceeds paid or payable for such taking or sale in lieu thereof.

**ARTICLE VIII**

**CONDITIONS TO OBLIGATIONS OF THE**

**EQUITY HOLDERS AND THE COMPANY**

Each of the obligations of the Equity Holders and the Company to be performed hereunder shall be subject to the satisfaction (or waiver by the Company) at or prior to the Closing Date of each of the following conditions:

8.01 Representations and Warranties Accurate at Closing Date . Each of the Buyer's representations and warranties contained in this Agreement shall be accurate in all material respects as of the date of this Agreement and as of the Closing Date with the same force and effect as though made on and as of the Closing Date; the Buyer shall have complied in all material respects with the covenants and agreements set forth herein to be performed or complied with by it on or before the Closing Date; and the Buyer shall have delivered to the Company a certificate dated the Closing Date and signed by its duly authorized officer to all such effects, and confirming such other matters as may be reasonably requested by the Company.

8.02 Litigation . No suit, investigation, action or other proceeding shall be pending or overtly threatened against the Company or the Buyer before any court or governmental agency which has resulted in the restraint or prohibition of any such party, or could, in the reasonable opinion of counsel for the Company, result in the obtaining of material damages or other relief from any such party, in connection with this Agreement or the consummation of the transactions contemplated hereby.

8.03 Required Governmental Approvals . All governmental authorizations, consents and approvals necessary for the valid consummation of the transactions contemplated hereby shall have been obtained and shall be in full force and effect. All applicable governmental pre-acquisition filing, information furnishing and waiting period requirements shall have been met or such compliance shall have been waived by the governmental authority having authority to grant such waivers.

**ARTICLE IX**

**CONDITIONS TO OBLIGATIONS OF THE BUYER**

The obligations of the Buyer to be performed hereunder shall be subject to the satisfaction (or waiver by the Buyer) on or before the Closing Date of each of the following conditions:

9.01 Representations and Warranties Accurate at Closing Date . Each of the representations and warranties of Equity Holders and the Company contained in this Agreement shall be accurate in all material respects as of the date of this Agreement and as of the Closing Date with the same force and effect as though made on and as of the Closing Date (provided that each of the representations and warranties of the Equity Holders and the Company in Sections qualified by materiality shall be accurate in all respects as of the date of this Agreement and as of the Closing Date with the same force and effect as though made on and as of Closing Date); the Equity Holders and the Company shall have performed and complied in all respects with the respective covenants and agreements set forth herein to be performed or complied with by each of them on or before the Closing Date; and the Equity Holders and the Company shall have delivered to the Buyer a certificate signed on behalf of the Company by its President and on behalf of the Equity Holders by their duly authorized representatives to all such effects, and confirming such other matters as may be reasonably requested by the Buyer.

9.02 No Material Change . The Company shall not have suffered any material adverse change since the date of this Agreement (whether or not such change is referred to or described in any Schedule) in its business, prospects, financial condition, working capital, assets, liabilities (absolute, accrued, contingent or otherwise), reserves or operations.

9.03 Litigation . No suit, investigation, action or other proceeding or claim shall be pending or overtly threatened against the Buyer, any Equity Holder or the Company before any court or governmental agency, which has resulted in the restraint or prohibition of any such party, or, in the reasonable opinion of the Buyer or its counsel, could result in the obtaining of material damages or other relief from any such party, in connection with this Agreement or the consummation of the transactions contemplated hereby.

9.04 Required Governmental Approvals . All governmental authorizations, consents and approvals necessary for the valid consummation of the transactions contemplated hereby shall have been obtained and shall be in full force and effect. All applicable governmental pre-acquisition filing, information furnishing and waiting period requirements shall have been met or such compliance shall have been waived by the governmental authority having authority to grant such waivers.

9.05 Other Necessary Consents . The Equity Holders and the Company shall have obtained all consents and approvals required to be reported to the Buyer pursuant to Section 4.04. With respect to each such consent or approval, Buyer shall have received written evidence, satisfactory to it, that such consent or approval has been duly and lawfully filed, given, obtained or taken and is effective, valid and subsisting.

9.06 Opinion of Counsel to the Equity Holders and the Company . The Buyer shall have received from counsel to the Equity Holders and the Company an opinion, dated the Closing Date, in a form acceptable to the Buyer.

9.07 Actions by the Company . The Board of Directors of the Company shall have approved this Agreement, and authorized its execution, delivery and performance by the Company.

9.08 Due Diligence Review. Representatives of the Buyer shall have completed the due diligence review of the operations, condition (financial and other), prospects, assets and liabilities of, and other matters related to, the Company and its business to the Buyer's satisfaction.

9.09 Financing . The Buyer shall have secured third party financing of at least Thirty Million Dollars ($30,000,000) on terms satisfactory to the Buyer in order to finance the transactions contemplated by this Agreement.

9.10 Real Property Title Insurance . The Buyer shall have obtained at its expense a title insurance policy insuring the Buyer that the Buyer has good, valid and marketable title in fee simple absolute to the Real Property, free and clear of all title defects or objections, liens, claims, charges, security interests or other encumbrances of any nature whatsoever, except as described in such policies and which are reasonably acceptable to the Buyer and except for Permitted Liens, and containing an endorsement insuring that any knowledge of title defects on the part of the Equity Holders or the Company on or prior to the Closing will not be attributed to the Buyer.

9.11 Subsifresh Governing Documents; Profit Sharing Agreement . The parties shall have executed and delivered the Subsifresh Governing Documents or the Profit Sharing Agreement, as the case may be, in forms acceptable to the Buyer.

9.12 Development Agreement . The parties shall have executed and delivered the Development Agreement on terms acceptable to the Buyer.

9.13 Certificates. The Company shall have delivered to the Buyer: (a) Certificates of the Secretary or Assistant Secretary of Equity Holder 1 and the Company (i) attaching and certifying copies of the resolutions of its board of directors, authorizing the execution, delivery and performance of this Agreement and the other documents, instruments and certifications required or contemplated hereby, (ii) certifying the name, title and true signature of each officer of the Equity Holders and the Company executing or authorized to execute this Agreement and the other documents, instruments and certifications required or contemplated hereby, and (iii) attaching and certifying a true, correct and complete copy of the bylaws of each of the Equity Holders and the Company; and (b) Copies of the articles or charter of Equity Holder 1 and the Company certified by the Secretary of State of the jurisdiction of its incorporation and by its Secretary or Assistant Secretary

9.14 Documents Satisfactory in Form and Substance . All agreements, certificates, opinions and other documents delivered by the Equity Holders and the Company to the Buyer hereunder shall be in form and substance satisfactory to the Buyer and its counsel, in the exercise of their reasonable judgment.

**ARTICLE X**

**INDEMNIFICATION**

10.01 Indemnification Generally .

(a) Except as otherwise limited by this Article X, the Equity Holders and the Company shall, jointly and severally, indemnify, reimburse and hold harmless the Buyer and any successor or assigns thereof, and their respective officers, directors, employees, consultants and agents (the " Protected Parties "), from and against any and all claims, losses, liabilities, damages, costs (including court costs) and expenses (including reasonable attorneys' and accountants' fees) (hereinafter " Loss " or " Losses ") asserted against, imposed upon, suffered by or incurred by any of the Protected Parties as a result of, or with respect to, or arising from

(i) any breach or inaccuracy of any representation or warranty of the Equity Holders or the Company set forth in this Agreement, whether such breach or inaccuracy exists or is made on the date of this Agreement or as of the Closing Date;

(ii) any breach or inaccuracy of any representation or warranty of the Equity Holders or the Company set forth in any certificate or other document delivered pursuant hereto or in connection herewith, including the certificate to be provided to the Buyer pursuant to Section 9.01 hereof, without regard to the materiality qualification contained in such certificate ;

(iii) any breach of or noncompliance by the Equity Holders or the Company with any covenant or agreement of the Equity Holders or the Company contained in this Agreement;

(iv) any and all liabilities and obligations arising out of any breach by the Company of any agreement assumed by the Buyer at the Closing by written instrument executed by the Buyer pursuant to this Agreement; and

(v) the construction and development of the ABC Coal Mine.

(b) Further, the Equity Holders and the Company shall, jointly and severally, indemnify, reimburse and hold harmless the Protected Parties from and against any and all Environmental Claims or other damages, costs or expenses arising out of, imposed upon, incurred by or asserted against any of the Protected Parties in connection with or in any way relating to environmental conditions in, on, at, under, above or around the Real Property as of the Closing Date, including, without limitation, by reason of

(i) the presence, use, generation, treatment, storage, recycling or management of any Hazardous Material at, in, on or under the Real Property by any person,

(ii) the Release into the environment or the transport of Hazardous Materials to, from, in, on, at, under, above or around the Real Property,

(iii) the violation of or noncompliance with any Environmental Law in connection with the Real Property, and

(iv) any loss of or damage to any property, natural resources or the environment, or death of or injury to any person, resulting from or relating to any Hazardous Material that is or was present, used, generated, treated, stored, recycled, managed, transported to or from or Released in, on, at, under, above or around the Real Property.

10.02 Indemnity Claims . The representations and warranties of the Equity Holders and the Company contained herein or in any certificate or other document delivered pursuant hereto or in connection herewith shall not be extinguished by the Closing but shall survive the Closing for, and all claims for indemnification in connection therewith shall be asserted no later than, two (2) years after the Closing Date; provided that, notwithstanding the foregoing,

(a) claims with respect to Losses arising out of or related in any way to (i) any breach of or inaccuracy in the representations and warranties contained in Article III hereof, and (ii) the matters described in Sections 10.01(a)(iii), (iv) and (v) and 10.01(b), may be made without limitation, except as limited by law; and

(b) claims with respect to Losses arising out of or related in any way to (i) any breach of or inaccuracy in the representations and warranties contained in Section 4.05 hereof (insofar as such representations and warranties relate to any federal, state, or local antitrust law or regulation), Section 4.14 hereof, and Section 4.21 hereof, and (ii) claims made by third parties against any of the Protected Parties with respect to any of the matters described in Section 10.01 hereof, may be made until, and shall be made no later than, thirty (30) days after the expiration of the applicable statute of limitations with respect thereto (the matters described in clauses (a) and (b) being referred to as " Surviving Matters "). The covenants and agreements of the Equity Holders and the Company contained herein shall survive without limitation as to time except as may be otherwise specified herein.

10.03 Threshold . Except for claims made in connection with a breach of the representations and warranties contained in Article III or Sections 4.01, 4.02, 4.03, 4.14, 4.21 or 4.22, the Buyer shall make no claim against the Equity Holders or the Company for indemnification under Section 10.01(a)(i) or (ii) hereof for a breach of a representation or warranty contained herein unless and until the aggregate amount of such claims against the Equity Holders and the Company exceeds $100,000 (the " Threshold ") in which event the Buyer may claim indemnification for the full amount of all such claims. Notwithstanding anything to the contrary contained herein, the amount of any claim with respect to Surviving Matters shall not be applied or included with other claims to determine whether the Threshold has been reached. Further, all Losses which would have given rise to a claim for indemnity under Section 10.01(a)(i) or (ii) hereof but for any materiality qualification contained in any representation or warranty shall be included with other claims to determine whether the Threshold has been reached.

10.04 Cap. Notwithstanding anything to the contrary contained herein, in no event shall the aggregate liability of the Equity Holders and the Company under this Article X for Losses suffered or incurred by any of the Protected Parties exceed the Purchase Price; provided , however , that there shall be no limit on the aggregate liability of the Equity Holders and the Company under this Article X with respect to: (a) Losses suffered or incurred as a result of a breach of the representations contained in Article III or Sections 4.01, 4.02, 4.03, 4.14, 4.21 or 4.22; (b) Losses arising out of or related in any way to the matters described in Section 10.01(b); or (c) a breach of any representation or warranty arising out of fraud or willful misconduct on the part of the Company or the Equity Holders.

10.05 Notice of Claim . The Buyer shall notify the Equity Holders and the Company, in writing, of any claim for indemnification, specifying in reasonable detail the nature of the Loss, and, if known, the amount, or an estimate of the amount, of the liability arising therefrom. The Buyer shall provide to the Equity Holders and the Company as promptly as practicable thereafter such information and documentation as may be reasonably requested by the Equity Holders and the Company to support and verify the claim asserted, so long as such disclosure would not violate the attorney-client privilege of the Buyer.

10.06 Defense . If the facts pertaining to a Loss arise out of the claim of any third party, or if there is any claim against a third party (other than a Protected Party) available by virtue of the circumstances of the Loss, the Equity Holders and/or the Company (as applicable, the " Indemnifying Party ") may assume the defense or the prosecution thereof by prompt written notice to the Buyer and the affected Protected Party, including the employment of counsel or accountants, at its cost and expense. The Buyer and the affected Protected Party shall have the right to employ counsel separate from counsel employed by the Indemnifying Party in any such action and to participate therein, but the fees and expenses of such counsel employed by the Buyer and the affected Protected Party shall be at their expense. The Indemnifying Party shall not be liable for any settlement of any such claim effected without its prior written consent, which shall not be unreasonably withheld; provided that if the Indemnifying Party does not assume the defense or prosecution of a claim as provided above within thirty (30) days after notice thereof from any Protected Party, the Buyer and the affected Protected Party may settle such claim without the Indemnifying Party's consent. The Indemnifying Party shall not agree to a settlement of any claim which provides for any relief other than the payment of monetary damages or which could have a material precedential impact or effect on the business or financial condition of any Protected Party without the Buyer's and the affected Protected Party's prior written consent. Whether or not the Indemnifying Party chooses to so defend or prosecute such claim, all the parties hereto shall cooperate in the defense or prosecution thereof and shall furnish such records, information and testimony, and attend such conferences, discovery proceedings, hearings, trials and appeals, as may be reasonably requested in connection therewith. The Indemnifying Party shall be subrogated to all rights and remedies of any Protected Party, except to the extent they apply against another Protected Party.

10.07 Right to Indemnification Not Affected by Knowledge . The right to indemnification, payment of damages or other remedy based on the representations, warranties, covenants, and obligations in this Agreement and the other documents and certificates delivered pursuant to this Agreement will not be affected by any investigation conducted with respect to, or any knowledge acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this Agreement or the Closing Date, with respect to the accuracy or inaccuracy of or compliance with, any such representation, warranty, covenant or obligation. The waiver of any condition based on the accuracy of any representation or warranty, or on the performance of or compliance with any covenant or obligation, will not affect the right to indemnification, payment of damages, or other remedy based on such representations, warranties, covenants and obligations.

10.08 Set-off . The Buyer shall be entitled to set-off any amount or right it may be entitled to hereunder against any amount, right or obligation owed to the Company under this Agreement or any other agreement entered into in connection herewith, including without limitation the Subsifresh Governing Documents or the Profit Sharing Agreement.

**ARTICLE XI**

**TERMINATION PRIOR TO CLOSING**

11.01 Termination of Agreement . This Agreement may be terminated at any time prior to the Closing:

(a) By the mutual written consent of Buyer, the Company and Equity Holders;

(b) By the Company and the Equity Holders in writing, without liability, if the Buyer shall (i) fail to perform in any material respect its agreements contained herein required to be performed by it on or prior to the Closing Date, or (ii) materially breach any of its representations, warranties or covenants contained herein, which failure or breach is not cured within ten (10) days after the Company and the Equity Holders have notified Buyer of their intent to terminate this Agreement pursuant to this subparagraph (b);

(c) By the Buyer in writing, without liability, if either the Company or any of the Equity Holders shall (i) fail to perform in any material respect their agreements contained herein required to be performed by them on or prior to the Closing Date, or (ii) materially breach any of their representations, warranties or covenants contained herein, which failure or breach is not cured within ten (10) days after the Buyer has notified the Company and the Equity Holders of its intent to terminate this Agreement pursuant to this subparagraph (c);

(d) By either the Company, the Equity Holders or the Buyer in writing, without liability, if there shall be any order, writ, injunction or decree of any court or governmental or regulatory agency binding on the Buyer, the Equity Holders or the Company, which prohibits or restrains the Buyer, the Equity Holders or the Company from consummating the transactions contemplated hereby, provided that the Buyer, the Equity Holders and the Company shall have used their reasonable, good faith efforts to have any such order, writ, injunction or decree lifted and the same shall not have been lifted within 30 days after entry, by any such court or governmental or regulatory agency;

(e) By either the Company, the Equity Holders or the Buyer, in writing, without liability, if for any reason the Closing has not occurred by September 30, 2010 other than as a result of the breach of this Agreement by the party attempting to terminate the Agreement; or

(f) By the Buyer, in writing, without liability, if the Buyer, in its sole discretion, (i) is not satisfied with the findings of its inspections and due diligence review of the Real Property or the operations, condition (financial and other), prospects, assets and liabilities of, and other matters related to, the Company and its business, including without limitation the construction, development and prospective operation of the ABC Coal Mine, or (ii) determines that the parties will not be able to agree to the Subsifresh Governing Documents, the Profit Sharing Agreement, the Development Agreement, or any other agreement or instrument to be negotiated and delivered in connection with this Agreement on terms acceptable to the Buyer.

11.02 Termination of Obligations . Termination of this Agreement pursuant to this Article XI shall terminate all obligations of the parties hereunder, except for the obligations under Sections 7.02, 11.02, 13.08 and 13.10 hereof; provided , however , that termination pursuant to subparagraphs (b), (c) or (e) of Section 11.01 hereof shall not relieve a defaulting or breaching party from any liability to the other party hereto.

**ARTICLE XII**

**DEFINED TERMS; INTERPRETATION OF AGREEMENT**

12.01 Defined Terms .

(a) " Confidential Information " shall mean any data or information, without regard to form, concerning the ABC Coal Mine or its operations that is of value and is not generally known to the general public or to others in the mining industry. To the extent consistent with the foregoing, Confidential Information includes, but is not limited to, lists (whether in written form or otherwise) of any information about the executives and employees, marketing techniques, price lists, pricing policies, business methods, and contracts and contractual relations relating to the ABC Coal Mine; provided that Confidential Information shall not include any materials or information of the types specified above to the extent that such materials or information: (A) are or become publicly known or generally utilized by others engaged in the same business or activities as those undertaken at the ABC Coal Mine; or (B) are furnished to others by the Buyer with no restriction on disclosure. Failure to mark any of the Confidential Information as confidential shall not affect its status as Confidential Information under this Agreement.

(b) " Environmental Claims " shall mean any and all administrative, regulatory or judicial actions, causes of action, suits, investigations, obligations, liabilities, losses, proceedings, decrees, judgments, penalties, fines, fees, demands, demand letters, orders, directives, claims (including any claims involving liability in tort, strict, absolute or otherwise), liens, notices of noncompliance or violation, and legal and consultant fees and costs of investigations or proceedings, relating in any way to any Environmental Law or the presence or Release (or alleged presence or Release) into the environment of any Hazardous Material on, at or from the Real Property (hereinafter " Claims ") including, without limitation, and regardless of the merit of such Claim, any and all Claims by any governmental or regulatory authority or by any third party or other person for enforcement, mitigation, cleanup, removal, response, remediation or other actions or damages, contribution, indemnification, cost recovery, compensation or injunctive or declaratory relief pursuant to any Environmental Law or any alleged injury or threat of injury to human health, safety, natural resources or the environment.

(c) " Environmental Laws " shall mean all present and future federal, state and local laws, statutes, ordinances, regulations, codes, policies, rules, directives, orders, decrees, permits, licenses, approvals, authorizations, criteria, guidelines, covenants, deed restrictions, treaties, conventions, and rules of common law now or hereafter in effect, and in each case as amended, and any judicial or administrative judgment, opinion or interpretation thereof, relating to the regulation or protection of human health, safety, natural resources or the environment, including, without limitation, laws and regulations (and all other items recited above) relating to the use, treatment, storage, management, handling, manufacture, generation, processing, recycling, distribution, transport, Release or threatened Release of or exposure to any Hazardous Material.

(d) " Hazardous Materials " shall mean, collectively, any substance, material, product, derivative, compound, mixture, mineral, chemical, waste, medical waste or gas, in each case whether naturally occurring, human-made or the by-product of any process, including but not limited to petroleum or petroleum products (A) that is now or hereafter becomes defined or included within the definition of a "hazardous substance," "hazardous waste," "hazardous material," "toxic chemical," "toxic substance," "hazardous chemical," "extremely hazardous substance," "pollutant," "contaminant," or any other words of similar meaning under any Environmental Law, (B) exposure to which or the presence, use, generation, treatment, Release, transport or storage of which is now or hereafter prohibited, limited, restricted or regulated under any Environmental Law or by any governmental or regulatory authority, or (C) that could require investigation, response or remediation, or could support the assertion of any Environmental Claim.

(e) " Knowledge ". As used herein, the terms "Equity Holders' knowledge" and "to the knowledge of the Equity Holders" with respect to the Equity Holders shall mean the knowledge of any Equity Holders (and where the Equity Holder is a corporation any director or officer of such Equity Holder) following due and diligent inquiry, and the terms "the Company's knowledge" or "to the knowledge of the Company" shall mean the knowledge of any director or officer of the Company following due and diligent inquiry.

(f) " Ordinary Course of Business " means, with respect to actions and operations conducted by the Company, actions and operations that are (a) consistent with the past practices of the Company, (b) taken in the ordinary course of the normal, day-to-day operations of the Company, (c) not required to be authorized by the Board of Directors or other governing body of the Company, and (d) similar in nature and magnitude to actions and operations customarily taken, without any authorization by the Board of Directors or other governing body, in the ordinary course of the normal, day-to-day operation of other companies that are in the same line of business as the Company.

(g) " Release " shall mean the release, deposit, disposal or leakage of any Hazardous Material at, into, upon or under any land, water or air, or otherwise into the environment, including, without limitation, by means of burial, disposal, discharge, emission, injection, spillage, leakage, seepage, leaching, dumping, pumping, pouring, escaping, emptying, placement and the like.

(h) " Taxes " shall mean all taxes, however denominated, including any interest, penalties or other additions to tax that may become payable in respect thereof, imposed by any federal, territorial, state, local or foreign government or any agency or political subdivision of any such government, which taxes shall include, without limiting the generality of the foregoing, all income or profits taxes (including, but not limited to, federal income taxes and state income taxes), payroll and employee withholding taxes, unemployment insurance, social security taxes, sales and use taxes, ad valorem taxes, excise taxes, franchise taxes, gross receipts taxes, business license taxes, occupation taxes, real and personal property taxes, stamp taxes, environmental taxes, transfer taxes, workers' compensation and other governmental charges, and other obligations of the same or of a similar nature to any of the foregoing, which the Company is required to pay, withhold or collect.

(i) " Returns " shall mean all reports, estimates, declarations of estimated tax, information statements and returns relating to, or required to be filed in connection with, any Taxes, including information returns or reports with respect to backup withholding and other payments to third parties.

12.02 Language . This Agreement is signed in duplicates in both Chinese and English languages, and each party shall hold one original copy for each language. Notwithstanding the foregoing, if there is any conflict between the two languages, the English version of this Agreement shall prevail.

12.03 Including . Words of inclusion shall not be construed as terms of limitation herein, so that references to "included" matters shall be regarded as non-exclusive, non-characterizing illustrations.

12.04 Gender and Number . Where the context requires, the use of a pronoun of one gender or the neuter is to be deemed to include a pronoun of the appropriate gender, singular words are to be deemed to include the plural, and vice versa.

12.05 References . Whenever reference is made in this Agreement to any Article, Section, Schedule or Exhibit, such reference shall be deemed to apply to the specified Article or Section of this Agreement or the specified Schedule or Exhibit to this Agreement.

**ARTICLE XIII**

**MISCELLANEOUS**

13.01 No Liens Created . This Agreement shall not be construed to create any lien or encumbrance on any of the Assets, or to create any rights in any third persons or to indicate that the Buyer is assuming any liabilities of the Company except as specifically provided for in the Assignment and Assumption Agreement (if applicable).

13.02 Entire Agreement . This Agreement (including the Schedules and Exhibits, which are incorporated herein) constitutes the sole understanding of the parties with respect to the subject matter hereof; provided , however , that this provision is not intended to abrogate any other written agreement between the parties executed with or after this Agreement.

13.03 Amendment . No amendment, modification or alteration of the terms or provisions of this Agreement shall be binding unless the same shall be in writing and duly executed by the parties hereto.

13.04 Parties Bound by Agreement; Successors and Assigns . The terms, conditions and obligations of this Agreement shall inure to the benefit of and be binding upon the parties hereto and the respective successors and assigns thereof. Without the prior written consent of the Buyer, neither the Equity Holders nor the Company may assign its or their rights, duties or obligations hereunder or any part thereof to any other person or entity. The Buyer may assign its rights and duties hereunder in whole or in part (before or after the Closing) to one or more entities, including without limitation a "Subsifresh" subsidiary as contemplated by Section 2.01(c) above.

13.05 Counterparts and Facsimile . This Agreement may be executed in multiple counterparts, each of which shall for all purposes be deemed to be an original and all of which, when taken together, shall constitute one and the same instrument. This Agreement may be executed and delivered by facsimile.

13.06 Headings . The headings of the Sections and paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

13.07 Modification and Waiver . Any of the terms or conditions of this Agreement may be waived in writing at any time by the party which is entitled to the benefits thereof. No waiver of any of the provisions of this Agreement shall be deemed to or shall constitute a waiver of any other provision hereof (whether or not similar).

13.08 Expenses . Except as otherwise provided herein, the Equity Holders, the Company and the Buyer shall each pay all costs and expenses incurred by each of them, or on their behalf respectively, in connection with this Agreement and the transactions contemplated hereby, including fees and expenses of their own financial consultants, accountants and counsel.

13.09 Notices . Any notice, request, instruction or other document to be given hereunder by any party hereto to any other party hereto shall be in writing and sent by facsimile or delivered personally or sent by registered or certified mail (including by overnight courier or express mail service), postage or fees prepaid,

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| --- | --- |
| if to Equity Holders or the Company to: | XY City Investment Group Co., Ltd. Xy-City China Attention: Mr. Xuan Shi |
| if to Buyer to: | Mineall International Holding Group Inc.Address CA,USA Fax: xxx-xxx-xxx Attention: Mr. Fred Ping |
| with a copy to: | Tornt, Dorset and Gall LLP Address Fax: xxx-xxx-xxx Attention: Oliver Twist, Esq. |

or at such other address for a party as shall be specified by like notice. Any notice sent by facsimile shall be deemed to have been duly given to the party to whom it is sent upon written confirmation of receipt, provided that a copy of such fax is delivered personally or mailed to the recipient within one business day of the date of the fax, in the manner herein provided. Any notice which is delivered personally in the manner provided herein shall be deemed to have been duly given to the party to whom it is directed upon actual receipt by such party or the office of such party. Any notice which is addressed and mailed in the manner herein provided shall be conclusively presumed to have been duly given to the party to which it is addressed at the close of business, local time of the recipient, on the fourth business day after the day it is so placed in the mail or, if earlier, the time of actual receipt.

13.10 Governing Law; Jurisdiction . This Agreement is executed by the Buyer in and shall be construed in accordance with and governed by the laws of the State of California, USA without giving effect to the principles of conflicts of law thereof. Each of the parties hereto irrevocably agrees that any legal action or proceeding with respect to this Agreement or the transactions contemplated hereby, or for recognition and enforcement of any judgment in respect hereof, brought by the other party hereto or its successors or assigns may be brought and determined in state or federal courts sitting in the State of California, USA, and each party hereby irrevocably submits with regard to any such action or proceeding for itself and in respect of its property, generally and unconditionally, to the nonexclusive jurisdiction of the aforesaid courts. Each party hereto hereby irrevocably waives, and agrees not to assert, by way of a motion, as a defense, counterclaim or otherwise, in any action or proceeding with respect to this Agreement, (a) any claim that it is not personally subject to the jurisdiction of the above-named courts for any reason other than the failure to lawfully serve process, (b) that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise), and (c) to the fullest extent permitted by applicable law, that (i) the suit, action or proceeding in any such court is brought in an inconvenient forum, (ii) the venue of such suit, action or proceeding is improper, and (iii) this Agreement, or the subject matter hereof, may not be enforced in or by such courts.

13.11 Public Announcements . No public announcement shall be made by any person with regard to the transactions contemplated by this Agreement without the prior consent of the Company, the Equity Holders and the Buyer; provided that either party may make such disclosure if advised by counsel that it is legally required to do so. The Company, the Equity Holders and the Buyer will discuss any public announcements or disclosures concerning the transactions contemplated by this Agreement with the other parties prior to making such announcements or disclosures.

13.12 No Third-Party Beneficiaries . With the exception of the parties to this Agreement and the Protected Parties, there shall exist no right of any person to claim a beneficial interest in this Agreement or any rights occurring by virtue of this Agreement.

13.13 Severability . In case any one or more of the provisions contained in this Agreement should be found by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect against any party hereto, such invalidity, illegality, or unenforceability shall only apply to such party in the specific jurisdiction where such judgment shall be made, and the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby, except that this Agreement shall not be reformed in any way that will deny to any party the essential benefits of this Agreement, unless such party waives in writing its rights to such benefits.

13.14 Further Assurances . Each of the parties hereto will use its reasonable good faith efforts to take all actions and to do all things necessary, proper or advisable following the Closing to consummate and effectuate the transactions contemplated by this Agreement.

13.15 Enforcement . The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specified terms. It is accordingly agreed that the parties shall be entitled to specific performance of the terms hereof, this being in addition to any other remedy to which they are entitled at law or in equity. (Signatures appear on following page)

IN WITNESS WHEREOF , each of the parties hereto has duly executed and delivered this Agreement as of the date first above written.

|  |  |  |
| --- | --- | --- |
|  | BUYER: | |
|  | Mineall International Holding Group Inc. | |
|  | By: | |s|Fred Ping |
|  |  | Name: Fred Ping Title:Chief Executive Officer |
|  | EQUITY HOLDERS: | |
|  | Erdos City Bayinmengke Investment Group Co., Ltd. | |
|  | By: | |s|Xuan Shi |
|  |  | Name: Xuan Shi |
|  |  | Title: Chairman and Chief Executive Officer |
|  | |s|Xuan Shi | |
|  | Xuan Shi | |
|  | |s|Wei Fang | |
|  | Wei Fang | |
|  | COMPANY: | |
|  | XY City ABC Coal Co., Ltd. | |
|  | By: | |s|Xuan Shi |
|  |  | Name: Xuan Shi Title: Chief Executive Officer |

**APA#11**

**ASSET PURCHASE AGREEMENT**

by and among

PEMBORTON USA INC. ("Buyer")

and

INCLEX, INC. MERBOW ASSOCIATES, INC. (individually a "Seller" and collectively, "Sellers"), LAMOC-DELAFOIS INCLEX, LAMOC BELGIQUE HOLDING S.A. F/K/A DELAFOIS AVENIR BRUXELLES S.A., DELAFOIS AVENIR GROUP (HK) LTD., DELAFOIS (SHANGHAI) BRAND CONSULTING CO, LTD., DELAFOIS AVENIR GROUP (I-CHIN),

(individually a "Foreign Subsidiary" and collectively, "Foreign Subsidiaries") OUTLINE ASSOCIATES, LLC ("Outline Associates") and WILLIAM MURRY and GORDON M. MOLSTON (individually a "Principal" and collectively "Principals")

Dated September 15, 2011

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**TABLE OF CONTENTS**

SECTION 1. DEFINITIONS AND USAGE 1

1.1 DEFINITIONS 1

1.2 USAGE 13

SECTION 2. SALE AND TRANSFER OF ASSETS; CLOSING 14

2.1 ASSETS TO BE SOLD 14

2.2 EXCLUDED ASSETS 15

2.3 CONSIDERATION 16

2.4 LIABILITIES 17

2.5 ALLOCATION 20

2.6 CLOSING 20

2.7 CLOSING OBLIGATIONS 20

2.8 POST-CLOSING ADJUSTMENTS; DETERMINATION OF ADJUSTMENT AMOUNT 22

2.9 CONSENTS 23

SECTION 3. REPRESENTATIONS AND WARRANTIES OF SELLERS AND OUTLINE ASSOCIATES 24

3.1 ORGANIZATION AND GOOD STANDING 24

3.2 ENFORCEABILITY; AUTHORITY; NO CONFLICT 25

3.3 CAPITALIZATION 26

3.4 FINANCIAL REPORTS 26

3.5 BOOKS AND RECORDS 27

3.6 SUFFICIENCY OF ASSETS 27

3.7 DESCRIPTION OF OWNED REAL PROPERTY 27

3.8 DESCRIPTION OF LEASED REAL PROPERTY 27

3.9 TITLE TO ASSETS; ENCUMBRANCES 27

3.10 CONDITION OF FACILITIES 28

3.11 ACCOUNTS RECEIVABLE 28

3.12 MATERIALS AND SUPPLIES INVENTORIES 29

3.13 NO UNDISCLOSED LIABILITIES 29

3.14 TAXES 29

3.15 NO MATERIAL ADVERSE CHANGE 31

3.16 EMPLOYEE BENEFITS 31

3.17 COMPLIANCE WITH LEGAL REQUIREMENTS; GOVERNMENTAL AUTHORIZATIONS 35

3.18 LEGAL PROCEEDINGS; ORDERS 36

3.19 ABSENCE OF CERTAIN CHANGES AND EVENTS 37

3.20 CONTRACTS; NO DEFAULTS 38

3.21 INSURANCE 41

3.22 ENVIRONMENTAL MATTERS 42

3.23 EMPLOYEES 44

3.24 LABOR DISPUTES; COMPLIANCE 44

3.25 INTELLECTUAL PROPERTY ASSETS 45

3.26 COMPLIANCE WITH THE FOREIGN CORRUPT PRACTICES ACT AND EXPORT CONTROL AND ANTIBOYCOTT LAWS 47

3.27 RELATIONSHIPS WITH RELATED PERSONS 48

3.28 CUSTOMERS AND VENDORS 49

3.29 BROKERS OR FINDERS 49

3.30 DISCLOSURE 49

SECTION 4. REPRESENTATIONS AND WARRANTIES OF BUYER 50

4.1 ORGANIZATION AND GOOD STANDING 50

4.2 AUTHORITY; NO CONFLICT 50

4.3 CERTAIN PROCEEDINGS 50

4.4 BROKERS OR FINDERS 51

SECTION 5. COVENANTS OF SELLERS PRIOR TO CLOSING 51

5.1 ACCESS AND INVESTIGATION 51

5.2 OPERATION OF THE BUSINESS 51

5.3 NEGATIVE COVENANT 52

5.4 REQUIRED APPROVALS 53

5.5 NOTIFICATION 53

5.6 NO NEGOTIATION 54

5.7 BEST EFFORTS 54

5.8 INTERIM FINANCIAL STATEMENTS 54

5.9 CHANGE OF NAME 54

5.10 PAYMENT OF LIABILITIES 54

SECTION 6. COVENANTS OF BUYER PRIOR TO CLOSING 54

6.1 REQUIRED APPROVALS 54

6.2 BEST EFFORTS 55

SECTION 7. CONDITIONS PRECEDENT TO BUYER'S OBLIGATION TO CLOSE 55

7.1 ACCURACY OF REPRESENTATIONS 55

7.2 SELLERS', FOREIGN SUBSIDIARIES', OUTLINE ASSOCIATES' AND PRINCIPALS' PERFORMANCE 55

7.3 CONSENTS 55

7.4 ADDITIONAL DOCUMENTS 56

7.5 NO PROCEEDINGS 56

7.6 NO CONFLICT 56

7.7 REAL PROPERTY LEASES 57

7.8 GOVERNMENTAL AUTHORIZATIONS 57

7.9 ENVIRONMENTAL REPORT 57

7.10 WARN ACT NOTICE PERIODS AND EMPLOYEES 57

7.11 ANCILLARY AGREEMENTS 57

7.12 ACCOUNT RELATIONSHIPS 57

7.13 FIXED AND OTHER ASSETS 58

SECTION 8. CONDITIONS PRECEDENT TO SELLERS' OBLIGATION TO CLOSE 58

8.1 ACCURACY OF REPRESENTATIONS 58

8.2 BUYER'S PERFORMANCE 58

8.3 CONSENTS 58

8.4 ADDITIONAL DOCUMENTS 58

8.5 NO INJUNCTION 59

SECTION 9. TERMINATION 59

9.1 TERMINATION EVENTS 59

9.2 EFFECT OF TERMINATION 60

SECTION 10. ADDITIONAL COVENANTS 60

10.1 EMPLOYEES AND EMPLOYEE BENEFITS 60

10.2 PAYMENT OF ALL TAXES RESULTING FROM SALE OF ASSETS BY SELLERS 63

10.3 PAYMENT OF OTHER RETAINED LIABILITIES 63

10.4 INTENTIONALLY OMITTED 64

10.5 REMOVING EXCLUDED ASSETS 64

10.6 REPORTS AND RETURNS 64

10.7 ASSISTANCE IN PROCEEDINGS 64

10.8 NONCOMPETITION, NONSOLICITATION AND NONDISPARAGEMENT 64

10.9 CUSTOMER AND OTHER BUSINESS RELATIONSHIPS 66

10.10 RETENTION OF AND ACCESS TO RECORDS 66

10.11 REPLACEMENT OF FIDUCIARIES AND OTHER REPRESENTATIVES 67

10.12 FURTHER ASSURANCES 67

SECTION 11. INDEMNIFICATION; REMEDIES 67

11.1 SURVIVAL 67

11.2 INDEMNIFICATION AND REIMBURSEMENT BY SELLERS AND OUTLINE ASSOCIATES 67

11.3 INDEMNIFICATION AND REIMBURSEMENT BY BUYER 68

11.4 LIMITATIONS ON AMOUNT-SELLERS AND OUTLINE ASSOCIATES 69

11.5 LIMITATIONS ON AMOUNT-BUYER 69

11.6 TIME LIMITATIONS 69

11.7 ESCROW 70

11.8 THIRD-PARTY CLAIMS 70

11.9 OTHER CLAIMS 72

11.10 INDEMNIFICATION IN CASE OF STRICT LIABILITY OR INDEMNITEE NEGLIGENCE 72

11.11 MITIGATION 72

11.12 EXCLUSIVE REMEDY 72

SECTION 12. GENERAL PROVISIONS 73

12.1 EXPENSES 73

12.2 PUBLIC ANNOUNCEMENTS 73

12.3 NOTICES 73

12.4 ARBITRATION 74

12.5 ENFORCEMENT OF AGREEMENT 74

12.6 WAIVER; REMEDIES CUMULATIVE 75

12.7 ENTIRE AGREEMENT AND MODIFICATION 75

12.8 DISCLOSURE LETTER AND EXHIBITS 75

12.9 ASSIGNMENTS, SUCCESSORS AND NO THIRD-PARTY RIGHTS 76

12.10 SEVERABILITY 76

12.11 CONSTRUCTION 76

12.12 TIME OF ESSENCE 77

12.13 GOVERNING LAW 77

12.14 EXECUTION OF AGREEMENT 77

12.15 SELLERS' AND OUTLINE ASSOCIATES' OBLIGATIONS 77

12.16 REPRESENTATIVE OF SELLERS AND OUTLINE ASSOCIATES 77

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**ASSET PURCHASE AGREEMENT**

This Asset Purchase Agreement ("Agreement") is dated as of September 15, 2011 (the "APA Effective Date"), by and among PEMBORTON USA INC., a Delaware corporation ("Buyer" or "PEMBORTON"); INCLEX, INC. (d/b/a LAMOC DELAFOIS INCLEX and herein "LAMOC" or "Seller Representative"), a Delaware corporation; MERBOW ASSOCIATES, INC., an Ohio corporation ("LAI" and together with LAMOC, individually a "Seller" and collectively "Sellers"); LAMOC-DELAFOIS INCLEX, a French company ("INCLEX Paris"), LAMOC Belgique Holdings S.A. f/k/a DELAFOIS AVENIR Bruxelles S.A., a Belgian company ("INCLEX Brussels"), DELAFOIS AVENIR Group (HK) Ltd., a Hong Kong company ("INCLEX Hong Kong"), DELAFOIS (Shanghai) Brand Consulting Co, Ltd., a PRC company ("INCLEX Shanghai") and DELAFOIS AVENIR Group (I-Chin), a Korean company ("INCLEX Seoul" and together with INCLEX Paris, INCLEX Brussels, INCLEX Hong Kong and INCLEX Shanghai, individually a "Foreign Subsidiary" and collectively "Foreign Subsidiaries"); Outline Associates, LLC, a Nevada limited liability company ("Outline Associates"), William Murry, a resident of Ontario, Canada ("Murry"); and Gordon M. Molston, a resident of Illinois ("Molston") (Murry and Molston are referred to herein individually as a "Principal" and collectively as "Principals").

RECITALS A. Principals (either directly or indirectly through the ownership of another entity) own all of the membership interests in Outline Associates which in turn owns one hundred percent (100%) of the capital stock of LAMOC, which in turn directly owns one hundred percent (100%) of the capital stock of LAI, and LAI owns directly and indirectly all of the Foreign Subsidiaries in the percentages specified in Part A .

B. Sellers desire to sell, and Buyer desires to purchase, the Assets of Sellers for the consideration and on the terms set forth in this Agreement. The parties, intending to be legally bound, agree as follows:

**Section 1. Definitions and Usage**

1.1 DEFINITIONS For purposes of this Agreement, the following terms and variations thereof have the meanings specified or referred to in this Section 1.1:

"Accounts Receivable"-(a) all trade accounts receivable and other rights to payment from customers of Sellers and Foreign Subsidiaries and the full benefit of all security for such accounts or rights to payment, including all trade accounts receivable representing amounts receivable in respect of goods shipped or products sold or services rendered to customers of Sellers and Foreign Subsidiaries, (b) all other accounts or notes receivable of Sellers and Foreign Subsidiaries and the full benefit of all security for such accounts or notes and (c) any claim, remedy or other right related to any of the foregoing.

"Adjustment Amount"-the amount by which the Cash Portion of the Purchase Price is finally adjusted, upward or downward, if any, as determined in accordance with Section 2.8.

"APA Effective Date"-as defined in the first paragraph of this Agreement.

"Appurtenances"-all privileges, rights, easements, hereditaments and appurtenances belonging to or for the benefit of the Land, including all easements appurtenant to and for the benefit of any Land (a "Dominant Parcel") for, and as the primary means of access between, the Dominant Parcel and a public way, or for any other use upon which lawful use of the Dominant Parcel for the purposes for which it is presently being used is dependent, and all rights existing in and to any streets, alleys, passages and other rights-of-way included thereon or adjacent thereto (before or after vacation thereof) and vaults beneath any such streets.

"Assets"-as defined in Section 2.1.

"Assumed Liabilities"-as defined in Section 2.4(a).

"Best Efforts"-the efforts that a prudent Person desirous of achieving a result would use in similar circumstances to achieve that result as expeditiously as possible; provided , however , that a Person required to use Best Efforts under this Agreement will not be thereby required to take actions that would result in a Material Adverse Change in the benefits to such Person of this Agreement and the Contemplated Transactions or to dispose of or make any change to its business, expend any material funds or incur any other material burden.

"Breach"-any breach of, or any inaccuracy in, any representation or warranty or any breach of, or failure to perform or comply with, any covenant or obligation, in or of this Agreement or any other Contract, or any event which with the passing of time or the giving of notice, or both, would constitute such a breach, inaccuracy or failure.

"Bulk Sales Laws"-as defined in Section 5.10.

"Business"-the business and operations of Sellers and Foreign Subsidiaries; provided that the Business shall not include the Excluded Assets or the Retained Liabilities.

"Business Day"-any day other than (a) Saturday or Sunday or (b) any other day on which banks in Illinois are permitted or required to be closed.

"Buyer"-as defined in the first paragraph of this Agreement.

"Buyer Indemnified Persons"-as defined in Section 11.2.

"Cash"-all currency and/or legal tender of any nature and cash equivalents, in all cases and purposes for this Agreement measured in US Dollar denominations based upon The Wall Street Journal exchange rate published at the measurement date in question.

"Closing"-as defined in Section 2.6.

"Closing Date"-the date on which the Closing actually takes place.

"COBRA"-as defined in Section 3.16(f). 2 "Code"-the Internal Revenue Code of 1986.

"Confidential Information"-as defined in Section 10.8(b).

"Consent"-any approval, consent, ratification, waiver or other authorization.

"Consulting Agreement"-as defined in Section 2.7(a)(vi).

"Contemplated Transactions"-all of the transactions contemplated by this Agreement.

"Contract"-any agreement, contract, Lease, consensual obligation, promise or undertaking (whether written or oral and whether express or implied), whether or not legally binding, including those Contracts specified in Section 3.19(a).

"Copyrights"-as defined in Section 3.25(a)(iii).

"Damages"-as defined in Section 11.2.

"Outline Associates"-as defined in the first paragraph of this Agreement.

"Disclosure Letter"-the disclosure letter delivered by Sellers, Foreign Subsidiaries and Outline Associates to Buyer concurrently with the execution and delivery of this Agreement.

"Effective Time"-the time at which the Closing is consummated.

"Employee Plans"-as defined in Section 3.16(a).

"Encumbrance"-any charge, claim, community or other marital property interest, condition, equitable interest, lien, option, pledge, security interest, mortgage, right of way, easement, encroachment, servitude, right of first option, right of first refusal or similar restriction, including any restriction on use, voting (in the case of any security or equity interest), transfer, receipt of income or exercise of any other attribute of ownership.

"Environment"-soil, land surface or subsurface strata, surface waters (including navigable waters and ocean waters), groundwaters, drinking water supply, stream sediments, ambient air (including indoor air), plant and animal life and any other environmental medium or natural resource.

"Environmental, Health and Safety Liabilities"-any cost, damages, expense, liability, obligation or other responsibility arising from or under any Environmental Law or Occupational Safety and Health Law, including those consisting of or relating to: (a) any environmental, health or safety matter or condition (including on-site or off-site contamination, occupational safety and health and regulation of any chemical substance or product); (b) any fine, penalty, judgment, award, settlement, legal or administrative proceeding, damages, loss, claim, demand or response, remedial or inspection cost or expense arising under any Environmental Law or Occupational Safety and Health Law; 3 (c) financial responsibility under any Environmental Law or Occupational Safety and Health Law for cleanup costs or corrective action, including any cleanup, removal, containment or other remediation or response actions ("Cleanup") required by any Environmental Law or Occupational Safety and Health Law (whether or not such Cleanup has been required or requested by any Governmental Body or any other Person) and for any natural resource damages; or (d) any other compliance, corrective or remedial measure required under any Environmental Law or Occupational Safety and Health Law. The terms removal," "remedial" and "response action" include the types of activities covered by the United States Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

"Environmental Law"-any Legal Requirement that requires or relates to: (a) advising appropriate authorities, employees or the public of intended or actual releases of pollutants or hazardous substances or materials, violations of discharge limits or other prohibitions and the commencement of activities, such as resource extraction or construction, that could have significant impact on the Environment; (b) preventing or reducing to acceptable levels the Release of pollutants or hazardous substances or materials into the Environment; (c) reducing the quantities, preventing the Release or minimizing the hazardous characteristics of wastes that are generated; (d) assuring that products are designed, formulated, packaged and used so that they do not present unreasonable risks to human health or the Environment when used or disposed of; (e) protecting resources, species or ecological amenities; (f) reducing to acceptable levels the risks inherent in the transportation of hazardous substances, pollutants, oil or other potentially harmful substances; (g) cleaning up pollutants that have been Released, preventing the Threat of Release or paying the costs of such cleanup or prevention; or (h) making responsible parties pay private parties, or groups of them, for damages done to their health or the Environment or permitting self-appointed representatives of the public interest to recover for injuries done to public assets.

"ERISA"-the Employee Retirement Income Security Act of 1974.

"Escrow Agent"-ABC Bank, N.A. –

"Escrow Services.". "Escrow Agreement"-as defined in Section 2.7(a)(vii).

"Escrow Amount"-Four Million Dollars ($4,000,000) .

"Estimated Net Working Capital"-the Net Working Capital, as set forth on the Estimated Working Capital Schedule.

"Estimated Working Capital Schedule"-the draft schedule of the Net Working Capital as of the Closing Date, prepared and delivered in good faith by Sellers three (3) days prior to the Closing in accordance with the Net Working Capital Calculation Formula.

"Exchange Act"-the Securities Exchange Act of 1934.

"Excluded Assets"-as defined in Section 2.2.

"Facilities"-any real property, leasehold or other interest in real property currently owned or operated by any Seller or any Foreign Subsidiary, including the Tangible Personal Property used or operated by any Seller or Foreign Subsidiary at the respective locations of the Real Property specified in Section 3.7 or 3.8. Notwithstanding the foregoing, for purposes of the definitions of "Hazardous Activity" and "Remedial Action" and Section 3.22, "Facilities" shall mean any real property, leasehold or other interest in real property currently or formerly owned or operated by a Seller or a Foreign Subsidiary, including the Tangible Personal Property used or operated by such Seller at the respective locations of the Real Property specified in Section 3.7 or 3.8.

"Film and Digitized Information Files"-all film files, digitized information files and related computer software owned by any Seller.

"Final Net Working Capital"-Net Working Capital as of the Closing Date as determined in accordance with and specified on the Final Working Capital Schedule.

"Final Working Capital Schedule"-the schedule of the Final Net Working Capital as of the Closing Date, which shall be in the same format as the Estimated Working Capital Schedule and will include a calculation of the Net Working Capital, as finally agreed to or otherwise determined by operation of Section 2.8 and the Working Capital Deficit or Working Capital Surplus, if any.

Financial Reports"-as defined in Section 3.4.

"Foreign Subsidiaries or "Foreign Subsidiary"-all or each of the non-United States of America chartered legal entities listed on Part A .

"Foreign Subsidiaries' Cash Balance"-all Cash in accounts and reported on hand at Foreign Subsidiaries at the measurement date in question.

"GAAP"-generally accepted accounting principles for financial reporting in the United States, applied on a basis consistent with the basis on which the Statement of Assets and Liabilities and the other Financial Reports were prepared.

"GAAP Exceptions"-the exceptions to GAAP and/or the accounting principles and methods of Sellers and Foreign Subsidiary which modify or interpret GAAP, all as set forth on Exhibit 3.4 .

Governing Documents"-with respect to any particular entity, (a) if a corporation, the articles or certificate of incorporation and the bylaws or foreign equivalent; (b) if a general partnership, the partnership agreement and any statement of partnership; (c) if a limited partnership, the limited partnership agreement and the certificate of limited partnership; (d) if a limited liability company, the articles or certificate of organization and operating agreement or foreign equivalent; (e) if another type of Person, any other charter or similar document adopted or filed in connection with the creation, formation or organization of the Person; (f) all equityholders' agreements, voting agreements, voting trust agreements, joint venture agreements, registration rights agreements or other agreements or documents relating to the organization, management or operation of any Person or relating to the rights, duties and obligations of the equityholders of any Person; and (g) any amendment or supplement to any of the foregoing.

"Governmental Authorization"-any Consent, license, registration or permit issued, granted, given or otherwise made available by or under the authority of any Governmental Body or pursuant to any Legal Requirement.

"Governmental Body"-any: (a) nation, state, county, city, town, borough, village, district or other jurisdiction; (b) federal, state, local, municipal, foreign or other government; (c) governmental or quasi-governmental authority of any nature (including any agency, branch, department, board, commission, court, tribunal or other entity exercising governmental or quasi-governmental powers); (d) multinational organization or body; (e) body exercising, or entitled or purporting to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; or (f) official of any of the foregoing.

"Ground Lease"-any long-term lease of land in which most of the rights and benefits comprising ownership of the land and the improvements thereon or to be constructed thereon, if any, are transferred to the tenant for the term thereof.

"Ground Lease Property"-any land, improvements and Appurtenances subject to a Ground Lease in favor of any Seller or any Foreign Subsidiary.

"Hazardous Activity"-the distribution, generation, handling, importing, management, manufacturing, processing, production, refinement, Release, storage, transfer, transportation, treatment or use (including any withdrawal or other use of groundwater) of Hazardous Material in, on, under, about or from any of the Facilities or any part thereof into the Environment and 6 any other act, business, operation or thing that increases the danger, or risk of danger, or poses an unreasonable risk of harm, to persons or property on or off the Facilities.

"Hazardous Material"-any substance, material or waste which is or will foreseeably be regulated by any Governmental Body, including any material, substance or waste which is defined as a "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "restricted hazardous waste," "contaminant," "toxic waste" or "toxic substance" under any provision of Environmental Law, and including petroleum, petroleum products, asbestos, presumed asbestos-containing material or asbestos-containing material, urea formaldehyde and polychlorinated biphenyls.

"HSR Act"-the Hart-Scott-Rodino Antitrust Improvements Act.

"Improvements"-all buildings, structures, fixtures and improvements located on the Land or included in the Assets, including those under construction.

"Indemnified Person"-as defined in Section 11.8.

"Indemnifying Person"-as defined in Section 11.8.

"Initial Cash Payment"-as defined in Section 2.3.

"Intellectual Property Assets"-as defined in Section 3.25(a).

"IRS"-the United States Internal Revenue Service and, to the extent relevant, the United States Department of the Treasury.

"Knowledge"-an individual will be deemed to have Knowledge of a particular fact or other matter if: (a) that individual is actually aware of that fact or matter; or (b) a prudent individual could be expected to discover or otherwise become aware of that fact or matter in the course of conducting a reasonably comprehensive investigation regarding the accuracy of any representation or warranty contained in this Agreement; provided that this paragraph (b) shall only be deemed to apply to that portion of the Business conducted in the United States of America and shall not be deemed to apply to the business and operations of the Foreign Subsidiaries. A Person (other than an individual) will be deemed to have Knowledge of a particular fact or other matter if any individual who is serving, or who has at any time served, as a director, officer, partner, executor or trustee of that Person (or in any similar capacity) has, or at any time had, Knowledge of that fact or other matter (as set forth in (a) and (b) above), and any such individual (and any individual party to this Agreement) will be deemed to have conducted a reasonably comprehensive investigation regarding the accuracy of the representations and warranties made herein by that Person or individual.

"Land"-all parcels and tracts of land in which any Seller or Foreign Subsidiary has an ownership interest.

"Lease"-any Real Property Lease or any lease or rental agreement, license, right to use or installment and conditional sale agreement to which any Seller or any Foreign Subsidiary is a party and any other Seller Contract pertaining to the leasing or use of any Tangible Personal Property.

"Legal Requirement"-any federal, state, local, municipal, foreign, international, multinational or other constitutional, law, ordinance, principle of common law, code, regulation, statute or treaty.

"Liability"-with respect to any Person, any liability or obligation of such Person of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise, and whether or not the same is required to be accrued on the financial statements of such Person.

"Marks"-as defined in Section 3.25(a)(i).

"Material Adverse Effect" or "Material Adverse Change"-with respect to any occurrence, incident, action, failure to act, event, change or effect that is or could reasonably be expected to be, materially adverse to the condition (financial or otherwise), properties, assets, liabilities, business, results of operations, or prospects of the Business, taken as a whole, or to the enforcement of this Agreement and any agreement contemplated herein, except changes or any effect resulting from (a) the announcement or other disclosure of this Agreement, (b) changes in general business and/or economic conditions, hostilities involving the United States or in general financial market conditions; (c) any changes in Laws directly or indirectly affecting the Buyer, any Seller or any Foreign Subsidiary; and (d) general developments affecting the industry in which any Seller or any Foreign Subsidiary competes.

"Material" or "Materially"-as used in connection with events, contingencies, claims or other matters (or a series of related such matters) expressly relating in the Agreement to any particular asset of Sellers or the Business as a whole as the case may be, shall mean such matters as a reasonably prudent investor would consider important (either, individually, or when considering the collective effect of all such matters) in deciding whether to purchase the Assets, as a whole, Sellers, or the Business on the terms provided herein.

"Material Consents"-as defined in Section 7.3.

"Materials and Supplies Inventories"-all inventories of Sellers, wherever located, and of all materials and supplies to be used or consumed by Sellers in the production of finished goods.

"Net Working Capital"-the current assets (other than Cash) included in the definition of Assets, less the current liabilities of Sellers and the Foreign Subsidiaries as of the close of business on the relevant measurement date, prepared in accordance with the Net Working Capital 8 Formula. For purposes of clarity, current liabilities shall specifically exclude any Retained Liabilities.

"Net Working Capital Calculation Formula"-the formula utilized in determining each of the Target Net Working Capital, Estimated Net Working Capital, and the Final Net Working Capital as set forth on Exhibit 2.8 .

“Occupational Safety and Health Law"-any Legal Requirement designed to provide safe and healthful working conditions and to reduce occupational safety and health hazards, including the Occupational Safety and Health Act, and any program, whether governmental or private (such as those promulgated or sponsored by industry associations and insurance companies), designed to provide safe and healthful working conditions.

"Order"-any order, injunction, judgment, decree, ruling, assessment or arbitration award of any Governmental Body or arbitrator.

"Ordinary Course of Business"-an action taken by a Person will be deemed to have been taken in the Ordinary Course of Business only if that action: (a) is consistent in nature, scope and magnitude with the past practices of such Person and is taken in the ordinary course of the normal, day-to-day operations of such Person; (b) does not require authorization by the board of directors or shareholders of such Person (or by any Person or group of Persons exercising similar authority) and does not require any other separate or special authorization of any nature; and (c) is similar in nature, scope and magnitude to actions customarily taken, without any separate or special authorization, in the ordinary course of the normal, day-to-day operations of other Persons that are in the same line of business as such Person.

"Part"-a part or section of the Disclosure Letter.

"Patents"-as defined in Section 3.25(a)(ii).

"Permitted Encumbrances"-as defined in Section 3.9(b).

"Person"-an individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a Governmental Body.

"Preliminary Adjustment Amount"-the difference, positive or negative, between the Target Net Working Capital and the Estimated Net Working Capital.

"Principal(s)"-Gordon M. Molston and William Murry (individually a "Principal" and collectively, "Principals).

"Proceeding"-any action, arbitration, audit, hearing, investigation, litigation or suit (whether civil, criminal, administrative, judicial or investigative, whether formal or informal, whether public or private) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Body or arbitrator.

"Proscribed Business"-the strategic design business performed for the Retail, Pharmaceuticals, Consumer Packaged Goods and Technology industries. Such business shall include a go to market strategy like or similar to the type of work and business being performed and operated by PEMBORTON and its Mercury division and the Business as of the Effective Time. Such work and business includes providing goods and services related to strategy, creative, design, structural, digital and premedia for branding and packaging as historically conducted by PEMBORTON or the Business. Notwithstanding the foregoing, Proscribed Business shall not include traditional advertising agency and promotional service, or internet strategy, online communications strategy, online advertising, internet marketing and communications.

"Purchase Price"-as defined in Section 2.3.

"Real Property"-the Land and Improvements and all Appurtenances thereto and any Ground Lease Property.

"Real Property Lease"-any Ground Lease or Space Lease.

"Record"-information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"Related Person"- (a) With respect to a particular individual:

(i) each other member of such individual's family;

(ii) any Person that is directly or indirectly controlled by one or more members of such individual's family;

(iii) any Person in which members of such individual's family hold (individually or in the aggregate) a Material Interest; and

(iv) any Person with respect to which one or more members of such individual's family serve as directors, officers, partners, executors or trustees (or in a similar capacity).

(b) With respect to a specified Person other than an individual:

(i) any Person that directly or indirectly controls, is directly or indirectly controlled by or is directly or indirectly under common control with such specified Person;

(ii) any Person that holds a Material Interest in such specified Person;

(ii) each Person that serves as a director, officer, partner, executor or trustee of such specified Person (or in a similar capacity); 10

(iv) any Person in which such specified Person holds a Material Interest; and

(v) any Person with respect to which such specified Person serves as a general partner or a trustee (or in a similar capacity).

For purposes of this definition

, (a) "control" (including "controlling," "controlled by," and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and shall be construed as such term is used in the rules promulgated under the Securities Act;

(b) the "Family" of an individual includes

(i) the individual,

(ii) the individual's spouse,

(iii) any other natural person who is related to the individual or the individual's spouse within the first degree and

(iv) any other natural person who resides with such individual; and (c)

"Material Interest" means direct or indirect beneficial ownership (as defined in Rule 13d-3 under the Exchange Act) of voting securities or other voting interests representing at least ten percent (10%) of the outstanding voting power of a Person or equity securities or other equity interests representing at least ten percent (10%) of the outstanding equity securities or equity interests in a Person.

"Release"-any release, spill, emission, leaking, pumping, pouring, dumping, emptying, injection, deposit, disposal, discharge, dispersal, leaching or migration on or into the Environment or into or out of any property.

"Remedial Action"-all actions, including any capital expenditures, required or voluntarily undertaken

(a) to clean up, remove, treat or in any other way address any Hazardous Material or other substance;

(b) to prevent the Release or Threat of Release or to minimize the further Release of any Hazardous Material or other substance so it does not migrate or endanger or threaten to endanger public health or welfare or the Environment;

(c) to perform pre-remedial studies and investigations or post-remedial monitoring and care; or

(d) to bring all Facilities and the operations conducted thereon into compliance with Environmental Laws and environmental Governmental Authorizations.

"Representative"-with respect to a particular Person, any director, officer, manager, employee, agent, consultant, advisor, accountant, financial advisor, legal counsel or other representative of that Person.

"Retained Liabilities"-as defined in Section 2.4(b).

"SEC"-the United States Securities and Exchange Commission.

"Securities Act"-as defined in Section 3.3.

"Seller" and "Sellers"-as defined in the first paragraph of this Agreement.

"Seller Contract"-with respect to each Seller and each Foreign Subsidiary, any Contract (a) under which any Seller or any Foreign Subsidiary has acquired or may acquire any rights or benefits; (b) under which any Seller or any Foreign Subsidiary has or may become subject to any obligation or liability; or (c) by which any Seller or any Foreign Subsidiary or any of the assets owned or used by such Seller or such Foreign Subsidiary is or may become bound.

“Software"-all computer software and subsequent versions thereof, including source code, object, executable or binary code, objects, comments, screens, user interfaces, report formats, templates, menus, buttons and icons and all files, data, materials, manuals, design notes and other items and documentation related thereto or associated therewith.

"Space Lease"-any lease or rental agreement pertaining to the occupancy of any improved space on any Land.

"Statement of Assets and Liabilities"-as defined in Section 3.4.

"Subsidiary"-with respect to any Person (the "Owner"), any corporation or other Person of which securities or other interests having the power to elect a majority of that corporation's or other Person's board of directors or similar governing body, or otherwise having the power to direct the business and policies of that corporation or other Person (other than securities or other interests having such power only upon the happening of a contingency that has not occurred), are held by the Owner or one or more of its Subsidiaries.

"Tangible Personal Property"-all machinery, equipment, tools, furniture, office equipment, computer hardware, supplies, materials, vehicles and other items of tangible personal property of every kind owned or leased by any Seller or any Foreign Subsidiary (wherever located and whether or not carried on such Seller's or such Foreign Subsidiary's books), together with any express or implied warranty by the manufacturers or sellers or lessors of any item or component part thereof and all maintenance records and other documents relating thereto.

"Target Net Working Capital-an amount specified in and/or derived from application of the Net Working Capital Calculation Formula. "Tax"-any income, gross receipts, license, payroll, employment, excise, escheat or unclaimed property, severance, stamp, occupation, premium, property, environmental, windfall profit, customs, vehicle, airplane, boat, vessel or other title or registration, capital stock, franchise, employees' income withholding, foreign or domestic withholding, social security, unemployment, disability, real property, personal property, sales, use, transfer, value added, alternative, add-on minimum and other tax, fee, assessment, levy, tariff, charge or duty of any kind whatsoever and any interest, penalty, addition or additional amount thereon imposed, assessed or collected by or under the authority of any Governmental Body or payable under any tax-sharing agreement or any other Contract.

"Tax Return"-any return (including any information return), report, statement, schedule, notice, form, declaration, claim for refund or other document or information filed with or submitted to, or required to be filed with or submitted to, any Governmental Body in connection with the determination, assessment, collection or payment of any Tax or in connection with the administration, implementation or enforcement of or compliance with any Legal Requirement relating to any Tax.

"Third Party"-a Person that is not a party to this Agreement.

"Third-Party Claim"-any claim against any Indemnified Person by a Third Party, whether or not involving a Proceeding.

"Threat of Release"-a reasonable likelihood of a Release that may require action in order to prevent or mitigate damage to the Environment that may result from such Release.

"Transfer, Assignment, Bill of Sale and Assumption Agreement"-as defined in Section 2.7(a)(i).

"WARN Act"-as defined in Section 3.23(d).

"WIP"-work-in-process for customers that has a reasonably certain likelihood to become a completed project in respect of which an Account Receivable will be generated upon such completion, including, but not limited to, unbilled receivables on the Statement of Assets and Liabilities.

"Working Capital Deficit"-the amount, if any, by which the Final Net Working Capital reflected on the Final Working Capital Schedule is less than the Estimated Net Working Capital applying the Net Working Capital Calculation Formula.

"Working Capital Surplus"-the amount, if any, by which the Final Net Working Capital reflected on the Final Working Capital Schedule is more than the Estimated Net Working Capital, applying the Net Working Capital Calculation Formula.

1.2 USAGE

(a) Interpretation. In this Agreement, unless a clear contrary intention appears: (i) the singular number includes the plural number and vice versa; (ii) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are not prohibited by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually; (iii) reference to any gender includes each other gender; (iv) reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof; (v) reference to any Legal Requirement means such Legal Requirement as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder, and reference to any section or other provision of any Legal Requirement means that provision of such Legal Requirement from time to time in effect and constituting the substantive amendment, modification, codification, replacement or reenactment of such section or other provision; 13 (vi) "hereunder," "hereof," "hereto," and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article, Section or other provision hereof; (vii) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term; (viii) "or" is used in the inclusive sense of "and/or"; (ix) with respect to the determination of any period of time, "from" means "from and including" and "to" means "to but excluding"; and (x) references to documents, instruments or agreements shall be deemed to refer as well to all addenda, exhibits, schedules or amendments thereto.

(b) Accounting Terms and Determinations. Unless otherwise specified herein, all accounting terms used herein shall be interpreted and all accounting determinations hereunder shall be made in accordance with GAAP.

(c) Legal Representation of the Parties. This Agreement was negotiated by the parties with the benefit of legal representation, and any rule of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any party shall not apply to any construction or interpretation hereof.

**Section 2. Sale and Transfer of Assets;**

Closing 2.1 ASSETS TO BE SOLD Upon the terms and subject to the conditions set forth in this Agreement, at the Closing, but effective as of the Effective Time, each Seller shall sell, convey, assign, transfer and deliver to Buyer, and Buyer shall purchase and acquire from Sellers, free and clear of any Encumbrances other than Permitted Encumbrances, all of Sellers' right, title and interest in and to all of each Seller's property and assets, real, personal or mixed, tangible and intangible, of every kind and description, wherever located, including the following (but excluding the Excluded Assets):

(a) all ownership interests (whether in the form of shares or other equity interests) in each of the Foreign Subsidiaries all as more particularly expressed in Part A ;

(b) all Real Property, including the Real Property described in Part 3.8;

(c) all Tangible Personal Property, including those items described in Part 2.1(b);

(d) all Materials and Supplies Inventories and all Film and Digitized Information Files;

(e) all Accounts Receivable and WIP;

(f) all Seller Contracts, including those listed in Part 3.20(a), and all outstanding offers or solicitations made by or to any Seller to enter into any Contract;

(g) all Governmental Authorizations related to the Business and all pending applications therefor or renewals thereof, in each case to the extent transferable to Buyer, including those listed in Part 3.17(b);

(h) all data and Records related to the operations of the Business by Sellers, including client and customer lists and Records, referral sources, research and development reports and Records, production reports and Records, service and warranty Records, equipment logs, operating guides and manuals, financial and accounting Records, customer accounts, pricing and quotation records, creative materials, advertising materials, promotional materials, studies, reports, correspondence and other similar documents and Records and, subject to Legal Requirements, copies of all personnel Records and other Records described in Section 2.2(g);

(i) all of the intangible rights and property of Sellers, including Intellectual Property Assets, going concern value, goodwill, telephone, telecopy and e-mail addresses and listings and those items listed in Parts 3.25(e), (f) and (h);

(j) all insurance benefits, including rights and proceeds, but only to the extent arising from or relating to the Assets or the Assumed Liabilities prior to the Effective Time, unless expended in accordance with this Agreement;

(k) all claims of any Seller against third parties but only to the extent arising from or relating to the Assets or the Assumed Liabilities, whether choate or inchoate, known or unknown, contingent or noncontingent, including all such claims listed in Part 2.1(j);

(l) all rights of any Seller relating to deposits and prepaid expenses, claims for refunds and rights to offset in respect thereof that are not listed in Part 2.2(d) and that are not excluded under Section 2.2(g) but only to the extent arising from or relating to the Assets or the Assumed Liabilities;

(m) all Cash on hand and bank accounts of Foreign Subsidiaries at Closing; and

(n) all rights in connection with, and assets of, any non-US Employee Plans. All of the property, rights and assets to be transferred to Buyer hereunder are herein referred to collectively as the "Assets." Notwithstanding the foregoing, the transfer of the Assets pursuant to this Agreement shall not include the assumption of any Liability related to the Assets unless Buyer expressly assumes that Liability pursuant to Section 2.4(a).

2.2 EXCLUDED ASSETS Notwithstanding anything to the contrary contained in Section 2.1 or elsewhere in this Agreement, the following property, rights and assets of Sellers (collectively, the "Excluded 15 Assets") are not part of the sale and purchase contemplated hereunder, are excluded from the Assets and shall remain the property of Sellers after the Closing:

(a) all Cash, cash equivalents and short-term investments (other than Cash on hand and in the bank accounts of Foreign Subsidiaries);

(b) all minute books, stock Records, historic computer server based corporate data and e-mail communications of Sellers' executive officers and Board of Directors pertaining to corporate, financial and tax matters and all Records solely pertaining to Retained Liabilities and corporate seals;

(c) the shares of capital stock (or equivalent) of any Seller held in treasury;

(d) those rights relating to deposits and prepaid expenses and claims for refunds and rights to offset in respect thereof related to other Excluded Assets and/or Retained Liabilities, including those listed in Part 2.2(d);

(e) all insurance policies and rights thereunder (except to the extent specified in Part 2.1(i) and (j)) but only to the extent related to or arising out of the Excluded Assets or the Retained Liabilities;

(f) all personnel Records and other Records pertaining solely to Excluded Assets and Retained Liabilities that Seller is required by law to retain in its possession;

(g) all claims for refund of Taxes and other governmental charges of whatever nature;

(h) all rights in connection with and assets of the Employee Plans;

(i) all rights of Sellers under this Agreement, the Transfer, Assignment, Bill of Sale and Assumption Agreement and the Escrow Agreement;

(j) all claims of Sellers or any Foreign Subsidiaries against third parties arising from or relating in any manner to Excluded Assets and/or Excluded Liabilities; and

(k) the property and assets expressly designated in Part 2.2(k).

2.3 CONSIDERATION The consideration for the Assets (the "Purchase Price") will be (a) Twenty-Five Million Dollars ($25,000,000) (the "Cash Portion") plus or minus the Adjustment Amount and (b) the assumption of the Assumed Liabilities. In accordance with Section 2.7(b), at the Closing, the Purchase Price, prior and subject to adjustment on account of the Preliminary Adjustment Amount, shall be delivered by Buyer to Seller as follows: (a) Twenty-One Million Dollars ($21,000,000) (the "Initial Cash Payment") by wire transfer to an account or accounts as specified by Seller Representative which specification will be made at least three (3) days prior to the Closing Date; (b) Four Million Dollars ($4,000,000) paid to Escrow Agent pursuant to the Escrow Agreement; and (c) the balance of the Purchase Price by the execution and delivery of 16 the Assignment, Bill of Sale and Assumption Agreement. The Preliminary Adjustment Amount shall be subtracted or added to the Initial Cash Payment, as appropriate, if negative or positive respectively. The Escrow Agreement shall provide, inter alia , that one-half (1/2) of the Escrow Amount (less any amount disbursed pursuant to Section 2.8 or any amount disbursed or reserved for disbursement pursuant to Section 11) shall be released on the first anniversary date of the Closing Date and that any remaining Escrow Amount (net of disbursements and amounts reserved for disputed items) shall be released on the second anniversary of the Closing Date. Buyer agrees to discuss, in good faith, with Sellers a reduction in the Escrow Amount to Two Million Dollars ($2,000,000) and the Indemnification Cap to $2,500,000 prior to Closing as a result of Buyer's due diligence investigation but shall not be obligated to agree to any such reduction.

2.4 LIABILITIES

(a) Assumed Liabilities. On the Closing Date, but effective as of the Effective Time, Buyer shall assume and agree to discharge only the following Liabilities of Sellers (the "Assumed Liabilities"):

(i) any trade account payable reflected on the Interim Statement of Assets and Liabilities (other than a trade account payable to a Related Person of a Seller) that remains unpaid at and is not delinquent as of the Effective Time;

(ii) any trade account payable (other than a trade account payable to a Related Person of a Seller) incurred by a Seller in the Ordinary Course of Business between the date of the Interim Statement of Assets and Liabilities and the Effective Time that remains unpaid as of the Effective Time and is included in the Estimated Net Working Capital;

(iii) any Liability to Sellers' and Foreign Subsidiaries' customers incurred by a Seller or a Foreign Subsidiary in the Ordinary Course of Business for orders outstanding as of the Effective Time reflected on Sellers' or Foreign Subsidiaries' books (other than any Liability arising out of or relating to a Breach that occurred prior to the Effective Time);

(iv) any Liability to Sellers' or Foreign Subsidiaries' customers in the Ordinary Course or under any customer mandated warranty agreements or arrangements in the forms disclosed in Part 2.4(a)(iv) given by a Seller or a Foreign Subsidiary to its customers in the Ordinary Course of Business prior to the Effective Time (except to the extent any Liability arises out of or relates to a Breach that occurred prior to the Effective Time);

(v) any Liability arising after the Effective Time under the Seller Contracts described in Part 3.20(a) (other than any Liability arising under the Seller Contracts described on Exhibit 2.4(a)(v) or to the extent arising out of or relating to a Breach that occurred prior to the Effective Time). Buyer acknowledges that Part 3.20(a) may contain a generic reference to Seller Contracts of Foreign Subsidiaries entered into in the Ordinary Course of Business so long as the dollar equivalent if any such Seller Contract does not exceed One Hundred Fifty Thousand Dollars ($150,000). At Closing, Buyer shall be deemed to have assumed all such Seller Contracts;

(vi) any Liability of any Seller or any Foreign Subsidiary arising after the Effective Time under any Seller Contract included in the Assets that is entered into by a Seller or a Foreign Subsidiary after the APA Effective Date in accordance with the provisions of this Agreement (other than any Liability to the extent arising out of or relating to a Breach that occurred prior to the Effective Time);

(vii) accrued vacation pay and other accrued benefits owed to employees of the Business;

(viii) current accrued payroll and payroll taxes (including federal, state and local) with respect to employees of the Business for the then outstanding pay period straddling the Effective Time to the extent included in the Estimated Net Working Capital forward;

(ix) deferred revenue (to the extent included on the Final Working Capital Schedule);

(x) any Liability of any Seller or any Foreign Subsidiary described in Part 2.4(a)(x);

(xi) all Liabilities of the Foreign Subsidiaries of every nature whatsoever arising after the Effective Time; except to the extent specifically included in the Retained Liabilities;

(xii) all Liabilities associated with Buyer's operation of the Business or ownership of the Assets arising on and after the Effective Time; and

(xiii) all Liabilities associated with the termination or retirement of any Hired Active Employee after the Effective Time.

(b) Retained Liabilities. The Retained Liabilities shall remain the sole responsibility of and shall be retained, paid, performed and discharged solely by each of the Sellers, respectively, or, with respect to Liabilities of the Foreign Subsidiaries, paid prior to the Effective Time. "Retained Liabilities" shall mean every Liability of any Seller or any Foreign Subsidiary other than the Assumed Liabilities, including:

(i) any Liability arising out of or relating to products of any Seller or Foreign Subsidiary to the extent manufactured or sold prior to the Effective Time other than to the extent assumed under Section 2.4(a)(iii), (iv) or (v);

(ii) any Liability under any Contract assumed by Buyer pursuant to Section 2.4(a) or under a Contract of a Foreign Subsidiary that arises after the Effective Time to the extent such Liability arises out of or relates to any Breach that occurred prior to the Effective Time; 18

(iii) any Liability for Taxes, including (A) any Taxes arising as a result of Seller's operation of its business or ownership of the Assets prior to the Effective Time (except to the extent assumed under Section 2.4(c)(viii)), (B) any Taxes that will arise as a result of the sale of the Assets pursuant to this Agreement and (C) any deferred Taxes of any nature;

(iv) any Liability under any Contract not assumed by Buyer under Section 2.4(a) or under any Contract of any Foreign Subsidiary not identified on Part 3.20(a) or, including any Liability arising out of or relating to Sellers' or Foreign Subsidiaries' credit facilities or any security interest related thereto;

(v) any Environmental, Health and Safety Liabilities arising out of or relating to the operation of the Business prior to the Effective Time or Seller's or any Foreign Subsidiary's leasing, ownership or operation of real property prior to the Effective Time;

(vi) all Liabilities of Sellers or Foreign Subsidiaries, including, without limitation, accrued and/or, if applicable, deferred taxes (except as otherwise provided in Section 2.4 above in respect to current accrued payroll taxes), costs, expenses or liabilities arising out of or related to terminated Employee Plans or Employee Plans in the process of being terminated, indebtedness for borrowed money (including any interest thereof), obligations under capital leases, all other long-term liabilities and current portions thereof and all unfunded pension liabilities;

(vii) any Liability under the Employee Plans or relating to workers' compensation (measured on a claims made basis), unemployment benefits, pension benefits, employee stock option or profit-sharing plans, health care plans or benefits or any other employee plans or benefits of any kind for Sellers' or Foreign Subsidiaries' employees or former employees or both except to the extent arising after the Effective Time as a part of Buyer's operation of the Business;

(viii) any Liability under any employment, severance, retention or termination agreement with any employee of any Seller;

(ix) any Liability arising out of or relating to any employee grievance for any matters occurring prior to the Effective Time whether or not the affected employees of Seller or Foreign Subsidiaries are hired by Buyer;

(x) any Liability of any Seller or any Foreign Subsidiary to any Related Person of any Seller;

(xi) any Liability to indemnify, reimburse or advance amounts to any officer, director, employee or agent of any Seller or any Foreign Subsidiary;

(xii) any Liability to distribute to any of any Seller's or any Foreign Subsidiary's shareholders or other equity holders or otherwise apply all or any part of the consideration received hereunder;

(xiii) any Liability of any Seller or any Foreign Subsidiary arising out of any Proceeding pending as of the Effective Time;

(xiv) any Liability of any Seller or any Foreign Subsidiary arising out of any Proceeding commenced after the Effective Time and to the extent arising out of or relating to any occurrence or event happening prior to the Effective Time;

(xv) any Liability arising out of or resulting from any Seller's or any Foreign Subsidiary's compliance or noncompliance with any Legal Requirement or Order of any Governmental Body; (xvi) any Liability of any Seller under this Agreement or any other document executed in connection with the Contemplated Transactions; and (xvii) any Liability of any Seller based upon any Seller's acts or omissions occurring after the Effective Time.

2.5 ALLOCATION The Purchase Price shall be allocated among the Assets and the covenant not to compete contained in Section 10.8 hereof as set forth on Exhibit 2.5 hereto. Exhibit 2.5 shall be completed and based upon a valuation of the Purchased Assets completed by Duff and Phelps Ltd. (at Buyer's expense) after the Closing Date, subject to Sellers' and UHY, LLP's acceptance and agreement to such allocation. In the event that Sellers dispute the asset allocation as proposed by Pinky Brothers Ltd., then any such dispute shall be resolved (and the cost of such resolution shall be allocated among the parties) pursuant to the dispute resolution provisions of Section 2.8. The parties agree that the allocations to be set forth in Exhibit 2.5 shall be used by them and respected for all purposes, including income tax purposes if in conformance with the rules and regulations of the Code and that the parties shall follow such allocation for all reporting purposes. The parties shall file IRS Form 8954 and make such other filings as legally required.

2.6 CLOSING The closing ("Closing") of the transactions contemplated hereby shall take place on a date mutually agreed to by Sellers and Buyer, not later than October 1, 2011, with an effective date of 12:01 a.m. (Chicago time) October 1, 2011, at such place as may be mutually agreed to by Sellers and Buyer.

2.7 CLOSING OBLIGATIONS In addition to any other documents to be delivered under other provisions of this Agreement, at the Closing:

(a) Sellers shall deliver to Buyer, together with funds sufficient to pay all Taxes necessary for the transfer, filing or recording thereof:

(i) a Transfer, Assignment, Bill of Sale and Assumption Agreement of all of the Assets that are intangible personal property in the form of Exhibit 2.7(a)(i), 20 executed by Seller which Transfer, Assignment, Bill of Sale and Assumption Agreement shall also contain Buyer's undertaking and assumption of the Assumed Liabilities (the "Transfer, Assignment, Bill of Sale and Assumption Agreement");

(ii) for each interest in Real Property identified on Part 3.8, an Assignment and Assumption of Lease in the form of Exhibit 2.7(a)(ii) or such other appropriate document or instrument of transfer, as the case may require, each in form and substance satisfactory to the parties and their counsel and executed by Sellers;

(iii) assignments of all Intellectual Property Assets and separate assignments of all registered Marks, Patents and Copyrights in the form of Exhibit 2.7(a)(iii) executed by Sellers;

(iv) such other deeds, bills of sale, assignments, stock or membership certificates, certificates of title, documents and other instruments of transfer and conveyance as may reasonably be requested by Buyer, including an assignment of ownership interests in each Foreign Subsidiary to the extent owned directly or indirectly, by a Seller, each in form and substance satisfactory to the parties and their legal counsel and executed by Sellers;

(v) Consulting Agreement in the form of Exhibit 2.7(a)(v), executed by Gordon M. Molston and Millicent Kirkpatrick (the "Consulting Agreement"); (vi) an escrow agreement in the form of Exhibit 2.7(a)(vi), executed by Buyer and Sellers and the Escrow Agent (the "Escrow Agreement"); and (vii) a certificate of the Secretary of each Seller certifying, as complete and accurate as of the Closing, attached copies of the Governing Documents of Sellers, certifying and attaching all requisite resolutions or actions of each Seller's board of directors and shareholders (or equivalent) approving the execution and delivery of this Agreement and the consummation of the Contemplated Transactions and the change of name contemplated by Section 5.9 and certifying to the incumbency and signatures of the officers of each Seller executing this Agreement and any other document relating to the Contemplated Transactions and accompanied by the requisite documents for amending the relevant Governing Documents of each Seller required to effect such change of name in form sufficient for filing with the appropriate Governmental Body.

(b) Buyer shall deliver to Sellers:

(i) The Initial Cash Payment as adjusted by the Preliminary Adjustment Amount plus the Foreign Subsidiaries Cash Balance, by wire transfer to an account specified by Seller Representative in a writing delivered to Buyer at least three (3) business days prior to the Closing Date;

(ii) the Escrow Agreement, executed by Buyer and the Escrow Agent, together with the delivery of Four Million Dollars (US$4,000,000) to the Escrow Agent thereunder, by wire transfer to an account specified by the Escrow Agent; 21

(iii) the Transfer, Assignment, Bill of Sale and Assumption Agreement executed by Buyer;

(iv) the Consulting Agreement executed by Buyer;

(v) a certificate of the Secretary of Buyer certifying, as complete and accurate as of the Closing, attached copies of the Governing Documents of Buyer and certifying and attaching all requisite resolutions or actions of Buyer's board of directors approving the execution and delivery of this Agreement and the consummation of the Contemplated Transactions and certifying to the incumbency and signatures of the officers of Buyer executing this Agreement and any other document relating to the Contemplated Transactions; and

(vi) an Assignment and Assumption of Lease(s) executed by Buyer.

2.8 POST-CLOSING ADJUSTMENTS; DETERMINATION OF ADJUSTMENT AMOUNT

(a) Buyer shall prepare in good faith and deliver to Sellers within sixty (60) days of the Closing Date the Final Working Capital Schedule. Buyer shall provide Sellers and their accounting and tax representatives with full and prompt access to the books and records of Sellers and the Foreign Subsidiaries for purposes of validating the Final Working Capital Schedule. In the absence of any objections from Sellers within thirty (30) days following receipt of such calculation, Buyer's determination of the Final Working Capital Schedule shall be conclusive, final and binding on the parties for purposes of determining the Net Working Capital, Working Capital Surplus and Working Capital Deficit. However, such determination shall not affect any other rights under this Agreement. If Sellers object to the Final Working Capital Schedule within thirty (30) days following receipt of such calculation from Buyer, Sellers shall deliver a written dispute notice to Buyer which shall set forth the specific line items in dispute and/or provide the basis for such dispute in reasonable detail, including, but not limited to, a claim that Sellers and their Representatives have not been furnished adequate information to confirm or refute the determination of Buyer. If, after ten (10) days from the date notice of a dispute is given hereunder, Sellers and Buyer cannot agree on the resolution of all of the disputed items, the Final Working Capital Schedule shall be adjusted to the extent of any items that are not in dispute, and the items still in dispute shall be referred to TBA USA, LLP or another independent public accounting firm acceptable to both the Sellers and Buyer (the "Unrelated Accounting Firm") to resolve the dispute (which determination must be made by the Unrelated Accounting Firm within an additional sixty (60) day period), whose decision as to the issues in dispute shall be conclusive, final and binding upon Sellers and Buyer for purposes of this Agreement. The Unrelated Accounting Firm shall address only those issues in dispute in accordance with the terms of this Section 2.8 and may not assign a value to any item greater than the greatest value for such items claimed by either party or less than the smallest value for such item claimed by either party. The cost (if any) of the Unrelated Accounting Firm shall be borne (i) by Sellers to the extent the benefit to Sellers as a result of the determination of the dispute by the Unrelated Accounting Firm does not exceed the cost of the Unrelated Accounting Firm and (ii) in all other events or extent by Buyer.

(b) Upon finalizing the Final Working Capital Schedule, either by agreement or by the Unrelated Accounting Firm:

(i) to the extent there is a Working Capital Surplus, Buyer will pay Sellers an amount equal to such Working Capital Surplus within ten (10) days of delivery of the Final Working Capital Schedule. If such Working Capital Surplus is not paid within such ten (10) day period, then interest shall accrue and be due and payable from Buyer on the Working Capital Surplus from and including the Closing through and including the date of payment at the Prime Rate (or if not paid within five (5) days when due the Prime Rate plus five percent (5%)) per annum; and

(ii) to the extent there is a Working Capital Deficit, within ten (10) days following the delivery of the Final Working Capital Schedule, Sellers will pay to Buyer in Cash available in the Escrow Account (up to Two Million Dollars ($2,000,000)) (and thereafter by wire transfer of immediately available funds to an account designated by Buyer) the amount of the Working Capital Deficit, if any. If such amounts are not paid within such ten (10) day period, then interest shall accrue and be due and payable from the Seller on such amounts from and including the Closing through and including the date of payment at the Prime Rate (or if not paid within five (5) days when due the Prime Rate plus five percent (5%)) per annum. The accrual of interest shall not relieve the responsible party from the payment obligation specified herein and therefore the other party may immediately seek legal remedies including attorneys fees expended to enforce/collect amounts owing hereunder.

2.9 CONSENTS

(a) If there are any Material Consents that have not yet been obtained (or otherwise are not in full force and effect) as of the Closing, in the case of each Seller Contract as to which such Material Consents were not obtained (or otherwise are not in full force and effect) (the "Restricted Material Contracts"), Buyer may waive the closing conditions as to any such Material Consent and either:

(i) elect to have Sellers continue their efforts to obtain the Material Consents; or

(ii) elect to have Sellers retain that Restricted Material Contract and all Liabilities arising therefrom or relating thereto. If Buyer elects to have Sellers continue their efforts to obtain any Material Consents and the Closing occurs, notwithstanding Sections 2.1 and 2.4, neither this Agreement nor the Transfer, Assignment, Bill of Sale and Assumption Agreement nor any other document related to the consummation of the Contemplated Transactions shall constitute a sale, assignment, assumption, transfer, conveyance or delivery or an attempted sale, assignment, assumption, transfer, conveyance or delivery of the Restricted Material Contracts, and following the Closing, the parties shall use Best Efforts, and cooperate with each other, to obtain the Material Consent relating to each Restricted Material Contract as quickly as practicable. Pending the obtaining of such Material Consents relating to any Restricted Material Contract, the parties shall cooperate with each other in any reasonable and lawful arrangements designed to provide to Buyer the benefits of use of the Restricted Material Contract for its term (or any right or benefit arising thereunder, including the enforcement for the benefit of Buyer of any and all rights of the applicable Seller against a third party thereunder). Once a Material Consent for the sale, assignment, assumption, transfer, conveyance and delivery of a Restricted Material Contract is 23 obtained, Sellers shall promptly assign, transfer, convey and deliver such Restricted Material Contract to Buyer, and Buyer shall assume the obligations under such Restricted Material Contract assigned to Buyer from and after the date of assignment to Buyer pursuant to a special-purpose assignment and assumption agreement substantially similar in terms to those of the Transfer, Assignment, Bill of Sale and Assumption Agreement (which special-purpose agreement the parties shall prepare, execute and deliver in good faith at the time of such transfer).

(b) If there are any Consents not listed on Exhibit 7.3 necessary for the assignment and transfer of any Seller Contracts to Buyer (the "Nonmaterial Consents") which have not yet been obtained (or otherwise are not in full force and effect) as of the Closing, Buyer shall elect at the Closing, in the case of each of the Seller Contracts as to which such Nonmaterial Consents were not obtained (or otherwise are not in full force and effect) (the "Restricted Nonmaterial Contracts"), whether to:

(i) accept the assignment of such Restricted Nonmaterial Contract, in which case, as between Buyer and Sellers, such Restricted Nonmaterial Contract shall, to the maximum extent practicable and notwithstanding the failure to obtain the applicable Nonmaterial Consent, be transferred at the Closing pursuant to the Transfer, Assignment, Bill of Sale and Assumption Agreement as elsewhere provided under this Agreement; or

(ii) reject the assignment of such Restricted Nonmaterial Contract, in which case, notwithstanding Sections 2.1 and 2.4, (A) neither this Agreement nor the Transfer, Assignment, Bill of Sale and Assumption Agreement nor any other document related to the consummation of the Contemplated Transactions shall constitute a sale, assignment, assumption, conveyance or delivery or an attempted sale, assignment, assumption, transfer, conveyance or delivery of such Restricted Nonmaterial Contract, and (B) Sellers shall retain such Restricted Nonmaterial Contract and all Liabilities arising therefrom or relating thereto.

Section 3. Representations and Warranties of Sellers and Outline Associates

Each Seller and Outline Associates represent and warrant, jointly and severally, to Buyer as follows:

3.1 ORGANIZATION AND GOOD STANDING

(a) Part 3.1(a) contains a complete and accurate list of each Seller's and each Foreign Subsidiary's jurisdiction of incorporation and any other jurisdictions in which it is qualified to do business as a foreign corporation. Each Seller, each Foreign Subsidiary and Outline Associates is a corporation, limited liability company or foreign entity equivalent duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or formation, with full corporate, limited liability or other power and authority to conduct its business as it is now being conducted, to own or use the properties and assets that it purports to own or use, and to perform all its obligations under the Seller Contracts. Each Seller and each Foreign Subsidiary is duly qualified to do business as a foreign corporation, limited liability company or other applicable entity and is in good standing under the laws of each state or other jurisdiction in which either the ownership or use of the properties owned or used by it, or the nature of the activities conducted by it, requires such qualification.

(b) Complete and accurate copies of the Governing Documents of each Seller and each Foreign Subsidiary, as currently in effect, have been delivered to Buyer.

(c) Except as disclosed in Part 3.1(c), no Seller and no Foreign Subsidiary has any Subsidiary and does not own any shares of capital stock or other securities or interest of any other Person.

3.2 ENFORCEABILITY; AUTHORITY; NO CONFLICT (a) This Agreement constitutes the legal, valid and binding obligation of each Seller, each Foreign Subsidiary and Outline Associates and, with respect to Sections 3.2, 5.4, 5.6, 5.7 10.1, 10.8, 10.9, 12.2 and 12.5, Principals, enforceable against each of them in accordance with its terms. Upon the execution and delivery by Sellers, Foreign Subsidiaries and Outline Associates of the Escrow Agreement and each other agreement to be executed or delivered by any or all of any Seller, any Foreign Subsidiary, and Outline Associates at the Closing (collectively, the "Sellers' Closing Documents"), each of Sellers' Closing Documents will constitute the legal, valid and binding obligation of each of each Seller, each Foreign Subsidiary and Outline Associates, enforceable against each of them in accordance with its terms. Each Seller, each Foreign Subsidiary and Outline Associates has the absolute and unrestricted right, power and authority to execute and deliver this Agreement and the Sellers' Closing Documents to which it is a party and to perform its obligations under this Agreement and the Sellers' Closing Documents, and such action has been duly authorized by all necessary action by each Seller's, each Foreign Subsidiary's and Outline Associates' shareholders, members, board of directors, managers or equivalent. Each Principal has all necessary legal capacity to enter into this Agreement and to perform his obligations hereunder. (b) Except as set forth in Part 3.2(b), neither the execution and delivery of this Agreement nor the consummation or performance of any of the Contemplated Transactions will, directly or indirectly (with or without notice or lapse of time):

(i) breach (A) any provision of any of the Governing Documents of any Seller, any Foreign Subsidiary or Outline Associates or (B) any resolution adopted by the board of directors or managers or the shareholders or members or equivalent of any Seller, any Foreign or Outline Associates;

(ii) breach or give any Governmental Body or other Person the right to challenge any of the Contemplated Transactions or to exercise any remedy or obtain any relief under any Legal Requirement or any Order to which any Seller, any Foreign Subsidiary, Outline Associates or any Principal, or any of the Assets, may be subject;

(iii) contravene, conflict with or result in a violation or breach of any of the terms or requirements of, or give any Governmental Body the right to revoke, withdraw, suspend, cancel, terminate or modify, any Governmental Authorization that is held by any Seller, any Foreign Subsidiary or that otherwise relates to the Assets or to the Business of any Seller or Foreign Subsidiary;

(iv) cause Buyer to become subject to, or to become liable for the payment of, any Tax (other than income Taxes incurred as the result of any gain realized as a result of the transactions contemplated hereby);

(v) breach any provision of, or give any Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or payment under, or to cancel, terminate or modify, any Seller Contract;

(vi) result in the imposition or creation of any Encumbrance upon or with respect to any of the Assets; or

(vii) result in any shareholder, member or equivalent of any Seller, any Foreign Subsidiary or Outline Associates having the right to exercise dissenters' appraisal rights. (c) Except as set forth in Part 3.2(c), none of any Seller, any Foreign Subsidiary or Outline Associates nor any Principal is required to give any notice to or obtain any Consent from any Person in connection with the execution and delivery of this Agreement or the consummation or performance of any of the Contemplated Transactions.

3.3 CAPITALIZATION The authorized equity securities of each Seller and each Foreign Subsidiary are set forth on Part 3.3. The ownership of such equity securities is as set forth on Part 3.3, free and clear of all Encumbrances. There are no Contracts relating to the issuance, sale or transfer of any equity securities or other securities of any Seller or any Foreign Subsidiary. None of the outstanding equity securities of any Seller or any Foreign Subsidiary was issued in violation of the Securities Act of 1933, as amended (the "Securities Act"), or any other Legal Requirement.

3.4 FINANCIAL REPORTS Sellers have delivered to Buyer:

(a) an unaudited consolidated balance sheet of the Business as at December 31, 2010, (the "2010 Statement of Assets and Liabilities"), and the related unaudited statements of income and retained earnings roll forward of Sellers for the fiscal year then ended (the "2010 Operating Statements"), and

(b) an unaudited consolidated and consolidating pro forma balance sheet of Sellers as at June 30, 2011 (the "Interim Statement of Assets and Liabilities") and the related unaudited consolidated and consolidating statements of income and retained earnings roll forward for the eight (8) months then ended (the "Interim Operating Statements" and together with the 2010 Statement of Assets and Liabilities, the 2010 Operating Statements and the Interim Statement of Assets and Liabilities and the financial statements required to be delivered pursuant to Section 5.8 collectively, the "Financial Reports") certified by Seller Representative's chief financial officer. Such Financial Reports fairly present (and the Financial Reports delivered pursuant to Section 5.8 will fairly present) the financial condition and the results of operations and cash flows of Sellers as at the respective dates of and for the periods referred to in such financial statements, all in accordance with GAAP, except for GAAP Exceptions and except as such Financial Reports include information as to that portion of Seller' Business and operations that are not included in the Business.

The Financial Reports referred to in this Section 3.4 and delivered pursuant to Section 5.8 reflect and will reflect the consistent application of such accounting principles throughout the periods involved, except as disclosed in the notes to such Financial Reports. The Financial Reports have been and will be prepared from and are in accordance with the accounting Records of Sellers and Foreign Subsidiaries. The foregoing notwithstanding, Buyer acknowledges and agrees that the representations and warranties contained in this Section 3.4 do not extend to any information contained in the Financial Report relating to Excluded Assets or the Retained Liabilities.

3.5 BOOKS AND RECORDS The books of account and other financial Records of Sellers and Foreign Subsidiaries related to the Business for the period from January 1, 2010, to the Closing Date, all of which have been made available to Buyer, are complete and correct, in all material respects, and represent actual, bona fide transactions and have been maintained in accordance with sound business practices, including the maintenance of an adequate system of internal controls. The minute books of each Seller and each Foreign Subsidiary pertaining to the period from January 1, 2010, to the Closing Date have been made available to Buyer, contain accurate and complete Records of all meetings held of, and corporate, limited liability company or other action taken by, the shareholders, members, the board of directors or managers and committees of the board of directors or managers or foreign equivalent of each Seller and each Foreign Subsidiary, and no meeting of any such shareholders, members, board of directors or managers or committee has been held for which minutes have not been prepared or are not contained in such minute books.

3.6 SUFFICIENCY OF ASSETS Except as set forth in Part 3.6 and except for the Excluded Assets, the Assets (a) constitute all of the assets, tangible and intangible, of any nature whatsoever, necessary to operate the Business in the manner presently operated by Sellers and Foreign Subsidiaries and (b) include all of the operating assets of each Seller (except with respect to the Excluded Assets).

3.7 DESCRIPTION OF OWNED REAL PROPERTY No Seller nor any Foreign Subsidiary has an ownership interest in any Real Property.

3.8 DESCRIPTION OF LEASED REAL PROPERTY Part 3.8 contains a correct legal description, street address and tax parcel identification number of all tracts, parcels and subdivided lots in which any Seller or any Foreign Subsidiary has a leasehold interest and an accurate description (by location, name of lessor, date of Lease and term expiry date) of all Real Property Leases.

3.9 TITLE TO ASSETS; ENCUMBRANCES

(a) Each Seller and each Foreign Subsidiary owns good and marketable title to its respective Lease estates in the Real Property, free and clear of any Encumbrances, other than: (i) liens for Taxes for the current tax year which are not yet due and payable; and 27 (ii) those described in Part 3.9(a) ("Real Estate Encumbrances"). True and complete copies of all instruments, agreements and other documents evidencing, creating or constituting any Real Estate Encumbrances have been delivered to Buyer. At the time of Closing, the Real Estate shall be free and clear of all Real Estate Encumbrances other than those identified on Part 3.9(a) as acceptable to Buyer ("Permitted Real Estate Encumbrances").

(b) Sellers own good and transferable title to all of the other Assets free and clear of any Encumbrances other than those described in Part 3.9(b) ("Non-Real Estate Encumbrances"). At the time of Closing, all other Assets shall be free and clear of all Non-Real Estate Encumbrances other than those identified on Part 3.9(b) as acceptable to Buyer ("Permitted Non-Real Estate Encumbrances" and, together with the Permitted Real Estate Encumbrances, "Permitted Encumbrances").

3.10 CONDITION OF FACILITIES

(a) Use of the Real Property for the various purposes for which it is presently being used is permitted as a right under all applicable zoning legal requirements and is not subject to "permitted nonconforming" use or structure classifications.

(b) Each item of Tangible Personal Property is in operating condition, ordinary wear and tear excepted, is suitable for immediate use in the Ordinary Course of Business and is, to the Knowledge of Sellers, free from latent and patent defects. No item of Tangible Personal Property is in need of repair or replacement other than as part of routine maintenance in the Ordinary Course of Business.

Except as disclosed in Part 3.10(b), all Tangible Personal Property used in the Business is in the possession of the applicable Seller or Foreign Subsidiary. All Tangible Personal Property is being sold "As Is, Where Is" without warranties except to title.

3.11 ACCOUNTS RECEIVABLE All Accounts Receivable that are reflected on the Statement of Assets and Liabilities or the Interim Statement of Assets and Liabilities or on the accounting Records of Sellers and Foreign Subsidiaries as of the Closing Date represent or will represent valid obligations arising from sales actually made or services actually performed by Sellers or Foreign Subsidiaries in the Ordinary Course of Business. Except to the extent paid prior to the Closing Date, such Accounts Receivable are or will be as of the Closing Date current net of the respective reserves shown on the 2010 Statement of Assets and Liabilities or the Interim Statement of Assets and Liabilities or on the Final Working Capital Schedule (which reserves, to Sellers' Knowledge, are adequate and calculated consistent with past practice and, in the case of the reserve on the Final Working Capital Schedule, will not represent a greater percentage of the Accounts Receivable reflected on the Final Working Schedule than the reserve reflected on the Interim Statement of Assets and Liabilities represented of the Accounts Receivable reflected thereon and will not represent a material adverse change in the composition of such Accounts Receivable in terms of aging). Subject to such reserves, to Sellers' Knowledge each of such Accounts Receivable either has been or will be collected in full, without any setoff, within ninety (90) days after the day on which it first becomes due and payable. There is no contest, claim, defense or right of setoff, other than returns in the Ordinary Course of Business of Sellers or Foreign Subsidiaries, under any Contract with any account debtor of an Account Receivable relating to the amount or validity of such Account Receivable. Part 3.11 contains a complete and accurate list of all Accounts Receivable as of the date of the Interim Statement of Assets and Liabilities, which list sets forth the aging of each such Account Receivable.

3.12 MATERIALS AND SUPPLIES INVENTORIES All items included in the Materials and Supplies Inventories consist of a quality and quantity usable in the Ordinary Course of Business of Sellers and Foreign Subsidiaries except for obsolete items and items of below-standard quality, all of which have been written off or written down to net realizable value in the 2010 Statement of Assets and Liabilities or the Interim Statement of Assets and Liabilities or on the accounting Records of Sellers and Foreign Subsidiaries as of the Closing Date, as the case may be.

3.13 NO UNDISCLOSED LIABILITIES Except as set forth in Part 3.13, the Business has no Liability except for Liabilities reflected or reserved against in the Statement of Assets and Liabilities or the Interim Statement of Assets and Liabilities and current liabilities incurred in the Ordinary Course of Business of Sellers or Foreign Subsidiaries since the date of the Interim Statement of Assets and Liabilities.

3.14 TAXES

Sellers and Outline Associates make the following representations only with respect to periods commencing on January 1, 2010 through the Closing Date; provided that such limitation does not affect Sellers' and Outline Associates' obligations to pay Retained Liabilities:

(a) Tax Returns Filed and Taxes Paid. Except as provided in Part 3.14(a), each Seller and each Foreign Subsidiary has filed or caused to be filed on a timely basis all Tax Returns and all reports with respect to Taxes that are or were required to be filed pursuant to applicable Legal Requirements. All Tax Returns and reports filed by Sellers or Foreign Subsidiaries are true, correct and complete. Each Seller and each Foreign Subsidiary has paid, or made provision for the payment of, all Taxes that have or may have become due for all periods covered by the Tax Returns or otherwise, or pursuant to any assessment received by such Seller or such Foreign Subsidiary, except such Taxes, if any, as are listed in Part 3.14(a) and are being contested in good faith and as to which, to the extent included in the Assumed Liabilities, adequate reserves (determined in accordance with GAAP) have been provided in the 2010 Statement of Assets and Liabilities and the Interim Statement of Assets and Liabilities. Except as provided in Part 3.14(a), no Seller nor any Foreign Subsidiary currently is the beneficiary of any extension of time within which to file any Tax Return. No claim has ever been made or is expected to be made by any Governmental Body in a jurisdiction where any Seller or any Foreign Subsidiary does not file Tax Returns that it is or may be subject to taxation by that jurisdiction. Except as provided in Part 3.14(a), there are no Encumbrances on any of the Assets that arose in connection with any failure (or alleged failure) to pay any Tax, and, except as 29 provided in Part 3.14(a), no Seller has any Knowledge of any basis for assertion of any claims attributable to Taxes which, if adversely determined, would result in any such Encumbrance.

(b) Delivery of Tax Returns and Information Regarding Audits and Potential Audits. Each Seller and each Foreign Subsidiary has delivered or made available to Buyer copies of, and Part 3.14(b) contains a complete and accurate list of, all Tax Returns filed since January 1, 2010. The foreign, federal, state or local income or franchise Tax Returns of each Seller and each Foreign Subsidiary have been audited by the IRS or relevant state or foreign tax authorities or are closed by the applicable statute of limitations for all taxable years through December 31, 2006. Part 3.14(b) contains a complete and accurate list of all Tax Returns of each Seller and each Foreign Subsidiary that have been audited or are currently under audit and accurately describe any deficiencies or other amounts that were paid or are currently being contested. To the Knowledge of Sellers and Foreign Subsidiaries, no undisclosed deficiencies are expected to be asserted with respect to any such audit. All deficiencies proposed as a result of such audits have been paid, reserved against, settled or are being contested in good faith by appropriate proceedings as described in Part 3.14(b). Each Seller and each Foreign Subsidiary has delivered, or made available to Buyer, copies of any examination reports, statements or deficiencies or similar items with respect to such audits. Except as provided in Part 3.14(b), no Seller nor any Foreign Subsidiary has any Knowledge that any Governmental Body is likely to assess any additional taxes for any period for which Tax Returns have been filed. There is no dispute or claim concerning any Taxes of any Seller or any Foreign Subsidiary either (i) claimed or raised by any Governmental Body in writing or (ii) as to which any Seller or any Foreign Subsidiary has Knowledge except as provided in Part 3.14(d)(iv). Part 3.14(b) contains a list of all Tax Returns for which the applicable statute of limitations has not run. Except as described in Part 3.14(b), no Seller or any Foreign Subsidiary has given or been requested to give waivers or extensions (or is or would be subject to a waiver or extension given by any other Person) of any statute of limitations relating to the payment of Taxes of any Seller or any Foreign Subsidiary or for which such Seller may be liable.

(c) Proper Accrual. The charges, accruals and reserves with respect to Taxes on the Records of Sellers and Foreign Subsidiaries are adequate (determined in accordance with GAAP) and are at least equal to Sellers' and Foreign Subsidiaries' liability for Taxes. There exists no proposed tax assessment or deficiency against any Seller except as disclosed in the Interim Statement of Assets and Liabilities or in Part 3.14(c).

(d) Specific Potential Tax Liabilities and Tax Situations. (i) Withholding. All Taxes that any Seller or any Foreign Subsidiary is or was required by Legal Requirements to withhold, deduct or collect have been duly withheld, deducted or collected and, to the extent required, have been paid to the proper Governmental Body or other Person. (ii) Tax Sharing or Similar Agreements. There is no tax sharing agreement, tax allocation agreement, tax indemnity obligation or similar written or unwritten agreement, arrangement, understanding or practice with respect to Taxes (including any advance pricing agreement, closing agreement or other arrangement relating to Taxes) that will require any payment by any Seller. 30 (iii) Consolidated Group. Sellers and Foreign Subsidiaries (A) are members of an affiliated group with each other and their Subsidiaries within the meaning of Code 1504(a) (or any similar group defined under a similar provision of state or local law) and (B) no Seller nor any Foreign Subsidiary has any liability for Taxes of any person (other than a Seller or a Foreign Subsidiary) under Treas. Reg. 1.1502-6 (or any similar provision of state or local law), as a transferee or successor by contract or otherwise. (iv) Part 3.14(d)(iv) lists all the states, provinces and localities with respect to which any Seller or any Foreign Subsidiary is required to file any corporate, income or franchise tax returns.

3.15 NO MATERIAL ADVERSE CHANGE Since the date of the 2010 Statement of Assets and Liabilities, there has not been any Material Adverse Change in the Business and no event has occurred or circumstance exists that may result in such a Material Adverse Change.

3.16 EMPLOYEE BENEFITS

(a) Set forth in Part 3.16(a) is a complete and correct list of all "employee benefit plans" as defined by Section 3(3) of ERISA, all specified fringe benefit plans as defined in Section 6039D of the Code, and all other bonus, incentive-compensation, deferred-compensation, profit-sharing, stock-option, stock-appreciation-right, stock-bonus, stock-purchase, employee-stock-ownership, savings, severance, change-in-control, supplemental-unemployment, layoff, salary-continuation, retirement, pension, health, life-insurance, disability, accident, group-insurance, vacation, holiday, sick-leave, fringe-benefit or welfare plan, and any other employee compensation or benefit plan, agreement, policy, practice, commitment, contract or understanding (whether qualified or nonqualified, currently effective or terminated, written or unwritten) and any trust, escrow or other agreement related thereto that (i) is maintained or contributed to by any Seller or any Foreign Subsidiary or any other corporation or trade or business controlled by, controlling or under common control with any Seller or any Foreign Subsidiary (within the meaning of Section 414 of the Code or Section 4001(a)(14) or 4001(b) of ERISA) ("ERISA Affiliate") or has been maintained or contributed to in the last six (6) years by any Seller or any Foreign Subsidiary or any ERISA Affiliate, or with respect to which any Seller or any Foreign Subsidiary or any ERISA Affiliate has or may have any liability, and (ii) provides benefits, or describes policies or procedures applicable to any current or former director, officer, employee or service provider of any Seller or any Foreign Subsidiary or any ERISA Affiliate, or the dependents of any thereof, regardless of how (or whether) liabilities for the provision of benefits are accrued or assets are acquired or dedicated with respect to the funding thereof (collectively the "Employee Plans"). Part 3.16(a) identifies as such any Employee Plan that is (w) a "Defined Benefit Plan" (as defined in Section 414(l) of the Code); (x) a plan intended to meet the requirements of Section 401(a) of the Code; (y) a "Multiemployer Plan" (as defined in Section 3(37) of ERISA); or (z) a plan subject to Title IV of ERISA, other than a Multiemployer Plan. Also set forth on Part 3.16(a) is a complete and correct list of all ERISA Affiliates of Sellers during the last six (6) years.

(b) Sellers and Foreign Subsidiaries have delivered to Buyer true, accurate and complete copies of (i) the documents comprising each Employee Plan (or, with respect to any Employee Plan which is unwritten, a detailed written description of eligibility, participation, benefits, funding arrangements, assets and any other matters which relate to the obligations of any Seller or any Foreign Subsidiary or any ERISA Affiliate); (ii) all trust agreements, insurance contracts or any other funding instruments related to the Employee Plans; (iii) all rulings, determination letters, no-action letters or advisory opinions from the IRS, the US Department of Labor, the Pension Benefit Guaranty Corporation ("PBGC") or any other Governmental Body that pertain to each Employee Plan and any open requests therefor; (iv) the most recent actuarial and financial reports (unaudited) and the annual reports filed with any Government Body with respect to the Employee Plans during the current year and each of the three preceding years; (v) all collective bargaining agreements pursuant to which contributions to any Employee Plan(s) have been made or obligations incurred (including both pension and welfare benefits) by Sellers, Foreign Subsidiaries or any ERISA Affiliate, and all collective bargaining agreements pursuant to which contributions are being made or obligations are owed by such entities; (vi) all securities registration statements filed with respect to any Employee Plan; (vii) all contracts with third-party administrators, actuaries, investment managers, consultants and other independent contractors that relate to any Employee Plan; (viii) with respect to Employee Plans that are subject to Title IV of ERISA, the Form PBGC-1 filed for each of the three most recent plan years; and (ix) all summary plan descriptions, summaries of material modifications and memoranda, employee handbooks and other written communications regarding the Employee Plans.

(c) Except as disclosed in Part 3.16(c), full payment has been made of all amounts that are required under the terms of each Employee Plan, to be paid as contributions with respect to all periods prior to and including the last day of the most recent fiscal year of such Employee Plan, ended on or before the date of this Agreement and all periods thereafter prior to the Closing Date, and no accumulated funding deficiency or liquidity shortfall (as those terms are defined in Section 302 of ERISA and Section 412 of the Code) has been incurred with respect to any such Employee Plan, whether or not waived. The value of the assets of each Employee Plan exceeds the amount of all benefit liabilities (determined on a plan termination basis using the actuarial assumptions established by the PBGC as of the Closing Date) of such Employee Plan. No Seller or no Foreign Subsidiary is required to provide security to an Employee Plan under Section 401(a)(29) of the Code. The funded status of each Employee Plan that is a Defined Benefit Plan is disclosed on Part 3.16(c) in a manner consistent with the Statement of Financial Accounting Standards No. 87. Each Seller and each Foreign Subsidiary has paid in full all required insurance premiums, subject only to normal retrospective adjustments in the ordinary course, with regard to the Employee Plans for all policy years or other applicable policy periods ending on or before the Closing Date.

(d) Except as disclosed in Part 3.16(d), no Employee Plan, if subject to Title IV of ERISA or any foreign equivalent, has been completely or partially terminated, nor has any event occurred nor does any circumstance exist that could result in the partial termination of such Employee Plan. The PBGC (or foreign equivalent) has not instituted or threatened a Proceeding to terminate or to appoint a trustee to administer any of the Employee Plans pursuant to Subtitle 1 of Title IV of ERISA, and no condition or set of circumstances exists that presents a material risk of termination or partial termination of any of the Employee Plans by the PBGC. None of 32 the Employee Plans has been the subject of, and no event has occurred or condition exists that could be deemed, a reportable event (as defined in Section 4043 of ERISA) as to which a notice would be required (without regard to regulatory monetary thresholds) to be filed with the PBGC. Sellers and Foreign Subsidiaries have paid in full all insurance premiums due to the PBGC (or foreign equivalent) with regard to the Employee Plans for all applicable periods ending on or before the Closing Date.

(e) Neither any Seller, nor any Foreign Subsidiary nor any ERISA Affiliate has any liability or has Knowledge of any facts or circumstances that might give rise to any liability, and the Contemplated Transactions will not result in any liability, (i) for the termination of or withdrawal from any Employee Plan under Sections 4062, 4063 or 4064 of ERISA, (ii) for any lien imposed under Section 302(f) of ERISA or Section 412(n) of the Code, (iii) for any interest payments required under Section 302(e) of ERISA or Section 412(m) of the Code, (iv) for any excise tax imposed by Section 4971 of the Code, (v) for any minimum funding contributions under Section 302(c)(11) of ERISA or Section 412(c)(11) of the Code, (vi) for withdrawal from any Multiemployer Plan under Section 4201 of ERISA or (vii) under any comparable provision of any applicable foreign law.

(f) Sellers and Foreign Subsidiaries have, at all times, complied, and currently complies, in all material respects with the applicable continuation requirements for its welfare benefit plans, including (1) Section 4980B of the Code (as well as its predecessor provision, Section 162(k) of the Code) and Sections 601 through 608, inclusive, of ERISA, which provisions are hereinafter referred to collectively as "COBRA" and (2) any applicable state or foreign statutes mandating health insurance continuation coverage for employees.

(g) The form of all Employee Plans is in compliance with the applicable terms of ERISA, the Code, and any other United States or foreign applicable laws, including the Americans with Disabilities Act of 1990, the Family Medical Leave Act of 1993 and the Health Insurance Portability and Accountability Act of 1996, and such plans have been operated in compliance with such laws and the written Employee Plan documents. Neither any Seller, any Foreign Subsidiary nor any fiduciary of an Employee Plan has violated the requirements of Section 404 of ERISA. All required reports and descriptions of the Employee Plans (including Internal Revenue Service Form 5500 Annual Reports, Summary Annual Reports and Summary Plan Descriptions and Summaries of Material Modifications) have been (when required) timely filed with the IRS, the U.S. Department of Labor or other Governmental Body and distributed as required, and all notices required by ERISA or the Code or any other Legal Requirement with respect to the Employee Plans have been appropriately given.

(h) Each Employee Plan that is intended to be qualified under Section 401(a) of the Code has received a favorable determination letter from the IRS, and no Seller nor any Foreign Subsidiary has any Knowledge of any circumstances that will or could result in revocation of any such favorable determination letter. Each trust created under any Employee Plan has been determined to be exempt from taxation under Section 501(a) of the Code, and no Seller nor any Foreign Subsidiary is aware of any circumstance that will or could result in a revocation of such exemption. Each Employee Welfare Benefit Plan (as defined in Section 3(1) of ERISA) that utilizes a funding vehicle described in Section 501(c)(9) of the Code or is subject to the provisions of Section 505 of the Code has been the subject of a notification by 33 the IRS that such funding vehicle qualifies for tax-exempt status under Section 501(c)(9) of the Code or that the plan complies with Section 505 of the Code, unless the IRS does not, as a matter of policy, issue such notification with respect to the particular type of plan.

(i) There is no material pending or threatened Proceeding relating to any Employee Plan, nor is there any basis for any such Proceeding. No Seller, no Foreign Subsidiary nor any fiduciary of an Employee Plan has engaged in a transaction with respect to any Employee Plan that, assuming the taxable period of such transaction expired as of the date hereof, could subject any Seller or Buyer to a Tax or penalty imposed by either Section 4975 of the Code or Section 502(l) of ERISA or a violation of Section 406 of ERISA. The Contemplated Transactions will not result in the potential assessment of a Tax or penalty under Section 4975 of the Code or Section 502(l) of ERISA nor result in a violation of Section 406 of ERISA.

(j) Each Seller and each Foreign Subsidiary has maintained workers' compensation coverage as required by applicable state law through purchase of insurance and not by self-insurance or otherwise except as disclosed to Buyer on Part 3.16(j).

(k) Except as required by Legal Requirements and as provided in Section 10.1(d), the consummation of the Contemplated Transactions will not accelerate the time of vesting or the time of payment, or increase the amount of compensation due to any director, employee, officer, former employee or former officer of Seller. There are no contracts or arrangements providing for payments that could subject any person to liability for tax under Section 4999 of the Code.

(l) Except for the continuation coverage requirements of COBRA, no Seller and no Foreign Subsidiary has obligations or potential liability for benefits to employees, former employees or their respective dependents following termination of employment or retirement under any of the Employee Plans that are Employee Welfare Benefit Plans.

(m) Except as provided in Section 10.1(d), none of the Contemplated Transactions will result in an amendment, modification or termination of any of the Employee Plans. No written or oral representations have been made to any employee or former employee of any Seller promising or guaranteeing any employer payment or funding for the continuation of medical, dental, life or disability coverage for any period of time beyond the end of the current plan year (except to the extent of coverage required under COBRA). No written or oral representations have been made to any employee or former employee of any Seller or any Foreign Subsidiary concerning the employee benefits of Buyer.

(n) With respect to any Employee Plan that is a "multiemployer plan" within the meaning of Section 4001(a)(3) of ERISA ("Multiemployer Plan"), and any other Multiemployer Plan to which any Seller or any Foreign Subsidiary has at any time had an obligation to contribute: (i) all contributions required by the terms of such Multiemployer Plan and any collective bargaining agreement have been made when due; and (ii) No Seller and no Foreign Subsidiary would be subject to any withdrawal liability under Part 1 of Subtitle E of Title IV of ERISA if, as of the date 34 hereof, such Seller or Foreign Subsidiary were to engage in a "complete withdrawal" (as defined in ERISA Section 4203) or a "partial withdrawal" (as defined in ERISA Section 4205) from such Multiemployer Plan.

3.17 COMPLIANCE WITH LEGAL REQUIREMENTS; GOVERNMENTAL AUTHORIZATIONS

(a) Except as set forth in Part 3.17(a): (i) Sellers and Foreign Subsidiaries are, and at all times since January 1, 2010, have been, in full compliance with each Legal Requirement that is or was applicable to them or to the conduct or operation of their business or the ownership or use of any of their assets; (ii) no event has occurred or circumstance exists that (with or without notice or lapse of time) (A) may constitute or result in a violation by any Seller or any Foreign Subsidiary of, or a failure on the part of such Seller or Foreign Subsidiary to comply with, any Legal Requirement or (B) may give rise to any obligation on the part of such Seller or Foreign Subsidiary to undertake, or to bear all or any portion of the cost of, any remedial action of any nature; and (iii) No Seller and no Foreign Subsidiary has received, at any time since January 1, 2010, any notice or other communication (whether oral or written) from any Governmental Body or any other Person regarding (A) any actual, alleged, possible or potential violation of, or failure to comply with, any Legal Requirement or (B) any actual, alleged, possible or potential obligation on the part of any Seller or any Foreign Subsidiary to undertake, or to bear all or any portion of the cost of, any remedial action of any nature.

(b) Part 3.17(b) contains a complete and accurate list of each Governmental Authorization that is held by each Seller and each Foreign Subsidiary or that otherwise relates to such Seller's or Foreign Subsidiary's business or the Assets. Each Governmental Authorization listed or required to be listed in Part 3.17(b) is valid and in full force and effect. Except as set forth in Part 3.17(b): (i) each Seller and each Foreign Subsidiary is, and at all times since January 1, 2010, has been, in full compliance with all of the terms and requirements of each Governmental Authorization identified or required to be identified in Part 3.17(b); (ii) no event has occurred or circumstance exists that may (with or without notice or lapse of time) (A) constitute or result directly or indirectly in a violation of or a failure to comply with any term or requirement of any Governmental Authorization listed or required to be listed in Part 3.17(b) or (B) result directly or indirectly in the revocation, withdrawal, suspension, cancellation or termination of, or any modification to, any Governmental Authorization listed or required to be listed in Part 3.17(b); 35 (iii) no Seller and no Foreign Subsidiary has received, at any time since January 1, 2010, any notice or other communication (whether oral or written) from any Governmental Body or any other Person regarding (A) any actual, alleged, possible or potential violation of or failure to comply with any term or requirement of any Governmental Authorization or (B) any actual, proposed, possible or potential revocation, withdrawal, suspension, cancellation, termination of or modification to any Governmental Authorization; and (iv) all applications required to have been filed for the renewal of the Governmental Authorizations listed or required to be listed in Part 3.17(b) have been duly filed on a timely basis with the appropriate Governmental Bodies, and all other filings required to have been made with respect to such Governmental Authorizations have been duly made on a timely basis with the appropriate Governmental Bodies. The Governmental Authorizations listed in Part 3.17(b) collectively constitute all of the Governmental Authorizations necessary to permit any Seller or any Foreign Subsidiary to lawfully conduct and operate its business in the manner in which it currently conducts and operates such business and to permit such Seller or such Foreign Subsidiary to own and use its assets in the manner in which it currently owns and uses such assets.

3.18 LEGAL PROCEEDINGS; ORDERS

(a) Except as set forth in Part 3.18(a), there is no pending or, to Sellers' and/or Foreign Subsidiaries' Knowledge, threatened Proceeding: (i) by or against any Seller or any Foreign Subsidiary or that otherwise relates to or may affect the business of, or any of the assets owned or used by, such Seller or Foreign Subsidiary; or (ii) that challenges, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with, any of the Contemplated Transactions. To the Knowledge of Sellers and Foreign Subsidiaries, no event has occurred or circumstance exists that is reasonably likely to give rise to or serve as a basis for the commencement of any such Proceeding. Sellers and Foreign Subsidiaries have delivered to Buyer copies of all pleadings, correspondence and other documents relating to each Proceeding listed in Part 3.18(a). There are no Proceedings listed or required to be listed in Part 3.18(a) that could have a material adverse effect on the business, operations, assets, condition or prospects of Sellers or Foreign Subsidiaries or upon the Assets.

(b) Except as set forth in Part 3.18(b): (i) there is no Order to which any Seller or any Foreign Subsidiary, its business or any of the Assets is subject; and (ii) to the Knowledge of Sellers and/or Foreign Subsidiaries, no officer, director, agent or employee of any Seller or any Foreign Subsidiary is subject to any Order that prohibits such officer, director, agent or employee from engaging in or 36 continuing any conduct, activity or practice relating to the business of such Seller or Foreign Subsidiary.

(c) Except as set forth in Part 3.18(c): (i) each Seller and each Foreign Subsidiary is, and, at all times since January 1, 2010, has been in compliance with all of the terms and requirements of each Order to which it or any of the Assets is or has been subject; (ii) no event has occurred or circumstance exists that is reasonably likely to constitute or result in (with or without notice or lapse of time) a violation of or failure to comply with any term or requirement of any Order to which any Seller or any Foreign Subsidiary or any of the Assets is subject; and (iii) no Seller and no Foreign Subsidiary has received, at any time since January 1, 2010, any notice or other communication (whether oral or written) from any Governmental Body or any other Person regarding any actual, alleged, possible or potential violation of, or failure to comply with, any term or requirement of any Order to which such Seller or Foreign or any of the Assets is or has been subject.

3.19 ABSENCE OF CERTAIN CHANGES AND EVENTS Except as set forth in Part 3.19, since the date of the 2010 Statement of Assets and Liabilities, each Seller and each Foreign Subsidiary has conducted its business only in the Ordinary Course of Business and there has not been any:

(a) change in such Seller's or Foreign Subsidiary's authorized or issued capital stock or other equity interests, grant of any stock option or right to purchase shares of capital stock of Seller or Foreign Subsidiary or issuance of any security convertible into such capital stock;

(b) amendment to the Governing Documents of any Seller or any Foreign Subsidiary;

(c) payment (except in the Ordinary Course of Business) or increase by any Seller or Foreign Subsidiary of any bonuses, salaries or other compensation to any shareholder, director, officer or employee or entry into any employment, severance or similar Contract with any director, officer or employee;

(d) adoption of, amendment to or increase in the payments to or benefits under, any Employee Plan; (e) damage to or destruction or loss of any Asset, whether or not covered by insurance;

(f) entry into, termination of or receipt of notice of termination of (i) any license, distributorship, dealer, sales representative, joint venture, credit or similar Contract to which any Seller or any Foreign Subsidiary is a party, or (ii) any Contract or transaction 37 involving a total remaining commitment by any Seller or any Foreign Subsidiary of at least One Hundred Fifty Thousand Dollars ($150,000);

(g) sale (other than sales of Inventories in the Ordinary Course of Business), lease or other disposition of any Asset or property of any Seller (including the Intellectual Property Assets) or the creation of any Encumbrance on any Asset;

(h) cancellation or waiver of any claims or rights with a value to any Seller or any Foreign Subsidiary in excess of Fifty Thousand Dollars ($50,000);

(i) indication by any customer or supplier of an intention to discontinue or change the terms of its relationship with any Seller or any Foreign Subsidiary;

(j) material change in the accounting methods used by any Seller or any Foreign Subsidiary; or

(k) Contract by any Seller or any Foreign Subsidiary to do any of the foregoing.

3.20 CONTRACTS; NO DEFAULTS

(a) Part 3.20(a) contains an accurate and complete list, and Sellers and Foreign Subsidiaries have delivered to Buyer accurate and complete copies, of: (i) each Seller Contract that involves performance of services or delivery of goods or materials to any Seller or any Foreign Subsidiary of an amount or value in excess of One Hundred Fifty Thousand Dollars ($150,000); (ii) each Seller Contract that was not entered into in the Ordinary Course of Business and that involves expenditures or receipts of a Seller or a Foreign Subsidiary in excess of One Hundred Fifty Thousand Dollars ($150,000); (iii) each Seller Contract affecting the ownership of, leasing of, title to, use of or any leasehold or other interest in any real or personal property (except personal property leases and installment and conditional sales agreements having a value per item or aggregate payments of more than Fifty Thousand Dollars ($50,000) and with a term of less than one year); (iv) each Seller Contract with any labor union or other employee representative of a group of employees relating to wages, hours and other conditions of employment; (v) each Seller Contract (however named) involving a sharing of profits, losses, costs or liabilities by Seller with any other Person; (vi) each Seller Contract containing covenants that in any way purport to restrict any Seller's or any Foreign Subsidiary's business activity or limit the freedom 38 of any Seller or any Foreign Subsidiary to engage in any line of business or to compete with any Person; (vii) each Seller Contract providing for payments to or by any Person based on sales, purchases or profits, other than direct payments for goods; (viii) each power of attorney of any Seller or any Foreign Subsidiary that is currently effective and outstanding; (ix) each Seller Contract entered into other than in the Ordinary Course of Business that contains or provides for an express undertaking by any Seller or any Foreign Subsidiary to be responsible for consequential damages; (x) each Seller Contract for capital expenditures in excess of Fifty Thousand Dollars ($50,000); (xi) each written warranty, guaranty and/or other similar undertaking with respect to contractual performance extended by any Seller or any Foreign Subsidiary other than in the Ordinary Course of Business; and (xii) each amendment, supplement and modification (whether oral or written) in respect of any of the foregoing. Part 3.20(a) sets forth reasonably complete details concerning such Contracts, including the parties to the Contracts and the location of such Seller's or Foreign Subsidiary's office where details relating to the Contracts are located.

(b) Except as set forth in Part 3.20(b), none of Outline Associates nor any Principal has or may acquire any rights under, and none of Outline Associates nor any Principal has or may become subject to any obligation or liability under, any Contract that relates to the Business or any of the Assets.

(c) Except as set forth in Part 3.20(c): (i) each Contract identified or required to be identified in Part 3.20(a) and which is to be assigned to or assumed by Buyer under this Agreement is in full force and effect and is valid and enforceable in accordance with its terms; (ii) each Contract identified or required to be identified in Part 3.20(a) and which is being assigned to or assumed by Buyer is assignable by the applicable Seller to Buyer without the consent of any other Person or with respect to such Contracts of Foreign Subsidiaries, cannot be terminated by any other Person as a result of the consummation of the transactions contemplated hereby; and (iii) to the Knowledge of Sellers and/or Foreign Subsidiaries, no Contract identified or required to be identified in Part 3.20(a) and which is to be assigned to or assumed by Buyer under this Agreement or to be continued by Foreign Subsidiary 39 will upon completion or performance thereof have a Material Adverse Effect on the Business.

(d) Except as set forth in Part 3.20(d): (i) each Seller or each Foreign Subsidiary is, and at all times since January 1, 2010, has been, in compliance with all applicable terms and requirements of each Seller Contract which is being assumed by Buyer or being continued by a Foreign Subsidiary; (ii) each other Person that has or had any obligation or liability under any Seller Contract which is being assigned to Buyer or retained by a Foreign Subsidiary is, and at all times since January 1, 2010, has been, in full compliance with all applicable terms and requirements of such Contract; (iii) no event has occurred or circumstance exists that (with or without notice or lapse of time) may contravene, conflict with or result in a Breach of, or give the applicable Seller or Foreign Subsidiary or other Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or payment under, or to cancel, terminate or modify, any Seller Contract that is being assigned to or assumed by Buyer or retained by a Foreign Subsidiary; (iv) no event has occurred or circumstance exists under or by virtue of any Contract that (with or without notice or lapse of time) would cause the creation of any Encumbrance affecting any of the Assets; and (v) no Seller and no Foreign Subsidiary has given to or received from any other Person, at any time since January 1, 2010, any notice or other communication (whether oral or written) regarding any actual, alleged, possible or potential violation or Breach of, or default under, any Contract which is being assigned to or assumed by Buyer or which belongs to a Foreign Subsidiary.

(e) There are no renegotiations of, attempts to renegotiate or outstanding rights to renegotiate any material amounts paid or payable to any Seller under current or completed Contracts with any Person having the contractual or statutory right to demand or require such renegotiation and no such Person has made written demand for such renegotiation.

(f) Each Contract relating to the sale, design, manufacture or provision of products or services by a Seller or a Foreign Subsidiary has been entered into in the Ordinary Course of Business of such Seller or Foreign Subsidiary and has been entered into without the commission of any act alone or in concert with any other Person, or any consideration having been paid or promised, that is or would be in violation of any Legal Requirement.

(g) Except as set forth in Part 3.20(g), no Contract restricts Seller or Foreign Subsidiary (or Buyer as Seller's successor in interest) from performing or providing goods and services to other Persons, including, without limitation, competitors to such contracting parties. 40

3.21 INSURANCE

(a) Sellers and Foreign Subsidiaries have delivered to Buyer: (i) accurate and complete copies of all policies of insurance (and correspondence relating to coverage thereunder) to which any Seller or Foreign Subsidiary is a party or under which a Seller or a Foreign Subsidiary is or has been covered at any time since January 1, 2010, a list of which is included in Part 3.21(a); and (ii) accurate and complete copies of all pending applications by any Seller or any Foreign Subsidiary for policies of insurance.

(b) Part 3.21(b) describes: (i) any self-insurance arrangement by or affecting any Seller or Foreign Subsidiary, including any reserves established thereunder; (ii) any Contract or arrangement, other than a policy of insurance, for the transfer or sharing of any risk to which any Seller or Foreign Subsidiary is a party or which involves the business of any Seller or Foreign Subsidiary; and (iii) all obligations of any Seller or Foreign Subsidiary to provide insurance coverage to Third Parties (for example, under Leases or service agreements) and identifies the policy under which such coverage is provided.

(c) Part 3.21(c) sets forth, by year, for the current policy year and each of the three (3) preceding policy years: (i) a summary of the loss experience under each policy of insurance; (ii) a statement describing each claim under a policy of insurance for an amount in excess of Fifty Thousand Dollars ($50,000), which sets forth: (1) the name of the claimant; (2) a description of the policy by insurer, type of insurance and period of coverage; and (3) the amount and a brief description of the claim; and (iii) a statement describing the loss experience for all claims that were self-insured, including the number and aggregate cost of such claims. (d) Except as set forth in Part 3.21(d): (i) all policies of insurance to which any Seller or Foreign Subsidiary is a party or that provide coverage to Seller or any Foreign Subsidiary: (1) are valid, outstanding and enforceable; (2) are issued by an insurer that is financially sound and reputable; (3) taken together provide adequate insurance coverage for the Assets and the operations of Sellers and Foreign Subsidiaries for all risks normally insured against by a Person carrying on the same business or businesses as Sellers and Foreign Subsidiaries in the same location; and (4) are sufficient for compliance with all Legal Requirements and Seller Contracts; (ii) no Seller and no Foreign Subsidiary has received (A) any refusal of coverage or any notice that a defense will be afforded with reservation of rights or (B) any notice of cancellation or any other indication that any policy of insurance is no longer in full force or effect or that the issuer of any policy of insurance is not willing or able to perform its obligations thereunder; (iii) Sellers and Foreign Subsidiaries have paid all premiums due, and has otherwise performed all of their obligations, under each policy of insurance to which they are a party or that provides coverage to any Seller or Foreign Subsidiary; and (iv) Sellers and Foreign Subsidiaries have given notice to the insurer of all claims that may be insured thereby.

3.22 ENVIRONMENTAL MATTERS Except as disclosed in Part 3.22:

(a) Each Seller and each Foreign Subsidiary is, and at all times has been, in full compliance with, and has not been and is not in violation of or liable under, any Environmental Law. Neither any Seller, any Foreign Subsidiary, Outline Associates nor either Principal has any basis to expect, nor has any of them or any other Person for whose conduct they are or may be held to be responsible received, any actual or threatened order, notice or other communication from (i) any Governmental Body or private citizen acting in the public interest or (ii) the current or prior owner or operator of any Facilities, of any actual or potential violation or failure to comply with any Environmental Law, or of any actual or threatened obligation to undertake or bear the cost of any Environmental, Health and Safety Liabilities with respect to any Facility or other property or asset (whether real, personal or mixed) in which any Seller or any Foreign Subsidiary has or had an interest, or with respect to any property or Facility at or to which Hazardous Materials were generated, manufactured, refined, transferred, imported, used or processed by any Seller, any Foreign Subsidiary or any other Person for whose conduct it is or may be held responsible, or from which Hazardous Materials have been transported, treated, stored, handled, transferred, disposed, recycled or received.

(b) There are no pending or, to the Knowledge of Sellers and Foreign Subsidiaries, threatened claims, Encumbrances, or other restrictions of any nature resulting from any Environmental, Health and Safety Liabilities or arising under or pursuant to any Environmental Law with respect to or affecting any Facility or any other property or asset 42 (whether real, personal or mixed) in which any Seller or any Foreign Subsidiary has or had an interest.

(c) Neither any Seller, any Foreign Subsidiary, Outline Associates nor either Principal has any Knowledge of or any basis to expect, nor has any of them, or any other Person for whose conduct they are or may be held responsible, received, any citation, directive, inquiry, notice, Order, summons, warning or other communication that relates to Hazardous Activity, Hazardous Materials, or any alleged, actual, or potential violation or failure to comply with any Environmental Law, or of any alleged, actual, or potential obligation to undertake or bear the cost of any Environmental, Health and Safety Liabilities with respect to any Facility or property or asset (whether real, personal or mixed) in which a Seller or a Foreign Subsidiary has or had an interest, or with respect to any property or facility to which Hazardous Materials generated, manufactured, refined, transferred, imported, used or processed by any Seller, any Foreign Subsidiary or any other Person for whose conduct it is or may be held responsible, have been transported, treated, stored, handled, transferred, disposed, recycled or received.

(d) Neither any Seller, any Foreign Subsidiary nor any other Person for whose conduct it is or may be held responsible has any Environmental, Health and Safety Liabilities with respect to any Facility or, to the Knowledge of Sellers and Foreign Subsidiaries, with respect to any other property or asset (whether real, personal or mixed) in which any Seller or any Foreign Subsidiary (or any predecessor) has or had an interest or at any property geologically or hydrologically adjoining any Facility or any such other property or asset.

(e) There are no Hazardous Materials present on or in the Environment at any Facility or at any geologically or hydrologically adjoining property, including any Hazardous Materials contained in barrels, aboveground or underground storage tanks, landfills, land deposits, dumps, equipment (whether movable or fixed) or other containers, either temporary or permanent, and deposited or located in land, water, sumps, or any other part of the Facility or such adjoining property, or incorporated into any structure therein or thereon. Neither any Seller, any Foreign Subsidiary nor any Person for whose conduct it is or may be held responsible, or to the Knowledge of Seller or any Foreign Subsidiary, any other Person, has permitted or conducted, or is aware of, any Hazardous Activity conducted with respect to any Facility or any other property or assets (whether real, personal or mixed) in which any Seller or any Foreign Subsidiary has or had an interest except in full compliance with all applicable Environmental Laws.

(f) Materials at or from any Facility or at any other location where any Hazardous Materials were generated, manufactured, refined, transferred, produced, imported, used, or processed from or by any Facility, or from any other property or asset (whether real, personal or mixed) in which any Seller or any Foreign Subsidiary has or had an interest, or to the Knowledge of any Seller or any Foreign Subsidiary any geologically or hydrologically adjoining property, whether by such Seller or any other Person.

(g) To the extent existing, Sellers and Foreign Subsidiaries have delivered to Buyer true and complete copies and results of any reports, studies, analyses, tests, or monitoring possessed or initiated by any Seller pertaining to Hazardous Materials or Hazardous Activities in, 43 on, or under the Facilities, or concerning compliance, by any Seller or any other Person for whose conduct it is or may be held responsible, with Environmental Laws.

3.23 EMPLOYEES

(a) Part 3.23(a) contains a complete and accurate list of the following information for each employee, director, independent contractor, consultant and agent of Sellers and Foreign Subsidiaries, including each employee on leave of absence or layoff status: employer; name; job title; date of hiring or engagement; date of commencement of employment or engagement; current compensation paid or payable and any change in compensation since January 1, 2010; sick and vacation leave that is accrued but unused; and service credited for purposes of vesting and eligibility to participate under any Employee Plan, or any other employee or director benefit plan.

(b) Part 3.23(b) contains a complete and accurate list of the following information for each retired employee or director of each Seller and each Foreign Subsidiary, or their dependents, receiving benefits or scheduled to receive benefits in the future: name; pension benefits; pension option election; retiree medical insurance coverage; retiree life insurance coverage; and other benefits.

(c) Part 3.23(c) states the number of employees terminated by any Seller or any Foreign Subsidiary since January 1, 2010.

(d) Sellers and Foreign Subsidiaries have not violated the Worker Adjustment and Retraining Notification Act (the "WARN Act"), or any similar foreign, state or local Legal Requirement.

(e) To the Knowledge of Sellers and Foreign Subsidiaries, no officer, director, agent, employee, consultant, or contractor of any Seller is bound by any Contract that purports to limit the ability of such officer, director, agent, employee, consultant, or contractor (i) to engage in or continue or perform any conduct, activity, duties or practice relating to the Business or (ii) to assign to any Seller, any Foreign Subsidiary or to any other Person any rights to any invention, improvement, or discovery. No former or current employee of any Seller or any Foreign Subsidiary is a party to, or is otherwise bound by, any Contract that in any way adversely affected, affects, or will affect the ability of any Seller or any Foreign Subsidiary or Buyer to conduct the business as heretofore carried on by Sellers or Foreign Subsidiaries.

3.24 LABOR DISPUTES; COMPLIANCE

(a) Each Seller and each Foreign Subsidiary has complied in all respects with all Legal Requirements relating to employment practices, terms and conditions of employment, equal employment opportunity, nondiscrimination, immigration, wages, hours, benefits, collective bargaining and other requirements, the payment of social security and similar Taxes and occupational safety and health. No Seller or Foreign Subsidiary is liable for the payment of any Taxes, fines, penalties, or other amounts, however designated, for failure to comply with any of the foregoing Legal Requirements.

(b) Except as disclosed in Part 3.24(b), (i) no Seller and no Foreign Subsidiary has been, or is now, a party to any collective bargaining agreement or other labor contract; (ii) since January 1, 2010, there has not been, there is not presently pending or existing, and to Sellers' and Foreign Subsidiaries' Knowledge there is not threatened, any strike, slowdown, picketing, work stoppage or employee grievance process involving any Seller; (iii) to Sellers' and Foreign Subsidiaries' Knowledge no event has occurred or circumstance exists that could provide the basis for any work stoppage or other labor dispute; (iv) there is not pending or, to Sellers' and Foreign Subsidiaries' Knowledge, threatened against or affecting any Seller or any Foreign Subsidiary any Proceeding relating to the alleged violation of any Legal Requirement pertaining to labor relations or employment matters, including any charge or complaint filed with the National Labor Relations Board or any comparable Governmental Body, and there is no organizational activity or other labor dispute against or affecting any Seller or any Foreign Subsidiary or the Facilities; (v) no application or petition for an election of or for certification of a collective bargaining agent is pending; (vi) no grievance or arbitration Proceeding exists that might have an adverse effect upon any Seller or any Foreign Subsidiary or the conduct of its business; (vii) there is no lockout of any employees by any Seller or any Foreign Subsidiary, and no such action is contemplated by any Seller; and (viii) to Sellers' and Foreign Subsidiaries' Knowledge there has been no charge of discrimination filed against or threatened against any Seller with the Equal Employment Opportunity Commission or similar Governmental Body.

3.25 INTELLECTUAL PROPERTY ASSETS

(a) The term "Intellectual Property Assets" means all intellectual property owned or licensed (as licensor or licensee) by a Seller or a Foreign Subsidiary in which such Seller or Foreign Subsidiary has a proprietary interest, including: (i) such Seller's and such Foreign Subsidiary's name, all assumed fictional business names, trade names, registered and unregistered trademarks, service marks and applications (collectively, "Marks"); (ii) all patents, patent applications and inventions and discoveries that may be patentable (collectively, "Patents"); (iii) all registered and unregistered copyrights in both published works and unpublished works (collectively, "Copyrights"); (iv) all rights in mask works; (v) all know-how, trade secrets, confidential or proprietary information, customer lists, Software, technical information, data, process technology, plans, drawings and blue prints (collectively, "Trade Secrets"); and (vi) all rights in internet web sites and internet domain names presently used by each Seller and each Foreign Subsidiary (collectively "Net Names").

(b) Part 3.25(b) contains a complete and accurate list and summary description, including any royalties paid or received by any Seller or any Foreign Subsidiary, and Sellers and Foreign Subsidiaries have delivered to Buyer accurate and complete copies, of all 45 Seller Contracts relating to the Intellectual Property Assets, except for any license implied by the sale of a product and perpetual, paid-up licenses for commonly available Software programs with a value of less than US$1,000 under which a Seller or a Foreign Subsidiary is the licensee. There are no outstanding and, to Sellers' and Foreign Subsidiaries' Knowledge, no threatened disputes or disagreements with respect to any such Contract.

(c) (i) Except as set forth in Part 3.25(c), the Intellectual Property Assets are all those necessary for the operation of Sellers' and Foreign Subsidiaries' Business as it is currently conducted. Sellers and/or Foreign Subsidiaries are the owners or licensees of all right, title and interest in and to each of the Intellectual Property Assets, free and clear of all Encumbrances, and have the right to use without payment to a Third Party all of the Intellectual Property Assets, other than in respect of licenses listed in Part 3.25(c). (ii) Except as set forth in Part 3.25(c), all former and current employees of Sellers and Foreign Subsidiaries have executed written Contracts with Sellers or Foreign Subsidiaries that assign to Sellers or Foreign Subsidiaries all rights to any inventions, improvements, discoveries or information relating to the Business of Sellers.

(d) No Seller and no Foreign Subsidiary has any Patent.

(e) (i) Part 3.25(e) contains a complete and accurate list and summary description of all Marks. (ii) To Sellers' and Foreign Subsidiaries' Knowledge, there is no potentially interfering trademark or trademark application of any other Person. (iii) No Mark is infringed or, to Sellers' and Foreign Subsidiaries' Knowledge, has been challenged or threatened in any way. None of the Marks used by Sellers or Foreign Subsidiaries infringes or is alleged to infringe any trade name, trademark or service mark of any other Person. (iv) All products and materials containing a Mark bear the proper federal registration notice where permitted by law.

(f) (i) Part 3.25(f) contains a complete and accurate list and summary description of all Copyrights. (ii) All of the registered Copyrights are currently in compliance with formal Legal Requirements, are valid and enforceable, and are not subject to any maintenance fees or taxes or actions falling due within ninety (90) days after the date of Closing. (iii) No Copyright is infringed or, to Sellers' and Foreign Subsidiaries' Knowledge, has been challenged or threatened in any way. None of the subject matter of any of the Copyright infringes or is alleged to infringe any copyright of any Third Party or is a derivative work based upon the work of any other Person. (iv) All works encompassed by the Copyrights have been marked with the proper copyright notice.

(g) (i) With respect to each Trade Secret, the documentation relating to such Trade Secret is current, accurate and sufficient in detail and content to identify and explain it and to allow its full and proper use without reliance on the knowledge or memory of any individual. (ii) Sellers and Foreign Subsidiaries have taken all reasonable precautions to protect the secrecy, confidentiality and value of all Trade Secrets (including the enforcement by Sellers and/or Foreign Subsidiaries of a policy requiring each employee or contractor to execute proprietary information and confidentiality agreements substantially in Sellers' or Foreign Subsidiaries' standard form, and all current and former employees and contractors of Sellers and Foreign Subsidiaries have executed such an agreement). (iii) Sellers and/or Foreign Subsidiaries have good title to and an absolute right to use the Trade Secrets. The Trade Secrets are not part of the public knowledge or literature and, to Sellers' and Foreign Subsidiaries' Knowledge, have not been used, divulged or appropriated either for the benefit of any Person (other than a Seller or a Foreign Subsidiary) or to the detriment of Sellers or Foreign Subsidiaries. No Trade Secret is subject to any adverse claim or has been challenged or threatened in any way or infringes any intellectual property right of any other Person.

(h) (i) Part 3.25(h) contains a complete and accurate list and summary description of all Net Names. (ii) All Net Names have been registered in the name of the applicable Seller and are in compliance with all formal Legal Requirements. (iii) No Net Name has been or is now involved in any dispute, opposition, invalidation or cancellation Proceeding and, to Sellers' and Foreign Subsidiaries' Knowledge, no such action is threatened with respect to any Net Name. (iv) To Sellers' and Foreign Subsidiaries' Knowledge, there is no domain name application pending of any other person which would or would potentially interfere with or infringe any Net Name. (v) No Net Name is infringed or, to Sellers' and Foreign Subsidiaries' Knowledge, has been challenged, interfered with or threatened in any way. No Net Name infringes, interferes with or is alleged to interfere with or infringe the trademark, copyright or domain name of any other Person.

3.26 COMPLIANCE WITH THE FOREIGN CORRUPT PRACTICES ACT AND EXPORT CONTROL AND ANTIBOYCOTT LAWS

(a) No Seller, no Foreign Subsidiary nor any of their representatives have, to obtain or retain business, directly or indirectly offered, paid or promised to pay, or authorized the payment of, any money or other thing of value (including any fee, gift, sample, travel expense or entertainment with a value in excess of one hundred dollars ($100.00) in the aggregate to any one individual in any year) or any commission payment in excess of one percent (1%) of any amount payable, to: (i) any person who is an official, officer, agent, employee or representative of any Governmental Body or of any existing or prospective customer (whether government owned or nongovernment owned); (ii) any political party or official thereof; (iii) any candidate for political or political party office; or (iv) any other individual or entity; while knowing or having reason to believe that all or any portion of such money or thing of value would be offered, given, or promised, directly or indirectly, to any such official, officer, agent, employee, representative, political party, political party official, candidate, individual, or any entity affiliated with such customer, political party or official or political office.

(b) Except as set forth in Part 3.26(b), Sellers and Foreign Subsidiaries have made all payments to Third Parties by check mailed to such Third Parties' principal place of business or by wire transfer to a bank located in the same jurisdiction as such party's principal place of business.

(c) Each transaction is properly and accurately recorded on the books and Records of Sellers, and each document upon which entries in Sellers' and Foreign Subsidiaries' books and Records are based is complete and accurate in all respects. Sellers maintain a system of internal accounting controls adequate to insure that Sellers maintain no off-the-books accounts and that Sellers' assets are used only in accordance with Sellers' management directives.

(d) Sellers and Foreign Subsidiaries have at all times been in compliance with all Legal Requirements relating to export control and trade embargoes. No product sold or service provided by any Seller during the last five (5) years has been, directly or indirectly, sold to or performed on behalf of Cuba, Iraq, Iran, Libya or North Korea.

(e) Except as set forth in Part 3.26(e), no Seller and no Foreign Subsidiary has violated the antiboycott prohibitions contained in 50 U.S.C. sect. 2401 et seq. or taken any action that can be penalized under Section 999 of the Code. Except as set forth in Part 3.27(e), during the last five (5) years, no Seller has been a party to, is not a beneficiary under and has not performed any service or sold any product under any Seller Contract under which a product has been sold to customers in Bahrain, Iraq, Jordan, Kuwait, Lebanon, Libya, Oman, Quatar, Saudi Arabia, Sudan, Syria, United Arab Emirates or the Republic of Yemen.

3.27 RELATIONSHIPS WITH RELATED PERSONS Except as disclosed in Part 3.27, none of any Seller, any Foreign Subsidiary, Outline Associates nor any Principal nor any Related Person of any of them has, or since January 1, 2010, has had, any interest in any property (whether real, personal or mixed and whether tangible or intangible) used in or pertaining to the Business. None of any Seller, any Foreign Subsidiary, Outline Associates nor any Principal nor any Related Person of any of them owns, or since January 1, 2010, has owned, of record or as a beneficial owner, an equity interest or any other financial or profit interest in any Person that has (a) had business dealings or a material financial interest in any transaction with any Seller or any Foreign Subsidiary other than business dealings or transactions disclosed in Part 3.27, each of which has been conducted in the Ordinary Course of Business with any Seller or any Foreign Subsidiary at substantially prevailing market prices and on substantially prevailing market terms or (b) engaged in competition with any Seller or any Foreign Subsidiary with respect to any line of the products or services of a Seller or a Foreign Subsidiary (a "Competing Business") in any market presently served by a Seller or a Foreign Subsidiary, except for ownership of less than one percent (1%) of the outstanding capital stock of any Competing Business that is publicly traded on any recognized exchange or in the over-the-counter market. Except as set forth in Part 3.27, neither any Seller, any Foreign Subsidiary, Outline Associates nor any Principal nor any Related Person of any of them is a party to any Contract with, or has any claim or right against, any Seller or any Foreign Subsidiary.

3.28 CUSTOMERS AND VENDORS . Part 3.28 is a true and complete list of Sellers' and Foreign Subsidiaries' customers and vendors during each of the fiscal years 2009 and 2010 and during the first seven (7) months of fiscal year 2011 with annual dollar or dollar equivalent volumes of sales or purchases in excess of Two Hundred Thousand Dollars ($200,000) showing, with respect to each, the name, address and dollar amount involved and the nature of the relationship (including the principal categories of products or services bought and sole). Except as set forth on Part 3.28, in the twelve months prior to the date hereof, there has been no Material Adverse Change in respect to sales volume or profit margins, in Sellers' and Foreign Subsidiaries' relationship with their ten largest customers during such period. No Seller and no Foreign Subsidiary is required to provide bonding or other financial security arrangements in connection with any transactions with any of its customers or vendors in the ordinary course of its business, other than as set forth on Part 3.28.

3.29 BROKERS OR FINDERS Neither any Seller, any Foreign Subsidiary nor any of its Representatives have incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payments in connection with the sale of the Business or the Assets or the Contemplated Transactions.

3.30 DISCLOSURE None of any Seller, any Foreign Subsidiary, Outline Associates nor any Principal has any Knowledge of any fact that has specific application to Sellers or Foreign Subsidiaries (other than general economic or industry conditions) and that may materially adversely affect the Assets, Business, prospects, financial condition or results of operations of Sellers and/or Foreign Subsidiaries that has not been set forth in this Agreement or the Disclosure Letter.

Section 4. Representations and Warranties of Buyer Buyer represents and warrants to Sellers, Outline Associates and Principals as follows:

4.1 ORGANIZATION AND GOOD STANDING Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, with full corporate power and authority to conduct its business as it is now conducted. Buyer has adequate funds on hand or available from financing in place to satisfy the Purchase Price and all of Buyer's other obligations under this Agreement.

4.2 AUTHORITY; NO CONFLICT (a) This Agreement constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms. Upon the execution and delivery by Buyer of the Transfer, Assignment, Bill of Sale and Assumption Agreement, the Escrow Agreement, the Employment Agreements and each other agreement to be executed or delivered by Buyer at Closing (collectively, the "Buyer's Closing Documents"), each of the Buyer's Closing Documents will constitute the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its respective terms. Buyer has the absolute and unrestricted right, power and authority to execute and deliver this Agreement and the Buyer's Closing Documents and to perform its obligations under this Agreement and the Buyer's Closing Documents, and such action has been duly authorized by all necessary corporate action. (b) Neither the execution and delivery of this Agreement by Buyer nor the consummation or performance of any of the Contemplated Transactions by Buyer will give any Person the right to prevent, delay or otherwise interfere with any of the Contemplated Transactions pursuant to: (i) any provision of Buyer's Governing Documents; (ii) any resolution adopted by the board of directors or the shareholders of Buyer; (iii) any Legal Requirement or Order to which Buyer may be subject; or (iv) any Contract to which Buyer is a party or by which Buyer may be bound. Buyer is not and will not be required to obtain any Consent from any Person in connection with the execution and delivery of this Agreement or the consummation or performance of any of the Contemplated Transactions.

4.3 CERTAIN PROCEEDINGS There is no pending Proceeding that has been commenced against Buyer and that challenges, or may have the effect of preventing, delaying, making illegal or otherwise 50 interfering with, any of the Contemplated Transactions. To Buyer's Knowledge, no such Proceeding has been threatened.

4.4 BROKERS OR FINDERS Neither Buyer nor any of its Representatives have incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with the Contemplated Transactions.

Section 5. Covenants of Sellers Prior to Closing

5.1 ACCESS AND INVESTIGATION Between the date of this Agreement and the Closing Date, and upon reasonable advance notice received from Buyer, Sellers and Foreign Subsidiaries shall (a) afford Buyer and its Representatives (collectively, "Buyer Group") full and free access, during regular business hours, to Sellers' and Foreign Subsidiaries' personnel, properties (including subsurface testing), Contracts, Governmental Authorizations, books and Records and other documents and data, such rights of access to be exercised in a manner that does not unreasonably interfere with the operations of Sellers and Foreign Subsidiaries; (b) furnish Buyer Group with copies of all such Contracts, Governmental Authorizations, books and Records and other existing documents and data as Buyer may reasonably request; (c) furnish Buyer Group with such additional financial, operating and other relevant data and information as Buyer may reasonably request; and (d) otherwise cooperate and assist, to the extent reasonably requested by Buyer, with Buyer's investigation of the properties, assets and financial condition related to Sellers and Foreign Subsidiaries. In addition, Buyer shall have the right to have the Real Property and Tangible Personal Property inspected by Buyer Group, at Buyer's sole cost and expense, for purposes of determining the physical condition and legal characteristics of the Real Property and Tangible Personal Property. In the event subsurface or other destructive testing is recommended by any of Buyer Group, Buyer shall be permitted to have the same performed.

5.2 OPERATION OF THE BUSINESS Between the date of this Agreement and the Closing, Sellers and Foreign Subsidiaries shall: (a) conduct the Business only in the Ordinary Course of Business; (b) except as otherwise directed by Buyer in writing, and without making any commitment on Buyer's behalf, use its Best Efforts to preserve intact its current business organization, keep available the services of its officers, employees and agents and maintain its relations and good will with suppliers, customers, landlords, creditors, employees, agents and others having business relationships with it; (c) confer with Buyer prior to implementing operational decisions of a material nature; 51 (d) otherwise report periodically to Buyer concerning the status of the Business; (e) make no material changes in management personnel without prior consultation with Buyer; (f) maintain the Assets in a state of repair and condition that complies with Legal Requirements and is consistent with the requirements and normal conduct of the Business; (g) keep in full force and effect, without amendment, all material rights relating to the Business; (h) comply with all Legal Requirements and contractual obligations applicable to the operations of the Business; (i) continue in full force and effect the insurance coverage under the policies set forth in Part 3.21(a) or substantially equivalent policies; (j) except as required to comply with ERISA or to maintain qualification under Section 401(a) of the Code, not amend, modify or terminate any Employee Plan without the express written consent of Buyer, and except as required under the provisions of any Employee Plan, not make any contributions to or with respect to any Employee Plan without the express written consent of Buyer, provided that Sellers and Foreign Subsidiaries shall contribute that amount of cash to each Employee Plan necessary to fully fund all of the benefit liabilities of such Employee Plan on a plan-termination basis as of the Closing Date; (k) cooperate with Buyer and assist Buyer in identifying the Governmental Authorizations required by Buyer to operate the business from and after the Closing Date and either transferring existing Governmental Authorizations of Seller to Buyer, where permissible, or obtaining new Governmental Authorizations for Buyer; (l) upon request from time to time, execute and deliver all documents, make all truthful oaths, testify in any Proceedings and do all other acts that may be reasonably necessary or desirable in the opinion of Buyer to consummate the Contemplated Transactions, all without further consideration; and (m) maintain all books and Records of Sellers and Foreign Subsidiaries relating to the Business in the Ordinary Course of Business.

5.3 NEGATIVE COVENANT Except as otherwise expressly permitted herein, between the date of this Agreement and the Closing Date, Sellers and Foreign Subsidiaries shall not, without the prior written Consent of Buyer, (a) take any affirmative action, or fail to take any reasonable action within its control, as a result of which any of the changes or events listed in Sections 3.15 or 3.19 would be likely to occur; (b) make any modification to any material Contract or Governmental Authorization; (c) allow the levels of raw materials, supplies or other materials included in the Inventories to vary materially from the levels customarily maintained; (d) enter into any compromise or 52 settlement of any litigation, proceeding or governmental investigation relating to the Assets, the business of Seller or the Assumed Liabilities; and (e) except with the written consent of Buyer (not to be unreasonably withheld), no Seller and no Foreign Subsidiary shall authorize or pay or agree to pay or accrue any wage, salary or other increase in remuneration of directors, officers or other employees or agents (other than scheduled cost of living adjustments and customary compensation reviews conducted in accordance with past practice), not authorize or make any changes in compensation or policy regarding compensation payable or to become payable to any directors, officers or other employees (other than scheduled cost of living adjustments and customary compensation reviews conducted in accordance with past practice), and not hire any new employees or elect any new officers or directors of Sellers or Foreign Subsidiaries; provided that, without Buyer's written consent, Sellers and/or Foreign Subsidiaries may, in the normal course of business, hire persons to replace terminated employees and hire new employees as may be necessary or appropriate to conduct its business, provided that such increases and hirings do not increase the level of payroll costs of Sellers and Foreign Subsidiaries.

5.4 REQUIRED APPROVALS As promptly as practicable after the date of this Agreement, Sellers and Foreign Subsidiaries shall make all filings required by Legal Requirements to be made by them in order to consummate the Contemplated Transactions. Sellers, Foreign Subsidiaries, Outline Associates and Principals also shall cooperate with Buyer and its Representatives with respect to all filings that Buyer elects to make or, pursuant to Legal Requirements, shall be required to make in connection with the Contemplated Transactions. Sellers, Foreign Subsidiaries, Outline Associates and Principals also shall cooperate with Buyer and its Representatives in obtaining all Material Consents.

5.5 NOTIFICATION Between the date of this Agreement and the Closing, Sellers, Foreign Subsidiaries, Outline Associates and Principals shall promptly notify Buyer in writing if any of them becomes aware of (a) any fact or condition that causes or constitutes a Breach of any of Sellers', Foreign Subsidiaries', Outline Associates' and Principals' representations and warranties made as of the date of this Agreement or (b) the occurrence after the date of this Agreement of any fact or condition that would or be reasonably likely to (except as expressly contemplated by this Agreement) cause or constitute a Breach of any such representation or warranty had that representation or warranty been made as of the time of the occurrence of, or any Seller's, any Foreign Subsidiary's, Outline Associates' or any Principal's discovery of, such fact or condition. Should any such fact or condition require any change to the Disclosure Letter, Sellers and Foreign Subsidiaries shall promptly deliver to Buyer a supplement to the Disclosure Letter specifying such change. Such delivery shall not affect any rights of Buyer under Section 9.2 and Section 11. During the same period, Sellers, Foreign Subsidiaries, Outline Associates and Principals also shall promptly notify Buyer of the occurrence of any Breach of any covenant of Sellers, Foreign Subsidiaries, Outline Associates or Principals in this Section 5 or of the occurrence of any event that may make the satisfaction of the conditions in Section 7 impossible or unlikely.

5.6 NO NEGOTIATION Until such time as this Agreement shall be terminated pursuant to Section 9.1, neither any Seller, any Foreign Subsidiary, Outline Associates nor any Principal shall directly or indirectly solicit, initiate, encourage or entertain any inquiries or proposals from, discuss or negotiate with, provide any nonpublic information to or consider the merits of any inquiries or proposals from any Person (other than Buyer) relating to any business combination transaction involving any Seller or any Foreign Subsidiary , including the sale by Outline Associates or Principals of any Seller's, any Foreign Subsidiary's, or Outline Associates' equity interest, the merger or consolidation of Seller or the sale of Seller's business or any of the Assets (other than in the Ordinary Course of Business). Sellers, Foreign Subsidiaries, Outline Associates and Principals shall notify Buyer of any such inquiry or proposal within twenty-four (24) hours of receipt or awareness of the same by any Seller, any Foreign Subsidiary, Outline Associates or any Principal.

5.7 BEST EFFORTS Sellers, Foreign Subsidiaries, Outline Associates and Principals shall use their Best Efforts to cause the conditions in Section 7 and Section 8.3 to be satisfied.

5.8 INTERIM FINANCIAL STATEMENTS Sellers shall deliver to Buyer within three (3) days of the Closing Date a Financial Report for the period ending August 31, 2011, and to the extent the Closing is extended beyond October 1, 2011, for each month thereafter within fifteen (15) days of such month end, in each case prepared in accordance with past practice and certified by an officer of Sellers.

5.9 CHANGE OF NAME On or before the Closing Date, each Seller shall (a) amend its Governing Documents and take all other actions necessary to change its name to one sufficiently dissimilar to such Seller's present name, in Buyer's judgment, to avoid confusion and (b) take all actions requested by Buyer (or any Subsidiary thereof) to enable Buyer to change its name to Seller's present name.

5.10 PAYMENT OF LIABILITIES Sellers shall pay or otherwise satisfy in the Ordinary Course of Business all of their Liabilities and obligations. Prior to the Closing, Foreign Subsidiaries shall pay or otherwise satisfy all of their Liabilities that are Retained Liabilities. Buyer and Sellers hereby waive compliance with the bulk-transfer provisions of the Uniform Commercial Code (or any similar law) ("Bulk Sales Laws") in connection with the Contemplated Transactions.

Section 6. Covenants of Buyer Prior to Closing

6.1 REQUIRED APPROVALS As promptly as practicable after the date of this Agreement, Buyer shall make, or cause to be made, all filings required by Legal Requirements to be made by it to consummate the Contemplated Transactions. Buyer also shall cooperate, and cause its Related Persons to cooperate, with Sellers and Foreign Subsidiaries (a) with respect to all filings Sellers and/or Foreign Subsidiaries shall be required by Legal Requirements to make and (b) in obtaining all Consents identified in Part 3.2(c), provided, however, that Buyer shall not be required to dispose of or make any change to its business, expend any material funds or incur any other burden in order to comply with this Section 6.1.

6.2 BEST EFFORTS Buyer shall use its Best Efforts to cause the conditions in Section 8 and Section 7.3 to be satisfied.

Section 7. Conditions Precedent to Buyer's Obligation to Close Buyer's obligation to purchase the Assets and to take the other actions required to be taken by Buyer at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Buyer, in whole or in part):

7.1 ACCURACY OF REPRESENTATIONS

(a) All of Sellers', Foreign Subsidiaries' and Outline Associates' representations and warranties in this Agreement (considered collectively), and each of these representations and warranties (considered individually), shall have been accurate in all material respects as of the date of this Agreement, and shall be accurate in all material respects as of the time of the Closing as if then made, without giving effect to any supplement to the Disclosure Letter.

(b) Each of the representations and warranties in Sections 3.2(a) and 3.4, and each of the representations and warranties in this Agreement that contains an express materiality qualification, shall have been accurate in all respects as of the date of this Agreement, and shall be accurate in all respects as of the time of the Closing as if then made, without giving effect to any supplement to the Disclosure Letter.

7.2 SELLERS', FOREIGN SUBSIDIARIES', OUTLINE ASSOCIATES' AND PRINCIPALS' PERFORMANCE All of the covenants and obligations that Sellers, Foreign Subsidiaries, Outline Associates and Principals are required to perform or to comply with pursuant to this Agreement at or prior to the Closing (considered collectively), and each of these covenants and obligations (considered individually) shall have been duly performed and complied with in all material respects.

7.3 CONSENTS Each of the Consents identified in Exhibit 7.3 (the "Material Consents") shall have been obtained and shall be in full force and effect.

7.4 ADDITIONAL DOCUMENTS Sellers, Foreign Subsidiaries, Outline Associates and Principals shall have caused the documents and instruments required by Section 2.7(a) and the following documents to be delivered (or tendered subject only to Closing) to Buyer: (a) an opinion of Neville Marina Attorneys PLLC and/or appropriate foreign counsel, dated the Closing Date, in a form reasonably acceptable to Buyer; (b) The certificate, articles and/or equivalent of incorporation or formation and all amendments thereto of each Seller and each Foreign Subsidiary, duly certified as of a recent date by the Secretary of State of the jurisdiction of such Seller's or such Foreign Subsidiary's incorporation; (c) If requested by Buyer, any Consents or other instruments that may be required to permit Buyer's qualification in each jurisdiction in which any Seller is licensed or qualified to do business as a foreign corporation under the name "LAMOC" or "INCLEX" or any derivative thereof; (d) A payoff letter or equivalent from the holder of Sellers' and Foreign Subsidiaries' indebtedness for money borrowed; (e) Releases of all Encumbrances on the Assets, other than Permitted Encumbrances, including releases of each mortgage of record and reconveyances of each deed of trust with respect to each parcel of real property included in the Assets; and (f) Certificates dated as of a date not earlier than the thirtieth (30th) day prior to the Closing as to the good standing of each Seller and each Foreign Subsidiary and payment of all applicable state (or foreign jurisdiction) Taxes by each Seller and each Foreign Subsidiary, executed by the appropriate officials of the State (or nation) of organization and each jurisdiction in which any Seller or Foreign Subsidiary is licensed or qualified to do business as a foreign corporation as specified in Part 3.1(a).

7.5 NO PROCEEDINGS Since the date of this Agreement, there shall not have been commenced or threatened against Buyer, or against any Related Person of Buyer, any Proceeding (a) involving any challenge to, or seeking Damages or other relief in connection with, any of the Contemplated Transactions or (b) that may have the effect of preventing, delaying, making illegal, imposing limitations or conditions on or otherwise interfering with any of the Contemplated Transactions.

7.6 NO CONFLICT Neither the consummation nor the performance of any of the Contemplated Transactions will, directly or indirectly (with or without notice or lapse of time), contravene or conflict with or result in a violation of or cause Buyer or any Related Person of Buyer to suffer any adverse consequence under (a) any applicable Legal Requirement or Order or (b) any Legal Requirement 56 or Order that has been published, introduced or otherwise proposed by or before any Governmental Body, excluding Bulk Sales Laws.

7.7 REAL PROPERTY LEASES Buyer shall be satisfied with the terms and conditions of Sellers' lease for their premises at (i) Address, USA and (ii) Address, USA, or Buyer shall have renegotiated the terms and conditions of any such lease to Buyer's reasonable satisfaction. The lessor under each such lease shall have consented to the transactions contemplated hereby or Buyer shall have concluded that any such Consent is not required.

7.8 GOVERNMENTAL AUTHORIZATIONS Buyer shall have received such Governmental Authorizations as are necessary or desirable to allow Buyer to operate the Assets from and after the Closing.

7.9 ENVIRONMENTAL REPORT Buyer shall have received any existing environmental site assessment report with respect to Sellers' Facilities, which report shall be reasonably acceptable in form and substance to Buyer.

7.10 WARN ACT NOTICE PERIODS AND EMPLOYEES

(a) All requisite notice periods under the Warn Act shall have expired.

(b) Buyer shall have entered into employment agreements with those employees of Seller identified in Exhibit 7.10.

(c) Those key employees of Sellers identified on Exhibit 7.10, or substitutes therefor who shall be acceptable to Buyer, in its sole discretion, shall have accepted employment with Buyer with such employment to commence on and as of the Closing Date.

(d) Substantially all other employees of Sellers shall be available for hiring by Buyer, in its sole discretion, on and as of the Closing Date.

7.11 ANCILLARY AGREEMENTS The relevant Persons shall have entered into ancillary agreements in form and substance as set forth in Exhibit 7.11 hereto.

7.12 ACCOUNT RELATIONSHIPS Buyer's President or Vice President shall have the opportunity to meet together with a representative of Sellers with Sellers' key account relationships and Buyer shall be reasonably satisfied as to the existence and condition of the account relationship are materially accurate as represented by Sellers.

7.13 FIXED AND OTHER ASSETS The Assets include all fixed assets (less normal depreciation) and any other tangible and intangible assets of Sellers and Foreign Subsidiaries shown on the Interim Statement of Assets and Liabilities of Sellers delivered by Seller Representative to Buyer pre-Closing.

7.14 DUE DILIGENCE Buyer shall have not notified Seller Representative by September 28, 2011 that Buyer's due diligence investigation shall have uncovered items or circumstances that are Materially adverse to the Business or the Assets.

Section 8. Conditions Precedent to Sellers' Obligation to Close Sellers' obligation to sell the Assets and to take the other actions required to be taken by Sellers at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Sellers in whole or in part):

8.1 ACCURACY OF REPRESENTATIONS All of Buyer's representations and warranties in this Agreement (considered collectively), and each of these representations and warranties (considered individually) shall have been accurate in all material respects as of the date of this Agreement and shall be accurate in all material respects as of the time of the Closing as if then made.

8.2 BUYER'S PERFORMANCE All of the covenants and obligations that Buyer is required to perform or to comply with pursuant to this Agreement at or prior to the Closing (considered collectively), and each of these covenants and obligations (considered individually), shall have been performed and complied with in all material respects.

8.3 CONSENTS Each of the Consents identified in Exhibit 8.3 shall have been obtained and shall be in full force and effect.

8.4 ADDITIONAL DOCUMENTS Buyer shall have caused the documents and instruments required by Section 2.7(b) and the following documents to be delivered (or tendered subject only to Closing) to Sellers, Outline Associates and Principals: (a) an opinion of Holcombe Madison P.C., dated the Closing Date, in a form acceptable to Seller Representative; and (b) the certificate, articles and/or equivalent of incorporation or formation and all amendments thereto of Buyer, duly certified as of a recent date by the Secretary of State of the jurisdiction of Buyer's incorporation.

8.5 NO INJUNCTION There shall not be in effect any Legal Requirement or any injunction or other Order that (a) prohibits the consummation of the Contemplated Transactions and (b) has been adopted or issued, or has otherwise become effective, since the date of this Agreement.

Section 9. Termination

9.1 TERMINATION EVENTS By notice given prior to or at the Closing, subject to Section 9.2, this Agreement may be terminated as follows:

(a) by Buyer if a material Breach of any provision of this Agreement has been committed by Sellers, Foreign Subsidiaries or Outline Associates and such Breach has not been cured after reasonable notice or waived by Buyer;

(b) by Sellers if a material Breach of any provision of this Agreement has been committed by Buyer and such Breach has not been cured after reasonable notice or waived by Seller Representative;

(c) by Buyer if any condition in Section 7 has not been satisfied as of the date specified for Closing in the first sentence of Section 2.6 or if satisfaction of such a condition by such date is or becomes impossible (other than through the failure of Buyer to comply with its obligations under this Agreement), and Buyer has not waived or Sellers have not satisfied such condition on or before such date plus a reasonable cure period;

(d) by Sellers if any condition in Section 8 has not been satisfied as of the date specified for Closing in the first sentence of Section 2.6 or if satisfaction of such a condition by such date is or becomes impossible (other than through the failure of Sellers or Outline Associates to comply with their obligations under this Agreement), and Seller Representative has not waived or Buyer has not satisfied such condition on or before such date plus a reasonable cure period;

(e) by mutual consent of Buyer and Sellers, Foreign Subsidiaries, Outline Associates and Principals;

(f) by Buyer, if the Closing has not occurred on or before November 30, 2011, or such later date as the parties may agree upon, unless the Buyer is in material Breach of this Agreement; or

(g) by Sellers and Outline Associates, if the Closing has not occurred on or before November 30, 2011, or such later date as the parties may agree upon, unless the Sellers or Outline Associates are in material Breach of this Agreement.

9.2 EFFECT OF TERMINATION Each party's right of termination under Section 9.1 is in addition to any other rights it may have under this Agreement or otherwise, and the exercise of such right of termination will not be an election of remedies. If this Agreement is terminated pursuant to Section 9.1, all obligations of the parties under this Agreement will terminate, except that the obligations of the parties in this Section 9.2 and Sections 12 and 13 (except for those in Section 13.5) will survive; provided, however, that, if this Agreement is terminated because of a Breach of this Agreement by the nonterminating party or because one or more of the conditions to the terminating party's obligations under this Agreement is not satisfied as a result of the party's failure to comply with its obligations under this Agreement, the terminating party's right to pursue all legal remedies will survive such termination unimpaired.

Section 10. Additional Covenants

10.1 EMPLOYEES AND EMPLOYEE BENEFITS

(a) Information on Active Employees. For the purpose of this Agreement, the term "Active Employees" shall mean all employees employed on the Closing Date by Sellers and Foreign Subsidiaries for the Business who are: (i) bargaining unit employees currently covered by a collective bargaining agreement, or (ii) employed exclusively in the Business as currently conducted, including employees on temporary leave of absence, including family medical leave, military leave, temporary disability or sick leave, but excluding employees on long-term disability leave.

(b) Employment of Active Employees by Buyer. (i) Buyer shall hire the Active Employees of Sellers specified on Part 10.1(b) as updated at the Closing. Not later than three (3) days prior to the Closing Date, Buyer and Sellers will develop a list of Active Employees to whom Buyer will offer employment upon the Effective Time (the "Hired Active Employees"). Subject to Legal Requirements, Buyer will have reasonable access to the Facilities and personnel Records (including performance appraisals, disciplinary actions, grievances and medical Records) of Sellers and Foreign Subsidiaries for the purpose of preparing for and conducting employment interviews with all Active Employees and will conduct the interviews as expeditiously as possible prior to the Closing Date. Access will be provided by Sellers and Foreign Subsidiaries upon reasonable prior notice during normal business hours. Effective immediately before the Closing, Sellers will terminate the employment of all of its Hired Active Employees. (ii) Neither any Seller, Outline Associates nor any Principal nor their Related Persons shall solicit the continued employment of any Active Employee or hire any Active Employee (unless and until Buyer has informed Seller Representative in writing that the particular Active Employee will not receive any employment offer from 60 Buyer) or for a period of five (5) years (two (2) years with respect to the non-hire covenant) after the Closing Date, the employment of any Hired Active Employee after the Closing. Buyer shall inform Seller Representative promptly of the identities of those Active Employees to whom it will not make employment offers, and Seller Representative shall assist Buyer in complying with the WARN Act as to those Active Employees. Neither Sellers, Outline Associates nor Principals shall be deemed to have breached the non-solicitation covenant contained herein if any such Hired Active Employee responds to an advertisement of general publication. (iii) It is understood and agreed that (A) Buyer's expressed intention to extend offers of employment as set forth in this section shall not constitute any commitment, Contract or understanding (expressed or implied) of any obligation on the part of Buyer to a post-Closing employment relationship of any fixed term or duration or upon any terms or conditions other than those that Buyer may establish pursuant to individual offers of employment, and (B) employment offered by Buyer is "at will" and may be terminated by Buyer or by an employee at any time for any reason (subject to any written commitments to the contrary made by Buyer or an employee and Legal Requirements). Nothing in this Agreement shall be deemed to prevent or restrict in any way the right of Buyer to terminate, reassign, promote or demote any of the Hired Active Employees after the Closing or to change adversely or favorably the title, powers, duties, responsibilities, functions, locations, salaries, other compensation or terms or conditions of employment of such employees.

(c) Salaries and Benefits. (i) Except to the extent included within the Assumed Liabilities, Sellers shall be responsible for (A) the payment of all wages and other remuneration due to their Active Employees with respect to their services as employees of Sellers through the close of business on the Closing Date, including pro rata bonus payments and all vacation pay earned prior to the Closing Date; (B) the payment of any termination or severance payments and the provision of health plan continuation coverage in accordance with the requirements of COBRA and Sections 601 through 608 of ERISA; and (C) any and all payments to employees required under the WARN Act. (ii) Sellers shall be liable for any claims made or incurred by Active Employees and their beneficiaries through the Closing Date under the Employee Plans. For purposes of the immediately preceding sentence, a charge will be deemed incurred, in the case of hospital, medical or dental benefits, when the services that are the subject of the charge are performed and, in the case of other benefits (such as disability or life insurance), when an event has occurred or when a condition has been diagnosed that entitles the employee to the benefit.

(d) Sellers' Retirement and Savings Plans. (i) All Hired Active Employees who are participants in Sellers' retirement plans shall retain their accrued benefits under Sellers' retirement plans as of the Closing Date, and Sellers (or Sellers' retirement plans) shall retain sole liability for 61 the payment of such benefits as and when such Hired Active Employees become eligible therefor under such plans. All Hired Active Employees shall become fully vested in their accrued benefits under Sellers' retirement plans as of the Closing Date, and Sellers will so amend such plans if necessary to achieve this result. Sellers shall cause the assets of each Employee Plan to equal or exceed the benefit liabilities of such Employee Plan on a plan-termination basis as of the Effective Time. (ii) Sellers shall take such actions as are necessary in order that the Hired Active Employees shall be fully vested in their accounts under such plan as of the Closing Date and all payments thereafter shall be made from such plan as provided in the plan.

(e) No Transfer of Assets. Neither any Seller nor Outline Associates nor their respective Related Persons will make any transfer of pension or other employee benefit plan assets to Buyer. The preceding sentence shall not preclude Hired Active Employees from electing to roll over their account balances in Sellers' savings plan to the Buyer's savings plan and Buyer shall take such reasonable actions as may be necessary to permit such rollovers by Hired Active Employees, unless Buyer determines in good faith that the acceptance of rollovers from Sellers' savings plan would adversely affect the qualified status of Buyer's savings plan.

(f) Collective Bargaining Matters. Buyer will set its own initial terms and conditions of employment for the Hired Active Employees and others it may hire, including work rules, benefits and salary and wage structure, all as permitted by law. Buyer is not obligated to assume any collective bargaining agreements under this Agreement. Sellers shall be solely liable for any severance payment required to be made to its employees due to the Contemplated Transactions. Any bargaining obligations of Buyer with any union with respect to bargaining unit employees subsequent to the Closing, whether such obligations arise before or after the Closing, shall be the sole responsibility of Buyer.

(g) General Employee Provisions. (i) Sellers, Foreign Subsidiaries and Buyer shall give any notices required by Legal Requirements and take whatever other actions with respect to the plans, programs and policies described in this Section 10.1 as may be necessary to carry out the arrangements described in this Section 10.1. (ii) Sellers, Foreign Subsidiaries and Buyer shall provide each other with such plan documents and summary plan descriptions, employee data or other information as may be reasonably required to carry out the arrangements described in this Section 10.1. (iii) If any of the arrangements described in this Section 10.1 are determined by the IRS or other Governmental Body to be prohibited by law, Sellers and Buyer shall modify such arrangements to as closely as possible reflect their expressed intent and retain the allocation of economic benefits and burdens to the parties contemplated herein in a manner that is not prohibited by law. 62 (iv) Sellers shall provide Buyer with completed I-9 forms (or equivalent forms required by local law) and attachments with respect to all Hired Active Employees, except for such employees as Sellers certify in writing to Buyer are exempt from such requirement. (v) Buyer shall not have any responsibility, liability or obligation, whether to Active Employees, former employees, their beneficiaries or to any other Person, with respect to any employee benefit plans, practices, programs or arrangements (including the establishment, operation or termination thereof and the notification and provision of COBRA coverage extension) maintained by Sellers.

(h) Past Service credit in Buyer's Employee Benefit Plans.

(i) Buyer agrees that Hired Active Employees and employees of Foreign Subsidiaries will not be subject to any exclusion or penalty for pre-existing conditions that were covered under a medical plan of any Seller or Foreign Subsidiary covering such employees immediately prior to the Closing or any waiting period relating to coverage under the Buyer's medical plan. Buyer further agrees that, to the extent that the initial period of coverage for Hired Active Employees under any Employee Plan of Buyer that is an "Employee Welfare Benefit Plan," as defined in Section 3(1) of ERISA, is not a full twelve (12) month period of coverage, Hired Active Employees and employees of Foreign Subsidiaries shall be given credit under the applicable welfare plan for any deductibles and co-insurance payments made by such employees under the corresponding Seller Employee Plan during the balance of such twelve (12) month period of coverage. (ii) With respect to any Buyer Employee Plan intended to qualify under Section 401(a) of the Code, the prior service with a Seller of Hired Active Employees and employees of Foreign Subsidiaries shall be taken into account for purposes of eligibility and vesting under such Plans. (iii) With respect to employee benefits such as vacation pay, sick pay, personal days, and the like, the prior service with a Seller of Hired Active Employees and employees of Foreign Subsidiaries shall be applied for purposes of eligibility, vesting and the level of benefit to which the employee is entitled.

10.2 PAYMENT OF ALL TAXES RESULTING FROM SALE OF ASSETS BY SELLERS Sellers shall pay in a timely manner all Taxes resulting from or payable in connection with the sale of the Assets pursuant to this Agreement, regardless of the Person on whom such Taxes are imposed by Legal Requirements.

10.3 PAYMENT OF OTHER RETAINED LIABILITIES In addition to payment of Taxes pursuant to Section 10.2, Sellers shall pay, or make adequate provision for the payment, in full all of the Retained Liabilities and other Liabilities of Sellers under this Agreement. If any such Liabilities are not so paid or provided for, or if Buyer 63 reasonably determines that failure to make any payments will impair Buyer's use or enjoyment of the Assets or conduct of the Business previously conducted by Sellers with the Assets, Buyer may, at any time after the Closing Date, elect to make all such payments directly (but shall have no obligation to do so) and Sellers and Outline Associates shall indemnify Buyer for any amount so paid pursuant to the provisions of Section 11.

10.4 INTENTIONALLY OMITTED

10.5 REMOVING EXCLUDED ASSETS On or before the Closing Date, Sellers shall remove all Excluded Assets from all Facilities and other Real Property to be occupied by Buyer. Such removal shall be done in such manner as to avoid any damage to the Facilities and other properties to be occupied by Buyer and any disruption of the business operations to be conducted by Buyer after the Closing. Any damage to the Assets or to the Facilities resulting from such removal shall be paid by Sellers at the Closing. Should Sellers fail to remove the Excluded Assets as required by this Section, Buyer shall have the right, but not the obligation: (a) to remove the Excluded Assets at Sellers' sole cost and expense; (b) to store the Excluded Assets and to charge Sellers all storage costs associated therewith; (c) to treat the Excluded Assets as unclaimed and to proceed to dispose of the same under the laws governing unclaimed property; or (d) to exercise any other right or remedy conferred by this Agreement or otherwise available at law or in equity. Sellers shall promptly reimburse Buyer for all costs and expenses incurred by Buyer in connection with any Excluded Assets not removed by Sellers on or before the Closing Date.

10.6 REPORTS AND RETURNS Sellers shall promptly after the Closing prepare and file all reports and returns required by Legal Requirements relating to the Business of Sellers as conducted using the Assets, to and including the Effective Time.

10.7 ASSISTANCE IN PROCEEDINGS Sellers will cooperate with Buyer and its counsel in the contest or defense of, and make available its personnel and provide any testimony and access to its books and Records in connection with, any Proceeding involving or relating to (a) any Contemplated Transaction or (b) any action, activity, circumstance, condition, conduct, event, fact, failure to act, incident, occurrence, plan, practice, situation, status or transaction on or before the Closing Date involving Sellers or their Business or either Principal.

10.8 NONCOMPETITION, NONSOLICITATION AND NONDISPARAGEMENT

(a) For a period of five (5) years after the Closing Date, none of any Seller, Outline Associates nor any Principal shall without the prior written consent of Buyer: (i) solicit for employment any employee of any Seller who continued employment with Buyer after the Closing Date; (ii) directly or indirectly, alone or as a member of a partnership, or as an officer, stockholder (owning more than five percent of outstanding stock), corporate director, employee, consultant, or representative of any company or entity, compete with Buyer within the United States of America, Canada, the United Kingdom, Europe, Korea, China or Southeast Asia (the 64 "Territory"), in the Proscribed Business as conducted by Sellers or Foreign Subsidiaries prior to the Closing or the LAMOC division of PEMBORTON after the Closing; or (iii) perform any act which would divert from Buyer to any person or entity in which he has an interest or by whom he is employed, any trade or business with any customer with whom any Seller had any contact or association during the three year preceding the date hereof, or with any party whose identity or potential as a customer of any Seller was confidential or learned by Sellers or Principals during any period while each Principal was employed by or was a consultant to a Seller or the LAMOC division of PEMBORTON. Notwithstanding the foregoing, the restrictions contained in this Agreement shall not apply to any business or activity acquired by Outline Associates or Principals, which is not primarily engaged in the Proscribed Business; so long as Outline Associates or Principals use best efforts to divest that portion of any such business which would otherwise violate the non-solicitation provisions contained herein within a reasonable period after acquiring such business. Further, Sellers, Outline Associates or Principals, as applicable, shall provide Buyer with a bona fide "first look" to purchase any such business unit or division. In the event that, based on such "first look," Buyer makes a bona fide offer for such business unit or division, which offer is not accepted by Sellers, Outline Associates or Principals, as applicable, then Sellers, Outline Associates or Principals, as applicable, shall provide Buyer with a right of first refusal with respect to any offer for such business unit or division that Sellers, Outline Associates or Principals are so willing to accept. Buyer shall have ten (10) business days to exercise such right by providing Outline Associates or its successor with a binding written offer accepting the third-party offer on its exact terms; absent such timely exercise, Buyer's right shall be extinguished with respect to that specific business unit or division being offered for sale, provided , further , that such right shall be revived in the event the relevant third-party offer is not consummated within one hundred eighty (180) days thereafter.

(b) Outline Associates and each Principal acknowledges that by reason of its or his affiliation with Sellers it and he has had access to Sellers' products, markets and business and financial information which Sellers considers to be confidential or proprietary (collectively, the "Confidential Information"). Sellers, Outline Associates and each Principal covenant and agree that such Confidential Information is included within the Assets and they shall not, for the shorter period of two (2) years after the Closing Date or the date the information becomes available in the public domain other than as a result of wrongful disclosure by a Seller or a Principal (and in any event excluding information of a general industry nature or becoming otherwise available through a different source), directly or indirectly, in the Territory, use for their own behalf or divulge to any third party any Confidential Information of Sellers. Sellers, Outline Associates and Principals agree to deliver to Buyer at the Closing all material (and all copies thereof) which contains or relates to Confidential Information.

(c) Nondisparagement. After the Closing Date, none of any Seller, Outline Associates nor any Principal will disparage Buyer or any of Buyer's shareholders, directors, officers, employees or agents.

(d) Modification of Covenant. If a final judgment of a court or tribunal of competent jurisdiction determines that any term or provision contained in Section 10.8(a) through (c) is invalid or unenforceable, then the parties agree that the court or tribunal will have the power to reduce the scope, duration or geographic area of the term or provision, to delete specific words or phrases or to replace any invalid or unenforceable term or provision with a 65 term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision. This Section 10.8 will be enforceable as so modified after the expiration of the time within which the judgment may be appealed. This Section 10.8 is reasonable and necessary to protect and preserve Buyer's legitimate business interests and the value of the Assets and to prevent any unfair advantage conferred on Sellers, Outline Associates or Principals.

(e) Sellers, Outline Associates and Principals acknowledge that the restrictions contained in this Section 10.8 are reasonable and necessary to protect the legitimate interests of Buyer, do not cause Sellers, Outline Associates and/or any Principal undue hardship, and that any violations of any provision of this Section 10.8 will result in irreparable injury to Buyer and that, therefore, Buyer shall be entitled to preliminary and permanent injunctive relief in any court of competent jurisdiction and to an equitable accounting of all earnings, profits and other benefits arising from such violation, which rights shall be cumulative and in addition to any other rights or remedies to which Buyer may be entitled.

10.9 CUSTOMER AND OTHER BUSINESS RELATIONSHIPS After the Closing until the first anniversary of the Closing Date, Sellers will cooperate with Buyer in its efforts to continue and maintain for the benefit of Buyer those business relationships of Sellers existing prior to the Closing and relating to the business to be operated by Buyer after the Closing, including relationships with lessors, employees, regulatory authorities, licensors, customers, suppliers and others. At all times Sellers will satisfy the Retained Liabilities in a manner that is not detrimental to any of such relationships. After the Closing until the first anniversary of the Closing Date, Sellers will refer to Buyer all bona fide sales opportunities. Until the expiration of the non-compete period, none of any Seller, Outline Associates nor any Principal nor any of its officers, employees, agents or shareholders shall take any action that would tend to diminish the value of the Assets after the Closing or that would interfere with the Proscribed Business to be engaged in after the Closing. Sellers and Principals will refrain from disparaging the name or business of Buyer.

10.10 RETENTION OF AND ACCESS TO RECORDS After the Closing Date, Buyer shall retain for a period consistent with Buyer's record-retention policies and practices those Records of Sellers delivered to Buyer but in no event for a period less than for five (5) years since the Closing Date. Buyer also shall provide Sellers, Outline Associates and Principals and their Representatives reasonable access thereto, during normal business hours and on at least three (3) days' prior written notice, to enable them to prepare financial statements or tax returns or deal with tax audits. After the Closing Date, Sellers, Outline Associates and Principals shall provide Buyer and its Representatives reasonable access to Records that are Excluded Assets, during normal business hours and on at least three (3) days' prior written notice, for any reasonable business purpose specified by Buyer in such notice. Upon request from Sellers, Buyer will cooperate with Seller to export from any of the information systems contained within the Assets any such Records that are Excluded Assets or that are necessary to permit Sellers to prepare financial statements or to prepare tax returns or to deal with Tax Audits. Until such information is delivered or exported to Sellers, it shall be 66 maintained in strict confidentiality and, to the extent included in Excluded Assets, remain the sole property of Sellers.

10.11 REPLACEMENT OF FIDUCIARIES AND OTHER REPRESENTATIVES. On the Closing Date, Sellers shall cause all Sellers and Sellers' Representatives to resign from any and all fiduciary positions and in any other representative capacity as it relates to the Foreign Subsidiaries, and Buyer shall duly appointed replacements thereto.

10.12 FURTHER ASSURANCES Subject to the proviso in Section 6.1, the parties shall cooperate reasonably with each other and with their respective Representatives in connection with any steps required to be taken as part of their respective obligations under this Agreement, and shall (a) furnish upon request to each other such further information; (b) execute and deliver to each other such other documents; and (c) do such other acts and things, all as the other party may reasonably request for the purpose of carrying out the intent of this Agreement and the Contemplated Transactions.

Section 11. Indemnification; Remedies

11.1 SURVIVAL All representations, warranties, covenants and obligations in this Agreement, the Disclosure Letter, the supplements to the Disclosure Letter, the certificates delivered pursuant to Section 2.7 and any other certificate or document delivered pursuant to this Agreement shall survive the Closing and the consummation of the Contemplated Transactions, subject to Section 11.7. All representations, warranties, covenants and obligations in this Agreement, the Disclosure Letter, the supplements to the Disclosure Letter, the certificates delivered pursuant to Section 2.7 and any other certificate or document delivered pursuant to this Agreement shall survive the Closing and the consummation of the Contemplated Transactions, subject to Section 11.7. Notwithstanding anything set forth herein to the contrary, no party shall be entitled to recover Damages from the other party for a breach or default of a representation or warranty made in this Agreement if such party had actual Knowledge of such breach or default and the consequences thereof (including, without limitation, a reasonable understanding of the potential damages arising out of such breach or default) and closed on the transactions contemplated hereby despite Knowledge of such breach or default and the consequences thereof.

11.2 INDEMNIFICATION AND REIMBURSEMENT BY SELLERS AND OUTLINE ASSOCIATES Each Seller and Outline Associates, jointly and severally, will indemnify and hold harmless Buyer, and its Representatives, shareholders, subsidiaries and Related Persons (collectively, the "Buyer Indemnified Persons"), and will reimburse the Buyer Indemnified Persons for any loss, liability, claim, damage, expense (including costs of investigation and defense and reasonable attorneys' fees and expenses) or diminution of value, whether or not involving a Third-Party Claim (collectively, "Damages"), arising from or in connection with: (a) any Breach of any representation or warranty made by any Seller or Outline Associates in (i) this Agreement (without giving effect to any supplement to the Disclosure Letter, except as agreed to by Buyer prior to or at the Closing), (ii) the Disclosure Letter, (iii) the supplements to the Disclosure Letter, (iv)any transfer instrument or (v) any other certificate, document, writing or instrument delivered by any Seller or Outline Associates pursuant to this Agreement; (b) any Breach of any covenant or obligation of any Seller, Outline Associates or Principals in this Agreement or in any other certificate, document, writing or instrument delivered by any Seller or Outline Associates pursuant to this Agreement; (c) any Liability arising out of the ownership or operation of the Assets prior to the Effective Time other than the Assumed Liabilities; (d) any brokerage or finder's fees or commissions or similar payments based upon any agreement or understanding made, or alleged to have been made, by any Person with any Seller or Outline Associates (or any Person acting on their behalf) in connection with any of the Contemplated Transactions; (e) any product or component thereof manufactured by or shipped, or any services provided by, any Seller, in whole or in part, prior to the Closing Date; (f) any matter disclosed in those Parts of the Disclosure Letter identified by Buyer to Seller Representative in writing at least three (3) days prior to the Closing Date and agreed to by Seller Representative; (g) any noncompliance with any Bulk Sales Laws or fraudulent transfer law in respect of the Contemplated Transactions; (h) any liability under the WARN Act or any similar state or local Legal Requirement that may result from an "Employment Loss", as defined by 29 USC sect. 2101(a)(6), caused by any action of Sellers prior to the Closing or by Buyer's decision not to hire previous employees of Sellers; (i) any Employee Plan established or maintained by any Seller; or (j) any Retained Liabilities.

11.3 INDEMNIFICATION AND REIMBURSEMENT BY BUYER Buyer will indemnify and hold harmless each Seller and Outline Associates, and will reimburse each Seller and Outline Associates, for any Damages arising from or in connection with: (a) any Breach of any representation or warranty made by Buyer in this Agreement or in any certificate, document, writing or instrument delivered by Buyer pursuant to this Agreement; 68 (b) any Breach of any covenant or obligation of Buyer in this Agreement or in any other certificate, document, writing or instrument delivered by Buyer pursuant to this Agreement; (c) any claim by any Person for brokerage or finder's fees or commissions or similar payments based upon any agreement or understanding alleged to have been made by such Person with Buyer (or any Person acting on Buyer's behalf) in connection with any of the Contemplated Transactions; or (d) any obligations of Buyer with respect to bargaining with the collective bargaining representatives of Hired Active Employees subsequent to the Closing.

11.4 LIMITATIONS ON AMOUNT-SELLERS AND OUTLINE ASSOCIATES Sellers and Outline Associates shall have no liability (for indemnification or otherwise) with respect to claims under Section 11.2(a) until each such claim or series of related claims exceed Four Thousand Dollars ($4,000) ("Di Minimis Claim") and then after the total of all Damages with respect to such matters exceeds Two Hundred Thousand Dollars ($200,000) and then only for the amount by which such Damages exceed Two Hundred Thousand Dollars ($200,000) (the "Basket"); provided that the maximum aggregate liability of the Sellers and Outline Associates to the Buyer Indemnified Persons all taken together for all Losses pursuant to Section 11.2 shall not exceed an amount equal to Four Million Dollars ($4,000,000 ) (the "Indemnification Cap"). However, except as provided in the next sentence, this Section 11.4 will not apply to claims under Section 11.2(b) through (j) or to matters arising in respect of Sections 3.9 (Title to Assets; Encumbrances), 3.11 (Accounts Receivables), 3.14 (Taxes) and 3.29 (Brokers or Finders). The foregoing notwithstanding, Seller and Outline Associates shall be entitled to the benefits of the Di Minimis Claim and the Basket with respect to claims based on unpaid Retained Liabilities of Foreign Subsidiaries.

11.5 LIMITATIONS ON AMOUNT-BUYER Buyer will have no liability (for indemnification or otherwise) with respect to claims under Section 11.3(a) until the total of all Damages with respect to such matters exceed Two Hundred Thousand Dollars ($200,000) and then only for the amount by which such Damages exceed Two Hundred Thousand Dollars ($200,000). However, this Section 11.5 will not apply to claims under Section 11.3(b) through (e) or matters arising in respect of Section 4.4 (Brokers or Finders) or to any Breach of any of Buyer's representations and warranties of which Buyer had Knowledge at any time prior to the date on which such representation and warranty is made or any intentional Breach by Buyer of any covenant or obligation, and Buyer will be liable for all Damages with respect to such Breaches.

11.6 TIME LIMITATIONS

(a) If the Closing occurs, Sellers and Outline Associates will have liability (for indemnification or otherwise) with respect to any Breach of (i) a covenant or obligation to be performed or complied with prior to the Closing Date (other than those in Sections 2.1 and 2.4(b) and Sections 10 and 12, as to which a claim may be made at any time within the applicable statute of limitation time period) or (ii) a representation or warranty (other than those in Sections 3.9 (Title to Assets; Encumbrances), 3.14 (Taxes), 3.16 (Employee Benefits), 3.22 (Environmental Matters) and 3.29 (Brokers or Finders), as to which a claim may be made at any time within the applicable statute of limitation time period), only if on or before April 1, 2013, Buyer notifies Seller Representative of a claim specifying the factual basis of the claim in reasonable detail to the extent then known by Buyer.

(b) If the Closing occurs, Buyer will have liability (for indemnification or otherwise) with respect to any Breach of (i) a covenant or obligation to be performed or complied with prior to the Closing Date (other than those in Section 12, as to which a claim may be made at any time within the applicable statute of limitation time period) or (ii) a representation or warranty (other than that set forth in Section 4.4, as to which a claim may be made at any time within the applicable statute of limitations time period), only if on or before April 1, 2013, Seller Representative notifies Buyer of a claim specifying the factual basis of the claim in reasonable detail to the extent then known by Sellers or Outline Associates.

11.7 ESCROW Upon notice to Seller Representative specifying in reasonable detail the basis therefor, Buyer may, in good faith and after reasonable inquiry into the validity of the claim, give notice of a claim in such amount under the Escrow Agreement. Neither the exercise of nor the failure to exercise such right to give a notice of a claim under the Escrow Agreement will constitute an election of remedies or limit Buyer in any manner in the enforcement of any other remedies that may be available to it. Buyer shall be liable for attorney fees of Sellers and Outline Associates if any such claim is determined to be meritless, as the prevailing party as provided in Section 12.3.

11.8 THIRD-PARTY CLAIMS

(a) Promptly after receipt by a Person entitled to indemnity under Section 11.2 or 11.3 (an "Indemnified Person") of notice of the assertion of a Third-Party Claim against it, such Indemnified Person shall give notice to the Person obligated to indemnify under such Section (an "Indemnifying Person") of the assertion of such Third-Party Claim, provided that the failure to notify the Indemnifying Person will not relieve the Indemnifying Person of any liability that it may have to any Indemnified Person, except to the extent that the Indemnifying Person demonstrates that the defense of such Third-Party Claim is prejudiced by the Indemnified Person's failure to give such notice.

(b) If an Indemnified Person gives notice to the Indemnifying Person pursuant to Section 11.9(a) of the assertion of a Third-Party Claim, the Indemnifying Person shall be entitled to participate in the defense of such Third-Party Claim and, to the extent that it wishes (unless (i) the Indemnifying Person is also a Person against whom the Third-Party Claim is made and the Indemnified Person determines in good faith that joint representation would be inappropriate or (ii) the Indemnifying Person fails to provide reasonable assurance to the Indemnified Person of its financial capacity to defend such Third-Party Claim and provide indemnification with respect to such Third-Party Claim), to assume the defense of such Third-Party Claim with counsel satisfactory to the Indemnified Person. After notice from the Indemnifying Person to the Indemnified Person of its election to assume the defense of such Third-Party Claim, the Indemnifying Person shall not, so long as it diligently conducts such defense, be liable to the Indemnified Person under this Section 11 for any fees of other counsel or any other expenses with respect to the defense of such Third-Party Claim, in each case subsequently incurred by the Indemnified Person in connection with the defense of such Third-Party Claim, other than reasonable costs of investigation. If the Indemnifying Person assumes the defense of a Third-Party Claim, (i) such assumption will conclusively establish for purposes of this Agreement that the claims made in that Third-Party Claim are within the scope of and subject to indemnification, and (ii) no compromise or settlement of such Third-Party Claims may be effected by the Indemnifying Person without the Indemnified Person's Consent unless (A) there is no finding or admission of any violation of Legal Requirement or any violation of the rights of any Person; (B) the sole relief provided is monetary damages that are paid in full by the Indemnifying Person; and (C) the Indemnified Person shall have no liability with respect to any compromise or settlement of such Third-Party Claims effected without its Consent. If notice is given to an Indemnifying Person of the assertion of any Third-Party Claim and the Indemnifying Person does not, within ten (10) days after the Indemnified Person's notice is given, give notice to the Indemnified Person of its election to assume the defense of such Third-Party Claim, the Indemnifying Person will be bound by any determination made in such Third-Party Claim or any compromise or settlement effected by the Indemnified Person.

(c) Notwithstanding the foregoing, if an Indemnified Person determines in good faith that there is a reasonable probability that a Third-Party Claim may adversely affect it or its Related Persons other than as a result of monetary damages for which it would be entitled to indemnification under this Agreement, the Indemnified Person may, by notice to the Indemnifying Person, assume the exclusive right to defend, compromise or settle such Third-Party Claim, but the Indemnifying Person will not be bound by any determination of any Third-Party Claim so defended for the purposes of this Agreement or any compromise or settlement effected without its Consent (which may not be unreasonably withheld).

(d) Notwithstanding the provisions of Section 12.4, each Seller and Outline Associates hereby consents to the nonexclusive jurisdiction of any court in which a Proceeding in respect of a Third-Party Claim is brought against any Buyer Indemnified Person for purposes of any claim that a Buyer Indemnified Person may have under this Agreement with respect to such Proceeding or the matters alleged therein and agree that process may be served on any Seller or Outline Associates with respect to such a claim anywhere in the world.

(e) With respect to any Third-Party Claim subject to indemnification under this Section 11: (i) both the Indemnified Person and the Indemnifying Person, as the case may be, shall keep the other Person fully informed of the status of such Third-Party Claim and any related Proceedings at all stages thereof where such Person is not represented by its own counsel, and (ii) the parties agree (each at its own expense) to render to each other such assistance as they may reasonably require of each other and to cooperate in good faith with each other in order to ensure the proper and adequate defense of any Third-Party Claim.

(f) With respect to any Third-Party Claim subject to indemnification under this Section 11, the parties agree to cooperate in such a manner as to preserve in full (to the extent possible) the confidentiality of all Confidential Information and the attorney-client and work-product privileges. In connection therewith, each party agrees that: (i) it will use its Best Efforts, in respect of any Third-Party Claim in which it has assumed or participated in the 71 defense, to avoid production of Confidential Information (consistent with applicable law and rules of procedure), and (ii) all communications between any party hereto and counsel responsible for or participating in the defense of any Third-Party Claim shall, to the extent possible, be made so as to preserve any applicable attorney-client or work product privilege.

11.9 OTHER CLAIMS A claim for indemnification for any matter not involving a Third-Party Claim may be asserted by notice to the party from whom indemnification is sought and shall be paid promptly after determination of the validity of such Third-Party Claim by way of the claims procedures set forth in this Agreement or by judicial determination.

11.10 INDEMNIFICATION IN CASE OF STRICT LIABILITY OR INDEMNITEE NEGLIGENCE THE INDEMNIFICATION PROVISIONS IN THIS SECTION 11 SHALL BE ENFORCEABLE REGARDLESS OF WHETHER THE LIABILITY IS BASED UPON PAST, PRESENT OR FUTURE ACTS, CLAIMS OR LEGAL REQUIREMENTS (INCLUDING ANY PAST, PRESENT OR FUTURE BULK SALES LAW, ENVIRONMENTAL LAW, FRAUDULENT TRANSFER ACT, OCCUPATIONAL SAFETY AND HEALTH LAW OR PRODUCTS LIABILITY, SECURITIES OR OTHER LEGAL REQUIREMENT). 11.11 MITIGATION No Indemnified Party shall be entitled to recover more than the full amount of any Loss incurred by such Indemnified Party under the provisions of this Agreement in respect of any such Loss. Without limiting the generality of the foregoing, the amount of any Losses subject to indemnification under Section 11.2 and 11.3 shall be reduced by the amounts actually recovered by the Indemnified Party incurring such Loss under applicable insurance policies with respect to claims related to such Losses. For purposes of this Article 11, "Loss" or "Losses" means any and all judgments, losses, Liabilities, amounts paid in settlement, damages, fees, fines, penalties, deficiencies, costs and expenses (including interest, court costs, reasonable fees and expenses of attorneys, accountants and other experts or other reasonable expenses of litigation or other proceedings or of any claim, default or assessment).

11.12 EXCLUSIVE REMEDY Except as otherwise expressly provided for in this Agreement following the Closing, the indemnification provided by this Article 11 shall be the exclusive remedy for Buyer or Sellers and Outline Associates, as the case may be, with respect to this Agreement and the transactions contemplated by this Agreement; provided, however , that nothing herein will limit in any way any such Indemnified Party's (a) remedies in respect of fraud or willful or intentional breach of any representation, warranty, covenant or agreement herein or Buyer's remedies in respect of any breach of the covenants contained in Section 10.1(b)(ii) (Non-Solicitation of Hired Employees) and 10.8 (Non-Competition, Non-Solicitation and Non-Disparagement) or (b) rights hereunder to injunctive or other equitable relief to enforce its rights under this Agreement, the Escrow Agreement or in connection with the transactions contemplated hereby.

Section 12. General Provisions

12.1 EXPENSES Except as otherwise provided in this Agreement, each party to this Agreement will bear its respective fees and expenses incurred in connection with the preparation, negotiation, execution and performance of this Agreement and the Contemplated Transactions, including all fees and expense of its Representatives. Buyer will pay one-half and Sellers will pay one-half of the fees and expenses of the Escrow Agent under the Escrow Agreement. If this Agreement is terminated, the obligation of each party to pay its own fees and expenses will be subject to any rights of such party arising from a Breach of this Agreement by another party. In any action brought by Sellers and/or Outline Associates, on the one hand, or Buyer, on the other, to enforce any of the provisions of this Agreement and the other agreements and documents referred to herein, all expense incurred by the prevailing party(ies) in connection with such actions, including reasonable attorneys' fees shall be borne by the non-prevailing party(ies) in such action.

12.2 PUBLIC ANNOUNCEMENTS Any public announcement, press release or similar publicity with respect to this Agreement or the Contemplated Transactions will be issued, if at all, at such time and in such manner as Buyer determines. Except with the prior consent of Buyer or as permitted by this Agreement, none of Sellers nor Outline Associates nor Principals nor any of their Representatives shall disclose to any Person (a) the fact that any Confidential Information of Sellers or Outline Associates has been disclosed to Buyer or its Representatives, that Buyer or its Representatives have inspected any portion of the Confidential Information of Sellers or Outline Associates, that any Confidential Information of Buyer has been disclosed to Sellers or Outline Associates or their Representatives or that Sellers or Outline Associates or their Representatives have inspected any portion of the Confidential Information of Buyer or (b) any information about the Contemplated Transactions, including the status of such discussions or negotiations, the execution of any documents (including this Agreement) or any of the terms of the Contemplated Transactions or the related documents (including this Agreement). Seller Representative and Buyer will consult with each other concerning the means by which Sellers' employees, customers, suppliers and others having dealings with any Seller will be informed of the Contemplated Transactions, and Buyer will have the right to be present for any such communication.

12.3 NOTICES All notices, Consents, waivers and other communications required or permitted by this Agreement shall be in writing and shall be deemed given to a party when (a) delivered to the appropriate address by hand or by nationally recognized overnight courier service (costs prepaid); (b) sent by facsimile or e-mail with confirmation of transmission by the transmitting equipment; or (c) received or rejected by the addressee, if sent by certified mail, return receipt requested, in each case to the following addresses, facsimile numbers or e-mail addresses and marked to the attention of the person (by name or title) designated below (or to such other address, facsimile number, e-mail address or person as a party may designate by notice to the other parties):

|  |  |
| --- | --- |
| Sellers, Outline Associates and/or Principals: | Outline Associates Group, LLC Address, Canada: William Murry Facsimile No.: xxx-xxx-xxx |
| With a copy to: | Neville Marina Attorneys PLLC Address, USA Attention: Vital Klitschenko, Esq. Facsimile No.: xxx-xxx-xxx- |
| Buyer: | PEMBORTON, Inc. Address, USA Attention: Spud Baker Facsimile No.: xxx-xxx-xxx |
| With a copy to: | Holcomb MadisonP.C. Address, USA Attention: George Flannary Facsimile No.: xxx-xxx-xxx |

12.4 ARBITRATION If there is any dispute or claim concerning the interpretation of this Agreement, and the relative rights and obligations of the parties hereunder, the parties agree that each party will provide written notice of any claim or dispute under this Agreement, and will use best efforts for a period of thirty (30) days following delivery of such notice to agree upon a mutually acceptable attorney to act as an arbitrator of such claim or dispute. If the parties are not able to agree on a mutually satisfactory arbitrator within the foregoing thirty (30)-day period, each party will designate an attorney and the two attorneys so designated will select a third attorney to act as an arbitrator of such claim or dispute. Any such arbitration shall be conducted in accordance with the rules of the American Arbitration Association. The decision of any arbitrator selected in accordance with this Section 12.4 will be final and binding upon the parties. In order to be selected as an arbitrator pursuant to this Section 12.4, an attorney must be a transactional specialist, independent in all respects and unconflicted, of a law firm licensed in the State of Illinois. Any such arbitration proceeding shall be conducted in the Chicago, Illinois metropolitan area.

12.5 ENFORCEMENT OF AGREEMENT Each Seller, Outline Associates and each Principal acknowledge and agree that Buyer would be irreparably damaged if any of the provisions of this Agreement are not performed in accordance with their specific terms and that any Breach of this Agreement by any Seller, Design Partners or any Principal could not be adequately compensated in all cases by monetary damages alone. Accordingly, in addition to any other right or remedy to which Buyer may be entitled, at law or in equity, it shall be entitled to enforce any provision of this Agreement by a decree of specific performance and to temporary, preliminary and permanent injunctive relief to prevent Breaches or threatened Breaches of any of the provisions of this Agreement, without posting any bond or other undertaking.

12.6 WAIVER; REMEDIES CUMULATIVE The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither any failure nor any delay by any party in exercising any right, power or privilege under this Agreement or any of the documents referred to in this Agreement will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable law, (a) no claim or right arising out of this Agreement or any of the documents referred to in this Agreement can be discharged by one party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other party; (b) no waiver that may be given by a party will be applicable except in the specific instance for which it is given; and (c) no notice to or demand on one party will be deemed to be a waiver of any obligation of that party or of the right of the party giving such notice or demand to take further action without notice or demand as provided in this Agreement or the documents referred to in this Agreement.

12.7 ENTIRE AGREEMENT AND MODIFICATION This Agreement supersedes all prior agreements, whether written or oral, between the parties with respect to its subject matter (including any letter of intent and, post-Closing, any confidentiality agreement between Buyer and Sellers) and constitutes (along with the Disclosure Letter, Exhibits and other documents delivered pursuant to this Agreement) a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter. This Agreement may not be amended, supplemented, or otherwise modified except by a written agreement executed by the party to be charged with the amendment.

12.8 DISCLOSURE LETTER AND EXHIBITS

(a) The information in the Disclosure Letter constitutes (i) exceptions to particular representations, warranties, covenants and obligations of Sellers and Outline Associates as set forth in this Agreement or (ii) descriptions or lists of assets and liabilities and other items referred to in this Agreement. If there is any inconsistency between the statements in this Agreement and those in the Disclosure Letter (other than an exception expressly set forth as such in the Disclosure Letter with respect to a specifically identified representation or warranty), the statements in this Agreement will control.

(b) From time to time prior to the Closing Date, Sellers will promptly supplement or amend the Disclosure Letter (i) if any matter arises hereafter which, if existing or occurring at or prior to the date of this Agreement, would have been required to be set forth or 75 described in the Disclosure Letter, or (ii) if it becomes necessary to correct any information in the Disclosure Letter which has become inaccurate; provided, however, that no such supplement or amendment to the Disclosure Letter shall be considered in determining satisfaction of the conditions set forth in Section 7 of this Agreement. If on the date on which this Agreement is executed by all parties hereto any Part of the Disclosure Letter has not been completed, then such Part shall be completed as promptly as commercially practical and such completed Part shall be treated as a supplement or amendment to the Disclosure Letter. Notwithstanding the foregoing, if such supplemental or amended disclosure (i) does not constitute a Material Adverse Effect, or (ii) such item is a Retained Liability, then Buyer shall not rely upon any such item as a basis to claim a condition in Section 7 has not been satisfied.

(c) If on the date on which this Agreement is executed by all parties thereto, any Exhibit is not completed, then such Exhibit shall be completed as promptly as agreed to by each party acting in a commercially reasonable manner.

12.9 ASSIGNMENTS, SUCCESSORS AND NO THIRD-PARTY RIGHTS All representations, warranties, covenants, terms and conditions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective heirs, legal representatives, successors and permitted assigns of the parties hereto; provided, however , that none of the rights or obligations of any of the parties hereto may be assigned without the prior written consent of, in the case of assignment by Sellers or Outline Associates, Buyer, or, in the case of assignment by Buyer, Seller Representative, which consent shall not unreasonably be withheld; provided, however , that Buyer may assign all or part of its rights under this Agreement and may delegate all or part of its obligations under this Agreement to one or more corporations or other entities all or substantially all of the capital stock or equity interest of which is owned, directly or indirectly, by Buyer or Buyer's Subsidiaries, in which event all the rights and power of Buyer and the remedies available to it under this Agreement shall extend to and be enforceable by such assignee. Any such assignment and delegation shall not release Buyer from its obligations under this Agreement, and further Buyer guarantees to Sellers, Outline Associates and Principals the performance by each such assignee of its obligations under this Agreement. In the event of any such assignment and delegation, the term "Buyer" or "PEMBORTON" as used in this Agreement shall be deemed to refer to each such assignee of Buyer and shall be deemed to include both Buyer and each such assignee where appropriate.

12.10 SEVERABILITY If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

12.11 CONSTRUCTION The headings of Sections and Sections in this Agreement are provided for convenience only and will not affect its construction or interpretation. All references to "Sections," 76 "Sections" and "Parts" refer to the corresponding Sections, Sections and Parts of this Agreement and the Disclosure Letter.

12.12 TIME OF ESSENCE With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

12.13 GOVERNING LAW This Agreement will be governed by and construed under the laws of the State of Illinois without regard to conflicts-of-laws principles that would require the application of any other law.

12.14 EXECUTION OF AGREEMENT This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile shall be deemed to be their original signatures for all purposes.

12.15 SELLERS' AND OUTLINE ASSOCIATES' OBLIGATIONS The liability of each Seller and Outline Associates hereunder shall be joint and several with each other Seller and Outline Associates. Where in this Agreement provision is made for any action to be taken or not taken by any Seller, each other Seller and Outline Associates jointly and severally undertake to cause such Seller to take or not take such action, as the case may be. Without limiting the generality of the foregoing, each Seller and Outline Associates shall be jointly and severally liable for the indemnities set forth in Section 11.

12.16 REPRESENTATIVE OF SELLERS AND OUTLINE ASSOCIATES

(a) Each Seller and Outline Associates hereby constitutes and appoints LAMOC as its representative ("Seller Representative") and its true and lawful attorney in fact, with full power and authority in each of their names and on behalf of each of them: (i) to act on behalf of each of them in the absolute discretion of the Seller Representative, but only with respect to the following provisions of this Agreement, with the power to: (A) designate the accounts for payment of the Purchase Price pursuant to Section 2.7(b)(i); (B) act pursuant to Section 2.9 with respect to any Purchase Price adjustment; (C) act under the Escrow Agreement; (D) consent to the assignment of rights under this Agreement in accordance with Section 12.9; (E) give and receive notices pursuant to Section 12.3; (F) terminate this Agreement pursuant to Section 9.1 or waive any provision of this Agreement pursuant to Section 8, Section 9.1 and Section 12.6; and (G) act in connection with any matter as to which each Seller and Outline Associates, jointly and severally, have obligations, or are Indemnified Persons, under Section 11; and (ii) in general, to do all things and to perform all acts, including executing and delivering all agreements, certificates, receipts, instructions and other instruments contemplated by or deemed advisable to effectuate the provisions of this Section 12.16. This appointment and grant of power and authority is coupled with an interest and is in consideration of the mutual covenants made herein and is irrevocable and shall not be terminated by any act of any other Seller or Outline Associates or by operation of law, or by the occurrence of any other event. Outline Associates and each Seller hereby consents to the taking of any and all actions and the making of any decisions required or permitted to be taken or made by the Seller Representative pursuant to this Section 12.16. Outline Associates and each Seller agree that Seller Representative shall have no obligation or liability to any Person for any action or omission taken or omitted by Seller Representative in good faith hereunder.

(b) Buyer and the Escrow Agent shall be entitled to rely upon any document or other paper delivered by Seller Representative as (i) genuine and correct and (ii) having been duly signed or sent by Seller Representative, and neither Buyer nor such Escrow Agent shall be liable to any Principal, Outline Associates or any Seller for any action taken or omitted to be taken by Buyer or such Escrow Agent in such reliance. [Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

|  |  |
| --- | --- |
| BUYER: PEMBORTON USA INC. By: /s/David PEMBORTON Name: David PEMBORTON Title: President C.E.O. | PRINCIPALS: /s/William Murry WILLIAM MURRY (solely for purposes of the last sentence of Sections 3.2, 5.4, 5.5, 5.6, 10.1, 10.8, 10.9, 12.2 and 12.5) |
|  | /s/Gordon M. Molston GORDON M. MOLSTON (solely for purposes of the last sentence of Sections 3.2, 5.4, 5.5, 5.6, 10.1, 10.8, 10.9, 12.2 and 12.5) |
|  | OUTLINE ASSOCIATES, LLC, a Nevada limited liability company By: /s/Gordon M. Molston Name: Gordon M. Molston Title: Member |

|  |  |
| --- | --- |
|  | SELLERS: INCLEX, INC., a Delaware corporation By: /s/William Murry Name: William Murry Title: President |
|  | MERBOW ASSOCIATES, INC., an Ohio corporation By: /s/William Murry Name: William Murry Title: President |

|  |  |
| --- | --- |
|  | FOREIGN SUBSIDIARIES: LAMOC-DELAFOIS INCLEX, a French company By: /s/William Murry Name: William Murry Title: Director |
|  | LAMOC BELGIQUE HOLDING S.A. F/K/A DELAFOIS AVENIR BRUXELLES S.A., a Belgian company By: /s/William Murry Name: William Murry Title: Director |
|  | DELAFOIS AVENIR GROUP (HK) LTD., a Hong Kong company By: /s/William Murry Name: William Murry Title: Director |
|  | DELAFOIS (SHANGHAI), BRAND CONSULTING CO LTD., a PRC company By: /s/William Murry Name: William Murry Title: Director |
|  | DELAFOIS AVENIR GROUP (I-CHIN), a Korean company By: /s/William Murry Name: William Murry Title: Director |

ACCEPTANCE AND AGREEMENT OF SELLER REPRESENTATIVE

The undersigned, being Seller Representative designated in Section 12.16 of the foregoing Asset Purchase Agreement, agrees to serve as Seller Representative and to be bound by the terms of such Asset Purchase Agreement pertaining thereto.

|  |  |
| --- | --- |
|  | INCLEX, INC. By: /s/William Murry Name: William Murry Title: President |
|  | Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2011 |

ASSET PURCHASE AGREEMENT dated as of July 21, 2010

between

Donburi, Ltd.

and

Fuel-It Industries, Inc.

TABLE OF CONTENTS

Page

ARTICLE I DEFINITIONS 1

1.1 Definitions 1

1.2 Other Defined Terms 6

ARTICLE II PURCHASE AND SALE 9

2.1 Purchase and Sale of the Purchased Assets 9

2.2 Excluded Assets 11

2.3 Assumed Liabilities 11

2.4 Purchase Price 13

2.5 Purchase Price Adjustment 13

2.6 Allocation 14

2.7 Consents 14

ARTICLE III CLOSING 15

3.1 Closing Date 15

3.2 Deliveries by Seller at the Closing 16

3.3 Deliveries by Buyer at the Closing 17

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SELLER 17

4.1 Organization and Good Standing 18

4.2 Authority and Enforceability 18

4.3 No Conflicts; Consents 18

4.4 Financial Statements 19

4.5 No Undisclosed Liabilities 19

4.6 Inventory 19

4.7 Taxes. 20

4.8 Compliance with Law 21

4.9 Business Authorizations 22

4.10 Title to Personal Properties 22

4.11 Condition of Tangible Assets 22

4.12 Real Property 23

4.13 Intellectual Property. 24

4.14 Absence of Certain Changes or Events 28

4.15 Contracts 29

4.16 Sufficiency of Purchased Assets 31

4.17 Litigation 31

4.18 Employee Benefits. 31

4.19 Labor and Employment Matters. 34

4.20 Environmental. 37

4.21 Insurance 39

4.22 Product Warranty 40

4.23 Suppliers and Customers 41

4.24 Solvency 41

4.25 Brokers or Finders 41

4.26 FCPA 41

4.27 Completeness of Disclosure 42

ARTICLE V REPRESENTATIONS AND WARRANTIES OF BUYER 42

5.1 Organization and Good Standing 42

5.2 Authority and Enforceability 42

5.3 No Conflicts; Consents 43

5.4 Litigation 43

5.5 Availability of Funds 43

5.6 Brokers or Finders 43

ARTICLE VI COVENANTS OF SELLER 43

6.1 Conduct of Business 43

6.2 Negative Covenants 44

6.3 Access to Information; Investigation; Conducting of Physical Inventory 45

6.4 Confidentiality 46

6.5 Release of Liens 46

6.6 Consents 46

6.7 Notification of Certain Matters 47

6.8 Restrictive Covenants 47

6.9 Reserved 48

6.10 Environmental Investigation 48

6.11 Exclusivity 48

ARTICLE VII COVENANTS OF BUYER AND SELLER 49

7.1 Regulatory Approvals 49

7.2 Public Announcements 50

7.3 Names 50

7.4 Employees. 51

7.5 Taxes and Transfer Costs. 53

7.6 LMP Agreement 54

7.7 Bulk Sales Laws 54

7.8 Discharge of Business Obligations After Closing 54

7.9 Access to Books and Records 54

7.10 Continuity of Supply 55

7.11 Customer Communications 55

7.12 Further Assurances 55

ARTICLE VIII CONDITIONS TO CLOSING 55

8.1 Conditions to Obligations of Buyer and Seller 55

8.2 Conditions to Obligation of Buyer 56

8.3 Conditions to Obligation of Seller 57

ARTICLE IX TERMINATION 58

9.1 Termination 58

9.2 Effect of Termination 59

9.3 Remedies 59

ARTICLE X INDEMNIFICATION 60

10.1 Survival 60

10.2 Indemnification by Seller 60

10.3 Indemnification by Buyer 61

10.4 Indemnification Procedures for Third Party Claims 62

10.5 Indemnification Procedures for Non-Third Party Claims 65

10.6 Effect of Investigation; Waiver 65

10.7 Exclusive Remedy 65

ARTICLE XI MISCELLANEOUS 65

11.1 Notices 65

11.2 Amendments and Waivers 66

11.3 Expenses 67

11.4 Successors and Assigns 67

11.5 Governing Law 67

11.6 Consent to Jurisdiction 67

11.7 Counterparts 67

11.8 Third Party Beneficiaries 68

11.9 Entire Agreement 68

11.10 Captions 68

11.11 Severability 68

11.12 Specific Performance 68

11.13 Interpretation 68

ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT, dated as of July 21, 2010 (the " Agreement "), between Donburi, Ltd., a Japanese corporation (" Buyer "), and Fuel-It Industries, Inc., a Delaware corporation (" Seller ").

WHEREAS, Seller and certain of its Subsidiaries (as hereinafter defined), including Fuel-It Japan, K.K. and Fuel-It Wuhan (collectively, the " Seller Group ") are engaged in the business of the development, manufacture, production, marketing, sale and distribution of the gas and liquid flow-management systems, mass flow controller products and exhaust pressure valve products set forth on Schedule I attached hereto (the " Flow Products ") and the services related thereto (the " Business "); and

WHEREAS, the parties desire that the Seller Group sell, assign, transfer, convey and deliver to Buyer, and that Buyer purchase and acquire from the Seller Group, all of the right, title and interest of the Seller Group in and to the Purchased Assets (as hereinafter defined), and that Buyer assume the Assumed Liabilities (as hereinafter defined), upon the terms and subject to the conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and the respective representations and warranties, covenants and agreements contained herein, the parties hereto agree as follows: ARTICLE I

DEFINITIONS

1.1 Definitions . When used in this Agreement, the following terms shall have the meanings assigned to them in this Article I or in the applicable Section of this Agreement to which reference is made in this Article I.

" Accounts Receivable " means (a) any trade accounts receivable and other rights to payment from customers for the sale of Flow Products and (b) any other account or note receivable Related to the Business, together with, in each case, the full benefit of any security interest of any member of the Seller Group therein.

" Affiliate " means, with respect to any specified Person, any other Person directly or indirectly controlling, controlled by or under common control with such specified Person.

" Ancillary Agreements " means the Bill of Sale, the Assignment and Assumption Agreement, the Master Services Agreement, the Authorized Service Provider Agreement, the China Asset Transfer Agreement, the Japan Office Space Lease, the Japan Real Estate Purchase Agreement, the IP Assignments, the Software License Agreement, the Sublease Agreements and the other agreements, instruments and documents delivered at the Closing.

" Authorization " means any authorization, approval, consent, certificate, license, permit or franchise of or from any Governmental Entity or pursuant to any Law.

" Benefit Plan " means (a) any "employee benefit plan" as defined in ERISA Section 3(3), including any (i) nonqualified deferred compensation or retirement plan or arrangement which is an Employee Pension Benefit Plan (as defined in ERISA Section 3(2)), (ii) qualified defined contribution retirement plan or arrangement which is an Employee Pension Benefit Plan, (iii) qualified defined benefit retirement plan or arrangement which is an Employee Pension Benefit Plan (including any Multiemployer

Plan (as defined in ERISA Section 3(37)) and (iv) Employee Welfare Benefit Plan (as defined in ERISA Section 3(1)) or material fringe benefit plan or program, or (b) stock purchase, stock option, severance pay, employment, change-in-control, vacation pay, company awards, salary continuation, sick leave, excess benefit, bonus or other incentive compensation, life insurance, or other employee benefit plan, contract, program, policy or other arrangement, whether or not subject to ERISA.

" Books and Records " means books of account, general, financial, warranty and shipping records, invoices, supplier lists, product specifications, product formulations, drawings, correspondence, engineering, maintenance, operating and production records, advertising and promotional materials, credit records of customers and other documents, records and files, in each case Related to the Business, including books and records relating to Seller Group Intellectual Property and the employee and personnel records of the Transferred Employees.

" Business Day " means a day other than a Saturday, Sunday or other day on which banks located in New York, New York USA or Tokyo, Japan are authorized or required by Law to close.

" Business Employee " means any of the employees of the Seller Group listed on Schedule 1.1(a) attached hereto.

"Change in Control ' shall be deemed to have occurred when (i) any "person" or "group" (as such terms are used in Sections 13(e) and 14(d) of the Exchange Act) is or becomes the beneficial owner of shares representing more than 50% of the combined voting power of the then outstanding securities entitled to vote generally in elections of directors of Seller (the " Voting Stock ") or (ii) Seller (A) consolidates with or merges into any other corporation or any other corporation merges into Seller, and in the case of any such transaction, the outstanding Common Stock of Seller is changed or exchanged into other assets or securities as a result, unless the stockholders of Seller immediately before such transaction own, directly or indirectly immediately following such transaction, at least a majority of the combined voting power of the outstanding voting securities of the corporation resulting from such transaction in substantially the same proportion as their ownership of the Voting Stock immediately before such transaction, or (B) conveys or transfers all or substantially all of its assets to any Person.

" Charter Documents " means, with respect to any entity, the certificate of incorporation, the articles of incorporation, by-laws, articles of organization, limited liability company agreement, partnership agreement, formation agreement, joint venture agreement or other similar organizational documents of such entity (in each case, as amended).

" Code " means the Internal Revenue Code of 1986, as amended.

" Contract " means any agreement, contract, license, lease, commitment, arrangement or understanding, written or oral, including any Open Customer Purchase Orders or Open Supplier Purchase Orders.

" Equipment " means machinery, fixtures, furniture, supplies, accessories, materials, equipment including all manufacturing and test equipment, parts, tooling, tools, molds, office equipment, computers, telephones and all other items of tangible personal property, in each case Related to the Business.

" ERISA " means the Employee Retirement Income Security Act of 1974.

" ERISA Affiliate " means any entity which is a member of a "controlled group of corporations" with, under "common control" with or a member of an "affiliated services group" with, the Seller Group, as defined in Section 414(b), (c), (m) or (o) of the Code.2

" Excluded Intellectual Property " means the rights, title and interest of a member of the Seller Group in, to or under the Retained Names, the SAP Licenses, the Seller's proprietary factory information system software being licensed to Buyer pursuant to the Software License Agreement, and other Intellectual Property, including standard, off-the-shelf software licenses, that is set forth on Schedule 4.15(a)(xiv).

" Foreign Antitrust Laws " means the antitrust and competition Laws of all jurisdictions other than those of the United States.

" GAAP " means generally accepted accounting principles in the United States.

" Governmental Entity " means any entity or body exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to United States federal, state, local, or municipal government, foreign, Japanese national, prefectural or city government or other instrumentality or political subdivision thereof, international, multinational or other government, including any department, commission, board, agency, bureau, subdivision, instrumentality, official or other regulatory, administrative or judicial authority thereof, and any non-governmental regulatory body to the extent that the rules and regulations or orders of such body have the force of Law.

" Governmental Order " means any award, injunction, judgment, decree, order, ruling, subpoena or verdict or other decision issued, promulgated or entered by or with any Governmental Entity of competent jurisdiction.

" Indebtedness " means any of the following: (a) any indebtedness for borrowed money, (b) any obligations evidenced by bonds, debentures, notes or other similar instruments, (c) any obligations to pay the deferred purchase price of property or services, except trade accounts payable and other current Liabilities arising in the ordinary course of the Business, (d) any obligations as lessee under capitalized leases, (e) any indebtedness created or arising under any conditional sale or other title retention agreement with respect to acquired property, (f) any obligations, contingent or otherwise, under acceptance credit, letters of credit or similar facilities, and (g) any guaranty of any of the foregoing.

" Indemnitee " means any Person that is seeking indemnification from an Indemnitor pursuant to the provisions of this Agreement.

" Indemnitor " means any party hereto from which any Indemnitee is seeking indemnification pursuant to the provisions of this Agreement.

" Inventory " means all raw materials, work-in-process, finished goods, supplies, manufactured and processed parts, spare parts and other inventories Related to the Business, including all such items (a) located on the Real Property, (b) in transit from suppliers of the Business, (c) held for delivery by suppliers of the Business, or (d) held on consignment by third parties.

" Knowledge " of Seller or any similar phrase means, with respect to any fact or matter, the actual knowledge of the individuals identified on Schedule 1.1(b) attached hereto, together with such knowledge that such individuals could reasonably be expected to discover after due inquiry concerning the existence of the fact or matter in question, including due inquiry of the directors, executive officers and other vice president level and above employees of Seller having direct responsibility relating to the matter in question.3

" Law " means any statute, law (including common law), constitution, treaty, ordinance, code, order, decree, judgment, rule, regulation and any other binding requirement or determination of any Governmental Entity.

" Lien " means, with respect to any property or asset, any mortgage, lien, pledge, charge, security interest, adverse claim or other encumbrance in respect of such property or asset.

" Material Adverse Change " means any fact, circumstance, event, change, effect or occurrence that, individually or in the aggregate with all other facts, circumstances, events, changes, effects or occurrences (a) has had or would reasonably be expected to have a material adverse effect on the condition (financial or otherwise) or operations of the Business or the Purchased Assets and Assumed Liabilities, taken as a whole, or (b) would materially impair the ability of the Seller to consummate the transactions contemplated by this Agreement and excluding the effect of (i) any change generally affecting the industry in which the Business operates (including general pricing changes affecting the industry as a whole); (ii) any change in the economy or the financial or securities markets in the United States or elsewhere in the world; (iii) any outbreak or escalation of hostilities, declared or undeclared acts of war, sabotage or terrorism, or other force majeure events; in each case as to clauses (i) -- (iii) above as do not have a disproportionate effect on the Seller Group, (iv) any actions taken, or actions not taken, or such other changes or conditions, in each case that the Buyer and the Seller have approved or consented to, or required by the terms of this Agreement or any Ancillary Agreement, and (v) the announcement of this Agreement and the transactions contemplated hereby, including the termination, modification or, or reduction in, any Contracts with any customers, suppliers, distributors or contractors of any member of the Seller Group, as the case may be, to the extent due to the announcement and performance of this Agreement or the identity of the Buyer or the Seller, as the case may be, or the performance of this Agreement and the consummation of the transactions contemplated hereby; provided, however, that the foregoing clause (v) shall not apply to any loss or reduction of Business Employees other than to the extent the loss of Business Employees arises out of or is due to the terms of employment offered by Buyer to any such Business Employee, the effect of which shall be excluded from the determination of whether a Material Adverse Change has occurred.

" Material Customers and Suppliers " means the customers and suppliers listed on Schedule 1.1(c) hereto.

" Open Customer Purchase Orders " means Seller's backlog of unfilled purchase orders from customers of Seller for the purchase from Seller or a member of the Seller Group of Flow Products with a scheduled delivery date after the Closing Date.

" Open Source Materials " means any software that contains, or is derived in any manner (in whole or in part) from, any software that is distributed as free software, open source software (e.g., Linux) or similar licensing or distribution models, including software licensed or distributed under any of the following licenses or distribution models, or licenses or distribution models similar to any of the following: (a) GNU's General Public License (GPL) or Lesser/Library GPL, (b) the Artistic License (e.g., PERL), (c) the Mozilla Public License, (d) the Netscape Public License, (e) the Sun Community Source License (SCSL), (f) the Sun Industry Standards License (SISL), (g) the BSD License, and (h) the Apache License.

" Open Supplier Purchase Orders " means purchase orders to suppliers of Seller for the purchase by Seller of raw materials, supplies, parts and other items used for the manufacture of Flow Products by Seller or a member of the Seller Group with a scheduled delivery date after the Closing Date.4

" Permitted Liens " means (a) Liens for current real or personal property Taxes not yet due and payable and with respect to which the Seller Group maintains adequate reserves, (b) workers', carriers' and mechanics' or other like Liens incurred in the ordinary course of the Business with respect to which payment is not due and that do not impair the conduct of the Business or the present or proposed use of the affected property and (c) Liens that are immaterial in character, amount, and extent and which do not detract from the value or interfere with the present or proposed use of the properties they affect.

" Person " means an individual, a corporation, a partnership, a limited liability company, a trust, an unincorporated association, a Governmental Entity or any other entity or body.

" Pre-Closing Environmental Liabilities " means Liabilities arising under Environmental Law arising out of or related to (a) the ownership or operation of the Business at any time on or prior to the Closing or (b) the ownership, operation or condition of the Real Property or any other real property currently or formerly owned, operated or leased by any member of the Seller Group Related to the Business at any time on or prior to the Closing, including but not limited to any such Liabilities based upon or arising out of (i) a failure to obtain, maintain or comply with any Environmental Permit, (ii) a Release of any Hazardous Substance, or (iii) the use, generation, storage, transportation, treatment, sale or other off-site disposal of Hazardous Substances.

" Related to the Business " means used, held for use or acquired or developed for use in the Business or otherwise necessary to, or arising out of, the operation or conduct of the Business, in each case excluding the services for repair or servicing of the Flow Products provided by the Seller Group at its Service Centers.

" SAP License " means the R/3 Software Individual End User License Agreement dated September 29, 1995 by and between Seller and SAP America, Inc., as amended.

" Seller Owned Intellectual Property " means Intellectual Property that is owned (exclusively, jointly with another Person or otherwise) by any member of the Seller Group, that constitutes Purchased Assets and is Related to the Business as it is currently conducted or as proposed to be conducted, including, without limitation, the Intellectual Property set forth in Schedule 2.1(e).

" Service Centers " means the Seller's facilities, or the facilities of Seller's designees in locations in which Seller does not have a physical presence, to service Flow Products located in Seoul, Korea; Shanghai, China; Taipei, Taiwan; Singapore; Hamburg, Germany; Bremen, Germany; Austin, Texas; Dallas, Texas; and the portion of the facility in Tokyo, Japan designated for service of Flow Products.

" Service-Related Inventory " means (i) raw materials designated for use in the repair or servicing of Flow Products, and (ii) repaired or refurbished products designated for use as replacement units for Flow Products, in each case located at Service Centers (other than in Seller's facilities in Tokyo, Japan).

" Subsidiary " or " Subsidiaries " means, with respect to any party, any Person, of which 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 Person is directly or indirectly owned or controlled by such party and/or by any one or more of its Subsidiaries.

" Tax " or " Taxes " means any and all federal, state, local, or foreign net or gross income, gross receipts, net proceeds, sales, transfer, use, ad valorem, value added, franchise, bank shares, withholding, payroll, employment, excise, property, deed, stamp, alternative or add-on minimum, environmental, profits, windfall profits, transaction, license, lease, service, service use, occupation, severance, energy, unclaimed property, escheat, unemployment, social security, workers' compensation, capital, premium, and other taxes, assessments, customs, duties, fees, levies, or other governmental charges of any nature whatever, whether disputed or not, together with any interest, penalties, additions to tax, or additional amounts with respect thereto.

" Tax Returns " means any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

" Taxing Authority " means any Governmental Entity having jurisdiction with respect to any Tax.

" WARN Act " means the Worker Adjustment and Retraining Notification Act of 1988.

" $ " means United States dollars. 1.2 Other Defined Terms . The following terms have the meanings assigned to such terms in the Sections of the Agreement set forth below:

Accounting Principles 2.6(a)(i)

Action 4.17(a)

Agreement Preamble

Allocation Statement 2.7

Applicable Survival Period 10.1(d)

Assigned Business Authorizations 7.1(d)

Assigned Contracts 2.1(f)

Assignment and Assumption Agreement 3.2(b)

Assumed Liabilities 2.3

Authorized Service Provider Agreement 3.2(d)

Balance Sheet Date 2.6(a)(i)

Base Amount 2.6(a)(ii)

Bill of Sale 3.2(a)

Business Recitals

Business Authorizations 4.9(a)

Buyer Preamble

Buyer's Benefit Plans 7.4(c)

Buyer Closing Certificate 8.3(c)

Buyer Indemnitees 10.2(a)

Buyer Warranty Losses 10.2(b)

Cash Consideration 2.5(a)

CERCLA 4.20(a)(i)

China Asset Transfer Agreement 3.2(e)

Closing 3.1

Closing Date 3.1

Closing Inventory Amount 2.6(a)(iii)

Closing Inventory Statement 2.6(a)(iv)

COBRA 7.4(k)

Confidentiality Agreement 6.3

Consents 4.3(a)

Copyrights 4.13(a)

Dispatched Employees 4.19(g)(viii)

Environment 4.20(a)(ii)

Environmental Action 4.20(a)(iii)

Environmental Clean-up Site 4.20(a)(iv)

Environmental Laws 4.20(a)(v)

Environmental Permit 4.20(a)(vi)

Excluded Assets 2.2

Excluded Contracts 2.2(b)

Excluded Liabilities 2.4

FCPA 4.26

Flow Products Recitals

Foreign Plans 4.18(n)

Hazardous Substances 4.20(a)(vii)

In-Bound Licenses 4.13(a)(c)

Intellectual Property 4.13(a)

Intellectual Property Rights 4.13(a)

IP Assignments 3.2(h)

Japan Buildings 2.1(a)

Japan Business Employees 4.19(g)(i)

Japan Collective Bargaining Agreements 4.19(g)(iii)

Japan Land 2.1(a)

Japan Office Space Lease 3.2(f)

Japan Personnel 4.19(g)(vii)

Japan Plans 4.18(o)

Japan Real Estate Purchase Agreement 3.2(g)

Japan Work Rules 4.19(g)(vi)

LMP Agreement 7.6

June Income Statement 4.4(a)

Lease 4.12(c)

Leased Real Property 4.12(a)

Liabilities 4.5

Losses 10.2(a)

Marks 4.13(a)

Master Services Agreement 3.2(c)

Material Contracts 4.15(b)

Noncompetition Period 6.8(a)

Nondisclosure Agreements 4.13(i)

Notice of Claim 10.4(a)

Out-Bound Licenses 4.13(d)

Owned Real Property 4.12(a)

Patents 4.13(a)

PCBs 4.20(i)

Pension Plan 4.18(b)

Personal Property 4.10(a)

Policies 4.21(a)

Post-Closing Tax Period 7.5(b)

Pre-Closing Tax Period 7.5(b)

Products 4.22(a)

Proprietary Information 4.13(a)

Purchase Price 2.5(a)

Purchased Assets 2.1

Real Property 4.12(a)

Release 4.20(a)(viii)

Representatives 6.3

Restricted Business 6.8(a)

Restricted Contract 2.8(a)

Retained Names 7.3

Section 1060 Forms 2.7

Seller Preamble

Seller Closing Certificate 8.2(c)

Seller Disclosure Schedule Preamble Article IV

Seller Employees 7.4(e)

Seller Group Recitals

Seller Group Benefit Plans 4.18(a)

Seller Indemnitees 10.3(a)

Seller Intellectual Property 4.13(e)

Seller June Balance Sheet 2.6(a)(i)

Seller Owned Intellectual Property 4.13(b)

Seller Registered Items 4.13(f)

Seller Warranty Losses 10.3(b)

Software 4.13(a)

Software License Agreement 3.2(i)

Statements of Operations 4.4(a)

Sublease Agreements 3.2(j)

Third Party Claim 10.4(a)

Third Party Defense 10.4(b)

Transfer Taxes 7.5(a)

Transferred Employees 7.4(b)

US Plans 4.18(a)

Work Product Agreements 4.13(j)

ARTICLE II

PURCHASE AND SALE

2.1 Purchase and Sale of the Purchased Assets. Upon the terms and subject to the conditions of this Agreement, at the Closing, Seller shall sell, assign, transfer, convey and deliver, and shall cause each other relevant member of the Seller Group to sell, assign, transfer, convey and deliver, to Buyer or a Subsidiary of Buyer designated by Buyer in writing to Seller not less than three Business Days prior to the Closing, and Buyer or such Subsidiary shall purchase, acquire and accept from the Seller Group, free and clear of Liens except for Permitted Liens, the entire right, title and interest of Seller and each other member of the Seller Group in, to and under all of the assets, properties and rights of every kind and description, real, personal and mixed, tangible and intangible, wherever situated, that are Related to the Business other than the Excluded Assets (the " Purchased Assets "). The Purchased Assets include the following assets, properties and rights:

(a) all (i) Owned Real Property located in Tokyo, Japan (the " Japan Land "), and (ii) buildings, fixtures, structures, signage and improvements erected or located on the Japan Land (the " Japan Buildings ");

(b) the leasehold interest of Seller for the real property constituting a parking lot leased by Seller in Tokyo, Japan and described on Schedule 2.1(b);

(c) all Inventory other than Service-Related Inventory;

(d) all Equipment, including Equipment located in Seller's clean room located in Wuhan, China and in Seller's clean room and lab space located in Boulder, Colorado, and all Equipment located at Seller's facilities in Tokyo, Japan, except the Equipment at such locations that is set forth on Schedule 2.1(d), which schedule shall be delivered by Seller to Buyer at least two (2) Business Days prior to Closing, to the extent the items on such Schedule are approved by Buyer prior to Closing;

(e) all Intellectual Property owned by Seller or any member of the Seller Group and Related to the Business, including the Intellectual Property set forth on Schedule 2.1(e);

(f) all Contracts Related to the Business that are (i) in effect as of the date of this Agreement and set forth on Schedule 2.1(f) or (ii) entered into by any member of the Seller Group between the date hereof and the Closing Date in compliance with the provisions of this Agreement, provided that the Seller and Buyer mutually agree prior to Closing that such Contracts (including Open Customer Purchase Orders and Open Supplier Purchase Orders), shall be listed in a supplement to Schedule 2.1(f) (the " Assigned Contracts ");

(g) all Business Authorizations and Environmental Permits;

(h) all Books and Records; provided that if any Books and Records also contain information relating to any business of any member of the Seller Group other than the Business, then only those portions of the Books and Records relating to the Business shall be included, and Seller may retain a copy of such Books and Records in accordance with Seller's applicable document retention policies;

(i) all claims, causes of action, choses in action, rights of recovery and rights under all warranties, representations and guarantees made by suppliers of products, materials or equipment, or components thereof, arising from or relating to the Purchased Assets or the Assumed Liabilities;

(j) all insurance benefits, including rights and proceeds, arising from or relating to the Purchased Assets or the Assumed Liabilities;

(k) all prepaid expenses relating to the Purchased Assets (other than relating to Taxes) set forth on Schedule 2.1(k) (as such Schedule may be updated at Closing as mutually agreed by the Seller and Buyer);

(l) all security deposits, earnest deposits and all other forms of deposit or security placed with or by any member of the Seller Group for the performance of an Assigned Contract; and (m) all goodwill of the Business as a going concern.

2.2 Excluded Assets . The Purchased Assets do not include, and neither Seller nor any other member of the Seller Group is selling, assigning, transferring, conveying or delivering, and neither Buyer nor any Subsidiary of Buyer is purchasing, acquiring or accepting from Seller or any other member of the Seller Group, any of the assets, properties or rights set forth in this Section 2.2 (collectively, the " Excluded Assets "):

(a) all cash, cash equivalents and bank accounts of the Seller Group;

(b) all Contracts that are not Assigned Contracts (the " Excluded Contracts ");

(c) the Seller's Service Centers, including clean rooms, Service-Related Inventory and Equipment, in each case located at Seller's Service Centers (other than Equipment and Inventory in Seller's facilities in Tokyo, Japan);

(d) the Seller's clean room located in Wuhan, China;

(e) the Equipment located at Seller's facilities in Tokyo, Japan set forth on Schedule 2.1(d) as mutually agreed by Seller and Buyer;

(f) the corporate seals, Charter Documents, minute books, stock books, Tax Returns, books of account or other records having to do with the corporate organization of any member of the Seller Group;

(g) all Policies and, subject to Section 2.1(j) hereof, all rights and benefits thereunder;

(h) the assets, properties and rights specifically set forth on Schedule 2.2(h);

(i) the shares of capital stock of any member of the Seller Group;

(j) all Accounts Receivable;

(k) the Excluded Intellectual Property; and

(l) the rights which accrue or will accrue to Seller and any member of the Seller Group under this Agreement and the Ancillary Agreements.

2.3 Assumed Liabilities . Upon the terms and subject to the conditions of this Agreement, Buyer or a Subsidiary of Buyer designated by Buyer in writing to Seller not less than three Business Days prior to the Closing shall assume effective as of the Closing, and from and after the Closing Buyer or such Subsidiary shall pay, discharge or perform when due, as appropriate, only the following Liabilities of the Seller Group (the " Assumed Liabilities "), and no other Liabilities:

(a) all Liabilities in respect of the Assigned Contracts, including the Open Supplier Purchase Orders and the Open Customer Purchase Orders, but only to the extent that such Liabilities thereunder are required to be performed after the Closing Date and do not relate to any failure to perform, improper performance, warranty (other than as provided in Section 2.3(b)) or other breach, default or violation by any member of the Seller Group on or prior to the Closing;

(b) all warranty, product liability and other customer and third-party claims relating to defective or nonconforming Flow Products sold by Seller in the ordinary course of business prior to the Closing Date to the extent such claims do not exceed in the aggregate $630,000; and

(c) all Transfer Taxes, regardless of the Person on whom such Taxes are imposed by Law.

2.4 Excluded Liabilities . Neither Buyer nor any of its Affiliates shall assume any Liabilities of the Seller Group (such unassumed Liabilities, the " Excluded Liabilities ") other than those specifically set forth in Section 2.3. Without limiting the generality of the foregoing, in no event shall Buyer or any of its Affiliates assume or incur any Liability in respect of, and the Seller Group shall remain bound by and liable for, and shall pay, discharge or perform when due, the following Liabilities of the Seller Group:

(a) all Liabilities for (i) Taxes relating to the Business or the Purchased Assets for any Pre-Closing Tax Period and (ii) Taxes of Seller or any Affiliate of Seller, excluding Transfer Taxes;

(b) all Liabilities in respect of the Excluded Contracts and other Excluded Assets;

(c) all Liabilities arising from or related to any breach, failure to perform, torts related to the performance of, violations of Law, infringements or indemnities under, guaranties pursuant to and overcharges or underpayments under, any Assigned Contract prior to the Closing Date; (d) other than as set forth in Section 2.3(b), all product Liability, warranty and similar claims for damages or injury to person or property, claims of infringement of Intellectual Property Rights and all other Liabilities, regardless of when made or asserted, which arise out of or are based upon any events occurring or actions taken or omitted to be taken by any member of the Seller Group, or otherwise arising out of or incurred in connection with the conduct of the Business, on or before the Closing Date;

(e) all Pre-Closing Environmental Liabilities;

(f) all Indebtedness of the Business;

(g) all Liabilities under Seller Group Benefit Plans;

(h) all accounts payable; and

(i) all Liabilities of any member of the Selling Group arising out of or incurred in connection with the negotiation, preparation and execution of this Agreement and the Ancillary Agreements and the consummation of the transactions contemplated hereby and thereby, including Taxes (other than Transfer Taxes) and fees and expenses of counsel, accountants and other experts, except as otherwise provided in Section 7.1.

2.5 Purchase Price .

(a) The consideration to be paid by Buyer to Seller for the Purchased Assets (the " Purchase Price ") shall be (i) $44,000,000 (the " Cash Consideration "), subject to adjustment as set forth in Section 2.6, and (ii) the assumption of the Assumed Liabilities.

(b) Seller shall have the right to direct, by written notice to Buyer not later than three Business Days prior to the Closing Date, that all or any part of the Cash Consideration be paid directly to one or more members of the Seller Group that is selling Purchased Assets to Buyer pursuant hereto; provided that no such direction shall relieve Seller of any of its obligations hereunder.

2.6 Purchase Price Adjustment .

(a) For purposes of this Section 2.6, the following terms shall have the meanings assigned to them in this Section 2.6(a): (i) " Accounting Principles " means GAAP applied on a basis consistent with its application in the preparation of the balance sheet of the Seller (the " Seller June Balance Sheet ") at June 30, 2010 (the " Balance Sheet Date "). (ii) " Base Amount " means $8,000,000. (iii) " Closing Inventory Amount " means the aggregate dollar amount of Inventory that are Purchased Assets, net of applicable reserves, as of the date two (2) Business Days prior to the Closing Date, calculated in accordance with the Accounting Principles.(iv) " Closing Inventory Statement " means an unaudited statement of Closing Inventory Amount that is prepared in accordance with the Accounting Principles.

(b) Within five (5) Business Days, but not less than two (2) Business Days prior to the Closing Date, Buyer shall have conducted, or at Buyer's option shall have caused a third party to conduct, a physical inventory for purposes of preparing the Closing Inventory Statement. Seller shall, and shall cause each other member of the Seller Group to, provide reasonable access to Buyer to the facilities of each member of the Seller Group for the purpose of preparing the Closing Inventory Statement. Seller and its representatives shall have the right to observe the taking of such physical inventory and Buyer and the Seller shall cooperate in good faith with respect to any such physical inventory. Subject to the consent of the Seller with respect to the amount of the Closing Inventory Amount, such consent not to be unreasonably withheld or delayed, no later than two (2) Business Days prior to the Closing Date, Buyer will prepare, or cause to be prepared, and deliver to Seller the Closing Inventory Statement which shall set forth the calculation of the Closing Inventory Amount as mutually agreed by Buyer and the Seller.

(c) Within five (5) Business Days, but not less than two (2) Business Days, prior to the Closing Date, Seller shall take a physical count of the Inventory of the Business (other than Service Related Inventory) located at Seller's Service Centers. Buyer shall be entitled to have its representatives present at such Inventory count conducted by Seller and Seller shall give Buyer at least twenty-four (24) hours advance notice of the date and time of the Inventory count. Prior to the Closing Seller shall deliver a true and correct certificate to Buyer setting forth in reasonable detail the Inventory (other than Service Related Inventory) located at each Service Center and the amount set forth in such certificate shall be included in the calculation of the Closing Inventory Amount set forth in the Closing Inventory Statement.

(d) The Inventory of the Business shall be valued at Seller's standard cost for each item, excluding the reserve for obsolete or excess Inventory in its entirety as reflected in the Seller June Balance Sheet (adjusted to reflect any changes in total Inventory as of the Closing Date). For purposes of this Section, Seller's standard cost and inventory reserve shall be calculated consistent with the accounting principles, policies and practices that were used in preparing the Seller June Balance Sheet. Seller's books and records reflect a value of the Inventory at the lower of Seller's cost or fair market value as of July 1, 2010.

(e) The Purchase Price shall be adjusted as follows: (i) if the Closing Inventory Amount is less than the Base Amount, the Cash Consideration shall be reduced by the difference between the Base Amount and the Closing Inventory Amount; or (ii) if the Closing Inventory Amount is greater than the Base Amount, the Cash Consideration shall be increased by the difference between the Base Amount and the Closing Inventory Amount.

2.7 Allocation . As soon as reasonably practicable following the Closing, Buyer shall deliver to Seller an allocation statement setting forth Buyer's proposed allocation of the Purchase Price for Tax purposes pursuant to Section 1060 of the Code and any other applicable Tax Laws (as the same may be revised pursuant to the following sentence, the " Allocation Statement "). If, within 20 days after the receipt of the proposed Allocation Statement, Seller notifies Buyer in writing that Seller disagrees with the proposed Allocation Statement, then Buyer and Seller shall attempt in good faith to resolve their disagreement within the 20 days following Seller's notification to Buyer of such disagreement. If Seller does not so notify Buyer within 20 days of receipt of the proposed Allocation Statement, or upon resolution of the dispute by Buyer and Seller, the proposed Allocation Statement (or such other Allocation agreed upon in writing by Buyer and Seller in resolving such dispute) shall become the final Allocation Statement. If Buyer and Seller are unable to resolve their disagreement within the 20 days following any such notification by Seller, the dispute shall be submitted to a nationally recognized independent valuation firm chosen jointly by Buyer and Seller, for resolution within 20 days of such submission. Buyer and Seller shall each cooperate fully with the other party to facilitate a prompt determination of the allocation. The fees, costs and expenses of the valuation firm retained to resolve any dispute with respect to the Allocation, if applicable, shall be borne equally by Seller, on the one hand, and Buyer, on the other. Except as otherwise required by Law, Buyer and Seller shall, and Seller shall cause each other member of the Seller Group to, file all Tax Returns (such as IRS Form 8594 or any other forms or reports required to be filed pursuant to Section 1060 of the Code or any comparable provisions of Law (" Section 1060 Forms ")) in a manner that is consistent with the Allocation Statement and refrain from taking any action inconsistent therewith. Buyer and Seller shall, and Seller shall cause each other member of the Seller Group to, cooperate in the preparation of Section 1060 Forms and file such Section 1060 Forms timely and in the manner required by applicable Law. Not later than 30 days prior to the filing of their respective Forms 8594 relating to the transactions contemplated by this Agreement, Buyer and Seller each shall deliver to the other party a copy of its Form 8594. Buyer and Seller agree to treat any payments made pursuant to the indemnification provisions of this Agreement as an adjustment to the Purchase Price for Tax purposes.

2.8 Consents .

(a) Notwithstanding anything in this Agreement to the contrary, this Agreement shall not constitute an agreement to sell, assign, transfer, convey or deliver any Purchased Asset or any benefit arising under or resulting from such Purchased Asset if the sale, assignment, transfer, conveyance or delivery thereof, without the Consent of a third party, (i) would constitute a breach or other contravention of the rights of such third party or (ii) would be ineffective with respect to any party to a Contract concerning such Purchased Asset. If the sale, assignment, transfer, conveyance or delivery by any member of the Seller Group to, or any assumption by Buyer of, any interest in, or Liability under, any Purchased Asset requires the Consent of a third party, then such sale, assignment, transfer, conveyance, delivery or assumption shall be subject to such Consent being obtained. Without limiting Section 2.8(b), to the extent any Assigned Contract may not be assigned to Buyer by reason of the absence of any such Consent (" Restricted Contract "), Buyer shall not be required to assume any Assumed Liabilities arising under such Restricted Contract, until such time, if any, as such Restricted Contract is assigned to Buyer. Further notwithstanding anything in this Agreement to the contrary, (x) to the extent Seller is unable to assign to Buyer or terminate any Open Supplier Purchase Order prior to the Closing, Buyer shall acquire from Seller the raw materials, supplies, parts and other items used for the manufacture of Flow Products for which Seller is unable to assign or terminate its purchase obligation at the same cost and on the same terms and conditions as contained in any such Open Supplier Purchase Order; and (y) to the extent Seller is unable to assign to Buyer (or terminate) its obligations to manufacture, sell and distribute any Flow Products that are subject to an Open Customer Purchase Order, Seller shall issue a purchase order to Buyer for, and Buyer shall fulfill and timely deliver to Seller, the Flow Products that are covered by any such Open Customer Purchase Order, and Seller shall pay all amounts payable under such purchase order, on the same terms and conditions as set forth in such Open Customer Purchase Order. To the extent any agreement with a provider of raw materials, supplies, parts or other items used for the manufacture of, repair or otherwise in connection with the Flow Products contains exclusivity provisions limiting the ability of such provider to sell raw materials, supplies, parts or other items to Buyer, Seller hereby waives such exclusivity provisions as they relate to the sale of raw materials, supplies parts or other items to Buyer for the manufacture of, repair or otherwise use in connection with the Flow Products by Buyer after Closing. Seller further agrees to take all necessary actions, including, without limitation, executing any documents required by any of provider of raw materials, supplies, parts or other items used for the manufacture of, repair or otherwise in connection with the Flow Products, to effectuate the intent and purpose of this Section.

(b) To the extent that any Consent in respect of a Restricted Contract or any other Purchased Asset shall not have been obtained on or before the Closing Date, Seller shall continue to use reasonable efforts to obtain any such Consent for the 12-month period following the Closing Date until such time as it shall have been obtained or, with respect to a Restricted Contract, until such time as Buyer shall have entered into a Contract providing for substantially the same benefits and rights as contained in such Restricted Contract. Seller shall, and shall cause each other relevant member of the Seller Group to, cooperate with Buyer in any economically feasible arrangement permitted by applicable Law and under the applicable Contract proposed by Buyer to provide that Buyer shall receive the interest of Seller or such member of the Seller Group in the benefits under such Restricted Contract or other Purchased Asset until such Consent is obtained. As soon as a Consent for the sale, assignment, transfer, conveyance, delivery or assumption of a Restricted Contract or other Purchased Asset is obtained, Seller shall promptly assign, transfer, convey and deliver such Restricted Contract or Purchased Asset to Buyer, and Buyer shall assume the Assumed Liabilities under any such Restricted Contract from and after the date of assignment to Buyer pursuant to a special-purpose assignment and assumption agreement substantially similar in terms to those of the Assignment and Assumption Agreement.

(c) With respect to material Contracts, including the Contracts with Material Customers and Material Suppliers (other than Assigned Contracts) that Relate to the Business and also relate to other business of the Seller, Seller agrees, and shall cause any other member of the Seller Group, upon the reasonable request of Buyer, to use its reasonable efforts to facilitate (with respect to a reasonable number of Contracts in the aggregate) the entry by Buyer or the relevant Buyer Affiliate and the other party to each such Contract into a new Contract that only relates to Flow Products.

ARTICLE III CLOSING

3.1 Closing Date . The closing of the Transactions contemplated by this Agreement (the " Closing ") shall take place at the offices of Maslow, Terton, Fringe LLP, Address , California, , at 10:00 a.m. on a date to be specified by the parties which shall be no later than two Business Days after satisfaction (or waiver as provided herein) of the conditions set forth in Article VIII (other than those conditions that by their nature will be satisfied at the Closing), unless another time, date and/or place is agreed to in writing by the parties. The date on which the Closing occurs is referred to in this Agreement as the " Closing Date ."

3.2 Deliveries by Seller at the Closing . At the Closing, Seller shall deliver to Buyer the following:

(a) a Bill of Sale in the form of Exhibit A hereto (the " Bill of Sale ") duly executed by each member of the Seller Group;

(b) an Assignment and Assumption Agreement in the form of Exhibit B hereto (the " Assignment and Assumption Agreement ") duly executed by each member of the Seller Group;

(c) a Master Services Agreement in the form of Exhibit D hereto (the " Master Services Agreement ") duly executed by each relevant member of the Seller Group;

(d) an Authorized Service Provider Agreement in the form of Exhibit E hereto (the " Authorized Service Provider Agreement ") duly executed by each relevant member of the Seller Group;

(e) an Asset Transfer Agreement in the form of Exhibit F hereto (the "China Asset Transfer Agreement" ) duly executed by each relevant member of the Seller Group;

(f) a Japan Office Space Lease in such form as is reasonably acceptable to Buyer and to Seller (the " Japan Office Space Lease "), provided that such lease shall provide for the lease of 10,000 to 13,000 square feet of space at market rates and terms to be mutually agreed upon by Buyer and Seller and for a term of one year with two one-year renewal periods, duly executed by each relevant member of the Seller Group;

(g) a Japan Real Estate Purchase Agreement with respect to the Japan Land and the Japan Buildings, in the form of Exhibit H hereto, duly executed by each relevant member of the Seller Group (the " Japan Real Estate Purchase Agreement ");

(h) IP Assignments in the form of Exhibit I hereto (the " IP Assignments ") duly executed by each relevant member of the Seller Group;

(i) a Software License Agreement covering the license of the Seller's proprietary factory information system software in the form of Exhibit L hereto (the " Software License Agreement ");

(j) sublease agreements in forms reasonably acceptable to Seller and Buyer (the "Sublease Agreements" ) for the sublease by Buyer of certain laboratory and office space located at Seller's facilities in Boulder, Colorado and San Diego, California;

(k) such other good and sufficient instruments of transfer as Buyer reasonably deems necessary and appropriate to vest in Buyer all right, title and interest in, to and under the Purchased Assets;

(l) the Seller Closing Certificate; and

(m) a completed certification of non-foreign status pursuant to Section 1.1445-2(b)(2) of the Treasury regulations duly executed by each member of the Seller Group that is selling Purchased Assets to Buyer pursuant hereto.

3.3 Deliveries by Buyer at the Closing . At the Closing, Buyer shall deliver to Seller the following:

(a) the Cash Consideration by wire transfer of immediately available funds to an account or accounts of Seller designated in writing by Seller to Buyer no later than three Business Days prior to the Closing Date or to such other accounts of the Seller Group as may be directed by Seller in accordance with Section 2.5(b);

(b) the Assignment and Assumption Agreement duly executed by Buyer or its designee pursuant to Section 2.1;

(c) the Master Services Agreement duly executed by Buyer or its designee pursuant to Section 2.1;

(d) the Authorized Service Provider Agreement duly executed by Buyer or its designee pursuant to Section 2.1;

(e) the Japan Office Space Lease duly executed by Buyer or its designee pursuant to Section 2.1;

(f) the China Asset Transfer Agreement duly executed by Buyer or its designee pursuant to Section 2.1;

(g) the Japan Real Estate Purchase Agreement duly executed by Buyer or its designee pursuant to Section 2.1;

(h) the Software License Agreement duly executed by Buyer or its designee pursuant to Section 2.1;

(i) the Sublease Agreements duly executed by Buyer or its designee pursuant to Section 2.1; and

(j) the Buyer Closing Certificate.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to Buyer as of the date hereof and as of the Closing Date that the statements contained in this Article IV are true and correct, except as set forth in the disclosure schedule dated and delivered as of the date hereof by Seller to Buyer (the " Seller Disclosure Schedule "), which is attached to this Agreement and is designated therein as being the Seller Disclosure Schedule. The Seller Disclosure Schedule shall be arranged in paragraphs corresponding to each representation and warranty set forth in this Article IV. Any information disclosed in one Section of the Seller Disclosure Schedule shall be considered to be made for purposes of another Section of the Seller Disclosure Schedule to the extent that the relevance or applicability of the disclosure is reasonably apparent on the face of such disclosure.

4.1 Organization and Good Standing . Each member of the Seller Group is a corporation, limited liability company or other legal entity duly organized, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or formation, has all requisite power to own, lease and operate its properties and to carry on its business as now being conducted and as proposed to be conducted, and is duly qualified to do business and is in good standing in each jurisdiction in which it owns or leases property or conducts any business so as to require such qualification except for those jurisdictions where the failure to be so qualified and in good standing could not individually or in the aggregate have a material adverse effect on the Purchased Assets or the condition (financial or otherwise), operations or results of operations of the Business or any member of the Seller Group. No member of the Seller Group is in default under its Charter Documents.

4.2 Authority and Enforceability .

(a) Seller has the 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 Seller. Seller has duly executed and delivered this Agreement. This Agreement constitutes the valid and binding obligation of Seller, enforceable against it in accordance with its terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar Laws affecting or relating to creditors' rights generally, and (ii) the availability of injunctive relief and other equitable remedies.

(b) Each member of the Seller Group has the requisite power and authority to enter into each Ancillary Agreement to which it is, or specified to be, a party and to consummate the transactions contemplated thereby. The execution and delivery by each member of the Seller Group of each Ancillary Agreement to which it is, or specified to be, a party and the consummation of the transactions contemplated thereby have been duly authorized by all necessary corporate, limited liability company or other action on the part of each such member of the Seller Group. Prior to the Closing each member of the Seller Group will have duly executed and delivered each Ancillary Agreement to which it is, or specified to be, a party. Each such Ancillary Agreement will constitute the valid and binding obligation of each such member of the Seller Group party thereto, enforceable against it in accordance with its terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar Laws affecting or relating to creditors' rights generally, and (ii) the availability of injunctive relief and other equitable remedies. The Ancillary Agreements will effectively vest in Buyer good, valid and marketable title to all the Purchased Assets free and clear of all Liens.

4.3 No Conflicts; Consents .

(a) The execution and delivery of this Agreement by Seller do not, and the execution and delivery of each Ancillary Agreement to which each member of the Seller Group is, or specified to be, a party, the performance by Seller and each member of the Seller Group of its obligations hereunder and thereunder and the consummation by Seller and each member of the Seller Group of the transactions contemplated hereby and thereby (in each case, with or without the giving of notice or lapse of time, or both), will not, directly or indirectly, (i) violate the provisions of any of the Charter Documents of any member of the Seller Group, (ii) violate or constitute a material default, an event of material default or an event creating rights of acceleration, termination, cancellation, imposition of additional material obligations or loss of material rights relating to the Business under any Assigned Contract or any Material Contract, (iii) violate or conflict with any Law, Authorization or Governmental Order applicable to any member of the Seller Group, or give any Governmental Entity or other Person the right to challenge any of the transactions contemplated by this Agreement or the Ancillary Agreements or to exercise any remedy, obtain any relief under or revoke or otherwise modify any rights held under, any such Law, Authorization or Governmental Order, or (iv) result in the creation of any Liens upon any of the Purchased Assets other than Permitted Liens. Section 4.3(a) of the Seller Disclosure Schedule sets forth all consents, waivers, assignments and other approvals and actions that are required in connection with the transactions contemplated by this Agreement with respect to any Purchased Asset or under any Assigned Contract to which any member of the Seller Group is a party (collectively, " Consents ") in order to sell, assign, transfer, convey and deliver to, Buyer all rights and benefits of the Seller Group thereunder without any impairment or alteration whatsoever.

(b) No Authorization or Governmental Order of, registration, declaration or filing with, or notice to, any Governmental Entity or other Person, is required by or with respect to any member of the Seller Group in connection with the execution and delivery of this Agreement and the Ancillary Agreements and the consummation of the transactions contemplated hereby and thereby.

4.4 Financial Statements .

(a) Seller has previously furnished Buyer with unaudited financial information of the Business, which includes management reports prepared for internal use by Seller in the management of the Business and in the form of statements of operations for the Business (the "Statements of Operations ") for the fiscal year ended December 31, 2009 and for the three-month period ended June 30, 2010 (the "June Income Statement "), copies of which are set forth as an exhibit to Section 4.4 of the Seller Disclosure Schedule. The Statements of Operations are true, complete and correct in all material respects and have been prepared on a basis consistent with Seller's historical accounting policies and procedures with respect to the Business and fairly and accurately present in all material respects the financial position and results of operations of the Business, as if the Business were operated on a stand-alone basis, without allocations for overhead costs or expenses, for each of the periods then ended.

(b) Except as set forth on Section 4.4 of the Seller Disclosure Schedule, the Statements of Operations have been derived from financial information that has been prepared in accordance with GAAP.

4.5 No Undisclosed Liabilities . There are no liabilities, obligations or commitments relating to the Purchased Assets of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured or otherwise (" Liabilities "), except

(a) those which are adequately reflected or reserved against in the Seller June Balance Sheet as of the Balance Sheet Date,

(b) those which have been incurred in the ordinary course of the Business and consistent with past practice since the Balance Sheet Date and which are not, individually or in the aggregate, material in amount,

(c) those arising under Contracts disclosed in Section 4.15 of the Seller Disclosure Schedule or not required to be disclosed therein, and

(d) those set forth on Section 4.5 of the Seller Disclosure Schedule.

4.6 Inventory . Each item of Inventory that constitutes a Purchased Asset

(a) is free of any material defect or other deficiency,

(b) is of a quality, quantity and condition useable and, as to finished goods, saleable in the ordinary course of the Business (subject to any obsolete items or excess inventory for which an adequate reserve has been made in the Seller June Balance Sheet),

(c) is properly stated on the Seller June Balance Sheet (to the extent existing on the date thereof) and on the books and records of the Seller at the lesser of cost or fair market value or net realizable value,

(d) were or shall be acquired and maintained in the ordinary course of business of the Business and

(e) are the property of Seller, are free and clear of any Lien (other than Permitted Liens) and, except for obsolete items for which an adequate reserve has been made in the Seller June Balance Sheet, conform in all material respects to all standards applicable to such Inventory or its use or sale imposed by any applicable Law. No material write-down of such Inventory has been made or should have been made in the period since December 31, 2009. All of such Inventory is located at the facilities of the Seller Group and no Inventory is held on a consignment basis.

4.7 Taxes .

(a) With respect to the Business or the Purchased Assets, all Tax Returns required to have been filed by or with respect to each member of the Seller Group have been duly and timely filed (or, if due between the date hereof and the Closing Date, will be duly and timely filed), and each such Tax Return correctly and completely reflects Liability for Taxes and all other information required to be reported thereon. With respect to the Business or the Purchased Assets, all Taxes owed by any member of the Seller Group (whether or not shown on any Tax Return) have been timely paid (or, if due between the date hereof and the Closing Date, will be duly and timely paid). Each member of the Seller Group has adequately provided for, in its books of account and related records and on the balance sheet of Seller as of December 31, 2009, Liability for all unpaid Taxes, being current Taxes not yet due and payable.

(b) In each case with respect to the Business or the Purchased Assets, (i) there is no action or audit now proposed, threatened or pending against, or with respect to, any member of the Seller Group in respect of any Taxes, (ii) no member of the Seller Group is the beneficiary of any extension of time within which to file any Tax Return except with respect to the Tax Return of Seller for the taxable year 2009 for which a timely extension has been filed, nor has any member of the Seller Group made (or had made on its behalf) any requests for such extensions, (iii) no claim has ever been made by an authority in a jurisdiction where any member of the Seller Group does not file Tax Returns that any of them is or may be subject to taxation by that jurisdiction or that any of them must file Tax Returns, and (iv) there are no Liens on any of the stock or assets of any member of the Seller Group with respect to Taxes.

(c) There are no Liens for Taxes on any of the Purchased Assets other than Permitted Liens. Each member of the Seller Group has withheld and timely paid all Taxes required to have been withheld and paid with respect to the Purchased Assets, and has complied with all information reporting and backup withholding requirements, including maintenance of required records with respect thereto.

(d) In each case with respect to the Purchased Assets or the Business, (i) there is no dispute or claim concerning any Liability for Taxes with respect to any member of the Seller Group for which notice has been provided, or which is asserted or threatened, or which is otherwise known to any member of the Seller Group, (ii) no issues have been raised in any Taxes examination with respect to any member of the Seller Group which, by application of similar principles, could be expected to result in Liability for Taxes for any member of the Seller Group or period not so examined, and (iii) no member of the Seller Group has waived (or is subject to a waiver of) any statute of limitations in respect of Taxes or has agreed to (or is subject to) any extension of time with respect to a Tax assessment or deficiency.

(e) No member of the Seller Group has ever been a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code. No foreign member of the Seller Group has ever held a "United States real property interest" within the meaning of Section 897(1)(1) of the Code. Seller is not a "foreign person" within the meaning of Section 1445 of the Code. No member of the Seller Group has made any payments, is obligated to make any payments, or is a party to any agreement that under certain circumstances could obligate it to make payments that would result in a nondeductible expense under Section 280G of the Code or an excise Tax to the recipient of such payments pursuant to Section 4999 of the Code. No member of the Seller Group has participated in or cooperated with an international boycott as defined in Section 999 of the Code.

(f) No member of the Seller Group has received (or is subject to) any ruling from any Taxing Authority or has entered into (or is subject to) any agreement with a Taxing Authority. Each member of the Seller Group has disclosed on its federal income Tax Returns all positions taken therein that could give rise to a substantial understatement of federal income Tax within the meaning of Section 6662 of the Code.

(g) No member of the Seller Group is a party to any Tax allocation or sharing agreement. No member of the Seller Group has any Liability for the Taxes of any Person, other than under Section 1.1502-6 of the Treasury regulations (or any similar provision of state, local, or foreign Law) with respect to any Relevant Group of which such member of the Seller Group currently is a member, (i) as a transferee or successor, (ii) by contract, (iii) under Section 1.1502-6 of the Treasury regulations (or any similar provision of state, local or foreign Law), or (iv) otherwise. No member of the Seller Group is a party to any joint venture, partnership or other arrangement that is treated as a partnership for federal income tax purposes.

(h) No member of the Seller Group that is incorporated in a non-U.S. jurisdiction is, or at any time has been, engaged in the conduct of a trade or business within the United States, or treated as or considered to be so engaged.

4.8 Compliance with Law .

(a) Each member of the Seller Group has conducted, and is conducting, the Business in compliance in all material respects with all applicable Laws.

(b) To Seller's Knowledge, no event has occurred and no circumstances exist that (with or without the passage of time or the giving of notice) could reasonably be expected to result in a violation of, conflict with or failure on the part of any member of the Seller Group to conduct the Business in compliance in all material respects with, any applicable Law. No member of the Seller Group has received written notice regarding any violation of, conflict with, or failure to conduct the Business in compliance in all material respects with, any applicable Law.

4.9 Business Authorizations .

(a) Each member of the Seller Group owns, holds or lawfully uses in the operation of the Business all material Authorizations which are necessary for it to conduct the Business as currently conducted or for the ownership and use of the assets owned or used by such member of the Seller Group in the conduct of the Business (the " Business Authorizations ") free and clear of all Liens, other than Permitted Liens. Such Business Authorizations are valid and in full force and effect. All Business Authorizations are listed in Section 4.9 of the Seller Disclosure Schedule.

(b) No event has occurred and no circumstances exist that (with or without the passage of time or the giving of notice) may result in a violation of, conflict with, failure on the part of any member of the Seller Group to comply with the terms of, or the revocation, withdrawal, termination, cancellation, suspension or modification of any material Business Authorization. No member of the Seller Group has received written notice regarding any violation of, conflict with, failure to comply with the terms of, or any revocation, withdrawal, termination, cancellation, suspension or modification of, any material Business Authorization. No member of the Seller Group is in default, nor has any such member of the Seller Group received written notice of any claim of default, with respect to any material Business Authorization.

(c) No Person other than a member of the Seller Group owns or has any proprietary, financial or other interest (direct or indirect) in any Business Authorization.

4.10 Title to Personal Properties .

(a) The Seller Disclosure Schedule sets forth a complete and accurate list of all personal properties and tangible assets (" Personal Property ") owned by the Seller Group that are Purchased Assets as of the date of this Agreement, with a current fair market value in excess of $3,000.

(b) With respect to Personal Property that constitute a Purchased Asset that it purports to own including all Personal Property reflected as owned on the Seller June Balance Sheet (other than Inventory sold in the ordinary course of the Business since the date thereof), a member of the Seller Group has good and transferable title to all such Personal Property, free and clear of all Liens except for Permitted Liens.

(c) No Personal Property that constitutes a Purchased Asset is leased by any member of the Seller Group.

4.11 Condition of Tangible Assets . All Purchased Assets that are tangible property are structurally sound, are in good operating condition and repair (subject to normal wear and tear given the use and age of such assets), are usable in the ordinary course of the Business (other than obsolete Inventory for which an adequate reserve has been made in the Seller June Balance Sheet) and conform in all material respects to all Laws and Authorizations relating to their construction, use and operation.

4.12 Real Property .

(a) The Seller Disclosure Schedule contains (i) a list of all real property and interests in real property owned in fee by any member of the Seller Group Related to the Business that constitute a Purchased Asset (the " Owned Real Property "), and (ii) a list of all real property and interests in real property leased by any member of the Seller Group Related to the Business that constitute a Purchased Asset (the " Leased Real Property " and, together with the Owned Real Property, the " Real Property ").

(b) With respect to each parcel of Owned Real Property: (i) A member of the Seller Group has good and marketable title to each such parcel of Owned Real Property free and clear of all Liens, except (A) Permitted Liens and (B) zoning and building restrictions, easements, covenants, rights-of-way and other similar restrictions of record, none of which impairs the current or proposed use of such Owned Real Property. (ii) Seller has provided to Buyer copies of the deeds and other instruments (as recorded) by which the relevant member of the Seller Group acquired such parcel of Owned Real Property, and copies of all title insurance policies, opinions, abstracts and surveys in the possession of the Seller Group with respect to such parcel. (iii) There are no outstanding options or rights of first refusal to purchase such parcel of Owned Real Property, or any portion thereof or interest therein.

(c) With respect to Leased Real Property, Seller has delivered to Buyer a true and complete copy of every lease and sublease pursuant to which any member of the Seller Group is a party or by which it is bound (each, a " Lease "). The relevant member of the Seller Group has peaceful, undisturbed and exclusive possession of the Leased Real Property.

(d) To Seller's Knowledge, the uses for which the buildings, facilities and other improvements located on the Owned Real Property are zoned do not restrict, or impair, the use of the Owned Real Property for purposes of the Business. To Seller's Knowledge, the uses for which the buildings, facilities and other improvements located on the Leased Real Property are zoned do not restrict, or impair, the use of the Leased Real Property for purposes of the Business.

(e) No Governmental Entity having the power of eminent domain over the Real Property has commenced or, to Seller's Knowledge, intends to exercise the power of eminent domain or a similar power with respect to all or any part of the Real Property. There are no pending or, to Seller's Knowledge, threatened condemnation, fire, health, safety, building, zoning or other land use regulatory proceedings, lawsuits or administrative actions relating to any portion of the Real Property or any other matters which do or may reasonably be expected to materially adversely effect the current use, occupancy or value thereof. No member of the Seller Group has received written notice of any pending or threatened special assessment proceedings affecting any portion of the Real Property.

(f) The Real Property and all present uses and operations of the Real Property comply in all material respects with all Laws, covenants, conditions, restrictions, easements, disposition agreements and similar matters affecting the Real Property. The Owned Real Property, and to Seller's Knowledge the Leased Real Property, and the continued use, occupancy and operation of the Real Property as used, occupied and operated in the conduct of the Business do not constitute a nonconforming use and are not the subject of a special use permit under any Law.

(g) The Real Property is in suitable condition in all material respects for the conduct of the Business as currently conducted. Each member of the Seller Group has good and valid rights of ingress and egress to and from all Owned Real Property from and to the public street systems for usual street, road and utility purposes.

(h) No Person other than a member of the Seller Group is in possession of any of the Real Property or any portion thereof (other than common use areas), and there are no leases, subleases, licenses, concessions or other agreements, written or oral, granting to any Person other than the Seller Group the right of use or occupancy of the Real Property or any portion thereof (other than common use areas). No easement, utility transmission line or water main located on the Real Property materially adversely affects the use of the Real Property or any improvement on the Real Property.

(i) All water, sewer, gas, electric, telephone and drainage facilities, and all other utilities required by any Law or by the use and operation of the Real Property in the conduct of the Business are operable and are adequate to service the Real Property in the operation of the Business and to permit compliance in all material respects with the requirements of all Laws in the operation thereof. To Seller's Knowledge, no fact or condition exists which could reasonably be expected to result in the termination or material reduction of the current access from the Real Property to existing roads or to sewer or other utility services presently serving the Real Property.

(j) A member of the Seller Group owns each of the Japan Buildings free and clear of any Liens except Permitted Liens. All of the Japan Buildings comply with all applicable material building codes, fire codes and other applicable Laws. All of the Japan Buildings comply with all applicable material building codes, fire codes and other applicable Laws, including but not limited to, the current earthquake standard under the Building Standards Act ( kenchiku kijun ho ) (Act No. 201 of 1950).

(k) No lawsuit, arbitration, conciliation or administrative proceeding with regard to the Owned Real Property is pending, and to Seller's Knowledge, there is no reasonable likelihood thereof.

(l) There is no third party of which any attachment, provisional attachment, or preservative measures are accepted with respect to the Owned Real Property and to Seller's Knowledge, no filing has been made therefor.

(m) There is no flaw or defect in the Owned Real Property that would prevent the Buyer from consummating the transactions contemplated by the Japan Real Estate Purchase Agreement on account thereof.

4.13 Intellectual Property .

(a) As used in this Agreement, " Intellectual Property " means: (i) inventions (whether or not patentable), trade secrets, technical data, databases, customer lists, designs, tools, methods, processes, technology, ideas, know-how, source code, product road maps and other proprietary information and materials (" Proprietary Information "); (ii) trademarks and service marks (whether or not registered), trade names, logos, trade dress and other proprietary indicia and all goodwill associated therewith; (iii) documentation, advertising copy, marketing materials, web-sites, specifications, mask works, drawings, graphics, databases, recordings and other works of authorship, whether or not protected by Copyright; (iv) computer programs, including any and all software implementations of algorithms, models and methodologies, whether in source code or object code, design documents, flow-charts, user manuals and training materials relating thereto and any translations thereof (collectively, " Software "); and (v) all forms of legal rights and protections that may be obtained for, or may pertain to, the Intellectual Property set forth in clauses (i) through (iv) in any country of the world (" Intellectual Property Rights "), including all letters patent, patent applications, provisional patents, design patents, PCT filings, invention disclosures and other rights to inventions or designs (" Patents "), all registered and unregistered copyrights in both published and unpublished works (" Copyrights "), all trademarks, service marks and other proprietary indicia (whether or not registered) (" Marks "), trade secret rights, mask works, moral rights or other literary property or authors rights, and all applications, registrations, issuances, divisions, continuations, renewals, reissuances and extensions of the foregoing.

(b) The Seller Disclosure Schedule lists (by name, owner and, where applicable, registration number and jurisdiction of registration, application, certification or filing) all Seller Owned Intellectual Property; provided that the Seller Disclosure Schedule is not required to list items of Seller Owned Intellectual Property which are both (i) immaterial to the Business and (ii) not registered or the subject of an application for registration. Except as described in the Seller Disclosure Schedule, a member of the Seller Group owns the entire right, title and interest to all Seller Owned Intellectual Property free and clear of all Liens, other than Permitted Liens.

(c) The Seller Disclosure Schedule lists all licenses, sublicenses, joint operation ( kyodo jigyo ) and other agreements (" In-Bound Licenses ") pursuant to which a third party authorizes any member of the Seller Group to use, practice any rights under, or grant sublicenses with respect to, any Intellectual Property Related to the Business and owned by a third party, including the incorporation of any such Intellectual Property into products of any member of the Seller Group and, with respect to each such In-Bound License, whether the In-Bound License is exclusive or non-exclusive.

(d) The Seller Disclosure Schedule lists all licenses, sublicenses, joint operation ( kyodo jigyo ) and other agreements (" Out-Bound Licenses ") pursuant to which any member of the Seller Group authorizes a third party to use, practice any rights under, or grant sublicenses with respect to, any Seller Owned Intellectual Property or pursuant to which any member of the Seller Group grants rights to use or practice any rights under any Intellectual Property owned by a third party and, with respect to each such Out-Bound License, whether the Out-Bound License is exclusive or non-exclusive.

(e) The members of the Seller Group (i) exclusively own the entire right, interest and title to each item of Seller Owned Intellectual Property free and clear of Liens (other than Permitted Liens), or (ii) otherwise rightfully use or otherwise enjoy Intellectual Property used in the Business as currently conducted (including the design, manufacture, license and sale of all products currently under development or in production) pursuant to the terms of a valid and enforceable In-Bound License. The Seller Owned Intellectual Property, together with the Seller Group's rights under the In-Bound Licenses listed in the Seller Disclosure Schedule (collectively, the " Seller Intellectual Property "), constitutes all the Intellectual Property used in or necessary for the operation of the Business as it is currently conducted and as proposed to be conducted by Seller.

(f) All registration, maintenance and renewal fees related to Patents, Marks, Copyrights and any other certifications, filings or registrations that are owned by any member of the Seller Group and Related to the Business (" Seller Registered Items ") that are currently due have been paid and all documents and certificates related to such Seller Registered Items have been filed with the relevant Governmental Entity or other authorities in the United States or foreign jurisdictions, as the case may be, for the purposes of maintaining such Seller Registered Items. There are no actions that must be taken by Buyer within 180 days after the date hereof, including the payment of any registration, maintenance or renewal fees or the filing of any documents, applications or certificates for the purposes of maintaining, perfecting or preserving or renewing any Seller Registered Items. All Seller Registered Items are held in compliance with all applicable legal requirements and enforceable by the Seller Group in all material respects. All Patents Related to the Business that have been issued to any member of the Seller Group are valid.

(g) Except as set forth in Section 4.13(g) of the Seller Disclosure Schedule, Seller is not aware of any challenges (or any basis therefor) with respect to the validity or enforceability of any Seller Owned Intellectual Property. The Seller Disclosure Schedule lists the status of any proceedings or actions before the United States Patent and Trademark Office or any other Governmental Entity anywhere in the world related to any of the Seller Owned Intellectual Property, including the due date for any outstanding response by any member of the Seller Group in such proceedings. No member of the Seller Group has taken any action or failed to take any action that could reasonably be expected to result in the abandonment, cancellation, forfeiture, relinquishment, invalidation, waiver or unenforceability of any Seller Owned Intellectual Property. The Seller Disclosure Schedule lists all previously held Seller Registered Items that any member of the Seller Group has abandoned, cancelled, forfeited or relinquished during the 12 months prior to the date of this Agreement.

(h) Except as set forth in Section 4.13(h) of the Seller Disclosure Schedule, none of the products or services currently or formerly developed manufactured, sold, distributed, provided, shipped or licensed by any member of the Seller Group, or which are currently under development, in each case Related to the Business, has infringed or infringes upon, or otherwise unlawfully used or uses, the Intellectual Property Rights of any third party. No member of the Seller Group, by conducting the Business as currently conducted (including the design, manufacture, license and sale of all products currently under development or in production) has infringed or infringes upon, or otherwise unlawfully used or uses, any Intellectual Property Rights of a third party. No member of the Seller Group has received any written communication alleging that any member of the Seller Group has violated or, by conducting the Business as currently conducted (including the design, manufacture, license and sale of all products currently under development or in production), would violate, any Intellectual Property Rights of a third party nor, to Seller's Knowledge, is there any basis therefor. No Action has been instituted, or, to Seller's Knowledge, threatened, relating to any Intellectual Property currently used by any member of the Seller Group Related to the Business and none of the Seller Intellectual Property is subject to any outstanding Governmental Order. To Seller's Knowledge, no Person has infringed or is infringing any Intellectual Property Rights of any member of the Seller Group Related to the Business or has otherwise misappropriated or is otherwise misappropriating any Seller Intellectual Property.

(i) With respect to the Proprietary Information of the Seller Group Related to the Business, the documentation relating thereto is current, accurate in all material respects and sufficient in detail and content to identify and explain it and to allow its full and proper use without reliance on the special knowledge or memory of others. Each member of the Seller Group has taken commercially reasonable steps to protect and preserve the confidentiality of all Proprietary Information owned by any member of the Seller Group Related to the Business that is not covered by an issued Patent. Any receipt or use by, or disclosure to, a third party of Proprietary Information Related to the Business owned by any member of the Seller Group has been pursuant to the terms of binding written confidentiality and non-use agreement between a member of the Seller Group and such third party (" Nondisclosure Agreements "). True and complete copies of the Nondisclosure Agreements, and any amendments thereto, have been provided to Buyer. Each member of the Seller Group is, and to Seller's Knowledge, all other parties thereto are, in compliance with the provisions of the Nondisclosure Agreements. To Seller's Knowledge, each member of the Seller Group is in compliance with the terms of all Contracts pursuant to which a third party has disclosed to, or authorized such member of the Seller Group to use, material Proprietary Information Related to the Business owned by such third party.

(j) All current and former employees, consultants and contractors of the Business who conceive or develop Intellectual Property Related to the Business have executed and delivered, and are in compliance with, enforceable agreements regarding the protection of Proprietary Information and providing valid written assignments of all Intellectual Property Related to the Business conceived or developed by such employees, consultants or contractors in connection with their services for the Business (" Work Product Agreements "). True and complete copies of the Work Product Agreements have been provided or made available to Buyer. No current or former employee, consultant or contractor or any other Person has any right, claim or interest to any of the Seller Owned Intellectual Property.

(k) No employee, consultant or contractor of any member of the Seller Group has been, is or will be, by performing services for the Business, in violation of any term of any employment, invention disclosure or assignment, confidentiality or noncompetition agreement or other restrictive covenant or any Governmental Order as a result of such employee's, consultant's or contractor's employment in the Business or any services rendered by such employee, consultant or contractor, which violation would reasonably be expected to have a material adverse effect on the Business or the Purchased Assets.

(l) All Intellectual Property that has been distributed, sold or licensed to a third party by any member of the Seller Group Related to the Business that is covered by warranty conformed and conforms to, and performed and performs in accordance with, the representations and warranties provided with respect to such Intellectual Property by or on behalf of the Seller Group for the time period during which such representations and warranties apply.

(m) The execution and delivery of this Agreement by Seller does not, and the consummation of the transactions contemplated hereby (in each case, with or without the giving of notice or lapse of time, or both), will not, directly or indirectly, result in the loss or impairment of, or give rise to any right of any third party to terminate or reprice or otherwise renegotiate any member of the Seller Group's rights to own any of its Intellectual Property or their respective rights under any Out-Bound License or In-Bound License, nor require the consent of any Governmental Entity or other third party in respect of any such Intellectual Property.

(n) The Seller Disclosure Schedule lists all Open Source Materials that is or was used in any Flow Products, and describes the manner in which such Open Source Materials are or were used (such description shall include, without limitation, whether (and, if so, how) the Open Source Materials were modified and/or distributed by any member of the Seller Group). No member of the Seller Group has used any Open Source Materials in a manner that requires the Seller Intellectual Property or any product of any member of the Seller Group Related to the Business to be (a) disclosed or distributed in source code form, (b) licensed for the purpose of making derivative works, or (c) redistributable at no charge.

(o) No member of the Seller Group has participated in any standards setting activities or joined any standards setting organizations that would affect the proprietary nature of any Seller Intellectual Property, or restrict the ability of any member of the Seller Group to enforce, license, or exclude others from using the Seller Intellectual Property.

4.14 Absence of Certain Changes or Events . Since the Balance Sheet Date to the date of this Agreement (with respect to the representation and warranty made as of the date of this Agreement) and to the Closing Date (with respect to the representation and warranty made as of the Closing Date):

(a) there has not been any Material Adverse Change;

(b) no member of the Seller Group has, except in the ordinary course of business and except as set forth on Section 4.14(b) of the Seller Disclosure Schedule, (i) materially increased or modified the compensation or benefits payable or to become payable by such member of the Seller Group to any Business Employees or consultants or contractors of the Business, (ii) materially increased or modified any Benefit Plan applicable to any Business Employees or consultants or contractors of the Business, or (iii) entered into any employment, severance or termination agreement with any Business Employee;

(c) no member of the Seller Group has sold, leased, transferred or assigned any Purchased Assets, except for (i) the sale of Inventory, and (ii) the sale of obsolete Equipment, in each case in the ordinary course of the Business consistent with past practice;

(d) no member of the Seller Group has incurred, assumed or guaranteed any Indebtedness Related to the Business, other than obligations relating to equipment or lease financing arrangements entered into in the ordinary course of the Business;

(e) no member of the Seller Group has mortgaged, pledged or subjected to Liens any assets, properties or rights Related to the Business, except for Liens arising under lease financing arrangements existing as of the Balance Sheet Date and Permitted Liens;

(f) no member of the Seller Group has entered into, amended, modified, canceled or waived any rights under, any Assumed Contract and no Assumed Contract has been terminated or cancelled;

(g) no member of the Seller Group has taken any action outside the ordinary course of the Business;

(h) there has not been any labor dispute, other than individual grievances, or any activity or proceeding by a labor union or representative thereof to organize any employees of the Business;

(i) there has not been any material violation of, or material conflict with, any applicable Law or any Business Authorization;

(j) there has not been any material damage, destruction or loss with respect to the Purchased Assets, whether or not covered by insurance;

(k) no member of the Seller Group has made any change in the accounting practices Related to the Business;

(l) no member of the Seller Group has made any Tax election, changed its method of Tax accounting or settled any claim for Taxes, in each case Related to the Business; and

(m) no member of the Seller Group has agreed, whether in writing or otherwise, to do any of the foregoing.

4.15 Contracts .

(a) Except as set forth in Section 4.15 of the Seller Disclosure Schedule, no member of the Seller Group is party to, or bound by, in each case Related to the Business:(i) any Contract or series of related Contracts for the purchase of materials, supplies, goods, services, equipment or other assets that involves (A) annual payments by the members of the Seller Group of $200,000 or more, or (B) aggregate payments by the members of the Seller Group of $2,000,000 or more; (ii) any Contract or series of related Contracts for the sale by the members of the Seller Group of (A) materials, supplies, goods, services, equipment or other assets, that involves a specified annual minimum dollar sales amount of $200,000 or more, or (B) pursuant to which the members of the Seller Group received payments of more than $200,000 in the year ended December 31, 2009; (iii) any Contract that requires any member of the Seller Group to purchase its total requirements of any product or service from a third party or that contains "take or pay" provisions; (iv) any Contract or series of related Contracts that (A) continues over a period of more than six months from the date hereof or (B) involves payments to or by any member of the Seller Group exceeding $200,000, other than arrangements disclosed pursuant to the preceding paragraphs (i) and (ii); (v) any partnership, joint venture or similar Contract; (vi) any distribution, dealer, representative or sales agency Contract; (vii) any Lease; (viii) any Contract for the lease of personal property which provides for payments to or by any member of the Seller Group in any one case of $200,000 or more annually or $600,000 or more over the term of the Contract; (ix) any Contract which provides for the indemnification by a member of the Seller Group of any Person (other than customary indemnification provisions contained in Contracts entered into in the ordinary course to which no claims for indemnification are outstanding), the undertaking by any member of the Seller Group to be responsible for consequential damages, or the assumption by any member of the Seller Group of any Tax or environmental Liability; (x) any Contract with any Governmental Entity; (xi) any note, debenture, bond, equipment trust, letter of credit, loan or other Contract for Indebtedness or lending of money (other than to employees for travel or business expenses in the ordinary course of the Business) or Contract for a line of credit or guarantee, pledge or undertaking of the Indebtedness of any other Person, in each case involving Indebtedness in excess of $200,000; (xii) any Contract for any capital expenditure or leasehold improvement in any one case in excess of $200,000 or any such Contracts in the aggregate greater than $600,000; (xiii) any Assigned Contract which restrains the ability of any member of the Seller Group to engage in any business or compete in any manner in any business; (xiv) any Out-Bound License or In-Bound License; (xv) any Contract relating to the acquisition or disposition of any material business (whether by merger, sale of stock, sale of assets or otherwise); (xvi) any collective bargaining Contract or other Contract with any labor organization, union or association; (xvii) any Contract that is an employment, consulting, termination or severance Contract with any Business Employee, other than non-binding offer letters; and (xviii) any Contract that is otherwise material to any member of the Seller Group and not previously disclosed pursuant to this Section 4.15.

(b) Each Contract required to be listed in Section 4.15 of the Seller Disclosure Schedule (collectively, the " Material Contracts ") is valid and enforceable in accordance with its terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar Laws affecting or relating to creditors' rights generally, and (ii) the availability of injunctive relief and other equitable remedies. The member of the Seller Group party to such Material Contract has materially complied with and is in material compliance with, and to Seller's Knowledge, all other parties thereto have materially complied with and are in material compliance with, the provisions of each Material Contract.

(c) No member of the Seller Group is, and to Seller's Knowledge, no other party thereto is, in default in the performance, observance or fulfillment of any material obligation, covenant, condition or other term contained in any Material Contract, and no member of the Seller Group has given or received written notice to or from any Person relating to any such alleged or potential default that has not been cured. No event has occurred which with or without the giving of notice or lapse of time, or both, may conflict with or result in a violation or breach of, or give any Person the right to exercise any remedy under or accelerate the maturity or performance of, or cancel, terminate or modify, any Material Contract. (d) Seller has delivered accurate and complete copies of each Material Contract to Buyer.

4.16 Sufficiency of Purchased Assets .

(a) The Purchased Assets include all assets, properties and rights Related to the Business reflected on the Seller June Balance Sheet other than (i) Inventory sold, (ii) Accounts Receivable, (iii) prepaid expenses realized, (iv) items of obsolete Equipment disposed of and (v) the Excluded Assets, in the case of each of (i)-(iv) in the ordinary course of the Business consistent with past practice.

(b) The Purchased Assets and the performance by Seller under the Ancillary Agreements will be sufficient for the conduct and operation of the Business by Buyer following the Closing in the same manner as conducted and operated by the members of the Seller Group on the Balance Sheet Date; provided, however, that Buyer acknowledges that, except with respect to the Assigned Contracts, Seller is not assigning any other Contracts Related to the Business.

(c) The products listed in Schedule I of the Seller Disclosure Schedule constitute all products currently or formerly used in the operation of the Business, including products currently under development or production.

4.17 Litigation .

(a) There is no action, suit or proceeding, claim, arbitration, litigation or governmental investigation (each, an " Action "), in each case Related to the Business, (i) pending or, to Seller's Knowledge, threatened against or affecting any member of the Seller Group, or (ii) that challenges or seeks to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement or the Ancillary Agreements. No event has occurred or circumstances exist that may give rise or serve as a basis for any such Action.

(b) There is no unsatisfied judgment, penalty or award, in each case Related to the Business, against or affecting any member of the Seller Group or any of the Purchased Assets.

4.18 Employee Benefits .

(a) Section 4.18(a) of the Seller Disclosure Schedule sets forth a complete and accurate list of all Benefit Plans maintained or contributed to by Seller or any member of the Seller Group for the benefit of any present or former employees, contractors or consultants of the Business (collectively, " Seller Group Benefit Plans ") covering employees located in the United States (the " US Plans ").

(b) Each US Plan has been and is currently administered in compliance with all reporting, disclosure and other requirements of ERISA and the Code applicable to such US Plan. Each US Plan that is an employee pension benefit plan (as defined in Section 3(2) of ERISA) and which is intended to be qualified under Section 401(a) of the Code (a " Pension Plan "), has been determined by the Internal Revenue Service to be so qualified and no condition exists that would adversely affect any such determination. No US Plan is a "defined benefit plan" as defined in Section 3(35) of ERISA.

(c) No member of the Seller Group or any ERISA Affiliate or any trustee or agent of any US Plan has been or is currently engaged in any prohibited transactions as defined by Section 406 of ERISA or Section 4975 of the Code for which an exemption is not applicable which could subject any member of the Seller Group, any ERISA Affiliate or any trustee or agent of any US Plan to the Tax or penalty imposed by Section 4975 of the Code or Section 502 of ERISA.

(d) No member of the Seller Group or any ERISA Affiliate has been or is currently party to any "multi-employer plan," as that term is defined in Section 3(37) of ERISA.

(e) True and correct copies of the most recent annual report on Form 5500 and any attached schedules for each US Plan (if any such report was required by applicable Law) and a true and correct copy of the most recent determination letter issued by the Internal Revenue Service for each Pension Plan have been made available to Buyer.

(f) With respect to each US Plan, there are no actions, suits or claims (other than routine claims for benefits in the ordinary course) pending or, to Seller's Knowledge threatened against any US Plan, any member of the Seller Group, any ERISA Affiliate or any trustee or agent of any US Plan.

(g) With respect to each US Plan to which a member of the Seller Group or any ERISA Affiliate is a party which constitutes a group health plan subject to Section 4980B of the Code, each such US Plan complies, and in each case has complied, in all material respects with all applicable requirements of Section 4980B of the Code.

(h) Full payment has been made of all amounts which any member of the Seller Group or any ERISA Affiliate was required to have paid as a contribution to any US Plan as of the last day of the most recent fiscal year of each of the Benefit Plans ended prior to the date of this Agreement.

(i) Each US Plan is, and its administration is and has been during the six-year period preceding the date of this Agreement, in compliance with, and no member of the Seller Group or any ERISA Affiliate has received any claim or notice that any such US Plan is not in compliance with, all applicable Laws and Governmental Orders and prohibited transaction exemptions, including to the extent applicable, the requirements of ERISA, in each case in all material respects.

(j) No US Plan other than a Pension Plan or severance plan provides benefits to any Business Employee after termination of employment.

(k) Except as set forth in the Seller Disclosure Schedule, the consummation of the transactions contemplated by this Agreement will not (i) entitle any Business Employee, contractor or consultant of the Business to severance pay, unemployment compensation or any other payment (except to the extent required by applicable Law), (ii) accelerate the time of payment or vesting, or increase the amount of, compensation due to any such Business Employee, contractor or consultant, or result in the payment of any other benefits to any Person or the forgiveness of any Indebtedness of any Person, (iii) result in any prohibited transaction described in Section 406 of ERISA or Section 4975 of the Code for which an exemption is not available or (iv) result (either alone or in conjunction with any other event) in the payment or series of payments by any member of the Seller Group or any of its Affiliates to any Person of an "excess parachute payment" within the meaning of Section 280G of the Code.

(l) With respect to each US Plan that is funded wholly or partially through an insurance policy, all premiums required to have been paid to date under the insurance policy have been paid, all premiums required to be paid under the insurance policy through the Closing will have been paid on or before the Closing and, as of the Closing, there will be no liability of any member of the Seller Group or any ERISA Affiliate under any insurance policy or ancillary agreement with respect to such insurance policy in the nature of a retroactive rate adjustment, loss sharing arrangement or other Liability arising wholly or partially out of events occurring prior to the Closing.

(m) Each US Plan that constitutes a "welfare benefit plan," within the meaning of Section 3(1) of ERISA, and for which contributions are claimed by any member of the Seller Group or any ERISA Affiliate as deductions under any provision of the Code, is in compliance with all applicable requirements pertaining to such deduction. With respect to any welfare benefit fund (within the meaning of Section 419 of the Code) related to a welfare benefit plan, there is no disqualified benefit (within the meaning of Section 4976(b) of the Code) that would result in the imposition of a Tax under Section 4976(a) of the Code. All welfare benefit funds intended to be exempt from Tax under Section 501(a) of the Code have been determined by the Internal Revenue Service to be so exempt and no event or condition exists which would adversely affect any such determination.

(n) Section 4.18(n) of the Seller Disclosure Schedule sets forth all Benefit Plans covering Business Employees outside of the United States (the " Foreign Plans "). The Foreign Plans have been operated in accordance, and are in compliance, with all applicable Laws and have been operated in accordance, and are in compliance, in each case in all material respects, with their respective terms. There are no unfunded liabilities under or in respect of the Foreign Plans, and all contributions or other payments required to be made to or in respect of the Foreign Plans prior to the Closing have been made or will be made prior to the Closing.

(o) With respect to all Foreign Plans covering Business Employees in Japan (the " Japan Plans"): (i) No written notice of non-compliance has been received by any member of the Seller Group from any such Governmental Entity with respect to any of the Japan Plans. (ii) Each Japan Plan to which any member of the Seller Group contributes that is intended to qualify for any Tax benefit under applicable Law has received any required confirmation of such qualification from an appropriate Governmental Entity and is in material compliance with all requirements of applicable Law, as to both form and operation, necessary to maintain such qualification. Each member of the Seller Group, as applicable, has performed all of its material obligations in relation to the Japan Plans in accordance with the governing documentation of the Japan Plans and the requirements of all applicable Laws. (iii) There are no criminal proceedings against, and no civil, arbitration, administrative or other proceedings or disputes by or against, the trustees, managers or administrators of the Japan Plans or any member of the Seller Group in relation to the Japan Plans and none is pending, or to Seller's Knowledge, threatened.

4.19 Labor and Employment Matters .

(a) The Seller Disclosure Schedule sets forth (i) a list of all Business Employees (including title and position), contractors and consultants of the Business as of the date hereof, and (ii) the base compensation and benefits of each such Business Employee, contractor and consultant. The employment of all Business Employees, contractors and consultants, except for the employment of Business Employees located in Japan, may be terminated at any time with or without cause and without any severance or other Liability to the members of the Seller Group. The list of Business Employees includes all employees of the Seller Group who perform services Related to the Business (other than employees who perform only incidental services Related to the Business).

(b) No member of the Seller Group is a party or subject to any labor union or collective bargaining agreement in connection with the Business. There have not been since January 1, 2008, and there are not pending or, to Seller's Knowledge, threatened, any labor disputes, work stoppages, requests for representation, pickets, work slow-downs due to labor disagreements or any actions or arbitrations that involve Business Employees. There is no unfair labor practice, charge or complaint pending, unresolved or, to Seller's Knowledge, threatened before the National Labor Relations Board. No event has occurred or circumstance exist that may provide the basis of any work stoppage or other labor dispute in connection with the Business.

(c) Each member of the Seller Group has complied in all material respects with each, and is not in material violation of any, Law relating to anti-discrimination and equal employment opportunities in connection with the Business. There are, and have been, no violations of any other Law respecting the hiring, hours, wages, occupational safety and health, employment, promotion, termination or benefits of any Business Employee. Each member of the Seller Group has filed all reports, information and notices required under any Law respecting the hiring, hours, wages, occupational safety and health, employment, promotion, termination or benefits of any Business Employee, and will timely file prior to Closing all such reports, information and notices required by any Law to be given prior to Closing.

(d) Each member of the Seller Group has paid or properly accrued in the ordinary course of the Business all wages and compensation due to Business Employees, including all vacations or vacation pay, holidays or holiday pay, sick days or sick pay, and bonuses.

(e) No member of the Seller Group is a party to any Contract which restricts any member of the Seller Group from relocating, closing or terminating any of its operations or facilities or any portion thereof with respect to the Business. The consummation of the transactions contemplated by this Agreement will not create liability for any act by any member of the Seller Group on or prior to the Closing under the WARN Act or any other Law respecting reductions in force or the impact on employees of plant closings or sales of businesses.

(f) Each member of the Seller Group has complied and is in compliance with, in all material respects, the requirements of the Immigration Reform and Control Act of 1986. The Seller Disclosure Schedule sets forth a true and complete list of all Business Employees working in the United States who are not U.S. citizens and a description of the legal status under which each such Business Employee is permitted to work in the United States. All Business Employees who are performing services for the Seller Group in the United States are legally able to work in the United States.

(g) With respect to labor and employment matters in Japan:

(i) In addition to the information otherwise required to be set forth under Section 4.19(a) above, the Seller Disclosure Schedule sets forth for each Business Employee located in Japan (the " Japan Business Employees ") the date of employment, date of commencement of continuous employment (if different), term of employment, number of accrued but unused annual paid vacation days, employee classification (whether eligible or non-eligible for overtime pay), and status as a full-time, part-time or temporary/fixed term employee. Each member of the Seller Group, as applicable, has complied at all times with all applicable Laws and material Contract terms relating to such Japan Business Employees, including, but not limited to, terms relating to the calculation and payment of wages (including overtime pay, late-night work pay, holiday work pay and salary deduction), maximum hours of work, vacation, child labor restrictions, equal employment opportunity, occupational safety and health, workers' compensation, unemployment compensation, the payment of social security and other Taxes, unfair labor practices, dispatched workers and other contingent workers, employment of handicapped individuals and prohibition of discrimination and harassment. There are no workers' compensation, labor, or similar employment related claims or disputes pending or threatened against any member of the Seller Group with respect to the Japan Business Employees or the Business in Japan. Except as may be set forth in any Japan Plans, the members of the Seller Group are not required by Law, Japan Work Rules (as defined below) or Contract to pay any bonus, commission or other incentive compensation to any Japan Business Employee.

(ii) The employment of any terminated former employee of any member of the Seller Group in connection with the Business in Japan has been terminated in compliance with any applicable material terms of any Contract (including Work Rules) and applicable Law, and no member of the Seller Group has any material Liability under any Contract (including Work Rules) or applicable Law toward any such terminated employee, except as may be set forth in any Japan Plans. The consummation of the transactions contemplated by this Agreement will not cause any of the members of the Seller Group to incur or suffer any Liability relating to, or obligation to pay severance, termination or other payment to, any present or former employee in connection with the Business in Japan.

(iii) True, correct and complete copies of all collective bargaining agreements and similar agreements between a member of the Seller Group and any trade union or similar organization representing the Japan Business Employees have been provided to Buyer (collectively, the " Japan Collective Bargaining Agreements "). There is no current or threatened dispute between any member of the Seller Group and any trade union or similar organization with respect to the Japan Business Employees. No Action is pending or, to the Seller's Knowledge, threatened against any of the members of the Seller Group respecting or involving any applicant for employment of any member of the Seller Group in Japan, any Japan Business Employee or any former employee in Japan of any member of the Seller Group, or any class of the foregoing, by or before any Governmental Entity.

(iv) There has been no dismissal of employees in Japan undertaken by or on behalf of any member of the Seller Group in the past three years, other than a dismissal of 33 employees in the aggregate whose employment terminated in 2008 and in the first and second quarters of 2009. No orders, awards, improvements, prohibitions or other notices have been served upon and no other enforcement or similar proceedings have been taken against any of the members of the Seller Group in the past three years pursuant to any legislation, regulations, orders or codes of conduct of any Governmental Entity in respect of the Japan Business Employees.

(v) The Seller Disclosure Schedule lists by position or title and regular salary or wage level (but not by name) each Japan Business Employee who is (x) absent from active employment due to short or long term disability, (y) absent from active employment on a leave required to be granted under applicable Law by reason of a medical or other condition of such employee or any family member or (z) absent from active employment on any other leave or approved absence (together with the reason for such leave or absence).

(vi) The Seller Disclosure Schedule lists all the employment-related rules, regulations and policies of any member of the Seller Group located in Japan (the " Japan Work Rules "). True, correct and complete copies of all Japan Work Rules documents have been provided or made available to Buyer. Each member of the Seller Group, as applicable, has duly submitted the Japan Work Rules and labor-management agreements to the applicable Government Entities and has duly updated them in accordance with applicable Laws. There are no agreements or other arrangements with any Japan Business Employees which may depart from the Japan Work Rules. There are no current negotiations with any union or similar organization for any material change in the rate of remuneration or the bonus, incentives, or private pension benefits of any Japan Business Employee, and any other employment terms and conditions. Execution, delivery and performance by the Seller of this Agreement and the other documents contemplated by this Agreement and the consummation by the Seller of the transactions contemplated by this Agreement and such other documents, do not and will not, directly or indirectly (with or without notice or lapse of time), violate, breach, conflict with, constitute a default under, accelerate or permit the acceleration of the performance required by, any Japan Work Rules, Japan Collective Bargaining Agreements or Employment Contracts respecting the Japan Business Employees. No member of the Seller Group has made any oral or written representations or warranties or such other commitments to any Japan Business Employees and/or any labor union or other labor organization with respect to the terms and conditions of employment of the Japan Business Employees after the Closing.

(vii) No third party has claimed to any member of the Seller Group or, to the Seller's Knowledge, has reason to claim, that any Japan Business Employee or any consultant or outsourced employee of any member of the Seller Group engaged in connection with the Business in Japan, including, but not limited to, any Dispatched Employee (as defined below) (collectively, the " Japan Personnel "), (x) has violated or may be violating any of the terms or conditions of his or her employment (or engagement), non-competition, non-solicitation or non-disclosure agreement with such third party, (y) has or may have disclosed or utilized any trade secret or proprietary information or documentation of such third party, or (z) has in his or her capacity as an employee, consultant, outsourced employee or Dispatched Employee of any member of the Seller Group interfered or may be interfering in the employment relationship between such third party and any of its present or former employees. To Seller's Knowledge, no Japan Personnel has employed or has proposed to employ any trade secret or any information or documentation proprietary to any former employer or violated any confidential relationship which such Japan Personnel may have had with any other Person, in connection with the development of any Product (as defined below) or proposed Product or the development or sale of any service or proposed service of any member of the Seller Group.

(viii) The Seller Disclosure Schedule lists each individual (but not by name) who is employed by a third party and dispatched by such third party to a member of the Seller Group to provide services to such member of the Seller Group in Japan in connection with the Business (the " Dispatched Employees ") and shows for each such individual the position or title of such individual, the location in which such individual is providing services to such member of the Seller Group, the nature and duration of such services, the name of such third party dispatcher and the monthly fees payable to such third party dispatcher for such services. Each member of the Seller Group has complied at all times with all applicable Laws and Contract terms relating to such individuals and the services they are providing to such member of the Seller Group.

4.20 Environmental .

(a) As used in this Agreement, the following words and terms have the following definitions:

(i) The term " CERCLA " means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq.

(ii) The term " Environment " means all indoor or outdoor air, surface water, groundwater, surface or subsurface land, including all fish, wildlife, biota and all other natural resources.

(iii) The term " Environmental Action " means any claim, proceeding or other Action under any Environmental Law or the assertion of any claim with respect to Pre-Closing Environmental Liabilities.

(iv) The term " Environmental Clean-up Site " means any location which is listed on the National Priorities List, the Comprehensive Environmental Response, Compensation and Liability Information System, or on any similar state or foreign list of sites requiring investigation or cleanup.

(v) The term " Environmental Laws " means any and all applicable Laws and Authorizations issued, promulgated or entered into by any Governmental Entity relating to the Environment, worker health and safety to the extent relating to the presence, Release or exposure to Hazardous Substances, preservation or reclamation of natural resources, or to the management, handling, use, generation, treatment, storage, transportation, disposal, manufacture, distribution, formulation, packaging, labeling, Release or threatened Release of or exposure to Hazardous Substances; and any similar or implementing state or local Law, and any Japanese Laws and regulations of similar import, including but not limited to the Basic Act for Environmental Pollution Control ( kankyo kihon ho ) (Act No. 91 of 1993), Industrial Safety and Health Act ( rodo anzen eisei ho ) (Act No.57 of 1972), the Air Pollution Control Act ( taiki osen boshi ho ) (Act No. 97 of 1968), the Water Pollution Control Act ( suishitsu odaku boshi ho ) (Act No. 138 of 1970), the Soil Contamination Countermeasures Act ( dojo osen taisaku ho ) (Act No. 53 of 2002), and the Waste Management and Public Cleaning Act ( haikibutsu no shori oyobi seiso ni kansuru horitsu ) (Act No. 137 of 1970), any applicable U.S. and non-U.S. Laws and regulations of similar import, and all amendments or regulations promulgated thereunder prior to the date hereof; and any common law doctrine, including but not limited to, negligence, nuisance, trespass, personal injury, or property damage related to or arising out of the presence, Release, or exposure to Hazardous Substances.

(vi) The term " Environmental Permit " means any Authorization under Environmental Law and includes any and all Governmental Orders issued or entered into by a Governmental Entity under Environmental Law.

(vii) The term " Hazardous Substances " means all explosive or regulated radioactive materials or substances, hazardous or toxic materials, wastes or chemicals, petroleum and petroleum products (including crude oil or any fraction thereof), asbestos or asbestos containing materials, and all other materials, chemicals or substances which are regulated by, form the basis of liability or are defined as hazardous, extremely hazardous, toxic or words of similar import, under any Environmental Law.

(viii) The term " Release " means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of Hazardous Substances into the Environment.

(b) Each member of the Seller Group has obtained, and is in compliance in all material respects with, all Environmental Permits required in connection with the Business and the Real Property. Each such Environmental Permit, together with the name of the Governmental Entity issuing such Environmental Permit, is set forth in the Seller Disclosure Schedule. All such Environmental Permits are valid and in full force and effect and all renewal applications for such Environmental Permits have been timely filed with the appropriate Governmental Entity. None of such Environmental Permits will be terminated or impaired or become terminable as a result of the consummation of the transactions contemplated by this Agreement. No Environmental Law imposes any obligation arising out of or as a condition to the transactions contemplated by this Agreement, including but not limited to, any requirement to file a notice or other submission with a Governmental Entity, the placement of any notice, restriction, acknowledgement or covenant in any land records, or the modification of or provision of notice under any agreement, consent order or consent decree. Each member of the Seller Group has been and is currently, in compliance with all Environmental Laws in all material respects and no member of the Seller Group has received written notice alleging that any member of the Seller Group is not in compliance with Environmental Laws, in each case Related to the Business and the Real Property.

(c) There are no past, pending or, to Seller's Knowledge, threatened Environmental Actions against or affecting any member of the Seller Group Related to the Business or the Real Property, and Seller is not aware of any facts or circumstances which would reasonably be expected to form the basis for any such Environmental Action. No member of the Seller Group has entered into or agreed to, nor does it contemplate entering into, any consent decree or order under Environmental Law in each case Related to the Business or the Real Property.

(d) No member of the Seller Group has entered into or agreed to any Governmental Order, and no member of the Seller Group is a party to any Governmental Order, relating to compliance with any Environmental Law or to investigation or cleanup of a Hazardous Substance under any Environmental Law, in each case Related to the Business or the Real Property.

(e) No Lien has been attached to, or asserted against, any assets (other than Real Property), Owned Real Property or rights Related to the Business pursuant to any Environmental Law, and, to Seller's Knowledge, no such Lien has been threatened. To Seller's Knowledge, there are no facts, circumstances or other conditions that would reasonably be expected to give rise to any Liens on or affecting the Real Property under Environmental Law.

(f) With respect to the Owned Real Property, and to Seller's Knowledge with respect to the Leased Real Property,

(i) there has been no treatment, storage, disposal or Release of any Hazardous Substance at, from, into, on or under any Real Property or any other property currently or formerly owned, operated or leased by any member of the Seller Group Related to the Business, and

(ii) no Hazardous Substances are present in, on, about or migrating to or from any Real Property that, in the case of (i) and (ii), would reasonably be expected to give rise to an Environmental Action against any member of the Seller Group.

(g) No member of the Seller Group has

(i) received a CERCLA 104(e) information request,

(ii) been named a potentially responsible party for any National Priorities List site under CERCLA or any other site under analogous Environmental Law, or

(iii) received an analogous notice or request from any non-U.S. Governmental Entity, in each case in connection with the Business.

(h) Except as set forth in the Seller Disclosure Schedule, to Seller's Knowledge, there are no aboveground tanks or underground storage tanks on, under or about the Real Property and any aboveground or underground tanks previously situated on the Real Property have been removed in accordance with all Environmental Laws.

(i) To Seller's Knowledge, there are no polychlorinated biphenyls (" PCBs ") leaking from any article, container or equipment on, under or about the Real Property and there are no such articles, containers or equipment containing PCBs in, at, on, under or within the Real Property.

(j) Except as set forth in the Seller Disclosure Schedule, to Seller's Knowledge, there is no asbestos containing material or lead based paint containing materials in at, on, under or within the Real Property. No member of the Seller Group has in connection with the Business

(i) manufactured or distributed or otherwise incorporated into any product it manufactured or distributed, or

(ii) ever acquired any company that manufactured or distributed or otherwise incorporated into any product it manufactured or distributed, any asbestos or asbestos-containing materials.

(k) To Seller's Knowledge, no member of the Seller Group has in connection with the Business transported or arranged for the treatment, storage, handling, disposal, or transportation of any Hazardous Material to any off-site location which is an Environmental Clean-up Site.

(l) None of the Real Property is an Environmental Clean-up Site.

(m) Seller has provided to Buyer true and complete copies of, or access to, all non-privileged written environmental assessments, materials, reports, data, analyses and compliance audits that have been prepared by or on behalf of any member of the Seller Group with respect to the Real Property or any other real property formerly owned, operated or leased by any member of the Seller Group in connection with the Business, in each case, to the extent in the Seller Group's possession or control.

(n) Notwithstanding any other provision of this Agreement, this Section 4.20 sets forth the sole and exclusive representations and warranties of Seller with respect to Environmental Laws Environmental Permits, Releases and Environmental Actions.

4.21 Insurance .

(a) The Seller Disclosure Schedule sets forth

(i) an accurate and complete list of each insurance policy and fidelity bond which covers the Business and any member of the Seller Group with respect to the Business (the " Policies ") and

(ii) with respect to the Business, a list of all pending claims and the claims history for the Seller Group during the current year and the preceding three years (including with respect to insurance obtained but not currently maintained). There are no pending claims under any of such Policies with respect to the Business as to which coverage has been questioned, denied or disputed by the insurer or in respect of which the insurer has reserved its rights.

(b) The Seller Disclosure Schedule describes any self-insurance arrangement by or affecting the Seller Group with respect to the Business, including any reserves thereunder, and describes the loss experience for all claims that were self-insured in the current year and the preceding three years.

(c) All Policies are in full force and effect and are enforceable in accordance with their terms. Such Policies provide adequate insurance coverage for the Business, and are sufficient for compliance with all Laws and Material Contracts to which any member of the Seller Group is a party or by which it is bound in connection with the Business.

(d) All premiums due under the Policies have been paid in full or, with respect to premiums not yet due, accrued. No member of the Seller Group has received a notice of cancellation of any Policy or of any material changes that are required in the conduct of the Business as a condition to the continuation of coverage under, or renewal of, any such Policy. There is no existing default or event which, with the giving of notice or lapse of time or both, would reasonably be expected to constitute a default under any Policy or entitle any insurer to terminate or cancel any Policy with respect to the Business. No member of the Seller Group has any Knowledge of any threatened termination of any Policy.

4.22 Product Warranty .

(a) There are no warranties (express or implied) outstanding with respect to any Flow Products currently or formerly manufactured, sold, distributed, shipped or licensed (" Products "), by any member of the Seller Group in connection with the Business, beyond that set forth in the standard conditions of sale or service, copies of which are included in the Seller Disclosure Schedule.

(b) Each Product manufactured, sold, distributed, shipped or licensed by the members of the Seller Group in connection with the Business has been in conformity in all material respects with all applicable contractual commitments and warranties. There are no material design, manufacturing or other defects, latent or otherwise, with respect to any Products and such Products are not toxic when used in accordance with their intended use. Each Product that has been manufactured, sold, distributed, shipped or licensed during the three-year prior to Closing contains all warnings required by applicable Law and such warnings are in accordance with reasonable industry practice.

(c) The Seller June Balance Sheet reflects adequate reserves (in accordance with GAAP) for product design and warranty claims and other damages in connection with any Flow Product manufactured, sold, distributed, shipped or licensed, or service rendered, by the members of the Seller Group in connection with the Business on the Balance Sheet Date. The accounting records of the Business set forth on Schedule 4.22 of the Seller Disclosure Schedule will reflect adequate reserves (in accordance with Seller's estimates and GAAP) for all such claims in connection with Products manufactured, sold, distributed, shipped or licensed, or services rendered by, any member of the Seller Group in connection with the Business on or prior to the Closing.

4.23 Suppliers and Customers .

(a) Section 4.23 of the Seller Disclosure Schedule sets forth with respect to the Business:

(i) each supplier from whom purchases exceeded $200,000 in the year ended December 31, 2009 or 2008 or that is otherwise material to the Business and the type and amount of goods purchased;

(ii) each supplier that constitutes a sole source of supply to the Business and the type and amount of goods purchased; and

(iii) with respect to each year ended December 31, 2009 or 2008 and the three-month period ended June 30, 2010, each customer that has contributed in excess of five percent (5%) of the revenues of the Business for such year or period and the type and amount of goods purchased.

(b) The relationships of the Business with each supplier and customer required to be listed in Section 4.23 of the Seller Disclosure Schedule are commercially reasonable working relationships. As of the date hereof, no such supplier or customer has canceled or otherwise terminated, or threatened in writing to cancel or otherwise terminate, its relationship with the Business or limited its services, supplies or materials to or purchases from the Business. Section 4.23 of the Seller Disclosure Schedule sets forth a description of each written notice received by any member of the Seller Group that any such supplier or customer may cancel, terminate or otherwise materially and adversely modify its relationship with the Business or limit its services, supplies or materials to or purchases from the Business, either as a result of the consummation of the transactions contemplated by this Agreement or otherwise.

4.24 Solvency . No member of the Seller Group is insolvent or will be rendered insolvent by any of the transactions contemplated by this Agreement and the Ancillary Agreements. "Insolvent" means, with respect to any Person, that the sum of the debts and other probable Liabilities of such Person exceeds the present fair saleable value of such Person's assets.

4.25 Brokers or Finders . Seller represents, as to itself and its Affiliates, that no agent, broker, investment banker or other firm or Person is or will be entitled to any broker's or finder's fee or any other commission or similar fee in connection with any of the transactions contemplated by this Agreement and the Ancillary Agreements, except XXX, whose fees and expenses will be paid by Seller.

4.26 FCPA . No member of the Seller Group (nor any director, officer, agent, employee, consultant of or other Person associated with or acting on behalf of a member of the Seller Group in the Business) has

(a) made, authorized, offered or promised to make any payment or transfer of anything of value, directly, indirectly or through a third party, to any foreign government official, employee or other representative (including employees of a government owned or controlled entity or public international organization and including any political party or candidate for public office), in violation of the United States Foreign Corrupt Practices Act of 1977 (the " FCPA "), or any Law of similar effect in any jurisdiction to which such Person is subject or

(b) otherwise taken any action which would cause any member of the Seller Group to be in violation of the FCPA, or any Law of similar effect in any jurisdiction to which such Person is subject. For the purposes of this Section 4.26, the acts specified include, but are not limited to (x) the making or payment of any illegal contributions, commissions, fees, gifts, entertainment, travel or other unlawful expenses relating to political activity, (y) the direct or indirect payment, gift, offer, promise or authorization to make a payment, gift, offer or promise of, anything of material value to any foreign government representative and (z) the making of any bribe, illegal payoff, influence payment, kickback or other unlawful payment, using funds of a member of the Seller Group or otherwise on behalf of a member of the Seller Group.

4.27 Completeness of Disclosure . No representation or warranty by Seller in this Agreement, and no statement made by Seller in the Seller Disclosure Schedule, the Ancillary Agreements or any certificate or other document furnished or to be furnished to Buyer pursuant hereto, contains or will at the Closing contain any untrue statement of a material fact or omits or will omit to state a material fact required to be stated herein or therein or necessary to make any statement herein or therein, in light of the circumstances in which it was made, not misleading.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller that each statement contained in this Article V is true and correct as of the date hereof.

5.1 Organization and Good Standing . Buyer is a kabushiki kaisha duly organized and validly existing under the Laws of Japan and has the requisite corporate power to own, lease and operate its properties and to carry on its business as now being conducted.

5.2 Authority and Enforceability . Buyer has the requisite corporate power and authority to enter into this Agreement and the Ancillary Agreements to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the Ancillary Agreements to which Buyer is a party and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action on the part of Buyer. This Agreement has been, and the Ancillary Agreements to which Buyer is a party will be, duly executed and delivered by Buyer and, assuming due authorization, execution and delivery by Seller, constitutes the valid and binding obligations of Buyer, enforceable against it in accordance with their respective terms, except as such enforceability may be limited by

(a) bankruptcy, insolvency, reorganization, moratorium or other similar Laws affecting or relating to creditors' rights generally, and

(b) the availability of injunctive relief and other equitable remedies.

5.3 No Conflicts; Consents .

(a) The execution and delivery of this Agreement by Buyer do not, and the execution and delivery of the Ancillary Agreements to which Buyer is a party and the consummation of the transactions contemplated hereby and thereby will not,

(i) violate the provisions of any of the Charter Documents of Buyer,

(ii) violate any Contract to which Buyer is a party,

(iii) violate any Law of any Governmental Entity applicable to Buyer on the date hereof, or

(iv) result in the creation of any Liens upon any of the assets owned or used by Buyer, except in each such case where such violation or Lien would not reasonably be expected materially to impair or delay the ability of Buyer to perform its obligations under this Agreement or the Ancillary Agreements.

(b) No Authorization or Governmental Order of, registration, declaration or filing with, or notice to any Governmental Entity is required by Buyer in connection with the execution and delivery of this Agreement and the Ancillary Agreements to which it is a party and the consummation of the transactions contemplated hereby and thereby, except for such Authorizations, Governmental Orders, registrations, declarations, filings and notices

(i) as may be required under the Foreign Antitrust Laws, or

(ii) the failure to obtain which would not reasonably be expected to materially impair the ability of Buyer to perform its obligations under this Agreement and the Ancillary Agreements to which Buyer is a party.

5.4 Litigation . There is no Action pending or, to the knowledge of Buyer, threatened against, Buyer which

(a) challenges or seeks to enjoin, alter or materially delay the consummation of the transactions contemplated by this Agreement, or

(b) would reasonably be expected to have a material adverse effect on Buyer.

5.5 Availability of Funds . Buyer has cash available or has existing borrowing facilities which together are sufficient to enable it to consummate the transactions contemplated by this Agreement.

5.6 Brokers or Finders . Buyer represents, as to itself and its Affiliates, that no agent, broker, investment banker or other firm or Person is or will be entitled to any broker's or finder's fee or any other commission or similar fee in connection with any of the transactions contemplated by this Agreement and the Ancillary Agreements.

ARTICLE VI

COVENANTS OF SELLER

6.1 Conduct of Business . During the period from the date of this Agreement and continuing until the earlier of the termination of this Agreement or the Closing Date, except with the prior written consent of Buyer, Seller shall, and shall cause each other member of the Seller Group to:

(a) (i) maintain its corporate existence, (ii) pay or perform the Liabilities of the Business when due, (iii) carry on the Business in the usual, regular and ordinary course in a manner consistent with past practice and in accordance with the provisions of this Agreement and in compliance in all material respects with all Laws, Business Authorizations and the Material Contracts, and (iv) keep the level and quality of its Inventory and supplies (A) in approximately the same proportions as reflected on the Seller June Balance Sheet, (B) in a manner consistent with past practice and (C) so as to be sufficient for the conduct of the Business by Buyer following the Closing in a manner consistent with the past practice of the Business;

(b) use its reasonable best efforts consistent with past practices and policies to preserve intact its Business organization, keep available the services of its present Business Employees and preserve its relationships with customers, suppliers, distributors, licensors, licensees and others having dealings with the Business;

(c) maintain the Real Property and other assets, properties and rights included in the Purchased Assets in substantially the same state of repair, order and conditions as they are on the date hereof, reasonable wear and tear excepted;

(d) maintain the Books and Records in accordance with past practice, and use its reasonable best efforts to maintain in full force and effect all Business Authorizations and Policies;

(e) promptly notify Buyer of any event or occurrence Related to the Business not in the ordinary course of the Business, unless such event or occurrence is immaterial to the Business; and

(f) use its reasonable best efforts to (i) conduct the Business in such a manner that on the Closing Date the representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects, as though such representations and warranties were made on and as of such date, and (ii) cause all of the conditions to the obligations of Buyer under this Agreement to be satisfied as soon as practicable following the date hereof.

6.2 Negative Covenants . Except as expressly provided in this Agreement, Seller shall not, and shall not permit any other member of the Seller Group to, do any of the following, in each case with respect to the Business, without the prior written consent of Buyer:

(a) (i) other than pursuant to existing obligations set forth in a written agreement, in the ordinary course of Seller's business or pursuant to a Seller Group Benefit Plan disclosed in the Seller Disclosure Schedule in the amount required thereunder, (A) modify the compensation or benefits payable or to become payable by any member of the Seller Group to any current Business Employees, or contractors or consultants of the Business, or (B) modify any bonus, severance, termination, pension, insurance or other employee benefit plan, payment or arrangement made to, for or with any current Business Employees, or contractors or consultants of the Business, or (ii) enter into any employment, severance or termination agreement with any Business Employees;

(b) establish, adopt, enter into, amend or terminate any Seller Group Benefit Plan or any collective bargaining, thrift, compensation or other plan, agreement, trust, fund, policy or arrangement for the benefit of any current Business Employees, or contractors or consultants of the Business;

(c) sell, lease, transfer or assign any assets, properties or rights of any member of the Seller Group Related to the Business, except (i) sales of Inventory, and (ii) the sale of Excluded Assets, in each case in the ordinary course of the Business consistent with past practice;

(d) assume, incur or guarantee any Indebtedness in excess of $200,000 or modify the material terms of any existing Indebtedness involving amounts in excess of $200,000;

(e) not cancel any debts or waive any claims or rights of substantial value;

(f) mortgage, pledge or subject to Liens (other than Permitted Liens) any assets, properties or rights that constitute Purchased Assets;

(g) materially amend or modify, cancel or waive any material rights under any Contract which is an Assigned Contract;

(h) enter into any Contract that, if entered into prior to the date of this Agreement, would be required to be listed as a Material Contract in Section 4.15 of the Seller Disclosure Schedule, other than (A) any Contract in the ordinary course of the Business consistent with past practice that is terminable by the relevant member of the Seller Group upon not more than sixty (60) days' prior notice without Liability to the Seller Group, (B) any Contract for the purchase of raw materials and supplies in the ordinary course of the Business consistent with past practice that has an aggregate future Liability to the Business of not more than $200,000 not to exceed $600,000 for all such Contracts, and (C) any Contract for the sale of goods and services in the ordinary course of the Business consistent with past practice.

(i) take any action or engage in any transaction Related to the Business that is material to, and outside the ordinary course of, the Business;

(j) (i) make any capital expenditure, or commit to make any capital expenditure which in any one case exceeds $200,000 or capital expenditures which in the aggregate exceed $600,000, or (ii) except as permitted by clause (i), acquire any assets, properties or rights other than Inventory in the ordinary course of the Business consistent with past practice;

(k) make any filings or registrations with any Governmental Entity, except routine filings and registrations made in the ordinary course of the Business consistent with past practice;

(l) be party to any merger, acquisition, consolidation, recapitalization, liquidation, dissolution or similar transaction involving the Business;

(m) make any changes in its accounting methods, principles or practices;

(n) make any Tax election, change its method of Tax accounting or settle any claim relating to Taxes;

(o) take any action or omit to do any act which action or omission will cause it to breach any obligation contained in this Agreement or cause any representation or warranty of Seller not to be true and correct in any material respect as of the Closing Date; or

(p) agree, whether in writing or otherwise, to do any of the foregoing.

6.3 Access to Information; Investigation; Conducting of Physical Inventory . Subject to the terms of the Confidentiality Agreement by and between Buyer and Seller dated April 10, 2009 (the " Confidentiality Agreement "), Seller shall, and shall cause each other member of the Seller Group to, afford to Buyer's officers, directors, employees, accountants, counsel, consultants, advisors and agents (" Representatives ") free and full access to and the right to inspect, during normal business hours, all of the Real Property, properties, assets, records, Contracts and other documents Related to the Business, and shall permit them to consult with the officers, employees, accountants, counsel, agents and Material Customers and Material Suppliers of the Seller Group at such times and in the manner mutually agreed by Buyer and the Seller for the purposes of making such investigation of the Business as Buyer shall desire to make and conducting a physical inventory of the Inventory as permitted in Section 2.6 herein. Seller shall furnish to Buyer all such documents and copies of documents and records and information with respect to the Business and copies of any working papers relating thereto as Buyer may request. Notwithstanding the foregoing, Buyer shall not have access to

(a) any medical or other employee information that is contained in the personnel records of Seller or any of its Affiliates and the disclosure of which would subject Seller or such Affiliate to risk of liability;

(b) any information which is the subject of any attorney-client or other privilege in favor of Seller or its Affiliates; or

(c) any information the disclosure of which would cause Seller or any of its Affiliates to violate applicable Law or the provisions of any Contract to which it is a party. Without limiting the foregoing, the Seller shall permit, and will cause each other member of the Seller Group to permit, Buyer and Buyer's Representatives to conduct environmental due diligence of the Real Property, including the collecting and analysis of samples of indoor or outdoor air, surface water, groundwater or surface or subsurface land on, at, in, under or from the Owned Real Property.

6.4 Confidentiality . From and after the Closing Date, Seller will, and will cause its Affiliates to, hold, and will use its reasonable best efforts to cause its and their respective Representatives to hold, in confidence any and all information, whether written or oral, concerning the Purchased Assets and the Assumed Liabilities, except to the extent that Seller can show that such information

(a) is in the public domain through no fault of Seller or any of its Affiliates or their respective Representatives or

(b) is lawfully created or acquired by Seller or any of its Affiliates after the Closing Date from sources that are not prohibited from disclosing such information by a legal, contractual or fiduciary obligation. If Seller or any of its Affiliates or Representatives is compelled to disclose any such information by judicial or administrative process or by other requirements of Law, Seller shall promptly notify Buyer in writing and shall disclose only that portion of such information that Seller is advised by its counsel in writing is legally required to be disclosed; provided that Seller shall exercise its reasonable best efforts to obtain an appropriate protective order or other reasonable assurance that confidential treatment will be accorded such information. Seller shall enforce for the benefit of Buyer, at Buyer's expense, all confidentiality, assignment of inventions and similar agreements between any member of the Seller Group and any other party relating to the Purchased Assets that are not Assigned Contracts.

6.5 Release of Liens . Prior to the Closing Date, Seller shall cause to be released all Liens (other than Permitted Liens) in and upon any of the Purchased Assets (all of such Liens are set forth in the Seller Disclosure Schedule).

6.6 Consents . Seller shall, and shall cause each other member of the Seller Group to, use commercially reasonable efforts to obtain all Consents that are required under the Assigned Contracts in connection with the consummation of the transactions contemplated by this Agreement so as to preserve all rights of, and benefits to, Buyer thereunder that are material to the Business. All of such Consents are set forth in the Section 4.3(a) of the Seller Disclosure Schedule.

6.7 Notification of Certain Matters . Seller shall give prompt notice to Buyer of (a) any fact, event or circumstance known to it that individually or taken together with all other facts, events and circumstances known to it, has had or could reasonably be expected to result in a Material Adverse Change, or could reasonably be expected to cause or constitute a breach of any of its representations, warranties, covenants or agreements contained herein, (b) the failure of any condition precedent to Buyer's obligations hereunder, (c) any notice or other communication from any third party alleging that the consent of such third party is or may be required in connection with the consummation of the transactions contemplated by this Agreement, (d) any notice or other communication from any Governmental Entity in connection with the consummation of the transactions contemplated by this Agreement, or (e) the commencement of any Action that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to Section 4.17; provided, however, (i) the delivery of any notice pursuant to this Section 6.7 shall not limit or otherwise affect any remedies available to Buyer, and (ii) disclosure by Seller shall not be deemed to amend or supplement the Seller Disclosure Schedule or prevent or cure any misrepresentation, breach of warranty or breach of covenant.

6.8 Restrictive Covenants . (a) Seller covenants that, commencing on the Closing Date and ending on the earlier of the fifth anniversary of the Closing Date or the date on which Seller consummates a Change in Control (the " Noncompetition Period "), and except as permitted or required by the Master Services Agreement and for the repair services provided by Seller to Buyer at its Service Centers, Seller shall not, and it shall cause its Affiliates not to, directly or indirectly, in any capacity, engage in or have any direct or indirect ownership interest in, or permit Seller's or any such Affiliate's name to be used in connection with, any business anywhere in the world which is engaged, either directly or indirectly, in the business of developing, manufacturing, marketing or selling any products or equipment or providing any services which are competitive with Flow Products manufactured, marketed, sold or under development by, or services provided by, the Business (the " Restricted Business "). It is recognized that the Restricted Business is expected to be conducted throughout the world and that more narrow geographical limitations of any nature on this non-competition covenant (and the non-solicitation covenant set forth in Section 6.8(b)) are therefore not appropriate. Notwithstanding the foregoing, it shall not constitute a breach of this Section 6.8 if Seller or any of its Affiliates during such five-year period (i) owns less than two percent (2%) of the outstanding shares of capital stock, outstanding debt instruments or other securities convertible into capital stock or debt instruments of any Person listed on a national securities exchange or publicly traded on any nationally recognized over the counter market or (ii) acquires, by way of merger, consolidation, asset purchase, or acquisition of stock or equity interests, or similar business combination, control of any Person that sells products or equipment or provides services that are competitive with the Restricted Business provided that (i) such products, equipment or services are incidental to the overall business of such Person that is acquired, and (ii) following the closing of such acquisition the revenue from products or services that are competitive with the Restricted Business do not exceed 5% of the total revenue of the Seller Group on a consolidated basis; provided further that if such revenue is in excess of 5% of the consolidated revenue of the Seller Group following such acquisition, the Seller shall not be deemed to be in violation of this Section 6.8(a) if it divests of all or a portion of such business that is competitive with the Restricted Business within twelve (12) months of the closing of the acquisition such that following such divestiture revenue from the competing business is less than 5% of the consolidated revenue of the Seller Group.(b) Seller covenants that from the date hereof through the end of the Noncompetition Period, Seller shall not, and it shall cause its Affiliates not to, solicit the employment or engagement of services of any person who is or will be offered employment by Buyer pursuant to Section 7.4; provided, however, that the foregoing provision will not prevent Seller and its Affiliates from soliciting or employing any such person who contacts Seller or its Affiliate (i) on his or her own initiative without any direct or indirect solicitation by or encouragement from Seller or its Affiliate, or (ii) in response to a general solicitation of employment made by Seller or such Affiliate in a trade journal or other publication or internet job posting site not specifically targeted at any employee of Buyer. (c) Seller acknowledges that the restrictions contained in this Section 6.8 are reasonable and necessary to protect the legitimate interests of Buyer and constitute a material inducement to Buyer to enter into this Agreement and consummate the transactions contemplated by this Agreement. Seller acknowledges that any violation of this Section 6.8 will result in irreparable injury to Buyer and agrees that Buyer shall be entitled to preliminary and permanent injunctive relief, without the necessity of proving actual damages, as well as an equitable accounting of all earnings, profits and other benefits arising from any violation of this Section 6.8, which rights shall be cumulative and in addition to any other rights or remedies to which Buyer may be entitled. Without limiting the generality of the foregoing, the Noncompetition Period shall be extended for an additional period equal to any period during which Seller or any Affiliate is in breach of its obligations under this Section 6.8. (d) In the event that any covenant contained in this Section 6.8 should ever be adjudicated to exceed the time, geographic, product or service or other limitations permitted by applicable Law in any jurisdiction, then any court is expressly empowered to reform such covenant, and such covenant shall be deemed reformed, in such jurisdiction to the maximum time, geographic, product or service or other limitations permitted by applicable Law. The covenants contained in this Section 6.8 and each provision thereof are severable and distinct covenants and provisions. The invalidity or unenforceability of any such covenant or provision as written shall not invalidate or render unenforceable the remaining covenants or provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such covenant or provision in any other jurisdiction.

6.9 Reserved.

6.10 Environmental Investigation . In connection with the execution of this Agreement, Seller has provided to Buyer a Phase I Site Investigation Report with respect to the Owned Real Property. Buyer may, at its expense, conduct such environmental site evaluations of the Real Property as it shall deem appropriate provided Buyer shall obtain the prior written consent of Seller. A copy of any reports prepared at the request of Buyer shall be delivered to Seller within ten (10) Business Days of completion thereof. All such reports shall be kept confidential by Buyer and shall be subject to the terms of the Confidentiality Agreement referred to in Section 6.3.

6.11 Exclusivity . The Seller agrees as follows: (a) Except with respect to the transactions contemplated by this Agreement, the Seller agrees upon execution of this Agreement and until the date, if any, on which this Agreement is terminated pursuant to Article IX, that it will not, and it will cause its subsidiaries and its and their respective Representatives not to, (i) initiate, solicit or seek, directly or indirectly, any inquiries or the making or implementation of any proposal or offer with respect to an acquisition, merger, consolidation or similar transaction involving, or any purchase of all or any substantial portion of the assets of the Business (any such proposal or offer being hereinafter referred to as a " Proposal "), or (ii) engage in any negotiations concerning, or provide any confidential information or data to, or have any substantive discussions with, any person relating to a Proposal, (iii) otherwise cooperate in any effort or attempt to make, implement or accept a Proposal, or (iv) enter into or consummate any agreement or understanding with any person relating to a Proposal. (b) Except with respect to the Possible Transaction, the Seller shall immediately cease and terminate, and it shall cause its subsidiaries and its and their respective Representatives immediately to cease and terminate, any existing activities, including discussions or negotiations with any parties conducted heretofore with respect to any Proposal. (c) The Seller shall upon execution of this Agreement and until the date, if any, on which this Agreement is terminated pursuant to Article IX, notify Buyer promptly if any inquiries, proposals or offers related to a Proposal are received by, any confidential information or data is requested in connection with a Proposal from, or any negotiations or discussions related to a Proposal are sought to be initiated or continued with, it or any of its subsidiaries or any of their respective Representatives and will provide the terms of any such inquiry, proposal or offer to Buyer.

ARTICLE VII

COVENANTS OF BUYER AND SELLER

7.1 Regulatory Approvals .

(a) Buyer and Seller shall each promptly apply for, and take all reasonably necessary actions to obtain or make, as applicable, all Governmental Orders and Authorizations of, and all filings with, any Governmental Entity or other Person required to be obtained or made by it for the consummation of the transactions contemplated by this Agreement. Each party shall cooperate with and promptly furnish information to the other party necessary in connection with any requirements imposed upon such other party in connection with the consummation of the transactions contemplated by this Agreement. Without limiting the generality of the foregoing, Buyer and Seller shall, as promptly as practicable and before the expiration of any relevant legal deadline, file with any Governmental Entity, any filings, reports, information and documentation required for the transactions contemplated hereby pursuant to any Foreign Antitrust Laws. Each of Seller and Buyer shall furnish to each other's counsel such necessary information and reasonable assistance as the other may request in connection with its preparation of any filing or submission that is necessary under the any Foreign Antitrust Laws. Buyer and Seller shall each be responsible for one half of all filing and other similar fees payable in connection with such filings and for any local counsel fees.

(b) Each of Buyer and Seller shall use its commercially reasonable efforts to promptly obtain any clearance required under any Foreign Antitrust Laws for the consummation of the transactions contemplated by this Agreement. Each of Buyer and Seller shall keep the other apprised of the status of any communications with, and any inquiries or requests for additional information from any Governmental Entities and shall comply promptly with any such inquiry or request. Notwithstanding the foregoing, (i) Buyer shall not be required to (A) consent to the divestiture, license or other disposition or holding separate (through the establishment of a trust or otherwise) of any of its or its Affiliates' assets or any Purchased Assets or (B) consent to any other structural or conduct remedy or enter into any settlement or agree to any order regarding antitrust matters respecting the transactions contemplated by this Agreement and (ii) Buyer and its Affiliates shall have no obligation to contest, administratively or in court, any Governmental Order or other action of any Governmental Entity or any other Person respecting the transactions contemplated by this Agreement.

(c) Buyer and Seller shall instruct their respective counsel to cooperate with each other and use commercially reasonable efforts to facilitate and expedite the identification and resolution of any issues arising under any Foreign Laws at the earliest practicable dates. Such commercially reasonable efforts and cooperation include, but are not limited to, counsel's undertaking (i) to keep each other appropriately informed of communications from and to personnel of any Governmental Entity, and (ii) to confer with each other regarding appropriate contacts with and response to personnel of such Governmental Entity.

(d) Seller shall take reasonable steps to assist Buyer in identifying the Authorizations required by Buyer to operate and conduct the Business as it is currently conducted from and after the Closing Date and will either transfer current Business Authorizations of the Seller Group to Buyer if capable of transfer and set forth on Schedule 7.1(d) (the " Assigned Business Authorizations ") or take reasonable steps, at Buyer's cost, to assist Buyer in obtaining new Business Authorizations.

7.2 Public Announcements . Neither Buyer nor Seller shall, and Seller will cause the other members of the Seller Group not to, issue any press releases or otherwise make any public statements with respect to the transactions contemplated by this Agreement; provided, however, that Buyer or Seller may, without such approval, make such press releases or other public announcement as it believes are required pursuant to any listing requirements or agreement with any national securities exchange or stock market or applicable securities Laws, in which case the party required to make the release or announcement shall allow the other party reasonable time to comment on such release or announcement in advance of such issuance; provided, further, that each of the parties may make internal announcements to their respective employees that are consistent with the parties' prior public disclosures regarding the transactions contemplated by this Agreement.

7.3 Names . Seller agrees that, for a period of six months after the Closing Date, Buyer may continue to distribute product literature that uses any Retained Names and distribute products with labeling that uses any Retained Names to the extent that such product literature and labeling exists on the Closing Date and Buyer has marked, or has caused the Business to mark, such product literature and such labeling to obliterate the Retained Names, or, has otherwise provided notice, or has caused the Business to otherwise provide notice, that the Business has been sold to Buyer and is independent of Seller. In no event shall Buyer use any Retained Names after the Closing in any manner or for any purpose different from the use of such Retained Names by the Seller Group during the 180-day period preceding the Closing Date. " Retained Names " means "Fuel-It" or "AE" or any name, logo or trademark that includes "Fuel-It" or "AE", any variation and derivatives thereof and any other product names (other than names of the Flow Products), logos or trademarks of the Seller Group not transferred to Buyer pursuant to this Agreement and the Ancillary Agreements.

7.4 Employees .

(a) Promptly following the execution of this Agreement, and subject to the confidentiality and other restrictions set forth in Section 6.3 above, Seller shall, and shall cause each other member of the Seller Group to, provide access to Buyer to the facilities and the personnel records of each member of the Seller Group for the purpose of preparing for and conducting employment interviews with Business Employees.

(b) Buyer shall, or shall cause one of its Affiliates to, extend written offers of employment to not less than 90% of the Business Employees located in the United States and Japan and employed full-time by the Seller or its Affiliates immediately prior to the Closing, such employment to be contingent upon and effective immediately following the Closing. Such written offers shall (i) advise the Business Employee of the material terms and conditions and job duties of such employee's position with Buyer or its Affiliates; (ii) state, among other things, an annual base salary during the first 12 months which shall be not less in the aggregate than that provided by Seller or the applicable member of the Seller Group to the employee immediately prior to the Closing Date; and (iii) include a summary of material benefits to which such employee shall be eligible to participate. Seller shall use, and shall cause each other member of the Seller Group to use, its reasonable best efforts to assist Buyer in employing as new employees of Buyer, all Business Employees to whom Buyer has offered employment pursuant to this Section 7.4(b). The Business Employees who accept Buyer's offer of employment and commence employment with Buyer shall be referred to, collectively, as " Transferred Employees ." Seller shall terminate the employment of all Transferred Employees with the Seller Group effective immediately prior to the Closing. With respect to any Transferred Employees employed by the Seller Group in Japan, Seller shall take all necessary measures to secure the termination and transfer of such Transferred Employees in accordance with applicable Law, employment agreements, labor agreements, union contracts and collective bargaining agreements, including without limitation, conducting discussions and/or collective bargaining with any applicable labor union if required.

(c) From and after the Closing Date, Buyer shall offer to Transferred Employees such Benefit Plans and arrangements (the "Buyer's Benefit Plans" ) made available by Buyer to its similarly situated employees. Buyer agrees that Transferred Employees will be eligible to immediately commence participation in the Buyer's Benefit Plans without regard to any eligibility period. Buyer and its Affiliates will recognize all service of the Transferred Employees with Seller or any member of the Seller Group for purposes of eligibility to participate and vesting (but not benefit accruals in a Buyer's Benefit Plans). Buyer and its Affiliates will waive to the fullest extent permitted by the applicable Benefit Plans all waiting periods, evidence of insurability requirements or pre-existing condition limitations and give credit under the Buyer's Benefit Plans for amounts paid under a corresponding Seller Benefit Plan for purposes of applying deductibles, copayments and out-of-pocket maximums.

(d) All Transferred Employees who are participants in a Seller Group Benefit Plan that is an employee pension benefit plan shall retain their accrued benefits under such plans as of the Closing Date, and Seller shall retain Liability for the payment of benefits as and when such Transferred Employees become eligible therefor under such plans. All Transferred Employees shall become fully vested in their accrued benefits under Seller's pension benefit plans as of the Closing Date.

(e) Seller shall be liable for any and all Liabilities relating to or arising out of the employment, or cessation of employment, any Person who is or was an employee of any member of the Seller Group and who is not a Transferred Employee, including any Person whose employment with the Business was terminated prior to the Closing (" Seller Employees "), including wages, deferred compensation, and other remuneration earned and due, severance, separation, deferred compensation or similar benefits that are payable to any Seller Employees.

(f) Except as otherwise provided in this Section 7.4, Seller shall be liable for any and all Liabilities relating to or arising out of the employment of any and all Transferred Employees based on events or facts occurring on or prior to the close of business on the Closing Date, including wages, deferred compensation and other remuneration earned and due on or before the close of business on the Closing Date.

(g) Except as otherwise provided in this Section 7.4, Buyer shall be liable for any and all Liabilities relating to or arising out of the employment, or cessation of employment, of the Transferred Employees based on events or facts occurring after the close of business on the Closing Date, including wages, deferred compensation and other remuneration earned and due after the close of business on the Closing Date, and any severance, separation or similar benefits that are payable to Transferred Employees terminated on or after the Closing Date.

(h) Seller shall be liable for any and all Liabilities relating to or arising out of the cessation of employment of any Transferred Employees as of the close of business on the Closing Date, including any severance, separation or similar benefits that are payable to Transferred Employees, in each case to the extent that such Transferred Employee's right to severance, separation, deferred compensation or similar benefits arises as a result of the transactions contemplated by this Agreement and the Ancillary Agreements.

(i) Seller shall be liable for the administration and payment of all workers' compensation Liabilities and benefits with respect to (i) Transferred Employees to the extent resulting from claims, events, circumstances, exposures, conditions or occurrences occurring on or prior to the Closing, and (ii) Seller Employees. Buyer shall be liable for the administration and payment of all workers' compensation Liabilities and benefits with respect to Transferred Employees to the extent resulting from claims, events, circumstances, exposures, conditions or occurrences occurring after the Closing Date.

(j) Seller shall be liable for the administration and payment of all health and welfare Liabilities and benefits under the Seller Group Benefit Plans and Foreign Plans with respect to (i) Transferred Employees to the extent resulting from claims, events, circumstances, exposures, conditions or occurrences occurring on or prior to the Closing, and (ii) Seller Employees. Buyer shall be liable for the administration and payment of all health and welfare Liabilities and benefits under Buyer's Benefit Plans with respect to Transferred Employees participating therein to the extent resulting from claims, events, circumstances, exposures, conditions or occurrences occurring after the Closing Date.

(k) Seller shall retain and perform all Liabilities and maintain all insurance under the Consolidated Omnibus Budget Reconciliation Act of 1985 (" COBRA ") with respect to eligible Seller Employees and their covered dependents; provided that Buyer shall perform all of its obligations under COBRA with respect to Transferred Employees that become covered by any group health insurance plan of Buyer.

(l) Except as expressly set forth in this Section 7.4 with respect to Transferred Employees, Buyer shall have no obligation with respect to any Business Employee or any other employee of the Seller Group.

(m) Nothing in this Agreement confers upon any Business Employee or Transferred Employee any rights or remedies of any nature or kind whatsoever under or by reason of this Section 7.4. Nothing in this Agreement shall limit the right of Buyer to terminate or reassign any Transferred Employee after the Closing or to change the terms and conditions of his or employment in any manner.

7.5 Taxes and Transfer Costs .

(a) Buyer shall pay all sales, use, transfer, documentary, stamp, registration, recording, conveyance or other transfer charges or taxes, export costs and fees, shipping costs, customs and duties (with Buyer, or its affiliate, being the importer of record), if any, due as a result of the purchase, sale or transfer of the Purchased Assets (the " Transfer Taxes ") in accordance herewith whether imposed by Law on the Seller Group or Buyer, provided that the Seller acknowledges and agrees that it is responsible for any Taxes payable to terminate the Customs Supervision Period in China in order to permit the transfer of Purchased Assets located in China. Except as provided in the previous sentence, each party shall pay such Taxes imposed on them under applicable Law. The Buyer and Seller shall cooperate with each other in connection with the foregoing Taxes, including in the preparation of associated Tax Returns and the determination of the amount of such Taxes that are due.

(b) All real property Taxes, personal property Taxes and similar ad valorem obligations levied with respect to the Purchased Assets for a taxable period that includes (but does not end on) the Closing Date shall be apportioned between Seller and Buyer as of the Closing Date based on the number of days of such taxable period included in the period ending with and including the Closing Date (with respect to any such taxable period, the " Pre-Closing Tax Period "), and the number of days of such taxable period beginning after the Closing Date (with respect to any such taxable period, the " Post-Closing Tax Period "). Seller shall be liable for the proportionate amount of such Taxes that is attributable to the Pre-Closing Tax Period, and Buyer shall be liable for the proportionate amount of such Taxes that is attributable to the Post-Closing Period. If bills for such Taxes have not been issued as of the Closing Date, and, if the amount of such Taxes for the period including the Closing Date is not then known, the apportionment of such Taxes shall be made at Closing on the basis of the prior period's Taxes. After Closing, upon receipt of bills for the period including the Closing Date, adjustments to the apportionment shall be made by the parties, so that if either party paid more than its proper share at the Closing, the other party shall promptly reimburse such party for the excess amount paid by them.

(c) Buyer and Seller agree to furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information and assistance relating to the Business, the Purchased Assets and Assumed Liabilities (including access to books and records) as is reasonably necessary for the filing of all Tax Returns, the making of any election relating to Taxes, the preparation for any audit by any Taxing Authority, and the prosecution or defense of any Action relating to any Tax. Any expenses incurred in furnishing such information or assistance shall be borne by the party requesting it.

7.6 LMP Agreement; Other Software License Agreements . Buyer shall use commercially reasonable efforts to enter into an agreement with LMP Logistic Corporation with respect to inventory storage and shipping (the " LMP Agreement ") and to enter into such software license agreements, including development and similar license agreements that are necessary to the operation of the Business by Buyer following the Closing.

7.7 Bulk Sales Laws . Buyer and Seller hereby waive compliance by Buyer and Seller with the bulk sales Law and any other similar Laws in any applicable jurisdiction in respect of the transactions contemplated by this Agreement and the Ancillary Agreements; provided, however, that Seller shall pay and discharge when due all claims of creditors asserted against Buyer or the Purchased Assets by reason of such noncompliance and shall take promptly all necessary actions required to remove any Lien which may be placed upon any of the Purchased Assets by reason of such noncompliance.

7.8 Discharge of Business Obligations After Closing .

(a) From and after the Closing, Seller shall, and shall cause each other member of the Seller Group to, pay and discharge on a timely basis all of the Excluded Liabilities.

(b) From and after the Closing, if any member of the Seller Group or any of their respective Affiliates receives or collects any funds relating to any Purchased Asset, such member of the Seller Group or its Affiliate shall remit such funds to Buyer within five Business Days after its receipt thereof. From and after the Closing, if Buyer receives or collects any funds relating to any Excluded Asset, Buyer shall remit any such funds to the relevant member of the Seller Group within five Business Days after its receipt thereof.

7.9 Access to Books and Records . Each of Seller and Buyer shall preserve all records possessed or to be possessed by such party relating to any of the assets, Liabilities or business of the Business prior to the Closing in accordance with its respective document retention policies, provided that such policies require the retention of such records for at least five years following the Closing Date. After the Closing Date, where there is a legitimate business purpose, such party shall provide the other party with access, upon prior reasonable written request specifying the purpose therefor, during regular business hours, to (i) the officers of such party and (ii) the books of account and records of such party, but, in each case, only to the extent relating to the assets, Liabilities or business of the Business prior to the Closing, and the other party and its representatives shall have the right to make copies of such books and records at their sole cost; provided , however , that the foregoing right of access shall not be exercisable in such a manner as to interfere unreasonably with the normal operations and business of such party and shall be subject to the terms of the Confidentiality Agreement.

7.10 Continuity of Supply . During the two year period following the Closing Date, Buyer will use reasonable efforts to consult with Seller in the event of any termination or phasing out of currently existing Flow Products and will cooperate with customers of such products to ensure that the customers are provided with a continuity of supply of Flow Products.

7.11 Customer Communications . Prior to the Closing, Buyer and Seller will coordinate their communications with customers of the Business and will confirm that certain customers are generally supportive of the sale of the Purchased Assets. Prior to the Closing, the Seller may require the assistance of Buyer in providing joint customer visits, and the Buyer shall not contact any customer without Seller's prior consent.

7.12 Further Assurances . Buyer and Seller shall, and Seller shall cause the other members of the Seller Group to, execute such documents and other instruments and take such further actions as may be reasonably required or desirable to carry out the provisions of this Agreement and the Ancillary Agreements and to consummate the transactions contemplated hereby and thereby. Upon the terms and subject to the conditions hereof, Buyer and Seller shall each use its respective reasonable best efforts to (a) take or cause to be taken all actions and to do or cause to be done all other things necessary, proper or advisable to consummate and make effective as promptly as practicable the transactions contemplated by this Agreement and the Ancillary Agreements and (b) obtain in a timely manner all Consents and Business Authorizations and effect all necessary registrations and filings. From time to time after the Closing, at Buyer's request, Seller shall execute, and Seller shall cause each other relevant member of the Seller Group to, acknowledge and deliver to Buyer such other instruments of conveyance and transfer and will take such other actions and execute and deliver such other documents, certifications and further assurances as Buyer may reasonably require in order to vest more effectively in Buyer, or to put Buyer more fully in possession of, any of the Purchased Assets.

ARTICLE VIII

CONDITIONS TO CLOSING

8.1 Conditions to Obligations of Buyer and Seller . The obligations of Buyer and Seller to consummate the transactions contemplated by this Agreement are subject to the satisfaction on or prior to the Closing Date of the following conditions: (a) Any waiting period applicable to the consummation of the transactions contemplated by this Agreement under the Foreign Antitrust Laws shall have expired or been terminated and] all other Authorizations and Governmental Orders of, declarations and filings with, and notices to any Governmental Entity, required to permit the consummation of the transactions contemplated by this Agreement shall have been obtained or made and shall be in full force and effect. (b) No temporary restraining order, preliminary or permanent injunction or other Governmental Order preventing the consummation of the transactions contemplated by this Agreement shall be in effect. No Law shall have been enacted or shall be deemed applicable to the transactions contemplated by this Agreement which makes the consummation of such transactions illegal.

8.2 Conditions to Obligation of Buyer . The obligation of Buyer to consummate the transactions contemplated by this Agreement is subject to the satisfaction (or waiver by Buyer in its sole discretion) of the following further conditions:

(a) The representations and warranties of Seller set forth in this Agreement that are qualified by materiality (considered collectively and individually) shall have been true and correct at and as of the date hereof and shall be true and correct at and as of the Closing Date as if made at and as of the Closing Date, and the representations and warranties that are not so qualified (considered collectively and individually) shall have been true and correct in all material respects at and as of the date hereof and shall be true and correct in all material respects at and as of the Closing Date as if made at and as of the Closing Date, except to the extent that such representations and warranties refer specifically to an earlier date, in which case such representations and warranties shall have been true and correct as of such earlier date.

(b) Seller shall have performed or complied in all material respects with all obligations and covenants required by this Agreement to be performed or complied with by Seller at or prior to the Closing.

(c) Buyer shall have received a certificate dated the Closing Date signed on behalf of Seller by an authorized officer of Seller (i) as to the accuracy of its representations and warranties as of the date of this Agreement and as of the Closing Date in accordance with Section 8.2(a) and (ii) as to performance and compliance with its obligations and covenants to be performed or complied with at or prior to the Closing in accordance with Section 8.2(b) (the " Seller Closing Certificate "); provided that no exceptions taken in such certificate will modify any of Seller's representations and warranties, covenants or agreements or have any effect for purposes of the conditions to Buyer's obligation to close the transactions contemplated hereby or Buyer's rights of indemnity hereunder.

(d) There shall have been no Material Adverse Change.

(e) No Action shall be pending or threatened before any court or other Governmental Entity or before any other Person wherein an unfavorable Governmental Order would (i) prevent consummation of any of the transactions contemplated by this Agreement or the Ancillary Agreements, (ii) affect adversely the right of Buyer to own the Purchased Assets or (iii) restrain or prohibit Buyer's ownership or operation (or that of its Subsidiaries or Affiliates) of all or any material portion of the Purchased Assets, or compel Buyer or any of its Subsidiaries or Affiliates to dispose of or hold separate all or any material portion of the Purchased Assets or all or any material portion of the business and assets of Buyer and its Subsidiaries. No such Governmental Order shall be in effect.

(f) No Law shall have been enacted or shall be deemed applicable to the transactions contemplated by this Agreement or the Ancillary Agreements which has any of the effects set forth in clauses (i) through (iii) in Section 8.2(e).

(g) The Seller Group shall have performed or complied in all material respects with all obligations and covenants required by the Japan Real Estate Purchase Agreement to be performed or complied with by the Seller Group at or prior to the Closing in order to effectively vest title of the Japan Land and Japan Buildings in Buyer.

(h) Seller shall have obtained the Consent of each Person whose Consent is required under the Assigned Contracts set forth in Schedule 8.2(h) and shall have provided evidence of each such Consent in form and substance satisfactory to Buyer.

(i) Buyer shall have received all Assigned Business Authorizations.

(j) Seller shall have delivered to Buyer all agreements and other documents required to be delivered by Seller to Buyer pursuant to Section 3.2 of this Agreement.

(k) Buyer shall have received evidence in form and substance satisfactory to Buyer that all Liens other than Permitted Liens with respect to the Purchased Assets have been released.

(l) LMP Logistic Corporation shall have entered into the LMP Agreement.

(m) The Intellectual Property License Agreement dated December 31, 2009 by and between the Seller and Fuel-It Japan K.K. shall have been terminated and of no further force or effect.

8.3 Conditions to Obligation of Seller . The obligation of Seller to consummate the transactions contemplated by this Agreement is subject to the satisfaction (or waiver by Seller in its sole discretion) of the following further conditions:

(a) The representations and warranties of Buyer set forth in this Agreement that are qualified by materiality (considered collectively and individually) shall have been true and correct at and as of the date hereof and shall be true and correct at and as of the Closing Date as if made at and as of the Closing Date, and the representations and warranties that are not so qualified (considered collectively and individually) shall have been true and correct in all material respects at and as of the date hereof and shall be true and correct in all material respects at and as of the Closing Date as if made at and as of the Closing Date, except to the extent that such representations and warranties refer specifically to an earlier date, in which case such representations and warranties shall have been true and correct as of such earlier date.

(b) Buyer shall have performed or complied in all material respects with all obligations and covenants required by this Agreement to be performed or complied with by Buyer at or prior to the Closing.

(c) Seller shall have received a certificate dated the Closing Date signed on behalf of Buyer by an authorized officer of Buyer to the effect that the conditions set forth in Section 8.3(a) and 8.3(b) have been satisfied (the " Buyer Closing Certificate ").

(d) No Action shall be pending or threatened before any court or other Governmental Entity or other Person wherein an unfavorable Governmental Order would (i) prevent consummation of any of the transactions contemplated by this Agreement and the Ancillary Agreements or (ii) cause any of the transactions contemplated by this Agreement and the Ancillary Agreements to be rescinded following consummation. No such Governmental Order shall be in effect.

(e) Buyer shall have delivered to Seller all agreements and other documents required to be delivered by Buyer to Seller pursuant to Section 3.3 of this Agreement.

ARTICLE IX

TERMINATION

9.1 Termination . (a) This Agreement may be terminated at any time prior to the Closing: (i) by mutual written consent of Buyer and Seller; (ii) by Buyer or Seller if: (1) the Closing does not occur on or before October 21, 2010; provided that the right to terminate this Agreement under this clause (ii)(1) shall not be available to any party whose breach of a representation, warranty, covenant or agreement under this Agreement has been the cause of or resulted in the failure of the Closing to occur on or before such date; or (2) a Governmental Entity shall have issued an Governmental Order or taken any other action, in any case having the effect of permanently restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement, which Governmental Order or other action is final and non-appealable; (iii) by Buyer if: (1) any condition to the obligations of Buyer hereunder becomes incapable of fulfillment other than as a result of a breach by Buyer of any covenant or agreement contained in this Agreement, and such condition is not waived by Buyer; or (2) so long as at such time a breach by Buyer of any of its representations, warranties, covenants or agreements hereunder has not occurred and is continuing, there has been a breach by Seller of any representation, warranty, covenant or agreement contained in this Agreement or the Seller Disclosure Schedule, or if any representation or warranty of Seller shall have become untrue, in either case such that the conditions set forth in Sections 8.2(a) or 8.2(b) would not be satisfied and, in either case, such breach is not curable, or, if curable, is not cured within fifteen (15) Business Days after written notice of such breach is given to Seller by Buyer; or (iv) by Seller if: (1) any condition to the obligations of Seller hereunder becomes incapable of fulfillment other than as a result of a breach by Seller of any covenant or agreement contained in this Agreement, and such condition is not waived by Seller; or (2) so long as at such time a breach by Seller of any of its representations, warranties, covenants or agreements hereunder has not occurred and is continuing, there has been a breach by Buyer of any representation, warranty, covenant or agreement contained in this Agreement, or if any representation or warranty of Buyer shall have become untrue, in either case such that the conditions set forth in Sections 8.3(a) or 8.3(b) would not be satisfied and, in either case, such breach is not curable, or, if curable, is not cured within ten (10) Business Days after written notice of such breach is given to Buyer by Seller.

(b) The party desiring to terminate this Agreement pursuant to clause (ii), (iii) or (iv) shall give written notice of such termination to the other party hereto.

9.2 Effect of Termination . In the event of termination of this Agreement as provided in Section 9.1, this Agreement shall immediately become null and void and there shall be no Liability or obligation on the part of Seller or Buyer or their respective officers, directors, stockholders or Affiliates, except as set forth in Section 9.3; provided, however, the provisions of Section 7.2 (Public Announcements) and Section 9.3 (Remedies) and Article X of this Agreement shall remain in full force and effect and survive any termination of this Agreement.

9.3 Remedies . Any termination of this Agreement pursuant to Section 9.1 shall be without Liability of either party (or any Affiliate, stockholder, director, officer, employee, agent, consultant or Representative of such Party) to the other party to this Agreement; provided that a party shall have the right to recover damages sustained by such party as a result of any breach by the other party of any representation, warranty, covenant or agreement contained in this Agreement or fraud or willful misrepresentation; provided, however, that the party seeking relief is not in breach of any representation, warranty, covenant or agreement contained in this Agreement under circumstances which would have permitted the other party to terminate the Agreement under Section 9.1.

ARTICLE X

INDEMNIFICATION

10.1 Survival .

(a) Except as set forth in Section 10.1(b), all representations and warranties contained in this Agreement, the Ancillary Agreements, any Schedule, certificate or other document delivered pursuant to this Agreement or the Ancillary Agreements, shall survive the Closing for a period of 12 months.

(b) The representations and warranties of Seller contained in Sections 4.1 (Organization and Good Standing), 4.2 (Authority and Enforceability), 4.10 (Title to Personal Properties), 4.12(b)(i) (Title to Real Estate), 4.16 (Sufficiency of Purchased Assets), 4.25 (Brokers or Finders), and the representations and warranties of Buyer contained in Sections 5.1 (Organization and Good Standing), 5.2 (Authority and Enforceability) and 5.6 (Brokers or Finders) shall survive the Closing indefinitely. The representations and warranties of Seller contained in Sections 4.7 (Taxes), and 4.18 (Employee Benefits) shall survive the Closing until 60 days after the expiration of the applicable statute of limitations period (after giving effect to any waivers and extensions thereof). The representations and warranties of Seller contained in Article 4.20 (Environmental) shall survive the Closing for a period of five years; provided, however, that if Seller elects to conduct, at its cost, a Phase II environmental assessment on the Owned Real Property, and such assessment does not identify any environmental conditions that require remediation under Environmental Law that would reasonably be expected to result in a Liability in excess of $200,000 in the aggregate, then the representations and warranties of Seller contained in Article 4.20 (Environmental) shall survive the Closing for a period of three years.

(c) The covenants and agreements which by their terms do not contemplate performance after the Closing shall survive the Closing for a period of 12 months. The covenants and agreements which by their terms contemplate performance after the Closing Date shall survive the Closing indefinitely.

(d) The period for which a representation or warranty, covenant or agreement survives the Closing is referred to herein as the " Applicable Survival Period ." In the event notice of claim for indemnification under Section 10.2 or 10.3 is given within the Applicable Survival Period, the representation or warranty, covenant or agreement that is the subject of such indemnification claim (whether or not formal legal action shall have been commenced based upon such claim) shall survive with respect to such claim until such claim is finally resolved. The Indemnitor shall indemnify the Indemnitee for all Losses (subject to the limitations set forth herein, if applicable) that the Indemnitee may incur in respect of such claim, regardless of when incurred.

10.2 Indemnification by Seller .

(a) From and after the Closing, Seller shall indemnify and defend Buyer and its Affiliates and their respective stockholders, members, managers, officers, directors, employees, agents, successors and assigns (the " Buyer Indemnitees ") against, and shall hold them harmless from, any and all losses, damages, claims (including third party claims), charges, interest, penalties, Taxes, diminution in value, costs and expenses (including legal, consultant, accounting and other professional fees, costs of sampling, testing, investigation, removal, treatment and remediation of contamination and fees and costs incurred in enforcing rights under this Section 10.2) (collectively, " Losses ") resulting from, arising out of, or incurred by any Buyer Indemnitee in connection with, or otherwise with respect to: (i) the failure of any representation and warranty or other statement by Seller contained in this Agreement, the Ancillary Agreements, the Seller Disclosure Schedule or any certificate or other document furnished or to be furnished to Buyer in connection with the transactions contemplated by this Agreement and the Ancillary Agreements to be true and correct in all respects as of the date of this Agreement and as of the Closing Date; (ii) any breach of any covenant or agreement of Seller contained in this Agreement, the Ancillary Agreements, the Seller Disclosure Schedule or any certificate or other document furnished or to be furnished to Buyer in connection with the transactions contemplated by this Agreement and the Ancillary Agreements; (iii) all warranty, product liability and other customer and third-party claims relating to defective or nonconforming products of the Business sold by Seller in the ordinary course of business prior to the Closing Date that exceed in the aggregate $630,000; (iv) any Excluded Liability, including any Pre-Closing Environmental Liability, regardless of whether or not the Seller Disclosure Schedule discloses any such Excluded Liability; (v) any fees, expenses or other payments incurred or owed by any member of the Seller Group to any agent, broker, investment banker or other firm or person retained or employed by it in connection with the transactions contemplated by this Agreement and the Ancillary Agreements; (vi) fraudulent transfer Laws or the failure to comply with any bulk sales Laws and similar Laws; (vii) for a period of three (3) years after the Closing, any claim that Buyer's sale, manufacture, use or any other exploitation of the Flow Products infringes one or more claims of the patents listed on Schedule 10.2(a)(vii) hereof; and (viii) any claim that Buyer does not own, free and clear of all Liens, all right, title and interest in and to the Intellectual Property Rights claimed under the patent listed on Schedule 10.2(a)(viii) hereof.

(b) Seller shall not be liable for any Loss or Losses pursuant to Section 10.2(a)(i) and Section 10.2(a)(vii) (" Buyer Warranty Losses ") (i) unless and until the aggregate amount of all Buyer Warranty Losses incurred by the Buyer Indemnitees exceeds $150,000 in which event Seller shall be liable for all Buyer Warranty Losses from the first dollar, and (ii) to the extent that Buyer Warranty Losses exceed $6,000,000 in the aggregate; provided, however, nothing contained in this Section 10.2(b) shall be deemed to limit or restrict in any manner any rights or remedies which Buyer has, or might have, at Law, in equity or otherwise, based on fraud or a willful misrepresentation or willful breach of warranty hereunder.

10.3 Indemnification by Buyer .

(a) Buyer shall indemnify and defend Seller and its Affiliates and their respective stockholders, members, managers, officers, directors, employees, agents, successors and assigns (the " Seller Indemnitees ") against, and shall hold them harmless from, any and all Losses resulting from, arising out of, or incurred by any Seller Indemnitee in connection with, or otherwise with respect to: (i) the failure of any representation and warranty or other statement by Buyer contained in this Agreement, the Ancillary Agreements or any certificate or other document furnished or to be furnished to Seller pursuant to this Agreement to be true and correct in all respects as of the date of this Agreement and as of the Closing Date; (ii) any breach of any covenant or agreement of Buyer contained in this Agreement, the Ancillary Agreements or any certificate or other document furnished or to be furnished to Seller in connection with the transactions contemplated hereby and thereby; (iii) any Assumed Liability; (iv) any Transfer Taxes; and (v) any fees, expenses or other payments incurred or owed by Buyer or any of its Affiliates to any agent, broker, investment banker or other firm or person retained or employed by it in connection with the transactions contemplated by this Agreement and the Ancillary Agreements.

(b) Buyer shall not be liable for any Loss or Losses pursuant to 10.3(a)(i) (" Seller Warranty Losses ") (i) unless and until the aggregate amount of all Seller Warranty Losses incurred by the Seller Indemnitees exceeds $150,000, in which event Buyer shall be liable for all Seller Warranty Losses from the first dollar, and (ii) to the extent that Seller Warranty Losses exceed $6,000,000 in the aggregate.

10.4 Indemnification Procedures for Third Party Claims .

(a) In the event that an Indemnitee receives notice of the assertion of any claim or the commencement of any Action by a third party in respect of which indemnity may be sought under the provisions of this Article X (" Third Party Claim "), the Indemnitee shall promptly notify the Indemnitor in writing of such Third Party Claim (" Notice of Claim "). Failure or delay in notifying the Indemnitor will not relieve the Indemnitor of any Liability it may have to the Indemnitee, except and only to the extent that such failure or delay causes actual harm to the Indemnitor with respect to such Third Party Claim. The Notice of Claim shall set forth the amount, if known, or, if not known, an estimate of the foreseeable maximum amount of claimed Losses (which estimate shall not be conclusive of the final amount of such Losses) and a description of the basis for such Third Party Claim.

(b) Subject to the further provisions of this Section 10.4, the Indemnitor will have 10 days (or less if the nature of the Third Party Claim requires) from the date on which the Indemnitor received the Notice of Claim to notify the Indemnitee that the Indemnitor will assume the defense or prosecution of such Third Party Claim and any litigation resulting therefrom with counsel of its choice and at its sole cost and expense (a " Third Party Defense "). If the Indemnitor assumes the Third Party Defense in accordance with the preceding sentence, the Indemnitor shall be conclusively deemed to have acknowledged that the Third Party Claim is within the scope of its indemnity obligation hereunder and shall hold the Indemnitee harmless from and against the full amount of any Losses resulting therefrom (subject to the terms and conditions of this Agreement). Any Indemnitee shall have the right to employ separate counsel in any such Third Party Defense and to participate therein, but the fees and expenses of such counsel shall not be at the expense of the Indemnitor unless (A) the Indemnitor shall have failed, within the time after having been notified by the Indemnitee of the existence of the Third Party Claim as provided in the first sentence of this paragraph (b), to assume the defense of such Third Party Claim, or (B) the employment of such counsel has been specifically authorized in writing by the Indemnitor, which authorization shall not be unreasonably withheld.

(c) The Indemnitor will not be entitled to assume the Third Party Defense if: (i) the Third Party Claim seeks, in addition to or in lieu of monetary damages, any injunctive or other equitable relief (except where non-monetary relief is merely incidental to a primary claim or claims for monetary damages); (ii) the Third Party Claim relates to or arises in connection with any criminal proceeding, action, indictment, allegation or investigation; (iii) under applicable standards of professional conduct, a conflict on any significant issue exists between the Indemnitee and the Indemnitor in respect of the Third Party Claim; (iv) the Third Party Claim involves a material customer or supplier of the Business; (v) the Indemnitee reasonably believes an adverse determination with respect to the Third Party Claim would be materially detrimental to or materially injure the Indemnitee's reputation or future business prospects; (vi) upon petition by the Indemnitee, the appropriate court rules that the Indemnitor failed or is failing to use commercially reasonable efforts to vigorously prosecute or defend such Third Party Claim; (vii) the Indemnitor fails to provide reasonable assurance to the Indemnitee of its financial capacity to prosecute the Third Party Defense and provide indemnification in accordance with the provisions of this Agreement; or (viii) the Third Party Claim would give rise to Losses which are more than the amount indemnifiable by the Indemnitor pursuant to this Article X.

(d) If by reason of the Third Party Claim a Lien, attachment, garnishment or execution is placed upon any of the property or assets of the Indemnitee, the Indemnitor, if it desires to exercise its right to assume such Third Party Defense, must furnish a satisfactory indemnity bond to obtain the prompt release of such Lien, attachment, garnishment or execution.

(e) If the Indemnitor assumes a Third Party Defense, it will use reasonable efforts in the defense, prosecution, or settlement of such claim or litigation and will hold all Indemnitees harmless from and against all Losses caused by or arising out of such Third Party Claim (subject to the last sentence of Section 10.4(b)). The Indemnitor will not consent to the entry of any judgment or enter into any settlement except with the written consent of the Indemnitee (not to be unreasonably withheld or delayed) to which the Indemnitor is obligated to furnish indemnification pursuant to this Agreement; provided that the consent of the Indemnitee shall not be required if all of the following conditions are met: (i) the terms of the judgment or proposed settlement include as an unconditional term thereof the giving to the Indemnitees by the third party of a release of the Indemnitees from all Liability in respect of such Third Party Claim, (ii) there is no finding or admission of (A) any violation of Law by the Indemnitees (or any Affiliate thereof), (B) any violation of the rights of any Person and (C) no effect on any other Action or claims of a similar nature that may be made against the Indemnitees (or any Affiliate thereof), and (iii) the sole form of relief is monetary damages which are paid in full by the Indemnitor. The Indemnitor shall conduct the defense of the Third Party Claim actively and diligently, and the Indemnitee will provide reasonable cooperation in the defense of the Third Party Claim. So long as the Indemnitor is reasonably conducting the Third Party Defense in good faith, the Indemnitee will not consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim without the prior written consent of the Indemnitor (not to be unreasonably withheld or delayed). Notwithstanding the foregoing, the Indemnitee shall have the right to pay or settle any such Third Party Claim; provided that, in such event, subject to the following sentence, it shall waive any right to indemnity therefor by the Indemnitor for such claim unless the Indemnitor shall have consented to such payment or settlement (such consent not to be unreasonably withheld or delayed). If the Indemnitor is not reasonably conducting the Third Party Defense in good faith, the Indemnitee shall have the right to consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim without the prior written consent of the Indemnitor and the Indemnitor shall reimburse the Indemnitee promptly for all Losses incurred in connection with such judgment or settlement.

(f) In the event that (i) an Indemnitee gives Notice of Claim to the Indemnitor and the Indemnitor fails or elects not to assume a Third Party Defense which the Indemnitor had the right to assume under this Section 10.4 or (ii) the Indemnitor is not entitled to assume the Third Party Defense pursuant to this Section 10.4, the Indemnitee shall have the right, with counsel of its choice, to defend, conduct and control the Third Party Defense, at the sole cost and expense of the Indemnitor. In each case, the Indemnitee shall conduct the Third Party Defense actively and diligently, and the Indemnitor will provide reasonable cooperation in the Third Party Defense. The Indemnitee shall have the right to consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim on such terms as it may deem appropriate; provided, however, that the amount of any settlement made or entry of any judgment consented to by the Indemnitee without the consent of the Indemnitor shall not be determinative of the validity of the claim, except with the consent of the Indemnitor (not to be unreasonably withheld or delayed). Notwithstanding Section 11.6 hereof, in connection with any Third Party Claim, the Indemnitor hereby consents to the nonexclusive jurisdiction of any court in which an Action in respect of a Third Party Claim is brought against any Indemnitee for purposes of any claim that the Indemnitee may have under this Article X with respect to such Action or the matters alleged therein and agrees that process may be served on the Indemnitor with respect to such a claim anywhere in the world. If the Indemnitor does not elect to assume a Third Party Defense which it has the right to assume hereunder, the Indemnitee shall have no obligation to do so.

(g) Each party to this Agreement shall use its commercially reasonable efforts to cooperate and to cause its employees to cooperate with and assist the Indemnitee or the Indemnitor, as the case may be, in connection with any Third Party Defense, including attending conferences, discovery proceedings, hearings, trials and appeals and furnishing records, information and testimony, as may reasonably be requested; provided that each party shall use its best efforts, in respect of any Third Party Claim of which it has assumed the defense, to preserve the confidentiality of all confidential information and the attorney-client and work-product privileges.

10.5 Indemnification Procedures for Non-Third Party Claims . In the event of a claim that does not involve a Third Party Claim being asserted against it, the Indemnitee shall send a Notice of Claim to the Indemnitor. The Notice of Claim shall set forth the amount, if known, or, if not known, an estimate of the foreseeable maximum amount of claimed Losses (which estimate shall not be conclusive of the final amount of such Losses) and a description of the basis for such claim. The Indemnitor will have 30 days from receipt of such Notice of Claim to dispute the claim and will reasonably cooperate and assist the Indemnitee in determining the validity of the claim for indemnity. If the Indemnitor does not give notice to the Indemnitee that it disputes such claim within 30 days after its receipt of the Notice of Claim, the claim specified in such Notice of Claim will be conclusively deemed a Loss subject to indemnification hereunder.

10.6 Effect of Investigation; Waiver . An Indemnitee's right to indemnification or other remedies based upon the representations and warranties and covenants and agreements of the Indemnitor will not be affected by any investigation or knowledge of the Indemnitee or any waiver by the Indemnitee of any condition based on the accuracy of any representation or warranty, or compliance with any covenant or agreement. Such representations and warranties and covenants and agreements shall not be affected or deemed waived by reason of the fact that the Indemnitor knew or should have known that any representation or warrant might be inaccurate or that the Indemnitor failed to comply with any agreement or covenant. Any investigation by such party shall be for its own protection only and shall not affect or impair any right or remedy hereunder.

10.7 Exclusive Remedy . The indemnification rights of the parties under this Article X will provide the exclusive remedy for any breach or inaccuracy of any representation or warranty or breach of any covenant or other agreement set forth in this Agreement, except for the right to seek specific performance, rescission or restitution, and except for rights set forth in any Ancillary Agreement, none of which rights or remedies shall be affected or diminished hereby; provided, however, nothing herein shall limit in any way any party's remedies against any other party in respect of fraud, intentional misrepresentation or intentional breach of any of the provisions of this Agreement.

ARTICLE XI

MISCELLANEOUS

11.1 Notices . Any notice, request, demand, waiver, consent, approval or other communication which is required or permitted hereunder shall be in writing and shall be deemed given (a) on the date established by the sender as having been delivered personally, (b) on the date delivered by a private courier as established by the sender by evidence obtained from the courier, (c) on the date sent by facsimile, with confirmation of transmission, if sent during normal business hours of the recipient, if not, then on the next Business Day, or (d) on the fifth day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications, to be valid, must be addressed as follows: If to Buyer, to: Donburi, Ltd.

Address

Tokyo, Japan

Attn: Hiro Takase

Facsimile: xx-xxx-xxx With a required copy to: Maslow, Terton, Fringe LLP

Adress, USA

Attn: xxxx, Esq.

Facsimile: xxx-xxx-xxx

Maslow, Terton, Fringe LLP

Address, USA

Attn: xxxxxxxx, Esq.

Facsimile: xxx-xxx-xxx If to Seller, to: Fuel-It Industries, Inc.

Address

Boulder, CO,USA

Telephone: xxx-xxx-xxx

Attn: Larry S. Avian, General Counsel

Facsimile: xxx-xxx-xxx With a required copy to: Taunton Myers US LLP

Boulder, CO USA

Attn: Mary S. Fielder, Esq.

Facsimile: xxx-xxx-xxx or to such other address or to the attention of such Person or Persons as the recipient party has specified by prior written notice to the sending party (or in the case of counsel, to such other readily ascertainable business address as such counsel may hereafter maintain). If more than one method for sending notice as set forth above is used, the earliest notice date established as set forth above shall control.

11.2 Amendments and Waivers .

(a) Any provision of this Agreement may be amended or waived if, and only if, such amendment or waiver is in writing and is signed, in the case of an amendment, by each party to this Agreement, or in the case of a waiver, by the party against whom the waiver is to be effective.

(b) No failure or delay by any party in exercising any right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

(c) To the maximum extent permitted by Law, (i) no waiver that may be given by a party shall be applicable except in the specific instance for which it was given and (ii) no notice to or demand on one party shall be deemed to be a waiver of any obligation of such party or the right of the party giving such notice or demand to take further action without notice or demand.

11.3 Expenses . Except as otherwise provided herein, each party shall bear its own costs and expenses in connection with this Agreement, the Ancillary Agreements and the transactions contemplated hereby and thereby, including all legal, accounting, financial advisory, consulting and all other fees and expenses of third parties, whether or not the transactions contemplated by this Agreement are consummated.61

11.4 Successors and Assigns . This Agreement may not be assigned by either party hereto without the prior written consent of the other party; provided that, without such consent, Buyer may transfer or assign this Agreement, in whole or in part or from time to time, to one or more of its Affiliates, but no such transfer or assignment will relieve Buyer of its obligations hereunder. Subject to the foregoing, all of the terms and provisions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective executors, heirs, personal representatives, successors and assigns.

11.5 Governing Law . This Agreement and Schedules hereto shall be governed by and interpreted and enforced in accordance with the Laws of the State of California, without giving effect to any choice of Law or conflict of Laws rules or provisions (whether of the State of California or any other jurisdiction) that would cause the application of the Laws of any jurisdiction other than the State of California.

11.6 Consent to Jurisdiction . Each party hereto irrevocably submits to the exclusive jurisdiction of any state or federal court located in San Francisco County, California, for the purposes of any Action arising out of this Agreement or the Ancillary Agreements or any transaction contemplated hereby or thereby, and agrees to commence any such Action only in such courts. Each party further agrees that service of any process, summons, notice or document by U.S. registered mail to such party's respective address set forth herein shall be effective service of process for any such Action. Each party irrevocably and unconditionally waives any objection to the laying of venue of any Action arising out of this Agreement, Ancillary Agreements or the transactions contemplated hereby or thereby in such courts, and hereby irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such Action brought in any such court has been brought in an inconvenient forum.

EACH PARTY HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE ANCILLARY AGREEMENTS AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY OR THE ACTIONS OF SUCH PARTY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT HEREOF AND THEREOF.

11.7 Counterparts . This Agreement may be executed in any number of counterparts, and any party hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. This Agreement shall become effective when each party hereto shall have received a counterpart hereof signed by the other party hereto. The parties agree that the delivery of this Agreement, and the delivery of the Ancillary Agreements and any other agreements and documents at the Closing, may be effected by means of an exchange of facsimile signatures with original copies to follow by mail or courier service.

11.8 Third Party Beneficiaries . No provision of this Agreement is intended to confer upon any Person other than the parties hereto any rights or remedies hereunder; except that in the case of Article X hereof, the other Indemnitees and their respective heirs, executors, administrators, legal representatives, successors and assigns, are intended third party beneficiaries of such sections and shall have the right to enforce such sections in their own names.

11.9 Entire Agreement . This Agreement, the Ancillary Agreements, the Schedules and the other documents, instruments and agreements specifically referred to herein or therein or delivered pursuant hereto or thereto set forth the entire understanding of the parties hereto with respect to the transactions contemplated by this Agreement. All Schedules referred to herein are intended to be and hereby are specifically made a part of this Agreement. Any and all previous agreements and understandings between or among the parties regarding the subject matter hereof, whether written or oral, are superseded by this Agreement, except for the Confidentiality Agreement which shall continue in full force and effect in accordance with its terms.

11.10 Captions . All captions contained in this Agreement are for convenience of reference only, do not form a part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement.

11.11 Severability . Subject to Section 6.8(d), any provision of this Agreement which is invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

11.12 Specific Performance . Buyer and Seller each agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed by them in accordance with the terms hereof and that each party shall be entitled to specific performance of the terms hereof, in addition to any other remedy at Law or equity.

11.13 Interpretation .

(a) The meaning assigned to each term defined herein shall be equally applicable to both the singular and the plural forms of such term and vice versa, and words denoting either gender shall include both genders as the context requires. Where a word or phrase is defined herein, each of its other grammatical forms shall have a corresponding meaning.

(b) The terms "hereof", "herein" and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement.

(c) When a reference is made in this Agreement to an Article, Section, paragraph, Exhibit or Schedule, such reference is to an Article, Section, paragraph, Exhibit or Schedule to this Agreement unless otherwise specified.

(d) The word "include", "includes", and "including" when used in this Agreement shall be deemed to be followed by the words "without limitation", unless otherwise specified.

(e) A reference to any party to this Agreement or any other agreement or document shall include such party's predecessors, successors and permitted assigns.

(f) Reference to any Law means such Law as amended, modified, codified, replaced or reenacted, and all rules and regulations promulgated thereunder.

(g) The parties have participated jointly in the negotiation and drafting of this Agreement and the Ancillary Agreements. Any rule of construction or interpretation otherwise requiring this Agreement or the Ancillary Agreements to be construed or interpreted against any party by virtue of the authorship of this Agreement or the Ancillary Agreements shall not apply to the construction and interpretation hereof and thereof.

(h) All accounting terms used and not defined herein shall have the respective meanings given to them under GAAP.63

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the date first above written.

|  |  |  |  |
| --- | --- | --- | --- |
|  | DONBURI, LTD. | | |
|  | By: | |s|Satoshi Yamaguchi | |
|  | Name: | Satoshi Yamaguchi |  |
|  | Title: | President & CEO |  |

|  |  |  |  |
| --- | --- | --- | --- |
|  | FUEL-IT INDUSTRIES, INC. | | |
|  | By: | |s|Dr. Sig F. Reed | |
|  | Name: | Dr. Sig F. Reed |  |
|  | Title: | Chief Executive Officer |  |

**APA#12**

ASSET PURCHASE AGREEMENT

by and among

COMMUNICALLIN ELECTRONICS CO., LTD.

TOWERTOPS TECHNOLOGY INTERNATIONAL

and

TOWERTOPS TECHNOLOGY PLC

DATED APRIL 19, 2011

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TABLE OF CONTENTS

SECTION 1 DESCRIPTION OF TRANSACTION 2

1.1 Agreement to Purchase and Sell 2

1.2 Excluded Assets 2

1.3 Assumption of Assumed Liabilities 4

1.4 Excluded Liabilities 5

1.5 Delivery of Assets 6

1.6 Subsequent Delivery 7

1.7 Internal Approval 7

SECTION 2 PURCHASE PRICE; ALLOCATIONS 7

2.1 Purchase Price 7

2.2 Payment of Purchase Price 8

2.3 VAT; Withholding Taxes 9

2.4 Allocation of Purchase Price 10

2.5 Allocation of Certain Items 11

SECTION 3 REPRESENTATIONS AND WARRANTIES OF THE SELLER 11

3.1 Organization 11

3.2 Subsidiaries 11

3.3 Authority; Binding Nature of Agreement 12

3.4 Absence of Restrictions 12

3.5 Governmental Consents 13

3.6 Absence of Changes 13

3.7 Conduct in the Ordinary Course 13

3.8 Assets 13

3.9 Inventory 14

3.10 Compliance with Law 14

3.11 Permits and Approvals 14

3.12 Intellectual Property 15

3.13 Contracts 16

3.14 Employee Matters 17

3.15 Product Liability; Warranties 18

3.16 Environmental Matters 18

3.17 Legal Proceedings 18

3.18 Customers and Suppliers 19

3.19 Tax Matters 19

3.20 Finder's Fee 19

3.21 Investment Representations 19

3.22 No Other Representations or Warranties 20

SECTION 4 REPRESENTATIONS AND WARRANTIES OF THE PURCHASER AND THE GUARANTOR 20

4.1 Organization and Standing 20

4.2 Authority; Binding Nature of Agreement 21

4.3 Capitalization 21

4.4 Valid Issuance 22

4.5 Governmental Consents 22

4.6 SEC Filings; Financial Statements 22

4.7 Absence of Restrictions 24

4.8 Absence of Changes 24

4.9 Legal Proceedings 25

4.10 Availability of Funds 25

4.11 Finder's Fee 25

SECTION 5 CERTAIN COVENANTS AND AGREEMENTS 25

5.1 Access and Investigation 25

5.2 Operation of the Seller's Business 25

5.3 Preparation of Financial Statements 26

5.4 Purchaser Designees; Local Asset Transfers 27

5.5 No Negotiation 27

5.6 Employee Matters 28

5.7 Assumed Contracts; Non-Assignable Contracts 29

5.8 Public Announcements 30

5.9 Confidentiality 30

5.10 Reasonable Efforts; Further Assurances; Cooperation 31

5.11 Regulatory Approvals 32

5.12 Transfer Taxes; Expenses 34

5.13 Non-Competition 34

5.14 Non-Solicitation 35

5.15 Customer Visits; Supplier Relationships 35

5.16 Inventory 36

5.17 Delivery of Books and Records 36

5.18 Valuation in Respect of the Loan Note 36

5.19 Covenant to Pay Irish Stamp Duty 36

SECTION 6 CONDITIONS PRECEDENT 37

6.1 Conditions Precedent to Obligations of Purchaser, Guarantor and Seller 37

6.2 Conditions Precedent to Obligations of Purchaser and Guarantor 37

SECTION 7 CLOSING 37

7.1 Closing 37

7.2 Closing Actions 38

7.3 Issuance of Share Consideration 38

SECTION 8 TERMINATION 38

8.1 Termination Events 38

8.2 Closing Breach 39

8.3 Effect of Termination 39

SECTION 9 INDEMNIFICATION 39

9.1 Indemnification Obligations of the Seller 40

9.2 Indemnification Obligations of the Purchaser and the Guarantor 40

9.3 Indemnification Procedure 40

9.4 Survival Period; Time Limits 42

9.5 Liability Limits 43

9.6 Exclusive Remedy 43

SECTION 10 GUARANTEE 43

10.1 Guarantee 43

10.2 Obligations Absolute 43

10.3 Primary Obligation; Waivers 44

SECTION 11 MISCELLANEOUS PROVISIONS 44

11.1 Enforcement of Agreement 44

11.2 Further Assurances 44

11.3 Fees and Expenses 45

11.4 Waiver; Amendment 45

11.5 Entire Agreement 45

11.6 Execution of Agreement; Counterparts; Electronic Signatures 45

11.7 Governing Law; Jurisdiction and Venue 46

11.8 WAIVER OF JURY TRIAL 47

11.9 Assignment and Successors 47

11.10 Parties in Interest 47

11.11 Notices 47

11.12 Seller Disclosure Schedules 49

11.13 Construction; Usage 49

11.14 Severability 50

11.15 Time of Essence 51

11.16 Schedules and Exhibits 51

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**ASSET PURCHASE AGREEMENT**

THIS ASSET PURCHASE AGREEMENT is made and entered into as of April 19, 2011 (the “Agreement Date "), by and among COMMUNICALLIN Electronics Co., Ltd., a company organized under the laws of the Republic of Korea (the "Seller "), TOWERTOPS Technology International, an exempted company incorporated with limited liability under the laws of the Cayman Islands and a wholly-owned subsidiary of the Guarantor (the "Purchaser "), and TOWERTOPS Technology plc, a company organized under the laws of the Republic of Ireland (the "Guarantor "). Certain capitalized terms used herein are defined in Exhibit A .

RECITALS

WHEREAS , the Seller and the Seller Subsidiaries are engaged in the Business (as defined below);

WHEREAS , the Seller proposes, and proposes to cause the Seller Subsidiaries, to transfer to the Purchaser, and the Purchaser proposes to acquire or assume from the Seller and the Seller Subsidiaries, the assets and liabilities relating to the Business as further described below; and

WHEREAS , in connection with the proposed transfer by the Seller and the Seller Subsidiaries to the Purchaser of the assets and liabilities relating to the Business as further described below, the parties are also entering into, or will enter into on or prior to the Closing Date, (i) an intellectual property agreement between the Seller and the Purchaser (the "IP Agreement ") and (ii) a shareholder agreement providing for certain rights and obligations with respect to the Share Consideration between the Seller and the Guarantor (the "Shareholder Agreement "), each in the forms set forth in Exhibit B and Exhibit C attached hereto, respectively, and each of which shall become effective upon the Closing. On or prior to the Closing, the relevant parties hereto will enter into (x) a supply agreement between the Seller and the Purchaser with respect to the Seller's internal hard-disk drive requirements (the "Supply Agreement for Internal Drives "), the major terms and conditions of which are attached hereto as Exhibit D , (y) an exchangeable loan note in the amount of $687,500,000 US (the "Loan Note ") issued by the Purchaser to the Seller, and guaranteed by the Guarantor, pursuant to which the parties agree that, at the option of each of the parties hereto, the amount due under the Loan Note will be exchangeable for the Share Consideration (as defined in Section 2.1(a) and in the manner provided in the instrument constituting the Loan Note) in full and final satisfaction of all amounts owed by the Purchaser to the Seller under the Loan Note, in the form set forth in Exhibit E , and (z) a transition services agreement between the Seller and the Purchaser (the "Transition Services Agreement "), each of which shall become effective upon the Closing (all of the foregoing documents, together with this Agreement and the Transfer Agreements, collectively, the "Transaction Documents ").

NOW, THEREFORE , in consideration of the respective covenants, agreements and representations and warranties set forth herein, the parties to this Agreement, intending to be legally bound, agree as follows:

SECTION 1

DESCRIPTION OF TRANSACTION

1.1 Agreement to Purchase and Sell . Subject to the terms and conditions hereof, at the Closing, the Seller shall, and shall cause each of the Seller Subsidiaries to, sell, assign, transfer and deliver to the Purchaser, and the Purchaser shall purchase, acquire and accept from the Seller and the Seller Subsidiaries, the assets, properties and rights of the Seller and the Seller Subsidiaries related to the Business as of the Closing Date as listed below, except for the Excluded Assets (as defined below) (such assets, properties and rights being referred to as the "Acquired Assets " ) :

(a) the Transferred Tangible Assets;

(b) the Transferred Inventory;

(c) the Transferred Patents;

(d) the Transferred Trademarks;

(e) the Transferred Other IP;

(f) the Transferred Technology;

(g) all causes of action, claims and demands of any nature arising under or with respect to the Transferred Patents, including all claims and damages for the past or future infringement of any of the Transferred Patents;

(h) the Assumed Contracts;

(i) the Exclusive Permits, including but not limited to those Governmental Authorizations set forth on Schedule 1.1(i) of the Seller Disclosure Schedules, but only to the extent that the Seller is legally permitted to assign or transfer such Governmental Authorizations;

(j) to the extent permitted by applicable Laws, originals of all books and records that are exclusive to the Business, including inventor notebooks, Patent disclosures, Patent files and other documents related to the Transferred IP; and

(k) the Additional Transferred Assets.

1.2 Excluded Assets . Notwithstanding anything to the contrary set forth herein, the Acquired Assets shall not include the following assets, properties and rights of the Seller or the Seller Subsidiaries (collectively, the "Excluded Assets "):

(a) any asset that is not expressly an Acquired Asset;

(b) all real property which the Seller or any of the Seller Subsidiaries owns or of which the Seller or any of the Seller Subsidiaries is the lessee or sublessee (together with all fixtures and improvements thereon other than any Transferred Tangible Assets);

(c) all assets used in the Seller's Component Business, other than the designs, molds, mask works and other materials, but not manufacturing equipment, required to make or have made the Custom Components;

(d) all cash, cash equivalents and marketable securities and all rights to any bank account of the Seller or any of the Seller Subsidiaries;

(e) accounts receivable, notes receivable and other receivables arising out of the conduct of or otherwise related to the Business as of 11:59 p.m. (local time for the Seller) on the Closing Date;

(f) all Intellectual Property of the Seller and the Seller Subsidiaries, other than the Transferred Patents, the Transferred Trademarks and the Transferred Other IP;

(g) any and all causes of action, lawsuits, judgments, claims, counterclaims and demands of any nature related to the Business, in each case, that accrued, accrue, arose or arise out of events occurring prior to the Closing, or any proceeds or receivables therefrom or related thereto, other than with respect to the Transferred Patents;

(h) all express or implied guarantees, warranties, representations, covenants, indemnities and similar rights in relation to the Business which arise from or relate to events occurring prior to the Closing;

(i) all insurance proceeds and insurance awards receivables with respect to any of the Acquired Assets or related to the Business which arise from or relate to events occurring prior to the Closing;

(j) any Retained Technology;

(k) certain plants, equipments or other tangible assets used exclusively in the Business, including without limiting those set forth on Schedule 1.2(k) of the Seller Disclosure Schedules, and certain office equipments and other tangible assets related to the Subject Employees that are not employed by the Purchaser or any Purchaser Designee as at the Closing (the "Excluded Tangible Assets ");

(l) certain Patents used exclusively in the conduct of the Business which are set forth on Schedule 1.2(l) of the Seller Disclosure Schedules (the "Excluded Patents ");

(m) certain Seller Contracts that relate exclusively to the Business which are set forth on Schedule 1.2(m) of the Seller Disclosure Schedules (the "Excluded Contracts ");

(n) all Non-Assignable Contracts;

(o) all rights that accrue to the Seller hereunder;

(p) all insurance policies (and any cash or surrender value thereon), other than the insurance policies applicable to the Transferred Employees set forth in Schedule 1.3(d) of the Seller Disclosure Schedules; and

(q) (i) personnel records pertaining to any Business Employee, except to the extent that copies thereof are required to be made and transferred to the Purchaser in accordance with applicable Law, and (ii) human resources information management systems of the Seller or the Seller Subsidiaries.

1.3 Assumption of Assumed Liabilities . Effective as of the Closing, the Purchaser shall assume, and hereby agrees to pay, perform and discharge, the liabilities and obligations of the Seller and the Seller Subsidiaries related to the Business as listed below (collectively, the "Assumed Liabilities "):

(a) all liabilities, obligations and product warranties (in each case, whether ongoing or contingent) arising under or with respect to or contained in the Assumed Contracts, including those Assumed Contracts under which the Seller or the Seller Subsidiaries have not rendered performance prior to the Closing, including (i) any and all liabilities and obligations vis-Ã -vis customers to deliver products or vis-Ã -vis suppliers as well as any other similar liabilities and obligations under the respective Assumed Contracts (such as forecast, investment and volume commitments that arose prior to the Closing) and (ii) any and all liabilities and obligations vis-Ã -vis customers arising from product warranty claims, whether expressed or implied, that result from performances made by or on behalf of the Seller or the Seller Subsidiaries prior to the Closing, and all other similar liabilities and obligations that arise prior to the Closing, provided that any such liabilities and obligations described under (ii) above shall be limited to US$20,000,000 (the "Warranty Liability Cap ") and any excess amount shall be deemed excluded from the Assumed Liabilities (and, for the avoidance of doubt, shall be Excluded Liabilities under this Agreement);

(b) all liabilities, claims, suits, actions, investigations and obligations (i) resulting from, arising out of, or related to (x) the Acquired Assets or the ownership or use thereof, (y) the sale or provision of Business Products, or (z) the conduct of the Business by the Purchaser, in the case of clauses (x) through (z), after the Closing, or (ii) specified on Schedule 1.3(b) of the Seller Disclosure Schedules;

(c) except as otherwise expressly set forth in Section 5.6, all liabilities related to the employment of the Transferred Employees that arise out of service to the Purchaser or any Purchaser Designee after the Closing, including any liability resulting from the transfer or termination of any Transferred Employee's employment with the Purchaser or any Purchaser Designee, as applicable; and

(d) all liabilities related to the insurance policies set forth in Schedule 1.3(d) of the Seller Disclosure Schedules as and to the extent applicable to the Transferred Employees and all liabilities related to the rolled-over severances related to the Transferred Employees.

1.4 Excluded Liabilities . For the avoidance of doubt and without in any way limiting the generality of Section 1.3, the Assumed Liabilities shall not include, and in no event shall the Purchaser assume, agree to pay, discharge or satisfy any liability or obligation under or otherwise have any responsibility for, any of the following liabilities or obligations of the Seller or any of its Affiliates (the "Excluded Liabilities "):

(a) any liability of the Seller or any of its Affiliates that is not expressly an Assumed Liability, including any liability that would become a liability of the Purchaser or a Purchaser Designee as a matter of Law in connection with this Agreement, the other Transaction Documents and the transactions contemplated hereby and thereby, other than as otherwise contemplated by this Agreement;

(b) any liability resulting from, arising out of or related to the operation or conduct by the Seller or any of its Affiliates of any business other than the Business;

(c) (i) any outstanding obligations of the Seller or any of its Affiliates for senior debt, subordinated debt and any other outstanding obligation for borrowed money, including that evidenced by notes, bonds, debentures or other instruments (and including all outstanding principal, prepayment premiums, if any, and accrued interest, fees and expenses related thereto), (ii) any outstanding obligations of the Seller or any of its Affiliates under capital leases and purchase money obligations, (iii) any amounts owed by the Seller or any of its Affiliates with respect to drawn letters of credit and (iv) any outstanding guarantees by the Seller or any of its Affiliates of obligations of the type described in clauses (i) through (iii) above;

(d) except as specifically assumed pursuant to Section 1.3(d) or otherwise expressly set forth in Section 5.6, all liabilities resulting from, arising out of or related to any employee benefit plan of the Seller or any of its Affiliates whether such liabilities arose or arise prior to, on or after the Closing Date;

(e) except as specifically assumed pursuant to Section 1.3(d) or otherwise expressly set forth in Section 5.6, all liabilities resulting from, arising out of or related to the employment, termination or transfer of the Business Employees, Subject Employees, Transferred Employees, which arose out of service to the Seller or any Seller Subsidiary prior to the Closing, together with all liabilities resulting from, arising out of or related to the employment, termination or transfer of the Business Employees or Subject Employees, excluding Transferred Employees, which arose out of service to the Seller or any Seller Subsidiary, whether such liabilities arose or arise prior to, on or after the Closing Date;

(f) any liabilities resulting from, arising out of or related to any claim, action, arbitration, audit, hearing, inquiry, examination, proceeding, investigation, litigation or suit (whether criminal, administrative or investigative) commenced or brought by any Governmental Body brought prior to the Closing to the extent relating to the conduct of the Seller or any Affiliate of the Seller or the Business prior to the Closing;

(g) all liabilities for (i) Taxes of the Seller or any Affiliate of the Seller and (ii) Taxes that arise from the conduct of the Business, including ownership of the Acquired Assets, for any periods prior to the Closing, other than Taxes expressly assumed by the Purchaser under this Agreement;

(h) any and all liabilities and obligations vis-Ã -vis customers resulting from, arising out of or related to product warranty claims, whether express or implied, that result from performances made by or on behalf of the Seller or any Seller Subsidiary prior to the Closing, and all other similar liabilities and obligations that arise prior to the Closing, to the extent such liabilities and obligations are in excess of the Warranty Liability Cap;

(i) any liabilities resulting from, arising out of or related to the Seller Contracts, other than the Assumed Contracts;

(j) any and all liabilities or claims to the extent resulting from, arising out of or related to such Business Products as sold by the Seller or any Affiliate of the Seller prior to the Closing with respect to infringement or misappropriation of the Intellectual Property of a third party occurring prior to the Closing;

(k) any liabilities resulting from, arising out of or related to the violation or alleged violation by the Seller or any of its Affiliates of any Law relating to health, safety, labor, discrimination, Export and Import Control Laws, Anti-Corruption and Anti-Bribery Laws, Environmental Laws and Antitrust Laws;

(l) all Seller Retained Environmental Liabilities;

(m) accounts payable arising from the conduct of the Business prior to the Closing;

(n) any liability to any broker, finder or agent for any investment banking or brokerage fees, finder's fees or commission and any other fees and expenses payable by the Seller pursuant to this Agreement and the other Transaction Documents with respect to the transactions contemplated by this Agreement and the other Transaction Documents;

(o) all liabilities pertaining to any Excluded Asset; and

(p) any liabilities resulting from, arising out of or related to matters described in Schedule 1.4(p) of the Seller Disclosure Schedules.

1.5 Delivery of Assets .

(a) Upon the Closing: (i) any Software or other Technology capable of being delivered by electronic means shall, at the Purchaser's request, be so delivered; and (ii) the Seller shall deliver to the Purchaser all, and not retain any, Transferred Technology that is not also Retained Technology or Transferred Copyable Technology.

(b) The following items of the Transferred Technology shall be deemed delivered upon the Closing: (i) Transferred Technology embodied in tangible or electronic form contained within the facilities transferred to the Purchaser; and (ii) those items of Transferred Technology within the knowledge of Transferred Employees and not subject to any duty of confidentiality or non-use under any Excluded Contract.

(c) Upon the Closing, delivery of all of the other Transferred Tangible Assets shall be at the Asset Locations.

1.6 Subsequent Delivery . To the extent that any items of the Transferred Technology have not already been delivered in the manner set forth in Section 1.5 and such items exist in tangible or electronic form, the Seller shall deliver such items (or copies thereof) to the Purchaser after the Closing Date in tangible or electronic form as requested by the Purchaser.

1.7 Internal Approval . Notwithstanding anything in this Section 1, if any Technology that meets the definition set forth in subsection (i)(A) of the definition of "Transferred Technology" in Exhibit A of this Agreement cannot be transferred to the Purchaser because the Seller's Storage System Division does not have the right to transfer such technology without the internal approval of another division of the Seller or an Affiliate of the Seller, the Seller may satisfy its obligations under this Section 1 by using its reasonable best efforts to procure the consent of the relevant division for such transfer and if it is not able to obtain such consent it shall use its reasonable best efforts to either otherwise obtain the benefit of such Transferred Technology for the Purchaser or to obtain and transfer to the Purchaser Technology which is substantially equivalent to such Transferred Technology.

SECTION 2

PURCHASE PRICE; ALLOCATIONS

2.1 Purchase Price .

(a) The aggregate purchase price (the "Purchase Price ") to be paid for the Acquired Assets shall be, net of any VAT, transfer Taxes or withholding Taxes, (i) $687,500,000 US payable in cash (the "Cash Consideration "), and (ii) the Loan Note, the amount due thereunder being exchangeable, at the option of each of the parties hereto, for 45,239,490 Ordinary Shares (the "Share Consideration"). In addition to the foregoing payment, as consideration for the sale, assignment, transfer and delivery of the Acquired Assets, the Purchaser shall assume and discharge the Assumed Liabilities. It is understood and agreed among the parties that the LOI Deposit Amount (to the extent not forfeited under the Letter of Intent) shall be subtracted from the amount of the Cash Consideration that the Purchaser is obligated to wire to the Seller hereunder.

(b) If, at any time prior to the forty-fifth (45th) day following the Closing Date, the Purchaser notifies the Seller in writing that any manufacturing equipment included in the Acquired Assets and identified on Schedule 1.1(a)(i) of the Seller Disclosure Schedules with either (X) a Book Value as of the Closing Date equal to or greater than $100,000 US individually or (Y) an original actual cost equal to or in excess of $250,000 US individually and where such amounts in (X) and (Y) in the aggregate exceed $1,000,000 US was not transferred or delivered to the Purchaser or the relevant Purchaser Designee at the Closing as contemplated by Section 1.1 hereof (with such notice identifying each such non-delivered manufacturing equipment by reference to the relevant section of the Seller Disclosure Schedules) (such non-delivered manufacturing equipment, the "Non-Delivered Equipment " ), then the Seller shall, within twenty (20) Business Days of receipt of such notice, (i) transfer the Non-Delivered Equipment to the Purchaser, to the extent such Non-Delivered Equipment exists and is transferable to the Purchaser, or (ii) to the extent such Non-Delivered Equipment does not exist or is not transferable to the Purchaser, pay to the Purchaser by wire transfer of immediately available funds, to an account designated by the Purchaser in such notice, an amount equal to the value of such Non-Delivered Equipment (such amount, the "Non-Delivered Equipment Refund Amount "), with the value of each piece of such Non-Delivered Equipment calculated as an amount equal to (A) if the Book Value as of the Closing Date is equal to or greater than $100,000 US, the Book Value of such Non-Delivered Equipment or (B) if the Book Value of such Non-Delivered Equipment is less than $100,000 US, the lesser of $100,000 US and the amount of the Replacement Value, in which case the Purchase Price shall be deemed adjusted accordingly. The total aggregate Non-Delivered Equipment Refund Amount shall be limited to five percent (5%) of the Purchase Price (the "Non-Delivered Equipment Refund Cap "); provided that any amount in respect of Non-Delivered Equipment in excess of the Non-Delivered Equipment Refund Cap and any and all other claims and rights arising from or in connection with the failure to deliver or the delay in delivering the Non-Delivered Equipment shall be subject to the liability limits under Section 9.5.

2.2 Payment of Purchase Price .

(a) On the Closing Date, the Purchaser and/or a Purchaser Designee shall pay the Cash Consideration by wire transfer of immediately available funds to such bank account(s) (including any bank account(s) for local purchase price payable under the Transfer Agreements) as shall be designated in writing by the Seller.

(b) On the Closing Date, the Purchaser shall execute and deliver to the Seller the Loan Note. As soon as practicable following the Closing, in accordance with Section 7.3, the Guarantor shall (i) procure that (x) its register of members is written up to reflect an allotment of the Share Consideration to the Seller credited as fully paid and (y) the Seller is entered therein as the holder of the Share Consideration, (ii) deliver to the Seller evidence satisfactory to the Seller thereof, and (iii) issue and deliver to the Seller a share certificate of the Guarantor executed under its common seal in respect of the Share Consideration.

2.3 VAT; Withholding Taxes .

(a) The Purchase Price is meant to be a net amount that does not include any VAT. To the extent that the consummation of the transactions contemplated by this Agreement is subject to VAT, such VAT shall be paid (i) if and to the extent such VAT is owed by the Seller under the Laws of the relevant jurisdictions, by the Purchaser and/or a Purchaser Designee, as the case may be, to the Seller at the Closing in addition to the Purchase Price, and (ii) if such VAT is owed by the Purchaser under the Laws of the relevant jurisdictions, by the Purchaser to the competent Taxing Authority. The determination of (i) to what extent the execution of this Agreement is subject to VAT, and (ii) to what extent such VAT is owed by the Seller or by the Purchaser shall be agreed, in accordance with applicable Laws regarding VAT, by the parties at least fifteen (15) days prior to the Closing; provided, however , that if the parties fail to reach such an agreement, the opinion of the Purchaser on the applicable VAT treatment of this Agreement shall prevail and such treatment shall be applied at the Closing. For purposes of making this determination, the Purchaser and/or Purchaser Designee shall be entitled to seek rulings from the relevant Taxing Authority, and upon the request of the Purchaser and/or Purchaser Designee, the Seller shall cooperate and provide all reasonable assistance in connection therewith. On the Closing Date, the Seller shall issue an invoice or the equivalent thereof in the relevant jurisdiction in accordance with applicable Laws regarding VAT. The parties hereto shall cooperate with each other to the extent reasonably requested and legally permitted to minimize any VAT.

(b) If the VAT amount actually payable is higher or lower than the amount shown on the relevant invoice (including cases where no VAT has been invoiced at all) based on a determination of the parties (in accordance with applicable Laws regarding VAT) made after the Closing or due to an assessment after the Closing of a Taxing Authority, the parties shall make appropriate declarations and filings with the relevant Taxing Authorities, amend any invoices (to the extent required by applicable Laws regarding VAT), provide to the respective other party any requested information and copies of relevant documents and make any required payments to each other and the Taxing Authorities, respectively, in each case without unreasonable delay. In particular, if according to a final determination made by a Taxing Authority the VAT payable by the Seller is higher than shown on the relevant invoice (including cases where no VAT has been invoiced at all), the Purchaser and/or Purchaser Designee shall pay the corresponding shortfall amount to the Seller within ten (10) Business Days after receipt from the Seller of notification of the shortfall amount and a copy of the notification from the relevant Taxing Authority. Any interest and/or penalty due to be paid to a Taxing Authority shall be borne by the Purchaser and/or Purchaser Designee as the case may be, unless to the extent such interest and/or penalty is triggered by a default of the Seller to timely pay the VAT in accordance with the determination under Section 2.3(a), in which case the Seller shall solely bear such interest/penalty. If the VAT assessed by such Taxing Authority is lower than that shown on the relevant invoice (including cases where no VAT has to be invoiced), the Seller shall pay such excess amount to the Purchaser and/or Purchaser Designee as the case may be within ten (10) Business Days after receipt of the respective VAT refund from the respective Taxing Authority, including any interest thereon received from such Taxing Authority.

(c) Any claim under this Section 2.3 shall become time-barred five (5) years after the ultimate, final and binding assessment of the relevant VAT.

(d) The Purchaser and the Guarantor believe that no withholdings of whatever nature are to be made on payments owed by the Purchaser or the Guarantor under any of the transactions contemplated by this Agreement. If withholding Taxes are due on payments to be made by the Purchaser or the Guarantor hereunder, then the Purchaser and the Guarantor shall make the necessary gross up payments to leave the Seller (after the deduction of the withholding Tax) with an amount equal to the payment which would have been due if no withholding Tax deduction had been required. The parties hereto shall cooperate with each other to the extent reasonably requested and legally permitted to minimize any such withholding Tax.

2.4 Allocation of Purchase Price .

(a) As soon as practicable after the Agreement Date, but no later than ninety (90) days thereafter, the Seller shall submit a preliminary allocation of the Purchase Price (taking into account any Assumed Liabilities to the extent treated as "amount realized" under applicable Law) among the Acquired Assets consistent with the arm's length principle (the " Purchase Price Allocation ") to the Purchaser in writing (such statement, the " Preliminary Allocation Statement "). The Purchaser shall thereupon have thirty (30) days to review the preliminary Purchase Price Allocation set forth on the Preliminary Allocation Statement and to notify the Seller in writing of any aspects thereof with which it disagrees. If the Purchaser does not respond within thirty (30) days of receipt of the Preliminary Allocation Statement from the Seller, the Purchase Price Allocation provided by the Seller shall be treated as conclusive and binding on the parties hereto for all purposes hereunder. In the event of any such disagreement, the parties shall negotiate in good faith to resolve such disagreement. If the Purchaser and the Seller are unable to agree on the Purchase Price Allocation by the date that is one hundred fifty (150) days after the Agreement Date, the Purchaser and the Seller shall jointly engage a third-party accountant, reasonably acceptable to both the Purchaser and the Seller, to prepare, in its reasonable determination, the Purchase Price Allocation that shall be conclusive and binding on the parties hereto for all purposes hereunder. The Purchaser and the Seller agree to provide to the third-party accountant such information as the third-party accountant may reasonably request in connection with the preparation of such schedule and shall request that the third-party accountant prepare and deliver to the Purchaser and the Seller such Purchase Price Allocation as promptly as practicable, but no later than 180 days after the Agreement Date. Any fees of the third-party accountant shall be split equally by the Purchaser and the Seller.

(b) The Purchase Price Allocation shall be used to make (i) the necessary determinations for VAT purposes pursuant to Section 2.3(a), and (ii) purchase price allocations necessary for statutory accounting (i.e., Korean IFRS or any other local generally accepted accounting principles) and Tax purposes. The parties agree to report the transactions contemplated hereby for any Tax purposes in accordance with the Purchase Price Allocation.

2.5 Allocation of Certain Items . With respect to certain expenses incurred in the operations of the Seller and the Seller Subsidiaries, the following allocations shall be made between the Seller and the Purchaser:

(a) In the case of Taxes based on ad valorem or similar Taxes assessed against the Acquired Assets, the portion of such Taxes allocated to the Seller shall be deemed to be the amount of such Tax for the entire taxable period, multiplied by a fraction the numerator of which is the number of days in the taxable period ending on and including the Closing Date and the denominator of which is the number of days in the entire taxable period, with the remaining portion of such Taxes allocated to the Purchaser.

(b) Taxes described in Section 2.5(a) above shall be timely paid, and all applicable filings, reports and returns shall be filed, as provided by applicable Law. The paying party shall be entitled to reimbursement from the non-paying party in accordance with Section 2.5(a) . Upon payment of any such Taxes, the paying party shall present a statement to the non-paying party setting forth the amount of reimbursement to which the paying party is entitled under Section 2.5(a) together with such supporting evidence as is reasonably necessary to calculate the amount to be reimbursed. The non-paying party shall make such reimbursement promptly but in no event later than ten (10) Business Days after the presentation of such statement.

SECTION 3

REPRESENTATIONS AND WARRANTIES OF THE SELLER

Except as set forth on the Seller Disclosure Schedules, as such schedules may be updated pursuant to Section 11.12, the Seller represents and warrants to the Purchaser and the Guarantor as follows:

3.1 Organization . The Seller is duly organized and validly existing under the Laws of the Republic of Korea, is not in administration, receivership or liquidation, no petition has been presented for its winding-up and there are no grounds on which any petition or application could be based for its winding-up or the appointment of an administrator or receiver over its assets, has all requisite corporate power and authority to own, lease and operate its properties and assets and to carry on its business as now being conducted, is duly qualified to do business and, to the extent such jurisdiction has a concept of good standing, is in good standing as a foreign entity in each jurisdiction where the nature of its activities makes such qualification necessary, except for jurisdictions in which the failure to be so qualified, individually or in the aggregate, would not have a Seller Material Adverse Effect.

3.2 Subsidiaries . Each of the Seller Subsidiaries is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or formation, as applicable and to the extent such jurisdiction has a concept of good standing, is not in administration, receivership or liquidation, no petition has been presented for its winding-up and there are no grounds on which any petition or application could be based for its winding-up or the appointment of an administrator or receiver over its assets, has all requisite corporate power and authority to own, lease and operate its properties and assets and to carry on its business as now being conducted, is duly qualified to do business and, to the extent such jurisdiction has a concept of good standing, is in good standing as a foreign entity in each jurisdiction where the nature of its activities makes such qualification necessary, except for jurisdictions in which the failure to be so qualified, individually or in the aggregate, would not have a Seller Material Adverse Effect.

3.3 Authority; Binding Nature of Agreement . The Seller has the power and authority to enter into and to perform its obligations under this Agreement and the other Transaction Documents to which it is a party, and the execution, delivery and performance by the Seller of this Agreement and the other Transaction Documents to which it is a party have been duly authorized by all necessary action on the part of the Seller. The Seller has the power and authority to cause each of the Seller Subsidiaries to transfer any Acquired Assets owned by it pursuant to the provisions of this Agreement. Assuming the due authorization, execution and delivery of this Agreement by the Purchaser and the Guarantor, this Agreement constitutes the valid and binding obligation of the Seller, enforceable against the Seller in accordance with its terms, subject to (a) laws of general application relating to bankruptcy, insolvency, fraudulent conveyance and transfer, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally and (b) rules of law governing specific performance, injunctive relief and other equitable remedies.

3.4 Absence of Restrictions . Assuming compliance with all applicable Antitrust Laws, neither (1) the execution, delivery or performance by the Seller of this Agreement or any of the other Transaction Documents, nor (2) the consummation of the transactions contemplated by this Agreement or any of the other Transaction Documents, will directly or indirectly (with or without the giving of notice or the lapse of time or both):

(a) contravene, conflict with or result in a violation of any of the provisions of the Seller Constituent Documents;

(b) contravene, conflict with or result in a violation of any resolution adopted by the shareholders, the board of directors, or any committee of the board of directors of any of the Seller or the Seller Subsidiaries;

(c) except as set forth on Schedule 3.4(c) of the Seller Disclosure Schedules, contravene, conflict with or result in a violation of, or give any Governmental Body or other Person the right to challenge any of the transactions contemplated by this Agreement or any of the other Transaction Documents or to exercise any remedy or obtain any relief under, any Law or any order, writ, injunction, judgment or decree to which the Seller or any of the Seller Subsidiaries, or any of the Acquired Assets, is subject, except for such contravention, conflict, violation, challenge, remedy or relief which, individually or in the aggregate, would not have a Seller Material Adverse Effect;

(d) result in the imposition or creation of any Encumbrance (other than any Permitted Encumbrance) upon or with respect to any Acquired Asset; or

(e) contravene, conflict with or result in a violation of any of the terms or requirements of, or give any Governmental Body the right to revoke, withdraw, suspend, cancel, terminate or modify, any material Governmental Authorization that is held by the Seller or the Seller Subsidiaries and that relates to the Business or to any of the Acquired Assets, except for such contravention, conflict, violation, revocation, withdrawal, suspension, cancellation, termination or modification which, individually or in the aggregate, would not have a Seller Material Adverse Effect.

3.5 Governmental Consents . Other than as set forth on Schedule 3.5 of the Seller Disclosure Schedules, no consent, approval, order or authorization of, or registration, declaration or filing with, or notice to (any of the foregoing being a "Consent "), any Governmental Body is required to be obtained or made by the Seller or any Seller Subsidiary in connection with the execution, delivery and performance by the Seller or any Seller Subsidiary of this Agreement or the consummation by the Seller or any Seller Subsidiary of the transactions contemplated hereby, except for such Consents which if not obtained or made would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect.

3.6 Absence of Changes . Since December 31, 2010:

(a) no Seller Material Adverse Effect has occurred, and no event, occurrence, development or state of circumstances or facts has occurred that would reasonably be expected to, have a Seller Material Adverse Effect; and

(b) there has not been any loss, damage or destruction to, or any interruption in the use of, any of the assets of the Business that has had or would reasonable be expected to have a Seller Material Adverse Effect (whether or not covered by insurance).

3.7 Conduct in the Ordinary Course . Since December 31, 2010, other than as set forth on Schedule 3.7 of the Seller Disclosure Schedules or as permitted by this Agreement, the Business has been conducted in the ordinary course of business and none of the actions or events prohibited by Section 5.2 has been taken or has occurred.

3.8 Assets .

(a) The Seller and the Seller Subsidiaries have and shall convey to the Purchaser at the Closing possession of, and good, valid and transferable title to, all of the Transferred Tangible Assets, free and clear of all Encumbrances, except for Permitted Encumbrances.

(b) Except as set forth on Schedule 3.8(b) of the Seller Disclosure Schedules, the Transferred Tangible Assets include the manufacturing equipment capable of manufacturing eighteen (18) million units of Business Products per quarter on the basis of operating at full capacity (i.e., 24 hours per day, 365 days per annum).

(c) Schedule 3.8(c) of the Seller Disclosure Schedules sets forth an accurate and complete list of all plants, equipments and other tangible assets used exclusively in the Business or located at the Asset Locations (other than the Excluded Tangible Assets) with a net book value of US$10,000 or more. All Transferred Tangible Assets (i) are in good operating condition and in a state of good maintenance and repair, subject to ordinary wear and tear, (ii) are free of any material defects and (iii) were acquired and are usable in the ordinary course of business.

(d) To the Knowledge of the Seller, no Affiliate of the Seller (other than the Seller Subsidiaries) owns any assets, properties or rights that would be Acquired Assets were such assets, properties or rights owned by the Seller or a Seller Subsidiary.

(e) To the Knowledge of the Seller, none of the Acquired Assets is located in the Republic of Ireland.

3.9 Inventory . The Transferred Inventory (a) was acquired and is sufficient for the operation of the Business in the ordinary course consistent with past practice and (b) is of a quality and quantity usable or saleable in the ordinary course of business.

3.10 Compliance with Law .

(a) Except as set forth in Schedule 3.10(a) of the Seller Disclosure Schedules, since December 31, 2007:

(i) to the Knowledge of the Seller, the Seller and each of the Seller Subsidiaries has conducted the Business in compliance with all applicable Laws in all material respects;

(ii) neither the Seller nor any Seller Subsidiary has received any written notice or other communication from any Governmental Body regarding any actual or possible violation in any material respect of, or failure to comply in any material respect with, any applicable Law with respect to the Business;

(iii) to the Knowledge of the Seller, the Seller and the Seller Subsidiaries have at all times been, and are currently, in material compliance with all applicable Anti-Corruption and Anti-Bribery Laws with respect to the Business;

(iv) the Seller and the Seller Subsidiaries have established and maintain compliance programs and reasonable internal controls and procedures appropriate to the requirements of applicable Anti-Corruption and Anti-Bribery Laws;

(v) to the Knowledge of the Seller, the Seller and the Seller Subsidiaries have at all times conducted, in all material respects, their export and import transactions in accordance with all applicable Export and Import Control Laws with respect to the Business; and

(vi) the Seller and the Seller Subsidiaries have established and maintain compliance programs and reasonable internal controls and procedures appropriate to the requirements of all applicable Export and Import Control Laws.

3.11 Permits and Approvals.

(a) Schedule 1.1(i) of the Seller Disclosure Schedules identifies all material Exclusive Permits. The Exclusive Permits held by the Seller and the Seller Subsidiaries are valid and in full force and effect. Schedule 1.1(i) of the Seller Disclosure Schedules identifies with an asterisk each material Exclusive Permit set forth therein which by its terms or by applicable Law cannot be transferred to the Purchaser at the Closing.

(b) The Seller and the Seller Subsidiaries are in compliance with, in all material respects, the terms and requirements of the respective material Exclusive Permits held by the Seller or a Seller Subsidiary.

(c) Neither the Seller nor any Seller Subsidiary has received any notice or other communication from any Governmental Body regarding (i) any actual or possible violation of or failure to comply with any term or requirement of any material Exclusive Permit or (ii) any actual or possible revocation, withdrawal, suspension, cancellation, termination or modification of any material Exclusive Permit.

(d) All applications required to have been filed for the renewal of any material Exclusive Permit have been duly filed on a timely basis with the relevant Governmental Body, and each other notice or filing required to have been given or made with respect to such material Exclusive Permit has been duly given or made on a timely basis with the appropriate Governmental Body.

3.12 Intellectual Property .

(a) Schedule 1.1(c) and Schedule 1.2(l) of the Seller Disclosure Schedules includes a true and complete list of all Patents owned by the Seller or any of the Seller's Affiliates and (i) for which employees of the Seller's Storage Systems Division were the sole inventors, (ii) for which the cost of prosecution or maintenance is internally allocated to the Storage Systems Division of the Seller, (iii) which were otherwise internally allocated to the Storage Systems Division of the Seller, or (iv) which are otherwise exclusive to the Business. Schedule 1.1(d) of the Seller Disclosure Schedules sets forth a true and complete list, as of the Agreement Date, of all Trademarks used for internal hard-disk drive products other than any Trademark that incorporates the Seller's trade name which are both part of the Business and owned by the Seller or any of the Seller's Affiliates.

(b) Except as set forth in Schedule 3.12(b) of the Seller Disclosure Schedules, to the Knowledge of the Seller, the operation of the Business as currently conducted does not infringe or misappropriate the Intellectual Property of any third party in any material respect.

(c) Schedule 3.12(c) of the Seller Disclosure Schedules is a complete and accurate list of Software owned by the Seller or any Seller Subsidiary and which is embodied in any Business Product or distributed by the Seller or any Seller Subsidiary to end users of Business Products.

(d) To the Knowledge of the Seller, no Person is engaging in any activity that infringes or misappropriates any of the material Transferred IP.

(e) Except as set forth in Schedule 3.12(e) of the Seller Disclosure Schedules, with respect to each item of the Transferred Technology and Transferred IP, the Seller or a Seller Subsidiary is the owner of the entire right, title and interest in and to such Technology and Intellectual Property and, following the Closing, Purchaser will be entitled to use such Technology and Intellectual Property in the continued operation of the Business as currently conducted.

(f) To the Knowledge of the Seller, the Transferred Patents, Transferred Trademarks and Copyrights which are part of the Transferred Other IP are valid and enforceable and have not been adjudged invalid or unenforceable.

(g) Except as set forth in Schedule 3.12(g) of the Seller Disclosure Schedules, no Legal Proceeding has been asserted, is pending, or to Knowledge of the Seller, is threatened, against the Seller or any Seller Subsidiaries alleging that the operation of any material portion of the Business or any Business Product infringes or misappropriates the Intellectual Property of any third party in any material respect.

(h) Schedule 3.12(h) of the Seller Disclosure Schedule lists (i) all agreements, contracts and licenses pursuant to which any third party has licensed or granted any rights to the Seller or any Seller Subsidiary of Intellectual Property or Technology that is practiced by, incorporated in, or distributed with any Business Product and material to the operation of the Business other than licenses to generally available Software licensed on standard industry terms and other than corporate level cross-licenses ("*In-Licenses ") and (ii) all HDD Patent corporate-level cross licenses to which the Seller is a party other than those with respect to which the Seller has disclosed to the Purchaser the other parties thereto through a process to be mutually agreed upon.*

(i) Except as set forth in Schedule 3.12(i) of the Seller Disclosure Schedules, to the Knowledge of the Seller, the Business is not subject to any outstanding consent, settlement, decree, order, injunction, judgment or ruling materially restricting the use of any Transferred Patent, Transferred Trademark or Transferred Other IP or the making, importing or selling of any Business Product.

(j) Except as set forth in Schedule 3.12(j) of the Seller Disclosure Schedules or those corporate level cross licenses to which the Seller is a party and where the Seller has disclosed to the Purchaser the other parties thereto through a process to be mutually agreed upon, the Seller has not entered into any written Contract granting to any third party any general right or license to any Transferred Patent or Transferred Trademark ("*Out-Licenses ").*

(k) Except as set forth on Schedule 3.12(k) of the Seller Disclosure Schedules, none of the Product Software owned by the Seller or any Affiliate of the Seller and used in the Business at the Closing includes any Open Source Materials.

3.13 Contracts .

(a) Subject to Section 5.7, Schedule 1.1(h) of the Seller Disclosure Schedules sets forth an accurate and complete list of all Seller Contracts that relate exclusively to the conduct of the Business (other than the Excluded Contracts) with an annual Contract value of US$1,000,000 or more. Each of the Assumed Contracts, In-Licenses and Out-Licenses is valid and in full force and effect, and is enforceable by the Seller or the Seller Subsidiaries in accordance with its terms. Except as set forth on Schedule 3.13(a) to the Seller Disclosure Schedules, the consummation of the transactions contemplated hereby shall not (either alone or upon the occurrence of additional acts or events) result in any payment or payments becoming due from the Seller, the Purchaser or any of its Affiliates to any Person or give any Person the right to terminate or alter the provisions of any Assumed Contract.

(b) None of the Seller or the Seller Subsidiaries has committed any material violation or breach of, or any material default under, any Assumed Contract, and, to the Knowledge of the Seller, no other Person has committed any material violation or material breach of, or any material default under, any Assumed Contract.

(c) The Seller has not received any written notice or other communication regarding any actual or possible material violation or material breach of, or material default under, any Assumed Contract.

(d) The Seller has not knowingly waived any of its material rights under any Assumed Contract.

(e) Except as set forth in Schedule 3.13(e) , there is no Assumed Contract limiting in any material respect the right of the Seller or any of the Seller Subsidiaries to engage in any line of business, including the Business, or to compete with any Person.

3.14 Employee Matters .

(a) Schedule 3.14(a) of the Seller Disclosure Schedules contains a list of employees employed by the Seller or the Seller Subsidiaries related to the Business (the "Business Employees ") as of the Agreement Date, and accurately reflects each such employee's location of employment, salary, and other cash compensation payable to them, date of employment, position, accrued paid time off or vacation as of March 31, 2011, and exempt or non-exempt status, where applicable. The Seller will provide an updated list of the Business Employees as of the Closing in the event that any Business Employee's employment with the Seller is terminated prior to the Closing or any employees are hired by the Seller after the Agreement Date who would have been included on Schedule 3.14(a) of the Seller Disclosure Schedules if employed by the Seller on the Agreement Date.

(b) To the Knowledge of the Seller, the Seller and each Seller Subsidiary is, and has at all times since December 31, 2007 been, in compliance, in all material respects, with all applicable Laws relating to employment, employment practices, wages, bonuses, employee benefit plans and programs and terms and conditions of employment related to the Business Employees.

(c) Except as set forth on Schedule 3.14(c) of the Seller Disclosure Schedules, there is no pending Legal Proceeding or, to the Knowledge of the Seller, threatened Legal Proceeding against the Seller or the Seller Subsidiaries raised by a Business Employee or a former employee of the Seller or the Seller Subsidiaries related to the Business.

(d) Except as set forth on Schedule 3.14(d) of the Seller Disclosure Schedules, no strike, labor dispute, slowdown, concerted refusal to work overtime or work stoppage against the Seller or any of the Seller Subsidiaries is pending, or to the Knowledge of the Seller, threatened, or reasonably anticipated.

3.15 Product Liability; Warranties . Except as set forth on Schedule 3.15 of the Seller Disclosure Schedules:

(a) there is no notice, demand, claim, action, suit, inquiry, hearing, proceeding, notice of violation or investigation from, by or before any Governmental Body relating to any Business Product, including the packaging and advertising related thereto, designed, formulated, manufactured, processed, distributed, sold or placed in the stream of commerce by the Business, or claim or lawsuit involving a Business Product which is pending or, to the Knowledge of the Seller, threatened by any Person; and

(b) there has not been, nor is there under consideration by the Business, any Business Product recall or post-sale warning of a material nature conducted by or on behalf of the Business concerning any Business Product.

3.16 Environmental Matters . Except as set forth on Schedule 3.16 of the Seller Disclosure Schedules:

(a) the Business has at all times complied and is presently in compliance with all applicable Environmental Laws in all material respects;

(b) the Seller and the Seller Subsidiaries have not received any notice, demand, claim, letter or request for information, relating to any alleged violation of Environmental Law; and

(c) the Seller and the Seller Subsidiaries possess all material Governmental Authorizations required under Environmental Laws for the Business as presently conducted and there are no circumstances, other than the transactions contemplated hereby, that could reasonably be expected to result in any such Governmental Authorizations being revoked, terminated or revised; and there are no writs, injunctions, decrees, directives, orders or judgments outstanding, in each case under any applicable Environmental Law or any actions, suits, proceedings or investigations pending or threatened relating to compliance with any applicable Environmental Law affecting the Business or the Acquired Assets.

3.17 Legal Proceedings .

(a) Except as set forth in Schedule 3.17(a) of the Seller Disclosure Schedules, there is no pending Legal Proceeding, and to the Knowledge of the Seller, there is no threatened Legal Proceeding: (i) that involves the Business or any of the Acquired Assets which if decided adversely would have a Seller Material Adverse Effect; or (ii) that involves the Business or any of the Acquired Assets which challenges, or that may have the effect of preventing, materially delaying, making illegal or otherwise interfering with, the transactions contemplated by this Agreement.

(b) Except as set forth in Schedule 3.17(b) of the Seller Disclosure Schedules and, except as would not have a Seller Material Adverse Effect, there is no decree, order, judgment, injunction, temporary restraining order or other order in any Legal Proceeding to which the Seller, the Business or any Acquired Asset is subject.

3.18 Customers and Suppliers . Schedule 3.18 of the Seller Disclosure Schedules contains a true, correct and complete list of the names and addresses of the Customers and Suppliers as of the Agreement Date. The Seller and the Seller Subsidiaries maintain good commercial relations with each of their respective Customers and Suppliers and, to the Knowledge of the Seller, no event has occurred that would materially and adversely affect the Seller's or the Seller Subsidiaries' relations with any such Customer or Supplier, excluding the transactions contemplated by this Agreement and any announcement related thereto. The Seller has not received any written notice to the effect that any current customer or supplier may terminate or materially alter its business relations with the Seller or any Seller Subsidiary, either as a result of the transactions contemplated hereby or otherwise, that, in either case, would have a Seller Material Adverse Effect.

3.19 Tax Matters .

(a) Except as set forth in Schedule 3.19(a) of the Seller Disclosure Schedules, the Seller and the Seller Subsidiaries have (i) paid, withheld and remitted on a timely basis to the competent Taxing Authority all Taxes arising out of the conduct of the Business or concerning or attributable to the Acquired Assets that may become due and payable on or prior to the Closing Date and (ii) timely filed all Tax Returns relating to all Taxes arising out of the conduct of the Business or concerning or attributable to the Acquired Assets, which Tax Returns are true and correct in all material respects.

(b) There are no liens on any of the Acquired Assets with respect to Taxes.

3.20 Finder's Fee . No broker, finder or investment banker, other than Allen Company LLC, is entitled to any brokerage, finder's or other fee or commission payable by the Seller in connection with the transactions contemplated hereby.

3.21 Investment Representations . The Seller (a) understands that the Ordinary Shares comprising the Share Consideration have not been, and, except as contemplated by and in accordance with the terms of Article IV of the Shareholder Agreement, will not be, registered under the Securities Act, or registered or qualified for resale under any state or foreign securities laws, and are being offered and sold to the Seller hereunder in reliance upon U.S. federal and state exemptions for transactions not involving any public offering, (b) is subscribing for the Ordinary Shares comprising the Share Consideration solely for its own account for investment purposes and not with a view to the distribution thereof, (c) has had the opportunity to obtain additional information concerning the Guarantor as desired in order to evaluate the merits and the risks inherent in holding the Ordinary Shares, (d) is able to bear the economic risk inherent in holding the Ordinary Shares, subject to the restrictions on transfer of the Ordinary Shares set forth in the Shareholder Agreement, and (e) is an "accredited investor" within the meaning of Rule 501(a) of Regulation D under the Securities Act.

3.22 No Other Representations or Warranties . Except for the representations and warranties contained in this Section 3, the Seller is not making or granting any representation or warranty or any other statement whether express or implied and the Seller hereby disclaims any other representation or warranty or any other statement, whether made by the Seller or any Affiliate of the Seller or any of their respective Representatives with respect to the Business, the Acquired Assets, the Assumed Liabilities, the execution of this Agreement or the other Transaction Agreements or the transactions contemplated hereunder and thereunder, and in particular and without limiting the generality of the foregoing, the Purchaser and the Guarantor acknowledge that the Seller makes no representation or warranty with respect to:

(a) any projections, estimates or budgets or any future revenues, future results of operations (or any component thereof), future cash flows, future financial condition (or any component thereof) or the future conduct and operations of the Business delivered or made available to the Purchaser, the Guarantor, their respective Affiliates or their or their respective Affiliates' Representatives, and

(b) any other information or documents made available to the Purchaser, the Guarantor, their respective Affiliates or their or their respective Affiliates' Representatives with respect to the Business.

SECTION 4

REPRESENTATIONS AND WARRANTIES OF

THE PURCHASER AND THE GUARANTOR

Each of the Purchaser and the Guarantor, jointly and severally, represents and warrants to the Seller as follows, and in addition, without prejudice to the foregoing, the Purchaser individually and on its own account as a separate covenant represents and warrants to the Seller as follows:

4.1 Organization and Standing . Each of the Purchaser and the Guarantor is a corporation duly incorporated, validly existing and, in the case of the Purchaser, in good standing under the Laws of the jurisdiction of its incorporation, is not in administration, examinership, receivership or liquidation, and no petition has been presented for its winding-up and there are no grounds on which any petition or application could be based for its winding-up or the appointment of an administrator or receiver over its assets, has all corporate power and authority to own, lease and operate its properties and assets and to carry on its business as now being conducted, and is duly qualified to do business and, to the extent such jurisdiction has a concept of good standing, is in good standing as a foreign entity in each jurisdiction where the nature of its activities makes such qualification necessary, except for jurisdictions in which the failure to be so qualified, individually or in the aggregate, would not have a Guarantor Material Adverse Effect.

4.2 Authority; Binding Nature of Agreement . Each of the Purchaser and the Guarantor has the power and authority to enter into and perform its obligations under this Agreement and the other Transaction Documents to which it is a party (in case of the Purchaser, including without limitation the issuance of the Loan Note and in case of the Guarantor, including without limitation the issuance of the Share Consideration), and the execution, delivery and performance by each of the Purchaser and the Guarantor of this Agreement and the other Transaction Documents have been duly authorized by all necessary action on the part of the Purchaser and the Guarantor. Assuming the due authorization, execution and delivery of this Agreement by the Seller, this Agreement constitutes the valid and binding obligation of each of the Purchaser and the Guarantor, enforceable against each of the Purchaser and the Guarantor in accordance with its terms, subject to (a) laws of general application relating to bankruptcy, insolvency, fraudulent conveyance and transfer, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally and (b) rules of law governing specific performance, injunctive relief and other equitable remedies.

4.3 Capitalization . The authorized share capital of the Guarantor consists of (i) 1,250,000,000 Ordinary Shares, of which 427,567,347 shares were issued and outstanding as of April 15, 2011, (ii) 100,000,000 preferred shares, par value $0.00001 per share, of which no shares were issued and outstanding as of April 15, 2011 and (iii) 40,000 non-voting deferred shares, all of which were issued and outstanding as of April 15, 2011. No shares in the capital of the Guarantor were held by a Subsidiary of the Guarantor as of the Agreement Date. As of April 15, 2011, 12,130,279 Ordinary Shares were subject to outstanding options granted under the TOWERTOPS Technology plc 2001 Share Option Plan (the "SOP "), 37,958,529 Ordinary Shares were subject to outstanding options granted under the TOWERTOPS Technology plc 2004 Share Compensation Plan, as amended (the " SCP "), 129,132 Ordinary Shares were subject to outstanding options granted under the Pinton Corporation 2005 Performance Incentive Plan, and 307,300 Ordinary Shares were subject to outstanding options granted under the Pinton Corporation Amended and Restated 1996 Stock Option Plan. As of April 15, 2011 15,586,344 additional Ordinary Shares were reserved and available for issuance pursuant to the SCP and 6,980,656 additional Ordinary Shares were reserved and available for issuance pursuant to the TOWERTOPS Technology plc Employee Stock Purchase Plan. All of the issued and outstanding Ordinary Shares and all shares in the capital of the Guarantor issued pursuant to the Guarantor Stock Plans have been, or will be upon issuance, duly authorized and validly issued, and are fully paid, and non-assessable. There are no preemptive or other outstanding rights, options, warrants, conversion rights, stock appreciation rights, redemption rights, repurchase rights, reserved for issuance, agreements, arrangements or commitments of any character under which the Guarantor is or may become obligated to issue or sell any shares or other equity interests, or any securities or obligations exercisable or exchangeable for or convertible into any shares or other equity interests, of the Guarantor, and no securities or obligations evidencing such rights are authorized, issued or outstanding. To the Knowledge of the Guarantor, the issued and outstanding shares and other equity interests of the Guarantor are not subject to any voting trust arrangement or other contract, agreement or arrangement restricting or otherwise relating to the voting, dividend rights or disposition of such stock or other equity interests. There are no phantom stocks or similar rights providing economic benefits based, directly or indirectly, on the value or price of the capital stock or other equity interests of the Guarantor.

4.4 Valid Issuance .

(a) Prior to the Closing, the Guarantor shall have taken all necessary action, and has and shall have sufficient authorized shares available, to permit it to issue or otherwise deliver the Share Consideration to be delivered hereby pursuant to the Loan Note, when and if either the Seller or the Guarantor exercise the option to exchange the amount due under the Loan Note for the Share Consideration. All Ordinary Shares to be delivered to the Seller as the Share Consideration pursuant to the Loan Note following the Closing will be validly issued, fully paid, non-assessable and free and clear of all Encumbrances, and no Person will have any preemptive right of subscription or purchase or any other right in respect thereof.

(b) Prior to the Closing, the Purchaser shall have taken all necessary action to permit it to issue and deliver the Loan Note at the Closing. The Loan Note to be delivered to the Seller as the Closing will be validly issued and free and clear of all Encumbrances, other than the Encumbrances relating to the obligations of the Purchaser therein.

4.5 Governmental Consents . Other than the Requisite Regulatory Approvals, no Consent is required to be obtained or made by the Purchaser or the Guarantor in connection with the execution, delivery and performance by the Purchaser or the Guarantor of this Agreement or the consummation by the Purchaser or the Guarantor of the transactions contemplated hereby, except for such Consents which if not obtained or made would not reasonably be expected to have, individually or in the aggregate, a Guarantor Material Adverse Effect.

4.6 SEC Filings; Financial Statements .

(a) All registration statements, proxy statements and other statements, reports, schedules, forms, exhibits and other documents filed by the Guarantor with the SEC and available on the SEC website, including all amendments thereto, since July 2, 2010, are accurate and complete copies thereof (collectively, the "Guarantor SEC Documents "). All statements, reports, schedules, forms, exhibits and other documents required to have been filed by the Guarantor with the SEC since July 2, 2010, have been so filed on a timely basis. None of the Guarantor's Subsidiaries is required to file any documents with the SEC. As of the time filed with the SEC (or, if amended or superseded by a filing prior to the Agreement Date, then on the date of such filing): (i) each of the Guarantor SEC Documents complied in all material respects with the applicable requirements of the Securities Act or the Exchange Act (as the case may be); and (ii) none of the Guarantor SEC Documents contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. Each of the certifications and statements relating to the Guarantor SEC Documents required by: (A) Rule 13a-14 or Rule 15d-14 under the Exchange Act; (B) 18 U.S.C. 1350 (Section 906 of the Sarbanes-Oxley Act); or (C) any other rule or regulation promulgated by the SEC or applicable to the Guarantor SEC Documents is accurate and complete, and complies as to form and content with all applicable Laws. As used in this Section 4.6, the term " file " and variations thereof shall be broadly construed to include any manner in which a document or information is filed, furnished, submitted, supplied or otherwise made available to the SEC or any member of its staff in accordance with the applicable requirements of the Securities Act or the Exchange Act (as the case may be).

(b) The financial statements (including any related notes) contained or incorporated by reference in the Guarantor SEC Documents: (i) complied as to form in all material respects with the published rules and regulations of the SEC applicable thereto; (ii) were prepared in accordance with US GAAP applied on a consistent basis throughout the periods covered (except as may be indicated in the notes to such financial statements or, in the case of unaudited financial statements, as permitted by Form 10-Q, Form 8-K or any successor form under the Exchange Act, and except that the unaudited financial statements may not contain footnotes and are subject to normal and recurring year-end adjustments, none of which were or will be material); and (iii) fairly present, in all material respects, the consolidated financial position of the Guarantor and its consolidated Subsidiaries as of the respective dates thereof and the consolidated results of operations and cash flows of the Guarantor and its consolidated Subsidiaries for the periods covered thereby. No financial statements of any Person other than the Guarantor and its Subsidiaries are required by US GAAP to be included in the consolidated financial statements of the Guarantor.

(c) The Guarantor's auditor has at all times since the date of enactment of the Sarbanes-Oxley Act been: (i) a registered public accounting firm (as defined in Section 2(a)(12) of the Sarbanes-Oxley Act); (ii) "independent" with respect to the Guarantor within the meaning of Regulation S-X under the Exchange Act; and (iii) to the Knowledge of the Guarantor, in compliance with subsections (g) through (l) of Section 10A of the Exchange Act and the rules and regulations promulgated by the SEC and the Public Company Accounting Oversight Board thereunder. All non-audit services performed by the Guarantor's auditors for the Guarantor that were required to be approved in accordance with Section 202 of the Sarbanes-Oxley Act were so approved.

(d) The Guarantor maintains, and at all times since July 2, 2010 has maintained, a system of internal controls over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) which is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with US GAAP, and includes those policies and procedures that: (i) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and disposition of the assets of the Guarantor; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in conformity with US GAAP and that receipts and expenditures are being made only in accordance with authorizations of management and directors of the Guarantor; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the assets of the Guarantor that would have a material effect on the financial statements. To the Knowledge of the Guarantor, except as set forth in the Guarantor SEC Documents filed prior to the Agreement Date, since July 2, 2010 neither the Guarantor nor any of its Subsidiaries nor the Guarantor's independent registered accountant has identified or been made aware of: (A) any significant deficiency or material weakness in the design or operation of internal control over financial reporting utilized by the Guarantor; (B) any illegal act or fraud, whether or not material, that involves the Guarantor's management or other employees; or (C) any claim or allegation regarding any of the foregoing.

4.7 Absence of Restrictions . Assuming compliance with all applicable Antitrust Laws, neither (1) the execution, delivery or performance of this Agreement or any of the other Transaction Documents, nor (2) the consummation of transactions contemplated by this Agreement or any of the other Transaction Documents (including without limitation the issuance of the Loan Note at the Closing and the issuance of the Share Consideration upon the exercise of the option to exchange the amount due under the Loan Note for the Share Consideration), will directly or indirectly (with or without the giving of notice or the lapse of time or both):

(a) contravene, conflict with or result in a violation of any of the provisions of the Guarantor Constituent Documents or the Purchaser Constituent Documents;

(b) contravene, conflict with or result in a violation of any resolution adopted by the shareholders, the board of directors, or any committee of the board of directors of the Guarantor or the Purchaser;

(c) contravene, conflict with or result in a violation of, or give any Governmental Body or other Person the right to challenge any of the transactions contemplated by this Agreement or any of the other Transaction Documents or to exercise any remedy or obtain any relief under, any Law or any order, writ, injunction, judgment or decree to which each of the Purchaser and the Guarantor, or any of the assets owned, used or controlled by the Purchaser or the Guarantor, is subject, except for such contravention, conflict, violation, challenge, remedy or relief which, individually or in the aggregate, would not have a Guarantor Material Adverse Effect; or

(d) contravene, conflict with or result in a violation of any of the terms or requirements of, or give any Governmental Body the right to revoke, withdraw, suspend, cancel, terminate or modify, any material Governmental Authorization that is held by the Purchaser or the Guarantor or that otherwise relates to the business of the Purchaser or the Guarantor or to any of the assets owned, used or controlled by the Purchaser or the Guarantor, except for such contravention, conflict, violation, revocation, withdrawal, suspension, cancellation, termination or modification which, individually or in the aggregate, would not have a Guarantor Material Adverse Effect.

4.8 Absence of Changes . Since December 31, 2010:

(a) no Guarantor Material Adverse Effect has occurred, and no event, occurrence, development or state of circumstances or facts has occurred that will, or would reasonably be expected to, have a Guarantor Material Adverse Effect; and

(b) there has not been any loss, damage or destruction to, or any interruption in the use of, any of the assets of the business or the Purchaser or the Guarantor that has had or would reasonable be expected to have a Guarantor Material Adverse Effect (whether or not covered by insurance).

4.9 Legal Proceedings .

(a) There is no pending Legal Proceeding, and to the Knowledge of the Guarantor, there is no threatened Legal Proceeding:

(i) that involves the Guarantor or the Purchaser which if decided adversely would have a Guarantor Material Adverse Effect; or

(ii) that involves the Guarantor or the Purchaser which challenges, or that may have the effect of preventing, materially delaying, making illegal or otherwise interfering with, the transactions contemplated by this Agreement.

(b) Except as would not have a Guarantor Material Adverse Effect, there is no decree, order, judgment, injunction, temporary restraining order or other order in any Legal Proceeding to which the Purchaser or the Guarantor is subject.

4.10 Availability of Funds . The Purchaser has lawfully available, and will have lawfully available on the Closing Date, sufficient funds without any external financing to enable the Purchaser to consummate the transactions contemplated by this Agreement and to pay all of the Cash Consideration and the Purchaser's and the Guarantor's fees and expenses in connection with this Agreement and the other Transaction Documents and the transactions contemplated hereby and thereby. No action or proceeding has been commenced by or against the Purchaser or the Guarantor under any bankruptcy Law of any relevant jurisdiction for the relief of debtors or for the enforcement of the rights of creditors.

4.11 Finder's Fee . Other than Morgan Stanley Co. Incorporated, no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission payable by the Guarantor or the Purchaser in connection with the transactions contemplated hereby.

SECTION 5

CERTAIN COVENANTS AND AGREEMENTS

5.1 Access and Investigation . During the period from the Agreement Date through the Closing Date (the " Pre-Closing Period "), the Seller shall provide the Purchaser and the Purchaser's Representatives with reasonable access to the Seller's Representatives, personnel, properties and assets and to all existing books, records, work papers, financial data (other than pricing information) and other documents and information relating to the Business as the Purchaser may reasonably request, subject to any restrictions under applicable Law.

5.2 Operation of the Seller's Business . During the Pre-Closing Period, except as otherwise consented to by the Purchaser, the Seller shall, and shall cause the Seller Subsidiaries to:

(a) conduct the Business (i) in the ordinary course and in accordance with past practices and (ii) in compliance with (x) all Laws and Governmental Authorizations applicable to the Business and (y) the requirements of all Assumed Contracts to which the Seller or the Seller Subsidiaries are a party; and

(b) use commercially reasonable efforts to ensure that it preserves the Business intact and maintains its relations and goodwill with all suppliers, customers, licensors and licensees providing services or products to the Business.

For the avoidance of doubt, any change in the Business or in the conduct or operation of the Business as a result of any loss of or any other change in the relationships with employees (including any strikes and other labor dispute), suppliers or customers (including customer orders or contracts) of the Seller or the Seller Subsidiaries or any change to the financial performance or position or results of operation of the Seller or the Seller Subsidiaries resulting from the announcement or pendency of the transactions contemplated by this Agreement or any other industry-related factors, in and of itself without otherwise breaching this Section 5.2, shall not be deemed to be a breach of this Section 5.2.

5.3 Preparation of Financial Statements . Prior to the Closing Date, the Seller shall cause to be prepared and delivered to the Guarantor (a) such audited financial statements (the "Business Financial Statements ") of the Business that the Guarantor determines in good faith (after consultation with its accounting and legal advisors) to be required by, and would enable the Guarantor to comply with, the public reporting and other rules and regulations of the SEC and the NASDAQ Global Select Market applicable to the Guarantor in the context or as a result of the transactions contemplated by the Transaction Documents, including those public reporting and other rules and regulations that require, permit or contemplate the public reporting of audited financial statements and pro forma information following the consummation of the transactions contemplated by the Transaction Documents and (b) such audited financial statements for the Business for the fiscal year ended December 31, 2010, (the " 2010 Financial Statements of the Business ") to be prepared by the Seller in accordance with Korean IFRS and its accounting policies and practices under its sole control, judgment and discretion. For the avoidance of doubt, the 2010 Financial Statements of the Business shall not be prepared for the Guarantor to comply with its reporting obligations and shall not be required to be prepared with any consultation with, determination by, or any other input from the Guarantor. In connection with the preparation and delivery of the Business Financial Statements, the Guarantor shall, and shall cause its Representatives to, fully cooperate with the Seller and its Representatives in a manner that is adequate to, and exercise its reasonable best efforts to, permit the Business Financial Statements and unaudited quarterly Business Financial Statements for the periods ended March 31, 2011 and June 30, 2011 to be prepared and delivered as soon as possible following the Agreement Date, but no later than 180 days thereafter, and to be updated on a quarterly basis for each quarter ending after June 30, 2011, with such updated unaudited quarterly Business Financial Statements to be prepared and delivered no later than 45 days after the end of such quarter and to be updated on an annual basis for the year ending on December 31, 2011 (and if the Closing occurs in 2013, for the year ending on December 31, 2012), with such updated audited Business Financial Statements to be prepared and delivered no later than 90 days after the end of each such year. The Seller shall be entitled to retain such internationally recognized accounting firm without any conflict with the Seller and any other advisors as are reasonably necessary to timely and properly prepare the Business Financial Statements and shall be entitled to retain its current independent accounting firm for the preparation of the 2010 Financial Statements of the Business. All fees, costs and expenses incurred by the Seller or any Affiliate thereof in the preparation of the Business Financial Statements shall be reimbursed to the Seller by the Guarantor promptly, and in any event within ten (10) Business Days, after the submission to the Guarantor of written invoices therefor.

5.4 Purchaser Designees; Local Asset Transfers .

(a) The Purchaser may assign the right to acquire certain of the Acquired Assets, or to assume certain of the Assumed Liabilities or employment relationships with the Transferred Employees to one or more of its Affiliates (the "Purchaser Designees "). No later than ninety (90) days following the Agreement Date, the Purchaser shall provide to the Seller a list of the Purchaser Designees, their respective constitutional documents and other documents and information reasonably requested by the Seller.

(b) The Seller shall, in good faith consultation with the Purchaser, select the manner by which the Acquired Assets are sold, conveyed, transferred or assigned to the Purchaser and/or the Purchaser Designees; provided that the manner selected shall result in the Purchaser and/or the Purchaser Designees, as applicable, receiving a Tax basis in each of the relevant jurisdictions for local Tax purposes at least equal to the applicable Purchase Price Allocation. If a Tax basis is not available with respect to any Acquired Asset as a result of a non-Tax issue, the parties will discuss the reasonable resolution of such matter.

(c) The parties shall enter into and deliver (and, in case of the Purchaser, shall cause the relevant Purchaser Designees to enter into and deliver, and, in case of the Seller, shall cause the relevant Seller Subsidiaries to enter into and deliver) the Transfer Agreements promptly after the Agreement Date, but no later than ninety (90) days thereafter, subject to any delays resulting from compliance with applicable Law. The consummation and closing of the sale, conveyance, transfer and/or assignment under each Transfer Agreement shall be subject to and occur simultaneously on the Closing Date.

5.5 No Negotiation . From the date hereof until the earlier of (a) the Closing Date and (b) the date on which this Agreement is terminated in accordance with its terms, the Seller shall not, and the Seller shall cause each of the Seller Subsidiaries not to, directly or indirectly through any of their respective directors, officers or other employees, affiliates, representatives or other agents (including its financial, legal, accounting or other advisors): (i) solicit, knowingly encourage, knowingly initiate or knowingly facilitate any inquiry, proposal or offer from any third party regarding an acquisition or sale of the Business, regardless of the structure or form of transaction (an "Alternative Transaction "); (ii) furnish or make available to any third party any non-public information regarding the Business in a manner intended to facilitate an Alternative Transaction; (iii) participate in any discussions with any third party regarding an Alternative Transaction; or (iv) enter into an agreement, or otherwise make any commitment or other arrangement, whether binding or non-binding, regarding an Alternative Transaction. Notwithstanding the foregoing, the Seller and each Seller Subsidiary shall be permitted to provide confidential information and otherwise engage in discussions with any third party in the ordinary course of business and in furtherance of the conduct of the Business.

5.6 Employee Matters .

(a) Pursuant to the procedures set forth in Exhibit F , and in consultation with the Seller, the Purchaser shall make offers of employment to all of the Subject Employees. The Purchaser hereby agrees to employ all of the Subject Employees, and any other Business Employee who received an offer from the Purchaser, who accept offers of employment from the Purchaser, effective as of the Closing Date (collectively, the "Transferred Employees "). The Seller agrees that concurrent with the Closing, the Seller and the Seller Subsidiaries shall ensure the termination of the employment relationship with all Transferred Employees. The Transferred Employees shall be employed by the Purchaser in accordance with the terms and conditions set forth in Sections 5.6(b), 5.6(c) and 5.6(d) below.

(b) The Purchaser (or one or more Purchaser Designees, as the case may be) shall provide guaranteed employment for no less than five (5) years for each of the Subject Employees identified in Schedule 5.6(b) of the Seller Disclosure Schedules who become Transferred Employees, as described in Exhibit F .

(c) Effective upon the Closing, the Purchaser agrees that it will employ the Transferred Employees in the same and/or similar functional disciplines and at no less than their then current respective total compensation (including, among other things, bonuses and payments under any profit sharing scheme and other material employee benefits). All Transferred Employees will be entitled to retirement, health, welfare and other employee benefits (including vacation, floating holiday, sickness, paid time off, and severance) that are substantially comparable, on an aggregate basis, to the retirement, health, welfare and other employee benefits provided by the Seller or a Seller Subsidiary to the Transferred Employees immediately prior to the Closing Date. Transferred Employees also will be entitled to participate in the Purchaser's employee benefit plans, commissions, bonus plans, and severance benefit plans at the same level and in the same manner as provided to comparably situated employees of the Purchaser as of the Agreement Date. The duration of each Transferred Employee's employment with the Seller or a Seller Subsidiary will be credited to such Transferred Employee as employment with the Purchaser for all employment purposes, including the calculation of severance pay, seniority and benefits eligibility, and vacation accrual, subject to applicable Laws and the approval of any applicable insurance carrier, and, in the case of severance pay, subject to any full pay-outs by the Seller, or the rollover to and assumption by the Purchaser or relevant Purchaser Designee, upon such Transferred Employee's transfer or termination of employment, as applicable.

(d) From and after the Closing Date, with respect to the Transferred Employees, the Purchaser shall be solely responsible for paying, providing or satisfying when due all compensation (including salary, wages, commissions, bonuses, incentive compensation, overtime, premium pay and shift differentials), vacation, sick pay and other paid time off, benefits and benefit claims, severance and termination pay, notice and benefits under all applicable Law and under any Purchaser plan, policy, practice or agreement and all other liabilities, in each such case incurred or arising as a result of employment or separation of employment with the Purchaser, as well as any taxes, social charges or similar contributions relating to the same. The Purchaser shall be responsible for liabilities with respect to the transfer or termination of any Transferred Employees by the Purchaser after the Closing, including without limitation, health care or any other continuation coverage with respect to benefits plans established or maintained by the Purchaser after the Closing, as applicable. Notwithstanding the foregoing, the Seller shall transfer to the Purchaser and/or Purchaser Designee(s), as applicable, the accrued but unpaid severance reserves for the Transferred Employees at the Closing.

(e) The Seller and the Purchaser agree and acknowledge that the employment relationships of the Transferred Employees are governed by the Laws of various jurisdictions and that the offer or transfer of employment and subsequent employment of the Transferred Employees by the Purchaser as contemplated by this Section 5.6 is subject to different legal requirements depending on the jurisdiction by which the employment relationship of the respective Transferred Employee is governed. Irrespective of the various obligations which are set forth in this Agreement and in particular in this Section 5.6, the Purchaser agrees to undertake all actions which may be reasonably required to effect the employment of the Transferred Employees by the Purchaser, and the Seller shall reasonably cooperate therewith. In connection with the employment of the Transferred Employees by the Purchaser, each party hereto shall comply in all material respects with all applicable Laws and any written agreement with any relevant trade union, works council, other employee representative body, or with any individual Transferred Employee. Each party hereto agrees to provide the other party with information reasonably required by the other party to (i) comply with any legal requirement (whether statutory or pursuant to any written agreement with any relevant trade union, works council or other employee representative body) in respect of the contemplated employment of the Transferred Employee by the Purchaser and (ii) inform, consult or negotiate with or seek consent from the relevant employees, relevant trade unions, relevant works councils or any other employee representative body in relation to this Agreement and the transactions contemplated hereby. Unless approved by the other party in writing, the parties hereto shall at all times between the Agreement Date and the Closing Date, refrain from any communication or other actions which are intended to cause, provoke or encourage a Transferred Employee to reject the Purchaser's offer of employment.

5.7 Assumed Contracts; Non-Assignable Contracts . The Seller and the Seller Subsidiaries, as applicable, shall use commercially reasonable efforts to (a) obtain the consent of the third parties required under any Assumed Contract in connection with the Transaction Documents or the consummation of the transactions contemplated by the Transaction Documents, or that may be necessary in order to prevent the termination by any third party of any Assumed Contract as a result of the Transaction Documents or the consummation of the transactions contemplated by the Transaction Documents, (b) make the benefit of any Non-Assignable Contract available to the Purchaser so long as the Purchaser fully cooperates with the Seller and the Seller Subsidiaries and promptly reimburses the Seller and the Seller Subsidiaries for all payments made by the Seller or the Seller Subsidiaries (with the prior written approval of the Purchaser) in connection therewith and (c) enforce, at the request of the Purchaser and at the sole expense and for the account of the Purchaser, any right of the Seller or the Seller Subsidiaries arising from any Non-Assignable Contract against the other party or parties thereto (including the right to elect or terminate any such Non-Assignable Contract in accordance with the terms thereof). The Purchaser shall use commercially reasonable efforts to avoid taking any action or suffering any omission which would limit, restrict or terminate in any material respect the benefits to the Purchaser of any Non-Assignable Contract. Nothing in this Agreement or any document executed in connection herewith shall constitute a sale, assignment, transfer or conveyance to, or assumption by, the Purchaser of the Non-Assignable Contracts, and prior to obtaining the applicable third-party consent with respect to a Non-Assignable Contract that would otherwise be included in an Assumed Contract, such Contract shall not be included in the Assumed Contracts and shall be retained by the Seller. With respect to any such Non-Assignable Contract as to which the necessary approval or consent for the assignment or transfer to the Purchaser is obtained following the Closing, the Seller shall transfer such Non-Assignable Contract to the Purchaser by execution and delivery of an instrument of conveyance promptly after the receipt of such approval or consent. Notwithstanding anything to the contrary in this Section 5.7, the Seller shall not be obligated to incur any out-of-pocket expenses in order to obtain a third-party consent related to any Assumed Contract.

5.8 Public Announcements . During the Pre-Closing Period, neither the Purchaser or the Guarantor, on the one hand, nor the Seller or the Seller Subsidiaries, on the other hand, shall (and they shall not permit any of their respective Affiliates or Representatives to) issue any press release or make any public statement regarding this Agreement or any of the other Transaction Documents, or regarding any of the transactions contemplated hereby or thereby, without the other parties' prior written consent; provided, however , that nothing herein shall be deemed to prohibit any party from making any public disclosure that such party deems necessary or appropriate under applicable Law or the rules of any securities exchange or market, in which case the other parties shall be consulted in good faith as to the nature, content and form of such public disclosure prior to disclosure; provided, further, that without the prior written consent of the other parties, no party shall at any time disclose to any Person the fact that this Agreement or any of the other Transaction Documents has been entered into or any of the terms of this Agreement or any of the other Transaction Documents other than to such party's advisors who such party reasonably determines needs to know such information for the purpose of advising such party, it being understood that such advisor will be informed of the confidential nature of this Agreement and the other Transaction Documents and the terms hereof and thereof and will be directed to treat such information as confidential in accordance with the terms of this Agreement.

5.9 Confidentiality .

(a) Except as set forth in Schedule 5.9 of the Seller Disclosure Schedules, none of the parties hereto shall, and each party shall ensure that none of their respective Affiliates will, during the Pre-Closing Period and after the Closing Date, disclose any Confidential Information, whether regarding itself or regarding the other parties, to any third Person. The obligation of the parties under this Section 5.9 shall not apply to any of the following: (i) disclosure of such Confidential Information required by applicable Law or the rules of any securities exchange or market, in which case the other parties shall be consulted in good faith as to the nature, content and form of such disclosure prior to disclosure; (ii) disclosure of such Confidential Information to such party's professional advisors who have been retained in relation to the transactions contemplated by this Agreement and the other Transaction Documents and who have been informed of the confidential nature of such information and agreed to treat such information as confidential in accordance with the terms of this Agreement, but only to the extent necessary for such advisors to perform their duties; and (iii) disclosure of such Confidential Information for the purpose of defending any claim against the other party or parties under this Agreement or enforcing its rights hereunder.

(b) Upon the Closing, any Confidential Information which is part of the Acquired Assets that pertains exclusively to the Business shall be deemed to be the Confidential Information of the Purchaser.

(c) The parties acknowledge that the Guarantor and the Seller have previously entered in a Mutual Nondisclosure Agreement, dated February 28, 2011 (the " Nondisclosure Agreement "), which Nondisclosure Agreement shall continue in full force an effect in accordance with its terms except as modified by this Section 5.9.

5.10 Reasonable Efforts; Further Assurances; Cooperation . Subject to the other provisions hereof, each party hereto shall use its reasonable best efforts to take, or cause to be taken, and do, or cause to be done, all things necessary, proper or advisable under applicable Law to cause the transactions contemplated herein to be effected as soon as practicable, but in any event on or prior to the Expiration Date, in accordance with the terms hereof and shall cooperate fully with each other party and its Representatives in connection with any step required to be taken as a part of its obligations hereunder, including the following:

(a) Each party hereto shall promptly and timely make its filings and submissions and shall use its reasonable best efforts to obtain any required approval of any Governmental Body with jurisdiction over the Acquired Assets or the transactions contemplated by this Agreement and the other Transaction Documents. Each of the parties hereto shall furnish to each other party all information required for any application or other filing to be made by such other party pursuant to any applicable Law in connection with the transactions contemplated hereby; provided that if any such information, in the discretion of the party providing the information, is deemed confidential, it shall be provided on an outside counsel basis only;

(b) Each party hereto shall promptly notify the other party of (and provide written copies of) any communications from or with any Governmental Body in connection with the transactions contemplated hereby;

(c) In the event any claim, action, suit, investigation or other proceeding by any Governmental Body or other Person is commenced that questions the validity or legality of the transactions contemplated by this Agreement or the other Transaction Documents or seeks damages in connection therewith, the parties hereto shall (i) cooperate and use their respective reasonable best efforts to defend against such claim, action, suit, investigation or other proceeding, (ii) in the event an injunction or other order is issued in any such claim, action, suit, investigation or other proceeding, use their respective best efforts to have such injunction or other order lifted and (iii) cooperate reasonably regarding any other impediment to the consummation of the transactions contemplated by this Agreement and the other Transaction Documents;

(d) The Seller shall give notices to all relevant third parties and use its commercially reasonable efforts (in consultation with the Purchaser) to obtain such third-party consents necessary or required to consummate the transactions contemplated by this Agreement and the other Transaction Documents;

(e) The Seller will, without demanding any further consideration therefor, at the request and expense of the Purchaser (except for the value of the time of the Seller's employees), use its commercially reasonable efforts to do (and cause its Affiliates to do) all lawful acts that are necessary for prosecuting, sustaining, obtaining continuations of, or reissuing Transferred IP and for evidencing, maintaining, recording and perfecting the Purchaser's rights to any Transferred IP, including but not limited to (i) execution and acknowledgement of (and causing its Affiliates to execute and acknowledge) assignments and other instruments in a form reasonably required by the Purchaser for each Patent jurisdiction and (ii) providing the Purchaser (or the relevant Purchaser Designee) with reasonable assistance to secure the Purchaser's rights in any inventions within the Transferred IP, in any and all applicable countries, including the disclosure to the Purchaser of all pertinent information and data with respect thereto, the execution of all applications, specifications, oaths, assignments, and all other instruments necessary in order to apply for, register, obtain, maintain, defend, and enforce such rights, and in order to deliver, assign and convey to the Purchaser, its successors, assigns, and nominees the sole and exclusive rights, title, and interest in and to all such inventions, and testifying in a suit or other proceeding relating to such inventions within the Transferred IP;

(f) As soon as practicable after the Agreement Date, but no later than sixty (60) days thereafter, the parties hereto shall agree on the list and scope of services to be provided under the Transition Services Agreement, which services thereunder shall be provided for up to a maximum of twelve months after the Closing Date, unless the parties otherwise mutually agree in writing. Within sixty (60) days thereafter, the parties hereto shall negotiate in good faith and agree on the form of the Transition Services Agreement; and

(g) The parties hereto shall negotiate in good faith, enter into and deliver the Supply Agreement for Internal Drives and the Transition Services Agreement on or prior to the Closing Date, which shall become effective as of the Closing Date.

5.11 Regulatory Approvals .

(a) Each of (i) the Guarantor, (ii) the Purchaser and (iii) to the extent required by applicable rules and regulations, the Seller and the Seller Subsidiaries, agrees to make, and if applicable, agrees to cause its respective Affiliates to make, an appropriate filing pursuant to (a) the HSR Act and (b) Regulation (EC) no. 139/2004 (the "EU Merger Regulation ") with respect to the transactions contemplated by this Agreement and the other Transaction Documents within ten (10) Business Days after the Agreement Date and to supply promptly any additional information and documentary material that may be requested pursuant to the HSR Act and the EU Merger Regulation as referred to above. In addition, each party hereto agrees to make, or to cause to be made, to the extent required by applicable rules and regulations, any filing that may be required under any other Antitrust Law or by any other Governmental Body, including any other requirements of the Antitrust Law of any relevant jurisdiction, if applicable, within thirty (30) days after the Agreement Date and to supply promptly any additional information and documentary material that may be requested pursuant thereto. In the event that any applicable Antitrust Law requires that a filing be made within less than thirty (30) days after the Agreement Date, then such requirement shall be complied with by the parties. Each party hereto shall have responsibility for its respective filing fees (and the filing fees of their respective Affiliates, if applicable) associated with the HSR Act filings, the EU Merger Regulation filings and any other filings required in any other jurisdictions under any other Antitrust Laws.

(b) If a party hereto (or any Affiliate of a party hereto) receives a request for additional information or documentary material from any Governmental Body with respect to the transactions contemplated by this Agreement or the other Transaction Documents, then it shall use its reasonable best efforts to make, or cause to be made, as soon as reasonably practicable and after consultation with the other party, an appropriate response in compliance with such request, and, if permitted by applicable Law and by any applicable Governmental Body, provide the other party's counsel with advance notice and the opportunity to participate in any material meeting with any Governmental Body in respect of any filing made thereto in connection with the transactions contemplated by this Agreement or the other Transaction Documents. Neither the Guarantor or the Purchaser (or any Affiliates thereof), on the one hand, nor the Seller or the Seller Subsidiaries (or any Affiliates thereof), on the other hand, shall commit to or agree with any Governmental Body to stay, toll or extend any applicable waiting period under the HSR Act, the EU Merger Regulation or other applicable Antitrust Laws, without the prior written consent of the other party (such consent not to be unreasonably withheld, conditioned or delayed).

(c) In the event the Requisite Regulatory Approvals have not been obtained by December 31, 2011 and to the extent the Guarantor and the Purchaser have not materially breached this Agreement or any other Transaction Document that has been entered into and is effective and are not in material breach of this Section 5.11, then the Guarantor shall have the right to extend the Expiration Date to March 31, 2012, solely for the purpose of obtaining the Requisite Regulatory Approvals. The Guarantor shall, not less than five (5) Business Days prior to December 31, 2011, provide to the Seller written notice that it intends to extend the Expiration Date (such notice, the "Notice of Extension "). The Notice of Extension shall (i) identify the Requisite Regulatory Approvals not yet obtained, and (ii) provide a detailed explanation of the information being requested by any Governmental Body that has not yet provided a Requisite Regulatory Approval and the actions such Governmental Body has required the Guarantor, the Purchaser and any of their respective Affiliates to take in order to obtain such Requisite Regulatory Approvals.

(d) None of the parties hereto shall take any action that would reasonably be expected to hinder or delay the obtaining of clearance or any necessary approval of any Governmental Body under any Antitrust Laws or the expiration of any required waiting periods under any Antitrust Laws.

(e) For the avoidance of doubt, each of the parties hereto hereby fully acknowledges and unequivocally agrees that such party would be irreparably damaged if any of the provisions of this Section 5.11 are not performed by the other party in accordance with their specific terms and that any breach of this Section 5.11 by the Purchaser or the Guarantor, or the Seller, as the case may be, would not be adequately compensated by monetary damages alone. Accordingly, to the fullest extent permitted by applicable Law, (i) in addition to any other right or remedy to which the Seller, the Purchaser or the Guarantor may be entitled, at law or in equity, the Seller, the Purchaser or the Guarantor, as the case may be, shall be entitled to enforce any provision of this Section 5.11 by a decree of specific performance and temporary, preliminary and permanent injunctive relief to prevent breaches or threatened breaches of any of the provisions of this Section 5.11 in any action instituted in a court of competent jurisdiction, without the posting of any bond or other undertaking, and (ii) each party hereto hereby irrevocably waives, in any action for specific performance, the defense of adequacy of a remedy at law. For the avoidance of doubt, in case a remedy of specific performance is not granted, the Seller would remain entitled to terminate this Agreement under Section 8.1(b) .

(f) Notwithstanding any of the foregoing, none of the Purchaser or any of its Affiliates shall be under any obligation to agree to sell, hold, separate, divest, discontinue or limit, before or after the Closing Date, any material assets or businesses or interest in any material assets or businesses of the Purchaser or any of its Affiliates.

5.12 Transfer Taxes; Expenses . Any transfer Taxes or recording fees payable as a result of the purchase and sale of the Acquired Assets or any other action arising out of this Agreement or the other Transaction Documents shall be paid by the Purchaser. The parties hereto shall cooperate with each other to the extent reasonably requested and legally permitted to minimize any such transfer Taxes or recording fees. The parties hereto shall cooperate in the preparation, execution and filing of all returns, questionnaires, applications and other documents regarding Taxes and all transfer, recording, registration and other fees that become payable in connection with the transactions contemplated hereby that are required or permitted to be filed at or prior to the Closing.

5.13 Non-Competition . For period of five (5) years from the Closing Date (the " Non-Compete Period "), neither the Seller nor any Affiliate of the Seller (other than natural Persons) shall, directly or indirectly, engage in whole or in part in a business substantially the same as the Business as it is conducted by the Seller and any Affiliate of the Seller as of the Closing Date, or in the design or manufacturing of (or having manufactured) HDDs. Notwithstanding the foregoing and anything else in this Agreement or any other Transaction Document, neither the Seller nor any Affiliate of the Seller (other than natural Persons) shall be precluded from, and shall not be in violation of this Section 5.13 by, (i) performing any obligations under, exercising any rights under or otherwise conducting or engaging in any activities contemplated to be undertaken by the Seller or any Affiliate of the Seller in connection with this Agreement or any other Transaction Document, including the IP Agreement and the Transition Services Agreement, (ii) conducting or in any manner otherwise engaging in, directly or indirectly, (x) the Seller's Component Business or (y) the research and development, design, manufacture, sale or any other commercialization of semiconductor products, solid-state drives or devices, components or other products which are not complete HDDs or which merely include or incorporate HDDs, (iii) the distribution or resale of HDDs purchased from the Purchaser, its Affiliates or a third party and warranty and other support in connection with the same or (iv) acquiring less than five percent (5%) of the outstanding equity interest in or investing less than US$100,000,000 in any Person engaged in the business of designing, making, assembling, servicing, supporting or selling HDDs.

5.14 Non-Solicitation . Neither the Purchaser nor the Guarantor shall, for a period of thirty (30) months from the Agreement Date, in any manner, directly, indirectly, individually, in partnership, jointly or in conjunction with any Person, except as otherwise expressly permitted by Section 5.6 with respect to Subject Employees and Transferred Employees, (i) recruit or solicit or attempt to recruit or solicit, on any of their behalves or on behalf of any other Person, any Business Employee, (ii) encourage any Person to recruit or solicit any Business Employee, or (iii) otherwise encourage any Business Employee to discontinue his or her employment with the Seller or any Affiliate of the Seller; provided that the placement of advertisements or general solicitations for employment in publications of broad dissemination, including in newspapers or on the Internet, shall not be deemed to be a violation of this Section 5.14, so long as no employee or group of employees of the Seller or any Affiliate of the Seller are specifically targeted.

5.15 Customer Visits; Supplier Relationships.

(a) During the Pre-Closing Period, the Seller shall permit the Purchaser to discuss and meet, and shall reasonably cooperate in such discussions and meetings, with any Customer of the Seller and the Seller Subsidiaries that the Purchaser so requests. A Representative of the Seller or a Seller Subsidiary shall have the right, but not the obligation, to accompany the Purchaser's Representative to such meetings and shall participate with the Purchaser's Representative in any such discussions. Furthermore, the Seller and the Seller Subsidiaries shall cooperate with the Purchaser in the preparation of presentations to such Customers with respect to the transactions contemplated by this Agreement and the other Transaction Documents. All costs relating to the actions described in this Section 5.15 (other than the cost of travel for the Seller's Representative) shall be borne solely by the Purchaser. The Seller shall promptly notify the Purchaser if a commercial relationship and/or agreement it has with a Customer terminates during the Pre-Closing Period.

(b) The Purchaser acknowledges that the Seller and the Seller Subsidiaries have made non-documented informal commitments with certain suppliers set forth on Schedule 5.15(b) of the Seller Disclosure Schedules for maintaining long-term business relationships and continued supply and purchase. The Purchaser hereby agrees to use good-faith commercially reasonable efforts to honor such long-term commitments as long as practicably possible after the Closing.

5.16 Inventory . The Seller shall maintain a target level of all inventory intended for use exclusively in the Business so that at the time of the Closing the value of the Transferred Inventory shall be as follows: (a) raw materials being equal to or greater than the value of 17.3 days, (b) work-in-progress being equal to or greater than 6.4 days, and (c) finished goods being equal to or greater than 17.2 days, in each case intended for use exclusively in the Business measured as of the Closing Date based on the cost of goods sold as of the end of the last quarter immediately preceding the Closing Date; provided , however , that the parties hereto agree that the aforementioned inventory level targets as of the Closing may be reduced by 10% by the relevant division of the Seller.

5.17 Delivery of Books and Records . During the period commencing on the Agreement Date and continuing through the one year anniversary of the Closing Date, upon reasonable written request by the Purchaser, the Seller shall make commercially reasonable efforts to deliver, and to cause its Affiliates to deliver, to the Purchaser copies of all books and records used in the conduct of the Business, including all manuals, records and files, correspondence, logs, technical records, research and development files, litigation files, sales and promotional materials, advertising materials, warranty records, engineering records and personnel records of the Seller, as well as such additional financial, operating, and other data and information as the Purchaser may reasonably request predominantly relating to the operations of the Business to the extent permitted by relevant Contracts and applicable Laws.

5.18 Valuation in Respect of the Loan Note . The Purchaser and the Guarantor shall have procured that a valuation report reasonably satisfactory to the Seller and in compliance with Section 30 Companies (Amendment) Act 1983 of Ireland in respect of the promissory note to be delivered to the Guarantor as consideration for the allotment of the Share Consideration issuable pursuant to the instrument constituting the Loan Note, and copies of such report shall be delivered to the Guarantor and the Seller on or prior to the Closing Date.

5.19 Covenant to Pay Irish Stamp Duty .

(a) If any Irish stamp duty is payable on or in respect of this Agreement or any document or any transfer, assignment or other conveyance on sale (as defined for the purposes of the Stamp Duties Consolidation Act 1999 of Ireland), in each case, contemplated herein or required to be delivered by the terms hereof or the instrument constituting the Loan Note or any document contemplated therein or required to be delivered by the terms thereof, then the Purchaser shall pay such liability in accordance with its obligations under Irish law.

(b) Without prejudice to the foregoing, if the Seller becomes liable to pay any Irish stamp duty as a result of the execution of the Transaction Documents or on the allotment of the Shares (as such term is defined in the form of the Loan Note attached as Exhibit E hereto), the Seller shall notify the Purchaser promptly and the Purchaser shall pay promptly to the Seller by way of liquidated damages an amount equal to any such stamp duty and any interest or penalties or surcharges payable in respect thereof.

SECTION 6

CONDITIONS PRECEDENT

6.1 Conditions Precedent to Obligations of Purchaser, Guarantor and Seller . The obligations of the Purchaser, the Guarantor and the Seller to consummate the transactions contemplated by this Agreement are subject to the satisfaction, at or prior to the Closing, of the following conditions:

(a) the waiting period applicable to the consummation of the transactions contemplated by this Agreement and the other Transaction Documents under the HSR Act (or any extension thereof) shall have expired or been terminated;

(b) the European Commission shall have issued a decision under Article 6(1)(b) or 8(1) or 8(2) of the EC Merger Regulation (or shall be deemed to have done so under Article 10(6) thereof), declaring the transactions contemplated by this Agreement and the other Transaction Documents compatible with EC Common Market;

(c) similar approvals under the Antitrust Laws of the Republic of Korea, Japan and the People's Republic of China applicable to the consummation of the transactions contemplated by this Agreement and the other Transaction Documents shall have been obtained (through the expiration of any applicable waiting period or otherwise) (the approvals contemplated under Sections 6.1(a), 6.1(b) and 6.1(c), collectively, the "Requisite Regulatory Approvals "); and

(d) no Governmental Body in the United States, the European Union, the Republic of Korea, Japan or the People's Republic of China shall have enacted, issued, promulgated, enforced or entered any Law or Order (which Order has become final and non-appealable), which Law or Order is in effect and which has the effect of making any of the transactions contemplated by this Agreement illegal or otherwise prohibiting the Closing, other than any Antitrust Law (or Order seeking to enforce the provisions of any Antitrust Law) and any Law or Order that would not have a Seller Material Adverse Effect or a Guarantor Material Adverse Effect.

6.2 Conditions Precedent to Obligations of Purchaser and Guarantor . The obligations of the Purchaser and the Guarantor to consummate the transactions contemplated by this Agreement are subject to the preparation and delivery of the 2010 Financial Statements of the Business pursuant to Section 5.3.

SECTION 7

CLOSING

7.1 Closing . The Closing shall take place at the offices of Paul, Hastings, Janofsky Walker LLP in Palo Alto, California within three (3) Business Days following the day on which the conditions set forth in Section 6.1 shall have been satisfied or waived in accordance with this Agreement or at such other place or time or on such other date as the Seller, the Purchaser and the Guarantor may agree in writing.

7.2 Closing Actions . On the Closing Date, the parties shall perform the following actions:

(a) the Purchaser shall pay the Cash Consideration to the Seller, as provided in Section 2.2(a);

(b) the Purchaser and the Guarantor shall deliver to the Seller the executed Loan Note under which the Seller or the Guarantor may, at its option, require that the amount due under the Loan Note be exchanged for the Share Consideration;

(c) the Seller shall deliver to the Purchaser such other executed instruments of assignment, certificates of title documents, deeds and conveyance documents necessary to transfer to the Purchaser the Acquired Assets, together with possession of the Acquired Assets;

(d) without limiting the foregoing, the Seller shall deliver to the Purchaser executed Patent and Trademark assignments, in a form reasonably acceptable to the Purchaser, suitable for filing with the US Patent and Trademark Office or other relevant authority in each jurisdiction in which such Transferred Patents or Transferred Trademarks have been filed or issued;

(e) the relevant parties hereto shall enter into and deliver the Supply Agreement for Internal Drives and the Transition Services Agreement; and

(f) the parties hereto shall perform all their respective obligations (and, in case of the Purchaser, shall cause the Purchaser Designees to perform their respective obligations, and, in case of the Seller, shall cause the Seller Subsidiaries to perform their respective obligations) required to be performed at Closing under the Transfer Agreements.

7.3 Issuance of Share Consideration . As soon as practicable after the Closing, but no later than 00:01 a.m., Irish time, on the date immediately following the Closing Date and upon any party's exercise of its option to require that the amount due under the Loan Note be exchanged for the Share Consideration, the Guarantor shall allot, issue and deliver the Share Consideration, free and clear of all Encumbrances, to the Seller.

SECTION 8

TERMINATION

8.1 Termination Events . This Agreement may be validly terminated (and the transactions contemplated by this Agreement and the other Transaction Documents abandoned) at any time prior to the Closing only as follows:

(a) by mutual written consent of the Guarantor and the Seller; or

(b) by the Seller in its sole discretion, in the event the Closing has not occurred by the Expiration Date and the Requisite Regulatory Approvals have not been obtained by such date.

8.2 Closing Breach . In the event that (a) the Requisite Regulatory Approvals have been obtained pursuant to Section 6.1, (b) the conditions set forth in Section 6.1(d) and Section 6.2 have been satisfied or waived, and (c) the Purchaser and the Guarantor do not fulfill their obligations under this Agreement to timely consummate the transactions contemplated by this Agreement and the other Transaction Documents ("Closing Breach "), the Seller shall be entitled to seek specific performance of the provisions of this Agreement, including the provisions relating to the consummation of the transactions contemplated by this Agreement and the other Transaction Documents, as set forth in Section 11.1. If such remedy of specific performance is not granted to the Seller for any reason whatsoever, the Seller may terminate this Agreement at its sole discretion and receive the termination fee pursuant to Section 8.3(b), as well as seek any and all other remedy available under law and equity.

8.3 Effect of Termination .

(a) If this Agreement is terminated by the Seller pursuant to Section 8.1(b), the Purchaser and the Guarantor, jointly and severally, shall pay to the Seller an amount equal to US$72,500,000 as promptly as possible (but in any event within five (5) Business Days after the date of termination).

(b) If this Agreement is terminated by the Seller pursuant to Section 8.2, the Purchaser and the Guarantor, jointly and severally, shall pay to the Seller an amount equal to US$82,500,000 as promptly as possible (but in any event within five (5) Business Days after the date of termination).

(c) The payment contemplated by Section 8.3(a) and Section 8.3(b) shall only be payable by the Guarantor and the Purchaser, together, one time as a single payment.

(d) In the event of termination of this Agreement, this Agreement shall forthwith become void and there shall be no liability on the part of any party to this Agreement, except for the obligations and other provisions set forth under Section 5.8 ( Public Announcements ), Section 5.9 ( Confidentiality ), this Section 8 ( TERMINATION ), and Section 11 ( MISCELLANEOUS PROVISIONS ) (other than Section 11.12 ( Seller Disclosure Schedules )) and Exhibit A ( Certain Definitions ), all of which shall survive the date of termination of this Agreement. Notwithstanding the foregoing, but subject to the following proviso of this sentence, nothing contained herein shall relieve any party from liability for any fraud and willful and intentional breach hereof; provided, however , that in the event this Agreement is terminated pursuant to Section 8.1(b) and the Seller receives the payment contemplated by Section 8.3(a), then receipt of such payment in full shall constitute liquidated damages for any breach of this Agreement and none of the Seller or any of its Affiliates shall be entitled to additional damages or other remedies for any breach of the this Agreement occurring prior to such termination.

SECTION 9

INDEMNIFICATION

9.1 Indemnification Obligations of the Seller . From and after the Closing, the Seller shall indemnify and hold harmless the Purchaser Indemnified Parties from, against, and in respect of, any and all Losses arising out of or relating to:

(a) any inaccuracy in or breach of any representation or warranty of the Seller set forth in this Agreement, either at and as of the Agreement Date or the Closing Date as if such representation and warranty had been made at and as of the Closing Date;

(b) any breach of any covenant, agreement or undertaking made by the Seller in this Agreement; or

(c) the Excluded Liabilities.

The Losses of the Purchaser Indemnified Parties described in this Section 9.1 as to which the Purchaser Indemnified Parties are entitled to indemnification are collectively referred to as "Purchaser Losses ."

9.2 Indemnification Obligations of the Purchaser and the Guarantor . From and after the Closing, the Purchaser and the Guarantor shall, jointly and severally, indemnify and hold harmless the Seller Indemnified Parties from, against and in respect of any and all Losses arising out of or relating to, and in addition, without prejudice to the foregoing, the Purchaser individually and on its own account as a separate covenant shall indemnify and hold harmless the Seller Indemnified Parties from, against and in respect of any and all Losses arising out of or relating to:

(a) any inaccuracy in or breach of any representation or warranty of the Purchaser or the Guarantor set forth in this Agreement, either at and as of the Agreement Date or the Closing Date as if such representation and warranty had been made at and as of the Closing Date;

(b) any breach of any covenant, agreement or undertaking made by the Purchaser or the Guarantor in this Agreement; or

(c) the Assumed Liabilities.

The Losses of the Seller Indemnified Parties described in this Section 9.2 as to which the Seller Indemnified Parties are entitled to indemnification are collectively referred to as " Seller Losses ."

9.3 Indemnification Procedure .

(a) Within ten (10) Business Days following receipt by an Indemnified Party of notice by a third party (including any Governmental Body) of any complaint, dispute or claim or the commencement of any audit, investigation, action or proceeding with respect to which such Indemnified Party may be entitled to indemnification pursuant hereto (a " Third-Party Claim "), such Indemnified Party shall provide written notice thereof to the party obligated to indemnify under this Agreement (the "Indemnifying Party "), provided, however , that the failure to so notify the Indemnifying Party shall relieve the Indemnifying Party from liability hereunder with respect to such Third-Party Claim only if, and only to the extent that, such failure to so notify the Indemnifying Party prejudices the Indemnifying Party or results in the forfeiture by the Indemnifying Party of rights and defenses otherwise available to the Indemnifying Party with respect to such Third-Party Claim. The Indemnifying Party shall have the right, upon written notice assuming full responsibility for any Purchaser Losses or Seller Losses (as the case may be) resulting from such Third-Party Claim delivered to the Indemnified Party within twenty (20) days thereafter, to assume the defense of such Third-Party Claim. In the event, however, that the Indemnifying Party declines or fails to assume the defense of such Third-Party Claim within such twenty (20) day period, then the Indemnified Party shall have the right, but not the obligation, to assume the defense of such Third-Party Claim and any Purchaser Losses or any Seller Losses (as the case may be) shall include the reasonable fees and disbursements of counsel for the Indemnified Party as incurred. In any Third-Party Claim for which indemnification is being sought hereunder the Indemnified Party or the Indemnifying Party, whichever is not assuming the defense of such Third-Party Claim, shall have the right to participate in such matter and to retain its own counsel at such party's own expense. The Indemnifying Party or the Indemnified Party (as the case may be) shall at all times use reasonable efforts to keep the Indemnifying Party or Indemnified Party (as the case may be) reasonably apprised of the status of the defense of any matter the defense of which it is maintaining and to cooperate in good faith with each other with respect to the defense of any such matter.

(b) No Indemnified Party may settle or compromise any Third-Party Claim or consent to the entry of any judgment with respect to which indemnification is being sought hereunder without the prior written consent of the Indemnifying Party (which may not be unreasonably withheld, delayed or conditioned), unless the Indemnifying Party fails to assume and maintain the defense of such Third-Party Claim pursuant to Section 9.3(a) after providing a written notice assuming full responsibility thereof to the Indemnifying Party. An Indemnifying Party may not, without the prior written consent of the Indemnified Party, settle or compromise any Third-Party Claim or consent to the entry of any judgment with respect to which indemnification is being sought hereunder unless such settlement, compromise or consent (x) includes an unconditional release of the Indemnified Party and its officers, directors, employees and Affiliates from all liability arising out of, or related to, such Third-Party Claim, (y) does not contain any admission or statement suggesting any wrongdoing or liability on behalf of the Indemnified Party and (z) does not contain any equitable order, judgment or term that in any manner affects, restrains or interferes with the business of the Indemnified Party or any of the Indemnified Party's Affiliates.

(c) In the event an Indemnified Party claims a right to payment pursuant hereto with respect to any matter not involving a Third-Party Claim (a "Direct Claim "), such Indemnified Party shall send written notice of such claim to the appropriate Indemnifying Party (a "Notice of Claim "). Such Notice of Claim shall specify in detail the legal basis for and the underlying facts of such Direct Claim. For the avoidance of doubt, the parties agree and understand that Notices of Claim in respect of a breach of a representation or warranty must be delivered prior to the expiration of the survival period for such representation or warranty under Section 9.4. In case the Indemnifying Party disputes the liability asserted under such Direct Claim, the Indemnifying Party shall send a notice of such dispute (an "Objection Notice ") to the Indemnified Party within thirty (30) days following its receipt of such Notice of Claim. In the event the Indemnifying Party disputes its liability with respect to such Direct Claim as provided above, as promptly as possible, such Indemnified Party and the appropriate Indemnifying Party shall establish the merits and amount of such Direct Claim (by mutual agreement, litigation, arbitration or otherwise) and, within ten (10) Business Days following the final determination of the merits and amount of such Direct Claim, the Indemnifying Party shall pay to the Indemnified Party immediately available funds in an amount equal to such Direct Claim as determined hereunder.

9.4 Survival Period; Time Limits .

(a) The representations and warranties made by the parties herein shall not be extinguished by the Closing, but shall survive the Closing for, and all claims for indemnification in connection therewith and all claims for indemnification in connection with a breach of any covenant or other agreement made by the parties herein shall be asserted not later than the date falling, twelve (12) months after the Closing Date, except that the representations and warranties set forth in Section 3.1 ( Organization ), Section 3.2 ( Subsidiaries ), Section 3.3 ( Authority; Binding Nature of Agreement ), clauses (a) and (b) of Section 3.4 ( Absence of Restrictions ), Section 3.19 ( Tax Matters ), Section 4.1 ( Organization and Standing ), Section 4.2 ( Authority; Binding Nature of Agreement ), Section 4.3 ( Capitalization ), Section 4.4 ( Valid Issuance ) and clauses (a) and (b) of Section 4.7 ( Absence of Restrictions ) shall survive until the date of the expiration of the applicable statute of limitations and as otherwise specified in the covenants in Section 5.

(b) All claims for indemnification arising out of any of the Excluded Liabilities falling under Section 1.4(a) (and not otherwise described in clauses (b) through (p) of Section 1.4) shall be asserted no later than the date falling two (2) years after the Closing Date and be time-barred thereafter.

(c) All claims for indemnification arising out of any of the Excluded Liabilities falling under Section 1.4(j) shall be asserted no later than the date falling three (3) years after the Closing Date and be time-barred thereafter.

(d) The Purchaser Indemnified Parties' ability to make claims for indemnification arising out of the Excluded Liabilities falling under clauses (b) through (i) and (k) through (p) of Section 1.4 shall survive until the date of the expiration of the applicable statute of limitations.

(e) Notwithstanding the foregoing clauses (a) through (d) of this Section 9.4, if, prior to the close of business on the last day a claim for indemnification may be asserted hereunder, an Indemnifying Party shall have been properly notified of a claim for indemnity hereunder and such claim shall not have been finally resolved or disposed of at such date, such claim shall continue to survive and shall remain a basis for indemnity hereunder until such claim is finally resolved or disposed of in accordance with the terms hereof.

9.5 Liability Limits . Notwithstanding anything to the contrary set forth herein, the Purchaser Indemnified Parties shall not make a claim against the Seller for indemnification under Section 9 for Purchaser Losses unless and until the aggregate amount of such Purchaser Losses (excluding all Purchaser Losses in respect of any single claim which do not exceed US$100,000, for which no claim for indemnification may be made (the "Threshold Amount ")) exceeds $10US,000,000 (the "Purchaser Basket "), in which event the Purchaser Indemnified Parties may claim indemnification only with respect to the amount of such Purchaser Losses in excess of the Purchaser Basket. The total aggregate liability, other than Excluded Liabilities pursuant to Section 1.4(j), of the Seller for Purchaser Losses with respect to any and all claims made pursuant to Section 9 shall be limited to $137US,500,000 (the "Indemnity Cap "). Notwithstanding anything to the contrary set forth herein, (i) the Threshold Amount and the Purchaser Basket shall not apply to the Seller's indemnification obligations (x) based on Section 9.1(c) or (y) arising out of a breach of Section 5.16; (ii) the Indemnity Cap shall not apply to the Seller's indemnification obligations arising out of (x) any of the Excluded Liabilities falling under clauses (b) through (i) and clauses (k) through (p) of Section 1.4 or (y) a breach of Section 2.1(b), Section 2.3(b), Section 5.9 or Section 5.13; and (iii) the total aggregate liability of the Seller for Purchaser Losses with respect to any and all claims made pursuant to Section 9 that arise out of any of the Excluded Liabilities falling under clause (j) of Section 1.4 shall be limited to a separate indemnity cap equal to $68US,750,000.

9.6 Exclusive Remedy . Except for actions grounded in fraud or willful or intentional breach, from and after the Closing and subject to Section 8 and Section 11.1, the indemnities provided in this Section 9 shall constitute the sole and exclusive remedy of any Indemnified Party for damages arising out of, resulting from or incurred in connection with any claims related to this Agreement. Notwithstanding the foregoing, nothing herein shall limit the ability of the Parties to seek specific performance or other equitable remedies pursuant to Section 11.1.

SECTION 10

GUARANTEE

10.1 Guarantee . Without limiting any of the obligations and liabilities of the Guarantor under this Agreement, the Guarantor hereby absolutely, irrevocably and unconditionally guarantees to the Seller the full and prompt payment, performance and satisfaction of all of the Purchaser's and any Purchaser Designee's obligations, duties, covenants, agreements, and liabilities to the Seller arising under this Agreement and under any other Transaction Documents, whether such obligations, duties, covenants, agreements and liabilities of the Purchaser or any Purchaser Designee arise prior to, on or after the Closing Date (the "*Guaranteed Obligations ").*

10.2 Obligations Absolute . To the fullest extent permitted by applicable Law, the Guaranteed Obligations of the Guarantor hereunder shall remain fully effective without regard to, and shall not be affected, limited or impaired in any way by: (i) any bankruptcy, insolvency, reorganization, adjustment, dissolution, liquidation, examinership or other like proceeding (each, an "Insolvency Proceeding ") relating to the Seller, the Purchaser, any Purchaser Designee or the Guarantor or any Affiliates thereof or any other implied or express guaranty thereof; (ii) any action taken by any trustee or receiver, or by any court, in any Insolvency Proceeding, whether or not the Guarantor shall have had notice or knowledge of any Insolvency Proceeding; (iii) any assignment of this Agreement by any party to any other party; (iv) any modification, alteration, amendment or addition of or to this Agreement; or (v) any defense of the Purchaser, any Purchaser Designee or any other Person or any circumstance whatsoever (with or without notice to or knowledge of the Guarantor) which may or might in any manner or to any extent vary the risks of such Guarantor or might otherwise constitute a legal or equitable discharge of a surety or a guarantor or otherwise.

10.3 Primary Obligation; Waivers . The guarantee provided by the Guarantor to the Seller under this Section 10 is a primary obligation of the Guarantor and the Guarantor hereby agrees that it is directly liable to the Seller for the Guaranteed Obligations and that a separate action for enforcement of such obligations may be brought against the Guarantor, whether such action is brought against the Purchaser, a Purchaser Designee or any other party or whether the Purchaser, a Purchaser Designee or any other party is joined in any such action. The Guarantor hereby waives any right it may have by Law or otherwise to require the Seller to institute suit against the Purchaser or a Purchaser Designee or to require the Seller to exhaust any rights and remedies which the Seller may have against the Purchaser or a Purchaser Designee.

SECTION 11

MISCELLANEOUS PROVISIONS

11.1 Enforcement of Agreement . Each of the parties hereto hereby fully acknowledges and unequivocally agrees that such party would be irreparably damaged if any of the provisions of this Agreement are not performed by the other parties in accordance with their specific terms and that any breach of this Agreement by the Seller, the Purchaser or the Guarantor, as the case may be, would not be adequately compensated by monetary damages alone. Accordingly, to the fullest extent permitted by applicable Law, (i) in addition to any other right or remedy to which the Seller, the Purchaser or the Guarantor may be entitled, at law or in equity, the Seller, the Purchaser or the Guarantor, as the case may be, shall be entitled to enforce any provision of this Agreement by a decree of specific performance and temporary, preliminary and permanent injunctive relief to prevent breaches or threatened breaches of any of the provisions of this Agreement in any action instituted in a court of competent jurisdiction, without the posting of any bond or other undertaking, and (ii) each party hereto hereby irrevocably waives, in any action for specific performance, the defense of adequacy of a remedy at law. For the avoidance of doubt, in the case of a Closing Breach, to the fullest extent permitted by applicable Law, the Seller shall be entitled to specifically enforce the provisions of this Agreement, including the provisions relating to the consummation of the transactions contemplated by this Agreement and the other Transaction Documents, and the Seller may terminate this Agreement and seek monetary payments pursuant to Section 8 when such remedy of specific performance has been denied by a court of competent jurisdiction.

11.2 Further Assurances . Each party hereto shall execute and cause to be delivered to each other party hereto such instruments and other documents, and shall take such other actions, as such other party may reasonably request (prior to, at or after the Closing) for the purpose of carrying out or evidencing any of the transactions contemplated by this Agreement and the other Transaction Documents.

11.3 Fees and Expenses . Unless otherwise specified herein, each party to this Agreement shall bear and pay all fees, costs and expenses (including legal fees and accounting fees, but excluding all stamp duties associated herewith which shall be paid by the Purchaser and/or the Guarantor) that have been incurred or that are incurred by such party in connection with the transactions contemplated by this Agreement and the other Transaction Documents.

11.4 Waiver; Amendment . Any agreement on the part of a party hereto to any extension or waiver of any provision hereof shall be valid only if set forth in an instrument in writing signed on behalf of such party. A waiver by a party hereto of the performance of any covenant, agreement, obligation, condition, representation or warranty shall not be construed as a waiver of any other covenant, agreement, obligation, condition, representation or warranty. A waiver by any party of the performance of any act shall not constitute a waiver of the performance of any other act or an identical act required to be performed at a later time. This Agreement may not be amended, modified or supplemented except by written agreement of all of the parties hereto.

11.5 Entire Agreement .

(a) This Agreement and the other Transaction Documents constitute the entire agreement among the parties to this Agreement and the other Transaction Documents and supersede all other prior agreements, representations and understandings, both written and oral, among or between any of the parties with respect to the subject matter hereof and thereof.

(b) This Agreement shall take precedence over any Transfer Agreement. To the extent that any Transfer Agreement shall be inconsistent with the terms and conditions of this Agreement, the parties shall undertake to amend such Transfer Agreement such that it is consistent with the terms and conditions of this Agreement and, if during the period and to the extent such amendment has not occurred, shall put each other in the same economic position among the parties as if such amendment had occurred.

11.6 Execution of Agreement; Counterparts; Electronic Signatures .

(a) This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument, and shall become effective when counterparts have been signed by each of the parties and delivered to the other parties; it being understood that all parties need not sign the same counterparts.

(b) The exchange of copies of this Agreement and of signature pages by facsimile transmission (whether directly from one facsimile device to another by means of a dial-up connection or whether mediated by the worldwide web), by electronic mail in "portable document format" (".pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by combination of such means, shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile shall be deemed to be their original signatures for all purposes.

11.7 Governing Law; Jurisdiction and Venue .

(a) This Agreement shall be construed in accordance with, and governed in all respects by, the internal laws of the State of Delaware (without giving effect to principles of conflicts of laws). The parties hereto hereby declare that it is their intention that this Agreement shall be regarded as made under the laws of the State of Delaware and that the laws of said State shall be applied in interpreting its provisions in all cases where legal interpretation shall be required. Each of the parties hereto agrees that this Agreement has been entered into by the parties hereto in express reliance upon 6 Del. C. 2708.

(b) All disputes, controversies or claims arising out of or in connection with this Agreement or the transactions contemplated hereby shall be heard and determined exclusively by the Court of Chancery of the State of Delaware, or if that court lacks jurisdiction, a state or federal court sitting in the State of Delaware. Each party to this Agreement expressly, irrevocably and unconditionally:

(i) consents and submits to the jurisdiction of the Court of Chancery of the State of Delaware, or if that court lacks jurisdiction, a state or federal court sitting in the State of Delaware (and each appellate court located in the State of Delaware), in connection with any legal proceeding relating to any disputes, controversies or claims arising out of or in connection with this Agreement or the transactions contemplated hereby;

(ii) agrees (1) to the extent such party is not otherwise subject to service of process in the State of Delaware, to appoint and maintain an agent in the State of Delaware as such party's agent for acceptance of legal process and notify the other party or parties hereto of the name and address of such agent, and (2) that service of any process, summons, notice or document by registered or certified mail (with a proof of receipt validated by the United States Postal Service) addressed to such party at the address set forth in Section 11.11 shall, to the fullest extent permitted by applicable Law, constitute effective service of such process, summons, notice or document for purposes of any such legal proceeding, and that service made pursuant to (ii) (1) or (2) above shall, to the fullest extent permitted by law, have the same legal force and effect as if served upon such party personally within the State of Delaware;

(iii) agrees that the Court of Chancery of the State of Delaware, or if that court lacks jurisdiction, a state or federal court sitting in the State of Delaware (and each appellate court located in the State of Delaware), shall be deemed to be a convenient forum; and

(iv) agrees not to assert (by way of motion, as a defense or otherwise), in any such legal proceeding commenced in the Court of Chancery of the State of Delaware, or if that court lacks jurisdiction, a state or federal court sitting in the State of Delaware (and each appellate court located in the State of Delaware), any claim by any of the Seller, the Purchaser or the Guarantor that it is not subject personally to the jurisdiction of such court, that such legal proceeding has been brought in an inconvenient forum, that the venue of such proceeding is improper or that this Agreement or the subject matter of this Agreement may not be enforced in or by such court.

11.8 WAIVER OF JURY TRIAL . EACH OF THE PARTIES IRREVOCABLY WAIVES ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING BETWEEN THE PARTIES ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

11.9 Assignment and Successors .

(a) No party hereto may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other parties, except that the Seller may assign any of its rights and delegate any of its obligations under this Agreement to any of its Affiliates and the Purchaser may assign the right to acquire certain of the Acquired Assets, or to assume certain of the Assumed Liabilities or employment relationships with the Transferred Employees to the Purchaser Designees pursuant to Section 5.4.

(b) Irrespective of any assignment, assumption or execution of a Transaction Document by a Purchaser Designee, the Purchaser and the Guarantor shall remain as the primary obligors under this Agreement and the other Transaction Documents, and shall remain jointly and severally liable in addition to such Purchaser Designee for, and any such assignment, assumption or execution shall not relieve the Purchaser or the Guarantor of, any liabilities or obligations of the Purchaser, the Guarantor and the Purchaser Designees under or in connection with this Agreement and the other Transaction Documents. Any reference to the Purchaser in this Agreement shall, to the extent applicable, also be deemed a reference to the applicable Purchaser Designee, except where in context of this Agreement such use would not be appropriate. The fact that the Purchaser Designees are expressly referenced or not referenced in certain provisions of the Agreement shall not limit the generality of the immediately preceding sentence with respect to other provisions of this Agreement.

(c) Subject to the foregoing Sections 11.9(a) and 11.9(b), this Agreement will apply to, be binding in all respects upon and inure to the benefit of the successors and permitted assigns of the parties.

11.10 Parties in Interest . None of the provisions of this Agreement is intended to provide any rights or remedies to any Person other than the parties hereto and their respective successors and assigns (if any).

11.11 Notices . All notices, consents, waivers and other communications required or permitted by this Agreement shall be in writing and shall be deemed given to a party when (a) delivered to the appropriate address by hand or by nationally recognized overnight courier service (costs prepaid), or (b) sent by facsimile or e-mail with confirmation of transmission by the transmitting equipment confirmed with a copy delivered as provided in clause (a), in each case to the following addresses, facsimile numbers or e-mail addresses and marked to the attention of the person (by name or title) designated below (or to such other address, facsimile number, e-mail address or person as a party may designate by notice to the other parties):

|  |  |
| --- | --- |
| the Seller: | |
|  | |
| COMMUNICALLIN Electronics Co., Ltd. | |
| Address | |
|  | |
| Korea | |
| Fax no.: | xxx |
| Attention: | International Legal Department, Office of the General Counsel |
|  |  |
| with a mandatory copy to (which copy shall not constitute notice): | |
|  | |
| Brad Gerlow | |
| Address | |
| Hong Kong | |
| Fax no.: | xxx-xxx-xxx |
| Attention: | Min Chul Hong |
|  | |
| the Purchaser: | |
|  | |
| TOWERTOPS Technology International | |
| Address | |
|  | |
| Cayman Islands, British West Indies | |
| Fax no.: | xxx-xxx-xxx |
| Attention: | Norm S. Lipton |
|  |  |
|  | |
| with a mandatory copy to (which copy shall not constitute notice): | |
|  | |
| Kiman, Jerni, Joltor | |
| Professional Corporation | |
| Address | |
| California | |
| United States of America | |
| Fax No.: | xxx-xxx-xxx |
| Attention: | Lowy Gersh |
|  | Hunter B. Manken |
|  | |
| the Guarantor: | |
|  | |
| TOWERTOPS Technology plc | |

48

|  |  |
| --- | --- |
| Address | |
|  | |
| , Ireland | |
| Fax no.: | xxx-xxx-xxx |
| Attention: | Norm S. Lipton |
|  |  |
|  | |
| with a mandatory copy to (which copy shall not constitute notice): | |
|  | |
| Kiman, Jerni, Joltor | |
| Professional Corporation | |
| Address | |
| California | |
| United States of America | |
| Fax No.: | +1-650-493-6811 |
| Attention: | Lowy Gersh |
|  | Hunter B. Manken |

11.12 Seller Disclosure Schedules . The section and subsection references in the Seller Disclosure Schedules shall update, modify, amend and supplement the corresponding section or subsection of this Agreement to which the disclosure relates and any other section or subsection of this Agreement (other than Section 1 hereof) to which it is reasonably apparent that such disclosure relates. At any time prior to the Closing, the Seller may update, modify, amend and supplement the Seller Disclosure Schedules subject to the prior written consent (not to be unreasonably withheld) of the Purchaser with any additional information necessary to make such disclosures accurate and complete in all material respects; provided that such updated disclosures shall be deemed to update, modify, amend and supplement all representations, warranties, covenants and other provisions to which such disclosures relate for all purposes hereunder, including for purposes of Section 9.1 of this Agreement. At any time within fourteen (14) days after the Agreement Date, the Purchaser may request specific changes to or modifications of the Seller Disclosure Schedules by giving a written request to the Seller, in which case the Seller shall have a right to consent in writing to such changes or modification which consent shall not be unreasonably withheld. If the Seller so consents, it shall update and modify the Seller Disclosure Schedules as necessary. The inclusion of any information in the Seller Disclosure Schedules or other documents made available or delivered by the Seller pursuant to this Agreement shall be not be deemed to be an admission or evidence of the materiality of such item, nor shall it establish a standard of materiality for any purpose whatsoever.

11.13 Construction; Usage .

(a) Interpretation . In this Agreement, unless a clear contrary intention appears:

(i) the singular number includes the plural number and vice versa;

(ii) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are not prohibited by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;

(iii) reference to any gender includes each other gender;

(iv) reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof;

(v) reference to any Law means such Law as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder, and reference to any section or other provision of any Law means that provision of such Law from time to time in effect and constituting the substantive amendment, modification, codification, replacement or reenactment of such section or other provision;

(vi) reference to the Purchaser shall be deemed reference to the Purchaser and all relevant Purchaser Designee(s);

(vii) reference to the Seller shall be deemed reference to the Seller and the Seller Subsidiaries;

(viii) "hereunder," "hereof," "hereto," and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article, Section or other provision hereof;

(ix) "including" means including without limiting the generality of any description preceding such term; and

(x) references to documents, instruments or agreements shall be deemed to refer as well to all addenda, exhibits, schedules or amendments thereto.

(b) Legal Representation of the Parties . This Agreement was negotiated by the parties with the benefit of legal representation and any rule of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any party shall not apply to any construction or interpretation hereof.

(c) Headings . The headings contained in this Agreement are for the convenience of reference only, shall not be deemed to be a part of this Agreement and shall not be referred to in connection with the construction or interpretation of this Agreement.

(d) Accounting Terms . All accounting terms not specifically defined herein shall be construed in accordance with Korean IFRS.

11.14 Severability . If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

11.15 Time of Essence . With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

11.16 Schedules and Exhibits . The Schedules and Exhibits (including the Seller Disclosure Schedules) are hereby incorporated into this Agreement and are hereby made a part hereof as if set out in full herein.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed, as of the date first above written.

|  |  |  |
| --- | --- | --- |
|  | SELLER: | |
|  |  | |
|  | COMMUNICALLIN ELECTRONICS CO., LTD. | |
|  |  | |
|  | By: | |s|Jeon-Il Kim |
|  | Name: Jeon-Il Kim | |
|  | Title: President | |

Signature Page to Asset Purchase Agreement

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed, as of the date first above written.

|  |  |  |
| --- | --- | --- |
|  | PURCHASER: | |
|  |  | |
|  | TOWERTOPS TECHNOLOGY INTERNATIONAL | |
|  |  | |
|  | By: | |s|Hans G. Anderson |
|  | Name: Hans G. Anderson | |
|  | Title: President | |

Signature Page to Asset Purchase Agreement

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed, as of the date first above written.

|  |  |  |  |
| --- | --- | --- | --- |
|  | GUARANTOR: | | |
|  |  | | |
|  | Given under the common seal of TOWERTOPS TECHNOLOGY PLC | | |
|  |  | | |
|  |  | | |
|  | |s|Hong-Il Song |  | |s|Hans G. Anderson |
|  | (Witness' Signature) |  | Hans G. Anderson |
|  |  | | |
|  |  | | |
|  |  | | |
|  | (Witness' Address) | | |
|  |  | | |
|  |  | | |
|  | Finance Exec. Director | | |
|  | (Witness' Occupation) | | |
|  |  | | |
|  | (Company Seal) | | |

EXHIBIT A

CERTAIN DEFINITIONS

For purposes of the Agreement (including this Exhibit A ):

"2010 Financial Statements of the Business" has the meaning ascribed to it in Section 5.3.

"Acquired Assets" has the meaning ascribed to it in Section 1.1.

"Additional Transferred Assets" means all of the assets specified on Schedule 1.1(k) of the Seller Disclosure Schedules.

"Affiliate" means a corporation, company, partnership or other entity that now or later owns, is owned by or is under common ownership or control with, directly or indirectly, a Party to this Agreement. For purposes of the foregoing, "control," "own", "owned", or "ownership" means ownership, either directly or indirectly, of fifty percent (50%) or more of the stock or other equity interest entitled to vote for the election of directors or an equivalent body. The corporation, company, partnership, or other entity will be deemed to be an Affiliate only so long as such ownership or control exists.

"Agreement" means this Asset purchase agreement, together with all exhibits and schedules thereto, as amended from time to time.

"Agreement Date" has the meaning ascribed to it in the Preamble.

"Alternative Transaction" has the meaning ascribed to it in Section 5.5.

"Anti-Corruption and Anti-Bribery Laws" means the Foreign Corrupt Practices Act of 1977, as amended, any rules or regulations thereunder, or any other applicable United States or foreign anti-corruption or anti-bribery laws or regulations.

"Antitrust Law" means the Sherman Act, as amended, the Clayton Act, as amended, the HSR Act, as amended, the Federal Trade Commission Act, as amended, the EC Merger Regulation, and all other Laws that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or lessening of competition or creation or strengthening of a dominant position through merger or acquisition.

"Asset Locations" means those locations set forth in Schedule 1.1(a)(ii) of the Seller Disclosure Schedules.

"Assumed Contracts" means, subject to Section 5.7, all rights of the Seller and the Seller Subsidiaries in and to all Seller Contracts that relate exclusively to the Business (other than the Excluded Contracts), including but not limited to those contracts set forth on Schedule 1.1(h) of the Seller Disclosure Schedules and all Seller Contracts that relate exclusively to the conduct of the Business entered into between the Agreement Date and the Closing.

A-1

"Assumed Liabilities" has the meaning ascribed to it in Section 1.3.

" Book Value " shall mean the dollar value at which a given asset is carried on the balance sheet of the owner of the asset.

"Business" means the Seller's and its Subsidiaries' HDD business and operations, as conducted by the Storage Systems Division of the Seller and the Seller Subsidiaries as of the Agreement Date, including without limitation: (i) the design and development, and manufacture and testing of Business Products, including both internal operations for the foregoing and management of third party vendor and suppliers with respect to the foregoing; (ii) the design and development of Custom Components and the procurement of Custom Components from third parties; (iii) the development and creation of Software for Business Products, including firmware, drivers and Software distributed for use with Business Products; (iv) the sales, distribution and marketing of Business Products; (v) support of Business Products including fulfillment of warranty obligations, reverse logistics, and customer support; and (vi) provisions of services related to Business Products including OEM, custom design support and provision of reference designs; provided that, notwithstanding any of the foregoing, in no event shall the "Business" include Seller's Component Business or any portion or element thereof.

"Business Day" means any day except Saturday, Sunday or any day on which banks are generally not open for business in the City of New York, New York or Seoul, the Republic of Korea.

"Business Employees" has the meaning ascribed to it in Section 3.14(a).

"Business Products" means (i) any HDDs that are, or have been within the 5-year period preceding the Closing Date, designed, manufactured and sold by the Storage Systems Division of the Seller and (ii) any HDDs that are currently under development by the Storage Systems Division of the Seller including those products identified as being currently under development on Schedule A-2 of the Seller Disclosure Schedules. Business Products include Product Software, housing, documentation, packaging and the like that form or constitute a complete HDD product sold directly or indirectly to end users.

"Business Financial Statements" has the meaning ascribed to it in Section 5.3.

"Cash Consideration" has the meaning ascribed to it in Section 2.1.

"Closing" means the consummation of the purchase and sale of the Acquired Assets and assumption of the Assumed Liabilities, as set forth in Section 7 of this Agreement.

"Closing Breach" has the meaning ascribed in Section 8.2.

"Closing Date" means the date on which the Closing occurs.

"Component" shall mean any components, assemblies and other materials (other than an integrated and complete HDDs), including without limitation magnetic discs, motors, actuators, and ASICs and other semiconductor products.

"Confidential Information" means any data or information concerning a party to this Agreement (including Trade Secrets), without regard to form, regarding (for example and including) (a) business process models; (b) proprietary Software; (c) research, development, products, services, marketing, selling, business plans, budgets, unpublished financial statements, licenses, prices, costs, Contracts, suppliers, customers, and customer lists; (d) the identity, skills and compensation of employees, contractors, and consultants; (e) specialized training; and (f) discoveries, developments, Trade Secrets, processes, formulas, data, lists, and all other works of authorship, mask works, ideas, concepts, know-how, designs, and techniques, whether or not any of the foregoing is or are patentable, copyrightable, or registerable under any applicable Intellectual Property Laws or industrial property Laws. Notwithstanding the foregoing, no data or information constitutes "Confidential Information" if such data or information is publicly known and in the public domain through means that do not involve a breach by any party of any covenant or obligation set forth in this Agreement. Residuals shall not be considered Confidential Information. " Residuals " means information of a general nature that would otherwise be Confidential Information that is retained in the unaided memory of a Person who has had access to Confidential Information.

"Consent" has the meaning ascribed to it in Section 3.5.

"Contract" means any written, oral or other agreement, contract, subcontract, lease, understanding, instrument, note, warranty, license, sublicense, insurance policy, benefit plan or legally binding commitment or undertaking of any nature, whether express or implied.

"Copyable Technology" means Technology that can be copied or replicated without incurring material cost in any form, including for example, Software and documents.

"Copyrights" means mask works, rights of publicity and privacy, and copyrights in works of authorship of any type, registrations and applications for registration thereof throughout the world, all rights therein provided by international treaties and conventions, all moral and common-law rights thereto, and all other rights associated therewith.

"Custom Component" means a specific component of a Business Product (a) being manufactured and sold as of the Closing (i) where each and every element of the design, and the design as a whole, of such component was created exclusively by the Storage Systems Division of Seller or by a third party (alone or with the Storage Systems Division of the Seller) exclusively for the Storage Systems Division of the Seller, in each case exclusively for use in a Business Product, and (ii) that has been manufactured exclusively by the Storage Systems Division of the Seller or by a third party (alone or with the Storage Systems Division of the Seller) exclusively for the Storage Systems Division of Seller, in each case exclusively for use in a Business Product or (b) otherwise set forth on the Seller Disclosure Schedules.

"Customer" means a customer of the Seller or the Seller Subsidiaries that paid the Seller and the Seller Subsidiaries more than US$100,000 in the aggregate during the twelve (12)-month period ended December 31, 2010 or a customer that is expected to pay the Seller and the Seller Subsidiaries more than US$100,000 in the aggregate during the twelve (12)-month period ended December 31, 2010, in each case for services or products related exclusively to the Business.

"Direct Claim" has the meaning ascribed to it in Section 9.3(c).

"Encumbrance" means any lien, pledge, hypothecation, charge, mortgage, security interest, claim, affecting property, real or personal, tangible or intangible, any restriction on the transfer of any Acquired Asset, any restriction on the receipt of any income derived from any Acquired Asset, any restriction on the use of any Acquired Asset, any restriction on the possession, exercise or transfer of any other attribute of ownership of any Acquired Asset, or any filing of or agreement to give any financing statement under any applicable Laws governing security interests.

"Entity" means any corporation (including any non-profit corporation), general partnership, limited partnership, limited liability partnership, joint venture, estate, trust, company (including any limited liability company or joint stock company), firm or other enterprise, association, organization or entity.

"Environmental Law" means any federal, state, local or non-U.S. Law (i) relating to pollution or protection of human health or the environment (including ambient air, surface water, ground water, land surface or subsurface strata), (ii) relating to emissions, discharges, releases or threatened releases of Materials of Environmental Concern, or (iii) otherwise relating to the manufacture, processing, sale, distribution, use, treatment, storage, labeling, recycling, exposure of others to, disposal, transport or handling of Materials of Environmental Concern or a product or waste containing Materials of Environmental Concern, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, the Resource Recovery and Conservation Act of 1976, the Federal Water Pollution Control Act, the Clean Air Act, the Hazardous Materials Transportation Act, the Clean Water Act, the European Union Directive 2002/96/EC on Waste Electrical and Electronic Equipment (" WEEE Directive ") and European Union Directive 2002/95/EC on the Restriction on the Use of Hazardous Substances (" RoHS Directive "), and China's Management Methods on the Control of Pollution Caused by Electronic Information Products (" China RoHS "), all as amended at any time.

"EU Merger Regulation" has the meaning ascribed to it in Section 5.11(a).

"Exchange Act" means the Securities Exchange Act of 1934, as amended and, the rules and regulations promulgated thereunder.

"Excluded Assets" has the meaning ascribed to it in Section 1.2.

"Excluded Contracts" has the meaning ascribed to it in Section 1.2(m).

"Excluded Liabilities" has the meaning ascribed to it in Section 1.4.

"Excluded Patents" has the meaning ascribed to it in Section 1.2(l).

"Excluded Tangible Assets" has the meaning ascribed to it in Section 1.2(k).

"Exclusive Permits" means Governmental Authorizations that relate exclusively to the conduct of the Business.

"Expiration Date" means December 31, 2011, or if extended pursuant to Section 5.11(c), March 31, 2012.

"Export and Import Control Laws" means any U.S. or applicable non-U.S. law, regulation, or order governing (i) imports, exports, re-exports, or transfers of products, services, software, or technologies from or to the United States or another country; (ii) any release of technology or software in any foreign country or to any foreign Person (anyone other than a citizen or lawful permanent resident of the United States, or a protected individual as defined by 8 U.S.C. 1324b(a)(3)) located in the United States or abroad; (iii) economic sanctions or embargoes; or (iv) compliance with unsanctioned foreign boycotts.

"Governmental Authorization" means any: (a) approval, permit, license, certificate, franchise, permission, clearance, consent, registration, qualification or other authorization issued, granted, given or otherwise made available by or under the authority of any Governmental Body or pursuant to any Law, or (b) right under any Contract with any Governmental Body.

"Governmental Body" means any (a) nation, state, commonwealth, province, territory, county, municipality, district or other jurisdiction of any nature; (b) federal, state, local, municipal, foreign, supranational or other government; or (c) governmental, self-regulatory or quasi-governmental authority of any nature (including any governmental division, department, agency, commission, instrumentality, official, organization, unit, body or Entity and any court or other tribunal).

"Guaranteed Obligations" has the meaning ascribed to it in Section 10.1.

"Guarantor" has the meaning ascribed to it in the Preamble.

"Guarantor Constituent Documents" means the formation documents (including, as applicable, any certificate of incorporation, bylaws or other charter documents), including all amendments thereto, of the Guarantor.

"Guarantor Material Adverse Effect" means any fact, change, event, effect, occurrence or circumstance that, individually or in the aggregate (considered together with all other facts, changes, events, effects, occurrences or circumstances) has or would reasonably be expected to have or give rise to a material adverse effect on (a) the business, financial condition or results of operations of the Guarantor and its Subsidiaries, taken as a whole; provided that in no event shall any fact, change, event, effect, occurrence or circumstance, alone or in combination, be deemed to constitute, or be taken into account in determining whether there has occurred a Guarantor Material Adverse Effect: (i) the failure of the Guarantor to meet historic, budgeted or forecasted revenue levels, earnings or other financial metrics or any public estimates of such metrics (provided that this clause (i) shall not prevent a determination that any change or effect underlying such failure to meet forecasts or projections has resulted in a Guarantor Material Adverse Effect (to the extent such change or effect is not otherwise excluded from this definition of Guarantor Material Adverse Effect)), (ii) the trading price or trading volume of the common stock of the Guarantor, (iii) changes in general local, domestic, foreign, or international economic conditions, (iv) changes affecting generally the industries or markets in which the Guarantor operates or conducts business, (vi) changes arising out of acts of war, sabotage or terrorism, military actions or the escalation thereof, (vii) changes arising out of weather conditions or other force majeure events, (viii) changes in applicable laws or accounting rules or principals, including changes in US GAAP, or (ix) the taking of or failure to take any action expressly required to be taken or not taken by this Agreement, or (b) the ability of the Guarantor or the Purchaser to consummate the transactions contemplated by, or to perform any of its obligations under, this Agreement and the Loan Note.

"Guarantor SEC Documents" has the meaning ascribed to it in Section 4.6(a).

"Guarantor Stock Option Plan" means the TOWERTOPS Technology plc 2001 Share Option Plan, the TOWERTOPS Technology plc 2004 Share Compensation Plan, the Pinton Corporation 2005 Performance Incentive Plan, the Pinton Corporation Amended and Restated 1996 Stock Option Plan, the Coretech Corporation Supplemental Stock Option Plan and the TOWERTOPS Technology plc Employee Stock Purchase Plan.

" Hazardous Material Activity " means the manufacture, processing, sale, distribution, use, treatment, storage, labeling, recycling, removal, remediation, release, any exposure of others to, disposal, transport or handling of Material of Environmental Concern or any product or waste containing a Material of Environmental Concern, including without limitation, any recycling product content, or product take-back requirements (including but not limited to RoHS, WEEE and China RoHS.

"HDD" means an assembled and integrated device used solely for storing and retrieving electronic data and without any other material functionality and which consists of a single enclosure containing one or more of each of the following as well as other components designed to be used with the following and necessary for its functionality: (i) a rigid rotating magnetic disc used as the storage medium, (ii) a one motor-driven spindle for engaging and rotating the magnetic disc, (iii) a magnetic head assembly, and (iv) an actuator assembly for positioning the magnetic head assembly across the disc. For the avoidance of doubt and without limitation, "HDD" shall not include (i) floppy discs, optical storage devices, magnetic tape storage devices or solid state storage devices (or other flash memory based storage devices) (ii) any device which merely has one or more HDDs embedded, incorporated or included as part of it, including without limitation PCs, DVRs, media players, media servers, NAS, DAS and print servers and (iii) products that incorporate generally available HDDs acquired from third parties. For further avoidance of doubt, "HDD" may include as an integrated or embedded component ancillary solid state memory as a means of secondary storage to the magnetic storage.

"HSR Act" means the United States Hart-Scott-Rodino Antitrust Improvements Act of 1976.

"Indemnified Party" means a Purchaser Indemnified Party or a Seller Indemnified Party.

"Indemnifying Party" has the meaning ascribed to it in Section 9.3(a).

"Indemnity Cap" has the meaning ascribed to it in Section 9.5.

"In-Licenses" has the meaning ascribed to it in Section 3.12(h).

"Insolvency Proceeding" has the meaning ascribed to it in Section 10.2.

"Intellectual Property" means any and all of the rights in or associated with the following throughout the world: (a) Patents, (b) Trademarks, (c) Copyrights, (d) Trade Secrets and (e) any equivalent intellectual property right to the foregoing.

"Internet Properties" means Uniform Resource Locators, Web site addresses and domain names, all of the foregoing of which are used exclusively by the Business other than any of the foregoing that incorporate the Seller's trade name, as set forth on Schedule A-7 of the Seller Disclosure Schedules.

"IP Agreement" has the meaning ascribed to it in the Recitals.

"Knowledge of the Guarantor" means the actual knowledge of Mr. Hans G. Anderson, , or Norm S. Lipton after reasonable due inquiry.

"Knowledge of the Seller" means the actual knowledge of Mr. Chul-Jae Lim, Mr. Han-Seok Kim, , or Ms. Wonyoung Park after reasonable due inquiry.

"Korean IFRS" means Korean International Financial Reporting Standards.

"Law" means any federal, state, local, municipal, foreign or international, multinational other law, statute, constitution, principle of common law, resolution, ordinance, code, edict, decree, directive, rule, regulation, ruling or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Body, including, without limitation, the Companies Acts 1963 to 2009 of Ireland.

"Legal Proceeding" means any action, suit, litigation, arbitration, proceeding (including any civil, criminal, administrative, investigative or appellate proceeding), hearing, inquiry, audit, examination or investigation commenced, brought, conducted or heard by or before, or otherwise involving, any court or other Governmental Body or any arbitrator or arbitration panel.

"Letter of Intent" means that certain letter of intent entered into between the Seller and the Guarantor on March 29, 2011.

"Loan Note" has the meaning ascribed to it in the Recitals.

"LOI Deposit Amount" means US$10,000,000 which the Guarantor has provided as a deposit to the Seller under the Letter of Intent.

"Losses" means any and all claims, liabilities, obligations, damages, losses, penalties, fines, judgments, costs and expenses (including amounts paid in settlement, costs of investigation and attorney's fees and expenses), whenever arising or incurred, and whether arising out of a third party claim.

"Materials of Environmental Concern" include any chemicals, pollutants, contaminants, wastes, toxic substances, petroleum and petroleum products and any other substance, emission or chemical that is now or hereafter regulated by any Environmental Law or that is otherwise a danger to health, reproduction or the environment.

"Non-Assignable Contracts" means Seller Contracts that require third-party consents for assignment that have not been obtained by the Seller prior to or as of the Closing which would otherwise be Assumed Contracts.

"Non-Compete Period" has the meaning ascribed to it in Section 5.13.

"Non-Copyable Technology" means Technology, including for example, mask works and hardware, that cannot be copied or replicated without incurring material costs in any form.

"Non-Delivered Equipment," "Non-Delivered Equipment Refund Amount," and "Non-Delivered Equipment Refund Cap" have the respective meanings ascribed to them in Section 2.1(b).

"Nondisclosure Agreement" has the meaning ascribed to it in Section 5.9(c).

"Notice of Claim" has the meaning ascribed to it in Section 9.3(c).

"Notice of Extension" has the meaning ascribed to it in Section 5.11(c).

"Objection Notice" has the meaning ascribed to it in Section 9.3(c).

"Open Source Materials" mean any Software or other material that is distributed as "free software", "open source software" or under a similar licensing or distribution model (including 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).

"Order" means any law, rule, regulation, executive order or decree, judgment, injunction, ruling or other order, whether temporary, preliminary or permanent enacted, issued, promulgated, enforced or entered by any Governmental Body.

"Ordinary Shares" shall mean the ordinary shares, par value US$0.00001 per share, of the Guarantor.

"Other IP" means Intellectual Property other than Patents and Trademarks.

"Out-Licenses" has the meaning ascribed to it in Section 3.12(j).

"Patent Application" means an application or filing for a Patent including, provisional patent applications and regular patent applications, and claims of priority under any treaty or convention, anywhere in the world.

"Patents" means patents, statutory invention registrations, including reissues, divisions, continuations, continuations-in-part, extensions, and reexaminations thereof, and all rights

therein provided by international treaties and conventions. Unless the context otherwise requires, the term "Patent" includes any Patent Application.

"Permitted Encumbrance" means (a) Encumbrance for Taxes not yet due and payable; and (b) Encumbrance of carriers, warehousemen, mechanics, materialmen and repairmen incurred in the ordinary course of business consistent with past practice and not yet delinquent.

"Person" means any individual, corporation, partnership, joint venture, limited liability company, trust, Governmental Body or other organization.

"Pre-Closing Period" has the meaning ascribed to it in Section 5.1.

"Preliminary Allocation Statement" has the meaning ascribed to it in Section 2.4(a).

"Product Software" means any and all versions of any Software, in source or object code form (including firmware), that is (i) distributed together with a Business Product, either preloaded on such Business Product or distributed together with such Business Product on a CD-ROM or similar storage media, or (ii) made available for download by Seller solely for use on or for Business Products.

"Purchase Price" has the meaning ascribed to it in Section 2.1.

"Purchase Price Allocation" has the meaning ascribed to it in Section 2.4(a).

"Purchaser" has the meaning ascribed to it in the Preamble.

"Purchaser Basket" has the meaning ascribed to it in Section 9.5.

"Purchaser Constituent Documents" means the formation documents (including, as applicable, any certificate of incorporation, bylaws or other charter documents), including all amendments thereto, of the Purchaser.

"Purchaser Designees" has the meaning ascribed to it in Section 5.4(a).

"Purchaser Indemnified Parties" means the Purchaser and the Guarantor, and their respective Affiliates, officers, directors, employees, agents and representatives.

"Purchaser Losses" has the meaning ascribed to it in Section 9.1.

"Replacement Value" shall mean the dollar value at which a given asset may be replaced with a substantially equivalent asset through an arm's-length third party transaction.

"Representatives" means, with respect to a Person, the officers, directors, employees, agents, attorneys, accountants, advisors and representatives of such Person.

"Requisite Regulatory Approvals" has the meaning ascribed to it in Section 6.1(c).

"Retail Drives" means all HDD products sold by the Seller through retail channels as COMMUNICALLIN-branded products, including bare-drives and other internal drives, direct attach HDDs (including HDDs with USB, IEEE, deta and other similar interfaces) and network attach HDDs.

"Retained Technology" means any Technology that is not exclusively used in the Business as of the Closing.

"SEC" means the United States Securities and Exchange Commission.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Seller" has the meaning ascribed to it in the Preamble.

"Seller Constituent Documents" means the certificate of incorporation and bylaws, or any similar charter documents, of the Seller and the Seller Subsidiaries.

"Seller Contract" means any Contract, including any amendment or supplement thereto: (a) to which the Seller or a Seller Subsidiary is a party; (b) by which the Seller or the Seller Subsidiaries or any of their respective assets is or may become bound or under which the Seller or the Seller Subsidiaries has, or may become subject to, any obligation; or (c) under which the Seller or the Seller Subsidiaries has or may acquire any right or interest.

"Seller Disclosure Schedules" means the disclosure schedules delivered to the Purchaser on behalf of the Seller and the Seller Subsidiaries on the Agreement Date, as such schedules may be modified, updated, supplemented and amended by the Seller prior to the Closing Date as contemplated by Section 11.12.

"Seller Indemnified Parties" means the Seller, the Seller Subsidiaries and their respective Affiliates, shareholders officers, directors, employees, agents and representatives.

"Seller Losses" has the meaning ascribed to it in Section 9.2.

"Seller Material Adverse Effect" means any fact, change, event, effect, occurrence or circumstance that, individually or in the aggregate (considered together with all other facts, changes, events, effects, occurrences or circumstances) has or would reasonably be expected to have or give rise to a material adverse effect on (a) the Business, the Acquired Assets or the Assumed Liabilities; provided that in no event shall any fact, change, event, effect, occurrence or circumstance, alone or in combination, be deemed to constitute, or be taken into account in determining whether there has occurred a Seller Material Adverse Effect: (i) the failure of the Seller or the Business to meet historic, budgeted or forecasted revenue levels, earnings or other financial metrics or any public estimates of such metrics (provided that this clause (i) shall not prevent a determination that any change or effect underlying such failure to meet forecasts or projections has resulted in a Seller Material Adverse Effect (to the extent such change or effect is not otherwise excluded from this definition of Seller Material Adverse Effect)), (ii) the trading price or trading volume of the common stock of the Seller, (iii) changes in general local, domestic, foreign, or international economic conditions, (iv) changes affecting generally the industries or markets in which the Seller operates or conducts the Business, (v) loss of or any other change in the relationships with employees (including any strikes and other labor dispute), suppliers or customers (including customer orders or contracts) resulting from the announcement or pendency of the transactions contemplated by this Agreement, (vi) changes arising out of acts of war, sabotage or terrorism, military actions or the escalation thereof, (vii) changes arising out of weather conditions or other force majeure events, (viii) changes in applicable laws or accounting rules or principals, including changes in Korean IFRS, or (ix) the taking of or failure to take any action expressly required to be taken or not taken by this Agreement, or (b) the ability of the Seller to consummate the transactions contemplated by, or to perform any of its obligations under, this Agreement.

"Seller's Component Business" shall mean the business and operations of researching, developing, designing, manufacturing, selling, offering for sale, importing or otherwise commercializing Components (other than Custom Components), all as conducted by the Seller and the Seller Subsidiaries.

"Seller Retained Environmental Liabilities" means any liability, obligation, judgment, penalty, fine, cost or expense, of any kind or nature, or the duty to indemnify, defend or reimburse any Person with respect to: (i) the presence on or before the Closing Date of any Materials of Environmental Concern in the soil, groundwater, surface water, air or building materials of any real property owned, leased, used, or occupied by the Seller or any Seller Subsidiaries with respect to the Business (" Pre-Existing Contamination "); (ii) the migration at any time prior to or after the Closing Date of Pre-Existing Contamination to any other real property, or the soil, groundwater, surface water, air or building materials thereof; (iii) any Hazardous Materials Activity conducted on any real property owned, leased, used, or occupied by the Seller or any Seller Subsidiaries with respect to the Business prior to the Closing Date or otherwise occurring prior to the Closing Date in connection with or to benefit the Business (" Pre-Closing Hazardous Materials Activities "); (iv) the exposure of any person to Pre-Existing Contamination or to Materials of Environmental Concern in the course of or as a consequence of any Pre-Closing Hazardous Materials Activities, without regard to whether any health effect of the exposure has been manifested as of the Closing Date; (v) the violation of any Environmental Laws by the Seller, the Seller Subsidiaries, or their agents, employees, predecessors in interest, contractors, invitees or licensees with respect to the Business prior to the Closing Date or in connection with any Pre-Closing Hazardous Materials Activities prior to the Closing Date; (vi) any actions or proceedings brought or threatened by any third party with respect to any of the foregoing; and (vii) any of the foregoing to the extent they continue after the Closing Date.

"Seller Subsidiaries" means the Subsidiaries of the Seller as set forth in Schedule A-11 of the Seller Disclosure Schedules.

"Share Consideration" has the meaning ascribed to it in Section 2.1.

"Shareholder Agreement" has the meaning ascribed to it in the Recitals.

"Software" means computer software, programs, and databases in any form, including source code, object code, operating systems and specifications, data, databases, database

management code, utilities, graphical user interfaces, menus, images, icons, forms and software engines, and all related documentation, developer notes, comments, and annotations.

"Subject Employees" has the meaning ascribed to it in Exhibit F .

"Subsidiary" means any Entity shall be deemed to be a "Subsidiary" of another Person if such Person directly or indirectly (a) has the power to direct the management or policies of such Entity; or (b) owns, beneficially or of record, (i) an amount of voting securities or other interests in such Entity that is sufficient to enable such Person to elect at least a majority of the members of such Entity's board of directors or other governing body, or (ii) at least 50% of the outstanding equity or financial interests of such Entity.

"Supplier" means any supplier of goods or services to which the Seller and the Seller Subsidiaries paid more than US$100,000 in the aggregate during the twelve (12)-month period ended December 31, 2010 or expects to pay more than US$100,000 in the aggregate during the twelve (12)-month period ended December 31, 2010.

"Supply Agreement for Internal Drives" has the meaning ascribed to it in the Recitals.

"Tax" means any tax (including any income tax, franchise tax, capital gains tax, gross receipts tax, value-added tax, surtax, excise tax, ad valorem tax, transfer tax, stamp tax, sales tax, use tax, property tax, business tax, withholding tax or payroll tax), levy, assessment, tariff, duty (including any customs duty), deficiency or fee, and any related charge or amount (including any fine, penalty or interest), imposed, assessed or collected by or under the authority of any Governmental Body.

"Tax Return" means any return (including any information return), report, statement, declaration, estimate, schedule, notice, notification, form, election, certificate or other document or information filed with or submitted to, or required to be filed with or submitted to, any Governmental Body in connection with the determination, assessment, collection or payment of any Tax or in connection with the administration, implementation or enforcement of or compliance with any Law relating to any Tax.

"Taxing Authority" means any Governmental Body in charge of imposing or collecting any Tax.

"Technology" means embodiments of Intellectual Property in electronic, written or other media, including Software, Internet Properties, designs, design and manufacturing schematics, algorithms, databases, lab notebooks, development and lab equipment, know-how, inventions and invention disclosures.

"Third-Party Claim" has the meaning ascribed to it in Section 9.3(a).

"Threshold Amount" has the meaning ascribed to it in Section 9.5.

"Trademarks" means trademarks, service marks, trade dress, logos, trade names, corporate names, URL addresses, Internet domain names and other indicia of source or origin, including the goodwill of the business symbolized thereby or associated therewith, all common-law rights thereto, registrations and applications for registration thereof throughout the world, all rights therein provided by international treaties and conventions.

"Trade Secrets" means all rights in any jurisdiction to limit the use or disclosure of know-how and other confidential or proprietary technical, business, and other information, including manufacturing and production processes and techniques, research and development information, technology, drawings, specifications, designs, plans, proposals, technical data, financial, marketing, and business data, pricing and cost information, business and marketing plans, customer and supplier lists and information based on both reasonable measures being taken to keep the foregoing confidential and the foregoing having economic value.

"Transaction Documents" has the meaning ascribed to it in the Recitals.

"Transfer Agreement" means each transfer, assignment and assumption agreement by the Seller and/or any of the Seller Subsidiaries, as applicable, on the one hand, and the Purchaser and/or any of the Purchaser Designees, on the other hand, in order to consummate the transactions contemplated by this Agreement in each relevant jurisdiction, reflecting local legal requirements or local customary practice, which may also require that the Transfer Agreement shall take the form of a separate sale and purchase agreement with a local purchase price to be paid in U.S. dollars or any other currency agreed by the parties thereto; it being understood that all substantive agreements shall be governed by this Agreement without creating any additional indemnification or other liabilities on any party under any Transfer Agreement and this Agreement shall take precedent over any and all Transfer Agreements.

"Transferred Employees" has the meaning ascribed to it in Section 5.6(a).

"Transferred Inventory" means all inventory, including finished goods, raw materials and work in progress (whether in transit to or otherwise in storage on behalf of the Seller or the Seller Subsidiaries) intended for use exclusively in the Business.

"Transferred Other IP" means the Other IP that both is owned by the Seller or the Seller Subsidiaries and used exclusively in the Business including, if applicable, Other IP exclusively in and to any Transferred Technology, as set forth on Schedule 1.1(e) of the Seller Disclosure Schedules.

"Transferred IP" means (i) the Transferred Patents, (ii) the Transferred Other IP and (iii) the Transferred Trademarks.

"Transferred Patents" means the Patents listed on Schedule 1.1(c) of the Seller Disclosure Schedules, it being agreed and understood that the Patents listed on Schedule 1.1(c) of the Seller Disclosure Schedules shall include, without limitation, (i) any Patent owned by the Seller or any of its Subsidiaries that claims (or is entitled to claim) priority from any of the other Patents listed on the schedule, (ii) any Patent that is a continuation, continuation in part, divisional or reissue, of any other scheduled Patent or linked to any other scheduled Patent by a terminal disclaimer, and (iii) any foreign counterpart of any scheduled Patent.

"Transferred Tangible Assets" means all plants, equipments and other tangible assets used exclusively in the Business and located at the Asset Locations (other than the Excluded

Tangible Assets), including but not limited to the items set forth on Schedule 1.1(a)(i) of the Seller Disclosure Schedules.

"Transferred Technology" means: (i) copies of any Copyable Technology owned by the Seller or the Seller's Affiliates and either (A) necessary for the manufacture, testing, sale or servicing of any Business Product or (B) used exclusively in the Business ( "Transferred Copyable Technology" ); and (ii) all of the Non-Copyable Technology used exclusively in the Business ( "Transferred Non-Copyable Technology" ).

"Transferred Trademarks" means all Trademarks both used exclusively by the Business and for Business Products which are internal HDDs and owned by the Seller or the Seller Subsidiaries, other than any Trademark that incorporates the Seller's trade name, as set forth on Schedule 1.1(d) of the Seller Disclosure Schedules, and the goodwill of the Business appurtenant thereto.

"Transition Services Agreement" has the meaning ascribed to it in the Recitals.

"US GAAP" means United States generally accepted accounting principles as in effect from time to time.

"VAT" means Korean value added tax ( boo-ga-ga-chi-se ) and any similar charge under Laws of other jurisdictions.

"Warranty Liability Cap" has the meaning ascribed to it in Section 1.3(a).

**APA#13**

**ASSET PURCHASE AGREEMENT**

between

INHIBITECH LTD.

and

CURE-IT, INC.

Dated as of April 18, 2012

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Table of Contents

ARTICLE I DEFINITIONS AND TERMS

Section 1.1 Certain Definitions

Section 1.2 Other Terms

Section 1.3 Other Definitional Provisions

ARTICLE II PURCHASE AND SALE

Section 2.1 Purchase and Sale of Assets

Section 2.2 Excluded Assets

Section 2.3 Assumption of Liabilities

Section 2.4 Excluded Liabilities

Section 2.5 Purchase Price

Section 2.6 Closing

Section 2.7 Deposit

Section 2.8 Allocation of Purchase Price

Section 2.9 Deliveries by Buyer

Section 2.10 Deliveries by Seller

Section 2.11 Affiliate Acquisitions

Section 2.12 Milestone Payments

Section 2.13 Royalty Payments

Section 2.14 Diligence

Section 2.15 Update Reports

Section 2.16 Exchange Rate; Manner and Place of Payment Section 2.17 Audit

Section 2.18 Late Payments

Section 2.19 Milestone Cash or Stock Election

Section 2.20 Set-off

ARTICLE III REPRESENTATIONS AND WARRANTIES OF SELLER

Section 3.1 Organization and Qualification Section 3.2 Corporate Authorization

Section 3.3 Consents and Approvals

Section 3.4 Non-Contravention

Section 3.5 Binding Effect

Section 3.6 Litigation and Claims

Section 3.7 Taxes

Section 3.8 Compliance with Laws

Section 3.9 Intellectual Property

Section 3.10 Regulatory Compliance

Section 3.11 FDA Compliance

Section 3.12 Clinical Studies

Section 3.13 Contracts

Section 3.14 Territorial Restrictions

Section 3.15 Absence of Certain Changes and Events Section 3.16 Confidentiality

Section 3.17 Insurance Claims

Section 3.18 Title to Transferred Assets

Section 3.19 Suppliers

Section 3.20 Solvency

Section 3.21 Foreign Corrupt Practices

Section 3.22 Securities Law Matters

Section 3.23 Finders' Fees

Section 3.24 No Other Representations or Warranties

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF BUYER Section 4.1 Organization and Qualification Section 4.2 Corporate Authorization

Section 4.3 Consents and Approvals

Section 4.4 Non-Contravention

Section 4.5 Binding Effect

Section 4.6 Litigation and Claims

Section 4.7 Capitalization

Section 4.8 SEC Filings; Financial Statements Section 4.9 Access

Section 4.10 Reliance

Section 4.11 No Buyer Vote Required

Section 4.12 Financing

Section 4.13 No Other Representations or Warranties

ARTICLE V COVENANTS

Section 5.1 Access and Information

Section 5.2 Conduct of Business

Section 5.3 No Shop

Section 5.4 Commercially Reasonable Best Efforts Section 5.5 Tax Matters

Section 5.6 Ancillary Agreement

Section 5.7 Notification

Section 5.8 Non-Competition

Section 5.9 Further Assurances

Section 5.10 Confidentiality

Section 5.11 Springing AL 3946Grant-Back Section 5.12 Assistance in Proceedings Section 5.13 Transfer of Regulatory Materials; Interim Responsibility Section 5.14 Communication With Agencies

Section 5.15 Adverse Experience Reporting Section 5.16 Financial Statement Reporting Section 5.17 Certain Intellectual Property Covenants

ARTICLE VI CONDITIONS TO CLOSING

Section 6.1 Conditions to the Obligations of Buyer Section 6.2 Conditions to the Obligations of Seller

ARTICLE VII SURVIVAL; INDEMNIFICATION; CERTAIN REMEDIES Section 7.1 Survival

Section 7.2 Indemnification by Seller

Section 7.3 Indemnification by Buyer

Section 7.4 Third Party Claim Indemnification Procedures Section 7.5 Direct Claims

Section 7.6 Limitations

Section 7.7 Indemnification in Case of Strict Liability or

Indemnitee Negligence

Section 7.8 Payments

Section 7.9 Characterization of Indemnification Payments Section 7.10 Mitigation

Section 7.11 Effect of Waiver of Condition Section 7.12 Right of Set-Off

Section 7.13 Specific Performance

ARTICLE VIII TERMINATION

Section 8.1 Termination

Section 8.2 Effect of Termination

ARTICLE IX MISCELLANEOUS

Section 9.1 Notices

Section 9.2 Amendment; Waiver; Remedies Cumulative Section 9.3 No Assignment or Benefit to Third Parties Section 9.4 Entire Agreement

Section 9.5 Fulfillment of Obligations

Section 9.6 Public Disclosure

Section 9.7 Expenses

Section 9.8 Bulk Sales

Section 9.9 Governing Law: Submission to Jurisdiction: Selection of Forum; Waiver of Trial by Jury

Section 9.10 Counterparts

Section 9.11 Headings

Section 9.12 Severability

Section 9.13 Disclosure Schedules

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ASSET PURCHASE AGREEMENT, dated as of April 18, 2012, between Inhibitech Ltd., a Singapore private limited company (" Seller "), and Cure-It, Inc., a Washington corporation (" Buyer "). WITNESSETH: WHEREAS, Seller possesses certain assets, including, without limitation, the proprietary technology and know-how related to the research, discovery, identification, syntheses and development of compounds that inhibit Incept 3, commonly referred to as IC3 (" IC3 "), including the Seller compounds designated as AL 3946and AL 3990; and WHEREAS, Seller desires to sell to Buyer and Buyer desires to purchase and assume from Seller certain assets and liabilities related to AL 3946and AL 3990, as more particularly set forth herein. NOW, THEREFORE, in consideration of the premises and the mutual representations, warranties, covenants and undertakings contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

ARTICLE I DEFINITIONS AND TERMS

Section 1.1 Certain Definitions . As used in this Agreement, the following terms have the meanings set forth below:

" Recurrent Anaplastic Hyphasia " means the disease or condition referred to and recognized by the FDA as Recurrent Anaplastic Hyphasia as of the date of this Agreement (whether or not such disease or condition continues to be known by such name in the United States after the date of this Agreement, and whether or not any Regulatory Authority outside of the United States refers to such disease or condition by that name or another name as of or after the date of this Agreement).

" Affiliate " means, with respect to any Person, any Person directly or indirectly controlling, controlled by, or under common control with, such other Person as of the date on which, or at any time during the period for which, the determination of affiliation is being made.

For purposes of this definition, the term "control" (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

" Agreement " means this Asset Purchase Agreement, as the same may be amended or supplemented from time to time in accordance with the terms hereof.

" Ancillary Agreement " means the registration rights agreement attached hereto as Exhibit A to be entered into at Closing between Buyer and Seller

" Asia " means all countries in Asia east of the westernmost boundary of India (including all countries portions of which lie to the east of such boundary but not including the former U.S.S.R. or any U.S. Territories) and all countries in East Asia, South Asia and Southeast Asia, including Asian countries, and shall include, but shall not be limited to, the following countries: Bangladesh, Bhutan, Brunei Darussalam, Cambodia, People's Republic of China, Cyprus, Hong Kong, India, Indonesia, Japan, Democratic People's Republic of Korea, Republic of Korea, Lao People's Democratic Republic, Macau, Malaysia, Maldives, Mongolian People's Republic, Union of Myanmar (Burma), Kingdom of Nepal, Pakistan, Philippines, Singapore, Sri Lanka, Republic of China (Taiwan), Thailand, and Vietnam. " Assigned Contracts " has the meaning set forth in Section 2.1(e) .

" Assumed Liabilities " means only the Liabilities that Buyer has expressly assumed or agreed to assume under Section 2.3 of this Agreement.

" Authorizations " means Governmental Authorizations and Non-Governmental Authorizations.

" Bankruptcy Exception " shall have the meaning set forth in Section 3.5 . " Books and Records " means all books, ledgers, files, reports, plans, records, manuals and other materials, including books of account, records, files, invoices, correspondence and memoranda, scientific records and files (including laboratory notebooks and invention disclosures), customer and supplier lists, data, specifications, operating history information and inventory records (in any form or medium) of, or maintained for, or relating to, the Transferred Assets, but excluding any such items to the extent (i) they are included in or primarily related to any Excluded Assets or Excluded Liabilities, or (ii) any Law prohibits their transfer.

" Business Day " means any day other than a Saturday, a Sunday or a day on which banks in New York are authorized or obligated by Law or executive order to close. " Buyer " has the meaning set forth in the Preamble.

" Buyer Indemnified Parties " has the meaning set forth in Section 7.2 .

" Buyer Required Approvals " means all consents, approvals, waivers, authorizations, notices and filings from or with a Government Entity that are required to be and are listed on Schedule 4.3 . " Change of Control Transaction " has the meaning set forth in Section 5.8(a) . " Chosen Courts " has the meaning set forth in Section 9.9 .

" Chronic Anaplastic Hyphasia " means the disease or condition referred to and recognized by the FDA as Chronic Anaplastic Hyphasia as of the date of this Agreement (whether or not such disease or condition continues to be known by such name in the United States after the date of this Agreement, and whether or not any Regulatory Authority outside of the United States refers to such disease or condition by that name or another name as of or after the date of this Agreement). 2. " Claim Notice " has the meaning set forth in Section 7.4(a) .

" Clinical Data " means data resulting from any pre-clinical study or clinical trial of any Seller Compound, generated by or for Seller or its Subsidiaries or any of their licensees (including Hercules), together with the applicable protocol for each such study or trial, as well as all associated site related documentation, investigator brochures, investigational review board correspondence, and data monitoring committee minutes and documentation.

" Closing " means the closing of the Transaction.

" Closing Date " has the meaning set forth in Section 2.6 . " Commercially Reasonable Efforts " has the meaning set forth in Section 2.14 .

" Competing Business " has the meaning set forth in Section 5.8(a) . " Competing Compound " has the meaning set forth in Section 5.8(a) .

" Confidentiality Agreement " means the confidentiality agreement, dated February 16, 2012, between Seller and Buyer.

" Contracts " means all agreements, contracts, leases and subleases, purchase orders, arrangements, commitments and licenses (other than this Agreement and the Ancillary Agreement), whether written or oral.

" Control " or " Controlled ," means with respect to any Intellectual Property, possession by a Person of the ability (whether by ownership, license or otherwise) to transfer ownership of, to grant access to, to grant use of, or to grant a license or a sublicense of or under such Intellectual Property without violating the terms of any agreement or other arrangement with any third party.

" Copyrights " means copyrights and registrations and applications therefor, works of authorship, content (including website content) and mask work rights.

" Development " means pre-clinical and clinical drug development activities, including clinical trials, relating to the development of pharmaceutical compounds and submission of information to a Regulatory Authority for the purpose of obtaining Regulatory Approval of a Product, and activities to develop manufacturing capabilities for Products. Development includes, but is not limited to, optimization and pre-clinical activities, pharmacology studies, toxicology studies, formulation, manufacturing process development and scale-up (including bulk compound production), quality assurance and quality control, technical support, pharmacokinetic studies, clinical trials and regulatory affairs activities. " Direct Claim " has the meaning set forth in Section 7.5 . 3.

" Effective Time " means the time at which the Closing is consummated.

" EMA " means the European Medicines Agency of the EU, and any successor agency thereto.

" Encumbrance " means any charge, claim, community or other marital property interest, condition, easement, encroachment, encumbrance, equitable interest, lien, mortgage, option, pledge, security interest, servitude, right of way, right of first option, right of first refusal, or other restriction or third party right of any kind, including any right of first refusal or restriction on voting. For the avoidance of doubt, "Encumbrance" shall not include any claim that a Transferred Asset infringes on the Intellectual Property rights of any third Person.

" Environmental Law " means any Law (including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980) and any Governmental Authorization relating to (x) the protection of the environment or human health and safety (including air, surface water, groundwater, drinking water supply, and surface or subsurface land or structures), (y) the exposure to, or the use, storage, recycling, treatment, generation, transportation, processing, handling, labeling, management, release or disposal of any Hazardous Substance or waste material or (z) noise, odor or electromagnetic emissions.

" EU " means the European Union.

" Exchange Act " means the Securities Exchange Act of 1934, as amended. " Excluded Assets " has the meaning set forth in Section 2.2 .

" Excluded Liabilities " means all Liabilities of Seller or any of its Affiliates other than the Assumed Liabilities.

" Exploit " or " Exploitation " means develop, design, test, modify, improve, make, use, sell, have made, used and sold, import, reproduce, market, distribute, and commercialize.

" FDA " means the U.S. Food and Drug Administration or any successor entity thereto. " Form S-1 " has the meaning set forth in Section 2.19 . " Fundamental Representations " has the meaning set forth in Section 7.1 .

" GAAP " means United States generally accepted accounting principles.

" Governing Documents " means with respect to any particular entity, (a) if a corporation, the articles or certificate of incorporation and the bylaws; (b) if a general partnership, the partnership agreement and any statement of partnership or other organizational documents; (c) if a limited partnership, the limited partnership agreement and the certificate of limited partnership or other organizational documents; (d) if a limited liability company, the articles of organization and operating agreement or other organizational documents; (e) if another type of Person, any other charter or similar document adopted or filled in connection 4. with the creation, formation or organization of the Person; (f) all equityholders' agreements, voting agreements, voting trust agreements, joint venture agreements, registration rights agreements or other agreements or documents relating to the organization, management or operation of any Person or relating to the rights, duties and obligations of the equityholders of any Person; and (g) any amendment or supplement to any of the foregoing.

" Government Entity " means any: (a) nation, state, county, city, town, borough, village, district or other jurisdiction; (b) federal, state, local, municipal, foreign or other government; (c) governmental or quasi-governmental authority of any nature (including any agency, branch, department, board, commission, court, tribunal or other entity exercising governmental or quasi-governmental powers); (d) multinational organization or body; (e) Regulatory Authority; (f) body exercising, or entitled or purporting to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; or (g) official of any of the foregoing.

" Governmental Authorizations " means all licenses, permits, certificates and other authorizations, consents, waivers and approvals issued by or obtained from a Government Entity or Self-Regulatory Organization.

" Hazardous Substance " means any substance that is listed, defined, designated or classified as hazardous, toxic or otherwise harmful under applicable Laws or is otherwise regulated by a Government Entity, including petroleum products and byproducts, asbestos-containing material, polychlorinated byphenyls, lead-containing products and mold.

" Healthcare Laws " means any U.S., foreign or other Law or regulation related to the development, manufacturing or commercialization of healthcare products and services, including, without limitation, (i) the U.S. Federal Food, Drug and Cosmetic Act and any regulations promulgated thereunder and any amendments or successors thereto, (ii) the federal Anti-kickback Statute (42 U.S.C. 1320a-7b(b)) and any regulations promulgated thereunder and any amendments or successors thereto, the Anti-Inducement Law (42 U.S.C. 1320a-7a(a)(5)) and any regulations promulgated thereunder and any amendments or successors thereto, (iii) the civil False Claims Act (31 U.S.C. 3729 et seq.) and any regulations promulgated thereunder and any amendments or successors thereto, (iv) the administrative False Claims Law (42 U.S.C. 1320a-7b(a)) and any regulations promulgated thereunder and any amendments or successors thereto, (v) the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d et seq.) and any regulations promulgated thereunder and any amendments or successors thereto, and (vi) any foreign equivalents of any of the above. 5. " Inbound Licenses " has the meaning set forth in Section 3.9(e) .

" IND " means any Investigational New Drug Application filed by any Person with the FDA pursuant to 21 CFR Part 312 with respect to any of the Seller Compounds, as submitted to the FDA by any Person, including all amendments thereto. " Indemnified Parties " has the meaning set forth in Section 7.2 .

" Indemnified Taxes " means (i) any Taxes of Seller or any of its Subsidiaries with respect to any Tax period, (ii) any Taxes for which Seller or any of its Subsidiaries is held liable under Treasury Regulations Section 1.1502-6 (or any corresponding or similar provision of state, local or foreign Tax Law) by reason of such entity being included in any consolidated, affiliated, combined or unitary group in any Tax period, (iii) any liability for Taxes of any Person imposed on Seller or any of its Subsidiaries as a transferee or successor, or by contract or otherwise, (iv) any Taxes allocated to Seller pursuant to Section 5.5 of this Agreement, or (v) any Taxes imposed with respect to any Royalty Payment or Milestone Payment. " Indemnifying Party " has the meaning set forth in Section 7.4(a) .

" Independently Active Pharmaceutical Ingredient " means an active pharmaceutical ingredient having a different target or a mode of action, or is otherwise treated or designated by the applicable Regulatory Authority as a separate active ingredient, than the applicable Seller Compound.

" Indication " means a specific disease, infection or other condition which is recognized by Regulatory Authorities in the United States as being a disease, infection or condition. For avoidance of doubt, the term "Indication" includes each of Recurrent Anaplastic Hyphasia, Chronic Anaplastic Hyphasia, Gorintitis, Blastomyelitis, Hyperdermatitis and Kyneoproritis. All variants of a single disease, infection or condition (whether classified by severity or otherwise) will be treated as the same Indication, except that different types of cancer (e.g., as defined by site or cancer cell origin) will be treated as different Indications. The treatment or prevention of a disease, infection or other condition in adults and the treatment or prevention of the same disease, infection or other condition in a pediatric population will not be treated as separate Indications.

" Intellectual Property " means all worldwide intellectual property rights, including without limitation, rights in and to the following: (a) Patents; (b) Marks; (c) Copyrights; (d) Know-How; (e) data exclusivity, databases and data collections, and (f) any similar, corresponding or equivalent rights to any of the foregoing.

" Inventory " means all inventory related to the Seller Compounds, wherever located, including all quantities of Seller Compound active pharmaceutical ingredient, quantities of Seller Compound drug product, finished placebo capsules, finished goods, work in process, raw materials, packaging, pre-clinical and clinical supplies and all other materials and supplies and parts to be used or consumed by Seller or its agents in the production of finished goods whether held at any location or facility of Seller and of its Subsidiaries or in transit to Seller or any of its Subsidiaries, in each case as of the Closing Date, except to the extent included in Excluded Assets.

" Know-How " means inventions (whether or not patentable); invention disclosures; proprietary processes, methods, algorithms and formulae; know-how, trade secrets, technology, proprietary information, technical data, designs, drawings, computer programs, apparatus, results of experiments, test data, including pharmacological, toxicological and clinical data, analytical and quality control data, manufacturing data and descriptions, market data, devices, assays, chemical formulations, notes of experiments, specifications, compositions of matter, physical, chemical and biological materials and compounds, whether in intangible, tangible, written, electronic or other form. " Knowledge " of Seller shall mean the actual knowledge of a fact or other matter, after a reasonable inquiry, of the individuals listed on the attached Schedule 1.1(a) (" Knowledge Individuals "); provided, however, that if a Knowledge Individual has failed to conduct a reasonable inquiry, such Knowledge Individual shall be deemed to have the knowledge of a fact or other matter if such Knowledge Individual would reasonably be expected to discover or otherwise become aware of that fact or matter by making a reasonable inquiry regarding such fact or matter. With respect to matters involving Intellectual Property, Knowledge does not require that the Knowledge Individuals have conducted, obtain or have obtained any freedom-to-operate opinions or similar opinions of counsel or any Intellectual Property clearance searches, and no knowledge of any third party Intellectual Property that would have been revealed by such inquiries, opinions or searches will be imputed to the Knowledge Individuals or the direct reports of any of the foregoing.

" Law " means any law, statute, ordinance, rule, regulation, code, order, judgment, injunction, writ, permit license or decree enacted, issued, promulgated, enforced or entered by a Government Entity or Self-Regulatory Organization.

" Liabilities " means any and all debts, liabilities, commitments and obligations of any kind, character or description, whether fixed, contingent or absolute, matured or unmatured, liquidated or unliquidated, secured or unsecured, accrued or not accrued, joint or several, due or to become due, vested or unvested, asserted or not asserted, disputed or undisputed, known or unknown, executory, determined, determinable or otherwise, whenever or however arising (including, whether arising out of any contract or tort based on negligence or strict liability) and whether or not the same would be required by GAAP to be reflected in financial statements or disclosed in the notes thereto.

" Losses " means any damages, losses, charges, Liabilities, claims, demands, actions, suits, proceedings, payments, judgments, settlements, assessments, deficiencies, taxes, interest, penalties, and costs and expenses (including removal costs, remediation costs, closure costs, fines, penalties and expenses of investigation and ongoing monitoring, reasonable attorneys' fees, and out of pocket disbursements), but excluding unforeseeable, speculative, special, indirect, consequential, exemplary and punitive damages (" Special Damages "), except in the case of Special Damages imposed on, sustained, incurred or suffered by, or asserted against, any Indemnified Party in respect of a Third Party Claim.

" Major EU Market " means any of England, France, Germany, Italy and Spain.

" Marks " means all United States and foreign trademarks, service marks, trade names, service names, brand names, trade dress rights, logos, Internet domain names and corporate names, together with the goodwill associated with any of the foregoing, and all applications, registrations and renewals thereof.

" Material Adverse Effect " means an effect that is materially adverse to the Program or would reasonably be expected to impair the ability of Seller to consummate the Transaction or its performance of obligations under this Agreement; provided , however , that none of the following (individually or in combination) shall be deemed to constitute, or shall be taken into account in determining whether there has been, a Material Adverse Effect:

(a) any adverse effect resulting directly from general business or economic conditions, except to the extent such general business or economic conditions have a disproportionate effect on the Program;

(b) any adverse effect resulting directly from conditions generally affecting any industry or industry sector to which the Program relates, except to the extent such adverse effect has a disproportionate effect on the Program;

(c) any adverse effect resulting directly from the announcement, execution or delivery of this Agreement or the pendency or consummation of the transactions contemplated hereunder;

(d) any adverse effect resulting directly from any change in accounting requirements or principles or any change in applicable Laws or the interpretation thereof;

(e) any adverse effect resulting directly from any action taken by Seller at Buyer's direction (other than any such action Seller is obligated to take under the terms and conditions of this Agreement);

(f) any adverse effect resulting directly from any breach by Buyer of any provision of this Agreement; or

(g) any adverse data, event or outcome, arising out of or related to the Program, including pre-clinical and clinical trials, which data, event or outcome is disclosed in the Clinical Data or Regulatory Materials made available by Seller to Buyer prior to the date of this Agreement.

" Milestone Payment " means any of the potential payments set forth in Section 2.12 .

" Gorintitis " means the disease or condition referred to and recognized by the FDA as Gorintitis as of the date of this Agreement (whether or not such disease or condition continues to be known by such name in the United States after the date of this Agreement, and whether or not any Regulatory Authority outside of the United States refers to such disease or condition by that name or another name as of or after the date of this Agreement).

" NDA " means any New Drug Application (as more fully defined in 21 CFR 314.5, et seq.) relating to any of the Seller Compounds, as submitted to the FDA by any Person, including all amendments and supplements thereto.

" Net Sales " means the gross amount invoiced for sales of Product by Buyer or its Affiliates or Sublicensees to Third Parties, less the following deductions from such gross amounts to the extent attributable to such Product and to the extent actually incurred, allowed, accrued or specifically allocated: (a) trade, cash and quantity discounts actually given, credits, price adjustments or allowances actually granted customers for damaged products, returns or rejections of Products; 8. (b) chargeback payments and rebates (or the equivalent thereof) for the Product granted to group purchasing organizations, Third Party payors (including managed health care organizations) or federal, state/provincial, local and other governments, including their agencies, or to trade customers; (c) reasonable and customary freight, shipping insurance and other transportation charges directly related to the sale of the Product separately stated on the invoice to the Third Party; and (d) sales, value-added, excise taxes, tariffs and duties, and other taxes and government charges directly related to the sale, to the extent that such items are included in the gross invoice price of the Product and actually borne by Buyer or its Affiliates, Sublicensees or distributors without reimbursement from any Third Party (but not including taxes assessed against the income derived from such sale); all as determined in accordance with GAAP on a basis consistent with Buyer's annual audited financial statements. The transfer of Product between or among Buyer and its Affiliates and Sublicensees for resale (which resale will give rise to Net Sales), use in a clinical trial, or use as free marketing samples will not be considered a sale. Upon the sale or other disposal of Product, such sale, disposal or use will be deemed to constitute a sale with the consideration for the sale being the consideration for the relevant transaction and constituting Net Sales hereunder, or if the consideration is not a monetary amount, a sale will be deemed to have occurred for a price assessed on the value of whatever consideration has been provided in exchange for the sale. Disposal of Product for or use of Product in Clinical Trials or as free samples will not give rise to any deemed sale under this definition. For clarity, there will be no limit on the quantity of Product which may be used in clinical trials but the quantity of Product to be given away as free samples will be such quantities customary in the industry for this sort of Product. Such amounts will be determined from the books and records of Buyer, its Affiliates and Sublicensees maintained in accordance with GAAP, consistently applied throughout the organization. In the event a Product is sold in a finished dosage form containing a Seller Compound in combination with one or more other Independently Active Pharmaceutical Ingredients (a " Combination Product "), Net Sales, for purposes of determining Royalty Payments on such Product, will be calculated by multiplying the Net Sales of the end-user product by the fraction A over A+B, in which A is the net selling price of the Product portion of the Combination Product when such Product is sold separately during the applicable accounting period in which the sales of the Combination Product were made, and B is the net selling price of the other Independently Active Pharmaceutical Ingredients of the Combination Product sold separately during the accounting period in question. All net selling prices of the Product portion of the Combination Product and of the other Independently Active Pharmaceutical Ingredients of such Combination Product will be calculated as the average net selling price of the said ingredients during the applicable accounting period for which the Net Sales are being calculated in the particular country where the Combination Product is sold. In the event that, in any country 9. or countries, no separate sale of either such above-designated Product or such above-designated other Independently Active Pharmaceutical Ingredients of the Combination Product are made during the accounting period in which the sale was made or if the net retail selling price for an Independently Active Pharmaceutical Ingredient cannot be determined for an accounting period, Net Sales allocable to the Product in each such country will be determined by mutual agreement reached in good faith by the Buyer and Seller prior to the end of the accounting period in question based on an equitable method of determining same that takes into account, on a country-by-country basis, variations in potency, the relative contribution of the Seller Compound and each other Independently Active Pharmaceutical Ingredient in the combination, and relative value to the end user of the Seller Compound and each such other Independently Active Pharmaceutical Ingredient. The Buyer and Seller agree that, for purposes of this paragraph, drug delivery vehicles, devices, adjuvants, half-life extenders, solubilizers and excipients will not be deemed to be "Independently Active Pharmaceutical Ingredients."

" Non-Governmental Authorizations " means all licenses, permits, certificates and other authorizations, consents, waivers, and approvals other than Governmental Authorizations.

" Blastomyelitis " means the disease or condition referred to and recognized by the FDA as Blastomyelitis as of the Effective Date (whether or not such disease or condition continues to be known by such name in the United States after the date of this Agreement, and whether or not any Regulatory Authority outside of the United States refers to such disease or condition by that name or another name as of or after the date of this Agreement). " Notice Period " has the meaning set forth in Section 7.4(a) .

" Occupational Safety and Health Law " means any Law designed to provide safe and healthful working conditions and to reduce occupational safety and health hazards, including the Occupational Safety and Health Act, and any program, whether governmental or private (such as those promulgated or sponsored by industry associations and insurance companies), designed to provide safe and healthful working conditions.

" Hercules " means Hercules Pharmaceuticals, Inc., a Delaware corporation.

" Order " means any order, writ, injunction, judgment, decree, ruling, award, assessment or arbitration award of any Government Entity or arbitrator.

" Other Seller Materials " means

(i) all research and development reports and disclosure memoranda in the possession of or controlled by Seller relating to the Seller Compounds, including, but not limited to, study reports, clinical trial related documents including consent forms, study contracts, site agreements, manuscripts and in process publications,

(ii) all of the marketing and promotional documents owned by Seller, such as customer lists, marketing and promotional plans, documents and materials, field force training manuals and materials, and the like, to the extent relating to the Seller Compounds,

(iii) all worldwide safety reports in the possession of Seller with respect to the Seller Compounds in existence as of the Closing, and

(iv) all of Seller's manufacturing information used in connection with the Seller Compounds.

" Outbound Licenses " has the meaning set forth in Section 3.9(d) . " Partnership Arrangement " means any transaction in which Buyer or its Affiliates grants to a Third Party or Third Parties any option, license, sublicense, asset sale or assignment under or with respect to any of the Seller Compounds and/or any of the Transferred Intellectual Property.

" Patent Term Extension " means any term extensions, supplementary protection certificates, and equivalents thereof offering patent or patent-like protection beyond the initial term with respect to any issued Patents.

" Patents " means all United States and foreign patents and applications therefor, including continuations, divisionals, continuations-in-part, reexaminations or re-issues of patent applications and patents issuing thereon.

" Permitted Encumbrances " means, each of the following as are immaterial, individually or in the aggregate, in amount and would not impair the ownership or use of the Transferred Assets:

(a) liens for current Taxes not yet due and payable or that are being contested in good faith by appropriate proceedings;

(b) deposits or pledges made in connection with, or to secure payment of, workers' compensation, unemployment insurance or similar programs mandated by applicable Law or governmental regulations;

(c) statutory or common Law liens in favor of carriers, warehousemen, mechanics and materialmen, to secure claims for labor, materials or supplies, and other like liens;

(d) the terms and conditions of

(i) the Inbound Licenses and Outbound Licenses,

(ii) licenses for off-the-shelf software or generally available software,

(iii) non disclosure agreements, and

(iv) materials transfer agreements on customary terms;

(e) liens in favor of customs and revenue authorities arising as a matter of Law to secure payment of customs duties in connection with the importation of goods; and

(f) liens and encumbrances arising under the Assigned Contracts.

" Person " means an individual, a corporation, a partnership, an association, a limited liability company, business trust, joint stock company, a Government Entity, joint venture, a trust or other entity or organization.

" Proceeding " means any action, arbitration, audit, hearing, investigation, inquiry, litigation or suit (whether civil, criminal, administrative, judicial or investigative, whether formal or informal, whether public or private) commenced, brought, conducted or heard by or before, or otherwise involving, any Government Entity or arbitrator.

" Product " means any pharmaceutical product containing or comprising any Seller Compound, whether or not as the sole active ingredient and in any dosage, form or formulation.

" Program " means all of Seller's activities (including activities performed by any third Person on behalf of Seller) directed specifically to the Development and manufacture (including synthesis, formulation, finishing or packaging), use, offer for sale, sale or import of the Seller Compounds up to the Closing Date. " Program Know-How " shall mean Know-How not included in the Program Patents, which Know-How is: (a) Controlled by Seller or its Subsidiaries immediately prior to 11. the Closing; and (b) directed to the Development, manufacture (including synthesis, formulation, finishing or packaging), use, offer for sale, sale, export or import of any Seller Compound, or otherwise primarily used or held for use in the Program; including the items listed on Exhibit B , but excluding, in any event, any Know-How that is an Excluded Asset. " Program Patents " shall mean: (a) the patents and patent applications listed on Exhibit C ; (b) any and all divisionals, continuations and continuations-in-part of the patents and patent applications referenced in the preceding clause (a); (c) the foreign patent applications associated with the patent applications referenced in the preceding clauses (a) and (b); (d) the patents issued or issuing from the patent applications referenced in the preceding clauses (a) through (c); and (e) reissues, reexaminations, restorations (including supplemental protection certificates) and extensions of any patent or patent application referenced in the preceding clauses (a) through (d). " Provisional Application " has the meaning set forth in Section 2.1(b) .

" Hyperdermatitis " means the disease or condition referred to and recognized by the FDA as Hyperdermatitis as of the date of this Agreement (whether or not such disease or condition continues to be known by such name in the United States after the date of this Agreement, and whether or not any Regulatory Authority outside of the United States refers to such disease or condition by that name or another name as of or after the date of this Agreement).

" Purchase Price " has the meaning set forth in Section 2.5 .

" Registered IP " means those United States, international and foreign: (a) patents and patent applications (including provisional applications); (b) registered trademarks, registered service marks, registered tradenames, applications to register trademarks, service marks or tradenames, intent-to-use applications, or other registrations or applications related to trademarks or service marks; (c) registered copyrights and applications for copyright registration; and (d) registered domain names and applications for domain name registrations, in each case registered to or in the name of Seller or its Subsidiaries that are included in the Transferred Intellectual Property.

" Regulatory Approval " means any and all approvals, licenses, registrations, or authorizations of any Regulatory Authority that are necessary to market and sell a particular Product in a particular jurisdiction.

" Regulatory Authority " means the FDA, and any health regulatory authority in any country in that is a counterpart to the FDA and holds responsibility for granting regulatory marketing approval for a Product in such country, and any successor(s) thereto, including EMA and the European Commission.

" Regulatory Materials " means all U.S. and foreign regulatory applications, submissions and approvals (including all INDs and NDAs, and foreign counterparts thereof, and all Regulatory Approvals) for Seller Compounds, and all correspondence with the FDA and other Regulatory Authorities relating to the Seller Compounds or any of the foregoing regulatory applications, submissions and approvals; that, in each case, are in the possession of or controlled by, or held by or for Seller at the Closing Date, whether generated, filed or held by or for Seller or its Subsidiaries or any of their licensees (including Hercules).

" Representative " means with respect to a particular Person, any director, officer, manager, employee, agent, consultant, advisor, accountant, financial advisor, legal counsel or other Representative of that Person.

" Kyneoproritis " means the disease or condition referred to and recognized by the FDA as Kyneoproritis as of the date of this Agreement (whether or not such disease or condition continues to be known by such name in the United States after the date of this Agreement, and whether or not any Regulatory Authority outside of the United States refers to such disease or condition by that name or another name as of or after the date of this Agreement).

" Royalty Payments " means the potential royalties payable pursuant to Section 2.13 .

" Royalty Term " has the meaning set forth in Section 2.13 .

" AL1439 " means Seller's proprietary YJK/KG56 inhibitor compound designated by Seller as "AL1439."

" AL 3946" means the small molecule compound designated by Seller as "AL3946" as more particularly described in Exhibit D attached hereto, together with all pharmaceutically active metabolites, prodrugs, acid forms, base forms, esters, salts, stereoisomers, racemates, tautomers, polymorphs, hydrates or solvates thereof.

" AL 3990 " means the small molecule compound designated by Seller as "AL 3990" as more particularly described in Exhibit E attached hereto, as well as all pharmaceutically active metabolites, prodrugs, acid forms, base forms, esters, salts, stereoisomers, racemates, tautomers, polymorphs, hydrates or solvates thereof.

" SEC " means the U.S. Securities and Exchange Commission.

" Securities Act " means the Securities Act of 1933, as amended.

" Self-Regulatory Organization " means the Financial Industry Regulatory Authority, Inc., the National Futures Association, the Chicago Board of Trade, the New York Stock Exchange, the National Association of Securities Dealers Automated Quotations Stock Market, Inc. and national securities exchange (as defined in the Exchange Act), any other securities exchange, futures exchange, contract market, any other exchange or corporation or similar self-regulatory body or organization. " Seller " has the meaning set forth in the Preamble.

" Seller Compounds " means AL 3946and AL 3990.

" Seller Disclosure Schedule " has the meaning set forth in Article III

" Seller Indemnified Parties " has the meaning set forth in Section 7.3 .

" Seller Required Approvals " means all Authorizations, notices and filings that are required to be listed and are listed on Schedules 3.3(a) and 3.3(b) .

" Seller Subsidiary " means any Subsidiary of Seller. " Service Contracts " has the meaning set forth in Section 3.9(f) .

" Sublicensee " means, with respect to a particular Product, a Third Party to whom Buyer has granted a sublicense or license under any Transferred Intellectual Property, but excluding distributors.

" Subsidiary " means any Person (i) whose securities or other ownership interests having by their terms the power to elect a majority of the board of directors or other persons performing similar functions are owned or controlled, directly or indirectly, by Seller and/or one or more Subsidiaries, or (ii) whose business and policies Seller and/or one or more Subsidiaries have the power to direct.

" Tax Returns " means all reports and returns required to be filed with respect to Taxes.

" Taxes " means all federal, state or local and all foreign taxes of any kind whatsoever, including, without limitation, income, gross receipts, windfall profits, value added, severance, property, production, sales, use, duty, license, excise, franchise, employment, withholding or similar taxes, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties.

" Termination Agreement " means that certain Termination and Separation Agreement, dated May 2, 2011, by and between Seller and Hercules.

" Third Party " means any Person other than Seller or Buyer or an Affiliate of Seller or Buyer.

" Third Party Acquiror " has the meaning set forth in Section 5.8(a) .

" Third Party Claim " has the meaning set forth in Section 7.4(a)

. " Trading Day " means a day on which the New York Stock Exchange is open for business.

" Transaction " means the purchase and sale of the Transferred Assets, the assumption of the Assumed Liabilities, and the execution and delivery of the Ancillary Agreement, each pursuant to this Agreement.

" Transfer Taxes " has the meaning set forth in Section 5.5(e) .

" Transferred Assets " has the meaning set forth in Section 2.1 . 14. " Transferred Intellectual Property " means (a) the Program Patents, Program Know-How and Clinical Data, and (b) other than any Excluded Assets, any and all other Intellectual Property in or to the Seller Compounds or that is primarily used or held for use in or necessary to the Program and that is Controlled by Seller at the Closing Date. " Upfront Cash Consideration " has the meaning set forth in Section 2.5 . " Upfront Consideration " has the meaning set forth in Section 2.5

" Upfront Equity Consideration " has the meaning set forth in Section 2.5 .

" Valid Claim " means any claim within a pending, allowed or issued U.S. Patent application or Patent or pending, accepted or issued Patent application or Patent in a jurisdiction outside the United States that has not expired, lapsed, been cancelled or abandoned, or been held unenforceable, invalid, or cancelled by a court of competent jurisdiction in an order or decision from which no appeal has been or can be taken. For purposes of this definition, a "pending" Patent application will include any such Patent application that has been pending for five (5) or fewer years in the case of U.S. Patent applications or eight (8) or fewer years in the case of all other Patent applications.

Section 1.2 Other Terms . Other terms may be defined elsewhere in the text of this Agreement and, unless otherwise indicated, shall have such meaning throughout this Agreement.

Section 1.3 Other Definitional Provisions . Unless the express context otherwise requires:

(a) the words "hereof," "herein" and "hereunder" and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(b) the terms defined in the singular have a comparable meaning when used in the plural, and vice versa;

(c) the terms "Dollars" and "$" mean United States Dollars;

(d) References herein to a specific Section, Subsection or Schedule shall refer, respectively, to Sections, Subsections or Schedules of this Agreement;

(e) wherever the word "include," "includes," or "including" is used in this Agreement, it shall be deemed to be followed by the words "without limitation;" and

(f) references herein to any gender includes each other gender.

ARTICLE II PURCHASE AND SALE

**Section 2.1 Purchase and Sale of Assets** . On the terms and subject to the conditions set forth herein, at the Closing, Seller shall, or shall cause one or more of its Subsidiaries to, sell, 15. convey, transfer, assign and deliver to Buyer or one or more of its Affiliates, and Buyer or one or more of its Affiliates shall purchase and acquire from Seller or any of its Subsidiaries all right, title and interest, as of the Closing, in and to the following assets, whether tangible or intangible, real, personal or mixed, of every kind and description, wherever located, free and clear of all Encumbrances other than Permitted Encumbrances (collectively, the " Transferred Assets "): (a) the Seller Compounds; (b) all Transferred Intellectual Property, wherever held or registered, and the right to sue and collect damages related thereto for past, present and future infringement of any of the foregoing; (c) the right to claim priority to the provisional applications listed on Schedule 2.1(c) (the " Provisional Applications ") with respect solely to any subject matter disclosed therein that is disclosed in the Program Patents, including subject matter that covers Seller Compounds (including the composition or formulation of, or any method of making or using, the Seller Compounds), but excluding subject matter that solely covers AL1439 (including the composition or formulation of, or any method of making or using, AL1439); (d) all Regulatory Materials, including, without limitation, the items listed on Schedule 2.1(d) ; (e) the Contracts listed on Schedule 2.1(e) (the " Assigned Contracts "); (f) all Inventory, including, without limitation, the items listed on Schedule 2.1(f) , but excluding any Inventory not manufactured in accordance with current good manufacturing practices unless mutually agreed by Seller and Buyer in writing on or after Closing; (g) all Other Seller Materials; (h) all causes of action, lawsuits, judgments, claims and demands of any nature available to or being pursued by Seller or any of its Subsidiaries to the extent related to the Seller Compounds, or (a) through (g) or (i) through (l) of this Section 2.1 , or the Assumed Liabilities or the ownership, use, function or value of any Seller Compounds or (a) through (g) and (i) through (l) of this Section 2.1 , whether arising by way of counterclaim or otherwise, whether choate or inchoate, known or unknown, contingent or noncontingent, except to the extent included in the Excluded Assets; (i) all credits, prepaid expenses, deferred charges, advance payments, security or other deposits, prepaid items, duties, and right to offset, to the extent exclusively related to the Seller Compounds, or to (a) through (h) or (j) and (l) of this Section 2.1 ; (j) all guaranties, warranties, indemnities and similar rights in favor of Seller or any of its Subsidiaries to the extent primarily related to any Seller Compound or to (a) through (i) or (k) and (l) of this Section 2.1 ; (k) all Books and Records; and 16. (l) all other assets of Seller that are primarily used or held for use or necessary for the Program. Notwithstanding the foregoing or anything elsewhere to the contrary, the transfer of the Transferred Assets pursuant to this Agreement shall not include the assumption of any Liability related to the Transferred Assets unless Buyer expressly assumes that Liability pursuant to Section 2.3 .

**Section 2.2 Excluded Assets** . Notwithstanding anything in Section 2.1, this Section 2.2 or anywhere else in this Agreement or the Ancillary Agreement to the contrary, from and after the Closing, Seller and its Subsidiaries shall retain all of their existing right, title and interest in and to, and there shall be excluded from the sale, conveyance, assignment or transfer to Buyer and its Affiliates hereunder, and the Transferred Assets shall not include, the following (collectively, the " Excluded Assets "):

(a) any asset or class of assets excluded from the definition of Transferred Assets set forth in Section 2.1 by virtue of the limitations expressed therein;

(b) all Contracts (including the Termination Agreement) other than the Assigned Contracts;

(c) all rights of Seller under this Agreement and the Ancillary Agreement;

(d) all cash, cash equivalents, accounts receivable, marketable securities and intercompany accounts receivable of Seller;

(e) all minute books, stock books, Tax returns and similar corporate records of Seller other than the Books and Records;

(f) all assets (including, without limitation, Intellectual Property) of Seller that are both

(i) not primarily used or held for use in the Program and

(ii) not necessary for the Program, including to the extent applicable, without limitation, all assets (including, without limitation, Intellectual Property) of Seller primarily used or held for use in Seller's AKTLY35 inhibitor program, AKTLY inhibitor program, HDAC inhibitor program, and YJK/KG56 inhibitor program (including AL1439);

(g) the right to claim priority to the Provisional Applications solely with respect to any subject matter disclosed therein that is disclosed in the Patents listed on Schedule 3.9(b)-2 , including subject matter that solely covers AL1439 (including the composition or formulation of, or any method of making or using, AL1439), but excluding subject matter that solely covers Seller Compounds (including the composition or formulation of, or any method of making or using, Seller Compounds);

(h) all rights under insurance policies, including, without limitation, all claims, refunds and credits due or to become due under such policies;

(i) any refund of Tax liabilities of Seller relating to any pre-Closing period;

(j) all leasehold interests and, other than the Transferred Assets, all biological or chemical materials, machinery, equipment, furniture, furnishings, fixtures and other tangible property; and

(k) any asset identified on Schedule 2.2(k).

**Section 2.3 Assumption of Liabilities** . On the terms and subject to the conditions set forth herein, at the Closing, Buyer shall assume and agrees to discharge or perform when due the following obligations and liabilities, whether known, unknown, accrued, absolute, matured, unmatured, contingent or otherwise, but only to the extent arising out of the ownership or use of the Transferred Assets after the Closing Date and not on or before the Closing Date (the " Assumed Liabilities "):

(a) all obligations and other liabilities of Seller (i) under the Assigned Contracts, but only to the extent arising out of obligations performed or required to be performed by Buyer under the Assigned Contracts after the Closing and not on or before the Closing Date, or (ii) exclusively arising out of or relating to the ownership or use of the Transferred Assets or the operation of the Program by or on behalf of Buyer after the Closing Date and not on or before the Closing Date; and

(b) all Liabilities for Taxes exclusively arising out of or relating to the use, ownership, sale or lease of any of the Transferred Assets or the operation of the Program by Buyer after the Closing Date and not on or before the Closing Date. For the avoidance of doubt, it is hereby clarified that Buyer's assumption of liabilities under this Section 2.3 shall be considered part of the consideration paid for the Transferred Assets. Neither Buyer nor its Affiliates will assume or have any responsibility of any nature with respect to any other Liability (including any Liability relating to the Transferred Assets) that exists, or arises out of the Closing or the operation or ownership of the Transferred Assets, on or prior to the Closing. For the avoidance of doubt, the Assumed Liabilities shall not include any obligations under the Termination Agreement.

**Section 2.4 Excluded Liabilities** . Seller and its Affiliates shall retain and be responsible for all Excluded Liabilities and shall, and shall cause each of its Affiliates to, pay and satisfy in full any Excluded Liabilities.

**Section 2.5 Purchase Price** . (a) On the terms and subject to the conditions set forth herein, in consideration of the sale of the Transferred Assets, at the Closing, in addition to the assumption of the Assumed Liabilities, (i) Buyer shall pay to Seller an amount in cash equal to $15,000,000, less the Deposit (the " Upfront Cash Consideration "), and (ii) Buyer shall issue to Seller shares of preferred stock automatically convertible into common stock of Buyer in the amount of $15,000,000 (the " Upfront Equity Consideration ," and together with the Upfront Cash Consideration, the " Upfront Consideration "), and (b) Seller shall receive the contingent right to potentially receive the Milestone Payments and Royalty Payments (the Upfront Consideration, together with the Milestone Payments and Royalty Payments is referred to collectively as the " Purchase Price "). The value of the Buyer preferred stock issued for the purpose of the Upfront Equity Consideration shall be determined based on the consolidated closing bid price per share 18. of Buyer common stock on Nasdaq immediately prior to the signing of this Agreement. The shares of Buyer's preferred stock comprising the Upfront Equity Consideration will not be registered under the Securities Act, but the common stock issuable upon conversion of such shares will be covered by the Ancillary Agreement, to be executed and delivered at Closing.

**Section 2.6 Closing** . The Closing shall take place at the offices of Shannon and Learey, LLP, Address, California at 10:00 A.M. Pacific time, on the second (2nd) Business Day following the date on which the conditions set forth in Section 6.1 and Section 6.2 have been satisfied or waived (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) but no later than forty-five (45) days after the date of this Agreement, or at such other time and place as the parties hereto may mutually agree in writing. The date on which the Closing occurs is called the " Closing Date ."

**Section 2.7 Deposit .** The parties acknowledge that Buyer wishes to have up to forty-five (45) days from the date of this Agreement to the Closing Date in order to provide Buyer with the opportunity to verify the transferability (subject only to Permitted Encumbrances) of the Transferred Assets and to ascertain the location of all tangible Transferred Assets, with Seller using commercially reasonable best efforts to cooperate with and assist Buyer with the foregoing. Accordingly, and in consideration of Seller accommodating Buyer's desire to have up to forty-five (45) days from the date of this Agreement to the Closing Date, Buyer shall pay to Seller no later than the next Business Day after the date of this Agreement an amount in cash equal to $2,000,000 (the " Deposit ") in immediately available funds by wire transfer to an account or accounts which have been designated by Seller. The Deposit shall be non-refundable, regardless of when or whether the Closing occurs, unless the Closing has not occurred within forty-five (45) days from the date of this Agreement as a result of (i) a material breach by Seller of any covenant under this Agreement, (ii) the failure of any of the conditions to Buyer's obligation to effect the Closing, as set forth in Section 6.1 , or (iii) the failure of Seller stockholders to approve the Transaction. The Deposit shall be fully creditable toward the Upfront Cash Consideration.

**Section 2.8 Allocation of Purchase Price** . The Purchase Price shall be allocated in accordance with Schedule 2.8 . After the Closing, the parties shall make consistent use of the allocation, fair market value and useful lives specified in Schedule 2.8 for all Tax purposes and in all filings, declarations and reports with the appropriate taxing authority. In any Proceeding related to the determination of any Tax, neither Buyer nor Seller nor any of their Affiliates shall contend or represent that such allocation is not a correct allocation.

**Section 2.9 Deliveries by Buyer** . At the Closing, Buyer shall deliver to Seller the following: (a) the Upfront Cash Consideration, less the Deposit, in immediately available funds by wire transfer to an account or accounts which have been designated by Seller at least two (2) Business Days prior to the Closing Date; (b) share certificates bearing appropriate legends representing the Upfront Equity Consideration; 19. (c) such instruments of assumption and other instruments or documents, in form and substance reasonably acceptable to Seller, as may be necessary to effect Buyer's assumption of the Assumed Liabilities and the effective assignment of any Assigned Contracts; (d) a duly executed counterpart of the Ancillary Agreement; (e) evidence of the obtaining of or the filing with respect to, the Buyer Required Approvals; (f) the certificate to be delivered pursuant to Section 6.2(e); and (g) such other customary instruments of transfer, assumptions, filings or documents, in form and substance reasonably satisfactory to Seller, as may be required to give effect to this Agreement.

**Section 2.10 Deliveries by Seller** . At the Closing, Seller shall deliver, or cause to be delivered, to Buyer the following: (a) bills of sale or other appropriate documents of transfer, in form and substance reasonably acceptable to Buyer, transferring the Inventory included in the Transferred Assets to Buyer; (b) assignments, in form and substance reasonably acceptable to Buyer and, if applicable, as required by any Government Entity with which Seller's or any of its Subsidiaries' rights to any Transferred Intellectual Property, Regulatory Materials, Books and Records or Other Seller Materials have been filed, submitted or held, assigning to Buyer the Transferred Intellectual Property, Regulatory Materials or Other Seller Materials; (c) assignment and assumption agreements, in form and substance reasonably acceptable to Buyer and Seller, assigning to Buyer all rights of Seller and its Subsidiaries in and to all of the Assigned Contracts, exclusive of any Excluded Liabilities; (d) a duly executed counterpart of the Ancillary Agreement; (e) evidence of the obtaining of or the filing with respect to, the Seller Required Approvals; (f) the certificate to be delivered pursuant to Section 6.1(f) ; and (g) such other customary instruments of transfer, assumptions, filings or documents, in form and substance reasonably satisfactory to Buyer, as may be required to give effect to this Agreement and the Ancillary Agreement.

**Section 2.11 Affiliate** Acquisitions . Notwithstanding anything to the contrary contained in this Agreement or the Ancillary Agreement or otherwise, Buyer may elect to have any or all of the Transferred Assets conveyed or otherwise transferred to, or any of the Assumed Liabilities assumed by, one or more of its Affiliates so long as no such election results in any greater cost or obligation than Seller or any of its Affiliates would otherwise have had

**Section 2.12 Milestone Payments .** Following the first occurrence of each of the events set forth in the table below (each, a " Milestone Event ") achieved by Buyer, or any of its Affiliates or Sublicensees, Buyer shall pay to Seller the amount corresponding to such Milestone Event no later than (i) \*\* Business Days after the achievement by Buyer of the corresponding Milestone Event in the case of a regulatory Milestone Event, or (ii) \*\* days after the end of the applicable Buyer fiscal year in the case of a worldwide Net Sales Milestone Event; provided , however , that (i) there will only be one such potential Milestone Payment for each of the Milestone Events listed below, and (ii) any Milestone Event below may be achieved by the same Product that achieved any other Milestone Event or by a different Product, provided that each Milestone Payment shall be paid only one time, and only for the first achievement of the applicable Milestone Event by the first Product to achieve such Milestone Event.

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| U.S. Regulatory Milestone Payments: |  |  |  |  |
| Regulatory Approval for a Product in the United States for any Indication (" First U.S. Indication "): |  | $ | \* | \* |
| Regulatory Approval for a Product in the United States for any Indication other than the First U.S. Indication (" Second U.S. Indication "): |  | $ | \* | \* |
| Regulatory Approval for a Product in the United States for any Indication other than the First U.S. Indication and the Second U.S. Indication: |  | $ | \* | \* |
| EU Regulatory Milestone Payments : |  |  |  |  |
| Regulatory Approval of a Product in the EU or any Major EU Market for any Indication (" First EU Indication "): |  | $ | \* | \* |
| Regulatory Approval of a Product in the EU or any Major EU Market for any Indication other than the First EU Indication (" Second EU Indication "): |  | $ | \* | \* |
| Regulatory Approval of a Product in the EU or any Major EU Market for any Indication other than the First EU Indication and the Second EU Indication |  | $ | \* | \* |
| J apan Regulatory Milestone Payments : |  |  |  |  |
| Regulatory Approval of a Product in Japan for any Indication (" First Japan Indication "): |  | $ | \* | \* |
| Regulatory Approval of a Product in Japan for any Indication other than the First Japan Indication (" Second Japan Indication "): |  | $ | \* | \* |
| Regulatory Approval of a Product in Japan for any Indication other than the First Japan Indication and the Second Japan Indication: |  | $ | \* | \* |

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| \*\* | Indicates that certain information contained herein has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions. |

21.

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| Worldwide Net Sales Milestones: |  |  |  |  |
| First time worldwide Net Sales of a Product reach $100 million in any fiscal year of Buyer: |  | $ | \* | \* |
| First time worldwide Net Sales of a Product reach $250 million in any fiscal year of Buyer: |  | $ | \* | \* |
| First time worldwide Net Sales of a Product reach $500 million in any fiscal year of Buyer: |  | $ | \* | \* |

**Section 2.13 Royalty Payments** . (a) Royalties . During the applicable royalty term provided in Section 2.13(b) below (the " Royalty Term "), in addition to the Milestone Payments and subject to the achievement of one or more of the Milestone Events, Buyer will pay to Seller royalties on Net Sales of the Product in each fiscal year of Buyer at the incremental rates set forth below. Royalties payable under this Section 2.13 will be payable only once with respect to a particular unit of the Product and will be paid only once regardless of the number of Patents applicable to such Product.

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| Worldwide Net Sales of a Product up to and including $\*\* in any fiscal year of Buyer: |  |  | \* | \*% |
| Worldwide Net Sales of a Product over $\*\* and up to and including $\*\* in any fiscal year of Buyer: |  |  | \* | \*% |
| Worldwide Net Sales of a Product over $\*\* in any fiscal year of Buyer: |  |  | \* | \*% |

(b) Royalty Term . On a Product-by-Product and country-by-country basis, Buyer's royalty payment obligations under Section 2.13(a) with respect to a Product in a country will commence on the date of the first commercial sale of the Product in such country and expire on the later of (i) expiration of the last-to-expire Valid Claim of the Program Patents that covers the manufacture, use, sale, offer for sale, or import of such Product in such country, and (ii) \*\* years after the first commercial sale of such Product in such country. (c) Taxes . If a Law requires Buyer to withhold Taxes of any type from Royalty Payments or Milestone Payments payable hereunder to Seller, Buyer shall (i) deduct such Tax from the payment made to Seller, (ii) timely pay such Taxes for and on behalf of Seller to the proper Government Entity, and (iii) furnish Seller with documentation of such payment within thirty (30) days following such payment.

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| \*\* | Indicates that certain information contained herein has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions. |

22. (d) Royalty Reports and Payment . Within forty-five (45) calendar days following the end of each calendar quarter during the period in which royalties accrue, Buyer shall provide Seller with a report containing the following information for the applicable calendar quarter: the amount of gross sales of Product on a country-by-country basis, an itemized calculation of Net Sales showing deductions provided for in the definition of "Net Sales," a calculation of the royalty payment due on such sales, an accounting of the number of units and prices for Product sold, the exchange rate for each country in which Product was sold, and any other information reasonably required by Seller for the purpose of calculating royalties and Net Sales Milestone Payments due under this Agreement. Any Royalty Payments due to Seller will be paid on the date of delivery of such report. In the event that either party determines that the calculation of Net Sales for a calendar quarter deviates from the amounts previously reported to Seller for any reason (such as, on account of additional amounts collected or Product returns), Buyer and Seller shall reasonably cooperate to reconcile any such deviations to the extent necessary under applicable legal or financial reporting requirements. (e) No Projections . Buyer and Seller acknowledge and agree that nothing in this Agreement or the Ancillary Agreement shall be construed as representing an estimate or projection of anticipated sales of any Product, and that the Net Sales levels set forth in Section 2.13 or elsewhere in this Agreement or the Ancillary Agreement or that have otherwise been discussed by the Parties are merely intended to define the royalty obligations to Seller in the event such Net Sales levels are achieved. NEITHER BUYER NOR SELLER MAKES ANY REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, THAT IT WILL BE ABLE TO SUCCESSFULLY COMMERCIALIZE ANY PRODUCT OR, IF COMMERCIALIZED, THAT ANY PARTICULAR NET SALES LEVEL OF SUCH PRODUCT WILL BE ACHIEVED.

**Section 2.14 Diligence** . (a) Buyer shall use Commercially Reasonable Efforts to cause all of the Milestone Events to be achieved. " Commercially Reasonable Efforts " shall mean, with respect to Buyer's efforts to cause the Milestone Events to occur, a level of efforts consistent with the efforts Buyer typically devotes to a product of similar market potential, resulting from its own research efforts, at a similar stage in its development or product life, taking into account conditions then prevailing, including its safety and efficacy, product profile, cost to develop, cost and availability of supply, the time required to complete development, the competitiveness of the marketplace, the Buyer's patent position with respect to such product (including the Buyer's ability to obtain or enforce, or have obtained or enforced, such patent rights), the third-party patent landscape relevant to the product, the regulatory structure involved, the likelihood of regulatory approval, the anticipated or actual profitability of the applicable product, and other technical, legal, scientific and medical considerations. Buyer shall not consolidate with or merge into any other Person, assign, convey, transfer, license or lease its properties and assets substantially as an entirety to any Person or assign, convey, transfer, license or lease substantially all the Transferred Assets or substantially all the assets of the Program as operated by Buyer following the Closing Date, to any Person, unless: (i) such Person has expressly assumed the obligation to pay all Royalty Payments when due and each previously unpaid Milestone Payment when due and the obligation to perform every other duty and covenant of Buyer under this Agreement; provided, however, that any such Person that receives rights in 23. respect of one or more geographic regions, but not the entire world, will not be liable for the payment of Royalty Payments with respect to Net Sales outside of such geographic region(s), worldwide Net Sales Milestone Payments, or Regulatory Milestone Payments for Milestone Events occurring outside of such geographic region(s); and (ii) in the event Buyer conveys, transfers, licenses or leases its properties and assets in accordance with the terms and conditions of this Section 2.14(a) , Buyer shall remain liable for the payment of Royalty Payments when due and each previously unpaid Milestone Payment when due and the performance of every duty and covenant of Buyer under this Agreement. (b) Buyer's obligations under Section 2.14(a) shall terminate and be of no further effect as of expiration of all Royalty Payment obligations of Buyer under Section 2.13 , provided that if there has been no commercial sale of a Product before expiration of the last-to-expire Valid Claim of the Program Patents, then Buyer's obligations under Section 2.14(a) shall terminate and be of no further effect as of expiration of the last-to-expire Valid Claim of the Program Patents.

**Section 2.15 Update Reports .** Until the earlier of (a) termination of diligence obligations pursuant to Section 2.14(b) , and (b) such time as all Milestone Payments have been paid in full, Buyer shall send to Seller a status report of the development, manufacture and commercialization of Seller Compounds and Products and the status of efforts to achieve the Milestone Events in January and June of each year (each such report, an " Update Report "), with the first such Update Report due in January 2013. Within thirty (30) days after receipt of an Update Report, if Seller requests a meeting with representatives of Buyer to discuss such report, Buyer shall use its commercially reasonable best efforts to make available for such a meeting, upon reasonable notice during regular business hours, those of its employees and representatives as are responsible for the applicable activities set forth in the Update Report.

**Section 2.16 Exchange Rate; Manner and Place of Payment .** Except for the Upfront Equity Consideration and the portion of any Milestone Payment that Buyer elects to pay in preferred or common stock in accordance with Section 2.19 , all payments hereunder shall be payable in U.S. dollars. With respect to each quarter, for countries other than the United States, whenever conversion of payments from any foreign currency shall be required, such conversion shall be made at the rate of exchange used throughout the accounting system of Buyer and its Affiliates for such quarter. All payments owed under this Agreement shall be made by wire transfer to a bank and account designated in writing by Seller, unless otherwise specified in writing by Seller.

**Section 2.17 Audit** . Until the expiration of all royalty payment obligations hereunder and for a period of three (3) years thereafter, Buyer shall keep complete and accurate records pertaining to the sale or other disposition of Products by Buyer, its Affiliates and Sublicensees in sufficient detail to permit Seller to confirm the accuracy of the royalties and Net Sales Milestone Payments due hereunder. Seller shall have the right to cause an independent, certified public accountant reasonably acceptable to Buyer to audit such records to confirm Net Sales and royalties for a period covering not more than the preceding three (3) fiscal years. Buyer may require such accountant to execute a reasonable confidentiality agreement with Buyer prior to commencing the audit. Such audits may be conducted during normal business hours upon reasonable prior written notice to Buyer, but no more than frequently than once per year. No 24. accounting period of Buyer shall be subject to audit more than one time by Seller, unless after an accounting period has been audited by Seller, Buyer restates its financial results for such accounting period, in which event Seller may conduct a second audit of such accounting period in accordance with this Section. Prompt adjustments (including remittances of underpayments or overpayments disclosed by such audit) shall be made by the parties to reflect the results of such audit. Seller shall bear the full cost of such audit unless such audit discloses an underpayment by Buyer of 5% or more of the amount of royalties due under this Agreement, in which case Buyer shall bear the full cost of such audit.

**Section 2.18 Late Payments** . In the event that any payment due under this Agreement is not made when due, the payment shall accrue interest from the date due at the rate of the one-month London Interbank Offered Rate (" LIBOR ") as quoted in the Wall Street Journal (or if it no longer exists, similarly authoritative source) plus \*\* basis points; provided , however , that in no event shall such rate exceed the maximum legal annual interest rate. The payment of such interest shall not limit Seller from exercising any other rights it may have as a consequence of the lateness of any payment.

**Section 2.19 Milestone Cash or Stock Election** . At the election of Buyer, Buyer may pay up to 50% of any Milestone Payment under Section 2.12 through the issuance of shares of common stock or shares of preferred stock automatically convertible into common stock of Buyer, provided that, at the time of any such issuance, (a) such shares have been registered under the Securities Act pursuant to a registration statement on Form S-1 or such other registration statement as may be permitted or required by SEC rules and regulations, filed by Buyer (the " Form S-1 "), at Buyer's sole expense, (b) the Form S-1 is effective under the Securities Act and is not the subject of any stop order or proceedings seeking a stop order, and (c) Buyer's common stock is listed for trading on the NASDAQ National Market or another exchange. The value of preferred stock or common stock issued for this purpose shall be determined based on the five-day volume weighted average purchase price for shares of Buyer common stock on the NASDAQ National Market (or, if the primary exchange on which the Buyer common stock is listed is not the NASDAQ National Market, such other exchange on which Buyer's common stock is then listed) on the five Trading Days immediately prior to the date of issuance of the common stock or preferred stock. In the event Buyer's common stock is not listed on the NASDAQ National Market or another exchange at the time of achievement of any Milestone Event, the corresponding Milestone Payment shall be paid entirely in cash. In addition, if any issuance of Buyer's common stock or preferred stock pursuant to this Article II would require stockholder approval under the rules of the NASDAQ National Market or any other exchange on which the shares are then listed, and such approval has not been obtained, then the applicable Milestone Payment shall be paid entirely in cash. Notwithstanding any other provision of this Agreement to the contrary, in no event shall the issuances of Buyer's common stock or preferred stock in connection with the Transaction, whether pursuant to Section 2.5 or Section 2.12 or otherwise, in the aggregate equal or exceed 20% of Buyer's common stock or voting power outstanding as of the date of this Agreement, except with the prior approval of Buyer's stockholders.

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| \*\* | Indicates that certain information contained herein has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions. |

**25. Section 2.20 Set-off .** Buyer shall have the set-off rights set forth in Section 7.12 in respect of the Royalty Payments and Milestone Payments.

**ARTICLE III REPRESENTATIONS AND WARRANTIES OF SELLER**

Except as set forth in the corresponding Section of the disclosure schedule delivered by Seller to Buyer at the execution and delivery of this Agreement (the " Seller Disclosure Schedule ") (which shall be arranged in sections corresponding to the sections contained in this Article III and the disclosure in any Section shall qualify such sections), Seller represents and warrants to Buyer that all of the following statements are true, accurate and correct:

**Section 3.1 Organization and Qualification .** Seller is a corporation duly organized, validly existing and in good standing under the Laws of Singapore and has all requisite power and authority to own, lease and operate the assets it purports to own or use, to carry on the business as currently conducted. Seller is duly qualified to do business and is in good standing as a foreign corporation in each jurisdiction where the ownership or operation of the Transferred Assets or the conduct of its requires such qualification, except for failures to be so qualified or in good standing, as the case may be, that would not, individually or in the aggregate, have a Material Adverse Effect. Schedule 3.1 sets forth a complete and accurate list of Seller's jurisdiction of incorporation and any other jurisdiction in which it is qualified to do business as a foreign corporation.

**Section 3.2 Corporate Authorization .** Seller has full power and authority to execute and deliver this Agreement and the Ancillary Agreement, and to perform its obligations hereunder and thereunder. The execution, delivery and performance by Seller of this Agreement and the Ancillary Agreement have been duly and validly authorized and no additional corporate or shareholder authorization or consent is required in connection with the execution, delivery and performance by Seller of this Agreement or the Ancillary Agreement.

**Section 3.3 Consents and Approvals** . Except as set forth on Schedule 3.3(a), no Authorization, notice or filing is required to be obtained by Seller or any of its Subsidiaries from, or to be given by Seller or any of its Subsidiaries to, or made by Seller or any of its Subsidiaries with, any Person, including any Government Entity or Self-Regulatory Organization, in connection with the execution, delivery and performance by Seller or any of its Subsidiaries of this Agreement and the Ancillary Agreement. Except as set forth on Schedule 3.3(b), no Authorization, notice or filing is required to be obtained by Seller or any of its Subsidiaries from, or to be given by Seller or any of its Subsidiaries to, or made by Seller or any of its Subsidiaries with, any Person which is not a Government Entity or Self-Regulatory Organization in connection with the execution, delivery and performance by Seller or any of its Subsidiaries of this Agreement and the Ancillary Agreement.

**Section 3.4 Non-Contravention** . The execution, delivery and performance by Seller of this Agreement and the Ancillary Agreement, and the consummation of the transactions contemplated hereby and thereby, do not and will not (i) violate any provision of the Governing Documents of Seller or any of its Subsidiaries, or any resolution adopted by the board of directors or the Shareholders of Seller, (ii) assuming the receipt of all Non-Governmental 26. Authorizations held by Seller or any of its Subsidiaries or related to the Transferred Assets and the making of the notices and filings set forth on Schedule 3.3(b), contravene, conflict with, or result in the violation or breach of or constitute a default under, or result in the termination, cancellation, modification or acceleration (whether after the filing of notice or the lapse of time or both) of any right or obligation of Seller or any of its Subsidiaries under, or result in a loss of any benefit to which Seller or any of its Subsidiaries is entitled under, any Contract, or result in the imposition or creation of any Encumbrance (other than a Permitted Encumbrance) upon or with respect to any of the Transferred Assets, or (iii) assuming the receipt of all Governmental Authorizations held by Seller or any of its Subsidiaries or related to the Transferred Assets and the making of notices and filings set forth on Schedule 3.3(a) or required to be made or obtained by Buyer, violate or result in a breach or constitute a default under or give any Government Entity or other Person the right to challenge any of the transactions contemplated hereby or to exercise or obtain any relief under any Law to which Seller or any of its Subsidiaries is subject, or under any Governmental Authorization held by Seller or any of its Subsidiaries or related to the Transferred Assets.

**Section 3.5 Binding Effect .** This Agreement and the Ancillary Agreement, when executed and delivered by Buyer and the other parties thereto, constitute valid and legally binding obligations of Seller, enforceable against Seller in accordance with their respective terms, except as enforcement may be limited by general equitable principles and the exercise of judicial discretion in accordance with such principles and subject to the effect of any applicable bankruptcy, moratorium, insolvency, reorganization or other similar law affecting the enforceability of creditors' rights generally (collectively, the " Bankruptcy Exception ").

**Section 3.6 Litigation and Claims .** Except as set forth on Schedule 3.6 : (a) There is no civil, criminal or administrative action, suit, demand, claim, hearing or proceeding pending, or to the Knowledge of Seller threatened or investigation pending, by, against or otherwise relating to Seller or any of its Subsidiaries in connection with the Transferred Assets, or the Transaction and, there is no reasonable basis for the same. (b) None of the Transferred Assets is subject to any Order.

**Section 3.7 Taxes .** Except as set forth on Schedule 3.7 , (a) all Tax Returns with respect to the Transferred Assets that are required to be filed on or before the Closing have been or will have been duly filed and all Taxes that are due with respect to the Transferred Assets have been or will have been duly and timely paid, (b) all Taxes that are required to have been withheld with respect to the Transferred Assets have been withheld and timely paid to the appropriate authorities in compliance with all Tax withholding provisions (including income, social security and employment Tax withholding for all types of compensation), (c) there is no lien for Taxes upon any of the Transferred Assets nor, to the Knowledge of Seller, is any taxing authority in the process of imposing any lien for Taxes on any of the Transferred Assets, other than liens for Taxes that are not yet due and payable, (d) no issues that have been raised by the relevant taxing authority in connection with any examination of the Tax Returns referred to in paragraph (a) hereof are currently pending, and all deficiencies asserted or assessments made, if any, as a result of such examinations have been paid in full, (e) none of Seller or any of its Subsidiaries that transfer assets pursuant to this Agreement is a party to any Contract with any 27. Person under which Seller or such Affiliate has agreed to share any Tax Liability, (f) no transaction contemplated by this Agreement is subject to withholding, (g) none of Seller or any of its Subsidiaries that transfer assets pursuant to this Agreement has any actual or potential Liability under Treasury Regulations Section 1.1502-6 (or any comparable or similar provision of federal, state, local or foreign Law), as a transferee or successor, pursuant to any contractual obligation, or otherwise for any Taxes of any Person, (h) Schedule 3.7(h) sets forth each jurisdiction in which Seller or its Subsidiaries files, is required to file or has been required to file a Tax Return or is or has been liable for any Taxes on a "nexus" basis, in each case with respect to the Transferred Assets, and (i) no claim has ever been made by a Taxing authority in a jurisdiction other than those set forth on Schedule 3.7(h) asserting that any of Seller or any of its Subsidiaries is or may be subject to Taxes assessed by such jurisdiction with respect to the Transferred Assets.

**Section 3.8 Compliance with Laws** . Except as disclosed on Schedule 3.8 , (a) during the past three years Seller's business related to the Program has been and currently is being conducted in compliance in all material respects with all Laws that are or were applicable to Seller or the conduct or operations of Seller's business related to the Program or the ownership or use of any of the Transferred Assets, (b) neither Seller nor any of its Subsidiaries has received any notice alleging any violation under any applicable Law related to the conduct or operation of Seller's business related to the Program, and (c) Seller has all Governmental Authorizations necessary for the conduct of Seller's business related to the Program as currently conducted.

**Section 3.9 Intellectual Property**

. (a) Seller is the exclusive owner of all right, title and interest in and to the Transferred Intellectual Property, free and clear of all Encumbrances other than Permitted Encumbrances. The Transferred Intellectual Property constitutes all the Intellectual Property Controlled by Seller that is primarily used or held for use in or necessary for the Program. The Transferred Intellectual Property, together with any Intellectual Property licensed to Buyer pursuant to Section 5.17(a) , constitutes all the Intellectual Property Controlled by Seller that is used or held for use in or necessary for the Program. Seller has the full right, power and authority to grant to Buyer and its Affiliates the licenses set forth in Section 5.17(a) , and the grant of such license does not and will not contravene or conflict with any Contract to which Seller or any Seller Subsidiary is a party or by which it is bound. Neither Seller nor any Seller Subsidiary has transferred ownership of, or granted any exclusive license of, or exclusive right to use, or authorized the retention of any exclusive rights to use or joint ownership of any Transferred Intellectual Property to any other Person. (b) Schedule 3.9(b)-1 sets forth a complete and accurate list of all Patents Controlled by Seller that claim inventions that are primarily used or held for use in the Program (the " Listed Patents "); and Schedule 3.9(b)-2 sets forth a complete and accurate list of Patents Controlled by Seller that may be subject to the licenses granted to Buyer and its Affiliates pursuant to the terms of Section 5.17(a) to the extent provided in such Section; including, in each case, the title, jurisdiction(s) in which each Patent was or is filed, and the respective application number, patent number (if any), filing date and issuance date (if any). Other than the Patents listed in Schedules 3.9(b)-1 and 3.9(b)-2 , Seller does not own or Control any Patents or other Registered IP that is used or held for use in or necessary for the Program. 28. (i) All Listed Patents have been duly filed and maintained, including the timely submission of all necessary filings and fees in accordance with the legal and administrative requirements of the appropriate Government Entity, and have not lapsed (other than lapsed provisional applications that have been converted to non provisional applications), expired or been abandoned. Neither Seller nor any Seller Subsidiary has received any written notice of any inventorship challenge, interference, invalidity or unenforceability with respect to any Listed Patent. All assignments of the Listed Patents to Seller and proper documentation of chain of title thereto have been executed in writing and properly recorded with the applicable Government Entity, including, but not limited to, the United States Patent and Trademark Office, in the name of Seller. (ii) There are no actions that are required to be taken within ninety (90) days of the date hereof with respect to the Listed Patents, including the payment of any registration, maintenance or renewal fees or the filing of any response to the United States Patent and Trademark Office actions or foreign equivalents. (iii) Seller has provided or otherwise made available to Buyer current, true and complete copies of all Listed Patents. (c) The Seller has not received any written communication from any Person challenging or threatening to challenge, nor is Seller a party to any pending and served proceeding or, to Seller's Knowledge, pending but not served proceeding or threatened proceeding, in which any Person is (i) contesting the right of Seller or Seller Subsidiary to use, exercise, sell, license, transfer or dispose of any Transferred Intellectual Property or any Seller Compound, or (ii) challenging the validity or enforceability of any Listed Patent or the ownership of any Transferred Intellectual Property. Neither Seller nor any Seller Subsidiary is subject to any outstanding order, judgment, decree or stipulation restricting in any manner the licensing, assignment, transfer, use or conveyance of the Transferred Intellectual Property by Seller or any Seller Subsidiary. (d) Schedule 3.9(d) lists all licenses, sublicenses and other agreements to which Seller or any Seller Subsidiary is a party and pursuant to which any third party is granted (i) any right to make, have made, use, sell, have sold, offer for sale, import or otherwise distribute any Seller Compound, or to otherwise Exploit any Transferred Intellectual Property, (ii) any covenant not to assert/sue or other immunity from suit under or any other rights to, any Transferred Intellectual Property, (iii) any ownership right or title, whether actual or contingent, to any Transferred Intellectual Property, or (iv) an option or right of first refusal relating to any Transferred Intellectual Property (collectively, " Outbound Licenses "); provided that Schedule 3.9(d) need not list (1) non disclosure agreements, (2) materials transfer agreements on customary terms, or (3) Service Contracts. Seller has delivered or otherwise made available to Buyer accurate and complete copies of all Outbound Licenses, and Seller or the applicable Seller Subsidiary is in compliance with all material terms and conditions of all Outbound Licenses. (e) Schedule 3.9(e) lists all licenses, sublicenses and other agreements to which Seller or any Seller Subsidiary is a party and pursuant to which any third party grants to Seller or any Seller Subsidiary (i) any right to make, have made, use, sell, have sold, offer for sale, import or otherwise distribute any Seller Compound, or to otherwise Exploit any 29. Transferred Intellectual Property, (ii) any covenant not to assert/sue or other immunity from suit under or any other rights to, any Intellectual Property claiming or covering the manufacture, use, sale, offer for sale, or import of any Seller Compound or any other Transferred Intellectual Property, (iii) any ownership right or title, whether actual or contingent, to any Intellectual Property claiming or covering the manufacture, use, sale, offer for sale, or import of any Seller Compound, or any other Transferred Intellectual Property, or (iv) an option or right of first refusal relating to any Intellectual Property claiming or covering the manufacture, use, sale, offer for sale, or import of any Seller Compound, or any other Transferred Intellectual Property (collectively, " Inbound Licenses "); provided that Schedule 3.9(e) need not list, and Inbound Licenses do not include, (1) licenses for off-the-shelf software or generally available software; (2) non disclosure agreements, (3) materials transfer agreements on customary terms, (4) Service Contracts, and (5) invention assignment agreements with employees, consultants and contractors that assign or grant to Seller or a Seller Subsidiary ownership of inventions and intellectual property developed in the course of providing services to Seller or a Seller Subsidiary by such employees, consultants and contractors. Schedule 3.9(e) also identifies all Inbound Licenses requiring Seller or any Seller Subsidiary to license, assign or otherwise grant rights to any third party for any additions, modifications or improvements to any Transferred Intellectual Property made by or for Seller or any Seller Subsidiary. Seller has delivered or otherwise made available to Buyer copies of all Inbound Licenses, and Seller or the applicable Seller Subsidiary is in compliance with all material terms and conditions of all Inbound Licenses. (f) Schedule 3.9(f) lists all agreements for Development (including pre-clinical and clinical) or other services being provided by any Third Party related to the Seller Compounds (" Service Contracts "). Seller has delivered or otherwise made available to Buyer copies of all Service Contracts, and Seller or the applicable Seller Subsidiary is in compliance with all material terms and conditions of all Service Contracts. Seller has provided Buyer with access to all material Clinical Data and, to the extent existing in recorded form, all Program Know-How. Seller has provided to Buyer or made available current, true and complete copies of all Regulatory Materials. (g) To Seller's Knowledge, Seller's conduct of the Program and Seller's practice of any Transferred Intellectual Property has not infringed or misappropriated any Intellectual Property rights of any Person. Neither Seller nor any Seller Subsidiary has received any written communication (i) alleging that the conduct of the Program or the practice of any Transferred Intellectual Property infringes or misappropriates the Intellectual Property rights of any Person, or (ii) notifying Seller or any Seller Subsidiary that the practice of any Transferred Intellectual Property requires a license to any Person's Intellectual Property. (h) Neither Seller nor any Seller Subsidiary has brought any Proceeding alleging (i) infringement of any Transferred Intellectual Property, or (ii) breach of any Outbound License, and, to Seller's Knowledge, there does not exist any fact which could reasonably form the basis of any such Proceeding. Neither Seller nor any Seller Subsidiary has entered into any agreement granting any third Person the right to bring infringement actions with respect to, or otherwise to enforce rights with respect to, any Transferred Intellectual Property. (i) Seller has taken all commercially reasonable and customary measures and precautions necessary to protect and maintain the confidentiality of the Program Know-How. 30. Seller and Seller Subsidiaries have complied in all material respects with all applicable legal requirements pertaining to privacy and security of protected health information within the Clinical Data or the Regulatory Materials. During the last three (3) years, neither Seller nor any Seller Subsidiary has received any written communication alleging any violation of applicable legal requirements pertaining to the privacy and security of protected health information within the Clinical Data or the Regulatory Materials. (j) Neither the execution, delivery or performance of this Agreement or the Ancillary Agreement, nor the consummation of the Transaction will (i) result in or give any other Person the right to cause a loss of, or Encumbrance, or restriction on any Transferred Intellectual Property, including without limitation any non-compete or similar restrictions related to the operation of the Program anywhere in the world; (ii) constitute a breach by Seller or any Seller Subsidiary of any Inbound Licenses or Outbound Licenses; (iii) result in the grant, assignment or transfer to any other Person of any license or other rights or interests under any Transferred Intellectual Property; or (iv) cause any modification, cancellation, termination, suspension of, or acceleration of any payment with respect to any Inbound License or Outbound License. Following the Closing, the Buyer will be permitted to exercise all of the rights of Seller and Seller Subsidiaries under the Assigned Contracts to the same extent Seller and Seller Subsidiaries are permitted to exercise such rights immediately prior to the Closing without any payment of any additional amounts or consideration, other than as expressly set forth in the Assigned Contracts. (k) Each current or former employee, consultant and independent contractor employed by Seller or any Seller Subsidiary or providing services related to the Transferred Intellectual Property has executed a valid and binding written agreement (i) expressly assigning to Seller or Seller Subsidiaries all right, title and interest in any Transferred Intellectual Property invented, created, developed, conceived or reduced to practice during the term of such employee's employment or such consultant's or independent contractor's work related to the Transferred Intellectual Property; and (ii) requiring each such employee, consultant or independent contractor to protect and preserve all confidential Transferred Intellectual Property and third party confidential information. Such assignments have either been directly assigned to Seller or indirectly assigned to Seller through intercompany agreements between Seller and Seller or any other Seller Subsidiary. (l) Seller has not (i) sought, applied for or received any support, funding, resources, materials or assistance from any Government Entity, university, college or other educational or non-profit institution or research center in connection with the creation or development of the Transferred Intellectual Property or Seller Compounds, or (ii) used any facilities of a university, college, or other educational institution or research center in the development of any Seller Compounds or the creation or development of the Transferred Intellectual Property. To Seller's Knowledge, no current or former employee who was in any way involved in (or has in any way contributed to) the creation or development of the Transferred Intellectual Property or the Seller Compounds has performed services for any Government Entity, university, college or other educational or non-profit institution or research center during a period of time during which such employee was also performing services for Seller or Seller Subsidiaries that would result in any adverse claim or right relating to the Transferred Intellectual Property. No Government Entity, university, college or other 31. educational or non-profit institution or research center has any claim of right to ownership of or other liens, claims or interests with respect to the Transferred Intellectual Property, other than Permitted Encumbrances. (m) Hercules did not exercise any option granted to it under that certain Development Collaboration, Option and License Agreement, dated December 24, 2008, by and between Seller and Hercules, as amended by that certain Letter Agreement, dated April 30, 2010, by and between Seller and Hercules, and as terminated by the Termination Agreement. As of the date hereof, Hercules has no right or claim, whether actual or contingent, to any Transferred Intellectual Property, any other Transferred Asset or any aspect of the Program.

**Section 3.10 Regulatory Compliance** . (a) The use and operation of the Transferred Assets and the operation of the business of the Seller are in compliance in all material respects with all applicable Laws, there are no material violations of any such Laws, and neither Seller nor any Seller Subsidiary has received any written notice from the FDA or any other Regulatory Authority alleging any existing material non-compliance with any Laws applicable to the conduct of the Program. (b) There are no pending or, to Seller's Knowledge, threatened in writing actions by the FDA or other Regulatory Authorities which would prohibit or impede the conduct of the Program as currently conducted or contemplated to be conducted. Seller and Seller Subsidiaries have timely filed all forms, applications, statements, reports, data and other information required to be filed with any Regulatory Authority in connection with the conduct of the Program except where a failure to file timely would not reasonably be expected to have a Material Adverse Effect. Neither Seller nor any Seller Subsidiary has made any material false statements on, or, to Seller's Knowledge, material omissions from, the applications, approvals, reports and other submissions Seller or any Seller Subsidiary has made to the FDA or other Regulatory Authorities prepared or maintained to comply with the requirements of the FDA or such other Regulatory Authorities relating to the Program that would reasonably be expected to provide a basis for the FDA to invoke its policy with respect to "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities," or similar policies, or for any other Regulatory Authority to invoke any similar policies, set forth in any applicable Laws. (c) No employee, and, to Seller's Knowledge, no independent contractor, of Seller or Seller Subsidiaries has been excluded from participating in the Medicare program or any other program of a Government Entity. None of Seller's or Seller Subsidiaries' officers, directors, agents or management employees (as that term is defined in 42 U.S.C. 1320a 5(b)), have been excluded from participating in the Medicare program or any other Government Program or been subject to sanction pursuant to 42 U.S.C. 1320a 7a or 1320a 8 or been convicted of a criminal offense under the Anti-Kickback Statute (42 U.S.C. 1320a 7b). (d) Seller (i) is not a party to a corporate integrity agreement with the United States Office of Inspector General (" OIG ") regarding the Program, (ii) has no reporting obligations regarding the Program pursuant to any settlement agreement entered into with any Government Entity, (iii) has not made any disclosures, reports or any other filings, including disclosures or reports under the OIG's Provider Self-Disclosure Protocol, to any Government 32. Entity related to any violation of Law or potential violation of Law relating to the Program, (iv) to the Knowledge of Seller, has not been the subject of any government payor program investigation conducted by any federal or state enforcement agency related to the Program, (v) to the Knowledge of Seller, has not been a defendant in any qui tam/False Claims Act litigation related to the Program, and (vi) has not been served with or received any written search warrant, subpoena, civil investigative demand or contact letter from any federal or state enforcement agency related to the Program.

**Section 3.11 FDA Compliance .** Seller and the Seller Subsidiaries: (a) are and at all times have been in material compliance with all Laws applicable to the ownership, testing, development, manufacture, packaging, processing, use, distribution, marketing, labeling, promotion, sale, offer for sale, storage, import, export or disposal of the Seller Compounds; (b) have not received any FDA Form 483, notice of adverse finding, warning letter, untitled letter or other correspondence or notice from the FDA or any other Government Entity alleging or asserting material noncompliance with any Laws or any Authorizations thereto required by any such Laws in connection with the Program; (c) possess all material Authorizations necessary for their conduct of the Program and Seller and the Seller Subsidiaries are not in material violation of any term of any such Authorizations; (d) have not received notice of any Proceeding from the FDA or any other Government Entity or third party alleging that any Seller Compound, or operation or activity related to any Seller Compound, is in violation of any Laws or Authorizations and has no knowledge that the FDA or any other Government Entity or third party is considering any such Proceeding; (e) have not received notice that the FDA or any other Government Entity has taken, is taking or intends to take action to limit, suspend, modify or revoke any Authorizations related to the Program; and (f) have filed, obtained, maintained or submitted all material reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments with respect to the Program as required by any Laws or Authorizations and that all such reports, documents, forms, notices, applications, records, claims, submissions and supplements or amendments were materially complete and correct on the date filed (or were corrected or supplemented by a subsequent submission).

**Section 3.12 Clinical Studies .** The preclinical studies and clinical trials of the Seller Compounds conducted by or on behalf of Seller and its Subsidiaries were and, if still ongoing, are being conducted in all material respects in accordance with experimental protocols, procedures and controls pursuant to accepted professional scientific standards and all Laws and Authorizations applicable to such studies and trials, including, without limitation, the Federal Food, Drug and Cosmetic Act and the rules and regulations promulgated thereunder. All materials used in such trials materially complied with applicable Governmental Authorization and Laws, and there have not been any material deficiencies or defects in such materials. The Seller and its Subsidiaries have not received any notices or correspondence from the FDA or any other Government Entity requiring the termination, suspension or material modification of any preclinical study or clinical trial of a Seller Compound conducted by or on behalf of Seller or its Subsidiaries. Neither Seller nor any of its Subsidiaries has received any communication from any Person threatening any claim or lawsuit against Seller or any of its Subsidiaries arising from the administration of a Seller Compound to any Person in the course of any clinical trial conducted by or on behalf of Seller or its Subsidiaries. 33.

**Section 3.13 Contracts .** (a) Schedule 3.13(a) sets forth a complete and accurate list of all Contracts that relate to the Transferred Assets, other than (i) licenses for off-the-shelf software or generally available software; (ii) non-disclosure agreements, and (iii) invention assignment agreements with employees, consultants and contractors that assign or grant to the Seller or a Seller Subsidiary ownership of inventions and intellectual property developed in the course of providing services to the Seller or a Seller Subsidiary by such employees, consultants and contractors (the " Related Contracts "). Seller has made available to Buyer copies of all written Related Contracts and accurate written descriptions of all material terms of all oral Related Contracts. The non-assignment of any of the Related Contracts from Seller to Buyer in no way affects Seller's ability to transfer all rights to the Clinical Data and Transferred Intellectual Property or to the ability of Buyer to in any way access, own and use the Clinical Data and Transferred Intellectual Property following the Closing Date. (b) All Related Contracts are in full force and effect and are enforceable against each party thereto in accordance with the express terms thereof. There does not exist under any Related Contract any material violation, breach or event of default, or alleged material violation, breach or event of default, or event or condition that, after notice or lapse of time or both, would constitute a material violation, breach or event of default thereunder on the part of Seller or any of its Subsidiaries or, to the Knowledge of Seller any other party thereto. To the Knowledge of Seller, no event or circumstance has occurred that, with notice or lapse of time or both, would constitute an event of default under any Related Contract or result in termination thereof or would cause or permit the acceleration or other changes of any right or obligation or loss of any benefit thereunder. There are no material disputes pending or threatened under any Related Contract. (c) There are no outstanding powers of attorney in favor of any Person relating to any Transferred Asset. (d) Each of the Seller-sponsored or Seller Subsidiary-sponsored clinical trials of the Seller Compounds that is the subject of any Contract listed on Schedule 3.13(a) has been completed. There are no amounts due and payable by Seller or any Seller Subsidiary under any such Contracts, the term of each such Contract has expired (subject to survival of specified provisions as set forth in each such Contract), and Seller or the applicable Seller Subsidiary has, as of the date hereof, effectively obtained ownership and possession of all Clinical Data generated under such Contracts.

**Section 3.14 Territorial Restrictions** . None of Seller or any of its Subsidiaries is restricted by any agreement or understanding with any Person from conducting the Program anywhere in the world, except for such restrictions that, individually or in the aggregate, would not reasonably be expected to be material to the Buyer following the Closing.

**Section 3.15 Absence of Certain Changes and Events** . Since March 31, 2011, Seller has not experienced any event or condition, and to Seller's Knowledge no event or condition is threatened, that, individually or in the aggregate, has had or is reasonably likely to have, a Material Adverse Effect on the Transferred Assets. 34.

**Section 3.16 Confidentiality** . Seller and its Affiliates have taken commercially reasonable and customary measures and precautions to preserve the confidential nature of all material confidential information (including, without limitation, any Know-How and other proprietary information) with respect to the Transferred Assets.

**Section 3.17 Insurance Claims .** Schedule 3.17 sets forth a list of all pending claims and the claims history for Seller primarily related to the Transferred Assets under the insurance policies owned by Seller for the past three years. There are no pending claims primarily related to the Transferred Assets under any of such insurance policies described in the immediately preceding sentence as to which coverage has been denied or disputed in any material respect by the insurer.

**Section 3.18 Title to Transferred Assets .** Seller has good and valid title to all of the Transferred Assets (other than any Intellectual Property subject to Inbound Licenses). All such Transferred Assets are free and clear of all Encumbrances other than Permitted Encumbrances.

**Section 3.19 Suppliers** . Schedule 3.19 sets forth with respect to the Transferred Assets (i) each supplier to whom Seller has paid consideration for goods or services rendered in an amount greater than or equal to $50,000 for each of the two most recent fiscal years (collectively, the " Material Suppliers "); and (ii) the amount of purchases from each Material Supplier during such periods. Seller has not received any notice, and has no reason to believe, that any of the Material Suppliers has ceased, or intends to cease, to supply goods or services to Seller with respect to the Transferred Assets or to otherwise terminate or materially reduce its relationship with Seller with respect to the Transferred Assets.

**Section 3.20 Solvency** . (a) Seller is not now insolvent and will not be rendered insolvent by the Transaction. As used in this section, "insolvent" means that the sum of the debts and other probable Liabilities of Seller exceeds the present fair saleable value of Seller's assets. (b) Immediately after giving effect to the consummation of the Transaction: (i) Seller will be able to pay its Liabilities as they become due in the usual course of its business; (ii) Seller will not have unreasonably small capital with which to conduct its present or proposed business; (iii) Seller will have assets (calculated at fair market value) that exceed its Liabilities; and (iv) taking into account all pending and threatened litigation, final judgments against Seller in actions for money damages are not reasonably anticipated to be rendered at a time when, or in amounts such that, Seller will be unable to satisfy any such judgments promptly in accordance with their terms (taking into account the maximum probable amount of such judgments in any such actions and the earliest reasonable time at which such judgments might be rendered) as well as all other obligations of Seller. The cash available to Seller, after taking into account all other anticipated uses of the cash, will be sufficient to pay all such debts and judgments promptly in accordance with their terms.

**Section 3.21 Foreign Corrupt Practices** . Seller does not own any securities of Buyer. Neither Seller, nor to the knowledge of Seller, any agent or other person acting on behalf of Seller, has, in connection with the Program, (i) directly or indirectly, used any funds for unlawful 35. contributions, gifts, entertainment or other unlawful expenses related to foreign or domestic political activity, (ii) made any unlawful payment to foreign or domestic government officials or employees or to any foreign or domestic political parties or campaigns from corporate funds, (iii) failed to disclose fully any contribution made by Seller (or made by any person acting on its behalf of which Seller is aware) which is in violation of Law, or (iv) violated in any material respect any provision of the Foreign Corrupt Practices Act of 1977, as amended.

**Section 3.22 Securities Law Matters** . Seller is an "accredited investor" within the meaning of Rule 501 of Regulation D under the Exchange Act, as presently in effect. Seller understands that the shares of preferred stock issued by Buyer as part of the Upfront Equity Consideration are characterized as "restricted securities" under the federal securities Laws inasmuch as they are being acquired from Buyer in a transaction not involving a public offering and that under such Laws and applicable regulations such securities may be resold without registration under the Securities Act, only in certain limited circumstances. Seller understands that any shares issued as part of the Upfront Equity Consideration may bear the following or a similar legend: "THE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED. THEY MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED, HYPOTHECATED, OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT REGISTRATION IS NOT REQUIRED UNDER SUCH ACT OR UNLESS SOLD PURSUANT TO RULE 144 UNDER SUCH ACT."

**Section 3.23 Finders' Fees** . Except for the fees of ThinkEquity, LLC, whose fees will be paid by Seller, there is no investment banker, broker, finder or other intermediary that has been retained by or is authorized to act on behalf of Seller or any of its Subsidiaries who might be entitled to any fee or commission from Seller or any of its Subsidiaries in connection with the Transaction. Section

**3.24 No Other Representations or Warranties** . Except for the representations and warranties contained in this Article III , neither Seller nor any other Person makes any other express or implied representation or warranty on behalf of Seller.

**ARTICLE IV REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to Seller as follows.

**Section 4.1 Organization and Qualification** . Buyer is a corporation duly organized, validly existing and in good standing under the Laws of the State of Washington. Buyer has all requisite corporate power and authority to own and operate its respective properties and assets and to carry on its respective business as currently conducted. Buyer is duly qualified to do business and is in good standing in each jurisdiction where the ownership or operation of its respective properties and assets or the conduct of its respective business requires such 36. qualification, except for failures to be so qualified or in good standing that would not, individually or in the aggregate, impair or delay Buyer's ability to perform its obligations hereunder.

**Section 4.2 Corporate Authorization** . Buyer has full corporate power and authority to execute and deliver this Agreement and the Ancillary Agreement and to perform its obligations hereunder and thereunder. The execution, delivery and performance by Buyer of this Agreement and the Ancillary Agreement have been duly and validly authorized and no additional corporate or shareholder authorization or consent is required in connection with the execution, delivery and performance by Buyer of this Agreement or the Ancillary Agreement.

**Section 4.3 Consents and Approvals** . Except as set forth on Schedule 4.3 , no consent, approval, waiver, authorization, notice or filing is required to be obtained by Buyer from, or to be given by Buyer to, or made by Buyer with, any Government Entity or Self-Regulatory Organization or other Person in connection with the execution, delivery and performance by Buyer of this Agreement and the Ancillary Agreement other than those the failure of which to obtain, give or make would not, individually or in the aggregate, materially impair or delay the ability of Buyer to effect the Closing or to perform its obligations under this Agreement and the Ancillary Agreement.

**Section 4.4 Non-Contravention** . The execution, delivery and performance by Buyer of this Agreement and the Ancillary Agreement, and the consummation of the transactions contemplated hereby and thereby, do not and will not (i) violate any provision of the Governing Documents of Buyer, (ii) assuming the receipt of all Governmental Authorizations held by the Buyer and the making of notices and filings set forth on Schedule 4.3 or required to be made or obtained by Seller, to the Knowledge of Buyer, violate or result in a breach of or constitute a default under any Law to which Buyer is subject.

**Section 4.5 Binding Effect** . This Agreement and the Ancillary Agreement, when executed and delivered by Seller, will constitute valid and legally binding obligations of Buyer enforceable against it in accordance with their respective terms, subject to the Bankruptcy Exception.

**Section 4.6 Litigation and Claims** . Except as set forth on Schedule 4.6 , there is no civil, criminal or administrative action, suit, demand, claim, hearing, proceeding or investigation pending or, to the Knowledge of Buyer, threatened against Buyer that, individually or in the aggregate, would impair or delay the ability of Buyer to effect the Closing. Buyer is not subject to any Order that, individually or in the aggregate, would impair or delay the ability of Buyer to effect the Closing.

**Section 4.7 Capitalization** . (a) As of the date of this Agreement, the authorized capital stock of Buyer consists of (i) 383,333,333 shares of Buyer common stock and (ii) 1,666,666 shares of Buyer preferred stock. As of the close of business on the day immediately preceding the date of this Agreement, (i) 227,714,600 shares of Buyer common stock are issued and outstanding, all of which are duly authorized, validly issued, fully paid and non-assessable, (ii) no shares of Buyer 37. common stock are held in the treasury of Buyer, (iii) no shares of Buyer common stock are held by Subsidiaries of Buyer, (iv) 1,451,640 shares of Buyer common stock are reserved for future issuance pursuant to stock options, (v) 1,019,166 shares of Buyer common stock are reserved for future issuance pursuant to Buyer's equity incentive plans, (vi) 225,974 shares of Buyer common stock are reserved for future issuance pursuant to the Buyer's employee stock purchase plan, (vii) 65 shares of Buyer common stock are reserved for future issuance pursuant to rights to restricted shares and (viii) 35,088,958 shares of Buyer common stock are reserved for future issuance upon exercise of the Buyer's outstanding warrants to purchase Buyer common stock. As of the date of this Agreement, no shares of Buyer preferred stock are issued and outstanding. As of the date of this Agreement, pursuant to Buyer's shareholder rights plan, dated December 28, 2009, one preferred stock purchase right is attached to and traded with each share of Buyer common stock. Except as set forth in this Section 4.7 , as of April 17, 2012, there were no options, warrants, convertible debt or other convertible instruments or other rights, agreements, arrangements or commitments of any character relating to the issued or unissued capital stock of Buyer or obligating Buyer to issue or sell any shares of capital stock of, or other equity interests in, Buyer. All shares of Buyer common stock subject to issuance as aforesaid, upon issuance on the terms and conditions specified in the instruments pursuant to which they are issuable, will be duly authorized, validly issued, fully paid and non-assessable. (b) All shares of Buyer common stock or preferred stock to be issued pursuant to Section 2.5 , or pursuant to Section 2.12 and Section 2.19 : (i) will be duly authorized, validly issued, fully paid and non-assessable and not subject to preemptive rights created by statute, Buyer's certificate of incorporation or bylaws or any agreement to which Buyer is a party or is bound, and (ii) will, when issued, be registered (in the case of shares to be issued pursuant to Section 2.12 and Section 2.19 ) or exempt from registration (in the case of shares to be issued pursuant to Section 2.5 ) under the Securities Act and the Exchange Act and registered or exempt from registration under applicable Blue Sky Laws, and (iii) will, when issued, be approved for listing on the NASDAQ National Market or any other national securities exchange on which Buyer's common stock is listed, subject to official notice of issuance.

**Section 4.8 SEC Filings; Financial Statements .** (a) Buyer has filed all forms, reports, statements, schedules and other documents required to be filed by it with the SEC since January 1, 2011 under the Securities Act or the Exchange Act (collectively, the " Buyer SEC Reports "). The Buyer SEC Reports at the time they were filed and, if amended, as of the date of such amendment, complied in all material respects with all applicable requirements of the Securities Act or the Exchange Act, as the case may be, and the rules and regulations promulgated thereunder. No Subsidiary of Buyer is required to file any form, report, statement, schedule or other document with the SEC under the Securities Act or the Exchange Act. (b) Each of the consolidated financial statements (including, in each case, any notes thereto) contained (or incorporated by reference) in the Buyer SEC Reports was prepared in accordance with GAAP applied on a consistent basis throughout the periods indicated (except as may be indicated in the notes thereto or, in the case of unaudited statements, as permitted by Form 10 Q of the SEC) and each fairly presents, in all material respects, the consolidated financial position, results of operations and cash flows of Buyer and its consolidated Subsidiaries 38. as at the respective dates thereof and for the respective periods indicated therein, except as otherwise noted therein (subject, in the case of unaudited statements, to normal and recurring year-end adjustments which are not, in the aggregate, material to Buyer and its Subsidiaries, taken as a whole). (c) As of the date of this Agreement, there are no outstanding or unresolved comments in comment letters received from the SEC with respect to the Buyer SEC Reports that would reasonably be expected to delay Buyer's performance of its obligations under the Ancillary Agreement. To the Knowledge of Buyer, none of the Buyer SEC Reports is the subject of ongoing SEC review that would reasonably be expected to delay Buyer's performance of its obligations under the Ancillary Agreement.

**Section 4.9 Access .** Buyer and its representatives have been given full access to the assets, books, records, Contracts and employees of Seller, and have been given the opportunity to meet with officers and other representatives of Seller for the purpose of investigating and obtaining information regarding Seller's business, operations and legal affairs, including, without limitation, the Program. Neither Buyer nor any of its representatives has had unauthorized access to, or has used, any confidential information of Seller regarding the process undertaken by Seller in connection with Seller's solicitation of potential acquisition offers or the terms of any such other offers.

**Section 4.10 Reliance** . Buyer has not relied on and is not relying on any representations, warranties or other assurances regarding Seller, the Program or the Transferred Assets other than those representations and warranties expressly set forth in Article III of this Agreement. Section

**4.11 No Buyer Vote Required** . No vote or other action of the stockholders of Buyer is required by applicable Law, the articles of incorporation of Buyer, the bylaws of Buyer or otherwise in order for Buyer to consummate the Transaction.

**Section 4.12 Financing** . Buyer will have at the Closing sufficient funds on hand and available through existing liquidity facilities to pay the Upfront Consideration (without restrictions on drawdown that would delay payment thereof).

**Section 4.13 No Other Representations or Warranties** . Except for the representations and warranties contained in this Article IV , neither Buyer nor any other Person makes any other express or implied representation or warranty on behalf of Buyer.

**ARTICLE V COVENANTS**

**Section 5.1 Access and Information .** From the date hereof until the Closing, subject to reasonable rules and regulations of Seller and any applicable Laws, Seller shall: (i) afford Buyer and its Representatives full and free access, during regular business hours, to the Transferred Assets and employees or consultants of Seller with knowledge of the Transferred Assets; provided , however , that Buyer acknowledges that after April 30, 2012, Seller may have no employees and as few as one consultant available for such purpose, and such lack of personnel shall neither constitute a breach of this Agreement by Seller nor be a condition to Buyer's 39. obligation to effect the Closing; (ii) furnish Buyer with copies of such Contracts, other relevant agreements and Governmental Authorizations held by Seller or any of its Subsidiaries or related to the Transferred Assets as Buyer may reasonably request; and (iii) furnish, or cause to be furnished, to Buyer any financial and operating data and other information that is available with respect to the Transferred Assets as Buyer from time to time reasonably requests, and (iv) instruct the employees of Seller, and its counsel and financial advisors to cooperate with Buyer in its investigation of the Transferred Assets. No investigation pursuant to this Section 5.1 shall alter any representation or warranty given hereunder by Seller. All information received pursuant to this Section 5.1 shall be governed by the terms of the Confidentiality Agreement. In the event that Buyer requests any document or material pursuant to this Section 5.1 for which any attorney-client or other legal privilege is available, Seller's obligation to provide Buyer with access to such document or material shall be conditioned upon execution by Seller and Buyer of an appropriate common interest and confidentiality agreement in reasonable and customary form.

**Section 5.2 Conduct of Business** . During the period from the date hereof to the Closing, except as otherwise contemplated by this Agreement or as Buyer otherwise agrees in writing in advance, Seller shall use its commercially reasonable best efforts to preserve intact the Transferred Assets as in existence on the date of this Agreement. By way of amplification and not in any way limiting the prior sentence, during the period from the date hereof to the Closing, except as otherwise contemplated by this Agreement or as Buyer shall otherwise consent (which consent shall not be unreasonably withheld), Seller shall not, and shall cause each of its Subsidiaries not to: (a) incur, create or assume any Encumbrance (other than Permitted Encumbrances) on any of the Transferred Assets; (b) sell, lease, license, transfer or dispose of any Transferred Assets; (c) terminate or extend or modify any Related Contract; (d) enter into any contract, arrangement or commitment related to the Transferred Assets; (e) dispose of or permit to lapse any rights in, to or for the use of any Transferred Intellectual Property, or disclose to any Person not an employee any Transferred Intellectual Property not heretofore a matter of public knowledge, except pursuant to judicial or administrative process; (f) settle any claims, actions, arbitrations, disputes or other Proceedings (i) that would impair the ability of Seller or any of its Subsidiaries to consummate the transactions contemplated by this Agreement and the Ancillary Agreement, or (ii) affecting the Transferred Assets; (g) do any other act which would cause any representation or warranty of Seller in this Agreement to be or become untrue in any material respect or intentionally omit to take any action necessary to prevent any such representation or warranty from being untrue in any material respect at such time; 40. (h) acquire any securities of Buyer; and (i) authorize or enter into any agreement or commitment with respect to any of the foregoing. In addition, Seller shall continue to take commercially reasonable best efforts and customary measures and precautions necessary to protect and maintain the confidentiality of the Program Know-How, consistent with Seller's past practice.

**Section 5.3 No Shop .** (a) Until the earlier of the termination of this Agreement and the Closing, Seller shall not and shall cause its Subsidiaries and their respective Representatives not to, directly or indirectly, (i) solicit, initiate, encourage or entertain any inquiries or proposals, or discuss, negotiate with or enter into any understanding, arrangement or agreement, relating to the direct or indirect disposition, whether by sale, merger or otherwise, of all or any portion of the Transferred Assets to any Person other than Buyer or its Affiliates, or (ii) knowingly disclose, directly or indirectly, to any Person (other than Buyer and its Representatives) any confidential information concerning the Transferred Assets except as necessary to conduct the Transferred Assets in the ordinary course of business (except as expressly contemplated by Section 5.10(a) ). In the event that Seller or any of its Affiliates receives a proposal or inquiry for such a transaction, Seller will provide Buyer with notice thereof as soon as practical after receipt or awareness thereof and in any event within twenty-four (24) hours of such receipt or awareness which notice may, in Seller's sole discretion, include the identity of the prospective buyer or soliciting party. (b) The parties acknowledge that there may be no adequate remedy at Law for a breach of Section 5.3(a) and that money damages may not be an appropriate remedy for breach of such Section. Therefore, the parties agree that Buyer has the right to seek injunctive relief and specific performance of Section 5.3(a) in the event of any breach of such Section in addition to any rights it may have for damages.

**Section 5.4 Commercially Reasonable Best Efforts** . Seller and Buyer shall cooperate and use their respective commercially reasonable best efforts to fulfill as promptly as practicable the conditions precedent to the other party's obligations hereunder, including securing as promptly as practicable all Authorizations required in connection with the transactions contemplated hereby. Notwithstanding anything to the contrary contained herein, neither Buyer nor Seller shall be required to (i) agree to sell, divest, dispose of or hold separate any assets or businesses, or otherwise take or commit to take any action that could reasonably limit their freedom of action with respect to, or their ability to retain, one or more businesses, product lines or assets, or (ii) litigate, (or defend) against any Proceeding (including any proceeding seeking a temporary restraining order or preliminary injunction) challenging any of the transactions contemplated hereby as violative of any competition Law.

**Section 5.5 Tax Matters** . (a) Seller Liability for Taxes . Seller shall be liable for (i) any Taxes imposed with respect to the Transferred Assets or any income or gain derived with respect thereto for the 41. taxable periods, or portions thereof, ended on or before the Closing Date, (ii) Losses directly or indirectly relating to or arising out of any liability for Taxes imposed with respect to the Transferred Assets or any Transferred Assets or any income or gain derived with respect thereto for the taxable periods, or portions thereof, ended on or before the Closing Date and (iii) any Transfer Taxes for which Seller is liable pursuant to Section 5.5(e) . (b) Buyer Liability for Taxes . Buyer shall be liable for (i) any Taxes imposed with respect to any Transferred Assets or any income or gains derived with respect thereto for any taxable period, or portion thereof, beginning after the Closing Date, (ii) Losses directly or indirectly relating to or arising out of any liability for Taxes imposed with respect to any Transferred Assets or any income or gains derived with respect thereto for any taxable period, or portion thereof, beginning after the Closing Date, and (iii) any Transfer Taxes for which Buyer is liable pursuant to Section 5.5(e) . (c) Proration of Taxes . To the extent necessary to determine the liability for Taxes with respect to the Transferred Assets or any income or gain derived with respect thereto for a portion of a taxable year or period that begins before and ends after the Closing Date, the determination of such Taxes for the portion of the year or period ending on, and the portion of the year or period beginning after, the Closing Date shall be determined by assuming that the taxable year or period ended as of the close of business on the Closing Date, except that those actual property taxes and exemptions, allowances or deductions that are calculated on an annual basis shall be prorated on a time basis. (d) Tax Returns . Seller shall file or cause to be filed when due all Tax Returns that are required to be filed by or with respect to all Transferred Assets for taxable years or periods ending on or before the Closing Date and shall pay any Taxes due in respect of such Tax Returns, and Buyer shall file or cause to be filed when due all Tax Returns that are required to be filed by or with respect to all Transferred Assets for taxable years or periods ending after the Closing Date and shall remit any Taxes due in respect of such Tax Returns. (e) Transfer Taxes . All federal, state, local or foreign or other excise, sales, use, value added, transfer (including real property transfer or gains), stamp, documentary, filing, recordation and other similar taxes and fees that maybe imposed or assessed as a result of the Transaction, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties (" Transfer Taxes "), shall be borne equally by Buyer and Seller on a timely basis. Any Tax Returns that must be filed in connection with Transfer Taxes shall be prepared and filed by Seller, at its expense, and Seller will use its commercially reasonable best efforts to provide such Tax Returns to Buyer at least ten (10) Business Days prior to the date such Tax Returns are due to be filed. (f) Assistance and Cooperation . After the Closing Date, the parties shall cooperate fully in preparing for any audits of, or disputes with taxing authorities regarding, any Tax Returns with respect to the Transferred Assets or any income or gain derived with respect thereto and payments in respect thereof. Each party shall (i) provide timely notice to the other in writing of any pending or proposed audits or assessments with respect to any such Taxes for which such other party or any of its Affiliates may have a liability under this Agreement and (ii) furnish the other with copies of all relevant correspondence received from any taxing authority in connection with any audit or information request with respect to any Taxes referred to in (i). 42.

**Section 5.6 Ancillary Agreement** . At the Closing, each of Seller and Buyer shall execute and deliver the Ancillary Agreement.

**Section 5.7 Notification** . (a) Between the date of this Agreement and the Closing, Seller shall promptly notify Buyer in writing if it becomes aware of (i) any fact, circumstance, event or action the existence, occurrence or taking of which (A) has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (B) has resulted in, or could reasonably be expected to cause, any representation or warranty made by Seller hereunder to be untrue or inaccurate in any material respect (without giving effect to any materiality or Material Adverse Effect qualification in such representation or warranty), or (C) has resulted in, or could reasonably be expected to result in, the failure of any of the conditions set forth in Article VI to be satisfied; (ii) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement and the Ancillary Agreement; (iii) any notice or other communication from any Government Entity in connection with the transactions contemplated by this Agreement or the Ancillary Agreement; (iv) has caused, or would reasonably be expected to cause, any covenant or agreement of Buyer hereunder not to be complied with in any material respect, or (v) any Proceeding commenced or, to Seller's Knowledge, threatened against, relating to or involving or otherwise affecting the Transferred Assets or the Assumed Liabilities that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to Section 3.6 or that relates to the consummation of the transactions contemplated by this Agreement and the Ancillary Agreement. No such notification shall affect the representations or warranties of Seller, or Buyer's right to rely thereon, or the conditions to the obligations of Buyer. (b) Buyer's receipt of information pursuant to this Section 5.7 shall not operate as a waiver or otherwise affect any representation, warranty or agreement given or made by Seller in this Agreement or the Ancillary Agreement and shall not be deemed to amend or supplement the Seller Disclosure Schedules, unless set forth in a written supplement to the Seller Disclosure Schedules delivered to Buyer as set forth below in this Section 5.7(b) . Should any such fact or condition require any change to the Seller Disclosure Schedule, Seller shall promptly deliver to Buyer a supplement to the Seller Disclosure Schedule specifying such change. Such delivery shall not affect any rights of Buyer under Article VI , Article VII or Section 9.2 . (c) Between the date of this Agreement and the Closing, Buyer shall promptly notify Seller in writing if it becomes aware of any fact, circumstance, event or action the existence, occurrence or taking of which (i) has caused in, or would reasonably be expected to cause, any representation or warranty made by Buyer hereunder to be untrue or inaccurate in any material respect, or (ii) has caused, or would reasonably be expected to cause, any covenant or agreement of Buyer hereunder not to be complied with in any material respect. No such notification shall affect the representations or warranties of Buyer, or Seller's right to rely thereon, or the conditions to the obligations of Seller. 43.

**Section 5.8 Non-Competition** . (a) Seller agrees that for the period commencing on the Closing Date and expiring on the fifth (5th) anniversary of the Closing Date, Seller shall not engage, either directly or indirectly, alone or with others, in the clinical development or commercialization of any small molecule compound, the primary mechanism of action of which is selective and specific inhibition of IC3 (a " Competing Compound "), for the treatment of cancer, Gorintitis, Hyperdermatitis or Kyneoproritis (a " Competing Business "); provided , however , that this Section 5.8 shall not be construed to prohibit or restrict any third party acquiror of Seller (a " Third Party Acquiror "), whether by merger, sale of stock, sale of assets or otherwise (a " Change of Control Transaction "), or any of such Third Party Acquiror's affiliated companies, from engaging in a Competing Business, if the applicable Competing Compound is: (i) controlled by the Third Party Acquiror or any of its affiliated companies prior to consummation of such Change of Control Transaction; (ii) acquired (whether by in license or otherwise) by such Third Party Acquiror or any of its affiliated companies after consummation of such Change of Control Transaction; or (iii) developed internally by such Third Party Acquiror or any of its affiliated companies, either before or after consummation of such Change of Control Transaction, in each case without the use of or reference to Confidential Information of Buyer. (b) The parties acknowledge that there may be no adequate remedy at Law for a breach of Section 5.8(a) and that money damages may not be an appropriate remedy for breach of such Section. Therefore, the parties agree that Buyer has the right to seek injunctive relief and specific performance of Section 5.8(a) in the event of any breach of such Section, in addition to any rights it may have for damages.

**Section 5.9 Further Assurances** . From time to time after the Closing Date, each party hereto shall, and shall cause its Affiliates, promptly to execute, acknowledge and deliver any other assurances or documents or instruments of transfer reasonably requested by the other party hereto and necessary for the requesting party to satisfy its obligations hereunder or to obtain the benefits of the Transaction. Without limiting the generality of the foregoing, to the extent that Buyer or Seller discover following Closing that any asset that was intended to be transferred pursuant to this Agreement was not transferred at Closing, Seller shall or shall cause its Subsidiaries promptly to assign and transfer to Buyer all right, title and interest in such asset, (ii) Seller shall or shall cause its Subsidiaries to assist Buyer or its designee with respect to the prosecution, maintenance and enforcement of the Transferred Intellectual Property by Buyer or its designee after the Closing, including submitting on behalf of Buyer or its designee any oaths, declarations or affidavits as required or advisable under applicable Law, and (iii) if required or advisable under applicable Law, Seller shall or shall cause its Subsidiaries to cooperate with and assist Buyer or its designee in pursuing any Patent Term Extension for any Patent included in the Transferred Intellectual Property.

**Section 5.10 Confidentiality** . (a) Except as otherwise provided herein, Seller shall treat as confidential and shall safeguard any and all nonpublic, confidential or proprietary information included in the Transferred Assets (" Confidential Information "), in each case by using the same degree of care, but no less than a reasonable standard of care, to prevent the unauthorized use, dissemination or 44. disclosure of such Confidential Information; provided , however , that the publication of those pending or in-process publications set forth on Schedule 5.10 and relating to the Seller Compounds of which Seller notified Buyer prior to the date of this Agreement shall not constitute a breach of this Section 5.10 . (b) Buyer and Seller acknowledge that the confidentiality obligations set forth herein shall not extend to (i) any information which was in, or comes into, the public domain through no breach of this Agreement or the Ancillary Agreement by Seller, (ii) any information in the possession of any Third Party Acquiror prior to a Change of Control Transaction, other than as a result of disclosure by Seller, (iii) any information that is independently developed or discovered by any Third Party Acquiror without reference to nonpublic, confidential or proprietary information included in the Transferred Assets, (iv) is rightfully communicated to any Third Party Acquiror by another third party, free and clear of any obligation of confidence, or (v) is or was communicated by Buyer to an unaffiliated third party free of any obligation of confidence. In addition, Seller shall not be prohibited from disclosing any portion of the Confidential Information that Seller is required to disclose by judicial or administrative process or, in the opinion of legal counsel, by other requirements of law. (c) In the event of a breach of the obligations hereunder by Buyer or Seller, the other party, in addition to all other available remedies, will be entitled to seek injunctive relief to enforce the provisions of this Section 5.10 in any court of competent jurisdiction.

**Section 5.11 Springing AL 3946Grant-Back** . If Buyer has not started Development of AL 3946in Japan or entered into a Partnership Arrangement for AL 3946in Japan prior to the eighteen (18) month anniversary of the Closing, Buyer shall (a) transfer and assign all rights of Buyer in Asia to Products (including Patents and Patent applications) initially acquired by Buyer from Seller back to Seller; (b) grant, and, subject to Closing of the Transaction, hereby does grant (if Buyer has not started Development of AL 3946in Japan or entered into a Partnership Arrangement for AL 3946in Japan prior to the eighteen (18) month anniversary of the Closing), Seller an exclusive, royalty-free license, including the right to sublicense, under Intellectual Property rights created by Buyer after the date hereof and necessary or useful for the development, manufacture or commercialization of Products in Asia, solely to develop, manufacture and commercialize Products in Asia; (c) assign to Seller all regulatory submissions and approvals for any Product filed with any Regulatory Authority in Asia; (d) provide to Seller a copy of all data generated by or on behalf of Buyer (or its Affiliates or Sublicensees) with respect to Products, for use by Buyer solely to obtain and maintain Regulatory Approvals for Products in Asia and to comply with applicable Law in Asia; and (e) grant to Seller the right to reference and access Buyer's and Affiliates of Buyer's regulatory filings and approvals for Products outside of Asia for the sole purpose of obtaining and maintaining regulatory approvals for Products in Asia.

**Section 5.12 Assistance in Proceedings .** For a period of forty-five (45) days after the Closing Date, Seller will cooperate with Buyer and its counsel in the contest or defense of, and make available its personnel and provide any testimony and access to its Books and Records in connection with, any proceeding involving or relating to (a) any contemplated transaction or (b) any action, activity, circumstance, condition, conduct, event, fact, failure to act, incident, occurrence, plan, practice, situation, status or transaction on or before the Closing Date involving 45. Seller or the Transferred Assets; in each case, at Buyer's sole expense, except to the extent that Seller is expressly obligated to provide any such requested cooperation or assistance by the express terms of this Agreement (other than this Section 5.12 ).

**Section 5.13 Transfer of Regulatory Materials; Interim** Responsibility . (a) Seller will assign to Buyer any and all Regulatory Materials, except only for only any regulatory filings Buyer requests in writing not to be assigned. (b) Within two (2) Business Days after the Closing Date, Seller shall (i) send letters (in form and substance satisfactory to Buyer) to the FDA and other Regulatory Authorities indicating that the Regulatory Materials are transferred to Buyer and that Buyer is the new owner of the Regulatory Materials as of the Closing Date, and (ii) provide to Buyer a copy of said letters. (c) Promptly after the Closing Date, the parties will cooperate in transferring the Regulatory Materials to Buyer. The target date for the transfer shall be agreed upon by the parties, but shall not be later than twenty (20) days after the Closing Date. Prior to the Closing, the parties will agree upon procedures to ensure a smooth transition from Seller to Buyer of all of the activities required to be undertaken by the Regulatory Materials holder, including adverse experience reporting, quarterly and annual reports to FDA, handling and tracking of complaints, sample tracking, and communication with health care professionals and customers. Within twenty (20) days after the Closing Date, Seller will forward to Buyer a complete copy of the Regulatory Materials for the Seller Compounds, as well as copies of all correspondence with, and periodic and other reports (including adverse event reports and the underlying data) to, Regulatory Authorities with respect to the Seller Compounds or Regulatory Materials. Seller will cooperate with Buyer to ensure a smooth transition of the Program, and in obtaining the cooperation of Seller and its distributors and licensees of the Seller Compounds with the transfer of adverse experience reporting obligations from Seller to Buyer. (d) Until the Regulatory Materials have been transferred to Buyer, Seller shall be responsible for maintaining them. After such transfer, Buyer will assume all responsibility for the Regulatory Materials, at Buyer's sole cost and expense. Each party shall cooperate with the other in making and maintaining all regulatory filings that may be necessary in connection with the execution, delivery and performance of this Agreement or the Ancillary Agreement. (e) Seller will transfer to Buyer, at no cost to Buyer, any and all documented Clinical Data and Program Know-How in its possession and control, and Seller will, to the extent any such Clinical Data or Program Know-How exists in a form suitable for electronic transfer, make any transfer electronically. (f) To the extent requested by Buyer, for a period of six (6) months following the Closing, Seller will provide such assistance as may be reasonably necessary to transfer and/or transition, over a reasonable period of time, to Buyer any Assigned Contracts.

**Section 5.14 Communication With Agencies .** Until the Regulatory Materials are transferred to Buyer, Seller shall have responsibility for all communications with the FDA relating to the Seller Compounds, and Seller will promptly provide Buyer with copies of all 46. communications to or from the FDA with respect to the Seller Compounds and/or the manufacture thereof. After such transfer has been completed, Buyer shall have responsibility for all such communications. Seller shall promptly provide Buyer with copies of any communications or contacts it sends to or receives from any other Government Entity concerning the Seller Compounds.

**Section 5.15 Adverse Experience Reporting** . (a) Until the Regulatory Materials are transferred to Buyer, Seller shall be responsible for the adverse experience and safety reporting for the Product in compliance with the requirements of applicable Law (including Healthcare Laws). After the Regulatory Materials are transferred to Buyer, Buyer shall assume such responsibility. Buyer and Seller agree to meet promptly after the Closing Date to determine mutually agreeable reporting procedures to communicate the information as required under this Section 5.15 . (b) Until the Regulatory Materials are transferred to Buyer, Seller shall be responsible for (i) maintaining the global safety database for the Seller Compounds, (ii) monitoring of all clinical experiences for the Seller Compounds and (iii) safety monitoring, pharmacovigilance surveillance, compliance and filing of all required safety reports to Regulatory Authorities, including without limitation annual safety reports, as and to the extent required by applicable Law (including Healthcare Laws) for any study conducted by or for Seller with respect to the Seller Compounds. On or before the Closing Date, Seller shall provide Buyer with a summary of the information relating to the investigation and reporting of adverse experiences regarding Seller Compounds and any existing material safety data sheets with respect to the Seller Compounds as of the Closing Date. After the Closing Date and until the Regulatory Materials are transferred to Buyer, Buyer agrees to submit to Seller all adverse drug experience information brought to the attention of Buyer with respect to the Seller Compounds, as well as any material events and matters concerning or affecting the safety or efficacy of the Seller Compounds brought to the attention of Buyer, via facsimile to the attention of Seller. After the Regulatory Materials have been transferred to Buyer, Seller shall assist Buyer with the provision of data relating to adverse experiences for the Seller Compounds after such transfer to Buyer. Additionally, after the transfer of the Regulatory Materials to Buyer, Seller shall provide Buyer with all adverse drug experience information brought to the attention of Seller with respect to the Seller Compounds, as well as any materials events and matters concerning or affecting the safety or efficacy of the Seller Compounds brought to the attention of Seller, via facsimile to the attention of Buyer.

**Section 5.16 Financial Statement Reporting** . If Buyer notifies Seller in writing prior to the Closing that Buyer has determined that it is legally required to include audited or unaudited historical financial statements and related schedules of Seller or pro forma financial statements giving effect to the Transaction prepared in accordance with U.S. GAAP with respect to the Transferred Assets prior to the Closing Date for inclusion in its reports with the SEC, then, solely during the 30-day period after Closing, Seller shall provide commercially reasonable best efforts to cooperate with Buyer in Buyer's preparation of any such financial statements, and provide reasonable access to the Books and Records and available financial and accounting personnel of Seller and its auditors; in each case, at Buyer's sole expense.

**Section 5.17 Certain Intellectual Property Covenants** . (a) If and to the extent that any Patent owned or Controlled by Seller as of the date hereof or the Closing Date that is not part of the Transferred Intellectual Property would, as of the date hereof or hereafter, in the absence of a license thereunder, be infringed by the manufacture, use, sale, offer for sale or import of a Seller Compound, Seller hereby grants to Buyer and its Affiliates a perpetual and irrevocable (except under the circumstances and to the extent set forth in Section 5.11 ), worldwide (but excluding Asia in the event Buyer has not started Development of AL 3946in Japan or entered into a Partnership Arrangement for AL 3946in Japan prior to the eighteen (18) month anniversary of the Closing), royalty-free, non-exclusive license, under such Patent, solely to make, have made, use, sell, have sold, offer for sale and import such Seller Compound. In addition, if and to the extent that any Know-How owned or Controlled by Seller as of the date hereof or the Closing Date that is not part of the Transferred Intellectual Property is necessary or useful for the manufacture, use, sale, offer for sale or import of a Seller Compound, Seller hereby grants to Buyer a perpetual, irrevocable, worldwide, royalty-free, non-exclusive license, under such Know-How, solely to make, have made, use, sell, have sold, offer for sale and import such Seller Compound. The foregoing licenses shall include the right to sublicense, through multiple tiers of sublicense, solely in conjunction with the grant by Buyer to a Sublicensee of the right to make, have made, use, sell, have sold, offer for sale, and import the applicable Seller Compound. (b) If and to the extent that any Program Patent would, as of the date hereof or hereafter, in the absence of a license thereunder, be infringed by the manufacture, use, sale, offer for sale or import of AL1439, Buyer hereby grants to Seller a perpetual, irrevocable, worldwide, royalty-free, non-exclusive license, under such Program Patent, solely to make, have made, use, sell, have sold, offer for sale and import AL1439. In addition, if and to the extent that any Program Know-How is necessary or useful for the manufacture, use, sale, offer for sale or import of AL1439 and was disclosed to any third party licensee of AL1439 prior to the date hereof, Buyer hereby grants to Seller a perpetual, irrevocable, worldwide, royalty-free, non-exclusive license, under such Program Know-How, solely to make, have made, use, sell, have sold, offer for sale and import AL1439. The foregoing licenses shall include the right to sublicense, through multiple tiers of sublicense, solely in conjunction with the grant by Seller to a third party of the right under any Excluded Assets to make, have made, use, sell, have sold, offer for sale and import AL1439.

**ARTICLE VI CONDITIONS TO CLOSING**

**Section 6.1 Conditions to the Obligations of Buyer** . The obligation of Buyer to effect the Closing is subject to the satisfaction (or waiver) prior to the Closing of the following conditions: (a) Representations and Warranties . No event or events shall have occurred since the date of this Agreement which, individually or in the aggregate, has had a Material Adverse Effect. The representations and warranties of Seller set forth in Article III (without giving effect to any supplement to the Seller Disclosure Schedule pursuant to Section 5.7(b) ) shall be true and correct in all material respects as of the date of this Agreement, and shall be true and correct in all material respects as of the date of Closing, as though made on and as of the Closing (except to the extent expressly made as of an earlier date, in which case as of the earlier date). (b) Covenants . Seller shall have performed and complied in all material respects with all of its covenants contained in Article V at or before the Closing (to the extent that such covenants require performance at or before the Closing). (c) Ancillary Agreement . Seller shall have executed and delivered the Ancillary Agreement. (d) Consents . All Seller Required Approvals set forth on Schedule 3.3(b) shall have been obtained and shall be in full force and effect, except to the extent the failure to obtain any such consent would not, in the reasonable judgment of Buyer, be material to the Transferred Assets or Buyer. (e) Seller Shareholder Approval . The Transactions contemplated by this Agreement shall have received the requisite approval of the Seller's shareholders. (f) Certificate . Buyer shall have received one or more certificates, each signed by a duly authorized officer of Seller and dated the Closing Date, (i) to the effect that the conditions set forth in Section 6.1(a) and 6.1(b) have been satisfied, (ii) certifying, as complete and accurate as of the Closing, attached copies of the governing documents of Seller, and (iii) certifying and attaching all requisite resolutions or actions of the governing body for Seller approving the execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement. (g) No Prohibition . No temporary restraining Order, preliminary or permanent injunction or other Order preventing the consummation of the Transaction shall have been issued by any court of competent jurisdiction and remain in effect.

**Section 6.2 Conditions to the Obligations of Seller** . The obligation of Seller to effect the Closing is subject to the satisfaction (or waiver) prior to the Closing of the following conditions: (a) Representations and Warranties . The representations and warranties of Buyer set forth in Article IV shall be true and correct in all material respects as of the date of this Agreement, and shall be true and correct in all material respects as of the Closing, as though made on and as of the Closing (except to the extent expressly made as of an earlier date, in which case as of the earlier date). (b) Covenants . Buyer shall have performed and complied with all of its covenants contained in Article V (disregarding any failure to perform or comply that was inadvertent or unintentional) at or before the Closing (to the extent that such covenants require performance by Buyer at or before the Closing), except where the failure to perform and comply with such covenants does not have a material adverse effect on the aggregate benefits to be derived by Seller from the transactions contemplated by this Agreement. 49. (c) Ancillary Agreement . Buyer shall have executed and delivered the Ancillary Agreement. (d) Consents . All Buyer Required Approvals shall have been obtained and shall be in full force and effect, except to the extent the failure to obtain any such consent does not have a material adverse effect on the aggregate benefits to be derived by Seller from the transactions contemplated by this Agreement. (e) Certificate . Seller shall have received a certificate, signed by a duly authorized officer of Buyer and dated the Closing Date, to the effect that the conditions set forth in Section 6.2(a) and 6.2(b) have been satisfied. (f) No Prohibition . No temporary restraining Order, preliminary or permanent injunction or other Order preventing the consummation of the Transaction shall have been issued by any court of competent jurisdiction and remain in effect.

**ARTICLE VII SURVIVAL; INDEMNIFICATION; CERTAIN REMEDIES**

**Section 7.1 Survival** . The representations and warranties, covenants and obligations of Seller and Buyer contained in this Agreement, the Seller Disclosure Schedule, the certificates delivered pursuant to Section 6.1 and Section 6.2 and any other certificates or documents delivered pursuant to this Agreement shall survive the Closing for the period set forth in this Section 7.1 . All representations and warranties contained in this Agreement and the Ancillary Agreement and all claims with respect thereto shall terminate upon the expiration of eighteen (18) months after the Closing Date, except that the representations and warranties contained in Section 3.1 (Organization and Qualification), Section 3.2 (Corporate Authorization), Section 3.5 (Binding Effect), Section 3.7 (Taxes), Section 3.9 (Intellectual Property), Section 3.18 (Title to Purchased Assets), Section 3.23 (Finders Fees), Section 4.1 (Organization and Qualification), Section 4.2 (Corporate Authorization) and Section 4.5 (Binding Effect) (collectively, the " Fundamental Representations ") shall survive until thirty-six (36) months after the Closing Date; it being understood that in the event notice of any claim for indemnification under Section 7.2 or Section 7.3 hereof has been given (within the meaning of Section 9.1 ) within the applicable survival period, the representations and warranties that are the subject of such indemnification claim shall survive with respect to such claim until such time as such claim is finally resolved. The right to indemnification, reimbursement or other remedy based upon the representations and warranties, covenants and obligations contained in this Agreement shall not be affected by any investigation (including any environmental investigation or assessment) conducted with respect to, or any Knowledge acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this Agreement or the Closing Date .

**Section 7.2 Indemnification by Seller .** Seller hereby agrees that from and after the Closing it shall indemnify, defend and hold harmless Buyer, its Affiliates, and their respective directors, officers, shareholders, partners, members, attorneys, accountants, agents, Representatives and employees and their heirs, successors and permitted assigns, each in their capacity as such (the " Buyer Indemnified Parties ", and, collectively with the Seller Indemnified Parties, the " Indemnified Parties ") from, against and in respect of any Losses imposed on, 50. sustained, incurred or suffered by, or asserted against, any of the Buyer Indemnified Parties, whether in respect of third party claims, claims between the parties hereto, or otherwise, arising from (i) any breach or inaccuracy of any representation or warranty made by Seller contained in this Agreement (without giving effect to any supplement to the Seller Disclosure Schedule) as of the date of this Agreement, or as of the Closing Date as if such representation or warranty had been made on and as of the Closing Date, in each case for the period such representation or warranty survives; (ii) any breach of any covenant, obligation or agreement of Seller contained in this Agreement, (iii) any of the Excluded Liabilities, (iv) any Indemnified Taxes, (v) any brokerage or finder's fees or commissions or similar payments based upon any agreement or understanding made, or alleged to have been made, by any Person with Seller (or any Person acting on Seller's behalf) in connection with any transactions contemplated by this Agreement, (vi) any matters relating to Seller's title to any or all of the Transferred Assets to the extent relating to, arising from or in connection with circumstance, actions, events or conditions occurring or existing on or prior to the Closing Date, and (vii) resulting from the ownership and operation of the Transferred Assets on or prior to the Closing Date; provided , however , that for purposes of computing the amount of Losses incurred or paid by a Buyer Indemnified Party, there shall be deducted an amount equal to the amount of any insurance proceeds, indemnification payments, contribution payments or reimbursements that are actually received by such Buyer Indemnified Party or any of such Buyer Indemnified Party's Affiliates in connection with such Losses or the circumstances giving rise thereto; and provided , further , that solely for purposes of computing the amount of Losses incurred or paid by a Buyer Indemnified Party with respect to any claim arising under clause (i) of this Section 7.2 , any qualifications relating to materiality, including the term "Material Adverse Effect," shall be disregarded.

**Section 7.3 Indemnification by Buyer** . Buyer hereby agrees that from and after the Closing it shall indemnify, defend and hold harmless Seller, its Affiliates, and their respective directors, officers, shareholders, partners, members, attorneys, accountants, agents, Representatives and employees and their heirs, successors and permitted assigns, each in their capacity as such (the " Seller Indemnified Parties ") from, against and in respect of any Losses imposed on, sustained, incurred or suffered by, or asserted against, any of the Seller Indemnified Parties, whether in respect of third party claims, claims between the parties hereto, or otherwise, directly or indirectly relating to, arising out of or resulting from, (i) any breach or inaccuracy of any representation or warranty made by Buyer contained in this Agreement for the period such representation or warranty survives, (ii) any of the Assumed Liabilities, and (iii) any breach of a covenant or agreement of Buyer contained in this Agreement, (iv) any and all Taxes for which Buyer is responsible in accordance with Section 5.5 or (v) the ownership and operation of the Transferred Assets from and after the Closing Date; provided , however , that solely for purposes of computing the amount of Losses incurred or paid by a Seller Indemnified Party with respect to any claim arising under clause (i) of this Section 7.3 , any qualifications relating to materiality shall be disregarded.

**Section 7.4 Third Party Claim Indemnification Procedures** . (a) In the event that any written claim or demand for which an indemnifying party (an " Indemnifying Party ") may have liability to any Indemnified Party hereunder, is asserted against or sought to be collected from any Indemnified Party by a third party (a " Third Party Claim "), such Indemnified Party shall promptly notify the Indemnifying Party in writing of such Third Party Claim, the amount or the estimated amount of damages sought thereunder to the extent then ascertainable (which estimate shall not be conclusive of the final amount of such Third Party Claim), any other remedy sought thereunder, any other material details pertaining thereto (a " Claim Notice "); provided , however , that the failure timely to give a Claim Notice shall not relieve the Indemnifying Party of any liability that it may have to any Indemnified Party except to the extent the Indemnifying Party is materially and adversely prejudiced thereby. The Indemnifying Party shall have a period of thirty (30) days from receipt of such Claim Notice within which to object to or contest the indemnity obligation relating to such Third Party Claim; provided , however , that no action taken, or not taken, by the Indemnified Party with respect to or relating in any way to the Claim Notice, the Third Party Claim or the facts underlying such Third Party Claim prior to the expiration of such thirty (30) days period shall impact, reduce or otherwise harm such Indemnified Party's right to indemnification pursuant to this Section 7.4. If the Indemnifying Party does not object to or contest the indemnity obligation relating to such Third Party Claim within such thirty (30) day period, the Indemnifying Party will be deemed to have accepted the indemnity obligation with respect to such Third Party Claim. If the Indemnifying Party objects to or contests the indemnity obligation relating to all or any part of the Third Party Claim within such thirty (30) day period, the Indemnified Party shall have the right to assume the defense of such Third Party Claim and the sole power to direct and control such defense, at its expense, and shall have the right to make a Direct Claim against the Indemnifying Party for indemnification for Losses resulting from such Third Party Claim (including the Indemnified Party's expenses of defending such Third Party Claim) in accordance with Section 7.5 . The Indemnifying Party shall have thirty (30) days after receipt of the Claim Notice (the " Notice Period ") to notify the Indemnified Party that it desires to defend the Indemnified Party against such Third Party Claim unless (i) the Indemnified Party has notified the Indemnifying Party in the Claim Notice that it has determined in good faith that there is a reasonable probability that such Third Party Claim may adversely affect it or its Affiliates other than as a result of monetary damages, (ii) the Third Party Claim has been brought or asserted by a Government Entity, (iii) there is reasonably likely to exist a conflict of interest that would make it inappropriate (in the judgment of the Indemnified Party in its reasonable discretion) for the same counsel to represent both the Indemnified Party and Seller, (iv) such Third Party Claim relates to Taxes, (v) such Third Party Claim relates to Intellectual Property, or (vi) settlement of, or an adverse judgment with respect to, the Third Party Claim may establish (in the good faith judgment of the Indemnified Party) a precedential custom or practice adverse to the business interests of the Indemnified Party or would increase the Tax Liability of the Indemnified Party in which case the Indemnified Party may assume the exclusive right to defend, compromise or settle such Third Party Claim, but the Indemnifying Party will not be bound by any determination of any Third Party Claim so defended for the purposes of this Agreement or any compromise or settlement effected without its consent (which may not be unreasonably withheld), it being understood that by assuming the defense of a Third Party Claim the Indemnifying Party shall conclusively acknowledge its obligation to indemnify the Indemnified Party for all or some portion of such Third Party Claim. Notwithstanding the foregoing provisions of this Section 7.4(a) , in the event of a Third Party Claim in which the Third Party seeks any injunctive or other equitable relief from a court in the context of a claimed bona fide emergency or claimed prospective irreparable harm (such claim, an " Equitable Relief Claim "), the Indemnified Party shall provide a Claim Notice with respect to such Equitable Relief Claim to the Indemnifying Party as soon as possible but no later than the next Business Day after the Indemnified Party receives notice of the Equitable Relief Claim, and the Indemnifying Party shall have a period of three (3) Business Days from receipt of such Claim Notice (or such lesser number of days as may be required by any court proceeding regarding such Equitable Relief Claim) within which to notify the Indemnified Party that it desires to defend such Equitable Relief Claim. Except for an Equitable Relief Claim included in any Third Party Claim, which shall be handled in accordance with this paragraph, such Third Party Claim shall be subject to the first paragraph of this Section 7.4(a) . (b) In the event that the Indemnifying Party notifies the Indemnified Party within the Notice Period that it desires to defend the Indemnified Party against a Third Party Claim, the Indemnifying Party shall have the right to defend the Indemnified Party by appropriate proceedings and shall have the sole power to direct and control such defense, with counsel reasonably satisfactory to the Indemnified Party at its expense. Once the Indemnifying Party has duly assumed the defense of a Third Party Claim, the Indemnified Party shall have the right, but not the obligation, to participate in any such defense and to employ separate counsel of its choosing. The Indemnified Party shall participate in any such defense at its expense unless (i) the Indemnifying Party and the Indemnified Party are both named parties to the proceedings and the Indemnified Party shall have reasonably concluded that representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them, or (ii) the Indemnified Party assumes the defense of a Third Party Claim after the Indemnifying Party has failed to diligently pursue a Third Party Claim it has assumed, as provided in the first sentence of Section 7.4(c) . The Indemnifying Party shall not, without the prior written consent of the Indemnified Party, settle, compromise or offer to settle or compromise any Third Party Claim on a basis that would result in (i) the imposition of a consent order, injunction or decree that would restrict the future activity or conduct of the Indemnified Party or any of its Affiliates, (ii) a finding or admission of a violation of Law or violation of the rights of any Person by the Indemnified Party or any of its Affiliates, (iii) a finding or admission that would have an adverse effect on other claims made or threatened against the Indemnified Party or any of its Affiliates, or (iv) except to the extent within the basket set forth in Section 7.6(a) hereof, any monetary liability of the Indemnified Party that will not be promptly paid or reimbursed by the Indemnifying Party. (c) If the Indemnifying Party (i) elects not to defend the Indemnified Party against a Third Party Claim, whether by not giving the Indemnified Party timely notice of its desire to so defend or otherwise, (ii) is not entitled to defend the Third Party Claim as a result of the Indemnified Party's election to defend the Third Party Claim as provided in Section 7.4(a) , or (iii) after assuming the defense of a Third Party Claim, fails to take reasonable steps necessary to defend diligently such Third Party Claim within ten days after receiving written notice from the Indemnified Party to the effect that the Indemnifying Party has so failed, the Indemnified Party shall have the right but not the obligation to assume its own defense; it being understood that the Indemnified Party's right to indemnification for a Third Party Claim shall not be adversely affected by the defense. (d) The Indemnified Party and the Indemnifying Party shall cooperate in order to ensure the proper and adequate defense of a Third Party Claim, including by keeping the other party reasonably informed of the status of such Third Party Claim and any related Proceedings at all stages thereof where such party is not represented by its own counsel, and by providing 53. access to each other's relevant business records and other documents, and employees; it being understood that the costs and expenses of the Indemnified Party relating thereto shall be Losses (but only to the extent that the Third Party Claim is ultimately subject to indemnification under this Agreement). (e) The Indemnified Party and the Indemnifying Party shall use its reasonable best efforts to avoid production of confidential information (consistent with applicable Law), and to cause all communications among employees, counsel and others representing any party to a Third Party Claim to be made so as to preserve any applicable attorney-client or work-product privileges. (f) Notwithstanding any provision of this Agreement to the contrary, the Indemnifying Party hereby consents to the nonexclusive jurisdiction of any court in which a proceeding in respect of a Third Party Claim is brought against any Indemnified Party for purposes of any claim that the Indemnified Party may have under this Agreement with respect to such proceeding or the matters alleged therein and agree that process may be served on the Indemnifying Party with respect to such a claim anywhere in the world.

**Section 7.5 Direct Claims .** If an Indemnified Party wishes to make a claim for indemnification hereunder for a Loss that does not result from a Third Party Claim (a " Direct Claim "), the Indemnified Party shall notify the Indemnifying Party in writing of such Direct Claim, the amount or the estimated amount of damages sought thereunder to the extent then ascertainable (which estimate shall not be conclusive of the final amount of such Direct Claim), any other remedy sought thereunder, and any other material details pertaining thereto. The Indemnifying Party shall have a period of 30 days from delivery of the notice of Direct Claim within which to respond to such Direct Claim. If the Indemnifying Party does not respond within such 30-day period, the Indemnifying Party will be deemed to have accepted the Direct Claim. If the Indemnifying Party rejects all or any part of the Direct Claim, the Indemnified Party shall be free to seek enforcement of its rights to indemnification under this Agreement with respect to such Direct Claim.

**Section 7.6 Limitations .** (a) This Article VII shall be the exclusive means for an Indemnified Party to collect any Losses for which such Indemnified Party is entitled to indemnification under this Agreement or otherwise and under any theory of liability. Seller's aggregate liability to Buyer Indemnified Parties shall not exceed $6,000,000 plus 50% of the amount of any Milestone Payment earned (regardless of when such Milestone Payment is earned); provided that the foregoing limitation shall not apply to Losses based upon, arising out of or by reason of (i) any Excluded Liabilities or (ii) any breach of any of the Indemnifying Party's representations and warranties of which such Indemnifying Party had Knowledge at any time prior to the date on which such representation and warranty is made or fraud or any intentional breach by the Indemnifying Party of any covenant or obligation under this Agreement. (b) Notwithstanding anything to the contrary contained in this Agreement or the Ancillary Agreement, no Indemnified Party shall be entitled to recover any Losses under Section 7.2 (other than with respect to a claim for indemnification based upon, arising out of or 54. by reason of any breach or inaccuracy of any Fundamental Representation) unless and until the aggregate Losses for which they would otherwise be entitled to indemnification under Section 7.2 exceed $300,000 at which point the Indemnified Parties shall become entitled to be indemnified only for such Losses in excess of $300,000, provided that the foregoing limitation shall not apply to Losses based upon, arising out of or by reason of (i) any Excluded Liabilities, (ii) any breach of any of the Indemnifying Party's representations and warranties of which such Indemnifying Party had Knowledge at any time prior to the date on which such representation and warranty is made or fraud or any intentional breach by the Indemnifying Party of any covenant or obligation under this Agreement, or (iii) any breach or inaccuracy of any Fundamental Representation. (c) If any Indemnified Party receives or becomes entitled to indemnification from an Indemnifying Party, the Indemnifying Party shall be entitled to exercise and shall be subrogated to any rights and remedies (including rights of indemnity, rights of contribution and rights of recovery) that the Indemnified Party may have against any other Person with respect to any Losses, circumstance or matter to which such indemnification payment is directly or indirectly related. The Indemnified Party shall take such actions, at the cost and expense of the Indemnifying Party, as the Indemnifying Party may reasonably request for the purpose of enabling the Indemnifying Party to perfect or exercise all rights of subrogation hereunder.

**Section 7.7 Indemnification in Case of Strict Liability or Indemnitee Negligence** .

THE INDEMNIFICATION PROVISIONS IN THIS ARTICLE VII SHALL BE ENFORCEABLE REGARDLESS OF WHETHER THE LIABILITY IS BASED UPON PAST, PRESENT OR FUTURE ACTS, CLAIMS OR LAWS (INCLUDING ANY PAST, PRESENT OR FUTURE BULK SALES LAW, ENVIRONMENTAL LAW, FRAUDULENT TRANSFER ACT, OCCUPATIONAL SAFETY AND HEALTH LAW OR PRODUCTS LIABILITY, SECURITIES OR OTHER LAW) AND REGARDLESS OF WHETHER ANY PERSON (INCLUDING THE PERSON FROM WHOM INDEMNIFICATION IS SOUGHT) ALLEGES OR PROVES THE SOLE, CONCURRENT, CONTRIBUTORY OR COMPARATIVE NEGLIGENCE OF THE PERSON SEEKING INDEMNIFICATION OR THE SOLD OR CONCURRENT STRICT LIABILITY IMPOSED UPON THE PERSON SEEKING INDEMNIFICATION.

**Section 7.8 Payments** . Claims by an Indemnified Party for Losses pursuant to this Agreement shall be satisfied at the election of Buyer, (i) as an offset against the Milestone Payments or Royalty Payments or (ii) if the claim is made within six (6) months after the Closing, against Seller directly, up to an aggregate of $4,000,000, which Seller may satisfy through surrender to Buyer and cancellation of up to $4,000,000 of the Upfront Equity Consideration (the number of such shares to be determined based on the consolidated closing bid price per share of Buyer common stock on Nasdaq immediately prior to the signing of this Agreement); provided, however, that the foregoing limitations in clauses (i) and (ii) shall not apply to Losses based upon, arising out of or by reason of (a) any Excluded Liabilities or (b) any breach of any of the Indemnifying Party's representations and warranties of which such Indemnifying Party had Knowledge at any time prior to the date on which such representation and warranty is made or fraud or any intentional breach by the Indemnifying Party of any covenant or obligation under and, provided further, however, that the dollar amount referenced in clause (ii) shall not be deemed to limit Losses as set forth in Section 7.6 and shall not be deemed 55. to limit clause (i) in any way. For the avoidance of doubt, if any Indemnified Party has given notice of a claim for indemnification in accordance with Article VII prior to the end of the period ending six (6) months after the Closing and such claim has not been resolved by such date, then such Third Party Claim or Direct Claim will continue to be eligible for payment pursuant to clause (i) or (ii) of this Section 7.8 until resolved. All amounts payable pursuant to this Article VII , shall be paid by wire transfer of immediately available funds, promptly following receipt from an Indemnified Party of a bill, together with all accompanying reasonably detailed back-up documentation, for a Loss that is the subject of indemnification hereunder, unless the Indemnifying Party in good faith disputes the Loss, in which event it shall so notify the Indemnified Party. In any event, the Indemnifying Party shall pay to the Indemnified Party, by wire transfer of immediately available funds, the amount of any Loss for which it is liable hereunder no later than five (5) Business Days following any final determination of such Loss and the Indemnifying Party's liability therefore. A "final determination" shall exist when (i) the parties to the dispute have reached an agreement in writing, or (ii) a court of competent jurisdiction shall have entered a final and non-appealable Order or judgment.

**Section 7.9 Characterization of Indemnification Payments** . All payments made by an Indemnifying Party to an Indemnified Party in respect of any claim pursuant to this Article VII shall be treated as adjustments to the Purchase Price for Tax purposes.

**Section 7.10 Mitigation** . Each Indemnified Party shall use its commercially reasonable best efforts to mitigate any indemnifiable Loss. Section

**Section 7.11 Effect of Waiver of Condition** . Neither Buyer's nor Seller's right to indemnity, reimbursement or other remedy pursuant to this Article VII shall be adversely affected by its waiver of a condition to closing set forth in Article VI unless such party makes clear by the terms of its waiver that it is foreclosing its right to indemnity with respect to the matter subject of the waiver.

**Section 7.12 Right of Set-Off** . Subject to the indemnification provisions set forth above in this Article VII , Buyer shall have the right to set off any amounts owed under this Article VII against any Milestone Payments or Royalty Payments owed under this Agreement. Neither the exercise of nor the failure to exercise such right of setoff shall constitute an election of remedies or limit Buyer or Seller in any manner in the enforcement of any other remedies that may be available to either.

**Section 7.13 Specific Performance .** The Parties acknowledges and agrees that any breach of this Agreement may give rise to irreparable harm for which monetary damages may not be an adequate remedy. The Parties accordingly agrees that, in addition to other rights or remedies, the other Party shall be entitled to seek to enforce the terms of this Agreement by decree of specific performance and to seek preliminary, temporary and permanent injunctive relief against any breach or threatened beach of this Agreement.

**ARTICLE VIII TERMINATION**

**Section 8.1 Termination** . This Agreement may be terminated at any time prior to the Closing: (a) by Buyer by written notice to Seller if Buyer is not then in material breach of any provision of this Agreement and: (i) there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Seller pursuant to this Agreement that would give rise to the failure of any of the conditions specified in Section 6.1(a) or Section 6.1(b) and such breach, inaccuracy or failure has not been cured by Seller by the earlier of (A) ten (10) days of Seller's receipt of written notice of such breach from Buyer, and (B) forty-five (45) days from the date of this Agreement; or (ii) any of the conditions set forth in Section 6.1(d) , (e) , or (f) shall not have been fulfilled within forty-five (45) days after the date of this Agreement; (b) by Seller by written notice to Buyer if: (i) Seller is not then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Buyer pursuant to this Agreement that would give rise to the failure of any of the conditions specified in Section 6.2(a) or Section 6.2(b) and such breach, inaccuracy or failure has not been cured by Buyer by the earlier of (A) ten (10) days of Buyer's receipt of written notice of such breach from Seller, and (B) forty-five (45) days from the date of this Agreement; or (ii) any of the conditions set forth in Section 6.2(d) or (e) shall not have been fulfilled within forty-five (45) days after the date of this Agreement; or (c) by Buyer or Seller if the Transaction has not been consummated within forty-five (45) days after the date of this Agreement; provided , however , that a party shall not be permitted to terminate this Agreement pursuant to this Section 8.1(c) if the failure to consummate the Transaction within such period is attributable to a failure on the part of such party to perform any covenant in this Agreement required to be performed by such party at or prior to the Closing; or (d) by Buyer or Seller in the event that a court of competent jurisdiction shall have issued a final and nonappealable Order having the effect of permanently restraining, enjoining or otherwise prohibiting the Transaction; provided , however , that a party shall not be permitted to terminate this Agreement pursuant to this Section 8.1(d) if such party did not use commercially reasonable best efforts to have such Order vacated prior to its becoming final and nonappealable.

**Section 8.2 Effect of Termination** . In the event of the termination of this Agreement in accordance with Section 8.1 , this Agreement shall thereafter become void and have no effect, 57. and no party hereto shall have any liability to the other party hereto or their respective Affiliates, or their respective directors, officers or employees, except for the obligations of the parties hereto contained in this Section 8.2 and in Article IX (and any related definitional provisions set forth in Article I ), and except that nothing in this Section 8.2 shall relieve any party from liability for any breach of this Agreement (including, without limitation, a breach of Section 5.3 ) that arose prior to such termination, for which liability the provisions of Article VII shall remain in effect in accordance with the provisions and limitations of such Article.

**ARTICLE IX MISCELLANEOUS**

**Section 9.1 Notices** . All notices and communications hereunder shall be deemed to have been duly given and made if in writing and if served by personal delivery upon the party for whom it is intended or delivered by registered or certified mail, return receipt requested, or if sent by facsimile or email, provided that the facsimile or email is promptly confirmed by telephone confirmation thereof, to the Person at the address set forth below, or such other address as may be designated in writing hereafter, in the same manner, by such Person: To Buyer: Cure-It, Inc. Address, WA Telephone: xxx-xxx-xxx Facsimile: xxx-xxx-xxx Email: \*\* Attn: James Robert deMiro, M.D., Chief Executive Officer With a copy to C-I Legal Affairs at the above address. With a copy to counsel, provided that such copy shall notice constitute legal notice to Buyer: Shannon and Learey LLPAddress, CA Telephone: xxx-xxx-xxx Facsimile: xxx-xxx-xxx Email: \*\* Attn: Merrit and Coldon, Esqs

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| \*\* | Indicates that certain information contained herein has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions. |

To Seller: Inhibitech Ltd. c/o Address Singapore Telephone: xxx-xxx-xxx Facsimile: xxx-xxx-xxx Email: \*\* Attn: Wan Li With a copy to counsel, provided that such copy shall not constitute legal notice to Seller: Kerry LLP Address CA Telephone: xxx-xxx-xxx Facsimile: xxx-xxx-xxxEmail: \*\* Attn: Tiffany Ellington

**Section 9.2 Amendment; Waiver; Remedies Cumulative** . Any provision of this Agreement may be amended or waived if, and only if such amendment or waiver is in writing and signed, in the case of an amendment, by Buyer and Seller, or in the case of a waiver, by the party against whom the waiver is to be effective. No notice or demand on one party will be deemed to be a waiver of any obligation of that party or the right of the party giving a notice or demand to take further action without notice or demand as provided in this Agreement. No waiver that may be given by a party will be applicable except for the specific instance for which it is given. No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

**Section 9.3 No Assignment or Benefit to Third Parties** . Subject to the provisions of Section 2.11 , (a) no party to this Agreement may assign any of its rights or delegate any of its obligations under this Agreement, by operation of Law or otherwise, without the prior written consent of the other party hereto, except as provided in Section 9.5 , (b) Buyer may assign any and all of its rights under this Agreement to a Third Party or one or more of its wholly owned subsidiaries, by operation of Law or otherwise, without the prior written consent of Seller (but no such assignment shall relieve Buyer of any of its obligations hereunder), and (c) Seller may assign this Agreement in connection with the transfer or sale of all or substantially all of Seller's business related to the Excluded Assets to a Third Party, whether by merger, sale of stock, sale of assets or otherwise (but no such assignment shall relieve Seller of any of its obligations hereunder). This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, legal Representatives and permitted assigns. Nothing in this

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| \*\* | Indicates that certain information contained herein has been omitted and filed separately with the Securities and Exchange Commission. Confidential treatment has been requested with respect to the omitted portions. |

Agreement, express or implied, is intended to confer upon any Person, other than Buyer, Seller, the Indemnified Parties and their respective successors, legal Representatives and permitted assigns, any legal or equitable right, remedy or claim under or by reason of this Agreement.

**Section 9.4 Entire Agreement .** This Agreement (including the Seller Disclosure Schedule, all Schedules and Exhibits hereto and other documents delivered pursuant hereto) contains the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral or written, with respect to such matters (including any proposal made or letter of intent delivered by Buyer to Seller), except for the Confidentiality Agreement, which shall remain in full force and effect.

**Section 9.5 Fulfillment of Obligations** . Any obligation of any party to any other party under this Agreement which obligation is performed, satisfied or fulfilled completely by an Affiliate of such party, shall be deemed to have been performed, satisfied or fulfilled by such party. Section 9.6 Public Disclosure . Notwithstanding anything to the contrary contained herein, except as may be required to comply with the requirements of any applicable Law and the rules and regulations of any stock exchange upon which the securities of one of the parties is listed, from and after the date hereof, no press release or similar public announcement or communication shall be made or caused to be made by either party and/or any of such party's Affiliates relating to this Agreement or the Transaction unless specifically approved in advance by the other party; provided , however , that: (a) the parties jointly may issue one or more press release(s) announcing entry into this Agreement and/or the Closing; (b) either party may issue such press releases, public announcements or communications or make such SEC filings as it determines are reasonably necessary to comply with applicable Law (including disclosure requirements of the SEC) or with the requirements of any stock exchange on which securities issued by a party or its Affiliates are traded; (c) Seller may deliver such communications to its shareholders regarding this Agreement and the Transactions as may be required by applicable Law; (d) after the Closing, Buyer shall not be subject to any restrictions under this Section 9.6 , and (e) after the Closing, Seller may issue press releases or otherwise publicly announce the receipt and, when received, the amounts of Milestone Payments and Royalty Payments hereunder. Seller and Buyer will consult with each other concerning the means by which the counterparty(ies) to any Assigned Contract will be informed of the transactions contemplated by this Agreement, and Buyer will have the right to be present for any such communication.

**Section 9.7 Expenses .** Except as otherwise expressly provided in this Agreement, whether or not the transactions contemplated by this Agreement are consummated, all costs and expenses incurred in connection with the preparation, negotiation, execution and performance of this Agreement and the Transaction shall be borne by the party incurring such costs and expenses. Buyer will pay any filing fee in connection with any application or other filing to be made with respect to this Agreement or the Transaction pursuant to any competition Law.

**Section 9.8 Bulk Sales** . Seller and Buyer agree to waive compliance with Article 6 of the Uniform Commercial Code as adopted in each of the jurisdictions in which any of the Transferred Assets are located to the extent that such Article is applicable to the transactions contemplated hereby

**Section 9.9 Governing Law**: Submission to Jurisdiction: Selection of Forum; Waiver of Trial by Jury . THE AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW THAT WOULD REQUIRE THE APPLICATION OF ANY OTHER LAW. Each party hereto agrees that it shall bring any action or proceeding in respect of any claim arising out of or related to this Agreement or the transactions contained in or contemplated by this Agreement and the Ancillary Agreement, exclusively in the United States District Court for the Northern District of California or any California State court sitting in San Francisco (the " Chosen Courts "), and solely in connection with claims arising under this Agreement or the transactions that are the subject of this Agreement or the Ancillary Agreement (i) irrevocably submits to the exclusive jurisdiction of the Chosen Courts, (ii) waives any objection to laying venue in any such action or proceeding in the Chosen Courts, (iii) waives any objection that the Chosen Courts are an inconvenient forum or do not have jurisdiction over any party hereto and (iv) agrees that service of process upon such party in any such action or proceeding shall be effective if notice is given in accordance with Section 9.1 of this Agreement. Each party hereto irrevocably waives any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or the transactions contemplated hereby.

**Section 9.10 Counterparts .** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same Agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile shall be deemed to be their original signatures for all purposes.

**Section 9.11 Headings** . The heading references herein and the table of contents hereof are for convenience purposes only, and shall not be deemed to limit or affect any of the provisions hereof.

**Section 9.12 Severability .** The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement, or the application thereof to any Person or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefore in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (b) the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

**Section 9.13 Disclosure Schedules** . The representations and warranties contained in Article III of the Agreement are subject to (a) the exceptions and disclosures set forth in the part of the Disclosure Schedule corresponding to the particular Section of Article III in which such representation and warranty appears; (b) any exceptions or disclosures explicitly cross-referenced in such part of the Disclosure Schedule by reference to another part of the Disclosure Schedule; and (c) any exception or disclosure set forth in any other part of the Disclosure Schedule to the extent it is reasonably apparent on its face and without further inquiry that such exception or disclosure is intended to qualify such representation and warranty. No reference to or disclosure of any item or other matter in this Disclosure Schedule shall be construed as an admission or indication that such item or other matter is material (nor shall it establish a standard of materiality for any purpose whatsoever) or that such item or other matter is required to be referred to or disclosed in this Disclosure Schedule. The information set forth in the Disclosure Schedule is disclosed solely for the purposes of this Agreement, and no information set forth therein shall be deemed to be an admission by any party hereto to any third party of any matter whatsoever, including of any violation of Law or breach of any agreement. The Disclosure Schedule and the information and disclosures contained therein are intended only to qualify and limit the representations, warranties and covenants of Seller contained in this Agreement. Nothing in the Disclosure Schedule is intended to create any covenant. Matters reflected in the Disclosure Schedule are not necessarily limited to matters required by the Agreement to be reflected in this Disclosure Schedule. Such additional matters are set forth for informational purposes and do not necessarily include other matters of a similar nature. 62. IN

WITNESS WHEREOF, the parties have executed or caused this Agreement to be executed as of the date first written above.

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| --- | --- | --- |
| INHIBITECH LTD. | | |
| By: |  | |s|Roberta Flagton |
| Name: |  | Roberta Flagton |
| Title: |  | Chief Executive Officer |
| CURE-IT, INC. | | |
| By: |  | |s|James Robert deMiro |
| Name: |  | James Robert deMiro, M.D. |
| Title: |  | Chief Executive Officer |

**APA#14**

**ASSET PURCHASE AGREEMENT**

by and among

INQUILABS CORPORATION, NORBERT SOUNDWAVES, INC., LINETOWN 122 LTD., NORBERT MICROCHIP (XIANMENG) CO., LTD., MARY A. NORBERT,

and

VICKI A. MERCHANT

Dated: October 5, 2006

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THE SYMBOL [\*\*\*] IS USED TO INDICATE THAT A PORTION OF THE EXHIBIT HAS BEEN OMITTED AND FILED SEPARATELY WITH THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTION. SCHEDULES TO THIS AGREEMENT ARE OMITTED FROM THIS FILING. INQUILABS CORPORATION UNDERTAKES TO PROVIDE COPIES OF THE OMITTED SCHEDULES TO THE SECURITIES AND EXCHANGE COMMISSION UPON REQUEST OF THE COMMISSION.

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Table of Contents

1. Definitions and Usage 2

1.1 DEFINITIONS 2

1.2 USAGE 14

2. Sale and Transfer of Assets; Closing 15

2.1 ASSETS TO BE SOLD 15

2.2 EXCLUDED ASSETS 17

2.3 CONSIDERATION 17

2.4 LIABILITIES 18

2.5 ALLOCATION 20

2.6 CLOSING 20

2.7 CLOSING OBLIGATIONS 21

2.8 ADJUSTMENT AMOUNT AND PAYMENT 24

2.9 ADJUSTMENT PROCEDURE 25

2.10 CONSENTS 26

3. Representations and Warranties of Seller and Shareholders 28

3.1 ORGANIZATION AND GOOD STANDING 28

3.2 ENFORCEABILITY; AUTHORITY; NO CONFLICT 29

3.3 CAPITALIZATION 30

3.4 FINANCIAL STATEMENTS 30

3.5 BOOKS AND RECORDS 31

3.6 SUFFICIENCY OF ASSETS 31

3.7 DESCRIPTION OF OWNED REAL PROPERTY 32

3.8 DESCRIPTION OF LEASED REAL PROPERTY 32

3.9 TITLE TO ASSETS; ENCUMNRANCES 32

3.10 CONDITION OF FACILITIES 33

3.11 ACCOUNTS RECEIVABLE; CUSTOMER REVENUES 34

3.12 INVENTORIES 34

3.13 NO UNDISCLOSED LIABILITIES 35

3.14 TAXES 35

3.15 NO MATERIAL ADVERSE CHANGE 37

3.16 EMPLOYEE BENEFITS 37

3.17 COMPLIANCE WITH LEGAL REQUIREMENTS; GOVERNMENTAL AUTHORIZATIONS 39

3.18 LEGAL PROCEEDINGS; ORDERS 40

3.19 ABSENCE OF CERTAIN CHANGES AND EVENTS 41

3.20 CONTRACTS; NO DEFAULTS 42

3.21 INSURANCE 45

3.22 ENVIRONMENTAL MATTERS 46

3.23 EMPLOYEES 48

3.24 LABOR DISPUTES; COMPLIANCE 49

3.25 INTELLECTUAL PROPERTY ASSETS 49

3.26 COMPLIANCE WITH THE FOREIGN CORRUPT PRACTICES ACT AND EXPORT CONTROL AND ANTIBOYCOTT LAWS 53

3.27 RELATIONSHIPS WITH RELATED PERSONS 54

3.28 BROKERS OR FINDERS 55

3.29 SOLVENCY 55

3.30 DISCLOSURE 55

4. Representations and Warranties of Buyer 56

4.1 ORGANIZATION AND GOOD STANDING 56

4.2 AUTHORITY; NO CONFLICT 56

4.3 [Intentionally omitted] 56

4.4 BROKERS OR FINDERS 56

5. Covenants of Seller Prior to Closing 57

5.1 ACCESS AND INVESTIGATION 57

5.2 OPERATION OF THE BUSINESS OF SELLER 57

5.3 NEGATIVE COVENANT 58

5.4 REQUIRED APPROVALS 59

5.5 NOTIFICATION 59

5.6 NO NEGOTIATION 59

5.7 BEST EFFORTS 60

5.8 INTERIM FINANCIAL STATEMENTS 60

5.9 PAYMENT OF LIABILITIES 60

5.10 HART SCOTT RODINO 60

5.11 CURRENT EVIDENCE OF TITLE 60

5.12 [\*\*\*] 60

5.13 USE OF NORBERT NAME 60

6. Covenants of Buyer Prior to Closing 61

6.1 REQUIRED APPROVALS 61

6.2 HART SCOTT RODINO 62

6.3 COOPERATION REGARDING [\*\*\*]. 62

7. Conditions Precedent to Buyer's Obligation to Close 62

7.1 ACCURACY OF REPRESENTATIONS 62

7.2 SELLER PARTIES' PERFORMANCE 62

7.3 CONSENTS 63

7.4 ADDITIONAL DOCUMENTS 63

7.5 NO PROCEEDINGS 64

7.6 [Intentionally Omitted] 64

7.7 TITLE INSURANCE 64

7.8 SURVEY 64

7.9 ZONING 64

7.10 GOVERNMENTAL AUTHORIZATIONS 65

7.11 ENVIRONMENTAL REPORT 65

7.12 EMPLOYEES 65

7.13 NONCOMPETITION AGREEMENTS 65

7.14 NO INJUNCTION 65

7.15 [XIANMENG CHINA CONDITIONS] 65

7.16 MATERIAL ADVERSE CHANGE 66

7.17 PRODUCTION CERTIFICATION 66

7.18 HART SCOTT RODINO WAITING PERIOD 66

8. Conditions Precedent to Seller Parties' Obligation to Close 66

THE SYMNOL [\*\*\*] IS USED TO INDICATE THAT A PORTION OF THE EXHIBIT HAS BEEN OMITTED AND FILED SEPARATELY WITH THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTION.ii

8.1 ACCURACY OF REPRESENTATIONS 66

8.2 BUYER'S PERFORMANCE 67

8.3 CONSENTS 67

8.4 ADDITIONAL DOCUMENTS 67

8.5 NO INJUNCTION 67

8.6 NO PROCEEDINGS 67

8.7 [Intentionally Omitted] 67

8.8 HART SCOTT RODINO WAITING PERIOD 67

9. Termination 68

9.1 TERMINATION EVENTS 68

9.2 EFFECT OF TERMINATION 68

10. Additional Covenants 69

10.1 EMPLOYEES AND EMPLOYEE BENEFITS 69

10.2 PAYMENT OF ALL TAXES RESULTING FROM SALE OF ASSETS BY SELLER 71

10.3 PAYMENT OF OTHER RETAINED LIABILITIES 71

10.4 RESTRICTION ON COMPANY DISTRIBUTIONS 71

10.5 RESTRICTIONS ON CHANGE IN CONTROL AND DISSOLUTION OF COMPANY 71

10.6 REMOVING EXCLUDED ASSETS 72

10.7 REPORTS AND RETURNS 72

10.8 ASSISTANCE IN PROCEEDINGS 72

10.9 CUSTOMER AND OTHER BUSINESS RELATIONSHIPS 73

10.10 RETENTION OF AND ACCESS TO RECORDS 73

10.11 PRODUCTION REPORTS 73

10.12 FURTHER ASSURANCES 73

11. Indemnification; Remedies 74

11.1 SURVIVAL 74

11.2 INDEMNIFICATION AND REIMNURSEMENT BY SELLER PARTIES 75

11.3 [Intentionally Omitted]. 75

11.4 INDEMNIFICATION AND REIMNURSEMENT BY BUYER 75

11.5 LIMITATIONS ON AMOUNT--SELLER PARTIES 76

11.6 [Intentionally Omitted] 78

11.7 THIRD-PARTY CLAIMS 78

11.8 INDEMNIFICATION PAYMENT 78

11.9 [Intentionally Omitted]. 78

12. Confidentiality 79

12.1 DEFINITION OF CONFIDENTIAL INFORMATION 79

12.2 RESTRICTED USE OF CONFIDENTIAL INFORMATION 79

12.3 EXCEPTIONS 80

12.4 LEGAL PROCEEDINGS 80

12.5 RETURN OR DESTRUCTION OF CONFIDENTIAL INFORMATION 81

12.6 [Intentionally Omitted] 81

13. General Provisions 81

13.1 EXPENSES 81

13.2 PUBLIC ANNOUNCEMENTS 81

13.3 NOTICES 82

13.4 [INTENTIONALLY OMITTED] 83

13.5 ENFORCEMENT OF AGREEMENT 83

13.6 WAIVER; REMEDIES CUMULATIVE 83

13.7 ENTIRE AGREEMENT AND MODIFICATION 84

13.8 DISCLOSURE SCHEDULE 84

13.9 ASSIGNMENTS, SUCCESSORS AND NO THIRD-PARTY RIGHTS 84

13.10 SEVERABILITY 84

13.11 CONSTRUCTION 84

13.12 TIME OF ESSENCE 85

13.13 GOVERNING LAW 85

13.14 EXECUTION OF AGREEMENT 85

13.15 SHAREHOLDER OBLIGATIONS 85

13.16 REPRESENTATIVE OF SELLER AND SHAREHOLDERS 85

13.17 CASUALTY AND CONDEMNATION 86

13.18 PRORATIONS 87

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ASSET PURCHASE AGREEMENT This Asset Purchase Agreement (this "Agreement") is dated October 5, 2006, by and among INQUILABS Corporation, a Delaware corporation ("Inquilabs"), and/or one or more of its designated affiliates , (collectively, "Buyer"); Norbert Soundwaves, Inc. (a/k/a NORBERT Super-Sounds, Inc.), an Ohio corporation ("Company"), Linetown 122 Ltd., an Ohio limited liability company ("F533"), Norbert Microchip (XIANMENG) Co., Ltd., a wholly foreign owned enterprise established in XIANMENG New District, XIANMENG, Harbin, PRC ("XIANMENG") (the Company, F533 and XIANMENG are sometimes referred to as "Seller", individually or "Sellers" collectively), Mary A. NORBERT, a resident of Lapato, Ohio ("MN") and Vicki A. MERCHANT, a resident of Linetown, Ohio ("VM") (MN and VM are referred to herein as "Shareholders", collectively) (Company, F533, XIANMENG and the Shareholders are referred to herein as "Seller Parties", collectively and "Seller Party", individually).

RECITALS

Shareholders own, in the aggregate, sixty-nine (69) shares of the common voting stock of Company, which constitute ninety-two percent (92%) of the issued and outstanding voting shares of capital stock of Company.

MN and VM own, in the aggregate, one hundred percent (100%) of the issued and outstanding membership units entitled to vote of F533. Company owns 100% of the ownership interests of XIANMENG.

Sellers desire to sell, and Buyer desires to purchase, the Assets (as defined herein) of Sellers for the consideration and on the terms set forth in this Agreement. MN and VM acknowledge and agree, as majority shareholders and members, respectively, of Company and F533, that this Agreement and the transactions related hereto are of benefit to them, constitute adequate consideration for their respective agreements herein and as contemplated hereby and that Buyer would not have entered into this Agreement without their personal agreements herein and as contemplated hereby.

In connection with the execution of this Agreement, Company and Buyer have also entered into that certain agreement relating to certain growers purchased or paid for by Buyer and installed at Company premises, in the form attached hereto as Exhibit A, (the "Keeper Agreement").

The parties, intending to be legally bound, agree as follows:

1. Definitions and Usage

1.1 DEFINITIONS For purposes of this Agreement, the following terms and variations thereof have the meanings specified or referred to in this Section 1.1:

"Accounts Receivable"--(a) all trade accounts receivable and other rights to payment from customers of the Business and the benefit of all security for such accounts or rights to payment, including all trade accounts receivable representing amounts receivable in respect of goods shipped or products sold or services rendered to customers of the Business prior to Closing and (b) all notes receivable of the Business and the benefit of all security for such notes.

"Acquired Contracts"--as defined in Section 2.1(e). "Adjustment Amount"--as defined in Section 2.8.

"Appurtenances"--all privileges, rights, easements, hereditaments and appurtenances belonging to or for the benefit of the Land (as defined herein), including without limitation, all easements appurtenant to and for the benefit of any Land (a "Dominant Parcel") for, and as a means of access between, the Dominant Parcel and a public way, or for any other use or benefit upon which lawful use of the Dominant Parcel for the purposes for which it is presently being used is dependent, and all rights existing in and to any streets, alleys, passages and other rights-of-way included thereon or adjacent thereto (before or after vacation thereof) and vaults beneath any such streets.

"Assets"--as defined in Section 2.1.

"Assignment and Assumption Agreement"--the Company Assignment and Assumption Agreement and the XIANMENG Assignment and Assumption Agreement.

"Assumed Liabilities"--as defined in Section 2.4(a).

"Best Efforts"--the efforts that a reasonably prudent Person desirous of achieving a result would use in similar circumstances to achieve that result as expeditiously as reasonably possible.

"Bill of Sale"--the Company Bill of Sale and the XIANMENG Bill of Sale.

"Breach"--any breach of, or any inaccuracy in, any representation or warranty or any breach of, or failure to perform or comply with, any covenant or obligation, in or of this Agreement or any other Contract, including any agreement or Exhibit attached hereto, or any event which with the passing of time or the giving of notice, or both, would constitute such a breach, inaccuracy or failure.

"Bulk Sales Laws"--as defined in Section 5.9.

"Business" -- the silicon growing and silicon fabrication related businesses of the Company and XIANMENG, including but not limited to ultrasonic machining, CNC machining, prototype development, lapping, polishing and crystal growing.

"Business Day"--any day other than (a) Saturday or Sunday or (b) any other day on which banks in Ohio are permitted or required to be closed.

"Buyer"--as defined in the first paragraph of this Agreement.

"Buyer Indemnified Persons"--as defined in Section 11.2.

"Buyer's Report"--as defined in Section 2.9.

"Carve-Out Financial Statements" -- the consolidated balance sheet of the Company and XIANMENG at July 31, 2006 and the consolidated income statement of the Company and XIANMENG for the seven (7) month period ended July 31, 2006, prepared in each case in accordance with GAAP (as defined herein), consistently applied, except for the variances from GAAP set forth on Exhibit B (the "GAAP Exceptions"), which statements separately show

(1) the full Company and XIANMENG assets and liabilities and the full Company and XIANMENG results of operation through July 31, 2006,

(2) the adjustments to the full Company and XIANMENG assets, liabilities and results of operation,

(3) the resulting assets, liabilities and results of operations, respectively, of the Business,

(4) the F533 assets relating to the Howard Street Property and

(5) the procedures employed to prepare such financial statements, the accompanying statement of Henry K. Willowbyton, which Carve-Out Financial Statements and procedures are Exhibit C attached hereto.

"Closing"--as defined in Section 2.6.

"Closing Asset Value"--the value of the assets of XIANMENG and the value of the assets of the Company and F533 related to the Howard Street Property, determined consistently with the Estimated Closing Asset Value and in accordance with GAAP except for the GAAP Exceptions, which includes only Confirmed [\*\*\*] Inventories as provided in Section 2.8(d), and which excludes

(i) the reimbursed costs up to $648,000 to Sellers,

(ii) amounts reimbursed relating to the Construction Agreement, respectively pursuant to Sections 2.3(c) and 2.4(a)(iv);

(iii) any property or equipment purchased or paid for by Buyer (including the property subject to the Keeper Agreement),

(iv) the prepaid item in the amount of $2,973,681, with respect to [\*\*\*], and

(v) the Real Property, and will be prepared in all respects consistently with the balance sheet included in the Carve-Out Financial Statements and the procedures related thereto.

"Closing Date"--the date on which the Closing actually takes place.

"Closing Balance Sheet"--the consolidated balance sheet of the Company and XIANMENG at the Closing Date, which balance sheet shall be prepared in accordance with GAAP, consistently applied, and consistent with the carve-out balance sheet included in the Carve-Out Financial Statements, including the procedures related thereto.

"COBRA"--as defined in Section 3.16(f).

"Code"--the Internal Revenue Code of 1986, as amended.

"Company"--as defined in the first paragraph of this Agreement.

"Company Assignment and Assumption Agreement"--as defined in Section 2.7(a)(ii).

"Company Bill of Sale"--as defined in Section 2.7(a)(i). "Company Contract"--any Contract (a) under which any of Company, XIANMENG or F533 has or may acquire any rights or benefits; (b) under which any of Company, XIANMENG or F533 has or may become subject to any obligation or liability or (c) by which any of Company, XIANMENG, F533 or any of the assets owned or used by any of Company, XIANMENG or F533, their respective Facilities (including the Howard Street Property of F533) or operations is or may become bound.

"Confidential Information"--as defined in Section 12.1. THE SYMNOL [\*\*\*] IS USED TO INDICATE THAT A PORTION OF THE EXHIBIT HAS BEEN OMITTED AND FILED SEPARATELY WITH THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTION.

"Consent"--any approval, consent, ratification, waiver or other authorization.

"Contemplated Transactions"--all of the transactions contemplated by this Agreement. "Contract"--any agreement, contract, Lease, consensual obligation, promise or undertaking (whether written or oral and whether express or implied), whether or not legally binding, including any agreement or Exhibit attached hereto.

"Copyrights"--as defined in Section 3.25(a)(iii).

"Damages"--as defined in Section 11.2. "DISC" --as defined in Section 3.31. "Disclosure Schedule"--the disclosure schedule delivered by Seller Parties to Buyer concurrently with the execution and delivery of this Agreement. "F533"--as defined in the first paragraph of this Agreement. "Effective Time"-- 11:59 p.m. (local time at Facility) on the Closing Date.

"Employee Plans"--as defined in Section 3.16(a).

"Employment Agreement"--as defined in Section 2.7(a)(vii).

"Encumbrance"--any charge, claim, community or other marital property interest, condition, equitable interest, lien, option, pledge, security interest, mortgage, right of way, easement, encroachment, servitude, right of first option, right of first refusal or similar restriction, including any restriction on use, voting (in the case of any security or equity interest), transfer, receipt of income or exercise or claim of any other attribute of ownership or interest.

"Environment"--soil, land surface or subsurface strata, surface waters (including navigable waters and ocean waters), groundwater, drinking water supply, stream sediments, ambient air (including indoor air), plant and animal life and any other environmental medium or natural resource.

"Environmental, Health and Safety Liabilities"--any cost, damage, expense, liability, claim, obligation or other responsibility arising from or under any Environmental Law or Occupational Safety and Health Law, including those consisting of or relating to:

(a) any environmental, health or safety matter or condition (including on-site or off-site contamination, occupational safety and health and regulation of any substance or product);

(b) any fine, penalty, judgment, award, settlement, legal or administrative proceeding, damage, loss, claim, demand or response, remedial or inspection cost or expense arising under any Environmental Law or Occupational Safety and Health Law;

(c) financial responsibility under any Environmental Law or Occupational Safety and Health Law for cleanup costs or corrective action, including any cleanup, removal, containment or5other remediation or response actions ("Cleanup") required by any Environmental Law or Occupational Safety and Health Law (whether or not such Cleanup has been required, requested or undertaken by any Governmental Body or any other Person) and for any natural resource damages; or

(d) any other compliance, corrective or remedial measure required under any Environmental Law or Occupational Safety and Health Law. The terms "removal," "remedial" and "response action" include, but are not limited to, the types of activities covered by the United States Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

"Environmental Law"--any Legal Requirement that requires or relates to:

(a) advising appropriate authorities, employees or the public of intended or actual Releases or Threatened Releases of pollutants or hazardous substances or materials, violations of discharge limits or other prohibitions and the commencement of activities, such as resource extraction or construction, that could have significant impact on the Environment;

(b) preventing or reducing to acceptable levels the Release or Threat of Release of pollutants or hazardous substances or materials into the Environment;

(c) reducing the quantities, preventing the Release or Threat of Release or minimizing the hazardous characteristics of wastes that are generated;

(d) assuring that products are designed, formulated, packaged and used so that they do not present unreasonable risks to human health or the Environment when used or disposed of;

(e) protecting natural, cultural or environmental resources, species or ecological amenities;

(f) reducing to acceptable levels the risks inherent in the transportation of hazardous substances, pollutants, oil or other potentially harmful substances;

(g) cleaning up pollutants that have been Released, preventing the Threat of Release or paying the costs of such clean up or prevention;

(h) making responsible parties pay or satisfy private parties, or groups of them, for damages done to their health or the Environment or permitting self-appointed representatives of the public interest to recover for injuries done to public assets; or

(i) obtaining or maintaining any Governmental Authorization for, or complying with any Legal Requirement relating to, operations, equipment, processes, emissions or permits that affect or relate to the Environment from a governmental entity. "ERISA"--the Employee Retirement Income Security Act of 1974, as amended. "Escrow Agreement"--as defined in Section 2.7(a)(ix).

"Estimated Closing Asset Value"--the value of the assets of XIANMENG and the value of the assets of Company and F533 related to the Howard Street Property, as set forth in Exhibit F attached hereto, which value has been determined in accordance with GAAP, except for the GAAP Exceptions, which includes all [\*\*\*] Inventories, and excludes

(i) the reimbursed costs up to $648,000 to Sellers,

(ii) the amounts reimbursed relating to the Construction Agreement (as defined herein), respectively, pursuant to Sections 2.3(c) and 2.4(a)(iv),

(iii) any property or equipment purchased or paid for by Buyer (including the property subject to the Keeper Agreement),

(iv) the prepaid item in the amount of $2,973,681, with respect to [\*\*\*] and

(v) the Real Property, and was prepared in all respects consistently with the balance sheet included in the Carve-Out Financial Statements.

"Exchange Act"--the Securities Exchange Act of 1934, as amended. "Excluded Assets"--as defined in Section 2.2.

"Facilities"--any real property, leasehold or other interest in real property currently owned or operated by Company, XIANMENG or F533, including without limitation, the Tangible Personal Property and Improvements used or operated by Company, XIANMENG or F533 at the respective locations of the Real Property specified in Section 3.7, including the Howard Street Property (as defined herein) of F533, but excepting and excluding the Lapato Road Property and the Faragut Road Property (as such terms are defined herein). Notwithstanding the foregoing, for purposes of the definitions of "Hazardous Activity" and "Remedial Action" and Section 3.22, "Facilities" shall mean any real property, leasehold or other interest in real property currently or formerly owned or operated by Company, XIANMENG or F533, including without limitation, the Tangible Personal Property and Improvements used or operated by Company, XIANMENG or F533 at the respective locations of the Real Property specified in Section 3.7.

"Howard Street Lease"--the lease dated May 1, 2002 between F533 and Company, as amended March 30, 2006, regarding the Howard Street Property (as defined herein) and any Real Property Lease or any lease or rental agreement, license, right to use or installment and conditional sale agreement to which Company is a party and any other Company Contract pertaining to the leasing or use of any Tangible Personal Property (as defined herein) related to the Howard Street Property.

"Howard Street Property" --the Real Property commonly known as 950 South Howard Street, Linetown, Ohio and that Real Property commonly known as 2349 South Howard Street, Linetown, Ohio, all as more specifically described in Exhibit G.

"GAAP"--generally accepted accounting principles for financial reporting in the United States.

"Good Reason"--as defined in Section 2.8(c).

"Governing Documents"--with respect to any particular entity,

(a) if a corporation, the articles or certificate of incorporation or other charter documents and the bylaws or regulations (in the applicable jurisdiction);

(b) if a general partnership, the partnership agreement and any statement of partnership;

(c) if a limited partnership, the limited partnership agreement and the certificate of limited partnership;

(d) if a limited liability company, the articles of organization and operating agreement;

(e) if a wholly foreign owned enterprise, the articles of association;

(f) if another type of Person, any other charter or similar document adopted or filed in connection with the creation, THE SYMBOL [\*\*\*] IS USED TO INDICATE THAT A PORTION OF THE EXHIBIT HAS BEEN OMITTED AND FILED SEPARATELY WITH THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTION.

formation, organization or governance of the Person;

(g) all equityholders' agreements, voting agreements, voting trust agreements, joint venture agreements, registration rights agreements or other agreements or documents relating to the organization, management or operation of any Person or relating to the rights, duties and obligations of the equityholders of any Person; and

(h) any amendment or supplement to any of the foregoing.

"Governmental Authorization"--any Consent, license, registration, approval or permit issued, granted, given or otherwise made available by or under the authority of any Governmental Body or pursuant to any Legal Requirement, including any renewals thereof.

"Governmental Body"--any:

(a) nation, state, county, province, city, town, borough, village, district or other jurisdiction;

(b) federal, state, local, municipal, foreign or other government;

(c) governmental or quasi-governmental authority of any nature (including any agency, branch, department, board, commission, court, tribunal or other entity exercising governmental or quasi-governmental powers);

(d) multinational organization or body;

(e) body exercising, or entitled or purporting to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power;

(f) state-owned commercial enterprise; or

(g) official or officer of any of the foregoing.

"Ground Lease"--any long-term lease of land in which most of the rights and benefits comprising ownership of the land and the improvements thereon or to be constructed thereon, if any, are transferred to the tenant for the term thereof.

"Ground Lease Property"--any land, improvements and appurtenances subject to a Ground Lease in favor of any Seller Party and relating to the Assets or Business.

"Guarantees"--as defined in Section 2.7(a)(x).

"Hazardous Activity"--the distribution, generation, handling, importing, management, manufacturing, processing, production, refinement, Release, storage, transfer, transportation, treatment or use (including but not limited to any withdrawal or other use of groundwater) of Hazardous Material in, on, under, about or from any of the Facilities or any part thereof into the Environment and any other act, business, operation or thing that increases the danger, or risk of danger, or poses a risk of harm, to persons or property on or off the Facilities.

"Hazardous Material"--any substance, material or waste which is or will foreseeably be regulated by any Governmental Body, including but not limited to any material, substance or waste which is defined as a "hazardous chemical," "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous substance," "restricted hazardous waste," "contaminant," "pollutant," "toxic waste" or "toxic substance" under any provision of Environmental Law, and including petroleum, petroleum products, asbestos, presumed asbestos-containing material or asbestos-containing material, urea formaldehyde and polychlorinated biphenyls.

"HSR Act"--the Hart-Scott-Rodino Antitrust Improvements Act, as amended. "Improvements"--all buildings, structures, fixtures and improvements located on the Land or included in the Assets, including those under construction and further including all equipment and property purchased or paid for by Buyer.

"Indemnified Person"--as defined in Section 11.7. "Indemnifying Person"--as defined in Section 11.7.

"Intellectual Property Assets"--as defined in Section 3.25(a).

"Interim Balance Sheet"--as defined in Section 3.4.

"Inventories"--all inventories of Company or XIANMENG related to the Business, wherever located, including all finished goods, work in process, raw materials, spare parts and all other materials and supplies to be used or consumed by Company or XIANMENG in the production of finished goods and related to the Business.

"IRS"--the United States Internal Revenue Service and, to the extent relevant, the United States Department of the Treasury.

"Keeper Agreement"--as defined in the recitals hereto.

"Knowledge"--an individual will be deemed to have Knowledge of a particular fact or other matter if: (a) that individual is actually aware of that fact or matter; or (b) a prudent individual could be expected to discover or otherwise become aware of that fact or matter in the course of conducting a reasonably comprehensive investigation, within the scope of his/her job duties, including the accuracy of any representation or warranty contained in this Agreement. A Seller Party will be deemed to have Knowledge of a particular fact or other matter if any of the following: MN, VM, [\*\*\*] has, or at any time had, Knowledge of that fact or other matter (as set forth in (a) or (b) above), and any such individual (and any individual party to this Agreement) will be deemed to have conducted a reasonably comprehensive investigation, within the scope of his/her job duties, including the accuracy of the representations and warranties made herein by the Seller Parties.

THE SYMBOL [\*\*\*] IS USED TO INDICATE THAT A PORTION OF THE EXHIBIT HAS BEEN OMITTED AND FILED SEPARATELY WITH THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTION.

"Land"--all parcels and tracts of land in which Company, XIANMENG or F533 has an ownership or leasehold interest, including the Howard Street Property and the rights pursuant to the construction agreement dated October 4, 2006 by and between the Company and Superior Construction Company, the purchase orders with Superior Construction Company related thereto and the purchase orders of or issued to other contractors and subcontractors related to the expansion of the Howard Street Property, which agreement and purchase orders are attached hereto as Exhibit H (the "Construction Agreement"), but excepting and excluding the property commonly known as 8493 Lapato Road, Linetown, Ohio, which property is described on Exhibit I attached hereto (the "Lapato Road Property") and the property commonly known as 1301 Faragut Road, Linetown, Ohio, which property is described on Exhibit J attached hereto (the "Faragut Road Property").

"Legal Requirement"--any federal, state, local, municipal, provincial, foreign, national, international, multinational or other constitution, law, ordinance, Order, stipulation, settlement, principle of common law, code, regulation, statute or treaty.

"Liability"--any claim, liability or obligation of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise, and whether or not the same is required to be accrued on a financial statement.

"Inquilabs China" -- a wholly foreign owned enterprise to be formed under the laws of the Peoples Republic of China and to be owned, directly or indirectly, by Inquilabs or a subsidiary or affiliate of Inquilabs. "MN"--as defined in the first paragraph of this Agreement.

"Marks"--as defined in Section 3.25(a)(i).

"Material Consents"--as defined in Section 7.3.

"Material Interest"--as defined in the definition of "Related Person". "Occupational Safety and Health Law"--any Legal Requirement affecting or relating to working conditions, occupational safety and health, including the Occupational Safety and Health Act, and any program, whether governmental or private (such as those promulgated or sponsored by industry associations and insurance companies), affecting or relating to safety and working conditions.

"Order"--any order, injunction, judgment, decree, ruling, assessment or arbitration award of any Governmental Body or arbitrator.

"Ordinary Course of Business"--an action taken by a Person will be deemed to have been taken in the Ordinary Course of Business only if that action:

(a) is consistent in nature, scope and magnitude with the past practices of such Person and is taken in the ordinary course of the normal, day-to-day operations of such Person, including but not limited to matters involving Inventory and shipments; and

(b) does not require authorization by the board of directors or shareholders of such Person (or by any Person or group of Persons exercising similar authority) and does not require any other separate or special authorization of any nature; "Patents"--as defined in Section 3.25(a)(ii). "Permitted Encumbrances"--as defined in Section 3.9(c).

"Person"--an individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture, enterprise or other entity, whether domestic or foreign, or a Governmental Body.

"Prepaid Assets"-- all amounts prepaid, paid in advance or by deposit, for goods or services or otherwise relating to the Assets or Business, whether designated as long term, current or other, including but not limited to (i) the prepaid in the amount of $2,973,681 relating to [\*\*\*] and (ii) such items relating to the customer orders referred to in Section 2.4(a)(i).

"Proceeding"--any action, arbitration, audit, hearing, investigation, litigation or suit (whether civil, criminal, administrative, judicial or investigative, whether formal or informal, whether public or private) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Body or arbitrator.

"Production Certification"--as defined in Section 10.11.

"Production Output Requirements"--as defined in Section 3.10(b).

"Purchase Price"--as defined in Section 2.3.

"Qualifying Termination"--as defined in Section 2.8(c).

"Qualifying Termination Adjustment"--as defined in Section 2.8(c).

"Real Property"--the Land and Improvements and all Appurtenances thereto.

"Real Property Lease"--any Ground Lease or Space Lease.

"Record"--information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"Related Person"-- With respect to a particular individual:

(a) each other member of such individual's Family;

(b) any Person that is directly or indirectly controlled by any one or more members of such individual's Family;

(c) any Person in which members of such individual's Family hold (individually or in the aggregate) a Material Interest; and THE SYMBMNOL [\*\*\*] IS USED TO INDICATE THAT A PORTION OF THE EXHIBIT HAS BEEN OMITTED AND FILED SEPARATELY WITH THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTION.11

(d) any Person with respect to which one or more members of such individual's Family serves as a director, officer, partner, executor or trustee (or in a similar capacity).

With respect to a specified Person other than an individual:

(a) any Person that directly or indirectly controls, is directly or indirectly controlled by or is directly or indirectly under common control with such specified Person;

(b) any Person that holds a Material Interest in such specified Person;

(c) each Person that serves as a director, officer, partner, manager, executor or trustee of such specified Person (or in a similar capacity);

(d) any Person in which such specified Person holds a Material Interest; and

(e) any Person with respect to which such specified Person serves as a general partner or a trustee (or in a similar capacity). For purposes of this definition,

(a) "control" (including "controlling," "controlled by," and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and shall be construed as such term is used in the rules promulgated under the Securities Act;

(b) the "Family" of an individual includes

(i) the individual,

(ii) the individual's spouse,

(iii) any other natural person who is related to the individual or the individual's spouse within the second degree and

(iv) any other natural person who resides with such individual; and (c)

"Material Interest" means direct or indirect beneficial ownership (as defined in Rule 13d-3 under the Exchange Act) of voting securities or other voting interests representing at least ten percent (10%) of the outstanding voting power of a Person or equity securities or other equity interests representing at least ten percent (10%) of the outstanding equity securities or equity interests in a Person.

"Release"--any release, spill, emission, leaking, pumping, pouring, dumping, emptying, injection, deposit, disposal, discharge, dispersal, leaching or migration on or into the Environment or into, out of, under or upon any property.

"Remedial Action"--all actions, including any capital or other expenditures, required or voluntarily undertaken

(a) to clean up, remove, treat or in any other way address any Hazardous Material or other substance;

(b) to prevent the Release or Threat of Release or to minimize the further Release of any Hazardous Material or other substance so it does not migrate or endanger or threaten to endanger public health or welfare or the Environment;

(c) to perform pre-remedial studies and investigations or post-remedial monitoring and care; or

(d) to bring all Facilities and the operations conducted thereon into compliance with Environmental Laws and environmental Governmental Authorizations. "Representative"--with respect to a particular Person, any director, officer, manager, employee, agent, consultant, advisor, accountant, financial advisor, legal counsel or other representative of that Person.

"Retained Business" --the non-silicon business presently conducted at the Lapato Road Property and which does not include use of the Assets or any business substantially similar to the Business.

"Retained Liabilities"--as defined in Section 2.4(b).

"SEC"--the United States Securities and Exchange Commission.

"Securities Act"--the Securities Act of 1933, as amended.

"Seller"--as defined in the first paragraph of this Agreement.

"Seller Parties"--as defined in the first paragraph of this Agreement.

"Selling Parties' Representative"--as defined in Section 13.16.

"Shareholders"--as defined in the first paragraph of this Agreement.

"Software"--all computer software and subsequent versions thereof, including source code, object, executable or binary code, objects, comments, screens, user interfaces, report formats, templates, menus, buttons and icons and all files, data, materials, manuals, design notes and other items and documentation related thereto or associated therewith wherever located or residing.

"Space Lease"--any lease or rental agreement pertaining to the occupancy of any improved space on any Land.

"Subsidiary"--with respect to any Person (the "Owner"), any corporation or other Person of which securities or other interests having the power to elect a majority of that corporation's or other Person's board of directors or similar governing body, or otherwise having the power to direct the business and policies of that corporation or other Person (other than securities or other interests having such power only upon the happening of a contingency that has not occurred), are held by the Owner or one or more of its Subsidiaries.

"XIANMENG Assignment and Assumption Agreement"--as defined in Section 2.7(a)(ii).

"XIANMENG Bill of Sale"--as defined in Section 2.7(a)(i). "Tangible Personal Property"--all machinery, equipment, tools, parts, furniture, office equipment, computer hardware, supplies, materials, vehicles and other items of tangible personal property (other than Inventories) of every kind owned or leased by Company or XIANMENG (wherever located and whether or not carried on Company's or XIANMENG's books) relating to or used in the Business, which tangible personal property as of June 30, 2006 is listed on Schedule 2.1(b) attached hereto, together with any express or implied warranty by the manufacturers or sellers or lessors of any item or component part thereof, all service agreements, all guarantees, all rights to return, all credits and other rights with respect thereto and all maintenance records and other documents relating thereto, notwithstanding the foregoing, certain Excluded Assets used by the Company in connection with the Retained Business have been, and may prospectively be, used by the Company in connection with certain silicon related activities permitted by the Noncompetition Agreement, and such use does not cause such Excluded Assets to be Tangible Personal Property or Assets for purposes of this Agreement.

"Tax"--any income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, property, environmental, windfall profit, customs, vehicle, airplane, boat, vessel or other title or registration, capital stock, franchise, employees' income withholding, foreign or domestic withholding, social security, unemployment, disability, real property, personal property, sales, use, transfer, value added, alternative, add-on minimum and other tax, fee, assessment, levy, tariff, charge or duty of any kind whatsoever and any interest, penalty, addition or additional amount thereon imposed, assessed or collected by or under the authority of any Governmental Body or payable under any tax-sharing agreement or any other Contract.

"Tax Return"--any return (including any information return), report, statement, schedule, notice, form, declaration, claim for refund or other document or information filed with or submitted to, or required to be filed with or submitted to, any Governmental Body in connection with the determination, assessment, collection or payment of any Tax or in connection with the administration, implementation or enforcement of or compliance with any Legal Requirement relating to any Tax.

"Third Party"--a Person that is not a party to this Agreement.

"Third-Party Claim"--any claim against any Indemnified Person by a Third Party, whether or not involving a Proceeding.

"Threat of Release"--a reasonable likelihood of a Release that may require action in order to prevent or mitigate damage to the Environment, or effect compliance with any Legal Requirements, that may result from, or relate to, such Release.

"VM"--as defined in the first paragraph of this Agreement.

"WARN Act"--as defined in Section 3.23(d).

1.2 USAGE (a) Interpretation. In this Agreement, unless a clear contrary intention appears:

(i) the singular number includes the plural number and vice versa;

(ii) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are not prohibited by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;

(iii) reference to any gender includes each other gender;

(iv) reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof;

(v) reference to any Legal Requirement means such Legal Requirement as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder, and reference to any section or other provision of any Legal Requirement means that provision of such Legal Requirement from time to time in effect and constituting the substantive amendment, modification, codification, replacement or reenactment of such section or other provision;

(vi) "hereunder," "hereof," "hereto," and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article, Section or other provision hereof;

(vii) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term;

(viii) "or" is used in the inclusive sense of "and/or";

(ix) with respect to the determination of any period of time, "from" means "from and including" and "to" means "to but excluding"; and

(x) references to documents, instruments or agreements shall be deemed to refer as well to all addenda, exhibits, schedules or amendments thereto.

(b) Accounting Terms and Determinations. Unless otherwise specified herein, all accounting terms used herein shall be interpreted and all accounting determinations hereunder shall be made in accordance with GAAP.

(c) Legal Representation of the Parties. This Agreement was negotiated by the parties with the benefit of legal representation, and any rule of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any drafting party shall not apply to any construction or interpretation hereof.

(d) References to "material," "materially" and "materiality" in Section 3 of this Agreement shall refer to, or be construed in reference to, the Business, assets or operations of Sellers.

**2. Sale and Transfer of Assets; Closing**

**2.1 ASSETS TO BE SOLD** Upon the terms and subject to the conditions set forth in this Agreement, at the Closing, but effective as of the Effective Time, Sellers shall sell, convey, assign, transfer and deliver to Buyer (with respect to the Assets of XIANMENG, to Inquilabs China and with respect to the Assets of Company and F533, to Inquilabs), and Buyer (with respect to the Assets of XIANMENG, Inquilabs China and with respect to the Assets of Company and F533, Inquilabs) shall purchase and acquire from Sellers, free and clear of any Encumbrances other than Permitted Encumbrances, all right, title and interest in and to all of Sellers' property and assets, real, personal or mixed, tangible and intangible, of every kind and description, wherever located, related to or used in the Business, including the following:

(a) all Real Property described in Schedules 3.7 and all leasehold interest of Sellers in any Real Property described in Schedule 3.8;

(b) all Tangible Personal Property, including those items described in Schedule 2.1(b) as of June 30, 2006;

(c) all Inventories, which Inventories as of July 31, 2006 are listed on Schedule 2.1(c);

(d) all Prepaid Assets, which Prepaid Assets as of July 31, 2006 are listed on Schedule 2.1(d);

(e) except to the extent subject to Section 2.10 hereof, all Company Contracts listed on Schedule 2.1(e), and all outstanding offers, solicitations and rights with respect to any such Contract and listed on a Schedule to the Assignment and Assumption Agreement (the "Acquired Contracts");

(f) all Governmental Authorizations and all pending applications therefor or renewals thereof, including those listed on Schedule 3.17(b), but excluding those listed on Schedule 3.17(c);

(g) all data and Records related to the operations of Company, XIANMENG and the Business, including client and customer lists and Records, sales and marketing data, referral sources, research and development reports and Records, production reports and Records, Records required under Environmental Laws, service and warranty Records, equipment logs, operating guides and manuals, financial and accounting Records, creative materials, advertising materials, promotional materials, studies, reports, correspondence and other similar documents and Records and, subject to Legal Requirements, copies of all personnel Records and other Records described in Section 2.2(g);

(h) except for the names "NORBERT" (subject to Buyer's right to use the name "NORBERT" set forth in Section 5.13), "NORBERT Super-Sounds", "Norbert Soundwaves" and the rights listed on Schedule 3.25(i) (the "Excluded IP"), all of the intangible rights and property of either Company or XIANMENG, including but not limited to Intellectual Property Assets, going concern value, goodwill, telephone and telecopy numbers listed on Schedule 3.25(a), to the extent permitted by the appropriate telecommunications provider, and those items listed in Schedules 3.25(d), (e), (f) and (h), other than the Excluded IP;

(i) all insurance benefits, including rights and proceeds, arising from or relating to the Assets, Business or the Assumed Liabilities, unless expended in accordance with this Agreement; and

(j) all claims against Third Parties relating to the Assets or Business, whether choate or inchoate, known or unknown, contingent or noncontingent, including but not all such claims listed in Schedule 2.1(j) (k) all claims, rights and interests of any of Seller Parties relating to the Assets or Business, whether choate or inchoate, known or unknown, contingent or noncontingent, including but not limited to all such claims, rights and interests listed in Schedule 2.1(k).16

(l) [Intentionally omitted.] All of the property, claims, benefits, rights and assets described above and to be transferred to Buyer hereunder are herein referred to collectively as the "Assets." Notwithstanding the foregoing, the transfer of the Assets pursuant to this Agreement shall not include the assumption of any Liability related to the Assets unless Buyer expressly assumes that Liability pursuant to Section 2.4(a).

**2.2 EXCLUDED ASSETS** The following assets of Sellers (collectively, the "Excluded Assets") are not part of the sale and purchase contemplated hereunder, are excluded from the Assets and shall remain the property of Sellers after the Closing: (a) the names "NORBERT" (subject to Buyer's right to use the name "NORBERT" set forth in Section 5.13), "NORBERT Super-Sounds" and "Norbert Soundwaves"; (b) all Accounts Receivable; (c) all cash and cash equivalents; (d) all minute books, stock Records and corporate seals of Sellers; (e) the shares of capital stock of Company; (f) all of the Company Contracts listed in Schedule 2.2(f) (the "Retained Contracts"); (g) all personnel Records and other Records that Sellers are required by law to retain in their possession; (h) all claims for refund of Taxes applicable to periods of time prior to the Closing Date related to the Business; (i) all rights and obligations in connection with the Employee Plans; (j) all rights of Seller Parties under this Agreement, the Bill of Sale, the Assignment and Assumption Agreement and the Escrow Agreement; (k) the Excluded IP, which is listed on Schedule 3.25(i); (l) the shares of capital stock of XIANMENG; (m) the property and assets expressly listed on Schedule 2.2(m); (n) the email addresses and listings of the Company and XIANMENG; and (o) the rights to pursue claims against and recoveries, payment and judgments against [\*\*\*] with respect to the Non-Confirmed [\*\*\*] Inventories.

**2.3 CONSIDERATION** The consideration for the Assets (the "Purchase Price") is (a) One hundred and seventy five million dollars ($175,000,000) (i) plus or minus the Adjustment Amount, (ii) less the Vacation and Personal Time Liability (as defined herein), (b) plus the costs incurred in connection with the expansion of the Howard Street Property after January 1, 2006 and prior to June 22, 2006, not to exceed $648,000, (c) plus the reimbursement of construction costs in accordance with the Construction Agreement incurred between June 22, 2006 and the Closing Date and (d) the assumption of the Assumed Liabilities. In accordance with Section 2.7(b), at the Closing, the Closing Payments (as defined in Section 2.7 (b)) and, prior to adjustment on account of the Adjustment Amount and the Vacation and Personal Time Liability, shall be delivered by Buyer to Seller Parties and the escrow agent. The Purchase Price is subject to the adjustments provided in Section 2.8.

**2.4 LIABILITIES**

(a) Assumed Liabilities. On the Closing Date, but effective as of the Effective Time, Buyer (with respect to Liabilities of XIANMENG, Inquilabs China and with respect to the Liabilities of Company and F533, Inquilabs) shall assume and agree to discharge only the following Liabilities of Sellers (the "Assumed Liabilities"): (i) [intentionally omitted] (ii) any Liability arising after the Effective Time under the Acquired Contracts (other than any Liability arising under the Acquired Contracts or arising out of or relating to a Breach that occurred prior to the Effective Time); (iii) the Howard Street costs incurred in connection with the expansion of the Howard Street Property not to exceed $648,000, as set forth in Section 2.3; (iv) the obligation to reimburse Sellers for construction costs incurred in accordance with the Construction Agreement and incurred between June 22, 2006 and the Closing Date, as set forth in Section 2.3; and (v) the liability for accrued vacation and personal days of the employees of the Business, who accept Buyer's offer of employment, which accrued liability is estimated to be $480,764.35, in the aggregate, as of September 30, 2006, as set forth on Schedule 2.4(a)(v).

(b) Retained Liabilities. The Retained Liabilities shall remain the sole responsibility of and shall be retained, paid, performed and discharged solely by Sellers. "Retained Liabilities" shall mean every Liability other than the Assumed Liabilities, including: (i) any accounts payable of any Seller, including any Liability for any credit, return or allowance; THE SYMBMNOL [\*\*\*] IS USED TO INDICATE THAT A PORTION OF THE EXHIBIT HAS BEEN OMITTED AND FILED SEPARATELY WITH THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTION. (ii) any accrued expenses of any Seller; (iii) any bank or other debt (not specifically included in the Assumed Liabilities); (iv) any Liability arising out of or relating to products of either Company or XIANMENG to the extent manufactured or sold prior to the Effective Time, including but not limited to any claim or Liability arising out of or related to non-conformance, defect, breach of warranty or the infringement of any right of any Third Party, Shareholder or any Related Person; (v) any Liability under any Acquired Contract assumed by Buyer pursuant to Section 2.4(a)(ii) that arises out of or relates to any Breach that occurred prior to the Effective Time; (vi) any Liability for Taxes, including (A) any Taxes arising as a result of any Seller's operation of its business or Seller Parties' ownership of the Assets prior to the Effective Time, (B) any Taxes that will arise as a result of the sale of the Assets pursuant to this Agreement and (C) any deferred Taxes of any nature; (vii) any Liability under any Contract not assumed by Buyer under Section 2.4(a), including any Liability arising out of or relating to either Company's or XIANMENG's credit or loan facilities or agreements or any security interest related thereto; (viii) any Environmental, Health and Safety Liabilities arising out of or relating to the operation, respectively, of any Seller's business or any Seller's respective leasing, ownership or operation of real property; (ix) any Liability under the Employee Plans or relating to pension benefits, employee stock option or profit-sharing plans, health care plans or benefits or any other employee plans or benefits of any kind for either Sellers' employees or former employees or both; (x) any Liability relating to payroll, commissions, bonuses, sick leave or other leave, severance, workers' compensation, unemployment compensation or any other Liability to employees of any Seller (in any case whether accrued, banked or otherwise), including any liability under the WARN Act; (xi) any Liability under any employment, severance, retention or termination agreement with any employee of any Seller or any of their respective Related Persons; (xii) any Liability arising out of or relating to any employee grievance, discrimination or other claim arising out of or related to any time prior to the Effective Time whether or not the affected employees are hired by Buyer; (xiii) any Liability to any shareholder, member or Related Person of any Seller Party existing as of the Effective Time, excluding Buyer's obligations expressly provided herein to the above mentioned Persons arising under this Agreement and the Contemplated Transactions; (xiv) any Liability to indemnify, reimburse or advance amounts to any officer, director, manager, employee or agent of any Seller existing as of the Effective Time, excluding Buyer's obligations expressly provided herein to the above mentioned Persons under this Agreement and the Contemplated Transactions; (xv) any Liability to distribute to any shareholders or members or otherwise apply all or any part of the consideration received hereunder (except for the consideration paid to the Shareholders at Closing for their Noncompetition Agreements and related agreements pursuant to Section 2.7(a)(viii)); (xvi) any Liability arising out of any Proceeding pending as of the Effective Time; (xvii) any Liability arising out of any Proceeding commenced after the Effective Time and arising out of or relating to any occurrence or event happening prior to the Effective Time; (xviii) any Liability arising out of or resulting from any Seller's compliance or noncompliance with any Legal Requirement or Order of any Governmental Body; (xix) any Liability of any Seller Party under this Agreement or any other document executed in connection with the Contemplated Transactions; and (xx) any Liability of any Seller Party based upon any Seller Party's acts or omissions occurring after the Effective Time.

**2.5 ALLOCATION** Buyer shall prepare and furnish to Sellers an allocation of the Purchase Price among the Assets, to Seller Parties within forty-five (45) days after Closing, which allocation shall be subject to Sellers' reasonable approval. Such allocation shall be in accordance with §1060 of the Code and the Treasury regulations thereunder (and any similar provision of state, local or foreign law) and shall be binding on the Company and Seller Parties. The parties agree that the Purchase Price shall be allocated in amounts equal to the fair market value of the Assets, including identified intangibles, with the balance allocated to goodwill. The parties shall make consistent use of the allocation, fair market value and useful lives specified in such allocation furnished by Buyer for all Tax purposes and in all filings, declarations and reports with the IRS in respect thereof, including the reports required to be filed under Section 1060 of the Code. Buyer shall prepare and deliver IRS Form 8594 to Company within forty-five (45) days after the Closing Date to be filed with the IRS, which form shall be consistent in all respects with such allocation. Company and Seller Parties shall timely and properly prepare, execute, file and deliver all such documents, forms and other information as Buyer may reasonably request in connection with such allocation. In any Proceeding related to the determination of any Tax, neither Buyer nor any Seller Party shall contend or represent that such allocation is not a correct allocation or otherwise take any action inconsistent with such allocation.

**2.6 CLOSING**

The purchase and sale provided for in this Agreement (the "Closing") will take place at the offices of Buyer's counsel Address, , commencing at 10:00 a.m. (local time --, Ohio) on the later of (a) November 9, 2006 or (b) the date that is five (5) Business Days following the termination of the applicable waiting period under the HSR Act, unless Buyer and Sellers otherwise mutually agree. Subject to the provisions of Article 9, failure to consummate the purchase and sale provided for in this Agreement on the date and time and at the place determined pursuant to this Section 2.6 will not result in the termination of this Agreement and will not relieve any party of any obligation under this Agreement.

**2.7 CLOSING OBLIGATIONS** In addition to any other documents to be delivered under other provisions of this Agreement, at the Closing: (a) Seller Parties shall deliver to Buyer, together with funds sufficient to pay all Taxes necessary for the transfer, filing or recording of the conveyance of the Howard Street Property: (i) a bill of sale for all of the Assets of Company and F533 that are Tangible Personal Property and Inventories in the form of Exhibit M (the "Company Bill of Sale") and a bill of sale for all of the Assets of XIANMENG that are Tangible Personal Property and Inventories in the form of Exhibit N (the "XIANMENG Bill of Sale") each executed by Seller Parties; (ii) an assignment of all of the Assets of Company and F533 that are intangible personal property, including without limitation the Intellectual Property Assets, in the form of Exhibit O, including but not limited to Acquired Contracts, which assignment shall also contain Buyer's undertaking and assumption of the Assumed Liabilities (the "Company Assignment and Assumption Agreement") and an assignment of all of the Assets of XIANMENG that are intangible personal property, including without limitation the Intellectual Property Assets, in the form of Exhibit P, including but not limited to Acquired Contracts, which assignment shall also contain Buyer's undertaking and assumption of the Assumed Liabilities (the "XIANMENG Assignment and Assumption Agreement") each executed by Seller Parties; (iii) for each interest in Real Property identified on Schedule 3.7, a recordable general warranty deed in form and substance satisfactory to Buyer and its counsel and executed by the appropriate Seller Parties; (iv) a termination and general release with respect to the Howard Street Lease, effective as of the Effective Time, in the form and substance satisfactory to Buyer and its counsel and executed by Company and F533; (v) Intentionally omitted; (vi) such other deeds, bills of sale, assignments, certificates of title, documents and other instruments of transfer and conveyance as may reasonably be requested by Buyer, each in form and substance satisfactory to Buyer and its legal counsel and executed by Seller Parties; (vii) an employment agreement in the form of Exhibit R, executed by [\*\*\*] (the "Employment Agreement"); (viii) noncompetition agreements in the form of Exhibit S, executed by each Seller Party (the "Noncompetition Agreements"); (ix) the Escrow Agreement (as defined in Section 2.11) in the form of Exhibit T, executed by Seller Parties and the escrow agent; (x) the personal guarantee of each Shareholder in the form of Exhibit U (the "Guarantees") executed by Shareholders; (xi) a certificate executed by each Seller Party as to the accuracy of their representations and warranties as of the date of this Agreement and as of the Closing in accordance with Section 7.1 and as to their respective compliance with and performance of their covenants and obligations to be performed or complied with at or before the Closing in accordance with Section 7.2; (xii) a certificate of the Secretary of each Seller certifying, as complete and accurate as of the Closing, attached copies of the Governing Documents of each Seller, certifying and attaching all requisite resolutions or actions of each Seller's respective board of directors, managers, members and shareholders approving the execution and delivery of this Agreement and the consummation of the Contemplated Transactions including but not limited to the approval required by Ohio Revised Code §1701.76 and certifying to the incumbency and signatures of the officers of each Seller executing this Agreement and any other document relating to the Contemplated Transactions; (xiii) releases of all liens, security interests and other Encumbrances with respect to the Assets, except for the Permitted Encumbrances, in form and substance satisfactory to Buyer and its legal counsel, executed by the respective Third Party; (xiv) owner's affidavits, non-foreign affidavits, transfer tax declarations, settlement statements and such other instruments and documents related to or regarding the conveyance of the Real Property, Real Property Leases and Facilities as Buyer's title insurance company may require; (xv) a release, executed by each Shareholder with respect to any ownership or interest in the Assets or Business, in the form of Exhibit V attached hereto; (xvi) written consent to the use by Buyer of the name "Norbert Microchip" in the Business as set forth in Section 5.13; and (xvii) executed amendment to its charter documents and written confirmation of such other action confirming that XIANMENG has changed its name as required by Section 5.13; (xviii) written confirmation (A) from each of the counterparties to the Construction Agreement, as of a date not later than (5) days prior to Closing, of amounts paid by Sellers pursuant to the Construction Agreement and each purchase order, shown by individual THE SYMBMNOL [\*\*\*] IS USED TO INDICATE THAT A PORTION OF THE EXHIBIT HAS BEEN OMITTED AND FILED SEPARATELY WITH THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTION. purchase orders and (B) payments made of the Howard Street Costs, in each case under the foregoing clauses (A) and (B) showing and reasonably detailing the payments and the agreement, purchase order or other commitment to which the payment relates ; (xix) reliance letter, in form and substance satisfactory to Buyer and its counsel, from Enviroconsult Resources regarding the Phase I Environmental Site Assessment of 950 S. Howard Street, Linetown, Ohio, No. D06362 and the Phase I Environmental Site Assessment of 2349 S. Howard Street, Linetown, Ohio, No. E003689; (xx) reliance letter, in form and substance satisfactory to Buyer and its counsel, from Professional Service Industries, Inc. regarding Subsurface Exploration and Foundation Recommendations for the Proposed Building Addition Norbert Soundwaves, 950 S. Howard Street, Linetown, Ohio, Report Number xxx, dated June 2, 2006; (xxi) the License Agreement in the form of Exhibit W (the "License Agreement"); (xxii) the Toolholder License Agreement in the form of Exhibit X (the "Toolholder License Agreement"); and (xxiii) the certifications with respect to the [\*\*\*] Inventories pursuant to Section 2.8(d) hereof. (b) Buyer shall deliver to Seller Parties, as the case may be the following amounts (the "Closing Payments") to accounts specified in a writing delivered by each Seller Party at least three (3) business days prior to Closing (the "Disbursement Statement"): (i) One hundred forty-seven million three hundred and fifty seven dollars ($147,357,000) by wire transfer to an account specified by Company in a writing delivered to Buyer at least three (3) business days prior to the Closing Date; (ii) the Howard Street Costs (as defined in Section 6.4) to an account specified by the Company in the Disbursement Statement; (iii) [\*\*\*] (iv) [\*\*\*] (v) Nine million nine hundred and forty three thousand dollars ($9,943,000) by wire transfer to an account specified by F533 in the Disbursement Statement, in consideration for the sale and transfer of the Howard Street Property. (c) Buyer shall deliver to Seller Parties: THE SYMNOL [\*\*\*] IS USED TO INDICATE THAT A PORTION OF THE EXHIBIT HAS BEEN OMITTED AND FILED SEPARATELY WITH THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTION. (i) the Escrow Agreement, executed by Buyer and the escrow agent, together with the delivery of the Escrow Amount to the escrow agent thereunder, by wire transfer to an account specified by the escrow agent; (ii) the Company Assignment and Assumption Agreement and the XIANMENG Assignment and Assumption Agreement each executed by Buyer; (iii) the Noncompetition Agreements executed by Buyer; (iv) the License Agreement; (v) a certificate executed by Buyer as to the accuracy of its representations and warranties as of the date of this Agreement and as of the Closing in accordance with Section 8.1 and as to its compliance with and performance of its covenants and obligations to be performed or complied with at or before the Closing in accordance with Section 8.2; (vi) a certificate of an officer of Buyer certifying, as complete and accurate as of the Closing, attached copies of the Governing Documents of Buyer, and certifying and attaching all requisite resolutions or actions of Buyer's board of directors approving the execution and delivery of this Agreement and the consummation of the Contemplated Transactions and certifying to the incumbency and signatures of the officers of Buyer executing this Agreement and any other document relating to the Contemplated Transactions; and (vii) the Toolholder License Agreement.

**2.8 ADJUSTMENT AMOUNT AND PAYMENT** (a) The "Adjustment Amount" (which may be a positive or negative number) will be equal to the amount determined by subtracting the Closing Asset Value from the Estimated Closing Asset Value. If the Adjustment Amount is positive, the Adjustment Amount shall be paid by wire transfer by Company to Buyer in an account specified by Buyer. If the Adjustment Amount is negative, the Adjustment Amount shall be paid by wire transfer by Buyer to Company to an account specified by Company. The maximum adjustment amount payable to Company, if applicable, is $10,000,000; provided , however , the $10,000,000 maximum shall not apply if both (i) the resulting Adjustment Amount due to Company is caused by an increase in inventory related to the Business reflected in the Closing Asset Value, which increase in inventory is directly related to written orders or written production requests by Buyer which orders or production requests materially exceed the projected orders or projected production requests of Buyer, in the amount of [\*\*\*], as set forth in Company's 2006 budget and (ii) on the Closing Date and based on inventory reflected in the Closing Asset Value, Company's ratio of inventory to production output related to the Business has not materially increased compared to its ratio of inventory to production output of [\*\*\*] which ratio is consistent with the Company's historical practices and operations. All payments shall be made together with interest at the rate equal to the prime rate of ABN AMRO as established from time to time, which interest shall begin accruing on the Closing Date and end on the date that the payment is made. Within three (3) business days after the calculation of the Closing Asset Value becomes binding and conclusive on the parties pursuant to Section 2.9, Sellers or Buyer, as the case may be, shall make the wire transfer payment provided for in this Section 2.8. (b) The Purchase Price is also subject to adjustment downward by the amount of accrued vacation and personal time off as of the Effective Time for the employees of the Business who accept Buyer's offer of employment (the "Vacation and Personal Time Liability"). Company shall pay Buyer by wire transfer payment the amount of the Vacation and Personal Time Liability within three (3) business days after such calculation of the vacation and Personal Time Liability becomes binding and conclusive on the parties pursuant to Section 2.9. (c) (i) The Purchase Price is also subject to a downward adjustment as set forth below (the "Qualifying Termination Adjustment") if [\*\*\*] voluntarily leaves the employ of Buyer other than for Good Reason (as hereinafter defined) or is terminated for "cause" (as defined in the Employment Agreement) (each a "Qualifying Termination") at any time within the first two (2) years following the Closing Date. For purposes of this Agreement, "Good Reason" means any of the following (A) a material adverse change in [\*\*\*] responsibilities, duties, benefits or compensation (other than a change in compensation or benefits that is applicable to all executives of Buyer at a substantially similar level) of employment with Buyer, (B) material breach by Buyer under the terms of the Employment Agreement, or (C) a requirement that [\*\*\*] relocate to a facility or office that is more than 50 miles from his residence as a condition of continued employment. (A) If a Qualifying Termination occurs at any time before or on the first anniversary of the Closing Date, the Qualifying Termination Adjustment shall be $7,000,000. THE SYMBMNOL [\*\*\*] IS USED TO INDICATE THAT A PORTION OF THE EXHIBIT HAS BEEN OMITTED AND FILED SEPARATELY WITH THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTION. (B) If a Qualifying Termination occurs at any time after the first anniversary of the Closing Date but before or on the second anniversary of the Closing Date, the Qualifying Termination Adjustment shall be $5,000,000. (C) If a Qualifying Termination occurs at any time after the second anniversary of the Closing Date, there shall be no Qualifying Termination Adjustment. (ii) Any Qualifying Termination Adjustment will be a reduction in the portion of the Purchase Price payable to Company. (iii) Company shall pay the Qualifying Termination Adjustment, in immediately available funds by wire transfer to Buyer's account, within fifteen (15) business days following Company's receipt of notice of the occurrence of a Qualifying Termination. (d) The parties agree that the Estimated Closing Asset Value includes $1,009,000 of Inventories which is accounted for by the Company as physically held by [\*\*\*] on the books and financial records of the Company (the "[\*\*\*] Inventories"). The Company has not been able to confirm that [\*\*\*] Inventories have not been subject to loss or damage. At Closing, Company will provide Buyer with a written certification, which certification details [\*\*\*] Inventories, including (a) that portion of the [\*\*\*] Inventories that can be confirmed by the Company, with reasonable supporting conformation satisfactory to Buyer, to be existing, available to the Company without claim, offset or deduction by [\*\*\*] and of a commercially useable quality (which shall not be scrap, damaged or non-confirming) (the "Confirmed [\*\*\*] Inventories") and (b) that portion of the [\*\*\*] Inventories that is not Confirmed [\*\*\*] Inventories, with detail by product and quantity (the "Non-Confirmed [\*\*\*] Inventories").

**2.9 PHYSICAL INVENTORY AND ADJUSTMENT PROCEDURE** (a) After the close of business on the day immediately preceding the Closing Date, Sellers and Buyer, and/or their respective Representatives, shall jointly conduct a physical inventory of the Inventories as of the Closing Date and an audit and tagging of the Tangible Personal Property as of the Closing Date. Buyer shall prepare a written report setting forth the results thereof (the "Inventory and Tangible Personal Property Report"), which Inventory and Tangible Personal Property Report shall be used in determining the Inventories and fixed assets value in the Closing Asset Value. Seller Parties and Buyer agree that (i) the physical count, as taken by Sellers and Buyer, shall be final and binding, and may not be objected to, on such basis, by Sellers in any Selling Parties' Representative's objection notice provided for in this Sections 2.9, and (ii) the Inventories reflected in the Inventory and Tangible Personal Property Report will be valued at the lower of cost or market value; provided , however , no amount shall be included in the Inventory and Tangible Personal Property Report for any excess or obsolete Inventories. For purposes of this Section 2.9(a), "excess and obsolete" Inventories shall mean Inventory quantities in excess of 12 month's historical consumption. The Inventory and Tangible Personal Property Report shall be included in and set forth in the Buyer's Report (as hereinafter defined). (b) Buyer shall prepare the Closing Balance Sheet and statement of Closing Asset Value as of the Closing Date. Buyer shall deliver the Closing Balance Sheet, its determination of the Closing Asset Value, the amount of the Vacation and Personal Time Liability, the Inventory and THE SYBMNOL [\*\*\*] IS USED TO INDICATE THAT A PORTION OF THE EXHIBIT HAS BEEN OMITTED AND FILED SEPARATELY WITH THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTION. Tangible Personal Property Report and the resulting calculations, including any Adjustment Amount and the party to whom it is payable (the "Buyer's Report") to Selling Parties' Representative within forty-five (45) days following the Closing Date. Sellers, and Sellers' accountants, shall give Buyer and its accountants, access to the books and records and personnel of Sellers, including the work papers of Henry K. Willowby with respect to the Carve-Out Financial Statements. (c) If within thirty (30) days following delivery of Buyer's Report, Selling Parties' Representative has not given Buyer written notice of its objection as to the Buyer's Report (which notice shall state in reasonable detail the basis of Selling Parties' Representative objection, including the proposed adjustment(s), thereto), then the Buyer's Report and the calculation included therein shall be final, binding and conclusive on the parties and be used in computing the Adjustment Amount and the amount of the Vacation and Personal Time Liability. (d) If Selling Parties' Representative gives Buyer timely notice of objection, and if Selling Parties' Representative and Buyer fail to resolve the issues outstanding with respect to the Buyer's Report within thirty (30) days of Buyer's receipt of Selling Parties' Representative objection notice, Selling Parties' Representative and Buyer shall submit the issues remaining in dispute to Francis and Grady, independent public accountants (the "Independent Accountants") for resolution applying the principles, policies and practices referred to in Section 2.9(c), which independent public accountants have not been engaged by any Buyer or Seller Party during the 3 year period immediately preceding the date of this Agreement or at any time subsequent to the date of this Agreement and prior to the resolution of any dispute pursuant to Sections 2.8 or 2.9. If issues are submitted to the Independent Accountants for resolution, (i) Selling Parties' Representative, Sellers and Buyer shall furnish or cause to be furnished to the Independent Accountants such work papers and other documents and information relating to the disputed issues as the Independent Accountants may request and are available to that party or its accountants and shall be afforded the opportunity to present to the Independent Accountants any material relating to the disputed issues and to discuss the issues with the Independent Accountants; (ii) the independent accountants shall only resolve or adjust the amounts in dispute as set forth in Selling Parties' Representative written objection; (iii) the determination by the Independent Accountants, as set forth in a written determination to be delivered to both Selling Parties' Representative and Buyer within sixty (60) days of the submission to the Independent Accountants of the issues remaining in dispute, shall be final, binding and conclusive on the parties and shall be used in the calculation of the Adjustment Amount and (iv) Sellers and Buyer will each bear fifty percent (50%) of the fees and costs of the Independent Accountants for such determination.

**2.10 CONSENTS** (a) If there are any Material Consents that have not yet been obtained (or otherwise are not in full force and effect) as of the Closing, in the case of each Company Contract as to which such Material Consents were not obtained (or otherwise are not in full force and effect) (the "Restricted Material Contracts"), Buyer may waive the closing conditions as to any such Material Consent and either: (i) elect to have Sellers continue their efforts to obtain the Material Consents; or (ii) elect to have Sellers retain that Restricted Material Contract and all Liabilities arising therefrom or relating thereto. If Buyer elects to have Sellers continue their efforts to obtain any Material Consents and the Closing occurs, notwithstanding Sections 2.1 and 2.4, neither this Agreement nor the Assignment and Assumption Agreement nor any other document related to the consummation of the Contemplated Transactions shall constitute a sale, assignment, assumption, transfer, conveyance or delivery or an attempted sale, assignment, assumption, transfer, conveyance or delivery of the Restricted Material Contracts, and following the Closing, the Seller Parties shall use Best Efforts, with respect to which Buyer will cooperate with Sellers (provided that Buyer shall not be required to incur any material expense or liability or agree to any material amendment or modification in connection therewith), to obtain the Material Consent relating to each Restricted Material Contract as quickly as practicable. Pending the obtaining of such Material Consents relating to any Restricted Material Contract, the parties shall cooperate with each other in any reasonable and lawful arrangements designed to provide to Buyer the benefits of use of the Restricted Material Contract for its term, including a transfer agreement or arrangement between Sellers and Buyer whereby Buyer obtains the benefits thereof at no mark-up or cost above the contract cost paid by Sellers (and/or any right or benefit arising thereunder, including the enforcement for the benefit of Buyer of any and all rights of Sellers against a third party thereunder [\*\*\*]. Once a Material Consent for the sale, assignment, assumption, transfer, conveyance and delivery of a Restricted Material Contract is obtained, which Material Consent shall be reasonably satisfactory to Buyer, Sellers shall promptly assign, transfer, convey and deliver such Restricted Material Contract to Buyer, and Buyer shall assume the obligations under such Restricted Material Contract assigned to Buyer from and after the date of assignment to Buyer pursuant to a special-purpose assignment and assumption agreement substantially similar in terms to those of the Assignment and Assumption Agreement (which special-purpose agreement Buyer shall prepare and the parties shall execute and deliver in good faith at the time of such transfer, all at no additional cost to Buyer). (b) If there are any Consents not listed on Schedule 7.3 necessary for the assignment and transfer of any Company Contracts to Buyer (the "Nonmaterial Consents") which have not yet been obtained (or otherwise are not in full force and effect) as of the Closing, Buyer shall elect at the Closing, in the case of each of the Company Contracts as to which such Nonmaterial Consents were not obtained (or otherwise are not in full force and effect) (the "Restricted Nonmaterial Contracts"), whether to: (i) accept the assignment of such Restricted Nonmaterial Contract, in which case, as between Buyer and Sellers, such Restricted Nonmaterial Contract shall, to the maximum extent practicable and notwithstanding the failure to obtain the applicable Nonmaterial Consent, be transferred at the Closing pursuant to the Assignment and Assumption Agreement as elsewhere provided under this Agreement; or (ii) reject the assignment of such Restricted Nonmaterial Contract, in which case, notwithstanding Sections 2.1 and 2.4, (A) neither this Agreement nor the Assignment and Assumption Agreement nor any other document related to the consummation of the Contemplated Transactions shall constitute a sale, assignment, assumption, conveyance or delivery or an attempted sale, assignment, assumption, transfer, conveyance or delivery of such Restricted THE SYMBOL [\*\*\*] IS USED TO INDICATE THAT A PORTION OF THE EXHIBIT HAS BEEN OMITTED AND FILED SEPARATELY WITH THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTION. Nonmaterial Contract, and (B) Sellers shall retain such Restricted Nonmaterial Contract (which shall be a Retained Liability) and all Liabilities arising therefrom or relating thereto.

**2.11 ESCROW** (a) On the Closing Date, the parties agree that Buyer shall deposit Seventeen million five hundred thousand Dollars ($17,500,000) (the "Escrow Amount") in an interest-bearing escrow account for a period of twelve (12) months following Closing ("Escrow Period") in order to partially secure the indemnification obligations of the Seller Parties under Section 11 hereof, together with the earnings thereon (the "Escrow Fund") at The Fifth Third Bank, N.A. ("Escrow Agent"), which shall serve as escrow agent pursuant to an escrow agreement in the form attached hereto as Exhibit T ("Escrow Agreement"). All costs, fees, charges and expenses assessed by Escrow Agent to maintain the escrow account as required hereunder, and any and all penalties, obligations, and liabilities associated therewith or arising therefrom shall be shared equally (one half each) respectively by the Company and Buyer. At the end of the Escrow Period, any amounts remaining (i) after the payment and satisfaction of any and all indemnification claims under Section 11, and (ii) net of any amounts held back for the purposes of pending claims, shall be distributed to the Seller Representative. All earnings and interest accrued on the Escrow Fund shall remain in the Escrow Fund until termination of the escrow, and released, subject to any pending claims, to the Seller Parties. The Escrow Agent shall manage and disburse the contents of the Escrow Fund in accordance with the terms and conditions of the Escrow Agreement and this Section 2.11. 3. Representations and Warranties of Seller and Shareholders Seller Parties (other than VM and MN) represent and warrant, jointly and severally and as between MN and VM, each of them represent and warrant severally, to Buyer, except as set forth in the specific section(s) of the Disclosure Schedule, as follows:

**3.1 ORGANIZATION AND GOOD STANDING** (a) Schedule 3.1(a) contains a complete and accurate list of Company's and XIANMENG's jurisdiction of incorporation or formation and any other jurisdictions in which either of them is qualified to do business as a foreign corporation, organization or association. Company, XIANMENG and F533, respectively, are a corporation, a wholly foreign owned enterprise and a limited liability company and each is duly organized or formed, validly existing and in good standing under the laws of its jurisdiction of incorporation or formation, with full corporate and company power and authority to conduct its respective business as it is now being conducted, to own or use the properties and assets that it purports to own or use, and to perform all its obligations under the Company Contracts. Each Seller is duly qualified to do business as a foreign corporation or other entity and is in good standing under the laws of each state or other jurisdiction in which either the ownership or use of the properties owned or used by it, or the nature of the activities conducted by it, requires such qualification. (b) Complete and accurate copies of the Governing Documents of each Seller, as currently in effect, are attached to Schedule 3.1(b). (c) Company has two (2) Subsidiaries as disclosed in Schedule 3.1(c), and except as disclosed on Schedule 3.1(c) does not own any shares of capital stock or other equity or ownership interest of any other Person. (d) Except as described on Schedule 3.1(d), neither Shareholder nor any Related Person owns or has any interest or business relationship, whether as shareholder, member, partner, owner, manager, consultant, broker, agent, advisor, with (i) any Person or Related Person or (ii) any interest in any intellectual property interest or right, in either case, similar or related to the Business or any business that is engaged in buying goods or services from or providing goods and services to, the Business.

**3.2 ENFORCEABILITY; AUTHORITY; NO CONFLICT** (a) This Agreement constitutes the legal, valid and binding obligation of each Seller Party, enforceable against each of them in accordance with its terms. Upon the execution and delivery, respectively, by Seller Parties of the Escrow Agreement, the Guarantees, the Noncompetition Agreement and each other agreement, document or instrument to be executed or delivered, respectively, by any or all of Seller Parties at the Closing (collectively, the "Seller Parties' Closing Documents"), each of Seller Parties' Closing Documents will constitute the legal, valid and binding obligation of each such Seller Party, respectively, enforceable against each of them in accordance with its terms. Each Seller Party has the absolute and unrestricted right, power and authority to execute and deliver this Agreement and the Seller Parties' Closing Documents to which it is a party and to perform its obligations under this Agreement and the Seller Parties' Closing Documents, and such action has been duly authorized by all necessary action by each Seller's shareholders, members, board of directors and managers, respectively. The board of directors, shareholder and member actions, respectively, of each Seller signing this Agreement and the transactions contemplated hereby were duly taken on August 28, 2006, certified copies of which actions are attached hereto as Schedule 3.2(a), none of which shall have been rescinded or modified as of the Effective Time. Each Shareholder has all necessary legal capacity to enter into this Agreement and the Seller Parties' Closing Documents to which such Shareholder is a party and to perform her obligations hereunder and thereunder. (b) Except as set forth in Schedule 3.2(b), neither the execution and delivery of this Agreement, any of the Seller Parties' Closing Documents, nor the consummation or performance of any of the Contemplated Transactions will, directly or indirectly (with or without notice or lapse of time): (i) Breach (A) any provision of any of the Governing Documents of any Seller or (B) any resolution adopted, respectively, by the board of directors, the shareholders, managers or members of any Seller; (ii) Breach or give any Governmental Body or other Person the right to challenge any of the Contemplated Transactions or to exercise any remedy or obtain any relief under any Legal Requirement or any Order to which any Seller Party, or any of the Assets, may be subject; (iii) contravene, conflict with or result in a violation or breach of any of the terms or requirements of, or give any Governmental Body the right to revoke, withdraw, suspend, cancel, terminate or modify, any Governmental Authorization that is held by any Seller Party or that otherwise relates to the Assets or to the business of either Seller; (iv) cause Buyer to become subject to, or to become liable for the payment of, any Tax; (v) Breach any provision of, or give any Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or payment under, or to cancel, terminate or modify, any material Company Contract or any Acquired Contract; or (vi) result in the imposition or creation of any Encumbrance upon or with respect to any of the Assets. (c) Except as set forth in Schedule 3.2(c), no Seller nor either Shareholder is required to give any notice to or obtain any Consent from any Person in connection with the execution and delivery of this Agreement or the consummation or performance of any of the Contemplated Transactions, including but not limited to the transfer to Buyer of any Governmental Authorization listed on Schedule 3.2(c) or the transfer to Buyer of any Acquired Contract. (d) This Agreement and the Contemplated Transactions related hereto are of benefit to the Shareholders and constitute adequate consideration for their respective agreements herein and as contemplated hereby.

**3.3 CAPITALIZATION** (a) The authorized equity securities of Company consist of one hundred (100) shares of common stock, par value one dollar ($1.00) per share, of which seventy-five (75) shares are issued and outstanding. MN owns 35 common shares of Company, representing 46.67% of the issued and outstanding voting common shares of the Company and 50% of the issued and outstanding voting units of F533. VM owns 34 common shares of Company, representing 45.34% of the issued and outstanding voting common shares of the Company and 50% of the issued and outstanding voting units of F533. Shareholders are and will be on the Closing Date the record and beneficial owners and holders of such shares and units owned by each of them, free and clear of all Encumbrances which together will constitute ninety-two (92%) percent of the voting stock of the Company and one hundred (100%) percent of the voting units of F533 on the Closing Date. Except as set forth on Schedule 3.3(a), there are no Contracts relating to the issuance, sale or transfer of any equity securities or other securities of either Company or F533. (b) The Company owns 100% of the voting and other equity interests of XIANMENG. There are no Contracts relating to the issuance, sale or transfer of any equity securities or other securities of XIANMENG.

**3.4 FINANCIAL STATEMENTS** Company has delivered to Buyer: (a) a consolidated balance sheet of Company and XIANMENG as at December 31, 2005 (including the notes thereto, the "2005 Year End Balance Sheet"), and the related statements of income, changes in shareholders' equity and cash flows for the fiscal year then ended, including in each case the notes thereto, together with the compilation reports therein of George and VonCarten LLP; (b) consolidated balance sheets of Company and XIANMENG as at December 31st in each of the fiscal years 2003 through 2004, and the related statements of income, changes in shareholders' equity and cash flows for each of the fiscal years then ended, including in each case the notes thereto together with the compilation reports therein of Hoover & Roberts, Inc., independent certified public accountants; (c) an unaudited consolidated balance sheet of Company and XIANMENG as at June 30, 2006, (the "Interim Balance Sheet") and the related unaudited statement[s] of income, [changes in shareholders' equity, and cash flows] for the six (6) months then ended, and (d) the Carve-Out Financial Statements, including in each of the foregoing (a)-(d) the notes thereto and certified by Company's controller. Such financial statements fairly present (and the financial statements delivered pursuant to Section 5.8 will fairly present) the financial condition and the results of operations, changes in shareholders' equity and cash flows of Company and XIANMENG as at the respective dates of and for the periods referred to in such financial statements, and with respect to the Carve-Out Financials, the Assets and related results of operations of the Business, with respect to the Carve-Out Financial Statements only, such financial statements are in accordance with GAAP, except for the GAAP Exceptions, consistently applied. The Estimated Closing Asset Value was prepared in accordance with GAAP, except for the GAAP Exceptions, consistently applied and consistently with the balance sheet included on the Carve-out Financial Statements. The Closing Asset Value will be prepared in accordance with GAAP, except for the GAAP Exceptions, consistently applied and consistently with the Estimated Asset Value and the balance sheet included in the Carve-Out Financial Statements. The financial statements referred to in this Section 3.4 and delivered pursuant to Section 5.8 reflect and will reflect the consistent application of such accounting principles throughout the periods involved, except as disclosed in the notes to such financial statements. The financial statements have been and will be prepared from and are in accordance with the accounting Records of Company and XIANMENG. Company has also delivered to Buyer copies of all letters from Company's or XIANMENG's auditors to Company's or XIANMENG's management, board of directors, any committee or management thereof during the thirty-six (36) months preceding December 31, 2005, together with copies of all responses thereto.

**3.5 BOOKS AND RECORDS** The books of account and other financial Records of Company and XIANMENG, all of which have been made available to Buyer, are complete and correct in all material respects and represent actual, bona fide transactions and have been maintained in accordance with sound business practices including the maintenance of an adequate system of internal controls. The minute books of Company and XIANMENG, all of which have been made available to Buyer, contain accurate and complete Records of all material corporate actions taken by, the shareholders, the board of directors and committees of the board of directors of Company or XIANMENG, and no meeting of any such shareholders, board of directors or committee has been held for which minutes have not been prepared or are not contained in such minute books.

**3.6 SUFFICIENCY OF ASSETS** (a) Except as set forth in Schedule 3.6, the Assets (i) constitute all of the assets, tangible and intangible, of any nature whatsoever, necessary to operate the Business in the manner presently operated by Company or XIANMENG, or otherwise relating to, or used in, the conduct of the Business as previously conducted by the Company or XIANMENG, (ii) except for the Excluded Assets, include all of the assets owned or used by Company or XIANMENG, (iii) include all of the intellectual property rights and assets necessary to conduct the Business in the manner presently operated by Company or XIANMENG, free of any infringement or claim thereof and (iv) except for the Excluded IP constitute all of the intellectual property rights and assets owned or used by the Company or XIANMENG. (b) Each of the lists of Assets and Excluded Assets and each of the Disclosure Schedules attached hereto which expressly purport to separately identify or allocate assets (by way of example, the lists of Acquired Contracts and the Lists of Company Contracts and the list of Intellectual Property Assets and the list of Excluded IP) (i) taken together disclose all the assets, properties or rights owned or held by Sellers in both the Business and the Retained Business and (ii) correctly list, include and/or allocate, respectively, all such items related to or used in the Business, in the Assets being acquired by Buyer or to the Retained Business and the Excluded Assets, being retained by the Sellers. (c) None of the Excluded Assets or any other assets, properties or rights of any Seller Party (not included in the Included Assets) are related to, used in or shared with the Business, except that certain Excluded Assets used by Company after the Effective Time to the extent permitted by the Non-Competition Agreement may in that regard be "related to" the Business.

**3.7 DESCRIPTION OF OWNED REAL PROPERTY** Schedule 3.7 contains a correct legal description, street address and tax parcel identification number of all Real Property.

**3.8 DESCRIPTION OF LEASED REAL PROPERTY** Schedule 3.8 contains a correct legal description, street address and tax parcel identification number of all tracts, parcels and subdivided lots in which any Seller has a leasehold interest and an accurate description (by location, name of lessor, date of Lease, term expiry date and all amendments, if any) of all Real Property Leases.

**3.9 TITLE TO ASSETS; ENCUMBRANCES** (a) Company, XIANMENG, or with respect to Howard Street Property, F533, each owns good and marketable title to its respective estates in the Real Property, free and clear of any Encumbrances, other than: (i) liens for real property Taxes for the current tax year which are not yet due and payable; and (ii) those described in Schedule 3.9(a) ("Real Estate Encumbrances"). (b) True and complete copies of (i) all deeds, existing title insurance policies and surveys of or pertaining to the Real Property identified in Schedule 3.7 and (ii) all instruments, agreements and other documents evidencing, creating or constituting any Real Estate Encumbrances have been delivered to Buyer. Seller Parties warrant to Buyer that, as of the Effective Time, the Real Property shall be free and clear of all Encumbrances other than those Real Estate Encumbrances identified on Schedule 3.9(b) as acceptable to Buyer ("Permitted Real Estate Encumbrances"). (c) Company, XIANMENG and F533, respectively, own good and marketable title to all of the other Assets free and clear of any Encumbrances other than those described in Schedule 3.9(c) ("Non-Real Estate Encumbrances"). Company, XIANMENG and F533, respectively, warrant to Buyer that, as of the Effective Time, all other Assets shall be free and clear of all Encumbrances other than those Non-Real Estate Encumbrances identified on Schedule 3.9(c) as acceptable to Buyer ("Permitted Non-Real Estate Encumbrances" and, together with the Permitted Real Estate Encumbrances, "Permitted Encumbrances"). (d) A true and complete copy, with all amendments, of the Construction Agreement is attached to Schedule 3.9(d). There is no breach or default, or to any Seller Party's Knowledge, alleged breach or default, by any party, with respect to the Construction Agreement. The Company has obtained all necessary Governmental Authorizations with respect to the improvements contemplated by the Construction Agreement, and the improvements, as contemplated thereby, will comply with all Legal Requirements when built in accordance therewith.

**3.10 CONDITION OF FACILITIES** (a) Use of the Real Property for the various purposes for which it is presently being used, and as it is contemplated being used upon completion of the Improvements pursuant to the Construction Agreement, is permitted as of right under, and is in compliance with, all applicable zoning Legal Requirements and is not subject to "permitted nonconforming" use or structure classifications. All Improvements are in compliance with all applicable Legal Requirements, including those pertaining to zoning, building and the disabled, are in good repair and in good condition, and are free from patent and, to any Seller Party's Knowledge, latent defects. Except for the Permitted Encumbrances, there are no contractual or legal restrictions to which any Seller is a party or, to any Seller Party's Knowledge, by which any Real Property is otherwise bound that preclude or restrict the ability of any Seller which owns, leases or otherwise uses such Real Property to use such Real Property for the purposes for which it is currently being used. There are no condemnation, environmental, zoning or other land-use regulation proceedings pending or to any Seller Party's Knowledge threatened in connection with any Real Property, and there are not any special assessment proceedings pending or to any Seller Party's Knowledge threatened which affect any Real Property. No part of any Improvement encroaches on any real property not included in the Real Property, and there are no buildings, structures, fixtures or other Improvements primarily situated on adjoining property which encroach on any part of the Land. The Land for each owned Facility abuts on and has direct vehicular access to a public road or has access to a public road via a permanent, irrevocable, appurtenant easement benefiting such Land and comprising a part of the Real Property, is supplied with public utilities and other services appropriate for the operation of the Facilities located thereon and except as set forth on Schedule 3.10(a), is not located within any flood plain or area subject to wetlands regulation or any similar restriction. There is no existing or, to any Seller Party's Knowledge, proposed plan to modify or realign any street or highway or any existing or to any Seller Party's Knowledge proposed eminent domain proceeding that would result in the taking of all or any part of any Facility or that would prevent or hinder the continued use of any Facility as heretofore used in the conduct of the business of Company. (b) Each item of Tangible Personal Property is (i) in good repair and good operating condition, (ii) is suitable for immediate use in the Ordinary Course of Business and (iii) is free from latent and patent defects, (iv) operates within or satisfies manufacturing specifications for operating rates, tolerances and other requirements, and (v) is not subject to any claim for material breach of warranty or defect. No item of Tangible Personal Property is in need of repair or replacement other than as part of routine maintenance in the Ordinary Course of Business. Except as disclosed in Schedule 3.10(b) and all Tangible Personal Property used in either Company's or XIANMENG's business is in the possession of Company or XIANMENG. Each of the silicon growers owned or operated by Company (i) is described on Schedule 3.10(b) and (ii) is currently operating and producing the yields at the diameters shown on Schedule 3.10(b), all in accordance with manufacturer's operating and technical specification shown on Schedule 3.10(b) (the "Current Production Output Requirements"). All facilities and manufacturing processes of Company and XIANMENG are in accordance with applicable industry standards and certifications and all proprietary customer quality requirements, in all material respects, as described on Schedule 3.10(b) (the "Processes & Facilities Standards"). None of the Seller Parties have received any notice of any material violation, deficiency or non-compliance with any Processes & Facilities Standard since January 1, 2003. No tangible personal property of Company, F533, XIANMENG or any Shareholder or any of their respective Related Persons is shared between the Lapato Road Property and the Howard Street Property or has, except as set forth in Schedule 3.10(b) been moved or transferred between such facilities in the last twelve (12) months.

**3.11 ACCOUNTS RECEIVABLE; CUSTOMER REVENUES** (a) All Accounts Receivable that are reflected on the balance sheet included in the Carve-Out Financial Statements, Interim Balance Sheet or existing as of the Closing Date with respect to the Business represent or will represent valid obligations arising from sales actually made or services actually performed by Seller in the Ordinary Course of Business. There is no contest, claim, defense or right of setoff, other than returns in the Ordinary Course of Business of Company or XIANMENG, with any such account debtor of an Account Receivable relating to the amount or validity of such Account Receivable. Schedule 3.11(a) contains a complete and accurate list of all Accounts Receivable as of the date of the Interim Balance Sheet, relating to the Business, which list sets forth the aging of each such Account Receivable. (b) The largest ten (10) customers relating to the Business (other than Buyer) for (i) the six (6) months ended 6/30/06 and (ii) twelve (12) months ended 12/31/05, respectively, with the sales revenues, net of any returns or allowances, are set forth on Schedule 3.11(b), including net sales for each customer, respectively, for such periods, and broken down in each case for such sales related to the Business and for sales other than related to the Business (in the latter case, with a brief description of such other business or products).

**3.12 INVENTORIES** All items included in the Inventories consist of a quality and quantity usable and, with respect to finished goods, saleable, in the Ordinary Course of Business of Company or XIANMENG, as the case may be, except for obsolete items and items of below-standard quality, all of which have been written off or written down to net realizable value in the Estimated Closing Asset Value. Neither Company nor XIANMENG is in possession of any inventory not owned by it, including goods already sold. All of the Inventories have been valued at the lower of cost or market value on a first in, first out basis. Inventories now on hand that were purchased after the date of the Carve-Out Financial Statements were purchased in the Ordinary Course of Business of Company or XIANMENG, as the case may be, at a cost not exceeding market prices prevailing at the time of purchase. The quantities of each item of Inventories (whether raw materials, work-in-process or finished goods) are not excessive but are reasonable in the present circumstances of Company or XIANMENG, as the case may be. All Inventories are now valued, and will be valued on the Closing Date, according to GAAP, except for the GAAP Exceptions, consistently applied.

**3.13 NO UNDISCLOSED LIABILITIES** Except as set forth in Schedule 3.13, neither Company nor XIANMENG has, and as of the Closing Date will have, any Liability except for Liabilities reflected or reserved against in the balance sheet included in the Carve-Out Financial Statement, Closing Balance Sheet or the Interim Balance Sheet and current liabilities incurred in the Ordinary Course of Business of Company or XIANMENG, as the case may be, since the date of the Interim Balance Sheet, respectively, as of the dates of each such balance sheet and the Closing Date.

**3.14 TAXES** (a) Tax Returns Filed and Taxes Paid. Company and XIANMENG have filed or caused to be filed on a timely basis all Tax Returns and all reports with respect to Taxes that are or were required to be filed pursuant to applicable Legal Requirements. All Tax Returns and reports filed by Company or XIANMENG are true, correct and complete in all material respects. Company and XIANMENG have paid, or made provision for the payment of, all Taxes that have or may have become due for all periods covered by the Tax Returns or otherwise, or pursuant to any assessment received by Company or XIANMENG, except such Taxes, if any, are listed in Schedule 3.14(a) and are being contested in good faith and as to which adequate reserves (determined in accordance with historical practices of Company or XIANMENG, as the case may be, and industry standards) have been provided in the balance sheet included in the Carve-Out Financial Statements. Except as provided in Schedule 3.14(a), neither Company nor XIANMENG currently is the beneficiary of any extension of time within which to file any Tax Return. No claim has ever been made or, to the Knowledge of Seller Parties, is expected to be made by any Governmental Body in a jurisdiction where Company or XIANMENG does not file Tax Returns that it is or may be subject to taxation by that jurisdiction. There are no Encumbrances on any of the Assets that arose in connection with any failure (or alleged failure) to pay any Tax, and no Seller Party has any Knowledge of any basis for assertion of any claims attributable to Taxes which, if adversely determined, could result in any such Encumbrance. (b) Delivery of Tax Returns and Information Regarding Audits and Potential Audits. Company and XIANMENG have delivered or made available to Buyer copies of, and Schedule 3.14(b) contains a complete and accurate list of, all Tax Returns filed since January 1, 1999. The federal and state income or franchise or other applicable Tax Returns of Company and XIANMENG have been audited, respectively by the IRS or relevant state and foreign tax authorities or are closed by the applicable statute of limitations for the taxable years set forth on Schedule 3.14(b). Schedule 3.14(b) contains a complete and accurate list of all Tax Returns of Company or XIANMENG that have been audited or are currently under audit and accurately describe any deficiencies or other amounts that were paid or are currently being contested. To the Knowledge of each Seller Party, no undisclosed deficiencies are expected to be asserted with respect to any such audit. All deficiencies proposed as a result of such audits have been paid, reserved against, settled or are being contested in good faith by appropriate proceedings as described in Schedule 3.14(b). Company and XIANMENG have delivered, or made available to Buyer, copies of any examination reports, statements or deficiencies or similar items with respect to such audits. Except as provided in Schedule 3.14(b), no Seller Party has Knowledge that any Governmental Body is likely to assess any additional taxes for any period for which Tax Returns have been filed. There is no dispute or claim concerning any Taxes of Company or XIANMENG either (i) claimed or raised by any Governmental Body in writing or (ii) as to which any Seller Party has Knowledge. Schedule 3.14(b) contains a list of all Tax Returns for which the applicable statute of limitations has not run. Except as described in Schedule 3.14(b), neither Company nor XIANMENG has given or been requested to give waivers or extensions (or is or would be subject to a waiver or extension given by any other Person) of any statute of limitations relating to the payment of Taxes of Company or XIANMENG or for which Company or XIANMENG may be liable. (c) Proper Accrual. The charges, accruals and reserves with respect to Taxes on the respective Records of Company and XIANMENG are adequate (determined in accordance with historical practices of Company or XIANMENG, as the case may) and are at least equal to Company's and XIANMENG's respective liability for Taxes. To the Knowledge of each Seller Party, there exists no proposed tax assessment or deficiency against Company or XIANMENG. (d) Specific Potential Tax Liabilities and Tax Situations. (i) Withholding. All Taxes that Company or XIANMENG is or was required by Legal Requirements to withhold, deduct or collect have been duly withheld, deducted and collected and, to the extent required, have been paid to the proper Governmental Body or other Person. (ii) Tax Sharing or Similar Agreements. There is no tax sharing agreement, tax allocation agreement, tax indemnity obligation or similar written or unwritten agreement, arrangement, understanding or practice with respect to Taxes (including any advance pricing agreement, closing agreement or other arrangement relating to Taxes). (iii) Consolidated Group. Neither Company nor XIANMENG (A) has been a member of an affiliated group within the meaning of Code Section 1504(a) (or any similar group defined under a similar provision of state, local or foreign law) and (B) has any liability for Taxes of any person (other than Company, XIANMENG or their respective Subsidiaries) under Treas. Reg. sect. 1.1502-6 (or any similar provision of state, local or foreign law), as a transferee or successor by contract or otherwise. (iv) S Corporation. Company is, and has been since July 1, 1994, an S corporation as defined in Code Section 1361. (v) Substantial Understatement Penalty. Company and XIANMENG have disclosed on their respective Tax Returns all positions taken therein that could give rise to a substantial understatement of federal income Tax within the meaning of Code Section 6662 (or any similar provision of state, local or foreign law).

**3.15 NO MATERIAL ADVERSE CHANGE**

Except as set forth on Schedule 3.15, since December 31, 2005, there has not been any material adverse change in the Business, operations, prospects, assets, results of operations or condition (financial or other) of Company or XIANMENG related to or affecting, directly or indirectly, the Business, and to the Knowledge of Seller Parties no event has occurred or circumstance exists that is reasonably likely to result in such a material adverse change.

**3.16 EMPLOYEE BENEFITS** (a) Set forth in Schedule 3.16(a) is a complete and correct list of all "employee benefit plans" as defined by Section 3(3) of ERISA, all fringe benefit plans as defined in Section 6039D of the Code, and all other bonus, incentive-compensation, deferred-compensation, profit-sharing, stock-option, stock-appreciation-right, stock-bonus, stock-purchase, employee-stock-ownership, savings, severance, change-in-control, supplemental-unemployment, layoff, salary-continuation, retirement, pension, health, life-insurance, disability, accident, group-insurance, vacation, holiday, sick-leave, fringe-benefit or welfare plan or arrangement, and any other employee compensation or benefit plan, agreement, policy, practice, commitment, contract or understanding (whether qualified or nonqualified, currently effective or terminated, written or unwritten) and any trust, escrow or other agreement related thereto that (i) is maintained or contributed to by Company or any other corporation or trade or business controlled by, controlling or under common control with Company (within the meaning of Section 414 of the Code or Section 4001(a)(14) or 4001(b) of ERISA) ("ERISA Affiliate") or has been maintained or contributed to in the last six (6) years by Company or any ERISA Affiliate, or with respect to which Company or any ERISA Affiliate has or may have any liability, and (ii) provides benefits, or describes policies or procedures applicable to any current or former director, officer, employee or service provider of Company or any ERISA Affiliate, or the dependents of any thereof, regardless of how (or whether) liabilities for the provision of benefits are accrued or assets are acquired or dedicated with respect to the funding thereof (collectively the "Employee Plans"). Schedule 3.16(a) identifies as such any Employee Plan that is (v) a "Defined Benefit Plan" (as defined in Section 414(j) of the Code); (w) a plan intended to meet the requirements of Section 401(a) of the Code; (x) a "Multiemployer Plan" (as defined in Section 3(37) of ERISA); (y) a plan subject to Title IV of ERISA, other than a Multiemployer Plan or (z) a plan subject to Section 412 of the Code other than a Defined Benefit Plan or a Multiemployer Plan. Also set forth on Schedule 3.16(a) is a complete and correct list of all ERISA Affiliates of Company during the last six (6) years. (b) Company has delivered to Buyer true, accurate and complete copies of (i) the documents comprising each Employee Plan (or, with respect to any Employee Plan which is unwritten, a detailed written description of eligibility, participation, benefits, funding arrangements, assets and any other matters which relate to the obligations of Company or any ERISA Affiliate); (ii) all trust agreements, insurance contracts or any other funding instruments related to the Employee Plans; (iii) all rulings, determination letters, no-action letters or advisory opinions from the IRS, the U.S. Department of Labor, the Pension Benefit Guaranty Corporation ("PBGC") or any other Governmental Body that pertain to each Employee Plan and any open requests therefor; and (iv) all summary plan descriptions, summaries of material modifications and memoranda, employee handbooks and other written communications regarding the Employee Plans. (c) The PBGC has not instituted or threatened a Proceeding to terminate or to appoint a trustee to administer any of the Employee Plans pursuant to Subtitle 1 of Title IV of ERISA, and no condition or set of circumstances exists that presents a material risk of termination or partial termination of any of the Employee Plans by the PBGC. None of the Employee Plans has been the subject of, and no event has occurred or condition exists that could be deemed, a reportable event (as defined in Section 4043 of ERISA) as to which a notice would be required (without regard to regulatory monetary thresholds) to be filed with the PBGC. Company has paid in full all insurance premiums due to the PBGC with regard to the Employee Plans for all applicable periods ending on or before the Closing Date. (d) No Seller Party or any ERISA Affiliate has any liability or has Knowledge of any fact or circumstance that might give rise to any liability, and the Contemplated Transactions will not result in any liability, (i) for the termination of or withdrawal from any Employee Plan under Sections 4062, 4063 or 4064 of ERISA, (ii) for any lien imposed under Section 302(f) of ERISA or Section 412(n) of the Code, (iii) for any interest payments required under Section 302(e) of ERISA or Section 412(m) of the Code, (iv) for any excise tax imposed by Section 4971 of the Code, (v) for any minimum funding contributions under Section 302(c)(11) of ERISA or Section 412(c)(11) of the Code or (vi) for withdrawal from any Multiemployer Plan under Section 4201 of ERISA. (e) The form of all Employee Plans is in compliance with the applicable terms of ERISA, the Code, and any other applicable laws, including the Americans with Disabilities Act of 1990, the Family Medical and Leave Act of 1993 and the Health Insurance Portability and Accountability Act of 1996, and such plans have been operated in compliance with such laws and the written Employee Plan documents. Neither Company nor any fiduciary of an Employee Plan has violated the requirements of Section 404 of ERISA. Except as set forth in Schedule 3.16(e), all required reports and descriptions of the Employee Plans (including Internal Revenue Service Form 5500 Annual Reports, Summary Annual Reports and Summary Plan Descriptions and Summaries of Material Modifications) have been (when required) timely filed with the IRS, the U.S. Department of Labor or other Governmental Body and distributed as required, and all notices required by ERISA or the Code or any other Legal Requirement with respect to the Employee Plans have been appropriately given. (f) Each Employee Plan that is intended to be qualified under Section 401(a) of the Code has received a favorable determination letter from the IRS, and no Seller Party has any Knowledge of any circumstance that will or could result in revocation of any such favorable determination letter. Each trust created under any Employee Plan has been determined to be exempt from taxation under Section 501(a) of the Code, and Company is not aware of any circumstance that will or could result in a revocation of such exemption. (g) Company has maintained workers' compensation coverage as required by applicable state law through purchase of insurance and not by self-insurance or otherwise except as disclosed on Schedule 3.16(g). (h) No written or oral representations have been made to any employee or former employee of Company promising or guaranteeing any employer payment or funding for the continuation of medical, dental, life or disability coverage for any period of time beyond the end of the current plan year (except to the extent of coverage required under COBRA). No written or oral representations have been made to any employee or former employee of Company concerning the employee benefits of Buyer. (i) None of Sellers have ever participated in, contributed to, or otherwise been subject to any Employee Plan that is a "Multiemployer Plan" within the meaning of Section 4001(a)(3) of ERISA.

**3.17 COMPLIANCE WITH LEGAL REQUIREMENTS; GOVERNMENTAL AUTHORIZATIONS** (a) Except as set forth in Schedule 3.17(a): (i) each Seller is, and at all times since January 1, 2003, has been, in material compliance, respectively, with each Legal Requirement that is or was applicable to it or to the conduct or operation of its business or the ownership or use of any of its assets; (ii) no event has occurred or circumstance exists that (with or without notice or lapse of time) (A) it is reasonable to expect may constitute or result in a violation by any Seller of, or a failure on the part of any Seller to comply with, any Legal Requirement or (B) may give rise to any obligation on the part of any Seller to undertake, or to bear all or any portion of the cost of, any remedial action of any nature; and (iii) no Seller has received, at any time since January 1, 2003, any notice or other communication (whether oral or written) from any Governmental Body or any other Person regarding (A) any actual, alleged, possible or potential violation of, or failure to comply with, any Legal Requirement or (B) any actual, alleged, possible or potential obligation on the part of any Seller to undertake, or to bear all or any portion of the cost of, any remedial action of any nature. (b) Schedule 3.17(b) contains a complete and accurate list of each Governmental Authorization that is held by each Seller (with respect to F533, with respect to the Howard Street Property) or that otherwise relates respectively to any Seller's respective businesses or the Assets. Each Governmental Authorization listed or required to be listed in Schedule 3.17(b) is valid and in full force and effect. Except as set forth in Schedule 3.17(b): (i) each Seller is, and at all times since January 1, 2003, has been, in material compliance with all of the terms and requirements of each Governmental Authorization identified or required to be identified in Schedule 3.17(b); (ii) no event has occurred or circumstance exists that is reasonable to expect (with or without notice or lapse of time) (A) constitute or result directly or indirectly in a violation of or a failure to comply, in all material respects, with any term or requirement of any Governmental Authorization listed or required to be listed in Schedule 3.17(b) or (B) result directly or indirectly in the revocation, withdrawal, suspension, cancellation or termination of, or any modification to, any Governmental Authorization listed or required to be listed in Schedule 3.17(b); (iii) no Seller has received, at any time since January 1, 2003, any notice or other communication (whether oral or written) from any Governmental Body or any other Person regarding (A) any actual, alleged, possible or potential violation of or failure to comply with any term or requirement of any Governmental Authorization or (B) any actual, proposed, possible or potential revocation, withdrawal, suspension, cancellation, termination of or modification to any Governmental Authorization; and (iv) all applications required to have been filed for the renewal of the Governmental Authorizations listed or required to be listed in Schedule 3.17(b) have been duly filed on a timely basis with the appropriate Governmental Bodies, and all other filings required to have been made with respect to such Governmental Authorizations have been duly made on a timely basis with the appropriate Governmental Bodies. (c) Except as set forth on Schedule 3.17(c), all of the Governmental Authorizations will be transferred to Buyer pursuant hereto and as included in the Assets. The Governmental Authorizations listed in Schedule 3.17(b) collectively constitute all of the Governmental Authorizations necessary to permit Sellers to lawfully conduct and operate the Business in the manner in which they currently conduct and operate such Business and to permit Sellers to own and use their respective assets in the manner in which they currently own and use such assets.

**3.18 LEGAL PROCEEDINGS; ORDERS** (a) Except as set forth in Schedule 3.18(a), there is no pending or, to any Seller Party's Knowledge, threatened Proceeding by or against any Seller or that otherwise relates to or may affect the Business, or any of the assets owned or used by, any Seller. To the Knowledge of each Seller Party, no event has occurred or circumstance exists that is reasonably likely to give rise to or serve as a basis for the commencement of any such Proceeding. Each Seller has delivered to Buyer copies of all pleadings, correspondence and other documents relating to each Proceeding listed in Schedule 3.18(a). There are no Proceedings listed or required to be listed in Schedule 3.18(a) that could have a material adverse effect on the business, assets, condition (financial or other) or prospects of any Seller or upon the Assets. (b) Except as set forth in Schedule 3.18(b): (i) there is no Order to which any Seller, the Business or any of the Assets is subject; and (ii) to the Knowledge of each Seller Party, no officer, director, agent, shareholder or employee of any Seller is subject to any Order that prohibits such officer, director, agent, shareholder or employee from engaging in or continuing any conduct, activity or practice relating to the Business. (c) Except as set forth in Schedule 3.18(c): (i) each Seller is, and, at all times since January 1, 2003, has been in compliance with all of the terms and requirements of each Order to which it, the Business or any of the Assets is or has been subject; (ii) no event has occurred or circumstance exists that is reasonably likely to constitute or result in (with or without notice or lapse of time) a violation of or failure to comply with any term or requirement of any Order to which any Seller, the Business or any of the Assets is subject; and (iii) no Seller Party has received, at any time since January 1, 2003, any notice or other communication (whether oral or written) from any Governmental Body or any other Person regarding any actual, alleged, possible or potential violation of, or failure to comply with, any term or requirement of any Order to which any Seller, the Business or any of the Assets is or has been subject.

**3.19 ABSENCE OF CERTAIN CHANGES AND EVENTS** Except as set forth in Schedule 3.19, since December 31, 2005, each Seller has conducted its business only in the Ordinary Course of Business and there has not been any: (a) change in any Seller's authorized or issued capital stock, membership or ownership interests, grant of any stock or membership or ownership option or right to purchase shares of capital stock or membership or ownership interests of any Seller or issuance of any security convertible into such capital stock or membership or ownership interest; (b) amendment to the Governing Documents of any Seller; (c) payment (except in the Ordinary Course of Business) or increase by Company or XIANMENG of any bonuses, salaries or other compensation to any shareholder, director, officer or employee or entry into any employment, severance or similar Contract with any director, officer or employee; (d) adoption of, amendment to or increase in the payments to or benefits under, any Employee Plan; (e) damage to or destruction or loss of any Asset, whether or not covered by insurance; (f) entry into, termination of or receipt of notice of termination of (i) any license, distributorship, dealer, sales representative, joint venture, credit or similar Contract to which any Seller is a party, or (ii) any Contract or transaction involving a total commitment by any Seller of at least $50,000; (g) sale (other than sales of Inventories in the Ordinary Course of Business), lease or other disposition of any Asset or property of any Seller (including the Intellectual Property Assets) or the creation of any Encumbrance on any Asset; (h) cancellation or waiver of any claims or rights with a value to any Seller in excess of $50,000; (i) communication, whether written or, to the knowledge of any Seller Party, oral, by any customer or supplier of an intention to discontinue or materially change the terms of its relationship with Company or XIANMENG; (j) material change in the accounting methods used by Company or XIANMENG; or (k) Contract by any Seller to do any of the foregoing.

**3.20 CONTRACTS; NO DEFAULTS** (a) Schedule 3.20(a) contains an accurate and complete list, and Company, XIANMENG and, with respect to the Howard Street Property or the Business, F533 , have delivered to Buyer accurate and complete copies, except as specifically contemplated below, (which Schedule separately indicates and discloses which Contracts relate to the Business or Assets and which Contracts do not relate to the Business or Assets), of: (i) each Company Contract that involves performance of services or delivery of goods or materials by any Seller of an amount or value in excess of $50,000; (ii) each Company Contract that involves performance of services or delivery of goods or materials to any Seller of an amount or value in excess of $50,000; (iii) each Company Contract that was not entered into in the Ordinary Course of Business and that involves expenditures or receipts of any Seller in excess of $50,000; (iv) each Company Contract affecting the ownership of, leasing of, title to, use of or any leasehold or other interest in any real or personal property (except personal property leases and installment and conditional sales agreements having a value per item or aggregate payments of less than $50,000 and with a term of less than one year); (v) each Company Contract with any labor union or other employee representative of a group of employees relating to wages, hours and other conditions of employment; (vi) each Company Contract (however named) involving a sharing of profits, losses, costs or liabilities by any Seller with any other Person; (vii) each Company Contract containing covenants that in any way purport to restrict any Seller's business activity or limit the freedom of any Seller to engage in any line of business or to compete with any Person; (viii) each Company Contract with a value in excess of $50,000 providing for the indemnification, hold harmless or defense by any Seller of any Person; (ix) each Company Contract with a value in excess of $50,000 providing for the nondisclosure or maintenance of confidentiality by any Seller Party with respect to information (proprietary or otherwise) of any Person; (x) each Company Contract providing for payments to or by any Person based on sales, purchases or profits, other than direct payments for goods; (xi) each power of attorney of any Seller that is currently effective and outstanding; (xii) each Company Contract that contains or provides for an express undertaking by any Seller to be responsible for consequential damages; (xiii) each Company Contract for capital expenditures in excess of $50,000; (xiv) each Company Contract not denominated in U.S. dollars that is valued in excess of $50,000(USD); (xv) each written warranty, guaranty and/or other similar undertaking with respect to contractual performance extended by any Seller and related to the Business; and (xvi) each amendment, supplement and modification (whether oral or written) in respect of any of the foregoing. Schedule 3.20(a) sets forth reasonably complete details concerning such Contracts, including the parties to the Contracts, and with respect to Subsections (i) and (ii) above, the amount of the remaining commitment of the respective Seller under the Contracts and the location of the respective Seller's office where details relating to the Contracts are located. Notwithstanding the foregoing, disclosure with respect to the Retained Business is limited to the information specified in Schedule 3.20(a). (b) Except as set forth in Schedule 3.20(b), neither Shareholder nor any other shareholder or equity owner has or may acquire any rights under, and neither Shareholder nor any other shareholder or equity owner has or may become subject to any obligation or liability under, any Contract that relates to the business of any Seller, the Business or any of the Assets. (c) Except as set forth in Schedule 3.20(c): (i) each Contract identified or required to be identified in Schedule 3.20(a) and which is to be assigned to or assumed by Buyer under this Agreement is in full force and effect and is valid and enforceable in accordance with its terms; (ii) each Contract identified or required to be identified in Schedule 3.20(a) and which is being assigned to or assumed by Buyer is assignable by the Seller that is party to such Contract to Buyer without the consent of any other Person; and (iii) to the Knowledge of each Seller Party, no Contract identified or required to be identified in Schedule 3.20(a) and which is to be assigned to or assumed by Buyer under this Agreement will upon completion or performance thereof have a material adverse effect on the business, assets, condition (financial or otherwise) or prospects of any Seller or the business to be conducted by Buyer with the Assets. (d) Except as set forth in Schedule 3.20(d): (i) each Seller is, and at all times has been, in compliance with all applicable material terms and requirements of each Contract which is being assumed by Buyer; (ii) each other Person that has or had any obligation or liability under any Contract which is being assigned to Buyer is, and at all times has been, in compliance with all material terms and requirements of such Contract; (iii) no event has occurred or circumstance exists that (with or without notice or lapse of time) may contravene, conflict with or result in a Breach of, or give any Seller or other Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or payment under, or to cancel, terminate or modify, any Contract that is being assigned to or assumed by Buyer; (iv) no event has occurred or circumstance exists under or by virtue of any Contract that (with or without notice or lapse of time) would cause the creation of any Encumbrance affecting any of the Assets other than the Permitted Encumbrances; and (v) no Seller has given to or received from any other Person, at any time, any notice or other communication (whether oral or written) regarding any actual, alleged, possible or potential violation or Breach of, or default under, any Contract which is being assigned to or assumed by Buyer. (e) There are no renegotiations of, attempts to renegotiate or outstanding rights to renegotiate any material amounts paid or payable to any Seller under current or completed Contracts with any Person having the contractual or statutory right to demand or require such renegotiation and no such Person has made written demand for such renegotiation. (f) Each Contract relating to the sale, design, manufacture or provision of products or services by Company or XIANMENG has been entered into in the Ordinary Course of Business of Company or XIANMENG, as the case may be, and has been entered into without the commission of any act alone or in concert with any other Person, or any consideration having been paid or promised, that is or would be in violation of any Legal Requirement.

**3.21 INSURANCE** (a) Each Seller has made available to Buyer: (i) accurate and complete copies of all policies of insurance (and correspondence relating to coverage thereunder) to which any Seller is a party or under which any Seller or any of the Assets or Business is or has been covered at any time since January 1, 2003, a list of which is included in Schedule 3.21(a); and (ii) accurate and complete copies of all pending applications by each Seller for policies of insurance. (b) Schedule 3.21(b) describes: (i) any self-insurance arrangement by or affecting any Seller, including any reserves established thereunder; (ii) any Contract or arrangement, other than a policy of insurance, for the transfer or sharing of any risk to which any Seller is a party or which involves the business of any Seller; and (iii) all obligations of each Seller to provide insurance coverage to Third Parties (for example, under Leases or service agreements) and identifies the policy under which such coverage is provided. (c) Schedule 3.21(c) sets forth, by year, for the current policy year and each of the three (3) preceding policy years: (i) a summary of the loss experience under each policy of insurance; (ii) except for workers' compensation claims in the Ordinary Course of Business, a statement describing each claim under a policy of insurance for an amount in excess of Ten Thousand Dollars ($10,000), which sets forth:

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|  | (A) |  | the name of the claimant; |
|  | (B) |  | a description of the policy by insurer, type of insurance and period of coverage; and |
|  | (C) |  | the amount and a brief description of the claim; and |

(iii) a statement describing the loss experience for all claims that were self-insured, for amounts in excess of Ten Thousand Dollars ($10,000) including the number and aggregate cost of such claims. (d) Except as set forth in Schedule 3.21(d): (e) all policies of insurance to which any Seller is a party or that provide coverage to any Seller:

|  |  |  |  |
| --- | --- | --- | --- |
|  | (A) |  | are valid, outstanding and enforceable; and |
|  | (B) |  | are sufficient for compliance, in all material respects, with all Legal Requirements and Contracts; |

(i) No Seller has received (A) any refusal of coverage or any notice that a defense will be afforded with reservation of rights or (B) any notice of cancellation or any other indication that any policy of insurance is no longer in full force or effect or that the issuer of any policy of insurance is not willing or able to perform its obligations thereunder; (ii) Each Seller has paid all premiums due, and has otherwise performed all of its obligations, under each policy of insurance to which it is a party or that provides coverage to it; and (iii) Each Seller has given notice to the insurer of all claims involving over Ten Thousand Dollars ($10,000) that may be insured thereby.

**3.22 ENVIRONMENTAL MATTERS**

Except as disclosed in Schedule 3.22: (a) Each Seller is, and at all times has been, in compliance with, and has not been and is not in violation of or liable under, any Environmental Law. No Seller Party has any basis to expect, nor has any of them or any other Person for whose conduct they are or may be held to be responsible received, any actual or threatened order, notice or other communication from (i) any Governmental Body or private citizen acting in the public interest or (ii) the current or any prior owner or operator of any Facilities, of any actual or potential violation or failure to comply with any Environmental Law, or of any actual or threatened obligation to undertake or bear the cost of any Environmental, Health and Safety Liabilities with respect to any Facility or other property or asset (whether real, personal or mixed) in which any Seller has or had an interest, or with respect to any property or Facility at or to which Hazardous Materials were generated, manufactured, refined, transferred, imported, used or processed by any Seller or any other Person for whose conduct it is or may be held responsible, or from which Hazardous Materials have been transported, treated, stored, handled, transferred, disposed, recycled or received. (b) There are no pending or, to the Knowledge of any Seller Party, threatened claims, Encumbrances, or other restrictions of any nature resulting from any Environmental, Health and Safety Liabilities or arising under or pursuant to any Environmental Law with respect to or affecting any Facility or any other property or asset (whether real, personal or mixed) in which any Seller has or had an interest. (c) No Seller Party has any Knowledge of or any basis to expect, nor has any of them, or any other Person for whose conduct they are or may be held responsible, received, any citation, directive, inquiry, notice, Order, summons, warning or other communication that relates to Hazardous Activity, Hazardous Materials, or any alleged, actual, or potential violation or failure to comply with any Environmental Law, or of any alleged, actual, or potential obligation to undertake or bear the cost of any Environmental, Health and Safety Liabilities with respect to any Facility or property or asset (whether real, personal or mixed) in which any Seller has or had an interest, or with respect to any property or facility to which Hazardous Materials generated, manufactured, refined, transferred, imported, used or processed by either Seller or any other Person for whose conduct it is or may be held responsible, have been transported, treated, stored, handled, transferred, disposed, recycled or received. (d) No Seller nor any other Person for whose conduct any of them is or may be held responsible has any Environmental, Health and Safety Liabilities with respect to any Facility or, to the Knowledge of any Seller Party, with respect to any other property or asset (whether real, personal or mixed) in which any Seller (or any predecessor) has or had an interest or at any property geologically or hydrologically adjoining any Facility or any such other property or asset. (e) There are no Hazardous Materials (as presently defined as of the Effective Time) present on or in the Environment at any Facility or at any geologically or hydrologically adjoining property, including any Hazardous Materials contained in barrels, aboveground or underground storage tanks, landfills, land deposits, dumps, impoundments, equipment (whether movable or fixed) or other containers, either temporary or permanent, and deposited or located in land, water, sumps, or any other part of the Facility or such adjoining property, or incorporated into any structure therein or thereon, other than in compliance with applicable Environmental Laws. Seller nor any Person for whose conduct any of them is or may be held responsible, or to the Knowledge of any Seller Party, any other Person, has permitted or conducted, or is aware of, any Hazardous Activity conducted with respect to any Facility or any other property or assets (whether real, personal or mixed) in which any Seller has or had an interest except in compliance with all applicable Environmental Laws, in all material respects. (f) There has been no Release or, to the Knowledge of any Seller Party, Threat of Release, of any Hazardous Materials (as presently defined as of the Effective Time) at or from any Facility or at any other location where any Hazardous Materials were generated, manufactured, refined, transferred, produced, imported, used, processed from or by, or have come to be located on, any Facility, or from any other property or asset (whether real, personal or mixed) in which any Seller has or had an interest, or to the Knowledge of any Seller Party any geologically or hydrologically adjoining property, whether by any Seller or any other Person, other than in compliance with applicable Environmental Laws. (g) Each Seller has delivered to Buyer true and complete copies and results of any reports, studies, analyses, tests, or monitoring possessed or initiated by any Seller pertaining to Hazardous Materials or Hazardous Activities in, on, or under the Facilities, or concerning compliance, by any Seller or any other Person for whose conduct it is or may be held responsible, with Environmental Laws. (h) Other than as indicated or described in the materials delivered to Buyer as represented in the preceding Section 3.22(g), there have been no investigations of the Environment at any of the Real Property, the purpose of which was to discover, identify or otherwise characterize the condition of the soil, groundwater, air, or presence of asbestos on the Real Property, during any Seller's ownership or occupancy of the Real Property. (i) Each Seller has all necessary Environmental Authorizations for all uses, discharges and Facilities under all applicable Environmental Laws.

**3.23 EMPLOYEES**

(a) Schedule 3.23(a) contains a complete and accurate list of the following information for each Active Employee (as hereinafter defined), director, independent contractor, consultant and agent of Company and XIANMENG, including each Active Employee on leave of absence or layoff status: employer; location (Howard Street Property or XIANMENG New District, XIANMENG, Harbin, PRC) name; job title; date of hiring or engagement; date of commencement of employment or engagement; date of commencement of leave of absence (if applicable) current compensation paid or payable and any change in compensation since December 31, 2005; whether employment is pursuant to a written contract (and a copy is attached as Schedule 3.23(a)), sick and vacation leave that is accrued but unused; and service credited for purposes of vesting and eligibility to participate under any Employee Plan, or any other employee or director benefit plan. (b) Schedule 3.23(b) contains a complete and accurate list of the following information for each retired employee or director of Company or XIANMENG, or their dependents, receiving benefits or scheduled to receive benefits in the future: name; pension benefits; pension option election; retiree medical insurance coverage; retiree life insurance coverage; and other benefits. (c) Schedule 3.23(c) states the number of employees terminated by Company or XIANMENG since December 31, 2004, and contains a complete and accurate list of the following information for each employee of Company or XIANMENG who has been terminated or laid off, or whose hours of work have been reduced by more than fifty percent (50%) by Company or XIANMENG, in the six (6) months prior to the date of this Agreement: (i) the date of such termination, layoff or reduction in hours; (ii) the reason for such termination, layoff or reduction in hours; and (iii) the location to which the employee was assigned. (d) Company has not violated the Worker Adjustment and Retraining Notification Act (the "WARN Act") or any similar state or local Legal Requirement. During the ninety (90) day period prior to the date of this Agreement, Company has terminated two (2) employees. (e) To the Knowledge of Company, XIANMENG and each Shareholder, no officer, director, agent, employee, consultant, or contractor of Company or XIANMENG is bound by any Contract that purports to limit the ability of such officer, director, agent, employee, consultant, or contractor (i) to engage in or continue or perform any conduct, activity, duties or practice relating to the Business or (ii) to assign to Company or XIANMENG or to any other Person any rights to any invention, improvement, or discovery. No former or current employee of Company or XIANMENG is a party to, or is otherwise bound by, any Contract that in any way adversely affected, affects, or will affect the ability of Company or XIANMENG or Buyer to conduct the business as heretofore carried on by Company or XIANMENG. (f) Schedule 3.23(f) lists each employee of the Company engaged in production, manufacturing, product development, engineering, research and development and/or operations. Each of the employees listed on Schedule 3.23(f) have executed the Employee Developments Agreement and the Employee Invention Rights Assignment, in the form attached to Schedule 3.23(f), and Buyer has been provided copies of such executed employee agreements.

**3.24 LABOR DISPUTES;** **COMPLIANCE**

(a) Company and XIANMENG have complied in all material respects with all Legal Requirements relating to employment practices, terms and conditions of employment, equal employment opportunity, nondiscrimination, immigration, wages, hours, benefits, collective bargaining and other requirements, the payment of social security and similar Taxes and occupational safety and health. Neither Company nor XIANMENG is liable for the payment of any Taxes, fines, penalties, or other amounts, however designated, for failure to comply with any of the foregoing Legal Requirements. (b) Except as disclosed in Schedule 3.24(b), (i) neither Company nor XIANMENG has been, and is not now, a party to any collective bargaining agreement or other labor contract; (ii) since July 1, 2001, there has not been, there is not presently pending or existing, and to Company's, XIANMENG's and each Shareholder's Knowledge there is not threatened, any strike, slowdown, picketing, work stoppage or employee grievance process involving Company or XIANMENG; (iii) to Company's, XIANMENG's and each Shareholder's Knowledge no event has occurred or circumstance exists that could provide the basis for any work stoppage or other labor dispute; (iv) there is not pending or, to Company's, XIANMENG's and each Shareholder's Knowledge, threatened against or affecting Company or XIANMENG any Proceeding relating to the alleged violation of any Legal Requirement pertaining to labor relations or employment matters, including any charge or complaint filed with the National Labor Relations Board or any comparable Governmental Body, and there is no organizational activity or other labor dispute against or affecting Company or XIANMENG or the Facilities; (v) no application or petition for an election of or for certification of a collective bargaining agent is pending; (vi) no grievance or arbitration Proceeding exists that might have an adverse effect upon Company or XIANMENG or the conduct of its business; (vii) there is no lockout of any employees by Company or XIANMENG, and no such action is contemplated by Company or XIANMENG; and (viii) to Company's, XIANMENG's and each Shareholder's Knowledge there has been no charge of discrimination filed against or threatened against Company or XIANMENG with the Equal Employment Opportunity Commission or similar Governmental Body.

**3.25 INTELLECTUAL PROPERTY ASSETS** (a) The term "Intellectual Property Assets" means all intellectual property owned, or licensed (as licensor or licensee) by Company or XIANMENG, in which Company or XIANMENG has a proprietary interest or otherwise utilizes, related to the Business or used in the Business, all of which are listed on Schedule 3.25(a), including: (i) except for the names "NORBERT", "NORBERT Super-Sounds" and "Norbert Soundwaves," all other names, marks, product names, assumed fictional business names, trade names, registered and unregistered trademarks, service marks and applications (collectively, "Marks"); (ii) all patents, patent applications and inventions and discoveries that may be patentable (collectively, "Patents"); (iii) all registered and unregistered copyrights in both published works and unpublished works (collectively, "Copyrights"); (iv) all rights in mask works; (v) all know-how, trade secrets, confidential or proprietary information, customer lists, Software, technical information, data, process technology, plans, drawings and blue prints (collectively, "Trade Secrets"); and (vi) all rights to telephone and facsimile numbers as set forth on Schedule 3.25(a) in use at the Howard Street Property. (b) Schedule 3.25(b) contains a complete and accurate list and summary description, including any royalties paid or received by Company or XIANMENG, and Company and XIANMENG have delivered to Buyer accurate and complete copies, of all Company Contracts (including all licenses in effect as of the date of this Agreement and those that have expired or been terminated within the previous five (5) years) relating to the Intellectual Property Assets, except for any license implied by the sale of a product and perpetual, paid-up licenses for commonly available Software programs with a value of less than $5,000 under which Company or XIANMENG is the licensee. All such Company Contracts are in full force and effect. There are no outstanding and, to Company's, XIANMENG's and each Shareholder's Knowledge, no threatened disputes or disagreements with respect to any such Contract. (c) (i) Except as set forth in Schedule 3.25(c), the Intellectual Property Assets are all those necessary for the operation of the Business as it is currently conducted and the manufacture, marketing and sale of Company or XIANMENG products and services. Company or XIANMENG is the owner or licensee of all right, title and interest in and to each of the Intellectual Property Assets, free and clear of all Encumbrances, and has the right to use all of the Intellectual Property Assets, without payment to a Third Party, either Shareholder or any Related Person, other than in respect of licenses listed in Schedule 3.25(c). (ii) Except as set forth in Schedule 3.25(c), all former and current employees of Company or XIANMENG have executed written Contracts with Seller that assign to Company or XIANMENG, as the case may be, all rights to any inventions, improvements, discoveries or information relating to the business of Company or XIANMENG. (d) (i) No Shareholder or Related Person owns or has any interest in any Patent related to or affecting the Business, including any business or Person buying from or selling to the Business. Schedule 3.25(d) contains a complete and accurate list and summary description of all Patents including and designating each Patent that is included in the Excluded IP. (ii) All of the issued Patents are currently in compliance with all Legal Requirements (including payment of filing, examination and maintenance fees and proofs of working or use), are valid and enforceable, and are not subject to any maintenance fees or taxes or actions falling due within ninety (90) days after the Closing Date. (iii) No Patent has been or is now involved in any interference, reissue, reexamination, or opposition Proceeding. To Company's, XIANMENG's and each Shareholder's Knowledge, there is no potentially interfering patent or patent application of any Third Party, Shareholder or Related Person. (iv) Except as set forth in Schedule 3.25 (d), (A) no Patent is infringed or, to Company's or XIANMENG's Knowledge, has been challenged or threatened in any way and (B) none of the products manufactured or sold, nor any process or know-how used, by Company or XIANMENG infringes or is alleged to infringe any patent or other proprietary right of any other Person, including any Shareholder or Related Person. (v) All products made, used or sold under the Patents have been marked with the proper patent notice. (e) (i) Schedule 3.25(e) contains a complete and accurate list and summary description of all Marks including and designating each Mark that is included in the Excluded IP. No Shareholder or Related Person owns or has any interest in any Mark (other than "NORBERT" and "NORBERT Supersound") related to or affecting the Business, including any business or Person buying from or selling to the Business. (ii) None of the Marks included in the Intellectual Property Assets are federally registered. All Marks included in the Intellectual Property Assets are valid and enforceable and do not infringe on any right of any Person. (iii) No Mark included in the Intellectual Property Assets has been or is now involved in any opposition, invalidation or cancellation Proceeding and, to Company's, XIANMENG's and each Shareholder's Knowledge, no such action is threatened with respect to any of the Marks. (iv) To Company's, XIANMENG's and each Shareholder's Knowledge, there is no potentially interfering trademark or trademark application of any Third Party, Shareholder or Related Person. (v) No Mark included in the Intellectual Property Assets is infringed or, to Company's, XIANMENG's and each Shareholder's Knowledge, has been challenged or threatened in any way. None of the Marks used by Seller infringes or to any Seller Party's Knowledge is alleged to infringe any trade name, trademark or service mark of any other Person. (f) (i) Schedule 3.25(f) contains a complete and accurate list and summary description of all Copyrights included in the Intellectual Property Assets including all Copyrights included in the Excluded IP. No Shareholder or Related Person owns or has any interest in any copyright related to or affecting the Business, including any business or Person buying from or selling to the Business. (ii) All of the registered Copyrights included in the Intellectual Property Assets are currently in compliance with all Legal Requirements, are valid and enforceable, and are not subject to any maintenance fees or taxes or actions falling due within ninety (90) days after the date of Closing. (iii) No Copyright included in the Intellectual Property Assets is infringed or, to Company's, XIANMENG's and each Shareholder's Knowledge, has been challenged or threatened in any way. None of the subject matter of any of the Copyrights infringes or is alleged to infringe any copyright of any Third Party, Shareholder or Related Person or is a derivative work based upon the work of any other Person. (iv) All works encompassed by the Copyrights included in the Intellectual Property Assets have been marked with the proper copyright notice. (g) (i) With respect to each Trade Secret included in the Intellectual Property Assets, the documentation relating to such Trade Secret is sufficient in accuracy, detail and content to identify and explain it and to allow its full and proper use as presently practiced without reliance on the knowledge or memory of any individual. (ii) Company and XIANMENG have taken all reasonable precautions to protect the secrecy, confidentiality and value of all Trade Secrets included in the Intellectual Property Assets, (including the enforcement by Company and XIANMENG of a policy generally requiring employees and contractors to execute proprietary information and confidentiality agreements substantially in Company's standard form (a copy of which is attached in the Schedule 3.25(g)), and those employees and contractors of Company or XIANMENG who have executed such an agreement are listed on Schedule 3.25(g)). (iii) Company or XIANMENG have good title to and an absolute right to use the Trade Secrets included in the Intellectual Property Assets. The Trade Secrets included in the Intellectual Property Assets are not part of the public knowledge or literature and, to Company's, XIANMENG's and each Shareholder's Knowledge, have not been used, divulged or appropriated either for the benefit of any Person (other than Seller) or to the detriment of Company or XIANMENG. No Trade Secret is subject to any adverse claim or has been challenged or threatened in any way or infringes any intellectual property right of any other Person. No Shareholder or Related Person owns or has any interest in any trade secret related to or affecting the Business, including any business or Person buying from or selling to the Business. (h) (i) Schedule 3.25(h) contains a complete and accurate list and summary description of all Domain Rights. (ii) All Domain Rights have been registered in the name of Company or XIANMENG and are in compliance with all formal Legal Requirements. (i) The term "Excluded IP" means all intellectual property owned or licensed (as licensor or licensee) by Company or XIANMENG, or in which Company or XIANMENG has a proprietary interest, and which is related solely to the Retained Business, all of which are listed and summarily described on Schedule 3.25(i), including: (i) all Marks; (ii) all Patents; (iii) all Copyrights; (iv) all rights in mask works; and (v) all Trade Secrets (j) None of the Company's or XIANMENG's products, processes, operations, services or Intellectual Property Assets infringe or otherwise violate any right of any other Person.

**3.26 COMPLIANCE WITH THE FOREIGN CORRUPT PRACTICES ACT AND EXPORT CONTROL AND ANTIBOYCOTT LAWS** (a) Neither Company, its Subsidiaries, Related Persons or Representatives nor XIANMENG (i) have, to obtain or retain business, or affect any approval or action or obtain any unfair advantage, directly or indirectly offered, paid or promised to pay, or authorized the payment of, any money or other thing of value or any commission payment in excess of five percent (5%) of any amount payable or (ii) have for any purpose whatsoever, offered, given or promised to give anything with a value in excess of one hundred dollars ($100) in the aggregate to any one individual in any year, to: (i) any person who is an official, officer, agent, employee or Representative of any Governmental Body or of any existing or prospective customer (whether government owned or nongovernment owned); (ii) any political party or official thereof; (iii) any candidate for political or political party office; or (iv) any other individual or entity; (v) while knowing or having reason to believe that all or any portion of such money or thing of value would be offered, given, or promised, directly or indirectly, to any such official, officer, agent, employee, representative, political party, political party official, candidate, individual, or any entity affiliated with such customer, political party or official or political office. (b) Except as set forth in Schedule 3.26(b), Company, XIANMENG and their Related Persons have made all payments to Third Parties by check mailed to such Third Parties' principal place of business or by wire transfer to a bank located in the same jurisdiction as such party's principal place of business. (c) Each transaction is properly and accurately recorded on the books and Records of Company or XIANMENG, and each document upon which entries in Company's or XIANMENG's books and Records are based is complete and accurate in all respects. Company and XIANMENG each maintain a system of internal accounting controls adequate to ensure that neither Company nor XIANMENG maintains off-the-books accounts and that Company's and XIANMENG's assets are used only in accordance with Company's or XIANMENG's management directives. (d) Except as set forth on Schedule 3.26(d), Company, XIANMENG and their Related Persons have at all times been in compliance with all Legal Requirements relating to export control and trade embargoes. Without limiting the generality of the foregoing sentence, except as set forth on Schedule 3.26(d), (i) all exports and reexports by Company or XIANMENG or their Related Persons of all products, software, technology or services have been made in compliance with all Legal Requirements, including all export licenses or other authorizations required under the United States Export Administration Regulations; (ii) Company, XIANMENG and their Related Persons have not, directly or indirectly, exported, reexported, transferred or diverted any products, software, technology or services to any country in violation of any Legal Requirement relating to trade embargoes; and (iii) Company, XIANMENG and their Related Persons have not, directly or indirectly, during the last five (5) years exported, reexported, transferred or diverted any products, software, technology or services to Cuba, Iran, Libya, North Korea, Sudan, Syria, Afghanistan, Iraq or Serbia and Montenegro, nor to any Person that is a national or resident of any such country. (e) Except as set forth in Schedule 3.26(e), neither Company, XIANMENG nor their Related Persons have violated the antiboycott prohibitions contained in 50 U.S.C. App. sec. 2401 et seq. or 15 CFR Part 760 or taken any action that can be penalized under Section 999 of the Code. Except as set forth in Schedule 3.26(e), during the last five (5) years, neither Company, XIANMENG nor their Related Persons has been a party to, is not a beneficiary under and has not performed any service or sold any product under any Company Contract under which a product has been sold to customers in Bahrain, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, United Arab Emirates or the Republic of Yemen.

**3.27 RELATIONSHIPS WITH RELATED PERSONS** Except as disclosed in Schedule 3.27, no Seller nor any shareholder or member or any Related Person of any of them has, or since December 31, 2004, has had, any interest in any property (whether real, personal or mixed and whether tangible or intangible) used in or pertaining to Company's or XIANMENG's business. No Seller nor any shareholder or member or any Related Person of any of them owns, or since December 31, 2004, has owned, of record or as a beneficial owner, an equity interest or any other financial or profit interest in any Person that has (a) had business dealings or a material financial interest in any transaction with Company or XIANMENG except as set forth and described in Schedule 3.27, each of which has been conducted in the Ordinary Course of Business with Company or XIANMENG at substantially prevailing market prices and on substantially prevailing market terms or (b) engaged in competition with Company or XIANMENG with respect to any line of the products or services included in the Business (a "Competing Business") in any market presently served by Company or XIANMENG, except for ownership of less than one percent (1%) of the outstanding capital stock of any Competing Business that is publicly traded on any recognized exchange or in the over-the-counter market. Except as set forth in Schedule 3.27, no Seller nor any shareholder or member or any Related Person of any of them is a party to any Contract with, or has any claim or right against, Company or XIANMENG.

**3.28 BROKERS OR FINDERS** No Seller Party nor any of their respective Representatives have incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payments in connection with the sale of any Seller's business or the Assets or the Contemplated Transactions, except for its agreement with Berger, Warnton, Frisch & Maxwell, LLC, whose fees and expenses will be paid by Seller Parties.

**3.29 SOLVENCY** (a) Neither Company nor XIANMENG is now insolvent nor will be rendered insolvent by any of the Contemplated Transactions. As used in this section, "insolvent" means that the sum of the debts and other probable Liabilities of Company or XIANMENG, as the case may be, exceeds the present fair saleable value of Company's or XIANMENG's, as the case may be, assets. (b) Immediately after giving effect to the consummation of the Contemplated Transactions: (i) both Company and XIANMENG will be able to pay their Liabilities as they become due in the usual course of their respective businesses; (ii) neither Company nor XIANMENG will have unreasonably small capital with which to conduct its present or proposed business; (iii) both Company and XIANMENG will have assets (calculated at fair market value) that exceed its Liabilities; and (iv) taking into account all pending and threatened litigation, final judgments against Company or XIANMENG in actions for money damages are not reasonably anticipated to be rendered at a time when, or in amounts such that, Company or XIANMENG will be unable to satisfy any such judgments promptly in accordance with their terms (taking into account the maximum probable amount of such judgments in any such actions and the earliest reasonable time at which such judgments might be rendered) as well as all other obligations of Company or XIANMENG, as the case may be. The cash available to Company and XIANMENG, after taking into account all other anticipated uses of the cash, will be sufficient to pay all such debts and judgments promptly in accordance with their terms.

**3.30 DISCLOSURE** (a) No representation or warranty or other statement made by any Seller or either Shareholder in this Agreement, the Disclosure Schedule, any supplement to the Disclosure Schedule, the certificates delivered pursuant to Section 2.7(a) or otherwise in connection with the Contemplated Transactions contains any untrue statement or omits to state a material fact necessary to make any of them, in light of the circumstances in which it was made, not misleading. (b) No Seller or either Shareholder has any Knowledge of any fact that has specific application to any Seller (other than general economic or industry conditions) and that may materially adversely affect the assets, business, prospects, financial condition or results of operations of Company or XIANMENG that has not been set forth in this Agreement or the Disclosure Schedule.

**3.31 DISC NORBERT DISC**, Inc. is a domestic international sales corporation and is a wholly-owned Subsidiary of Company, duly organized or formed, under the laws of Nevada and pursuant to Section 992 of the Code ("DISC"). DISC has no material assets, property, liabilities or operations other than those described on Schedule 3.31. None of the Assets are owned or held by or ever have been owned or held by DISC.

**3.32** [\*\*\*] With respect to the Company's obligations to [\*\*\*], including any inability to fulfill or perform obligations that may result from the condition described in Schedule 3.15 of the Disclosure Schedule [\*\*\*] (a) The Company has, and Buyer will have, no special product priority or preference obligations to either [\*\*\*] (b) The Company has, and Buyer will have, no liability to [\*\*\*] for any money damages, including any incidental or consequential damages, or any monetary penalties; (c) Neither [\*\*\*] have the contractual right to specifically enforce [\*\*\*] 4. Representations and Warranties of Buyer Buyer represents and warrants to Seller Parties as follows: THE SYMBOL [\*\*\*] IS USED TO INDICATE THAT A PORTION OF THE EXHIBIT HAS BEEN OMITTED AND FILED SEPARATELY WITH THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTION.56

**4.1 ORGANIZATION AND GOOD STANDING** Inquilabs is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, with full corporate power and authority to conduct its business as it is now conducted. Inquilabs China is a wholly foreign owned enterprise in the process of being formed under the laws of the Peoples Republic of China and upon formation and satisfaction of the conditions set forth in Section 7.15 will have full company power and authority to conduct its business.

**4.2 AUTHORITY; NO CONFLICT** (a) This Agreement constitutes the legal, valid and binding obligation of each Buyer, enforceable against each Buyer in accordance with its terms. Upon the execution and delivery by each Buyer of the Assignment and Assumption Agreement, the Escrow Agreement, the Employment Agreements, and each other agreement, document and instrument to be executed or delivered by Buyer at Closing (collectively, the "Buyers' Closing Documents"), each of the Buyers' Closing Documents will constitute the legal, valid and binding obligation, respectively, of each Buyer, enforceable against each Buyer in accordance with its respective terms. Each Buyer has the absolute and unrestricted, right, power and authority to execute and deliver this Agreement and the Buyers' Closing Documents and to perform its respective obligations under this Agreement and the Buyers' Closing Documents, and such action has been duly authorized by all necessary corporate action. (b) Neither the execution and delivery of this Agreement, any of Buyers' Closing Documents, by either Buyer nor the consummation or performance of any of the Contemplated Transactions by either Buyer will give any Person the right to prevent, delay or otherwise interfere with any of the Contemplated Transactions pursuant to: (i) any provision of either Buyer's Governing Documents; (ii) any resolution adopted by the board of directors or the shareholders of either Buyer; or (iii) any Legal Requirement or Order to which either Buyer may be subject.

**4.3 [INTENTIONALLY OMITTED]**

**4.4 BROKERS OR FINDERS** Neither Buyer nor any of its Representatives have incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with the Contemplated Transactions, except for its agreement with JPMorgan, whose fees and expenses will be paid by Buyer.

**4.5 AVAILABLE FUNDS** The cash available to Buyers after taking into account all anticipated uses, will be sufficient to pay all amounts at Closing and consummate the contemplated transactions promptly in accordance with their terms.

**5. Covenants of Seller Prior to Closing**

**5.1 ACCESS AND INVESTIGATION** Between the date of this Agreement and the Closing Date, and upon reasonable advance notice received from Buyer, Sellers shall and Shareholders shall cause Sellers to (a) afford Buyer and its Representatives full and free access, during regular business hours, to Sellers' personnel, properties (including subsurface testing), Contracts, Governmental Authorizations, books and Records and other documents and data, such rights of access to be exercised in a manner that does not unreasonably interfere with the operations of Sellers; (b) furnish Buyer with copies of all such Contracts, Governmental Authorizations, books and Records and other existing documents and data as Buyer may reasonably request; (c) furnish Buyer with such additional financial, operating and other relevant data and information as Buyer may reasonably request; and (d) otherwise cooperate and assist, to the extent reasonably requested by Buyer, with Buyer's investigation of the properties, assets and financial condition related to Company or F533. In addition, Buyer shall have the right to have the Real Property and Tangible Personal Property inspected, at Buyer's sole cost and expense, for purposes of determining the physical condition and legal characteristics of the Real Property, Facilities and Tangible Personal Property. In the event subsurface or other destructive testing is recommended based on any such inspection, Buyer shall be permitted to have the same performed at its costs and expense.

**5.2 OPERATION OF THE BUSINESS OF SELLER** Between the date of this Agreement and the Closing, Seller Parties each shall cause each Seller to: (a) conduct its business only in the Ordinary Course of Business; (b) except as otherwise directed by Buyer in writing, and without making any commitment on Buyer's behalf, use its Best Efforts to preserve intact its current business organization, keep available the services of its officers, employees and agents and maintain its relations and good will with suppliers, customers, landlords, creditors, employees, agents and others having business relationships with it; (c) confer with Buyer prior to implementing operational decisions of a material nature; (d) otherwise report periodically to Buyer concerning the status of its business, operations and finances; (e) make no material changes in management personnel without prior consultation with Buyer; (f) maintain the Assets in a state of repair and condition that complies with Legal Requirements, satisfies the Current Production Output Requirements and is consistent with the requirements and normal conduct of Company's and XIANMENG's businesses; (g) keep in full force and effect, without amendment, all material rights relating to Company's and XIANMENG's businesses; (h) comply with all Legal Requirements and contractual obligations applicable to the operations of the Business and the Howard Street Property; (i) continue in full force and effect the insurance coverage under the policies set forth in Schedule 3.21(a); (j) except as required to comply with ERISA or to maintain qualification under Section 401(a) of the Code, not amend, modify or terminate any Employee Plan without the express written consent of Buyer, and except as required under the provisions of any Employee Plan, not make any contributions to or with respect to any Employee Plan without the express written consent of Buyer, provided that Company shall contribute that amount of cash to each Employee Plan necessary to fully fund all of the benefit liabilities of such Employee Plan on a plan-termination basis as of the Closing Date; (k) cooperate with Buyer and assist Buyer in identifying the Governmental Authorizations required by Buyer to operate the Business from and after the Closing Date and either transferring existing Governmental Authorizations of Company or XIANMENG to Buyer, where permissible, or obtaining new Governmental Authorizations for Buyer; (l) upon request from time to time, execute and deliver all documents, and do all other acts that may be reasonably necessary or desirable in the opinion of Buyer to consummate the Contemplated Transactions, all without further consideration; and (m) maintain all books and Records of Sellers relating to Sellers' business in the Ordinary Course of Business. (n) maintain fire and casualty insurance with respect to all Improvements, with coverages in amounts sufficient to cover the replacement cost of the Improvements.

**5.3 NEGATIVE COVENANT** Except as otherwise expressly permitted herein, between the date of this Agreement and the Closing Date, neither Company, XIANMENG nor Shareholders shall permit Company or XIANMENG to, without the prior written Consent of Buyer, (a) take any affirmative action, or fail to take any reasonable action within its control, as a result of which any of the changes or events listed in Sections 3.15 or 3.19 occur or would be likely to occur; (b) make any modification to any material Contract or Governmental Authorization; (c) enter into any compromise or settlement of any litigation, proceeding or governmental investigation relating to the Assets, the Business or the Assumed Liabilities; (d) sell, lease, license, encumber, pledge or otherwise surrender, relinquish or dispose of any of the Assets (including, without limitation, any Real Property), except for the sale of Inventory in the Ordinary Course of Business of the Company; (e) except in accordance with the59

Construction Agreement (subject to the approval of Buyer with respect to any amendment thereto) remodel or make any material alteration to any Facility without in each instance obtaining the prior written consent of Buyer; or (f) commit or agree to do any of the foregoing.

**5.4 REQUIRED APPROVALS** As promptly as practicable after the date of this Agreement, Seller Parties shall make all filings required by Legal Requirements to be made by them in order to consummate the Contemplated Transactions (including all filings under the HSR Act). Company, XIANMENG and Shareholders also shall cooperate with Buyer and its Representatives with respect to all filings that Buyer elects to make or, pursuant to Legal Requirements, shall be required to make in connection with the Contemplated Transactions. Seller Parties also shall cooperate with Buyer and its Representatives in obtaining all Material Consents (including taking all actions requested by Buyer to cause early termination of any applicable waiting period under the HSR Act).

**5.5 NOTIFICATION** Between the date of this Agreement and the Closing, Seller Parties shall promptly notify Buyer in writing if any of them becomes aware of (a) any fact or condition that causes or constitutes a Breach of any of Seller Parties' representations and warranties made as of the date of this Agreement or (b) the occurrence after the date of this Agreement of any fact or condition that would or be reasonably likely to (except as expressly contemplated by this Agreement) cause or constitute a Breach of any such representation or warranty had that representation or warranty been made as of the time of the occurrence of, or Seller Parties' discovery of, such fact or condition. Should any such fact or condition require any change to the Disclosure Schedule, the affected Seller Party shall promptly deliver to Buyer a supplement to the Disclosure Schedule specifying such change. Such delivery shall not affect any rights of Buyer under Section 9.2 and Article 11. During the same period, Seller Parties also shall promptly notify Buyer of the occurrence of any Breach of any covenant of Seller Parties in this Article 5 or of the occurrence of any event that may make the satisfaction of the conditions in Article 7 impossible or unlikely.

**5.6 NO NEGOTIATION** Until such time as this Agreement shall be terminated pursuant to Section 9.1, none of the Seller Parties shall directly or indirectly solicit, initiate, encourage, discuss or support any inquiry or proposal from, discuss or negotiate with, provide any information to or consider the merits of any inquiry or proposal from any Person (other than Buyer) relating to any business combination transaction involving Company, XIANMENG or the Assets, including without limitation the sale by Shareholders of Company's stock, sale by Company of XIANMENG's equity interests, the merger or consolidation of Company or XIANMENG or the sale of Company's or XIANMENG's business or any of the Assets (other than in the Ordinary Course of Business). Seller Parties shall notify Buyer of any such inquiry or proposal within twenty-four (24) hours of receipt or awareness of the same by Seller Parties, including the name/identity of the interested party(ies) including the Person who controls such party and the terms and conditions and other related information with respect thereto.

**5.7 BEST EFFORT** Seller Parties shall use their Best Efforts to obtain the transfer to Buyer of the Governmental Authorization listed on Schedule 7.3, the consents to the transfer to Buyer of the Acquired Contracts listed on Schedule 2.1(e) and the consents set forth on Schedule 3.2(c).

**5.8 INTERIM FINANCIAL STATEMENTS** Until the Closing Date, Seller shall deliver to Buyer within fifteen (15) days after the end of each month a copy of the balance sheet and income statement of the Company and XIANMENG for such month prepared in a manner and containing information consistent with Company's and XIANMENG's current practices and certified by Company's controller as to compliance with Section 3.4.

**5.9 PAYMENT OF LIABILITIES** Each of Company and XIANMENG shall pay or otherwise satisfy in the Ordinary Course of Business all of its Liabilities and obligations. Buyer and Sellers hereby waive compliance with any applicable bulk-transfer provisions of the Uniform Commercial Code (or any similar law) ("Bulk Sales Laws") in connection with the Contemplated Transactions.

**5.10 HART SCOTT RODINO** Seller Parties shall (i) within 5 Business Days of the date hereof file the Premerger Notification Report required under the HSR Act, including, if so requested by Buyer, a request for early termination, (ii) promptly respond to any request from a Governmental Body pursuant thereto, and (iii) cooperate with Buyer in order to comply with the HSR Act.

**5.11 [ INTENTIONALLY OMITTED]**

**5.12 [\*\*\*]** Prior to the Closing, but not until after Buyer files its Form 8-K with the Securities Exchange Commission publicly announcing the existence of this Agreement, Seller Parties shall use their Best Efforts to obtain the consent of [\*\*\*] for the assignment by Company of its right to [\*\*\*] owned by [\*\*\*]

**5.13 USE OF NORBERT NAME** Seller Parties agree that Buyer shall have the right to use the name "Norbert Microchip, a division of INQUILABS Corporation" in the Business from and after the Effective Time, until the fifth (5 th ) anniversary of the Closing. Company agrees to take such further and other actions reasonably requested by Buyer, without any expense to Buyer, in order to permit and effect such use by Buyer. Seller Parties agree that none of them will use the name "Norbert Microchip" or any name confusingly similar to such name during such five (5) year period following Closing. Without limiting the foregoing, XIANMENG agrees to change its name to a name wholly dissimilar to its present name effective as of the Closing.

**5.14 [\*\*\*]** THE SYMBOL [\*\*\*] IS USED TO INDICATE THAT A PORTION OF THE EXHIBIT HAS BEEN OMITTED AND FILED SEPARATELY WITH THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTION. Company agrees that it will promptly, but in no event later than three (3) business days after the date of this Agreement, file a [\*\*\*] and pay any applicable penalties, fines and fees related thereto, and Company shall take all other actions reasonably requested by Buyer to mitigate the consequences of [\*\*\*]. Company shall submit a draft of the [\*\*\*] to Buyer for Buyer's reasonable review and approval prior to the filing of the [\*\*\*]. Following the filing of the [\*\*\*] with [\*\*\*], Company shall promptly furnish Buyer with copies of all communications received by Company from [\*\*\*] or [\*\*\*] with respect to the [\*\*\*].

**5.15 CONSTRUCTION AGREEMENT CHANGE ORDER** Neither Seller shall authorize any Change Order or Change Directive (including without limitation, Change Orders and/or Change Directives that have or would have the affect of increasing or modifying the GMP, Schedule of Work or Work) without in each instance Buyer's written consent, which consent, in the case of a Change Order or Change Directive that has or would have the affect of increasing or modifying the GMP, Schedule of Work or Work, may be withheld or granted in Buyer's sole discretion, and in all other cases shall not be unreasonably withheld. For purposes of this Section 5.15, the terms "Change Order," "Change Directive," "GMP," "Schedule of Work" and "Work" shall have the meanings assigned to them in the Construction Agreement.

**6. Covenants of Buyer Prior to Closing**

**6.1 REQUIRED APPROVALS** Promptly after the date of this Agreement, Buyer shall make, or cause to be made, all filings required by Legal Requirements (including all filings under the HSR Act) to be made by it to consummate the Contemplated Transactions. Buyer also shall cooperate, with Seller (a) with respect to all filings Seller shall be required by Legal Requirements to make and (b) in obtaining all Consents identified in Schedule 3.2(c), provided, however, that Buyer shall not be required to dispose of or make any change to its business, expend any funds (other than the filing fees under HSR Act) or incur any other burden in order to comply with this Section 6.1.

**6.2 HART SCOTT RODINO** Buyer shall (i) within 5 Business Days of the date hereof, file the Premerger Notification Report required under the HSR Act, (ii) promptly respond to any request from a Governmental Body pursuant thereto, and (iii) cooperate with Seller Parties in order to comply with the HSR Act.

**6.3 COOPERATION REGARDING** [\*\*\*] THE SYMBOL [\*\*\*] IS USED TO INDICATE THAT A PORTION OF THE EXHIBIT HAS BEEN OMITTED AND FILED SEPARATELY WITH THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTION.

Buyer will cooperate with Company in seeking [\*\*\*] consent pursuant to Section 5.12 , provided that Buyer shall not be required to incur any cost or expense or materially change the terms of [\*\*\*] as existed prior to Closing.

**6.4 HOWARD STREET EXPANSION**. Subject to receipt of payment confirmation pursuant to Section 2.7(a)(xviii), Buyer shall reimburse Company, on a dollar-for-dollar basis, for all costs and expenses related to the expansion of the Howard Street Facility, incurred by Company during the time period commencing on January 1, 2006 and ending on June 22, 2006, not to exceed $648,000 ("Howard Street Costs").

**7. Conditions Precedent** to Buyer's Obligation to Close Buyer's obligation to purchase the Assets and to take the other actions required to be taken by Buyer at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Buyer, in whole or in part):

**7.1 ACCURACY OF REPRESENTATIONS** (a) All of Seller Parties' representations and warranties in this Agreement (considered collectively), and each of these representations and warranties (considered individually), shall have been accurate in all material respects as of the date of this Agreement, and shall be accurate in all material respects as of the time of the Closing as if then made, without giving effect to any supplement to the Disclosure Schedule. (b) Each of the representations and warranties in Sections 3.2(a) and 3.4, and each of the representations and warranties in this Agreement that contains an express materiality qualification, shall have been accurate in all respects as of the date of this Agreement, and shall be accurate in all respects as of the time of the Closing as if then made, without giving effect to any supplement to the Disclosure Schedule. 7.2 SELLER PARTIES' PERFORMANCE All of the covenants and obligations that Seller Parties are required to perform or to comply with pursuant to this Agreement at or prior to the Closing (considered collectively), and each of these covenants and obligations (considered individually), shall have been duly performed and complied with.

**7.3 CONSENTS** Each of the Governmental Authorizations and Consents identified in Schedule 7.3 (the "Material Consents") shall have been obtained and shall be in full force and effect.

**7.4 ADDITIONAL DOCUMENTS** Seller Parties shall have caused the documents and instruments required by Section 2.7(a) and the following documents to be delivered (or tendered subject only to Closing) to Buyer: THE SYMBOL [\*\*\*] IS USED TO INDICATE THAT A PORTION OF THE EXHIBIT HAS BEEN OMITTED AND FILED SEPARATELY WITH THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTION.

(a) Opinions of Lametti, Marrrafin Co., L.P.A. and Chinese counsel to XIANMENG, which counsel shall be reasonably satisfactory to Buyer, dated the Closing Date, in form and substance satisfactory to Buyer and its counsel (the opinion of Chinese counsel shall be limited to organization of XIANMENG, due authorization and enforceability of the Agreement and the Contemplated Transactions);

(b) The articles of incorporation and all amendments thereto of Company, duly certified as of a date within 30 days prior to Closing by the Secretary of State of Ohio;

(c) The regulations of Company, duly certified as of the Closing Date by the Secretary of Company;

(d) The articles of association of XIANMENG, duly certified as of the Closing Date by a duly appointed and serving officer of XIANMENG;

(e) A copy of the resolutions of the board of directors and shareholders of Company authorizing the execution and delivery of this Agreement and the consummation of the Contemplated Transactions, certified as true, accurate and complete by the Secretary of Company;

(f) A copy of the resolutions of the members of F533 authorizing the execution and delivery of this Agreement and the consummation of the Contemplated Transactions, certified as true, accurate and complete by a member of F533;

(g) Releases of all Encumbrances on the Assets, other than Permitted Encumbrances, including without limitation releases of each mortgage of record and reconveyances of each deed of trust with respect to each parcel of real property included in the Assets;

(h) Certificates dated as of a date not earlier than ten (10) days prior to the Closing as to the good standing of Company and F533, executed by the appropriate officials of the State of Ohio and each jurisdiction in which Company or F533 is licensed or qualified to do business as a foreign corporation as specified in Schedule 3.1(a);

(i) A copy of the current business license of XIANMENG, certified as true, accurate and complete by a duly appointed officer of XIANMENG, and chopped with the chop of the local (XIANMENG New District) Administration of Industry and Commerce;

(j) A copy of all resolutions and company actions of XIANMENG, necessary to approve this Agreement and the consummation of the Contemplated Transactions, certified as true, accurate and complete by an officer of XIANMENG; and (k) Such other documents as Buyer may or its counsel may reasonably request.

**7.5 NO PROCEEDINGS** Since the date of this Agreement, there shall not have been commenced or threatened against Buyer, or against any Related Person of Buyer, any Proceeding (a) involving any challenge to, or seeking material damages or other relief in connection with, any of the Contemplated Transactions (b) that may have the effect of preventing, delaying, making illegal, imposing material limitations or conditions on or otherwise materially interfering with any of the Contemplated Transactions.

**7.6 [INTENTIONALLY OMITTED**]

**7.7 TITLE INSURANCE** Buyer shall have received unconditional and binding commitments to issue policies of title insurance (the "Title Commitment") from a title insurer reasonably acceptable to it, ("Title Insurer") to insure fee simple, or as the case may be, leasehold title to all Land, Improvements, insurable appurtenances, if any, and Ground Lease Property, in an aggregate amount equal to the amount of the Purchase Price allocated to the Real Property, deleting all requirements listed in ALTA Schedule B-1, amending the effective date to the Closing Date and time of Closing with no exception for the gap between Closing and recordation, deleting or insuring over all so called "standard exceptions" and all exceptions that pertain to Encumbrances, Encumbrances involving any monetary claim or lien against or with respect to the Real Property, or any portion thereof, or Encumbrances that are not Permitted Real Estate Encumbrances, attaching all endorsements required by Buyer, and otherwise in form and substance satisfactory to Buyer in its sole discretion.

**7.8 SURVEY** Buyer shall have received a survey with respect to each tract or parcel of Real Property and all Improvements thereon (each, a "Survey") in form and substance reasonably satisfactory to Buyer and made by a land surveyor licensed in by the State of Ohio and bearing a certificate, signed and sealed by the surveyor, certifying to Buyer and the Title Insurer that: (a) each such survey was made (A) in accordance with "Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys," and includes Items 1-4, 6, 7(a), 7(b)(1), 7(c), 8-11 and 13 of Table A thereof, and (B) pursuant to the Accuracy Standards (as adopted by ALTA and ACSM and in effect on the date of said certificate); (b) each such Survey reflects the location of all building lines, easements and areas affected by any recorded documents affecting such Real Property as discussed in the Title Commitment applicable thereto, as well as any encroachments onto the Real Property or by the Improvements onto any easements area or adjoining property. No Survey shall include or identify any gaps, gores, encroachments, defects or other matters adversely affecting the title to the Real Property or the Improvements identified therein, other than Permitted Real Estate Encumbrances.

**7.9 ZONING** Buyer shall have received written confirmation from applicable Governmental Bodies, as well as any other written confirmation that Buyer determines is necessary or desirable, that the Real Property and the Improvements, and the use thereof for the various purposes for which they are presently being used, is permitted under, and is in compliance with, all applicable zoning Legal Requirements and are not subject to "permitted nonconforming" use or structure classifications and are otherwise in compliance with all other applicable Legal Requirements, including, without limitation, those pertaining to building requirements and the disabled.

**7.10 GOVERNMENTAL AUTHORIZATIONS** Buyer shall have received such Governmental Authorizations as are listed on Schedule 7.3 to allow Buyer to own and operate the Assets from and after the Closing.

**7.11 ENVIRONMENTAL REPORT** Buyer shall have received an environmental site assessment report from ERM with respect to the Facilities and the facility in which XIANMENG operates its Business, which report shall be acceptable in form and substance to Buyer in its reasonable discretion, and shall not set forth any material adverse findings with respect to the Real Property, Land or Facilities.

**7.12 EMPLOYEES** (a) Buyer and [\*\*\*] shall have entered into the Employment Agreement. (b) Substantially all other employees of Company (other than those employed at the Lapato Road Property) and all employees of XIANMENG shall be available for hiring by Buyer, in its sole discretion, on and as of the Closing Date.

**7.13 NONCOMPETITION AGREEMENTS** Each Seller Party shall have executed and delivered a Noncompetition Agreement.

**7.14 NO INJUNCTION** There shall not be in effect any Legal Requirement or any injunction or other order that (a) prohibits the consummation of the contemplated transactions and (b) has been adopted or issues, or has otherwise become effective, since the date of this Agreement.

**7.15 Inquilabs CHINA** Buyer and/or Inquilabs China shall have received all necessary Governmental Authorizations to acquire, own, operate and conduct the business, assets, and operations previously conducted by XIANMENG, including but not limited to: (a) business licenses set forth on Schedule 7.15(a), and (b) approval of the sale and purchase of the Assets of XIANMENG and the transactions contemplated by this Agreement pursuant to all Chinese Legal Requirements, including but not limited to the approval of the HarbinDepartment of Foreign Economic Relations and Trade.

**7.16 MATERIAL ADVERSE CHANGE**

THE SYMBOL [\*\*\*] IS USED TO INDICATE THAT A PORTION OF THE EXHIBIT HAS BEEN OMITTED AND FILED SEPARATELY WITH THE COMMISSION. CONFIDENTIAL TREATMENT HAS BEEN REQUESTED WITH RESPECT TO THE OMITTED PORTION.66

(a) There shall have been no material adverse change after the date hereof in the Assets or Business or in the business, operations, prospects or condition (financial or otherwise) of Company or XIANMENG.

(b) There shall have been no material adverse change after the date hereof in the business, operations, prospects or condition (financial or otherwise) of Buyer. 7.17 [INTENTIONALLY OMITTED]

**7.18 HART SCOTT RODINO WAITING PERIOD** The waiting period under the HSR Act shall have expired or been terminated.

**7.19 [\*\*\*]** Company shall have made the [\*\*\*] and taken all reasonable steps to mitigate the consequences of [\*\*\*] and such other actions as provided in Section 5.14.

**7.20 XIANMENG LEASE** The lease term of the Intent Agreement on the Leasing of Ready-built Factory Building dated October 8, 2003 between XIANMENG New & Hi-tech Development Zone Export Processing Zone and Company (the "XIANMENG Lease") shall have been extended for a period of at least six (6) months beyond its current expiration/termination date through May 14, 2007, which extension shall not materially modify the other terms and conditions of the XIANMENG Lease, as determined by Buyer in its reasonable judgment. Seller Parties shall deliver to Buyer a true, complete and accurate executed English language copy of such extension.

**7.21 [INTENTIONALLY OMITTED]**

**8. Conditions Precedent** to Seller Parties' Obligation to Close Seller Parties' obligation to sell the Assets and to take the other actions required to be taken by them at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Seller in whole or in part):

**8.1 ACCURACY OF REPRESENTATIONS** All of Buyer's representations and warranties in this Agreement (considered collectively), and each of these representations and warranties (considered individually), shall have been accurate in all material respects as of the date of this Agreement and shall be accurate in all material respects as of the time of the Closing as if then made.

**8.2 BUYER'S PERFORMANCE** All of the covenants and obligations that Buyer is required to perform or to comply with pursuant to this Agreement at or prior to the Closing (considered collectively), and each of these covenants and obligations (considered individually), shall have been performed and complied with in all material respects.

**8.3 CONSENTS** Each of the Consents identified in Schedule 8.3 shall have been obtained and shall be in full force and effect.

**8.4 ADDITIONAL DOCUMENTS** Buyer shall have caused the documents and instruments required by Section 2.7(b) and the following documents to be delivered (or tendered subject only to Closing) to Seller Parties:

(a) an opinion of Langacker& Gucci LLP, dated the Closing Date, in form and substance satisfactory to Seller Parties and their counsel; and

(b) such other documents as Seller Parties or its counsel may reasonably request.

**8.5 NO INJUNCTION** There shall not be in effect any Legal Requirement or any injunction or other Order that

(a) prohibits the consummation of the Contemplated Transactions and

(b) has been adopted or issued, or has otherwise become effective, since the date of this Agreement.

**8.6 NO PROCEEDINGS** Since the date of this Agreement, there shall not have been commenced or threatened against a Seller Party or against any Related Person of Seller Party, any Proceeding

(a) involving any challenge to, or seeking material damages or other relief in connection with, any of the Contemplated Transactions or

(b) that may have the effect of preventing, delaying, making illegal, imposing material limitations or conditions on or otherwise materially interfering with any of the Contemplated Transactions.

**8.7 [INTENTIONALLY OMITTED]**

**8.8 HART SCOTT RODINO WAITING PERIOD** The waiting period under the HSR Act shall have expired or been terminated.

**9. Termination**

**9.1 TERMINATION EVENTS** By notice given prior to or at the Closing, subject to Section 9.2, this Agreement may be terminated as follows:

(a) by Buyer if a material Breach of any provision of this Agreement has been committed by any Seller Party and such Breach has not been waived by Buyer;

(b) by Seller Parties if a material Breach of any provision of this Agreement has been committed by Buyer and such Breach has not been waived by Seller Parties;

(c) by Buyer if any condition in Article 7 has not been satisfied as of the date specified for Closing in the first sentence of Section 2.6 or if satisfaction of such a condition by such date is or becomes impossible (other than through the failure of Buyer to comply with its obligations under this Agreement), and Buyer has not waived such condition on or before such date;

(d) by Seller Parties if any condition in Article 8 has not been satisfied as of the date specified for Closing in the first sentence of Section 2.6 or if satisfaction of such a condition by such date is or becomes impossible (other than through the failure of any Seller Party to comply with their obligations under this Agreement), and Seller Parties have not waived such condition on or before such date;

(e) by mutual consent of Buyer and Seller Parties;

(f) by Buyer if the Closing has not occurred on or before December 9, 2006, or such later date as the parties may agree upon, unless the Buyer is in material Breach of this Agreement;

(g) by Seller Parties if the Closing has not occurred on or before December 9, 2006, or such later date as the parties may agree upon, unless any Seller Party is in material Breach of this Agreement; or

(h) by Buyer in accordance with Section 13.17.

**9.2 EFFECT OF TERMINATION** Each party's right of termination under Section 9.1 is in addition to any other rights it may have under this Agreement or otherwise, and the exercise of such right of termination will not be an election of remedies. If this Agreement is terminated pursuant to Section 9.1, all obligations of the parties under this Agreement will terminate, except that the obligations of the parties in this Section 9.2 and Articles 12 and 13 (except for those in Section 13.5) will survive, provided, however, that, if this Agreement is terminated because of a Breach of this Agreement by the nonterminating party or because one or more of the conditions to the terminating party's obligations under this Agreement is not satisfied as a result of the party's failure to comply with its obligations under this Agreement, the terminating party's right to pursue all legal remedies will survive such termination unimpaired.

**10. Additional Covenants**

**10.1 EMPLOYEES AND EMPLOYEE BENEFITS**

(a) Information on Active Employees For the purpose of this Agreement, the term "Active Employees" shall mean all employees employed on the Closing Date by Company or XIANMENG in connection with the operation of the Business (which employees as of the date hereof are listed on Schedule 10.1, which schedule Buyer agrees to update as of Closing), including employees on temporary leave of absence, including family and/or medical leave, military leave, temporary disability or sick leave, but excluding employees on long-term disability leave and employees who have been exclusively employed at the Lapato Road Property performing work unrelated to the Business.

(b) Employment of Active Employees by Buyer.

(i) Buyer is not obligated to hire any Active Employee but may interview all Active Employees. Buyer will provide Company with a list of Active Employees to whom Buyer has made an offer of employment that has been accepted to be effective on the Closing Date (the "Hired Active Employees"). Subject to Legal Requirements, Buyer will have reasonable access to the Facilities and personnel Records (including performance appraisals, disciplinary actions, grievances and medical Records) of Company and XIANMENG for the purpose of preparing for and conducting employment interviews with all Active Employees and will conduct the interviews as expeditiously as possible prior to the Closing Date. Access will be provided by Company and XIANMENG upon reasonable prior notice during normal business hours. Effective immediately before the Closing, Company and XIANMENG will terminate the employment of all of its Active Employees.

(ii) It is understood and agreed that (A) Buyer's expressed intention to extend offers of employment as set forth in this section shall not constitute any commitment, contract or understanding (expressed or implied) of any obligation on the part of Buyer to a post-Closing employment relationship of any fixed term or duration or upon any terms or conditions other than those that Buyer may establish pursuant to individual offers of employment, and (B) employment offered by Buyer is "at will" and may be terminated by Buyer or by an employee at any time for any reason (subject to any written commitments to the contrary made by Buyer or an employee and Legal Requirements). Nothing in this Agreement shall be deemed to prevent or restrict in any way the right of Buyer to terminate, reassign, promote or demote any of the Hired Active Employees after the Closing or to change adversely or favorably the title, powers, duties, responsibilities, functions, locations, salaries, other compensation or terms or conditions of employment of such employees.

(c) Salaries and Benefits

(i) Company or XIANMENG, as the case may be, shall be responsible for (A) the payment of all wages and other remuneration due to Active Employees with respect to their services as employees of Company or XIANMENG through the close of business on the Closing Date, including pro rata bonus payments earned prior to the Closing Date; (B) the payment of any termination or severance payments and the provision of health plan continuation coverage in accordance with the requirements of COBRA and Sections 601 through 608 of ERISA; and (C) any and all payments to employees required under the WARN Act.

(ii) Company or XIANMENG, as the case may be, shall be liable for any claims made or incurred by Active Employees and their beneficiaries under the Employee Plans.

(d) Company's Retirement Plans.

(i) All Hired Active Employees who are participants in Company's retirement plans shall retain their accrued benefits under Company's retirement plans as of the Closing Date, and Company (or Company's retirement plans) shall retain sole liability for the payment of such benefits as and when such Hired Active Employees become eligible therefor under such plans. All Hired Active Employees shall become fully vested in their accrued benefits under Company's Employee Plans that are intended to be qualified under Section 401(a) of the Code as of the Closing Date, and Company will so amend such plans if necessary to achieve this result.

(e) No Transfer of Assets. Neither Company nor Shareholders nor their respective Related Persons will make any transfer of pension or other employee benefit plan assets to Buyer.

(f) Buyer will set its own initial terms and conditions of employment for the Hired Active Employees and others it may hire, including work rules, benefits and salary and wage structure, all as permitted by law. Buyer is not obligated to assume any such matters under this Agreement. Company or XIANMENG, as the case may be, shall be solely liable for any severance payment required to be made to its employees due to the Contemplated Transactions.

(g) General Employee Provisions.

(i) Company or XIANMENG, as the case may be, shall give any notices required by Legal Requirements and take whatever other actions with respect to the plans, programs and policies described in this Section 10.1 as may be necessary to carry out the arrangements described in this Section 10.1.

(ii) Company or XIANMENG, as the case may be, shall provide Buyer with copies of such plan documents and summary plan descriptions, employee data or other information as may be reasonably required to carry out the arrangements described in this Section 10.1.

(iii) If any of the arrangements described in this Section 10.1 are determined by the IRS or other Governmental Body to be prohibited by law, Company or XIANMENG, as the case may be, shall modify such arrangements to as closely as possible reflect their expressed intent and retain the allocation of economic benefits and burdens to the parties contemplated herein in a manner that is not prohibited by law.

(iv) Company or XIANMENG, as the case may be, shall provide Buyer with completed I-9 forms and attachments with respect to all Hired Active Employees, except for such employees as Company or XIANMENG, as the case may be, certifies in writing to Buyer are exempt from such requirement.

(v) Buyer shall not have any responsibility, liability or obligation, whether to Active Employees, former employees, their beneficiaries or to any other Person, with respect to any employee benefit plans, practices, programs or arrangements (including the establishment, operation or termination thereof and the notification and provision of COBRA coverage extension) maintained by Company or XIANMENG, as the case may be.

(h) Covenant Not To Hire -- Seller Parties. Each Seller Party covenants and agrees not to hire or solicit for hire, directly or indirectly, any Active Employees as provided in the Noncompetition Agreements.

(i) Covenant Not To Hire -- Buyer. Buyer covenants and agrees not to hire or solicit for hire, directly or indirectly, any employee of Company employed exclusively at the Lapato Road Property as provided in the Noncompetition Agreements.

**10.2 PAYMENT OF ALL TAXES RESULTING FROM SALE OF ASSETS BY SELLER** Seller Parties shall pay in a timely manner all Taxes resulting from or payable in connection with the sale of the Assets pursuant to this Agreement, regardless of the Person on whom such Taxes are imposed by Legal Requirements.

**10.3 PAYMENT OF OTHER RETAINED LIABILITIES**

In addition to payment of Taxes pursuant to Section 10.2, Seller Parties shall timely pay, satisfy, discharge or make adequate provision for the timely payment, in full all of the Retained Liabilities and other Liabilities of Seller Parties under this Agreement. If any such Liabilities are not so paid or provided for, or if Buyer reasonably determines that failure to make any payments will impair Buyer's use or enjoyment of the Assets or conduct of the Business, Buyer may, at any time after the Closing Date, elect to make all such payments directly (but shall have no obligation to do so) and set off and deduct the full amount of all such payments from the then remaining funds held pursuant to the Escrow Agreement.

**10.4 INTENTIONALLY OMITTED**

**10.5 RESTRICTIONS ON CHANGE IN CONTROL AND DISSOLUTION OF COMPANY**

(a) For a period of five (5) years after the Closing Date, neither Company nor Shareholders shall, and Shareholders shall not cause or permit Company to, without the prior written consent of Buyer, which consent may be granted or withheld by Buyer in its sole discretion,

(i) merge Company with or into or consolidate Company with any Person,

(ii) sell all or substantially all of the assets of Company,

(iii) enter into any agreement (whether written or oral) the consummation of which would result in more than a majority of the voting power of Company being owned or controlled by any Person other than Shareholders,

(iv) effect a reorganization of Company or

(v) dissolve Company.

(b) For a period of two (2) years after the fifth anniversary of the Closing Date, neither Company nor Shareholders shall, and Shareholders shall not cause or permit Company to, without the prior written consent of Buyer, which consent may be granted or withheld by Buyer in its sole discretion,

(i) merge Company with or into or consolidate Company with any Person reasonably deemed to be a competitor of Buyer,

(ii) sell all or substantially all of the assets of Company to any Person reasonably deemed to be a competitor of Buyer, or

(iii) enter into any agreement (whether written or oral) the consummation of which would result in more than a majority of the voting power of Company being owned or controlled by any Person reasonably deemed to be a competitor of Buyer, provided however, that the Company may terminate the restrictions in this Section 10.5(b) after the fifth anniversary of the Closing Date by (x) terminating the License Agreement, (y) returning all intellectual property covered by the License Agreement to Buyer, including copies of all manuals, documents and other confidential information, and (z) entering into a confidentiality agreement with Buyer in a form reasonably acceptable to Buyer.

**10.6 REMOVING EXCLUDED ASSETS** On or before the Closing Date, Company and XIANMENG, as the case maybe, shall remove the Excluded Assets located at the Facilities and listed on Schedule 2.2(m). Such removal shall be done in such manner as to avoid any damage to the Facilities and other Assets and to avoid any disruption of the business operations to be conducted by Buyer after the Closing. Any damage to the Facilities or other Assets resulting from such removal shall be paid by Company at the Closing. Should Company or XIANMENG, as the case may be, fail to remove the Excluded Assets as required by this Section 10.5, Buyer shall have the right, but not the obligation,

(a) to remove the Excluded Assets at Company's or XIANMENG's, as the case may be, sole cost and expense;

(b) to store the Excluded Assets and to charge Company or XIANMENG, as the case may be, all storage costs associated therewith;

(c) to treat the Excluded Assets as unclaimed and to proceed to dispose of the same under the laws governing unclaimed property; or

(d) to exercise any other right or remedy conferred by this Agreement or otherwise available at law or in equity. Company or XIANMENG, as the case may be, shall promptly reimburse Buyer for all costs and expenses incurred by Buyer in connection with any Excluded Assets not removed by Company or XIANMENG, as the case may be, on or before the Closing Date. Sellers shall also not cause or permit any mechanics or similar liens to be filed against any Real Property as a result of any of the foregoing removal and repair of damage by or on behalf of either Seller.

**10.7 REPORTS AND RETURNS** Seller Parties shall promptly after the Closing prepare and file all reports and returns required by Legal Requirements relating to the business of Seller Parties as conducted using the Assets, to and including the Effective Time.

**10.8 ASSISTANCE IN PROCEEDINGS** Each party agrees to cooperate with the other party and its counsel in the contest or defense of, and make available its personnel and provide any testimony and access to its books and Records in connection with, any Proceeding involving or relating to

(a) any Contemplated Transaction or

(b) any action, activity, circumstance, condition, conduct, event, fact, failure to act, incident, occurrence, plan, practice, situation, status or transaction on or before the Closing Date involving any Seller Party, the Business or the Assets.

**10.9 CUSTOMER AND OTHER BUSINESS RELATIONSHIPS** After the Closing, Seller Parties will use Best Efforts to support Buyer in its efforts to continue and maintain for the benefit of Buyer those business relationships of Company existing prior to the Closing and relating to the Business, including relationships with lessors, employees, regulatory authorities, licensors, customers, suppliers and others, and Seller Parties will satisfy, or cause to be satisfied, the Retained Liabilities in a manner that is not detrimental to any of such relationships. Seller Parties will refer to Buyer all inquiries relating to the Business. No Seller Party nor any of Seller's officers, employees, agents or shareholders shall take any action that would tend to diminish the value of the Assets after the Closing or that would interfere with the business of Buyer to be engaged in after the Closing, including disparaging the name or business of Buyer.

**10.10 RETENTION OF AND ACCESS TO RECORDS** After the Closing Date, Buyer shall retain for a period equal to seven (7) years after Closing Date) those Records of Company and XIANMENG delivered to Buyer. Buyer also shall provide Seller Parties and their Representatives reasonable access thereto, during normal business hours and on at least three days' prior written notice, to enable them to prepare financial statements or tax returns. After the Closing Date, Seller Parties shall provide Buyer and its Representatives reasonable access to Records that are related to Excluded Assets or the Retained Business, during normal business hours and on at least three business days' prior written notice, for any reasonable business purpose related to the Business, the Assets and/or the Contemplated Transactions as specified by Buyer in such notice.

**10.11 PRODUCTION REPORTS** Within five (5) business days prior to the Closing Date, Company agrees to furnish to Buyer production logs relating to the silicon growers set forth on Schedule 3.10(b), signed by the President of the Company, certifying that

(i) such equipment has been operating at or in excess of the Current Production Output Requirements for the period beginning on the date of this Agreement through and including the date of such certificate and

(ii) such equipment is in compliance with the other provisions of this Agreement and

(iii) there is no unresolved warranty, service or other repair outstanding with respect to such equipment (the "Production Certification").

**10.12 WEBSITE REDIRECT** . Within five (5) business days after the Closing Date, Company and Buyer will mutually agree on a modification of its internet website for the purpose of redirecting to Buyer those Persons who visit Company's website for reasons related to the Business. Company agrees to maintain such notice and redirect in place for a period of 180 days following the Closing Date.

**10.13 FURTHER ASSURANCES** Subject to the proviso in Section 6.1, the parties shall cooperate reasonably with each other and with their respective Representatives in connection with any steps required to be taken as part of their respective obligations under this Agreement, and shall

(a) furnish upon request to each other such further information;

(b) execute and deliver to each other such other documents; and

(c) do such other acts and things, all as the other party may reasonably request for the purpose of carrying out the intent of this Agreement and the Contemplated Transactions. Without limiting the foregoing, Sellers shall, at the reasonable request of Buyer, provided that Sellers shall not be required to incur any expense (unless Buyer agrees to reimburse Sellers therefore), take such further and other action, including the execution of documents, necessary to more fully convey to and vest in Buyer title to the Assets, and to more effectively effect Buyer's use, possession and enjoyment of the Assets.

**10.14 UNEMPLOYMENT COMPENSATION** Buyer and Sellers agree that Buyer will make the necessary filings for the transfer to Buyer of the Unemployment Compensation experience rating currently held by the Facility located at the Howard Street Property. Sellers shall cooperate with, and provide assistance to the Buyer that is reasonably necessary to accomplish the Buyer becoming the successor-in-interest for purposes of the Unemployment Compensation experience rating, including but not limited to, the execution of any applications necessary to effectuate said successorship.

**10.15 WORKERS' COMPENSATION RATING** Buyer and Sellers agree that Buyer will make the necessary filings for the transfer to Buyer of the Workers' Compensation experience rating currently held by the Facility located at the Howard Street Property. Sellers shall cooperate with, and provide assistance to the Buyer that is reasonably necessary to accomplish the Buyer becoming the succeeding employer for purposes of the Workers' Compensation experience rating, including but not limited to, the execution of any applications necessary to effectuate said transfer.

**10.16 LICENSE** Company grants Buyer a limited license to use the text and information used in the Company's employees handbook for the purpose of adopting and creating and publishing employee policies and practices for the Business after the Effective Time. Company makes no representation or warranty to Buyer with respect to such material.

**10.17 OAKTREE LLC AGREEMENTS** The parties agree to use their respective Best Efforts to negotiate and execute amendments to each of the agreements between OAKTREE LLC and Company referenced in Schedule 3.20(a)(iii), items 6 and 7, in form and substance satisfactory to Buyer.

**11. Indemnification; Remedies**

**11.1 SURVIVAL** All representations, warranties, covenants and obligations in this Agreement, the Disclosure Schedule, the supplements to the Disclosure Schedule, the certificates delivered pursuant to Section 2.7 and any other certificate or document delivered pursuant to this Agreement shall survive the Closing and the consummation of the Contemplated Transactions until the date that is the first anniversary of the Closing Date, except that

(i) the representations and warranties in Sections 3.1, 3.2, 3.28, and 4 shall survive in perpetuity and shall not expire,

(ii) the representations and warranties in Sections 3.6, 3.9, 3.14, 3.22, 3.25(c)(i), 3.25(d)(i), 3.25(e)(i) and 3.32 and the matters referenced in Section 11.2(g) shall survive until the expiration of the applicable statute of limitations and

(iii) the representations and warranties in Section 3.25 shall survive until date that is the third anniversary of the Closing Date. The right to indemnification, reimbursement or other remedy based upon such representations, warranties, covenants and obligations shall not be affected by any investigation (including any environmental investigation or assessment) conducted with respect to, or any Knowledge acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this Agreement or the Closing Date, with respect to the accuracy inaccuracy of or compliance with any such representation, warranty, covenant or obligation. The waiver of any condition based upon the accuracy of any representation or warranty, or on the performance of or compliance with any covenant or obligation, will not affect the right to indemnification, reimbursement or other remedy based upon such representations, warranties, covenants and obligations.

**11.2 INDEMNIFICATION AND REIMNURSEMENT BY SELLER PARTIES** Subject to the provisions of Section 11.5, Seller Parties (other than MN and VM), jointly and severally, and MN and VM, severally as between themselves, agree to indemnify and hold harmless Buyer, and its Representatives, shareholders, subsidiaries and Related Persons (collectively, the "Buyer Indemnified Persons"), and will reimburse the Buyer Indemnified Persons for any loss, liability, claim, damage, expense (including costs of investigation and defense and reasonable attorneys' fees and expenses) or diminution of value, whether or not involving a Third-Party Claim (collectively, "Damages"), arising from or in connection with: (a) any Breach of any representation or warranty made by any Seller Party in

(i) this Agreement,

(ii) the Disclosure Schedule (as supplemented prior to Closing),

(iii) the certificates delivered pursuant to Section 2.7 (for this purpose, each such certificate will be deemed to have stated that Seller Parties' representations and warranties in this Agreement fulfill the requirements of Section 7.1 as of the Closing Date as if made on the Closing Date without giving effect to any supplement to the Disclosure Schedule),

(iv) any transfer instrument or

(v) any other certificate, document, writing or instrument delivered by any Seller Party pursuant to this Agreement;

(b) any Breach of any covenant or obligation of any Seller Party in this Agreement or in any other certificate, document, writing or instrument delivered by any Seller Party pursuant to this Agreement;

(c) any Liability other than the Assumed Liabilities;

(d) any brokerage or finder's fees or commissions or similar payments based upon any agreement or understanding made by any Person with any Seller Party (or any Person acting on their behalf) in connection with any of the Contemplated Transactions;

(e) any Retained Liabilities;

(f) any breach of Section 3.32, notwithstanding any disclosure(s) on Schedule 3.15 of the Disclosure Schedule or any other Schedule cross referencing such matters; or

(g) any Liability or expense arising out of or related to the disclosure in Schedule 3.10(a), item 2, except for Buyer's obligation to pay expenses related to the consolidation of the real property described in, and pursuant to, that certain side letter agreement, dated of even date herewith, by and among Buyer, F533 and Linetown 122, Ltd., an Ohio general partnership.

**11.3 [INTENTIONALLY OMITTED**].

**11.4 INDEMNIFICATION AND REIMBURSEMENT BY BUYER** Buyer will indemnify and hold harmless Seller Parties, and will reimburse Seller Parties, for any Damages arising from or in connection with:

(a) any Breach of any representation or warranty made by Buyer in this Agreement or in any certificate, document, writing or instrument delivered by Buyer pursuant to this Agreement;

(b) any Breach of any covenant or obligation of Buyer in this Agreement or in any other certificate, document, writing or instrument delivered by Buyer pursuant to this Agreement;

(c) any claim by any Person for brokerage or finder's fees or commissions or similar payments based upon any agreement or understanding made by such Person with Buyer (or any Person acting on Buyer's behalf) in connection with any of the Contemplated Transactions; or

(d) any Assumed Liabilities. Buyer's indemnification obligations shall not exceed an aggregate of Thirty five million dollars ($35,000,000); provided, however, that Buyer's indemnification obligations with respect to or in connection with the Assumed Liabilities and any fraud by Buyer shall have no limit.

**11.5 LIMITATIONS ON AMOUNT--SELLER PARTIES**

(a) Seller Parties shall have no liability (for indemnification or otherwise) with respect to claims under Section 11.2(a) unless and until the Damages of Buyer Indemnified Persons exceed One million seven hundred and fifty thousand Dollars ($1,750,000) (the "Threshold"), provided, however, that

(i) all claims under Section 11.2(a) by Buyer Indemnified Persons shall accrue in the aggregate until the Damages of all Buyer Indemnified Persons exceed the Threshold, and thereupon Seller Parties shall become obligated to indemnify Buyer Indemnified Persons for all Damages, including without limitation all amounts up to and including the Threshold amount and

(ii) with respect to any individual claim of Buyer asserted against Seller Party, no such claim shall be made hereunder or otherwise be taken into account in determining whether the Threshold in the previous clause (i) has been satisfied, unless and until an individual claim exceeds $25,000. This Section 11.5(a) will not apply to claims under Section 11.2(b) through (g), or to matters arising in respect of Sections 3.6, 3.9, 3.14, 3.22, 3.25(c)(i), 3.25(d)(i), 3.25(e)(i), 3.26, 3.27, 3.28 or 3.32, or to any Breach of any of Seller Parties' representations and warranties of which any Seller Party had Knowledge at any time prior to the date on which such representation and warranty is made or deemed to be made, or to any intentional Breach by any Seller Party of any covenant or obligation, or to fraud by any Seller Party.

(b) Seller Parties' indemnification obligations shall not exceed an aggregate of Thirty Five Million Dollars ($35,000,000); provided, however, that Seller Parties' indemnification obligation with respect to or in connection with

(i) any breach of the representations and warranties in Sections 3.9, 3.14 and 3.22 shall not exceed an aggregate of One Hundred and Seventy Five Million Dollars ($175,000,000),

(ii) any breach of the representations and warranties in Sections 3.25 (other than 3.25(c)(i), 3.25(d)(i) and 3.25(e)(i)), shall not exceed an aggregate of Fifty Dollars ($50,000,000) which limitation shall be separate and exclusive from the limitation set forth in the first clause of this Section 11.5(b) and set forth in the foregoing clause (i), and (iii) the Retained Liabilities, any matter pursuant to Section 11.2(c), Section 3.6 and the Excluded Assets shall have no limit. Notwithstanding the foregoing, in no event shall Seller Parties' aggregate indemnification obligations hereunder, other than for claims relating to Retained Liabilities, any matter pursuant to Section 11.2(c) or the Excluded Assets, exceed $175,000,000.

**11.6 [INTENTIONALLY OMITTED]**

**11.7 THIRD-PARTY** **CLAIMS**

(a) Promptly after receipt by a Person entitled to indemnity under Section 11.2 or 11.4 (an "Indemnified Person") of notice of the assertion of a Third-Party Claim against it, such Indemnified Person shall give notice to the Person obligated to indemnify under such Section (an "Indemnifying Person") of the assertion of such Third-Party Claim, provided that the failure to notify the Indemnifying Person will not relieve the Indemnifying Person of any liability that it may have to any Indemnified Person, except to the extent that the Indemnifying Person demonstrates that the defense of such Third Party Claim is materially prejudiced by the Indemnified Person's failure to give such notice.

(b) If an Indemnified Person gives notice to the Indemnifying Person pursuant to Section 11.7(a) of the assertion of a Third-Party Claim, the Indemnifying Person shall be entitled to participate in the defense of such Third-Party Claim and, to the extent that it wishes (unless

(i) the Indemnifying Person is also a Person against whom the Third-Party Claim is made and the Indemnified Person determines in good faith that joint representation would be inappropriate or

(ii) the Indemnifying Person fails to provide reasonable assurance to the Indemnified Person of its financial capacity to defend such Third-Party Claim and provide indemnification with respect to such Third-Party Claim), to assume the defense of such Third-Party Claim with counsel satisfactory to the Indemnified Person. After notice from the Indemnifying Person to the Indemnified Person of its election to assume the defense of such Third-Party Claim, the Indemnifying Person shall not, so long as it diligently conducts such defense, be liable to the Indemnified Person under this Article 11 for any fees of other counsel or any other expenses with respect to the defense of such Third-Party Claim, in each case subsequently incurred by the Indemnified Person in connection with the defense of such Third-Party Claim, other than reasonable costs of investigation. If the Indemnifying Person assumes the defense of a Third-Party Claim,

(i) such assumption will conclusively establish for purposes of this Agreement that the claims made in that Third-Party Claim are within the scope of and subject to indemnification, and

(ii) no compromise or settlement of such Third-Party Claims may be effected by the Indemnifying Person without the Indemnified Person's Consent unless (A) there is no finding or admission of any violation of Legal Requirement or any violation of the rights of any Person; (B) the sole relief provided is monetary damages that are paid in full by the Indemnifying Person; and (C) the Indemnified Person shall have no liability with respect to any compromise or settlement of such Third-Party Claims effected without its Consent. If notice is given to an Indemnifying Person of the assertion of any Third-Party Claim and the Indemnifying Person does not, within ten (10) days after the Indemnified Person's notice is given, give notice to the Indemnified Person of its election to assume the defense of such Third-Party Claim, the Indemnifying Person will be bound by any determination made in such Third-Party Claim or any compromise or settlement effected by the Indemnified Person.

(c) Notwithstanding the foregoing, if an Indemnified Person determines in good faith that there is a reasonable probability that a Third-Party Claim may adversely affect it or its Related Persons other than as a result of monetary damages for which it would be entitled to indemnification under this Agreement, the Indemnified Person may, by notice to the Indemnifying Person, assume the exclusive right to defend, compromise or settle such Third-Party Claim, but the Indemnifying Person will not be bound by compromise or settlement effected without its Consent (which may not be unreasonably withheld or delayed).

(d) Notwithstanding the provisions of Section 13.4, each Seller Party hereby consents to the nonexclusive jurisdiction of any court in which a Proceeding in respect of a Third-Party Claim is brought against any Buyer Indemnified Person for purposes of any claim that a Buyer Indemnified Person may have under this Agreement with respect to such Proceeding or the matters alleged therein and agree that process may be served on any Seller Party with respect to such a claim anywhere in the world.

(e) With respect to any Third-Party Claim subject to indemnification under this Article 11:

(i) both the Indemnified Person and the Indemnifying Person, as the case may be, shall keep the other Person reasonably informed of the status of such Third-Party Claim and any related Proceedings at all stages thereof where such Person is not represented by its own counsel, and

(ii) the parties agree (each at its own expense) to render to each other such assistance as they may reasonably require of each other and to cooperate in good faith with each other in order to ensure the proper and adequate defense of any Third-Party Claim.

(f) With respect to any Third-Party Claim subject to indemnification under this Article 11, the parties agree to cooperate in such a manner as to preserve in full (to the extent possible) the confidentiality of all Confidential Information and the attorney-client and work-product privileges. In connection therewith, each party agrees that:

(i) it will use its Best Efforts, in respect of any Third-Party Claim in which it has assumed or participated in the defense, to avoid production of Confidential Information (consistent with applicable law and rules of procedure), and

(ii) all communications between any party hereto and counsel responsible for or participating in the defense of any Third-Party Claim shall, to the extent possible, be made so as to preserve any applicable attorney-client or work-product privilege.

**11.8 INDEMNIFICATION PAYMENT**

(a) All amounts payable by one party to another pursuant to this Article 11 shall be paid in immediately available funds within five (5) days after final determination of such amounts payable. Buyer Indemnified Persons may seek payment of any part or all amounts payable by Seller Parties pursuant to this Article 11 from the then remaining funds held under the Escrow Agreement in accordance with the terms, provisions and procedures set forth in the Escrow Agreement.

**11.9 [INTENTIONALLY OMITTED].**

**12. Confidentiality**

**12.1 DEFINITION OF CONFIDENTIAL INFORMATION**

(a) As used in this Article 12, the term "Confidential Information" includes any and all of the following information of Company, XIANMENG, Shareholders or Buyer that has been or may hereafter be disclosed in any form, whether in writing, orally, electronically or otherwise, or otherwise made available by observation, inspection or otherwise by any party or its Representatives (a "Disclosing Party") to the other party or its Representatives (a "Receiving Party"):

(i) all information that is a trade secret under applicable trade secret or other law;

(ii) all information concerning product specifications, data, know-how, formulae, compositions, processes, designs, sketches, photographs, graphs, drawings, samples, inventions and ideas, past, current and planned research and development, current and planned manufacturing or distribution methods and processes, customer lists, current and anticipated customer requirements, price lists, market studies, business plans, computer hardware, Software and computer software and database technologies, systems, structures and architectures whether or not such information is protected by copyright, trademark, patent or other intellectual property rights;

(iii) all information concerning the business and affairs of the Disclosing Party (which includes without limitation historical and current financial statements, financial projections and budgets, tax returns and accountants' materials, historical, current and projected sales, capital spending budgets and plans, business plans, strategic plans, marketing and advertising plans, publications, client and customer lists and files, contracts, the names and backgrounds of key personnel and personnel training techniques and materials, however documented), and all information obtained from review of the Disclosing Party's documents or property or discussions with the Disclosing Party regardless of the form of the communication; and

(iv) all notes, analyses, compilations, studies, summaries and other material prepared by the Receiving Party to the extent containing or based, in whole or in part, upon any information included in the foregoing. (b) Any trade secrets of a Disclosing Party shall also be entitled to all of the protections and benefits under applicable trade secret law and any other applicable law. If any information that a Disclosing Party deems to be a trade secret is found by a court of competent jurisdiction not to be a trade secret for purposes of this Article 12, such information shall still be considered Confidential Information of that Disclosing Party for purposes of this Article 12 to the extent included within the definition. In the case of trade secrets, each of Buyer, Company, F533 and Shareholders hereby waives any requirement that the other party submit proof of the economic value of any trade secret or post a bond or other security.

**12.2 RESTRICTED USE OF CONFIDENTIAL INFORMATION**

(a) Each Receiving Party acknowledges the confidential and proprietary nature of the Confidential Information of the Disclosing Party and agrees that such Confidential Information

(i) shall be kept confidential by the Receiving Party;

(ii) shall not be used for any reason or purpose than to evaluate and consummate the Contemplated Transactions; and

(iii) without limiting the foregoing, shall not be disclosed by the Receiving Party to any Person, except in each case as otherwise expressly permitted by the terms of this Agreement or with the prior written consent of an authorized representative of Seller Parties with respect to Confidential Information of Sellers or Shareholders (each, a "Seller Contact") or an authorized representative of Buyer with respect to Confidential Information of Buyer (each, a "Buyer Contact"). Each of Buyer, Sellers and Shareholders shall disclose the Confidential Information of the other party only to its Representatives who require such material for the purpose of evaluating the Contemplated Transactions and are informed by Buyer, Sellers or Shareholders, as the case may be, of the obligations of this Article 12 with respect to such Confidential Information. Each of Buyer, Sellers and Shareholders shall (x) enforce the terms of this Article 12 as to its respective Representatives; (y) take such action to the extent necessary to cause its Representatives to comply with the terms and conditions of this Article 12; and (z) be responsible and liable for any breach of the provisions of this Article 12 by it or its Representatives. (b) Unless and until this Agreement is terminated, Sellers and each Shareholder shall maintain as confidential any Confidential Information (including for this purpose any information of Sellers or Shareholders of the type referred to in Sections 12.1(a)(i), (ii) and (iii), whether or not disclosed to Buyer) of Sellers or Shareholders relating to any of the Assets or the Assumed Liabilities. Notwithstanding the preceding sentence, Seller Parties may use any Confidential Information of Seller Parties before the Closing in the Ordinary Course of Business in connection with the transactions permitted by Section 5.2. (c) From and after the Closing, the provisions of Section 12.2(a) above shall not apply to or restrict in any manner Buyer's use of any Confidential Information of a Seller Party relating to any of the Assets or the Assumed Liabilities.

**12.3 EXCEPTIONS** Sections 12.2(a) and (b) do not apply to that part of the Confidential Information of a Disclosing Party that a Receiving Party demonstrates

(i) was, is or becomes generally available to the public other than as a result of a breach of this Article 12 by the Receiving Party or its Representatives;

(ii) was or is developed by the Receiving Party independently of and without reference to any Confidential Information of the Disclosing Party or

(iii) was, is or becomes available to the Receiving Party on a nonconfidential basis from a Third Party not bound by a confidentiality agreement or any legal, fiduciary or other obligation restricting disclosure. No Seller Party shall disclose any Confidential Information of a Seller Party relating to any of the Assets or the Assumed Liabilities in reliance on the exceptions in clauses (ii) or (iii) above.

**12.4 LEGAL PROCEEDINGS** If a Receiving Party becomes compelled in any Proceeding or is requested by a Governmental Body having regulatory jurisdiction over the Contemplated Transactions to make any disclosure that is prohibited or otherwise constrained by this Article 12, that Receiving Party shall provide the Disclosing Party with prompt notice of such compulsion or request so that it may seek an appropriate protective order or other appropriate remedy or waive compliance with the provisions of this Article 12. In the absence of a protective order or other remedy, the Receiving Party may disclose that portion (and only that portion) of the Confidential Information of the Disclosing Party that, based upon advice of the Receiving Party's counsel, the Receiving Party is legally compelled to disclose or that has been requested by such Governmental Body, provided, however, that the Receiving Party shall use reasonable efforts to obtain reliable assurance that confidential treatment will be accorded by any Person to whom any Confidential Information is so disclosed. The provisions of this Section 12.4 do not apply to any Proceedings between the parties to this Agreement.

**12.5 RETURN OR DESTRUCTION OF CONFIDENTIAL INFORMATION** If this Agreement is terminated, each Receiving Party shall

(a) destroy all Confidential Information of the Disclosing Party prepared or generated by the Receiving Party without retaining a copy of any such material;

(b) promptly deliver to the Disclosing Party all other Confidential Information of the Disclosing Party, together with all copies thereof, in the possession, custody or control of the Receiving Party or, alternatively, with the written consent of a Seller Contact or a Buyer Contact (whichever represents the Disclosing Party) destroy all such Confidential Information; and

(c) certify all such destruction in writing to the Disclosing Party, provided, however, that the Receiving Party may retain a list that contains general descriptions of the information it has returned or destroyed to facilitate the resolution of any controversies after the Disclosing Party's Confidential Information is returned.

**12.6 [INTENTIONALLY OMITTED]**

**13. General Provisions**

**13.1 EXPENSES** Except as otherwise provided in this Agreement, each party to this Agreement will bear its respective fees and expenses incurred in connection with the preparation, negotiation, execution and performance of this Agreement and the Contemplated Transactions, including all fees and expenses of its Representatives. Buyer will pay all amounts payable to the Title Insurer in respect of the Title Commitments, copies of exceptions and any title insurance policy, including premiums (including premiums for endorsements) and search fees. Buyer will pay the HSR Act filing fee. The Seller Parties and Buyer will each pay one half of the fees and expenses of the escrow agent under the Escrow Agreement. If this Agreement is terminated, the obligation of each party to pay its own fees and expenses will be subject to any rights of such party arising from a Breach of this Agreement by another party.

**13.2 PUBLIC ANNOUNCEMENTS** Any public announcement, press release or similar publicity with respect to this Agreement or the Contemplated Transactions will be mutually agreed upon by the parties, except to the extent Buyer is required by law to made such announcement, filing or press release. Except with the prior consent of Buyer or as permitted by this Agreement, no Seller Party or any of their Representatives shall disclose to any Person

(a) the fact that any Confidential Information of a Seller Party has been disclosed to Buyer or its Representatives, that Buyer or its Representatives have inspected any portion of the Confidential Information of a Seller Party, that any Confidential Information of Buyer has been disclosed to a Seller Party or any of their Representatives or that Seller Parties or their Representatives have inspected any portion of the Confidential Information of Buyer or

(b) any information about the Contemplated Transactions, including the status of such discussions or negotiations, the execution of any documents (including this Agreement) or any of the terms of the Contemplated Transactions or the related documents (including this Agreement). Company and Buyer will consult with each other concerning the means by which Company's employees, customers, suppliers and others having dealings with Company will be informed of the Contemplated Transactions, and Buyer will have the right to be present for any such communication.

**13.3 NOTICES** All notices, Consents, waivers and other communications required or permitted by this Agreement shall be in writing and shall be deemed given to a party when

(a) delivered to the appropriate address by hand or by nationally recognized overnight courier service (costs prepaid);

(b) sent by facsimile or e-mail with facsimile confirmation; or

(c) received or rejected by the addressee, if sent by certified mail, return receipt requested, in each case to the following addresses, facsimile numbers or e-mail addresses and marked to the attention of the person (by name or title) designated below (or to such other address, facsimile number, e-mail address or person as a party may designate by notice to the other parties):

|  |  |  |
| --- | --- | --- |
| If to Company or F533 |  | Norbert Soundwaves, Inc./Linetown 122, Ltd. |
| (before the Closing): |  | 950 S. Howard Street |
|  |  | Linetown, Ohio |
|  |  | Attention: Mary A. NORBERT |
|  |  | Facsimile: |
|  |  | E-mail address: |
| If to Company or F533 |  | Norbert Soundwaves, Inc./Linetown 122, Ltd. |
| (after the Closing): |  | 1301 Faragut Road |
|  |  | Linetown, Ohio 45320 |
|  |  | Attention: Mary A. NORBERT |
|  |  | Facsimile: |
|  |  | E-mail address: |
| If to the Shareholders: |  | 1301 Faragut Road |
|  |  | Linetown, Ohio |
|  |  | Attention: Mary A. NORBERT |
|  |  | Facsimile: |
|  |  | E-mail address: |
| with a copy to: |  | Lametti, Marrrafin Co., L.P.A. |
|  |  |  |
|  |  | Ohio |
|  |  | Attention: Paul Pierson, Esq. |
|  |  | Facsimile: xxx-xxx-xxx |

|  |  |  |
| --- | --- | --- |
| Buyer: |  | INQUILABS Corporation |
|  |  | Address |
|  |  |  |
|  |  | Attention: Norm B Grundler, Jr. |
|  |  | Director of Legal Services |
|  |  | Facsimile: xxx-xxx-xxx |
|  |  | Email: |
| with a copy to: |  | Langacker& Gucci LLP |
|  |  | Address |
|  |  |  |
|  |  |  |
|  |  | Attention: Paula Kirk |
|  |  | Facsimile: xxx-xxx-xxx |
|  |  | E-mail address: |

**13.4 [INTENTIONALLY OMITTED]**

**13.5 ENFORCEMENT OF AGREEMENT** The parties each acknowledge and agree that the other party would be irreparably damaged if any of the provisions of this Agreement are not performed in accordance with their specific terms and that any Breach of this Agreement by any party could not be adequately compensated in all cases by monetary damages alone. Accordingly, in addition to any other right or remedy to which either party may be entitled, at law or in equity, the non-Breaching party shall be entitled to enforce any provision of this Agreement by a decree of specific performance and to temporary, preliminary and permanent injunctive relief to prevent Breaches or threatened Breaches of any of the provisions of this Agreement, without posting any bond or other undertaking.

**13.6 WAIVER; REMEDIES CUMULATIVE** The rights and remedies of the parties to this Agreement are cumulative, not alternative and shall not be exclusive of any other right or remedy, or preclude the assertion of, any other right or remedy otherwise available to any party. Neither any failure nor any delay by any party in exercising any right, power or privilege under this Agreement or any of the documents referred to in this Agreement will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable law,

(a) no claim or right arising out of this Agreement or any of the documents referred to in this Agreement can be discharged by one party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other party;

(b) no waiver that may be given by a party will be applicable except in the specific instance for which it is given; and

(c) no notice to or demand on one party will be deemed to be a waiver of any obligation of that party or of the right of the party giving such notice or demand to take further action without notice or demand as provided in this Agreement or the documents referred to in this Agreement.

**13.7 ENTIRE AGREEMENT AND MODIFICATION** This Agreement supersedes all prior agreements, whether written or oral, between the parties with respect to its subject matter and constitutes (along with the Disclosure Schedule, Exhibits and other documents delivered pursuant to this Agreement) a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter. This Agreement may not be amended, supplemented, or otherwise modified except by a written agreement executed by the party to be charged with the amendment.

**13.8 DISCLOSURE SCHEDULE** (a) The information in the Disclosure Schedule constitutes (i) exceptions to particular representations, warranties, covenants and obligations of Seller Parties as set forth in this Agreement or (ii) descriptions or lists of assets and liabilities and other items referred to in this Agreement. If there is any inconsistency between the statements in this Agreement and those in the Disclosure Schedule (other than an exception expressly set forth as such in the Disclosure Schedule with respect to a specifically identified representation or warranty), the statements in this Agreement will control. (b) The statements in the Disclosure Schedule, and those in any supplement thereto, relate only to the provisions in the Section of this Agreement to which they expressly relate and not to any other provision in this Agreement.

**13.9 ASSIGNMENTS, SUCCESSORS AND NO THIRD-PARTY RIGHTS** No party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other parties, except that Buyer may assign any of its rights and delegate any of its obligations under this Agreement to any Subsidiary or Related Person of Buyer provided that Buyer shall remain responsible for all liabilities and obligations not satisfied by such Subsidiary or Related Person. Subject to the preceding sentence, this Agreement will apply to, be binding in all respects upon and inure to the benefit of the successors and permitted assigns of the parties. Nothing expressed or referred to in this Agreement will be construed to give any Person other than the parties to this Agreement any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision of this Agreement, except such rights as shall inure to a successor or permitted assignee pursuant to this Section 13.9.

**13.10 SEVERABILITY** If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

**13.11 CONSTRUCTION** The headings of Articles and Sections in this Agreement are provided for convenience only and will not affect its construction or interpretation. All references to "Articles," "Sections" and "Schedules" refer to the corresponding Articles, Sections and Schedules of this Agreement and the Disclosure Schedule.

**13.12 TIME OF ESSENCE** With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

**13.13 GOVERNING LAW** This Agreement will be governed by and construed under the laws of the State of Ohio without regard to conflicts-of-laws principles that would require the application of any other law.

**13.14 EXECUTION OF AGREEMENT** This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile shall be deemed to be their original signatures for all purposes.

**13.15 SHAREHOLDER OBLIGATIONS** Where in this Agreement provision is made for any action to be taken or not taken by either Seller, Shareholders jointly and severally undertake to cause Sellers to take or not take such action, as the case may be. Without limiting the generality of the foregoing, Shareholders shall be jointly and severally liable with Sellers for the indemnities set forth in Article 11.

**13.16 REPRESENTATIVE OF SELLER AND SHAREHOLDERS**

(a) Company, XIANMENG, F533 and each Shareholder hereby constitute and appoint MN as their representative ("Selling Parties' Representative") and their true and lawful attorney in fact, with full power and authority in each of their names and on behalf of each of them:

(i) to act on behalf of each of them in the absolute discretion of the Selling Parties' Representative, but only with respect to the following provisions of this Agreement, with the power to: (A) designate the accounts for payment of the Purchase Price pursuant to Section 2.7(b)(i); (B) act pursuant to Sections 2.8 and 2.9 with respect to any Purchase Price adjustment; (C) act under the Escrow Agreement; (D) consent to the assignment of rights under this Agreement in accordance with Section 13.9; (E) give and receive notices pursuant to Section 13.3; (F) terminate this Agreement pursuant to Section 9.1 or waive any provision of this Agreement pursuant to Article 8, Section 9.1 and Section 13.6; (G) accept service of process pursuant to Section 13.4; and (H) act in connection with any matter as to which Sellers and each of the Shareholders, jointly and severally, have obligations, or are Indemnified Persons, under Article 11; and

(ii) in general, to do all things and to perform all acts, including executing and delivering all agreements, certificates, receipts, instructions and other instruments contemplated by or deemed advisable to effectuate the provisions of this Section 13.16. This appointment and grant of power and authority is coupled with an interest and is in consideration of the mutual covenants made herein and is irrevocable and shall not be terminated by any act of either of the Shareholders or either Seller or by operation of law, whether by the death or each incapacity of either Shareholder or by the occurrence of any other event. Each Shareholder and Seller hereby consents to the taking of any and all actions and the making of any decisions required or permitted to be taken or made by the Selling Parties' Representative pursuant to this Section 13.16.

(b) Buyer and the escrow agent designated in the Escrow Agreement shall be entitled to rely upon any document or other paper delivered by the Selling Parties' Representative as

(i) genuine and correct and

(ii) having been duly signed or sent by the Selling Parties' Representative, and neither Buyer nor such escrow agent shall be liable to either of the Shareholders or either Seller for any action taken or omitted to be taken by Buyer or such escrow agent in such reliance.

**13.17 CASUALTY AND CONDEMNATION** In the event at any time prior to the Closing Date: (a) If with respect to any Real Property or Facility, a fire or other casualty ("Casualty") shall occur and such Casualty shall cause Material Damage (as herein defined) or condemnation or eminent domain proceedings shall commence or shall be threatened ("Condemnation") which are reasonably expected to cause Material Damage, then Buyer may, at its election, terminate this Agreement by delivering written notice to either Seller within

(i) if Material Damage by Casualty is applicable, within thirty (30) days after the later of (A) Buyer's receipt of written notice of such Casualty or (B) Buyer's receipt of written notice of a final offer of coverage under policies of insurance covering the Facility affected by such Casualty; or

(ii) if a Condemnation that is reasonably expected to cause Material Damage is applicable, within thirty (30) days after Buyer's receipt of written notice that such Condemnation has been commenced or is threatened, which written notice shall not be deemed received by Buyer until Buyer shall also have received reasonably satisfactory written evidence of the amount of the award or other compensation that will be paid or due to Sellers in connection with such Condemnation. In the event that Buyer terminates this Agreement as provided in the preceding sentence, neither party shall thereafter have any further obligations to the other hereunder except as provided in Section 9.2 hereof.

(b) In the event that any Casualty shall occur or Condemnation shall commence or be threatened for which Buyer is not entitled to terminate this Agreement as provided in clause (a) above or with respect to which Buyer is entitled to terminate this Agreement as provided in clause (a) above but fails to timely exercise such right in accordance with clause (a) above, Buyer shall proceed with the Closing.

(c) For purposes hereof, "Material Damage" shall mean:

(i) in case of a Casualty, any damage, as reasonably estimated by Buyer, that would cost for the Facility affected by such Casualty more than Two Million Five Hundred Thousand Dollars ($2,500,000) in repairs or that would otherwise have a material adverse effect on the Assets or Business; and (ii) in the case of a Condemnation, would likely result in an award to Seller in an amount in excess of Two Million Five Hundred Thousand Dollars ($2,500,000) or would otherwise have a material adverse effect on the Assets or Business.

(d) In the event Buyer is required under clause (b) above to proceed with the Closing,

(i) if a Casualty is applicable, at Closing, Buyer shall receive the affected Facility in its then existing condition and Buyer will be entitled to receive all insurance money paid and, to the extent not yet paid, an assignment of all insurance money payable to Sellers, or either of them, under all policies of insurance covering such Facility as a result of and with respect to the damage or destruction of such Facility caused by such Casualty and a credit against the Purchase Price in the amount of any applicable deductible; or

(ii) if Condemnation is applicable, at Closing, Buyer shall be entitled to all proceeds, awards or compensation paid and, to the extent not yet paid, an assignment of all proceeds, awards or compensation payable to Sellers, or either of them, as a result of and with respect to such Condemnation.

**13.18 PRORATIONS (**a) At the Closing, Buyer and Sellers shall reimburse each other, as appropriate, for the following expenses applicable to the Assets, all of which shall be prorated such that Sellers are responsible for the expenses accrued on or prior to the Closing Date and Buyer is responsible for expenses accrued after the Closing Date:

(i) all real estate taxes and assessments applicable to the Real Property, including taxes for the calendar year of Closing that are a lien against the Real Property but not due and payable until the following calendar year, provided, that in any case and notwithstanding anything in this Agreement to the contrary, Seller shall be responsible for all Taxes and assessments that are a lien against the Real Property but not yet due for years prior to the Closing Date, and a portion of such Taxes and assessments for the year of Closing, prorated on a daily basis through the Closing Date;

(ii) all personal property taxes;

(iii) utility expenses applicable to the Real Property;

(iv) rent payments and any common area charges or other similarly pro-rated charges due under the Leases that are part of the Acquired Contracts (including percentage rent on an annualized basis, as may be adjusted for recaptured landlord allowances); and

(v) any other items customarily prorated, as mutually agreed upon by the parties.

(b) If there are water, gas or electric meters located at any of the Real Property, Sellers shall obtain readings thereof to a date not more than thirty (30) days prior to the Closing Date and the unfixed water rates and charges, sewer taxes and rents and gas and electricity charges, if any, based thereon for the intervening time shall be apportioned on the basis of such readings. If such readings are not obtainable by the Closing Date, then, at the Closing, any water rates and charges, sewer taxes and rents and gas and electricity charges which are based on such readings shall be prorated based upon the per diem charges obtained by using the most recent period for which such readings shall then be available. Upon the taking of subsequent actual readings, the apportionment of such charges shall be recalculated and Sellers or Buyer, as the case may be, promptly shall make a payment to the other based upon such recalculations. The parties agree to make such final recalculations within ninety (90) days after the Closing Date, which obligation shall survive the Closing.

(c) If any refunds of real property taxes or assessments, water rates and charges or sewer taxes and rents shall be made after the Closing, the same shall be held in trust by Sellers or Buyer, as the case may be, and shall first be applied to the unreimbursed costs incurred in obtaining the same, then the balance, if any, shall be paid to Sellers (for the period on or prior to the Closing Date) and to Buyer (for the period commencing after the Closing Date).

(d) If, on the Closing Date, any of the Real Property shall be or shall have been affected by any special or general assessment or assessments or real property taxes payable on a lump sum or which are or may become payable in installments of which the first installment is then a charge or lien and has become payable, Sellers shall pay or cause to be paid at the Closing the unpaid installments of such assessments, including those which are to become due and payable after the Closing Date.

(e) No insurance policies of Sellers are to be transferred to Buyer, and no apportionment of the premiums therefor shall be made.

(f) If any of the foregoing items to be prorated under this Section 13.18 cannot be prorated at the Closing because of the unavailability of the amounts which are to be prorated, such items shall be prorated on the basis of a good faith estimate by the parties and adjusted and reconciled as soon as practicable after the Closing Date; provided, however, all such adjustments and reconciliations shall occur no later than one (1) year after the Closing Date.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| SELLERS: | | |  | BUYERS: | | |
| Norbert Soundwaves, Inc. | | |  | INQUILABS Corporation | | |
| |s|Oscar MERCHANT | | |  | |s|Stephen G. Hull | | |
| By: |  | Oscar MERCHANT |  | By: |  | Stephen G. Hull |
| Title: |  | President |  | Title: |  | President and Chief Executive Officer |

Linetown 122, Ltd.

|  |  |  |
| --- | --- | --- |
| |s|Mary A. NORBERT | | |
| By: |  | Mary A. NORBERT |
| Title: |  | Partner |

Norbert Microchip (XIANMENG) Co., Ltd.

|  |  |  |
| --- | --- | --- |
| |s|Oscar MERCHANT | | |
| By: |  | Oscar MERCHANT |
| Title: |  | President |

Shareholders

|  |  |  |
| --- | --- | --- |
| |s|Mary A. NORBERT |  | |s|Vicki A. MERCHANT |
| Mary A. NORBERT, individually |  | Vicki A. MERCHANT, individually |

**APA#15**

**ASSET PURCHASE AGREEMENT**

AMONG

TELLI, LTD.,

TELLI (BERMUDA), LTD.,

RALL SPACE & COMMUNICATIONS CORPORATION,

AS DEBTOR AND DEBTOR IN POSSESSION

RALL SPACECOM CORPORATION,

AS DEBTOR AND DEBTOR IN POSSESSION

AND

RALL SATELLITE, INC.

AS DEBTOR AND DEBTOR IN POSSESSION

DATED AS OF XXXXXXX, 20XX

------Page Break------

**TABLE OF CONTENTS**

|  |
| --- |
| **Page** |
| **----** |
| **ARTICLE I** |
| **DEFINITIONS AND TERMS** |
| Section 1.1 Specific Definitions.............................................................................................................. 2 |
| Section 1.2 Other Definitional Provisions........................................................................................ 15 |
| **ARTICLE II** |
| **PURCHASE AND SALE OF THE PURCHASED ASSETS** |
| Section 2.1 Purchase and Sale of Purchased Assets.................................................................... 15 |
| Section 2.2 Excluded Assets.................................................................................................................. 16 |
| Section 2.3 Assumed Liabilities........................................................................................................... 16 |
| Section 2.4 Excluded Liabilities........................................................................................................... 16 |
| Section 2.5 Purchase Price..................................................................................................................... 17 |
| Section 2.6 Closing..................................................................................................................................... 21 |
| Section 2.7 Deliveries by Purchaser.................................................................................................. 22 |
| Section 2.8 Deliveries by Sellers......................................................................................................... 23 |
| **ARTICLE III** |
| **REPRESENTATIONS AND WARRANTIES OF SELLERS** |
| Section 3.1 Organization and Qualification................................................................................... 23 |
| Section 3.2 Purchased Assets.............................................................................................................. 23 |
| Section 3.3 Corporate Authorization............................................................................................... 24 |
| Section 3.4 Consents and Approvals................................................................................................ 24 |
| Section 3.5 Non-Contravention.......................................................................................................... 24 |
| Section 3.6 Binding Effect..................................................................................................................... 24 |
| Section 3.7 Litigation and Claims.................................................................................................. 25 |
| Section 3.8 Property, Equipment and Other Purchased Assets....................................... 25 |
| Section 3.9 Intellectual Property................................................................................................... 26 |
| Section 3.10 Certain Contracts........................................................................................................ 27 |
| Section 3.11 Government Contracts............................................................................................. 29 |
| Section 3.12 Taxes................................................................................................................................ 31 |
| Section 3.13 Compliance with Laws............................................................................................. 31 |
| Section 3.14 SEC Reports.................................................................................................................. 31 |
| Section 3.15 Governmental Authorizations.............................................................................. 32 |
| Section 3.16 Orbital Locations, etc................................................................................................ 33 |
| Section 3.17 Intersystem Coordination...................................................................................... 33 |
| Section 3.18 Collective Bargaining Agreements..................................................................... 34 |
| Section 3.19 Absence of Change.................................................................................................... 34 |
| Section 3.20 Insurance...................................................................................................................... 34 |
| Section 3.21 Related Party Transactions.................................................................................. 35 |
| Section 3.22 Accuracy of Copies................................................................................................... 35  Section 3.23 Financial and Business Information…………...……………………………….. 35 |
| **ARTICLE IV** |
| **REPRESENTATIONS AND WARRANTIES OF PARENT AND PURCHASER** |
| Section 4.1 Organization and Qualification............................................................................ 36 |
| Section 4.2 Corporate Authorization........................................................................................ 36 |
| Section 4.3 Consents and Approvals......................................................................................... 36 |
| Section 4.4 Non-Contravention................................................................................................... 37 |
| Section 4.5 Binding Effect.............................................................................................................. 37 |
| Section 4.6 Certificate of Incorporation, Memorandum of Association  and Bye-Laws............................................................................................................. 37 |
| **ARTICLE V** |
| **COVENANTS AND AGREEMENTS REGARDING BANKRUPTCY** |
| Section 5.1 Bankruptcy Actions.................................................................................................. 37 |
| **ARTICLE VI** |
| **CERTAIN COVENANTS** |
| Section 6.1 Access............................................................................................................................ 39 |
| Section 6.2 Conduct of Business................................................................................................ 40 |
| Section 6.3 Books and Records.................................................................................................. 44 |
| Section 6.4 Best Reasonable Efforts........................................................................................ 45 |
| Section 6.5 Certain Filings; Consents...................................................................................... 45 |
| Section 6.6 Insurance..................................................................................................................... 47 |
| Section 6.7 Financial Statements and Access...................................................................... 48 |
| Section 6.8 Compliance with Property Transfer Laws; State and Local  Governmental Authorizations............................................................................ 49 |
| Section 6.9 Further Assurances................................................................................................. 50 |
| Section 6.10 Certain Matters Involving the Transferred Intellectual Property and |
| Licensed Intellectual Property.......................................................................... 50 |
| Section 6.11 Obligation to Update.............................................................................................. 50 |
| Section 6.12 Additional Intellectual Property Matters...................................................... 51 |
| Section 6.13 Limitations on Solicitation, etc...................................................................... 51 |
| Section 6.14 ITU Matters............................................................................................................ 52 |
| Section 6.15 PANGTEL Matters............................................................................................... 52 |
| Section 6.16 Orbital Incentive Payments............................................................................ 53 |
| Section 6.17 Lease Contract...................................................................................................... 53 |
| Section 7.1 Best Reasonable Efforts..................................................................................... 54 |
| Section 7.2 Shareholder Approval........................................................................................ 54 |
| Section 7.4 Compliance with Property Transfer Laws; Governmental  Authorizations....................................................................................................... 54 |
| Section 7.5 Obligation to Update........................................................................................... 55 |
| Section 7.6 Collection of Accounts Receivable................................................................ 55 |
| **ARTICLE VIII** |
| **EMPLOYEE AND TAX MATTERS** |
| Section 8.1 Tax Matters............................................................................................................ 55 |
| Section 8.2 Employees and Employee Benefits............................................................. 56 |
| **ARTICLE IX** |
| **CONDITIONS TO CLOSING** |
| Section 9.1 Conditions to the Obligations of Parent  and Purchaser...................................................................................................... 58 |
| Section 9.2 Conditions to the Obligations of the Sellers........................................... 63 |
| **ARTICLE X** |
| **INTENTIONALLY OMITTED** |
| **ARTICLE XI** |
| **TERMINATION** |
| Section 11.1 Termination....................................................................................................... 65 |
| Section 11.2 Effect of Termination..................................................................................... 67 |
| **ARTICLE XII** |
| **MISCELLANEOUS** |
| Section 12.1 Notices................................................................................................................. 68 |
| Section 12.2 Amendment; Waiver..................................................................................... 69 |
| Section 12.3 Assignment........................................................................................................ 69 |
| Section 12.4 Entire Agreement; Severability................................................................ 70 |
| Section 12.5 Fulfillment of Obligations........................................................................... 70 |
| Section 12.6 Parties in Interest.......................................................................................... 70 |
| Section 12.7 Guaranty............................................................................................................ 70 |
| Section 12.8 Public Disclosure........................................................................................... 70 |
| Section 12.9 Return of Information................................................................................. 71 |
| Section 12.10 Expenses.......................................................................................................... 71 |
| Section 12.11 Governing Law; Submission To Jurisdiction; Selection Of  Forum................................................................................................................ 71 |
| Section 12.12 Counterparts.................................................................................................. 72 |
| Section 12.13 Headings.......................................................................................................... 72 |
| Section 12.14 Time is of the Essence................................................................................ 72 |
| Section 12.15 Mutual Drafting............................................................................................. 72 |
| Section 12.16 No Survival...................................................................................................... 72 |

-----Page Break-----

**ANNEXES**

|  |
| --- |
| Annex A Purchased Assets |
| Annex B Excluded Assets |
| Annex C Form of Intellectual Property Agreement |
| Annex D Form of Noncompetition Agreement |
| Annex E-1 Business Transition Services Agreement |
| Annex E-2 TT&C Transition Services Agreement |
| Annex F Sale Procedures Order and Sale Order |
| Annex G SS/R Agreement |
| Annex H Terms of Revised Procurement Agreements |
| Annex I Terms of New Procurement Agreement |
| Annex J Terms of Deposit and Security Agreement |
| **SCHEDULES** |
| Schedule 1.1(a) Persons with Knowledge of Sellers |
| Schedule 1.1(b) Persons with Knowledge of Parent or Purchaser |
| Schedule 1.1(c) Other Filing Entities |
| Schedule 2.3 Additional Assumed Liabilities |
| Schedule 2.5 Certain Purchase Price Adjustments |
| Schedule 3.2 Certain Assets for the Conduct of the Transferred Business |
| Schedule 3.4 Governmental Approvals |
| Schedule 3.5 Non-Contravention |
| Schedule 3.7 Litigation and Claims |
| Schedule 3.8 Property, Equipment and Other Purchased Assets |
| Schedule 3.9 Intellectual Property |
| Schedule 3.10 Certain Contracts |
| Schedule 3.11 Government Contracts |
| Schedule 3.13 Compliance with Laws |
| Schedule 3.15 Governmental Authorizations |
| Schedule 3.16 Orbital Locations |
| Schedule 3.17 Intersystem Coordination |
| Schedule 3.18 Collective Bargaining Agreements |
| Schedule 3.19 Absence of Change |
| Schedule 3.20 Insurance Policies |
| Schedule 3.21 Related Party Transactions |
| Schedule 4.3 Consents and Approvals |
| Schedule 4.4 Non-Contravention |
| Schedule 4.5 Binding Effect |
| Schedule 5.1(f) Certain Additional Agreements |
| Schedule 6.2 Conduct of Business |
| Schedule 6.6 Insurance Renewal |
| Schedule 8.2 Severance and WARN Act Obligations |
|  |

|  |
| --- |
| Schedule 9.1(j) Governmental and Other Approvals |
| Schedule 9.1(o) Backlog Amount |
| Schedule 9.1(p) Recurring Revenues |
| Schedule 9.1(q) Certain Customer Service Contracts |
| Schedule 9.1(s) Form of Legal Opinion of Sellers' FCC Counsel |
| -----Page Break----- |

ASSET PURCHASE AGREEMENT, dated as of XXXXXXX, 20XX (the "Agreement"), among Telli, Ltd., a Bermuda company ("Parent"), Telli (Bermuda), Ltd., a Bermuda company ("Purchaser"), Rall Space & Communications Corporation, a Delaware corporation, as debtor and debtor in possession ("RallSpace"), Rall SpaceCom Corporation, a Delaware corporation, as debtor and debtor in possession ("Rall SpaceCom"), and Rall Satellite, Inc., a Delaware corporation, as debtor and debtor in possession (together with RallSpace and Rall SpaceCom, the "Sellers").

W I T N E S S E T H:

WHEREAS, the Sellers, among other things, own and operate geostationary earth orbit satellites ("GEO Satellites") on which transponder capacity is leased or sold to customers for various applications;

WHEREAS, each of the Sellers and the Other Filing Entities (as defined herein) has filed with the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") a voluntary petition (the "Chapter 11 Cases") for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code");

WHEREAS, the Sellers have advised Parent and Purchaser that the Sellers intend to dispose of certain of their assets and liabilities (including the Purchased Assets referred to in Section 2.1) through a sale or sales to be effected under the supervision of the Bankruptcy Court in the Chapter 11 Cases under the Bankruptcy Code;

WHEREAS, the parties hereto desire that, on the terms and subject to the conditions set forth herein, the Sellers sell to Purchaser, and Purchaser purchase from the Sellers, certain of such GEO Satellites, which are referred to as Commstar 4, Commstar 5, Commstar 6 and Commstar 7, as well as those GEO Satellites, which are referred to as Commstar 8 and Commstar 13 (to the extent of the Sellers' ownership of Commstar 13, as set forth in Section 3.8(c)), which are currently under construction (collectively, the "Purchased Satellites"),together with the Purchased Assets referred to in Section 2.1, each of which assets is used or useful in the operation of that portion of Sellers' Starnet satellite services business Related to the Purchased Satellites;

WHEREAS, simultaneously herewith, the Sellers shall cause Space Systems/Rall, Inc. ("SS/R") to enter into an agreement with Parent and Purchaser relating to certain obligations of SS/R relating to the transactions contemplated under this Agreement in the form of Annex G hereto (the "SS/R Agreement");

WHEREAS, simultaneously with the Closing, the Sellers shall cause SS/R to enter into amendments to the procurement agreements related to Commstar 8 and Commstar 13 on the terms set forth in Annex H hereto (the "Revised Procurement Agreements") and the Sellers shall cause SS/R to enter into the New Procurement Agreement (as defined below);

WHEREAS, simultaneously with Closing hereunder, Telli LLC, an Affiliate of Purchaser ("Telli LLC"), shall place an order with respect to one new GEO Satellite, on the terms set forth on Annex I hereto (the "New Procurement Agreement"); and

WHEREAS, simultaneously with Closing hereunder, SS/R and Telli LLC will enter into a security agreement on the terms set forth in Annex J hereto (the "Deposit and Security Agreement", and together with the Revised Procurement Agreements and the New Procurement Agreement, the "Related Agreements");

NOW, THEREFORE, in consideration of the mutual covenants and undertakings contained herein, and subject to and on the terms and conditions herein set forth, the parties hereto agree as follows:

**ARTICLE I**

**DEFINITIONS AND TERMS**

Section 1.1 Specific Definitions. As used in this Agreement, the following terms shall have the meanings set forth or as referenced below:

"Affiliates" shall mean, with respect to any Person, any Persons directly or indirectly controlling, controlled by, or under common control with, such other Person as of the date on which, or at any time during the period for which, the determination of affiliation is being made. The term "control" (including, with correlative meaning, the terms "controlled by" and "under common control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

"Agreement" shall mean this Agreement, including the schedules and annexes hereto, as the same may be amended or supplemented, from time to time, in accordance with the terms hereof.

"Ancillary Agreements" shall mean: (i) the Intellectual Property Agreement; (ii)the Noncompetition Agreement; (iii) the Transition Services Agreement; (iv) the SS/R Agreement; (v) the Related Agreements; and (vi) any other agreement or any certificate, license or other document required to be delivered pursuant to the terms of this Agreement (other than agreements, certificates, licenses or other documents to which a Person other than one or more parties hereto, SS/R or Rall Parent or their Affiliates, is a party).

"Assumed Contract" shall mean the following to the extent in existence on the Closing Date: (a) all Contracts identified on Schedule 3.10(a), without giving effect to the cross-reference to Schedule 3.20, provided, that the Satellite Agreement, dated as of XXXXXX, 20XX, with Tongel shall constitute an Assumed Contract only in the circumstances set forth in Section 9.1(n); (b) all Customer Service Contracts entered into after the date hereof in accordance with Section 6.2 (but without giving effect to Section 6.2(b)); (c)insurance policies identified on Annex A hereto as Purchased Assets;

(d) non-disclosure agreements identified on Schedule 3.10(a) Related to the Purchased Assets that the Purchaser elects in writing to assume within thirty (30) days of the date hereof; (e) the Revised Procurement Agreements, (f) a legally binding underwriting commitment meeting the requirement of Section 2.5(c) and (g) any other Contract the Purchaser elects to assume within seven (7) Business Days after receiving a written notice from the Sellers (which Sellers may or may not send in their sole discretion) identifying such Contract (and providing a copy thereof if not previously provided to the Purchaser)and requesting Purchaser's election whether to assume such Contract.

"Backlog" shall mean the aggregate amount of Revenues that Sellers are entitled to recognize in accordance with GAAP and consistent with past practice for services to be rendered under the terms of each Customer Service Contract during the period commencing as of a specified date and continuing until the remainder of the then current term of such Contract, but excluding any accounts receivable outstanding as of such specified date. As used herein with respect to a specified date, the term "Backlog" does not include any revenues that are not attributable to Contracts that would have been Assumed Contracts if the Closing had occurred on such date.

"Best Reasonable Efforts" shall mean the diligent, good faith efforts that a reasonably prudent Person desirous of achieving a result in an economically reasonable manner would use in similar circumstances to achieve the desired result. The obligation of a Person under this Agreement to use Best Reasonable Efforts to achieve a result that benefits another party to this Agreement requires such Person to use the same resources that such Person would have reasonably used in achieving a similar result that would have benefited such Person. The fact that a result is not actually achieved shall not create a presumption that the obligated party did not in fact utilize its Best Reasonable Efforts in attempting to accomplish the result.

"Books and Records" shall mean originals or copies of all books, ledgers, files, reports, plans and operating records (including electronic files, data, spreadsheets, etc.) related to the Transferred Business or the Purchased Assets, as the case may be, containing information that is or would be needed by a Person purchasing or owning the Transferred Business or the Purchased Assets.

"Business Day" shall mean any day other than a Saturday, a Sunday or a day on which banks in New York City are authorized or obligated by law or executive order to close.

"Closing" shall mean the closing of the transactions contemplated by this Agreement.

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

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

"Communications Act" shall mean the Communications Act of 1934, as amended.

"Contracts" shall mean the agreements, contracts, leases, purchase orders, service orders, arrangements, commitments and non-governmental licenses, whether written or oral, that are Related to the Transferred Business or the Purchased Satellites (including the Customer Service Contracts and any agreement referred to in Schedule 9.1(j)(ii)) except to the extent included in the Excluded Assets or Excluded Liabilities.

"Customer Service Contracts" shall mean Contracts to provide services to customers of the Transferred Business, other than Portability-In Contracts.

"Deposit Collateral" shall mean the collateral described in Annex J.

"Encumbrances" shall mean liens, charges, encumbrances, security interests, options, rights of way, written agreements, mortgages or deeds of trust, rights of first refusal, easements, restrictive covenants, encroachments, survey defects or any other restrictions or third party rights.

"Environmental Law" shall mean any Laws relating to the protection of the environment (including air, water, soil and natural resources) or the use, storage, handling, release or disposal of any hazardous or toxic substance or pollutant or protection of human health as it relates to the environment.

"Environmental Permits" shall mean all Governmental Authorizations issued under or pursuant, or relating, to any Environmental Law.

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

"ERISA Affiliate" shall mean any entity which is considered one employer with a Seller under Section 4001 of ERISA or Section 414 of the Code.

"Excluded Liabilities" shall mean the Liabilities that are not "Assumed Liabilities" referred to in Section 2.3, and shall include without limitation the "Excluded Liabilities" expressly listed in Section 2.4.

"Excluded Payments" shall mean all prepayments received in respect of (a) the transponders sold by ABC prior to Seller's acquisition of Starnet, (b) the contract between one or more Sellers and XYZ CORP., dated XXXXXX, 20XX, and (c) the option termination fee paid by CBS under the Contract, dated XXXXXXX, 20XX, which for accounting purposes is being amortized over the remaining life of the contract.

"Exon-Florio" shall mean Section 721 of Title VII of the Defense Production Act

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| of 1950, as amended by the Omnibus Trade and Competitiveness Act of 1988.  "FCC" shall mean the Federal Communications Commission and any successor thereto |

"FCC Authorizations" shall mean Governmental Authorizations of the FCC.

"Federal Bankruptcy Rules" shall mean the Federal Rules of Bankruptcy Procedure and all rules, regulations and relevant interpretations issued under the Bankruptcy Code.

"Final Date" shall mean XXXXXX, 20XX.

"GAAP" shall mean United States generally accepted accounting principles, as consistently applied by Sellers during the relevant period.

"Government Contracts" shall mean those Contracts Related to the Purchased Assets between a Seller and the U.S. federal government or any agency thereof or a Seller and another party which is party to a contract with the U.S. federal government or any agency thereof under which such Seller acts as subcontractor to such other party and is obligated pursuant to any contractual flow-down provisions to abide by any government contracting regulations, including the Federal Acquisition Regulations, that are applicable to the principal contractor.

"Governmental Approval" shall mean any license, permit, certificate, consent, validation or other authorization, approval or action of any Governmental Authority required in connection with the transfer or assignment of the Purchased Assets or otherwise in connection with the execution, delivery or performance by any Seller of this Agreement or any of the Ancillary Agreements.

"Governmental Authority" shall mean any domestic or foreign supranational, national, federal, state or local judicial, legislative, executive or regulatory authority.

"Governmental Authorization" shall mean any license, permit, certificate, consent, validation, frequency registration or other authorization, approval or action of any Governmental Authority required to own and operate the Purchased Assets as currently operated by the Sellers under applicable Laws prior to the Closing.

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

"Intellectual Property" shall mean intellectual property rights including: trademarks, service marks, brand names, certification marks, trade dress, assumed names, trade names and other indications of origin, the goodwill associated with the foregoing and registrations in any jurisdiction of, and applications in any jurisdiction to register the foregoing, including any extension, modification or renewal of any such registration or application and any intent to use applications with respect to the foregoing; patents, applications for patents (including, without limitation, divisions, continuations, continuations in-part, provisional applications and reissue applications), and any renewals, extensions or reissues thereof, in any jurisdiction; computer software(including software, data, source code and related documentation) other than software that is generally available on non-discriminatory pricing terms, software programs that purport to bind the purchaser of such programs such as shrink-wrap and click-wrap, commercial off-the-shelf software and software that is distributed as free software, open source software or under similar licensing or distribution model; inventions, discoveries and ideas, whether patentable or not in any jurisdiction, trade secrets, know-how (including, without limitation, research and development, formulas, compositions, manufacturing and production processes and techniques, technical data, designs, drawings and product and equipment specifications) and confidential information and rights in any jurisdiction to limit the use or disclosure thereof by any Person; writings, data bases, compilations and other works, whether copyrightable or not in any jurisdiction; registrations or applications for registration of copyrights in any jurisdiction, and any renewals or extensions thereof; any similar intellectual property or proprietary rights; any and all exclusive licenses to use any of the foregoing; and any claims or causes of action arising out of or related to any infringement or misappropriation of any of the foregoing.

"Intellectual Property Agreement" shall mean the intellectual property agreement to be entered into between Rall SpaceCom and Purchaser on or prior to the Closing Date substantially in the form of Annex C hereto.

"ITU" shall mean the International Telecommunication Union.

"ITU Authorizations" shall mean Governmental Authorizations of the ITU.

"Knowledge" of a Seller as to a matter that is the subject of a representation,

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| warranty or condition shall mean (a) the actual knowledge as to any |
| such matter of any of the Persons listed in Schedule 1.1(a) (or any |
| successor with similar authority and responsibilities) and (b) the |
| actual knowledge that a prudent business person in such position would |
| reasonably be expected to have in light of such Person's title and |
| responsibilities, and after reasonable inquiry of subordinates. |
| "Law" shall include any law, statute, ordinance, rule, regulation, permit, |
| license, authorization, order, judgment, injunction or decree of any |
| Governmental Authority and, without limiting the generality of the foregoing, any Governmental Authorization. |

"Liability" shall mean any debt, liability, guarantee, commitment or other obligation (contingent or otherwise), known or unknown, matured or unmatured, due or to become due, accrued or unaccrued.

"Licensed Intellectual Property" shall mean the Intellectual Property listed as such on Schedule 3.9.

"Rall Parent" shall mean Rall Space & Communications Ltd., a Bermuda company.

"Material Adverse Change" shall mean an event that has had, or is reasonably likely to have, a Material Adverse Effect.

"Material Adverse Effect" shall mean an effect that is materially adverse to the value of the Transferred Business or the Purchased Assets, taken as a whole, or materially adverse to the business, financial condition or results of operations of the Transferred Business, taken as a whole; provided that the following shall be excluded from any determination as to whether a Material Adverse Effect has occurred: (a) any changes or effects attributable to the expiration or non-renewal of any Customer Service Contracts in accordance with the respective terms of such contracts (other than an expiration resulting from a party's exercise of an early termination or buy-out right); (b) any changes or effects attributable to general economic or political conditions (but only if the Transferred Business and the Purchased Assets are not disproportionately affected); and (c) any changes or effects that are generally applicable to Persons engaged in the satellite communications operator business (but only if the Transferred Business and the Purchased Assets are not disproportionately affected). In addition, solely for purposes of determining whether there has been a Material Adverse Change under Section 3.19, there shall be excluded from such determination any changes or effects that are directly attributable to the filing of the Chapter 11 Cases. The filing of the Chapter 11 Cases shall not, taken alone, be deemed to represent a Material Adverse Effect.

"Noncompetition Agreement" shall mean the noncompetition agreement to be entered into among Parent, Purchaser, Sellers and the Affiliates of Sellers specified therein, on or prior to the Closing Date substantially in the form of Annex D hereto.

"Non-Disclosure Agreement" shall mean the Non-Disclosure Agreement, dated XXXXXX 20XX, between Parent and Rall Parent, as amended.

"Other Filing Entities" shall include entities referred to in Schedule 1.1(c)hereto.

"Out-of-Pocket Expenses" shall mean payments by a Person to a third party and shall not include compensation paid to such Person's employees.

“Person” shall mean an individual, a company, a corporation, a partnership, an association, a trust or other entity or organization or any Governmental Authority.

"Pro Rata Fraction" shall mean a fraction of which (a) the denominator is the total cancellation payment divided by the monthly rate specified in the contract and (b) the numerator is the denominator minus the number of months from the cancellation date to the Closing.

"Purchased Satellite Procurement Contracts" or "Purchased Satellite Procurement Agreements" shall mean the following:

(a) Commstar 4: Contract, dated August 2, 1989,between Rall SpaceCom (as successor to ABC) and Techseed (as successor to Stanford Company);

(b) Commstar 5, Commstar 6 and Commstar 7:

Contract, dated XXXXXX, 20XX, between Rall SpaceCom (a ssuccessor to ABC) and SS/R, as amended by Amendment No. 1,dated XXXXXX, 20XX, Amendment No. 2, dated XXXXXXX, 20XX, and Amendment No. 3, dated XXXXXX, 20XX;

(c) Commstar 8: Contract, dated XXXXX, 20XX, between Rall SpaceCom and SS/R, as amended by Contract Amendment No. 1, effective as of XXXXXX, 20XX and Contract Amendment No. 2, effective as of XXXXXXX, 20XX and as amended in accordance with the terms of Annex H; and

(d) Commstar 13: Agreement, dated XXXXXX, 20XX, between TVZ Corporation and Rall SpaceCom,the Amended and Restated TVZ 9 Agreement, effective as of XXXXXX, 20XX, between Rall SpaceCom and SS/R, as amended in accordance with the terms of Annex H, and the Contract, dated XXXXXX, 20XX, between Rall SpaceCom and TVZOrbital Corporation.

"Recurring Revenues" shall mean Revenues earned in the ordinary course of the T ransferred Business, consistent with past practice, but shall exclude the portion of each termination fee payable by a customer upon early termination of its contract commitment equal to the Pro Rata Fraction multiplied by the aggregate of such termination fees, any fees related to termination of options or any similar non-recurring Revenue items; provided that the Revenues from occasional, month-to-month and part-time use shall be deemed to be Recurring Revenues.

"Regulatory Requirements" means all applicable requirements of the Federal Communications Act of 1934, as amended, and the published policies, rules, decisions and regulations of the FCC as amended from time to time.

"Related to" shall mean primarily related to, or used or intended to be used orheld for use primarily in connection with.

"Related to the Purchased Assets" shall mean primarily related to, or used or intended to be used or held prior to the Closing for use primarily in connection with, the Purchased Assets.

"Revenues" shall mean the revenues recognized by Sellers in accordance with GAAP, consistently applied, for services rendered under the Customer Service Contracts (including any Customer Service Contracts with RallStarnet Network Services, Inc.) and Portability-In Contracts (but only to the extent attributable to Purchased Satellites) and including revenues derived from the transponders sold by ABC prior to Sellers' acquisition of Starnet to the extent consistent with past practices. As used herein with respect to a specified date, the term "Revenues" does not include any revenues that are not attributable to Contracts that would have been Assumed Contracts if the Closing had occurred on the date such revenues accrued.

"Subsidiary" shall mean any Person 50% or more of the equity interests in which are beneficially owned directly or indirectly by a Seller.

"Successor" or "successor" shall mean the legal successor to any Person in

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| connection with any amalgamation, merger, reorganization or equivalent |
| thereof and shall include, without limitation, the purchaser of all or |
| substantially all of the assets of such Person; provided that Purchaser |
| will not be Successor to the Sellers. |
| "Taxes" shall mean taxes, fees, duties or other charges imposed by any |
| Governmental Authority, including, but not limited to income, |
| franchise, gross receipts, gains, capital, value added, ad valorem, |
| respective severance, property, production, sales, use, transfer, |
| stamp, documentary, recording, registration, license, excise, |
| employment, occupation, pension plan, withholding, payroll, minimum |
| taxes, windfall profit taxes or similar taxes, fees, duty or other |
| charges together with any interest, additions or penalties with respect |
| thereto and any interest in respect of such additions or penalties. |

"Total Loss" shall mean, with respect to any Purchased Satellite, any of the following: (a) the complete loss, destruction or permanent failure of the satellite; (b) the satellite suffers or is expected to suffer Transponder Failure(s) resulting in an accumulated loss of more than fifty (50) percent of its Remaining Transponder Years from the date the failure occurs through the Remaining Mission Life; or (c) the revocation, non-renewal or other loss of the applicable ITU Authorization or FCC Authorization required in order to operate such satellite at its intended orbital location. In addition, solely with respect to Commstar 13, the term "Total Loss" shall also include any event or condition that would constitute a "Total Loss" as defined in Section 4B of the Amended and Restated TVZ Contract between Rall Starnet and SS/R, effective as XXXXXXX, 20XX, as amended through XXXXXX, 20XX.

As used in the foregoing definition, the terms:

"Remaining Transponder Years" shall mean the product of (i) the number of transponders operating for one year in a manner that is not a Transponder Failure and (ii) the number of years included in the satellite's Remaining Mission Life. As of XXXXXX, 20XX, the Remaining Transponder Years for each Purchased Satellite are as follows:

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"Remaining Mission Life" shall mean the time period in years until the satellite reaches its completion of orbital design life. As of XXXXXX, 20XX, the Remaining Mission Life for each operational Purchased Satellite is as follows:

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"Satellite Performance Specifications" shall mean the relevant Performance Specifications set forth in the Purchased Satellite Procurement Agreements for each of Commstar 4, Commstar 5, Commstar 6, Commstar 7 and Commstar 13.

"Transponder Failure" shall mean that the transponder permanently (including permanently intermittently) fails to operate in accordance with the Satellite Performance Specifications or will fail to operate in accordance with the Satellite Performance Specifications throughout all periods including eclipse, loss of on-board propellant or available power resulting in the reduction in the Remaining Mission Life.

"Transferred Business" shall mean the portion of Sellers' Starnet satellite services business operations Relating to and conducted with the Purchased Satellites, excluding Sellers' Network Services Business of providing end-to-end data solutions on networks comprised of earth terminals, space segment, and where appropriate, networking hubs and Sellers' Professional Services Business of providing (a) technical support and monitoring in the construction and launch of satellites,

(b) telemetry, tracking and control services and (c) technical and operational support in the design, implementation and operation of data networks over satellites.

"Transferred Intellectual Property" shall mean Intellectual Property that is listed as such on Schedule 3.9.

"Transition Services Agreement" shall mean, collectively, the Business Transition Services Agreement and the TT&C Transition Services Agreement entered into among Sellers and Purchaser on the date hereof and attached hereto as Annex E-1 and E-2, respectively.

Each of the following terms is defined in the section of thisAgreement set forth opposite such term:

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| Term Section |
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| 363/365 Orders 5.1(b) |
| Accounting Requirements 6.7(a) |
| Adjustments 2.5(b) |
| Agreement Preamble |
| Alternate Transaction 5.1(c) |
| Applicable Employees 8.2(d) |
| Arbiter 2.5(g) |
| Arbiter Report 2.5(g) |
| Assumed Liabilities 2.3 |
| Average Transponder Price 9.1(q) |
| Backlog Threshold 2.5(b) |
| Bankruptcy Code Recitals |
| Bankruptcy Court Recitals |
| Base Price 2.5(a) |
| Benefit Plans 8.2(e) |
| Break-Up Fee 5.1(c) |
| Chapter 11 Cases Recitals |
| Chosen Courts 12.11 |
| Closing Date 2.6 |
| Commingled Books and Records 6.3 |
| Consideration 8.1(a) |
| Contracts With Warranty 3.10(j) |
| D&T 6.7(a) |
| Deposit 2.7(a)(v) |
| Deposit and Security Agreement Recitals |
| DOJ 6.5(c) |
| TVZ 9.1(l) |
| Employees 8.2(b) |
| Entitlement Party 2.1(a) |
| Estimated Adjustment Report 2.5(b) |
| Excluded Assets 2.2 |
| Expense Reimbursement 5.1(c) |
| Final Report 2.5(e) |
| FTC 6.5(c) |
| GEO Satellites Recitals |
| Telli LLC Recitals |
| Lease Agreement 6.17 (b) |
| Lease Notice 6.17(a) |
| Listed Employees 8.2(b) |
| Rall Space Preamble |

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| Rall SpaceCom Preamble |
| New Lease 6.17(a) |
| New Procurement Agreement Recitals |
| Objection Notice 2.5(f) |
| Open Source 3.9(e) |
| Other Employees 8.2(b) |
| Other Intellectual Property 3.9(a) |
| Parent Preamble |
| Parent Shareholder Approval 4.2 |
| Parent Shareholder Approval Date 11.1(b) |
| Parent Shareholders Meeting 7.2 |
| PNG Agreement 6.15 |
| Portability-In Contract 3.10(g) |
| Portability-Out Contract 3.10(g) |
| Postponement Notice 2.6 |
| Proposal 6.13 |
| Purchase Price 2.5(a) |
| Purchased Assets 2.1(a) |
| Purchased Satellites Recitals |
| Purchaser Preamble |
| Purchaser Obligations 12.7 |
| Receiving Party 2.1(a) |
| Related Agreements Recitals |
| Restricted Persons 6.13 |
| Retained Accountants 6.7(a) |
| Revenue Threshold 2.5(b) |
| Revised Procurement Agreements Recitals |
| Sale Order 5.1(b) |
| Sale Procedures Order 5.1(b) |
| Sales and Marketing Employees 8.2(b) |
| SEC 3.14(a) |
| Sellers Preamble |
| Sellers' FCC Application 6.5(a) |
| Selling Activities 6.13 |
| Solicit 8.2(g) |
| SS/R Recitals |
| SS/R Agreement Recitals |
| Superior Proposal 6.13 |
| Three-Month Period 2.5(b)(iv)(A) |
| Transaction 6.13 |
| Transfer Taxes 8.1(b) |
| Upgrade Software Annex A |
| WARN Act 2.4(j) |

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| Warranty Claims 2.3 |
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Section 1.2 Other Definitional Provisions.

(a) The words "hereof", "herein" and "hereunder" and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement.

(b) The terms defined in the singular shall have a comparable meaning when used in the plural, and vice versa.

(c) The terms "dollars" and "$" shall mean United States dollars.

**ARTICLE II**

**PURCHASE AND SALE OF THE PURCHASED ASSETS**

Section 2.1 Purchase and Sale of Purchased Assets.

(a) On the terms and subject to the conditions set forth herein, at the Closing, the Sellers agree to sell, convey, transfer, assign and deliver, or cause to be sold, conveyed, tran ferred, assigned or delivered, to Purchaser, and Purchaser agrees to purchase from the Sellers, good title to all right, title and interest of the Sellers in and to the assets set forth on Annex A hereto, whether tangible or intangible, except for the Excluded Assets, free and clear of any Encumbrances (other than Encumbrances that constitute Assumed Liabilities) to which Purchaser would be subject following the Closing Date (the "Purchased Assets"). In the event it is determined following the Closing that any asset that is uniquely related to a Purchased Satellite should have been transferred to Purchaser in order for the representations and warranties of Sellers in Section 3.2 to be true but were not, such assets shall also constitute Purchased Assets and shall be transferred, without charge, to Purchaser. Subject to the provisions of Section 7.6, if after the Closing Date, Sellers, on the one hand, or Purchaser and Parent, on the other hand (the "Receiving Party"), receive any funds which, pursuant to the terms of this Agreement, belong to the other party (the "Entitlement Party"), the Receiving Party shall hold such funds in trust for, and immediately pay over such funds to, the Entitlement Party.

(b) On the Closing Date, Sellers shall (i) cure, atS ellers' sole expense, any and all defaults existing under each Assumed Contract to the extent required for Sellers to assume such Assumed Contract in the Chapter 11 Cases, (ii) pay, or to the extent permitted by the Sale Order segregate funds sufficient to pay, any and all cure amounts due with respect to each Assumed Contract, (iii) assume each Assumed Contract in the Chapter 11 Cases, and (iv) subject to Purchaser providing adequate assurance of performance to the counterparty thereto to the extent required by the Bankruptcy Court, assign such Assumed Contract to Purchaser pursuant to an order of the Bankruptcy Court(which may be the Sale Order or one or more other orders that are no less favorable to Parent and Purchaser than the provisions of the Sale Order). Effective upon and concurrently with such assignment, Purchaser shall assume each Assumed Contract assigned to it pursuant to this Section 2.1.

Section 2.2 Excluded Assets. Notwithstanding any provision herein to the contrary, the Purchased Assets shall exclude all assets and properties of the Sellers and any Affiliate of the Sellers other than those assets and properties included in the definition of Purchased Assets (all such assets herein referred to as the "Excluded Assets"), including, without limitation, the assets listed on Annex B hereto.

Section 2.3 Assumed Liabilities. On the terms and subject to the conditions set forth herein, on the Closing Date, Purchaser or its designated Affiliate (whose performance has been guaranteed as provided in

Section 12.7) shall deliver to the Sellers an instrument of assumption in form and substance reasonably satisfactory to Sellers pursuant to which Purchaser or such designated Affiliate shall assume and agree to discharge (a) all Liabilities under the Assumed Contracts that arise and become due with respect to periods on or after the Closing Date in accordance with the respective terms and subject to the respective conditions thereof; (b) Liability for any claims first made on or after the Closing Date with respect to warranty or similar claims under Assumed Contracts that are Contracts With Warranty to the extent that the claim relates to performance problems after the Closing regardless of whether the underlying event or condition giving rise to the warranty or similar claim existed or arose on, prior, or after Closing ("Warranty Claims"); (c)Liabilities set forth on Schedule 2.3; and (d) any Liability arising on or after the Closing Date in connection with the operation of the Transferred Business or ownership of the Purchased Assets by Purchaser or its Affiliates on or after the Closing Date (the "Assumed Liabilities").

Section 2.4 Excluded Liabilities. The only Liabilities which Purchaser shall assume and to which the Purchased Assets shall be subject are the Assumed Liabilities and all other Liabilities shall be retained by the Sellers. For the avoidance of doubt, the Liabilities listed below are excluded and shall not be assumed or discharged by Parent or its Affiliates and instead shall be retained by the Sellers:

(a) All Liabilities arising out of or relating to the Excluded Assets;

(b) All Liabilities for Transfer Taxes imposed or assessed as a result of the transactions effected pursuant to this Agreement;

(c) All Liabilities of the Sellers with respect to any indebtedness for borrowed money;

(d) All Liabilities relating to claims for overcharges made or billed prior to the Closing;

(e) Any Liabilities or obligations of any Seller under any Contract related to breaches by a Seller of its obligations thereunder occurring prior to the Closing Date;

(f) Any payment obligations of any Seller for goods delivered or services rendered prior to the Closing (other than (i)Warranty Claims, and (ii) "orbital payments" and similar payments arising out of the operation of the Purchased Satellites, including those to become due pursuant to the terms of the Purchased Satellite Procurement Contracts, Revised Procurement Contract and New Procurement Contract);

(g) Any Liabilities, obligations or responsibilities whatsoever relating to any "employee benefit plan" (as defined in

Section 3(3) of ERISA) maintained by any Seller, any ERISA Affiliate, any Subsidiary or any Affiliate of any Seller whether or not relating to employees associated with the Purchased Assets, including any multiemployer plan, maintained by or contributed to by any Seller or any ERISA Affiliate, or as to which any Seller, Subsidiary, ERISA Affiliate or Affiliate of any Seller is obligated to contribute to, at any time, including any such Liability (i) to the SAMS BenefitGuaranty Corporation under Title IV of ERISA; (ii) relating to a multiemployer plan; (iii) with respect to non-compliance with the notice or benefit continuation requirements of COBRA; or (iv) with respect to any non-compliance with ERISA or any other applicable laws;

(h) Except as provided in Section 8.2(c), all Liabilities with respect to any Persons at any time employed by any Seller or its Affiliates in connection with the operation or ownership of the Transferred Business or the Purchased Assets, whether known or unknown, fixed or contingent which arise out of events occurring prior to employment of any of such Persons, if at all, by Purchaser;

(i) All Liabilities arising from the ownership or operation of the Purchased Assets prior to the Closing;

(j) Except as provided in Section 8.2(c), any Liabilities arising under the Worker Adjustment and Retraining Notification Act(the "WARN Act") in connection with the Sellers' termination of any employees; and

(k) All Liabilities assessed by the FCC for violations of statutes, rules and policies with respect to Sellers' operation of the Purchased Assets and the Transferred Business prior to the Closing.

Section 2.5 Purchase Price. (a) On the terms and subject to the conditions set forth herein, at the Closing, Purchaser agrees to pay to the Sellers $1.0 billion (the "Base Price"), subject to increase or decrease pursuant to Sections 2.5(b), (c) and (d) (the Base Price, as so adjusted, the "Purchase Price").

(b) The Base Price shall be adjusted by the amounts set forth in clauses (i) through (v) below (the "Adjustments"). At least three (3) Business Days prior to the Closing, Sellers shall deliver to Purchaser a report (the "Estimated Adjustment Report") certified as to completeness and accuracy by the chief financial officer of each Seller, which shall set forth a reasonable good faith estimate (together with reasonable supporting detail) of the Adjustments set forth in clauses (i), (ii), (iii) and (v) below.

(i) The Base Price shall be decreased by the sum of all amounts received by the Sellers prior to the Closing with respect to customer deposits, prepayments and accounts receivable generated by the Transferred Business to the extent related to the period after the Closing Date (other than (A) the Excluded Payments and (B) the remaining balance of the amounts prepaid as of the date hereof under the Contracts set forth on Schedule 2.5(b)(i)).

(ii) The Base Price shall be decreased by an amount equal to the Pro Rata Fraction multiplied by each cancellation payment received by Sellers with respect to periods prior to the Closing with respect to Customer Service Contracts which would not have terminated prior to Closing butfor the cancellation occurring after the date of this Agreement and which would have been Assumed Contracts if they had not been terminated.

(iii) The Base Price shall be decreased by any insurance payments received by Sellers, net of any payments by Sellers to parties under Contracts With Warranty with respect to the insured loss, prior to the Closing in respect of (i) a loss suffered by the Transferred Business or the Purchased Assets (or assets that would have been Purchased Assets but for such loss) subsequent to the date hereof and prior to the Closing Date, or (ii) a new proof of loss first filed after the date hereof other than with respect to matters described on Schedule 3.20(b).

(iv) There shall be a Final Report as of a month-end no more than sixty (60) days prior to the Closing. The Base Price shall be decreased by the greater of the following decreases:

(A) if Recurring Revenues for the three (3) calendar month period (the "Three-Month Period") in the Final Report are below the revenue threshold set forth in Schedule 2.5(b)(iv)(A) (the "Revenue Threshold"), then the Base Price shall be decreased $10 for every $1 that such Recurring Revenues are below the Revenue Threshold, but not more than a $100 million decrease in the aggregate under this Section2.5(b)(iv)(A).

(B) if Backlog, as set forthin the Final Report, is less than the backlog threshold set forth on Schedule

2.5(b)(iv)(B) (the "Backlog Threshold"), then the Base Price shall be decreased by the difference between the Backlog Threshold and such Backlog amount, but not more than a $25 million decrease in the aggregate under this Section 2.5(b)(iv)(B).

(v) The Base Price shall be increased by the sum of: (A) all security and similar deposits paid by any Seller to the Contract counterparty under any of the Assumed Contracts (but only to the extent of the economic benefit that Purchaser receives from such deposits), (B) pre-paid expenses that are Purchased Assets (provided that no Adjustment shall be made with respect to launch risk management insurance for Commstar 8and Commstar 13) and (C) to the extent related to the Purchased Assets, personal property taxes and FCC regulatory fees, in each case under clauses (A), (B) and (C) to the extent that they relate to the Transferred Business for any period following the Closing. The Base Price shall be decreased by the amount of any FCC regulatory fees that will be payable by Purchaser (or its designated Affiliate) following the Closing with respect to the Purchased Assets, to the extent such fees relate to the Transferred Business for any period prior to the Closing.

(c) The Base Price shall be decreased by $25 million if at Closing Sellers or SS/R have not delivered to Purchaser under the terms of the Commstar 8 Procurement Contract a legally binding underwriting commitment to Purchaser as the named insured or the valid assignment of Sellers' or SS/R's rights as the named insured to such a commitment for launch risk management insurance with coverage limits of $250 million (which policy coverage limits may be decreased as provided in the Revised Procurement Agreement related to Commstar 8) and on the terms set forth in Schedule 2.5(c).

(d) If on or prior to the Closing Date, Sellers, incompliance with Section 6.17, shall have entered into a New Lease and Purchaser shall have elected under Section 6.17(c) for the New Lease to be the Lease Agreement for purposes of this Section 2.5(d), and the Lease Agreement is a valid and binding Contract (which is an Assumed Contract, all rights under which are legally and validly assigned to Purchaser at Closing) then: (A) the Base Price shall be increased by$100 million and (B) provided that SS/R executes and delivers at Closing amendments to the Purchased Satellite Procurement Agreements eliminating all obligations to make orbital incentive payments, Purchaser shall pay SS/R on the Closing Date $25 million, whereupon the covenant of Sellers in Section 6.16 hereof and the closing condition in Section 9.1(r) hereof shall cease to be effective.

(e) Commencing with November 30, 2003 (or such earlier month-end as the parties may agree) and on and as of each subsequent month end, Ernst & Young or, if it is unable or unwilling to serve, another mutually acceptable accounting firm or, if the parties are unable to agree, such a firm selected by the Bankruptcy Court (Ernst &Young or such other firm, the "Accountants") shall perform an agreed upon procedures review of the Backlog as of, and the Recurring Revenues for the Three Month Period ending on such month end and shall report, as part of such review, on their computation of such amount (the "Monthly Report"). The Monthly Report shall also set forth a calculation the Average Transponder Price for the period from the date of this Agreement through the last day of the last full calendar month covered by the Monthly Report. Sellers shall deliver to the Accountants promptly after XXXXXX, 20XX, and after the end of each month thereafter a calculation (with appropriate supporting detail) of Recurring Revenues for the Three Month Period ending at such month end, Average Transponder Price through such month end and Backlog as of such month end. The Accountants shall deliver each of their Monthly Reports to Sellers and the Parent and Purchaser as soon as practicable after its completion. Sellers and Parent and Purchaser shall consult in good faith with respect to each Monthly Report to reach an agreement on all computational and other issues with a view towards minimizing the likelihood of a dispute with respect to the Final Report referred to below. On the Closing Date, the Base Price shall be adjusted to reflect the Adjustment required under Section 2.5(b)(iv) solely on the basis of the Recurring Revenues and Backlog shown on the most recent Monthly Report delivered by the Accountants (that Monthly Report, and the amounts set forth therein, used to establish these Adjustments is referred to as the "Final Report"). Sellers shall provide the Accountants their full cooperation (including executing and delivering appropriate management representation letters and all necessary information including, without limitation an accounts receivable aging schedule).

(f) Within sixty (60) days after the Closing: (i)Purchaser may, by written notice to Sellers, object to all or any portion of the Estimated Adjustment Report, (ii) Sellers may notify Purchaser that they believe that the actual amounts in clauses (i),

(ii), (iii) and (v) of Section 2.5(b) at Closing vary from the amounts in the Estimated Adjustment Report and (iii) either party may object to the computation of Recurring Revenues for the Three Month Period or Backlog in the Final Report. Upon reasonable prior notice, Sellers shall provide Purchaser with reasonable access during normal business hours during such sixty (60) day period to the books and records used in connection with the preparation of the Estimated Adjustment Report or to any other information in any Seller's possession that relates to the amounts in the Final Report. If any party makes an objection or provides a notice under this Section 2.5(f), it shall within such sixty

(60) day period deliver to the other parties written notice (the "Objection Notice") of its: (i) objection or its notice relating to the Estimated Adjustment Report and the calculation of the Adjustments or the computations in the Final Report, as the case may be, (ii) setting forth the items being disputed and the reasons therefore and (iii)specifying the party's calculation of each of the Adjustments or the computations in the Final Report, as the case may be, and the amount payable in accordance with this Section 2.5.

(g) For fifteen (15) days after delivery of the Objection Notice, Purchaser and Sellers shall attempt to resolve all disputes. If Purchaser and Sellers cannot resolve all such disputes within such fifteen (15) day period, Purchaser or Sellers may submit the matters in dispute for determination by a nationally recognized public accounting firm that is mutually acceptable to the parties or, if the parties are unable to agree, such a firm selected by the Bankruptcy Court (such a firm, the "Arbiter"). Promptly, but not later than thirty (30) days after the acceptance of its appointment, the Arbiter shall determine (based solely on presentations to the Arbiter by or on behalf of Sellers and Purchaser and not by independent review) only those items in dispute and shall render a report (the "Arbiter Report") as to the matters in dispute and the resulting payment pursuant to Section 2.5. Such determination shall be done as of the Closing or the date of the Final Report, as the case may be. For purposes of the Arbiter's calculation, the amounts to be included shall be the appropriate amounts from the Estimated Adjustment Report and the Final Report as to items that are not in dispute and for those items in dispute the amounts determined by the Arbiter. In resolving any disputed item, the Arbiter may not assign a value to such item greater than the greatest value for such item claimed by either party or less than the lowest value for such item claimed by either party. Purchaser and Sellers shall cooperate with the Arbiter in making its determination and such determination shall be conclusive and binding upon Purchaser and Sellers.

(h) Purchaser and Sellers shall each bear one-half of the fees and expenses of the Accountants and the Arbiter. Sellers, Parent and Purchaser shall enter into customary engagement letters with the Accountants and the Arbiter.

(i) Any payment owed by a party as a result of the Arbiter's determination shall be paid within ten (10) days after delivery of the Arbiter Report.

(j) If there is an amount owed by Sellers to Purchaser under Section 2.5(i) and Sellers have failed to make payment to Purchaser of such amount on the date provided therein, Purchaser may, in lieu of having a continuing claim against Sellers for such unpaid amount, elect, by written notice to Sellers and SS/R, to reduce the purchase price under the New Procurement Agreement by an amount equal to such unpaid amount and SS/R shall have a claim only against the Seller (and not against Purchaser) with respect to such reductions.

Section 2.6 Closing. The Closing shall take place at the offices of Sullivan & Cromwell LLP, 125 Broad Street, New York, N.Y., 10004 at10:00 a.m. local time, on the fifth (5th) Business Day following: the later of

(a) the receipt of the Government Approvals referred to in Section 9.1(h), (i)and (j) (other than any Governmental Approval the receipt of which has been waived by Purchaser and Sellers) and (b) the expiration date of any applicable waiting period under the HSR Act. If on such fifth (5th) Business Day there are other conditions that would not be satisfied if the Closing occurred on such date, the Closing may be postponed by either Sellers or Purchaser to a later date (but not later than the Final Date) by a delivery of written notice (the "Postponement Notice") to the other party not later than the close of business on such fifth (5th) Business Day unless (i) the party seeking such postponement is in material breach of its obligations under this Agreement or (ii) the other party has reasonably and in good faith concluded that it is unlikely that all the conditions to its obligation to effect the Closing will be satisfied by the Final Date and has provided written notice of such conclusion to the party seeking postponement within five (5) Business Days of receipt of the Postponement Notice. Purchaser may elect to defer the Closing until the last Business Day in the calendar month in which the Closing would have otherwise occurred pursuant to the terms of the preceding two sentences. The date on which the Closing occurs is called the "Closing Date". The Closing shall be effective as of 12:01 a.m. on the Closing Date.

Section 2.7 Deliveries by Purchaser.

(a) At the Closing, Purchaser shall deliver the following to the Sellers:

(i) The Purchase Price in immediately available funds by wire transfer to the accounts designated, in writing, by the Sellers not less than three Business Days prior to the Closing;

(ii) Such instruments of assumption and other instruments or documents, in form and substance reasonably acceptable to the Sellers, as may be necessary to effect Purchaser's assumption of the Assumed Liabilities;

(iii) A copy of each of the applicable Ancillary Agreements and any documents required to be delivered by such agreements, in each case duly executed by Purchaser or such of its Affiliates as are party thereto;

(iv) The certificates, opinions and other documents referred to in Section 9.2 to be delivered by Purchaser; and

(v) A deposit of $100 million with respect to the New Procurement Agreement (the "Deposit") in immediately available funds by wire transfer to the accounts designated, in writing, by the Sellers not less than three (3) Business Days prior to the Closing; provided that if Sellers are unable to deliver a valid, perfected, first priority security interest in the Deposit Collateral, as provided in the Deposit and Security Agreement, the Deposit shall not be a condition to Closing and shall only be required to be made when the required security interest in the Deposit Collateral, together with all appropriate documentation, is so delivered.

(b) Purchaser may designate, in a written notice delivered to the Sellers not less than thirty (30) days prior to the Closing Date, one or more of its Affiliates to accept title to or assignment of any portion of the Purchased Assets and assume any portion of the Assumed Liabilities directly from the Sellers at the Closing; subject to Parent's compliance with Section 12.7 and such assignment not hindering, delaying, or materially increasing the cost of Closing; and provided that no such assignment shall relieve Purchaser or Parent of their obligations hereunder.

Section 2.8 Deliveries by Sellers. At the Closing, the Sellers shall deliver to Purchaser the following:

(a) Bills of sale, assignments and any other customary instruments of sale and conveyance, in form and substance reasonably acceptable to Purchaser, transferring to Purchaser all Purchased Assets;

(b) A copy of each of the Ancillary Agreements and any documents required to be delivered by such agreements, in each case duly executed by Sellers or such of their Affiliates as are party thereto; provided that if Sellers fail to deliver the documentation as is necessary to grant to Purchaser the security interest referenced in Section 2.7(a)(v) above, such failure shall only constitute a condition to Purchaser extending the Deposit, and Purchaser's sole remedy under this Agreement for the failure to deliver such documentation shall be that it is relieved from its obligation to extend the Deposit until such time as Sellers deliver such documentation;

(c) The Books and Records other than Commingled Books and Records that are subject to Section 6.3;

(d) The certificates, opinions and other documents referred to in Section 9.1 to be delivered by Sellers; and

(e) Such other instruments or documents, in form and substance reasonably acceptable to Purchaser, as may be necessary to effect the Closing.

**ARTICLE III**

**REPRESENTATIONS AND WARRANTIES OF SELLERS**

Each Seller jointly and severally represents and warrants to Parent and Purchaser as follows:

Section 3.1 Organization and Qualification. Each Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite corporate power and authority to own and operate the Purchased Assets as currently owned and operated by it. Each Seller is duly qualified to do business and is in good standing as a foreign corporation in each jurisdiction where the ownership or operation of the Purchased Assets by it requires such qualification except where the failure tobe so qualified would not, individually or in the aggregate, have a Material Adverse Effect.

Section 3.2 Purchased Assets. Except as set forth in Schedule3.2, the Purchased Assets together with the services to be received pursuant to the Transition

Services Agreement and the Licensed Intellectual Property licensed pursuant to the Intellectual Property Agreement are sufficient to enable Purchaser immediately following the Closing to conduct the Transferred Business insubstantially the same manner as the Transferred Business has been operated by the Sellers in the past.

Section 3.3 Corporate Authorization. Subject to obtaining approval by the Bankruptcy Court, each Seller has the necessary corporate power and authority to execute and deliver this Agreement and each of the Ancillary Agreements to which it is a party and to perform each of its obligations hereunder and thereunder. Except for approval by the Bankruptcy Court, the execution, delivery and performance by each Seller of this Agreement and each of the Ancillary Agreements to which it is a party have been duly and validly authorized, and no additional corporate authorization or consent (including, without limitation, any action by such Seller's shareholders) is required in connection with the execution, delivery and performance by such Seller of this Agreement or the Ancillary Agreements.

Section 3.4 Consents and Approvals. Except for the Governmental Approvals listed in Schedule 3.4, and subject to obtaining approval by the Bankruptcy Court, no Governmental Approvals are required to be obtained by any Seller, and no notice or filing is required to be given by any Seller to, or made by any Seller with, any Governmental Authority or other Person in connection with the execution, delivery or performance by the Sellers of this Agreement or any of the Ancillary Agreements.

Section 3.5 Non-Contravention. Subject to obtaining approval by the Bankruptcy Court, the execution, delivery and performance by each Seller of this Agreement and each of the Ancillary Agreements to which such Seller is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) violate any provision of the certificate of incorporation, by-laws or other organizational documents of such Seller, (b) conflict with, or result in the breach of, or constitute a default under, or result in the termination, cancellation or acceleration (whether after the filing of notice or the lapse of time or both) of any right or obligation of such Seller under, or to a loss of any benefit to which such Seller is entitled under, any Contract, except as listed in Schedule 3.5, or result in the creation of any Encumbrance upon any of the Purchased Assets that will not be discharged in full on or prior to the Closing or (c) assuming the consents, approvals, waivers, authorizations, notices and filings set forth in Sections 3.4 and 4.3are obtained or given or made, violate or result in a breach of or constitute a default under any Law.

Section 3.6 Binding Effect. This Agreement, upon approval by the Bankruptcy Court, constitutes, and each of the Ancillary Agreements to which a Seller is a party when executed and delivered by the parties thereto, upon approval by the Bankruptcy Court, will constitute, a valid and legally binding obligation of each Seller enforceable in accordance with its terms, subject in the case of each Seller's obligation to transfer the Purchased Assets, to obtaining, giving or making the consents, approvals, waivers, authorizations, notices and filings set forth in Sections 3.4 and 4.3.

Section 3.7 Litigation and Claims.

(a) Except as set forth in Schedule 3.7 hereof and except for the Chapter 11 Cases and the matters and proceeding arising thereunder, there is no civil, criminal or administrative action, suit, demand, claim, hearing, arbitration proceeding, investigation, pending or, to the Knowledge of any Seller threatened, involving any Seller or the Purchased Assets, before any arbitration tribunal, domestic or foreign, or before any Governmental Authority which (i) challenges, or that would have the effect of preventing or delaying the consummation of the transactions contemplated hereby, (ii) would have the effect of subjecting any Seller to a material cease and desist order with respect to the Purchased Assets or (iii) has had or would reasonably be expected to have, a Material Adverse Effect.

(b) Except as set forth in Schedule 3.7 hereof, no Seller has been charged with, nor to the Knowledge of the Sellers, is any Seller under investigation with respect to, any violation of any provision of any Law with respect to the Purchased Assets or the conduct of the Transferred Business.

(c) Except as set forth in Schedule 3.7 hereof, none of the Purchased Assets or (except for Governmental Authorizations and such orders, writs, judgments, awards, injunctions and decrees as do not, and subsequent to the Closing will not, in the aggregate have a Material Adverse Effect) any Seller is subject to any order, writ, judgment, award, injunction or decree of any court or Governmental Authority of competent jurisdiction or any arbitrator or arbitrators, other than those arising in the Chapter 11 Cases.

Section 3.8 Property, Equipment and Other Purchased Assets.

(a) Except for this Agreement or as set forth in Schedule3.8, no Seller is obligated under or a party to, any option, right of first refusal or other contractual right to sell, lease or dispose of(other than pursuant to Customer Service Contracts) of the Purchased Assets or any portion thereof or interest therein.

(b) Except as set forth in Schedule 3.8, each Seller has good title to the Purchased Satellites and the other Purchased Assets purported to be owned by it, which in the aggregate for the Sellers, constitute all the Purchased Assets, free and clear of any Encumbrances(other than Encumbrances that would constitute Assumed Liabilities) to which Purchaser or such Purchased Assets would be subject following the Closing Date. Subject to ordinary course wear and tear, and except asset forth in Schedule 3.8, all material assets included in the Purchased Assets, including, without limitation, the in-orbit Purchased Satellites, are in good and working condition for use in the ordinary course consistent with the Sellers' past practice, and each Seller has performed regular maintenance on the Purchased Assets owned by it in accordance with such Seller's past practice.

(c) Upon transfer of title to Commstar 13 from SS/R toTVZ, Seller will own (i) 100% of the C-band payload of Commstar 13and (ii) as a tenant in common, 41.5% of the elements of the Commstar 13that are common to and/or shared by the Ka-Band, Ku-Band and C-Bandpayloads.

Section 3.9 Intellectual Property.

(a) Schedule 3.9 sets forth a list and description(including the country of registration) of (i) all Transferred Intellectual Property and all Licensed Intellectual Property and (ii)any other intellectual property for which any Seller has paid or is obligated to pay $100,000 or more ("Other Intellectual Property") used in the conduct of the Transferred Business or in connection with the Purchased Assets. Transferred Intellectual Property and Licensed Intellectual Property include all material Intellectual Property used in the Transferred Business, except to the extent designated as Other Intellectual Property on Schedule 3.9.

(b) Subject to the entry of the Sale Order, no Seller is, nor will it be as a result of the execution, delivery or performance of this Agreement and the Ancillary Agreements to which it is a party, in violation of any licenses, sublicenses or other agreements as to which such Seller is a party or pursuant to which such Seller is authorized to use any material third-party Intellectual Property and all such material third-party Intellectual Property is assignable, to Parent and Purchaser without causing any breach to occur, except as set forth on Schedule 3.9; and the transfer of the Purchased Assets and the transfer and licensing of the Transferred Intellectual Property and the Licensed Intellectual Property to Parent and Purchaser, will not cause Parent or Purchaser to incur any obligation to license any third party due to any preexisting agreement between such Seller and the third party, or otherwise, except as set forth on Schedule 3.9.

(c) No claims with respect to the Transferred Intellectual Property or Licensed Intellectual Property owned by any Seller are currently pending or, to the Knowledge of any Seller, threatened by any Person which would have a Material Adverse Effect.

(d) Except as set forth on Schedule 3.9, to the actual knowledge of the Persons listed on Schedule 1.1(a), as of the date hereof, there are no valid grounds for any bona fide claims: (i) to the effect that the use or operation of the Purchased Assets, infringes on any third-party Intellectual Property rights; (ii) against the use by such Seller of any Transferred Intellectual Property or Licensed Intellectual Property; (iii) challenging the ownership of any of the Transferred Intellectual Property or Licensed Intellectual Property; or

(iv) challenging any license or legally enforceable right to use the material third-party Intellectual Property by such Seller, except in each case as would not reasonably be expected to have a Material Adverse Effect.

(e) To the Knowledge of each Seller, there is no unauthorized use, infringement or misappropriation of any of the Transferred Intellectual Property or Licensed Intellectual Property that does not constitute open source code or other similar software not developed by one of the Sellers ("Open Source") by any third party, including any employee or former employee of such Seller which would have a Material Adverse Effect.

(f) To the Knowledge of each Seller, the ownership, manufacture, use, operation or sale of Purchased Assets or the transfer of such Purchased Assets to Purchaser does not infringe or violate any Intellectual Property rights of such Seller, including patent rights that are not transferred or otherwise licensed to Purchaser through this Agreement or the Ancillary Agreements. Therefore, no additional license, including a patent license, from such Seller to Purchaser(other than those contained in the Ancillary Agreements) is required for Purchaser to lawfully own, use and operate any Purchased Asset with respect to any Intellectual Property right owned or assigned to such Seller as of the Closing.

(g) The Sellers, in the aggregate, own or are licensed or otherwise possess legally enforceable rights to use all of the Transferred Intellectual Property and Licensed Intellectual Property(other than any Open Source embedded in either).

Section 3.10 Certain Contracts.

(a) Schedule 3.10 contains a list of all Contracts inexistence as of the date hereof (other than Government Contracts)including, without limitation, the following: (i) non-competition agreements, (ii) partnership or joint venture agreements, (iii)distributorship, franchise, or brokerage agreements and (iv) Contracts between any Seller and its suppliers or customers.

(b) Except as set forth in Schedule 3.10, each of the Contracts listed in Schedule 3.10 is valid, binding and enforceable against Sellers and, to each of the Sellers' Knowledge, the other parties thereto in accordance with its terms, and in full force and effect, subject, in the case of enforceability against the other parties thereto, to bankruptcy, reorganization, insolvency, moratorium or similar Laws relating to such other parties which affect creditors' rights generally and by legal and equitable limitations on the enforceability of equitable remedies as might apply to the other parties thereto. Except as set forth in Schedule 3.10, each of the Sellers has performed all material obligations required to be performed by such Seller under each Contract listed on Schedule 3.10, other than the commencement of the Chapter 11 Cases and monetary defaults that would be cured by such Seller by payment of the "cure amount" as provided in the Bankruptcy Code. Except as set forth in Schedule 3.10,neither any Seller nor, to Sellers' Knowledge, any other party thereto is in material default under any Contract listed on Schedule 3.10 (and no event has occurred which, with due notice or lapse of time or both, would constitute such a lapse or default by Sellers, or to Sellers' Knowledge, any other party thereto) and no event has occurred or failed to occur that would adversely affect a Seller's material rights thereunder, other than in the case of Sellers the commencement of the Chapter 11 Cases and defaults that would be cured by Sellers by payment of the "cure amount" as provided in the Bankruptcy Code.

(c) The Sellers have previously delivered to Parent and Purchaser true and complete schedules of Backlog as of XXXXXX, 20XX and as of the final day of each month during 2003, through XXXXXX, 20XX. Such schedule accurately reflects the aggregate amount of Backlog as of each such date. Attached as Schedule 3.10 is a true and complete Schedule of Backlog as of XXXXX, 20XX, which accurately sets forth the amount of Backlog attributable to each customer of the Transferred Business as of such date. Each Customer Service Contract reflecting such Backlog is listed on such schedule. The Backlog represents Revenue that would be recognized under each Contract from bona fide sales and delivery of goods, performance of services and other business transactions, for the remaining term of the Contract, assuming no termination thereof. Except as set forth on Schedule 3.10,as of the date hereof, no Seller is, or has received any notice or has any Knowledge that any other party is, in default in any material respect under any Contract representing any material portion of the Backlog, other than payment defaults under transponder lease agreements which are not more than sixty (60) days past due.

(d) Schedule 3.10(d) includes a true and complete list of amounts of deposits under Customer Service Contracts as of the date set forth in such schedule. True and complete copies of all Contracts, including all amendments thereto and modifications thereof, listed in Schedule 3.10 have been provided or made available to Parent and Purchaser.

(e) Except as set forth in Schedule 3.10, none of the Contracts bind or purport to bind any Affiliate of a Seller or of a party having an ownership interest in a Purchased Satellite, other than the Sellers and their subsidiaries.

(f) Except for those Customer Service Contracts that are indicated on Schedule 3.10, no Seller is a party to any Contract limiting the freedom of any of the Sellers or any of their Affiliates or of any Person having an ownership interest in a Purchased Satellite or any of such Person's Affiliates to engage in any line of business or to compete with any Person.

(g) Except as specifically noted on Schedule 3.10, no Seller is a party to any agreement that permits a customer to transfer all or a portion of their traffic from a satellite other than a Purchased Satellite to a Purchased Satellite (a "Portability-In Contract") or from a Purchased Satellite to a satellite other than a Purchased Satellite (a "Portability-Out Contract").

-28-

(h) Schedule 3.10 includes a separate list of all "sales-type" leases, "condos at" agreements and other Contracts as of the date hereof, pursuant to which, in the case of sales-type leases, customers have prepaid for the services offered by the Sellers and Related to the Purchased Assets and lists the number of transponders that are subject to such agreements.

(i) Schedule 3.10 sets forth a complete and accurate summary of the current status of SS/R's performance, as of the date hereof, under the Commstar 8 spacecraft contract and the Commstar 13satellite procurement contract, including a description of the program status, milestone completion and deliverables, payment profile, waivers, modifications and other deviations from specifications.

(j) Schedule 3.10 includes a separate list of Contracts under which any Seller provides an express or implied warranty("Contracts With Warranty"). As of the date hereof, the maximum Liability that Sellers could have under such warranties assuming Sellers failed to meet all applicable performance standards relating to these warranties does not exceed $53.5 million. Except as set forth in Schedule 3.10, no Seller has received any written notice to terminate or any written intention to terminate any Customer Service Contract.

(k) Except as specifically noted on Schedule 3.10, there are no orbital incentive or similar payments provided for under any Contract related to a Purchased Satellite.

Section 3.11 Government Contracts.

(a) Schedule 3.11 contains a list of all Government Contracts existing as of the date hereof, true, complete and correct copies of which have been provided or made available to Parent and Purchaser.

(b) Except as set forth in Schedule 3.11 and for the commencement of the Chapter 11 Cases, no Seller has taken any action or omitted to take any action required under the terms of a Government Contract which would cause a material breach or default under such Government Contract or cause a Seller to be subject to disqualification or removal from any capacity which a Seller now occupies with respect to, or as a result of the Government Contracts, either directly or as a subcontractor, consultant or otherwise, nor has any Seller been disqualified or removed from any such capacity.

(c) No Seller has received notice of any default under, or notice of any violation of the terms of, any Government Contract, other than those relating to the commencement of the Chapter 11 Cases, that is reasonably likely to result in a Material Adverse Effect.

(d) No Seller is participating in, or to the Knowledge of the Sellers, the subject of, any investigation by any Governmental Authority relating to the Government Contracts, billings, claims or business practices that is reasonably likely to lead to criminal or material civil penalties or the cancellation of any Government Contract, and, to the Knowledge of the Sellers, no such investigation has been threatened or is actively being considered.

(e) No Seller is debarred or suspended under the FederalAcquisition Regulations or other similar applicable federal or statelaws or regulations by any Governmental Authority from bidding for, orobtaining any Government Contract for services provided by, Sellers,and to the Knowledge of Sellers, no such proceeding is pending orthreatened.

(f) To the Knowledge of Sellers, each Seller has compliedin all material respects with all applicable requirements, if any,under the Federal Truth in Negotiations Act (codified at 10 U.S.C.Sections 2306 and 2306a; 41 U.S.C. Section 254b) with respect toGovernment Contracts for services provided by Sellers. No GovernmentContract is subject to the U.S. Government Cost Accounting Standards,as set forth in 48 C.F.R. Part 30. No Seller has engaged in anyfraudulent act, bribery or other act of dishonesty or made anymisrepresentation of material fact in connection with soliciting,negotiating, obtaining or maintaining any Government Contract whichcould serve as the basis of the termination of any such GovernmentContract or otherwise have a Material Adverse Effect.

(g) Except as would not have a Material Adverse Effect:

(i) the operation of the Purchased Assets has conformed, and isexpected to conform, with the delivery schedule requirements of eachGovernment Contract except as otherwise agreed by the applicableGovernmental Authority; (ii) there has not been, nor is there expectedto be, any cost overrun Liability or spending in excess of anylimitation of cost and fund provisions under any cost reimbursementtype Government Contracts; and (iii) no Governmental Authority has, inwriting or, to the Knowledge of a Seller, orally communicated, assertedor filed any actual or potential material price reduction, adversecontract adjustment, disallowance of costs or claims in respect of anyGovernment Contract.

(h) As of the date hereof, no Seller has received, withrespect to any Government Contract, notice of: (i) any cure noticepursuant to applicable contract default provisions or notice ofdefault, however termed; (ii) any contract termination, whether fordefault, convenience, cancellation or a lack of funding or otherreasons; (iii) any final decision or unilateral modification assessinga price reduction, penalty or claim for damages or other remedy,however termed; (iv) any claim, based on assertions of defectivepricing or asserted violations of government cost accounting standardsor cost principles; (v) any claim for indemnification by anyGovernmental Authority; (vi) other than in the ordinary course ofbusiness and in amounts less than $50,000, an equitable adjustment ofor claim concerning such Government Contract submitted by or brought byany

-30-

Seller or brought by any subcontractors or suppliers against a Seller;or (vii) any disallowance of costs (direct or indirect) or relatedclaims, in each case referred to in one of the preceding clauses ofthis Section 3.11, except as in each case is not reasonably likely tohave a Material Adverse Effect.

Section 3.12 Taxes. There are no agreements or arrangementswith any taxing authority with respect to the taxation of the Purchased Assetsor the income from the Purchased Assets.

Section 3.13 Compliance with Laws.

(a) The Purchased Assets have been at all relevant times, and are being, operated in compliance in all material respects with all applicable Laws, except where the failure to be in compliance would not, individually or in the aggregate, result in a Material Adverse Change to the Transferred Business following the Closing Date. Without limiting the generality of the foregoing, each of the Sellers has been and currently is in compliance in all material respects with the U.S. Export Administration Act of 1979, as amended, and all regulations promulgated thereunder with respect to the Transferred Business, except where the failure to be in compliance would not, individually or in the aggregate, result in a Material Adverse Change.

(b) Except as set forth in Schedule 3.13, each of the Sellers has complied in all material respects with all Regulatory Requirements applicable to, and with the terms and conditions of, the Governmental Authorizations.

(c) Except as set forth on Schedule 3.13, the Purchased Satellites have been designed and constructed to comply with, and are in all material respects in full compliance with, all obligations required under the FCC Authorizations and the Regulatory Requirements and, in the case of Commstar 8 and Commstar 13, all construction milestone requirements set forth in the authorizations applicable thereto.

Section 3.14 SEC Reports.

(a) As of the date of filing, the Annual Report on Form10-K of Rall Parent for the year ended XXXXXX, 20XX and the Quarterly Report on Form 10-Q of Rall Parent for the fiscal quarter ended XXXXXXX 20XX filed with the Securities and Exchange Commission(the "SEC") did not contain any untrue statement of a material fact or omit to state any material fact --- required to be stated therein or necessary in order to make the statements therein, in light of the circumstances in which they were made, not misleading. The foregoing representation shall not apply to any assets of, or aspects of, the business of Rall Parent and its subsidiaries that is not included in the Transferred Business or the Purchased Assets. In addition, the materiality of any fact shall be determined with respect to the business and assets of Rall Parent and its subsidiaries, taken as a whole.

(b) The financial statements contained in the filings set forth in clause (a) above (including the related notes, where applicable) fairly present in all material respects the consolidated financial position of Rall Parent and its consolidated Subsidiaries for the respective fiscal periods or as of the respective dates therein set forth (subject, in the case of unaudited statements, to recurring audit adjustments normal in nature and amount) and the results of the consolidated operations and changes in shareholders' equity and consolidated cash flows of Rall Parent and its Subsidiaries for the respective fiscal periods or as of the respective dates therein set forth; each of such statements (including the related notes, where applicable), comply in all material respects with the Accounting Requirements (as applicable at the date of the filing); and each of such statements (including the related notes, where applicable) has been prepared in all material respects in accordance with GAAP, consistently applied during the periods involved, except, in each case, as indicated in such statements or in the notes thereto.

(c) Each Seller maintains accurate books and records reflecting the Purchased Assets and Assumed Liabilities and maintains proper and adequate internal accounting controls which provide assurance that: (i) transactions are executed with management's authorization, (ii) transactions are recorded as necessary to permit the preparation of the financial statements and to maintain accountability for the assets, (iii) access to their assets is permitted only in accordance with management's authorization and (iv)accounts receivables are recorded accurately and properly and adequate procedures are implemented to effect the collection thereof on a current and timely basis.

(d) The chief executive officer and the chief financial officer of Rall Parent have signed and Rall Parent has furnished to the SEC all certifications required by Section 906 of the Sarbanes-Oxley Act of 2002; such certifications comply with the requirements thereof and have not been modified or withdrawn; and neither Rall Parent nor any of its officers has received any notice from any Governmental Authority questioning or challenging the accuracy, completeness or form of such certifications.

Section 3.15 Governmental Authorizations. Schedule 3.15 to this Agreement lists all material Governmental Authorizations (including, without limitation, all FCC Authorizations, ITU Authorizations and Environmental Permits) Related to the Purchased Assets or to the current use of the Purchased Assets that any Seller has obtained from any Governmental Authority. Except asset forth in Schedule 3.15, all such material Governmental Authorizations are validly existing authorizations, each Seller has all Governmental Authorizations necessary for the lawful operation of the Transferred Business and the Purchased Assets as currently operated and there is no action pending, nor to the Sellers' Knowledge, threatened, before any Governmental Authority to revoke, refuse to renew, suspend or modify any of the Governmental Authorizations, or any action which is reasonably likely to result in the denial of any pending applications of any Seller. Except as set forth on Schedule 3.15, the Sellers have not received notice from any Governmental Authority to the effect that any additional Governmental Authorizations are required for such operation, and no Governmental Authorizations are required but which have not been obtained. Except as set forth in Schedule 3.15, by reason of the consummation of the transactions contemplated by this Agreement, subject to the receipt of Governmental Approvals and entry of the Sale Order: (a) none of the rights of the Sellers under such Governmental Authorizations will be impaired and (b) all of the rights of the Sellers under such Governmental Authorizations will be enforceable by Parent or Purchaser without the consent or agreement of any party other than those obtained by the Sellers prior to the Closing. No Seller provides common carrier services to its customers under the Contracts as regulated under Title II of the Communications Act.

Section 3.16 Orbital Locations, etc. Schedule 3.16 hereto sets forth complete and accurate copies of: (a) a list, as of the date of this Agreement, by orbital location, of each Purchased Satellite, including the proposed orbital locations of Commstar 8 and Commstar 13, (b) a satellite loading chart, dated as of the date set forth in Schedule 3.16, listing each transponder on each Purchased Satellite (other than Commstar 8 and Commstar 13), together with the customer or group of related customers that have purchased services utilizing capacity on such transponder and the amount of capacity allocated to such customer(s) and (c) a list as of the date of this Agreement of the most recent health status report for each Purchased Satellite (other than Commstar 8and Commstar 13), which report summarizes all spacecraft related incidents and anomalies of which any Seller has Knowledge as of the date of the report, and the current status of the subsystems on the Purchased Satellites as of the date of the report. As of the date hereof, Sellers have no Knowledge of any spacecraft related incidents or anomalies that are not disclosed in the reports in the list referred to in clause (c) of the immediately preceding sentence.

Section 3.17 Intersystem Coordination.

(a) Schedule 3.17 contains a complete and accurate description of the current status, as of the date of this Agreement, ofthe frequency registration at the ITU for each Purchased Satellite operating at its current orbital location, and in the case of Commstar4, Commstar 8 and Commstar 13, as they are proposed to be operated at 77(degree) W, 89(degree) W and 121(degree) W, respectively, by the Sellers. Schedule 3.17 includes the ITU coordination request reference numbers and publication dates (or equivalent information for advance publication whenever coordination requests are still unpublished),identity of the filing administration, frequency bands covered and geographical coverage area. Schedule 3.17 also includes the ITU required dates for bringing the satellite network into use, submission of due diligence information to the ITU and ITU filing notification. Schedule 3.17 also details the relative priority of the filing administration's rights under applicable ITU regulations to use the frequency assignments described in its ITU filings at each such orbital location vis-a-vis any other foreign administration's rights to use the frequency assignments described in its ITU filings at and adjacent to each such orbital location.

(b) Schedule 3.17 contains a list, as of the date of this Agreement, of all satellite intersystem coordination agreements to which any Seller is a party with respect to the Purchased Satellites. Schedule 3.17 also contains a detailed description, as of the date of this Agreement, by orbital location, of the status of all remaining intersystem coordination required by the ITU for notification of the respective ITU filings, indicating the administrations with which coordination needs to be achieved and their relevant ITU filings.

(c) Except as disclosed on Schedule 3.17, as of the date of this Agreement no Person or entity has priority rights in accordance with the ITU regulations, or has, to the Knowledge of the Sellers, asserted that it has rights to operate a spacecraft in a manner thatwould result in interference to any Purchased Satellite now operated bya Seller or proposed to be operated by a Seller as per any FCC Authorization or any application for an FCC Authorization.

Section 3.18 Collective Bargaining Agreements. Except as disclosed on Schedule 3.18, no Seller is a party to or bound by any labor agreement or collective bargaining agreement respecting its employees, and there is not any pending, or, to the Knowledge of the Sellers, threatened, strike, walkout or other work stoppage or any union organizing effort by or respecting its employees.

Section 3.19 Absence of Change. Except as set forth in Schedule 3.19 and to the extent arising out of or relating to the transactions contemplated by this Agreement, since December 31, 2002, the Purchased Assets have been operated in the ordinary course in a manner consistent with past practice and there has not been any Material Adverse Change.

Section 3.20 Insurance.

(a) Schedule 3.20 sets forth a list of all insurance policies or binders, which list shall contain a general description of the coverage, deductible and term of each policy or binder, which are currently in effect insuring the Purchased Satellites, and true and complete copies thereof have been delivered to Parent and Purchaser.

(b) With respect to policies listed in Schedule 3.20, (i)the Sellers have paid all premiums due and have not received any notice of cancellation, and (ii) as of the date hereof: (A) except as setforth in Schedule 3.20, there are no pending or asserted claims against such insurance by any Seller and (B) no Seller has received any notice of any pending or threatened termination of any of such policies or any premium increases for the current policy period with respect to any of such policies.

Section 3.21 Related Party Transactions. Schedule 3.21 sets forth all transactions Related to the Purchased Assets between or among any Seller on the one hand and any Affiliate of any Seller on the other hand since XXXXXX 20 XX or that remain in place as of the date hereof.

Section 3.22 Accuracy of Copies. The copies of documents delivered or made available by any of the Sellers to Parent and Purchaser pursuant to the terms of this Agreement are complete and accurate in all material respects.

Section 3.23 Financial and Business Information.

(a) The Sellers have previously delivered to Parent and Purchaser the following schedules, each of which is true and complete as of the relevant dates indicated:

(i) Schedule of prepaid commitments as of XXXX, 20XX, which includes the option termination fee paid by BCS and schedule of off-balance sheet warranty liabilities as of XXXXXX 20XX;

(ii) Statements for the years ended XXXXXX 20XX and 20XX and for the six-month period ending XXXXX 20XX, of Revenues reported in each case by satellite;

(iii) Non-satellite capital expense schedule of the entire fixed satellite services business, dated XXXXXX 20XX, of Rall Parent;

(iv) The accounts receivable aging schedule of the Transferred Business, dated XXXXX 20XX (which schedule includes the accounts receivables arising out of Rall SpaceCom's San Del Mar business in amounts that do not exceed $100,000 per month); and

(v) Rall Starnet 20XX cost and expense schedule of Rall Parent's entire fixed satellite services business, dated XXXX 20XX.

(vi) A schedule of billings by customer for the five months ended XXXXX 20XX.

(b) Each of the schedules referenced in (i), (ii) and (iv) above: (i) is expressed in U.S. dollars and, except as otherwise expressly described in Schedule 3.23 hereto, has been prepared in accordance with GAAP; (ii) has been prepared on the basis of the books and records of Sellers in accordance with accounting principles consistently applied and maintained throughout the periods indicated; and (iii) accurately reflects the books, records and accounts of Sellers.

(c) The appraisals of the Purchased Satellites, dated XXXXX 20XX, with respect to Commstar 4 and Commstar 5 and XXXXX 20XX with respect to Commstar 6, Commstar 7, Commstar 8 and Commstar 13, are the most current appraisals available.

**ARTICLE IV**

**REPRESENTATIONS AND WARRANTIES OF PARENT AND PURCHASER**

Parent and Purchaser, jointly and severally, represent and warrant to the Sellers as follows:

Section 4.1 Organization and Qualification. Each of Parent and Purchaser is a company duly incorporated and existing under the laws of Bermudain good standing (meaning solely that it has not failed to make any filing with any Bermuda governmental authority or to pay any Bermuda government fees or tax, which would make it liable to be struck off the Registry of Companies in Bermuda and thereby cease to exist under the laws of Bermuda) and has all requisite power and authority to own and operate and to carry on its business as currently conducted.

Section 4.2 Corporate Authorization. Each of Purchaser and, subject to the receipt of approval of this Agreement and the transactions contemplated hereby by holders of sixty (60) percent or more of its total issued and outstanding ordinary shares ("Parent Shareholder Approval"), Parent, has the necessary corporate power and authority to execute and deliver this Agreement and each of the Ancillary Agreements to which it is a party, and to perform each of its obligations hereunder and thereunder. Except for obtaining Parent Shareholder Approval, the execution, delivery and performance by Parent and Purchaser of this Agreement and each of the Ancillary Agreements to which it is a party have been duly and validly authorized, and no additional corporate authorization or consent is required in connection with the execution, delivery and performance by Parent or Purchaser of this Agreement or the Ancillary Agreements. The board of directors of Parent (at a meeting duly called and held or otherwise in accordance with applicable Law and Parent's bye-laws) has: (a) approved the execution, delivery and performance by Parent of this Agreement and the transactions contemplated hereby, (b) subject to their fiduciary duties under applicable Law, authorized the solicitation of Parent's shareholders' approval of this Agreement and the transactions contemplated hereby, and (c) directed that this Agreement and the transactions contemplated hereby be submitted to Parent's shareholders for consideration and approval at the Parent Shareholder Meeting.

Section 4.3 Consents and Approvals. Except as set forth in Schedule 4.3 and except for such Governmental Approvals where the failure to obtain such Governmental Approval or to provide such notice to or make such filing with a Governmental Authority would not, individually or in the aggregate, have a material adverse effect on Parent and Purchaser's ability to consummate the transactions contemplated hereby, no Governmental Approval is required to be obtained by Parent or Purchaser to, or made by Parent from, and no notice or filing is required to be given by Parent or Purchaser to, or made by Parent, Purchaser with, any Governmental Authority or other Person in connection with the execution, delivery or performance by Parent or Purchaser of this Agreement or any of the Ancillary Agreements.

Section 4.4 Non-Contravention. Except as set forth in Schedule4.4, the execution, delivery and performance by Parent and Purchaser of this Agreement and each of the Ancillary Agreements to which it is a party, and the consummation of the transactions contemplated hereby and thereby do not and will not (a) violate any provision of the bye-laws, certificate of incorporation or memorandum of association of Parent or Purchaser, respectively or (b) assuming the consents, approvals, waivers, authorizations, notices and filings set forth in Sections 3.4 and 4.3 are obtained or given or made, violate or result in a breach of or constitute a default under any Law or any contract, arrangement or agreement to which Parent or Purchaser is subject, except for such violations, conflicts and breaches as in the aggregate will not have a material adverse effect on Parent's and Purchaser's ability to close the transactions contemplated hereby.

Section 4.5 Binding Effect. Except as set forth in Schedule 4.5, this Agreement constitutes, and each of the Ancillary Agreements (to the extent either Parent or Purchaser is a party thereto) when executed and delivered by the parties thereto will constitute, valid and binding obligations of Parent and Purchaser enforceable in accordance with their respective terms, subject to bankruptcy, insolvency, liquidation, amalgamation, fraudulent transfer, reorganization, moratorium and similar Laws of general applicability relating to or affecting creditors' rights and to general equity principles.

Section 4.6 Certificate of Incorporation, Memorandum of Association and Bye-Laws. True and correct copies of the certificate of incorporation, memorandum of association and bye-laws of Parent and Purchaser have previously been made available to the Sellers.

**ARTICLE V**

**COVENANTS AND AGREEMENTS REGARDING BANKRUPTCY**

Section 5.1 Bankruptcy Actions.

(a) Chapter 11 Filing. Each of the Sellers and the Other Filing Entities has filed the Chapter 11 Cases with the Bankruptcy Court and true and complete copies of the petitions have been delivered by Sellers to Purchaser.

(b) Cooperation; Efforts. Each of the Sellers and Parent and Purchaser shall use its Best Reasonable Efforts to cooperate, assist and consult with each other to procure the entry of a sales procedures order (the "Sale Procedures Order") promptly following receipt of the Parent Shareholder Approval and a sale order (the "Sale Order" and together with the Sale Procedures Order, the "363/365 Orders") as promptly thereafter as practicable, in each case in the form attached hereto as Annex F. Without limiting the generality of the foregoing, the Sellers shall (i) each comply with all requirements under the Bankruptcy Code and Federal Bankruptcy Rules in connection with obtaining the 363/365 Orders, (ii) agree to proceed with their Chapter 11 Cases pursuant to and in accordance with the terms and provisions contemplated by the 363/365 Orders, in each case after the order has been entered by the Bankruptcy Court and (iii)comply or cause the compliance with the notice requirements of the 363/365 Orders, in each case after the order has been entered by the Bankruptcy Court, and any other applicable order of the Bankruptcy Court as they relate to the Chapter 11 Cases, the Federal Bankruptcy Rules (including, without limitation, Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure) and any applicable rules of the Bankruptcy Court with respect to the transactions contemplated by this Agreement. In the event that the 363/365 Orders or any other orders of the Bankruptcy Court relating to this Agreement shall be appealed by any party (or a petition for certiorari or motion for reconsideration, amendment, clarification, modification, vacation, stay, rehearing or reargument shall be filed with respect to any such order), each of the Sellers and Parent and Purchaser will cooperate in taking such steps diligently to defend against such appeal, petition or motion and each of the Sellers and Parent and Purchaser shall use its Best Reasonable Efforts to obtain an expedited resolution of any such appeal, petition or motion. Neither Parent, Purchaser nor any of the Sellers shall make any filing in the Bankruptcy Court with respect to the 363/365 Orders (or otherwise take any position in the Bankruptcy Court proceedings with respect thereto) without the express written consent of the other party, which may not be unreasonably withheld, conditioned or delayed, or otherwise that would be reasonably likely to result in the failure of the transactions contemplated hereby. Notwithstanding anything to the contrary herein, however, nothing shall be deemed to prohibit or otherwise restrain either Parent or Purchaser from making any filing in the Bankruptcy Court to challenge or object to the entry of an order by the Bankruptcy Court approving the entry by one or more Sellers into an Alternate Transaction. To the extent that it is necessary for any Other Filing Entity to take actions comparable to those required of Sellers under this Section 5.1 in order for the transactions contemplated hereby to be consummated, Sellers shall cause the Other Filing Entities to take such action or, if Sellers are unable to cause an Other Filing Entity to do so, Sellers shall be deemed to bein breach of this Section 5.1.

(c) Break-Up Fee. Each of the Sellers hereby agrees, in the event that a Bankruptcy Court enters an order that becomes final and non-appealable approving a Transaction with a party other than Parent and Purchaser (an "Alternate Transaction"), Sellers shall pay to Purchaser a break-up fee (the "Break-Up Fee") in the amount of $20million together with an amount equal to all of the Out-of-Pocket expenses, up to a total of $8 million, incurred by Parent and Purchaser in connection with the transactions contemplated by this Agreement (the "Expense Reimbursement"). These amounts are intended to compensate Parent and Purchaser for the time and expense dedicated to this transaction and the value added by Parent and Purchaser in (i) establishing a bid standard or minimum for other bidders, (ii) placing the Sellers' estate property in a sales configuration mode attracting other bidders to the auction and (iii) for serving, by its name and its expressed interest, as a catalyst for other potential or actual bidders. The Break-Up Fee and Expense Reimbursement shall constitute an administrative priority claim against the Sellers' estates under Sections 503(b) and 507(a)(1) of the Bankruptcy Code and shall be paid immediately, without further order of the Bankruptcy Court, at such time as the order of the Bankruptcy Court approving an Alternate Transaction becomes final and non-appealable.

(d) Notification. Sellers shall keep Purchaser informed on a current basis of all proposals or offers from any Person for a possible transaction involving the Transferred Business, some or all of the Purchased Assets, or the stock of Sellers or any other Person that owns, directly or indirectly, any interest in the Purchased Assets. Sellers shall provide Purchaser with written copies of any such proposals or offers (including all material terms and the identity of the proponent of such proposal or offer) within one (1) Business Day after receipt thereof.

(e) Assignment of Rights. If, in connection with the auction or sale referred to in the Sale Procedures Order, any of the Sellers or any of their Affiliates enter into confidentiality or similar agreements with any Person, such Sellers shall assign all rights under those agreements to the extent relating to the Transferred Business to Purchaser at the Closing.

(f) Certain Contracts. Sellers shall cause: (i) SS/R to assume, under Section 365 of the Bankruptcy Code, in connection with the Chapter 11 Cases the Revised Procurement Agreements, the remaining Purchased Satellite Procurement Contracts, the Contract, dated as XXXXXX 20XX, with TVZ Orbital Corporation and the additional agreements set forth on Schedule 5.1(f), as amended and (ii) Rall Cyberstar Inc. to enter into with Rall SpaceCom, and assume, under Section 365 of the Bankruptcy Code, in connection with the Chapter 11Cases, that certain Master Service Agreement in the form previously delivered to Purchaser (and included in the Section 2.3.4.m file of the data room). Nothing contained in any Chapter 11 plan confirmed in Sellers' bankruptcy cases or in the confirmation order confirming any such plan shall conflict with, derogate from or reject any provisions of this Agreement.

**ARTICLE VI**

**CERTAIN COVENANTS**

Section 6.1 Access. Prior to the Closing, the Sellers shall permit Parent and Purchaser and their representatives to have reasonable access, during regular business hours and upon reasonable advance notice, to the Purchased Assets and personnel who work with the Purchased Assets, and shall furnish, or cause to be furnished, to Parent and Purchaser, any data and other information that is reasonably available with respect to the Purchased Assets as Parent and Purchaser shall from time to time reasonably request. The Sellers shall instruct their accountants and advisers to cooperate with Parent and Purchaser and to provide Parent and Purchaser with reasonable access to such accountants (including their work papers, subject to Parent and Purchaser complying with any confidentiality, limitation of liability, and other requirements of the accountants with respect to access to their work papers) and advisers. Sellers shall use Best Reasonable Efforts to facilitate meetings among Parent, Purchaser and customers of Seller designated by Purchaser. All information obtained by Purchaser or Parent with respect to Sellers or the Purchased Assets shall be subject to the terms of the Non-Disclosure Agreement.

Section 6.2 Conduct of Business.

(a) During the period from the date hereof to the Closing, except as otherwise contemplated by this Agreement or as Purchaser shall otherwise agree in writing in advance, each Seller shall use its Best Reasonable Efforts to conduct the Transferred Business and operate the Purchased Assets in the ordinary and usual course, to preserve intact all business and relationships with third parties Related to the Transferred Business and keep available their present employees whose primary responsibilities are Related to the Transferred Business. During the period from the date hereof to the Closing, except as set forth on Schedule 6.2, as otherwise provided for in this Agreement or as Purchaser shall otherwise consent, each Seller covenants and agrees that, with respect to the operation of the Purchased Assets, it shall use its Best Reasonable Efforts to:

(i) maintain the Purchased Assets in accordance with such Seller's past practice and not remove any equipment included in the Purchased Assets, except for replacements, modifications or maintenance in the ordinary course of business;

(ii) operate the Purchased Assets in accordance with applicable Law, including applicable Regulatory Requirements;

(iii) deliver to Purchaser, promptly after filing, copies of any reports, applications or responses to the FCC orany communications from the FCC or any other party directed to the FCC Related to the Purchased Assets which are filed between the date of this Agreement and the Closing Date;

(iv) furnish to Purchaser . . . within twenty (20)days after the end of each month ending between the date of this Agreement and the Closing Date: (A) a statement setting forth the Revenues of the Transferred Business (by customer and by satellite) for the month just ended and the Backlog of the Transferred Business as of the last day of such month, (B) cost and expense schedule for Rall SpaceCom's entire "Starnet" business for the month just ended, (C) copies of any new or amended Customer Service Contracts (provided that a Seller shall also notify Purchaser promptly after entering into such Customer Service Contracts) and report of any Customer Service Contract terminations for the month just ended, (D) progress reports on the construction of Commstar 8and Commstar 13 for the month just ended and (E) a report summarizing all spacecraft related anomalies during such month of which Sellers have Knowledge and (y) within twenty (20)days after the end of each calendar quarter health status reports for each satellite as of the last day of such quarter, summarizing all spacecraft related incidents and anomalies known to the Seller and the status of the subsystems on the satellites;

(v) keep Purchaser informed as to any necessary or relevant information related to its satellite intersystem coordination efforts insofar as they relate to the Transferred Business, and Seller shall not enter into any new or modify any existing intersystem coordination agreement that relates to the Transferred Business without Purchaser's prior written consent, which shall not be unreasonably withheld or delayed; provided that the foregoing shall not relate to informal satellite loading arrangements for periods prior to the Closing Date or other agreements that, in each case, are not binding on Purchaser following the Closing Date;

(vi) at least ten (10) days prior to Closing, deliver to Purchaser complete and accurate copies, as of a date within thirty (30) days of the Closing Date, of (A) a list, by orbital location, of each Purchased Satellite (which, in the case of Commstar 8 and Commstar 13 shall be the proposed orbital locations), (B) a satellite loading chart listing each transponder on the Purchased Satellite, together with the customer or group of related customers that have purchased services utilizing capacity on such transponder and the amount of capacity allocated to such customer(s) and (C) the most recent health status report for each satellite, summarizing all spacecraft related incidents and anomalies known to the Seller and the current status of the subsystems on the satellites as of the date of such report;

(vii) promptly and fully cure all violations of Law and Regulatory Requirements that relate to the Transferred Business and shall pay any fines which may be assessed by any Governmental Authority for any such violation when such fines are ultimately due, which if not cured or paid would have an adverse effect on the Transferred Business following the Closing;

(viii) perform on a timely basis all obligations required to be performed by them under all Contracts according to their respective terms and provide prior notice of renewal or a decision not to renew such agreement;

(ix) pay to SS/R all remaining milestone payments that are set forth in the milestone payment schedules contained in the Purchased Satellite Procurement Contracts as well as any other payments that are or may subsequently become due under such contracts, other than the payments due under the Commstar 8 Contract, dated XXXXX 20XX, between Rall SpaceCom and SS/R, in an amount not to exceed $130 million;

(x) cause SS/R to perform in a timely manner all of its obligations under the Purchased Satellite Procurement Contracts (other than Purchased Satellite Procurement Contract with respect to Commstar 4) in accordance with the terms and conditions thereof, including, without limitation, the completion of all work associated with the remaining milestones under the Purchased Satellite Procurement Contracts related to the construction and launch of Commstar 8 and Commstar 13; provided, however, that at the Purchaser's request Rall SpaceCom shall exercise the ground storage option under Article 33 of the Commstar 8 Procurement Agreement and pay all amounts associated with exercising such option;

(xi) cause SS/R to allow the Purchaser (and employees and contractors of its Affiliates) reasonable access to all work and work-in-progress performed under the Purchased Satellite Procurement Agreements related to the construction and launch of Commstar 8 and Commstar 13, all data and information related thereto (including the design and test data), and all facilities therefor, for purposes of observation, inspection, examination and evaluation at any reasonable time prior to final acceptance of the satellite(s) thereunder and thereafter to the extent Purchaser or its Affiliates are customarily provided such access in connection with their satellite procurement contracts with SS/R, subject, however, to the condition that the Purchaser or its Affiliate(s), as the case may be, shall provide SS/R with reasonable advance notice of its intent to obtain such access and that access to data shall be subject to the limitations and restrictions contained in the U.S. Federal International Traffic in Arms Regulations;

(xii) continue pricing, marketing and sales practices consistent with past practices and applicable market conditions; and

(xiii) comply with all applicable requirements of the WARN Act;

and it shall not with respect to the Purchased Assets:

(xiv) other than as provided in Section 6.17, enter into, or become obligated under: (A) any service agreement or commitment, except for customer service commitments at usual and customary rates with the consideration to be paid solely in cash, that are entered into in the ordinary and regular course of business and consistent with past business practice, or (B) without Purchaser's consent not to be unreasonably withheld or delayed, any transponder lease or service contract that will be an Assumed Contract and that provides for aggregate payments to Sellers in excess of $15 million in net present value (determined using a six (6) percent per annum discount rate);

(xv) other than with respect to Commstar 8 in accordance with the terms of its procurement agreement, approve or incur any Liability for any new capital expenditures except pursuant to existing obligations set forth in Schedule 6.2;

(xvi) dispose of or incur, create or assume any Encumbrance that will not be discharged on or prior to the Closing Date (other than pursuant to rights of first refusal or renewal options on satellite capacity, in each case as that are in existence on the date hereof) on, any Purchased Assets;

(xvii) enter into any "condos at" arrangements, "sales-type" leases or other prepaid lease agreements;

(xviii) divert or migrate any existing customer traffic on the Purchased Satellites to other satellites of the Sellers or their Affiliates that are not included in the Purchased Satellites except pursuant to the Portability-Out Contracts;

(xix) amend any procurement contract relating to Purchased Satellites in any manner that would adversely affect Purchaser's performance of and rights under such agreements following the Closing;

(xx) incur any indebtedness for money borrowed which would be an Assumed Liability;

(xxi) take any action or enter into any transaction that would adversely affect in any material respect Purchaser's ability to operate the Purchased Assets as presently operated;

(xxii) enter into any material transaction Related to the Purchased Assets, except in the ordinary course of business consistent with the past practice of the Transferred Business;

(xxiii) modify, terminate, amend or grant any waiver in respect of any Contract in any material respect;

(xxiv) take any action that would cause any of the representations and warranties made by any Seller in this Agreement not to be true and correct; provided that the failure to cure a breach of representation or warranty not caused by Sellers shall not be deemed to be a breach of this

Section 6.2(a)(xxiv);

(xxv) grant to any Person any interests or rights in any Transferred Intellectual Property except in the ordinary course of business consistent with past practice;

(xxvi) permit any transactions between the Purchased Assets and any other operations of any Seller or any Affiliate of a Seller except transactions that (A) are, or have been, entered into in the ordinary course of business consistent with past practice and (B) are on terms no less favorable to the Transferred Business than those that could be obtained in a comparable arm's-length transaction between two entities that are not Affiliates;

(xxvii) enter into any new intercompany agreements that would be assumed by the Purchaser at Closing;

(xxviii) enter into any Contract that contains (A) a restriction on any of the Sellers' ability to assign or otherwise transfer such agreement to Parent or Purchaser or any of their Affiliates and (B) any provision that provides for a change in any material term as a result of the assignment or other transfer of such agreement by any of the Sellers to Parent or Purchaser or any of their Affiliates; or

(xxix) agree, in writing or otherwise, to do any of the foregoing.

(b) Without limiting the effect of the condition to Closing set forth in Section 9.1(b) or the termination right set forth in Section 11.1(d), no Seller shall be deemed to have breached (other than for purposes of Sections 9.1(b) and 11.1(d)) any covenant set forth in Section 6.2(a) above if it takes or fails to take any action in order to comply with an order of the Bankruptcy Court. Any action or failure to take action which would have been a breach but for the prior sentence shall be deemed to be a breach of a covenant for purposes of Sections 9.1(b) or 11.1(d).

Section 6.3 Books and Records. The Sellers shall provide Purchaser with access to any commingled books and records that relate to the Purchased Assets which are not delivered to Purchaser on the Closing Date ("Commingled Books and Records") at any time and from time to time upon reasonable notice by Purchaser to the Sellers and Purchaser agreeing to keep all information included in the Commingled Books and Records relating to matters other than Purchased Assets confidential, and Sellers shall, at Purchaser's request, extract therefrom and deliver to Purchaser in electronic format a copy of all electronic files, data and spreadsheets that constitute Books and Records. Purchaser shall reimburse Sellers for one-half of the cost of such extraction. If any of the Sellers desires at any time to destroy any Commingled Books and Records, it shall first notify Purchaser and offer to Purchaser the right for thirty (30) Business Days to receive copies of the portions of such Commingled Books and Records that are related to Purchased Assets, at Purchaser's sole expense. If Purchaser does not elect to receive copies of such portions of Commingled Books and Records, Sellers shall be free to destroy such books and records.

Section 6.4 Best Reasonable Efforts. During the period from the date hereof to the Closing, the Sellers shall cooperate with Purchaser and Parent and use their Best Reasonable Efforts to satisfy, or cause to be satisfied, the conditions precedent to Purchaser's or Parent's obligations hereunder. Without limiting the generality of the foregoing, each Seller shall cooperate with Purchaser and Parent and use its Best Reasonable Efforts (a) to obtain the Governmental Approvals, and to give or make the notices and filings, set forth in Schedules 3.4 and 4.3, (b) to obtain the approvals and consents and give the notices required in respect of the Contracts designated in Schedule 3.10 as requiring such action (except to the extent such approvals and consents are not required because of the effect of the Sale Order) and (c) to obtain approval for a novation from a Seller to Purchaser of any Government Contracts listed in Schedule 3.11 if such novation is required, notwithstanding the Sale Order.

Section 6.5 Certain Filings; Consents.

(a) During the period from the date hereof to the Closing, the Sellers, Parent and Purchaser shall use their Best Reasonable Efforts to assist in obtaining the approval of the FCC for the assignment of the FCC Authorizations listed on Schedule 3.15 to Purchaser or its designated Affiliate and any other action or transaction contemplated by this Agreement for which such approval is required and, specifically and without limitation, Sellers shall prepare, sign and file with the FCC the assignor's and licensee's portions of the assignment applications. Within five (5) Business Days after the execution of this Agreement, the Sellers shall deliver to Purchaser their respective portions of the assignment application ("Sellers' FCC Application") and Purchaser shall make such filings as promptly as practicable. During the period from the date hereof to the Closing, Purchaser and the Sellers shall diligently comply with any request from the FCC for additional information, documents, or other materials. During the period from the date hereof to the Closing, Purchaser and the Sellers shall diligently take, or cooperate in the taking of, all steps that are necessary, proper or desirable to expedite the prosecution of the assignment applications to a favorable conclusion. During the period from the date hereof to the Closing, if any administrative or judicial action or proceeding is initiated (or threatened to be initiated) challenging the transactions contemplated hereby as violative of Law, Purchaser and the Sellers shall contest and resist any such action, and use their Best Reasonable Efforts to have vacated, lifted, reversed or overturned any decree, judgment, injunction, ruling, decision, finding or other order (whether temporary, preliminary or permanent) until such time as a final, non-appealable order has been entered. During the period from the date hereof to the Closing, the Sellers shall cooperate in good faith with Purchaser in Purchaser's efforts to contest such action or proceeding referenced in the preceding sentence.

(b) During the period from the date hereof to the Closing, the Sellers, Parent and Purchaser shall cooperate with one another (i) in determining whether any action by or in respect of, or filing with, any Governmental Authority (other than approval of the assignment applications by the FCC and the HSR Act notification) is required, and (ii) subject to the terms and conditions of this Agreement, in taking any such actions and making any such filings, furnishing information required in connection therewith and seeking timely to complete any such actions, consents, approvals or waivers.

(c) During the period from the date hereof to the Closing, the Sellers, Parent and Purchaser and their respective Affiliates promptly shall make the filings required under the HSR Act and any other antitrust Laws. During the period from the date hereof to the Closing, the Sellers, Parent and Purchaser shall request early termination of the waiting period under the HSR Act. During the period from the date hereof to the Closing, the Sellers, Parent and Purchaser shall also substantially comply at the earliest practicable date with any request for additional information, documents, or other materials, or investigative interviews or depositions, received from the Federal Trade Commission ("FTC") or the Antitrust Division of the Department of Justice ("DOJ") or any other Governmental Authority, including other national or supra-national competition authorities. During the period from the date hereof to the Closing, Parent, Purchaser and the Sellers shall use their Best Reasonable Efforts to resolve objections, if any, which may be asserted by any Governmental Authority with respect to the transactions contemplated hereby under any antitrust Laws. During the period from the date hereof to the Closing, each of Parent, Purchaser and the Sellers shall furnish to the other such necessary information and reasonable assistance as the other may request in connection with its preparation of any filing or submission which is necessary under the HSR Act. During the period from the date hereof to the Closing, Parent, Purchaser and the Sellers shall keep each other apprised of the status of any communications with, and inquiries or requests for additional information from, any Governmental Authority, including the FTC or the DOJ. During the period from the date hereof to the Closing, Parent, Purchaser and the Sellers shall use their Best Reasonable Efforts to obtain any clearance required under the HSR Act for the purchase and sale of the Purchased Assets in accordance with the terms and conditions hereof. Nothing contained in this Agreement will (i) require or obligate Parent, Purchaser, any of the Sellers or any of their respective Affiliates to initiate, pursue or defend any litigation to which any Governmental Authority (including the FTC or the DOJ) is a party or (ii) require or obligate Parent, Purchaser or their Affiliates to (A) agree to otherwise become subject to any limitations on their respective rights effectively to acquire, control or operate the Purchased Assets, or to exercise full rights of ownership of the Transferred Business and all or any portion of the Purchased Assets (excluding any immaterial limitations) or (B) agree or otherwise be required to sell or otherwise dispose of, hold separate (through the establishment of a trust or otherwise), or divest itself of all or any portion of the Purchased Assets or any assets of its own or its Affiliates. The parties agree that (x) no representation, warranty or covenant of Parent or Purchaser contained in this Agreement shall be breached or deemed breached as a result of the failure by any party hereto or any of its Affiliates to take any of the actions specified in the preceding sentence and (y) no representation, warranty or covenant of any Seller contained in this Agreement shall be breached or deemed breached as a result of the failure by any party hereto or any of its Affiliates to take any of the actions specified in clause (i) of the preceding sentence.

(d) During the period from the date hereof to the Closing, Purchaser and Sellers shall cooperate and promptly make all voluntary filings and other disclosures in respect of the transactions contemplated hereby with the Committee on Foreign Investment in the United States under Exon-Florio, if Purchaser provides written notice to Sellers within one hundred and twenty (120) days of this Agreement of its intention to make such voluntary filing.

(e) Purchaser and Sellers shall share equally the cost of all filing fees associated with the Parties' filings with Governmental Authorities (except for any filings required under the HSR Act, which filing fees shall be paid by the party responsible for such filing fees, in accordance with the HSR Act).

(f) In any circumstance in which Rall Parent must make, initiate or participate in the process of seeking, requesting or making any of the applications, approvals or filings (including without limitation HSR Act filings) referred to in this Section 6.5, Sellers shall cause Rall Parent to take all necessary actions, but subject to the limitations in the last two sentences of Section 6.5(c).

Section 6.6 Insurance.

(a) Each Seller shall, until the Closing, maintain insurance coverage with respect to the Purchased Assets at the coverage levels set forth on Schedule 6.6, including continuing an in-orbit policy for Commstar 4 for a one (1) year period following the expiration of the current policy.

(b) With respect to property insurance, during the period from the date hereof through the Closing, each Seller will promptly file and diligently prosecute all claims relating to any loss suffered by the Transferred Business or the Purchased Assets, after the date of this Agreement and prior to the Closing Date, that is covered by such insurance. At Closing, each Seller shall either (i) to the extent permissible under the terms of such insurance policies, the Assumed Contracts and applicable Law, cause Purchaser to be the named beneficiary under such insurance policies or (ii) assign to Purchaser its rights as the named insured under such insurance policies pursuant to the Sale Order.

(c) On or prior to Closing, the Sellers shall, to the extent not otherwise effected pursuant to the Sale Order, make appropriate arrangements with all present loss payees who are not counter parties to the Assumed Contracts to effect the foregoing provisions and eliminate such parties as loss payees.

Section 6.7 Financial Statements and Access.

(a) Sellers shall prepare, and (subject to Purchaser executing and delivering a customary engagement letter) retain Deloitte & Touche LLP ("D&T") or another nationally recognized public accounting firm that is acceptable to Parent and Purchaser (D&T or such other firm, the "Retained Accountants") to audit, balance sheets for the Transferred Business as at XXXXXX, 20XX, XXXXX 20XX, XXXXX 20XX, thereafter occurring on or prior to the Closing Date, together with statements of operations and cash flows and notes thereto in accordance with GAAP, Articles 3-01 and 3-02 of Regulation S-X as well as any other applicable rules and regulations of the SEC (together, the "Accounting Requirements") for the year then ended. Sellers shall cause the Retained Accountants promptly to provide to Purchaser such information (including copies of all work papers, subject to Parent and Purchaser complying with any confidentiality, limitation of liability and other requirements of the accountants with respect to access to their work papers) related to such balance sheets and statements as may be reasonably requested by Purchaser. Each of the Sellers shall use its Best Reasonable Efforts to take, or cause to betaken, all action, and to do, or cause to be done, all things necessary, proper or advisable to prepare and to assist and otherwise cause the Retained Accountants to complete the audit of the financial statements and deliver to Purchaser such financial statements and the Retained Accountants' audit report relating thereto (i) for the financial statements as at and for the year ended XXXXX 20XX and XXXXXX 20XX, as promptly as reasonably practicable, but in no event later than XXXXX 20XX and (ii) for the financial statements as at and for the year ended on any XXXXXX thereafter occurring prior to the Closing Date, no later than seventy-four (74) days after such year end (regardless of whether the Closing has occurred prior to such date).

(b) Each of the Sellers shall use its Best Reasonable Efforts to take, or cause to be taken, all action, and to do, or cause to be done, all things necessary, proper or advisable to prepare, and to assist and otherwise cause the Retained Accountants to conduct a SAS71 or a similar type of review or audit of, the unaudited balance sheets as of the dates set forth below and statements of operations and cash flows and notes thereto for the periods set forth below in accordance with the Accounting Requirements:

(i) as at XXXXX 20XX and for the three (3) and six (6) months ended XXXXX 20XX and XXXXX 20XX;

(ii) as at XXXXX 20XX and for the three (3) and nine (9) months ended XXXXX 20XX and XXXXX 20XX;

(iii) as at the end of each fiscal quarter (other than the fourth fiscal quarter) thereafter and prior to the Closing Date and for the three (3) months ended on each such date and for the elapsed portion of the fiscal year ended on such date, and for the corresponding periods of the prior fiscal year.

The financial statements for the foregoing periods, and the report of the Retained Accountants with respect to its SAS 71 or a similar type of review or its audit report, as the case may be, shall be delivered to Purchaser, in accordance with the first sentence of this clause (b),(A) for the financial statements required by clause (i), as promptly as reasonably practicable, but in no event later than XXXXX 20XX, (B) for the financial statements required by clause (ii) and clause (iii), ending no later than the fifty-fifth (55th) day after the end of the relevant fiscal quarter (regardless of whether the Closing has occurred prior to such date).

(c) Purchaser shall reimburse Sellers for Sellers' Out-of-Pocket Expenses for the Retained Accountants for auditing or reviewing, as the case may be, the financial statements and for any additional accounting firm or personnel retained to assist in the preparation of such financial statements.

(d) Commencing on the date hereof and for a period of three (3) years from the Closing Date, each Seller shall provide Parent and Purchaser with reasonable access to its personnel and independent accountants and advisors, and to the data and work papers (subject to Parent and Purchaser complying with any confidentiality, limitation of liability and other requirements of the accountants with respect to access to their work papers) that are Related to the Purchased Assets, but are not otherwise available to Purchaser, which are reasonably required to enable Purchaser to comply with any applicable Laws. Purchaser or Parent shall reimburse each Seller for all Out-of-Pocket Expenses it incurs in connection with the fulfillment of its obligations under this Section 6.7(d).

Section 6.8 Compliance with Property Transfer Laws; State andLocal Governmental Authorizations.

(a) During the period from the date hereof to the Closing, the Sellers shall use their Best Reasonable Efforts to comply with all requirements of applicable property transfer Laws to the extent not superseded by the Sale Order in order to consummate the transactions contemplated by this Agreement. During the period from the date hereof to the Closing, each Seller agrees to provide Parent and Purchaser with any documents to be submitted to the relevant Governmental Authorities prior to submission, and no Seller shall take any action to comply with such Laws without Parent's and Purchaser's prior consent, which consent shall not be unreasonably withheld or delayed.

(b) During the period from the date hereof to the Closing, each Seller shall cooperate with Purchaser and shall assist Purchaser with identifying the state and local Governmental Authorizations, if any, required by Purchaser to operate the Purchased Assets from and after the Closing Date (other than Governmental Approvals).

Section 6.9 Further Assurances. At any time after the Closing Date, each Seller shall promptly execute, acknowledge and deliver any other assurances or documents reasonably requested by Purchaser or Parent necessary to evidence the transfer of the Purchased Assets or the other transactions contemplated hereby.

Section 6.10 Certain Matters Involving the Transferred Intellectual Property and Licensed Intellectual Property. On or promptly after the Closing Date, each Seller shall use Best Reasonable Efforts to assist Purchaser with all necessary steps to record with the appropriate Governmental Authorities, including any discretionary filings requested by Purchaser, the transfer from, or license by, such Seller to Purchaser of all Transferred Intellectual Property and Licensed Intellectual Property previously registered or patented in or outside the United States; provided that Purchaser shall reimburse such Seller for such Seller's Out-of-Pocket Expenses incurred by Seller in such recordings.

Section 6.11 Obligation to Update. Between the date of this Agreement and the Closing Date, each Seller shall notify Purchaser and Parent in writing within a reasonable period of time if any Person listed in Schedule1.1(a) or any successor with similar authority and responsibilities gains actual knowledge of any fact or condition that causes or constitutes a breach of any of such Seller's representations and warranties as of the date of this Agreement, or if any Person listed in Schedule 1.1(a) or any successor with similar authority and responsibilities gains actual knowledge of the occurrence after the date of this Agreement of any fact or condition that could reasonably be expected to cause or constitute a breach of any such representation or warranty had such representation or warranty been made as of the time of occurrence or discovery of such fact or condition. Within three (3) Business Days prior to the Closing Date, Sellers shall provide Purchaser with a list of any changes that would be required to Schedule 3.10 if such Schedule were being prepared in response to Section 3.10(a) as of the third Business Day prior to the Closing. Any breach of this Section 6.11 shall for purposes of Article IX be deemed to be a breach of a representation or warranty and not a breach of a covenant. The providing of notice under this Section shall not relieve Sellers of any responsibility for a breach of the relevant representation or warranty nor shall such notice be deemed to update any Schedule to this Agreement.

Section 6.12 Additional Intellectual Property Matters.

(a) Except in connection with a breach of the Intellectual Property Agreement, the terms of which shall be unaffected by this provision, no Seller shall bring any claim, litigation or proceeding against Purchaser or its Affiliates (including any of Purchaser's Successors or assigns to any significant portion of the Purchased Assets) for infringement of any Intellectual Property rights, including patents and trademarks, owned by or assigned to a Seller as of the Closing, based on the operation of the Purchased Assets, the existence of which would have been or was a breach of any representation or warranty under this Agreement.

(b) At any time within six (6) months of the Closing, if it is determined that a license of any additional Intellectual Property rights of any Seller (excluding Other Intellectual Property), including patent rights which were omitted from the list of Licensed Intellectual Properties on Schedule 3.9 but are not specifically listed as Excluded Assets, is necessary for Purchaser (including any of Purchaser's Successors or assigns to any significant portion of the Purchased Assets) to use, operate, sell, offer for sale or import any Purchased Asset lawfully or operate the Purchased Assets lawfully, such Seller(including its Successors and assigns to such rights) shall provide such license without any additional charge to, or royalty, from Purchaser (other than Global Alliance Information Network (GAIN)) and, in each case, pursuant to the terms of the Intellectual Property Agreement.

Section 6.13 Limitations on Solicitation, etc. Except as provided in the Sale Procedures Order with respect to the period prior to the entry of the Sale Order, neither Sellers nor their Affiliates, officers, directors, employees, agents or representatives (including attorneys, investment bankers, brokers and accountants) ("Restricted Persons") shall, directly or indirectly, (a) solicit, initiate, encourage or entertain the submission of proposals or offers from any Person (other than Purchaser) for, or enter into any agreement or arrangement (whether or not binding) relating to, any possible transaction involving the Transferred Business, some or all of the assets that will constitute Purchased Assets (other than such assets that are disposed of in the ordinary course of business in compliance with Section 6.2 hereof), or the stock of any of the Sellers or any other Person that owns, directly or indirectly, a greater than five (5) percent interest in the Sellers or the Purchased Assets (a "Transaction") or (b) participate in any substantive discussions or negotiations or provide any confidential information regarding, or furnish to any other Person any information with respect to or in contemplation of, a possible Transaction. Sellers shall notify Purchaser in writing as soon as possible, but in any event within one (1) Business Day, of the receipt of any inquiry or proposal (including all material terms and the identity of the proponent of the inquiry or proposal) covered by this Section

6.13. Notwithstanding the foregoing, at any time prior to the entry of the Sale Procedures Order, the Restricted Persons may furnish information to, and negotiate or otherwise engage in substantive discussions with, any Person who delivers a bona fide written proposal (a "Proposal") for a Transaction which was not solicited or encouraged by a Restricted Person after the date of this Agreement, if and so long as the Board of Directors (or a duly authorized committee thereof) of each Seller determines in good faith by resolutions duly adopted, after consultation with its outside counsel, that the failure to provide such information or engage in such negotiations or discussions is or would be a breach of the directors' fiduciary duties under applicable law and determines in good faith that such a Proposal is a Superior Proposal. Sellers shall notify Purchaser in writing within one (1) Business Day of such inquiries, proposals or offers received by, or any such discussions or negotiations sought to be initiated or continued with, any of the Restricted Persons, indicating the name of such Person and providing to Purchaser a copy of such written proposal or offer for an Alternative Transaction. Prior to providing any information or data to, or engaging in any discussions with, any Person in connection with a Proposal, Sellers shall notify Purchaser in writing if Sellers or the Restricted Persons intend to engage in any such activities with any such Person other than providing written notice to such Person that an auction of the Purchased Assets is expected to occur under the Sale Procedures Order and that Sellers will provide the Person with a copy of the Sale Procedures Order when it has been entered by the Court ("Selling Activities"). Sellers shall keep Purchaser advised of the status of any Selling Activities and, without limiting Parent's and Purchaser's rights under this Agreement or the 363/365 Orders, provide Purchaser a reasonable opportunity to submit its own proposal in response to any proposals or offers received by Sellers. "Superior Proposal" means a Proposal made by a Person other than Purchaser, and which is on terms which Sellers' Boards of Directors determine in good faith would result in a Transaction that is materially more favorable (a) to Sellers than the transaction contemplated by this Agreement (after consultation with a nationally recognized investment banking firm) taking into account all the terms and conditions of such proposal and this Agreement and the transactions contemplated hereby, and (b) is reasonably capable of being completed on the terms proposed, taking into account all financial, regulatory, legal and other aspects of such Proposal; provided, however, that no Proposal shall be deemed to be a Superior Proposal if the Proposal is subject to a financing contingency.

Section 6.14 ITU Matters. Sellers will request the FCC to make available to Purchaser copies of the intersystem coordination agreements that the FCC entered into with Argentina and Brazil related to their ITU filings at the 77(degree) W and 77.5(degree) W orbital locations, respectively. Sellers will not take any actions that are inconsistent with the draft intersystem coordination agreement with Brazil related to its ITU filing at the 90(degree) W orbital location (which draft agreement has been previously delivered by Sellers to Purchaser).

Section 6.15 PANGTEL Matters. During the period from the date hereof to the Closing, Sellers shall use their Best Reasonable Efforts to cause PANGTEL to enter into on behalf of the Independent State of Papua New Guinea an amended and restated satellite agreement in the form previously delivered to Purchaser (the "PNG Agreement"), and to cause PANGTEL to acknowledge the assignment of the rights and obligations of Rall Parent under the PNG Agreement to a Seller and to the partial assignment by such Seller to Purchaser of the rights and obligations of Rall Parent (or of a Seller as the valid assignee of Rall Parent) under such agreement related to the use of the 121(Degree) W orbital position, subject to Purchaser agreeing to make the annual payment owed under such agreement in connection with the use of the 121(Degree) W orbital position, and to seek PANGTEL's consent to the novation thereof to the effect that any breach by Sellers or their Affiliates under the PANGTEL agreement following the Closing shall not be deemed a breach by the Purchaser under its separate agreement with PANGTEL.

Section 6.16 Orbital Incentive Payments. Sellers shall cause SS/R to amend the Purchased Satellite Procurement Agreements as provided in the SS/R Agreement.

Section 6.17 Lease Contract.

(a) Notwithstanding anything contained in Section 6.2 to the contrary, at any time prior to the Closing Date, Sellers may enter into an agreement with a single lessee (which may include such lessee's Affiliates) providing for the lease of a substantial number of transponders on one or more of the Purchased Satellites (the "New Lease"); provided that prior to entering into the New Lease and not less than thirty (30) days prior to the Closing Date, such Seller shall have provided written notice to Purchaser of its intention to enter into the Lease together with copy of the proposed New Lease requesting Purchaser to designate the New Lease as the Lease Agreement for purposes of Section 2.5(d) (the "Lease Notice"). Purchaser may in its sole and absolute discretion decide whether to designate the New Lease as the Lease Agreement for purposes of Section 2.5(d).

(b) If on or within seven (7) days of receipt of the Lease Notice, Purchase fails to make an election or elects that the New Lease shall not be a "Lease Agreement," the New Lease (i) shall be deemed an Excluded Asset for all purposes under this Agreement (and, for avoidance of doubt, any revenues recognized by Sellers from the New Lease shall not constitute Revenue for any purpose under this Agreement) and (ii) the counterparty to the New Lease shall be required to acknowledge in the New Lease or in a writing contemporaneous with the execution of the New Lease, that the transponder capacity leased thereunder shall not be provided on a Purchased Satellite for periods subsequent to the Closing Date.

(c) If on or within seven (7) days of receipt of the Lease Notice, Purchaser shall provide written notice to Sellers that it elects to designate the New Lease as the "Lease Agreement" and the applicable Seller and the counterparty thereto shall enter into the New Lease on valid and binding terms, in the form provided in the Lease Notice, the New Lease (i) shall constitute the Lease Agreement for purposes of Section 2.5(d) and (ii) shall be deemed an Assumed Contract for all purposes of this Agreement (and, for avoidance of doubt, any revenues recognized by Sellers from the Lease Agreement shall constitute Revenue for all purposes under this Agreement).

(d) Sellers may only exercise their right under this Section 6.17 once.

**ARTICLE VII**

**PURCHASER'S AND PARENT'S COVENANTS**

Section 7.1 Best Reasonable Efforts. During the period from the date hereof to the Closing, Purchaser and Parent shall cooperate with the Sellers and use their Best Reasonable Efforts to satisfy, or cause to be satisfied, the conditions precedent to Purchaser's and Parent's obligations hereunder. Without limiting the generality of the foregoing, during the period from the date hereof to the Closing, Purchaser shall cooperate with the Sellers and use its Best Reasonable Efforts (a) to obtain the Governmental Approvals and to give or make the notices or filings set forth in Schedules 3.4 and 4.3, and

(b) to the extent required notwithstanding the Sale Order, to obtain approval for the novation from the Sellers to Purchaser of the PANGTEL agreement as provided in Section 6.15 and of the Government Contracts listed in Schedule 3.11(including entering into customary agreements necessary to obtain the assignments or novations contemplated by Section 9.1(e) and having one or more employees with a "secret" security clearance).

Section 7.2 Shareholder Approval. Parent will take, in accordance with applicable Law and its bye-laws, all action necessary to convene a meeting of the holders of its ordinary shares ("Parent Shareholders Meeting") on or before September 8, 2003 to consider and vote upon the approval of this Agreement and the transactions contemplated hereby. Subject to their fiduciary duties under applicable Law, Parent's board of directors shall use Best Reasonable Efforts to solicit such approval.

Section 7.3 Further Assurances. At any time after the Closing Date, each of Purchaser and Parent shall promptly execute, acknowledge and deliver any other assurances or documents reasonably requested by any Seller necessary to evidence the transfer of the Purchased Assets, the assumption of the Assumed Liabilities and the other transactions contemplated hereby.

Section 7.4 Compliance with Property Transfer Laws; Governmental Authorizations. During the period from the date hereof to the Closing, Parent and Purchaser shall use their Best Reasonable Efforts to comply with all requirements of applicable property transfer Laws to the extent not superseded by the Sale Order in order to consummate the transactions contemplated by this Agreement. During the period from the date hereof to the Closing, Parent and Purchaser agree to provide Sellers with copies of any documents submitted to the relevant Governmental Authorities in connection with such compliance, and neither Parent nor Purchaser shall take any action to comply with such Laws without Sellers' consent which shall not be unreasonably withheld.

Section 7.5 Obligation to Update. During the period from the date hereof to the Closing, each of Parent or Purchaser, as applicable, shall notify Sellers in writing within a reasonable period of time if any Person listed in Schedule 1.1(b) or any successor with similar authority and responsibilities gains actual knowledge of any fact or condition that causes or constitutes a breach of any of Parent's or Purchaser's representations and warranties as of the date of this Agreement, or if any Person listed in Schedule1.1(b) or any successor with similar authority and responsibilities gains actual knowledge (in the ordinary course of performing his or her duties) of the occurrence after the date of this Agreement of any fact or condition that would reasonably be expected to cause or constitute a breach of any such representation or warranty had such representation or warranty been made as of the time of occurrence or discovery of such fact or condition. The providing of notice under this Section 7.5 shall not relieve Parent or Purchaser of any responsibility for a breach of the relevant representation or warranty.

Section 7.6 Collection of Accounts Receivable. All accounts receivable arising in connection with the operation of the Transferred Business prior to the Closing Date shall remain the property of Sellers. Purchaser agrees to use Best Reasonable Efforts to assist Sellers in collection of such accounts receivable in the normal and ordinary course of business for a period of ninety

(90) days following the Closing. Purchaser shall apply all collections to the debtor's oldest account receivable first (except that any such accounts collected by Purchaser from persons who are also indebted to Purchaser may be applied to Purchaser's account where such account debtor specifies that a payment is to be applied to Purchaser's account), and shall remit all amounts collected on Sellers' behalf during any month within the first ten (10) Business Days of the following month. Purchaser's obligation and authority shall not extend to the institution of litigation, employment of counsel or a collection agency or any other extraordinary means of collection. At the end of the ninety (90) day collection period, any remaining accounts receivable shall be returned to Sellers for collection, and all obligations of Purchaser with respect thereto shall cease.

**ARTICLE VIII**

**EMPLOYEE AND TAX MATTERS**

Section 8.1 Tax Matters.

(a) Determination and Allocation of Consideration. Purchaser shall initially propose the amount and allocation of the total consideration (the "Consideration") for the Purchased Assets. Within one hundred and twenty (120) days after the Closing Date, Purchaser shall provide the Sellers with one or more schedules setting out its proposal. If the Sellers disagree with any items reflected on the schedules so provided, Sellers may notify Purchaser of such disagreement and their reasons for so disagreeing, in which case the Sellers and Purchaser shall attempt to resolve the disagreement. If Purchaser and Sellers are unable to resolve their disagreement, the matter or matters in dispute shall be submitted for resolution to a mutually acceptable appraisal firm. The parties shall equally bear the costs of such appraisal firm. Any determination and allocation of the Consideration pursuant to this subsection shall be binding on the Sellers and Purchaser for all tax reporting purposes.

(b) Transfer Taxes. All excise, sales, use, transfer(including real property transfer), stamp, registration, documentary, filing, recordation and other similar Taxes which may be imposed or assessed as a result of the transactions effected pursuant to this Agreement (the "Transfer Taxes"), together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties shall be borne by the Sellers, and each Seller shall indemnify Purchaser for any Liabilities for such Transfer Taxes; provided that Sellers shall use Best Reasonable Efforts to have all Transfer Taxes exempted pursuant to the Sale Order. Any returns or reports with respect to Transfer Taxes that are required to be filed shall be prepared and, to the extent a Seller is permitted by law or administrative practice, filed by such Seller when due.

Section 8.2 Employees and Employee Benefits.

(a) Purchaser shall have no requirement to offer employment to any of the employees of the Sellers. Any offer Purchaser determines to make shall be for employment at-will by Purchaser as new employees of Purchaser (subject to any applicable probation period not prohibited by Law) to occupy positions designated by Purchaser and pursuant to the terms and conditions determined by Purchaser in its sole discretion, unless Purchaser otherwise agrees in writing with any such employee.

(b) Within thirty (30) days from the date hereof, the Sellers shall deliver to Purchaser a true and complete list of the names and positions of those of Sellers' then current employees who work in positions Related to the Transferred Business and whose primary job responsibilities are Related to sales or marketing ("Sales and Marketing Employees") or other functions Related to the Transferred Business ("Other Employees" and, together with the Sales and Marketing Employees, the "Employees"). At Purchaser's request, the Sellers shall deliver, with respect to any Employee designated by the Purchaser, the following compensation information for fiscal year 20XX and as of the date of Purchaser's request: (i) annual base salary; (ii) annual bonus; (iii) commissions; (iv) perquisites; (v) benefits; (vi) severance; and (vii) all other material items of compensation. Purchaser shall have the right to hire any Sales and Marketing Employees in compliance with this Section 8.2(b). Not later than one hundred and twenty (120) days from the date hereof, Purchaser shall provide the Sellers with a list identifying each of the Sales and Marketing Employees to whom Purchaser may wish to make offers of employment at the Closing ("Listed Employees"). Not later than ninety (90) days from the date hereof, Purchaser may notify Sellers of any then current Other Employees to whom it wishes to offer employment. Sellers will have the right, in their sole discretion, to determine whether Purchaser will be permitted to offer employment to such Other Employee prior to the Closing. Purchaser may employ any Other Employee who requests employment with Purchaser without any prior solicitation, if the Employee, once hired by Purchaser, represents that he was not solicited by Purchaser and agrees not to solicit any other Employees during the period and to the extent Purchaser is prohibited from soliciting Employees under Section 8.2(c).Not later than sixty (60) days prior to the anticipated Closing Date, Purchaser shall notify Seller of all Employees to which it has made, asof such date, offers of employment and a good faith estimate of those additional Employees to whom it may make offers of employment.

(c) Notwithstanding the provisions of Section 8.2(b), Purchaser agrees that during the twelve (12) month period following the Closing Date it will not solicit any Employee, other than an Applicable Employee (as defined below), unless Purchaser has first obtained the written consent of the Sellers. If, during the twelve (12) month period following the Closing, Purchaser hires any Employee other than an Applicable Employee and other than with the consent of Sellers, Purchaser shall certify to Sellers that such Employee was not solicited by Purchaser and shall cause such former Employee to make a similar representation and to agree with Sellers that such former Employee will not solicit any other Employee, other than an Applicable Employee, during the twelve (12) month period following the Closing. In addition, in the event that Purchaser hires any Employee other than an Applicable Employee during such twelve (12) month period, the Purchaser shall reimburse the Sellers for any severance payments made in accordance with Seller's applicable severance policy, including any payments under the WARN Act, made to any such Employee as a result of such employee's termination of employment with the Sellers. Seller's severance and WARN Act obligation are set forth on Schedule 8.2.

(d) The Sellers shall make available to Purchaser, to the fullest extent permitted by Law, all information and materials reasonably requested by Purchaser from the personnel files of each of the Employees who, with the consent of the Sellers if required, shall have elected to accept employment with Purchaser ("Applicable Employees").

(e) Each Seller shall remain responsible for the payment of all benefits that accrue under each of such Seller's or its Affiliates' compensation plans, "employee benefit plans" (as defined in Section 3(3) of ERISA) and stock plans (collectively "Benefit Plans"). Purchaser shall not at any time assume any Liability under any of the Sellers' Benefit Plans for the payment of any benefits to any active or any terminated, vested or retired participants (or any of their beneficiaries) in any of the Benefit Plans. Purchaser assumes no obligation to continue or assume any Benefit Plans or Liabilities of the Sellers under any Benefit Plans.

(f) With respect to any Applicable Employee (and any dependent or beneficiary of any such Applicable Employee), the Sellers shall retain all liabilities and obligations arising under any group life, accident, medical, dental or disability plan or similar arrangement (whether or not insured) and any other "employee welfare benefit plan" (as defined in Section 3(1) of ERISA) maintained for the benefit of the Sellers' employees and their dependents and other beneficiaries under each such plan or similar arrangement, and such liabilities and obligations shall constitute Excluded Liabilities. Purchaser shall be responsible only for liabilities and obligations with respect to claims incurred by any Applicable Employee (and any dependent or beneficiary of any such Applicable Employee) on or after the Closing Date which are covered under any life, accident, medical, dental or disability plan or similar arrangement (whether or not insured) established or made available by Purchaser for the benefit of Applicable Employees and their dependents and beneficiaries after the Closing Date. For this purpose claims under any medical, dental, vision, or prescription drug plan, a claim generally will be deemed to be incurred on the date that the service giving rise to such claim is performed and not when such claim is made.

(g) For purposes of this Section 8.2, the term "solicit" means a communication with an Employee in which Purchaser, or an agent acting on its behalf, invites, advises, encourages or requests an Employee to accept employment with Purchaser. "Solicit" does not include: (i) the publication (in any form of media) of a general advertisement or employment listing, or (ii) a circumstance in which an Employee initiates contact with Purchaser without any previous solicitation by Purchaser.

**ARTICLE IX**

**CONDITIONS TO CLOSING**

Section 9.1 Conditions to the Obligations of Parent and Purchaser. The obligation of Parent and Purchaser to effect the Closing is subject to the satisfaction (or waiver) on or prior to the Closing of the following conditions:

(a) Representations and Warranties True When Made. The representations and warranties of the Sellers contained herein shall have been true and correct when made, except where the failure of such representations and warranties to be true and correct would not constitute a Material Adverse Change. Each of Parent and Purchaser shall have received a certificate to such effect dated the Closing Date and executed by a duly authorized officer of each Seller. For purposes of this Section 9.1(a), the representations and warranties of the Sellers shall be read without giving effect to the terms "material", "Material Adverse Change", "Material Adverse Effect" or words with a similar meaning, except for the representations and warranties of the Sellers set forth in Section 3.19.

(b) Covenants. The covenants and agreements of each Seller to be performed on or prior to the Closing shall have been duly performed in all material respects, and Parent and Purchaser shall have received a certificate to such effect dated the Closing Date and executed by a duly authorized officer of each Seller; provided that if Sellers have failed to comply with Section 6.2 because complying therewith would constitute a violation of an order of the Bankruptcy Court and such noncompliance has no effect on the Transferred Business, the Purchased Assets, Parent or Purchaser, other than a de minimis effect, such noncompliance shall not represent the failure of this Closing condition.

(c) Shareholder Approval. Parent shall have received the Parent Shareholder Approval.

(d) Representations and Warranties True as of Closing. The representations and warranties of each Seller contained herein shall be true and correct as of the Closing Date and shall be deemed to be remade by Sellers on that date (except that representations made as of a specific date need be only true and correct as of such date), except where the failure of such representations and warranties to be true and correct would not constitute a Material Adverse Change. Each of Parent and Purchaser shall have received a certificate to such effect dated the Closing Date and executed by a duly authorized officer of each Seller. For the purposes of this Section 9.1(d), the representations and warranties of the Sellers, except for the representations and warranties of the Sellers set forth in Section3.19, shall be read without giving effect to the terms "material", "Material Adverse Change", "Material Adverse Effect" or words with a similar meaning.

(e) Assignments and Novations. Purchaser shall have received an assignment or novation (including any necessary third-party consents and approvals) reasonably satisfactory to Purchaser to each of the Contracts listed in Schedule 3.10, except where the Sale Order makes such assignment or novation unnecessary or where the failure to obtain such assignment or novation would not, in the aggregate and after taking into consideration any alternative measures used effectively to transfer the economic benefit of any such Contract to Purchaser, be reasonably likely to have a Material Adverse Effect subsequent to the Closing.

(f) No Injunctions or Proceedings. No temporary restraining order, preliminary or permanent injunction or other order of any court of competent jurisdiction or other legal restraint or prohibition preventing, restricting or conditioning the consummation of the transactions contemplated by this Agreement shall be in effect. No litigation, investigation or administrative proceeding, in each case brought or initiated by a U.S. Governmental Authority, shall be pending or threatened that would enjoin, restrain, condition or prohibit consummation of the transactions contemplated by this Agreement. No Governmental Authority of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, sanction, judgment, decree, injunction or other order which would be reasonably likely to have a Material Adverse Effect prior or subsequent to the Closing.

(g) Antitrust Compliance. (i) Any applicable waiting period under the HSR Act shall have expired or been terminated, (ii) to the extent requested by Parent pursuant to, and within the time period specified in Section 6.5, all notices and reports under Exon-Florio shall have been made, (iii) any requests for information or documents made by the European Commission shall have been fulfilled and (iv) no Governmental Authority shall have instituted, or announced an intention to institute, any proceeding against Parent, Purchaser or any Seller arising out of or based upon an antitrust, competition or similar Law applicable to such party or to the Transferred Business or the Purchased Assets.

(h) FCC Approval. The FCC or relevant FCC staff official pursuant to delegated authority shall have granted the assignment applications referred to in Section 6.5(a), without the imposition of any condition that would constitute a Material Adverse Change (provided that Purchaser shall be deemed to have waived this condition with respect to any condition in the grant of the assignment application, if Purchaser shall not have objected to such condition by the tenth (10th)day after Sellers deliver a written copy of the grant of the assignment application to Purchaser and ask the Purchaser whether or not it objects to any condition in the grant), there shall be no outstanding petition for reconsideration, application for review or judicial appeal of such consent which is reasonably likely to result in a reversal of such consent or the imposition of a condition that would constitute a Material Adverse Change and the time for filing any such petition, application or appeal shall have expired; provided that the expiration of the time for such filing will not be a condition to Parent's and Purchaser's obligations to effect the Closing if no petition to deny or objection was filed at the FCC against the FCC applications prior to the granting of such applications by the FCC or relevant FCC staff official pursuant to delegated authority.

(i) Sale Order. The Bankruptcy Court shall have entered the Sale Order substantially in the forms attached hereto as Annex F (together with any related findings of fact or conclusions of Law)without modification or the imposition of any conditions or limitations with respect thereto, except for such immaterial modifications, conditions or limitations which do not individually or in the aggregate adversely affect Parent and Purchaser and the Sale Order shall not have been violated, vacated, withdrawn, overruled, resolved or stayed, amended, reversed and/or modified and shall have become final and nonappealable.

(j) Other Approvals. The other Governmental Approvals, notices and filings set forth in Schedule 9.1(j)(i) shall have been obtained, given or made and shall not contain any condition or provision that would constitute a Material Adverse Change. The condition described in Schedule 9.1(j)(ii) shall have been satisfied.

(k) Other FCC Actions. The FCC or relevant FCC staff official pursuant to delegated authority shall have granted: (i) Rall SpaceCom's XXXXX 20XX Petition for Declaratory Ruling to add the Commstar 13 C-band payload to FCC's Permitted Space Station List without the imposition of any condition(s) (other than standard FCC conditions, which the Parties acknowledge for purposes of this Agreement do not include any condition requiring Rall SpaceCom (or its successor) to give any form of notice to customers) that could materially adversely affect Purchaser's commercial operation of the C-band capacity on Commstar 13 at the 121 (degree) W orbital location following the Closing (provided that Purchaser shall be deemed to have waived this condition with respect to any condition in the FCC declaratory ruling, if Purchaser shall not have objected to such condition within ten (10)days after Sellers deliver a written copy of the Petition to Purchaser and requested Purchaser's consent), and there shall be no outstanding petition for reconsideration, application for review or judicial appeal of such grant which is reasonably likely to result in a reversal of such grant or the imposition of a condition that would materially adversely affect Purchaser's commercial operation of the C-band capacity on Commstar 13 at the 121(degree)W orbital location following the Closing, and the time for filing any such petition, application or appeal shall have expired; provided, that the expiration of the time for such filing will not be a condition to Parent's and Purchaser's obligations to effect the Closing if no petition to deny or objection was filed at the FCC against the FCC applications prior to the granting of such applications by the FCC or relevant FCC staff official pursuant to delegated authority, and (ii) Rall SpaceCom's XXXXX 20XX application to the FCC to extend the construction completion and launch milestones for Commstar 8 to the second and third quarters, respectively, of 20XX as well as granting authority to use the South American beam notwithstanding any failure to provide full frequency reuse and there shall be no outstanding petition for reconsideration, application for review or judicial appeal of such grant which is reasonably likely to result in a reversal of such consent or the imposition of a condition that would constitute a Material Adverse Change and the time for filing any such petition, application or appeal shall have expired; provided that the expiration of the time for such filing will not be a condition to Parent's and Purchaser's obligations to effect the Closing if no petition to deny or objection was filed at the FCC against the FCC applications prior to the granting of such applications by the FCC or relevant FCC staff official pursuant to delegated authority.

(l) Commstar 13. Unless the launch of Commstar 13 is delayed solely as a result of technical malfunction of either the launch vehicle or the spacecraft, and such delay is not attributable to any other cause, and the Purchaser, in its sole discretion, believes that such delay will not exceed the period of six (6) months, Commstar13 shall have been successfully launched and shall be operating at the 121(degree) W orbital location without a Total Loss having occurred, and Rall SpaceCom shall own title to the C-band payload on the Commstar 13satellite, as contemplated by that certain agreement, dated XXXXX 20XX, between Rall SpaceCom and TVZ Orbital Corporation("TVZ") and the Amended and Restated Agreement, as of XXXXX 20XX, between Rall Starnet and SS/R, shall be valid and in full force and effect without any outstanding default thereunder by either party.

(m) Total Loss. No Total Loss shall have occurred with respect to any of Commstar 5, Commstar 6 or Commstar 7, or with respect to Commstar 4 (unless, in the case of Commstar 4, Sellers were in compliance with their obligations under Section 6.6 hereof as they related to Commstar 4 at the time of the Total Loss). The provisions of this Section 9.1(m) are not intended to create an implication, one way or the other, as to whether (i) less than Total Losses with respect to the Purchased Satellites would not constitute a Material Adverse Change or

(ii) a Total Loss (other than in the circumstances described in the parenthetical clause in the prior sentence) or less than Total Loss(es)with respect to Commstar 4 would constitute a Material Adverse Change.

(n) PNG Agreement. PANGTEL, on behalf of the Independent State of Papua, New Guinea, shall have entered into an amended and restated PNG Agreement, substantially in the form previously delivered to Purchaser. The rights and obligations of Rall Parent under the PNG Agreement shall have been validly and effectively assigned to Purchaser(either directly by Rall Parent or by a Seller as the valid assignee of Rall Parent), including all applicable approvals of the Bankruptcy Court. PANGTEL shall have (i) acknowledged in writing the assignment to Purchaser of the rights and obligations of Rall Parent, or such Seller, as the case may be, under such agreement or (ii) consented to the partial assignment to Purchaser of the rights and obligations of Rall Parent under such agreement related to the use of the 121(degree) W orbital position, subject to Purchaser agreeing to make the annual payments due after the Closing required under such agreement with respect to such orbital slot; provided that if PANGTEL has not consented to the novation in favor of the Purchaser of such partially assigned rights and obligations under the agreement, Purchaser may elect to assume all rights and obligations under the agreement.

(o) Backlog. Backlog as set forth in the Final Report shall not be less than the amount set forth in Schedule 9.1(o).

(p) Recurring Revenues. Recurring Revenues for the Three Month Period set forth in the Final Report shall not be less than the amount set forth in Schedule 9.1(p).

(q) Customer Service Contracts. Unless Purchaser shall have otherwise consented in writing, except as set forth as Schedule 9.l (q), the average annual price per transponder unit (36MHz equivalent) charged by Sellers under new Contracts that are Assumed Contracts (including any renewal of an existing Contract that is an Assumed Contract) that are entered into or renewals that take place after the date hereof ("Average Transponder Price") and prior to the Closing for transponders on the Purchased Satellites shall not be less than the amount set forth on Schedule 9.1(q).

(r) Orbital Incentive Payments. SS/R shall have amended the Purchased Satellite Procurement Agreements as provided in Section 6.16 hereof.

(s) Legal Opinions. Parent and Purchaser shall have received the opinion of Sellers' FCC counsel, dated as of the Closing Date, addressed to Parent and Purchaser substantially in the form attached as Schedule 9.1(s), and the opinion of Sellers' Bermuda counsel, dated as of the Closing Date, addressed to Parent and Purchaser in the form to be mutually agreed upon by the parties, each of which opinions shall expressly permit lenders to Parent or Purchaser to rely thereon.

(t) Ancillary Agreements. The Ancillary Agreements shall be in full force and effect and all actions thereunder which are contemplated to occur simultaneously with the Closing shall so occur.

(u) Certain Contracts. (i) SS/R shall have assumed under Section 365 of the Bankruptcy Code, in connection with the Chapter 11Cases, the Revised Procurement Agreements and the remaining Purchased Satellite Procurement Contracts, and the Contract, dated as of XXXXX 20XX, with TVZ Orbital Corporation (and there shall have been no material default thereunder by SS/R) and the contract listed on Schedule 5.1(f) and (ii) Rall Starnet Network Services Inc. shall have entered into with Rall SpaceCom, and shall have assumed under Section365 of the Bankruptcy Code, in connection with the Chapter 11 Cases, that certain Master Service Agreement in the form previously delivered to the Purchaser (and included in the Section 2.3.4.m file of the data room).

(v) Transition Services Agreement. Each Seller shall have performed in all material respect its obligations under the Transition Services Agreement.

(w) Delivery of Other Closing Documents. Each Seller shall have executed and delivered all of the documents required to be delivered pursuant to Section 2.8.

Section 9.2 Conditions to the Obligations of the Sellers. The obligation of the Sellers to effect the Closing is subject to the satisfaction (or waiver) on or prior to the Closing of the following conditions:

(a) Representations and Warranties True When Made. The representations and warranties of Parent and Purchaser contained herein shall have been true and correct when made except where the failure of such representations and warranties to be true and correct would not constitute a material adverse effect on Parent's and Purchaser's performance of their obligations hereunder. The Sellers shall have received a certificate to such effect dated the Closing Date and executed by duly authorized officers of Parent and Purchaser. For purposes of this Section 9.2(a), the representations and warranties of Purchaser and Parent shall be read without giving effect to the terms "material", "material adverse change", "material adverse effect" or words with a similar meaning.

(b) Covenants. The covenants and agreements of Parent and Purchaser to be performed on or prior to the Closing shall have been duly performed in all material respects and the Sellers shall have received a certificate to such effect dated the Closing Date and executed by duly authorized officers of Parent and Purchaser.

(c) Shareholder Approval. Parent shall have received the Parent Shareholder Approval.

(d) Representations and Warranties True as of Closing. The representations and warranties of Parent and Purchaser contained herein shall be true and correct as of the Closing Date and shall be deemed to be remade by Parent and Purchaser on that date (except that representations and warranties that are made as of a specific date need be true only as of such date), except where the failure of such representations and warranties to be true and correct would not constitute a material adverse effect on Parent's and Purchaser's performance of their obligations hereunder. The Sellers shall have received a certificate to such effect dated the Closing Date and executed by duly authorized officers of Parent and Purchaser. For purposes of this Section 9.2(d), the representations and warranties of Purchaser and Parent shall be read without giving effect to the terms "material", "material adverse change", "material adverse effect" or words with a similar meaning.

(e) No Injunctions or Proceedings. No temporary restraining order, preliminary or permanent injunction or other order of any court of competent jurisdiction or other legal restraint or prohibition preventing, restricting or conditioning the consummation of the transactions contemplated by this Agreement shall be in effect. No litigation, investigation or administrative proceeding, in each case brought or initiated by a U.S. Governmental Authority, shall be pending or threatened that would enjoin, restrain, condition or prohibit consummation of the transactions contemplated by this Agreement.

(f) Antitrust Compliance. (i) Any applicable waiting period under the HSR Act shall have expired or been terminated, (ii) all notices and reports under Exon-Florio shall have been made, (iii) any requests for information or documents made by the European Commission shall have been fulfilled and (iv) no Governmental Authority shall have instituted, or announced an intention to institute, any proceeding against Parent, Purchaser or any Seller arising out of or based upon an antitrust, competition or similar Law applicable to such party or to the Transferred Business or the Purchased Assets.

(g) FCC Approval. The FCC shall have granted the assignment applications referred to in Section 6.5(a).

(h) Bankruptcy Court Approval. The Bankruptcy Court shall have entered the Sale Order substantially in the form attached hereto as Annex F, without modification or the imposition of conditions or limitations with respect thereto, except for such immaterial modifications, conditions or limitations which do not, individually or in the aggregate, adversely affect Sellers, and the Sale Order shall not have been vacated, stayed, amended, reversed or modified.

(i) Other Approvals. The other Governmental Approvals, notices and filings set forth in Schedule 9.1(j)(i) shall have been obtained, given or made.

(j) Legal Opinions. The Sellers shall have received the opinion of Parent's and Purchaser's Bermuda counsel, dated as of the Closing Date, addressed to the Sellers in the form to be mutually agreed upon by the parties.

(k) Ancillary Agreements. The Ancillary Agreements shall be in full force and effect and all actions thereunder that are contemplated to occur simultaneously with the Closing shall so occur.

(l) Business Transition Services Agreement. Parent and Purchaser shall have paid all amounts due and owing prior to the Closing Date under the Business Transition Services Agreement.

(m) Delivery of Other Closing Documents. Parent and Purchaser shall have executed and delivered all of the documents required to be delivered pursuant to Section 2.7.

**ARTICLE X**

**INTENTIONALLY OMITTED**

**ARTICLE XI**

**TERMINATION**

Section 11.1 Termination. This Agreement may be terminated at any time prior to the Closing:

(a) By agreement of the parties hereto.

(b) By Parent and Purchaser if the Sale Procedures Order shall not have been entered by the Bankruptcy Court in substantially the form attached hereto as Annex F without modification or the imposition of any conditions or limitations with respect thereto (except for such immaterial modifications, conditions or limitations which do not individually or in the aggregate adversely affect Parent and Purchaser) on or prior to the later of (i) the fifth (5th) Business Day after date on which Parent Shareholder Approval is obtained ("Parent Shareholder Approval Date") and (ii) the twenty-fifth (25th)day after written notice from Parent that the Parent Shareholder Meeting has been scheduled; provided that this right must be exercised not later than the thirtieth (30th) Business Day after the later of the two periods referred to in this Section 11.1(b).

(c) By Parent and Purchaser if the Sale Order shall not have been entered by the Bankruptcy Court in substantially the form attached hereto as Annex F approving this Agreement and the transactions contemplated hereby without modification or the imposition of any conditions or limitations with respect thereto (except for such immaterial modifications, conditions or limitations which do not individually or in the aggregate adversely affect Parent and Purchaser) on or prior to the forty-fifth (45th) calendar day after the entry of the Sale Procedures Order; provided that this right must be exercised not later than the thirtieth (30th) day after the expiration of such forty-five (45) day period.

(d) By Parent or Purchaser upon written notice to the Sellers, if (i) any Seller is in breach or default of its covenants, agreements or other obligations herein, or if any of its representations and warranties herein are not true and accurate in all material respects when made or when otherwise required by this Agreement to be true and accurate, (ii) such breach, default, untruth or inaccuracy is incapable of being cured, or if such breach, default, untruth or inaccuracy is capable of being cured, it is not cured within thirty (30) days of receipt of notice that such breach, default or failure exists or has occurred (for purposes of this clause (ii) and without limiting its applicability to any other breach, a breach of Section 6.13 (other than the notice provisions) shall be deemed to be not curable) and (iii) such breach, default, untruth or inaccuracy would constitute a failure to satisfy a Closing condition hereunder if the Closing were to occur at the time Parent or Purchaser seeks to terminate this Agreement under this Section 11.1(d).

(e) By Parent and Purchaser, by giving written notice of such termination to the Sellers, if the Closing shall not have occurred on or prior to the Final Date; provided that neither Parent nor Purchaser is in material breach of its obligations under this Agreement.

(f) By Sellers upon written notice to the Parent and Purchaser, if (i) either Parent and Purchaser is in material breach or default of its covenants, agreements, or other obligations herein, or if any of its representations and warranties herein were not true and accurate in all material respects when made or when otherwise required by this Agreement to be true and accurate, (ii) such breach, default, untruth or inaccuracy is incapable of being cured, or if such breach, default, untruth or inaccuracy is capable of being cured, it is not cured within thirty (30) days of receipt of notice that such breach, default, untruth or inaccuracy exists or has occurred and (iii) such breach, default, untruth or inaccuracy would constitute a failure to satisfy a Closing condition hereunder if the Closing were to occur at the time Sellers seek to terminate this Agreement under this Section 11.1(f).

(g) By Sellers, by giving written notice of such termination to Purchaser, if the Closing shall not have occurred on or prior to the Final Date; provided that no Seller is in material breach of its obligations under this Agreement.

(h) By Parent and Purchaser or by Sellers if Parent Shareholder Approval has not been obtained by XXXXX 20XX; provided that this right must be exercised by Parent and Purchaser or by Sellers not later than XXXXX 20XX; and provided, further, that Parent and Purchaser may not terminate this Agreement under this Section 11.1(h) if they are in material breach of their obligations under Section 7.2.

(i) By Parent and Purchaser if the Sellers have not delivered the financial statements referred to in Sections 6.7(a)(i) or 6.7(b)(i) on or prior to XXXX 20XX; provided that such right may only be exercised on or prior to the later of (A) the date such financial statements are delivered or (B) five (5) days after Sellers provide notice that such financial statements will be available for delivery.

(j) By Parent, Purchaser or Sellers if the Bankruptcy Court shall have approved a Transaction with a Person other than Parent or Purchaser; provided that this right may be exercised by Parent or Purchaser upon such approval (and without any requirement to wait for such approval to become final and non-appealable).

(k) By Parent or Purchaser if Sellers do not deliver Sellers' FCC Application to Purchaser or do not make the HSR notification filing contemplated by Section 6.5(c), in each case by the fifteenth (15th) Business Day after the date hereof; provided that thisright must be exercised not later than the forty-fifth (45th) Business Day after the date hereof.

Any notice given pursuant to clause (d) or (f) shall specify the condition or conditions that constitute the breach, default, untruth or inaccuracy.

Section 11.2 Effect of Termination. In the event of the termination of this Agreement in accordance with Section 11.1 hereof, this Agreement shall thereafter become void and have no effect, and no party hereto shall have any Liability to any other party hereto or their respective Affiliates, directors, officers or employees, except that (i) the parties shall perform their obligations contained in this Section 11.2 and in the last sentence of Section 6.1 and Sections 12.3, 12.5,12.6, 12.8, 12.9, 12.10, 12.11 and 12.13; provided that nothing in this Article XI shall relieve any party of its Liability for a breach of its obligations under this Agreement, (ii) Purchaser's right to the Break-Up Fee and Expense Reimbursement under Section 5.1(c) shall remain in effect notwithstanding a termination of this Agreement under Section 11.1(j); and (iii) if the Break-Up Fee and Expense Reimbursement are paid pursuant to, and under the circumstances contemplated by, Section 5.1(c), such amount shall be in lieu of and full satisfaction for any claims of Parent or Purchaser based upon the Sellers' breach of this Agreement or failure to consummate the transactions contemplated hereby.

**ARTICLE XII**

**MISCELLANEOUS**

Section 12.1 Notices. All notices or other communications hereunder shall be deemed to have been duly given and made upon receipt if made in writing and if (a) served by personal delivery upon the party for whom it is intended, (b) delivered by a national courier service or (c) sent by telecopier, provided that the telecopy is promptly confirmed by telephone confirmation thereof, to the person at the address set forth below, or such other address as may be designated in writing hereafter, in the same manner, by such person.

To Parent or Purchaser:

XXXXXXXXXXX

To Sellers:

XXXXXXXXXXX

Section 12.2 Amendment; Waiver. Any provision of this Agreement may be amended or waived if, and only if, such amendment or waiver is in writing and signed, in the case of an amendment, by the parties hereto, or, in the case of a waiver, by the party against whom the waiver is to be effective. No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by Law.

Section 12.3 Assignment. No party to this Agreement may assign any of its rights or obligations under this Agreement without the prior written consent of the other parties hereto; provided that (a) Parent and Purchaser may:

(i) assign their rights hereunder to any direct or indirect wholly-owned Subsidiary, and (ii) assign, pledge and grant a security interest in their right, title and interest, in, to and under this Agreement and their rights thereunder as collateral security for any present or future indebtedness, which assignment, in either case, shall not relieve Parent or Purchaser of any obligations hereunder, (b) Sellers may assign their right to receive the Purchase Price to lenders under a debtor-in-possession financing agreement, which assignment shall be subject to the provisions of Section 2.5 and shall not relieve Sellers of any obligation hereunder and (c) Parent, Purchaser and Sellers may assign their rights and obligations to a person who acquires all or substantially all of that party's assets (or, in the case of Parent and Purchaser, after the Closing, all or substantially all of the assets acquired by them under this Agreement) and assumes all of such Party's obligations hereunder. Any attempted assignment in contravention hereof shall be null and void.

Section 12.4 Entire Agreement; Severability. This Agreement, the Non-Disclosure Agreement and the Ancillary Agreements contain the entire agreement between the parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings, oral or written, with respect to such matters. If any provision of this Agreement is held to be invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement that is held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

Section 12.5 Fulfillment of Obligations. Any obligation of any party to any other party under this Agreement or any of the Ancillary Agreements, which obligation is performed, satisfied or fulfilled by an Affiliate of such party, shall be deemed to have been performed, satisfied or fulfilled by such party.

Section 12.6 Parties in Interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective Successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any Person other than the parties hereto or their Successors and permitted assigns any rights or remedies under or by reason of this Agreement.

Section 12.7 Guaranty. Parent hereby irrevocably and unconditionally guarantees to the Sellers the agreements to be performed hereunder by Purchaser or by any designated Affiliate of Purchaser that has assumed and agreed to discharge any Liability under any Assumed Contract pursuant to Section 2.3 hereof ("Purchaser Obligations"). Except as provided below, the guaranty provided hereby is a guaranty of payment and performance, not merely of collection. If Purchaser shall fail timely to perform or pay any Purchaser Obligation hereunder, Parent shall pay or perform such Purchaser Obligation as and when due. Except as provided below, Parent hereby waives (a) promptness, diligence, notice, disclosure, demand for, presentment, protest and dishonor and (b) any right to force any Seller to proceed first, concurrently or jointly against Purchaser, any other guarantor, surety or other co-obligor. Sellers hereby agree that prior to enforcing their rights of payment and performance against Parent pursuant to this Section 12.7 with respect to any Purchaser Obligation, Sellers shall have (i) made demand on Purchaser to perform such Purchaser Obligation, (ii) given Purchaser a reasonable opportunity to comply with such Purchaser Obligation and (iii) determined in its reasonable discretion that Purchaser has not or will not comply with such Purchaser Obligation.

Section 12.8 Public Disclosure. Notwithstanding anything herein to the contrary, each of the parties to this Agreement hereby agrees with the other parties hereto that, except as may be required to comply with the requirements of any applicable Laws, and the rules and regulations of each stock exchange upon which the securities of one of the parties is listed, no press release or similar public announcement or communication shall ever, whether prior to or subsequent to the Closing, be made or caused to be made concerning the execution or performance of this Agreement unless specifically approved in advance by the parties hereto (which approval shall not be unreasonably withheld or delayed).

Section 12.9 Return of Information. If for any reason whatsoever the transactions contemplated by this Agreement are not consummated, Parent and Purchaser shall promptly return to Sellers all Books and Records furnished by Sellers or any of their respective agents, employees, or representatives (including all copies, if any, thereof).

Section 12.10 Expenses. Except as otherwise expressly provided in this Agreement, whether or not the transactions contemplated by this Agreement are consummated, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be borne by the party incurring such expenses.

Section 12.11 GOVERNING LAW; SUBMISSION TO JURISDICTION; SELECTION OF FORUM. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED INACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK. EACH PARTY HERETO AGREESTHAT IT SHALL BRING ANY ACTION OR PROCEEDING IN RESPECT OF ANY CLAIM ARISING OUTOF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTAINED IN OR CONTEMPLATEDBY THIS AGREEMENT, WHETHER IN TORT OR CONTRACT OR AT LAW OR IN EQUITY, EXCLUSIVELY (A) IN THE BANKRUPTCY COURT TO THE EXTENT THAT THE BANKRUPTCY COURTHAS JURISDICTION OVER SUCH ACTION OR PROCEEDING, AND (B) IN ALL OTHER CASES INTHE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK (THE"CHOSEN COURTS") AND (I) IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OFTHE CHOSEN COURTS, (II) WAIVES ANY OBJECTION TO LAYING VENUE IN ANY SUCH ACTIONOR PROCEEDING IN THE CHOSEN COURTS, (III) WAIVES ANY OBJECTION THAT THE CHOSENCOURTS ARE AN INCONVENIENT FORUM OR DO NOT HAVE JURISDICTION OVER ANY PARTYHERETO, (IV) AGREES THAT SERVICE OF PROCESS UPON SUCH PARTY IN ANY SUCH ACTIONOR PROCEEDING SHALL BE EFFECTIVE IF NOTICE IS GIVEN IN ACCORDANCE WITH SECTION

12.1 OF THIS AGREEMENT AND (V) ACKNOWLEDGES THAT THE OTHER PARTIES WOULD BEIRREPARABLY DAMAGED IF ANY OF THE PROVISIONS OF THIS AGREEMENT ARE NOT PERFORMEDIN ACCORDANCE WITH THEIR SPECIFIC TERMS AND THAT ANY BREACH OF THIS AGREEMENTCOULD NOT BE ADEQUATELY COMPENSATED IN ALL CASES BY MONETARY DAMAGES ALONE ANDTHAT, IN ADDITION TO ANY OTHER RIGHT OR REMEDY TO WHICH A PARTY MAY BE ENTITLED,AT LAW OR IN EQUITY, IT SHALL BE ENTITLED TO ENFORCE ANY PROVISION OF THIS AGREEMENT BY A DECREE OF SPECIFICPERFORMANCE AND TO TEMPORARY, PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF TOPREVENT BREACHES OR THREATENED BREACHES OF ANY OF THE PROVISIONS OF THISAGREEMENT, WITHOUT POSTING ANY BOND OR OTHER UNDERTAKING.

Section 12.12 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same Agreement.

Section 12.13 Headings. The heading references herein and the table of contents hereto are for convenience purposes only, do not constitute apart of this Agreement and shall not be deemed to limit or affect any of the provisions hereof.

Section 12.14 Time is of the Essence. With regard to all dates and time periods set forth or referred to in Section 2.6, 11.1(b), 11.1(c),11.1(e), 11.1(g), 11.1(h), 11.1.(i) and 11.1(k), time is of the essence.

Section 12.15 Mutual Drafting. This Agreement is the product of joint drafting and negotiation among the parties and no provision hereof shall be construed for or against any party based upon such party having been responsible or primarily responsible for the drafting thereof.

Section 12.16 No Survival. The representations and warranties of the parties hereto, and the covenants in Articles VI and VII which by their terms are to be fully performed on or prior to the Closing Date (in case of their presentations and warranties, after being made on the Closing Date) shall not survive, and shall terminate immediately following, the Closing. The provisions of this Section 12.16 shall not apply to any cause of action based on fraud.

IN WITNESS WHEREOF, the parties have executed or caused this Agreement to be executed as of the date first written above.

RALL SPACE & COMMUNICATIONS

CORPORATION,

as debtor and debtor in possession

|  |
| --- |
| By: | |
| ---------------------------------- |
| Name: |
| Title: |
|  |

RALL SPACECOM CORPORATION,

as debtor and debtor in possession

|  |
| --- |
| By: |
| ---------------------------------- |
| Name: |
| Title: |
|  |

RALL SATELLITE INC.,

as debtor and debtor in possession

|  |
| --- |
| By: |
| ---------------------------------- |
| Name: |
| Title: |
|  |

TELLI, LTD.

|  |
| --- |
| By: |
| ---------------------------------- |
| Name: |
| Title: |

TELLI (BERMUDA), LTD.

|  |
| --- |
| By: |
| ---------------------------------- |
| Name: |
| Title: |

**APA#16**

**ASSET PURCHASE AGREEMENT**

This Asset Purchase Agreement (the "Agreement")

is made and entered into as of this

\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20XX,

by and between

West Mining Company, Inc., a Nevada corporation ("Buyer"),

and

Mineracso Verde Ltda., a Brazilian company ("Seller").

**RECITALS**

WHEREAS, Seller owns certain mineral property known as Property AB located in the State of Mato Grosso, Brazil, described in the Brazilian National Department of Mineral Productions File Number XXXXXX (the "Property"), as more particularly described in Exhibit A to this Agreement; and

WHEREAS, Seller desires to sell and Buyer desires to purchase a 70% working interest in the property (the "Acquired Assets") on the terms and subject to the terms and conditions set forth in this Agreement.

**AGREEMENT**

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

**1.** **Purchase and Sale of Assets.** On the terms and subject to the conditions set forth in this Agreement, Seller agrees to sell, convey, assign, transfer and deliver to Buyer and Buyer agrees to purchase from Seller, at the closing on XXXXX 20XX, or on such earlier or later date as may be mutually agreed

upon by the Buyer and the Seller ("Closing Date").

**2. Assumption of Obligations and Liabilities.** On the Closing Date, Buyer shall not assume or agree to pay or otherwise perform any obligations or liabilities of Sellers.

**3. Purchase Price.** As consideration for the sale, conveyance, assignment, transfer and delivery of the Assets, Buyer agrees to issue and deliver to Seller on the Closing Date, four million five hundred thousand (4,500,000) shares of its privately held Common Stock, $.001 par value per share (the 'Shares"). After

the Buyer becomes publicly traded, the Shares will be exchanged one for one into Common Shares of Restricted Rule 144 publicly traded stock. Seller and Buyer agree to execute any other documents, representations and warranties required to qualify the issuance of the shares pursuant to Rule 144 of the Securities Act of 1933.

**4. Closing.** The closing shall take place on the Closing Date at the United States offices of the Buyer at the offices of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Brazil, at 4:00 p.m. local time or such other time and place as the parties may agree upon in writing.

**5. Deliveries at Closing.** At the closing on the Closing Date:

(a)     Seller shall deliver to Buyer such deeds, assignments, and other instruments of sale, conveyance, assignment and transfer as are sufficient in the opinion of Buyer and its counsel to vest In Buyer and Its successors or assigns the absolute, legal and equitable titles to all of the Acquired Assets.

(b)      Buyer shall deliver to Seller stock certificates representing four million five hundred thousand (4,500,000) shares of Buyers Common Stock.

**6. Representations and Warranties of Seller.** Seller hereby represents and warrants to Buyer that:

(a)     Seller is a limited partnership duty organized, validly existing and in good standing under the laws of the Country of Brazil. Seller has the requisite power and authority to own and operate its assets, properties and business and to carry on its business as now conducted.

(b)     The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duty authorized and approved by the owners of the Seller, and, when executed by the authorized representative of Seller, this Agreement will constitute a legal, valid and binding agreement of Seller, except as such enforcement may be limited by bankruptcy, Insolvency

or similar laws affecting creditors' rights generally or by the scope of equitable remedies which may be available.

(c)     The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not result in a breach of the terms and conditions of, or result in a loss of rights under, or result in the creation of any lien, charge or encumbrance upon, any of the Acquired Assets

pursuant to (i) Seller's Articles of Incorporation, by laws or other charter documents, (ii) any franchise, mortgage, deed of trust. ease, license, permit, agreement, instrument of undertaking to which Seller is a party or by which it or any of its properties are bound, or (ii) any statute, rule, regulation, order, judgment, award or decree.

(d)     Seller has good and marketable title to the Property and the Acquired Assets, free and clear of any liens or encumbrances, and has the full right, power and authority to convey the Acquired Assets to the Buyer free and clear of all such liens, claims and encumbrances, other than the 30% carried

working interest in the Property being retained by the Seller and its affiliates.

(e)     Seller is not subject to any material liability, absolute or contingent, which has not been disclosed to the Buyer in writing.

(f)     To the best of Seller's knowledge, there is no suit, claim, action or proceeding now pending or threatened before any court, administrative or regulatory agency or any basis for such a claim which may result in any judgment, order, decree, liability or other determination which could have an adverse effect, financial or otherwise, upon the Acquired Assets. No such judgment, order or decree has been entered, which has or could have such effect.

(g)     To the best of Seller's knowledge, Seller has all licenses and permits necessary to conduct mining operations on the Property. No violations are or have been recorded in respect of such licenses or permits and no proceeding is pending or threatened which could result in the revocation or limitation of any of such licenses or permits.

(h)     Except as set forth in Exhibit A to this Agreement, no consent is necessary to effect the transfer to Buyer of the Acquired Assets and, upon the consummation of the transactions contemplated hereby, Buyer will be entitled to use the Acquired Assets to the full extent that Seller used the same immediately prior to the transfer of the Assets.

**7. Representations and Warranties of Buyer.** Buyer hereby represents and warrants to Seller that:

(a)     Buyer is a corporation duly organized, validly existing and In good standing under the laws of the State of Nevada, and has full corporate power and authority to enter into this Agreement and to carry cut its obligations hereunder.

(b)     Buyer has taken all requisite corporate action to authorize and approve the execution of delivery of this Agreement and the consummation of the transactions contemplated hereby, and this Agreement constitutes a legal, valid and binding agreement of Buyer.

(c)      The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not violate the Certificate of Incorporation or the Bylaws of Buyer or any agreement, contract or other instrument to which Buyer Is a party, or any statute, rule, regulation,

order, judgment, award or decree.

(d)     The authorized capital stock of Buyer consists of 25,000,000 shares of Common Stock, per value $.001 per share, of which 1,600,000 shares are issued and outstanding on the date of this Agreement. All outstanding shares of stock of Buyer are duly authorized, validly issued, fully paid and nonassessable. There are no shares of capital stock or other securities of the Buyer outstanding except for the outstanding

shares of Common Stock described In this Section 7(d), and there are no outstanding options, warrants or rights to purchase any securities of the Buyer.

(e)     The Shares, when issued, sold and delivered in accordance with the terms of this Agreement, will be duly and validly Issued, fully paid and nonassessable.

(f)     Buyer is not a Party to any contract, agreement, lease, license, arrangement, or commitment.

(g)     There is no litigation, proceeding or investigation pending or, to the knowledge of Buyer, threatened against Buyer affecting any of its assets or properties that could result, either In any case or In the aggregate, in any material adverse change in the assets, properties or business of Buyer, or

that could Impair the validity of this Agreement or any action to be taken pursuant to this Agreement.

(h)     Neither this Agreement nor any exhibit to this Agreement nor any written statement or certificate furnished by Buyer in connection with this Agreement contains an untrue statement of a material fact or omits to state a fact that is necessary in order to make the statements contained herein and therein, in light of the circumstances under which they are made, not materially misleading.

**8. Conditions Precedent to the Obligations of Buyer.** All obligations of Buyer under this Agreement are, at its option, subject to fulfillment of each of the following conditions prior to or at the closing:

(a)     All material representations and warranties of Seller made in this Agreement or in any exhibit hereto delivered by Seller shall be true and correct as of the Closing Date with the same force and effect as if made on and as of that date.

(b)     Seller shall have performed and complied with all agreements, covenants and conditions required by this Agreement to be performed or complied with by Seller prior to or at the Closing Date.

**9. Conditions Precedent to the Obligations of Seller.** All obligations of Seller under this Agreement are, at its option, subject to fulfillment of each of the following conditions prior to or at the closing:

(a)     All material representations and warranties of Buyer made in this Agreement or In any exhibit hereto delivered by Buyer shall be true and correct on and as of the Closing Date with the same force and effect as if made on and as of that date.

(b)     Buyer shall have performed and Complied with all agreements and conditions required by this Agreement to be performed or complied with by Buyer prior to or at the Closing Date.

**10. Further Assurances.** Following the closing, Seller agrees to take such actions and execute, acknowledge and deliver to Buyer such further instruments of assignment, conveyance and transfer and take any other action as Buyer may reasonably request in order to more effectively convey, sell,

transfer and assign to Buyer any of the Acquired Assets, to confirm the title of Buyer thereto, and to assist Buyer in exercising rights with respect to the Acquired Assets.

**11. Survival of Representations and Warranties.** All representations and warranties made by each of the parties hereto shall survive the closing for a period of three years after the Closing Date.

**12. Indemnification.**

(a)     Seller agrees to Indemnify, defend and hold harmless Buyer against any and all claims, demands, losses, costs, expenses, obligations, liabilities and damages, Including Interest, penalties and reasonable attorneys' fees, incurred by Buyer arising, resulting from, or relating to any breach of, or

failure by Seller to perform, any of its representations, warranties, covenants or agreements In this Agreement or in any exhibit or other document furnished or to be furnished or to be furnished by Seller under this Agreement.

(b)     Buyer agrees to indemnify, defend and hold harmless Seller against any and all claims, demands, losses, costs, expenses, obligations, liabilities and damages, Including interest, penalties and reasonable attorneys’ fees, incurred by Seller arising, resulting from or relating to any breach of, or failure by Buyer to perform, any of its representations, warranties, covenants or agreements In this Agreement.

**13.     General Provisions.**

**13.1    Construction.** This Agreement shall be construed and enforced in accordance with the laws of the State of Nevada.

**13.2    Notices.** All notification, requests, demands and other communications contemplated under this Agreement shall be in writing and shall be deemed to have been duly given when personally delivered or when mailed by United States express, certified or registered in mail, postage prepaid, addressed to the

following parties, their successors In interest or their permitted assignees at the following addresses, or at such other addressees as the parties may designate by written notice in the manner aforesaid:

Seller:

XXXXXXXXXXXXXXXXX

Buyer:

XXXXXXXXXXXXXXXXX

**13.3    Assignment.** This Agreement shall not be assignable by any party without prior written consent of the other parties, nothing contained in this Agreement, express or implied, is intended to confer upon any person or entity other than the parties to this Agreement and their successors and assigns, any rights or

remedies under this Agreement unless expressly so stated to the contrary.

**13.4    Remedies.** Except as otherwise expressly provided herein, none of the remedies set forth in this Agreement are intended to be exclusive, and each party shall have all other remedies now or hereafter existing at law, in equity, by statute or otherwise. The election of any one or more remedies shall not

constitute a waiver of the right to pursue other available remedies.

**13.5    Attorney's Fees and Litigation Costs.** If an legal action is brought for the enforcement of this Agreement or because of an alleged dispute, breach, default or misrepresentation in connection with any of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and other costs incurred in such proceeding or other legal action, in addition to any other relief to which it may be entitled, including but not limited to post-judgment costs.

**13.6 Entire Agreement.** This Agreement and the exhibits and other matter hereof, and supersede all prior agreements, understandings, discussions, negotiations and commitments of any kind. This Agreement may not be amended or supplemented, nor may any rights hereunder be waived, except in a writing signed by each of the parties affected thereby.

**13.7    Section Headings.** The section headings in this Agreement are included for convenience only, are not a part of this Agreement and shall not be used in construing it.

**13.8    Severability.** In the event that any provision or any part of this Agreement is held to be illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect the validity or

enforceability of any other provision or part of this Agreement.

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

        IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first above mentioned.

BUYER:

WEST MINING COMPANY, INC.

A Nevada corporation

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

     Name:

Title:

SELLER:

MINERACAO VERDE LTDA.,

A Brazilian company

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

Name:

Title:

WITNESS:

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

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

**APA#17**

**ASSET PURCHASE AGREEMENT**

dated August 21, 2009

between

ABC MEDICAL, INC.

and

FIDELITIES LIQUIDATING TRUST

\* \* \*

**ASSET PURCHASE AGREEMENT**

This ASSET PURCHASE AGREEMENT is dated August 21, 2009 (this Agreement ) between ABC MEDICAL, INC., a Delaware corporation (formerly known as DEF Holdings, Inc.) located at 1329 West Bend Road, Boulder, CO 80302 (the Purchaser), and FIDELITIES LIQUIDATING TRUST, a Delaware trust located at Edinburgh LLC, Trustee for the Fidelities Liquidating Trust, 769 Plymouth Ave, Richmond, VA 23294(the Seller)

**PREAMBLE**

WHEREAS, the Seller is a liquidating trust formed pursuant to the Delaware General Corporation Law (the DGCL) to dispose of all of the assets of Fidelities Corporation, a Delaware corporation dissolved pursuant to Section 274 of the DGCL ( the Predecessor), a biopharmaceutical company formed to develop medicines to address substantial unmet medical needs in major pharmaceutical markets (the Business ) and to wind up its affairs, pay or adequately provide for the payment of all of its liabilities and distribute to or for the benefit of its stockholders all of the Predecessors assets, including interests in any liquidating trust established in connection with the complete liquidation of the Predecessor;

WHEREAS, the parties executed a Term Sheet dated July 8, 2009, pursuant to which Purchaser has been provided access to information available from Seller and third parties holding Assets on behalf of Seller as well as personnel formerly employed by Predecessor and the parties now desire to close the transaction contemplated in the Term Sheet on the terms and conditions set forth herein;

WHEREAS, Section 7.2(c) of the Liquidating Trust Agreement provides: As far as reasonably practicable, the Trustee shall cause any written instrument creating an obligation of the Trust Assets to include a reference to [the Liquidating Trust] Agreement and to provide that neither the Beneficiaries, the Trustee nor its agents shall be liable thereunder, and that the other parties to such instrument shall look solely to the Trust Assets for the payment of any claim [under such instrument] or the performance thereof; provided that the omission of such provision from any such instrument shall not render the Beneficiaries, the Trustee or its agents liable, nor shall the Trustee be liable to anyone for such omission.;

WHEREAS, the Purchaser paid $50,000 (the Downpayment ) to Seller on July 8, 2009; and WHEREAS, the Purchaser desires to purchase from the Seller and the Seller desires to sell to the Purchaser certain of the assets, and underlying intellectual property in connection with the Business, which assets are further described herein. NOW, THEREFORE, in consideration of the representations, warranties and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

**ARTICLE I CERTAIN DEFINITIONS; CONSTRUCTI**ON

1.1 Certain Definitions . (a) The following terms, when used in this Agreement, shall have the respective meanings ascribed to them below:

Action means any litigation, claim, action, suit, inquiry, hearing, investigation or other proceeding.

Affiliate means, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, Controls, is Controlled by or is under common Control with, such Person. For purposes of this definition, Control (including, with correlative meanings, the terms Controlled by and under common Control with) means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of stock, as trustee or executor, by Contract or credit arrangement or otherwise. Without limitation on the foregoing, Fidelities Corporation shall be deemed an Affiliate of the Seller. Agreement has the meaning set forth in the preamble hereto.

Ancillary Agreements means, collectively, the Bill of Sale and General Assignment, the Trademark Assignment and the Patent Assignment. Assets has the meaning set forth in Section 2.1. Bills of Sale has the meaning set forth in Section 3.2(c). Business has the meaning set forth in the preamble hereto.

Business Day means any day other than Saturday, Sunday or any day on which banks in New York, New York are required or authorized to be closed. China License Rights - shall mean (i) such of the Assets as include the right to manufacture, compound, deliver, license, use, sell or otherwise deal in Phytamelin and related analog compounds and Trodusquemine and related analog compounds, and precursors of any of the foregoing, solely within China (and not for export from China or import into China) and (ii) the right of Seller to approve or disapprove of any transaction involving or affecting any of such Assets.

Claim Notice means written notification pursuant to Section 7.2(a) of a Third-Party Claim as to which indemnity pursuant to Section 7.1 is sought by an Indemnified Party. Closing has the meaning set forth in Section 3.1. Closing Date has the meaning set forth in Section 3.1.

Code means the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder. DGCL has the meaning set forth in the preamble hereto. Excluded Assets has the meaning set forth in Section 2.2.

GAAP means United States generally accepted accounting principles as in effect from time to time, consistently applied throughout the specified period and all prior comparable periods.

Governmental Entity means any government or political subdivision thereof, whether foreign or domestic, federal, state, provincial, county, local, municipal or regional, or any other governmental entity, any agency, authority, department, division or instrumentality of any such government, political subdivision or other governmental entity, any court, arbitral tribunal or arbitrator, and any nongovernmental regulating body to the extent that the rules, regulations or orders of such body have the force of Law.

Indemnified Party means any Person claiming indemnification under any provision of Article VII.

Indemnifying Party means any Person against whom a claim for indemnification is being asserted under any provision of Article VII.

Intellectual Property means such of the Assets as includes: all

(i) discoveries and inventions (whether patentable or unpatentable and whether or not reduced to practice), patents, patent applications (either filed or in preparation for filing) and statutory invention registrations, including reissues, divisions, continuations, continuations in part, extensions and reexaminations thereof, all rights therein provided by international treaties or conventions, and all improvements thereto,

(ii) trademarks, service marks, trade dress, logos, trade names, corporate names, and other source identifiers (whether or not registered) including all common law rights, and registrations and applications for registration (either filed or in preparation for filing) thereof, all rights therein provided by international treaties or conventions, and all reissues, extensions and renewals of any of the foregoing,

(iii) copyrightable works, copyrights (whether or not registered) and registrations and applications for registration thereof (either filed or in preparation for filing), all rights therein provided by international treaties or conventions, and all extensions and renewals of any of the foregoing,

(iv) confidential and proprietary information, trade secrets, know-how (whether patentable or unpatentable and whether or not reduced to practice), processes and techniques, and research and development information, ideas, technical data, designs, drawings and specifications and associated goodwill, remedies against infringements thereof and rights of protection of an interest therein under the Laws of all applicable jurisdictions, and

(viii) copies and tangible embodiments of any item described in the foregoing.

Knowledge , Known and words of similar import mean the actual knowledge of the Trustee.

Laws means all laws, statutes, rules, regulations, ordinances and other pronouncements having the effect of law of the United States, any domestic or foreign state, county, city or other political subdivision or of any Governmental Entity.

Liability means all indebtedness, obligations and other liabilities of a Person, whether absolute, accrued, contingent, fixed or otherwise, and whether due or to become due.

Lien means any mortgage, pledge, assessment, security interest, lease, lien, adverse claim, levy, charge or other encumbrance of any kind, whether voluntary or involuntary (including any conditional sale Contract, title retention Contract or Contract committing to grant any of the foregoing). For the avoidance of doubt, the China License Rights shall not be considered a Lien under this Agreement.

Liquidating Trust Agreement means the Agreement and Declaration of Trust dated as of June 12, 2009, by and among the Predecessor and Edinburgh LLC, a Delaware limited liability company, as Trustee.

Loss means any and all damages, fines, fees, penalties, deficiencies, losses and expenses (including all interest, court costs, fees and expenses of attorneys, accountants and other experts or other expenses of litigation or other proceedings or of any claim, default or assessment or pursuit of rights to indemnification).

Material Adverse Effect means any material adverse effect on the condition (financial or otherwise), operations, business, prospects, assets or results of operations of the Business.

Order means any writ, judgment, decree, injunction or similar order of any Governmental Entity (in each case whether preliminary or final). Patent Assignment has the meaning set forth in Section 3.2(d).

Person means any individual, general or limited partnership, limited liability company, corporation, association, joint stock company, trust, estate, joint venture, unincorporated organization, Governmental Entity or any other entity of any kind. Predecessor has the meaning set forth in the preamble hereto. Purchase Price has the meaning set forth in Section 2.4. Purchaser has the meaning set forth in the preamble hereto. Recipients has the meaning set forth in Section 6.4. 4

Representatives means, with respect to any Person, the directors, officers, partners, employees, counsel, accountants and other authorized representatives of such Person.

Resolution Period means the period ending thirty days following receipt by an Indemnified Party of a Dispute Notice. Retained Liabilities has the meaning set forth in Section 2.3. Seller has the meaning set forth in the preamble hereto. Seller has the meaning set forth in the preamble hereto.

Tax Returns means all returns and reports (including elections, claims, declarations, disclosures, schedules, estimates, computations and information returns) required to be supplied to a Taxing Authority in any jurisdiction relating to Taxes.

Taxes means all United States federal, state, local and foreign income, profits, franchise, gross receipts, environmental, customs duty, capital stock, severance, stamp, payroll, sales, employment, unemployment, disability, use, property, withholding, excise, production, value added, occupancy and other taxes, duties or assessments of any nature whatsoever together with all interest, penalties, fines and additions to tax imposed with respect to such amounts and any interest in respect of such penalties and additions to tax.

Taxing Authority means any governmental agency, board, bureau, body, department or authority of any United States federal, state or local jurisdiction or any foreign jurisdiction, having or purporting to exercise jurisdiction with respect to any Tax. Third-Party Claim has the meaning set forth in Section 7.2(a). Trademark Assignment has the meaning set forth in Section 3.2(e).

Transfer Taxes means sales, use, value added, excise, registration, documentary, stamp, transfer, real property transfer, recording, gains, stock transfer and other similar Taxes and fees. Trust has the meaning set forth in the preamble hereto.

Trustee means Edinburgh LLC, a Delaware limited liability company, as trustee of the Trust under the Liquidating Trust Agreement, and any successor trustee thereunder.

(b) Construction . For purposes of this Agreement, except as otherwise expressly provided herein or unless the context otherwise requires:

(i) words using the singular or plural number also include the plural or singular number, respectively, and the use of any gender herein shall be deemed to include the other genders;

(ii) references herein to Articles, Sections, subsections and other subdivisions, and to Exhibits, Schedules, Annexes and other attachments, without reference to a document are to the specified Articles, Sections, subsections and other subdivisions of, and Exhibits, Schedules, Annexes and other attachments to, this Agreement;

(iii) a reference to a subsection without further reference to a Section is a reference to such subsection as contained in the same Section in which the reference appears, and this rule shall also apply to other subdivisions within a Section or subsection;

(iv) the words herein, hereof, hereunder, hereby and other words of similar import refer to this Agreement as a whole and not to any particular provision;

(v) the words include, includes and including are deemed to be followed by the phrase without limitation; and

(vi) all accounting terms used and not expressly defined herein have the respective meanings given to them under GAAP. 5 (c) Preamble . The Preamble set forth above is part of this Agreement.

**ARTICLE II PURCHASE AND SALE OF ASSETS**

**2.1 Purchase and Sale of Assets** . Upon the terms and conditions set forth in this Agreement, and in consideration of the payment by the Purchaser of the Purchase Price, the Seller shall sell, convey, transfer, assign, grant and deliver to the Purchaser, and the Purchaser shall purchase, acquire and accept from the Seller, at the Closing, all right, title and interest in and to the following assets and properties of every kind, nature, character and description (whether tangible or intangible, whether absolute, accrued, contingent, fixed or otherwise and wherever situated), including the goodwill related thereto (collectively, the Assets ), free and clear of all Liens:

(a) the Sellers Intellectual Property relating to Phytamelin and all related analog compounds and Lignomelin and all related analog compounds including those set forth on Schedule 2.1(a)

(b) the Sellers tangible assets relating to Phytamelin and all related analog compounds and Lignomelin and all related analog compounds, including those set forth on Schedule 2.1(b) ;

(c) the Sellers records of the development of Phytamelin and related analog compounds and Trodusquemine and related analog compounds including lab notebooks, FDA filings and correspondence, research reports, research and clinical data, manufacturing and production records, and patent correspondence.

**2.2 Excluded Assets .** Notwithstanding anything in this Agreement to the contrary, all tangible and intangible property not described in Section 2.1 (the Excluded Assets ) shall be excluded from, and shall not constitute, Assets. Without limiting the generality of the immediately preceding sentence, the Excluded Assets include the following:

(a) all intellectual property and tangible assets of the Seller relating to the IL-9 development program with Immoflex;

(b) all intellectual property and tangible assets of the Seller relating to the pexiganan development program;

(c) all intellectual property and tangible assets of the Seller relating to the inflommex (Taral) development program;

(d) the inventory of Phytamelin previously sold to Brilltown University as per the Bill of Sale signed by the Predecssor on June 5, 2009;

(e) cash, commercial paper, certificates of deposit, bank deposits, treasury bills and other cash equivalents;

(f) all insurance policies relating to the operation of the Business;

(g) all of the Sellers right, title and interest in and to Tax credits and prepaid Taxes;

(h) all assets owned or held by any employee benefit plan;

(i) all receivables;

(j) all real property owned or leased by the Seller;

(k) the organizational books and records of the Seller;

(l) all of the Sellers right, title and interest in and to this Agreement;

(m) the China License Rights; and

(n) all claims or causes of action, except those directly related to the Assets.

**2.3 Retained Liabilities .** The Purchaser assumes no Liabilities relating to the Business, the Assets or the Seller. All such Liabilities (collectively, the Retained Liabilities ), are, and shall at all times remain, the Liabilities of the Seller.

**2.4 Purchase Price** . The Purchaser shall pay to the Seller the aggregate amount of $200,000 (the Purchase Price ), of which $50,000 was previously paid as the Downpayment and the balance of $150,000 shall be paid at the Closing by wire transfer of immediately available funds. The Seller and the Purchaser shall each report federal, state, local and other Tax consequences of the purchase and sale contemplated hereby (including the filing of Internal Revenue Service Form 8594).

**2.5 Third Party Consents** . To the extent that any of the Assets is not assignable without the consent, waiver or approval of another Person and such consent, waiver or approval has not been obtained before or at the Closing, this Agreement shall not constitute an assignment or an attempted assignment of such Asset by the Seller or an assumption or an attempted assumption of such Asset by the Purchaser. The Seller shall use its commercially reasonable efforts to obtain such consents, waivers and approvals as soon as practicable following the date hereof and the Purchaser shall cooperate with and assist the Seller to this end; provided , however , that the Seller shall take no action to seek such consent, waiver or approval without prior consultation with or approval by the Purchaser and no party shall be required to pay any sums in connection therewith. If any such consent, waiver or approval shall not be obtained before or at the Closing, then until such consent, waiver or approval is obtained, the Seller shall cooperate with the Purchaser in any reasonable arrangement designed to provide the Purchaser with the benefits intended to be assigned to the Purchaser with respect to the underlying Asset.

**2.6 Certain Rights of Seller.** Seller retains all right, title and interest in and to the China License Rights provided however that Seller shall not license or otherwise transfer China License Rights unless it has first conferred with Purchaser as to the terms and conditions of said license and transfer and obtained Purchasers prior written consent. In the event that Seller or Purchaser, or any of their affiliates, receive or become aware of a bona fide offer to purchase or license those Assets subject to the China License Rights, Seller shall consider in good faith terms by which such purchase or license can be consummated. Seller now expects to approve, subject to Purchasers right to review and consent or reject, a transaction that provides for payments to Seller in respect of the Assets subject to the China License Rights consisting of

(i) a lump sum amount on the date of the purchase or license transaction of which 40% will be paid to Purchaser; plus

(ii) additional lump sum amounts, of which 50% will be payable to Purchaser; plus

(iii) royalty payments, not less than 50% of which shall be payable to Purchaser. The China License Rights shall be transferred to and revert to Purchaser at such time, if any, as Seller as a trust entity ceases to exist and no successor entity exists to receive payments in respect of the China License Rights.

**ARTICLE III THE CLOSING**

**3.1 Closing** . The closing of the transactions contemplated hereby (the Closing ) shall take place at the offices of Lorraine and Menchin, LL.P. 319 Broadway, New York, New York commencing at 10:00 a.m. E.S.T., on the date hereof (the Closing Date ).

**3.2 Delivery of Items by the Seller** . The Seller and the Predecessor shall deliver to the Purchaser at the Closing the items listed below:

(a) a certificate, duly executed by the Trustee, certifying the Liquidating Trust Agreement;

(b) [intentionally omitted];

(c) a Bill of Sale (the Bills of Sale ), duly executed by the Seller, in the forms attached hereto as Exhibit A ;

(d) a Patent Assignment (the Patent Assignment ), duly executed by the Seller, in the form attached hereto as Exhibit B ; and

(e) a Trademark Assignment (the Trademark Assignment ), duly executed by the Seller, in the form attached hereto as Exhibit C .

**3.3 Delivery of Items by the Purchaser** . The Purchaser shall deliver to the Seller at the Closing the items listed below:

(a) the Patent Assignment, duly executed by the Purchaser;

(b) the Trademark Assignment, duly executed by the Purchaser; and

(c) a wire transfer of immediately available funds to an account designated by the Seller on the Closing Date, constituting the payment of the Purchase Price pursuant to Section 2.4. 3.4 As Is, Where Is . The sale and delivery of the Assets by Seller hereunder is made on an as is, where is basis.

**ARTICLE IV REPRESENTATIONS AND WARRANTIES OF THE SELLER**

The Seller represents and warrants to the Purchaser that the statements contained in this Article IV are true and correct as of the date hereof and will be true and correct as of the Closing Date.

**4.1 Organization, Qualification and** Power . On June 4, 2009, the Predecessors stockholders approved a plan of complete liquidation and dissolution of the Predecessor (the Plan) including creation of the Trust pursuant to Section 275 of the DGCL. Pursuant to the Plan, the Predecessor filed Articles of Dissolution, effective as of June 12, 2009, with the Delaware Secretary of State. The Plan provides, among other things, that the Board will cause the Predecessor to dispose of all of the assets of the Predecessor wind up its affairs, pay or adequately provide for the payment of all of its liabilities and distribute to or for the benefit of its stockholders all of the Predecessors assets, including interests in any liquidating trust established in connection with the complete liquidation of the Predecessor. The Trust is a successor entity, as defined in Section 280(e) of the DGCL, of the Predecessor.

**4.2 Trust Documents .** The Seller has heretofore furnished to the Purchaser complete and correct copies of the Liquidating Trust Agreement, which constitute its governing instrument. Such governing instrument is in full force and effect. The Seller is not in violation of any of the provisions of its governing instrument.

**4.3 Authorization .** The Seller has full power and authority to execute and deliver this Agreement and the Ancillary Agreements and to perform the Sellers obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by the Seller of this Agreement and the Ancillary Agreements to which it is a party and the consummation of the transactions contemplated hereby and thereby have been duly authorized by the Seller, and no other action is required on the part of the Seller in connection with the execution, delivery or performance of this Agreement and the Ancillary Agreements. This Agreement and the Ancillary Agreements to have been duly executed and delivered by the Seller and, assuming the due authorization, execution and delivery hereof and thereof by the Purchaser and the enforceability against the Purchaser, constitute the valid and legally binding obligations of the Seller enforceable in accordance with their respective terms.

**4.4 Noncontravention;** Governmental Approvals .

(a) Neither the execution, delivery or performance of this Agreement or the Ancillary Agreements nor the consummation of the transactions contemplated hereby or thereby will, with or without the giving of notice or the lapse of time or both,

(i) violate any provision of the governing instruments of the Seller,

(ii) violate any Law or Order or other restriction of any Governmental Entity to which the Seller or the Assets may be subject or

(iii) conflict with, result in a breach of, constitute a default under, result in the acceleration of any right or obligation under, create in any party the right to accelerate, terminate, modify, cancel or require any notice under or result in the creation of a Lien on any of the Assets under, any contract or permit to which the Seller is a party or by which such Person is bound or to which such Person or any of such Persons properties or assets is subject.

(b) The execution and delivery by the Seller of this Agreement and the Ancillary Agreements to which the Seller is a party do not, and the performance by the Seller of this Agreement and the Ancillary Agreements to which the Seller is a party and the consummation by the Seller of the transactions contemplated hereby and thereby will not, require any consent, approval, authorization or permit of, or filing with or notification to, any Governmental Entity.

**4.5 Brokers Fees** . No agent, broker, finder, investment banker, financial advisor or other Person will be entitled to any fee, commission or other compensation in connection with any of the transactions contemplated by this Agreement on the basis of any act or statement made or alleged to have been made by the Seller, any of its Affiliates, or any investment banker, financial advisor, attorney, accountant or other Person retained by or acting for or on behalf of the Seller or any such Affiliate.

**4.6 Litigation .** There is no pending or, to the Knowledge of the Seller, threatened Action against or affecting the Business or any of the Assets before any Governmental Entity. None of the Seller nor any of the Assets is subject to any Order restraining, enjoining or otherwise prohibiting or making illegal any action by the Seller, this Agreement or any of the transactions contemplated hereby.

**4.7 Intellectual Property .** The Seller is the sole and exclusive owner of, and has good and marketable title, free and clear of all Liens, to, all right, title and interest in and to the Intellectual Property owned by the Seller, and has a valid right to use all of the Intellectual Property owned by third parties and used or held for use by the Seller in connection with the Business. Such Intellectual Property is not subject to any outstanding Orders. Immediately following the Closing, all Intellectual Property constituting part of the Assets will be owned or available for use by the Purchaser on terms and conditions substantially identical to the terms and conditions pertaining to the Seller immediately prior to the Closing. The Seller has taken reasonable measures to maintain in confidence the trade secrets and confidential information that it owns or uses or holds for use in connection with the Business. The Seller and Predecessor make no representation or warranty concerning the merchantibility, adequacy for purposes of conducting the Business, completeness or fitness of the Intellectual Property.

**4.8 Tangible Personal Property; the Assets .** Except as set forth on Schedule 4.7 , the Seller has good and marketable title to all of the Assets, free and clear of all Liens.

**ARTICLE V REPRESENTATIONS AND WARRANTIES OF THE PURCHASER**

The Purchaser represents and warrants to the Seller that the statements contained in this Article V are true and correct as of the date hereof and will be true and correct as of the Closing Date.

**5.1 Organization .** The Purchaser is a corporation duly organized, validly existing, and in good standing under the Laws of its jurisdiction of incorporation. The Purchaser is duly authorized to conduct business and is in good standing under the laws of each jurisdiction where such qualification is required, except where the failure to be so qualified, individually or in the aggregate, could not reasonably be expected to have a material adverse effect on the Purchaser. The Purchaser has full corporate power and authority to carry on the businesses in which it is engaged and to own and use the properties owned and used by it. The Purchaser has heretofore delivered to Seller complete and correct copies of its Certificate of Incorporation and bylaws and resolutions authorizing the execution and deliver of and performance under this Agreement, including all amendments thereto, which constitute all of its governing instruments. Such governing instruments are in full force and effect. The Purchaser is not in violation of any of the provisions of its governing instruments.

**5.2 Authorization .** The Purchaser has full corporate power and authority to execute and deliver this Agreement and the Ancillary Agreements to which it is a party and to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by the Purchaser of this Agreement and the Ancillary Agreements to which it is a party and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action. This Agreement and the Ancillary Agreements to which the Purchaser is a party have been duly executed and delivered by the Purchaser and, assuming the due authorization, execution and delivery hereof and thereof by the Seller, constitute the valid and legally binding obligations of the Purchaser enforceable in accordance with their respective terms.

**5.3 Noncontravention**; Governmental Approvals .

(a) Neither the execution, delivery or performance of this Agreement or the Ancillary Agreements nor the consummation of the transactions contemplated hereby or thereby will, with or without the giving of notice or the lapse of time or both,

(i) violate any provision of the certificate of incorporation or bylaws of the Purchaser or (ii) violate any Law or Order or other restriction of any Governmental Entity to which the Purchaser may be subject.

(b) The execution and delivery by the Purchaser of this Agreement and the Ancillary Agreements to which it is a party do not, and the performance by the Purchaser of this Agreement and the Ancillary Agreements to which it is a party and the consummation by the Purchaser of the transactions contemplated hereby and thereby will not, require any consent, approval, authorization or permit of, or filing with or notification to, any Governmental Entity.

**5.4 Brokers Fees** . No agent, broker, finder, investment banker, financial advisor or other Person will be entitled to any fee, commission or other compensation in connection with any of the transactions contemplated by this Agreement on the basis of any act or statement made by the Purchaser, any of its Affiliates, or any investment banker, financial advisor, attorney, accountant or other Person retained by or acting for or on behalf of the Purchaser or any such Affiliate.

**ARTICLE VI COVENANTS**

**6.1 Notices and Consents** . The Seller will

(a) give any notices to any Person in connection with the transactions contemplated hereby that the Purchaser reasonably may request, and

(b) use its commercially reasonable efforts to obtain all consents to the performance by the Seller of its obligations under this Agreement or to the consummation of the transactions contemplated hereby as are required under any contract to which either Seller is a party to the extent such contract relates to the Business or the Assets. Each such consent shall:

(i) be in form and substance reasonably satisfactory to the Purchaser;

(ii) not be subject to the satisfaction of any condition that has not been satisfied or waived; and (iii) be in full force and effect.

**6.2 Full Access** . The Seller will permit the Purchaser, any of its Affiliates and any of their respective Representatives to have full access at all times, in a manner so as not to interfere unreasonably with the normal business operations of the Seller, to all premises, properties, personnel, books, records, contracts and documents of or pertaining to the Seller. Notwithstanding the foregoing, the delivery of the tangible items included in the Assets and the access to the premises, properties, personnel, books, records, contracts and documents of or pertaining to the Seller is necessarily limited by the fact that Seller is a liquidating trust with no physical office, employees or business operations and the delivery of the tangible assets included in the Assets will be made available, as applicable, at the offices of the Trust at 769 Plymouth Ave, Richmond, VA 23294 or 3341 Bane Road, Richmond VA 23020 at the third party facilities identified to Purchaser prior to the Closing. Seller will provide written instructions to all third parties holding Assets stating that the Assets in said third partys possession are to be released to Purchaser in accordance with Purchasers instructions and delivered to Purchaser at Purchasers expense. Purchaser will take delivery of all Assets promptly and hold Seller harmless from any expense incurred for storage, handling or shipping incurred after the Closing. Storage costs prior to Closing shall remain Sellers liability.

**6.3 Tax Matters .**

(a) Cooperation . The Seller shall, and shall cause its Affiliates to, provide the Purchaser with such cooperation, assistance and information as it may reasonably request in respect of Taxes relating to the Assets, the preparation of any Tax Return, including Tax Returns relating to Transfer Taxes, amended Tax Returns or claim for refund in respect of the Assets, or the participation in or conduct of any audit or other examination by any Taxing Authority or judicial or administrative proceeding relating to liability for Taxes relating to the Assets. Such cooperation and information shall include

(i) providing copies of all relevant portions of relevant Tax Returns, together with relevant accompanying schedules and relevant work papers, relevant documents relating to rulings or other determinations by Taxing Authorities and relevant records concerning the ownership and Tax basis of property, which the Seller may possess or control, and

(ii) making employees or agents available on a mutually convenient basis to provide explanations of any documents or information provided. For a period that is equal to the longer of (x) six years and (y) the expiration of all relevant statutes of limitation, but in no event longer than required under the Liquidating Trust Agreement, the Seller shall retain all relevant tax documents, including prior years Tax Returns, supporting work schedules and other records or information that may be relevant to such Tax Returns and shall not destroy or otherwise dispose of any such records without the prior written consent of the Purchaser.

(b) Transfer Taxes . All applicable Transfer Taxes imposed in connection with this Agreement and the transactions contemplated hereby shall be borne equally by the Seller, on the one hand, and the Purchaser, on the other hand. The Seller and the Purchaser shall file all necessary documentation and Tax Returns with respect to such Transfer Taxes.

(c) Applicable Asset Acquisition . The Seller acknowledges and agrees that the purchase of the Assets hereunder is an applicable asset acquisition within the meaning of section 1060(c) of the Code.

**6.4 Confidentiality .** Following the Closing Date, the parties shall, and shall cause their respective Affiliates and their respective officers, partners, employees and advisors (collectively, the Recipients ) to, keep confidential any information relating to the Assets or the Business, except for any such information that

(a) is available to the public on the Closing Date,

(b) thereafter becomes available to the public other than as a result of an unauthorized disclosure by the other party or any of its Recipients

(c) is or becomes available to the non-disclosing party or any of its Recipients on a non-confidential basis from a source that to such Persons knowledge, is not prohibited from disclosing such information to such Person by a legal, contractual or fiduciary obligation to any other Person or Seller is required to disclose under the terms of the Liquidating Trust Agreement. Should a party or any of its Recipient be required to disclose any such information in response to an Order or as otherwise required by Law or administrative process, such Person shall inform the other party in writing of such request or obligation as soon as possible after the such Person is informed of it and, if possible, before any information is disclosed, so that a protective order or other appropriate remedy may be obtained by the Purchaser. If such Person is obligated to make such disclosure, it shall only make such disclosure to the extent to which it is so obligated, but not further or otherwise.

**6.5 Further Assurances** . At any time and from time to time after the Closing, at the Purchasers request and without further consideration, the Seller shall execute and deliver to the Purchaser such other instruments of sale, transfer, conveyance, assignment and confirmation, provide such materials and information and take such other actions as the Purchaser may reasonably deem necessary or desirable in order more effectively to transfer, convey and assign to the Purchaser, and to confirm the Purchaser title to, all of the Assets, and, to the full extent permitted by Law, to put the Purchaser in actual possession and operating control of the Assets and to assist the Purchaser in exercising all rights with respect thereto, and otherwise to cause the Seller to fulfill their obligations under this Agreement and the Ancillary Agreements.

**ARTICLE VII INDEMNIFICATION**

**7.1 Indemnification Obligations** .

(a) Indemnification by the Seller . Subject to Sections 7.3 and 8.1, following the Closing the Seller shall indemnify, defend and hold harmless the Purchaser and its officers, directors, shareholders, employees, agents and Affiliates against any and all Losses suffered, incurred or sustained by any of them or to which any of them becomes subject, resulting from, arising out of or relating to

(i) any misrepresentation or breach of representation or warranty on the part of the Seller contained in this Agreement,

(ii) any non-fulfillment of or failure to perform any covenant or agreement on the part of the Seller contained in this Agreement, and

(iii) the Retained Liabilities.

(b) Indemnification by the Purchaser . Subject to Sections 7.3 and 8.1, following the Closing the Purchaser shall indemnify, defend and hold harmless the Seller and its officers, employees, agents and Affiliates against any and all Losses suffered, incurred or sustained by any of them or to which any of them becomes subject, resulting from, arising out of or relating to

(i) any misrepresentation or breach of representation or warranty on the part of the Purchaser contained in this Agreement,

(ii) any non-fulfillment of or failure to perform any covenant or agreement on the part of the Purchaser contained in this Agreement, and

(iii) Purchasers ownership, use and exploitation of the Assets after the Closing including but not limited to conduct of human and animal trials of drug candidates.

**7.2 Method of Asserting Claims** . Claims for indemnification by an Indemnified Party under Section 7.1 will be asserted and resolved as follows:

(a) Third-Party Claims . In the event that any claim or demand in respect of which an Indemnified Party might seek indemnification under Section 7.1 is asserted against or sought to be collected from such Indemnified Party by a Person other than the Seller or the Purchaser or any of their respective Affiliates (a Third-Party Claim ), the Indemnified Party shall deliver a Claim Notice with reasonable promptness to the Indemnifying Party. Thereafter, the parties will undertake in good faith to establish procedures to resolve the underlying claim.

(b) Non-Third Party Claims . In the event any Indemnified Party should have a claim under Section 7.1 against any Indemnifying Party that does not involve a Third-Party Claim, the Indemnified Party shall deliver an Indemnity Notice with reasonable promptness to the Indemnifying Party. Thereafter, the parties will undertake in good faith to establish procedures to resolve the underlying claim.

**7.3 Further Items Relating to Indemnification .** Notwithstanding the foregoing, the right of any Indemnified Party to indemnification under this Article VII shall be subject to the following terms:

(a) NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE OBLIGATION OF THE TRUST AND THE TRUSTEE AS TO INDEMNIFICATION AND OTHER CLAIMS IS SUBJECT TO THE LIMITATION IN THIS SECTION 7.3(a). Neither the beneficiaries, the Trustee nor its agents shall be liable under this Agreement, and all parties to this Agreement shall look solely to the Trust assets for the payment of any claim under this Agreement or the performance thereof.

(b) For purposes of determining the amount of a Loss under this Article VII only, all qualifications as to materiality or Material Adverse Effect contained in any representation or warranty shall be disregarded.

(c) Any indemnity payment made under this Agreement following the Closing shall be treated by the parties hereto as a purchase price adjustment, and the parties agree to report such payments consistent therewith.

(d) Nothing in this Article VII shall require the Trust to remain in existence after the Closing Date.

**ARTICLE VIII MISCELLANEOUS**

**8.1 Survival .** Other than the Purchasers obligations under Subsection 7.1 (b.)(iii) survival of which shall not be limited, the representations and warranties of the parties contained in this Agreement and the Ancillary Agreements and any certificate or other document provided hereunder or thereunder shall survive in full force and effect until the date which is ninety (90) days following the Closing Date; provided , however , that any representation or warranty that would otherwise terminate in accordance with this sentence will continue to survive if a Claim Notice or Indemnity Notice (as applicable) shall have been timely given under Article VII on or prior to such termination date, until the related claim for indemnification has been satisfied or otherwise resolved as provided in Article VII, but only with respect to matters described in such Claim Notice or Indemnity Notice. Nothing in this Section 8.1 shall require the Trust to remain in existence after the Closing Date. 15

**8.2 Press Releases and Public Announcement .** Neither the Purchaser nor the Seller shall issue any press release or make any announcement relating to this Agreement or the Ancillary Agreements or the transactions contemplated hereby or thereby without the prior review and written approval of the Seller, in the case of the Purchaser, or the Purchaser, in the case of the Seller; provided , however , that if such release or announcement is required by Law, by the Liquidating Trust Agreement or stock exchange or self-regulatory organization regulation or rule in order to discharge the disclosure obligations of the Purchaser or Seller (including without limitation the Purchasers obligation to describe and file this Agreement with the Securities and Exchange Commission) and it is unable after good faith efforts to obtain timely the approval of the Seller or the Purchaser, as the case may be, then it may make or issue the obligatory filing, release or announcement and promptly furnish the Seller or the Purchaser, as the case may be, with a copy thereof.

**8.3 No Third-Party Beneficiaries .** The terms and provisions of this Agreement are intended solely for the benefit of the parties hereto and their respective successors and permitted assigns, and it is not the intention of the parties to confer third-party beneficiary rights, and this Agreement does not confer any such rights, upon any other Person, except for any Person entitled to indemnity hereunder.

**8.4 Entire Agreement** . This Agreement (including the Exhibits and the Schedules hereto) and the Ancillary Agreements constitute the entire agreement between the parties hereto and thereto with respect to the subject matter hereof and thereof and supersede any prior understandings, agreements or representations by or between the parties hereto, written or oral, with respect to such subject matter.

**8.5 Succession and Assignment .** Subject to the next sentence, this Agreement shall be binding upon and inure to the benefit of the parties named herein and their respective successors and permitted assigns. No party hereto may assign this Agreement or any of its rights, interests or obligations hereunder without the prior written approval of the Seller, in the case of Purchaser, or the Purchaser, in the case of the Seller, except that the Purchaser may assign this Agreement or any of its rights, interests or obligations hereunder to any Affiliate of the Purchaser.

**8.6 Drafting .** The parties have participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

**8.7 Notices .** All notices, requests and other communications hereunder must be in writing and will be deemed to have been duly given only if

(a) delivered personally against written receipt,

(b) sent by facsimile transmission,

(c) mailed by registered or certified mail, postage prepaid, return receipt requested, or

(d) mailed by reputable international overnight courier, fee prepaid, to the parties hereto at the following addresses or facsimile numbers:

If to the Sellers, to: Edinburgh LLC Trustee for the Fidelities Liquidating Trust, Peter Menlow President 769 Plymouth Ave, Richmond, VA 23294 Facsimile: (804)883-9477

and a copy, which shall not constitute legal notice, to:

Currents and Williams, LL.C. 894 Hampton Hedges, Stockton, NJ 08559, Facsimile: (609) 307-7826

If to the Purchaser, to: ABC Medical, Inc. 1329 West Bend Road, Boulder, CO 80302 Facsimile: (303)-675-111 Attention: Joe Culvert with a copy, which shall not constitute legal notice, to: Lorraine and Menchin, LL.P. 319 Broadway, New York, New York Facsimile: 212-457-452 Attention: Alfred Bender

All such notices, requests and other communications will be deemed given, (w) if delivered personally as provided in this Section 8.7, upon delivery, (x) if delivered by facsimile transmission as provided in this Section 8.7, upon confirmed receipt, (y) if delivered by mail as provided in this Section 8.7, upon the earlier of the fifth Business Day following mailing and receipt, and (z) if delivered by overnight courier as provided in this Section 8.7, upon the earlier of the second Business Day following the date sent by such overnight courier and receipt (in each case regardless of whether such notice, request or other communication is received by any other Person to whom a copy of such notice is to be delivered pursuant to this Section 8.7). Any party hereto may change the address to which notices, requests and other communications hereunder are to be delivered by giving the other parties hereto notice in the manner set forth herein.

**8.8 Governing Law** . This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to any choice of law or conflict of law provision or rule that would cause the application of the Laws of any jurisdiction other than the State of Delaware.

**8.9 CONSENT TO JURISDICTION AND SERVICE OF PROCESS .** EACH OF THE PARTIES HERETO CONSENTS TO THE EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE STATE OF DELAWARE AND IRREVOCABLY AGREES THAT ALL ACTIONS OR PROCEEDINGS RELATING TO THIS AGREEMENT, THE ANCILLARY AGREEMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY BE LITIGATED IN SUCH COURTS. EACH OF THE PARTIES HERETO ACCEPTS FOR ITSELF AND IN CONNECTION WITH ITS RESPECTIVE PROPERTIES, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS , AND IRREVOCABLY AGREES TO BE BOUND BY ANY JUDGMENT RENDERED THEREBY IN CONNECTION WITH THIS AGREEMENT, THE ANCILLARY AGREEMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH OF THE PARTIES HERETO FURTHER IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OUT OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO SUCH PARTY AT THE ADDRESS SPECIFIED IN THIS AGREEMENT, SUCH SERVICE TO BECOME EFFECTIVE 15 CALENDAR DAYS AFTER SUCH MAILING. NOTHING HEREIN SHALL IN ANY WAY BE DEEMED TO LIMIT THE ABILITY OF EITHER PARTY HERETO TO SERVE ANY SUCH LEGAL PROCESS, SUMMONS, NOTICES AND DOCUMENTS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

**8.10 WAIVER OF JURY TRIAL .** EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT, THE ANCILLARY AGREEMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY AND FOR ANY COUNTERCLAIM RELATING THERETO.

**8.11 Amendments and Waivers** . No amendment of any provision of this Agreement shall be valid unless such amendment is in writing and signed by the Purchaser and the Seller. No waiver by any party hereto of any default, misrepresentation or breach of warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence. No waiver shall be valid unless such waiver is in writing and signed by the party against whom such waiver is sought to be enforced.

**8.12 Severability .** If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future Law, and if the rights or obligations of any party hereto under this Agreement will not be materially and adversely affected thereby,

(a) such provision will be fully severable,

(b) this Agreement will be construed and enforced as if such provision had never comprised a part hereof,

(c) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by such provision or its severance herefrom and

(d) in lieu of such provision, there will be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such provision as may be possible.

**8.13 Expenses .** Each of the parties hereto will bear its own costs and expenses (including legal fees and expenses) incurred in connection with this Agreement and the Ancillary Agreements and the transactions contemplated hereby and thereby, whether or not the transactions contemplated hereby and thereby are consummated.

**8.14 Exhibits and Schedules .** The Exhibits and Schedules identified in this Agreement are incorporated herein by reference and made a part hereof. No information contained in any particular Schedule shall be deemed to be contained in any other Schedule unless expressly included therein (by cross-reference or otherwise).

**8.15 Specific Performance** . The parties hereto agree that irreparable damage would occur in the event that any provision of this Agreement was not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof in addition to any other remedy available to them at law or equity.

**8.16 No Successor Liability** . The Purchaser shall not be considered a successor to the Seller, any of its Affiliates or any of their respective predecessors by reason of any theory of Laws or equity.

**8.17 Headings** . The descriptive headings contained in this Agreement are included for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement.

**8.18 Counterparts .** This Agreement may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first written above. FIDELITIES LIQUIDATING TRUST

By: Edinburgh LLC, Trustee

By: Name:Peter Menlow Title:President CEO

ABC MEDICAL INC.

By:

|  |  |  |
| --- | --- | --- |
|  | Name: | Alfred Bender |

|  |  |  |
| --- | --- | --- |
|  | Title: | President and CEO |

Signature Page to Asset Purchase Agreement

**APA#18**

**ASSET PURCHASE AGREEMENT**

THIS ASSET PURCHASE AGREEMENT (this " Agreement "),

dated as of March 9, 2012,

is made by and among

CephaloCephalocomp, Inc., a Colorado corporation (" Buyer "),

SynaptexSynaptexCorp., a Massachusetts corporation (the " Company "),

and

the shareholders of the Company listed on Schedule A ,

attached hereto (each, a " Shareholder ," and, collectively, the " Shareholders ").

Capitalized and other defined terms shall have the meanings ascribed to them on Exhibit A , attached hereto, unless such terms are defined elsewhere in this Agreement.

RECITALS

A. The Company is engaged in the business of manufacturing advanced medical devices for non-invasive measurement of ABCD (the " Business ").

B. The Shareholders collectively own 100% of the outstanding capital stock of the Company.

C. This Agreement contemplates that the Company will transfer and assign to Buyer substantially all of the assets of the Company in exchange for the Purchase Price as determined pursuant to Section 1.4.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

ARTICLE I TRANSFER OF ACQUIRED ASSETS

**1.1 Sale and Transfer of Assets** . Subject to the terms of this Agreement, at the Closing, Buyer will deliver and pay to the Company the Closing Purchase Price as determined pursuant to Section 1.4 , and the Company agrees, and the Shareholders agree to cause the Company, to transfer, assign and deliver to Buyer, free from all Encumbrances, all properties, privileges, rights, interests and claims, real and personal, tangible and intangible, of every type and description that are owned, leased, held by or for the benefit of the Company, in which the Company has any right, title or interest or in which the Company acquires any right, title or interest on or before the Closing Date (collectively, the " Acquired Assets "), including but not limited to the following (but not including any Excluded Assets):

(a) all Contracts, as described on Schedule 1.1(a) (the " Assumed Contracts ");

(b) all equipment, inventory, vehicles, trailers, furniture, fixtures, and other tangible personal property, including computer and telecommunications hardware and software, information technology systems, and motor vehicles, the principal items of which are described on Schedule 1.1(b) ;

(c) all Permits, including the material Permits described on Schedule 1.1(c) ;

(d) all leasehold interests in the Leased Real Property, as described on Schedule 1.1(d) (the " Assumed Leases "), including any and all deposits on the Assumed Leases;

(e) all Intellectual Property, including the material Intellectual Property described on Schedule 1.1(e) ;

(f) all books and records of the Company; and

(g) all intangible assets, including customer lists, telephone numbers, accounts receivable and goodwill, if any, owned, used or held for use by the Company.

**1.2 Excluded Assets .** Notwithstanding the provisions of Section 1.1 , the Acquired Assets shall not include any of the following (the " Excluded Assets "), all rights, titles and interests in which shall be retained by the Company:

(i) cash and cash equivalents, and other current assets (other than any and all deposits on the Assumed Leases);

(ii) insurance policies and rights and claims thereunder;

(iii) the articles of organization, operating agreement, qualifications to conduct business as a foreign company, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, seals, minute books, stock transfer books, and other documents relating to the incorporation, organization, maintenance, and existence of the Company as a limited liability company; or

(iv) any Plans;

(v) any of the rights of the Company under this Agreement or the Transaction Documents; and (vi) any asset identified on Schedule 1.2 .

**1.3 Assumed Liabilities .** After Closing, Buyer shall assume, pay, discharge, and perform the following (the " Assumed Liabilities "):

(i) those obligations and Liabilities attributable to periods after Closing under the Assumed Contracts, the Assumed Leases and the Permits; and

(ii) all obligations and Liabilities arising out of Buyer's ownership of the Acquired Assets or operation of the Business after Closing. Except only for Assumed Liabilities, Buyer does not assume, and shall not have any responsibility for, any Liabilities or obligations of the Company, including but not limited to Liabilities or obligations associated with Excluded Assets.

**1.4 Purchase Price .** Buyer shall pay to the Company aggregate consideration for the Acquired Assets as follows (the " Purchase Price "):

(a) At Closing, Buyer shall pay the sum of $100,000, by wire transfer of immediately available funds to an account designated by Seller (the " Closing Cash Purchase Price ").

(b) At Closing, Buyer shall issue to the Company 266,478 restricted shares (the " Buyer Stock ," and together with the Closing Cash Purchase Price, the " Closing Purchase Price ") of the common stock, $0.001 par value per share, of Buyer's parent company, Cephalo, Inc., a Nevada corporation (" Parent "), to be held by Parent, for the benefit of the Company, until the first anniversary of the Closing Date.

(c) At Closing, the Buyer shall pay the amounts listed on Schedule 1.4(c) to the Persons entitled thereto or to Synaptex for payment to such Persons in accordance with the instructions on Schedule 1.4(c) .

(d) On the date that is 60 days following the Closing Date, Buyer shall pay the sum of $100,000, by wire transfer of immediately available funds to an account designated by Seller (the " Deferred Cash Purchase Price ").

(e) Buyer shall pay the Contingent Purchase Price Payments in accordance with Section 1.5 .

**1.5 Contingent Purchase Price .**

(a) In addition to the Closing Purchase Price and Deferred Cash Purchase Price, Buyer shall pay the Company additional amounts calculated as a percentage of Buyer's net revenues (net invoiced and reported value (list price less discounts or other credits or deductions)) derived after the Closing Date from products of the Business prior to Closing and any products directly developed from the Intellectual Property of the Business as of the Closing Date (the " Organic Net Revenue "), which such calculation of Organic Net Revenue shall not take into account any acquisitions that Buyer may consummate after the Closing Date, as follows:

(i) 10% of Organic Net Revenue for the fiscal year ending December 31, 2012

(ii) 10% of Organic Net Revenue for the fiscal year ending December 31, 2013;

(iii) 8% of Organic Net Revenue for the fiscal year ending December 31, 2014;

(iv) 5% of Organic Net Revenue for the fiscal year ending December 31, 2015;

(v) 4% of Organic Net Revenue for the fiscal year ending December 31, 2016;

(vi) 2% of Organic Net Revenue for the fiscal year ending December 31, 2017; and

(vii) 0.5% of Organic Net Revenue for the fiscal year ending December 31, 2018.

(b) The Company and the Shareholders acknowledge and agree that

(i) the Company's sole and exclusive right under this Section 1.5 will be to receive, subject to the other terms of this Agreement, the Contingent Purchase Price Payments, if any, payable pursuant to this Section 1.5 ;

(ii) Buyer shall have the right to operate the Business as it chooses, in its sole discretion;

(iii) Buyer is under no obligation to provide any specific level of investment or financial assistance to the Business or to undertake any specific actions (or to refrain from taking any specific actions) with respect to the operation of the Business; and

(iv) Buyer is not representing or warranting that any specific level of Organic Net Revenue will be achieved after the Closing nor will the Company or the Shareholders have any claims against Buyer arising from the Buyer's failure to meet for any reason any level of Organic Net Revenues.

(c) Determination of Contingent Purchase Price Payments.

(i) Within ninety (90) days after the end of the first fiscal quarter following each fiscal year beginning with the fiscal year ended December 31, 2012 and ending with the fiscal year ended December 31, 2017, Buyer shall (i) deliver to the Company a statement prepared by Buyer showing the amount of Organic Net Revenue for the previous fiscal year, with reasonable supporting information (for each fiscal year, a " Contingent Purchase Price Statement "); and

(ii) pay to the Company such amount of Contingent Purchase Price required to be paid by Buyer to the Company by wire transfer of immediately available funds to an account designated by the Company (each a " Contingent Purchase Price Payment ," and, collectively, the " Contingent Purchase Price Payments "). (ii) Within 20 days after receipt of each Contingent Purchase Price Statement, the Company shall give Buyer written notice of the Company's good faith objections, if any, to such Contingent Purchase Price Statement. If the Company makes any such objection, the parties shall endeavor to resolve the Company's objections within 20 days after Buyer's receipt thereof. If Buyer and the Company are unable to resolve such objections within such 20-day period, the Company and Buyer shall cause, within 45 days after the Company's receipt of such Contingent Purchase Price Statement, a nationally recognized accounting firm mutually acceptable to the Buyer and the Company to resolve any remaining disputed amounts. The determination of such accounting firm shall be conclusive and binding upon the Company and Buyer, and the Buyer shall bear the reasonable fees and expenses payable to such accounting firm in connection with such determination; provided that , if the Company's objection to the Contingent Purchase Price Statement does not result in the accounting firm's determination that an additional Contingent Purchase Price Payment is payable to the Company, the Company shall bear the fees and expenses payable to such accounting firm. Alternatively, the Company may choose a nationally recognized accounting firm reasonably acceptable to the Buyer at the Company's expense. Within ten Business Days after the Company's objections are resolved as provided above, Buyer shall pay to the Company, or the Company shall pay to Buyer, the amount by which the amount of Contingent Purchase Price Payment, as finally determined is greater or less, respectively, than the amount of the Contingent Purchase Price Payment as stated in the Contingent Purchase Price Statement.

**1.6 Closing and Closing Deliveries .**

(a) The closing of the Transaction (the " Closing ") will take place at 10:00 a.m., Denver, Colorado time, on the date hereof. The date on which the Closing occurs is referred to as the

" Closing Date ." Except as otherwise provided herein, all actions taken at the Closing shall be deemed to have been taken simultaneously at the time the last of any such actions is taken or completed.

(b) Subject to the delivery of the items set forth in Section 1.6(c) , at the Closing, Buyer shall execute and/or deliver to the Company all of the following, which shall be in form and substance reasonably satisfactory to the Company and the Company's counsel:

(i) the Closing Cash Purchase Price, by wire transfer of immediately available funds, pursuant to Section 1.4 ; and (ii) a copy of the stock certificate representing the Buyer Stock to be issued to the Company on the Closing Date pursuant to Section 1.4 , as evidence of such issuance, with the original to be help in escrow by Parent until the first anniversary of the Closing Date.

(c) Subject to the delivery of the items set forth in Section 1.5(b) , at the Closing, the Shareholders and/or the Company shall execute and/or deliver to Buyer (or such other Person as indicated below) all of the following, which shall be in form and substance reasonably satisfactory to Buyer and Buyer's counsel:

(i) copies of certificates of existence or good standing of the Company on or soon before the Closing Date from the Secretary of State of the State of Massachusetts and from each jurisdiction in which the Company is qualified to do business (together with Tax clearance certificates);

(ii) a certificate from the Secretary of the Company, in a form reasonably satisfactory to Buyer, certifying (A) the names of the officers of the Company authorized to sign the Transaction Documents to which it is a party, together with the true signatures of such officers; and (B) copies of consent actions or certified resolutions taken by the board of directors authorizing the appropriate officers of the Company to execute and deliver the Transaction Documents to which the Company is a party and to consummate the Transaction;

(iii) copies of all consents and authority necessary or appropriate to consummate the Transaction, (B) evidence of the making or obtaining of all governmental filings, authorizations and approvals, and (C) estoppel certificates or consents from third parties to leases, contracts and agreements of the Company reasonably requested by Buyer and in form reasonably satisfactory to Buyer;

(iv) a duly executed bill of sale, assignment and assumption agreement, in form and substance reasonably satisfactory to Buyer, transferring the Acquired Assets, including the Assumed Contracts, to Buyer;

(v) the books, files and other records of the Company referred to in Section 1.1 , including any other documentation evidencing the Company's ownership of the Acquired Assets as may reasonably be requested by Buyers;

(vi) evidence that all amounts due from the Company to its employees pursuant to Section 4.5(a) shall have been paid in full;

(vii) documents, in form and substance reasonably satisfactory to Buyer, evidencing the release of any Encumbrances on the Acquired Assets; and

(viii) such other documents from the Shareholders and the Company as Buyer may reasonably request for the purpose of facilitating the consummation of the Transactions.

**1.7 Allocation of Purchase Price .** Following the Closing, Buyer will prepare and furnish to the Company a purchase price allocation schedule in respect of each of the Acquired Assets in accordance with Section 1060 of the Code and filed on IRS Form 8594 not later than 180 days after the Closing Date (or, if earlier, April 1 of the year following the Closing Date). Buyer and the Company agree to

(a) prepare and file each of their respective Tax Returns on a basis consistent with such allocation schedule, and

(b) unless otherwise required by applicable Law, take no position inconsistent with such allocation schedule on any applicable Tax Return, in any audit or proceeding before any Governmental Authority, in any report made for Tax, financial accounting, or for any other purpose. Buyer and the Company agree to use their best efforts to resolve in good faith any differences with respect to the purchase price allocation schedule.

**1.8 Consents to Assignment** . Anything in this Agreement to the contrary notwithstanding, this Agreement shall not constitute an agreement to assign any Contract or Permit or any claim or right or any benefit arising thereunder or resulting therefrom if an attempted assignment thereof, without the consent of a third party thereto, would constitute a default thereof or in any way adversely affect the rights of Buyer thereunder. If such consent is not obtained, or if an attempted assignment thereof would be ineffective or would affect the rights thereunder so that Buyer would not receive all such rights, the Company will provide, and the Shareholders will cause the Company to provide, to Buyer the benefits under any such Contract or Permit or any claim or right, including, without limitation, enforcement for the benefit of Buyer of any and all rights of the Company against a third party thereto arising out of the default or cancellation by such third party or otherwise.

**1.9 Apportionments .** Any and all real property taxes, personal property taxes, assessments, lease rentals, and other charges applicable to the Acquired Assets will be pro-rated to the Closing Date, and such taxes and other charges shall be allocated between the parties by adjustment at the Closing, or as soon thereafter as the parties may agree. All such taxes shall be allocated on the basis of the fiscal year of the tax jurisdiction in question.

**ARTICLE II REPRESENTATIONS AND WARRANTIES REGARDING THE COMPANY AND THE SHAREHOLDERS**

Except as disclosed in the disclosure schedule attached hereto (the " Disclosure Schedule "), the Company and the Shareholders, jointly and severally, represent and warrant the following to Buyer:

**2.1 Organization; No Subsidiaries .** The Company is a corporation duly organized, validly existing and in good standing under the Laws of the State of Massachusetts. The Company has the requisite power and authority to own and lease its properties and assets and to carry on its business as it is now being conducted and as it is presently proposed to be conducted. The Company has never controlled, directly or indirectly, nor has it ever held any direct or indirect equity interest in, any Person.

**2.2 Qualification .** The Company is duly qualified and in good standing to do business as a foreign corporation in each jurisdiction in which the ownership or leasing of its properties or assets or the conduct of its business requires such qualification.

**2.3 Capitalization .** The Shareholders own, beneficially and of record, the common stock of the Company as set forth on Section 2.3 of the Disclosure Schedule, which constitutes all of the issued and outstanding capital stock of the Company.

**2.4 Authorization and Execution .** The Company has all requisite corporate power and authority, and each Shareholder who executes the Transaction Documents has full legal capacity and authority, to execute and deliver the Transaction Documents and to consummate the Transaction. The execution, delivery and performance of the Transaction Documents by the Company have been duly authorized by its board of directors and stockholders and no corporate action of the Company is necessary to consummate the Transaction. This Agreement and the other Transaction Documents have been duly executed and delivered by each of Shareholders and the Company and constitute the legal, valid, and binding obligation of each, enforceable against each of the Shareholders and the Company in accordance with their respective terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, or similar Laws affecting the enforcement of creditors' rights generally or by general principles of equity**.**

**2.5 Financial Statements; Liabilities** . Section 2.5 of the Disclosure Schedule contains a true, correct and complete copy of the following: Filed income tax returns, December 31, 2009, December 31, 2010 and Company generated financial statements for December 31, 2011.

**2.6 Outstanding Indebtedness .** Except for Indebtedness shown in Section 2.6 of the Disclosure Schedule, the Company does not have any Indebtedness outstanding. The Company is not in default with respect to any outstanding Indebtedness or any instrument relating thereto and no such Indebtedness or any instrument or agreement relating thereto or to the Shareholders purports to limit the sale of the Acquired Assets or the operation of the Business. The Company is not a guarantor of, and is not otherwise responsible for, any Liability or obligation of any other Person.

**2.7 Changes, Etc .** Except for the Transaction, since the Annual Balance Sheet Date, the Company has been operated in the Ordinary Course and there has been no event or occurrence that has had, or could reasonably be expected to have, a Material Adverse Effect**.**

**2.8 Tax Matters .** The Company has properly prepared and filed all Tax Returns that were required to be filed by it, and no extensions are currently in effect. All Taxes owed by or with respect to the Company have been timely paid or remitted. Except as set forth in Section 2.8 of the Disclosure Schedule, the Company

(a) has not received any notice that any Tax audit or other Tax proceeding is being or will be conducted by any Governmental Authority,

(b) does not have in effect any waiver of any statute of limitations regarding Taxes or agreement to an extension of time regarding the assessment of any Tax deficiency or

(c) has not received a claim from any Governmental Authority in a jurisdiction where the Company does not file any Tax Return that the Company is or may be subject to a Tax imposed by such jurisdiction. All Taxes that the Company is or was required to withhold or collect in connection with any amount paid or owing to any employee, independent contractor, owner, officer, manager, nonresident, creditor or other third party have been duly withheld or collected and have been paid, to the extent required, to the proper Governmental Authority or other Person. All Persons performing services to the Company who are classified and treated as independent contractors qualify as independent contractors and not as employees under applicable Law. All Tax information reporting requirements of or with respect to the Company have been satisfied in full. There are no Encumbrances for Taxes upon any property or assets of the Company, other than Permitted Encumbrances.

**2.9 Litigation; Governmental Proceedings .** Except as set forth on Section 2.9 of the Disclosure Schedule, there are no actions, suits, disputes, claims, arbitrations, proceedings, hearings, or investigation of, in or before any court or quasi judicial or administrative agency of any Governmental Authority or before any arbitrator made, brought or initiated by, or pending or, to the Knowledge of the Company, threatened against, the Company, any of its properties, assets or the Business or any of its owners, managers or officers in their capacities as such or involving any Person for whose acts or defaults the Company is vicariously liable, or to which the Company is a party. The Company has no Knowledge of any condition or state of facts or the occurrence of any event that might reasonably be expected to form the basis of any action, suit, dispute, claim, arbitration, proceeding, hearing or investigation by, against or affecting the Company. The Company is not a party to or subject to the provisions of any judgment, order, writ, injunction or decree of any Governmental Authority. Except as set forth on Section 2.9 of the Disclosure Schedule, neither the Company nor its officers, managers, owners, agents, or employees have, during the past three (3) years, been the subject of any inspection, investigation, survey, audit, monitoring, or other form of review by any Governmental Authority, trade association, professional review association, accrediting organization or certifying agency based upon any alleged improper activity or violation of any Laws on the part of the Company or its representatives; nor has the Company or its representatives received any written notice of deficiency from any Governmental Authority during the past three (3) years in connection with the business operations of the Company.

**2.10 Compliance with Applicable Laws; Non-Contravention .** Except as set forth on Section 2.10 of the Disclosure Schedule, the business and operations of the Company have been and are being conducted in compliance with all applicable Laws, including with respect to U.S. Food and Drug Administration rules and regulations. None of

(a) the execution and delivery of the Transaction Documents,

(b) the performance of or compliance with any such Transaction Document or (c) the consummation of the Transaction will

(i) conflict with, result in any breach of (with or without the giving of notice or passage of time), constitute a default under, give rise to a termination, right of termination or a change in, or result in the acceleration of or create in any party the right to accelerate any Contract or other instrument to which the Company is a party or by which it or any of the Acquired Assets is bound or affected,

(ii) violate the articles of organization or bylaws of the Company or any Laws,

(iii) result in the imposition of any Encumbrance upon the Acquired Assets,

(iv) or give rise to any limitation, restriction or adverse effect on Buyer's ability to conducts its business (including the Business) after the Closing (including the revocation or other termination of any Permit). The Company represents that all Company products sold outside of the U.S. were for research purposes only and were sold in compliance with applicable foreign Laws.

**2.11 Contracts and Commitments .** A complete and correct list of all of written contracts, agreements and commitments, and a complete and correct description of all oral contracts, agreements and commitments, to which the Company is a party or by which the Company is otherwise bound (collectively, the " Contracts ") is set forth in Section 2.11 of the Disclosure Schedule. The Company has delivered to Buyer true, correct and complete copies of all written Contracts, with all amendments, modifications and supplements thereto entered into on or prior to the Closing Date. Each Assumed Contract was entered into on an arm's-length basis. Except as set forth on Section 2.11 of the Disclosure Schedule, no Assumed Contract has been assigned by the Company nor is it the subject of any security agreement given by the Company. Each Assumed Contract is a valid and binding obligation of the Company, and, to the Knowledge of the Company, of the other party or parties thereto, and is enforceable in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, or similar Laws affecting the enforcement of creditors' rights generally or by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at Law). Neither the Company nor, to the Knowledge of the Company, any other party thereto has

(a) terminated, canceled, modified or waived in any material respect any term or condition of any Assumed Contract,

(b) failed to perform in any material respect its obligations required to be performed under any Assumed Contract, or

(c) received any written claim of violation or default under any Assumed Contract. The Company has not received any prepayment under any Assumed Contract for any service that has not been fully performed (other than as is fully reflected on the Interim Balance Sheet). Except as set forth in Section 2.11 of the Disclosure Schedule, none of the Assumed Contracts contains any express covenant or other restriction preventing or limiting the consummation of the Transaction, including any provision prohibiting a change of control of the Company as contemplated hereby or granting any party a right of termination or modification of any provisions as a result thereof. To the Knowledge of the Company, there are no conditions or issues involving any Assumed Contract that would hinder or jeopardize the ability of the Company to enforce the terms and conditions of such Assumed Contract following the consummation of the Transaction or would result in the counterparties to such Assumed Contract modifying, altering or withdrawing any term or condition of such Assumed Contract.

**2.12 Customers .** Except as set forth on Section 2.12 of the Disclosure Schedule, the Company has no Knowledge that any of its customers has any plan or intention to, cease to purchase services from the Company or reduce to a material extent the amount of services it purchases from the Company.

**2.13 Title to Properties and Encumbrances** . Except as set forth on Section 2.13 of the Disclosure Schedule, the Company has good and valid title to, or a valid leasehold interest in or a valid license for, each asset used by it, located on any of its premises, shown on the Interim Balance Sheet, or acquired by it after the Interim Balance Sheet Date, or as is otherwise necessary for the conduct of the Business as conducted and as presently proposed to be conducted, free and clear of any Encumbrance other than any Permitted Encumbrance, except for any asset disposed of in its Ordinary Course since the Interim Balance Sheet Date. Each such asset that is personal property is free from defects (patent and latent), has been maintained in accordance with normal applicable industry practice, is in good operating condition and repair (except normal wear and tear) and is suitable and sufficient for the purposes for which it is used and presently is proposed to be used. The Company has exclusive possession and control of each such asset at the applicable Leased Real Property.

**2.14 Intellectual Property and Proprietary Rights** .

(a) Schedule 2.14(a) of the Disclosure Schedule sets forth a true and complete list of all:

(i) Company Registered Intellectual Property;

(ii) Company Products; and (iii) any other Company Intellectual Property material to the conduct of the Business. All Company Registered Intellectual Property is: in full force and effect; valid, subsisting and enforceable; and has been prosecuted in compliance with all applicable rules, policies and procedures of the applicable Governmental Authorities.

(b) The Company is the sole and exclusive owner of all right, title and interest in and to the Company Owned Intellectual Property. All Company Intellectual Property is free and clear of all Encumbrances. The Company lawfully owns, or otherwise has sufficient rights to all Intellectual Property that is required to conduct its business in the manner it is currently being conducted and as currently proposed to be conducted. The execution of the Transaction Documents and the consummation of the transactions contemplated thereby do not result in the loss or impairment of the Company's rights to own or use the Company Intellectual Property, or give rise to any right of any Person to terminate any rights under the Intellectual Property Licenses.

(c) The Company Products, Company Intellectual Property and the conduct of the Business has not, does not violate, infringe or misappropriate any Intellectual Property Rights of any Person. There is no pending or threatened litigation, arbitration, action, suit, judgment, order, injunction, proceeding or investigation or an offer of a license:

(i) involving any Company Intellectual Property; or

(ii) alleging that any Company Product, Company Intellectual Property, or the conduct of the Business infringes, misappropriates or otherwise violates the rights of any Person. No Person is infringing upon, misappropriating or otherwise violating or conflicting with any Company Intellectual Property, or has previously done so.

(d) Schedule 2.14(d) of the Disclosure Schedule sets forth a true, complete and correct list of all:

(i) Outbound Licenses; and

(ii) Inbound Licenses. The Intellectual Property Licenses are valid, binding and enforceable on all parties thereto, and there exists no event or condition that does or will result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default by any party thereunder.

(e) Schedule 2.14(e) of the Disclosure Schedule identifies all Company Software. No Source Code for any Software owned by the Company has been delivered, licensed, or is subject to any Source Code escrow obligation by the Company to a Person. The Company is not obligated under any Open Source License to distribute or make available any Source Code or other materials or grant any other rights to any Person other than the unmodified Open Source Materials received by the Company under each such Open Source License.

(f) The Company has:

(i) taken all reasonable measures to protect and preserve its rights in the Company Intellectual Property and the confidentiality of all Trade Secrets owned or held by any of the Company; and

(ii) only disclosed any such Trade Secrets pursuant to the terms of a written agreement that requires the Person receiving such Trade Secrets to protect and not disclose such Trade Secrets.

(g) No present or former employee, officer, consultant or contractor of the Company has any ownership, license or other right, title or interest in any Company Intellectual Property. Each current and former employee, officer, consultant and contractor of the Company who is or has been involved in the development (alone or with others) of any Intellectual Property by or for the Company, or has or previously had access to any Trade Secrets, has executed and delivered to the Company a written and enforceable Contract that:

(i) assigns to the Company, without an obligation of payment, all right, title and interest in and to any such Intellectual Property; and

(ii) provides reasonable protection for such Trade Secrets. In each case in which the Company has acquired ownership (or purported to acquire ownership) of any Intellectual Property from any Person, the Company has obtained a valid and enforceable written assignment sufficient to irrevocably transfer ownership of all rights with respect to such Intellectual Property to the Company. Neither the Company nor any of its officers, employees or agents has done, or failed to do, any act or thing which may, prejudice the validity or enforceability of any of the Company Intellectual Property. No Person (other than the Company) has an interest or right in or to any improvements, modifications, enhancements, customization or derivatives of any Company Owned Intellectual Property.

**2.15 Real Estate .** The Company does not own any real property (including any ownership interest in any buildings or structures and improvements located thereon). The use and occupancy by the Company of the Leased Real Property is in compliance with all applicable Laws and insurance requirements.

**2.16 Insurance** . Section 2.15 of the Disclosure Schedule sets forth the following information with respect to each insurance policy (including policies providing property, casualty, general liability and workers' compensation coverage, errors and omissions, bond and surety arrangements and similar coverages and arrangements under any Laws) with respect to which the Company is a party, a named insured or otherwise a beneficiary of coverage (the " Policies "):

(a) type of insurance being provided;

(b) the name of the carrier;

(c) the policy number; and

(d) the applicable coverages and deductibles. Section 2.15 of the Disclosure Schedule also describes any self-insurance, retention, captive insurance company or similar insurance arrangements affecting the Company. With respect to each such insurance Policy, (w) the Policy is legal, valid, binding, enforceable and in full force and effect, (x) the Company is not in breach or default nor, to the Knowledge of the Company, is any other party to the Policy in breach or default (including with respect to the payment of premiums or the giving of notices), and no event has occurred which, with notice or the lapse of time, would constitute such a breach or default, or permit termination, modification or acceleration, under the Policy, (y) no party to the Policy has repudiated any material provision thereof, and (z) the Company has paid all premiums due on the Policies. Except as described in Section 2.15 of the Disclosure Schedule, no claim relating to the Company is outstanding under any of the Policies. In the twelve (12) months preceding the Closing Date, no claims have been made by the Company on its insurers nor have any circumstances arisen which may give rise to any claim, which (in either case) could have the effect of causing future premiums to be higher than would otherwise be the case.

**2.17 Employee Benefits** . Set forth in Section 2.17 of the Disclosure Schedule is a list of all "employee benefit plans" (as defined in the Employee Retirement Income Security Act of 1974, as amended (" ERISA ")) and any other employee benefit plans, practices, policies or arrangements of any kind, whether written or oral, which are maintained by the Company for the remunerative benefit of any of its current or former officers, directors or employees, or under which the Company has any current or potential Liability (hereinafter collectively referred to as " Plans " and individually as a " Plan "). Each Plan has been administered in all material respects in accordance with its Plan documents and the applicable Laws, and there has been no breach of fiduciary duty, prohibited transaction, or other event with respect to a Plan which could result in an excise Tax or other claim or Liability against the Company, any Plan or any fiduciary of a Plan. Each employee pension benefit plan listed in Section 2.17 of the Disclosure Schedule that is intended to be a "qualified plan" for purposes of the Code is in fact so qualified, such Plan has received a current favorable determination letter or opinion letter from the IRS regarding its qualified status, and nothing has occurred since the date such determination letter was requested that would adversely affect such qualified status. At no time during the calendar year in which the Closing Date occurs and the six (6) calendar years preceding the calendar year in which the Closing Date occurs has the Company or any Person which is or was aggregated with the Company under Code Section 414 maintained or made any contributions to any defined benefit pension plan or multiemployer pension plan which is subject to Title IV of ERISA, Section 302 of ERISA, or Section 412 of the Code. No Plan or agreement provides health, dental, life insurance or similar welfare benefits to any employee of the Company, or any dependent of such employee, following termination of the employee's employment, except as may be required by Code Section 4980B or any similar Laws. No action, suit, proceeding, hearing, audit or investigation with respect to any Plan (other than routine claims for benefits) will be pending as of the Closing Date, and to the Knowledge of the Company, no such action, suit, proceeding, hearing or investigation has been threatened.

**2.18 Employees** . Section 2.18 of the Disclosure Schedule contains a complete and correct list of all employees of, and independent contractors and consultants retained by, the Company, showing for each employee and independent contractor and consultant the current job title or description, current salary level or payment arrangement, and any bonus, commission or other remuneration paid during the years 2009, 2010 and 2011. Except as set forth in Section 2.18 of the Disclosure Schedule:

(a) to the Knowledge of the Company, no employee has any plan to terminate his or her employment with the Company;

(b) the Company is not a party to any collective bargaining agreement covering any employee, and no union or association of employees has been certified or recognized as the collective bargaining representative of any employees or has attempted to engage in negotiations regarding terms and conditions of employment;

(c) no unfair labor practice charge, work stoppage, picketing or other such activity relating to labor matters of the Company's business are pending or, to the Knowledge of the Company, has been threatened;

(d) to the Knowledge of the Company, there are no current or threatened attempts to organize or establish any labor union or employee association to represent any employees of the Company's business;

(e) the Company does not have any workers' compensation Liabilities that are not covered by insurance;

(f) there is not in existence any contract of employment with any employee of the Company that cannot be terminated at will by the Company without creating any Liability of the Company (except Liabilities of the Company with respect to wages or other compensation for services rendered before such termination);

(g) no employee of the Company is currently on short-term or long-term disability;

(h) the Company has not implemented any layoff of employees that could implicate the WARN Act, or any similar foreign, state or local Law;

(i) the Company is not delinquent in payments to any of its employees, consultants or independent contractors for any wages, salaries, commissions, bonuses or other direct compensation for any service performed for it prior to the Closing Date or amounts required to be reimbursed to such employees, consultants or independent contractors;

(j) the Company has complied in all material respects with all applicable state and federal equal employment opportunity Laws and with other Laws related to employment, including those related to wages, hours, worker classification, collective bargaining and the payment and withholding of Taxes and other sums as required by Law; and

(k) the Company is not liable for any arrears of wages, Taxes, penalties, or other sums for failure to comply with any of the foregoing or any withholding or collection in connection with any amount paid or owing to any employee, consultant or independent contractor.

**2.19 Immigration .** Except as listed in Section 2.19 of the Disclosure Schedule:

(a) the Company has in its files a Form I-9 that is validly and properly completed in accordance with applicable Law for each employee of the Company with respect to whom such form is required under applicable Law;

(b) the Company has not received any notice or other communication from any Governmental Authority or other Person regarding any violation or alleged violation of any applicable Law relating to hiring, recruiting, employing (or continuing to employ) anyone not authorized to work in the United States; (c) for each employee of the Company whose social security number (or purported social security number) has appeared on any "no match" notification from the Social Security Administration (SSA), such employee or the Company has resolved in accordance with applicable Law each discrepancy or non-compliance with applicable Law with respect to such social security number (or, if applicable, such purported social security number); (d) the Company has a public access file for all employees working under the H-1B visa program, and the public access file is in compliance with Section 655.760 of Title 20 of the Code of Federal Regulations; and (e) the Company is in compliance with the Department of Labor's Labor Condition Application provisions set forth in Title 20 of the Code of Federal Regulations, Section 655.700 et. seq.

**2.20 Conflicts of Interest .** Except as set forth in Section 2.20 of the Disclosure Schedule, neither the Company nor any officer, director, or manager of the Company or any Affiliate of such officer, director, manager (other than the Company) or either Shareholder has or had within the past twelve (12) months

(a) any direct or indirect interest in any Person that does business with the Company,

(b) any direct or indirect interest in any property, asset or right that is used by the Company in the conduct of its business, or

(c) any contractual relationship with the Company other than as an employee.

**2.21 No Brokers or Finders .** Neither any Shareholder nor the Company has any Liability to any broker, finder, or similar intermediary or other Person in connection with the Transaction that would cause Buyer to become liable for payment of any commission, fee or other compensation with respect thereto.

**2.22 Licenses; Permits; Consents .** The Company possesses from the appropriate Governmental Authority, all licenses, permits, registrations, authorizations, approvals, franchises and rights that are necessary for the Company to conduct the business in which it is currently engaged and which it currently proposes to be engaged in and to own and use the properties owned and used by it (the " Permits "). True and correct copies of all such Permits have been delivered to Buyer. The Company has been at all times in full compliance with all of the terms and requirements of each Permit. Except as set forth in Section 2.22 of the Disclosure Schedule, no consent, approval or authorization of, registration, qualification or filing with, or notice to any Person (including any Governmental Authority) is required for the execution and delivery by the Company of the Transaction Documents to which it is a party or for the consummation and performance by the Company of the Transaction and the Company has obtained all required consents and made all filings identified in Section 2.22 of the Disclosure Schedule.

**2.23 Illegal Payments .** The Company has never offered, made or received any illegal payment or contribution of any kind, directly or indirectly, including illegal payments, gifts or gratuities, to any Person or any United States or foreign national, state or local government official, employee or agent or any candidate for any such position. Neither the Company nor any of its officers, directors, agents, or employees, or any other Person associated with or acting for or on their respective behalf has, directly or indirectly, in connection with the business of the Company

(a) made any contribution, gift, bribe, rebate, payoff, influence payment, kickback, or other payment or remuneration to any Person, regardless of form, whether in money, property or services, including

(i) to obtain favorable treatment in securing business or payment for business (government, public, or private),

(ii) to pay for favorable treatment or payment for business secured (government, public, or private), or

(iii) to obtain special concessions or for special concessions already obtained, for or in respect of the Company, or

(b) established or maintained any fund or asset that has not been recorded in the books and records of the Company.

**2.24 Books and Records .** The complete and correct minute books of the Company have been made available to Buyer for inspection, and such minute books record therein all actions taken by the board of directors and stockholders of the Company. No other material actions of the board of directors or stockholders of the Company, have been taken which have not been recorded therein.

**2.25 Disclosure .** The representations and warranties of the Company and the Shareholders in this Agreement, and all representations, warranties and statements of the Company and the Shareholders contained in any schedule, financial statement, exhibit, list or document delivered pursuant hereto or in connection herewith, do not omit to state a material fact necessary in order to make the representations, warranties or statements contained herein or therein not misleading. The Company and the Shareholders have furnished to Buyer complete and accurate copies of all documents and information requested by Buyer.

**2.26 Investment Representations** . The Buyer Stock being acquired by the Company is solely for the Company's own account and for investment purposes only and the Company has no present intention of distributing, selling, or otherwise disposing of it in connection with a distribution within the meaning of the Securities Act or the securities Laws of any state. Each of the Company and the Shareholders who execute this Agreement is able to bear the economic risk of an investment in the Buyer Stock and has such knowledge and experience in financial and business matters that each of the Company and the Shareholders who execute this Agreement is capable of evaluating the merits and risks of the proposed investment in the Buyer Stock. Each of the Company and the Shareholders has had an opportunity to ask questions of, and receive answers from, officers of Buyer concerning Buyer and its operations and has had an opportunity to review Buyer's financial and other publicly available information, including Buyer's reports filed with the U.S. Securities and Exchange Commission. Each of the Company and the Shareholders understands that the Buyer Stock may not be sold, transferred, or otherwise disposed of by it or him without registration under the Securities Act and any applicable state securities Laws, or an exemption therefrom, and that in the absence of an effective registration statement covering the Buyer Stock or an available exemption from registration, he, she or it may be required to hold it indefinitely. Each of the Company and the Shareholders understands that the Buyer Stock may not be sold pursuant to Rule 144 promulgated under the Securities Act unless all of the conditions of that rule are met. Each of the Company and the Shareholders understands and agrees that the certificates evidencing the Buyer Stock or any other securities issued in respect of the Buyer Stock upon any stock split, stock dividend, recapitalization, merger, consolidation or similar event, shall bear a legend in substantially the following form (in addition to any legend required by any stockholders agreement of Buyer or under applicable state securities Laws):

"THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR ANY STATE SECURITIES LAWS. THE SECURITIES REPRESENTED BY THIS CERTIFICATE MAY NOT BE TRANSFERRED, SOLD, OFFERED FOR SALE OR OTHERWISE DISPOSED OF UNLESS THERE IS AN EFFECTIVE REGISTRATION STATEMENT OR OTHER QUALIFICATION RELATING TO SUCH SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND ANY APPLICABLE STATE SECURITIES LAWS OR UNLESS THE COMPANY RECEIVES AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION OR OTHER QUALIFICATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND ANY APPLICABLE STATE SECURITIES LAWS IS NOT REQUIRED IN CONNECTION WITH SUCH TRANSFER, SALE, OFFER OR DISPOSITION. THE SALE, PLEDGE, HYPOTHECATION OR TRANSFER OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE IS SUBJECT TO THE TERMS AND CONDITIONS OF A CERTAIN ASSET PURCHASE AGREEMENT BY AND AMONG THE COMPANY AND CERTAIN HOLDERS OF CAPITAL STOCK OF THE COMPANY. COPIES OF SUCH AGREEMENT MAY BE OBTAINED UPON WRITTEN REQUEST TO THE SECRETARY OF THE COMPANY."

**ARTICLE III REPRESENTATIONS AND WARRANTIES BY BUYER**

Buyer represents and warrants the following to the Company, as of the date hereof and as of the Closing Date:

**3.1 Incorporation; Standing; Qualification** . Buyer is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware and has the limited liability company power and authority to own, lease and operate its properties and assets and to carry on its business as it is now being conducted.

**3.2 Authorization and Execution** . Buyer has all corporate power and authority to execute and deliver the Transaction Documents to which it is a party and to consummate the Transaction. The execution, delivery and performance by Buyer of the Transaction Documents to which it is a party have been duly authorized by all necessary corporate action, and no further corporate action of Buyer is necessary to consummate the Transaction. The Transaction Documents to which Buyer is a party have been duly executed and delivered by Buyer and constitute the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with their terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, or similar Laws affecting the enforcement of creditors' rights generally, or by general principles of equity.

**3.3 No Brokers or Finders** . Buyer has no Liability to any broker, finder or similar intermediary in connection with the Transaction that would cause the Company or the Shareholders to become liable for payment of any fee or expense with respect thereto.

**ARTICLE IV COVENANTS**

**4.1 Certain Post-Closing Covenants .** The Shareholders and the Company, on the one hand, and Buyer on the other hand, agree as follows with respect to the period following the Closing.

(a) In case at any time after the Closing any further action is necessary to carry out the purposes of the Transaction Documents and the Transaction, each party hereto will take such further action (including the execution and delivery of such further instruments and documents) as any other party reasonably may request, all at the requesting party's cost and expense (unless the requesting party is entitled to indemnification therefor under Article V below). The Shareholders and the Company acknowledges and agree that from and after the Closing, Buyer will be entitled to possession of all documents, books, records (excluding Tax records), agreements and financial data of any sort relating to the Company.

(b) In the event and for so long as any party actively is contesting or defending against any action, suit, proceeding, hearing, investigation, charge, complaint, claim or demand in connection with

(i) the Transaction or

(ii) any fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action, failure to act or transaction on or prior to the Closing Date involving the Business or the Acquired Assets, the Company and the Shareholders, on the one hand, and Buyer, on the other hand, as the case may be, will cooperate with it and its counsel in the contest or defense, make available its representatives, and provide such testimony and access to its books and records as shall be necessary in connection with the contest or defense, all at the sole cost and expense of the contesting or defending party (unless the contesting or defending party is entitled to indemnification therefor under Article V below).

(c) Neither the Company nor the Shareholders will take any action that is designed or intended to have the effect of discouraging any lessor, licensor, customer, supplier or other business associate of Buyer from maintaining the same business relationships with Buyer after the Closing as it maintained with the Company prior to the Closing.

(d) The Company and the Shareholders will treat and hold as confidential all information concerning the Acquired Assets, the Business and the business and affairs of Buyer that is not already generally available to the public (the " Confidential Information "), refrain from using any of the Confidential Information except in connection with this Agreement, and deliver promptly to Buyer or destroy, at the request and option of Buyer, all tangible embodiments (and all copies) of the Confidential Information which are in its possession. In the event that the Company or the Shareholders is requested or required (by oral question or request for information or documents in any legal proceeding, interrogatory, subpoena, civil investigative demand, or similar process) to disclose any Confidential Information, the Company or the Shareholders, as the case may be, will notify Buyer promptly of the request or requirement so that Buyer may seek an appropriate protective order or waive compliance with the provisions of this Section 4.1(d) . If, in the absence of a protective order or the receipt of a waiver hereunder, either the Company or either Shareholder is, on the advice of counsel, compelled to disclose any Confidential Information to any tribunal or else stand liable for contempt, the Company or the Shareholders, as the case may be, may disclose the Confidential Information to the tribunal; provided, however , that it, he or she shall use its or his best efforts to obtain, at the reasonable request of Buyer, and at Buyer's cost, an order or other assurance that confidential treatment will be accorded to such portion of the Confidential Information required to be disclosed as Buyer shall designate. The terms of this Agreement shall be deemed Confidential Information.

(e) Except as otherwise required by applicable Law, and except with respect to Buyer following the Closing, Buyer, the Shareholders and the Company will not, and will not permit any of their respective Affiliates, representatives or advisors to, issue or cause the publication of any press release or make any other public announcement, including any tombstone advertisements, or any announcements to employees, customers or suppliers of the Business with respect to the Transaction without the consent of the other parties, which consent shall not be unreasonably withheld or delayed. Buyer, the Shareholders and the Company shall cooperate with each other in the development and distribution of all press releases and other public announcements with respect to this Agreement and the Transaction, and shall furnish the other with drafts of any such releases and announcements as far in advance as reasonably possible.

(f) Contemporaneously with the execution and delivery of this Agreement, the Company shall change its corporate name to remove any reference to the name "Synaptex" or any other trade name used by the Company or any name derived from or confusingly similar to any such names. As promptly as practicable following the Closing Date, the Company shall file in all jurisdictions in which it is qualified to do business any documents necessary to reflect such change of name or to terminate its qualification therein. In connection with enabling the Buyer to use the current corporate name of the Company, the Company shall deliver to the Buyer all consents related to such change of name as may be requested by the Buyer and shall otherwise cooperate with the Buyer. From and after the Closing Date, the Company shall immediately cease the use (in any format or medium) of such name or any variations thereof for all business purposes whatsoever (except that such name may be referred to as a former name in any Tax or other filing required to be made with any Governmental Authority).

**4.2 Tax Matters .**

(a) The Company will file and pay when due or cause to be so filed and paid, all Tax Returns and Taxes and unclaimed property returns and filings with respect to the Company or the Company's operation of the Business. Buyer will file and pay when due or cause to be so filed and paid, all Tax Returns and Taxes and unclaimed property returns and filings with respect to Buyer or Buyer's operation of the Business.

(b) All sales, use, transfer, and similar Taxes arising from or payable by reason of the transactions contemplated by this Agreement shall be the Liability of and for the account of the Company, and the Company and the Shareholders shall indemnify and hold Buyer harmless from and against all Damages arising from any of the same.

(c) Each party will cooperate in all reasonable respects with respect to Tax matters and provide one another with such information as is reasonably requested to enable the requesting party to complete and file all Tax Returns it may be required to file (or cause to be filed) with respect to the Company, to respond to Tax audits, inquiries or other Tax proceedings and to otherwise satisfy Tax requirements. Such cooperation also will include promptly forwarding copies (to the extent related thereto) of

(i) relevant Tax notices, forms or other communications received from or sent to any Governmental Authority, and

(ii) reasonably requested copies of all relevant Tax Returns together with accompanying schedules and related workpapers, documents relating to rulings, audits or other Tax determinations by any Governmental Authority and records concerning the ownership and Tax basis of property.

**4.3 Non-Competition and Non-Solicitation** . In order to protect the goodwill of the Business after the Closing and as a condition precedent to Buyer entering into and performing its obligations under this Agreement, each of the Company and the Shareholders agrees to the following restrictions:

(a) Each of the Company and Drew J. Kaiser covenants and agrees that from the Closing Date and through the later of

(i) five (5) years thereafter, or

(ii) two (2) years after such time as neither the Company, the Shareholders, nor any of their Affiliates holds any interest in the capital equity of Parent (the " Restricted Period "), neither the Company nor Drew J. Kaiser will, directly or indirectly (including as a proprietor, owner, principal, agent, partner, officer, director, stockholder, employee, manager, member, consultant or otherwise), anywhere in the world own, operate, manage, control, engage in, participate in, invest in, permit his name to be used by, hold any interest in, assist, aid, act as a consultant to or otherwise advise in any way, or perform any services (alone or in association with any Person) for any Person (or on the Company's or Drew J. Kaiser ’s behalf) that engages in or owns, invests in, operates, manages or controls any venture or enterprise that, directly or indirectly, engages in any business, services or other activity that Buyer or any Affiliate of Buyer conducts or actively engaged in pursuing as of the Closing Date, or otherwise competes with the Business, or at any time that either Shareholder is providing services to Buyer or any of its respective Affiliates after the Closing Date (the " Restricted Business ").

(b) Each of the Company and Drew J. Kaiser covenants and agrees that during the Restricted Period, neither the Company nor Drew J. Kaiser will, directly or indirectly through another Person (including as a proprietor, owner, principal, agent, partner, officer, director, stockholder, employee, manager, member, consultant or otherwise)

(i) call on, solicit for services or otherwise attempt in any manner to solicit the business of any customer, supplier or other business relation of Buyer, or any of its Affiliates, or in any way interfere with the relationship between any such customer, supplier or other business relation and Buyer, or any of its respective Affiliates (including inducing such Person to cease doing business with Buyer, or any of its Affiliates, or make any negative statements or communications about Buyer, or any of its Affiliates), or

(ii) hire, engage, employ, solicit, take away, induce or attempt to hire, engage, solicit, take away or induce (either on the Company's or Drew J. Kaiser ’s behalf or on behalf of any other Person) any Person who is then an employee or contractor of Buyer, or any of its Affiliates, or who was an employee or contractor of Buyer, or any of its Affiliates, at any time during the six-month period immediately preceding Drew J. Kaiser ’s termination of employment with Buyer, if applicable.

(c) Nothing herein shall prohibit either the Company or Drew J. Kaiser from

(i) being a passive owner of not more than 1% of the outstanding stock of any class of securities of any corporation listed on a national securities exchange or publicly traded on any nationally recognized over-the-counter market engaged in such business,

(ii) performing any services for Buyer or that are otherwise permitted under any written agreement with Buyer, or

(iii) hiring any employee who responds to general solicitations for employment in newspapers or magazines, over the internet or by headhunters or employment agencies, in each case if not specifically directed towards employees of Buyer or any Affiliate of Buyer.

(d) If the duration of, the scope of, or any business activity covered by, any provision of this Section 4.3 is in excess of what is determined to be valid and enforceable under applicable Law, such provision shall be construed to cover only that duration, scope or activity that is determined to be valid and enforceable. Each of the Company and Drew J. Kaiser hereby acknowledges that this Section 4.3 shall be given the construction which renders its provisions valid and enforceable to the maximum extent, not exceeding its express terms, possible under applicable Law.

(e) Each of the Company and Drew J. Kaiser acknowledges and affirms that a breach of Sections 4.3(a) or 4.3(b) by either the Company or Drew J. Kaiser cannot be adequately compensated in an action for damages at Law, and equitable relief would be necessary to protect Buyer from a violation of this Agreement and from the harm which this Agreement is intended to prevent. Accordingly, each of the Company and Drew J. Kaiser agrees that in the event of any actual or threatened breach of such provisions, Buyer shall (in addition to any other remedies which it may have) be entitled to enforce its rights and the Company's or Drew J. Kaiser’s , as the case may be, obligations under this Section 4.3 not only by an action or actions for damages, but also by an action or actions for specific performance, temporary and/or permanent injunctive relief and/or other equitable relief in order to enforce or prevent any violations (whether anticipatory, continuing or future) of the provisions of this Section 4.3 (including the extension of the Restricted Period by a period equal to

(i) the length of the violation of this Section 4.3 plus

(ii) the length of any court proceedings necessary to stop such violation) and recover attorneys' fees and costs for the same, and such relief may be granted without the necessity of proving actual damages or the inadequacy of money damages, or posting bond. In the event of a breach or violation by either the Company or Drew J. Kaiser of any of the provisions of this Section 4.3 , the running of the Restricted Period (but not the Company's or Drew J. Kaiser ’s obligations under this Section 4.3 ) shall be tolled with respect to each of the Company and Drew J. Kaiser during the continuance of any actual breach or violation. Each of the Company and Drew J. Kaiser further acknowledges that Sections 4.3(a) and 4.3(b) constitute a material inducement to Buyer to complete the Transaction and that Buyer will be relying on the enforceability of such Section in consummating the Transaction.

**4.4 Bulk Sales .** If the provisions of Article 6 of the Uniform Commercial Code have not been repealed in each jurisdiction where any of the Acquired Assets are located, the Company, the Shareholders and Buyer hereby waive compliance with the provisions of Article 6 of the Uniform Commercial Code in each such jurisdiction that has not repealed such article and where any of the Acquired Assets are located in connection with the Transaction.

**4.5 Employees .**

(a) The Company acknowledges and confirms that immediately prior to the Closing, the Company terminated all employees employed of the Company effective as of the close of business on the Business Day immediately preceding the Closing. Simultaneously with such termination, the Company paid each such terminated employee, all accrued wages and salaries, accrued vacation, sick and personal time and all other amounts due from the Company to such employees.

(b) Buyer shall have no obligation to offer employment to, and shall have no other Liability to, any employees of the Company, including any employees who, on the Closing Date, are not actively employed by the Company or are on disability, leave of absence, military service leave or lay-off (whether or not with recall rights), or whose employment has been terminated (voluntarily or involuntarily) or who have retired prior to the Closing Date.

(c) The Company shall retain all Liabilities arising from the termination or severance at any time and from time to time of all of its employees.

(d) The Company agrees and acknowledges that the selling group (as defined in Treasury Regulation Section 54.4980B-9, Q&A-3(a)) of which it is a part (the " Selling Group ") will continue to offer a group health plan to employees of the Company after the Closing Date and, accordingly, that the Company and the Selling Group will be solely responsible for providing continuation coverage under COBRA, to those individuals who are M&A qualified beneficiaries (as defined in Treasury Regulation Section 54.4980B-9, Q&A-4(a)) with respect to the transactions contemplated by this Agreement (collectively, the " M&A Qualified Beneficiaries "). The Company and the Selling Group further agree and acknowledge that in the event that the Selling Group ceases to provide any group health plan to any employee prior to the expiration of the continuation coverage period for all M&A Qualified Beneficiaries (pursuant to Treasury Regulation Section 54.4980B-9, Q&A-8(c)), then the Company or a member of the Selling Group shall provide Buyer with

(i) written notice of such cessation as far in advance of such cessation as is reasonably practicable (and in any event, at least thirty (30) days prior to such cessation), and

(ii) all information necessary or appropriate to enable Buyer to offer continuation coverage to such M&A Qualified Beneficiaries if Buyer determines it is legally obligated to do so.

**4.6 Restrictions on Buyer Stock .**

(a) No Stockholder shall Transfer any Buyer Stock or any right, title or interest therein or thereto, except for Permitted Transfers as set forth in Section 4.6(b) (with respect to which this Section 2 shall not apply) during the period commencing on the date hereof and ending on the date that is 12 months following the date hereof (the " Transfer Restricted Period "). Any attempt to Transfer any Buyer Stock or any rights thereunder in violation of the preceding sentence shall be null and void ab initio . For purposes of this Section 4.6 , " Transfer " means any sale, assignment, encumbrance, grant of security interest in, hypothecation, pledge, conveyance in trust, gift, transfer by request, devise or descent, or other transfer or disposition of any kind, including, without limitation, transfers to receivers, levying creditors, trustees or receivers in bankruptcy proceedings or general assignees for the benefit of creditors, whether voluntary or by operation of law, directly or indirectly, of all or any portion of a security, or any interest or rights in a security.

(b) Notwithstanding the foregoing, the restrictions on Transfer set forth in Section 4.6(a) shall not apply to a Transfer by

(i) a Stockholder that is a partnership or limited partnership transferring to its partners, limited partners or general partners or former partners, limited partners or general partners,

(ii) a Stockholder that is a corporation transferring to its Affiliates, a wholly-owned subsidiary or a parent corporation that owns all of the capital stock of the Stockholder,

(iii) a Stockholder that is a limited liability company transferring to its members or former members,

(iv) a Stockholder that is an individual transferring, pursuant an inter vivos transfer or pursuant to will or the applicable laws of descent and distribution, to the Stockholder's spouse or any family member of a Stockholder related to him or her within two generations (each an " Immediate Family Stockholder ") or to a trust for the benefit of such Stockholder or for the benefit of one or more Immediate Family Stockholders, or

(v) a Stockholder to any one or more of the transferees contemplated in clauses (i) through (iv) (each, a " Permitted Transfer "); provided, however, that in the event of any Transfer made pursuant to one of the exemptions provided by the foregoing clauses (i), (ii), (iii), and (iv), (A) such Stockholder shall inform the Company of such Transfer at least sixty (60) days prior to the Transfer, prior to effecting the same and stating which clause under this Section 4.6(b) the Transfer is to be made, and (B) the transferee or donee shall agree in writing to be bound by the terms hereof.

(c) As soon as reasonably practicable after the first anniversary of the Closing Date, Buyer shall deliver to the Company an original stock certificate representing the Buyer Stock issued to the Company on the Closing Date pursuant to Section 1.4 , as adjusted by any shares of Buyer Stock forfeited in accordance with Section 5.7 .

**ARTICLE V INDEMNIFICATION**

**5.1 Indemnity in Favor of Buyer** . The Company and the Shareholders agree, jointly and severally, to indemnify, defend and hold harmless Buyer, and each of its Affiliates, and each of its directors, officers, stockholders, subsidiaries, employees, successors, assigns, agents and representatives, in each case, other than the Company or the Shareholders (each a " Buyer Indemnified Person ") from and against, and will be liable for, any and all Liabilities, damages, losses (including diminution in value), obligations, Taxes, actions, suits, proceedings, claims, demands, judgments and settlements, whether asserted by third parties or incurred or sustained in the absence of third-party claims, costs and expenses (including interest, penalties and reasonable attorneys' fees) and all amounts paid in investigation, defense or settlement of any of the foregoing (collectively, " Damages ") related to or arising, directly or indirectly, out of, caused by or resulting from the following:

(a) any breach or inaccuracy, or allegation by any third party which, if true, would be a breach or inaccuracy, of any representation or warranty made in any Transaction Document by the Company or the Shareholders;

(b) any breach or nonperformance of any agreement, covenant or obligation to be performed by the Company or the Shareholders on or before the Closing, and any breach or nonperformance of any agreement, covenant or obligation to be performed by the Company or the Shareholders after the Closing, in any Transaction Document;

(c) ownership or operation of the Business or any Acquired Asset on or before the Closing;

(d) any and all Excluded Assets, Excluded Liabilities or Company Transaction Expenses;

(e) any non-compliance of the Company or the Shareholders with applicable state or other bulk sales or transfer in bulk Laws in connection with the Transactions;

(f) any lawsuits or claims relating to this Agreement and the transactions contemplated hereby; and

(g) any appraisal or similar rights claimed by any Shareholders.

**5.2 Survival .** The representations and warranties of the Company and the Shareholders contained in this Agreement or in any Transaction Document shall survive the Closing and the consummation of the Transaction. The representations and warranties of the Company and the Shareholders shall terminate on the date that is twenty-four (24) months after the Closing Date. Each covenant and agreement contained in this Agreement and all associated rights to indemnification, shall survive the Closing and shall continue in full force thereafter until all Liability hereunder relating thereto is barred by all applicable statutes of limitation, subject to any applicable limitation stated herein.

**5.3 Calculation of Damages .** The parties hereto hereby acknowledge that certain representations and warranties contained in Article II are qualified by references to "material," "materially," "materiality" or by matters having or not having a Material Adverse Effect (collectively, " Materiality Qualifiers ") and that, for purposes of this Article V , including for purposes of determining whether a breach of a representation or warranty has occurred and for purposes of determining the amount of Damages arising out of, relating to or resulting from a breach of any representation or warranty, all Materiality Qualifiers will be ignored and the representations and warranties shall be construed without regard to any Materiality Qualifiers therein contained.

**5.4 Buyer's Right to Specific Performance .** The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed by the Company and the Shareholders in accordance with their specific terms or were otherwise breached. Accordingly, Buyer shall be entitled to seek an injunction or injunctions, without the posting of any bond, to prevent breaches of this Agreement by the Company and the Shareholders and to enforce specifically the terms and provisions of this Agreement, in addition to any other remedy to which Buyer is entitled at Law, in equity or under this Agreement. The parties acknowledge that neither the Company nor the Shareholders shall be entitled to enforce specifically the terms and provisions of this Agreement and that the Company's and the Shareholders' sole and exclusive remedy with respect to any such breach shall be the right to indemnification under this Article V .

**5.5 Knowledge and Investigation .** The fact that any Buyer Indemnified Person conducted a due diligence investigation or had knowledge of a breach or inaccuracy of a representation or warranty, or the nonperformance or breach of a covenant or agreement, will not be a defense to any party's obligations under this Article V . All representations, warranties, covenants, agreements and indemnities will be deemed material and relied upon by the Buyer Indemnified Persons, regardless of any such knowledge or investigation.

**5.6 Other Factors Not Limiting .** No representation or warranty contained herein will limit the generality or applicability of any other representation or warranty. The terms of this Article V will be enforceable regardless of whether Liability is based on past, present or future acts, claims or legal requirements and regardless of any sole, concurrent, contributory, comparative or similar negligence, or of any sole, concurrent, strict or similar Liability, of a Person seeking indemnification (or of any of its Buyer Indemnified Persons).

**5.7 Stock Forfeiture .**

(a) During the Transfer Restricted Period, any adjudicated or agreed claim as to which a Buyer Indemnified Person demands indemnification under this Article V (" Claim "), or any portion thereof, for Damages of a Buyer Indemnified Person permitted by this Article V may be satisfied by deeming the shares of Buyer Stock of the Stockholders to be forfeited in an amount, rounded up to the nearest whole share of Buyer Stock, equal to the quotient of: (x) the total amount of such adjudicated or agreed Claim divided by (y) $0.655 up to the aggregate number of shares of Buyer Stock, and the Stockholders agree to forfeit such Buyer Stock (together with any other assets or securities attributable to such Buyer Stock) and deliver stock certificate(s) representing such forfeited Buyer Stock in satisfaction of such adjudicated or agreed Claim.

(b) Forfeiture Procedures . Any shares of Buyer Stock which are forfeited or cancelled pursuant to Section 5.7(a) shall be automatically deemed to be cancelled and no longer outstanding without any further action of Buyer, any such shares of Buyer Stock shall be released to Buyer and the Stockholders shall have no further right, title or interest whatsoever in such forfeited or cancelled shares or any claims with respect to such shares effective as of the date of such forfeiture or cancellation. If any Stockholder is in possession of any certificates representing any such forfeited or cancelled shares, then such Stockholder shall immediately return to Buyer any and all certificates representing such forfeited or cancelled shares. In the event that any claim made by the Buyer pursuant to this Article V is disputed by the Stockholders, no shares of Buyer Stock shall be forfeited pursuant to Section 5.7(a) except and until such dispute has been resolved.

**5.8 Offset .** Notwithstanding any other rights of Buyer under this Article V , including under Section 5.4 and Section 5.7 , Buyer will have the option of recouping all or any part of any Damages Buyer may suffer (in lieu of seeking any indemnification to which it is entitled under this Article V ) by withholding and offsetting against any and all Deferred Cash Purchase Price and Contingent Purchase Price Payments due to the Company.

**5.9 Cap on Indemnification .** Except as provided below, the Company and the Shareholders' obligations to provide indemnification under this Article V , in the aggregate, will not exceed 50% of the amount of the Purchase Price actually paid to the Company, which, for avoidance of doubt includes the Closing Cash Purchase Price, Buyer Stock, Deferred Cash Purchase Price and Contingent Purchase Price Payments. The forgoing notwithstanding, with respect to Claims or Damages based on Section 2.1 (Organization; No Subsidiaries); Section 2.3 (Capitalization); Section 2.4 (Authorization and Execution); Section 2.8 (Tax Matters); Section 2.9 (Litigation; Governmental Proceedings); Section 2.10 (Compliance with Laws; Non-Contravention); Section 2.13 (Title to Properties and Encumbrances); Section 2.14 (Intellectual Property and Proprietary Rights); Section 2.17 (Employee Benefits); Section 2.21 (No Brokers or Finders); Section 2.22 (Licenses Permits Consents) any representations relating to product liability matters, fraud, intentional misrepresentation, intentional or willful breach of a warranty, or willful or reckless misconduct, the cap on the Company's and Shareholder's indemnification obligations under this Article V shall be 100% of the Purchase Price actually paid to the Company.

**ARTICLE VI MISCELLANEOUS PROVISIONS**

**6.1 Expenses .** Except as otherwise expressly set forth herein, all expenses incurred by the parties hereto in connection with or related to the authorization, preparation and execution of the Transaction Documents and the closing of the Transaction, including all fees and expenses of agents, representatives, counsel and accountants employed by any such party, shall be borne solely and entirely by the party incurring the same.

**6.2 Entire Agreement; Amendment and Waiver .** This Agreement, including the exhibits and Disclosure Schedule, constitutes the entire Agreement between the parties pertaining to the subject matter herein and supersedes any prior representations, warranties, covenants, agreements and understandings of the parties regarding such subject matter. No supplement, modification or amendment hereof will be binding unless expressed as such and executed in writing by each party. Except to the extent as may otherwise be stated herein, no waiver of any term hereof will be binding unless expressed as such in a document executed by the party making such waiver. No waiver of any term hereof will be a waiver of any other term hereof, whether or not similar, nor will any such waiver be a continuing waiver beyond its stated terms. Except to the extent as may otherwise be stated herein, failure to enforce strict compliance with any term hereof will not be a waiver of, or estoppel with respect to, any existing or subsequent failure to comply.

**6.3 Notices .** All notices or other communications required or permitted to be given hereunder will be in writing and will be

(a) delivered by hand,

(b) sent by United States registered or certified mail,

(c) sent by nationally recognized overnight delivery service for next Business Day delivery, or

(d) sent by facsimile or electronic mail, in each case as stated below in this Section 7.3 . Such notices or communications will be deemed given (w) if so delivered by hand, when so delivered, (x) if sent by mail, three (3) Business Days after mailing, (y) if sent by nationally recognized overnight courier service, one (1) Business Day after delivery to such service, or (z) if sent by facsimile or electronic mail during normal business hours, when so sent, or if sent by facsimile or electronic mail after normal business hours, the next Business Day. A party may change the address to which such notices and other communications are to be given by giving the other Party notice in the foregoing manner.

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| --- | --- | --- |
|  | (a) | To Buyer: |

CephaloCephalocomps, Inc. Address, USA Attn: Chief Financial Officer Fax: xxx-xxx-xxx e-mail: xxx@Cephalo.com with a copy to: Cumberbatch HolmesLLP Address, USA Attn: Bert CaluchiFax: (xxx-xxx-xxx e-mail: xxxxx

|  |  |  |
| --- | --- | --- |
|  | (b) | To the Company: |

SynaptexSynaptexCorp. Address, USA Attn: Drew KaiserDrew KaiserFax: xxx-xxx-xxx e-mail: xxxxx

|  |  |  |
| --- | --- | --- |
|  | (c) | To the Shareholders, at the address set forth for each Shareholder on Schedule A . |

**6.4 Counterparts; Assignment .** For the convenience of the parties any number of counterparts hereof may be executed, and each such executed counterpart shall be deemed an original, and all such counterparts together shall constitute one and the same instrument. Facsimile transmission of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart, and such facsimile signatures shall be deemed original signatures for purposes of enforcement and construction of this Agreement. This Agreement may not be assigned by the Company or either Shareholder without the written consent of Buyer.

**6.5 Governing Law** . Except as provided in the following sentence, this Agreement, and all disputes and controversies relating to or arising out of or in connection with this Agreement, shall be governed by and construed in accordance with the domestic Laws of the State of Colorado, without giving effect to any choice or conflict of Law provision or rule (whether of the State of Colorado or any other jurisdiction) that would cause the application of the Laws of any jurisdiction other than the State of Colorado.

**6.6 Severability .** Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If the final judgment of a court of competent jurisdiction declares that any term or provision hereof is invalid or unenforceable, the parties hereto agree that the court making the determination of invalidity or unenforceability shall have the power to reduce the scope, duration, or area of the term or provision, to delete specific words or phrases, or to replace any invalid or unenforceable term or provision with the term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid and unenforceable term or provision, and this Agreement shall be enforceable as so modified after the expiration of the time within which the judgment may be appealed.

**6.7 Interpretation; Construction .** In this Agreement,

(a) the table of contents and headings are for convenience of reference only and will not affect the meaning or interpretation of this Agreement;

(b) the words "herein," "hereunder," "hereby" and similar words refer to this Agreement as a whole (and not to the particular sentence, paragraph or Section where they appear);

(c) terms used in the plural include the singular, and vice versa, unless the context clearly requires otherwise;

(d) pronouns in masculine, feminine and neuter genders shall be construed to include any other gender;

(e) unless expressly stated herein to the contrary, reference to any document means such document as amended or modified and as in effect from time to time in accordance with the terms thereof;

(f) unless expressly stated herein to the contrary, reference to any applicable Law means such applicable Law as amended, modified, codified, replaced or reenacted, in whole or in part, and as in effect from time to time, including any rule or regulation promulgated thereunder;

(g) the words "including," "include" and variations thereof are deemed to be followed by the words "without limitation";

(h) "or" is used in the sense of "and/or"; "any" is used in the sense of "any or all"; and "with respect to" any item includes the concept "of" such item or "under" such item or any similar relationship regarding such item;

(i) unless expressly stated herein to the contrary, reference to a document, including this Agreement, will be deemed to also refer to each annex, addendum, exhibit, schedule or other attachment thereto;

(j) unless expressly stated herein to the contrary, reference to an Article, Section, Schedule, Disclosure Schedule, or Exhibit is to an article, section, schedule, the Disclosure Schedule, or exhibit, respectively, of this Agreement;

(k) all dollar amounts are expressed in United States dollars and will be paid in cash (unless expressly stated herein to the contrary) in United States currency;

(l) when calculating a period of time, the day that is the initial reference day in calculating such period will be excluded and, if the last day of such period is not a Business Day, such period will end on the next day that is a Business Day;

(m) with respect to all dates and time periods in or referred to in this Agreement, time is of the essence; and

(n) the parties participated jointly in the negotiation and drafting of this Agreement and the documents relating hereto, and each party was (or had ample opportunity to be) represented by legal counsel in connection with this Agreement and such other documents and each party and each party's counsel has reviewed and revised (or had ample opportunity to review and revise) this Agreement and such other documents; therefore, if an ambiguity or question of intent or interpretation arises, then this Agreement and such other documents will be construed as if drafted jointly by the parties and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any of the terms hereof or thereof.

**6.8 Submission to Jurisdiction; Jury Trial Waiver** .

(a) EACH PARTY TO THIS AGREEMENT IRREVOCABLY SUBMITS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT SITTING IN THE STATE OF COLORADO IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTION AND AGREES THAT ALL CLAIMS IN RESPECT OF THE ACTION OR PROCEEDING SHALL BE HEARD AND DETERMINED IN ANY SUCH COURT. EACH PARTY ALSO AGREES NOT TO BRING ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT IN ANY OTHER COURT. EACH OF THE PARTIES WAIVES ANY DEFENSE OF INCONVENIENT FORUM TO THE MAINTENANCE OF ANY ACTION OR PROCEEDING SO BROUGHT AND WAIVES ANY BOND, SURETY, OR OTHER SECURITY THAT MIGHT BE REQUIRED OF THE OTHER PARTY WITH RESPECT THERETO.

(b) EACH PARTY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, BETWEEN THE PARTIES HERETO ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH. ANY PARTY HERETO MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

**6.9 Third Party Beneficiaries .** This Agreement is solely for the benefit of the parties hereto and those Persons (or categories of Persons) specifically described herein, and, except as aforesaid, no provision of this Agreement shall be deemed to confer any remedy, claim or right upon any third party. Without limiting the generality of the foregoing, the parties expressly confirm their agreement that, in addition to the Shareholders, the Company and Buyer, and the Buyer Indemnified Persons shall also enjoy the benefits of indemnities made herein which are expressly stated to be in their favor. In this regard, the parties agree that such Persons shall have the right to enforce those provisions directly against the applicable indemnifying party. [ The remainder of this page is intentionally omitted .]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and delivered as of the date and year first above written.

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| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| BUYER: | | |  |  |  |  |  | SHAREHOLDERS: |
| CEPHALOCEPHALOCOMP, INC. | | |  |  |  |  |  |  |
| By: |  | |s|Helen Cellar |  |  |  |  |  | |s|Drew Kaiser |
|  |  | Name: Helen Cellar Title: President |  |  |  |  |  | Drew Kaiser |

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| COMPANY: SYNAPTEXSYNAPTEXCORP. | | |  |  |  |  | | |
| By: |  | |s|Drew Kaiser |  |  |  |  |  |  |
|  |  | Name: Drew KaiserDrew KaiserTitle: CEO |  |  |  |  |  |  |

SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT SCHEDULE A Shareholders

|  |  |  |
| --- | --- | --- |
| Person A |  | Person H |
| Drew Kaiser |  | Person I |
| Oerson C |  | Person J |
| Person D |  | Person K |
| Person E |  | Person L |
| Person F |  | Person M |
| Person G |  | Person N |

|  |  |  |
| --- | --- | --- |
| Person O |  |  |

Schedule A Exhibit A

Definitions Unless the context otherwise requires, the terms defined in this Exhibit A shall have the meanings herein specified for all purposes of this Agreement, applicable to both the singular and plural forms of any of the terms herein defined.

" Acquired Assets " has the meaning set forth in Section 1.1 .

" Affiliate " of any Person means any Person controlling, controlled by, or under common control with such Person, and, in the case of an individual, means his or her spouse, siblings, ascendants and descendants. For purposes of this definition, "control," "controlled by" and "under common control with," as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities, by contract or otherwise.

" Agreement " has the meaning set forth in the preamble to this Agreement.

" Annual Balance Sheet " has the meaning set forth in Section 2.5 .

" Annual Balance Sheet Date " has the meaning set forth in Section 2.5 .

" Assumed Contracts " has the meaning set forth in Section 1.1(a) .

" Assumed Leases " has the meaning set forth in Section 1.1(d) .

" Assumed Liabilities " has the meaning set forth in Section 1.3 .

" Business " has the meaning set forth in the recitals to this Agreement.

" Business Day " means any day that is not a Saturday, Sunday or legal holiday in Denver, Colorado.

" Buyer " has the meaning set forth in the preamble to this Agreement.

" Buyer Indemnified Person " has the meaning set forth in Section 5.1 .

" Buyer Stock " has the meaning set forth in Section 1.4 .

" Claim " has the meaning set forth in Section 5.7(a) .

" Closing " has the meaning set forth in Section 1.6 .

" Closing Cash Purchase Price " has the meaning set forth in Section 1.4(a) .

" Closing Date " has the meaning set forth in Section 1.6(a) .

" Closing Purchase Price " means the Cash Purchase Price and the Buyer Stock.

" Code " means the Internal Revenue Code of 1986, as amended. A-1

" Company " has the meaning set forth in the preamble to this Agreement.

" Company Intellectual Property " means any Intellectual Property exploited by, held for exploitation by, owned, purported to be owned by or licensed to the Company.

" Company Owned Intellectual Property " means all Company Intellectual Property other than Intellectual Property licensed to the Company pursuant to an Inbound Intellectual Property License.

" Company Product(s) " means: (a) all products and service offerings that are currently being marketed, offered, sold, distributed, made commercially available, or otherwise provided directly or indirectly by the Company; and (b) any such products and service offerings that are currently under development by the Company.

" Company Registered Intellectual Property " means any Company Owned Intellectual Property that is the subject of an application or registration with any Governmental Authority, including any domain name registration and any application or registration for any patent, copyright or trademark.

" Company Software " means any Software that is owned or licensed to the Company or otherwise used, distributed, or made available by the Company.

" Company Transaction Expenses " means those expenses of the Company and the Shareholders incurred prior to the Closing in preparing to consummate and consummating the Transaction, including costs and expenses (including the fees, disbursements, and other charges of legal counsel, consultants, and accountants) incurred in connection with the preparation and negotiation of the Transaction Documents, the fees and expenses of the Company's and the Shareholders' brokers, finders, financial advisors and investment bankers (if any) and the expenses for which the Company is responsible pursuant to Section 6.1 .

" Confidential Information " has the meaning set forth in Section 4.1(d) .

" Contingent Purchase Price Payment " has the meaning set forth in Section 1.5(c)(i) .

" Contingent Purchase Price Statement " has the meaning set forth in Section 1.5(c)(i) .

" Contracts " has the meaning set forth in Section 2.11 .

" Damages " has the meaning set forth in Section 5.1 .

" Deferred Cash Purchase Price " has the meaning set forth in Section 1.4(c) .

" Disclosure Schedule " has the meaning set forth in the preamble to Article II .

" Encumbrance " means any and all mortgages, liens, pledges, security interests, charges, encumbrances, claims, easements, rights of way, covenants, conditions or restrictions or any other adverse claims or rights of any kind or nature whatsoever or any type of preferential arrangement (including a title transfer or retention arrangement) having similar effect.

" ERISA " has the meaning set forth in Section 2.17 .

" Excluded Assets " has the meaning set forth in Section 1.2 .

" Financial Statements " has the meaning set forth in Section 2.5 . A-2

" GAAP " means generally accepted accounting principles of the United States, consistently applied.

" Governmental Authority " means any: (a) nation, state, county, city, district or other similar jurisdiction of any nature; (b) federal, state, local or foreign government; (c) governmental or quasi governmental authority of any nature (including any governmental agency, branch, commission, bureau, instrumentality, department, official, entity, court or tribunal); (d) multi-national organization or body; or (e) body or other Person entitled by applicable Law (or by contract with the Parties) to exercise any arbitrative, administrative, executive, judicial, legislative, police, regulatory or Taxing authority or power.

" Immediate Family Stockholder " has the meaning set forth in Section 4.6(b) .

" Inbound Licenses " means all Contracts pursuant to which the Company is authorized or otherwise permitted to exploit any other Person's Intellectual Property.

" Indebtedness " means any obligation or other Liability under or for any of the following (excluding any trade payable incurred in the Ordinary Course): (a) indebtedness for borrowed money (including if guaranteed or for which a Person is otherwise liable or responsible, including an obligation to assume indebtedness); (b) obligation evidenced by a note, bond, debenture or similar instrument (including a letter of credit); (c) surety bond; (d) swap or hedging contract; (e) capital lease; (f) banker acceptance; (g) purchase money mortgage, indenture, deed of trust or other purchase money lien or conditional sale or other title retention agreement; (h) indebtedness secured by any Encumbrance upon any asset; or (i) interest, fee or other expense regarding any of the foregoing.

" Indebtedness Amount " means the aggregate amount of Indebtedness of the Company as of Closing.

" Intellectual Property " means collectively all Intellectual Property Rights and Technology.

" Intellectual Property Licenses " means collectively all Inbound Licenses and the Outbound Licenses.

" Intellectual Property Rights " means any and all rights (anywhere in the world, whether statutory, common law or otherwise) with respect to: (a) applications and registrations for patents, or other industrial rights or designs including any reissues, divisionals, renewals, extensions, provisionals, continuations or continuations-in-part thereof, and any other filings claiming priority to or serving as a basis for priority thereof; (b) applications and registrations for copyrights or rights with respect to works of authorship (including any moral and economic rights, however denominated); (c) trademarks, service marks, logos and design marks, trade dress, trade names, fictitious and other business names, or brand names, together with all goodwill associated with any of the foregoing, and all applications and registrations therefor; (d) domain names, uniform resource locators and other names and locators associated with the internet, including applications and registrations thereof; (e) telephone numbers; (f) Trade Secrets, including rights to limit the use or disclosure thereof by any person; (g) privacy or publicity; (h) Technology; (i) databases and data collections; (j) all other equivalent or similar rights; and (k) any rights to pursue, recover or retain damages, costs or attorneys' fees for past, present and future infringement or misappropriations of the foregoing.

" Interim Balance Sheet " has the meaning set forth in Section 2.5 .

" Interim Balance Sheet Date " has the meaning set forth in Section 2.5 . A-3

" Interim Financial Statements " has the meaning set forth in Section 2.5 .

" IRS " means the United States' Internal Revenue Service.

" Knowledge of the Company " and any similar phrases, means the knowledge of the Shareholders, or any Person who is or was a director or an officer of the Company prior to the Closing, in each case after due inquiry and investigation, including reasonable review of the books and records of the Company and inquiry of the appropriate management and supervisory employees of the Company.

" Law " means any applicable provision of any constitution, treaty, statute, law (including the common law), rule, regulation, ordinance, code or order enacted, adopted, issued or promulgated by any Governmental Authority.

" Leased Real Property " means the land, buildings and other improvements covered by any leases, subleases, licenses and other agreements pursuant to which (A) the Company uses or occupies or has the right to use or occupy, now or in the future, any real property, or (B) the Company leases or subleases any real property.

" Liability " means any liability or obligation of any kind or nature (whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due).

" M&A Qualified Beneficiaries " has the meaning set forth in Section 4.5 .

" Material Adverse Effect " means, with respect to any Person, any incident, condition, change, effect or circumstance that, individually or when taken together with all such incidents, conditions, changes, effects or circumstances in the aggregate, (a) has had or could reasonably be expected to have a material adverse effect on the business, operations, condition (financial or otherwise), properties, Liabilities, results of operations or prospects of such Person, or (b) materially and adversely affects the ability of the Company and the Shareholders to consummate the Transaction.

" Materiality Qualifiers " has the meaning set forth in Section 5.3 .

" Open Source License " means an agreement that: (a) licenses Software or other material as "free software" or "open source software;" (b) is, or is substantially similar to, a license now or in the future approved by the Open Source Initiative and listed at http://www.opensource.org/licenses, which licenses include all versions of the GNU GPL, the GNU LGPL, the GNU Affero GPL, the MIT license, the Eclipse Public License, the Common Public License, the CDDL, the Mozilla Public License, the Academic Free License, the BSD license and the Apache License; or (c) is a Reciprocal License.

" Open Source Materials " means any Software or other materials licensed under an Open Source License.

" Ordinary Course " means ordinary course of business of the Company consistent with past custom and practices, including with respect to quantity and frequency.

" Organic Net Revenue " has the meaning set forth in Section 1.5(a) .

" Outbound Licenses " means any Contract pursuant to which the Company grants any right to or otherwise permits any other Person to exploit any Company Intellectual Property. A-4

" Parent " has the meaning set forth in Section 1.4 .

" Permits " has the meaning set forth in Section 2.22 .

" Permitted Encumbrance " means any: (a) Encumbrance for any Tax, assessment or other governmental charge that is not yet due and payable or that may thereafter be paid without penalty; or (b) mechanic's, materialmen's, landlord's or similar Encumbrance arising or incurred in the Ordinary Course that secures any amount that is not overdue.

" Permitted Transfer " has the meaning set forth in Section 4.6(b) .

" Person " means and includes an individual, a partnership, a joint venture, a corporation, a trust, an association, a limited liability company, an unincorporated organization or a Governmental Authority.

" Personal Identifiable Information " means any information that specifically identifies any employee, contractor, and third parties who have provided information to the Company, whether a living or dead individual person, including: (a) any personally-identifiable information or any information that could be associated with such individual, such as addresses, telephone numbers, health information, drivers' license numbers, and government issued identification numbers; and (b) any nonpublic personally identifiable financial information, such as information relating to a relationship between an individual person and a financial institution, and/or related to a financial transaction by such individual person with a financial institution.

" Plan " or " Plans " has the meaning set forth in Section 2.17 .

" Policies " has the meaning set forth in Section 2.16 .

" Privacy Laws " has the meaning set forth in Section 2.26 .

" Purchase Price " has the meaning set forth in Section 1.4 .

" Reciprocal License " means a license of an item of Software that requires or that conditions any rights granted in such license upon: (i) the disclosure, distribution or licensing of any Software (other than such item of Software in its unmodified form); (ii) a requirement that another Person be permitted to access, modify, make derivative works of, or reverse-engineer any such Software; (iii) a requirement that such Software be redistributable by another Person; or (iv) the grant of any patent or other rights including non-assertion or patent license obligations.

" Restricted Business " has the meaning set forth in Section 4.3(a) .

" Restricted Period " has the meaning set forth in Section 4.3(a) .

" Selling Group " has the meaning set forth in Section 4.5(d) .

" Shareholders " has the meaning set forth in the preamble to this Agreement.

" Software " means all computer programs (including any and all software implementation of algorithms, models and methodologies whether in Source Code or object code), databases and computations (including any and all data and collections of data), documentation (including user manuals and training materials) relating to any of the foregoing and the content and information contained in any web sites. A-5

" Source Code " means computer software and code, in a form other than object code form, including: (a) related programmer comments and annotations, help text, data and data structures, instructions; and (b) procedural, object-oriented and other code, in each case, which may be printed out or displayed in human readable form. " Systems " is defined in Section 2.14(b) .

" Tax " or " Taxes " means federal, state, local, foreign and other taxes, including income taxes, taxes imposed under Section 1374 of the Code, estimated taxes, alternative or add-on minimum taxes, excise taxes, sales taxes, franchise taxes, employment and payroll related taxes, withholding taxes, transfer taxes, gross receipts taxes, license taxes, severance taxes, stamp taxes, occupation taxes, premium taxes, windfall profits taxes, environmental taxes (including taxes under Section 59A of the Code), customs duties taxes, capital stock taxes, profits taxes, social security (or similar) taxes, unemployment taxes, disability taxes, real property taxes, personal property taxes, registration taxes, value added taxes or other taxes of any kind whatsoever and all deficiencies, or other additions to tax, interest, fines and penalties, and other assessments and fees of any Governmental Authority, and including any obligation to indemnify or otherwise assume or succeed to the tax Liability of any other Person.

" Tax Return " means any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

" Technology " means any and all: (a) technology, formulae, algorithms, procedures, processes, methods, techniques, know-how, ideas, creations, inventions, discoveries, and improvements (whether patentable or unpatentable and whether or not reduced to practice); (b) technical, engineering, manufacturing, product, marketing, servicing, financial, supplier, personnel and other information and materials; (c) customer lists, customer contact and registration information, customer correspondence and customer purchasing histories; (d) specifications, designs, models, devices, prototypes, schematics and development tools; (e) Software, websites, content, images, graphics, text, photographs, artwork, audiovisual works, sound recordings, graphs, drawings, reports, analyses, writings, and other works of authorship and copyrightable subject matter; (f) databases and other compilations and collections of data or information; (g) Trade Secrets; and (h) tangible embodiments of any of the foregoing, in any form or media whether or not specifically listed herein.

" Trade Secrets " means information and materials not generally known to the public, including trade secrets and other confidential and proprietary information.

" Transaction " means the transactions contemplated by the Transaction Documents.

" Transaction Documents " means this Agreement and each other agreement, document and instrument entered into or executed by any party hereto in connection with this Agreement.

" Transfer " has the meaning set forth in Section 4.6(a) . " Transfer Restricted Period " has the meaning set forth in Section 4.6(a) .

" WARN Act " means the Worker Adjustment and Retraining Notification Act of 1988, as amended. A-6

**APA#19**

**ASSET PURCHASE AGREEMENT**

THIS ASSET PURCHASE AGREEMENT (the "Agreement") is made as of the 19 th day of December, 2000, by and between Stellor GmbH, a German corporation ("Purchaser"), and Galactrans, Incorporated ("Seller"), a Washington state corporation.

**RECITALS**

WHEREAS, Seller has developed and owns or is developing and will own certain commercial space hardware known as the space storage system or SSS and related assets (the SSS that is integrated into the Shuttle cargo bay in a horizontal position and related assets are referred to hereafter as the "SSS System" and the SSS that is to be integrated into the Shuttle cargo bay in vertical position and related assets are referred to hereafter as the "SSS-V System");

WHEREAS, Purchaser and Seller have entered into a (i) Collaboration Agreement and a Stock Purchase Agreement dated as of August 2, 1999 establishing a Strategic Alliance, (ii) a Joint Program Agreement for the purchase of the SSS System Assets and the SSS-V System Assets and a leaseback of said assets to Seller dated as of November 30, 2000 and (iii) an Agreement on Principles for Lease of the SSS System Assets and the SSS-V System Assets dated as of November 30, 2000; and

WHEREAS, on the terms and subject to the conditions contained in this Agreement, Seller desires to sell to Purchaser, and Purchaser desires to purchase from Seller, the SSS Systems Assets and the SSS-V Systems Assets.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties agree as follows:

**ARTICLE 1**

**Purchase and Sale of Assets**

1.1 Agreement to Purchase and Sell . On the terms and subject to the conditions contained in this Agreement, Purchaser agrees to purchase from Seller, and Seller agrees to sell to Purchaser, all of Seller's right, title and interest in and to the SSS System and the SSS-V System as set forth on Schedule I hereto (referred to hereafter as "SSS System Assets" and SSS-V System Assets, respectively) and the assets related thereto as set forth in paragraphs 1.3 (a), (b), (c) and (d) (the SSS System Assets, the SSS-V System Assets and the assets related thereto are collectively referred to as the "Purchased Assets").

The Purchased Assets shall be sold to Purchaser free and clear of any and all liens, claims and encumbrances of whatever kind or nature, including but not limited to security interests, mortgages, pledges, charges, suits, licenses, options, rights of recovery, judgments, rights of first refusal, orders and decrees of any court or foreign or domestic governmental entity, interest, tax, covenants, restrictions, indentures, instruments, leases, options, contracts, agreements, offsets, recoupments, claims for reimbursement, contribution, indemnity orexoneration successor, product, environmental, taxes, labor, ERISA, CERCLA, alter ego and other liabilities (collectively, "Claims").

1.2 Transfer of title to Purchaser's subsidiary. Unless otherwise notified by Purchaser prior to the First Closing or Second Closing respectively, Seller shall transfer all of Seller's right, title and interest in and to the Purchased Assets to Purchaser's subsidiary, Stellor North America, Inc., a Delaware corporation, in lieu of delivering said right, title and interest to Purchaser

1.3 Enumeration of Assets Purchased . In addition to the SSS System Assets and the SSS-V System Assets set forth on Schedule I hereto, the assets related thereto that are being purchased also shall include the following:

(a) all rights under warranties, representations and guarantees made by suppliers, manufacturers and contractors in connection with the SSS System Assets and the SSS-V System Assets related thereto;

(b) all U.S. and foreign trademarks, service marks, logos, designs, trade names, patents, registered designs, mask works, copyrights, computer software and databases, whether or not registered, and related items (and all intellectual property and proprietary rights incorporated therein) and all other trade secrets, research and development, formulae, know-how, and proprietary and intellectual property rights and information, including all grants, registrations, renewals, reissues and applications relating thereto, owned by Seller and related exclusively to the SSS System Assets or the SSS-V System Assets; and

(c) all processes, procedures and test data related to the handling and operation of the SSS System Assets and the SSS-V System Assets documented in whatever form, it being agreed that those items related to Generic SSS will only be transferred in the status and form available to Seller on 31 st December 2000; and

(d) any and all other assets and rights that are not of the type or character referenced in Section 1.2(a)-(c) and which are necessary for the continuation of the operation of the SSS System Assets or the SSS-V System Assets in at least the same manner as they are conducted as of the date hereof.

**ARTICLE 2**

**No Liabilities Assumed; Indemnification**

2.1 No Liabilities Assumed . Seller acknowledges and agrees that pursuant to the terms and provisions of this Agreement, Purchaser will not assume any obligation of Seller whatsoever. In furtherance and not in limitation of the foregoing, Purchaser shall not assume and shall not be deemed to have assumed, any debt, Claim, obligation or other liability of Seller whatsoever (the "Excluded Liabilities"), including, but not limited to

(i) any environmental costs and liabilities arising from environmental, health, or safety conditions, or the release of a contaminant into the environment, for any act, omission, condition, event or circumstance to the extent occurring or existing prior to the respective closing date for the assets involved, including without limitation all environmental costs and liabilities relating in any manner to Seller's direct or indirect handling, transportation or disposal of any contaminants,

(ii) any of Seller's liabilities in respect of any taxes,

(III) any taxes or any fees arising in connection with the consummation of the transactions contemplated hereby, including any tax or liability of any stockholder of Seller or its affiliates and any of Seller's fees and expenses incurred in connection with the transfer of the Purchased Assets (other than as expressly provided in this Agreement),

(iv) any brokers' or finders' fees, or other liability of Seller for costs and expenses (including legal fees and expenses) incurred in connection with this Agreement or the consummation of the transactions contemplated hereby,

(v) any liability or obligation of Seller under this Agreement,

(vi) any indebtedness of the Seller,

(vii) any obligation or liability arising as a result of or whose existence is a breach of Seller's representations, warranties, agreements or covenants, and (vii) any Excluded Assets.

2.2 Indemnification . Seller agrees to defend, indemnify, and hold harmless the Purchaser, its officers, directors, shareholders, employees, accountants, attorneys, agents, successors and assigns from and against any and all claims, damages, liabilities, costs and expenses (including reasonable attorneys' fees and court costs) arising out of or related to a debt, Claim, obligation or liability concerning the Excluded Liabilities. With respect to any claim which may form the basis for indemnification under this Section, the Purchaser shall give prompt notice of such claim to the Seller as well as the opportunity for Seller to defend, compromise, or settle such claim with counsel selected by Seller, and shall fully cooperate in the course thereof. The Seller shall not enter into any compromise or settlement that shall have the effect of creating any liability or obligation (whether legal or equitable) on the part of the Purchaser.

**ARTICLE 3**

**Purchase Price, Manner of Payment and Closing**

3.1 Consideration . The purchase price (the "Purchase Price") of the Purchased Assets shall be the sum of Fifteen Million Four Hundred Thousand Dollars ($15,400,000) of which Eleven Million Dollars ($11,000,000) shall be for Purchased Assets related to the SSS System Assets and Four Million Four Hundred Thousand Dollars ($4,400,000) shall be for Purchased Assets related to the SSS-V System Assets. The Purchase Price shall be paid in the manner described in Section 3.2 below.

3.2 Time and Place of the Closings . The closing of the transactions contemplated by this Agreement shall take place at two separate closings, respectively, the "First Closing" and the "Second Closing", each to occur as hereinafter set forth.

(a) The First Closing shall occur at such place and on such date and at such time as the parties mutually agree, but in no event later than June 30, 2002. On or before the First Closing, the Purchaser shall:

(i) pay the Seller Five Million Dollars ($5,000,000) in cash,

(ii) pay Seller Three Million Dollars ($3,000,000), on or before March 9, 2001, and

(iii) pay Seller Three Million Dollars ($3,000,000) on or before June 30, 2002. After fulfillment of Purchaser's obligation under (i) above, the Seller shall execute and deliver to Purchaser (i) a Bill of Sale, and (ii) such other endorsements, assignments and such other instruments of transfer and conveyance, in form and substance reasonably satisfactory to Purchaser, as shall be effective to vest in Purchaser as of the date of the First Closing good title, free and clear of any Claims, to the SSS System Assets and all other assets set forth in paragraphs 1.3 (a), (b), (c) and (d) related to the SSS System Assets. In addition, both parties shall execute and deliver such other ancillary documents contemplated by, or arising under, this Agreement as are necessary in order to effect the transfers contemplated for the First Closing.

(b) The Second Closing shall occur at such place and on such date and at such time as the parties mutually agree after the SSS-V system has been qualified for flight onboard Space Shuttle in accordance with the requirements identified in Article 6.2 (e) of this Agreement. Upon the Second Closing, Purchaser shall pay Seller Four Million Four Hundred Thousand Dollars ($4,400,000). Upon the Second Closing, Seller shall execute and deliver to Purchaser

(i) a Bill of Sale and

(ii) such other endorsements, assignments and such other instruments of transfer and conveyance, in form and substance reasonably satisfactory to Purchaser, as shall be effective to vest in the Purchaser as of the date of the Second Closing good title, free and clear of any Claims, to the SSS-V System Assets and all other assets set forth in sections 1.3 (a), (b), (c) and (d) related to the SSS-V System Assets. In addition, both parties shall execute and deliver such other ancillary documents contemplated by, or arising under, this Agreement as are necessary in order to effect the transfers contemplated for the Second Closing.

3.3 Transfer Taxes . All taxes upon, related to or arising out of the transactions contemplated by this Agreement, including, without limitation, transfer, registration, stamp, documentary, sales, use, excises, duties and similar taxes and specifically including all applicable Seller income or gains taxes, any penalties, interest and additions to tax, and court, registration and filing fees incurred in connection with this Agreement shall be the responsibility of and be timely paid by Seller. Seller and Purchaser shall cooperate in the timely making of all filings, returns, reports and forms as may be required in connection therewith.

**ARTICLE 4**

**Representations and Warranties**

4.1 Purchaser's Representations and Warranties . Purchaser represents and warrants to Seller that:

(a) Purchaser is a corporation existing and in good standing under the laws of Germany.

(b) Purchaser has full power and authority to enter into and perform this Agreement and all documents and instruments to be executed by Purchaser pursuant to or in connection with this Agreement. The execution and delivery of this Agreement by Purchaser, and the performance by Purchaser of all of its obligations hereunder, have been duly authorized and approved prior to the date hereof by all necessary corporate action. This Agreement has been duly executed and delivered by the Purchaser and constitutes its legal, valid and binding agreement, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally.

(c) No consent, authorization, order or approval of, or filing or registration with, any governmental authority or other person is required for the execution and delivery by Purchaser of this Agreement and the consummation by Purchaser of the transactions contemplated by this Agreement.

(d) Neither the execution and delivery of this Agreement by Purchaser, nor the consummation by Purchaser of the transactions contemplated hereby, will conflict with or result in a breach of any of the terms, conditions or provisions of the constituent organizational and governing documents of Purchaser, or of any agreement or instrument to which Purchaser is a party or any of its properties is subject or bound or any statute or administrative regulation, or of any order, writ, injunction, judgment or decree of any court or governmental authority or of any arbitration award that is binding upon Purchaser.

(e) Purchaser has not dealt with any person or entity who is or may be entitled to a broker's commission, finders fee, investment bankers fee or similar payment from Seller for arranging the transaction contemplated hereby or introducing the parties to each other.

4.2 Seller's Representations and Warranties . Seller represents and warrants to Purchaser that:

(a) Seller has full power and authority to enter into and perform this Agreement and all documents, agreements and instruments to be executed by Seller pursuant to or in connection with this Agreement. The execution and delivery by Seller of this Agreement, and the performance by Seller of all of its obligations hereunder and thereunder, have been duly authorized and approved prior to the date hereof by all necessary corporate action. This Agreement has been duly executed and delivered by Seller and constitutes its legal, valid and binding agreement, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditor's rights and remedies generally.

(b) Except for technology transfer regulations (see paragraph c below), no consent, authorization, order or approval of, or filing or registration with, any governmental authority or other person or entity not furnished at or prior to Closing is required for the execution and delivery of this Agreement and the consummation by Seller of the transactions contemplated by this Agreement. Except as noted above, neither the execution and delivery by Seller of this Agreement, nor the consummation by Seller of the transactions contemplated hereby and thereby, will conflict with or result in a breach of any of the terms, conditions or provisions of the constituent organizational and governing documents of Seller, or of any agreement or instrument to which Seller is a party or any of its properties is subject or bound or any statute or administrative regulation, or of any order, writ, injunction, judgment or decree of any court or any governmental authority or of any arbitration award, in each case to which Seller is subject or by which Seller is bound, which conflict or breach could have a material adverse effect on the Seller's ability to complete the transactions contemplated by this Agreement.

(c) Seller has the power and authority to transfer title to the SSS System and SSS-V System hardware and operating documentation as set forth in section 1 of the present purchase agreement. Seller shall have full power and authority and will transfer title to the SSS System and SSS-V System technical design data upon

(i) receipt of the approvals of the U.S. Department of State and/ or Department of Commerce, if required, or

(ii) availability of personnel and processes within Stellor NA which allow such transfer without approval.

(d) Seller has the power to sell free and clear of any Claims all Purchased Assets. Seller has or will have good title to Purchased Assets at the time of the closing related to such assets. All SSS System Assets and SSS-V System Assets are in good operating condition and repair, ordinary wear and tear excepted, in accordance with industry standards. The SSS System Assets are physically located in or about Seller's place of business. The SSS-V System Assets will be physically located in or about Seller's place of business at the time of the Second Closing.

(e) Seller warrants that there is no litigation or proceeding, in law or in equity, pending against Seller with respect to the Purchased Assets and there are no proceedings or governmental investigations before any commission or other administrative authority pending against or, to the best of the Seller's knowledge, threatened against Seller with respect to the Purchased Assets.

(f) Seller has not dealt with any person or entity who is or may be entitled to a broker's commission, finders fee, investment bankers fee or similar payment from Purchaser for arranging the transaction contemplated hereby or introducing the parties to each other.

(g) Seller owns all intellectual property that are incorporated in, used by or related to the SSS System Assets or the SSS-V System Assets. Seller is not and will not be, as a result of the execution and delivery of this Agreement or the performance of its obligations under this Agreement, in breach of any license, sublicense or other agreement relating to intellectual property or the rights of third parties with regard to intellectual property. Purchaser's use or lease to Seller or to third parties of the Purchased Assets will not infringe the intellectual property rights of any third party.

**ARTICLE 5**

**Conduct Prior to the Closings**

5.1 Prohibitions . From the date hereof until the respective closing hereunder, without the prior written consent of Purchaser, Seller shall not:

(a) sell, transfer, or otherwise dispose of any of the Purchased Assets;

(b) take any action that would materially adversely affect the Purchased Assets.

5.2 Maintenance of Assets . From the date hereof until the respective closing hereunder, except as expressly contemplated or permitted by this Agreement or as otherwise consented to by Purchaser in writing, Seller shall:

(a) maintain the SSS System Assets and the SSS-V System Assets in good working repair, order and condition, in accordance with their standard maintenance policies, and in any event in at least as good repair, order and condition as on the date hereof (ordinary wear and tear excepted);

(b) neither (i) encumber, mortgage or subject to any lien any of the Purchased Assets; (ii) or do or omit to do any act which may cause a material breach of or default under any commitment or a material breach of any representation, warranty, covenant or agreement made herein by Seller;

**ARTICLE 6**

**Conditions to Closing**

6.1 Conditions to Seller's Obligations . The obligations of Seller to consummate the transactions contemplated hereby are subject to the fulfillment of all of the following conditions on or prior to the respective closing date; upon the non fulfillment of any of which this Agreement may, at Seller's option, be terminated pursuant to and with the effect set forth in Section 8.2:

(a) Each and every representation and warranty made by Purchaser shall have been true and correct in all material respects when made and shall be true and correct in all material respects as if originally made on and as of the respective closing date;

(b) All material obligations of Purchaser to be performed hereunder through, and including on, the respective closing date shall have been performed;

(c) No action or proceeding before any court, government body, or other tribunal shall have been commenced (by a party other than Seller, or an Affiliate of Seller) wherein an unfavorable judgment, decree or order would (i) prevent the carrying out of this Agreement or any of the transactions contemplated hereby, (ii) declare unlawful any of the transactions contemplated by this Agreement, or (iii) cause any of such transactions to be rescinded. As used in this Agreement, the term "Affiliate" shall mean any person or entity which controls a party to this Agreement, which is controlled by a party to this Agreement, or which is under common control with that party;

(d) Seller shall have received or otherwise be satisfied with payment of the purchase price for the assets to be acquired at such closing;

6.2 Conditions to Purchaser's Obligations . The obligation of Purchaser to consummate the transactions contemplated hereby is subject to the fulfillment of all of the following conditions on or prior to the respective closing date; upon the non fulfillment of any of which this Agreement may, at Purchaser's option, be terminated pursuant to and with the effect set forth in Section 8.2:

(a) Each and every representation and warranty made by Seller shall have been true and correct in all material respects when made, and shall be true and correct in all material respects as if originally made on and as of the respective closing date;

(b) All material obligations of Seller to be performed hereunder through, and including on, the Closing Date shall have been performed;

(c) No action or proceeding before any court, government body, or other tribunal shall have been commenced or threatened (other than by an Affiliate of Purchaser) which seeks to (i) nullify, restrict or modify the rights and protections afforded Purchaser in this Agreement, (ii) prevent the carrying out of this Agreement or any of the transactions contemplated hereby, (iii) declare unlawful the transactions contemplated by this Agreement (iv) cause such transactions to be rescinded, or (v) materially affect the right of Purchaser to own, operate or control the purchased assets; and

(d) The Purchaser shall not be obligated to consummate the transactions contemplated by the Second Closing unless and until the SSS-V System Assets have been delivered by F.C.Biggins Rocket and Space Corporation Tertia to Seller. Seller shall not give final acceptance except with the written concurrence of Purchaser or its nominee (appointed as provided in Section 1.2). For the purposes of this Agreement, final acceptance shall not occur unless Purchaser or its nominee concurs with Seller that the SSS-V System Assets meet all of the conditions of the SSS-V purchase contract. Purchaser or its nominee shall be allowed to be present at and participate in all acceptance testing and inspections related to the SSS-V System Assets.

(e) The Purchaser shall not be obligated to consummate the transactions contemplated by the Second Closing unless and until the SSS-V System Assets have been delivered by Seller as a flight qualified system. VCC qualification means that sufficient reviews, inspections, tests and analyses have been performed successfully to show that the VCC has met the requirements documented in the VCC Systems requirements specification (SHI-VCC-S1002) and that the VCC is qualified for use as described therein. Flight Qualification shall be documented by the completion and delivery, by Seller, and acceptance by Purchaser of the following products related to the VCC in its nominal configuration, i.e. as a vertical carrier utilizing 1 core section, 2 outer sections and left and right trunnion beam assemblies, for use as a Shuttle based un-pressurized cargo carrier.

Technical Data was removed

**ARTICLE 7**

**Other Agreements**

7.1 Further Assurances . The parties shall execute such further documents, and perform such further acts, as may be reasonably necessary to transfer and convey the Purchased Assets to Purchaser, on the terms herein contained, and to otherwise comply with the terms of this Agreement and consummate the transactions contemplated hereby.

7.2 Survival . The representations, warranties, covenants and agreements of the parties hereto contained in this Agreement or any agreement delivered in connection herewith shall survive each closing date for a period of one year from the date of said closing.

**ARTICLE 8**

**Termination**

8.1 Termination .

(a) This Agreement may be terminated with respect to the SSS System Assets at any time prior to First Closing date or with respect to the SSS-V System Assets at any time prior to the Second Closing date by mutual written agreement of Seller and Purchaser. This Agreement may be terminated with respect to the SSS System Assets by either party pursuant to the terms of Section 6.1 or 6.2 if the closing conditions are not met by the other Party by June 30, 2001. This Agreement may be terminated with respect to the SSS-V System Assets by either party pursuant to the terms of Section 6.1 or 6.2 if the closing conditions are not met by the other Party by January 31, 2003.

(b) If a Party intends to terminate this Agreement it shall do so by delivering a written notice to the other party, such termination to be effective on the fifth business day (the "Termination Date") following the terminating party's delivery of such notice. On the Termination Date,

(i) Seller shall return the Cash Payment, plus interest thereon at an annualized rate of five percent (5%) applied for the period between the First Closing and the Termination Date, plus any amounts applied to the Future Stellor Claim prior to the Termination Date, and

(ii) the balance remaining under the Stellor Work Credit shall be cancelled, with Seller being thereafter responsible for full payment of any invoices arising in respect of services rendered by Purchaser to Seller.

8.2 Effect of Termination and Abandonment . In the event of termination of the Agreement pursuant to this Article 8, written notice thereof shall as promptly as practicable be given to the other parties to this Agreement and this Agreement shall terminate and the transactions contemplated hereby not then completed shall be abandoned, without further action by any of the parties hereto. If this Agreement is terminated as provided herein:

(a) all further obligations of the parties shall terminate; and

(b) each party shall have available to it such remedies as may exist at law or in equity.

**ARTICLE 9**

**Miscellaneous**

9.1 Publicity . Except as otherwise required by law, press releases concerning this transaction shall be made only with the prior approval of the Seller and Purchaser, which approval shall not be unreasonably withheld.

9.2 Notices . All notices required or permitted to be given hereunder shall be in writing and may be delivered by hand, by facsimile or by nationally recognized private courier. Notices delivered by hand, by facsimile or by nationally recognized private carrier shall be deemed given on the day of receipt. All notices, including any change in notice addresses shall be addressed as follows:

If to Seller:

Galactrans, Incorporated

Address

USA

Attention: Donald G. Carter

Facsimile: xxx-xxx-xxx

with a copy to:

O’Mally BriansLLP

Address,

USA

Attention: Catherine Sherwin

Facsimile: xxx-xxx-xxx

If to the Purchaser:

Stellor GmbH

Address,

Germany

Attention: Franz Berger

Facsimile: xxx-xxx-xxx

with a copy to:

Hollows & Frampton, LLP

1667 K Street, NW Suite 801

Washington, D.C. 20006

Attention: William Frampton

Facsimile: xxx-xxx-xxx

or, in each case, at such other address as may be specified in writing to the other party.

9.3 Expenses . Unless otherwise expressly agreed to in Articles 1, 2, and 3 of the present agreement each of the Seller and the Purchaser will bear their respective costs and expenses (including legal fees and expenses) incurred in connection with this Agreement and the transactions contemplated hereby.

9.4 Entire Agreement . This Agreement and the instruments to be delivered by the parties pursuant to the provisions hereof constitute the entire agreement between the parties. Each Exhibit and Schedule shall be considered incorporated into this Agreement.

9.5 Applicable Law . This Agreement shall be governed and controlled as to validity, enforcement, interpretation, construction, effect and in all other respects by the internal laws of the District of Columbia applicable to contracts made therein, without regard to rules of conflicts of law.

9.6 Binding Effect; Benefit . This Agreement shall inure to the benefit of, and be binding upon, the parties hereto, and their successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer on any person other than the parties hereto, and their respective successors and permitted assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement.

9.7 Assignability . This Agreement shall not be assignable by either party without the prior written consent of the other party, except in the event of a reorganization, merger or acquisition of a party where the successor entity is reasonably deemed to be qualified to perform the duties and obligations of the original party under this Agreement.

9.8 Amendments . This Agreement shall not be modified or amended except pursuant to an instrument in writing executed and delivered on behalf of each of the parties hereto.

9.9 Headings . The headings contained in this Agreement are for convenience of reference only and shall not affect the meaning or interpretation of this Agreement.

9.10 Bulk Sales Laws . The parties hereto hereby waive compliance with the provisions of any applicable bulk sales laws, including Article 6 of the Uniform Commercial Code as it may be in effect in any applicable jurisdiction.

9.11 Dispute Resolution . All disputes arising out of the interpretation or enforcement of this Agreement and not settled previously in an amicable manner shall be finally settled under the rules of conciliation and arbitration of the International Chamber of Commerce by a panel of three arbitrators appointed in accordance with said rule. The arbitration proceeding shall take place in London, England, or any such other location as the parties may mutually agree, and shall be conducted in the English language. The arbitration award shall be final and binding on the parties. A party may enter judgment upon the award in any court of appropriate jurisdiction upon application thereto.

9.12 Counterparts . This Agreement may be executed in counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

|  |  |  |
| --- | --- | --- |
| STELLOR GmbH | | |
| By: |  | |s| Dr. Herbert Scherer |
|  |  | Dr. Herbert Scherer[V.P. Galactic Transport Systems] |
| By: |  | |s| Dr. Volker Hagen |
|  |  | Dr. Volker Hagen [Director of Finance, Control, Procurement & Commercial] |
| GALACTRANS, INCORPORATED | | |
| By: |  | |s| Jermy L. Sarnow |
|  |  | Jeremy L. Sarnow[President] |

**APA#20**

**ASSET PURCHASE AGREEMENT**

This ASSET PURCHASE AGREEMENT (the "Agreement") is made as of the \_\_\_ day of XXXX, 20XX, between DeltaT Sports Equipment Co. Ltd./Compagnie D'Equipement de Sports DeltaT Ltee, a Quebec company (the "Seller"), NOVET of Canada Inc., a Quebec company ("NOVET Canada"), and NOVET Health & Fitness, Inc., a Delaware corporation ("NOVET"; each of NOVET Canada and NOVET being sometimes referred to herein as a "Buyer" and collectively as the "Buyers").

**Recitals**

The Seller and NOVET are party to the Distribution Agreement dated XXXXX, 20XX (as in effect prior to the date hereof, the "Distribution Agreement") pursuant to which NOVET appointed the Seller as its distributor for the Products (as such term is defined in the Distribution Agreement) in the Territory (as such term is defined in the Distribution Agreement), subject to the terms and conditions set forth therein.

As part of a global settlement of certain disputes among the parties hereto and their respective affiliates, NOVET and the Seller have agreed, among other things, to amend the Distribution Agreement and the Buyers have agreed to purchase and the Seller has agreed to sell certain assets relating to Seller's home fitness equipment business lines (the "Equipment Business") and NOVET has agreed to assume certain related liabilities.

**Agreement**

Therefore, in consideration of the foregoing and the mutual agreements and covenants set forth below, the parties hereto hereby agree as follows:

**1. DEFINITIONS.**

1.1. Definitions. Certain terms are used in this Agreement as specifically defined herein. Certain definitions are set forth in Section 7 hereof.

1.2. Master Transaction Agreement. Reference is hereby made to the First Amended and Restated Master Transaction Agreement dated as of XXXXXX, 20XX (as from time to time in effect, the "Master Transaction Agreement") among NOVET, DeltaT Health and Fitness, a Nevada corporation, DeltaT Sporting Goods, Inc., a California corporation, and the other sellers named therein. Terms defined in the Master Transaction Agreement and not otherwise defined herein are used herein with the meanings so defined.

**2. AMENDMENT AND PARTIAL TERMINATION OF DISTRIBUTION AGREEMENT.**

2.1. Amendment and Partial Termination. This Agreement shall be deemed an amendment of the Distribution Agreement for all purposes. Except for the provisions of this Agreement and of Section 8.2, Section 12.3 (other than Section 12.3.4) and, to the extent provided in the next sentence, Section 12.5of the Distribution Agreement, which provisions shall survive the execution and delivery hereof, the Distribution Agreement is hereby terminated and of no further force or effect simultaneously with the execution and delivery hereof and the making of the Settlement Payment (as defined below), and neither NOVET nor Seller or any other Person shall have any further or outstanding rights or obligations thereunder. Section 12.5 of the Distribution Agreement is hereby modified by Amendment No. 1 to the Non-Competition Agreement of even date herewith, by and among, inter alia, DeltaT and NOVET and, as so modified, said Section 12.5 shall survive the execution and delivery hereof. Solely for purposes of said Sections 12.3 (other than 12.3.4) and 12.5, this Agreement shall be deemed a termination under Section 11 (without reason by both parties)and a sale under Section 12.1 of the Distribution Agreement.

2.2. Royalty Payments, etc. Simultaneously with the execution and delivery hereof, NOVET is paying to the Seller $200,750 (the "Royalty Payment")in satisfaction of certain royalty obligations under the Distribution Agreement.

2.3. Settlement Payments. Simultaneously with the execution and delivery hereof, NOVET is paying to the Seller $8,000,000 (the "Settlement Payment") in consideration of the termination of the Distribution Agreement as provided in Section 2.1 and settlement of any and all Section 2 Claims (as defined in Section 2.4) pertaining to, by reason of or arising out of, any and all disputes under the Distribution Agreement, including but not limited to the disputes at issue

(i) in mediation proceeding identified as Conciliation No. XXXX which was initiated in 20XX in the International Chamber of Commerce in London, England,

(ii) in a conciliation demand filed with the International Chamber of Commerce in Paris, France in XXXXX and (iii) in four actions filed in federal courts in Utah on XXXX against ABC, Inc., The Sand Company d/b/a S&D International, Inc. d/b/a American Distributors.

Any and all Section 2 Claims (as defined in Section 2.4) of any kind whatsoever any Person may now have or may previously have had based in whole or in part on facts that occurred prior to the date hereof

(i) pertaining to, by reason of, or arising under, the Distribution Agreement, or

(ii) pertaining to, by reason of, or arising under, any other Person's obligations under the Distribution Agreement, or

(iii) pertaining to, by reason of, or arising under, any other Person's failure to comply with or to perform its obligations thereunder, are hereby released and extinguished; provided, however, that this sentence shall not be interpreted as releasing NOVET from or extinguishing any Section 2 Claim made after the date hereof based upon NOVET's warranties under Section 8.2 of the Distribution Agreement, or as releasing or extinguishing any Section 2 Claim of NOVET under Section 12.5 of the Distribution Agreement (as modified by Section2.1 of this Agreement and Section 2.1 of the Settlement Agreement (as defined in Section 10.10 hereof)) arising after the date hereof based solely upon facts that occur entirely after the date of execution and delivery of this Agreement.

2.4. Section 2 Claims. "Section 2 Claims" shall mean all debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, torts, damages, and any and all claims, demands, rights, and liabilities whatsoever, of every name and nature, both at law and in equity, whether direct or derivative, whether liquidated or unliquidated, whether known or unknown, and including but not limited to any and all "claims" as that term is defined in 11 U.S.C. § 101.

**3. PURCHASE AND SALE OF EQUIPMENT ASSETS; ASSUMPTION OF LIABILITIES; AND MANNER OF PAYMENT.**

3.1. Purchase and Sale of Assets.

3.1.1. Sale of Assets. The Seller hereby agrees to sell, assign and transfer to Buyers simultaneously with the execution and delivery hereof, and Buyers hereby agree to purchase from the Seller simultaneously with the execution and delivery hereof, the Equipment Assets. All of the Equipment Assets shall be allocated to NOVET Canada.

3.1.2. Purchase Price. In addition to the assumption of the Assumed Liabilities, the cash purchase price to be paid by Buyers to the Seller for the Equipment Assets (the "Cash Purchase Price" and, together with the Assumed Liabilities, the "Purchase Price") will be US $8,430,000 and shall be paid simultaneously with the execution and delivery hereof.

3.1.3. Payment of Purchase Price. The Cash Purchase Price and the amounts of the Royalty Payment and the Settlement Payment will be paid by wire transfer of immediately available funds in U.S. dollars to such account as the Seller shall specify.

3.1.4. Allocation of Purchase Price. The Purchase Price shall be allocated among the Equipment Assets in the manner set forth in Schedule3.1.1 hereto. Each Buyer and the Seller hereby agree to reflect the allocation of the Purchase Price provided for herein in their respective financial statements and Tax Returns.

3.1.5. Elections. NOVET Canada and the Seller shall, at the Closing, jointly execute an election under Section 167 of the Excise Tax Act (Canada) and Section 75 of the Quebec Sales Tax Act in the form prescribed for such purpose in order that the sale of the Equipment Assets will occur without any Goods and Services Tax ("GST") or Quebec Provincial Sales Tax ("PST") being payable in connection therewith. NOVET Canada shall file the election form executed by it with Revenue Canada and the Minister of Revenue of Quebec with its GST and PST return, respectively, for its GST and PST reporting period encompassing the date of Closing and NOVET Canada shall concurrently therewith confirm to the Seller in writing that said election has been duly filed. NOVET Canada and the Seller agree to file a joint election in accordance with Subsection 22(1) of the Income Tax Act (Canada)and Section 184 of the Quebec Taxation Act in prescribed form and within the prescribed time limits.

3.2. Assumption of Liabilities. Buyers hereby agree, jointly and severally, effective upon the execution and delivery hereof, to assume and pay, discharge, perform or otherwise satisfy in accordance with their respective terms and be responsible for all liabilities and obligations of the Seller which relate to the Equipment Business, past, present and future, actual or contingent, other than the Excluded Liabilities and the Seller Retained Unknown Liabilities (collectively the "Assumed Liabilities"). The Assumed Liabilities include only

(i) the Specifically Assumed Liabilities and

(ii) the Buyer Assumed Unknown Liabilities.

The Buyers shall be responsible for, and shall pay, all Unknown Liabilities up to a minimum amount equal in the aggregate to the Deductible Amount (such portion of such liabilities being referred to herein as the "Buyer Assumed Unknown Liabilities"). The Seller shall be responsible for, and shall pay, all Unknown Liabilities which remain outstanding after the Deductible Amount is equal to zero dollars (such portion of such liabilities being referred to herein as the "Seller Retained Unknown Liabilities"), and the Seller shall have no obligation to pay any Unknown Liabilities unless and until the Deductible Amount shall be equal to zero dollars. As used herein, the term "Unknown Liabilities" means all liabilities and obligations of the Seller which relate to the Equipment Business which

(i) were incurred, or, subject to the provisions of the next sentence, arose or arise from acts or omissions of the Seller, during the period ending upon the execution and delivery hereof, and

(ii) do not constitute either Specifically Assumed Liabilities or (except to the extent specifically provided in Sections 3.3(f) and 3.3(g))

Excluded Liabilities. In the case of liabilities arising from conduct commenced by the Seller prior to and continued by the Buyers after the Closing, such liabilities shall be deemed to be Unknown Liabilities solely to the extent attributable to pre-Closing conduct of the Sellers, and, to the extent attributable to post-Closing conduct of the Buyers, the Buyers, jointly and severally, shall be responsible therefor and discharge the same. As used herein, the term "Specifically Assumed Liabilities" means all liabilities and obligations specifically assumed by the Buyers pursuant to the provisions of Section 3.2.1 through 3.2.4 below:

3.2.1. Transferred Contracts, Payables and Bank Debt. Seller hereby assigns to the Buyers, effective upon the execution and delivery hereof, and the Buyers hereby assume, effective upon the execution and delivery hereof, the Transferred Contracts (as defined below) (provided that the Seller shall remain liable for the Excluded Liabilities referred to in Section 3.3(f)) and the accounts payable referred to in clause (b) below in the amounts referred to therein. Buyers hereby agree, jointly and severally, effective upon the execution and delivery hereof, to assume and pay, discharge, perform or otherwise satisfy in accordance with their respective terms and be responsible for

(a) all liabilities and obligations of the Seller with respect to the contracts and leases (the "Transferred Contracts") listed on Schedule 3.2.1(provided that the Seller shall remain liable for the Excluded Liabilities referred to in Section 3.3(f));

(b) the payment of the accounts payable listed on Schedule 3.2B, in the amounts therein set forth, and

(c) the payment of $321,639 to Royal Bank of Canada (the "Bank") in respect of indebtedness of Seller for money borrowed to the Bank (and NOVET agrees to pay (or cause NOVET Canada to pay) on the Closing Date at Closing all money to be paid to the Bank under this clause (c)).

3.2.2. Distribution Arrangements.

(a) Simultaneously with the execution and delivery hereof the Buyers are executing and delivering to each of the four (4) distributors referred to therein counterparts of the forms of distribution agreements attached as Schedule 3.2.2A-1 through A-4. The Buyers jointly and severally agree to perform and discharge all agreements and covenants to be performed by them thereunder, provided that if any of such distributors elects not to enter into such a distribution agreement and fails to execute the same within 30 days after the Closing, then, in the case of the Israel distributor, such distributor shall be treated as an Oral Distributor (as defined below), and, in the case of the Brazil distributor, who has previously entered into a distributorship agreement attached as part of Schedule3.2.2B, such written distributorship agreement shall be treated as a Distributorship Agreement under Section 3.2.2(b) below.

(b) Attached hereto as Exhibits 3.2.2 B-1 through B-9 are letters executed by the Seller, NOVET and the distributors listed on Schedule 3.2.2B with respect to the distribution agreements identified on said Schedule 3.2.2B, (the "Distributorship Agreements"). Effective upon the execution and delivery hereof, the Seller hereby assigns to the Buyers, and the Buyers, jointly and severally, hereby assume, the Distributorship Agreements to the extent the same relate to home fitness equipment; it being understood that the Seller is not assigning, and the Buyers are not assuming, the Distributorship Agreements to the extent the same relate to nutritional products or publications or other products other than home fitness equipment. The Buyers jointly and severally agree to perform and discharge all agreements and covenants of the Seller under the Distributorship Agreements to the extent the same relate to home fitness equipment (but not to the extent relating to nutritional products or publications or other products other than home fitness equipment). Notwithstanding the foregoing provisions of this Section 3.2.2(b), the Seller shall remain liable for the Excluded Liabilities referred to in Section 3.3(g).

(c) The Buyers hereby agree, jointly and severally, to supply each of the distributors and other customers listed in Schedule 3.2.2C(the "Oral Distributors") with the brands of home fitness equipment listed respectively opposite the names of such distributors or customers on Schedule 3.2.2C either on a non-exclusive basis or on an exclusive basis, as set forth in said Schedule with respect to each such distributor or customer, at prices no higher than those charged other international distributors of NOVET generally and otherwise on terms similar to those applicable to other international distributors of NOVET generally (the existing distributors referred to in Schedules 3.2.2A, B and C are referred to herein, collectively, as the Existing Distributors"). Notwithstanding the foregoing provisions of this Section 3.2.2(c), it is expressly understood and agreed that, subject to the provisions of clause (iii) of Section 6.1.2, the Buyers may at any time cease to supply any of the Oral Distributors.

3.2.3. Filling Pre-Closing Orders and Warranty Claims.

(a) The Buyers agree, jointly and severally, effective upon the execution and delivery hereof, to assume the obligation to execute each order listed on Schedule 3.2.3 and each other existing order, if any, not listed in Schedule 3.2.3, which is a bona fide arms length order for home fitness equipment which was placed with Seller by unaffiliated third parties prior to the date hereof but which has not been filled at the date hereof, in each case on the Seller's terms applicable to such order.

(b) The Buyers agree, jointly and severally, effective upon the execution and delivery hereof, that if any home fitness equipment sold by Seller prior to the Closing is entitled to warranty service after the Closing under the ordinary course warranties provided by the Seller in connection with sales of home fitness equipment, Buyers shall, at Buyers' own expense, promptly repair or replace such product upon the applicable distributor's or customer's request if made within the applicable warranty period of the Seller. Notwithstanding the foregoing, Seller shall remain liable for the Excluded Liabilities referred to in Section 3.3(h).

3.2.4. Products Liability. Buyers hereby agree, jointly and severally, effective upon the execution and delivery hereof, to assume and pay, discharge or otherwise be responsible for all product liability claims that were not asserted in a writing actually received by the Seller prior to the execution and delivery hereof in respect of (i) home fitness equipment sold by Seller prior to the execution and delivery hereof and (ii) inventory sold by either Buyer after the execution and delivery hereof, other than, in the case of clause (i), product liability claims which constitute Excluded Liabilities. Simultaneously with the execution and delivery hereof, the Seller is paying the Buyers $40,000 (Canadian) in respect of related product liability insurance costs of the Buyers.

3.2.5. Allocations. Assumed Liabilities as between the Buyers are allocated to NOVET Canada; provided, that NOVET hereby agrees to pay when due any Assumed Liability assumed by NOVET Canada which NOVET Canada fails to pay when due. This guarantee by NOVET is a guarantee of payment and not of collection, and shall remain in effect notwithstanding that NOVET Canada's payment obligations may be stayed or enjoined under bankruptcy or other applicable laws; and this guarantee shall be reinstated in the event a payment previously made by NOVET Canada is returned under laws relating to bankruptcy preferences or other applicable law. NOVET waives presentment, protest, notice of dishonor and similar demands and notices, and confirms that this guarantee shall remain in effect notwithstanding the failure by the Seller to exhaust its rights and remedies against NOVET Canada or to proceed with promptness and diligence in enforcing its rights under this Agreement or otherwise.

3.2.6. Dollars. All references to $ or Dollars in this Agreement are to U.S. dollars.

3.3. Excluded Liabilities. Buyers shall not assume, and the Seller shall remain liable for and shall pay and discharge

(a) all liabilities and obligations of the Seller not primarily related to the Equipment Business,

(b) all liabilities and obligations of the Seller in respect of Taxes,

(c) all liabilities and obligations of the Seller in respect of any pending litigation or any litigation threatened in a writing that is actually received by the Seller or any of its Affiliates prior to the Closing, excluding, however, any litigation or threatened litigation by any third party against the Seller or its Affiliates relating to the distribution by NOVET, directly or indirectly, of home fitness equipment in the territory of any Existing Distributor other than through the Seller ("NOVET Related Litigation"),

(d) all liabilities and obligations in respect of products liability claims relating to products sold by the Seller prior to the Closing if, but only if, such claim was asserted in a writing that is actually received by the Seller on or prior to the Closing;

(e) all liabilities and obligations of the Seller arising under any Legal Requirement relating to the employment of employees of the Seller prior to the date of execution and delivery hereof, it being understood that if the Buyers fail to comply with their obligations under Section 8.2 or 8.3 with respect to any such employee, the Buyers shall be liable for any severance payment or other compensation required to be paid by the Seller to such employee resulting from such breach of Section 8.2 or 8.3 and for any other damages suffered by the Seller resulting from such breach;

(f) except to the extent constituting Buyer Assumed Unknown Liabilities, all liabilities and obligations of the Seller under the Transferred Contracts arising as a result of any breach prior to the Closing of any Transferred Contracts by the Seller or any failure by the Seller to perform any obligations to be performed by it thereunder prior to the Closing, provided that the purported assignment hereunder of a Transferred Contract by the Seller to the Buyers notwithstanding the non-assignability of such Transferred Contract shall not be deemed to be a breach or non-performance thereof by Seller;

(g) except to the extent constituting Buyer Assumed Unknown Liabilities or liabilities arising out of any NOVET Related Litigation, all liabilities and obligations of the Seller in respect of any of the Existing Distributors arising as a result of any breach prior to the Closing by the Seller of any Contractual Obligation to such Existing Distributors or any failure by the Seller to perform any obligation to be performed by it thereunder prior to the Closing, provided that the purported assignment hereunder of a Distributorship Agreement (or other contractual relationship with an Existing Distributor) by Seller to Buyers, notwithstanding the non-assignability of such agreement or relationship shall not be deemed to be the breach or non-performance of a Contractual Obligation or other obligation by Seller, and

(h) except to the extent constituting Buyer Assumed Unknown Liabilities, any actual direct cost suffered by NOVET Canada or NOVET (not otherwise covered by any insurance policies maintained by either Buyer) solely as a result of a general recall prior to the second anniversary of the Closing of home fitness equipment sold by Seller prior to the Closing, which products were not manufactured by NOVET or Completefitness Inc. (all liabilities and obligations to be retained by the Seller pursuant to this Section 3.3, collectively, the "Excluded Liabilities").

3.4. Closing. The Closing under this Agreement (the "Closing") shall occur simultaneously with the execution and delivery hereof and of the certificates, consents, releases, and other documents and instruments specified on Schedule 3.4 hereto (the "Closing Date").

3.5. Bulk Sale. Each of the parties hereto expressly waives compliance with Article 1767 (et seq.) of the Civil Code of the Province of Quebec (the "Quebec Bulk Sales Laws").

3.6. No Implied Warranties. Each Buyer hereby acknowledges that it has been permitted by the Seller to conduct a full and complete examination of the Equipment Assets and further acknowledges having been supplied with all information requested by it pertaining to the Equipment Assets. Each Buyer hereby declares its satisfaction with the results of the examination it has conducted in respect of the Equipment Assets. Each Buyer acknowledges that it is purchasing

(i) the portion of the Equipment Assets which consists of inventory, equipment and other physical assets "as is," "with all faults", and without any representation or warranty of any nature whatsoever, express or implied, conventional or legal, including, without limitation, warranties of merchantability or fitness for a particular purpose or use or warranties of ownership or quality set forth in the Civil Code of Quebec or the Uniform Commercial Code in force in any U.S. jurisdiction, to the extent applicable to the transactions contemplated herein (the foregoing clause (i) shall not obviate or modify the representations of Seller in Section 4, which are independent representations),

(ii) the portion of the Equipment Assets which consists of accounts receivable without any guarantee of collectability and

(iii) the portion of the Equipment Assets consisting of the Transferred Contracts and the Distributorship Agreements without any representation or warranty regarding the assignability of the same.

The Seller shall not be liable to the Buyers for any liability, loss or damage incurred or suffered as a result of the non-assignability of any such Transferred Contract or Distributorship Agreement.

**4. REPRESENTATIONS AND WARRANTIES OF THE SELLER.**

In order to induce each Buyer to enter into and perform this Agreement and to consummate the transactions contemplated hereby, the Seller represents and warrants to each Buyer as follows:

4.1. Organization, Power and Standing. The Seller is a corporation duly organized, validly existing and in good standing under the laws of Quebec and has all requisite corporate power and authority to execute, deliver and perform this Agreement and to consummate the transactions contemplated hereby.

4.2. Authority and Enforceability. This Agreement has been duly authorized, executed and delivered by the Seller, and, subject to the payment to the Bank of the amount set forth in Section 3.2.1(c), is enforceable against the Seller.

4.3. Non-Contravention, etc. Except that no representation is made as to Quebec Bulk Sales Laws, neither the execution and delivery of this Agreement nor the consummation of any of the transactions contemplated hereby constitutes, results in or gives rise to

(i) a breach of or a default or violation or right or cause of action under any Charter or By-Laws provision of the Seller or any Legal Requirement applicable to the Seller or

(ii) the imposition of any Lien upon or the forfeiture of any Equipment Assets.

Except that no representation is made as to Quebec Bulk Sales Laws, and except that Seller makes no representation or warranty with respect to the assignability of any Transferred Contract or Distributorship Agreement, no approval, consent, waiver, authorization or other order of, and no declaration, filing, registration, qualification or recording with, any Governmental Authority or other Person, including without limitation any party to any Contractual Obligation of the Seller, is required to be obtained or made by or on behalf of the Seller in connection with the execution, delivery or performance of this Agreement and the transactions contemplated hereby by the Seller, except as set forth on Schedule 4.3 hereto, all of which (except as specifically indicated in Schedule 4.3 hereto) have been obtained subject to the payment to the Bank of the amount set forth in Section 3.2.1 (c).

4.4. Title to Assets, etc. The Seller has good and marketable title to all of the Equipment Assets

(i) constituting inventory or

(ii) listed on the Schedules hereto, in each case free and clear of any Liens, except as described in Schedule 4.4A hereto (the "Permitted Liens"), and upon transfer of the Equipment Assets to NOVET as contemplated hereunder, NOVET shall acquire good and marketable title to the Equipment Assets free and clear of any Liens other than Permitted Liens (except for Permitted Liens identified on Schedule 4.4 hereto as not continuing after the Closing and Liens created by Buyers), it being understood that the Seller is not making any representation or warranty with respect to the assignability of any Transferred Contract or Distributorship Agreement.

The Equipment Assets listed or referred to on the Schedules hereto constitute all material assets, property and rights used primarily to conduct the Equipment Business during the period since XXXXX 20XX, other than

(i) inventory sold in the ordinary course of business,

(ii)cash, cash equivalents, insurance policies and rights to payments thereunder, fixed assets, owned real property, equipment leases (and related equipment) and maintenance contracts not transferred in connection with the transaction contemplated hereby,

(iii) other assets immaterial in value or use sold or otherwise disposed of in the ordinary course of business,

(iv) other assets identified on Schedule 4.4B and

(v) the contracts and agreements referred to in Section 10.11.

4.5. Litigation. Except as set forth on Schedule 4.5 hereto and except for the NOVET Related Litigation, there is no litigation, at law or inequity, or any proceeding before or investigation by any foreign, federal, state or provincial court or other governmental or administrative agency or any arbitrator pending (or, to the knowledge of the Seller, threatened in a writing actually received by the Seller) against the Seller relating to the Equipment Business or which has had or could reasonably be expected to have a material adverse effect on the Equipment Business considered as a whole. There is no litigation at law or in equity, or any proceeding before or investigation by any foreign, federal, state, municipal or provincial court or other governmental or administrative agency or any arbitrator, pending (or, to the knowledge of the Seller, threatened in a writing actually received by the Seller) against the Seller, which seeks rescission of, seeks to enjoin the consummation of, or otherwise relates to, this Agreement or any of the transactions contemplated hereby. No judgment, decree or order of any foreign, federal, state or municipal or provincial court, or other governmental or administrative agency or any arbitrator has been issued against the Seller or any of its Affiliates which has been, or could reasonably be expected to be, material with respect to the use of the Equipment Assets.

4.6. Contracts. To the best of its knowledge the Seller is not a party to any contract material to the Equipment Business other than (a)those listed in Schedules 3.2.1 and 3.2.2B hereto and (b) those referred to in the last sentences of Section 4.4 and Section 10.11 as not being transferred to the Buyers. True and complete copies of such contracts listed on Schedules3.2.1 and 3.2.2B have been delivered to NOVET or its counsel.

4.7. Defaults. Except for notices relating to the NOVET Related Litigation, the Seller has not received any written notice in the last three months from any Existing Distributor or from any other party to any of the Transferred Contracts claiming that a default, breach or violation has occurred or is in existence thereunder which either entitles such other party to terminate said contract or agreement or otherwise has a material adverse effect on the Equipment Business considered as a whole.

4.8. Certain Affiliated Party Relationships. Other than

(a) the agreements involving the parties and their Affiliates entered into

(i) in connection with the closing under and the transactions contemplated by the Master Transaction Agreement and

(ii) in connection with the closing under and the transactions contemplated by the Settlement Agreement, (b) the Distribution Agreement, and

(c) the oral arrangements listed in Schedule 3.2.2.C, the Seller is not party to any agreement to be assumed by the Buyers hereunder with any Affiliate of the Seller pursuant to which such Affiliate provides goods or services to the Equipment Business or the Equipment Business provides goods or services to such Affiliate at prices which are materially above or below the market price thereof. Neither the Seller nor any Affiliate of the Seller (exclusive of any Existing Distributor), either individually or in the aggregate with the Seller and all Affiliates of the Seller (exclusive of any Existing Distributor), directly or indirectly, holds an equity interest in excess of 50% in, or controls, directly or indirectly, any Existing Distributor. The representation in the immediately preceding sentence shall not be deemed breached if, upon any executive officer of the Seller, or either Buyer, becoming aware after the date hereof of the ownership by the Seller of more than a 50% equity interest in any Existing Distributor, the Seller shall sell the excess of such equity interest over 50% as soon as reasonably practicable (but without being forced into a fire sale situation) after such executive officer becoming aware of such percentage ownership, or Seller receiving written notice from either Buyer to such effect.

**5. REPRESENTATIONS AND WARRANTIES OF BUYERS.**

In order to induce the Seller to enter into and perform this Agreement and to consummate the transactions contemplated hereby, each Buyer, jointly and severally with the other Buyer, represents and warrants to the Seller as follows:

5.1. Corporate Matters. Each Buyer is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation and has all requisite corporate power and authority to execute, deliver and perform this Agreement and to consummate the transactions contemplated hereby.

5.2. Authorization and Enforceability. This Agreement has been duly authorized, executed and delivered by each Buyer, and is Enforceable against each Buyer.

5.3. Non-Contravention, etc. Neither the execution, delivery nor performance of this Agreement nor the consummation of the transactions contemplated hereby does or will constitute, result in or give rise to any breach or violation of, or any default or right or cause of action under, any Charter or By-Laws provision of either Buyer or any Legal Requirement applicable to either Buyer. No approval, consent, waiver, authorization or other order of, and no declaration, filing, registration, qualification or recording with, any Governmental Authority or any other Person, including without limitation any party to any Contractual Obligation of either Buyer, is required to be obtained or made by or on behalf of either Buyer in connection with the execution, delivery or performance of this Agreement and the transactions contemplated hereby by either Buyer, except as set forth on Schedule 5.3 hereto, all of which have been obtained.

5.4. Litigation. There is no litigation at law or in equity, or any proceeding before or investigation by any foreign, federal, state or provincial court or other governmental or administrative agency or any arbitrator, pending (or, to the knowledge of either of the Buyers, threatened in writing) against either of the Buyers which seeks rescission of or seeks to enjoin the consummation of or otherwise relates to this Agreement or any of the transactions contemplated hereby.

5.5. Tax Registration. NOVET Canada has registered under the Excise Tax Act (Canada) and the Quebec Sales Tax Act.

**6. INDEMNITY.**

6.1. Indemnity. The Seller (in its capacity as indemnifying party, an "Indemnifying Party") hereby agrees to indemnify each Buyer and its respective Affiliates (each in its capacity as indemnified party, an "Indemnitee") and hold each Buyer and such Affiliates harmless, and each Buyer (in its capacity as indemnifying party, an "Indemnifying Party"), jointly and severally with the other Buyer, hereby agrees to indemnify the Seller and its Affiliates (each in its capacity as indemnified party, an "Indemnitee") and hold each of the Seller and such Affiliates harmless, from, against and in respect of any and all Losses arising from or related to any of the following:

6.1.1. The Seller. In the case of the Seller as Indemnifying Party,

(i) any breach of or inaccuracy in any representation or warranty made by the Seller in this Agreement (including, without limitation, the Schedules hereto),

(ii) any Excluded Liability (to the extent it does not constitute a Buyer Assumed Unknown Liability referred to in subsection (f), (g) or (h) of Section 3.3) or Seller Retained Unknown Liabilities,

(iii) any obligation of the Seller for which either Buyer is liable by operation of the provisions of the Quebec Bulk Sales Laws with respect to the transactions contemplated hereby and which obligation is asserted against either Buyer within the applicable prescription period provided for in Section 1776 of the Civil Code of Quebec applicable thereto (after giving effect to any written agreement of Seller extending or tolling such prescription period); provided, that the maximum liability of the Seller under this clause (iii) shall not exceed the Cash Purchase Price; and provided further that the Seller shall have no indemnification obligation under this clause (iii) with respect to claims constituting Assumed Liabilities and claims resulting from either Buyer's breach of its obligations under Section 8, or

(iv) any breach or violation of any covenant or agreement made in this Agreement by the Seller to be performed after the Closing not otherwise specifically covered by any of clauses (i) through (iii) of this Section 6.1.1.

6.1.2. Buyers. In the case of each Buyer as Indemnifying Party,

(i) any Assumed Liability,

(ii) any breach of or inaccuracy in any representation or warranty made by either Buyer in this Agreement(including, without limitation, the Schedules hereto),

(iii) any claim by any Oral Distributor against the Seller based upon any cessation of supply by the Buyers to such Oral Distributor as provided in the last sentence of Section 3.2.2(C) or otherwise arising from either Buyer's conduct with or relationship with such Oral Distributor after the Closing, or

(iv) any breach or violation of any covenant or agreement made by either Buyer in this Agreement (including without limitation the covenants and agreements made by the Buyers pursuant to Section 8 hereof) to be performed by either Buyer after the Closing (or, in the case of covenants and agreements under Section 8, at the Closing) not otherwise specifically covered by any of clauses (i) through (iii) of this Section 6.1.2.

6.2. Time Limitation on Indemnification.

6.2.1. The Seller's Indemnities. Notwithstanding the foregoing, no claim may be made or suit instituted under the Indemnity(a "Claim") by either Buyer or its Affiliates after the date which is three hundred and sixty four (364) days after the date hereof, except for

(i) all Claims as to which either Buyer or its Affiliates has given the Seller reasonably specific written notice (in light of the facts then known) on or prior to such date,

(ii) all Claims relating to Excluded Liabilities (to the extent not constituting Buyer Assumed Unknown Liabilities referred to in subsection (f), (g) or (h) of Section 3.3) or Seller Retained Unknown Liabilities,

(iii) all Claims with respect to any of the representations or warranties contained in Section 4.1 or 4.2 or 4.4 hereof,

(iv) all Claims based on the breach of any covenant or agreement made in this Agreement to be performed by the Seller after the Closing,

(v) all Claims based upon intentional fraud (and not merely gross negligence or recklessness) and

(vi) all Claims under Section 6.1.1(iii). With respect to all Claims to which reference is made in clauses (i), (ii), (iii), (iv) or (v) of the immediately preceding sentence, there shall not be any limitation as to time.

As to Claims referred to in clause (vi) of the second preceding sentence, no Claim may be made after seven (7) days after the expiration of the prescription period provided for in Section 1776 of the Civil Code of Quebec applicable to the underlying claim (in each case after giving effect to any written agreement of Seller extending or tolling such prescription period) .

6.2.2. Buyers' Indemnities. Notwithstanding the foregoing, no Claim may be made by the Seller or its Affiliates after the date which is three hundred and sixty four (364) days after the date hereof except for

(i) all Claims as to which the Seller has given either Buyer reasonably specific written notice (in light of the facts then known) on or prior to such date,

(ii) all Claims relating to Assumed Liabilities (including Claims relating to obligations and liabilities of Buyers under Section 8),

(iii) all Claims with respect to any of the representations or warranties contained in Section 5.1 or 5.2hereof,

(iv) all Claims based on the breach of any covenant or agreement made in this Agreement to be performed by the Buyers after the Closing (or, in the case of covenants and agreements under Section 8, at and after the Closing),

(v) all Claims based upon intentional fraud (and not merely gross negligence or recklessness) and (vi) all Claims under Section 6.1.2(iii) related to claims by Oral Distributors.

With respect to Claims to which reference is made in clauses (i), (ii), (iii), (iv), (v) and

(vi) of the immediately preceding sentence, there shall not be any limitation as to time.

6.3. Monetary Limitations on Indemnification.

6.3.1. The Seller.

6.3.1.1. Minimum.

(a) Except as set forth in clause (b) below, the Seller as Indemnifying Party shall have no obligation under this Agreement to indemnify either Buyer or any of its Affiliates as Indemnitee in respect of any Loss suffered or incurred by either Buyer or any of its Affiliates as Indemnitee until the aggregate cumulative total, without duplication, of (x) the aggregate dollar amount of the Losses, if any, actually incurred or suffered by either Buyer or its Affiliates prior to the date of determination as to which Losses a timely Claim shall have been made under Section 6.2.1 and which Losses shall otherwise be entitled to indemnification under Section 6 hereof (determined without regard to Section 6.3.1), plus

(b) the aggregate dollar amount of the Unknown Liabilities, if any, actually paid by either Buyer prior to such date of determination (subject to the last sentence of Section 6.4), $1 exceeds,000,000, whereupon each Buyer and its Affiliates as Indemnitee (but without duplication) will be entitled to indemnification for the entire aggregate cumulative amount of such Losses to the extent that the aggregate cumulative total, without duplication, of (x) the aggregate dollar amount of the Losses, if any, actually incurred or suffered by either Buyer or its respective Affiliates prior to the date of determination as to which Losses a timely Claim shall have been made pursuant to Section 6.2.1 and which Losses shall otherwise be entitled to indemnification under Section 6 hereof (determined without regard to Section 6.3.1), plus

(c) the aggregate dollar amount of the Unknown Liabilities, if any, actually paid by either Buyer prior to such date of determination (subject to the last sentence of Section 6.4), exceeds $1,000,000.

In no event shall Seller be liable for the first such $1,000,000. No minimum dollar limitation shall apply to Losses (i) as to which a Claim referred to in clauses (iv) or (v) of Section 6.2.1 hereof is made or (ii) in respect of the Excluded Liabilities referred to in Sections 3.3(a), (b), (c), (d) and (e).

6.3.1.2. Maximum. Except with respect to the Claims referred to in (ii), (iii), (iv) or (v) of Section 6.2.1 hereof, the Seller as Indemnifying Party shall have no obligation to indemnify the Buyers and their Affiliates as Indemnitee in excess of an aggregate amount equal to the Cash Purchase Price.

6.3.2. Amount of Losses Reimbursable.

6.3.2.1. Taxes and Insurance. The amount of any liability for Loss as to which indemnification exists under this Agreement shall be measured taking into account

(i) any income tax savings (and income tax cost attributable to the indemnity payment) actually realized (or incurred) that affect the overall economic impact of the Loss to the Indemnitee, and

(ii) any insurance proceeds actually realized and adverse insurance consequences incurred (such as premium adjustments and other detriments) that affect the overall economic impact of the Loss to the Indemnitee.

6.3.2.2. Certain Litigation Costs. In the event of any Claim by any third party based on facts which, if true as alleged, would give rise to any liability for Loss as to which indemnification exists under this Agreement, the amount of the Loss shall be deemed to include without limitation the costs of the defense thereof, whether or not successful, subject to the rights of the Indemnifying Party to assume such defense pursuant to Section 6.4.

6.3.2.3. Currency. Obligations under this Section 6 shall be satisfied in U.S. dollars.

6.3.2.4. Treatment of Indemnity Payments. All payments under this Section 6 shall be deemed adjustments to the Purchase Price, unless a final determination with respect to the Indemnitee causes any such payment not to constitute an adjustment to the Purchase Price for federal, state, provincial or municipal income Tax purposes.

6.4. Third Party Claims. Promptly after the receipt by any Indemnitee of notice of the commencement of any action against such Indemnitee by a third party (a "Third Party Claim"), such Indemnitee shall, if a Claim with respect thereto is or may be made against any Indemnifying Party pursuant to this Section 6, give such Indemnifying Party written notice thereof. The failure to give such notice shall not relieve any Indemnifying Party from any obligation hereunder except where, and then solely to the extent that, such failure actually and materially prejudices the rights of such Indemnifying Party. Such Indemnifying Party shall have the right to defend such Third Party Claim, at such Indemnifying Party's expense and with counsel of its choice reasonably satisfactory to the Indemnitee, provided that the Indemnifying Party conducts the defense of such Third Party Claim actively and diligently. So long as the Indemnifying Party is conducting the defense of such Third Party Claim as provided in the previous sentence, the Indemnitee may retain separate co-counselat its sole cost and expense and may participate in defense of such Third Party Claim, and neither the Indemnifying Party nor the Indemnitee will consent to the entry of any judgment or enter into any settlement with respect to such Third Party Claim without the prior written consent of the other, which consent will not be unreasonably withheld. In the event the Indemnifying Party does not or ceases to conduct the defense of such Third Party Claim as so provided, (x) the Indemnitee may defend against, and consent to the entry of any judgment or enter into any settlement with respect to, such Third Party Claim in any manner it may reasonably deem to be appropriate, (y) the Indemnifying Party will reimburse the Indemnitee promptly and periodically for the costs of defending against such Third Party Claim, including attorneys' fees and expenses, and (z) the Indemnifying Party will remain responsible for any Losses the Indemnitee may suffer as a result of such Claim to the full extent provided in this Section 6.If the Indemnifying Party assumes the defense of such Third Party Claim, the Indemnitee agrees to reasonably cooperate in such defense so long as the Indemnitee is not materially prejudiced thereby. Notwithstanding the foregoing, the Seller shall have the right to direct the Buyers not to contest or to cease contesting a Third Party Claim or Unknown Liability and to direct the Buyers to pay the same, if either the then remaining Deductible Amount shall be sufficient to cover such Third Party Claim or Unknown Liability or the Seller pays the amount by which the Third Party Claim or Unknown Liability exceeds the then remaining Deductible Amount. If either Buyer pays any Unknown Liability in violation of the foregoing provisions of this Section 6.4, the Deductible Amount shall be reduced solely to the extent of the amount of the liability that the Seller agrees is due the third party claimant, subject only to a subsequent judicial determination of a different amount. The Seller and the Buyers agree that Buyers shall pay all Buyer Assumed Unknown Liabilities, notwithstanding any dispute between Buyers and Seller with respect to

(i) the existence or amount of any indemnifiable Losses under Section 6 or

(ii) the additional amount by which the Deductible Amount may eventually be reduced by judicial determination if the next preceding sentence applies, which disputed amounts under clauses (i) and (ii) shall not reduce the Deductible Amount until the actual amount thereof shall have been agreed upon or judicially determined.

6.5. No Circulatory of Limitations. In the event that an Indemnitee claims that an Indemnifying Party has breached its obligation to make any payment under this Section 6, the time and monetary limitations contained herein shall be inapplicable to resolution of such claim for payment (but such limitations shall be operative as provided herein to determination of the underlying claim).

6.6. Insurance Subrogation. The Seller and each of the Buyers hereby waive any insurer's right of subrogation under this Agreement except solely to the extent that such waiver would result in a limitation or termination of coverage under any policy.

**7. DEFINITIONS.**

For purposes of this Agreement, accounting terms used herein and not otherwise defined herein are used herein as defined by Generally Accepted Accounting Principles. In addition, the following terms shall have the following meanings:

7.1. Deductible Amount. The term "Deductible Amount" shall mean $1,000,000 less the sum, without duplication, of

(a) the aggregate dollar amount of the Losses, if any, actually incurred or suffered by either Buyer or the irrespective Affiliates prior to the date of determination as to which Losses a Claim shall have been timely made under Section 6.2.1 and which Losses shall be otherwise entitled to indemnification under Section 6 hereof (determined without regard to Section 6.3.1), plus

(b) the aggregate dollar amount of the Unknown Liabilities, if any, actually paid by either Buyer prior to such date of determination.

7.2. Generally Accepted Accounting Principles. The term "Generally Accepted Accounting Principles" shall mean Canadian generally accepted accounting principles, as of the date hereof.

7.3. Equipment Assets. The term "Equipment Assets" shall mean all of the assets owned by the Seller which primarily relate to the conduct of the Equipment Business, including without limitation the Transferred Contracts, the Distributorship Agreements and those assets listed on Schedule 7.3 hereto but excluding

(i) cash, cash equivalents, insurance policies and rights to payments thereunder, fixed assets, owned real property, equipment leases (and related equipment) and maintenance contracts not transferred in connection with the transactions contemplated hereby,

(ii) other assets identified on Schedule4.4.B, and

(iii) the contracts and agreements referred to in Section 10.11.

**8. EMPLOYEES.**

8.1. Reimbursement of Certain Expenses.

(a) Buyers, jointly and severally agree to pay to the Seller (or its designee and such designee may be changed by either the Seller or such designee at any time and from time to time), for so long as Ronald Denham shall live (but not in any event after the fifth anniversary of the Closing Date), an amount equal to

(i) the aggregate salary and year-end bonus paid to, and the aggregate cost of benefits for, the three secretary/receptionists assisting Ronald Denham currently employed by the Seller (each, together with any replacements designated by Seller or its designee, a "Continuing Employee") and in the case of each such secretary/receptionist, his or her replacement; provided, however, that in no event shall Buyers pay any amount under this clause (i) (A)with respect to the 12 month period commencing on the date hereof, in excess of the aggregate of (x) 20XX salary, (y) 20XX year-end bonus (increased by an amount reflecting any increase in the Canadian Consumer Price Index ("Canadian CPI") for 1996) and (z) cost of benefits set forth in Schedule 8.1 hereto and (B) with respect to each successive 12-month period thereafter (each an "Applicable Period"), in excess of the aggregate amount payable for the immediately preceding 12-month period increased by the amount of the Canadian CPI increase for the calendar year immediately preceding the Applicable Period, plus

(ii) the aggregate amount of the employer's contribution to the DeltaT Sports & Equipment Group Health Plan, furnished to Buyers (or such other insurance health plans as may from time to time be adopted by DeltaT which is applicable to Seller employees generally), Quebec Pensions Plan, Unemployment Insurance, CSST, the Labour Standards Commission levy and Quebec Health Insurance levy and similar compulsory contributions required to be made by applicable Legal Requirements based on the employment of the Continuing DeltaT Employees after the Closing Date(the "Contributions").

(b) On the fifth business day of each month, Buyers shall pay to the Seller (or its designee and such designee may be changed by either the Seller or such designee at any time and from time to time) an amount equal to all expenses reimbursable pursuant to clause (a) which were actually paid by the Seller or its designee during the preceding month.

(c) The Continuing DeltaT Employees are and will continue to be employees of the Seller (or its designee and such designee may be changed by either the Seller or such designee at any time and from time to time). Only the Seller or its designee shall have the right to terminate, replace or direct the Continuing DeltaT Employees. Buyers and their Affiliates shall have no liability of any kind or nature whatsoever in respect of the Continuing DeltaT Employees or their acts or omissions other than to make the payments provided for in Section 8.1(b).

(d) The obligations of each Buyer hereunder are joint and several with the other Buyer. The payments required to be made by Buyers pursuant to this Section 8.1 (a) and (b) shall be made without any setoff, deduction or withholding for any reason whatsoever (including any Claim under Section 6) and shall bear interest at the rate of 12% per annum from and after the tenth (10th) calendar day following notice of failure to pay when due to and including the date of payment. If, after written notice is provided to Buyers in accordance with Section 11 hereof, Buyers fail to make any payments under this Section 8 for any reason and the Seller elects to rely on the following provisions of this Section (d), the Specified Amount (as hereinafter defined) shall immediately and automatically become due and payable in full within two days of such election being made by the Seller in writing and will bear interest at a rate of 12% per annum from the date that of such election until the date payment of the Specified Amount is made; provided, however that the foregoing provisions of this sentence shall not apply if Buyers fail to pay when due not more than three (3) Monthly Payments in any twelve month period, so long as Buyers shall have paid each such Monthly Payment within 10 calendar days of notice of same. As used herein the term "Specified Amount" shall mean, at any time, the amount equal to the product of

(i) the sum of (x) the total of all payments (but excluding interest) required to be made pursuant to clauses (i) and (ii) of Section 8.1 (a) for the then preceding twelve (12) months plus (y) five percent (5%) of the total amount referred to in clause (x) (which shall be deemed to represent the Canadian CPI for the number of months under clause (ii) below) divided by twelve (12), multiplied by

(ii) the number of months then remaining until the fifth anniversary of the date of execution and delivery hereof. In the event of any suit to collect payments under this Section 8.1, each party agrees it shall be responsible for and shall pay any and all legal expenses of the other party in respect of such suit to the extent such other party prevails on the merits of such suit.

Payment of the Specified Amount with such interest shall constitute payment in full of all obligations under this Section 8.1 (including without limitation any obligation to pay interest pursuant to the second sentence of this Section 8.1(d) so as to avoid double counting), if Seller elects to demand payment of the Specified Amount.

8.2. Hiring Other DeltaT Employees. One of the Buyers shall offer employment effective as of the Closing and on the same terms and conditions as currently exist (including salaries, benefits and severance terms (as provided in Section 8.3) reflecting, in each case, such employees' years of employment with Seller or its predecessor entities) to each of the Seller's employees listed on Schedule 8.2 hereto and Seller hereby agrees to cooperate in good faith with Buyers to effectuate the hiring of such employees. Such terms and conditions as currently exist are set forth on Schedule 8.2.

8.3. Severance. With respect to employees listed on Schedule 8.2 hereto who accept employment with a Buyer no later than within 10 days of the date hereof, the Buyers agree to adopt the following severance policy and make all payments pursuant thereto to all employees entitled to such payments pursuant hereto, in a single lump sum payable at the time of termination in the case of each employee so entitled: until the first anniversary of the date of this Agreement, any employee, who is terminated by either Buyer for any reason, or is subject to Constructive Termination (as defined below), shall be entitled to a lump sum severance payment payable at the time of termination from Buyers, jointly and severally, equal to one year's salary, if such employee has more than ten years' service, or one-half year's salary, if such employee has more than one year's but fewer than ten years' service (in each case including as applicable service for the purpose of such determination service for the Seller or its predecessor entities). For purposes of this Agreement a "Constructive Termination" shall occur if an employee elects not to remain in Buyer's employ as a result of Buyer's making it a condition of employment that such employee's place of employment be moved from Montreal to St. Jerome or any other place and such move (a) increases such employee's commuting distance more than 35 kilometers and travel time more than 50% or (b) results in either a commuting distance of more than 70 kilometers or travel time of more than 60 minutes. Severance payments shall be reduced by any withholding required under applicable provincial or federal Canadian law.

8.4. Third Party Beneficiaries. Each Buyer hereby expressly acknowledges that the employees listed in Schedule 8.2 are intended as third party beneficiaries of the provisions of Section 8.2 and 8.3 of this Agreement.

8.5. Transition Services. The Seller agrees to make available Bob Smith, who will remain an employee of the Seller, to provide reasonable transition services to Buyers (provided that such services shall be without liability to Seller, which shall not be responsible for any action or omission of Bob Smith) without cost to Buyers after the Closing for a period of thirty (30) days.

**9. GOVERNING LAW**

9.1. Governing Law. This Agreement shall be governed by and construed in accordance with the domestic substantive laws of the State of New York, without giving effect to any choice or conflict of law provision or rule that would cause the application of the domestic substantive laws of any other jurisdiction.

9.2. Consent to Jurisdiction. Each of the parties agrees that all actions, suits or proceedings arising out of or based upon this Agreement or the subject matter hereof shall be brought and maintained exclusively in the federal and state courts of the State of New York. Each of the parties hereto by execution hereof

(i) hereby irrevocably submits to the jurisdiction of the federal and state courts in the State of New York for the purpose of any action, suit or proceeding arising out of or based upon this Agreement or the subject matter hereof and

(ii) hereby waives to the extent not prohibited by applicable law, and agrees not to assert, by way of motion, as a defense or otherwise, in any such action, suit or proceeding, any claim that he or it is not subject personally to the jurisdiction of the above-named courts, that he or it is immune from extraterritorial injunctive relief or other injunctive relief, that his or its property is exempt or immune from attachment or execution, that any such action, suit or proceeding may not be brought or maintained in one of the above-named courts, that any such action, suit or proceeding brought or maintained in one of the above-named courts should be dismissed on grounds of forum non conveniens, should be transferred to any court other than one of the above-named courts, should be stayed by virtue of the pendency of any other action, suit or proceeding in any court other than one of the above-named courts, or that this Agreement or the subject matter hereof may not be enforced in or by any of the above-named courts.

Each of the parties hereto hereby consents to service of process in any such suit, action or proceeding in any manner permitted by the laws of the State of New York, agrees that service of process by registered or certified mail, return receipt requested, at the address specified in or pursuant to Section 11 hereof is reasonably calculated to give actual notice and waives and agrees not to assert by way of motion, as a defense or otherwise, in any such action, suit or proceeding any claim that service of process made in accordance with Section 11 hereof does not constitute good and sufficient service of process. The provisions of this Section 9.2 shall not restrict the ability of any party to enforce in any court any judgment obtained in a federal or state court of the State of New York.

9.3. Waiver of Jury Trial. To the extent not prohibited by applicable law which cannot be waived, each of the parties hereto hereby waives, and covenants that he or it will not assert (whether as plaintiff, defendant, or otherwise), any right to trial by jury in any forum in respect of any issue, claim, demand, cause of action, action, suit or proceeding arising out of or based upon this Agreement or the subject matter hereof, in each case whether now existing or hereafter arising and whether in contract or tort or otherwise. Any of the parties hereto may file an original counterpart or a copy of this Section 9.3 with any court as written evidence of the consent of each of the parties hereto to the waiver of his or its right to trial by jury.

9.4. Reliance. Each of the parties hereto acknowledges that he or it has been informed by each other party that the provisions of this Section 9 constitute a material inducement upon which such party is relying and will rely in entering into this Agreement and the transactions contemplated hereby.

**10. MISCELLANEOUS.**

10.1. Entire Agreement; Waivers. This Agreement constitutes the entire agreement among the parties hereto pertaining to the subject matter hereof and supersedes all prior and contemporaneous oral agreements, understandings, negotiations and discussions, and all prior written agreements and other writings of the parties with respect to such subject matter. No waiver of any provision of this Agreement shall be deemed to or shall constitute a waiver of any other provision hereof (whether or not similar), shall constitute a continuing waiver unless otherwise expressly provided nor shall be effective unless in writing and executed (i) in the case of a waiver by either Buyer, by both Buyers, and (ii) in the case of a waiver by the Seller, by the Seller.

10.2. Amendment or Modification, etc. The parties hereto may not amend or modify this Agreement except in such manner as may be agreed upon by a written instrument executed by each Buyer and the Seller. Any written amendment, modification or waiver executed by each Buyer and the Seller shall be binding upon each Buyer and the Seller.

10.3. Survival, etc. All representations, warranties, covenants and agreements made by or on behalf of any party hereto in this Agreement (including without limitation the Schedules hereto), or pursuant to any document, certificate, financial statement or other instrument referred to herein or delivered in connection with the transactions contemplated hereby, shall be deemed to have been material, of independent significance and relied upon by the parties hereto, notwithstanding any investigation made by or on behalf of any of the parties hereto or any opportunity therefor or any actual or constructive knowledge thereby obtained, and shall survive the execution and delivery of this Agreement and the Closing, as provided herein.

10.4. Further Assurances. The Seller and each Buyer agree that from time to time, that they will do, execute, acknowledge or deliver, and cause to be done, executed, acknowledged or delivered, all such further acts deeds, assignments, transfers, conveyances, powers of attorney, notarial transfer deeds or assurances as may reasonably requested by the other to consummate the transactions contemplated hereby. In addition, NOVET agrees to use commercially reasonable efforts to include the Seller as a named insured under its product liability insurance with coverage throughout the Territory (as defined in the Distribution Agreement) in respect of products purchased from NOVET for an amount not lower than levels in effect after XXXXX, 20XX. Any cash received by the Seller in payment of accounts receivable included in the Equipment Assets shall be held by Seller in trust for and remitted by Seller to NOVET Canada, immediately upon receipt, and in the form received.

10.5. No Third Parties. Except as set forth in Sections 6 and 8.4 hereof, neither this Agreement nor any provision set forth herein is intended to, or will, create any rights in or confer any benefits upon any person other than the parties hereto and their respective successors and permitted assigns.

10.6. No Longer Distributor. The Seller acknowledges and agrees that after the date hereof it shall not hold itself out as a distributor of NOVET or any of its Affiliates for periods after the date hereof.

10.7. Headings, etc. Section and subsection headings are not to be considered part of this Agreement, are included solely for convenience, are not intended to be full or accurate descriptions of the content thereof and shall not affect the construction hereof. This Agreement shall be deemed to express the mutual intent of the parties, and no rule of strict construction shall be applied against any party.

10.8. Severability. In the event that any provision hereof would, under applicable law, be invalid or unenforceable in any respect, such provision shall(to the extent permitted by applicable law) be construed by modifying or limiting it so as to be valid and enforceable to the maximum extent compatible with, and possible under, applicable law. The provisions hereof are severable, and in the event any provision hereof should be held invalid or unenforceable in any respect, it shall not invalidate, render unenforceable or otherwise affect any other provision hereof.

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

10.10. Successors and Assigns. All of the terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective transferees, successors and assigns (each of which such transferees, successors and assigns shall be deemed to be a party heretofore all purposes hereof); provided, however that (i) no party may transfer any of its rights or obligations hereunder without the consent of each Buyer and the Seller; except that (a) each Buyer and the Seller and any permitted transferee thereof may assign its rights and obligations hereunder, in whole or in part, to any entity which is controlled by or under common control with such Buyer or Seller, provided NOVET (in the case of such Buyer) or the Seller (in the case of the Seller) guarantees all obligations hereunder of any such transferee, (b) each Buyer and any permitted transferee thereof may transfer any of its rights hereunder to ABC Capital Corporation or any other institutional lender and their respective successors for security purposes (and the Sellers acknowledges the assignment of the indemnities of the Seller hereunder to ABC Capital Corporation, as Agent for security purposes) and (c) the Seller and any permitted transferee thereof may transfer any of its rights hereunder to ABC Capital Corporation or any other institutional lender and their respective successors for security purposes, and (ii) no transfer or assignment by any party shall relieve such party of any of its obligations hereunder. Except as expressly provided herein in Sections 6 and 8.4 hereof, this Agreement shall not confer any right or remedy upon any Person other than the parties and their respective transferees, successors and assigns. A merger shall not constitute a transferor assignment for purposes of this Section 10.10.

10.11. Settlement, etc. This Agreement is one of the documents contemplated by the Settlement Agreement entered into between and among the Buyers, the Seller and certain other parties of even date herewith. For the avoidance of doubt, the parties acknowledge and agree that the Seller is not assigning to Buyers, and Buyers are not assuming from the Seller, the following agreements which shall not be a part of the Purchased Assets:

(i) this Agreement,

(ii) the Settlement Agreement,

(iii) agreements involving the parties and their Affiliates entered into

(a) in connection with the closing under and the transactions contemplated by the Master Transaction Agreement, and

(b) in connection with the closing under and the transactions contemplated by the Settlement Agreement,

(iv) the Canada License Agreement (as defined in the Settlement Agreement),

(v) the Distribution Agreement,

(vi) agreements or understandings relating to the grant of the perpetual exclusive right to the DeltaT name for a variety of products, including exercise equipment, to third parties for Japan and Australia, respectively (which rights to such third parties with respect to fitness equipment the Seller represents and warrants were all granted prior to XXXXXXXX, 20XX), and

(vii) any agreements between the Seller and any Affiliate of the Seller.

10.12. French Language. The parties acknowledge that they have requested this agreement and all ancillary documents to be drawn up in English language only. Les parties reconnaissent avoir exige que cette convention ainsi que tousles documents y afferents soient rediges en anglais seulement.

**11. NOTICES.**

Any notices or other communications required or permitted hereunder shall be effective if in writing and delivered personally or sent by telecopier, Federal Express, or registered or certified mail, postage prepaid, addressed as follows:

If to Seller, to it at :

XXXXXXXXX

If to NOVET or NOVET Canada to it at:

XXXXXXXXXX

Unless otherwise specified herein, such notices or other communications shall be deemed effective (a) on the date delivered, if delivered personally, (b) two business days after being sent by Federal Express, if sent by Federal Express,

(c) one business day after being delivered, if delivered by telecopier with confirmation of good transmission, and (d) three business days after being sent, if sent by registered or certified mail. Each of the parties hereto shall been titled to specify a different address by giving notice as aforesaid to each of the other parties hereto.

**12. CERTAIN ADDITIONAL COVENANTS.**

12.1. Certain Investments. Seller agrees not to acquire after the Closing, and to cause Seller's affiliates controlling, controlled by or under common control with the Seller not to acquire after the Closing, directly or indirectly, any additional equity interest in any Existing Distributor.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have hereunto set their hands under seal, as of the date first above written.

|  |
| --- |
| NOVET: NOVET HEALTH & FITNESS, INC. |
| By: |
| ------------------------------------ |
| Title: |
| NOVET: CANADA: NOVET OF CANADA INC. |
| By: |
| ------------------------------------ |
| Title: |

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have hereunto set their hands under seal, as of the date first above written.

DELTAT SPORTS EQUIPMENT CO., LTD

|  |
| --- |
| By: |
| ------------------------------ |
| Title: |

**APA#21**

**ASSET PURCHASE AGREEMENT**

ASSET PURCHASE AGREEMENT (this " Agreement ")

dated effective as of December 22, 2008,

by and between

Softech, Inc., a Delaware corporation (" Buyer "),

and

ALLROUND Inc., a Nevada corporation (" Seller ").

Buyer and Seller are individually referred to as a "Party" or collectively as "the Parties" herein.

RECITALS

WHEREAS, Seller runs a business in software and hardware in the defense, homeland security, systems diagnostics and prognostics, sensor fusion, information and computational technology in the U.S. (the " Transferred Business ") and also owns fuel cell, battery, and test equipment businesses, and an interest in Transfuel LLC,, and holds indirectly holds majority ownership in a BVI and China-based enterprise manufacturing copyrighted artwork sold and marketed in major U.S. retail stores and harvesting fast-growing grass for biotech and animal feed purposes.

WHEREAS, Buyer desires to purchase from Seller and Seller desires to sell to Buyer, on the terms and subject to the conditions of this Agreement, a substantial amount of Seller's assets (the " Assets ") in connection with the Transferred Business in exchange for the consideration described in Section 1 below;

WHEREAS, in connection with such transactions, Seller agrees to make certain additional representations and agreements with the Buyer as set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the premises of the mutual agreements and covenants hereinafter set forth, Buyer and Seller (collectively, the " Parties ") agree as follows:

**Section 1. Purchase of Assets .**

1.1 Assets . Seller hereby sells, assigns, conveys and otherwise transfers (" Transfer ") to Buyer, and Buyer's successors and assigns, all of the right, title and interest in and to the Assets held by Seller, which consist of the following described assets (collectively, the " Purchased Assets "):

(a) trade and assumed names (except for the trade name "ALLROUND" and Direct Ethanol Fuel Cell Corporation "DEFCC" and "Transfuel");

(b) customer lists and customer orders received after Closing;

(c) Seller's Licenses (as defined below) or other contractual arrangements for "GLOW", an inference engine technology, and any related Licenses from X-university for use of GLOW in one or more applications including but not limited to defense applications, homeland defense, maritime security, and diagnostics and prognostics, medical systems, manufacturing, plan management, telecommunications, etc.);

(d) Seller's Licenses and Intellectual Property relating to the GOAL Perimeter Surveillance Radar solution (by …) (" GOAL Radar ") and also the deposit on the radar equipment;

(e) Seller's Licenses and Intellectual Property relating to:

(i) A - technology;

(ii) B- technology ;

(iii) C- technology ;

(f) all other Seller's right, title and interest in any technology Licenses or other similar agreements expressly assumed by the Buyer and set forth in Schedule 1 ;

(g) Certain equipment owned by Seller consisting of (i) desktop and laptop computers used by Seller's consultants or employees as described on Schedule 2 attached hereto and (ii) test and manufacturing equipment needed to carry on the business units acquired by the Buyer;

(h) all other intangible assets related to the assets set forth in subsections (a) through (h) listed above;

(i) all uniform resource locators ("URLs") associated with the domain names of the Seller related, directly or indirectly, to the Purchased Assets as described in sub-sections (a) through (i) above, including, without limitation, any websites related to the Purchased Assets together with all content of such websites but excluding URLs and websites incorporating the trade name "ALLROUND", or relating to DEFCC (as defined below);

(j) all right, title and interest of Seller in and to all Intellectual Property rights relating to such assets set forth in sub-sections (a) through (j) above, including without limitation all books, payment records; accounts; correspondence; production records; technical, accounting and procedural manuals; development and design data; and other useful business records utilized in the conduct of or relating to the Purchased Assets (collectively "Records").

**1.2 Excluded Assets . Notwithstanding** anything contained in Section 1.1 to the contrary, Seller shall not Transfer to Purchaser, and Purchaser shall not accept the Transfer of, the following properties, assets and rights, all of which shall be retained by Seller (the " Excluded Assets "):

(a) Seller's rights under this Agreement;

(b) the Intellectual Properties, including trademark, logo, trade name and corporate name, URLs, websites relating to and incorporating the name "ALLROUND", and Direct Ethanol Fuel Cell Corporation , "DEFCC" and any modifications or derivations of any of the foregoing;

(c) Seller's Equipment including without limitation, furniture, fixtures, computers and tenant improvements and computer servers, not otherwise described on Schedule 2 attached hereto; r;

(d) The energy businesses, including without limitation the humidity sensor, battery tester, and battery businesses and also Seller's member interest in Transfuel LLC, until after the option price of $400,000.00 is paid to Seller

(e) Seller's Accounts Receivable for products or services arising out of transactions prior to closing;

(f) equity securities of, or any other rights, interests or privileges pertaining to any of Seller's subsidiaries.

**1.3 Closing .** At the Closing, subject to the terms and conditions hereof, the Seller shall deliver to Buyer:

(a) an executed Bill of Sale in the form set forth as Exhibit A ;

(b) an Assignment and Assumption Agreement in the form set forth as Exhibit B ; and

(c) and the Seller's Secretary's Certificate.

and the Buyer shall deliver to Seller:

(a) an executed Assignment and Assumption Agreement in the form set forth as Exhibit B;

(b) and the Buyer's Secretary's Certificate.

**1.4 Purchase Price Amount .** The aggregate consideration to be paid by Buyer for the Assets (the " Purchase Price ") shall be $479,000:

(a) $200,000 which has already been paid by Buyer as a deposit upon executed of Term Sheets between Seller and Buyer;

(b) $250,000 payable by Buyer's assumption of certain indebtedness of Seller as evidenced by that certain promissory note executed and delivered by Seller dated as of in the original principal amount of $250,000.00 plus accrued interest of $29,000 executed by Seller in favor of Telluride Manufacturing Ltd. and subsequently acquired by XYZ Capital Trust (" Telluride Note "). Buyer represents that the Telluride Note shall be deemed satisfied as of the Closing.

**1.5 Liabilities .** Buyer shall assume and agree to pay, honor and discharge when due, , (i)remaining amounts owed by Seller to Goaltech the supplier of the GOAL Radar (The radar assets in section 1.1(d) will not be transferred to Seller until the liability to GOALTECH has been removed, Seller will retain all rights to the radar assets in section 1.1(d) if the liability has not been removed by December 31, 2008. , (" Assumed Liabilities "). Other than the Assumed Liabilities, Buyer shall not assume nor shall Buyer or any affiliate, or any officer, director, employee or stockholder of Buyer be deemed to assume, and none of the foregoing persons shall be liable for, any of the liabilities, obligations, litigation, disputes, debts, payables counterclaims, rights of set-off or return of Seller of any kind or nature, contingent or otherwise, known or unknown, direct or indirect, whether in existence on or prior to or after the date of Closing.

**1.6 Definitions .**

" Accounts Receivable " shall mean any and all accounts receivable, notes and other amounts receivable from third parties, whether or not in the ordinary course, together with any unpaid financing charges accrued thereon.

" Equipment " shall mean all furniture, fixtures and all equipment.

" Intellectual Property " shall mean, patents, patent applications, patent rights, trademarks, trademark applications, trade names, service marks, service mark applications, copyrights, copyright applications, franchises, licenses, databases, domain names, pages on the World Wide Web, computer programs and other computer software, including the software programs, server codes, database codes and HTML codes, if any, developed by Seller, trade secrets, customer lists, proprietary technology, processes and formulae, source code, object code, algorithms, architecture, structure, display screens, layouts, development tools, instructions, templates, marketing materials, inventions, trade dress, logos and designs, and all documentation and all media constituting, describing or relating to the foregoing including but not limited to recommended product features.

" License " shall mean any contract or agreement that grants a person the right to use or otherwise enjoy the benefits of any Intellectual Property (including without limitation any covenants not to sue with respect to any Intellectual Property).

**Section 2. Representations and Warranties of Seller** . Seller hereby represents and warrants to, and agrees with, Buyer as follows:

**2.1 Existence and Good Standing .** Seller is a corporation duly organized, validly existing and in good standing under the laws of its state of incorporation and has all necessary power and authority to carry on its business as now being conducted and to own the Assets. The Company is duly qualified or duly licensed to transact business and is in good standing in each jurisdiction in which the nature of the business conducted by it makes such qualification necessary

**2.2 Authorization and Validity of Agreement .** Seller has full power and authority to execute and deliver this Agreement, to perform its obligations hereunder, and to consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement by Seller, and the consummation by it of the transactions contemplated hereby, have been duly and validly authorized and approved by all necessary corporate action of Seller. This Agreement has been duly and validly executed and delivered by Seller and is a valid and binding obligation of Seller, except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other laws of general application affecting enforcement of creditors' rights generally and (ii) as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies.

**2.3 Consents and Approvals; No Violations .** The execution, delivery and performance of this Agreement by Seller and the consummation by Seller of the transactions contemplated hereby will not, with or without the giving of notice or the lapse of time or both:

(a) violate, conflict with, or result in a breach or default under any provision of the organizational documents of Seller;

(b) violate any statute, ordinance, rule, regulation, order, judgment or decree of any court or of any governmental or regulatory body, agency or authority applicable to Seller or by which the Assets may be bound;

(c) except for any filings pursuant to applicable federal and states securities laws, require any filing by Seller with, or require Seller to obtain any permit, consent or approval of, or require Seller to give any notice to, any governmental or regulatory body, agency or authority or any other person..

**2.4 Intellectual Property .** To Seller's knowledge, Seller has sufficient legal rights of ownership, license or otherwise to all patents, copyrights, trade secrets, information and proprietary rights and processes (collectively, the " Intellectual Property ") which comprise the Assets, without any conflict with or infringement of the rights of others, including, but not limited to, all parties with whom Seller has previously entered into contracts relating to the sale or license by or to Seller of any Intellectual Property. There are no outstanding options, licenses, or agreements of any kind relating to any of the Assets, nor is Seller bound by or a party to any options, licenses or agreements of any kind with respect to the patents, trademarks, service marks, trade names, copyrights, trade secrets, licenses, information, proprietary rights and processes of any other person or entity. Seller has not received any communications alleging that Seller has violated or, by conducting its business as proposed, would violate any of the patents, trademarks, service marks, trade names, copyrights or trade secrets or other proprietary rights of any other person or entity. Seller is not aware that any of its employees is obligated under any contract (including licenses, covenants or commitments of any nature) or other agreement, or subject to any judgment, decree or order of any court or administrative agency, that would interfere with the use of his or her best efforts to promote the interests of Seller. Neither the execution nor delivery of this Agreement nor the consummation of the transactions contemplated herein, shall conflict with or result in a breach of the terms, conditions or provisions of, or constitute a default under, any contract, covenant or instrument under which any of such employees is now obligated.

**Section 3. Representations and Warranties of Buyer** . Buyer hereby represents, warrants and agrees as follows:

**3.1 Existence and Good Standing of Buyer; Power and Authority .** Buyer is a corporation duly organized and validly existing under the laws of the state of incorporation. Buyer has full power and authority to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The execution, delivery and performance of this Agreement by Buyer and the consummation by Buyer of the transactions contemplated hereby have been duly and validly authorized and approved by all necessary corporate action of Buyer. This Agreement has been duly and validly executed and delivered by Buyer and is a valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms, except

(i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other laws of general application affecting enforcement of creditors' rights generally and

(ii) as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies.

**3.2 Consents and Approvals; No Violations .** The execution, delivery and performance of this Agreement by Buyer and the consummation by Buyer of the transactions contemplated hereby will not, with or without the giving of notice or the lapse of time or both:

(a) violate, conflict with, or result in a breach or default under any provision of the articles of organization or by-laws or other comparable organizational documents or Buyer;

(b) violate any statute, ordinance, rule, regulation, order, judgment or decree of any court or of any governmental or regulatory body, agency or authority applicable to Buyer or by which any of its properties or assets may be bound;

(c) require any filing by Buyer with, or require Buyer to obtain any permit, consent or approval of, or require Buyer to give any notice to, any governmental or regulatory body, agency or authority or any other person.

**3.3 Disclosure of Information.** Buyer believes it has received all the information it considers necessary or appropriate for deciding whether to acquire the Assets. Buyer further represents that it has had an opportunity to ask questions and receive answers from Seller regarding the Assets and the Transferred Business of Seller.

**Section 4. Covenants And Other Agreements .**

**4.1 Conduct of the Business .** Seller covenants and agrees that, between the date hereof and the Closing, Seller shall conduct its business in the ordinary course and consistent with Seller's past practice.

**4.2 Option for Additional Purchase of Assets** Seller grants Buyer an option to purchase the humidity sensor, battery tester, and battery businesses and ALLROUND's share in Transfuel LLC for a cash purchase price of $400,000 This option expires on April 18, 2009. If ALLROUND receives an offer for one or more of these businesses during the option period, Buyer must either purchase the business unit at the higher of the offered price, or exercise the entire option for $400,000 within seven days of written notification by Seller. At Buyer's request, the following are components of the $400,000- humidity sensor $175,000, battery tester $75,000, battery business $50,000, and Transfuel $100,000. The option requires purchase of all these business units together. These prices do not reflect sales or offering prices for the individual business units.

**4.4 Employment And Sublease of Space .** Buyer wishes to retain certain ALLROUND consultants and employees for the purpose of assisting Buyer with efforts to commercialize the Assets. Buyer will sublease space from ALLROUND on a month-to-month basis for a minimum of $2,000 per month. At closing, buyer will provide ALLROUND with $4,000 to cover the first two months of the sublease. Buyer will prepay these expenses in the future on a monthly basis. Buyer will enter into an employment agreement with Bill Miller.

**4.5 Bulk Sales Law .** Buyer waives compliance with any applicable bulk sales laws, if any.

**Section 5. Export Controls .**

**5.1 Export Control Laws .** Each of Buyer and Seller (generically, a " Party ") agrees that each shall comply with the export control laws of the United States as applicable to this Agreement, including, without limitation, the transfer of technologies and commodities (hereinafter collectively called "items") pursuant to the terms of this Agreement. In the event that one Party shall transfer items to the other Party, the transferring Party shall determine if the transfer is subject to export controls. If so, the transferring Party shall comply with all domestic requirements to assure the lawful export of the items, and shall advise the receiving Party of the provision of the export control lists, which controls the transfer. The transferring Party shall provide the other Party with the classification numbers according to the export control lists, if controlled.

**5.2 No Military Weapons Purposes .** During and after the term of this Agreement, Buyer shall not use any hardware, software or any other information received from Seller under this Agreement for "Military Weapons Purposes" (as defined below). For the purpose of this Section 5.2, "Military Purposes" means the design, development, manufacture or use of any weapons, including without limitation, nuclear weapons, biological weapons, chemical weapons and missiles and land mines.

**5.3 No Business with Countries subject to UN Sanctions .** During and after the term of this Agreement, Buyer shall not render services or sell products to any customers in any country designated as "Countries against which sanctions should be taken" by certain resolution of the Security Council of the United Nations as long as such resolutions remain valid.

**5.4 Liability for Breach .** Should Buyer fail to comply with any of the obligations set forth in this Section 5, Buyer shall indemnify and hold harmless the Seller from any and all penalties, fines, expenses or damages which might arise as a result of such a failure.

**Section 6. Conditions To Buyer's Obligations .** The obligation of Buyer to purchase the Assets is subject to the fulfillment to its satisfaction of the following conditions:

**6.1 Representations and Warranties Correct .** The representations and warranties made by Seller shall be true and correct when made and as of the Closing.

**6.2 No Material Adverse Change** . Since the date of this Agreement, there shall not have occurred, in the opinion of Buyer, any material adverse change in the condition of the Assets (" Material Adverse Change "), and no change in the business or operations in which such Assets are used.

**6.3 Performance of Obligations .** Seller shall have obtained all necessary consents and performed all obligations and conditions required herein to be performed on the date thereof.

**6.4 Seller's Secretary's Certificate .** Buyer shall have received a true and complete copy, certified by the Secretary of Seller, of the resolutions duly and validly adopted by each of the Board of Directors, evidencing their authorization of the execution and delivery of this Agreement to which Seller is a party and the consummation of the transactions contemplated hereby and thereby.

**6.5 Assignment and Assumption Agreement .** Seller shall have executed and delivered the Assignment and Assumption Agreement.

**6.6 Bill of Sale .** Seller shall have executed and delivered the Bill of Sale.

**6.7 Third Party Consents** . Seller shall have obtained all required approvals of licensors of licenses to be assigned from Seller to Buyer.

**Section 7. Conditions To Seller's Obligations .** The obligation of Seller to sell the Assets is subject to the fulfillment to its satisfaction of the following conditions:

**7.1 Representations and Warranties Correct .** The representations and warranties made by Buyer shall be true and correct when made and as of the Closing.

**7.2 Payments:** Buyer has received from Seller $33,000 by wire transfer for X-university's intellectual property fees and for two month's rent of ALLROUND office and laboratory space,.

**7.3 Assignment of $250,000 Promissory Note .** XYZ Capital Trust shall have executed and delivered the Assignment of the Telluride Note to ALLROUND.

**7.3 Buyer's Secretary's Certificate .** Seller shall have received a true and complete copy, certified by the Secretary or an Assistant Secretary of Buyer, of the resolutions duly and validly adopted by the Board of Directors of Buyer evidencing its authorization of the execution and delivery of this Agreement to which Buyer is a party and the consummation of the transactions contemplated hereby and thereby.

**7.4 Performance of Obligations .** Buyer shall have obtained all necessary consents and performed all obligations and conditions required herein to be performed on the date thereof.

**7.5 Assignment and Assumption Agreement .** Buyer shall have executed and delivered the Assignment and Assumption Agreement.

**Section 8. Closing .** The purchase and sale of Assets shall take place at the office of Moyers, Angel LL.P. at 1477 Treeline Blvd., Suite 453, San Diego Cal. 91901 on December 18, 2008 or on such other date as the Buyer and Seller mutually agree upon in writing or orally (the " Closing ").

**Section 9. Indemnification .**

**9.1 Survival of Representations and Warranties .** Buyer and Seller agree that except in the case of actual fraud, the representations and warranties made by Buyer and Seller respectfully, will expire with respect to any claim not made on or before the first anniversary of the Closing, except for representations and warranties relating to undisclosed tax matters, which will continue in full force and effect until the expiration of the relevant periods for assessment of tax under applicable tax laws. If written notice of a claim has been given prior to the expiration of the applicable representations and warranties, then the relevant representations and warranties shall survive as to such claim until the claim has been finally resolved.

**9.2 Indemnification by Seller.**

(a) Indemnifiable Losses . Subject to Section 9.2(b) and (c) below, the Buyer and its affiliates, officers, directors, employees, agents, successors and assigns shall be indemnified and held harmless by Seller, jointly and severally, for any and all liabilities, losses, damages, claims, costs and expenses, interest, awards, judgments and penalties actually suffered or incurred by them (including, without limitation, any Action brought or otherwise initiated by any of them) (a " Loss "), arising out of or resulting from the following:

(i) the breach of any representation or warranty made by Seller contained in the Agreement;

(ii) the breach of any covenant or agreement by Seller contained in the Agreement;

(iii) any and all Losses suffered or incurred by Buyer by reason of or in connection with any claim or cause of action of any third party to the extent arising out of any action, inaction, event, condition, liability or obligation of Seller occurring or existing prior to the Closing; and,

(iv) all liabilities of Seller other than the Assumed Liabilities, none of which shall be assumed by Buyer.

(b) Limits on Indemnification . Notwithstanding anything to the contrary contained in this Agreement, the maximum amount of indemnifiable Losses which may be recovered from Seller arising out of or resulting from the causes enumerated in Section 9.2(a) shall be an amount equal to the Purchase Price actually received by Seller.

**9.3 Indemnification by Buyer .**

(a) Subject to Section 9.3(b) below, the Seller and its affiliates, officers, directors, employees, agents successors and assigns shall be indemnified and held harmless by Buyer, jointly and severally, for Loss, arising out of or resulting from the following:

(i) the breach of any representation or warranty made by Buyer contained in the Agreement; and

(ii) the breach of any covenant or agreement by Buyer contained in the Agreement.

(iii) any and all Losses suffered or incurred by Seller by reason of or in connection with any claim or cause of action of any third party to the extent arising out of any action, inaction, event, condition, liability or obligation of Buyer occurring or existing prior to the Closing.

(b) Limits on Indemnification . Notwithstanding anything to the contrary contained in this Agreement, the maximum amount of indemnifiable Losses which may be recovered from Buyer arising out of or resulting from the causes enumerated in Section 9.3(a) shall be an amount equal to the Purchase Price actually received by Seller.

**9.4 Indemnification Procedures .**

(a) For purposes of this Section 9.4, " Indemnified Party " shall mean Buyer or Seller, as the case may be, and its respective affiliates, officers, directors, employees, agents, successors and assigns, and " Indemnifying Party " shall mean Buyer or Seller, as the case may be, when indemnifying Seller or Buyer, as the case may be and its respective affiliates, officers, directors, employees, agents, successors and assigns.

(b) An Indemnified Party shall give the Indemnifying Party notice of any matter which an Indemnified Party has determined has given rise to a right of indemnification under this Agreement, within sixty (60) days of such determination, stating the amount of the Loss, if known, and method of computation thereof, a brief description of the facts upon which such claim is based and containing a reference to the provisions of this Agreement in respect of which such right of indemnification is claimed or arises.

(c) The obligations and liabilities of the Indemnifying Party under this Section 9 with respect to Losses arising from claims of any third party which are subject to the indemnification provided for in this Section 9 (individually, a " Third Party Claim " or collectively " Third Party Claims ") shall be governed by and contingent upon the following additional terms and conditions: if an Indemnified Party shall receive notice of any Third Party Claim, the Indemnified Party shall give the Indemnifying Party notice of such Third Party Claim within thirty (30) days of the receipt by the Indemnified Party of such notice; provided, however, that the failure to provide such notice shall not release the Indemnifying Party from any of its obligations under this Section 9 except to the extent the Indemnifying Party is materially prejudiced by such failure. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party hereunder against any Losses that may result from such Third Party Claim, then the Indemnifying Party shall be entitled to assume and control the defense of such Third Party Claim at its expense and through counsel of its choice if it gives notice of its intention to do so to the Indemnified Party within five (5) days of the receipt of such notice from the Indemnified Party; provided, however, that if there exists or is reasonably likely to exist a conflict of interest that would make it inappropriate, for the same counsel to represent both the Indemnified Party and the Indemnifying Party, then the Indemnified Party shall be entitled to retain its own counsel. In the event the Indemnifying Party exercises the right to undertake any such defense against any such Third Party Claim as provided above, the Indemnified Party shall cooperate with the Indemnifying Party in such defense and make available to the Indemnifying Party at the Indemnifying Party's expense, all witnesses, pertinent records, materials and information in the Indemnified Party's possession or under the Indemnified Party's control relating thereto as is reasonably required by the Indemnifying Party. Similarly, in the event the Indemnified Party is, directly or indirectly, conducting the defense against any such Third Party Claim, the Indemnifying Party shall cooperate with the Indemnified Party in such defense and make available to the Indemnified Party, at the Indemnifying Party's expense, all such witnesses, records, materials and information in the Indemnifying Party's possession or under the Indemnifying Party's control relating thereto as is reasonably required by the Indemnified Party. No such Third Party Claim may be settled by the Indemnifying Party without the prior written consent of the Indemnified Party which consent may not be unreasonably withheld or delayed. No such Third Party Claim may be settled for monetary damages by the Indemnified Party without the prior written consent of the Indemnifying Party which consent may not be unreasonably withheld or delayed.

(c) To the extent that the Indemnifying Parties' undertakings set forth in this Section 9 may be unenforceable, the Indemnifying Parties shall be obligated, jointly and severally, to contribute the maximum amount that it is permitted to contribute under applicable law to the payment and satisfaction of all Losses incurred by the Indemnified Parties.

**9.5 INDEMNIFICATION IN CASE OF STRICT LIABILITY OR INDEMNITEE NEGLIGENCE .**

THE INDEMNIFICATION PROVISIONS IN THIS SECTION SHALL BE ENFORCEABLE REGARDLESS OF WHETHER THE LIABILITY IS BASED UPON PAST, PRESENT OR FUTURE ACTS, CLAIMS OR LEGAL REQUIREMENTS (INCLUDING ANY PAST, PRESENT OR FUTURE ENVIRONMENTAL LAW, FRAUDULENT TRANSFER ACT, OCCUPATIONAL SAFETY AND HEALTH LAW OR PRODUCTS LIABILITY, SECURITIES OR OTHER LEGAL REQUIREMENT) AND REGARDLESS OF WHETHER ANY PERSON (INCLUDING THE PERSON FROM WHOM INDEMNIFICATION IS SOUGHT) ALLEGES OR PROVES THE SOLE, CONCURRENT, CONTRIBUTORY OR COMPARATIVE NEGLIGENCE OF THE PERSON SEEKING INDEMNIFICATION (PROVIDED THAT ANY CONTRIBUTORY OR COMPARATIVE NEGLIGENCE SHALL OFFSET ANY INDEMNIFICATION AMOUNTS OWED TO THE INDEMNIFIED PARTY FROM THE INDEMNIFYING PARTY) OR THE SOLE OR CONCURRENT STRICT LIABILITY IMPOSED UPON THE PERSON SEEKING INDEMNIFICATION.

**9.6 No Claims as Officer or Director .** Each party hereby agrees that such party ("Defending Party") will not make any claim for indemnification or right of contribution against the other party ("Claiming Party") by reason of the fact that any employee or other Affiliate of Defending Party was a director, officer, employee or agent of the Defending Party or was serving at the request of the Defending Party as a partner, trustee, director, officer, employee or agent of another entity (whether such claim is for judgments, damages, penalties, fines, costs, amounts paid in settlement, losses, expenses or otherwise and whether such claim is pursuant to any statute, charter document, bylaw, agreement or otherwise) with respect to any action, suit, proceeding, complaint, claim or demand brought by

(i) Claiming Party, or

(ii) a third party against Defending Party for which Claiming Party may seek indemnification against Defending Party (whether such action, suit, proceeding, complaint, claim, or demand is pursuant to this Agreement, applicable Law, or otherwise).

**9.7 No Consequential Damages .** Notwithstanding anything to the contrary elsewhere in this Agreement, no Party shall, in any event, be liable for any consequential, incidental, indirect, special or punitive damages relating to the breach or alleged breach hereof.

**Section 10. Miscellaneous .**

**10.1 Survival; Entire Agreement; Successors and Assigns; Counterparts; Headings .** The respective representations and warranties of Seller and Buyer contained in this Agreement, or in any Exhibit or Schedule delivered pursuant hereto shall not survive the date of the Closing. This Agreement (including the Exhibits and Schedules hereto) sets forth the entire understanding of the parties with respect to the subject matter hereof. Any previous agreements or understandings between the parties regarding the subject matter hereof are merged into and superseded by this Agreement. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors of the parties hereto. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original and all of which shall constitute the same instrument. The headings of the sections and paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction hereof.

**10.2 Modification .** No amendment, modification or alteration of the terms or provisions of this Agreement shall be binding unless the same shall be in writing and duly executed by the parties hereto.

**10.3 Transfer Taxes; Governing Law; Severability; Venue** (a) . Seller shall be responsible for and pay and indemnify and hold harmless Buyer for, any and all applicable United States sales, transfer, use, and other taxes and fees that may become due or payable as a result of the sale, conveyance, assignment, transfer or delivery of the Assets, whether levied on Buyer or Seller. This Agreement shall be governed by and construed in accordance with the laws of California. If any provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other provisions of this Agreement shall remain in full force and effect. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement shall be brought against any of the Parties in the courts of the State of Nevada, and each of the Parties irrevocably consents to the exclusive jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on any Party anywhere in the world by first class certified mail, return receipt requested, postage prepaid to the address at which such Party is to receive notice in accordance with this Agreement.

**10.4 Publicity .** Except as otherwise required by applicable laws or regulations, neither Seller nor Buyer shall issue any press release or make any other public statement, in each case relating to or connected with of this Agreement or the matters contemplated hereby, without obtaining the prior approval of the other party hereto to the contents and the manner of presentation and publication thereof, which approval shall not be unreasonably withheld.

**10.5 Confidentiality .** Except as otherwise required by applicable laws or otherwise provided by the terms of this Agreement, Seller agrees to, and to cause any respective affiliates to, keep confidential all non-public information, without limitation, relating to the Assets.

**10.6 Expenses .** Other than as set forth herein, Buyer and Seller will each be responsible for its own expenses incurred in connection with the transactions contemplated hereby.

**10.7 Preparation of Agreement .** Each party to this Agreement acknowledges that:

(i) the party had the advice of, or sufficient opportunity to obtain the advice of, legal counsel separate and independent of legal counsel for any other party hereto;

(ii) the terms of the transactions contemplated by this Agreement are fair and reasonable to such party; and

(iii) such party has voluntarily entered into the transaction contemplated by this Agreement without duress or coercion. Each party further acknowledges that such party was not represented by the legal counsel of any other party hereto in connection with the transactions contemplated by this Agreement, nor was he or it under any belief or understanding that such legal counsel was representing his or its interests. Each party agrees that no conflict, omission or ambiguity in this Agreement, or the interpretation thereof, shall be presumed, implied or otherwise construed against any other party to this Agreement on the basis that such party was responsible for drafting this Agreement.

**10.8 Assurances .** Each Party to this Agreement shall execute all instruments and documents and take all actions as may be reasonably required to effectuate this Agreement, whether before, concurrent with or after the consummation of the transactions contemplated hereby.

**10.9 Specific Performance .** Each of the Parties (" Breaching Party ") acknowledges and agrees that the other party (" Non-Breaching Party ") would be damaged irreparably in the event any of the provisions of this Agreement are not performed in accordance with their specific terms or otherwise are breached. Accordingly, the Breaching Party agrees that the Non-Breaching Party shall be entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof in any action instituted in any court of the United States or any state thereof having jurisdiction over the Parties and the matter (subject to the provisions set forth in Section 10.3 above), in addition to any other remedy to which they may be entitled, at law or in equity.

**10.10 Waiver; Remedies Cumulative .** The rights and remedies of the Parties to this Agreement are cumulative and not alternative. Neither any failure nor any delay by any Party in exercising any right, power or privilege under this Agreement or any of the documents referred to in this Agreement will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable law,

(a) no claim or right arising out of this Agreement or any of the documents referred to in this Agreement can be discharged by one Party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other Party;

(b) no waiver that may be given by a Party will be applicable except in the specific instance for which it is given; and

(c) no notice to or demand on one Party will be deemed to be a waiver of any obligation of that Party or of the right of the Party giving such notice or demand to take further action without notice or demand as provided in this Agreement or the documents referred to in this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, each of the parties hereto has caused this Asset Purchase Agreement

to be duly executed on its or his behalf as of the date above first written.

|  |  |  |  |
| --- | --- | --- | --- |
|  |  |  | BUYER |

|  |  |  |  |
| --- | --- | --- | --- |
|  |  |  | Softech Inc. |

|  |  |  |
| --- | --- | --- |
| By:  Title: |  | |s|John Hunter  Name: John Hunter  Its President |

|  |  |  |
| --- | --- | --- |
|  |  | SELLER |

|  |  |  |  |
| --- | --- | --- | --- |
|  |  |  | ALLROUND Inc. |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| By: |  | |s|Brenda Ferguson | | |
| Title: |  | Name:  CEO |  | Brenda Ferguson |

**APA#22**

**ASSET PURCHASE AGREEMENT**

by and between

MIDLAND LLC, an Illinois limited liability company, as Seller;

and

RANGER CORP., a Nevada corporation, as Purchaser

Dated as of XXXXXX

----Page Break----

TABLE OF CONTENTS

LIST OF EXHIBITS AND SCHEDULES

PREAMBLE………………………………………………………………………………………………………X

ARTICLE 1 PURCHASE AND SALE OF ASSETS……………………………………………………X

1.1. SALE OF ASSETS………………………………………………………………………………………..X

1.2. DEPOSIT…………………………………………………………………………………………………...X

1.3. ASSUMPTION OF LIABILITIES……………………………………………………………………X

1.4. EXCLUDED ASSETS……………………………………………………………………………………X

1.5. AMOUNT, PAYMENT AND ALLOCATION OF PURCHASE PRICE…………………....X

1.6. SECURITIES ISSUES…………………………………………………………………………………...X

ARTICLE 2 CLOSING………………………………………………………………………………………...X

2.1. CLOSING……………………………………………………………………………………………………X

2.2. DELIVERIES BY SELLER…………………………………………………………………………….X

2.3. DELIVERIES BY PURCHASER……………………………………………………………………..X

2.4. POSSESSION AND CONTROL OF PURCHASED ASSETS………………………………..X

2.5. FAILURE TO CLOSE…………………………………………………………………………………..X

ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF THE SELLER……………….X

3.1. ORGANIZATION……………………………………………………………………………………….X

3.2. AUTHORIZATION…………………………………………………………………………………….X

3.3. NO VIOLATION………………………………………………………………………………………..X

3.4. GOOD TITLE CONVEYED, ETC. ………………………………………………………………...X

3.5. NO BROKERS…………………………………………………………………………………………..X

3.6. NO VIOLATIONS, INVESTIGATIONS, CHARGES…………………………………………X

3.7. GOOD CONDITION AND REPAIR OF ASSETS………………………………………….X

ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF PURCHASER…………...X

4.1. ORGANIZATION……………………………………………………………………………………X

4.2. AUTHORIZATION…………………………………………………………………………………X

ii

----Page Break----

4.3. NO VIOLATION……………………………………………………………………………………X

4.4. GOOD TITLE CONVEYED, ETC. …………………………………………………………….X

4.5. NO BROKERS………………………………………………………………………………………X

4.6. NO LITIGATION…………………………………………………………………………………..X

ARTICLE 5 REPRESENTATIONS AND WARRANTIES

OF SELLER AND PURCHASER……………………………………………………………….X

ARTICLE 6 COVENANTS OF SELLER AND PURCHASER………………………….......X

6.1. REQUIRED APPROVALS……………………………………………………………………..X

6.2. COMMERCIALLY REASONABLE EFFORTS…………………………………………..X

6.3. NOTICES TO COMPANY CONTACTS……………………………………………………X

6.4. NO EMPLOYEE RELATIONSHIP………………………………………………………….X

ARTICLE 7 CONDITIONS TO OBLIGATIONS OF PURCHASER……………………..X

7.1. REPRESENTATIONS AND WARRANTIES……………………………………………X

7.2. PERFORMANCE………………………………………………………………………………..X

7.3. NO PROCEEDING OR LITIGATION……………………………………………………..X

7.4. DOCUMENTS……………………………………………………………………………………X

7.5. CONSENTS AND APPROVALS……………………………………………………………X

7.6. ASSETS NOT ADVERSELY AFFECTED……………………………………………….X

ARTICLE 8 CONDITIONS TO OBLIGATIONS OF SELLER…………………………..X

8.1. REPRESENTATIONS AND WARRANTIES………………………………………….X

8.2. PERFORMANCE………………………………………………………………………………X

8.3. NO INJUNCTION……………………………………………………………………………..X

ARTICLE 9 TERMINATION……………………………………………………………………X

9.1. TERMINATION EVENTS………………………………………………………………….X

9.2. EFFECT OF TERMINATION……………………………………………………………..X

ARTICLE 10 INDEMNIFICATION AND CONTRIBUTION………………………..X

10.1. SURVIVAL OF REPRESENTATIONS AND COVENANTS………………….X

10.2. INDEMNIFICATION…………………………………………………………………….X

iii

----Page Break----

10.3. THIRD PARTY CLAIMS……………………………………………………………….X

10.4. CONTRIBUTION………..……………………………………………………………….X

10.5. REMEDIES CUMULATIVE………………………………………………………......X

10.6. INDEMNIFICATION CAP…………………………………………………………….X

ARTICLE 11 NONCOMPETE AND NONDISCLOSURE……………………………X

11.1. NONDISCLOSURE……………………………………………………………………..X

11.2. INJUNCTIVE RELIEF…………………………………………………………………X

ARTICLE 12 MISCELLANEOUS PROVISIONS………………………………………X

12.1. PRESS RELEASES AND PUBLIC ANNOUNCEMENTS…………………...X

12.2. CONFIDENTIALIT…………………………………………………………………….X

12.3. GENERAL PROVISIONS…………………………………………………………….X

A. FURTHER ASSURANCES……………………………………………………………….X

B. PARTIES IN INTEREST…………………...…………………………………………….X

C. ADJUSTMENTS UPON SUBDIVISION OR

COMBINATION OF COMMON STOCK….…………………………………………….X

D. NOTICES………………………………….………………………………………………….X

E. FINAL AGREEMENT…………………………………………………………………….X

F. AMENDMENTS AND WAIVERS…………………………………………………….X

G. GOVERNING LAW……………………………………………………………………….X

H. SEVERABILITY………………..………………………………………………………….X

I. HEADINGS……………………………….………………………………………………….X

J. COUNTERPARTS………………………...……………………………………………….X

K. SURVIVAL OF REPRESENTATIONS …………………………………………….X

L. EXPENSES………………………………………………………………………………….X

M. CONSTRUCTION…………………………………………….………………………….X

N. EXHIBITS AND SCHEDULES TO THIS AGREEMENT…………………….X

ARTICLE 13………………………………………………………………………………….X

OTHER DEFINED TERMS………………………..…………………………………….X

13.1. OTHER DEFINED TERMS……………………………………………………...X

EXHIBIT A ASSIGNMENT AND BILL OF SALE…………………………………X

EXHIBIT B PATENT ASSIGNMENT..……………….………………………………X

SCHEDULE 1.1 PURCHASED ASSETS……………………………………………..X

iv

----Page Break----

\* \* \* \*

LIST OF EXHIBITS AND SCHEDULES EXHIBITS……………………………..X

Exhibit A Assignment and Bill of Sale…………………………………………….X

Exhibit B Patent Assignment……..………………………………………………….X

SCHEDULES…………………………………………………………………………………X

Schedule 1.1 Purchased Assets……………………………………………………..X

\* \* \* \*

vi

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**ASSET PURCHASE AGREEMENT**

This Asset Purchase Agreement ("Agreement") is made, entered into, and effective as of \_\_\_\_\_\_\_\_\_\_\_, 20XX, between RANGER CORP. (“Purchaser”), a Nevada corporation having its principal office at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, on the one hand; and MIDLAND LLC , an Illinois limited liability company ("Seller"), having its principal office at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, on the other hand.

**PREAMBLE**

WHEREAS, West Wind, Corp., a Nevada corporation ("Company") is engaged in the small wind turbine alternative energy business offering a distributed power technology platform designed to produce electric energy from the wind. Such business as conducted by Company on the date hereof is referred to in this Agreement as the "Business."

WHEREAS, as a secured creditor of the Company, Seller has foreclosed (or is in the process of foreclosing) upon substantially all of the operating assets of the Company (the "Foreclosed Assets").

WHEREAS, the Purchaser desires to purchase from Seller certain of the Foreclosed Assets identified on Schedule 1.1 hereof (the "Purchased Assets").

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, and in order to consummate the purchase and the sale of the Purchased Assets from Seller, it is hereby agreed as follows:

ARTICLE 1. PURCHASE AND SALE OF ASSETS

1.1. SALE OF ASSETS.

A. At the Closing (as defined below), Seller shall sell, convey, transfer, assign, and deliver to Purchaser, and Purchaser will purchase from Seller all of Seller's right, title and interest in and to the Purchased Assets set forth on Schedule 1.1 attached hereto. Except as otherwise stated in Schedule 1.1, the Purchased Assets shall be free and clear of any and all liabilities, obligations, claims, debts, mortgages, charges, security, interests, equities, or imperfections of any nature, or other liens or encumbrances, whether absolute, accrued, contingent or otherwise.

B. The transfer and sale of the Purchased Assets shall be affected by delivery at the Closing of the following:

1. By Seller to Purchaser, an assignment and bill of sale substantially in form attached hereto as Exhibit A (the "Bill of Sale") transferring and assigning to Purchaser all of the Purchased Assets, other than the Patents;

2. By Seller to Purchaser, assignments with respect to all customer leads and all Patents, Copyrights, Trade Secrets, Marks and Websites and all applications therefore in which Company has any interest, all in recordable form, including, without limitation, a Patent Assignment substantially in the form attached hereto as Exhibit B (the "Patent Assignment") assigning all of the existing patents and patent applications in which Company has any interest;

3. By Seller to Purchaser, such other good and sufficient instruments of conveyance and transfer as shall be reasonably necessary or appropriate to vest in Purchaser good and valid title to the Purchased Assets (collectively, the "Other Instruments"), as contemplated by this Agreement; and

4. By Purchaser to Seller, the Purchase Price (as defined herein).

C. The parties' intent is to enter into this Agreement immediately after Seller completes the foreclosure sale of the Foreclosed Assets. Because the Closing is to occur immediately thereafter, the parties acknowledge that certain disputes from other creditors of the Company may arise in connection with the Purchased Assets. The parties acknowledge that this Agreement contemplates Seller defending Purchaser from the claims of third parties regarding those assets identified on Schedule 1.1, and that certain adjustments may occur pursuant to Section 10.2.A. as a result of such claims. Notwithstanding anything herein to the contrary, under no circumstance will a claim brought by a third party or other dispute against any of the Purchased Assets be considered a breach of this Agreement by Seller; provided, however, that Seller is subject to the indemnification provisions set forth in Section 10.2 hereof.

1.2. DEPOSIT.

Purchaser has already issued to Seller by way of an original share certificate registered in the name of Seller (the "Certificate") and has delivered to Purchaser's counsel, XXXX Hundred Thousand (X00,000) shares of Common Stock (as defined herein) as Commitment Shares under the XXXX, 20XX Letter of Intent. Said Certificate bears the customary restrictive legend under the Act of 1933 (defined below). At the Closing, the Commitment Shares shall be released to Seller and credited towards the Payment Shares.

1.3. ASSUMPTION OF LIABILITIES.

Purchaser shall not assume or be responsible for any liabilities or obligations of Company unless otherwise stated on Schedule 1.1.

1.4. EXCLUDED ASSETS.

Notwithstanding the foregoing and without limitation, the Purchased Assets shall not include any of the following:

A. The corporate entity, corporate seals, certificates of incorporation, by-laws, minute books, stock books, tax returns, books of account or other records relating solely to the organization, taxes and finances of Company; provided, however, that copies of the foregoing items relating to the operation of the Business shall be provided by Seller to Purchaser, to the extent that Seller obtains possession of such items from the Company;

B. Any rights of Seller under this Agreement or under any other agreement between Seller on the one hand and Purchaser on the other hand entered into on or after the date of this Agreement; and

C. All claims, rights and causes in action of (i) Seller against the Company for amounts owed by the Company to Seller, and (ii) Company or Seller against third parties to the extent not primarily relating to the Business.

Notwithstanding the foregoing, Seller is not required to deliver any asset to Purchaser other than the Purchased Assets.

1.5. AMOUNT, PAYMENT AND ALLOCATION OF PURCHASE PRICE.

A. The purchase price for the Purchased Assets shall be XXXXXXX Dollars and no cents ($XXXXX) (the "Purchase Price") and shall be paid by Purchaser issuing and delivering to Seller on the Closing Date the aggregate amount of XXX million (X,000,000) shares (the "Payment Shares") of fully paid and non-assessable shares of common stock of Purchaser, par value $0.XX per share (the "Common Stock") based upon an agreed-upon value of XX cents ($0.XX) per share, subject to the restrictions below in Section 1.5.A.1. The Payment Shares will be issued in certificated form with a customary restrictive legend. For the avoidance of doubt, the total aggregate Payment Shares will include the Commitment Shares.

\* \* \*

ARTICLE 2. CLOSING

2.1. CLOSING. The parties intend to sign this Agreement promptly after Seller's completion of the foreclosure sale of the Foreclosed Assets, and then to immediately close on the transactions contemplated by this Agreement (the Closing); provided, however, that if the Closing has not occurred by XXXXX, 20XX (the "Closing Deadline"), then either party may terminate this Agreement upon written notice to the other party. The date on which the Closing actually occurs is referred to herein as the "Closing Date."

2.2. DELIVERIES BY SELLER. At the Closing, Seller shall deliver to Purchaser the following:

A. the Bill of Sale, in the form attached hereto as Exhibit A;

B. the Patent Assignment and Other Instruments;

C. all tangible assets that comprise the Purchased Assets;

D. all documents in Seller's possession or control (either at the time of Closing or obtained after Closing) containing or relating to intellectual property and other intangible assets comprising the Purchased Assets;

E. all books and records (including all computerized records and other computerized storage media and the software used in connection therewith) of the Business relating to the Purchased Assets (collectively, Books and Records), including all Books and Records relating to the purchase of materials, supplies and services for Company, dealings with customers and distributors of Company, and employees of Company that Seller obtains from the Company or that is otherwise in Sellers possession or control;

F. all other documents, instruments and writings required to be delivered by Seller to Purchaser at the Closing pursuant to this Agreement or otherwise required in connection herewith; and

G. evidence satisfactory to Purchaser that all liens and encumbrances on the Purchased Assets have been removed, or that Seller is prepared to defend Purchaser's interests therein.

2.3. DELIVERIES BY PURCHASER. At the Closing, Purchaser shall deliver to Seller:

A. the Payment Shares as set forth in Section 1.5.A; and

B. all other documents, instruments and writings required to be delivered by Purchaser to Seller at or prior to the Closing pursuant to this Agreement or otherwise required in connection herewith.

2.4. POSSESSION AND CONTROL OF PURCHASED ASSETS. Notwithstanding anything herein to the contrary, by executing the Agreement, Purchaser hereby acknowledges, agrees and represents that Purchaser will have satisfactory possession, control and access to the Purchased Assets upon Closing, and that such acknowledgement, agreement and representation is made after inspecting Schedule 1.1 and making due inquiry regarding the assets set forth thereon.

2.5. FAILURE TO CLOSE. Seller agrees to pay Purchaser One Hundred Thousand Dollars and no cents ($100,000.00) as a breakup fee (the "Breakup Fee") if the Closing does not occur by the Closing Deadline due to Seller's unwillingness or inability to complete the Closing by the Closing Deadline. Notwithstanding the foregoing, if the Closing does not occur by the Closing Deadline because the foreclosure of the Foreclosed Assets has not yet occurred (the date such foreclosure occurs is referred to herein as the "Collateral Transfer Date"), (i) Seller may extend the Closing Deadline by ninety (90) days by providing written notice thereof to Purchaser, in which case the Breakup Fee shall increase by Fifty Thousand Dollars and no cents ($50,000.00), to a total of $150,000.00, which shall be payable by Seller if the Closing does not occur by such extended Closing Deadline because the Collateral Transfer Date has not yet occurred; and (ii) Seller shall have the right to continue to extend the Closing Deadline for three (3) additional ninety (90) day periods thereafter if the Closing does not occur by the then-applicable Closing Deadline because the Collateral Transfer Date has not yet occurred by providing written notice thereof to Purchaser each time, in which case the Breakup Fee shall increase by Fifty Thousand Dollars for each ninety (90) day period by which the Closing Deadline is extended, which shall be payable by Seller if the Closing does not occur by the tenth applicable Closing Deadline because the Collateral Transfer Date has not yet occurred.

ARTICLE 3. REPRESENTATIONS AND WARRANTIES OF THE SELLER

Seller represents and warrants to and covenants with Purchaser and Purchaser's successors and assigns (which representations, warranties and covenants shall survive the Closing for a period of 12 months), as follows:

3.1. ORGANIZATION. Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the Illinois.

3.2. AUTHORIZATION. Seller has all requisite company power and authority to enter into, execute and deliver this Agreement and any instruments and agreements contemplated herein (collectively, the "Related Instruments") required to be executed and delivered by it pursuant to this Agreement and to consummate the transactions contemplated hereby and thereby. Seller has taken all action required by law, its governing documents or otherwise to authorize the execution and delivery of this Agreement and the Related Instruments and the consummation of the transactions contemplated hereby and thereby. No other act or proceeding on the part of Seller is necessary to authorize the execution and delivery of this Agreement or any of the Related Instruments or the transactions contemplated hereby or thereby, except for the foreclosure sale required to occur in order for Seller to obtain title to the Foreclosed Assets. This Agreement is, and each of the Related Instruments, when executed and delivered by Seller to Purchaser at the Closing, will be a valid and binding obligation of Seller, enforceable against Seller in accordance with its terms.

3.3. NO VIOLATION. Except as set forth on Schedule 3.3, neither the execution and delivery by Seller of this Agreement or any of the Related Instruments, nor the consummation by Seller of the transactions contemplated hereby or thereby, will (i) violate any provision of Seller's governing document, or (ii) violate any statute or law or any judgment, decree, order, writ, injunction, regulation or rule of any court or governmental authority.

3.4. GOOD TITLE CONVEYED, ETC. Subject to applicable California law and Nevada law regarding the foreclosure of security interests; after the foreclosure sale contemplated herein, the Company will have the power and the right to sell, assign, transfer and deliver to Purchaser, and upon consummation of the transactions contemplated by this Agreement, Purchaser will acquire good and valid title to, the Purchased Assets, free and clear of all mortgages, pledges, liens, security interests, conditional sales agreements, encumbrances or charges of any kind. The parties hereby acknowledge that the Company, employees of the Company, and creditors of the Company may claim an interest in the Purchased Assets before or after the Closing Date. Pursuant to Section 10.2 hereof, Seller agrees to defend, indemnify, and hold Purchaser harmless from such claims. Seller makes no other warranties regarding the Purchased Assets other than the transfer of valid title to Purchaser as set forth in this Section.

3.5. NO BROKERS. Seller has taken no action that would give rise to any claim by any Person for brokerage commissions, finder's fees or similar payments relating to this Agreement or the transactions contemplated hereby.

3.6. NO VIOLATIONS, INVESTIGATIONS, CHARGES. Seller, and where applicable, any shareholder, officer, director, member or partner of Seller, is not in violation of, or under investigation with respect to, or have been charged with or given notice of, any violation of any applicable law, statute, order, rule, regulation, policy or guideline promulgated or judgment entered, by any federal, state or local court or governmental authority relating to or affecting Seller or any of Seller's assets.

3.7. GOOD CONDITION AND REPAIR OF ASSETS. Purchaser is acquiring the Purchased Assets from Seller, in an "AS IS" "WHERE IS" CONDITION, SUBJECT TO "ALL FAULTS," INCLUDING BUT NOT LIMITED TO BOTH LATENT AND PATENT DEFECTS. PURCHASER HEREBY WAIVES ALL WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE CONDITION AND USE OF THE PURCHASED PROPERTY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE 4. REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser represents and warrants to Seller (which representations and warranties shall survive the Closing for a period of 12 months) as follows:

4.1. ORGANIZATION. Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of Nevada.

4.2. AUTHORIZATION. Purchaser has full power and authority to execute and deliver the Agreement and the Related Documents and to consummate the transactions contemplated hereby. The execution, delivery and consummation of this Agreement have been duly authorized and approved by such officers, directors, and shareholders of Purchaser as required by, and in accordance with, applicable laws and the instruments, agreements and documents controlling Purchaser's governance.

4.3. NO VIOLATION. Neither the execution and delivery by Purchaser of this Agreement and the Related Instruments to which it is a party, nor the consummation by Purchaser of the transactions contemplated hereby or thereby, will (i) violate any provision of the articles of incorporation or current bylaws of Purchaser or (ii) violate any statute or law or any judgment, decree, order, writ, injunction, regulation or rule of any court or governmental authority.

4.4. GOOD TITLE CONVEYED, ETC. Purchaser has complete and unrestricted power and the unqualified right to sell, assign, transfer and deliver to Seller, and upon consummation of the transactions contemplated by this Agreement, Seller will acquire good and valid title to, the Common Stock equal in value to the Purchase Price, subject to the restrictions enumerated in this Agreement.

4.5. NO BROKERS. Purchaser has not taken any action that would give rise to a claim by any Person for brokerage commissions, finder's fees or similar payments relating to this Agreement or the transactions contemplated hereby.

4.6. NO LITIGATION. As of the date hereof there is, and as of the Closing there will not be litigation at law or in equity, no proceeding before any commission or other administrative or regulatory authority, and no dispute, claim or controversy pending, or to the knowledge of Purchaser threatened, against or affecting the right of Purchaser to enter into and consummate the transactions contemplated by this Agreement.

ARTICLE 5. REPRESENTATIONS AND WARRANTIES OF SELLER AND PURCHASER

5.1. Seller and Purchaser hereby represent and warrant to each other that there has been no act or omission by Seller or Purchaser, as applicable, which would give rise to any valid claim against any of the parties hereto for a brokerage commission, finder's fee, or other like payment in connection with the transactions contemplated hereby. The parties agree to hold each other harmless and indemnify each other against any all claims for brokers' fees from any broker, arising out of any acts of such party.

ARTICLE 6. COVENANTS OF SELLER AND PURCHASER

6.1. REQUIRED APPROVALS. As promptly as practicable after the date of this Agreement, Company and Seller will use commercially reasonable efforts to obtain all consents and make any filings reasonably necessary in order to consummate the transactions contemplated by this Agreement. Between the date of this Agreement and the Closing Date, Purchaser and Seller will (a) cooperate with respect to all filings that any party hereto shall elect to make or is required by law to make in connection with the transactions contemplated by this Agreement and (b) cooperate in obtaining all consents related to the transfer of the Purchased Property to Purchaser.

6.2. COMMERCIALLY REASONABLE EFFORTS. Between the date of this Agreement and the Closing Date, Purchaser and Seller will use commercially reasonable efforts to cause the conditions in ARTICLE 7 and ARTICLE 8 to be satisfied.

6.3. NOTICES TO COMPANY CONTACTS. Within a reasonable time after the Closing, the Purchaser shall send, at its expense, notices to the Company's clients, vendors, suppliers and any other appropriate persons or entities that it has acquired the Company's business herein.

6.4. NO EMPLOYEE RELATIONSHIP. Nothing herein shall operate to make the Seller, or its principals and agents, an employee, joint venture, or partner of the Purchaser.

ARTICLE 7. CONDITIONS TO OBLIGATIONS OF PURCHASER

The obligations of Purchaser to purchase the Purchased Assets are subject to the satisfaction, at or before the Closing, of each of the following conditions:

7.1. REPRESENTATIONS AND WARRANTIES. The representations and warranties of Seller contained herein, and the statements contained in any schedule, instrument, list, certificate or writing delivered by Seller pursuant to this Agreement shall be true, complete and accurate in all material respects as of the date when made and, as of the Closing Date as though such representations and warranties were made at and as of such dates, except for any changes expressly permitted by this Agreement.

7.2. PERFORMANCE. Seller shall have performed and complied in all material respects with all covenants, agreements, obligations and conditions required by this Agreement to be performed or complied with by Seller at or prior to the Closing. Seller agrees that the Purchased Assets are unique and that damages would not be an adequate remedy for their breach of this Agreement. Therefore, in the event that Seller fails to or refuses to satisfy the applicable conditions to Closing, or to otherwise perform its obligations hereunder, Seller agrees that Purchaser may enforce specific performance of this Agreement by appropriate proceedings in any court.

7.3. NO PROCEEDING OR LITIGATION. Except as set forth on Schedule 8.3, there shall not be threatened, instituted or pending any suit, action, investigation, inquiry or other proceeding by or before any court or governmental or other regulatory or administrative agency or commission requesting or looking toward an order, judgment or decree that (a) restrains or prohibits the consummation of the transactions contemplated hereby, (b) could have a material adverse effect on Purchaser's ability to exercise control over or manage the Purchased Assets after the Closing or (c) could have a Material Adverse Effect.

7.4. DOCUMENTS. The Related Instruments and all other documents to be delivered by Seller to Purchaser at the Closing shall have been so delivered and shall be satisfactory in form and substance to Purchaser.

7.5. CONSENTS AND APPROVALS. All licenses, permits, consents, approvals and authorizations of all third parties and governmental bodies and agencies requested by Purchaser shall have been obtained, and copies of all such licenses, permits, consents, approvals and authorizations shall have been delivered to Purchaser.

7.6. ASSETS NOT ADVERSELY AFFECTED. The tangible Purchased Assets shall not have been adversely affected in any material way (whether or not covered by insurance) as a result of any fire, casualty, act of God or other force majeure or any labor dispute or disturbances.

ARTICLE 8. CONDITIONS TO OBLIGATIONS OF SELLER

The obligations of Seller under this Agreement are subject to the satisfaction, at or before the Closing, of each of the following conditions:

8.1. REPRESENTATIONS AND WARRANTIES. The representations and warranties of Purchaser contained herein shall be true, complete and accurate in all material respects as of the date when made and at and as of the Closing Date as though such representations and warranties were made at and as of such date, except for any changes expressly permitted by this Agreement. Notwithstanding anything to the contrary set forth herein, if as of the Closing Date either party knew, or through the exercise of reasonable diligence should have known, of any breach by the other party of a representation or warranty and proceeds with Closing, such breach shall be deemed waived.

8.2. PERFORMANCE. Purchaser shall have performed and complied in all material respects with all covenants, agreements, obligations and conditions required by this Agreement to be so performed or complied with by it at or prior to the Closing.

8.3. NO INJUNCTION. Except as set forth on Schedule 8.3, on the Closing Date, there shall be no effective injunction, writ, preliminary restraining order or other order issued by a court of competent jurisdiction restraining or prohibiting the consummation of the transactions contemplated hereby.

ARTICLE 9. TERMINATION

9.1. TERMINATION EVENTS. This Agreement may, by notice given prior to or at the Closing, be terminated:

A. By either Purchaser or Seller if a material breach of any provision of this Agreement has been committed by the other party and such breach has not been waived or cured within ten (10) business days after written notice from the other party;

B. By Purchaser if any of the conditions in ARTICLE 6 or ARTICLE 7 have not been satisfied as of the Closing Date or if satisfaction of such a condition is or becomes impossible (other than through the failure of Purchaser to comply with its obligations under this Agreement) and Purchaser has not waived such condition on or before the Closing Date; or (ii) by Seller, if any of the conditions in ARTICLE 6 or ARTICLE 8 has not been satisfied as of the Closing Date or if satisfaction of such a condition is or becomes impossible (other than through the failure of Seller to comply with its obligations under this Agreement) and Seller has not waived such condition on or before the Closing Date;

C. By mutual consent of Purchaser and Seller; or

D. By either Purchaser or Seller if the Closing has not occurred by the Closing Deadline pursuant to Section 2.1 hereof.

9.2. EFFECT OF TERMINATION. Each party's right of termination under Section 9.1 is in addition to any other rights it may have under this Agreement or otherwise, and the exercise of a right of termination will not be an election of remedies. If this Agreement is terminated pursuant to Section 9.1, all further obligations of the parties under this Agreement will terminate, except that the obligations in Section 11.1 will survive; provided, however, that if this Agreement is terminated by a party because of the breach of the Agreement by the other party or because one or more of the conditions to the terminating party's obligations under this Agreement is not satisfied as a result of the other party's failure to comply with its obligations under this Agreement, the terminating party's right to pursue all legal remedies will survive such termination unimpaired.

ARTICLE 10. INDEMNIFICATION AND CONTRIBUTION

10.1. SURVIVAL OF REPRESENTATIONS AND COVENANTS. All representations and warranties made by any party to this Agreement or pursuant hereto shall survive the Closing hereunder and any investigation made by or on behalf of any party hereto for a period of 12 months following the Closing Date; provided, however, that in the case of fraud, all such representations and warranties shall survive indefinitely. Subject to Section 8.2, the Closing shall not have the effect of terminating any covenant or obligations of the parties hereto which are applicable after the Closing.

10.2. INDEMNIFICATION.

A. Subject to the terms and conditions of this ARTICLE 10, Seller shall indemnify, defend and hold harmless Purchaser from and against all demands, claims, actions or causes of action, assessments, losses, damages, liabilities, costs and expenses, including interest, penalties and reasonable attorneys' fees and expenses (collectively, "Damages"), asserted against, resulting to, imposed upon or incurred by Purchaser, directly or indirectly, by reason of or resulting from

(i) a breach of any representation, warranty, covenant or agreement of Seller contained in or made pursuant to this Agreement or any Related Instrument, and

(ii) any claim asserted by the Company or a third party claiming ownership of, or a valid lien against, the Purchased Assets as of the Closing Date (collectively, "Purchaser Claims"). For the avoidance of doubt, Seller's indemnification obligation under this Section is intended to apply to any adverse claim made by the Company, an employee of the Company or a third party creditor claiming an adverse interest, lien, or encumbrance against the Purchased Assets. To the extent a valid lien, encumbrance, or adverse interest is determined to exist by a court of competent jurisdiction against a Purchased Asset (or as otherwise may be agreed to in writing by Seller and such adverse party), Seller agrees to reimburse Purchaser (either in cash or by offset against Common Stock otherwise deliverable to Seller under this Agreement) the market value of such valid lien, encumbrance, or property required to be transferred by Purchaser to such third party.

B. Subject to the terms and conditions of this ARTICLE 10, Purchaser shall indemnify, defend and hold harmless Seller from and against all Damages asserted against, resulting to, imposed upon or incurred by Seller, directly or indirectly, by reason of or resulting from

(i) a breach of any representation, warranty, covenant or agreement of Purchaser contained in or made pursuant to this Agreement, or

(ii) a failure to deliver Shares to Seller as required hereunder (collectively, "Seller Claims") (Purchaser Claims and Seller Claims are collectively referred to as "Claims," and individually, as a "Claim").

C. Notwithstanding any provision in this ARTICLE 10 to the contrary, no party hereto shall be required to indemnify any Person pursuant to this ARTICLE 10 unless and until the aggregate amount of Claims as to which indemnification would be required from such party (but for the provisions of this Section 10.2.C) exceeds $10,000 (the "Indemnity Threshold"), and thereafter such party shall be required in the manner and to the extent otherwise provided in this ARTICLE 10, to indemnify any Person and to pay all amounts required to be paid by such party in respect of such Claims, irrespective of the Indemnity Threshold. The amount of each Claim shall be adjusted to provide the Indemnifying Party (as defined below) the benefit of

(i) any insurance coverage provided with respect to a Claim and

(ii) any tax benefit realized by the Indemnified Party (as defined below) with respect to a Claim.

10.3. THIRD PARTY CLAIMS. The obligations and liabilities of Purchaser, on the one hand, and Seller, on the other hand, as indemnifying parties (each, an "Indemnifying Party") to indemnify Seller and Purchaser, respectively (each, an "Indemnified Party"), under Section 10.2 with respect to Claims made by third parties shall be subject to the terms and conditions set forth in this Section 10.3. The Indemnified Party shall give written notice to the Indemnifying Party of any Claim with respect to which it seeks indemnification promptly after the discovery by such party of any matters giving rise to such Claim for indemnification; provided that the failure of any Indemnified Party to give notice as provided herein shall not relieve the Indemnifying Party of its obligations under Section 10.2 unless it shall have been prejudiced by the omission to provide such notice. In case any action, suit, claim or proceeding is brought against an Indemnified Party, the Indemnifying Party shall be entitled to participate in the defense thereof and, to the extent that it may wish, to assume the defense thereof, with counsel reasonably satisfactory to the Indemnified Party. After notice from the Indemnifying Party of its election so to assume the defense thereof, the Indemnifying Party will not be liable to the Indemnified Party under Section 10.2 for any legal or other expense subsequently incurred by the Indemnified Party in connection with the defense thereof; provided, however, that

(a) if the Indemnifying Party shall elect not to assume the defense of such claim or action or

(b) if the Indemnified Party reasonably determines that there may be a conflict between the positions of the Indemnifying Party and the Indemnified Party in defending such claim or action, then separate counsel shall be entitled to participate in and conduct such defense, and the Indemnifying Party shall be liable for any reasonable legal or other expenses incurred by the Indemnified Party in connection with such defense. The Indemnifying Party shall not be liable for any settlement of any action, suit, claim or proceeding affected without its written consent, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party shall not, without the Indemnified Party's prior written consent, settle or compromise any action, suit, claim or proceeding to which the Indemnified Party is a party or consent to entry of any judgment in respect thereof, unless the Indemnifying Party discharges or assumes any and all liabilities or obligations in connection with such settlement and the settlement

(i) includes an unconditional release of the Indemnified Party from all liability, (ii) requires only the payment of money and (iii) does not include an admission of guilt.

10.4. CONTRIBUTION. In the event that the foregoing indemnity is unavailable to an Indemnified Party for any reason, the Indemnifying Party shall contribute to any such Damages and shall do so in such proportion as is appropriate to reflect the relative fault of each party in connection with the conduct that resulted in the Damages. The parties agree that it would not be just or equitable if contributions were determined by pro rata allocation or by any other method of allocation that does not take account of relative fault and other equitable considerations.

10.5. REMEDIES CUMULATIVE . Except as expressly provided in this Agreement, the remedies provided herein shall be cumulative and shall not preclude assertion by any party hereto of any other rights or the seeking of any other remedies against any other party hereto.

10.6. INDEMNIFICATION CAP. Notwithstanding anything herein to the contrary, in no event shall the Indemnifying Party's indemnification obligations under this Agreement exceed in aggregate the Purchase Price, inclusive of all costs, expenses, and fees (including without limitation, attorney's fees) incurred in connection with such indemnification obligations and any amount payable to the Indemnified Party under this ARTICLE 10 (the "Indemnification Cap").

ARTICLE 11. NONCOMPETE AND NONDISCLOSURE

11.1. NONDISCLOSURE. Seller covenants and agrees that it will not at any time following disclosure, directly or indirectly, or make available to any Person, or in any manner use for their own benefit, any Confidential Information or trade secrets relating to the Business, including, without limitation, business strategies, operating plans, acquisition strategies (including the identities of (and any other information concerning) possible acquisition candidates), pro forma financial information, market analysis, acquisition terms and conditions, personnel information, product information (whether existing, former, or proposed), trade secrets, sources of leads and methods of obtaining new business, know-how, customer lists and relationships, supplier lists and relationships, manufacturing and distribution methods or any other methods of doing and operating the Business, or other non-public proprietary and confidential information relating to the Business, except to the extent that such information

(i) is obtained from a third party whom the disclosing party has no reason to believe is bound by a duty of confidentiality,

(ii) relates to information that is or becomes generally known to the public other than as a result of a breach of this Agreement, or

(iii) is required to be disclosed by law or judicial administrative process (in which case prior to such disclosure the disclosing party shall promptly provide prior written notice of such required disclosure to Purchaser in order to afford Purchaser the opportunity to seek an appropriate protective order preventing such disclosure).

11.2. INJUNCTIVE RELIEF. Seller agrees that any breach of this ARTICLE 11 by Seller will cause irreparable damage to the business of Purchaser and that in the event of such breach Purchaser shall have, in addition to any and all remedies of law, the right to an injunction, specific performance or other equitable relief in any court of competent jurisdiction to prevent the violation of his obligations hereunder. Nothing herein contained shall be construed as prohibiting Purchaser from pursuing any other remedy available for such breach or threatened breach. The prevailing party in any litigation arising under this ARTICLE 11 shall be entitled to recover his or its attorneys' fees and expenses in addition to all other available remedies.

ARTICLE 12. MISCELLANEOUS PROVISIONS

12.1. PRESS RELEASES AND PUBLIC ANNOUNCEMENTS. The parties shall cooperate in the preparation of a joint press release to be issued following the Closing. Unless required by law, neither Purchaser nor Seller shall issue any press release or make any public announcement relating to the subject matter of this Agreement prior to the Closing without the prior written approval of the other party.

12.2. CONFIDENTIALITY. Seller and Purchaser shall hold, and shall cause their respective members, employees, consultants and advisors to hold, in strict confidence, unless compelled to disclose by judicial or administrative process or by other requirements of law, all documents and information concerning the other party furnished to it by the other party or its representatives in connection with the transactions contemplated by this Agreement (except to the extent that such information shall be shown to have been

(a) previously known by the party to which it was furnished,

(b) in the public domain through no fault of such party or

(c) later lawfully acquired from other sources by the party to which it was furnished), and each party shall not release or disclose such information to any other Person, except its auditors, attorneys, financial advisors, bankers and other consultants and advisors in connection with the transactions contemplated by this Agreement. Each party shall be deemed to have satisfied its obligation to hold confidential information concerning or supplied by the other party if it exercises the same care as it takes to preserve confidentiality for its own similar information.

12.3. GENERAL PROVISIONS.

A. FURTHER ASSURANCES. From time to time, at the request of Purchaser and without further consideration, Seller shall execute and deliver to Purchaser such documents and take such other action as Purchaser may reasonably request in order to consummate the transactions contemplated hereby and to vest in Purchaser good and valid title to the Purchased Assets.

B. PARTIES IN INTEREST. This Agreement shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and permitted assigns of the parties hereto. Except as otherwise expressly provided herein, the rights and obligations of Purchaser hereunder may not be assigned without the prior written consent of Seller, and the rights and obligations of Seller hereunder may not be assigned without the prior written consent of Purchaser.

C. ADJUSTMENTS UPON SUBDIVISION OR COMBINATION OF COMMON STOCK. If Purchaser at any time after the date of this Agreement subdivides (by any stock split, stock dividend, recapitalization or otherwise) or combines (by combination, reverse stock split or otherwise) one or more classes of its outstanding shares of Common Stock, then any reference in this Agreement to a share issuance, a number of shares, or share price shall be adjusted appropriately to reflect such event.

D. NOTICES. All notices, claims, certificates, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered personally, mailed (registered or certified mail, postage prepaid, return receipt requested) and addressed as follows (or at such change of address given by one party to the other in writing after the date hereof):

If to Purchaser: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

If to Seller: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

A notice shall be deemed effectively given on the earliest of

(i) the date delivered, if delivered by personal delivery, as against written receipt therefor, or by confirmed facsimile or electronic mail transmission, (ii) the fifth Trading Day after deposit, postage prepaid, in the United States Postal Service by registered or certified mail, or (iii) the third Trading Day after mailing by domestic or international express courier, with delivery costs and fees prepaid.

E. FINAL AGREEMENT. This Agreement, the exhibits, the schedules and other writings among the parties hereto contain the entire understanding of the parties with respect to the subject matter hereof and thereof and supersedes any and all prior negotiations, term sheets, agreements and understandings with respect to the subject matter hereof and thereof.

F. AMENDMENTS AND WAIVERS. No consent hereunder may be given and no provision hereof may be waived except by a written instrument signed by the party to be charged with such consent or waiver. This Agreement may not be amended except by a written instrument duly executed by all of the parties hereto. Any amendment or waiver affected in accordance with this Section 12.3.F shall be binding upon all of the parties hereto.

G. GOVERNING LAW. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to its or any other jurisdiction's conflicts of laws principals. Any legal action or proceeding with respect to this Agreement or for recognition and enforcement of any judgment in respect hereof brought by any party hereto or its successors or assigns shall be brought and determined in the federal or state courts located in XXXXXX County, California, and each party hereto submits with regard to any such action or proceeding for itself and in respect to its property, generally and unconditionally, to the exclusive jurisdiction of such courts, and agrees that service of process in any such action or proceeding shall be effective if mailed to such party at the address specified herein. To the fullest extent permitted by law, each party hereto irrevocably waives, and agrees not to assert, by way of motion, as a defense, counterclaim or otherwise, in any action or proceeding with respect to this Agreement any claim that

(a) it is not personally subject to the jurisdiction of such courts for any reason,

(b) that it or its property is exempt or immune from jurisdiction of any court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise),

(c) the suit, action or proceeding in any such court is brought in an inconvenient forum,

(d) the venue of such suit, action or proceeding is improper and

(e) this Agreement, or the subject matter hereof, may not be enforced in or by such courts.

H. SEVERABILITY. If any provision of this Agreement is held to be invalid by a court of competent jurisdiction, then the remaining provisions shall nevertheless remain in full force and effect.

I. HEADINGS. Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.

J. COUNTERPARTS. This Agreement may be executed in two (2) or more counterparts (and the same may be delivered by means of facsimile or PDF file), each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and it shall not be necessary in making proof of this Agreement or the terms hereof to produce or account for more than one of such counterparts.

K. SURVIVAL OF REPRESENTATIONS. All representations, warranties and agreements contained herein shall not be discharged or dissolved upon Closing, but shall survive the same.

L. EXPENSES. Each party hereto will bear its own costs and expenses (including fees and expenses of legal counsel, accountants, investment bankers, brokers or other representatives or consultants) incurred in connection with this Agreement and the transactions contemplated hereby.

M. CONSTRUCTION. Purchaser and Seller have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the parties hereto and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

N. EXHIBITS AND SCHEDULES TO THIS AGREEMENT. All Schedules and Exhibits hereto are hereby incorporated into this Agreement and are hereby made a part hereof as if set out in full in this Agreement.

O. ATTORNEY'S FEES. In the event of any action at law or in equity to enforce or interpret the terms of this Agreement, the Prevailing Party (as defined hereafter) shall be entitled to reasonable attorneys' fees, court costs and collection costs in addition to any other relief to which such party may be entitled. " Prevailing Party " shall mean the party in any litigation or enforcement action that prevails in the highest number of final rulings, counts or judgments adjudicated by a court of competent jurisdiction.

ARTICLE 13. OTHER DEFINED TERMS

13.1. OTHER DEFINED TERMS. As used in this Agreement, the following terms have the meanings indicated:

“Affiliate of a specified person” means a person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the person specified.

“Copyrights means” all registered and unregistered copyrights in both published works and unpublished works.

“Intellectual Property” shall mean any and all intellectual property now or hereafter owned by or licensed to Company by third parties including, without limitation, any and all inventions, Patents, know-how (including without limitation formulas, processes, techniques, methods, technology, products, apparatuses, materials and compositions), trademarks, trademark registrations, trademark applications, service marks, trade names and all other names and slogans embodying business or product, goodwill (or both), copyrights, mask works, Trade Secrets, computer software, documentation, instruction manuals, operating manuals, method plans, procedures, models, molds, specifications, Websites and all other intellectual property rights, whether or not subject to statutory registration or protection.

“Marks” means Company's name, all assumed fictional business names, trade names, registered and unregistered trademarks, service marks, and applications therefore.

“Material Adverse Effect” means any material adverse effect on the operations, financial condition, assets, liabilities, earnings or prospects of the Business, the Purchased Assets or the ownership or operation of the Business or the Purchased Assets by the Purchaser.

“Patents” means all patents, patent applications, and inventions and discoveries that may be patentable.

“Person” means an individual, a partnership, corporation, limited liability company, limited liability partnership, trust, unincorporated organization, other entity or group.

“Trade Secrets” means all know-how, trade secrets, confidential or proprietary information, customer lists, software, technical information, data, process technology, plans, drawings, designs, blue prints and molds.

“Websites” means all rights in internet websites (including the content thereof) and internet domain names presently used by Company.

IN WITNESS WHEREOF, Asset Purchase Agreement has been duly executed and delivered by the undersigned as of the date first written above.

Dated: XXXXXX, 20XX.

|  |  |
| --- | --- |
|  |  |
| PURCHASER: RANGER ENERGY, INC.,  a Nevada corporation | | SELLER: MIDLAND LLC,  an Illinois limited liability company |
| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

**APA#23**

**Asset Purchase Agreement**

This Asset Purchase Agreement, dated as of XX XXXX 20XX, is by and between

TEMPER CORPORATION, a corporation organized under the laws of the State of Delaware, USA and having its principal offices at New York, USA ( "Corp" );

DUO-TEMPER GMBH, a corporation organized under the law of Germany and having its principal place of business at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Germany

(“GmbH” and together with Corp “Seller”);

ALANA AB, a company organized under the laws of Sweden and having its principal offices at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Sweden (“ALANA”); and

The Seller and ALANA are referred to in this Agreement, each as a "party" and, collectively, as the "parties".

**Background**

Seller is the owner of the rights in Planto in the Territory, as such terms are defined below. Seller desires to sell its rights to Planto in the Territory to ALANA, and ALANA desires to purchase such rights to Planto in the Territory, all on the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the following mutual promises and obligations, and for other good and valuable consideration the adequacy and sufficiency of which are hereby acknowledged, the parties agree as follows:

**ARTICLE I DEFINITIONS**

**1.1 Definitions.** As used in this Agreement, terms defined in the preamble of this Agreement shall have the meanings set forth therein and the following terms shall have the meanings set forth below:

**"Affiliate"** shall mean any company or entity controlled by, controlling, or under common control with a party hereto. For the purpose of this definition, a business entity shall be deemed to "control" another business entity, if it owns directly or indirectly, more than 50% of the outstanding voting securities, capital stock, or other comparable equity or ownership interest of such business entity, or exercises equivalent influence over such entity.

**"Agreed Form"** means in relation to any document, in the form agreed by the parties prior to the date of this Agreement.

**"Agreement**" means this Agreement and the Schedules hereto.

**"ALANA Improvements"** means any Improvements developed, acquired or controlled by or on behalf of ALANA, its Affiliates or sub-licensees during the term of the License Agreement and/or through its participation (if any) in the Post Approval Commitments.

**"ALANA Pharma"** means ALANA Pharma, a company incorporated under the laws of Luxembourg, having its head office and registered address at XXXXXXX.

**"Assigned Contracts"** means the contracts of Seller listed on Schedule A annexed hereto.

**"Assigned Contract Amendments"** means amendments to the Assigned Contracts in form reasonably satisfactory to ALANA ("**Assigned Contract Amendments**") providing, among other things, for Seller to continue to have the right to purchase Planto for use outside of the Territory.

**"Assignment and Assumption Agreements"** means the agreements assigning to ALANA the Assigned Contracts and other contractual rights in the Purchased Assets and pursuant to which ALANA assumes the Assumed Liabilities, in the Agreed Form.

**"Bill of Sale"** means the bill of sale conveying Inventory, in the Agreed Form.

**"Clinical Supplies"** means all Product labeled for research use in the possession of Seller or other parties to the Assigned Contracts.

**"Closing"** means the closing of the Transactions.

**"Closing Date"** shall mean the date of this Agreement.

**"Collateral Documents"** means the agreements, other than this Agreement, executed and delivered by the parties hereto pursuant to this Agreement.

**"Confidential Information"** shall have the meaning set out in Section 5.4.1.

**"Consideration"** means the Cash Consideration and the assumption of the Assumed Liabilities.

**"Control"** shall mean, with respect to any Information, Patents or other intellectual property rights, possession by a party of the right, power and authority (whether by ownership, license or otherwise) to grant access to, to grant use of or to grant a license or a sublicense to such Information, Patents or intellectual property rights without violating the terms of any agreement or other arrangement with any Third Party.

**"Cooperation Agreement"** means the agreement entered into pursuant to Sections 6.2.1.5 and 6.2.2.5 in the Agreed Form.

**"Default"** means the occurrence of any event which of itself or with the giving of notice or the passage of time or both would constitute an event of default under the applicable agreement, contract or instrument or would permit the other party thereto to cancel or terminate performance or seek damages for breach.

**"Derivative"** shall mean, with respect to Planto, any . . . of Planto.

**"Documentation"** means all documentation (in all media, including digital formats) of the Purchased Assets, and all copies thereof in Seller's possession or control.

**"Dollars"** and **"$"** means dollars of the United States of America.

**"EMA"** means the European Medicines Agency or any successor entity thereof performing similar functions.

**"Employment Claim"** means any claim whether in contract or in tort or under statute (including the Treaty of Rome and any Directive made under the authority of that Treaty) for any remedy including, without limitation, claims under the Arbeitszeitgesetz - ArbzG, Altersteilzeitgesetz - AltersteilzeitG or Betriebsrentengesetz - BetrAVG; breach of contract; claims for wages, benefits, overtime bonuses, deferred compensation, vacation pay, pension payments or pension contributions; income tax or social insurance contributions; unfair dismissal and/or wrongful dismissal; a redundancy payment whether statutory or otherwise; public interest disclosure; maternity, paternity, adoption or parental leave rights; equal pay; discrimination on grounds of sex, race (including colour, national origins, nationality and origins), sexual orientation, gender reassignment; religion, religious belief, age or disability; or for a protective award for failure to inform and/or consult with employee representatives in relation to a transfer of employment or redundancy, or any similar claims under any applicable employment, income tax and social insurance legislation in any country covered by this Agreement.

**"Excluded Product Registration Data"** means all regulatory files prepared exclusively for submission to an Excluded Regulatory Authority relating to the Product, including any licenses granted by an Excluded Regulatory Authority (to the extent transferable), and minutes of meetings and telephone conferences with any Excluded Regulatory Authorities, validation data, preclinical and clinical studies and tests related to the Product and prepared exclusively for Excluded Regulatory Approvals including original data, case report forms, study files relating to the aforementioned studies and tests, and all audit reports of clinical studies, plus all applications (and amendments thereto) prepared exclusively for Excluded Regulatory Approvals, annual reports prepared exclusively for submission to an Excluded Regulatory Authority and safety reports associated therewith, in each case which are in Seller's or its Affiliates' possession or Control, and all correspondence with Excluded Regulatory Authorities regarding the marketing status of the Product; and (ii) all records maintained solely for the requirements of an Excluded Regulatory Authority under cGMPs or other record keeping or reporting requirements of Excluded Regulatory Authorities, including all correspondence and communications with Excluded Regulatory Authorities in connection with the Product (including any advertising and promotion documents), adverse event files, complaint files, manufacturing records in each case prepared solely for the requirements of an Excluded Regulatory Authority.

**"Improvements"** shall mean any Improvements developed, acquired or Controlled by or on behalf of Seller, its Affiliates or any sublicense during the term of the License Agreement and/or through its participation (if any) in the Post Approval Commitments. "

**"Know-How"** shall mean all Information owned or Controlled by Seller that is necessary or useful for the registration, development, promotion, marketing, sale or distribution of Product in the Territory.

**"Patents"** shall mean the patents set out in Schedule F and any patents owned or Controlled by Seller or any of its Affiliates that, in the absence of a license thereunder, would be infringed by the development, use, sale, offer for sale or import of Product in the Territory.

**"Planto"** means any chemical composition comprising or containing XYZ and ABC.

**"Planto Business"** means Seller's business, whether conducted through Corp or GmbH, comprising or relating to the development or commercialization of Planto.

**"Planto Trademarks"** shall mean the Planto trademarks that are identified in Schedule E.

**"Product Registration Data"** means (i) all regulatory files relating thereto, including any licenses (to the extent transferable), and minutes of meetings and telephone conferences with any Regulatory Authorities, validation data, preclinical and clinical studies and tests related to the Product including original data, case report forms, study files relating to the aforementioned studies and tests, and all audit reports of clinical studies, plus all applications (and amendments thereto) for Regulatory Approvals, annual reports and safety reports associated therewith, drug master files, which are in Seller's or its Affiliates' possession or Control, and all correspondence with Regulatory Authorities regarding the marketing status of the Product; and (ii) all records maintained under cGMPs or other record keeping or reporting requirements of Regulatory Authorities in the Territory, including all correspondence and communications with Regulatory Authorities in connection with the Product (including any advertising and promotion documents), adverse event files, complaint files, manufacturing records.

**"Excluded Inventory"** means the inventory and work in process of Product identified on Schedule B annexed hereto.

**"Excluded Pricing and Reimbursement Approvals"** means any pricing and reimbursement approvals which are required to be obtained before placing the Product on the market in a particular jurisdiction outside of the Territory.

**"Excluded Regulatory Approvals"** means any and all approvals (including Excluded Pricing and Reimbursement Approvals), licenses, registrations, or authorizations of any country, federal, supranational, state or local regulatory agency, department, bureau or other government entity outside of the Territory that are necessary for the development, use, importation, promotion, marketing, sale and distribution of Products outside of the Territory.

**"Excluded Regulatory Authority"** means any country, federal, supranational, state or local regulatory agency, department, bureau, court or other governmental or regulatory authority having the authority to regulate the development or marketing of pharmaceutical products outside of the Territory.

**"Existing Planto Agreements"** means the License Agreement dated XXXXXX between Corp, GmbH and ALANA, the Supply Agreement dated XXXXX between ALANA and Corp, the Quality Assurance Agreement XXXXX between Corp, ALANA and ALANA Pharma, GmbH Co., and the Pharma Agreement effective XXXXX between ALANA and GmbH.

**"Expiration Date"** shall have the meaning set out in Section 7.1.

**"Governmental Entity"** means the United States or other country government, the government of any of the states constituting the United States or any provinces or regions of any other country, any municipality and any other national or provincial or regional government, and all of their respective branches, departments, agencies, instrumentalities, non-appropriated fund activities, subsidiary corporations or other subdivisions.

**"IFRS"** means International Financial Reporting Standards as published by the International Accounting Standards Board, as in effect at the time to which the financial statements or records relate.

**"Improvements"** shall mean any and all developments, inventions or discoveries relating to the Technology developed or acquired by, or under the Control of, a party and shall include such developments intended to enhance the safety, efficacy or uses (including additional indications) of the Product.

**"Information"** shall mean tangible and intangible techniques, technology, practices, trade secrets, inventions (whether patentable or not), methods, knowledge, know-how, skill, experience, test data and results (including pharmacological, toxicological and clinical test data and results), analytical and quality control data, results, descriptions and compositions of matter.

**"Inventory"** shall mean the inventory of Product, as defined in Section 2.1.4 and as set forth on Schedule C annexed hereto.

**"IP Assignments"** means the instruments and agreements conveying the Planto Trademarks, the Patents and other Technology to ALANA and ALANA Pharma, in the Agreed Form. "Joint Improvements" means any Improvements developed, acquired or Controlled jointly by or on behalf of the parties or their respective Affiliates or permitted sub-licensees (in the case of ALANA) during the term of the License Agreement and/or through its participation (if any) in the Post Approval Commitments.

**"License Agreement"** means the License and Supply Agreement, dated as of XXXXXX among Corp, GmbH and ALANA.

**"Litigation Expense"** means any expenses incurred in connection with investigating, defending or asserting any claim, action, suit or proceeding incident to any matter indemnified against under this Agreement, including, without limitation, court filing fees, court costs, arbitration fees or costs, witness fees and reasonable fees and disbursements of legal counsel (whether incurred in any action or proceeding between the parties to this Agreement or between any party to this Agreement and any Third Party), investigators, expert witnesses, accountants and other professionals.

**"Loss"** means any loss, obligation, claim, liability, settlement payment, award, judgment, fine, penalty, interest charge, expense, damage or deficiency or other charge, other than Litigation Expense.

**"Material Adverse Effect"** means an effect which is materially adverse to the results of operations, financial condition or prospects of the specified Person, the Planto Business in the Territory or the ability to use the Purchased Assets (taken as a whole) as presently used.

**"Obtained Consents"** shall have the meaning set out in Section 3.4.

**"Parent Company Guarantee"** means the Parent Company Guarantee to be provided by Corp to ALANA in the form set out in Schedule 6.

**"Patents"** shall mean patents and patent applications, including provisional applications, continuations, continuations-in-part, continued prosecution applications, divisions, substitutions, reissues, additions, renewals, reexaminations, extensions, term restorations, confirmations, registrations, revalidations, revisions, priority rights, requests for continued examination and supplementary protection certificates granted in relation thereto, as well as utility models, innovation patents, petty patents, patents of addition, inventor's certificates, and equivalents in any country or jurisdiction.

**"Person"** means and includes an individual, a corporation, a partnership, a limited liability company, a limited liability partnership, a joint venture, a trust, an unincorporated association, a Governmental Entity or any other entity, wherever located or organized.

**"Pharma Agreement"** means the Pharma Agreement effective XXXXXX between ALANA and GmbH.

**"Post Approval Commitments"** means the post approval commitments regarding clinical studies Seller agreed to undertake, as set out in the grant of the Marketing Authorisation, dated XXXXXXXX.

**"Pricing and Reimbursement Approvals"** means any pricing and reimbursement approvals which are required to be obtained before placing Product on the market in a particular jurisdiction in the Territory.

**"Product"** means a pharmaceutical product that is or contains Planto.

**"Purchased Assets"** means the assets and rights of the Planto Business in the Territory described in Section 2.1, whether held by Corp or GmbH, other than the Excluded Assets.

**"Quality Assurance Agreement"** means the Quality Assurance Agreement dated XXXXXX between Corp, ALANA and ALANA Pharma GmbH Co.

**"Regulatory Approval"** shall mean any and all approvals (including Pricing and Reimbursement Approvals, the Marketing Authorisation and orphan drug designations), licenses, registrations, or authorizations of any country, federal, supranational, state or local regulatory agency, department, bureau or other government entity in the Territory that are necessary for the development, use, importation, promotion, marketing, sale and distribution of Product in any part of the Territory.

**"Regulatory Authority"** shall mean any country, federal, supranational, state or local regulatory agency, department, bureau, court or other governmental or regulatory authority having the authority to regulate the development or marketing of pharmaceutical products in the Territory or any part thereof (e.g. the EMA).

**"Larl Asset Purchase Agreement"** means the Asset Purchase Agreement dated XXXXXX between Corp, Sands Pharmaceuticals, Inc. and ALANA Pharma GmbH Co.

**"Supply Agreement"** means the Supply Agreement dated XXXXXXX between ALANA and Corp.

**"Taxes"** means any taxes, charges, fees, levies or other assessments, including income, excise, property, sales, gross receipts, employment and franchise taxes imposed by the United States, or any state, county, local or foreign government or subdivision or agency thereof, and any interest, penalties or additions attributable thereto.

**"Technology"** shall mean the Patents and Know How.

**"Termination Agreement"** means the agreement entered into pursuant to Sections 6.2.1.4 and 6.2.2.4 providing for the termination of the Existing Planto Agreements other than the Pharma Agreement.

"Third Party" shall mean any entity other than Seller or ALANA or their respective Affiliates.

"Transactions" means the transactions contemplated by this Agreement.

"Territory" means the countries listed in Schedule D.

"VAT" means value added tax.

1.2 Other interpretations.

1.2.1 References in this Agreement to any gender shall include references to all genders.

1.2.2 Unless the context otherwise requires, references in the singular include references in the plural and vice versa.

1.2.3 References to a party to this Agreement or to other agreements described herein means those Persons executing such agreements.

1.2.4 The words "include", "including", "includes" or "in particular" shall be deemed to be followed by the phrase "without limitation" or the phrase "but not limited to" in all places where such words appear in this Agreement.

1.2.5 This Agreement is the joint drafting product of Seller and ALANA and each provision has been subject to negotiation and agreement and shall not be construed for or against either party as drafter thereof.

1.2.6 The phrases "have heretofore been provided" or "has provided" or similar words mean that Seller has delivered such information to ALANA.

**ARTICLE II SALE AND PURCHASE**

**2.1 Transfer of Certain Purchased Assets to ALANA.** Upon and subject to the terms and conditions stated in this Agreement, for the Consideration set forth in Section 2.5 and ALANA's performance of its other obligations under this Agreement, Seller hereby sells, assigns, conveys, transfers and delivers to ALANA, and ALANA acquires from Seller, all of the following Purchased Assets, including all of the right, title and interest of Seller in and to:

2.1.1 The Know-How, any Improvements and rights to any Joint Improvements or ALANA Improvements (in each instance only with respect to the use thereof in the Territory);

2.1.2 The Product Registration Data;

2.1.3 The Regulatory Approvals;

2.1.4 All Product, consisting of goods and materials held anywhere in the world for resale or license by the Planto Business in the Territory or incorporated into or consumed in connection with such goods and materials including, without limitation, raw materials, active pharmaceutical ingredient, bulk product, work in process and finished goods, labeling and packaging owned or controlled by Seller, regardless of where located, and all Clinical Supplies, other than the Excluded Inventory (collectively, the " **Inventory**");

2.1.5 All of the rights of Seller in and to the Assigned Contracts as of the date hereof; and all purchase orders and commitments issued or made by Seller to suppliers of the Planto Business in the Territory outstanding as of the date hereof and which have heretofore been provided to ALANA;

2.1.6 All of the goodwill of Seller associated with the foregoing Purchased Assets; and

2.1.7 All of Seller's claims, causes of action, judgments, and other rights and remedies of whatever nature arising from infringements in the Territory of the Technology included in the foregoing Purchased Assets, the Improvements or Seller's rights in and to any Joint Improvements and ALANA Improvements (including without limitation any Improvements, Joint Improvements or ALANA Improvements relating to the Post Approval Commitments) or all other claims of Seller arising from the Purchased Assets or the conduct of the Planto Business in the Territory, including rights to recoveries for damages for defective goods or services, insurance and refund claims and similar assets of the Planto Business in the Territory (except to the extent related to Excluded Liabilities).

**2.2 Excluded Assets.** The Purchased Assets shall not include the following (collectively, the "**Excluded Assets**"):

2.2.1 All accounts, notes and other receivables generated by the Purchased Assets that are outstanding as of the date hereof (collectively, the "**Accounts Receivable**");

2.2.2 The Excluded Inventory;

2.2.3 All Information relating exclusively to the development, marketing and sale of the Product outside of the Territory, including without limitation Patents, trademarks, trade names, copyright and other intellectual property rights to the extent that they relate exclusively to Products outside the Territory (it being acknowledged by the parties that the Purchased Assets shall include the Patents, the Planto Trademarks and the Know How);

2.2.4 All Excluded Product Registration Data;

2.2.5 All assets and rights of Seller not related to the Purchased Assets or relating exclusively to the Planto Business outside of the Territory (including without limitation and Know-How, Improvements and rights to any Joint Improvements or ALANA Improvements, in each instance only with respect to the use thereof outside of the Territory);

2.2.6 One copy of all Documentation and all other data and information comprising the Information, to be retained solely for (i) legal archival purposes and in connection with the potential defense of any claim for indemnification made by any ALANA Indemnified Party pursuant to Section 7.2 hereunder and (ii) to the extent such Documentation memorializes any Know-How, for the ongoing use by Seller or any licensee of such Know-How exclusively outside of the Territory pursuant to the license granted in the Cooperation Agreement.

**2.3** **Assumption of Liabilities.** ALANA hereby assumes and agrees to pay and perform only the following liabilities and obligations of Seller existing as of the date hereof (collectively, the "Assumed Liabilities"):

2.3.1 All obligations of Seller arising under the Assigned Contracts after the Closing Date, including all appertaining duties and obligations pursuant to applicable statutory law;

2.3.2 All obligations of Seller related to conducting the Post Approval Commitments pursuant to the provisions of Section 3.1(b) of the License Agreement after the Closing Date; and

2.3.3 All liabilities arising after the Closing Date relating to the Inventory being acquired by ALANA hereunder, including without limitation, (i) liabilities for any actual or alleged injury to Persons resulting from or caused by any such Inventory held for resale or license by ALANA after the Closing Date or incorporated into or consumed in connection with the Products or other goods and materials sold or licensed by ALANA after the Closing Date and (ii) liabilities relating to any adulteration, misbranding or shortened shelf life of any Inventory.

**2.4 Excluded Liabilities.** Notwithstanding any provision of this Agreement to the contrary, none of the following liabilities of Seller (collectively, the "**Excluded Liabilities**") shall be assumed by ALANA or its Affiliates:

2.4.1 Any liability related to any Excluded Assets;

2.4.2 Any liability arising under the Assigned Contracts prior to the Closing Date or any liability for any breach by Seller of any Assigned Contract prior to the Closing Date;

2.4.3 Any liability with respect to any actual or alleged injury to Persons or physical damage to property prior to the Closing Date actually or allegedly caused by Seller or its agents;

2.4.4 Any liability under any litigation, proceeding or claim against Seller based, in whole or in part, on events occurring or circumstances existing on or before the Closing Date other than any liability assumed by ALANA pursuant to Section 2.3.3;

2.4.5 Without prejudice to Section 7.4, any liability or obligation of Seller related to Seller's termination of employment or consulting arrangements of existing or former employees of Seller, consultants or independent contractors on or prior to the Closing Date; provided, however, that if any employee of GmbH is retained by ALANA, its Affiliates or any sub-licensee as an employee, consultant or independent contractor (for consultants or independent contractors provided that the individual has worked on average no less than twenty (20) hours per week calculated over the entire period from the Closing Date to the date three (3) months after the Closing Date, irrespective of whether the individual was engaged for all or part of such period), within three (3) months following the Closing Date, Seller shall not be liable for any statutory severance or other liability or obligation of ALANA, such Affiliate or sub-licensee to such employee as a result of his or her prior termination of employment or consulting arrangements, and if severance or other payments previously were paid by Seller to such employee, such amount shall be reimbursed promptly by ALANA; and

2.4.6 Any liability for any Taxes incurred or accruing prior to the Closing Date with respect to the Purchased Assets.

**2.5 Consideration.**

2.5.1 In consideration of Seller's performance of this Agreement and the transfer and delivery of the Purchased Assets to ALANA, ALANA has (in accordance with the allocation provided for in Section 2.6) delivered to Seller by wire transfer the following amounts, in immediately available funds (the "Cash Consideration"):

2.5.1.1 Three Hundred Thousand Dollars ($300,000); plus

2.5.1.2 An amount equal to any outstanding payables owed

on Existing Planto Agreements; plus

2.5.1.3 $558,014 in respect of Inventory.

**2.6 Allocation of Consideration.** Schedule 2.6 allocates the Consideration paid by ALANA to the Seller and among each class of Purchased Assets (the "Purchase Price Allocation Schedule"). The parties shall provide each other with reasonable assistance in respect of any tax filings arising from the payment of the Consideration or any other tax filings relating to this Agreement.

**2.7 \* \* \***

**2.8 \* \* \***

**ARTICLE III REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller hereby further represents and warrants as follows:

**3.1 Organization, Power, Standing and Qualification of Seller.** Seller is duly organized and validly existing under the laws of their jurisdiction of incorporation, and are in good standing, and have all requisite corporate power and authority to carry on their business as it is now being conducted and to own and operate the properties and assets now owned and operated by them. Seller is duly qualified to do business and in good standing in each jurisdiction where the conduct of its business or the ownership or operation of its assets requires such qualification except where failure to be so qualified or in such good standing will not result in a Material Adverse Effect on the Purchased Assets.

**3.2 Power and Authority.** Upon execution and delivery as contemplated herein, this Agreement will be a valid and binding obligation of Seller, enforceable against it in accordance with its terms except to the extent that its enforceability may be subject to applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or similar laws affecting the enforcement of creditors' rights generally and to general equitable principles. Seller each has all requisite corporate power and authority to enter into this Agreement and to perform all of its obligations hereunder. The Board of Directors of Corp has duly authorized the execution and delivery of this Agreement and the performance of the Transactions. No approval of the stockholders of Corp is required with respect to the consummation of the Transactions, and Corp, as the sole stockholder of GmbH, has approved the consummation of the Transactions on behalf of GmbH.

**3.3 Validity of Contemplated Transactions.** The execution, delivery and performance of this Agreement by Seller, the execution, delivery and performance by Seller of the Collateral Documents to which it is a Party and the consummation of the Transactions do not and will not (a) contravene any provision of the Certificate of Incorporation or By-laws of Corp or the equivalent documents of GmbH; (b) constitute a breach by Seller of, or result in a default under or cause the acceleration of any payments pursuant to, any agreement, contract, indenture, lease or mortgage to which Seller is a party or by which any of the Purchased Assets are bound, or violate any provision of any law or permit to which Seller is subject, except for requirements for consents of Persons referred to in Section 3.4.

**3.4 Consents.** No permit, consent, approval or authorization of, or designation, declaration or filing with, any Governmental Entity or any other Person on the part of Seller is required in connection with the execution or delivery by Seller of this Agreement or the consummation of the Transactions other than (a) those which have previously been obtained as set out in Schedule 3.4 ( "Obtained Consents" ) (on terms that do not modify any agreement included in the Purchased Assets in a manner that would impose additional obligations on the ALANA), or (b) those specified in Schedule 3.4 which have not been obtained.

**3.5 Financial Matters; Financial Statements.**

3.5.1 Except as disclosed in Schedule 3.5.1, as of the date of this Agreement, Corp and GmbH have paid to all other parties to the Assigned Contracts all amounts currently due to them through the Closing Date pursuant to and in accordance with relevant Assigned Contracts.

3.5.2 Seller has made available to ALANA true and complete copies of (i) the audited balance sheet of GmbH for the year ended XXXXX . . . , (ii) the unaudited balance sheet of GmbH for the year ended XXXXX, and (iii) the unaudited balance sheet of GmbH for the three months ended XXXXX (collectively, the "**GmbH Balance Sheets**"), and the related audited and unaudited statements of operations, statements of cash flows, changes in stockholders' equity and changes in financial position for the fiscal year then ended, together with the notes thereon (collectively, the "**GmbH Financial Statements**"). The GmbH Financial Statements have been prepared in accordance with IFRS consistently applied throughout the periods indicated (except as otherwise stated in the notes thereto), and fairly present in all material respects the consolidated financial position of GmbH as at the dates thereof and for the periods therein referred to. The GmbH Financial Statements for XXXXX do not include or reflect normal year-end adjustments or include the type of notes that would customarily be included in a financial statement prepared in accordance with IFRS.

**3.6 Undisclosed Liabilities.** Except as disclosed in Schedules 3.5.1 or 3.6, Seller does not have any liabilities or any obligations of any nature whether or not accrued, contingent or otherwise that are related to the Purchased Assets, other than those that have arisen as a direct consequence of the proper operation of the Seller's Planto Business in the ordinary course (such expression not to include any liabilities which are not ordinary to the Planto Business, such as any product liability or claims for defective product).

**3.7 Absence of Certain Changes.** Prior to the date of this Agreement, Seller has operated the Planto Business in the Territory in the ordinary course and in a manner consistent with past practice.

**3.8 Purchased Assets.** The Purchased Assets together with the Patents and the Planto Trademarks constitute all of the tangible and intangible property necessary for ALANA together with its Affiliates to conduct the Planto Business in the Territory as now being conducted. The execution and delivery of this Agreement and the Collateral Documents and other documents to be delivered by Seller to ALANA pursuant to Subsection 6.2.2, upon delivery of the Consideration, will vest at the Closing all of Seller's right, title and interest in and to the Purchased Assets in ALANA and ALANA will be vested with good and marketable right, title and interest in and to the Purchased Assets, in each case free and clear of any liens, security interests, mortgages, charges, encumbrances and adverse rights of every kind, nature and description, except for any rights of Third Parties under the Assigned Contracts.

**3.9 Brokers' or Finders' Fees.** Seller 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 the Transactions.

**3.10 Existing Planto Agreements.** There is no Default on the part of Seller in the performance of any obligation to be performed or paid under any of the Assigned Contracts or the Existing Planto Agreements and to the Seller's knowledge, none of the counterparties to such agreements is in Default of such agreements.

**3.11 Litigation.** There are no actions, suits, proceedings, orders, grievance procedures or claims pending by or against or, to Seller's knowledge, threatened against, or investigations involving Seller related to the Planto Business in the Territory, the Existing Planto Agreements or the Product.

**3.12 Insurance.** On the date hereof, Seller has and shall maintain until the third (3rd ) anniversary of the Closing Date such general liability, product liability, fire, theft, business interruption, use and occupancy, employee fidelity, workers' compensation, disability and other forms of insurance covering the Planto Business in the Territory and its assets and employees which are (a) equal to or in excess of such coverage or amounts required by any applicable law, and (b) in compliance with applicable agreements.

**3.13 Disclosure.** No representation or warranty made by Seller in this Agreement or any schedules hereto contains or will contain any untrue statement of a material fact, or omits or will omit to state a material fact necessary to make the statements or facts contained herein or therein not misleading in light of the circumstances under which they were furnished.

**ARTICLE IV REPRESENTATIONS AND WARRANTIES OF ALANA**

ALANA hereby represents and warrants as follows:

**4.1 Power and Authority.** This Agreement is a valid and binding obligation of ALANA enforceable against it in accordance with its terms, except to the extent that its enforceability may be subject to applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or similar laws affecting the enforcement of creditors' rights generally and to general equitable principles. ALANA has all requisite power and authority to enter into this Agreement and to perform all of its obligations hereunder. ALANA has passed a board resolution authorizing the officers of ALANA to take any actions and to execute all documents and instruments to be executed, delivered or filed by it pursuant to or in connection with this Agreement. The execution and delivery of this Agreement and the performance of the Transactions has been approved by all necessary action of the board of managers of ALANA.

**4.2 Validity of Contemplated Transactions.** The execution, delivery and performance of this Agreement and the consummation of the Transactions (a) do not and will not contravene any provision of the organizational documents of ALANA, or (b) constitute a breach of, result in a Default under, or cause the acceleration of any payments pursuant to, any agreement, contract, indenture, lease or mortgage to which ALANA, or by which ALANA or its assets is bound, or violate any provision of any applicable law, permit or license to which ALANA is subject, where any such breaches, Defaults or violations would materially impair the ability of ALANA to consummate the Transactions.

**4.3 Consents.** No permit, consent, approval or authorization of, or designation, declaration or filing with, any Governmental Entity on the part of ALANA is required in connection with the execution or delivery by ALANA of this Agreement or required of ALANA in connection with the consummation of the Transactions other than (a) those which have previously been obtained, or (b) such permits, consents, approvals, authorizations, designations, declarations or filings the absence of which, individually or in the aggregate, would not materially impair the ability of ALANA to consummate the Transactions.

**4.4 Existing Planto Agreements.** There are no past due payables owed to Seller under any of the Existing Planto Agreements and there is no Default on the part of ALANA or any of its Affiliates in the performance of any obligation to be performed or paid under any of the Existing Planto Agreements.

**4.5 Insurance.** On the date hereof, ALANA has and shall for a period of three (3) years hereafter maintain such general liability, product liability, fire, theft, business interruption, use and occupancy, employee fidelity, workers' compensation, disability and other forms of insurance covering the Purchased Assets acquired hereunder and its assets and employees which are (a) equal to or in excess of such coverage or amounts required by any applicable law, and (b) in compliance with applicable agreements.

**4.6 Litigation.** There are no actions, suits, proceedings, orders, grievance procedures or claims pending by or against ALANA's ALANA related to the Planto Business in the Territory, the Existing Planto Agreements or the Product and Buyer has not received any written notice threatening the foregoing.

**4.7 Disclosure.** No representation or warranty made by ALANA in this Agreement contains or will contain any untrue statement of a material fact, or omits or will omit to state a material fact necessary to make the statements or facts contained herein or therein not misleading in light of the circumstances under which they were furnished.

**ARTICLE V COVENANTS**

**5.1 Good Faith Efforts.** Following the Closing, Seller and ALANA will use all reasonable commercial efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things, necessary, proper or advisable under applicable laws to consummate and make effective the Transactions as promptly as practicable.

**5.2 Laws Affecting Transfer of Regulatory Approvals.** Corp and GmbH shall, and, if required, ALANA, shall make any necessary filings with the appropriate Governmental Entities required to transfer the Regulatory Approvals under the laws of the jurisdictions in the Territory where the Planto Business is conducted.

**5.3 Public Announcements.** The parties hereby consent to each party initially announcing the terms of the Transactions in a press release in the form set out in Schedule 5.3 and making subsequent public disclosure consistent with such press release.

**5.4 Confidentiality.** Seller and ALANA acknowledge and confirm that all Information comprised in the Purchased Assets shall comprise the Confidential Information of ALANA as though it had been disclosed by ALANA to Seller and Seller and ALANA agree that this Agreement and the Transactions contemplated hereby constitute Confidential Information of both parties in each case, governed by such provisions on that basis and shall survive the Closing.

5.4.1 Except as otherwise provided herein, each party shall maintain in strict confidence, and shall not use for any purpose or disclose to any Third Party without the disclosing party's written consent, information disclosed by the other party ("**Confidential Information**"). Without limiting the foregoing, Confidential Information shall include information relating to the Product and all related developments, products, substances, customer lists, pricing policies, employment records and policies, operational methods, marketing plans and strategies, product development techniques or plans, methods of manufacture, technical processes, designs and design projects, inventions and research programs and trade secrets. Confidential Information shall not include any information that the receiving party can demonstrate by competent evidence: (i) was already known to the receiving party at the time of disclosure hereunder as evidenced by previously-existing written records, or (ii) is now or hereafter becomes publicly known other than through acts or omissions of the receiving party, or (iii) is disclosed to the receiving party on a non-confidential basis by a Third Party under no obligation of confidentiality to the disclosing party or (iv) is independently developed by the receiving party without the use of, reliance on or reference to any Confidential Information disclosed to the receiving party by the disclosing party.

5.4.2 Permitted Use. Notwithstanding the provisions of Section 5.4.1 above, each party may disclose Confidential Information of the other party as expressly permitted by this Agreement, or if and to the extent such disclosure is reasonably necessary in the following instances:

5.4.2.1 enforcing such party’s rights under this Agreement;

5.4.2.2 prosecuting or defending litigation as permitted by this Agreement;

5.4.2.3 complying with applicable court orders or governmental regulations;

5.4.2.4 register or record this Agreement or evidence of this Agreement

with the applicable patent authorities;

5.4.2.5 in the case of ALANA, developing or commercializing the Product

in the Territory, and in the case of Seller, developing or

commercializing the Product outside the Territory;

5.4.2.6 facilitate discussions with actual or potential subcontractors and

sublicensees in connection with the development and

commercialization of Product hereunder provided, in each case,

that any such actual or potential subcontractor or sublicensee agrees

to be bound by reasonable obligations of confidentiality or non-use;

5.4.2.7 respond to any request by any Regulatory Authority in connection with

any filings or applications for Regulatory Approval of the Licensed

Product;

5.4.2.8 comply with requirements to disclose to applicable stock exchanges; provided, that prior notice of such disclosure shall be provided to the non-disclosing party and reasonable measures, to the extent available and after consultation with the non-disclosing party, shall be taken to assure confidential treatment of such information, including requests for redaction of confidential terms of this Agreement; and

5.4.2.9 disclosure to Third Parties in connection with due diligence or similar investigations by such Third Parties, and disclosure to potential Third Party investors, acquirers, merger partners, or potential providers of equity or debt financing and their advisors in confidential financing documents, provided, in each case, that any such Third Party agrees to be bound by reasonable obligations of confidentiality and non-use.

Notwithstanding the foregoing, in the event a party is required to make a disclosure of the other party's Confidential Information pursuant to Section 5.4.2.2 or Section 5.4.2.3, it will, except where impracticable, give reasonable advance notice to the other party of such disclosure and use efforts to secure confidential treatment of such information at least as diligent as such party would use to protect its own confidential information, but in no event less than reasonable efforts. In any event, the parties agree to take all reasonable action to avoid disclosure of Confidential Information hereunder. Seller shall promptly deliver to ALANA all materials remaining in its possession containing any Confidential Information, including all copies, extracts, adaptations, and transcriptions thereof, except as otherwise provided in this Agreement.

**5.5 Transfer Taxes.** All excise, sales, use, transfer, stamp, documentary, filing, recording and other similar taxes or fees which may be imposed or assessed as the result of the Transactions ("**Transfer Taxes**"), together with any interest or penalties with respect thereto shall be paid by the party responsible for such Transfer Taxes under applicable Law. All tax filings required to be filed in connection with any Transfer Taxes shall be prepared and filed when due by the party responsible under applicable Law or custom to file such tax filings. The parties shall provide each other with reasonable assistance in respect of tax filings arising from Transfer Taxes.

**5.6 HSR Filing.** ALANA and Seller shall have determined, upon advice of counsel, that no filing is required pursuant to the Hart-Scott-Rodino Act ("**HSR Act**"). ALANA and Seller shall furnish to each other such necessary information and reasonable assistance as the other may reasonably request in connection with reaching such determination.

**5.7 Cooperation Regarding Litigation.** Upon reasonable prior written notice given by ALANA or its Affiliates (including ALANA Pharma) to Seller or Seller to ALANA, as the case may be, each of the parties shall provide the other with access to such information and employees as either party may reasonably request in connection with any actions, suits or proceedings relating to the Planto Business in the Territory or the Purchased Assets, provided, however, that the requesting party shall reimburse the party providing the access for its out of pocket costs of providing the information and direct salary costs for employees so requested.

**5.8 Insurance Claims.** Seller and ALANA shall cooperate with Seller's insurers in processing all claims arising with respect to acts, omissions, or occurrences prior to the Closing Date and shall cooperate with the insurers of ALANA and/or its Affiliates in processing all claims with respect to acts, omissions, or occurrences after the Closing Date.

**5.9 Additional Assurances.** Corp and GmbH shall take such additional actions and execute any such additional documents and instruments as may be reasonably necessary to fully vest Seller's ownership, rights and privileges in the Purchased Assets in ALANA and its Affiliates (in particular ALANA Pharma). Notwithstanding anything to the contrary contained in this Agreement, to the extent that the sale, assignment, transfer, conveyance or delivery or attempted sale, assignment, transfer, conveyance or delivery to ALANA and its Affiliates (in particular ALANA Pharma) of any Purchased Asset is prohibited by any applicable law or would require any Governmental Entity or other Third Party authorizations, approvals, consents or waivers and such authorizations, approvals, consents or waivers shall not have been obtained prior to the Closing, this Agreement shall not constitute a sale, assignment, transfer, conveyance or delivery, or any attempted sale, assignment, transfer, conveyance or delivery, thereof. The parties shall use reasonable efforts and shall cooperate with each other, to obtain promptly such authorizations, approvals, consents or waivers, including without limitation, (i) consent of the EMA to the transfer of the Marketing Authorisation, (ii) consents from Third Parties to the assignment of the Assigned Contracts from Seller to ALANA and (iii) execution and delivery of the Assigned Contract Amendments and the consent of the relevant Third Parties thereto. Pending such authorization, approval, consent or waiver, the parties shall cooperate with each other in any reasonable and lawful arrangements designed to provide to ALANA and its Affiliates (in particular ALANA Pharma) the benefits and liabilities of use of such Purchased Asset. In particular, in respect of the Assigned Contracts:

5.9.1 Seller shall hold these in trust for ALANA absolutely, ALANA shall (to the extent permissible and lawful under the Assigned Contracts) perform all obligations of Seller under the Assigned Contracts to be discharged after Completion Date; and

5.9.2 Seller shall (to the extent permissible and lawful under the Assigned Contracts) provide ALANA with all the rights of the Seller under such Assigned Contract and comply with all reasonable instructions of ALANA in respect thereof.

5.10 Once such authorization, approval, consent or waiver for the sale, assignment, transfer, conveyance or delivery of a Purchased Asset not sold, assigned, transferred, conveyed or delivered at the Closing is obtained pursuant to Section 5.9, Seller shall and shall cause its Affiliates to promptly assign, transfer, convey and deliver, or cause to be assigned, transferred, conveyed and delivered, such Purchased Asset to ALANA or its Affiliates (in particular ALANA Pharma) for no additional consideration. To the extent that any such Purchased Asset cannot be transferred or the full benefits and liabilities of use of any such Purchased Asset cannot be provided to ALANA or its Affiliates (in particular ALANA Pharma) pursuant to Section 5.9, then ALANA and Seller shall enter into such arrangements (including subleasing or subcontracting if permitted) designed to provide to ALANA or its Affiliates (in particular ALANA Pharma) the economic and operational equivalent of obtaining such authorization, approval, consent or waiver and the performance by ALANA or its Affiliates of the obligations thereunder to the extent permitted by law.

**ARTICLE VI THE CLOSING**

**6.1 Time and Place.** The Closing is being held simultaneously with the execution and delivery of this Agreement (the "Closing Date").

**6.2 Conduct of Closing.**

6.2.1 As to ALANA. ALANA has, in exchange for the Purchased Assets, delivered to Seller, in each case duly executed by ALANA, as appropriate:

6.2.1.1 The Cash Consideration in the amount set forth in Section 2.5;

6.2.1.2 A certificate dated the Closing Date and signed on behalf of ALANA by an officer of ALANA certifying that the board of managers of ALANA has passed resolutions authorizing and approving the Transactions and authorizing the officers of ALANA to take any actions and to execute all documents and instruments to be executed, delivered or filed by it pursuant to or in connection with this Agreement;

6.2.1.3 The Assignment and Assumption Agreements;

6.2.1.4 The Termination Agreement;

6.2.1.5 The IP Assignments;

6.2.1.6 The Cooperation Agreement;

6.2.1.7 The Larl Asset Purchase Agreement; and

6.2.1.8 Such other documents and instruments as Seller or its counsel may reasonably request in good faith in connection with the transfer of the Purchased Assets and the assumption of the Assumed Liabilities.

6.2.2 As to Seller. Seller has delivered or has caused to be delivered to ALANA, in each case duly executed by Seller, as appropriate:

6.2.2.1 The Bill of Sale, Assignment and Assumption Agreements, IP

Assignments, Marketing Authorisation Transfer and copies of the

Obtained Consents;

6.2.2.2 Unless previously provided to ALANA, copies of the Documentation, all records and tangible materials embodying or reflecting any of the Pur chased Assets and such other documents, instruments, assignments and certificates as may be necessary to vest the Purchased Assets and all rights thereto and thereunder in ALANA;

6.2.2.3 A certificate dated the Closing Date and signed on behalf of Seller, by an officer of Seller, attaching, as appropriate, (i) a certificate of good standing from the Secretary of State of Delaware in respect of Corp and a certificate of good standing of GmbH, and (ii) a copy of the resolutions of the Board of Directors of Seller authorizing and approving this Agreement and the Collateral Documents and the consummation of the Transactions and authorizing the officers of such Seller to take any actions and to execute all documents and instruments to be executed, delivered or filed by it pursuant to or in connection with this Agreement;

6.2.2.4 The Assignment and Assumption Agreements;

6.2.2.5 The Termination Agreement;

6.2.2.6 The IP Assignments;

6.2.2.7 The Cooperation Agreement;

6.2.2.8 The Larl Asset Purchase Agreement; and

6.2.1.8 Such other documents and instruments as ALANA or its Affiliates (in particular ALANA Pharma) or its counsel may reasonably request in good faith in connection with the transfer of the Purchased Assets and the assumption of the Assumed Liabilities.

**ARTICLE VII SURVIVAL AND INDEMNIFICATION**

**7.1 Survival of Representations, Warranties and Covenants.** The representations and warranties of the parties contained in this Agreement shall, notwithstanding any investigation by or notice by or to any party prior to the Closing Date, survive the Closing for eighteen (18) months following the Closing Date. In the event notice of any claim for indemnification under Section 7.5 shall have been given prior to midnight on the last day of the survival period (the "Expiration Date"), the representations and warranties that are the subject of such indemnification claim shall survive until the claim is finally resolved. The covenants and agreements of the parties contained in this Agreement shall survive until fully performed.

**7.2 Indemnification by Corp.** Corp shall indemnify and hold harmless ALANA and its Affiliates (in particular ALANA Pharma) and their respective employees, directors, agents and representatives (collectively, the "ALANA Indemnified Parties"), from and against any and all Loss and Litigation Expense, which they or any of them may suffer or incur as a result of or arising from any of the following: (a) any misrepresentation or breach of warranty, (b) the failure of Seller to perform its covenants contained in this Agreement, (c) the failure by Seller to satisfy any liability or obligation which is an Excluded Liability, or (d) the failure of Seller or its Affiliates to pay any Transfer Taxes which Seller is required to pay pursuant to Section 5.5 or any other costs or expenses which are the responsibility of Seller.

**7.3 Indemnification by Corp in respect of Employment Claims.** If in consequence of or in connection with the Transactions the contract of employment of any person (whether such person is or has been employed by the Seller or any of its Affiliates or not) or any liability under any such person's contract of employment or associated with their employment or its termination, transfers or is alleged to have transferred to ALANA or any of its Affiliates (in particular ALANA Pharma) pursuant to the Bürgerliches Gesetzbuch -- BGB and any modification or re-enactment thereof ALANA shall notify the Seller in writing within thirty (30) days of becoming aware of that fact or allegation ("**Notification**").

7.3.1 To the extent that such person claims to be employed by ALANA or its Affiliates (in particular ALANA Pharma), the following process shall apply:

7.3.1.1 within twenty one (21) days of the Notification being received by Seller, Seller may offer employment to such person or may take at its own cost such other steps as it feels necessary to effect a written withdrawal of the Employment Claim. If such offer of employment is accepted, ALANA or its Affiliates (in particular ALANA Pharma) shall immediately release the person from its employment; and

7.3.2.2 if no such offer of employment has been made or procured to be made by Seller or such offer has been made but not accepted or if such person has failed to withdraw the claim, then ALANA or its Affiliates may terminate the employment of such person at any time during the period of seven days beginning (i) on the 28th day after the date on which the Notification was sent to Seller, or (ii) on the day a required approval of the termination was given by the relevant authority.

7.3.2 Corp will indemnify ALANA and its Affiliates (in particular ALANA Pharma) against all Losses and Litigation Expenses arising out of any Employment Claim, made at any time against ALANA or its Affiliates relating to the employment of any person to whom Section 7.3 relates at any time and the termination of such person's employment at any time.

7.3.3 Notwithstanding the foregoing, if any person whose Employment Claim or severance or related costs were initially paid for or indemnified by Corp or GmbH is subsequently rehired by ALANA, an Affiliate or a sub-licensee as an employee or retained as a consultant within three (3) months after the Closing Date (for consultants provided that the individual has worked on average no less than twenty (20) hours per week calculated over the entire period from the Closing Date to the date three (3) months after the Closing Date, irrespective of whether the individual was engaged for all or part of such period), neither Corp nor GmbH shall be liable for any Losses and Litigation Expenses arising out of any Employment Claim or severance or related costs as to such person, and if any such payments previously had been made by Corp or GmbH to such person, ALANA will promptly remit to Seller the amount of all such payments.

**7.4 Indemnification by ALANA.** ALANA shall indemnify and hold harmless Seller, its Affiliates and their respective employees, directors, agents and representatives (collectively, the "**Seller Indemnified Parties**"), from and against any and all Loss and Litigation Expense which they, or any of them, may suffer or incur as a result of or arising from any of the following: (a) any misrepresentation or breach of warranty, (b) the failure of ALANA to perform its covenants contained in this Agreement, (c) the failure by ALANA to satisfy any liability or obligation which is an Assumed Liability, or (d) the failure of ALANA to pay any Transfer Taxes which ALANA is required to pay pursuant to Section 5.5 or any other costs or expenses which are the responsibility of ALANA.

**7.5 Procedure.** Promptly after acquiring knowledge of any Loss, or any action, suit, investigation, proceeding, demand, assessment, audit, judgment, or claim ("**Claim**") which may result in a Loss, and prior to the Expiration Date, the Person seeking indemnity under this Article VII (the "**Indemnitee**") shall give written notice thereof to the party from whom indemnity is sought (the "**Indemnitor**"). The Indemnitor shall have the right, at its expense, to defend, contest or compromise such Claim, through counsel of its choice (unless such Indemnitor is relieved of its liability hereunder with respect to such Claim and Loss and Litigation Expense by the Indemnitee) and shall not then be liable for fees or expenses of the Indemnitee's attorneys (unless the Indemnitor and Indemnitee are parties to the action and there exists a conflict of interest between the Indemnitor and the Indemnitee, in which event the Indemnitor will be responsible for the reasonable fees and expenses of one firm representing Indemnitee), and the Indemnitee and the Indemnitor shall provide to each other all necessary and reasonable cooperation in the defense of all Claims. In the event that the Indemnitor shall undertake to compromise or defend any Claim, it shall promptly notify the Indemnitee of its intention to do so. In the event that the Indemnitor, after written notice from Indemnitee, fails to take timely action to defend the same, the Indemnitee shall have the right to defend the same by counsel of its own choosing, but at the cost and expense of the Indemnitor, provided, no settlement of a Claim by Indemnitee shall be effected without the consent of the Indemnitor unless Indemnitee waives any right to indemnification therefor. The Indemnitor may settle or compromise the entry of any judgment (a) which includes the unconditional release by the Person asserting the Claim and any related claimants of Indemnitee from all liability with respect to such Claim in form and substance reasonably satisfactory to Indemnitee, and (b) which would not adversely affect the right of Indemnitee and its Affiliates to own, hold use and operate their respective assets and businesses.

**7.6 No Subrogation.** If any payment is made by or Claim asserted against Seller under the terms of this Article VII, none of the Seller Indemnified Parties shall have any rights against the Purchased Assets, whether by reason of contribution, indemnification or otherwise and shall not take any action against the Purchased Assets with respect thereto. Any rights which the Seller Indemnified Parties may have, by operation of law or otherwise against the Purchased Assets are, effective on the Closing Date, hereby expressly and knowingly waived.

**7.7 Exclusive Remedy.** The exclusive remedies for any breach of any representation, warranty, covenant or agreement hereunder shall be the indemnification provided by this Article VII and each party expressly waives any other rights or remedies it may have, provided, however, that equitable relief, including the remedies of specific performance and injunction, shall be available with respect to any actual or attempted breach of any covenant to be performed after the Closing Date.

**7.8 Limitations.** Notwithstanding anything to the contrary contained in this Agreement, the liabilities and obligations of Seller and ALANA and any of its Affiliates (in particular ALANA Pharma) asserted under Article VII of this Agreement shall be subject to the following limitations, save in respect of the Seller's indemnity pursuant to Section 7.3 which shall not be so limited:

7.8.1 Seller and ALANA each shall not be responsible to ALANA Indemnified Parties and the Seller Indemnified Parties, respectively, for any misrepresentation or breach of a representation or warranty contained in this Agreement until the cumulative aggregate amount of all Losses and Litigation Expenses for which it would otherwise be obligated to pay under this Article VII exceeds US$40,000 (after taking into account any payments made directly or indirectly to ALANA Indemnified Parties or the Seller Indemnified Parties, as the case may be, as a result of any applicable insurance payments), whereupon such party shall be liable to ALANA Indemnified Parties or the Seller Indemnified Parties, as the case may be, for the full amount of such Losses and Litigation Expenses (after taking into account any payments made directly or indirectly to ALANA Indemnified Parties or the Seller Indemnified Parties, as the case may be, as a result of any applicable insurance payments).

7.8.2 The parties agree that the aggregate combined amount of the obligations and liabilities of either party together with its Affiliates under (i) Article VII hereof for Losses and Litigation Expenses and (ii) the Larl Asset Purchase Agreement shall not exceed the Cash Consideration payable under this Agreement plus the Cash Consideration (as defined therein) payable under the Larl Asset Purchase Agreement. Both Parties agree that they shall procure that their Affiliates do not make a claim under the Larl Asset Purchase Agreement that will cause this limit to be exceeded. ARTICLE VIII MISCELLANEOUS 8.1 Headings and References . The headings in this Agreement are for convenience of reference only and shall not affect its interpretation. Any reference in this Agreement to an Article, Section or Schedule, unless it clearly refers to another instrument, means the specified Article, Section or Schedule of this Agreement. 8.2 Severability . The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement, or the application thereof to any Person or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (b) the remainder of this Agreement and the application of such provision to other Persons, entities or circumstances shall not be affected by such invalidity or unenforceability. 8.3 Expenses . Except as otherwise expressly provided herein, each of Seller and ALANA shall be responsible for its own expenses. 8.4 Notices . Any notice to be given under this Agreement must be in writing and delivered either in Person, by any method of mail (postage prepaid) requiring return receipt, or by overnight courier or facsimile confirmed thereafter by any of the foregoing, to the party to be notified at its address(es) given below, or at any address such party has previously designated by prior written notice to the other. Notice shall be deemed sufficiently given for all purposes upon the earliest of: (a) the date of actual receipt; (b) if mailed, five days after the date of postmark; or (c) if delivered by express courier, the next business day the courier regularly makes deliveries in the country of the recipient. If to ALANA, to:

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If to Seller, to:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**8.5 Waiver; Consents.** The failure by any party to exercise any right under, or to object to the breach by any other party of any term, provision or condition of, this Agreement shall not constitute a waiver thereof and shall not preclude such party from thereafter exercising that or any other right, or from thereafter objecting to that or any prior or subsequent breach of the same or any other term, provision or condition of the Agreement. Any consent granted pursuant to this Agreement shall be in writing, executed by the Person authorized by the consenting party to receive notices, and shall be a consent only to the Transactions, act or agreement specifically referred to in the consent and not to other similar Transactions, acts or agreements.

**8.6 Assignment.** This Agreement shall not be assigned by any party without the prior written consent of the other party, provided, however, that ALANA may assign this Agreement to any Affiliate of ALANA and Seller may assign this Agreement to any acquiror of all or substantially all of its business or assets if such acquiror confirms and acknowledges the obligations of Seller under this Agreement and the Collateral Documents. Any attempted assignment in contravention with the foregoing shall be void. This Agreement shall be binding on and inure to the benefit of the parties hereto, their successors and any permitted assigns.

**8.7 Further Assurance.** Each party shall do, or procure the doing of, all acts and things, and execute, or procure the execution of, all documents, as may reasonably be required to give full effect to this Agreement.

**8.8 Governing Law.** This Agreement and any disputes, claims, or actions related thereto shall be governed by and construed in accordance with the laws of the State of New York, USA, without regard to the conflicts of laws provisions thereof with the exceptions of Sections 5-1401 and 5-1402 of the New York General Obligations Law and with the exception that to the extent the transfer or assignment in rem of any Purchased Assets or Assumed Liabilities follows mandatory statutory local law, such mandatory statutory local law shall apply.

**8.9 Parties in Interest.** This Agreement is binding upon and shall inure to the benefit of the parties hereto and their successors and permitted assigns. Nothing contained in this Agreement, express or implied, shall give any other Person any legal or equitable right, remedy or claim under or with respect to this Agreement or the Transactions except as expressly provided in Article VII.

**8.10 Dispute Resolution.** Any dispute arising under or relating to the parties rights and obligations under this Agreement will be referred to the Chief Executive Officer of Corp and the Chief Executive Officer of ALANA for resolution (the "**Authorized Officers**"). Each Authorized Officer shall appoint two additional authorized representatives of such party to serve as a member of a Dispute Resolution Committee (the "**DRC**"). In the event of a dispute, the DRC shall meet and attempt, in good faith, to resolve such dispute. If the DRC is unable to resolve such dispute within 30 days of such dispute being referred to them, then, upon the written request of either party to the other party, the dispute shall be subject to arbitration, as provided in Section 8.11.

**8.11 Arbitration.**

8.11.1 Claims. Any claim, dispute, or controversy of whatever nature arising out of or relating to this Agreement that is not resolved pursuant to Section 8.1 within the required 30-day period, including without limitation, any action or claim based on tort, contract, or statute, or concerning the interpretation, effect, termination, validity, performance and/or breach of this Agreement ("**Claim**"), shall be resolved by final and binding arbitration before a panel of three neutral experts with relevant industry experience. The arbitration proceeding shall be administered by the American Arbitration Association (the "**AAA**") in accordance with its then existing International Arbitration Rules, and the panel of arbitrators shall be selected in accordance with such rules. The arbitration shall be conducted in English, and shall be held in New York, New York, USA.

8.11.2 Arbitrators' Award. The arbitrators shall, within 15 days after the conclusion of the arbitration hearing, issue a written award and statement of decision describing the essential findings and conclusions on which the award is based, including the calculation of any damages awarded. The decision or award rendered by the arbitrators shall be final and non-appealable, and judgment may be entered upon it in any court of competent jurisdiction. The arbitrators shall be authorized to award compensatory damages, but shall NOT be authorized (i) to award non-economic damages, (ii) to award punitive damages, or (iii) to reform, modify or materially change this Agreement or any other agreements contemplated hereunder; provided, however, that the damage limitations described in parts (i) and (ii) of this sentence will not apply if such damages are statutorily imposed.

8.11.3 Costs. Each party shall bear its own attorneys' fees, costs, and disbursements arising out of the arbitration, and shall pay an equal share of the fees and costs of the arbitrators; provided, however, the arbitrators shall be authorized to determine whether a party is the prevailing party, and at their discretion, to award to that prevailing party reimbursement for its reasonable attorneys' fees, costs and disbursements (including, for example, expert witness fees and expenses, photocopy charges and travel expenses), and/or the reasonable fees and costs of the AAA and the arbitrators.

**8.12 Court Actions.** Nothing contained in this Agreement shall deny either party the right to seek injunctive or other equitable relief from a court of competent jurisdiction in the context of a bona fide emergency or prospective irreparable harm, including without limitation relating to the violation of the confidentiality provisions of Section 5.4 hereof, and such an action may be filed and maintained notwithstanding any ongoing arbitration proceeding. In addition, either party may bring an action in any court of competent jurisdiction to resolve disputes pertaining to the validity, construction, scope, enforceability, infringement or other violations of Patents or other intellectual property rights, and no such matter shall be subject to arbitration pursuant to Section 8.11.

**8.13 Continued Performance.** The parties agree to continue performing under the Agreement in accordance with its provisions, pending the final resolution of any dispute.

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

**8.15 Entire Agreement; Amendments.** This Agreement and the Collateral Documents constitute the entire understanding among the parties hereto with respect to the subject matter contained herein and supersede any prior understandings and agreements among them respecting such subject matter. This Agreement may be amended, supplemented, and terminated only by a written instrument duly executed by Seller and ALANA. Each of ALANA and Seller recognizes that the liability and remedy provisions of this Agreement are material to the Agreement and have been bargained for and are reflected in the mutual promises and agreements set forth in the Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers on the date first above written.

SELLER TEMPER CORPORATION

By:

Name:

Title:

DUO-TEMPER GMBH

By:

Name:

Title:

BUYER ALANA AB

By:

Name:

Title:

**APA#24**

**Asset Purchase Agreement**

Effective Date

June \_\_, 2009

between

Greenestgrocers, Inc., ("Company")

a

New Jersey corporation,

located at

530 6th Street, Suite 221, Baltimore, MD, 21052

and

Stars of the Hearth, LLC , ("Seller")

a

New York, limited liability corporation

located at

4475 Nantucket Ave, New York, NY, 10018

**Summary**

Company desires to purchase 100% of the assets owned by Seller in the operation of the Business, subject to the conditions and upon the terms and conditions set forth herein.

As of May 21, 2009, an expert outside appraisal firm, Williams Appraisal Associates, Inc., completed an Asset Valuation of the assets of the Seller. Williams Appraisal Associates, Inc. was hired by the Company in May, 2009 to perform the Valuation, which cost $626.50. In performing the Valuation, Williams Appraisal Associates, Inc. visited Seller's offices, performed a physical review of assets and inventory. The Parties and their respective managers and directors are relying upon this Asset Valuation in establishing the Purchase Price.

**Agreement**

THEREFORE , in consideration of the mutual agreements of the parties and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, it is agreed as follows:

Agreement of Purchase and Sale . Company hereby agrees to purchase from Seller and Seller hereby agrees to sell to Company, for the consideration and upon the terms and conditions set forth herein, all of Seller's right, title and interest in and to all assets of Seller constituting or used in connection with the Business (the "Assets"), including without limitation the following:

1.1.2

Product, Inventory and supplies listed in Exhibit A.

1.1.3

Office furniture, office equipment, manufacturing equipment, computer equipment and other machinery and equipment listed in Exhibit A.

1.1.5

All of the rights, title and interest in and to all fixtures and leasehold improvements of the Seller.

1.1.6

Telephone numbers, service marks, the trade name [trade name / trademark / service mark], and all other trade names and trademarks (including the goodwill represented by that), trade secrets, Business records and files, lists of current and potential Customers and Vendors, product formulations existing and under development, promotional materials, copyrighted materials and all other intangible items, including the goodwill of Business as a going concern.]

1.1.7

All rights under the contracts, leases, licenses, insurance policies, fidelity and contract bonds, and other Agreements relating to the Business.

1.1.8

All documents, files, Agreements, instruments, records, notices, Membership Certificates, affidavits, statements, and all other papers and information of any kind relating to the Business or the Assets, including but not limited to such items stored in computer memories, on microfiche, electronically or by any other means, used, made or compiled by or on behalf of the Seller or made available to the Seller (all of which shall be delivered by the Seller to the main premises of the Business (if not already present there) on or before the Effective Date.

GREENESTGROCERS, INC.

1.1.9

All other property and assets of every kind and description whether personal, real, mixed, tangible or intangible, wherever located and whether or not reflected on its balance sheet.

1.2

Assets Excluded

Assumed Obligations . Except as listed below in this section, the Company will not assume any of Seller's debts and obligations, including without limitation trade payables and legal fees, all of which shall remain the sole responsibility of Seller.

1.2.1

The following assets are not being sold by the Seller or purchased by the Buyer and are specifically excluded from the meaning of the term "Assets":

1.2.2

Certain receivables may be retained by the Seller. Section 1.2.3 lists the receivables, if any, that the Seller does not want transferred to the Buyer.

1.2.3

Receivable due the Seller on the Closing Date.

1.2.4

Cash and cash equivalent items, including Lender accounts, money market accounts, certificates of deposit and Lender deposits, on hand at the close of business on the Closing Date.

1.2.5

Accounts receivable earned from operations of the Business during the period beginning 60 days prior to the Closing Date and ending on the Closing Date, and accounts receivable as to litigation commenced prior to the Closing Date against a debtor for purposes of collection.

1.2.6

All judgments in favor of the Seller in connection with the collection of accounts receivable.

1.2.7

All checkbooks, stubs, books of account, ledgers, and journals relating to the prior operation of the Business.

1.3

Liabilities

1.3.1

Subject to the terms and conditions of this Agreement, the Buyer will, as of the Closing Date, assume from the Seller and agrees to discharge only those liabilities and obligations that both accrue and arise after the Closing Date with respect to the paid sales orders / Agreements for Products to be delivered by the Seller to the Buyer at the Closing.

**2.Purchase Price & Terms of Payment**

The total purchase price to be paid by Company to Seller for the Assets (the "Purchase Price") will be the sum of $21,506.40 which shall be paid in the form of 2,509,205 restricted common shares payable as follows.

2,509,205 restricted common shares will be issued by the Company to Seller within 10 business days after the Closing, excluding the 400,000 restricted common shares which were issued upon the signing of the Letter of Intent;

Closing . The closing of the transactions contemplated by this Agreement (the "Closing") shall occur at the Company's offices on June \_\_\_\_, 2009.

Company has been provided unrestricted access to, and conducted a due diligence review of, Seller's books and records, including without limitation, corporate minute books and stock ledgers; bank records; accounting books and records (including without limitation periodic financial statements, accounts payable ledgers, and accounts receivable ledgers); insurance files (including liability, property, group health and workers' compensation insurance policies and claims records); operating policies and procedures; employee manuals; federal and state income tax returns for the most recent three years; and sales tax returns and payment records, and has approved same, in Company's sole discretion.

**3. Covenant Not to Compete**

Seller agrees that Seller shall not, during the period of three (3) years following the Closing, without the prior written consent of Company, which consent may be withheld for any reason or no reason, directly or indirectly engage in, or own or control an interest in, or act as an officer, director, or employee of, or consultant or adviser to, any business consisting, wholly or in part, of the organic and natural beverage industry.

It is understood and agreed that, in the event of a breach of the covenants contained in this Agreement, Company will not have an adequate remedy in the form of money damages in that that the loss to Company will not likely be an isolated case and it will be difficult or impossible to ascertain the exact amount of loss. In such event, therefore, Company shall be entitled to a temporary restraining order, preliminary injunction and/or permanent injunction, without bond, restraining the breaching party from engaging in the activity prohibited under this Agreement. Such remedy shall be nonexclusive and without prejudice to any and all other remedies to which Company may be entitled. Further, in the event of a violation of any of the covenants in this Agreement, the period for which the provision would remain in effect shall be extended for a period of time equal to that period when the activities constituting the violation commenced and ending when the activities constituting the violation shall have been finally terminated in good faith.

Selling Parties expressly acknowledge and agree that the restrictive provisions of this Agreement are reasonable and necessary for the protection of Company's legitimate business interests, that such restrictions impose no undue burden upon Selling Parties, and that the enforcement of such restrictions will not cause any Selling Party to be deprived of the ability to earn a livelihood.

Company, in addition to all equitable relief and damages, shall be entitled to recover all costs, expenses and fees, including attorneys' fees, incurred by Company in connection with the breach, by a Seller, of any covenant or agreement under this Agreement or the enforcement of any such covenant or agreement, whether or not suit is instituted.

**4. Indemnification of Sellers**

Company jointly and severally agrees to indemnify and hold Seller harmless from and against any and all loss, liability, settlement, damage, deficiency, cost and expense arising by virtue of:

Any breach of this Agreement or misrepresentation hereunder by Company;

Any and all actions, suits, proceedings, demands, judgments, costs and other expenses, including reasonable attorney's fees, incident to any of the matters referred to in this Section or any claims with respect thereto.

5.Indemnification of Company

Seller agrees to indemnify and hold Company harmless from and against any and all loss, liability, damage, deficiency, costs and expenses arising by virtue of:

Any breach of this Agreement or misrepresentation hereunder by Seller; and

Except as to those obligations expressly assumed herein, any debt or obligation of Seller, including, without limitation, any debt or obligation arising out of or in connection with the operation of the Business by Seller prior to the Closing Date, and any act or omission on the part of Seller, its respective officers, employees, and agents, in connection therewith.

Any and all actions, suits, proceedings, demands, judgments, costs and expenses, including reasonable attorney's fees, arising out of the operation of the Business prior to the Closing, or any claims with respect thereto.

**6.Confidential Information and Intellectual Property**

Disclosure of Information. Seller shall work with and be exposed to the business and operations of the Company. The Seller recognizes and acknowledges that the Company's trade secrets, confidential information, proprietary information and processes are valuable, special and unique assets of the Company's business, access to and knowledge of which are essential to the performance of the Seller's duties hereunder. The Seller will not, during or after the term of its appointment by the Company, in whole or in part, disclose such secrets, information or processes to any person, firm, corporation, association or other entity for any reason or purpose whatsoever, nor shall the Seller make use of any such property for its own purpose or for the benefit of any person, firm, corporation or other entity (except the Company) under any circumstances during and after the term of its appointment, provided that after the term of its appointment these restrictions shall not apply to secrets, information and processes which are then in the public domain (provided that the Seller was not responsible, directly or indirectly, for such secrets, information or processes entering the public domain without the Company's consent). The Seller shall consider and treat as the Company's property, all computer disks, memoranda, books, papers, lab reports, notes, letters, formulas, flow charts, tables, designs, reports, customer lists, financial statements and budgets and all other data, and all copies thereof and there from, in any way relating to the Company's business and affairs, whether created by it or otherwise coming into its possession, and on termination of its appointment, or on demand of the Company, at any time, to deliver all embodiments of the confidential information (whether written, typed or computer files) of the same to the Company

Inventions or Discoveries. The Seller acknowledges that while working with as well as developing products for the Company any and all inventions, improvements, discoveries, processes, programs or systems relating to the business of the Company developed or discovered by the Seller shall be fully disclosed by it to the Company and shall be the sole and absolute property of the Company. For the purpose of the Section, the meaning of the phrase "inventions, improvements, discoveries, processes, programs or systems relating to the business of the Company" shall not be limited to formulations, inventions, improvements, discoveries, processes, programs or systems which result in modifications or enhancements of, or can be used in connection with or in lieu of, services or products then offered commercially by the Company, or which are the subject of patents held or applied for by the Company, or which are under active funded development by the Company during the term of this Agreement. For the purpose of this Section, the meaning of the phrase "under active funded development by the Company" shall be limited to services or products which the Company has developed or is in the process of developing and for which the Company has accounted for the expenses of such development in accordance with generally accepted accounting principles. The Seller acknowledges that upon the request of the Company, the Seller shall execute, acknowledge and deliver, such assignments, certificates or other documents as the Company may consider necessary or appropriate to properly vest all right, title and interest to any such invention of formulation or discovery in the Company. Any such invention or discovery by the Seller within one year of the termination or expiration of the Agreement shall fall within the provisions of this Section unless proved conclusively by the Seller to have been first invented or discovered by it following such termination or expiration. The provisions of this Section shall survive the expiration of the Agreement or its termination by either the Company or the Seller and shall remain in full force and effect.

Intellectual Property Rights . Seller acknowledges and agrees that any and all product development discussions, formulations, trade secrets, trademarks, design work, brand development, modifications and/or evolutions of product or packaging that were the property of the Seller are now the property of the Company. Seller acknowledges and agrees that any and all product development discussions, formulations, trade secrets, trademarks, design work, brand development, modifications and/or evolutions of product or packaging that Seller will work on and develop for the Company will be the property of Company. Neither Seller nor Seller's employees, subsidiaries or parent or sister companies or assigns shall sell or trade with any item which infringes or may be construed to infringe upon Company's intellectual property rights as interpreted by international patent, trade mark and copyright laws.

**7.General Provisions**

7.1

Independent Contractors. The relationship between both parties established by this Agreement is that of independent contractors, and nothing contained in this Agreement shall be construed to give either party the power to direct and control the day-to-day activities of the other. Neither party is an agent, representative or partner of the other party. Neither party shall have any right, power or authority to enter into any agreement for, or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other party. This Agreement shall not be interpreted or construed to create an association, agency, joint venture or partnership between the parties or to impose any liability attributable to such relationship upon either party.

7.2

Governing Law & Jurisdiction . This agreement and the parties' actions under this Agreement shall be governed by and construed under the laws of the state of New Jersey, without reference to conflict of law principles. The parties hereby expressly consent to the jurisdiction and venue of the federal and state courts within the state of New Jersey. Each party hereby irrevocably consents to the service of process in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to such party at its address set forth in the preamble of this Agreement, such service to become effective thirty (30) days after such mailing.

7.3

Entire Agreement. This Agreement, including the attached exhibits, constitutes the entire Agreement between both parties concerning this transaction, and replaces all previous communications, representations, understandings, and Agreements, whether verbal or written between the parties to this Agreement or their representatives. No representations or statements of any kind made by either party, which are not expressly stated in this Agreement, shall be binding on such parties.

7.4

All Amendments in Writing. No waiver, amendment or modification of any provisions of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom such waiver, amendment or modification is sought to be enforced. Furthermore, no provisions in either party's purchase orders, or in any other business forms employed by either party will supersede the terms and conditions of this Agreement.

7.5

Notices. Any notice required or permitted by this Agreement shall be deemed given if sent by registered mail, postage prepaid with return receipt requested, addressed to the other party at the address set forth in the preamble of this Agreement or at such other address for which such party gives notice hereunder. Delivery shall be deemed effective three (3) days after deposit with postal authorities.

7.6

Costs of Legal Action. In the event any action is brought to enforce this Agreement, the prevailing party shall be entitled to recover its costs of enforcement including, without limitation, attorneys' fees and court costs.

7.7

Inadequate Legal Remedy. Both parties understand and acknowledge that violation of their respective covenants and Agreements may cause the other irreparable harm and damage, that may not be recovered at law, and each agrees that the other's remedies for breach may be in equity by way of injunctive relief, as well as for damages and any other relief available to the non-breaching party, whether in law or in equity.

7.8.

Arbitration. Any dispute relating to the interpretation or performance of this Agreement shall be resolved at the request of either party through binding arbitration. Arbitration shall be conducted in New Jersey in accordance with the then-existing rules of the American Arbitration Association. Judgment upon any award by the arbitrators may be entered by any state or federal court having jurisdiction. Company and Seller intend that this Agreement to arbitrate be irrevocable.

7.8

Delay is Not a Waiver. No failure or delay by either party in exercising any right, power or remedy under this Agreement, except as specifically provided in this Agreement, shall operate as a waiver of any such right, power or remedy.

7.9

Force Majeure. In the event that either party is unable to perform any of its obligations under this Agreement or to enjoy any of its benefits because of any Act of God, strike, fire, flood, governmental acts, orders or restrictions, Internet system unavailability, system malfunctions or any other reason where failure to perform is beyond the reasonable control and not caused by the negligence of the non-performing party (a "Force Majeure Event"), the party who has been so affected shall give notice immediately to the other party and shall use its reasonable best efforts to resume performance. Failure to meet due dates resulting from a Force Majeure Event shall extend such due dates for a reasonable period. However, if the period of nonperformance exceeds sixty (60) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been affected may, by giving written notice, terminate this Agreement effective immediately upon such notice or at such later date as is therein specified.

7.10

Assignability & Binding Effect . Except as expressly set forth within this Agreement, neither party may transfer or assign, directly or indirectly, this Agreement or its rights and obligations hereunder without the express written permission of the other party, not to be unreasonably withheld; provided , however , that both parties shall have the right to assign or otherwise transfer this Agreement to any parent, subsidiary, affiliated entity or pursuant to any merger, consolidation or reorganization, provided that all such assignees and transferees agree in writing to be bound by the terms of this Agreement prior to such assignment or transfer. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.

7.11

Certain Sections Invalid. If any provisions of this Agreement are held by a court of competent jurisdiction to be invalid under any applicable statute or rule of law, they are to that extent to be deemed omitted and the remaining provisions of this Agreement shall remain in full force and effect.

7.12

Headings. The titles and headings of the various sections and sections in this Agreement are intended solely for convenience of reference and are not intended for any other purpose whatsoever, or to explain, modify or place any construction upon or on any of the provisions of this Agreement.

7.13

Survival of Certain Provisions. The warranties and the indemnification and confidentiality obligations set forth in the Agreement shall survive the termination of the Agreement by either party for any reason.

Understood, Agreed & Approved

We have carefully reviewed this contract and agree to and accept all of its terms and conditions. We are executing this Agreement as of the Effective Date above.

Company:

Seller:

Greenestgrocers, Inc.

Stars of the Hearth, LLC

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Harry M.Richards

Kip Beringer

Founder/CEO/President/Chairman

Founder

GREENESTGROCERS, INC.

Text Marked By [\* \* \*] Has Been Omitted Pursuant To A Request For Confidential Treatment And Was Filed Separately With The Securities And Exchange Commission.

**APA#25**

**ASSET PURCHASE AGREEMENT**

by and between

Medstatknow Corporation, as Seller,

and

Warditoff ApS, as Buyer

May 13, 2011

**ASSET PURCHASE AGREEMENT**

This Asset Purchase Agreement (this " Agreement ") is made as of May 13, 2011, by and between Medstatknow Corporation, a Delaware corporation (" Seller "), and Warditoff ApS, a company organized under the laws of Denmark (" Buyer "). Seller and Buyer are each referred to individually as a " Party " and collectively as the " Parties ." RECITIFM WHEREAS, Seller owns certain pre-clinical and clinical data, intellectual property rights and other assets relating to certain compounds, and Seller and Buyer desire for Buyer to acquire such rights and assets upon the terms set forth herein. NOW, THEREFORE, the Parties agree as follows:

**ARTICLE 1**

**DEFINITIONS**

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

" Acceptance of Filing Submission " means with respect to an MAA, the occurrence of the earlier of: (a) the expiration of the period specified in Applicable Law for any notice by the applicable Regulatory Authority that such MAA will not be accepted for review, without Buyer, its Affiliates or their licensees having received such notice from such Regulatory Authority; or (b) the receipt by Buyer, its Affiliates or their licensees from the applicable Regulatory Authority of notice that such MAA is accepted for review, provided that in any case, if neither such period for acceptance nor such notice is provided for in Applicable Law, then the MAA shall be deemed "accepted" on the date such MAA was submitted to the applicable Regulatory Authority.

" Acquired Patents " means the Patents set forth in Schedule 2.1(b)(i) .

" Affiliate " means any corporation or other business entity controlled by, controlling, or under common control with a Party to this Agreement. For this purpose, " control " means direct or indirect beneficial ownership of at least 50% of the voting stock or income interest in such corporation or other business entity, or such other relationship as, in fact, constitutes actual possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such corporation or other business entity, whether by contract or otherwise.

" IFM or Halititis Warditoff Product " means an Warditoff Product that is developed or labeled for the treatment or prevention of Inflemmosis or Halititis.

" Applicable Law " means applicable laws, statutes, rules, regulations and guidances, including rules, regulations, guidances, guidelines or other requirements of Regulatory Authorities or other Governmental Bodies, as in effect from time to time in any jurisdiction. " Assigned Contracts " has the meaning set forth in Section 2.1(c).

" Assumed Liabilities " has the meaning set forth in Section 2.2. " STATOMED Acquisition Agreement " has the meaning set forth in Section 2.3(a). " STATOMED Acquisition Date " has the meaning set forth in Section 2.3(a).

" Books and Records " means, to the extent they relate to the Purchased Assets and are maintained by Seller or its Affiliates as of the Closing Date,

(a) all books, records, files, documents, data, information and correspondence, whether in electronic or tangible form, including all records with respect to supply sources;

(b) trial master files, all pre-clinical, clinical and process development data and reports relating to research or development of the Products or of any materials used in the research, development or manufacture of the Products, including all raw data relating to clinical trials of the Products, all case report forms relating thereto , all statistical programs developed (or modified in a manner material to the use or function thereof) to analyze clinical data;

(c) all records, including vendor and supplier lists, manufacturing records, sampling records, standard operating procedures , quality control and release testing procedures and batch records, related to the manufacturing process;

(d) all data contained in laboratory notebooks relating to the Products or relating to their biological, physiological, mechanical or formula properties;

(e) all drug master files, all adverse experience reports and files related thereto (including source documentation) , all periodic adverse experience reports and all data contained in electronic data bases relating to periodic adverse experience reports , all complaint databases and other regulatory files ;

(f) all analytical and quality control data ;

(g) all documentation relating to the Product Intellectual Property ; and

(h) all correspondence, minutes or other communications with the FDA maintained by Seller or any of its Affiliates as of the Closing Date, including all books, records, files, documents, data, information and correspondence that Seller acquired from STATOMED pursuant to the STATOMED Acquisition Agreement.

" Business Day " means any day other than a Saturday, Sunday or a statutory or civic holiday in the State of California or Copenhagen, Denmark, or other day on which banks in the State of California or Copenhagen, Denmark are permitted or required to close by Applicable Law.

" Clinical Trial " means any controlled clinical study sponsored by Buyer, its Affiliates or their licensees of an Warditoff Product in humans designed to establish the safety or efficacy of an Warditoff Product. " Closing " has the meaning set forth in Section 2.4.

" Closing Date " has the meaning set forth in Section 2.4.

" Closing Payment " has the meaning set forth in Section 2.5.

" Commercialize " means to manufacture, market, promote, distribute, import, export, offer to sell or sell a drug.

" Competing Product " means any Product that is developed or labeled for the treatment or prevention of lysosomal storage diseases.

" Compound " means any of: (a) arimoclomol, iroxanadine and bimoclomol, as such molecules are further described in Schedule 1 ; and (b) any other compound for which its composition of matter is claimed under any of the Acquired Patents.

" Confidentiality Agreement " means the Mutual Nondisclosure Agreement dated December 17, 2010 between Seller and Buyer.

" Disclosure Schedule " means the disclosure schedule delivered by Seller to Buyer concurrently with the execution and delivery of this Agreement.

" EMA " means the European Medicines Agency or any successor thereto.

" Encumbrance " means any lien, pledge, security interest, mortgage, option, license, right of first refusal or similar restriction.

" Excluded Liabilities " has the meaning set forth in Section 2.3.

" FDA " means the United States Food and Drug Administration or any successor thereto.

" Governmental Authorization " means any approval, consent, license, permit, or other authorization issued, granted, given, or otherwise made available by or under the authority of any Governmental Body or pursuant to any Applicable Law.

" Governmental Body " means any Federal, state, provincial, local or foreign government or any court, administrative or regulatory agency or commission or other governmental authority or agency.

" IFRS " means International Financial Reporting Standards.

" IND " means any investigational new drug application (including any amendments thereto) filed with the FDA pursuant to 21 C.F.R. 312, Subpart B or any comparable filings with any Regulatory Authority in any other jurisdiction, including any application for a clinical trial authorization (CTA).

" Know-How " means all technical, scientific and medical information, data, knowledge, know-how, inventions and trade secrets that are necessary or useful for the development, registration, manufacturing, formulation, sale, use and commercialization of the Compounds or Products, including any and all:

(a) research and development files, including information concerning the clinical, toxicological and pharmacological properties of the Compound,

(b) manufacturing records, process development reports and files, batch documentation, master batch records, quality control and release testing procedures, and specifications,

(c) adverse event reports and files, complaint databases and other regulatory files,

(d) pre-clinical and clinical studies and files, including reports, case report forms and other materials or correspondence filed with or received from a Governmental Body, investigator or contract research organization, and

(e) all technical, scientific and medical information, data, knowledge, know-how, inventions and trade secrets that Seller acquired from STATOMED pursuant to the STATOMED Acquisition Agreement.

" Knowledge " means the actual knowledge of, with respect to any matter in question, (i) in the case of Buyer, any officer or director of Buyer, and (ii) in the case of Seller, David Haen, Benjamin Levin or any officer or director of Seller.

" Legal Requirement " means any Federal, state, provincial, local or foreign constitution, law, statute, rule or regulation.

" License Revenues " means, with respect to any license agreement entered into by Buyer or its Affiliates and a Third Party within [\*\*\*] after the Closing Date that grants rights under the Purchased Assets to Commercialize an Warditoff Product, (a) all upfront and other payments payable to Buyer or its Affiliates in connection with the execution of such license agreement, (b) any development or regulatory milestone payments payable to Buyer or its Affiliates prior to the first commercial sale of an Warditoff Product that is subject to any such license agreement, and (c) license maintenance fees payable to Buyer or its Affiliates; but excluding, without limitation, royalties, profit sharing and other payments based on sales.

" MAA " means a marketing authorization application, new drug application or other product registration application filed with any Regulatory Authority to obtain approval to sell an Warditoff Product in a country or region and all supplements, variations and other amendments thereof.

" MAA Approval " means, with respect to each country or region, approval of the applicable MAA by the applicable Regulatory Authority.

" Major European Union Country " means Germany, France, Italy, Spain or the United Kingdom.

" Net Sales " means, in relation to an Warditoff Product, the gross amounts invoiced on sales of such Warditoff Product by Buyer or any of its Affiliates or their licensees to a Third Party purchaser in an arms-length transaction, less the following customary deductions, to the extent specifically allocated to any such Warditoff Product and actually taken, paid, accrued or allowed:

(a) normal and customary trade, cash and/or quantity discounts or allowances, and credits allowed or paid, in the form of deductions actually allowed or fees actually paid with respect to sales of such Warditoff Product (to the extent not already reflected in the amount invoiced) excluding commissions for commercialization;

(b) rebates, chargebacks, and discounts (or equivalent thereof) actually granted to managed health care organizations, pharmacy benefit managers (or equivalent thereof), federal, state/provincial, local or other governments, or their agencies or purchasers, reimbursers, or trade customers;

(c) excise taxes, use taxes, tariffs, sales taxes and customs duties, and/or other government charges imposed on the sale of such Warditoff Product to the extent included in the price and separately itemized on the invoice price but specifically excluding, for clarity, any income taxes assessed against the income arising from such sale and including value add taxes, but only to the extent that such value add taxes are not reimbursable or refundable;

(d) outbound freight, shipment and insurance costs to the extent included in the price and separately itemized on the invoice price; and (e) retroactive price reductions, credits or allowances actually granted upon claims, rejections or returns of such Warditoff Product, including for recalls or damaged goods and billing errors.

" Non-IFM or Halititis Warditoff Products " means a Warditoff Product that is not being developed, and is not labeled, for the treatment or prevention of Inflemmosis or Halititis.

" Warditoff Product " means any Product developed by Buyer, its Affiliates or their licensees.

" Patent Assignment " means the Patent Assignment Agreement to be executed and delivered at the Closing by Seller and Buyer, in the form attached hereto as Exhibit A .

" Patents" means

(a) all national, regional and international patents and patent applications, including provisional patent applications,

(b) all patent applications filed either from such patents, patent applications or provisional applications or from an application claiming priority from either of these, including divisionals, continuations, continuations-in-part, provisionals, converted provisionals, and continued prosecution applications,

(c) any and all patents that have issued or in the future issue from the foregoing patent applications ((a) and (b)), including utility models, petty patents and design patents and certificates of invention, (d) any and all extensions or restorations by existing or future extension or restoration mechanisms, including revalidations, reissues, re-examinations and extensions (including any supplementary protection certificates and the like) of the foregoing patents or patent applications ((a), (b) and (c)) and (e) any similar rights, including so-called pipeline protection, or any importation, revalidation, confirmation or introduction patent or registration patent or patent of additions to any of such foregoing patent applications and patents ((a), (b), (c) and (d)).

" Person " means any individual, corporation, partnership, limited liability company, trust, association, organization, or other entity or Governmental Body.

" Phase III Clinical Trial " means a controlled pivotal clinical study sponsored by Buyer, its Affiliates or their licensees of an Warditoff Product that is prospectively designed to establish efficacy and safety for the purpose of preparing and submitting an MAA.

" Proceeding " means any action, arbitration, investigation, litigation or suit commenced, brought, conducted, or heard by or before, or otherwise involving, any Governmental Body or arbitrator.

" Product " means any pharmaceutical formulation containing a Compound.

" Product Intellectual Property " means (i) the Acquired Patents and (ii) the Know-How.

" Product Inventory " means all inventories of Compounds and Products in existence as of the date of this Agreement, including samples, placebos, raw materials, clinical trial materials and works in process owned by Seller or any of its Affiliates.

" Purchased Assets " has the meaning set forth in Section 2.1.

" Regulatory Authority " means any Governmental Body responsible for granting MAA Approvals for drugs, including the FDA, EMA and any corresponding national or regional regulatory authorities.

" Regulatory Approvals " means all Governmental Authorizations required by any Governmental Body or under any Applicable Laws to own, use, develop or manufacture the Purchased Assets, including all INDs.

" Regulatory Exclusivity " means any of:

(a) a designation as a drug for rare diseases or conditions under Sections 526 et seq. of the FDC Act or EC Regulation No. 141/2000, as amended;

(b) an exclusive right to sell pursuant to Section 505(j)(4) of the FDC Act or the data exclusivity provisions under Directives 2004/27/EC and 2001/83/EC and Regulation (EC) 726/2004, as amended; or

(c) the completion of pediatric studies requested by the FDA under Section 505A et seq. of the FDC Act or EU Regulation 1901/2006, as amended, and in each of the foregoing, the equivalent rights in any other country. " Royalties " has the meaning set forth in Section 2.8(a).

" Sales and Royalty Report " means a written report showing each of:

(a) the Net Sales of each Warditoff Product during the reporting period;

(b) the Royalties payable with respect to such Net Sales;

(c) the exchange rate(s) used to compute such amounts; and

(d) applicable withholding taxes.

" Tax " means any and all taxes, assessments, levies, tariffs, duties or other charges, or impositions in the nature of a tax (together with any and all interest, penalties, additions to tax and additional amounts imposed with respect thereto) imposed by any applicable Governmental Body.

" Territory " means the world.

" Third Party " means any Person other than a Party or an Affiliate of a Party.

" Valid Claim " means a claim of an issued Acquired Patent that has not expired or been revoked, held invalid or enforceable by an administrative agency, court or other governmental agency or competent jurisdiction in a final and non-appealable judgment (or judgment from which no appeal was taken within the allowable time period).

**ARTICLE 2 ASSETS TO BE PURCHASED**

**2.1 Purchased Assets** . Seller hereby sells, conveys, assigns, transfers and delivers to Buyer free and clear of all Encumbrances (except for the Encumbrances described on Schedule 2.1(a) ), and Buyer hereby purchases and acquires from Seller, all right, title and interest in and to the following (the " Purchased Assets "):

(a) Product Inventory;

(b) Product Intellectual Property; (c) all contracts relating to the Purchased Assets that are set forth on Schedule 2.1

(c) (the " Assigned Contracts ");

(d) Books and Records;

(e) Regulatory Approvals;

(f) all present and future rights, claims, credits, causes of action, rights of indemnity, warranty rights, guarantees, rights of contribution, rights to refund, rights of recovery and rights of setoff against Third Parties to the extent related to the Purchased Assets; and

(g) all goodwill associated with the Purchased Assets.

**2.2 Assumed Liabilities** . Buyer hereby assumes and agrees to pay, perform and discharge when due, only the liabilities, obligations or commitments arising out of any Assigned Contract to the extent incurred after the Closing Date, except for those liabilities specifically excluded in Section 2.3(c) and (e) (the " Assumed Liabilities ") (and, for the avoidance of doubt, not including any liability arising out of or relating to a breach of such contract which occurred prior to the Closing).

**2.3 Excluded Liabilities .** Notwithstanding any other provision of this Agreement or any other writing to the contrary, Buyer does not assume, and shall not have any obligation to pay, perform or discharge, any liability of Seller other than the Assumed Liabilities, all of which shall be retained by and remain liabilities, obligations and commitments of Seller (collectively, the " Excluded Liabilities "). Excluded Liabilities shall include:

(a) any liabilities, obligations or commitments arising out of or relating to that certain Asset Sale and Purchase Agreement by and among STATOMED., STM Research and Development Company Ltd and Seller (the " STATOMED Acquisition Agreement ") dated October 4, 2004 (the " STATOMED Acquisition Date ");

(b) any liabilities, obligations or commitments arising out of or relating to the ownership or use of the Purchased Assets prior to the Closing Date;

(c) any obligations with respect to the employment of any individual who is a party to any confidentiality or non-disclosure agreement listed on Schedule 2.1(c) ;

(d) any liabilities and obligations arising out of or relating to the return of Products or any product liability, breach of warranty or similar claim for injury or other harm to person or property, regardless of when asserted, that arises out the any clinical study or other development, use or misuse of Products supplied by, for or on behalf of Seller prior to the Closing Date;

(e) any obligations, if any, to make any payments to the IFM Charitable Remainder Trust dated August 28, 2006 (" IFMCT ") in accordance with that certain Royalty Agreement dated August 28, 2006 between Seller and IFMCT as amended by that certain letter agreement dated August 13, 2009 between Seller and IFMCT, on any sums payable by Buyer to Seller pursuant to this Agreement;

(f) except to the extent specifically provided in Section 2.2, all other liabilities, obligations and commitments, regardless of when they are asserted, billed or imposed or when they become due or payable, of whatever kind and nature, primary or secondary, direct or indirect, absolute or contingent, known or unknown, whether or not accrued, arising out of or relating to, directly or indirectly, the Products or the Purchased Assets to the extent such liabilities, obligations or commitments are attributable to any action, omission, performance, non-performance, event, condition or circumstance prior to the Closing Date.

**2.4 Closing .** The closing of the transactions contemplated by this Agreement (the " Closing ") shall take place on the date hereof, or such other date as Buyer and Seller may mutually determine (the " Closing Date "). Title to, ownership of, control over and risk of loss of the Purchased Assets shall pass to Buyer effective as of 12:01 a.m. on the Closing Date unless expressly provided otherwise herein. The Parties shall, at Buyer's cost and risk, within a reasonable period of time after the Closing Date, make arrangements for the shipping, storage or disposal (upon written instructions from the Buyer and at Buyer's cost) of the Purchased Assets.

**2.5 Closing Payment .** At the Closing, Buyer shall deliver to Seller by wire transfer to an account specified by Seller, in immediately available funds, an amount equal to the sum of $ [\*\*\*] (the " Closing Payment ").

**2.6 Development and Regulatory Milestone Payments .** Buyer shall also pay the following development and regulatory milestone payments:

(a) With respect to Non-IFM or Halititis Warditoff Products and subject to the terms set forth in subsection

(b) below, Buyer shall make the following non-refundable cash payments to Seller following the achievement of the corresponding milestone event by Buyer, its Affiliates or their licensees:

|  |  |  |
| --- | --- | --- |
| Milestone Event | First Non-IFM or Halititis Warditoff Product Milestone Payment | Second Non-IFM or Halititis Warditoff Product Milestone Payment |
| First dosing in the first Clinical Trial | $ [\*\*\*] | $ [\*\*\*] |
| First dosing in the first Phase III Clinical Trial | $ [\*\*\*] | $ [\*\*\*] |
| MAA Approval by the EMA or the applicable Regulatory Authority in a Major European Union Country | $ [\*\*\*] | $ [\*\*\*] |
| MAA Approval in the United States | $ [\*\*\*] | $ [\*\*\*] |
| MAA Approval in Japan | $ [\*\*\*] | $ [\*\*\*] |

(b) Buyer shall pay to Seller the amounts set forth under the column entitled "First Non-IFM or Halititis Warditoff Product Milestone Payment" when the first Non-IFM or Halititis Warditoff Product developed by Buyer, its Affiliates or their licensees achieves the corresponding milestone event. Buyer shall pay to Seller the amounts set forth under the column entitled "Second Non-IFM or Halititis Warditoff Product Milestone Payment" when the second Non-IFM or Halititis Warditoff Product developed by Buyer, its Affiliates or their licensees achieves the corresponding milestone event. A Non-IFM or Halititis Warditoff Product will not be considered the second Non-IFM or Halititis Warditoff Product for purposes of the preceding sentence unless it contains a different Compound than the first Non-IFM or Halititis Warditoff Product. The amounts payable under the column entitled "First Non-IFM or Halititis Warditoff Product Milestone Payment" will be paid only once. The amounts payable under the column entitled "Second Non-IFM or Halititis Warditoff Product Milestone Payment" will be paid only once. For the avoidance of doubt, milestones achieved by Third Parties under investigator-sponsored studies shall not be deemed achieved by Buyer, its Affiliates or their licensees, even if Buyer provides product under a material transfer agreement to such Third Party.

(c) With respect to each IFM or Halititis Warditoff Product, Buyer shall make the following non-refundable cash payments to Seller following the achievement of the corresponding milestone event by Buyer, its Affiliates or their licensees:

|  |  |
| --- | --- |
| Milestone Event | Milestone Payment |
| First dosing in the first Phase III Clinical Trial | $ [\*\*\*] |
| Acceptance of Filing Submission by EMA | $ [\*\*\*] |
| MAA Approval by the EMA or the applicable Regulatory Authority in a Major European Union Country | $ [\*\*\*] |
| Acceptance of Filing Submission by FDA | $ [\*\*\*] |
| MAA Approval in the United States | $ [\*\*\*] |
| MAA Approval in Japan | $ [\*\*\*] |

Each milestone payment shall be payable only once for each IFM or Halititis Warditoff Product irrespective of the number of times the milestone events shall have been achieved by such IFM or Halititis Warditoff Product. A subsequent IFM or Halititis Warditoff Product is eligible to achieve the milestone payments listed above if:

(i) it contains a Compound that is different than other IFM or Halititis Warditoff Products previously achieving such milestone; or

(ii) it contains the same Compound as another IFM or Halititis Warditoff Product previously achieving such milestone, but such subsequent IFM or Halititis Warditoff Product is for a different indication (i.e. IFM or Halititis) than such IFM or Halititis Warditoff Product previously achieving such milestone. Notwithstanding the foregoing, an IFM or Halititis Warditoff Product is eligible to achieve the milestone payments listed above even if such product contains a Compound that was used to develop a Non-IFM or Halititis Warditoff Product that achieved one or more milestone payments pursuant to subsections (a) and (b) above. For the avoidance of doubt, milestones achieved by Third Parties under investigator-sponsored studies shall not be deemed achieved by Buyer, its Affiliates or their licensees, even if Buyer provides product under a material transfer agreement to such Third Party.

(d) Buyer shall provide Seller with written notice of the achievement of each milestone and pay to Seller the corresponding milestone payment within 30 days after such milestone is achieved.

**2.7 Sales Milestones .** Within 30 days after the achievement by Buyer, its Affiliates or their licensees in any calendar year of aggregate Net Sales of Warditoff Product(s) reaching the sales milestone levels set forth below, Buyer shall pay to Seller the additional non-refundable amounts set forth below:

|  |  |
| --- | --- |
| Sales Milestone (Annual Aggregate Net Sales) | Milestone Payment |
| Aggregate annual Net Sales $ [\*\*\*] | $ [\*\*\*] |
| Aggregate annual Net Sales $ [\*\*\*] | $ [\*\*\*] |
| Aggregate annual Net Sales $ [\*\*\*] | $ [\*\*\*] |

Each milestone payment shall be payable only once irrespective of the number of times the milestone events shall have been achieved. Multiple milestone payments may be payable with in a particular calendar year if more than one milestone event is achieved in that calendar year.

**2.8 Royalties** .

(a) Buyer shall pay Seller royalties (the " Royalties ") equal to the following percentages of Net Sales:

(i) [\*\*\*] % on Net Sales of all Warditoff Products that are labeled and prescribed for the treatment or prevention of Inflemmosis or Halititis; and

(ii) [\*\*\*] % on Net Sales of all other Warditoff Products.

(b) Upon MAA Approval of an IFM or Halititis Warditoff Product, Buyer and Seller shall establish procedures for the calculation of Royalties with respect to such product in accordance with subsection (a) above. Any such procedures shall include the use of Third Party prescription data.

**2.9 Royalty Term.** Royalties shall be paid on a country-by-country basis and Warditoff Product by Warditoff Product basis until the later of:

(i) the expiration of all Valid Claims claiming the composition of matter or use of such Warditoff Product for the approved indication in such country,

(ii) the expiration of all Regulatory Exclusivity for such approved indications in such country for such Warditoff Product; or

(iii) [\*\*\*] from the date of MAA Approval in such country for such Warditoff Product (the " Royalty Term "). The Royalties payable under Section 2.8 shall be reduced by [\*\*\*] % on a country-by-country basis and Warditoff Product by Warditoff Product basis for the remainder of the Royalty Term upon the expiration of all Valid Claims claiming the composition of matter or use of such Warditoff Product for the approved indication in such country and the expiration of all Regulatory Exclusivity for such approved indications in such country for such Warditoff Product. The Royalties payable under Section 2.8 shall be reduced by [\*\*\*] % on a country-by-country basis and Warditoff Product by Warditoff Product basis for the remainder of the Royalty Term if, at the time of the first commercial sale of an Warditoff Product in a country, there are no Valid Claims claiming the composition of matter or use of such Warditoff Product for the approved indication in such country and there is no Regulatory Exclusivity for such approved indications in such country for such Warditoff Product.

**2.10 Third Party IP**. If Buyer obtains a license or immunity from suit from any Third Party that is reasonably necessary for Buyer, its Affiliates or any of their licensees to exercise or use the rights granted to Buyer herein in respect of any Warditoff Product in any country or to develop or Commercialize Warditoff Products in any country, and Buyer, its Affiliates or any of their licensees pays any Third Party any up-front fee, milestone, royalty, or other payment (each, a " Third Party Payment ") in consideration of obtaining such license or immunity from suit, Buyer shall have the right to offset up to [\*\*\*] % of such Third Party Payments that are allocable to an Warditoff Product against Royalties payable to Seller under Section 2.8 in respect of sales of such Warditoff Product; provided , that such offset shall not exceed [\*\*\*] % of the Royalties otherwise payable in respect of sale of such Warditoff Product; and provided further that any portion of the [\*\*\*] % of such Third Party Payments that may be offset against Royalties payable to Seller under Section 2.8 may be applied against Royalties to be paid in respect of such Warditoff Product in subsequent periods until fully depleted. Not less than 20 Business Days prior to entering into any agreement providing for payment of Third Party Payments, Buyer shall send Seller a written notice describing in reasonable detail the terms of the proposed agreement and reasons for entering into such agreement. If requested by Seller, the Parties shall then discuss such terms and Buyer shall consider in good faith any views expressed by Seller. For purposes of clarity, any such license or immunity with respect to any Warditoff Product will not be deemed necessary and will not qualify as a Third Party Payment under this Section 2.10 if said license or immunity is required only for combinations or for formulations, delivery routes or methods of administration that were not used by Seller and will not be subject to such offset unless agreed to in writing by the Parties.

**2.11 Royalty Adjustment for Generic Competition** . In the event that there is Generic Competition (as defined below) with respect to an Warditoff Product in any country during the Royalty Term, then the Royalties payable for Net Sales in respect of such Warditoff Product in such country shall be reduced by [\*\*\*] % following the first occurrence of Generic Competition in such country and for long as Generic Competition prevails in such country. In this Section, " Generic Competition " means the initiation of commercial sales of a generic version of an Warditoff Product in a country.

**2.12 Sales and Royalty Report** . Within 60 days after each quarter during the Royalty Term, Buyer will provide to Seller a Sales and Royalty Report, together with a payment of all Royalties payable on Net Sales during such quarter.

**2.13 Audit of Sales and Royalty Report** . Seller shall have the right for a period of three years after receiving any Sales and Royalty Report to appoint a U.S. or internationally-recognized independent accounting firm (which is reasonably acceptable to Buyer) to inspect the relevant records of Buyer or its Affiliates to verify such Sales and Royalty Report. Buyer and its Affiliates shall make their records available for inspection by the accounting firm during regular business hours at such place or places where such records are customarily kept, upon receipt of reasonable advance notice from Seller, solely to verify the accuracy of the Sales and Royalty Reports. Such inspection right shall not be exercised more than once in any year. Seller shall pay for such audits, as well as its own expenses associated with enforcing its rights with respect to any payments hereunder, except that in the event there is any upward adjustment in aggregate amounts payable for any year shown by such audit of more than 5% of the amount paid, Buyer shall pay for such audit.

**2.14 Non-Royalty Licensing Fee** . With respect to any license agreement entered into by Buyer or its Affiliates and a Third Party within 18 months after the Closing Date that grants rights under the Purchased Assets to Commercialize an Warditoff Product, Buyer will pay Seller a fee equal to [\*\*\*] % of any License Revenues (the " Non-Royalty Licensing Fee "). Buyer shall provide Seller with a written notice within 30 days of the entry by Buyer or its Affiliates into each license agreement of an Warditoff Product, and shall pay to Seller any Non-Royalty Licensing Fee within 30 days of receipt by Buyer or its Affiliates of any License Revenues. The Non-Royalty Licensing Fee will be in addition to, and not in lieu of, the other any other payments Buyer is required to pay to Seller with respect to any such licensed Warditoff Product under this Agreement.

**2.15 Disclaimer .** BUYER DISCLAIMS ANY REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, THAT IT WILL BE ABLE TO SUCCESSFULLY COMMERCIALIZE ANY WARDITOFF PRODUCT OR, IF COMMERCIALIZED, THAT ANY PARTICULAR NET SALES LEVEL OF SUCH PRODUCT WILL BE ACHIEVED. BUYER HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, EITHER EXPRESS OF IMPLIED, THAT IT WILL USE DILIGENT OR ANY EFFORTS TO REACH THE MILESTONES AND NET SALES LEVELS SET FORTH IN THIS AGREEMENT. THE PARTIES AGREE THAT BUYER HAS ABSOLUTE DISCRETION WITH RESPECT TO WHICH COMPOUNDS OR PRODUCTS IT PURSUES, IF ANY, AND THAT BUYER IS UNDER NO OBLIGATION TO PURSUE ANY IFM OR HALITITIS WARDITOFF PRODUCTS. THE PARTIES AGREE THAT THE BUYER MAY, IN ITS SOLE DISCRETION, CEASE ANY FURTHER WORK OR EXPENDITURE ON ANY OF THE PRODUCT INTELLECTUAL PROPERTY, AND MAY, AT ITS SOLE DISCRETION, ABANDON, NOT FURTHER PURSUE OR RENEW THE SAME.

**2.16 Currency; Holidays .** All currency amounts set forth or referred to in this Agreement are in United States Dollars. All payments under this Agreement shall be made in United States Dollars to the credit of such bank account as may be designated in writing by the Party receiving payment. Any payments which fall due on a date that is a legal holiday in California may be made on the next following day that is not a legal holiday in California.

**2.17 Taxes .** Seller will pay any and all Taxes levied on account of any payments made to it under this Agreement. If any Taxes are required to be withheld by Buyer, Buyer will:

(a) deduct such Taxes from the payment made to Seller;

(b) timely pay the Taxes to the proper taxing authority;

(c) send proof of payment to Seller; and

(d) reasonably assist Seller in its efforts to obtain a credit for such Tax payment. Each Party agrees to reasonably assist the other Party in lawfully claiming exemptions from and/or minimizing such deductions or withholdings under double taxation laws or similar circumstances.

**2.18 Sales, Use and Other Taxes .** All transfer, documentary, sales, use, valued-added, gross receipts, stamp, registration or other similar transfer taxes (collectively, " Transfer Taxes ") incurred in connection with the transfer and sale of the Purchased Assets as contemplated by the terms of this Agreement, including all recording or filing fees and other similar costs of Closing, that may be imposed, payable, collectible or incurred, shall be borne by Seller. The Parties hereto agree to reasonably cooperate with each other to claim any applicable exemption from, or reduction of, any applicable Transfer Taxes.

**2.19 Assignment of Purchased Assets; Consents of Third Parties .** Notwithstanding anything in this Agreement to the contrary,

(a) this Agreement shall not constitute an agreement to sell, transfer, assign or deliver to Buyer any Purchased Assets if such Purchased Assets are not transferable under applicable laws or regulations, and

(b) this Agreement shall not constitute an agreement to assign any asset or claim or right or any benefit arising under or resulting from such asset if an attempted assignment thereof, without the consent of a third party, would constitute a breach or other contravention of the rights of such third party, or would be ineffective with respect to any party to an agreement concerning such asset. If any transfer or assignment by Seller of any Purchased Assets is limited by the immediately preceding sentence, or any assumption by Buyer of, any interest in, or liability, obligation or commitment under any asset requires the consent of a third party and such consent has not been obtained, then such transfer, assignment or assumption shall be subject to any such consent or required authorization being obtained. Seller shall use commercially reasonable efforts to obtain such consent or authorization as promptly as practicable, and Seller and Buyer shall cooperate in any lawful and commercially reasonable mutually agreeable arrangement under which (x) Buyer shall obtain (without infringing upon the legal rights of such third party or outside party or violating any applicable laws) the economic claims, right and after-Tax benefits under the asset, claim or right with respect to which the consent or authorization has not been obtained in accordance with this Agreement and (y) Buyer shall assume any related economic burden with respect to the asset, claim or right with respect to which the consent or authorization has not been obtained (including any related Assumed Liability), at no additional costs to Buyer.

**ARTICLE 3 REPRESENTATIONS OF SELLER**

**Seller represents to Buyer as follows as of the date of this Agreement:**

**3.1 Incorporation and Good Standing .** Seller is duly organized, validly existing, and in good standing under the laws of the State of Delaware, with all requisite power and authority to own or use the Purchased Assets. Seller is duly qualified to do business as a foreign entity and is in good standing under the laws of each state in which either the ownership or use of the properties owned or used by it, or the nature of the activities conducted by it, requires such qualification.

**3.2 Authority; Enforceability; No Conflict .**

(a) Seller has the requisite power and authority to enter into this Agreement and the Patent Assignment and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the Patent Assignment by Seller and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized by Seller. This Agreement has been duly executed and delivered by Seller and, upon the execution and delivery by Seller of the Patent Assignment, and further assuming the due authorization, execution and delivery of this Agreement and the Patent Assignment by Buyer, this Agreement and the Patent Assignment will constitute the legal, valid and binding obligations of Seller, enforceable against it in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer and other similar laws affecting creditors' rights generally and to general principles of equity regardless of whether considered in a proceeding in equity or at law.

(b) Neither the execution and delivery of this Agreement nor the Patent Assignment nor the consummation or performance of any of the transactions contemplated hereby nor thereby by Seller will:

(i) violate any provision of Seller's Certificate of Incorporation or Bylaws;

(ii) violate any Legal Requirement applicable to Seller or the transactions contemplated hereby in any material respect; or

(iii) result in the creation of any Encumbrance upon any of the Purchased Assets pursuant to the terms or provisions of, or will result in the breach or violation in any material respect of, or constitute a default under, any Assigned Contract.

(c) Seller is not or will not be required to give any notice to any Governmental Body or obtain any Governmental Authorization in connection with the execution and delivery of this Agreement or the Patent Assignment or the consummation or performance of any of the transactions contemplated hereby or thereby.

(d) Except as set forth on Schedule 3.2(d) , no notice to, declaration, filing or registration with, or authorization, consent, approval from any other third party is required to be made or obtained by Seller in connection with the execution and delivery of this Agreement or the Patent Assignment or the consummation or performance of any of the transactions contemplated hereby or thereby.

**3.3 Title of Purchased Assets .** Seller has good and transferable title to each of the Purchased Assets, free and clear of all Encumbrances.

**3.4 Compliance With Legal Requirements; Governmental Authorizations .** Seller is, and has since the STATOMED Acquisition Date been, in compliance in all material respects with all Legal Requirements applicable to the Purchased Assets.

**3.5 No Proceedings; Orders .** There is no pending Proceeding that has been commenced

(a) relating to the Purchased Assets or

(b) that challenges, or that may have the effect of preventing, delaying, making illegal, or otherwise interfering with, any of the transactions contemplated hereby. To the Knowledge of Seller, no such Proceeding has been threatened. There is no order issued by any Governmental Body to which any Purchased Asset is subject.

**3.6 Contracts .**

(a) Except for the Assigned Contracts, Seller is not a party to or bound by any oral or written contract, lease, license, indenture, agreement, commitment or any other legally binding arrangement (including broker, agency, supply and distribution agreements), that is used or held for use in connection with the Purchased Assets. Except for the Assigned Contracts, there are no other oral or written contracts, leases, licenses, indentures, agreements, commitments or any other legally binding arrangements (including broker, agency, supply and distribution agreements) relating to the Purchased Assets.

(b) All Assigned Contracts are valid, binding and in full force and effect and will continue to be legal, valid, binding and enforceable immediately following the Closing in accordance with the terms thereof as is in effect immediately prior to the Closing. Seller has performed all obligations required to be performed by it to date under the Assigned Contracts, and it is not (with or without the lapse of time or the giving of notice, or both) in breach or default thereunder and, to the Knowledge of Seller, no other party to any Assigned Contract is (with or without the lapse of time or the giving of notice, or both) in material breach or default in any respect thereunder. Seller has not received any notice of the intention of any party to terminate any Assigned Contract. Complete and correct copies of all Assigned Contracts and amendments thereto have been made available to Buyer.

(c) Except as set forth on Schedule 3.6(c) , none of the recipients under any of the material transfer agreements listed on Schedule 2.1(c) have any right, title or interest in or to the Product Intellectual Property.

(d) The Purchased Assets do not include any confidential information disclosed to Seller pursuant to any of the confidentiality and non-disclosure agreements listed on Schedule 2.1(c) .

(e) The molecule group RL 86 described on Exhibit A to that certain Agreement dated February 10, 2006 between AMMINO-AGENTS Research Laboratories Inc. US and Seller (the " AMMINO-AGENTS Agreement ") does not cover any Compound. The AMMINO-AGENTS Agreement does not restrict Seller's right to use any Compound and does not give AMMINO-AGENTS any rights to any Compound.

**3.7 Intellectual Property .**

(a) Seller or an Affiliate of Seller is the owner of all right, title and interest in and to, or otherwise has the right to use, the Product Intellectual Property free and clear of any Encumbrance. No Person other than Seller and its Affiliates, including any current or former employee or consultant of Seller and its Affiliates, has any proprietary, commercial or other interest in any of the Product Intellectual Property. Details of the registrations and applications relating to the Acquired Patents are set forth in Schedule 2.1(b)(ii) hereto.

(b) Except as set forth in Schedule 3.7(b) hereto, no Proceeding is pending or, to the Knowledge of Seller, threatened against Seller or its Affiliates based upon, challenging or seeking to deny or restrict the use of any Product Intellectual Property or alleging that the development, manufacture, marketing, use, sale, import, export of the Products infringes, misappropriates, violates, dilutes or otherwise constitutes unauthorized use of the intellectual property rights of any Third Party, and, to the Knowledge of Seller, there is no reasonable basis for any such claim.

(c) To the Knowledge of Seller, no Third Party is engaging in any activity that infringes or misappropriates the Product Intellectual Property.

(d) Except as set forth in Schedule 3.7(d) hereto, Seller has not received any written notice of any claim of invalidity or unenforceability of the Acquired Patents in the Territory. None of the Acquired Patents are involved in any litigation, reissue, interference, reexamination, or opposition, and to the Knowledge of Seller, no inequitable conduct that would be in violation of 37 C.F.R. 1.56, or its foreign equivalent, if applicable, has been committed in the prosecution of any of the Acquired Patents.

(e) All necessary filing, issuance, registration, and maintenance fees due from Seller with respect to the registered Product Intellectual Property in the Territory have been paid in a timely manner. All documents, certificates and other materials required to maintain such pending, issued or registered intellectual property rights within the Product Intellectual Property owned by Seller or its Affiliates have been filed in a timely manner with the relevant Governmental Bodies.

(f) Except as set forth in Schedule 3.7(f) hereto, Seller has not granted any licenses to the Product Intellectual Property to a Third Party. Except as set forth in Schedule 3.7(f) hereto, there are no existing agreements, options, commitments, or rights with, of or to any Person to acquire or obtain any rights to, any of the Product Intellectual Property. Except as set forth in Schedule 3.7(f) hereto, Seller nor its Affiliates have entered into any agreement

(i) granting any Person the right to bring infringement actions with respect to, or otherwise to enforce rights with respect to, any of the Product Intellectual Property, or

(ii) expressly agreeing to indemnify any Person against any charge of infringement of any Product Intellectual Property.

(g) Seller or its Affiliates have the unrestricted right to assign, transfer and/or grant to Buyer all rights in the Product Intellectual Property, in each case free of any rights or claims of any Person and without obligations to pay any royalties, license fees or other amounts to any Person.

(h) The Acquired Patents set forth on Schedule 2.1(b)(i) constitute all of the Patents owned or controlled by Seller or its Affiliates that claim or disclose any of arimoclomol, iroxanadine and bimoclomol, as such molecules are further described in Schedule 1 , or any methods of manufacturing or using such molecules.

**3.8 Brokers or Finders .** Seller has not retained any agent, broker, investment banker, financial advisor or other firm or Person that is or will be entitled to any brokers' or finders' fee or any other commission or similar fee in connection with any of the transactions contemplated by this Agreement.

**3.9 Disclosure .** Seller has made available to Buyer all material information of Seller and its Affiliates concerning safety, efficacy, side effects or toxicity related to the Products (in animals or humans), associated with or derived from any pre-clinical or clinical use, studies, investigations or tests of the Products (in animals or humans) in all indications for the Products that have been studied by Seller, whether or not determined to be attributed to the Products.

**3.10 Regulatory Approvals.**

(a) A complete and accurate list of all Regulatory Approvals used in connection with the Purchased Assets is set forth on Schedule 3.10(a) . Seller has made available to Buyer complete and accurate copies of all such Regulatory Approvals listed on Schedule 3.10(a).

(b) Except as disclosed on Schedule 3.10(b) :

(i) all Regulatory Approvals listed on Schedule 3.10(a) are valid and in full force and effect, and no other Regulatory Approvals are required for the lawful use of the Purchased Assets as they are currently being used;

(ii) no consent of or notice to any Governmental Body is required in respect of any such Regulatory Approval by reason of the transactions contemplated by this Agreement;

(iii) no such Regulatory Approval will be revoked, terminated prior to its normal expiration date or not renewed solely as a result of the consummation of the transactions contemplated by this Agreement;

(iv) Seller is in compliance in all material respects with such Regulatory Approvals and is not in violation of, or default under, any such Regulatory Approvals;

(v) to the Knowledge of Seller, no event has occurred or circumstance exists that, with or without notice or the passage of time or both, could (A) constitute or result in a violation of or failure to comply with any such Regulatory Approval or (B) result in the revocation, withdrawal, suspension, cancellation, termination or material modification of any such Regulatory Approval;

(vi) Seller has not received written or oral notice from any Governmental Body or other Person regarding (A) any actual, alleged or potential violation of or failure to comply with any such Regulatory Approval or (B) any actual, proposed or potential revocation, withdrawal, suspension, cancellation, termination or modification of any such Regulatory Approval; and

(vii) during the past 5 years Seller has duly filed on a timely basis all applications that were required to be filed for the renewal of such Regulatory Approvals, and has duly made on a timely basis all other filings required to have been made in respect of such Regulatory Approvals and all such applications and filings were true, complete and correct in all material respects.

**3.11 Regulatory Compliance .** To the extent applicable to any of the Products in the Territory:

(a) Seller has made available to Buyer copies of all material reports of inspectors or officials from any Governmental Body of any event or condition requiring attention or correction or that is objectionable or otherwise contrary to applicable Legal Requirements.

(b) Since the STATOMED Acquisition Date, and except as set forth on Schedule 3.11(b) , the Products have been developed, manufactured, labeled, stored, tested and distributed in compliance with all applicable Legal Requirements.

(c) All preclinical trials and clinical trials, if any, conducted by or, to the Knowledge of Seller, on behalf of Seller, with respect to the Products have been, and are being, conducted in compliance in all material respects with the applicable requirements of Good Laboratory Practice and Good Clinical Practice requirements contained in 21 C.F.R. Part 58 and Part 312 and all applicable requirements relating to protection of human subjects contained in 21 C.F.R. Parts 50, 54, and 56, and all similar Legal Requirements.

(d) With respect to the Products, to the Knowledge of the Seller, all manufacturing operations conducted for the benefit of Seller with respect to the Products have been and are being conducted in compliance in all material respects with the FDA's current Good Manufacturing Practice regulations for drug products, including 21 C.F.R. Parts 210 and 211, and all similar Legal Requirements.

(e) Since the STATOMED Acquisition Date, none of the Products has been recalled, suspended or discontinued as a result of any action by the FDA or any other Governmental Body within the Territory, by Seller or by any licensee, distributor or marketer of the Products.

(f) Since the STATOMED Acquisition Date, Seller has not received any notice that the FDA or any other Governmental Body has commenced, or threatened to initiate, any action to withdraw approval or request the recall of any of the Products, or commenced, or threatened to initiate, any action to enjoin or place restrictions on the production of any of the Products.

(g) To the Knowledge of Seller, there are no facts, circumstances or conditions that would be sufficient to presently, or solely with the passage of time in the ordinary course of business, provide a reasonable basis for a recall, suspension or discontinuance of any of the Products.

(h) With respect to the Products, to the Knowledge of Seller, Seller has not committed any act, made any statement or failed to make any statement that would reasonably be expected to provide a basis for the FDA to invoke its policy with respect to "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities" set forth in 56 Fed. Reg. 46191 (September 10, 1991) and any amendments thereto, or give rise to a claim of false advertising under the Trademark Act of 1946 (Lanham Act), as amended (15 USC 1114-27). Additionally, to the Knowledge of Seller, none of Seller or any of its officers, key employees or agents involved with respect to the Purchased Assets has been convicted of any crime or engaged in any conduct that has resulted, or would reasonably be expected to result, in debarment under 21 U.S.C. Section 335a or any similar state law or regulation under 42 U.S.C. Section 1320a-7.

(i) Set forth on Schedule 3.11(i) is a complete and accurate list of all clinical trials involving a Compound that have been initiated since the STATOMED Acquisition Date, whether or not such trials are still ongoing, which list shall include all investigator-initiated and Seller-sponsored clinical trials.

**3.12 Disclaimer of Other Representations and Warranties** .

EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS AGREEMENT (INCLUDING THE SCHEDULES TO THIS AGREEMENT), SELLER MAKES NO OTHER REPRESENTATION OR WARRANTY TO BUYER, EXPRESS OR IMPLIED, AT LAW OR IN EQUITY, AND SELLER DISCLAIMS ANY SUCH REPRESENTATION OR WARRANTY, NOTWITHSTANDING THE DELIVERY OR DISCLOSURE TO BUYER OR ANY OTHER PERSON OF ANY DOCUMENTATION OR OTHER INFORMATION BY THE OR ANY OTHER PERSON WITH RESPECT TO ANY ONE OR MORE OF THE FOREGOING.

**ARTICLE 4**

**REPRESENTATIONS OF BUYER**

Buyer represents to Seller as follows as of the date of this Agreement:

**4.1 Incorporation and Good Standing .** Buyer is duly organized, validly existing, and in good standing under the laws of Denmark. Buyer is duly qualified to do business as a foreign entity and is in good standing under the laws of each jurisdiction in which either the ownership or use of the properties owned or used by it, or the nature of the activities conducted by it, requires such qualification.

**4.2 Authority; No Conflict .**

(a) Buyer has the requisite power and authority to enter into this Agreement and the Patent Assignment and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the Patent Assignment by Buyer and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized by Buyer. This Agreement has been duly executed and delivered by Buyer and, upon the execution and delivery by Buyer of the Patent Assignment, and further assuming the due authorization, execution and delivery of this Agreement and the Patent Assignment by Seller, this Agreement and the Patent Assignment will constitute the legal, valid and binding obligations of Buyer, enforceable against it in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer and other similar laws affecting creditors' rights generally and to general principles of equity regardless of whether considered in a proceeding in equity or at law.

(b) Neither the execution and delivery of this Agreement nor the Patent Assignment nor the consummation or performance of any of the transactions contemplated hereby nor thereby will

(i) violate any provision of Buyer's formation or organizational documents;

(ii) violate any Legal Requirement applicable to Buyer or the transactions contemplated hereby; or

(iii) result in the breach or violation of, or constitute a default under, any material contract or agreement to which Buyer is a party or by which Buyer may be bound, except in the case of clauses (ii) and (iii) for such violation, breach, or default which would not reasonably be expected to prevent, delay or otherwise interfere with the consummation or performance of any of the transactions contemplated hereby.

(c) Buyer is not, and will not be, required to give any notice to any Governmental Body or obtain any Governmental Authorization in connection with the execution and delivery of this Agreement or the Patent Assignment or the consummation or performance of any of the transactions contemplated hereby or thereby, except for such notices, approvals, consents or authorizations which have been obtained or made or which, if not obtained or made, would not reasonably be expected to prevent, delay or otherwise interfere with the consummation or performance of any of the transactions contemplated hereby.

(d) No notice to, declaration, filing or registration with, or authorization, consent, approval from any other third party is required to be made or obtained by Buyer in connection with the execution and delivery of this Agreement or the Patent Assignment or the consummation or performance of any of the transactions contemplated hereby or thereby.

**4.3 No Proceedings .** There is no pending Proceeding that has been commenced against Buyer that challenges, or may have the effect of preventing, delaying, making illegal, or otherwise interfering with, any of the transactions contemplated hereby. To Buyer's Knowledge, no such Proceeding has been threatened.

**4.4 Brokers or Finders .** Buyer and its officers and agents have incurred no obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with this Agreement.

**ARTICLE 5 COVENANTS**

**5.1 Bulk Transfer Laws .** Buyer hereby waives compliance by Seller with the provisions of any so-called "bulk transfer law" of any jurisdiction in connection with the acquisition of the Purchased Assets by Buyer.

**5.2 Transition Services.** For a period beginning on the Closing Date and ending on the 6-month anniversary of the Closing Date, as reasonably requested by Buyer from time to time, Seller agrees to assist Buyer in understanding the INDs and Know-How. If Buyer desires further assistance from Seller beyond the initial 6-month period, Seller may, but is under no obligation to, continue to assist Buyer at an hourly rate to be negotiated by the Parties.

**5.3 Non-Competition** .

(a) From and after the Closing Date until the [ \*\*\* ] anniversary of the Closing Date (the " Restricted Period "), except as permitted by this Section 5.3, neither Seller nor any of its Affiliates shall, directly or indirectly through any third party,

(i) conduct any preclinical or clinical development with regard to, or make, have made, sell, offer to sell, import, license, market, promote or Commercialize, any Competing Product in the Territory, or

(ii) engage in, or have any majority equity ownership in, or participate in the financing, operation or management of, any Person that engages in, the direct or indirect development, manufacture, licensing, promotion or Commercialization of any Competing Product in the Territory (the " Restricted Business Activities "). This Section 5.3 shall cease to be applicable to any Person at such time as it is no longer an Affiliate of Seller.

(b) Seller acknowledges that the restrictions set forth in this Section 5.3 are considered by the parties to be reasonable for the purposes of protecting the value of the business and goodwill of Buyer. Seller acknowledges that Buyer may be irreparably harmed and that monetary damages may not provide an adequate remedy to Buyer in the event the covenants contained in this Section 5.3 are not complied with in accordance with their terms. Accordingly, Seller agrees that any breach or threatened breach by it of any provision of this Section 5.3 may entitle Buyer to seek injunctive and other equitable relief to secure the enforcement of these provisions, in addition to any other remedies (including Damages) which may be available to Buyer.

(c) It is the desire and intent of the parties that the provisions of this Section 5.3 be enforced to the fullest extent permissible under the laws and public policies of each jurisdiction in which enforcement is sought. If any provisions of this Section 5.3 relating to the time period, scope of activities or geographic area of restrictions is declared by a court of competent jurisdiction to exceed the maximum permissible time period, scope of activities or geographic area, as the case may be, the time period, scope of activities or geographic area shall be reduced to the maximum which such court deems enforceable. If any provisions of this Section 5.3 other than those described in the preceding sentence are adjudicated to be invalid or unenforceable, the invalid or unenforceable provisions shall be deemed amended (with respect only to the jurisdiction in which such adjudication is made) in such manner as to render them enforceable and to effectuate as nearly as possible the original intentions and agreement of the parties.

**5.4 Later-Discovered Patents .** The Parties shall cooperate reasonably with each other and with their respective representatives in connection with any steps required to be taken as part of their respective obligations under this Agreement, and shall ensure that all assets and rights intended to be deemed Purchased Assets shall be treated as such and all liabilities, obligations and commitments intended to be deemed Assumed Liabilities or Excluded Liabilities, shall be treated as such. In furtherance, and not limitation, of the foregoing, if either Party discovers any Patent owned or controlled by Seller or its Affiliates that claims or discloses any of arimoclomol, iroxanadine and bimoclomol, as such molecules are further described in Schedule 1 , or any methods of manufacturing or using such molecules, and was not transferred to Buyer at the Closing, Seller shall assign and transfer such Patent as promptly as possible after such discovery.

**ARTICLE 6 INDEMNIFICATION; REMEDIES**

**6.1 Indemnification by Seller .** Subject to the other provisions of this Article 6, Seller shall indemnify, defend and hold harmless Buyer and its Affiliates and their respective officers, directors, employees, representatives, agents and shareholders (collectively, the " Buyer Indemnified Parties ") and shall reimburse the Buyer Indemnified Parties for any loss, liability, claim, damage or expense (including reasonable attorneys' fees and expenses) (collectively, " Damages "), to the extent caused by or arising from

(a) any breach of any representation or warranty of Seller in this Agreement or the Patent Assignment,

(b) any breach of any covenant or agreement of Seller in this Agreement or the Patent Assignment, or (c) any Excluded Liabilities.

**6.2 Indemnification by Buyer** . Subject to the other provisions of this Article 6, Buyer will indemnify, defend and hold harmless Seller and its Affiliates and their respective officers, directors, employees, representatives, agents and shareholders (collectively, the " Seller Indemnified Parties ") and shall reimburse the Seller Indemnified Parties for any Damages, to the extent caused by or arising from

(a) any breach of any representation or warranty of Buyer in this Agreement or the Patent Assignment,

(b) any breach of any covenant or agreement of Buyer in this Agreement or the Patent Assignment, or

(c) any Assumed Liabilities.

**6.3 Third Party Claims .**

(a) If a Third Party asserts that a Buyer Indemnified Party or any Seller Indemnified Party (collectively, the "Indemnified Persons ") is liable to such Third Party for a monetary or other obligation which may constitute or result in Damages for which such Indemnified Person may be entitled to indemnification pursuant to this Article 6, then such Indemnified Person may make a claim for indemnification pursuant to this Article 6 and shall be reimbursed in accordance with the applicable provisions of this Agreement for any such Damages for which it is entitled to indemnification pursuant to this Article 6 (subject to the right of the indemnifying Party to dispute the Indemnified Person's entitlement to indemnification under the applicable terms of this Agreement).

(b) The Indemnified Person shall give prompt written notification to Seller or Buyer, as the case may be, of the commencement of any Proceeding relating to a Third Party claim for which indemnification pursuant to this Article 6 may be sought; provided , however , that no delay on the part of the Indemnified Person in notifying Seller or Buyer, as the case may be, shall relieve Seller or Buyer, as the case may be, of any liability or obligation hereunder except to the extent of any damage or liability caused by or arising out of such failure. Within 30 days after delivery of such notification, Seller or Buyer, as the case may be, may, upon written notice thereof to the Indemnified Person, assume control of the defense of such Proceeding provided Seller or Buyer, as the case may be, acknowledges in writing to the Indemnified Person that any damages, fines, costs or other liabilities that may be assessed against the Indemnified Person in connection with such Proceeding constitute Damages for which the Indemnified Person shall be entitled to indemnification pursuant to this Article 6. During such time as Seller or Buyer, as the case may be, is controlling the defense, the Indemnified Person shall cooperate, and cause its Affiliates, agents, licensees to cooperate upon request of Seller or Buyer, as the case may be, in the defense, including by furnishing such records, information and testimony and attending such conferences, discovery proceedings, hearings, trials or appeals as may reasonably be requested by the Seller or Buyer, as the case may be. If Seller or Buyer does not, as the case may be, so assume control of such defense, the Indemnified Person shall control such defense. The Party not controlling such defense may participate therein at its own expense. The Party controlling such defense shall keep the other Party advised of the status of such Proceeding and the defense thereof. The Indemnified Person shall not agree to any settlement of such Proceeding without the prior written consent of Seller or Buyer, as the case may be, which shall not be unreasonably withheld, conditioned or delayed. Seller or Buyer, as the case may be, shall not agree to any settlement of such Proceeding without the prior written consent of the Indemnified Person, which shall not be unreasonably withheld, conditioned or delayed.

**6.4 Certain Limitations on Indemnification Obligations .**

(a) The Buyer Indemnified Parties shall not be entitled to indemnification under Section 6.1(a) until the aggregate amount of Damages incurred by the Buyer Indemnified Parties for all claims under Section 6.1 in the aggregate exceeds $10,000 (the " Basket Amount "), and the Seller will be liable under Section 6.1(a) only for the amount of such Damages that exceed the Basket Amount; provided, however, that this sentence shall not apply to indemnification claims under Section 6.1(a) with respect to any breach of any representation and warranty contained in Sections 3.1, 3.2 and 3.3.

(b) The Seller shall have no liability under Section 6.1(a) other than with respect to any breach of any representation and warranty contained in Sections 3.1, 3.2 and 3.3 with respect to Damages incurred by the Buyer Indemnified Parties in excess of an aggregate amount equal to the cumulative sum of the Closing Payment and any milestone and royalty payments actually received by Seller. The limitation set forth in the preceding sentence shall not apply to any Damages resulting from fraud, willful breach or intentional misrepresentation and shall in no way restrict or limit Buyer's right to offset in accordance with Section 6.6 below.

**6.5 Treatment of Indemnity Payments .** Any payment made to Buyer pursuant to this Article 6 shall be treated as a reduction in the Closing Payment for Tax purposes. Any payment made to Seller pursuant to this Article 6 shall be treated as an increase in the Closing Payment for Tax purposes.

**6.6 Buyer's Right to Offset .** Buyer may withhold sums payable to Seller pursuant to this Agreement, to the extent of any claim asserted by a Buyer Indemnified Party, and offset against the amounts due under this Agreement any amounts or estimated amounts that a Buyer Indemnified Party is entitled pursuant to indemnification or reimbursement under this Agreement. Any sums so withheld will operate as a discharge, to the extent of the amount withheld, of Buyer's payment obligations to Seller under this Agreement.

**ARTICLE 7 GENERAL PROVISIONS**

**7.1 Expenses.** Except as otherwise expressly provided in this Agreement, each Party to this Agreement will bear its respective expenses incurred in connection with the preparation, execution, and performance of this Agreement and the transactions contemplated hereby, including all fees and expenses of agents, representatives, counsel, and accountants.

**7.2 Confidentiality .**

(a) Buyer acknowledges that the information being provided to it in connection with the acquisition of the Purchased Assets and the consummation of the other transactions contemplated hereby is subject to the terms of the Confidentiality Agreement, the terms of which are incorporated herein by reference. Effective upon the Closing Date, the Confidentiality Agreement shall terminate with respect to information provided to Buyer solely to the extent that such information relates to the Purchased Assets; provided , that Buyer acknowledges that any and all other information provided to it by Seller or its respective representatives concerning Seller and their Affiliates (other than such information related to the Purchased Assets) shall remain subject to the terms and conditions of the Confidentiality Agreement for its duration.

(b) Each Party may make a press release or other public announcement with respect to the terms of this Agreement or the transactions contemplated hereby after approval in advance by the other Party, which approval shall not be unreasonably withheld. In the event that each Party desires to make a press release or other public announcement, the parties agree that the terms of this Agreement and the transactions contemplated hereby shall be consistently described in each such press release or other public announcement. Prior to the Closing, Buyer and Seller shall keep this Agreement strictly confidential and may not make any disclosure of this Agreement to any Person.

(c) Each of Buyer and Seller agree that the terms of this Agreement and the Patent Assignment shall not be disclosed or otherwise made available to the public and that copies of this Agreement and the Patent Assignment shall not be publicly filed or otherwise made available to the public, except where such disclosure, availability or filing is required by applicable Legal Requirement or the listing standards of any stock exchange on which equity securities of a Party are traded. In the event that such disclosure, availability or filing is required by applicable Legal Requirement or such listing standards, each of Buyer and Seller (as applicable) agrees to promptly notify the other Party and to use commercially reasonable efforts to obtain "confidential treatment" of this Agreement and the Patent Assignment with the U.S. Securities and Exchange Commission (or the equivalent treatment by any other Governmental Body) and to redact such terms of this Agreement and the Patent Assignment as the other Party shall request. Each Party shall be permitted to disclose the terms of this Agreement , in each case under appropriate confidentiality provisions substantially equivalent (in no event be required to be more restrictive than) to those of this Agreement and the Confidentiality Agreement, to any actual or potential acquirers, merger partners, collaboration partners, alliance partners, sublicensees, licensees and professional advisors.

(d) Seller shall keep confidential, and will cause its Affiliates, employees, agents, consultants, licensees and sublicensees to keep confidential, all information provided to Seller in connection with acquisition of the Purchased Assets and the consummation of the other transactions contemplated hereby and relating to the Purchased Assets, except as required by Legal Requirement and except for information that is available to the public on the Closing Date, or thereafter becomes available to the public other than as a result of a breach of this Section 7.2(d). The covenant set forth in this Section 7.2(d) shall survive the Closing.

**7.3 Notices.** All notices and other communications provided for hereunder shall be in writing, shall specifically refer to this Agreement, shall be addressed to the receiving Party's address set forth below or to such other address as a Party may designate by notice hereunder, and shall be deemed to have been sufficiently given for all purposes on the next Business Day following the date of first attempted delivery after being mailed by first class certified or registered mail, postage prepaid,

(b) the next Business Day after being sent by nationally recognized overnight courier for next Business Day delivery with proof of delivery to the recipient received by the courier in the form of a signature of recipient, or

(c) when personally delivered.

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| If to Buyer: | Warditoff Denmark Attention: Sven Johanson, Chief Executive Officer |
| with a copy to (which shall not constitute notice): | Galtidis and Gionzo LLP Address USA Attention: Mildred Kearns |
| If to Seller: | Medstatknow Corporation Address USA Facsimile: xxx-xxx-xxx Attention: Alfred G. Lumber, Chief Executive Officer |
| with a copy to (which shall not constitute notice): | Medstatknow Corporation Address USA Facsimile: xxx-xxx-xxx Attention: Salomon Handelsman, General Counsel |

**7.4 Further Assurances .** The Parties agree

(a) to furnish upon request to each other such further information,

(b) to execute and deliver to each other such other documents, and

(c) to do such other acts and things, all as any other Party may reasonably request for the purpose of carrying out the intent of this Agreement and the documents referred to in this Agreement.

**7.5 Damages .** NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, IN NO EVENT SHALL ANY PARTY HERETO OR ITS AFFILIATES BE LIABLE OR RESPONSIBLE TO ANY OTHER PARTY HERETO FOR SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING ANY CLAIMS FOR DAMAGES BASED UPON LOST REVENUES OR PROFITS, HOWEVER CAUSED OR ON ANY THEORY OF LIABILITY THAT ARISE OUT OF OR RELATE TO THIS AGREEMENT OR THE PERFORMANCE OR BREACH THEREOF; PROVIDED , THAT IF A BUYER INDEMNIFIED PARTY IS HELD LIABLE TO A THIRD PARTY FOR ANY OF SUCH DAMAGES AND SELLER IS OBLIGATED TO INDEMNIFY SUCH BUYER INDEMNIFIED PARTY FOR THE MATTER THAT GAVE RISE TO SUCH DAMAGES, THEN SELLER SHALL BE LIABLE FOR, AND OBLIGATED TO REIMBURSE SUCH BUYER INDEMNIFIED PARTY FOR, THE TOTAL AMOUNT OF SUCH DAMAGES HOWSOEVER CHARACTERIZED.

**7.6 Waiver .** The rights and remedies of the Parties to this Agreement are cumulative and not alternative. 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. The waiver by either Party hereto of any right hereunder or of the failure to perform or of a breach by the other Party shall not be deemed a waiver of any right hereunder or of any other breach or failure by said other Party whether of a similar nature or otherwise.

**7.7 Entire Agreement and Modification .** Except for the Confidentiality Agreement, which remains in full force and effect in accordance with Section 7.2, this Agreement supersedes all prior agreements between the Parties with respect to its subject matter and constitutes (along with the Patent Assignment) a complete and exclusive statement of the terms of the agreement between the Parties with respect to its subject matter. This Agreement may not be amended or modified except by a written agreement duly executed by each of the Parties hereto.

**7.8 Disclosure Schedule .** The information and disclosures in the Disclosure Schedule are intended only to qualify and limit the representations and warranties of Seller contained in this Agreement and shall not be deemed to expand in any way the scope or effect of any of such representations and warranties. The Section numbers in the Disclosure Schedule correspond to the section numbers in this Agreement. Capitalized terms used but not defined in the Disclosure Schedule shall have the same meanings given them in this Agreement. In the event of any inconsistency between the statements in the body of this Agreement and those in the Disclosure Schedule (other than an exception expressly set forth as such in the Disclosure Schedule with respect to a specifically identified representation or warranty), the statements in the body of this Agreement will control.

**7.9 Assignments, Successors and No Third-Party Rights** . No Party may assign this Agreement or any of its rights or obligations under this Agreement without the prior consent of the other Party, and any purported assignment without consent shall be void. Notwithstanding the preceding sentence, Buyer may assign its rights with respect to the Products to a successor to Buyer by way of a merger of Buyer or sale of all or substantially all of the assets of Buyer relating to the Products if such assignee assumes in writing all of Buyer's obligations under this Agreement; provided that no such assignment shall relieve Buyer of its obligations hereunder. Subject to the preceding sentences, this Agreement will apply to, be binding in all respects upon, and inure to the benefit of the successors and permitted assigns of the Parties. Nothing expressed or referred to in this Agreement will be construed to give any Person other than the Parties to this Agreement any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provision of this Agreement. This Agreement and all of its provisions and conditions are for the sole and exclusive benefit of the Parties to this Agreement and their successors and permitted assigns.

**7.10 Severability.** If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

**7.11 Section Headings; Construction; Conflicts .** The headings of Sections in this Agreement are provided for convenience only and will not affect its construction or interpretation. All bare references to "Section" or "Sections" without the accompanying words "of the Disclosure Schedule" refer to the corresponding Section or Sections of this Agreement. All references to "hereof," "hereto" and "hereunder" shall refer to this Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the words "include," "includes" and "including" do not limit the preceding words or terms and shall be deemed to be followed by the words "without limitation." The language of this Agreement shall be deemed to be the language mutually chosen by the Parties and no rule of strict construction shall be applied against either Party hereto. In the event of any conflict between the provisions of this Agreement and the provisions of any Patent Assignment, the provisions of this Agreement shall prevail.

**7.12 Time of the Essence** . With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

**7.13 Governing Law .** This Agreement and the Patent Assignment will be governed by the laws of the State of Delaware without regard to conflicts of laws principles.

**7.14 Arbitration .** Except as otherwise expressly provided in this Agreement, the Parties agree that any dispute not resolved internally by the Parties shall be resolved through binding arbitration conducted under the auspices of the American Arbitration Association in accordance with its International Arbitration Rules (the " Rules "), except as modified in this Agreement. A Party may initiate arbitration by written notice to the other Party of its intention to arbitrate, and such demand notice shall specify in reasonable detail the nature of the dispute. Each Party shall select one arbitrator, and the two arbitrators so selected shall choose a third arbitrator. All three arbitrators shall serve as neutrals and have at least 10 years of

(a) dispute resolution experience or

(b) legal or business experience in the biotech or pharmaceutical industry. Notwithstanding anything to the contrary in this Section 7.14, in the event of a dispute regarding the Acquired Patents, at least one arbitrator shall have expertise in patent law. If a Party fails to nominate its arbitrator, or if the Parties' arbitrators cannot agree on the third arbitrator, the necessary appointments shall be made in accordance with the Rules. Once appointed by a Party, such Party shall have no ex parte communication with its appointed arbitrator. The arbitration proceedings shall be conducted in New York, New York. The arbitration proceedings and all pleadings and written evidence shall be in the English language. Any written evidence originally in another language shall be submitted in English translation accompanied by the original or a true copy thereof. Each Party agrees to use reasonable efforts to make all of its current employees available to the extent determined by the tribunal to be reasonably needed. The arbitrators shall be instructed and required to render a written, binding, non-appealable resolution and award on each issue that clearly states the basis upon which such resolution and award is made. The written resolution and award shall be delivered to the Parties as expeditiously as possible, but in no event more than 90 days after conclusion of the hearing, unless otherwise agreed by the Parties. Judgment upon such award may be entered in any competent court or application may be made to any competent court for judicial acceptance of such an award and order for enforcement. Each Party agrees that, notwithstanding any provision of applicable law or of this Agreement, it will not request, and the arbitrators shall have no authority to award, punitive or exemplary damages against any Party. The Parties may apply to any court of competent jurisdiction for a temporary restraining order, preliminary injunction or other interim or conservatory relief, as necessary, without breaching these arbitration provisions and without abridging the powers of the arbitrators. At the request of either Party, the arbitrators shall enter an appropriate protective order to maintain the confidentiality of information produced or exchanged in the course of the arbitration proceedings. The arbitrators shall have the power to decide all questions of arbitrability. The Parties agree that (x) they shall share equally the fees and expenses of the arbitrators and (y) each Party shall bear its own attorneys' fees and associated costs and expenses.

**7.15 Service .** The Parties hereby agree that mailing of process or other papers in connection with any action or proceeding in the manner provided in Section 7.3 (Notices), or in such other manner as may be permitted by law, shall be valid and sufficient service thereof and hereby waive any objections to service accomplished in such manner.

**7.16 Execution of Agreement; Counterparts .** This Agreement may be executed and delivered (including by facsimile or other electronic transmission) in multiple counterparts, each of which shall be an original and together which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have duly executed and delivered this Agreement as of the date first written above.

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| --- | --- |
| Warditoff ApS By: |s|Harry L. Jergensen Name: Harry L. Jergensen Title: Chairman of the Board By: |s|Sven Johanson Name: Sven Johanson Title: Chief Executive Officer | Medstatknow Corporation By: |s|Alfred G. Lumber Name: Alfred G. Lumber Title: President and CEO |

**APA#26**

**ASSET PURCHASE AGREEMENT**

This ASSET PURCHASE AGREEMENT (the " Agreement "), made as of this 23rd day of March, 2009, by and among ABC International Inc., a corporation organized under the laws of the province of Ontario, Canada (" ABC ") with offices at 6693 Old Mill, Kektomee, Ontario, Canada L4T 1B3, ABC Plastics Inc., a Delaware corporation (" ABC Plastics ") with offices at 4023 Braewood Road, Norfolk VA 24220, ABC Kingsley GmbH, a corporation organized under the laws of Germany with offices at Hochdamm-StraÎ²e 22, 20357, D-20357 Hamburg, Germany (" ABC Kingsley Germany ") (ABC, ABC Plastics and ABC Kingsley Germany are each referred to herein, individually, as a " Seller " and, collectively, as the " Sellers "), Millers Corporation, a Massachusetts corporation with offices at Industrial Park, Millers, CT 06233 (" Millers "), as well as such subsidiary or subsidiaries of Millers which Millers prior to the Closing may designate to acquire some or all of the Acquired Assets directly from Sellers pursuant hereto (collectively, " Buyer ").

W I T N E S S E T H :

WHEREAS , ABC Plastics and ABC Kingsley Germany are wholly-owned subsidiaries of ABC;

WHEREAS , ABC Plastics and ABC Kingsley Germany are each engaged in the development, manufacture and sale of certain products including, without limitation, silicone materials, at their Norfolk, Virginia and Hamburg, Germany facilities; WHEREAS , Sellers and Buyer wish to enter into this Agreement to provide for

(a) the acquisition by Buyer, and the sale, assignment and transfer by ABC and ABC Plastics, of the Norfolk Business, and

(b) the acquisition by Buyer, and the sale, assignment and transfer by ABC and ABC Kingsley Germany, of the Kingsley Business (as each such term is defined herein), and each Buyer has agreed to assume the Assumed Liabilities (as that term is defined herein) of the Norfolk Business and/or the Kingsley Business, as applicable, all for the consideration and upon the terms and subject to the conditions hereinafter set forth.

NOW, THEREFORE , the parties hereto, in consideration of the mutual promises and other consideration set forth below, the receipt and adequacy of which hereby is acknowledged, and intending to be legally bound hereby, do represent, warrant, covenant and agree as follows:

SECTION 1 DEFINITIONS

The terms used herein and listed below shall be defined as follows:

**1.01**. " Accounts Receivable " means cash, cash equivalents, notes receivable, investment securities and receivables of a Seller derived from sales of Products in the ordinary course of Sellers' business, as well as the benefit of all security agreements and arrangements to the extent securing such receivables, and any accounts and notes corresponding to such receivables.

1.02. " Acquired Assets " shall have the meaning set forth in Section 2.01.

1.03. " Acquired Employees " shall have the meaning set forth in Section 10.02(a).

1.04. " Affiliate " means, as applied to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with that Person. For the purposes of this definition, "control" (including with correlative meanings, the terms "controlling", "controlled by" and "under common control with") as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that Person, whether through ownership of voting securities or by contract or otherwise. 1.05. " Assumed Contracts " shall have the meaning set forth in Section 2.01(b).

1.06. " Assumed Liabilities " shall have the meaning set forth in Section 4.02.

1.07. " Basket " shall have the meaning set forth in Section 8.02(b).

1.08. " Benefit Plan " means any Plan established by Seller or any predecessor or Affiliate of Seller, existing at the Closing Date or prior thereto, to which Seller contributes or has contributed, and under which any employee or former employee of Seller or any beneficiary thereof is covered, is eligible for coverage or has benefit rights.

1.09. " Business " means the Norfolk Business and the Kingsley Business, collectively, including without limitation any and all business conducted with the Acquired Assets, along with all research, development, marketing and sales of the Products, and of services related to the Products.

1.10. " Business Day " means a day other than a Saturday or Sunday, on which commercial banks in Toronto, Ontario, Boston Massachusetts and Hamburg, Germany are open for general transaction of business.

1.11. " Business Records " shall have the meaning set forth in Section 2.01(d).

1.12. " Buyer " shall have the meaning set forth in the preamble.

1.13. " Buyer Indemnified Parties " shall have the meaning set forth in Section 8.02(a).

1.14. " Buyer Plans " shall have the meaning set forth in Section 10.02(b).

1.15. " Canadian Authorities " shall have the meaning set forth in Section 6.16(a).

1.16. " Claim " shall mean any and all administrative or judicial actions, suits, arbitrations, orders, claims, notices of violations, investigations, complaints, proceedings, or other similar actions, whether criminal or civil. In the context of the Section 8.02 hereof, a "Claim" shall mean a claim for indemnification hereunder.

1.17. " Closing " and " Closing Date " shall have the respective meanings assigned to them in Section 5.01 hereof.

1.18. " Code " means the United States Internal Revenue Code of 1986, as amended.

1.19. " Commercial Software Rights " shall mean commercial computer software programs generally available to the public by sale, lease or other forms of distribution, in any case that are used in the Business.

1.20. " Compensation Agreement " shall have the meaning set forth in Section 4.02(g).

1.21. " Confidentiality Agreement " means that certain Confidentiality Agreement, dated July 7, 2008, by and between ABC and the Buyer.

1.22. " Consolidated Financial Statements " shall have the meaning set forth in Section 6.16(c).

1.23. " Contract " means any legally binding agreement, obligation, undertaking, lease, evidence of Indebtedness, mortgage, indenture, security agreement or other contract (whether written or oral and whether expressed or implied).

1.24. " Divisional Financial Statements " shall have the meaning set forth in Section 6.16(b).

1.25. " Environment " means all air, surface water, groundwater, or land, including land surface or subsurface, including all fish, wildlife, biota and all other natural resources.

1.26. " Environmental Claim " means any Claim pursuant to any applicable Environmental Law by any Person (including but not limited to any Governmental or Regulatory Authority, private person and citizens' group) based upon, alleging, asserting, or claiming any actual or potential

(a) violation of or Liability under any Environmental Law,

(b) violation of any Environmental Permit, or (c) Liability for investigatory costs, cleanup costs, removal costs, remedial costs, response costs, natural resource Losses, property damage, personal injury, fines, or penalties arising out of, based on, resulting from, or related to the presence, release, or threatened release into the Environment, of any Hazardous Materials at any location, including but not limited to any off-Site location to which Hazardous Materials or materials containing Hazardous Materials were sent for handling, storage, treatment, or disposal.

1.27. " Environmental Clean-up Site " means any location which is listed on the National Priorities List (as presented on the Environmental Protection Agency website at http://www.epa.gov/superfund/sites/npl/npl.htm , or any other successor link created after the Closing), the Comprehensive Environmental Response, Compensation and Liability Information System, or on any similar state list of sites requiring investigation or cleanup, or which is the subject of any pending (or, to Sellers' Knowledge, threatened) action, suit, proceeding, or investigation related to or arising from any alleged violation of any Environmental Law, or at which there has been a release (or, to Sellers' Knowledge, a threatened or suspected release) of a Hazardous Material.

1.28. " Environmental Law " means all applicable federal, state, local and foreign environmental, health and safety Laws, common law orders, decrees, judgments, codes and ordinances and all rules and regulations promulgated thereunder, civil or criminal, including, without limitation, Laws relating to emissions, discharges, releases or threatened releases of Hazardous Materials, pollutants, contaminants, chemicals, or industrial, toxic or hazardous substances or wastes into the environment or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials, pollutants, contaminants, chemicals, or industrial, solid, toxic or hazardous substances or wastes.

1.29. " Environmental Permit " means any federal, state, local, provincial, or foreign permits, licenses, approvals, consents or authorizations required by any Governmental or Regulatory Authority under or in connection with any Environmental Law and includes any and all orders, consent orders or binding agreements issued or entered into by a Governmental or Regulatory Authority under any applicable Environmental Law.

1.30. " ERISA " means the Employee Retirement Income Security Act of 1974, as amended, or any successor Law, and the rules and regulations promulgated thereunder.

1.31. " Escrowed Amount " shall have the meaning set forth in Section 8.03.

1.32. " Excluded Assets " shall have the meaning set forth in Section 2.02.

1.33. " Excluded Employee " shall have the meaning set forth in Section 10.02(a).

1.34. " Excluded Liabilities " shall have the meaning set forth in Section 4.03.

1.35. " Financial Statements " shall have the meaning set forth in Section 6.16(c).

1.36. " Fixed Assets " shall have the meaning set forth in Section 2.01(a).

1.37. " GAAP " refers to "Generally Accepted Accounting Principles," and shall mean

(a) when used in reference to the preparation of a statement, that such statement has been prepared in accordance with generally accepted accounting principles in Canada, consistently applied, except that no footnotes or other required disclosures otherwise required under generally accepted accounting principles in Canada necessarily need to have been provided, and

(b) when used in reference to a specific calculation or line item of a statement, that such calculation or line item has been prepared or valued in accordance with generally accepted accounting principles in Canada, consistently applied, provided however, that interim statements, and calculations and line items prepared for interim statements, shall be subject to normal adjustments in accordance with generally accepted accounting principles in Canada, consistently applied.

1.38. " General Intangibles " shall have the meaning set forth in Section 2.01(c).

1.39. " Governmental or Regulatory Authority " means any court, tribunal, arbitrator, authority, agency, commission, 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, without limitation, the Securities and Exchange Commission, the Internal Revenue Service, and the various state and foreign securities regulators and taxation authorities.

1.40. [\*]

1.41. [\*]

1.42. [\*]

1.43. " Hazardous Material " means

(a) any petroleum or petroleum products, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation and transformers or other equipment that contain dielectric fluid containing levels of polychlorinated biphenyls (PCBs);

(b) any chemicals, materials, substances or wastes which are now defined as or included in the definition of "hazardous substances", "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants" or words of similar import, under any Environmental Law; and

(c) any other chemical, material, substance or waste, exposure to which is now prohibited, limited or regulated by any Governmental or Regulatory Authority under any Environmental Law, including without limitation crystalline silica.

1.44. " Indebtedness " of any Person means all obligations of such Person

(a) for borrowed money,

(b) evidenced by notes, bonds, debentures or similar instruments,

(c) for the deferred purchase price of goods or services (other than trade payables or accruals incurred in the ordinary course of the Business),

(d) under capital leases, and

(e) in the nature of guarantees of the obligations described in clauses (a) through (d) above of any other Person. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1.45. " Indemnified Party " shall have the meaning set forth in Section 8.02(d).

1.46. " Indemnifying Party " shall have the meaning set forth in Section 8.02(d).

1.47. " Indemnity Cap " shall have the meaning set forth in Section 8.02(b).

1.48. " Intellectual Property " shall mean any or all of the following, and all rights, and all title and interest therein or associated therewith:

(a) United States, Canadian, German and foreign patents and applications therefor and all reissues, divisions, renewals, extensions, provisionals, continuations and continuations-in-part thereof;

(b) inventions (whether or not patentable), invention disclosures, invention improvements, trade secrets (including, without limitation, [\*]), computer software programs (in both source code and object code form), technology, technical data and customer lists (including contact information for such customers), tangible or intangible proprietary information, and all documentation relating to any of the foregoing;

(c) copyrights, copyrights registrations and applications therefor, and all other rights corresponding thereto throughout the world;

(d) industrial designs and any registrations and applications therefor owned by a Seller;

(e) trade names, including, without limitation, registered trademarks and common law trademarks and service marks, logos, trademark and service mark registrations and applications therefor throughout the world;

(f) all databases and data collections and all rights therein throughout the world;

(g) moral and economic rights specifically designated for authors or inventors, however denominated, throughout the world; and

(h) any similar or equivalent rights to any of the foregoing anywhere in the world.

1.49. " Key Employees " shall mean [\*].

1.50. " Knowledge " means the actual knowledge of a Person with respect to any fact, event or condition, as well as the knowledge that such party reasonably would be expected to have acquired in the ordinary course of the Business and the prudent management of its own affairs; including without limitation that which could be acquired by making reasonable inquiry (including, in the case of Sellers, of the Key Employees). Such definition shall include any form of such term, such as knows, known, etc., whether or not capitalized, as used in this Agreement with respect to a party's awareness of the presence or absence of a fact, event or condition.

1.51. " Law " and " Laws " means all laws, statutes, rules, regulations, ordinances and other pronouncements having the effect of law of the United States, any foreign country or any domestic or foreign state, county, city or other political subdivision or of any Governmental or Regulatory Authority.

1.52. " Lease " and " Leased Premises " shall have the meanings set forth in Section 6.12. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [\* ] CONFIDENTIAL TREATMENT REQUESTED

1.53. " Kingsley Business " means the business conducted by ABC Kingsley Germany within the twelve (12) month period immediately prior to the Closing, including, without limitation, the development, manufacture, sale and/or distribution of finished and semi-finished elastomeric products, as conducted by ABC Kingsley Germany at its facilities in Hamburg, Germany, but excluding the Retained Business.

1.54. " Liability " or " Liabilities " means all Indebtedness, obligations and other liabilities of a Person (whether absolute, accrued, contingent (or based upon any contingency), fixed or otherwise, or whether due or to become due).

1.55. " License " means any license, permit, certificate of authority, authorization, approvals, registration, franchise and similar consent granted or issued by any Governmental or Regulatory Authority.

1.56. " Liens " means claims, pledges, security interests, mortgages, easements, covenants of record, liens, charges, restrictions, consignments, or other encumbrances of whatever nature, whether created by statute, contract, process of Law or otherwise, and whether or not recorded or otherwise perfected.

1.57. " Loss " means any and all damages (including reasonably foreseeable incidental and consequential damages proximately related thereto, but not including punitive damages or exemplary damages), fines, fees, penalties, deficiencies, diminution in value of investment, losses and expenses, including without limitation, interest, reasonable expenses of investigation, court costs, reasonable fees and expenses of attorneys, accountants and other experts or other expenses of litigation or other proceedings or of any Claim, default or assessment, but specifically excluding

(i) any costs incurred by or allocated to an Indemnified Party with respect to time spent by employees of the Indemnified Party or any of its Affiliates, and

(ii) a decrease in value of an Acquired Asset due to factors or circumstances which would have had no significant adverse effect upon the value thereof had they occurred as of the Closing Date, but rather are caused primarily by the different use to which such Acquired Asset is put thereafter.

1.58. " Material Adverse Effect " means any change or effect of any event or circumstance which, individually or when taken together with all other changes, effects, events or circumstances, is or could reasonably be expected to be materially adverse to the assets, financial condition, business or results of operation of a Person; excluding, however, any adverse effect due to changes, after the date of this Agreement, relating to or arising out of

(a) conditions affecting the United States, Germany or worldwide economy generally or the general market addressed by such Person's products and/or services,

(b) any natural disaster, national emergency, war or act of terrorism or international political or social conditions,

(c) any adverse change or effect arising from the negotiation or public announcement of this Agreement,

(d) any failure of the Norfolk Business or the Kingsley Business to achieve any financial, sales or other projection or forecast,

(e) any breach by Buyer or any of its Affiliates of the Confidentiality Agreement, or

(f) any change in GAAP or generally accepted accounting principles in the United States, Canada or Germany (or any change in interpretation thereof).

1.59. " ABC Kingsley Sweden " means Kingsley Elastomer AB, a corporation organized under the laws of Sweden with offices at Fräsarvägen 30, S-142 50, Skogas, Sweden.

1.60. " Net Kingsley Receivables " shall have the meaning set forth in Section 2.01(g).

1.61. " Operative Documents " shall mean any and all certificates, instruments, agreements and other documents between or among some or all of the parties hereto, or their employees, which are required to be executed and/or delivered pursuant to this Agreement.

1.62. " OSHA " means the United States Occupational Safety and Health Act, as amended and in effect as of the Closing Date.

1.63. " Other Party " shall have the meaning set forth in Section 6.20(g).

1.64. " Permits " shall have the meaning set forth in Section 6.03.

1.65. " Permitted Exceptions " means

(a) liens for general real estate Taxes not yet due and payable;

(b) liens or encumbrances of a definite or ascertainable amount and which will be paid and discharged in full by or for Sellers at or prior to the Closing;

(c) with respect to real property, all zoning ordinances, building codes, and all easements, restrictions, and covenants of record and other liens or encumbrances that do not materially impair the use of such real property for its current use, nor materially diminish its market value;

(d) statutory liens arising in the ordinary course of business with respect to amounts not yet overdue for a period of 60 days or in respect of amounts being contested in good faith; and

(e) restrictions placed on any Seller Intellectual Property licensed to a Seller by any Third Party and disclosed on Schedule 6.20(g).

1.66. " Person " means any natural person, corporation, general or limited partnership, limited liability company or partnership, proprietorship, other business organization, estate, trust, union, association or governmental or regulatory authority.

1.67. " Plan " means any bonus, incentive compensation, deferred compensation, pension, profit sharing, retirement, leave of absence, layoff, vacation, day or dependent care, legal services, cafeteria, life, health, accident, disability, workmen's compensation or other insurance, severance, separation or other employee benefit plan, practice, policy or arrangement of any kind, whether written or oral, including, but not limited to, any "employee benefit plan" within the meaning of Section 3(3) of ERISA.

1.68. " Products " shall mean those products and services produced or sold by the Sellers in connection with the Business, or otherwise provided to the Sellers for sale in connection with the Business, together with all intellectual property rights associated therewith and the goodwill and business appurtenant thereto, except and solely to the extent listed as an Excluded Asset.

1.69. " Purchase Price " shall have the meaning set forth in Section 3.01.

1.70. " Registered Intellectual Property " shall mean

(a) all Intellectual Property that is subject to any United States or foreign:

(i) patents and patent applications (including provisional applications);

(ii) registered trademarks, applications to register trademarks, or intent-to-use applications to register trademarks;

(iii) registered copyrights and applications to register copyrights; and

(b) any other Intellectual Property that is the subject of an application, certificate, filing, registration, or other similar document issued by, filed with, or recorded by any state, government or other public legal authority.

1.71. " Release " shall mean any depositing, spilling, leaking, pumping, pouring, placing, emitting, discarding, abandoning, emptying, discharging, migrating, injecting, escaping, leaching, dumping or depositing.

1.72. " Retained Business " shall have the meaning set forth in Section 2.02(a).

1.73. " Norfolk Business " means the business conducted by ABC Plastics within the twelve (12) month period immediately prior to the Closing, including, without limitation, the development, manufacture and sale of foam, sponge and solid silicone materials and other products by ABC Plastics at its Norfolk, Virginia facility in bun stock form, rolls or sheets, with conversion capabilities such as die cutting, slitting, adhesive application and assembly, and specifically including the manufacture of silicone foam applied to fabric for [\*], but excluding the Retained Business.

1.74. " Securities Filings " shall have the meaning set forth in Section 6.16(a).

1.75. " Seller " and " Sellers " shall have the meanings set forth in the preamble.

1.76. " Seller 401(k) Plan " shall have the meaning set forth in Section 10.02(d).

1.77. " Seller Indemnified Parties " shall have the meaning set forth in Section 8.02(c).

1.78. " Seller Intellectual Property " shall mean any Intellectual Property (excluding any Commercial Software Rights) that is owned by Seller or to which Seller has rights of use, and which is either necessary for or used in, or as of the Closing Date was developed or being developed primarily for or held primarily in connection with, the Business. For the avoidance of doubt, Seller Intellectual Property excludes the [\*] and any rights (trademark or otherwise) with respect to the names [\*] but includes rights to the [\*], and includes all Seller Registered Intellectual Property, except and solely to the extent listed as an Excluded Asset. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [\* ] CONFIDENTIAL TREATMENT REQUESTED

1.79. " Seller Registered Intellectual Property " shall mean all of the Registered Intellectual Property (excluding, for the avoidance of doubt, any Commercial Software Rights) that is owned by, or filed in the name of, a Seller, which is either necessary for or used in, or as of the Closing Date was developed or being developed primarily for or held primarily in connection with, the Business, except and solely to the extent listed as an Excluded Asset by Sellers. For the avoidance of doubt, Seller Registered Intellectual Property excludes any rights (trademark or otherwise) with respect to the names [\*].

1.80. " Site " means any of the real properties currently or previously owned, leased or operated by Seller or any past or present subsidiary of Seller which have been used in connection with the Business or any portion thereof.

1.81. " Soft Furnishings Business " means the business of assembling ABC Kingsley Germany's fabricated [\*] product under any existing contract including, without limitation, those certain contracts with [\*], and any successor contract or relationship with respect thereto. For the avoidance of doubt, assets (tangible or intangible) of the Soft Furnishings Business shall only refer to those assets used exclusively in the assembly of the [\*] or inventory held for such assembly, but shall not include assets used in the manufacture or sale of any of the component parts so assembled, nor raw materials or inventory not exclusively held for such assembly, nor any tangible and intangible assets of ABC Kingsley Germany which are used in the assembly of the [\*] product but have other uses or applications within the Business.

1.82. " Tax " or " Taxes " means any and all federal, state, local or foreign taxes, fees, levies, duties, tariffs, imposts and other governmental charges of any nature (together with any interest, penalties and additions to tax) including, without limitation, taxes or other charges on, or with respect to, income, gross receipts, property, sales, use, capital or net worth.

1.83. " Tax Return " means any return, report or statement (including any information return) required to be filed for purposes of a particular Tax. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [\* ] CONFIDENTIAL TREATMENT REQUESTED

1.84. " Third Party " shall mean any Person who is not a party to this Agreement, nor is an Affiliate of any party to this Agreement.

1.85. " Trust Agreement " shall have the meaning set forth in Section 4.02(g).

1.86. " WARN " shall have the meaning set forth in Section 4.02(f).

SECTION 2 PURCHASE AND SALE OF ASSETS

**2.01. Purchase and Sale** . Upon the terms and subject to the conditions set forth in this Agreement, and in reliance on the representations and warranties of Sellers contained herein, at the Closing (as herein defined), Sellers each shall sell, convey, transfer, assign and deliver, and shall cause their respective Affiliates to sell, transfer, assign and deliver to Buyer, and Buyer shall purchase and assume from Sellers and such Affiliates of any of them (in each case except as set forth in Section 2.02 below), for the consideration hereinafter set forth herein and free and clear of all Liens and Third Party Claims (whether private, governmental or otherwise) whatsoever, other than Permitted Exceptions, good and marketable title to all tangible fixed assets and intangible assets which are either are used in, are necessary for, or as of December 31, 2008 were located at the facilities and/or offices of, the Business (including any off-site locations such as temporary storage sites, including without limitation the assets held in the facility of [\*] in Norfolk, Virginia), other than Excluded Assets (collectively, the " Acquired Assets "); including, without limitation, the following:

(a) Those fixed assets of the Business (the " Fixed Assets "), including without limitation the machinery and equipment, testing devices, computer equipment (hardware, software, peripherals, laptops, PDAs, etc.), furniture, fixtures, any tooling, office equipment, signage, company owned vehicles and any other types of fixed assets including, but not limited to, those items listed and described on Schedule 2.01(a) hereto, which Schedule shall be revised by the Sellers as of the Closing Date to correctly note any additions to and deletions from the Fixed Assets, if any, which may have occurred between the date hereof and the Closing Date, and to describe any material impact upon the operations of the Business caused thereby (provided that Sellers' Liability therefor, to the extent provided in this Agreement, shall not be diminished by the fact that such changes have been disclosed).

(b) All of Sellers' rights, title and interest in, to and under all Contracts of or relating to the Business, as well as works in process and bids and proposals of Sellers that are related to the conduct of the Business including, without limitation, any and all deposits or prepayments thereunder, together with all necessary consents to assignment; provided that with respect to the contracts contemplating future work thereunder, Buyer may either accept the necessary consents thereto or separately negotiate an agreement with the other party or parties thereto prior to Closing. Such assigned or separately negotiated contracts are referred to collectively hereunder as the " Assumed Contracts ". Notwithstanding the foregoing sentence, however, Buyer's acquisition of any rights, title or interest in any Contract, other than an Assumed Liability, shall not be deemed a consent or an agreement by Buyer to become a party thereto or otherwise to assume liability thereunder, unless such Contract is specified as an Assumed Contract on Schedule 6.19 hereto. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [\* ] CONFIDENTIAL TREATMENT REQUESTED 11

(c) All Seller Intellectual Property including, without limitation, those assets set forth on Schedule 2.01(c) hereto, together with the goodwill and business appurtenant thereto and any licenses and sublicenses granted and obtained with respect thereto, rights thereunder, remedies against infringements thereof, and rights to protection of interests therein under the applicable Laws of all jurisdictions, customer lists, Sellers' existing telephone and facsimile numbers (other than the three telephone numbers listed in Section 10.03, which shall revert to Sellers after the transition period set forth in Section 10.03), all rights in and to the trademarks and tradenames associated with any Product (except with respect to the tradenames [\*]), along with all choses in action, permits, Licenses, approvals, variances and other intangible assets of the Business (in each case to the extent transferable) and all goodwill of the Business (other than corporate authorizations to transact business which are related to a Seller as a legal entity) (" General Intangibles ").

(d) All books, records, files, catalogues, contracts, customer lists, prospect lists, dealer and distributor lists, lists of open customer purchase orders and sales leads, sales literature, sales records, engineering data, product design, drawings and information, operating records, certain research results and test records and other miscellaneous documentation that primarily relate to the Acquired Assets or to the Business, as well as copies of such documents and/or information to the extent they relate both to the Acquired Assets and/or to the Business as well as any Excluded Assets and/or the Retained Business, whether such materials and documents are in written or electronic form (the " Business Records ").

(e) All of Sellers' inventory, raw materials, supplies, work in process, finished goods, packaging and other manufacturing supplies of any nature relating to the Business.

(f) All of Sellers' right, title and interest in all real property owned or leased by Sellers at the facility located in Norfolk, Virginia, and all of Sellers' right, title and interest as of the Closing Date in and to the real property leased at Hamburg, Germany (other than the facility used for the Soft Fur nishings Business and located at Hochdamm-StraÎ²e 10, D-20357, Hamburg, Germany), including all structures and improvements thereon and all interests therein used in the Business.

(g) The Accounts Receivable, less any accounts payable, of ABC Kingsley Germany, other than those relating to the Retained Businesses or owing by Affiliates of ABC Kingsley Germany (the " Net Kingsley Receivables "), up to a maximum of US$400,000, computed as of the first yearly anniversary of the Closing Date. If as of such anniversary the Net Kingsley Receivables exceed US$400,000, the Buyer shall pay to ABC Kingsley Germany or its lawful successors and assigns the balance thereof, and if the Net Kingsley Receivables then are less than US$400,000, the Buyer shall be entitled to receive the deficiency thereof from the Sellers (which Buyer shall first take from the Escrowed Amount, to the extent then available and not subject to any asserted Claim, and for which Sellers shall not be obligated to replenish the Escrowed Amount). \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [\* ] CONFIDENTIAL TREATMENT REQUESTED

(h) All the Sellers' right, title and interest as of the Closing Date in, to and under all other assets of every kind and nature used or intended to be used in or necessary to the operation of the Business, including, without limitation, any other data wherever found or of whatever kind of Sellers not described above reasonably required to conduct the Business. In order to effect the foregoing, Sellers shall execute and deliver to Buyer at the Closing a Bill of Sale in the form of Exhibit B hereto. Except as otherwise set forth or disclosed herein, all the Acquired Assets are, and at the Closing Date will be, located at the facilities of ABC Plastics in Norfolk, Virginia, and of ABC Kingsley Germany in Hamburg, Germany, respectively.

As of the Closing Date, the Acquired Assets shall be transferred or otherwise conveyed to Buyer free and clear of all Liens and Liabilities, excepting only Permitted Exceptions and the Assumed Liabilities listed in Section 4.02.

The parties hereby waive compliance with the bulk transfer or bulk sales provisions of the applicable state Uniform Commercial Code provisions or any other similar Law, if any; provided, however, that such waiver shall not constitute a limitation of the rights of Buyer and Sellers hereunder.

**2.02. Excluded Assets .** The following assets of Sellers (collectively, the " Excluded Assets ") are not part of the sale and purchase contemplated hereunder, are excluded from the Acquired Assets and shall remain the property of Sellers after the Closing:

(a) All tangible and intangible assets located at facilities of ABC Plastics in Norfolk, Virginia, of ABC Kingsley Germany in Hamburg, Germany, respectively, on December 31, 2008 primarily relating to [\*] (iii) the business conducted by ABC Plastics primarily at its facilities in Milton, Florida (other than the [\*]), internally referred to as the Mold-Ex Division or Milton Division, (iv) Sterne SARL, (v) the portion of the Kingsley Business conducted by ABC Kingsley Sweden (which shall be subject to the Transition Services Agreement) , and (vi) those specific businesses and assets of Sellers which are listed or specifically described on Schedule 2.02 (a) hereto (collectively, the " Retained Business "). \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [\* ] CONFIDENTIAL TREATMENT REQUESTED 13 (b) Any contract rights relating to (i) employees of, or consultants to, Sellers who are not being hired by or offered employment with Buyer as of the Closing, and (ii) any customers and suppliers of Sellers exclusively with respect to the Retained Business.

(c) All books, records, files, catalogues, contracts, customer lists, prospect lists, dealer and distributor lists, lists of open customer purchase orders and sales leads, sales literature, sales records, engineering data, product design, drawings and information, operating records, certain research results and test records and other miscellaneous documentation that exclusively pertain to the Retained Business.

(d) All minute books, records and seals.

(e) All personnel records and other records that Sellers are required by Law to retain in their respective possession (provided that accurate and complete copies are given or made available to Buyer at or prior to the Closing, to the extent that they relate to personnel continuing their employment with Buyer after the Closing).

(f) All Claims for refund of Taxes and other governmental charges of whatever nature for which Sellers would otherwise be entitled to under this Agreement, prorated to reflect the portion attributed to pre-Closing or post-Closing business activity. Sellers agree to provide Buyer with reasonable cooperation in connection with any audit or assessment of Taxes, interest or other charges with respect to any period prior to Closing..

(g) All rights of Sellers under this Agreement and the Operative Documents.

(h) All agreements regarding the purchase and sale of, or governing the rights of, the capital stock of Sellers.

(i) All Accounts Receivable (other than Net Kingsley Receivables), intercompany receivables for loans and other financial arrangements, prepaid items, deposits and capitalized development costs for future recovery, except to the extent they relate to the Assumed Liabilities.

(j) Any interest in real property owned or leased by Sellers and not included in the Acquired Assets.

2.03 [\*]: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [\* ] CONFIDENTIAL TREATMENT REQUESTED 14 (a) [\*] (b) [\*] (c) [\*] (d) [\*]

**SECTION 3 PURCHASE PRICE**

**3.01. Amount and Payment of the Purchase Price .** In consideration for the Acquired Assets, Millers shall pay to the Sellers the aggregate amount of Seven Million Four Hundred Thousand Dollars (US$7,400,000.00) (the " Purchase Price "), payable in lawful currency of the United States as follows:

(a) Three Million Five Hundred Thousand Dollars (US$3,500,000.00) with respect to the Norfolk Business, which shall be paid by wire transfer to ABC Plastics on the Closing Date to the account(s) specified by ABC Plastics in writing;

(b) Three Million Nine Hundred Thousand Dollars (US$3,900,000.00) with respect to the Kingsley Business, which shall be paid by wire transfer to ABC Kingsley Germany on the Closing Date to the account(s) specified by ABC Kingsley Germany in writing; and

(c) Six Hundred Fifty Thousand Dollars (US$650,000.00), which shall be paid over to an escrow agent to be held as provided for in Section 8.03 below.

**3.02 Allocation of Purchase Price .** The parties hereto agree and acknowledge that the determination of the price for each of the Acquired Assets being sold by Sellers to Buyer, as set forth in this Agreement, is the result of arm's-length negotiations between the parties. The Purchase Price shall be preliminarily allocated amongst the Acquired Assets by the Buyer in the manner set forth in Schedule 3.02 (to be supplied by Buyer prior to Closing). Buyer then shall provide to Sellers the report of buyer's independent appraiser within ninety (90) days after the Closing, which shall be prepared in accordance with United States Generally Accepted Accounting Principles then in effect. If after discussion with Buyer and/or its appraiser, Sellers' appraiser disagrees with the conclusions of that report, then each Party may file its tax returns in reliance upon the characterization and allocated prices of the various assets determined by that Party's independent appraiser in good faith. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [\* ] CONFIDENTIAL TREATMENT REQUESTED

**SECTION 4 ASSUMPTION OF LIABILITIES**

**4.01. Nonassumption of Liabilities and Indemnification .** Buyer shall not assume any Liabilities of Sellers whatsoever except as specifically set forth in Section 4.02 below. The parties intend that Buyer shall acquire ownership of the Acquired Assets free and clear of all Liens and Third Party Claims (whether private, governmental or otherwise) whatsoever, other than Permitted Exceptions, and each Seller represents and warrants that such sale shall be accomplished without expense or Liability for any such Third Party Claims to Buyer.

**4.02. Assumed Liabilities .** At Closing, Buyer shall assume the following Liabilities, and shall be responsible for all such Liabilities from and after the Closing Date (collectively, the " Assumed Liabilities "):

(a) The purchase orders as of the Closing Date from each Seller's customers regarding the Products, accepted in the ordinary course of the Business as conducted by a Seller (all of which, as of the Closing Date, are annexed as Schedule 4.02(a) hereto).

(b) The purchase orders of each Seller as of the Closing Date to such Seller's suppliers regarding the Business; provided, that such purchase orders were accepted in the ordinary course of the Business as conducted by such Seller consistent with past practices and contain pricing and other terms which are usual and ordinary in the normal course of the Business; and provided, further that any payments under such purchase orders were not, by their terms, due and payable by a Seller as of a date prior to the Closing Date. All such purchase orders as of the date hereof are annexed as Schedule 4.02(b) attached hereto (aside from those not available as of the date hereof, which shall be included in a Class A Schedule Update, as defined in Section 5.06(c)(i), and delivered to Buyer prior to Closing), and these shall be supplemented, as a Class B Schedule Update (as defined in Section 5.06(c)(i)) as of the Closing by those additional purchase orders issued between the date hereof and the Closing. As of the Closing or promptly upon request of a Seller after the Closing, Buyer shall reimburse such Seller for any advance payments made by such Seller prior to the Closing for any such outstanding purchase orders.

(c) All Liabilities of Sellers under all of the Assumed Contracts as provided in the Assignment and Assumption Agreement attached hereto as Exhibit D ; provided that the assumption of such obligations by Buyer hereunder shall not be deemed to diminish any liability of Sellers for a breach of a representation or warranty concerning such obligations.

(d) All warranties and service obligations with respect to any Products sold by Sellers prior to the Closing Date; provided, that the assumption of such obligations by Buyer hereunder shall not be deemed to diminish any liability of Sellers for a breach of a representation or warranty concerning such obligations; and provided, further that Buyer shall not be responsible for any other Liabilities, in connection with Products shipped from inventory of a Seller, existing as of the Closing Date, which Liabilities shall remain with the applicable Seller.

(e) Liabilities for Taxes based or imposed upon, arising out of, or resulting from the purchase of the Business and the Acquired Assets, in each case relating to periods (or portions thereof) after the Closing Date, but in no event including any Liabilities for Taxes assessed or accrued for a period (or portion thereof) prior to or including the Closing Date, or arising out of or resulting from the ownership, holding or use of any Acquired Asset prior to the Closing Date, or relating to any transaction consummated prior to the Closing Date.

(f) All Liabilities and obligations (including, for the avoidance of doubt, all severance or termination liabilities, if any) in respect of employees of the Business (other than Excluded Employees) who are employees of the Business immediately prior to the Closing, and beneficiaries of such employees, including liabilities and obligations under or relating to the Worker Adjustment Retraining and Notification Act, as amended (" WARN "), or any similar state or local law, but solely to the extent relating to or arising out of the sale of the Acquired Assets or any actions taken by Buyer on or after the Closing Date.

(g) Obligations of Sellers to pay royalties pursuant to [\*].

(h) All other trade payables of the Kingsley Business incurred consistently with past practice of the Sellers and in the ordinary course of business or other trade payables owing from Affiliates of ABC Kingsley Germany.

**4.03 Excluded Liabilities .** Notwithstanding the foregoing, and except as expressly set forth in this Agreement with respect to the Assumed Liabilities, Buyer shall not assume nor become liable for, nor shall, by execution or performance of this Agreement, purchase of the Acquired Assets or otherwise, become responsible for, be liable with respect to or otherwise be obligated to pay, perform, discharge or guarantee, any Liability of Sellers (whether known, unknown, direct, indirect or otherwise) to the extent arising or relating to the conduct of the Business prior to the Closing Date (collectively, the " Excluded Liabilities "). Sellers agree to promptly pay or discharge all Excluded Liabilities, and to indemnify Buyer from any failure to do so on a timely basis. Without limitation, Excluded Liabilities shall include the following:

(a) Liabilities for Taxes based or imposed upon, arising out of, or resulting from the Business and the Acquired Assets, in both cases for periods (or portions thereof) on or before the Closing Date. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [\* ] CONFIDENTIAL TREATMENT REQUESTED

(b) Any claims, acts, errors, omissions, Losses, costs or Liabilities with respect to any Seller, the Acquired Assets, such Seller's trade practices or the Business as conducted by such Seller arising or accruing or based on the operation of the Business prior to the Closing Date or otherwise based on any acts or omissions of a Seller made at any time thereafter including, but not limited to, unpaid salary, products liability, environmental, tort, antitrust, workers' compensation liability, employment practices liability, unfair competition, business practices liability and similar claims.

(c) Any legal, accounting or other expenses of a Seller in connection with this Agreement.

(d) Any Liabilities arising out of, incurred in connection with or related to the ownership of the Excluded Assets.

(e) Any Liabilities arising out of or in connection with any Indebtedness of a Seller for borrowed money (including, without limitation, the outstanding operating and term loan facilities with SEB, Sparkasse and Bank of America).

(f) Any inter-company accounts payable, other than for goods (if any) received in an arm's length transaction in the ordinary course of business.

(g) Any Liabilities to employees or former employees of a Seller, arising out of actions taken or omitted prior to the Closing Date (including Liability for accrued but unpaid vacation time as described in Section 10.02(e)), or otherwise exclusively related to the Retained Business; including without limitation the pending or threatened Claims of four former employees of ABC Kingsley Germany which are described in Sections 6.08 and 6.22 of the Disclosure Schedule.

(h) Any brokerage fees, commissions, finders or similar fees incurred by a Seller in connection with the transactions contemplated by this Agreement.

(i) Any obligations under [\*] not included as an Assumed Liability.

**SECTION 5 CLOSING**

**5.01. Closing** . The closing of the transactions contemplated herein (the " Closing ") shall be held at the offices of Gardner and Temple LLP, counsel for Buyer, remotely via the exchange of documents and signatures or at such other time and place as the parties mutually may agree, on the third Business Day following the day on which the conditions set forth in this Section 5 have been satisfied or waived (other than those conditions that are intended to be satisfied at the Closing), or such other date upon which the parties mutually may agree, but in no event later than May 15, 2009 (the " Closing Date "). \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [\* ] CONFIDENTIAL TREATMENT REQUESTED

**5.02. Deliveries of Sellers .** Each Seller, as applicable, shall deliver or cause to be delivered to Buyer at the Closing:

(a) A Bill of Sale conveying good and marketable title in the Acquired Assets to Buyer in accordance with this Agreement, free and clear of all Liens (other than Permitted Exceptions), in substantially the form attached as Exhibit B hereto, executed by such Seller.

(b) Any and all documents of title necessary to transfer ownership to Buyer of the Acquired Assets, duly executed by each Seller and any other parties thereto.

(c) An Assignment of Intellectual Property in substantially the form attached as Exhibit C hereto, executed by each Seller.

(d) An Assignment and Assumption Agreement in substantially the form attached as Exhibit D hereto, executed by each Seller.

(e) A Non-Competition and Non-Solicitation Agreement in substantially the form attached as Exhibit E hereto, executed by each Seller. [\*]

(f) An Escrow Agreement in substantially the form attached as Exhibit F hereto, executed by each Seller.

(g) Transitional Services Agreements, without any additional consideration, to be mutually agreed by the Buyer and Sellers prior to Closing.

(h) All documents necessary to transfer any other General Intangibles being purchased by Buyer hereunder, executed by each Seller and any other parties.

(i) A certificate executed on behalf of each Seller by its President or Chief Executive Officer, certifying as to such Seller's satisfaction of the conditions set forth in Section 5.04(a) and (b).

(j) All such other deeds, endorsements, assignments and other instruments as, in the opinion of Buyer' counsel, are necessary or desirable to vest in Buyer good, valid and marketable title to and ownership of the Acquired Assets.

(k) A certified copy of resolutions, duly adopted by the Boards of Directors and stockholders of each Seller, authorizing the transactions contemplated hereby, and a certificate of incumbency as to the authority of the individuals of each Seller to execute this Agreement, the Operative Documents to which such Seller is a party and the various other documents and instruments contemplated herein or therein. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [\* ] CONFIDENTIAL TREATMENT REQUESTED

(l) Such certificates issued by the appropriate governmental authorities as required to evidence the legal existence and good standing of each Seller in each jurisdiction in which it is qualified to do business.

(m) Evidence, reasonably satisfactory to Buyer, that all work-in-process and finished goods inventory of ABC Kingsley Sweden has been transferred and delivered to the premises of ABC Kingsley Germany located in Hamburg, Germany (unless prior to the Closing Buyer requests of Sellers that some or all of such work-in-process and/or finished goods inventory not be transferred, in which case such inventory shall remain the property of Sellers). As of the Closing or promptly thereafter at the request of ABC Kingsley Germany, Buyer shall reimburse ABC Kingsley Germany for all reasonable costs directly associated with such delivery and certain other costs related to the closure of ABC Kingsley Sweden, as and to the extent set forth in a Transition Services Agreement substantially in the form annexed hereto as Exhibit G hereto.

(o) A signed opinion of Sellers' counsel in substantially the form attached as Exhibit H hereto.

(p) [\*]

(q) Copies of the Amendment, Confirmation and Consent substantially as set forth on Exhibit K hereto, [\*].

(r) [\*] (s) Such other closing documents and instruments as Buyer reasonably may require.

**5.03. Deliveries of Buyer** . Buyer shall deliver or cause to be delivered to Sellers at the Closing:

(a) The sum of Six Million Seven Hundred Fifty Thousand Dollars (US$6,750,000.00), in immediately available funds via wire transfer to the accounts of the Sellers as designated by them at least two (2) Business Days prior to the Closing Date and in accordance with Section 3.01; \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [\* ] CONFIDENTIAL TREATMENT REQUESTED

(b) An Assignment and Assumption Agreement in substantially the form attached as Exhibit D hereto, executed by Buyer.

(c) A Non-Competition and Non-Solicitation Agreement in substantially the form attached as Exhibit E hereto, executed by Buyer.

(d) An Escrow Agreement in substantially the form attached as Exhibit F hereto, executed by Buyer, along with the deposit of Six Hundred Fifty Thousand Dollars (US$650,000.00) into the escrow account designated therein.

(e) A Transitional Services Agreement in substantially the form attached as Exhibit G hereto, executed by Buyer.

(f) A certified copy of votes, duly adopted by the Board of Directors of Buyer, authorizing the transactions contemplated hereby, and a certificate of incumbency as to the authority of the individuals of Buyer to execute this Agreement, the Operative Documents to which Buyer is a party and the various other documents and instruments contemplated herein or therein.

(g) A certificate executed on behalf of Buyer by its President or a Vice President, certifying as to Buyer's satisfaction of the conditions set forth in Section 5.05(a) and (b).

(h) A copy of an undertaking executed by Millers in favor of the Trustee and the Sellers, pursuant to which Millers agrees to pay royalties, at current rates, pursuant to and in accordance with the Compensation Agreement, to the extent modified by the Amendment, Confirmation and Consent set forth as Exhibit K hereto. 5.04. Conditions to Buyer's Obligations . The obligation of Buyer to consummate the transactions to be performed by it in connection with the Closing will be subject to the satisfaction (or waiver by Millers, in whole or in part, in writing) of the following conditions as of the time of the Closing:

(a) No breach of any representations or warranties of Sellers set forth in Section 6, nor any updates (Class A or B) to the Disclosure Schedule provided for in Section 5.06(c) hereof, individually or in the aggregate, will have or reasonably could be expected to have a Material Adverse Effect upon the Business. For the avoidance of doubt, any violations of Laws which concern the export of products or technical information from the United States of America and which may be imposed from time to time by the government of the United States of America (including, without limitation, the Foreign Corrupt Practices Act of 1977, Export Administration Act of 1979, U.S. Arms Export Control Act and the International Traffic in Arms Regulations, and similar Laws which has had or, in Buyer's sole but reasonable judgment, may have a reasonable likelihood of impairing the conduct of any portion of the Buyer's business (including but not limited to the Business) after the Closing, shall constitute a Material Adverse Effect. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [\* ] CONFIDENTIAL TREATMENT REQUESTED

(b) Sellers shall have performed and complied in all material respects with each of the covenants and agreements required to be performed by the Sellers under this Agreement or any Operative Document at or prior to the Closing.

(c) There shall be no proceeding commenced or threatened against Buyer or any Seller involving this Agreement or the transactions contemplated herein or any judgment, decree, injunction or order which prohibits the consummation of the transactions contemplated by this Agreement.

(d) Sellers shall have tendered delivery of the Acquired Assets to Buyer, free and clear of all Liens, other than Permitted Exceptions.

(e) There shall have occurred no Material Adverse Effect upon the Business between the date hereof and the Closing.

(f) Buyer shall have received written acceptance of employment from each Key Employee in accordance with Sections 10.01 and 10.02.

(g) Each Seller shall have delivered to Buyer the items set forth in Section 5.02.

(h) [\*] shall have agreed to amend the [\*] (as each such capitalized term is defined in Section 6.19) upon terms and conditions reasonably acceptable to Buyer (which terms and conditions shall not include any further liability for Sellers beyond whatever may have been incurred in the prior agreement between Sellers and [\*]).

(i) [\*] shall have executed and delivered an original copy of same to Buyer an Amendment, Confirmation and Consent substantially in the form set forth as Exhibit K hereto, and the other parties thereto likewise shall have executed same and delivered an original copy of same to Buyer.

(j) The consents listed on Exhibit I hereto, sufficient for the assignment of the Assumed Contracts referenced therein to Buyer, shall have been obtained.

(k) The parties to the Assumed Contracts which are listed on Exhibit J hereto shall have agreed to terms and conditions satisfactory to Buyer. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [\* ] CONFIDENTIAL TREATMENT REQUESTED

(l) Sellers shall have cleaned up and disposed of the contents of any assets held in the off-site facility of [\*] in Norfolk, Virginia which Buyer indicates, prior to the Closing, it does not wish to acquire.

(m) Buyer and Sellers shall have reached agreement on the form of the draft Non-Competition and Non-Solicitation which will be annexed as Exhibit E hereto. 5.05. Conditions to the Sellers' Obligations . The obligation of each Seller to consummate the transactions to be performed by it in connection with the Closing is subject to the satisfaction (or waiver by Sellers in writing) of the following conditions as of the Closing Date:

(a) No breach of any representations or warranties of Buyer set forth in Section 7 will preclude, or reasonably could be expected to preclude, Buyer's ability to substantially fulfill its obligations hereunder.

(b) Buyer will have performed and complied in all material respects with all of the covenants and agreements required to be performed by Buyer under this Agreement at or prior to the Closing.

(c) There shall be no proceeding commenced or threatened against Buyer or any Seller involving this Agreement or the transactions contemplated herein or any judgment, decree, injunction or order which prohibits the consummation of the transactions contemplated by this Agreement.

(d) Buyer shall have delivered to Sellers the items set forth in Section 5.03.

(e) No proposed adjustment by Buyer pursuant to Section 5.06(c)(iv) shall result in a reduction of the aggregate Purchase Price of more than [\*].

(f) Buyer and Sellers shall have reached agreement on the form of the draft Non-Competition and Non-Solicitation which will be annexed as Exhibit E hereto.

**5.06. Pre-Closing Covenants and Adjustments .**

(a) Operations and Maintenance of the Business . From and after the date hereof and prior to the Closing, unless Millers otherwise consents in writing or except as set forth expressly herein, each Seller will conduct the Business only in the ordinary course of the Business as conducted by such Seller and consistent with past practice. Furthermore, except as may otherwise be required under this Agreement or as set forth on Schedule 5.06 , no Seller shall do any of the following, without the prior written consent of Millers: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [\* ] CONFIDENTIAL TREATMENT REQUESTED

(i) enter into any Contract, or incur or permit to be incurred, any obligation or other Liabilities, with respect to or materially affecting the Business or the Acquired Assets, other than in the ordinary course of the Business as conducted by such Seller and in accordance with past practice; including, without limiting the generality of the foregoing, (i) enter into any agreement relating to capital leases of the Business or borrowed money on behalf of the Business greater than US$10,000 individually or US$50,000 in the aggregate, or

(ii) make any loans to any Person with respect to or materially affecting the Business or the Acquired Assets (other than advances in the ordinary course of the Business as conducted by such Seller and consistent with past practice); (ii) remove any of its assets (other than cash and cash equivalents) used in the Business by way of dividend, distribution, withdrawal or any other means without prior written notice to Millers;

(iii) voluntarily permit to be incurred any Lien on any of its assets used in the Business;

(iv) increase the compensation payable or to become payable to any of its employees, or otherwise enter into or alter any employment or consulting agreement, outside the ordinary course of the Business as conducted by such Seller;

(v) commence, enter into, or alter any profit sharing, deferred compensation, bonus, option or purchase Plan for its interests or other equity securities, pension, retirement or incentive Plan or any fringe Benefit Plan for its employees retained in connection with the Business outside the ordinary course of the Business as currently conducted by such Seller;

(vi) sever or terminate the employment of any of its employees retained in connection with the Business, other than Excluded Employees, or engage any employees or consultants in connection with the Business except in the ordinary course of the Business as conducted by such Seller;

(vii) make or commit to any individual capital expenditure with respect to or materially affecting the Business or the Acquired Assets in excess of US$10,000;

(viii) cancel or waive any claims or rights of any Seller, with respect to or materially affecting the Business or the Acquired Assets, outside the ordinary course of the Business as conducted by such Seller and consistent with past practice;

(ix) change any accounting methods used by such Seller in connection with the Business, except and solely to the extent required by GAAP or Law;

(x) pay or incur any obligation or Liability, absolute or contingent with respect to or materially affecting the Business or the Acquired Assets, other than obligations or Liabilities incurred in the ordinary course of the Business as conducted by such Seller and consistent with past practice or purchase any asset other than in the ordinary course of the Business as conducted by such Seller;

(xi) make any Tax election or settle or compromise any Tax Liability which could reasonably be expected to have an adverse impact on Taxes payable by Buyer with respect to the Business or the Acquired Assets;

(xii) enter into any joint venture, partnership or other similar arrangement or form any other material arrangement for the operation of the Business as conducted by such Seller;

(xiii) cancel or terminate any of the insurance policies covering the Acquired Assets or permit any of the coverage thereunder to lapse, unless simultaneously with such termination, cancellation or lapse, replacement policies providing coverage equal to or greater than the coverage under such cancelled, terminated or lapsed insurance policies are in full force and effect; or

(xiv) enter into any binding commitment to do any of the foregoing.

(b) Information . Subject to the attorney-client privilege and any other applicable privileges with respect to its legal counsel, from time to time at Buyer's request, upon reasonable prior notice and at reasonable times during normal business hours, subject to requirements of Law, Sellers will provide to representatives of Buyer and its agents, employees and accounting, tax, legal and other advisors (collectively, including Buyer, the " Investigating Parties "):

(i) access to the information regarding the assets, the Liabilities and operations of the Business;

(ii) access to all accounts, insurance policies, Tax Returns, Contracts, and other books and records concerning the operations and properties of Seller in connection with the Business, the Acquired Assets and such other relevant information and materials as may be reasonably requested (including the right to make copies and abstracts thereof) including, without limitation, financial statements (including the Financial Statements), review of books and records of the Business for the last five (5) years through the Closing Date and review of assets, Liabilities, Products, services, inventory, compliance with Laws, methods of accounting, margins and financial and other Business Records, investigation of the Business' customers and providers, and inspection and examination of each Seller's facilities and assets relating to the Business, including such Seller's ownership of such facilities and assets;

(iii) opportunity to meet with customers, converters or other value-added resellers (or Persons acting in a similar capacity), prospective customers and key suppliers of the Business (including without limitation the Top 20 Customers, Top 10 Suppliers, and Manufacturers Representatives, each as defined in Section 6.02(a)), and to discuss the affairs, finances and accounts of the Business with those partners, directors, officers or managers (or equivalent officials), senior management and other employees, sales representatives and independent accountants of such Seller reasonably requested by Buyer who would reasonably be presumed to have information which would be relevant for the purposes of conducting the Investigating Parties' business, accounting, financial, environmental, legal and other due diligence review regarding such Seller and the Acquired Assets and preparing for the consummation of the transactions contemplated hereby, in each case so long as such access does not unreasonably interfere with the business and operations of such Seller; and

(iv) opportunity to meet with distributors to the Business, for the purposes of conducting the Investigating Parties' business, accounting, financial, environmental, legal and other due diligence review regarding such Seller and the Acquired Assets, for the consummation of the transactions contemplated hereby and for the purpose of establishing the terms and conditions, if any, for future business arrangements, in each case so long as such access does not unreasonably interfere with the business and operations of such Seller.

Notwithstanding the foregoing, in no event shall Buyer or any other Investigating Party contact any customer, prospective customer or supplier of any Seller in connection with the Business without the prior written consent of such Seller, which consent shall not be unreasonably withheld, delayed or conditioned. All information obtained by the Investigating Parties pursuant to the provisions of this Section 5.06(b) shall be subject to the provisions of the Confidentiality Agreement, which shall be deemed to apply as well to each Seller; provided, however, that in the event the terms and conditions of this Agreement conflict with those set forth in such Confidentiality Agreement, this Agreement shall prevail. Buyer shall not use any information obtained pursuant to this Section 5.06(b) for any purpose unrelated to the consummation of the transactions contemplated by this Agreement and, if such transactions are not consummated, it will treat all information and documents obtained pursuant to this Section 5.06(b) in the manner provided by the Confidentiality Agreement.

(c) Schedules Supplement, Pre-Closing Adjustments, and Cooperation Generally .

(i) Updating of Disclosure Schedule . From the date of this Agreement through the earlier to occur of (x) the Closing Date, and (y) the date on which this Agreement is terminated pursuant to the terms hereof, each Seller agrees that it will promptly notify Buyer of (A) any and all information, facts, events, circumstances, issues or other matters that existed as of the date of this Agreement that should have been set forth or described in the Disclosure Schedule as of the date of this Agreement, or otherwise imply a breach of a representation or warranty of a Seller hereunder (the " Class A Schedule Updates "), and (B) any and all information, facts, events, circumstances, issues or other matters arising after the date of this Agreement which, if existing on the date of this Agreement, would have been required to be set forth or described in the Disclosure Schedule, or otherwise imply a breach of a representation or warranty of a Seller hereunder (the " Class B Schedule Updates "), in each case by delivery of appropriate updates to the Disclosure Schedule setting forth such information, facts, events, circumstances, issues or other matters on or prior to the Closing Date.

(ii) Effect of Class B Schedule Updates . In the event that the Sellers deliver any Class B Schedule Updates pursuant to Section 5.06(c)(i)(B), then (A) such Class B Schedule Updates shall be deemed to be attached to the Disclosure Schedule and become a part of the Disclosure Schedule, (B) all references to the Disclosure Schedule shall refer to the Disclosure Schedule as updated by the Class B Schedule Updates, including, without limitation, for purposes of determining whether or not a Buyer Indemnified Party is entitled to indemnification under Section 8.02, and the amount of any such indemnification, and (C) such Class B Schedule Updates shall not be given effect for determining whether the conditions to Closing set forth in Section 5.04 have been satisfied.

(iii) Effect of Class A Schedule Updates . In the event that the Sellers deliver any Class A Schedule Updates pursuant to Section 5.06(c)(i)(A), then (A) such Class A Schedule Updates shall not be deemed to be attached to the Disclosure Schedule or become a part of the Disclosure Schedule, (B) all references to the Disclosure Schedule shall refer to the original Disclosure Schedule, without reference to such Class A Schedule Updates, and (C) such Class A Schedule Updates shall not be given effect for determining whether the conditions to Closing set forth in Section 5.04 have been satisfied. No Class A Schedule Update made after execution hereof by a Seller pursuant to this section shall be deemed to cure any breach of any representation or warranty made pursuant to this Agreement.

(iv) Pre-Closing Adjustments . In the event of (A) any breach of a representation or warranty given by any Seller which is discovered (whether by disclosure by a Seller or by Buyer) prior to Closing, or (B) the delivery by a Seller of any Class A Schedule Updates pursuant to Section 5.06(c)(i)(A), Buyer shall be entitled to an adjustment to the Purchase Price in the amount of the Loss incurred by Buyer on account thereof, including in such Loss the diminution in the value of the Acquired Assets as a result of such breach. Such adjustment shall not be reduced by the Basket, nor shall reduce the Basket. In the event that the parties do not agree on the amount of such adjustment, then the Closing nevertheless shall be consummated, and the disputed portion of such adjustment shall be submitted to arbitration pursuant to Section 12. Any such adjustment pursuant to clauses (A) or (B) above shall, however, reduce the available Escrowed Amount on a dollar-for-dollar basis, as of the time when such adjustments are either agreed to by both parties or are resolved by arbitration pursuant to Section 12.

(v) Satisfaction of Conditions to Closing . Each party acting in good faith shall cause the conditions to Buyer's and each Seller's respective obligations to consummate the transactions contemplated by this Agreement to be satisfied to the extent within its power and control, and shall use its commercial best efforts to satisfy such conditions to the extent not within its power and control; including, without limitation, the preparation, execution and delivery of all agreements and instruments contemplated hereunder to be executed and delivered by such party in connection with or prior to the Closing.

**5.07. Transfer of Inventory .** ABC and ABC Kingsley Germany, as applicable, shall, prior to Closing, cause all work-in-process and finished goods inventory currently held by ABC Kingsley Sweden at its Skogas, Sweden facility to be transferred to ABC Kingsley Germany's facility in Hamburg, Germany to the extent provided in Section 5.02(m) hereof, and for the reimbursement there provided.

**5.08. Transfer of Assumed Contracts** . Each of ABC, ABC Plastics and ABC Kingsley Germany, as necessary, shall cause the transfer of their respective rights, obligations and benefits under all of the Assumed Contracts to Buyer (and ABC shall cause ABC Kingsley Sweden, if necessary, to do so), effective as of the Closing Date, subject to the receipt of all required third party consents.

**5.09 [\*].** If Buyer does not agree to assume the [\*] contracts between ABC Kingsley Germany and [\*], pursuant to Section 2.01 (b), then the parties will work in good faith to reach an agreement prior to close regarding a Purchase Price adjustment that reflects the change in value of the acquired assets, and if the parties fail to reach agreement on such adjustment, Buyers shall place into escrow an additional amount comprising its good faith estimate of the value of such products (and reduce the purchase price paid at Closing by such escrowed amount), and the actual value shall be determined as provided in Section 12.01.

**SECTION 6 REPRESENTATIONS, WARRANTIES AND COVENANTS OF SELLERS**

ABC hereby jointly and severally represents and warrants, and each of ABC Plastics, and ABC Kingsley Germany hereby severally represent and warrant, that the following representations and warranties are true, accurate and complete as of the date hereof with respect to such Seller, except as otherwise set forth in the disclosure schedule attached as Exhibit A hereto (the " Disclosure Schedule "). Without limiting the generality of the foregoing, the mere listing (or inclusion of a copy) of a document or other item, whether as an attachment to the Disclosure Schedule or otherwise, shall not be deemed adequate to disclose an exception to a representation or warranty made herein. The Disclosure Schedule shall be arranged in sections corresponding to the numbered and lettered sections and subsections contained in this Section 6, and the disclosures in any section or subsection of the Disclosure Schedule shall qualify other sections and subsections in this Section 6 only to the extent it is readily apparent from a reading of the disclosure that such disclosure is applicable to such other sections and subsections. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [\* ] CONFIDENTIAL TREATMENT REQUESTED 28 The only exceptions and limitations to the representations and warranties being made in this Section 6 are those set forth in the Disclosure Schedule in the manner described above. For the avoidance of doubt, no disclosure made or allegedly made to Buyer or its representatives in person (whether orally or in writing) or via an actual or electronic "data room", business plan, Internet web site or otherwise, shall be deemed an exception to these representations and warranties. (The parties acknowledge that the following representations and warranties constitute decisions as to the relative allocation of risk between the parties, and do not necessarily correlate to actual knowledge of any factual content by the representing party.)

**6.01. The Seller, Etc .** Each Seller is duly organized, validly existing and in good standing under the Laws of its jurisdiction of incorporation set forth on Schedule 6.01(a) of the Disclosure Schedule, and has the full power and authority to own, lease, and operate the properties used in the Business and to carry on the Business as now being conducted; and certified copies of its Certificate of Incorporation, By-laws, and other governing documents, each as amended and currently in effect, will be delivered to Buyer at the Closing. No Seller holds any equity, partnership, joint venture or other interest in any Person affecting or otherwise relating to the Business. ABC Kingsley Germany has been wholly owned, directly or indirectly, by ABC for at least five (5) years prior to the Closing. Schedule 6.01(a) of the Disclosure Schedule contains an accurate and complete list of

(i) each trade name or assumed name of each Seller now used or that has been used during the last five (5) years in connection with the Business,

(ii) each jurisdiction where it is authorized to do conduct the Business, and

(iii) each office or location now maintained or that has been maintained in connection with the conduct of the Business by such Seller during the last five (5) years. Each Seller's minute book and other similar records provided to Buyer contain a true and complete record of all action taken at all meetings and by all written consents in lieu of meetings of the Board of Directors, stockholders or other similar governing entities of such Seller. Each Business Record of the Sellers is true and accurate in all material respects and, with respect to what it purports to record, list or describe, is complete in all material respects.

**6.02. Customers, Suppliers, Distributors and Manufacturers' Representatives .**

(a) Schedule 6.02(a) of the Disclosure Schedule lists

(i) the top twenty (20) customers, converters or other value-added resellers (or Persons acting in a similar capacity), original equipment manufacturers and other similar participants in the sales process of each of the Norfolk Business and the Kingsley Business (" Top 20 Customers "),

(ii) the top ten (10) suppliers of goods or services to each of the Norfolk Business and the Kingsley Business (" Top 10 Suppliers "),

(iii) all Persons acting as a manufacturer's representative or distributor to either or both of the Norfolk Business and the Kingsley Business (" Manufacturers Representatives "), in each case measured by dollar volume during the most recent whole fiscal year. Other than pursuant to the request of a Seller, and listed, together with the reason therefor, on Schedule 6.02(a) of the Disclosure Schedule, no Top 20 Customer, Top 10 Supplier or Manufacturers Representative has, with respect to either the Norfolk Business or the Kingsley Business, as applicable, ceased or materially reduced its purchases from or sales or provision of services to either the Norfolk Business or the Kingsley Business since December 31, 2007 or, to the Knowledge of a Seller, has threatened to cease or materially reduce such purchases or sales or provision of services prior to or after the Closing Date. No Top 10 Supplier has, with respect to either of the Norfolk Business or the Kingsley Business, materially increased its prices or reduced its volume discounts during the last twelve (12) months or has notified a Seller (or shall so inform the Buyer, during the meetings with Buyer described in Section 5.06(b)(iv) hereof) of its intent to do so during the twelve (12) month period following the Closing, other than as a result of any additional terms or conditions imposed by Buyer. Each Seller's current level of accepted and unfilled purchase orders for the sale of any Products is not in excess of its customary level of accepted and unfulfilled purchase orders based on its historical practices. Schedule 6.02(a) of the Disclosure Schedule lists the Top 20 Customers, Top 10 Suppliers and Manufacturers Representatives by name and address and sets forth the date and Products, by type, amount and dollar value, purchased or sold by them since January 1, 2004 (or, if later, the date of acquisition by ABC of the business pertaining thereto).

(b) Schedule 6.02(b) of the Disclosure Schedule, to be furnished by Sellers as an update to the Disclosure Schedule prior to Closing, lists every Active Sales Management Report issued during 2009 (redacted to exclude leads related exclusively to the Retained Businesses).

(c) Except as provided in Schedule 6.02(c) of the Disclosure Schedule, no single customer, supplier, distributor, converter or other value-added reseller, original equipment manufacturer or manufacturer's representative is of material importance to the Business as conducted by a Seller. Solely for the purposes of the preceding sentence, "material" means greater than five percent (5%) by dollar volume of the aggregate dollar volume of all customers, suppliers, distributors, converters or other value-added resellers, original equipment manufacturers or manufacturer's representatives, as the case may be.

(d) Schedule 6.02(d) lists each Contract pursuant to which a Seller has agreed to supply Products to a customer at specified prices, whether directly or through a specific distributor, converter or other value-added reseller (or other Persons acting in a similar capacity), original equipment manufacturer, manufacturer's representative or dealer. Each Seller has delivered to Buyer true and correct copies of all such Contracts that relate to the Business, together with all amendments, waivers or other changes thereto. All of such Contracts are in full force and effect and, to a Seller's Knowledge, constitute legal, valid and binding obligations of the respective parties thereto; there currently are not any defaults thereunder by a Seller or, to such Seller's Knowledge, any other party; and to a Seller's Knowledge, no event has occurred which constitutes, or which with notice, lapse of time or both would constitute a default thereunder. The validity, continuation and effectiveness of all such Contracts (except for any which Buyer included as an Excluded Asset) under the current terms thereof will not be materially adversely affected by the transactions contemplated by this Agreement.

**6.03. Authority and Qualification .** Each Seller has full power and authority, and the legal capacity, to execute and deliver this Agreement and the Operative Documents which it is required to execute and/or deliver, and to perform its obligations hereunder and thereunder, all of which have been duly authorized by all proper and necessary action; and has duly executed and delivered this Agreement and such Operative Documents, and this Agreement and such Operative Documents constitute legal, valid and binding obligations of such Seller, enforceable in accordance with its and their respective terms, except

(i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, or other laws of general application relating to or affecting the enforcement of creditors' rights generally, or

(ii) as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies.

Each Seller is duly qualified, licensed or admitted to do business and is in good standing in each jurisdiction in which the ownership, use or leasing of its assets (including, without limitation, the Acquired Assets) and other properties, or the conduct or nature of the Business, makes such qualification, licensing or admission necessary, except for such failures to be so qualified, licensed or admitted and in good standing which, individually or in the aggregate,

(i) are not having and could not reasonably be expected to have a Material Adverse Effect, and

(ii) could not reasonably be expected to have a material adverse effect on the validity or enforceability of this Agreement or any of the Operative Documents or on the ability of a Seller to perform its obligations hereunder or thereunder.

Schedule 6.03 of the Disclosure Schedule lists each business license and permit held by a Seller that is material to the conduct of the Business by such Seller (collectively, the " Permits "), are true and complete copies of which have been delivered to Buyer. Each Permit is valid, binding and in full force and effect, and no Seller has received any notice that it is in default (or with the giving of notice or lapse of time or both, would be in default) under any applicable Permit or that any such Permit is subject to being revoked.

**6.04. Compliance .** Neither the execution and delivery of this Agreement and the Operative Documents, nor the consummation of the transactions contemplated hereby or thereby, assuming that a Seller obtains any consents, approvals and actions, makes any filings and gives any notices as are described in Schedule 6.11 of the Disclosure Schedule, will conflict with or result in a breach under

(i) such Seller's Certificate of Incorporation, Bylaws or other organizational documents,

(ii) except as described on Schedule 6.11 of the Disclosure Schedule, the terms, conditions or provisions of any material Contract to which a Seller is a party and that relates to the Business or by which such Seller or any of the Acquired Assets are bound, or will give rise to a right of termination to any party thereto,

(iii) any order, injunction or decree of any court or Governmental or Regulatory Authority, or (iv) any applicable Law to which a Seller is bound.

**6.05. Equipment, Inventory and other Corporate Assets .** Except as set forth on Schedule 6.05 of the Disclosure Schedule, the Acquired Assets comprise all of the assets (including all Licenses and agreements) that are used in the operation of and necessary to permit the Buyer to operate the Business. Each Seller has delivered to Buyer true and correct lists of all Acquired Assets in electronic, searchable format. Except as set forth on Schedule 6.05, all of the Fixed Assets and inventory of each Seller used in the Business are, as of the date of this Agreement, in good operating condition and repair (ordinary wear and tear excepted), are performing satisfactorily, and are available for immediate use as and to the extent currently used in the conduct of the Business. Sellers have provided Buyer with a true and complete list of inventory of each Seller located at any distributor, converter or other value-added reseller (or any Person acting in a similar capacity) and/or original equipment manufacturer to the Norfolk Business and the Kingsley Business. Attached as Schedule 2.01(a) is a list of each Seller's Fixed Assets used in the Business, all of which are included in the Acquired Assets. No officer, director, stockholder, partner or employee of any Seller or, to a Seller's Knowledge, any other Person, owns or has possession of any of the Acquired Assets.

The information systems (including all computer hardware and software) and technology (including but not limited to, information technology, embedded systems, or any other electro-mechanical or processor-based system) owned, licensed or otherwise used by each Seller in the Business are suitable and adequate for the purposes for which they are being used by such Seller consistent with common business practices applicable to the Business.

**6.06. Debts, Obligations and Liabilities .** Aside from

(i) trade payables incurred prior to the date of the Financial Statements and reflected thereon,

(ii) trade payables incurred subsequent thereto in the ordinary course of the Business as conducted by a Seller,

(iii) normal employee compensation and benefit obligations incurred during the regular pay period in which the Closing Date occurs,

(iv) the obligations of a Seller pursuant to any Lease obligation disclosed on Schedule 6.12 of the Disclosure Schedule,

(v) any Assumed Contract disclosed on Schedule 6.19 of the Disclosure Schedule and not listed as an Excluded Liability in Section 4.03 hereto, and

(vi) the Indebtedness and Liabilities disclosed on Schedule 6.06 of the Disclosure Schedules (which shall be satisfied on or prior to the Closing Date), no Seller, as of the date hereof, is subject to any Indebtedness, obligation, commitment or Liability to any Person in connection with the Business. Without limiting the generality of the foregoing, all debts owing from any Seller to [\*] with respect to any Claims asserted in the past by [\*] will have been completely repaid as of the Closing.

**6.07. Ownership of Assets; Absence of Liens; Personal Property Leases .** Each Seller is in possession of and has good and marketable title to, or has valid leasehold interests in, or valid rights under contract to use, all of the Acquired Assets owned and used by it in connection with the Business, subject to no Liens, except for Liens shown and stated on Schedule 6.07 of the Disclosure Schedule and Permitted Exceptions. Schedule 6.07 of the Disclosure Schedule accurately sets forth and states the name and address of each Person who holds any Lien on any of the Acquired Assets, a description of the particular Acquired Asset on which such Lien is held, and the current balance of the debt owed to such Person which is secured by such Lien. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [\* ] CONFIDENTIAL TREATMENT REQUESTED

Set forth on Schedule 6.07 of the Disclosure Schedule is a true and correct list of all leases on Acquired Assets (other than real property) to which a Seller is a party and all of the accrued and unpaid obligations or other obligations of such Seller on or with respect to such leases as of the date hereof. Each Seller has delivered to Buyer true and correct copies of all such leases. All of such leases are in full force and effect and, to a Seller's Knowledge, constitute legal, valid and binding obligations of the respective parties thereto; there currently are not any defaults thereunder by a Seller or, to such Seller's Knowledge, any other party; and to a Seller's Knowledge, no event has occurred which constitutes, or which with notice, lapse of time or both would constitute a default thereunder. The validity, continuation and effectiveness of all such leases (except for any which Buyer included as an Excluded Asset) under the current terms thereof will not be materially adversely affected by the transactions contemplated by this Agreement.

**6.08. No Default .** No Seller is in default under any Law or regulation or under any order of any Governmental or Regulatory Authority having jurisdiction over such Seller in connection with the Business or the Acquired Assets, and there are no material claims, actions, suits or proceedings pending or, to a Seller's Knowledge, threatened against or affecting any Seller in connection with the Business or any of the Acquired Assets, at law or in equity, or before or by any Governmental or Regulatory Authority having jurisdiction over a Seller that relates to the Business or any of the Acquired Assets and no notice of any Claim, action, suit or proceeding, whether pending or threatened, has been received by a Seller in connection with the Business or with respect to the Acquired Assets, except as otherwise specifically disclosed on Schedule 6.08 of the Disclosure Schedule. Except as set forth on Schedule 6.08 of the Disclosure Schedule, each Seller has conducted and is conducting the Business and has maintained and is maintaining the Acquired Assets and the Leased Premises in compliance in all material respects with the requirements, standards, criteria and conditions set forth in applicable federal, state and local statutes, ordinances, permits, Licenses, orders, approvals, variances, rules and regulations and is not in violation of any of the foregoing which would, individually or in the aggregate, have a Material Adverse Effect on the Business.

**6.09. Restrictions on Business Activities .** Except as set forth in Schedule 6.09 of the Disclosure Schedule , and in confidentiality agreements and non-disclosure agreements entered into in the ordinary course of the Business as conducted by a Seller consistent with past practices,

(i) there is no agreement (non-compete or otherwise), judgment, injunction, order or decree to which a Seller or any Affiliate thereof are a party or otherwise binding upon a Seller or any such Affiliate which has had or could be reasonably expected to have, with or without due notice or lapse of time or both, the effect of prohibiting or limiting the conduct of the Business by a Seller in any market or location, and

(ii) except as set forth on Schedule 6.09 of the Disclosure Schedule, neither any Seller nor any Affiliate thereof has entered into any agreement under which such Seller is restricted from selling or otherwise distributing any of the Products to any class of customers, in any geographic area, during any period of time or in any segment of the market in the conduct of the Business.

**6.10. Taxes and Audits .** Except as disclosed in Schedule 6.10 of the Disclosure Schedule,

(i) each Seller has duly and timely filed (taking into account any extension of time within which to file) all material Tax Returns required to be filed by it in connection with the Business and all such filed Tax Returns are true, complete and accurate in all material respects;

(ii) each Seller has paid all Taxes required to be paid by it in connection with the Business, including Taxes that such Seller is obligated to withhold from amounts owing to any employee, creditor or other Third Party;

(iii) there are no pending or, to the Knowledge of a Seller, threatened audits, examinations, investigations or other proceedings in respect to Taxes or Tax Matters relating to a Seller in its conduct of the Business or otherwise affecting the Acquired Assets;

(iv) there are no deficiencies or claims for any Taxes with respect to the Business, the Acquired Assets described herein or with respect to either of ABC Plastics or ABC Kingsley Germany that have been proposed, asserted or assessed against a Seller;

(v) there are no material Liens for Taxes against either of ABC Plastics or ABC Kingsley Germany or upon the Acquired Assets, other than Liens for current Taxes not yet due and payable;

(vi) no waiver or extension of the statute of limitations on, and no agreement for any extension of time with respect to, the assessment of any Taxes of, or relating to, a Seller in connection with the Business has been granted and is currently in effect;

(vii) all Taxes required to be withheld, collected or deposited by or with respect to a Seller's conduct of the Business have been timely withheld, collected or deposited, as the case may be, and, to the extent required, have been paid to the relevant taxing authority as of the date hereof;

(viii) there is no request for information currently outstanding with respect to Taxes relating to either of ABC Plastics or ABC Kingsley Germany or to the Business or the Acquired Assets;

(ix) each Seller, in connection with its conduct of the Business, has disclosed on its Tax Returns all positions taken which could give rise to a "substantial understatement" within the meaning of Section 6662 of the Code or any equivalent applicable Law;

(x) to a Seller's Knowledge, there is no proposed adjustment, assessment or deficiency against either of ABC Plastics or ABC Kingsley Germany or proposed reassessment of any property or property Tax imposed on an Acquired Asset owned by such Seller or other proposals that could increase the amount of any Tax to which such Seller would be subject (other than, for the sake of clarity, any reassessment which may result from the consummation of the transactions contemplated in this Agreement); and

(xi) none of ABC Plastics or ABC Kingsley Germany has been a party to any distribution within the three (3) years prior to the Closing that the parties to which treated as satisfying the requirements of Section 355 of the Code (or foreign equivalent). Schedule 6.10 of the Disclosure Schedule also sets forth the U.S. taxpayer identification (or foreign equivalent) number of each Seller.

**6.11. Approval of Third Parties .** Except for such consents or approvals which have been or will be obtained and such notices as have been or will be given as listed on Schedule 6.11 of the Disclosure Schedule, no consent, approval or action of, filing with or notice to any Governmental or Regulatory Authority on the part of a Seller, or the consent or approval of any other Person, is required in connection with the execution, delivery and performance of this Agreement or any of the Operative Documents to which any Seller is a party or the consummation of transactions contemplated hereby or thereby. The copy of the Trust Agreement and the Compensation Agreement, in the form delivered to Sellers and appended to Schedule 6.11 of the Disclosure Schedule, represent true and complete copies of such documents (together with all amendments, modifications and/or supplements thereto), as each are amended and/or restated and in effect immediately prior to the Closing Date. The provisions of this Section 6.11 are subject to the provisions of Section 10.07 herein.

**6.12. Real Property** . Schedule 6.12 of the Disclosure Schedule contains a complete and accurate legal description of the premises leased by each Seller and used in the Business (the " Leased Premises "), which constitutes a complete list of the real property leased or occupied by each Seller and used in the Business, and a true and complete copy of each lease (and all amendments, modifications or extensions) with respect to the Leased Premises (each, a " Lease ") has been provided to Buyer. No Seller has or has had any owned real property that is or was used in the Business, and the only interests in real property any Seller has which is used in the Business are those leasehold interests created by a Lease. Each Seller has good and valid leasehold interests in its respective Leased Premises, in each case, free and clear of all Liens, except for Permitted Exceptions and Liens set forth on Schedule 6.12. No Seller has assigned, sublet, transferred, hypothecated or otherwise disposed of its interest in any Lease and no penalties are accrued against and unpaid by any Seller under any Lease. No Seller is in default under a Lease, nor has any event occurred which constitutes, or which with notice, lapse of time or both could constitute a default thereunder. There are no disputes outstanding, nor oral agreements or forbearance programs in effect, with respect to any Lease or Leased Premises. Each Seller has paid all rent due and owing through the date of this Agreement under an applicable Lease. All consents and approvals necessary in order for Buyer to assume such Leases have been obtained or will be obtained by each Seller at or before the Closing Date.

There is

(a) no Claim, action or proceeding, actual or to a Seller's Knowledge threatened, against any Seller or any Leased Premises by any Person which would materially affect the future use, occupancy or value of such property or any part thereof, and

(b) to a Seller's Knowledge, there are no condemnation or appropriation proceedings pending or threatened against any Leased Premises or improvements thereon. All of the buildings, fixtures and improvements used by each Seller in the Business are located on the applicable Leased Premises. All Leased Premises are supplied with utilities and other services necessary for the operation of the Business as currently conducted thereon by the applicable Seller.

**6.13. Employees .** Schedule 6.13 of the Disclosure Schedule contains a complete and accurate list of all employees (including but not limited to leased employees, if any) and their current titles in the Business, officers and consultants of each Seller retained in connection with the Business and the current annual base salary, potential bonuses and other compensation paid to such Persons. Within fourteen (14) days after the Closing, Sellers shall provide Buyer with a true, accurate and complete chart or other document describing, for the ABC Plastics employees, each such Person's function in terms of the equipment currently used in the Business which he/she is qualified to operate. Except as specifically identified and disclosed in Schedule 6.13 of the Disclosure Schedule, all of the U.S. employees used in the Business are "at-will" employees (meaning that they can be terminated with no more than 30 days' notice, without penalty) and no employment contract exists with any such employee. Schedule 6.13 also accurately states and represents the current unemployment insurance tax rate, or foreign equivalent, paid by each Seller to its employees. Each Seller has complied in all material respects with, and is not in violation of, any Laws, rules or regulations respecting employment or employment practices, including, without limitation, those dealing with employment discrimination and occupational health and safety laws (including, without limitation, OSHA and any foreign equivalent), United States and foreign federal and state income tax laws and United States or foreign unemployment and social security withholding laws.

Except as described on Schedule 6.22 , there are no material controversies or pending claims for compensation, reimbursement or Losses between a Seller, on the one hand, and any current or former employee or consultant of such Seller listed on Schedule 6.13 , on the other hand. No employee of a Seller listed on Schedule 6.13 is presently a member of a collective bargaining unit or party to a collective bargaining agreement or similar labor Contract relating to such employee's employment with such Seller and to such Seller's Knowledge there are no threatened or contemplated attempts to organize for collective bargaining purposes any of the employees of ABC Plastics or ABC Kingsley Germany. No unfair labor practice complaint, sex or age discrimination Claim nor any other type of employment Claim of any kind is pending against any Seller before the National Labor Relations Board or any other Governmental or Regulatory Authority. In the past five (5) years, there has been no work stoppage, strike or other concerted action by employees of ABC Plastics or ABC Kingsley Germany.

To a Seller's Knowledge,

(a) no employee of a Seller listed on Schedule 6.13 recently has expressed in writing (including via e-mail or other electronic means) any intention to leave the employ of such Seller in the next twelve (12) months; and

(b) the execution and implementation of this Agreement will not legally cause such an employee to acquire the right to renegotiate a compensation package, nor any other contractual right or benefit not expressly provided for herein, except as otherwise expressly provided in the "Supplementary Opinion on Employment Law Aspects" annexed hereto in Schedule 6.13.

Other than set forth on Schedule 6.13 , all salaries, bonuses and other compensation have been paid by each Seller to its respective employees listed thereon on a timely basis consistent with past practice, without acceleration or deceleration and no Liability exists as of the date hereof for any such salaries, bonuses or other compensation (except for such salaries and related compensation accrued for the most recent and current pay period).

**6.14. Employee Benefits .** Schedule 6.14 of the Disclosure Schedule sets forth a complete and accurate list of all Benefit Plans and other Plans, if any, maintained and provided by each Seller for the benefit of any of its employees retained in connection with the Business. Schedule 6.14 also specifies which employees are covered by which Plans. No Seller maintains or contributes to (nor has ever maintained or contributed to) any Plan in connection with the Business which is subject to Part 3 of Title 1 of ERISA, Section 412 of the Code or Title IV of ERISA or any equivalent applicable Law, except as otherwise disclosed on Schedule 6.14. The terms of all Benefit Plans and other Plans listed on Schedule 6.14 and the administration and operation thereof comply, and have at all times complied in all material respects with their terms and with ERISA, the Code and such other statutes, laws, ordinances, codes, rules and regulations as are applicable. The Seller has made all contributions which it was required to make for each Benefit Plan and other Plan listed on Schedule 6.14 under the terms thereof and applicable Law, and all benefit payments due and payable to participants under each such Benefit Plan and other Plan will have been made as of the Closing Date, and all benefits accrued under any unfunded Benefit Plan or other Plan will have been paid, accrued or otherwise adequately reserved as of such date and each Seller has performed all material obligations required to be performed as of the Closing Date under all such Benefit Plans or other Plans. Each Benefit Plan and other Plan listed on Schedule 6.14 that is intended to qualify under Section 401(a) of the Code or any equivalent applicable Law, and each trust which forms a part of any such Benefit Plan and other Plan has received a favorable determination letter from the U.S. Internal Revenue Service (and any applicable state or foreign taxing authority), and no suit, actions or other litigation (excluding claims for benefits incurred in the ordinary course of Plan activities) has been brought against or with respect to any such Benefit Plan or other Plan. True, complete and accurate copies of the documents setting forth the terms of each Benefit Plan and other Plan listed in Schedule 6.14 of the Disclosure Schedule and all related contracts and other agreements thereto have been delivered to Buyer. Each Benefit Plan or Plan that provides for deferred compensation (other than Plans that are intended to comply with Section 401(a) of the Code) was reviewed and amended to comply with Section 409A of the Code before 2009.

**6.15. Accounts Receivable .** Schedule 6.15 of the Disclosure Schedule contains a complete and accurate list of Accounts Receivable, with aging, indicating name of counter-party and amount owed per invoice date, as of February 25, 2009 (for ABC Kingsley Germany) and as of February 28, 2009 (for ABC Plastics), and as of the Closing Date.

**6.16. Financial Statements; Securities Filings** .

(a) The, reports, statements, schedules, prospectuses, and other documents required to be filed by ABC with the applicable securities regulatory authority in each of the Provinces of Ontario and Alberta (collectively, the " Canadian Authorities ") in accordance with the applicable securities legislation of each such provincial regulatory authority and the respective rules, regulations and written and published policies thereunder for the past five (5) years, (collectively, as amended and/or supplemented to date, the " Securities Filings ") to the extent they relate to the Business, did not at the time they were filed contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. A true and complete copy of all Securities Filings is available for review by Buyer at xxx

(b) The financial statements, balance sheets and income statements (including, in each case, any related notes thereto) relating to the Business as an independent segment for the fiscal year ended December 31, 2007 and the nine months ended September 30, 2008, as well as statements of profit and loss for the Norfolk Business and the Kingsley Business as of December 31, 2008, are included on Schedule 6.16 of the Disclosure Schedule (collectively, the " Divisional Financial Statements ") ,

(i) have been prepared in all material respects in accordance with GAAP applied on a consistent basis throughout the periods involved (except (A) to the extent disclosed therein or required by changes in GAAP, (B) as may be indicated in the notes thereto, and (C) inter-company balances, transactions and management fees charged for accounting and information technology systems which are eliminated upon consolidation), and

(ii) fairly present in all material respects the financial position of the Business as an independent segment as of the respective dates thereof and the consolidated results of operations and cash flows of the Business for the periods indicated (subject, in the case of unaudited consolidated financial statements for interim periods, to adjustments necessary to present fairly such results of operations and cash flows).

(c) The financial statements contained in the Securities Filings, to the extent that such financial statements (including, in each case, any related notes thereto), relate to the Business (collectively, the " Consolidated Financial Statements " and, together with the Divisional Financial Statements, the " Financial Statements "),

(i) have been prepared in all material respects in accordance with the published rules and regulations of the Canadian Authorities and GAAP applied on a consistent basis throughout the periods involved (except (A) to the extent disclosed therein or required by changes in GAAP, (B) with respect to Securities Filings filed prior to the date of this Agreement, as may be indicated in the notes thereto, and (C) in the case of the unaudited financial statements, as permitted by the rules and regulations of the Canadian Authorities) and

(ii) fairly present in all material respects the consolidated financial position of ABC and its subsidiaries as of the respective dates thereof and the consolidated results of operations and cash flows of ABC for the periods indicated (subject, in the case of unaudited consolidated financial statements for interim periods, to adjustments necessary to present fairly such results of operations and cash flows), except that any pro forma financial statements contained in such consolidated financial statements are not necessarily indicative of the consolidated financial position of ABC and its subsidiaries as of the respective dates thereof and the consolidated results of operations and cash flows for the periods indicated.

(d) Except as disclosed in the Securities Filings, ABC maintains a system of internal accounting controls with respect to the Business sufficient to provide reasonable assurance that

(i) transactions are executed in accordance with management's general or specific authorizations,

(ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management's general or specific authorization, and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

**6.17. Operations in the Ordinary Course .** Except as disclosed in Schedule 6.17 of the Disclosure Schedule, since the date of the most recent Financial Statements, there have not been:

(a) Any material amendment, waiver or consent with respect to any Assumed Contract, license or Intellectual Property;

(b) Any physical damage, destruction or other casualty Loss, whether or not covered by insurance, affecting any of the Acquired Assets or the Leased Premises;

(c) Any write-off or write down of any individual Acquired Asset in an amount exceeding US$10,000 or of the Acquired Assets in an aggregate amount exceeding US$50,000;

(d) Any purchase or disposition of any Acquired Assets made, or agreed to be made, other than acquisitions or dispositions of property in the ordinary course of the Business as conducted by such Seller and consistent with past practice and the terms of this Agreement and the Operative Documents;

(e) Any material change in the accounting methods or procedures of a Seller relating to the Business, or any material change in the reserves or the percentage or method of calculating the reserves applicable to a Seller in connection with the Business, as contained in the Financial Statements;

(f) Any change in policy or any other type of change regarding increases in compensation payable to or to become payable to any Seller's managers, directors officers, employees or agents retained in connection with the Business, other than in the ordinary course of the Business consistent with past practice;

(g) Any Claim, litigation, arbitration, administrative proceeding, or other event or condition of any character including, without limitation, any change in the Acquired Assets, the Business or its prospects, that had or could have, individually or in the aggregate, a Material Adverse Effect;

(h) Any Lien made or agreed to be made on any Acquired Assets, except Permitted Exceptions;

(i) Any borrowings or agreements to borrow by or from any Seller, or any other Liabilities of a material nature (whether absolute, accrued, contingent or otherwise and whether due or to become due) except in the ordinary course of the Business as conducted by such Seller and consistent with past practice, nor, without limiting the generality of the foregoing, guaranteed, endorsed or assumed responsibility for any debts or obligations of any Person;

(j) Any transaction by any Seller outside the ordinary course of the Business;

(k) Any single capital expenditure by any Seller made with respect to the Business in excess of US$10,000, except as otherwise in the ordinary course of the Business as conducted by such Seller; and

(l) Any agreement by any Seller to do any of the items described in subparagraphs (a) through (k), above. Except for transactions contemplated by this Agreement and the Operative Documents, since the date of the Financial Statements, other than set forth in Schedule 6.17 of the Disclosure Schedule, each Seller has conducted the Business only in the ordinary course of the Business as conducted by such Seller, consistent with past practice. Without limiting the generality of the foregoing, since the date of the Financial Statements, each Seller has

(i) preserved intact the business organization of such Seller with respect to the Business,

(ii) maintained the Acquired Assets and Leased Premises of such Seller (including without limitation its equipment, whether owned or leased) in good working order and condition,

(iii) preserved from lapse, violation or infringement all of its Intellectual Property used in the Business,

(iv) maintained the goodwill of customers, suppliers, lenders and other Persons that relate to the Business with whom such Seller has significant business relationships with respect to such Seller's conduct of the Business, and

(v) continued all such Seller's general sales, marketing and promotional activities relating to the Business, and

(vi) paid all trade payables and other debts and expenses of such Seller in its conduct of the Business generally as they have become due.

**6.18. Insurance .** Schedule 6.18 of the Disclosure Schedule sets forth a complete and accurate list and description of all insurance policies maintained by each Seller in its conduct of the Business or which otherwise provide coverage for the Business or the Acquired Assets, including the type of insurance, the name and address and phone number of the insurance company and the agent who sold the policy to such Seller, the amount of coverage, the annual premium rates, the date when the next premium payment is due, and the date of expiration. Each Seller has provided to Buyer copies of all current insurance policies. With respect to each such insurance policy:

(a) the policy is legal, valid, binding, enforceable, and in full force and effect;

(b) the policy will continue to be legal, valid, binding, enforceable, and in full force and effect on identical terms following the consummation of the transactions contemplated hereby;

(c) neither a Seller nor, to such Seller's Knowledge, any other party to the policy is in breach or default (including with respect to the payment of premiums or the giving of notices), and no event has occurred which, with notice or the lapse of time, would constitute such a breach or default, or permit termination, modification, or acceleration, under the policy;

(d) to a Seller's Knowledge, no other party to the policy has repudiated any provision thereof;

(e) no historical limits have been eroded or significantly impaired; and

(f) no material claims are pending as to which coverage has been denied or disputed. Each Seller has been covered at all times since its respective dates of incorporation by insurance (including self-insurance arrangements) in scope and amount customary and reasonable for the Business as conducted by such Seller during such period and, except as set forth in Schedule 6.18 of the Disclosure Schedule, no Seller has been refused coverage or failed to acquire coverage with respect to its conduct of the Business or any Acquired Asset for which it had previously applied. Schedule 6.18 of the Disclosure Schedule also describes any self-insurance arrangements affecting any Seller in its conduct of the Business. If any insurance policy described above is a "claims made" policy, then the Sellers shall either purchase a "tail" policy therefor, or else shall retain such policy in force for twenty-four (24) months following the Closing.

**6.19. Contracts .** All material Contracts, the parties thereto and the dates and descriptions thereof are listed on Schedule 6.19 of the Disclosure Schedule, and each Seller has made available for review by Buyer a true and complete copy of each Assumed Contract to which such Seller is a party, and such copies (and descriptions thereof in the Disclosure Schedule) are true, complete and accurate and include all amendments, supplements, modifications or waivers or other changes thereto. Schedule 6.19 of the Disclosure Schedule also contains a true, accurate and complete list of which of the material Contracts are Assumed Contracts. Except as set forth on Schedule 6.19 of the Disclosure Schedule,

(a) all Assumed Contracts,

(b) all other Contracts of a Seller granting such Seller the right to the Acquired Assets, and

(c) all other Contracts of a Seller material to the Business as it is currently operated by such Seller are, as of the date hereof, valid, binding and in full force and effect upon each such Seller and, to each such Seller's Knowledge, the other parties thereto, in accordance with their terms and conditions and have been entered into in the ordinary course of the Business as conducted by each Seller. There is no existing material default, event of default or other event with respect to any Assumed Contract to which any Seller is a party or by which any Seller or its properties used in the Business is bound which, with or without due notice, the passage of time or both, would constitute a material default or event of default on the part of such Seller. There will not be, as of the Closing Date, any circumstances which will result in any customer having the legal right to a credit or offset against charges otherwise due after the Closing Date under any Assumed Contract.

[\*]

**6.20. Intellectual Property Rights .**

(a) Schedule 6.20(a) of the Disclosure Schedule sets forth

(i) a complete list of all Seller Registered Intellectual Property and specifies the jurisdiction(s) in which such Seller Registered Intellectual Property has been issued or registered or in which an application for such issuance or registration has been filed, including the respective registration or application numbers and the names of all relevant owners, and

(ii) a list of all Products currently marketed by each Seller, with an indication as to which copyrights, if any, in and to such Products have been registered (and, if so, in whose name they have been registered) with the United States Copyright Office or any foreign copyright offices. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [\* ] CONFIDENTIAL TREATMENT REQUESTED

(b) Schedule 6.20(b) of the Disclosure Schedule sets forth a complete list of all licenses, sublicenses and other agreements to which a Seller is a party pursuant to which a Seller or any other Person is now authorized to use any Seller Intellectual Property, and includes the date thereof and identity of all parties thereto.

(c) Schedule 6.20(c) of the Disclosure Schedule sets forth any agreement pursuant to which a Third Party is licensing any Seller Intellectual Property or has assigned any Intellectual Property to a Seller (except for agreements with respect to Commercial Software Rights) and includes the date thereof and identity of all parties thereto.

(d) The execution and delivery of this Agreement by each Seller, and the consummation of the transactions contemplated hereby on the Closing Date, will not cause any Seller to be in violation or default in any material respect under any license, sublicense or agreement listed on Schedule 6.20(b) or Schedule 6.20(c) of the Disclosure Schedule, nor entitle any other party to any such license, sublicense or agreement to terminate or modify such license, sublicense or agreement.

(e) Unless otherwise indicated in Schedule 6.20(a) , Schedule 6.20(b) or Schedule 6.20(c) of the Disclosure Schedule, each item of Seller Registered Intellectual Property is valid and subsisting. All necessary registration, maintenance and renewal fees currently due in connection with such Seller Registered Intellectual Property have been paid and all necessary or material documents, recordations and certificates in connection with such Seller 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 Seller Registered Intellectual Property.

(f) Each Seller is, or as of the Closing Date will be, the sole and exclusive owner or licensee of, with all right, title, and interest in and to each item of Seller Intellectual Property attributable to such Seller, free and clear of any Lien or encumbrance, except Permitted Exceptions, and has or will have as of the Closing Date sole and exclusive rights (and is not or shall not be contractually obligated to pay any compensation other than licensing fees and royalties set forth in the applicable license to any Third Party in respect thereof) to the use thereof or the material covered thereby in connection with the Products and the Business in respect of which such Seller Intellectual Property is being used. Except as set forth on Schedule 6.20(g) of the Disclosure Schedule, no Seller Intellectual Property is subject to any restrictions with respect to its use, modification or distribution.

(g) To the extent that any Seller Intellectual Property used in the operation of the Business or necessary to permit the Buyer to operate the Business has been developed or created for a Seller by any employee, independent contractor or other Third Party (each, an " Other Party "), except as provided on Schedule 6.20(g) of the Disclosure Schedule, each Seller either

(i) has obtained ownership of, and is the exclusive owner of, or

(ii) has obtained a license (sufficient for the conduct of the Business) to all such Other Party's intellectual property in such Seller Intellectual Property, either by operation of Law or by valid assignment. Each Seller has delivered to Buyer all written agreements assigning Seller Intellectual Property developed or created by any Other Party not otherwise in a "work for hire" relationship with such Seller.

(h) No Seller has transferred ownership of, or granted any exclusive license with respect to, any of its Intellectual Property to any Third Party. All Seller Intellectual Property can be transferred to Buyer in accordance with this Agreement, and all consents and approvals necessary therefor have been obtained or shall be obtained by Closing.

(i) All Assumed Contracts relating to Seller Intellectual Property as used in the Business or relating to the Acquired Assets are in full force and effect. Each Seller is in material compliance with, and has not breached any material term of, such Assumed Contracts and, to the Knowledge of each Seller, all other parties to such Assumed Contracts are in compliance with, and have not breached any material term of, such Assumed Contracts. Following the Closing Date, Buyer will have the right to exercise all of a Seller's rights under such Assumed Contracts to the same extent that such Seller 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 ongoing fees, royalties or payments which such Seller would otherwise be required to pay.

(j) No Seller has been sued or charged as a defendant in any Claim, suit, action, or proceeding which involves a Claim of infringement of any intellectual property of any Third Party and which has not been finally terminated prior to the date hereof, nor does any Seller have Knowledge of any such charge or Claim or any infringement Liability with respect to, or infringement or violation by, such Seller of any intellectual property of any Third Party with respect to the Products. No Claim with respect to infringement of any Seller Intellectual Property based upon its use in the Business, or any Claim with respect to the ownership, validity or effectiveness of any Seller Intellectual Property has been asserted and remain outstanding or, to the Knowledge of any Seller, has been threatened by a Third Party. To each Seller's Knowledge, there is no unauthorized use, infringement or misappropriation of any Seller Intellectual Property by any Third Party, including any employee or former employee of such Seller.

(k) Each Seller has taken reasonable steps to protect Seller's rights in Seller's confidential information, trade secrets and other confidential information to the Business that it wishes to protect or any trade secrets or confidential information of third parties provided to such Seller.

(l) The Seller Intellectual Property, including without limitation the [\*], together with the other Acquired Assets, are sufficient to enable Buyer to continue operation of the Business in the same manner as it has been operated by the Sellers within the twelve (12) month period prior to the Closing Date.

**6.21. Brokers .** No Seller has entered into any agreement or had any discussions with any Third Party regarding any transaction involving such Seller which could result in Buyer being subject to any Claim giving rise to any Liability to said Third Party as a result of entering into this Agreement or the Operative Documents or consummating the transactions contemplated hereby or thereby.

**6.22. Litigation;** Warranty Claims and Recalls . Except as otherwise specifically identified and disclosed on Schedule 6.22 of the Disclosure Schedule, there is no litigation, Claim, action, suit, administrative, arbitration or other proceeding pending or to a Seller's Knowledge threatened against such Seller or relating to any of the Acquired Assets, nor are there any disputes, disagreements, or any other facts or circumstances relating or pertaining to a Seller that relate to the Business or the Acquired Assets which are reasonably likely to give rise to the same in the foreseeable future. No Seller is subject to any order, writ, judgment, award, injunction or any decree of any court or Governmental or Regulatory Authority or arbitrator, which affects or which might affect any of the Acquired Assets or which might interfere with the transactions contemplated in this Agreement. No Seller has Knowledge of any fact which would suggest that any present or former employee of or Person providing services to such Seller has or is likely to make any Claim against such Seller and/or Buyer by virtue of any obvious or latent employment-related health defect or any severance, discrimination, harassment or termination action.

There are no judgments outstanding against any Seller affecting any of the Acquired Assets. Schedule 6.22 of the Disclosure Schedule also sets forth a description and summary of the outcome of each lawsuit and all other types of legal proceedings, including but not limited to, administrative proceedings, mediations, arbitrations, etc., in which a Seller has been involved, either as a plaintiff or as a defendant, during the five (5) years prior to the Closing Date that relate to the Business. All legal proceedings, including but not limited to, administrative proceedings, mediations, arbitrations, etc., in which any Seller was involved prior to such five year period and that relate to the Business have been discharged, settled or otherwise released.

No Seller has received notice or warning of, and no Seller is aware of, any material defects in such Seller's Products or inventory, whether or not yet sold, whether such defects are discernable or latent, including without limitation

(a) defects which could affect the performance of such Seller's Products, and/or give rise to a claim for a refund of a purchase price previously booked by such Seller;

(b) dangerous or substandard conditions in the products or materials sold, distributed, or to be sold or distributed by such Seller that could give rise to a Claim for or could cause bodily injury, sickness, disease, death, or damage to property, or result in loss of the use of property, if handled or used properly, or

(c) any Claim, suit, demand for arbitration or notice seeking damages for any such event. To a Seller's Knowledge, there has been no threat of any recall of any Product, nor does any Seller know of any facts which makes such a recall likely in the reasonably foreseeable future. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [\* ] CONFIDENTIAL TREATMENT REQUESTED Schedule 6.22 of the Disclosure Schedule sets forth (a) all written customer complaints received by each Seller since December 31, 2006; (b) all oral customer complaints received by each Seller since October 1, 2008; and (c) any other customer complaints, whether written and oral, which have resulted in or may reasonably be expected to result in a Claim in excess of US$10,000 being made after the Closing against such Seller and/or Buyer. Except as set forth on Schedule 6.22 of the Disclosure Schedule, neither any Seller nor any of its employees has made any oral or written warranties with respect to the quality or absence of defects of any of the Products or services of the Seller that is inconsistent with or broader than any written warranties of such Seller which are provided to all such Seller's customers, which written warranties have been provided to Buyer prior to the Closing. No Seller is aware of any circumstance which would tend to cause the cost of performing warranty obligations to customers of the Business for which warranty adjustments can be expected during unexpired warranty periods which extend beyond the Closing Date to be higher than the historic cost of performing warranty obligations to customers of such products and services which such Seller has sold and performed for in the past. No Seller has been required to pay direct, incidental or consequential damages to any Person for any reason in connection with a matter relating to the Business.

**6.23. Regulatory and Employee Safety Matters .** Except as otherwise specifically identified and disclosed in Schedule 6.23 of the Disclosure Schedule, there is no pending or, to a Seller's Knowledge threatened, investigation, audit, review or other examination of such Seller, and no Seller is subject to, nor has it received written notice or advice that it may become subject to, any order, agreement, memorandum of understanding or other regulatory enforcement action or proceeding with or by a Governmental or Regulatory Agency having supervisory or regulatory authority with respect to such Seller that relates to the Business, and nor is such Seller aware of any basis for any such investigation or audit. Except as set forth on Schedule 6.23 of the Disclosure Schedule, each Seller

(a) is in compliance in all material respects with all Laws (including, without limitation, Laws relating to the Acquired Assets or the Business), and

(b) maintains all required compliance programs relating to environmental, safety, health or other Law. Each Seller has provided Buyer with copies of all notices, correspondence, agreements and other documents relating to any matters set forth on Schedule 6.23 of the Disclosure Schedule. Except as set forth on Schedule 6.23 of the Disclosure Schedule, no Seller has received any governmental complaint or private Claim regarding any violation of OSHA or the occupational safety and health laws and regulations applicable to any facility of Seller involved in the Business (including, without limitation, any related to silicosis and/or other afflictions associated with silicone manufacturing or any other substance used by Sellers), or has Knowledge of any situation making it likely that such a complaint or Claim will be forthcoming in the reasonably foreseeable future.

**6.24. Affiliate Transactions .** Other than as disclosed on Schedule 6.24 of the Disclosure Schedule, as of the date hereof

(i) there are no Liabilities between any Seller and any current or former officer, director, employee, partner, stockholder, manager or Affiliate of such Seller that relate to the Business,

(ii) no Seller provides any assets, services or facilities to any such current or former officer, director, employee, partner, stockholder, manager or Affiliate of such Seller, and

(iii) no Seller beneficially owns any equity interest in any such current or former officer, director, employee, manager, partner, stockholder or Affiliate of such Seller.

6.25. Environmental Matters .

(a) Except as set forth on Schedule 6.25 of the Disclosure Schedule:

(i) Each Seller has obtained and holds all Environmental Permits materially necessary for the operation of the Business by such Seller.

(ii) Each Seller is in material compliance with all terms, conditions and provisions of each applicable Environmental Permit and Environmental Law.

(iii) There are no past, pending, or, to a Seller's Knowledge, threatened Environmental Claims against any Seller.

(iv) There has been no Release of any Hazardous Material on or affecting any Site currently or, to a Seller's Knowledge, formerly owned, operated or otherwise used by a Seller in the Business, or, to the Knowledge of a Seller, by any predecessors of such Seller, which Release would be reasonably likely to result in Liability to Buyer under Environmental Laws. (v) No Seller has received any written notice asserting an alleged Liability or obligation of such Seller under any Environmental Laws with respect to the investigation, remediation, removal or monitoring of a Release of any Hazardous Material or the threatened Release of any Hazardous Material at or from any property currently or formerly owned, operated or otherwise used by such Seller in the Business, or at or from any off-site location where Hazardous Material from the Seller's operations in connection with the Business have been sent for treatment, disposal, storage or handling.

(vi) No Seller has transported or arranged for the treatment, storage, handling, disposal, or transportation of any Hazardous Material to any off-site location which could result in an Environmental Claim against such Seller.

(vii) No Site is a current (or, to a Seller's Knowledge, proposed) Environmental Clean-up Site. To a Seller's Knowledge, there are no Liens arising under or pursuant to any Environmental Law on any Site.

(b) There have been no environmental investigations, studies, audits or other analyses conducted by or on behalf of a Seller, or in the possession of a Seller, during the five (5) year period prior to the Closing Date addressing potentially material matters arising under Environmental Laws with respect to any property owned, operated or otherwise used by any Seller in the Business that have not been delivered or otherwise made available to Buyer prior to the Closing Date.

**6.26. Insolvency .** No petition in bankruptcy or similar arrangement has been filed by or against any Seller, nor has any Seller taken advantage of any applicable federal, state or local insolvency Law. No receiver, trustee, custodian, liquidator, assignee, sequestrator or other similar official has been appointed over any Seller or all or a substantial part of the Acquired Assets nor has any Seller made any assignment for the benefit of creditors or otherwise suffered any action which adversely affects its title to the Acquired Assets.

**6.27. Product Warranties; Defects; Liabilities** . Except as set forth on Schedule 6.27 of the Disclosure Schedule,

(a) each product, item, good or other object produced by each Seller for sale in connection with the Products has been in all material respects in conformity with all applicable contractual commitments and all applicable express and implied warranties,

(b) no Seller has any Liability or obligation (and to a Seller's Knowledge, there is no basis for any present or future action, suit, proceeding, hearing, investigation, charge, complaint, Claim or demand against such Seller giving rise to any Liability or obligation) for replacement or repair thereof or other Losses or Liabilities in connection therewith except Liabilities incurred in the ordinary course of the Business as conducted by such Seller and consistent with past practice and

(c) no Product is subject to any guaranty, warranty, or other indemnity beyond the applicable standard terms and conditions of sale, license or lease or beyond that implied or imposed by applicable Law. Appended to Schedule 6.27 is a true and complete description of the current standard terms and conditions of sale, license or lease of each Seller for each of the Products, including all applicable guaranties, warranties and indemnities made by any Seller in connection therewith.

**6.28. Full Disclosure .** No representation, warranty or covenant made to Buyer in this Agreement nor any Operative Document delivered and/or executed by a Seller hereunder contains any untrue statement of a material fact or omits a material fact necessary to make the statements contained in this Agreement and the Operative Documents not misleading.

**SECTION 7 REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants that the following representations and warranties are true, accurate and complete as of the date hereof:

**7.01. Organization.** Millers is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Massachusetts. Any designee of Millers acquiring any of the Acquired Assets hereunder is duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized.

**7.02. Qualification and Organizational Power** . Buyer is duly qualified to conduct business under the Laws of each jurisdiction where such qualification is necessary, except where the failure to be so qualified would not have a Material Adverse Effect.

**7.03. Authorization of Transactions .** Buyer has all requisite corporate or other power and authority to execute and deliver this Agreement and the Operative Documents to which it is a party, and to perform their respective obligations hereunder and thereunder. The execution and delivery by Buyer of this Agreement and the Operative Documents to which it is a party, and the performance by Buyer of its obligations hereunder and thereunder, have been duly and validly authorized by all necessary corporate action on the part of Buyer. This Agreement has been, and upon execution and delivery thereof, each of the Operative Documents to which Buyer is a party will be, duly and validly executed and delivered by Buyer and are valid and binding obligations of Buyer, enforceable against Buyer in accordance with their terms, except

(i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, or other laws of general application relating to or affecting the enforcement of creditors' rights generally, or

(ii) as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies.

**7.04. Noncontravention .** There is no requirement applicable to Buyer to make any filing with, or to obtain any permit, authorization, consent or approval of, any governmental entity as a condition to the lawful consummation by Buyer of the transactions contemplated pursuant to this Agreement. The execution, delivery and performance of this Agreement by Buyer do not, and the consummation of the transactions contemplated hereby will not (with or without the giving of notice, the lapse of time or both),

(i) conflict with or result in any breach of any provision of the Articles of Organization, Bylaws or other governing documents of Buyer,

(ii) violate any applicable Law, rule, regulation, order, writ, judgment, ordinance, injunction or decree of any governmental entity to which Buyer is a party or is bound, or

(iii) result in a material breach of, or constitute a material default (or event which with the giving of notice or lapse of time, or both, would become a material default) under, or give rise to a right of termination, cancellation or acceleration of any obligation or loss of a benefit under, or result in the creation of any lien upon any of the properties, rights or assets of Buyer pursuant to, any Contract to which Buyer is a party or by which it is bound or affected (except, in the case of clause (iii), any such defaults, rights or liens that would not materially impair the ability of Buyer to consummate the transactions contemplated by this Agreement).

**7.05. Brokers** . Buyer shall have no Liability or obligation to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement or any of the Operative Documents.

**7.06. Legal Proceedings .** As of the date hereof, there are no Claims pending by or against or, to the Knowledge of Buyer, threatened against, Buyer that would materially impair the ability of Buyer to consummate the transactions contemplated by this Agreement.

**7.07. Due Diligence Investigation .** Buyer has had, and will have, an opportunity to discuss the business, management, operations and finances of the Business with Sellers, and has had, and will have, an opportunity to inspect the facilities of the Business. Buyer has conducted its own independent investigation of the Business. In making its decision to execute and deliver this Agreement and to consummate the transactions contemplated by this Agreement, Buyer has relied solely upon the representations and warranties of the Sellers set forth in Section 6 (and acknowledges that such representations and warranties are the only representations and warranties made by the Sellers) and has not relied upon any other information provided by, for or on behalf of the Sellers, or their respective agents or representatives, to Buyer in connection with the transactions contemplated by this Agreement.

**7.08. Capital and Financing .** Buyer represents and warrants that it has secured adequate paid-in capital and adequate funds to consummate all of the transactions contemplated by this Agreement, and to pay the Purchase Price in accordance with the terms of this Agreement.

**7.09. Assumed Liabilities** . Buyer acknowledges that it is aware of and understands the nature of the Assumed Liabilities and that it is aware of and understands that the amount of the Assumed Liabilities cannot presently be determined as they relate, in part, to future events and actions which may or may not occur. Buyer acknowledges that there will be no adjustment to the Purchase Price under this Agreement based on the amount of Assumed Liabilities, except as expressly provided for herein.

**7.10. Sole Representations .** Except as expressly set forth in this Section 7, Buyer makes no other representation or warranty with respect to the transactions contemplated by this Agreement or any Operative Document.

**SECTION 8 SURVIVAL OF REPRESENTATIONS AND WARRANTIES; INDEMNIFICATION**

**8.01. Survival of Representations and Warranties .** All of Buyer' representations and warranties in this Agreement or in any Operative Document, and all of Sellers' representations and warranties in this Agreement, in any Operative Document, or in any instrument delivered pursuant hereto or thereto, shall survive the Closing Date and continue until the date which is twenty-four (24) months after the Closing Date; provided, however, that

(i) any Claim based on fraud or intentional misrepresentation shall survive indefinitely,

(ii) any Claim for violation of the representations and warranties set forth in Sections 6.10 ("Taxes and Audits"), 6.14 ("Employee Benefits"), 6.23 ("Regulatory and Employee Safety Matters"), and 6.25 ("Environmental Matters") shall survive until the expiration of the applicable statute of limitations applicable to any Claim or right of action related thereto,

(iii) the covenants and agreements contained in this Agreement and the Operative Documents to be performed at the Closing Date will survive until fully performed in accordance with their terms, or until this Agreement has been terminated in accordance with its terms;

(iv) any Claim for indemnity asserted pursuant to Section 8.02 shall, if made within the applicable time period set forth above with respect to an accrued Liability, survive until fully resolved;

(v) any Claim with respect to a matter described in Section 8.02(b)(G) hereof shall survive indefinitely; and

(vi) any dispute asserted by a Seller to any Pre-Closing Adjustments pursuant to Section 5.06(c)

(iv) hereof shall survive only until twelve (12) months following the Closing. No Claim for indemnity may be asserted under Section 8.02 unless notice of such Claim is given to Seller or Buyer, as the case may be, prior to the appropriate period(s) specified in the preceding sentence.

**8.02. Indemnification .**

(a) ABC jointly and severally agrees, and each of ABC Plastics and ABC Kingsley Germany severally and not jointly agree, from and after the Closing Date, for the appropriate period(s) specified in Section 8.01, above, to indemnify and hold Buyer and its officers, directors, attorneys, employees, agents or Affiliates and their respective successors and assigns (the " Buyer Indemnified Parties "), harmless from and against any Loss incurred by any Buyer Indemnified Party, directly or indirectly, resulting from

(i) any inaccuracy in, or breach of, a representation or warranty of Seller contained in this Agreement or in any Operative Document or other agreement or instrument delivered by Seller in connection with the transactions set forth herein,

(ii) any Excluded Liability, or

(iii) any failure by Seller to perform or comply with any applicable covenant contained herein.

(b) The Liability of Sellers to provide indemnification pursuant to Section 8.02(a) shall be limited as follows:

(i) Sellers shall not be liable with respect to any matter referred to in Section 8.02(a)(i) unless the aggregate Loss thereunder exceeds Fifty Thousand Dollars (US$50,000.00) (the " Basket "), in which event Buyer Indemnified Party will be entitled to make a Claim against such Seller to the full extent of such Loss counting back to the first dollar amount thereof, and

(ii) the collective aggregate Liability of the Sellers under Section 8.02(a) shall not exceed Two Million Dollars (US$2,000,000.00) (the " Indemnity Cap "); provided, however, that any Loss shall not be subject to the Indemnity Cap to the extent arising as the result of: (A) fraud or intentional misrepresentation; (B) a Claim with respect to any Excluded Asset or Excluded Liability; (C) a warranty or similar Claim made by a direct or indirect customer or end user based upon any sale made by the Sellers prior to the Closing; (D) any Claim based upon violation of occupational health and safety Laws (including, without limitation, pursuant to OSHA and workers' compensation-related Claims), or for any claims by employees of Sellers for compensation, reimbursement or Losses, to the extent occurring or arising out of occurrences prior to the Closing Date; (E) a Claim of infringement with respect to Intellectual Property; (F) Environmental Claims and Liabilities therefrom; or (G) the invalidity or unenforceability of the Trustee's Amendment, Confirmation and Consent described in Section 5.02(q) hereof, for any reason, or the inaccuracy of the opinion of Mr. [\*] described in Section 5.02(r) as regards the accurate identities of the parties to the various agreements described in Section 4.02(g) hereof, or the representation regarding such agreements in the penultimate sentence of Section 6.11 hereof. In addition, the matters described in clause (G) above shall not be subject to the Basket; nor shall any liability for the Claims of the four former employees of ABC Kingsley Germany described in Section 4.03(g) hereof.

(c) Buyer agrees from and after the Closing Date, for the appropriate period(s) specified in Section 8.01, above, to indemnify and hold Sellers and their Affiliates (the " Seller Indemnified Parties ") harmless from and against any Loss incurred by any Seller Indemnified Party directly or indirectly resulting from

(i) any inaccuracy in, or breach of, a representation or warranty of Buyer contained in this Agreement or in any Operative Document delivered by Buyer in connection with the transactions set forth herein,

(ii) any failure by Buyer to perform or comply with any covenant contained herein or therein,

(iii) any Assumed Liability (including the failure to perform or in due course pay or discharge any Assumed Liability, except to the extent that such payment or liability derived from a breach of a representation, warranty or covenant of a Seller hereunder or under an Operative Document or a certificate delivered hereunder or thereunder); or

(iv) Buyer's ownership and/or operation of the Business after the Closing other than due to a breach of a representation, warranty or covenant of Seller hereunder.

(d) If any Third Party shall notify any party (the " Indemnified Party ") with respect to any matter which may give rise to a Claim for indemnification against any other party (the " Indemnifying Party ") under this Section 8, then the Indemnified Party shall notify each Indemnifying Party thereof promptly; provided, however, that no delay on the part of the Indemnified Party in notifying any Indemnifying Party shall relieve the Indemnifying Party from any Liability or obligation hereunder unless (and then solely to the extent) the Indemnifying Party thereby is materially prejudiced. In the event any Indemnifying Party notifies the Indemnified Party within thirty (30) days after the Indemnified Party has given notice of the matter that the Indemnifying Party is assuming the defense thereof,

(i) the Indemnifying Party will defend the Indemnified Party against the matter with counsel of its choice reasonably satisfactory to the Indemnified Party,

(ii) the Indemnified Party may retain separate co-counsel (at the sole cost of the Indemnified Party),

(iii) the Indemnified Party will not consent to the entry of any judgment or enter into any settlement with respect to the matter without the written consent of the Indemnifying Party (not to be withheld unreasonably), and

(iv) the Indemnifying Party will not consent to the entry of any judgment with respect to the matter, or enter into any settlement which does not include a provision whereby the plaintiff or claimant in the matter releases the Indemnified Party from all Liability with respect thereto, without the written consent of the Indemnified Party (not to be withheld unreasonably); provided , however , that, without the consent of the Indemnified Party, the Indemnifying Party shall not consent to, and the Indemnified Party shall not be required to agree to, the entry of any judgment or enter into any settlement that

(i) provides for injunctive or other non-monetary relief affecting the Indemnified Party, or

(ii) does not include as an unconditional term thereof the giving of a release from all liability with respect to such claim by each claimant or plaintiff to the Indemnified Party that is the subject of such Claim. In the event the Indemnifying Party fails to assume the defense of the matter as provided herein within thirty (30) days after the Indemnified Party has given notice thereof, the Indemnified Party may defend against, or enter into any settlement with respect to, the matter in any manner it reasonably may deem appropriate, at the sole cost, expense and Liability of the Indemnifying Party. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [\* ] CONFIDENTIAL TREATMENT REQUESTED

(e) Each of the parties covenants and agrees that it will use commercially reasonable efforts to mitigate any Losses with respect to which such party is or may become entitled to be indemnified by any other party pursuant to this Agreement. Buyer shall not be obligated to seek any insurance recovery with respect to any Losses for which Seller is liable hereunder; however, if Buyer does in fact do so and receives an insurance recovery for Losses for which Seller previously has paid Buyer hereunder, Buyer promptly shall reimburse Seller therefor.

(f) After the Closing Date, the right of indemnification under this Section 8 shall be the sole and exclusive remedy available to any party for any Claim or cause of action arising under this Agreement or arising out of the Operative Documents in connection with any breach of any representation, warranty, covenant or provision of this Agreement, the Operative Documents or otherwise; provided, however, that this exclusive remedy does not preclude a party from bringing an action for specific performance or other equitable remedy to require a party to perform its obligations under this Agreement. Each party expressly waives any rights it may have to make a Claim against any other party in connection with the transactions contemplated by this Agreement pursuant to or under authority of any constitutional, statutory, common law or civil law authorities. The provisions of this Section 8.02(f) shall not apply to claims arising out of or relating to the fraud, gross negligence, intentional nondisclosure or willful misconduct of a party.

**8.03 Escrowed Amount .** The sum of Six Hundred Fifty Thousand Dollars (US$650,000.00) (the " Escrowed Amount ") shall be held in escrow jointly by the two law firms of Gardner and Temple LLP and Huffner Poff LLP (collectively, the "Escrow Agent") for payment of indemnification claims pursuant to Section 8.02 hereof, in accordance with an Escrow Agreement which shall be executed at the Closing substantially in the form set forth as Exhibit F hereto. The Escrow Agreement shall provide that the Escrowed Amount shall be held for twelve (12) months from the Closing Date; provided that, on the date which is ninety (90) Business Days following the Closing Date, the sum of One Hundred Fifty Thousand Dollars (US$150,000.00), less any amount then or previously claimed for indemnification pursuant to Section 8.02 hereof (whether paid or pending, and whether resolved or in dispute) shall be returned to Sellers or their successors and permitted assigns pro rata in accordance with the allocation described in Section 3.02, or as they otherwise may direct, and the Escrowed Amount shall be reduced thereby. In the event that a Claim is made pursuant to Section 8.02 hereof, then the amount so claimed shall be held in escrow until the resolution thereof, and the term of the escrow extended until such resolution. The Escrow Agreement shall provide for physical custody of said funds being held by the Escrow Agent, but shall prohibit any disbursement of the Escrowed Amount other than with the written consent of the parties or an order of a court of competent jurisdiction. Interest upon the Escrowed Amount shall be allocated in proportion to the ultimate disposition of the principal thereof.

**SECTION 9 PRESERVATION OF BOOKS AND RECORDS**

For a period of six (6) years after the Closing date, Buyer shall preserve the books and records of Seller delivered to Buyer; and Seller shall similarly make available to Buyer any records which Buyer permits Seller to retain; each party will make such books and records available to the other party at all reasonable times and permit the other party to make extracts from or copies of all such records.

**SECTION 10 CERTAIN OTHER COVENANTS AND AGREEMENTS**

**10.01. Employment of ABC Kingsley Germany Employees .** Buyer agrees to offer employment to all ABC Kingsley Germany employees involved in the Business, as and to the extent required by applicable German law, conditioned on the consummation of the purchase and sale of the Acquired Assets pursuant hereto. ABC Kingsley Germany hereby authorizes Millers to offer such employment to such employees, waives any rights either of them may have to prohibit such employees from being employed by Millers, and shall not offer new employment to any such employees. Nothing in this Section 10.01 shall be deemed to be a contract for the benefit of any employee of any Seller. ABC Kingsley Germany shall use its best efforts to assist Millers in obtaining the services of all current employees of ABC Kingsley Germany that Millers wishes to so retain. Prior to the Closing Date, Sellers shall use its commercial best efforts to insure that Millers shall receive written acceptance of employment from each Key Employee.

**10.02. Employment of ABC Plastics Employees .**

(a) Offers of Employment . With the exception of those employees listed on Schedule 10.02(a) (" Excluded Employees "), Buyer shall offer "at will" employment to all ABC Plastics employees (other than [\*]) who are legally eligible to work in the United States and are employed by ABC Plastics on the Closing Date and whose principal place of work is Norfolk, Virginia, conditioned on the consummation of the purchase and sale of the Acquired Assets pursuant hereto. Such ABC Plastics employees who accept such offer of employment and become employees of Buyer shall be referred to herein as " Acquired Employees ." Except as otherwise provided in the Transitional Services Agreement, the Acquired Employees shall cease active participation in the Benefit Plans and other applicable Plans effective as of the Closing Date. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [\* ] CONFIDENTIAL TREATMENT REQUESTED

(b) 401(k) Plans . Buyer shall not accept "eligible rollover distributions" (as such term is defined under Section 402(c)(4) of the Code), including outstanding loans, from the vested account balances of any Acquired Employee under the Superplast Delaware, Inc. 401K Plan, or any other 401K plan of Sellers (the " Seller 401(k) Plan ").

(c) Vacation . Except as may otherwise be required by law, effective as of the Closing Date, Seller shall pay all accrued but unpaid vacation time of all Acquired Employees through the Closing Date.

(d) WARN . The Buyer shall be solely responsible for any and all Liabilities, penalties, fines or other sanctions that may be assessed or otherwise due under WARN and similar laws and regulations, as a result of the transactions contemplated herein or otherwise, arising exclusively out of Buyer's actions on or after the Closing Date.

(e) No Third Party Rights . The parties acknowledge and agree that all provisions contained in this Section 10.02 with respect to employees are included for the sole benefit of the respective parties and shall not create any right

(i) in any other Person, including, without limitation, any employees, former employees, any participant in any Benefit Plan or any beneficiary thereof or

(ii) to continued employment with any Seller or Buyer. 10.03. Transition . Sellers and ABC Kingsley Sweden shall execute letters, in one or more forms (which Buyer, at its option, may elect to co-sign), to be mutually agreed upon prior to the Closing Date, addressed to their respective vendors and/or customers in the Business, notifying such addressees of the purchase of the Business by Millers and inviting such addressees to continue doing business with Millers. Notwithstanding anything herein to the contrary, for a period of one hundred eighty (180) days following the Closing Date, Sellers consent and agree to the use by Buyer of the names [\*] in external communications with third parties (including, without limitation, the use of existing stocks of packaging, signage, sales and other promotional literature) in connection with the conduct of the Business by Buyer, and for internal communications within the Business (including among its employees), and the use by Buyers during such time of the telephone numbers [\*].

**10.04. Further Assurances .** Upon the request of any party hereto, the remaining parties will execute and deliver to the requesting party, or such party's nominee, all such instruments and documents of further assurance or otherwise, and will do any and all such acts and things as may reasonably be required to carry out the obligations of such party hereunder and to more effectively consummate the transactions contemplated hereby, including obtaining all consents and approvals from third parties, under leases, agreements and other contracts. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [\* ] CONFIDENTIAL TREATMENT REQUESTED

**10.05. Confidentiality .** The Sellers, and their respective employees and agents

(a) shall keep confidential all proprietary information relating to the Business and not use such information for any purpose except as contemplated by this Agreement, and

(b) shall not disclose to any Person other than Buyer, any trade secrets, know-how, technology, processes, formulae, customer lists, customer names or identities or other confidential or proprietary business information, except to the extent used in or as presently contemplated to be used in connection with the Business. The Sellers further agree to take all steps reasonably necessary to prevent their respective directors, officers, employees and agents from disclosing such trade secrets and other information. The provisions of this section shall not apply to

(i) any information which any party presently has knowledge of or which is in such party's possession on the date hereof and of which such party did not learn through its contact with another party hereto previous to the date hereof (provided that such knowledge or possession is provable by such party's written records as in existence prior to the date hereof),

(ii) information which is presently publicly available or becomes a matter of public knowledge generally through no fault of the party against whom this provision would apply respecting such information or such party's employees, agents or consultants, or

(iii) disclosure of such information by a party as required pursuant to the rules and regulations of any Governmental or Regulatory Authority.

**10.06. Taxes .** Each Seller shall pay its respective Taxes of any kind or nature arising from the conduct of the Business by such Seller prior to the Closing; provided, however, that the Buyer shall pay all transfer, recording, sales or similar Tax arising out of or in connection with the transactions contemplated by this Agreement, and Buyer shall prepare and timely and properly file all Tax Returns relating to such Taxes (or exemptions therefrom) and shall provide copies of such Tax Returns to Sellers promptly upon written request after filing. If any Taxes whose payment is the responsibility of a Seller, or any withholding therefor, are assessed against Buyer, Buyer shall notify the appropriate Seller in writing promptly thereafter and such Seller shall be entitled to pay such amount, or to contest, in good faith, such assessment or charge. If a Seller does not pay same within a reasonable time, Buyer may, at its option, pay same and in such case shall be reimbursed in full by Sellers, without application of the Basket.

**10.07. Consents .**

(a) Each Seller will use its commercially reasonable best efforts to

(i) obtain or cause to be obtained, on or before the Closing Date, all consents listed on Exhibit I hereto and required to be obtained by such Seller, and

(ii) cause each such consent to be effective as of the Closing Date (whether it is granted or entered into prior to or after the Closing), and Buyer will use commercially reasonable efforts to cooperate with such efforts. Buyer and Sellers shall agree upon what actions are necessary in order to satisfy the obligations set forth above.

(b) Notwithstanding anything in this Agreement to the contrary, this Agreement shall not constitute an offer or agreement to assign any asset or any claim or right or any benefit arising under or resulting from such asset if an attempted assignment thereof, without the consent of a Third Party, would constitute a breach or other contravention of the rights of such Third Party, would be ineffective with respect to any party to an agreement concerning such asset, or would in any way adversely affect the rights of Sellers or, upon transfer, Buyer under such asset. If any transfer or assignment by Sellers to, or any assumption by Buyer of, any interest in, or liability, obligation or commitment under, any asset requires the consent of a Third Party, then such assignment or assumption shall be made subject to such consent being obtained. With respect to any such asset or any claim, right or benefit arising thereunder or resulting therefrom, promptly after the Closing Date, the parties will use commercially reasonable efforts (but without any payment of money or other transfer of value by any party to any Third Party) to obtain any required consent for the assignment, transfer or sublicense of any such asset, or written confirmation reasonably satisfactory in form and substance to the parties confirming that such consent is not required. To the extent any Assumed Contract may not be assigned to Buyer by reason of the absence of any such consent after such efforts, Sellers shall not be required to assign such Contract, such Contract shall not constitute an "Assumed Contract" hereunder, and Buyer shall not be required to assume any Assumed Liabilities arising under such Contract.

(c) If any consent which must be obtained is not obtained prior to the Closing, Sellers and Buyer shall cooperate (at their own expense) in any lawful and reasonable arrangement reasonably proposed by Buyer, under which Buyer shall obtain the economic Claims, rights and benefits under the asset, Contract, claim or right with respect to which the consent has not been obtained in accordance with this Agreement; provided that such arrangement does not and will not constitute a breach by Sellers of any of their respective obligations to a Third Party. Such reasonable arrangement may include, at Buyer's sole option,

(i) the subcontracting, sublicensing or subleasing to Buyer of any and all rights of Sellers against the other party to such agreement arising out of a breach or cancellation thereof by the other party, and

(ii) the enforcement by Sellers of such rights. To the extent Buyer is able to receive the economic claims, rights and benefits under such asset or agreement, Buyer shall be responsible for the Assumed Liabilities, if any, arising thereunder.

**10.08 Accounts Receivable and Mail .**

(a) Accounts Receivable .

(i) Buyer will use its commercial best efforts to collect all Accounts Receivable of the Kingsley Business which are validly due and owing during the first twelve (12) months after the Closing as soon as reasonably practicable in accordance with the terms thereof and customary business practices;

(ii) Buyer will provide periodic reports to Sellers as to the status of such collections;

(iii) Buyer will not settle any such Accounts Receivable at a discount in excess of Twenty-Five Thousand Dollars ($25,000.00) in the aggregate, except with the prior consent of the Sellers, and except as otherwise provided in clause (v) below,

(iv) Buyer will apply general payments received from customers on account of such Accounts Receivable to those which have been outstanding the longest, except to the extent that the customer has specified that a payment be credited to specific invoices; and

(v) if any such Accounts Receivable cannot be collected within 120 days, Buyer and Seller will consult with one another to develop a plan or proposal to collect such Accounts Receivable; provided that Buyer retains the final discretion to deal with such Accounts Receivable in Buyer's sole but reasonable judgment.

(b) Mail . Buyer covenants and agrees to promptly deliver or cause to be delivered to Sellers all mail and other communications received by Buyer which directly relates to any Seller or which may otherwise affect any Seller and which does not relate to the Business, and Sellers each covenants and agrees to promptly deliver or cause to be delivered to Buyer all mail and other communications received by a Seller which directly relates to any Buyer or which may otherwise affect any Buyer, or which relates to the Business.

**10.09 Buyer Purchasing Entities .** Millers covenants and agrees that the purchaser of the Acquired Assets from ABC Plastics and the party who will assume the Assumed Liabilities of ABC Plastics will be either Millers itself or a wholly-owned subsidiary of Millers or an Affiliate, organized under the laws of a State of the United States and the purchaser of the Acquired Assets from ABC Kingsley Germany and the party who will assume the Assumed Liabilities of ABC Kingsley Germany will be a wholly-owned subsidiary of Millers or an Affiliate, organized under the laws of Germany.

**10.10 Insurance History and Succession**

(a) Pursuant to Sellers obligation to indemnify Buyer under section 8.02 of this agreement, Sellers and their successors in interest (if any) shall provide commercially reasonable cooperation to the Buyer and its Subsidiaries, and shall use all commercially reasonable efforts to ensure that the Buyer and its Subsidiaries have access to any insurance policies of Sellers as respects any claims, proceedings or similar actions brought against Buyer or its Subsidiaries that may be covered by such policies and that arise out of, result from or relate to any Excluded Assets or Excluded Liabilities for which Seller has agreed to indemnify Buyer.

(b) Without limiting the applicability of Sellers indemnification obligations or clause (a) above, Schedule 10.10 sets forth a complete and accurate list of all historical Workers' Compensation insurance maintained by or on behalf of the Sellers for the operations at ABC Plastics in Norfolk, Virginia dating back to May 8, 2005. Schedule 10.10 also includes the historical Workers' Compensation insurance maintained for any other locations of Seller where current ABC Plastics employees worked prior to transferring to the Norfolk, Virginia location for the period of time commensurate with the ABC Plastics employees' tenure at those locations. For each policy period of coverage, Schedule 10.10 includes the name of the insurance company, the policy number, the policy effective and expiration dates, and any policy deductibles or self insured retention amounts.

**SECTION 11 TERMINATION**

**11.01. Termination .** This Agreement may be terminated at any time prior to the Closing Date as follows:

(a) by mutual written consent of Sellers and Buyer; or

(b) by either Sellers (acting collectively) or Buyer in the event that either such party desiring to terminate this Agreement and to be excused from its obligation to consummate the transactions contemplated hereby (the " Excusing Party ") fails or is unable to satisfy a material condition precedent to the Closing set forth herein; provided, that

(i) such Excusing Party has used its commercially reasonable best efforts to satisfy such material condition (including, without limitation, the offer and payment of funds to a commercially reasonable extent),

(ii) the satisfaction of such material obligation of the Excusing Party is in fact beyond the Excusing Party's actual control, and

(iii) following notice by the Excusing Party to the other party of its failure to satisfy such condition (which notice shall state, with reasonable detail, the reasons for such failure, and the actions taken by the Excusing Party to satisfy such condition) the other party refuses, or fails within ten (10) days after such notice, to waive such condition. Waiver of a condition shall not imply waiver of the indemnification consequences thereof; accordingly, if the other party does waive such condition, nothing herein shall be construed to prevent or limit the ability of such other party to seek indemnification for any Loss occasioned by the condition waived. Any party desiring to terminate this Agreement pursuant to this Section 11.01 shall give written notice of such termination to the other parties in accordance with Section 12.05.

**11.02. Effect of Termination .** If this Agreement is terminated pursuant to Section 11.01 hereof, all rights and obligations of Sellers and Buyer hereunder shall terminate and no party shall have any liability to the other party, except for obligations of the parties hereto in Sections 2.03(d), 10.05, 11.02, 12.01, 12.13 and 12.14 all of which shall survive the termination of this Agreement. Notwithstanding any provision in this Section 11 or elsewhere in this Agreement to the contrary, the rights and remedies provided in this Section 11 shall be in addition to, and not exclusive of, any rights or remedies to which the parties may be entitled under applicable Law as a result of a termination of this Agreement.

**SECTION 12 MISCELLANEOUS**

**12.01. Governing Law; Jurisdiction .** This Agreement shall be construed and interpreted in accordance with the laws of the Commonwealth of Massachusetts, except that no application shall be given to the conflicts of laws principles thereof; and for the avoidance of doubt, the actual transfer of Acquired Assets by ABC Kingsley Germany shall be governed by any mandatory Laws of Germany to the extent applicable). Any dispute, controversy or Claim made by a party under this Agreement or any Operative Document shall be resolved exclusively by arbitration in Boston, Massachusetts under the then-current rules and procedures for the arbitration of commercial disputes of the American Arbitration Association or any successor thereof (" AAA " and the " AAA Rules "); except that any such dispute, controversy or Claim relating to a breach of a Seller's violation of its representation or warranty set forth in Sections 6.20 ("Intellectual Property Rights"), 6.23 ("Regulatory and Employee Safety Matters") or 6.25 ("Environmental Matters"), and any dispute, controversy or Claim related to a breach of a covenant hereunder, or under an Operative Document or a certificate delivered hereunder or thereunder, for which injunctive relief is sought, shall instead be brought before and shall be enforceable exclusively in the federal and state courts located in Suffolk County, Massachusetts. Any arbitration shall be commenced by a party filing a demand for arbitration pursuant to the AAA Rules (an " Arbitration Demand "). That party also shall send a copy of the Arbitration Demand to the other parties. Any dispute, controversy or Claim submitted for arbitration hereunder shall be heard before a panel comprised of three (3) arbitrators, unless otherwise agreed in writing by the parties to such dispute, controversy or Claim, such panel to be selected in accordance with AAA rules and to be seated in Suffolk County, Massachusetts. The parties shall each bear their own costs and legal expenses of arbitration, except to the extent that the arbitration relates to Pre-Closing Adjustments pursuant to Section 5.06(c)(iv) hereof, in which case the losing party shall pay the legal expenses of the prevailing party. The Buyer, on the one hand, and those Sellers collectively involved in the arbitration, on the other hand, shall equally split the costs of the AAA and the costs of stenographers and other forum costs in connection therewith. The arbitration shall be conducted pursuant to the Federal Arbitration Act and such other procedures as the parties to the arbitration may agree or, in the absence of such agreement, pursuant to the AAA Rules and the provisions of this Section 12.01. The decision of the arbitrators will be final and binding on all parties hereto and upon their Affiliates, whether or not a party to the arbitration. The panel shall be instructed to provide a written decision explaining the basis for its ruling. The parties agree that a judgment may be entered on the arbitration award in any court of competent jurisdiction. The arbitrators in reviewing any dispute, controversy or Claim under this Agreement shall have the exclusive authority to determine any issues as to arbitrability of such dispute, controversy or Claim or related disputes hereunder. In reaching a decision, the arbitrators shall interpret, apply and be bound by this Agreement and applicable law and shall have no authority to add to, detract from or modify this Agreement or any applicable law in any respect. The arbitrators may grant any remedy for equitable relief that a court of competent jurisdiction could grant.

**12.02 Modification .** This Agreement may be modified, amended or terminated, and the requirements of any provision hereof may be waived, with the mutual consent of each Seller and Millers by written instrument signed by them or their respective successors or assigns in any manner deemed necessary or appropriate by them.

**12.03 Drafting Presumptions .** This Agreement has been extensively negotiated by counsel for both the Sellers and Buyer, and therefore the parties acknowledge and agree that no negative presumption shall be made regarding the party whose counsel prepared the original or other drafts hereof, or of any of the Operative Documents.

**12.04. Counterparts .** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement shall be deemed effective upon the receipt by each Party of an executed signature page hereto signed by the other, which in accordance with the provisions of Section 12.05 hereof may be transmitted by facsimile or electronic means.

**12.05. Notices .** Any notice or other communication hereunder may be sent by any means (including facsimile or email or other electronic means, provided that receipt thereof is acknowledged and confirmed by the recipient) and shall be effective upon receipt; except that, if sent via domestic certified mail or via international overnight courier such as Federal Express, said notice shall be conclusively deemed to have been received by a party hereto and be effective on the earlier of

(a) the actual date of receipt, or, if earlier,

(b) the third business day following the date given to the post office or courier for delivery. In addition to such notices and communications as shall be addressed to such party at the address set forth at the outset of this Agreement (or such other address as such party shall specify to the other party in writing), mandatory copies, sent in such manner, shall be delivered to the additional addressees set forth below:

As to Sellers: ABC International, Inc. 6693 Old Mill Kektomee, Ontario, Canada L4T 1B3 Attn: Mr. Walter Bishop, President and CEO Facsimile No: +1-905-564-6414 E-mail: wbishop@plaspro.ca

With a copy to: Wildeboer Dellelce LLP Suite 800 365 Bay Street Toronto, Ontario, Canada M5H 2V1 Attn: Mr. Troy Pocaluyko Facsimile No. +1-416-361-1790 E-mail: troy@wildlaw.ca

As to Buyer: Special Plastics Division Millers Corporation 245 Woodstock Road Woodstock, CT 06281-1815 Facsimile No: +1- 860-928-7843 Attn.: John Krakauer, Vice President Email: john.krakauer@Millerscorporation.com

With mandatory copies to: Rebecca Franton General Manager, Special Plastics Division Millers Corporation 324 Norton Street Indianapolis, Indiana 47403 Facsimile No: 1-317-447-6894Email: Rebecca.franton@Millerscorporation.com

|  |  |
| --- | --- |
| and to: | William T. Shattner |

Vice President and Secretary Industrial Park Millers, CT 06233 Facsimile No: +1-860-779-5585 Email: w.t. shattner @Millerscorporation.com

|  |  |
| --- | --- |
| and to: | Gardner and Temple |

134 Willows Norton, MA 02134 Facsimile No: 1-614-335-3885 Attn: Don Johnson, Esq. Email: djohnson@gardtemple .com

**12.06. Entire Agreement** . This Agreement, together with its schedules, exhibits and the Operative Documents, constitutes the entire contract among the parties and supersedes all other understandings and agreements, oral or written, with respect to the subject matter hereof.

**12.07. Headings .** The descriptive headings of the several Sections and Paragraphs of this Agreement are inserted for convenience only and do not constitute a part of this Agreement.

**12.08. Equitable Remedies .** In the event that any party to this Agreement shall default in the performance of any obligation, covenant or agreement hereunder, the other parties to this Agreement shall, in addition to all other remedies which may be available to it, be entitled to injunctive and equitable relief, including without limitation specific performance, and shall be entitled to recover from the defaulting party or parties its costs and expenses (including reasonable attorneys' fees) incurred by it in securing such injunctive or equitable relief.

**12.09. Severability** . In the event that any provision of this Agreement shall be held to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement should remain in full force and effect and be interpreted as if such invalid or unenforceable provision had not been a part hereof; provided, however, if any particular portion of this Agreement shall be adjudicated invalid or unenforceable by reason of the length of time or scope of applicability provided for herein, this Agreement shall be deemed amended to diminish such time and/or reduce such scope to the longest enforceable time and the broadest enforceable scope of applicability.

**12.10. Assignment** . Buyer shall be entitled to assign all or part of their respective rights, title and interest under this Agreement to an Affiliate; provided that the Acquired Assets and Assumed Liabilities of ABC Plastics shall be assumed by an entity organized under the laws of a State of the United States and the Acquired Assets and Assumed Liabilities of ABC Kingsley Germany shall be assumed by an entity organized under the laws of Germany and provided, further that such Affiliate shall assume the corresponding obligations of Buyer under this Agreement. A copy of any assignment made hereunder shall be promptly forwarded to Sellers. No Seller may assign all or any part of its rights, title and interest under this Agreement without the prior written consent of Millers. In the event of an assignment of a party's rights under this Agreement, whether as a result of the proviso above or upon the consent of the parties hereto, such assignment shall not relieve the assigning party of its obligations under this Agreement and all such obligations shall remain the valid and binding obligations of the assigning party, and the non-assigning parties shall retain the right to pursue the assigning party directly for any and all claims it may have hereunder or thereunder.

**12.11. Successors and Assigns .** This Agreement shall be binding upon and inure to the benefit of the parties herein and their successors and permitted assigns.

**12.12. Acceptance of Counsel .** Whenever in this Agreement it is provided that a party hereto shall deliver an agreement or other instrument to the other of them, such agreement or instrument shall be in form reasonably satisfactory to counsel for the party to whom the same is to be delivered.

**12.13. Expenses .** Except to the extent otherwise expressly provided herein, each party hereto shall pay its own expenses, including the fees and disbursements of its own counsel, incident to the preparation of this Agreement and the consummation of the transactions contemplated hereby.

**12.14. Publicity .** Without the consent of ABC or Millers, no other party shall issue nor cause the publication of any press release or other announcement with respect to this Agreement or the transactions contemplated hereby, which consent shall not be unreasonably withheld, except where such release or announcement is required by applicable Law or the rules of any stock exchange, stock market or Governmental or Regulatory Authority having authority over a party.

**12.15. English Language .** The parties agree that this Agreement, the Operative Documents and any additional documents proposing to govern the transactions contemplated herein or therein shall be written in the English language, unless otherwise required by applicable Law. The parties acknowledge that certain documents and other items provided to Buyer or counsel for and consultants to Buyer in connection with its due diligence may not be in the English language. In the event that this Agreement or any Operative Document must be translated into another language for filing or other purposes, and such translation deviates from the English version, the English version shall control.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

|  |  |  |  |
| --- | --- | --- | --- |
|  | SELLERS: | |  |
|  | ABC International Inc. | |  |
|  | By: | |s|Walter Bishop |  |
|  |  | Print Name/Title: President and Chief Executive Officer |  |

|  |  |  |  |
| --- | --- | --- | --- |
|  | ABC Plastics Inc. | |  |
|  | By: | |s|Walter Bishop |  |
|  |  | Print Name/Title: President and Chief Executive Officer |  |

|  |  |  |  |
| --- | --- | --- | --- |
|  | ABC Kingsley GmbH | |  |
|  | By: | |s|Walter Bishop |  |
|  |  | Print Name/Title: President and Chief Executive Officer |  |

|  |  |  |  |
| --- | --- | --- | --- |
|  | BUYER: | |  |
|  | Millers Corporation | |  |
|  | By: | |s|John Krakauer |  |
|  |  | Print Name/Title: John Krakauer, Vice President |  |
|  |  | Special Plastics Division |  |

**APA#27**

**TRADEMARK Purchase AND ASSIGNMENT Agreement**

by and between

HESSEN AG

and

MEDIPHARMCO CORPORATION

dated as of December 13, 2001

TABLE OF CONTENTS

------------PAGE BREAK----------

ARTICLE I. DEFINITIONS....................................................2

ARTICLE II. PURCHASE AND SALE OF ASSETS...................................3

ARTICLE III. PURCHASE PRICE AND PAYMENT...................................3

ARTICLE IV. EFFECTIVE DATE................................................3

ARTICLE V. REPRESENTATIONS AND WARRANTIES.................................4

ARTICLE VI. COVENANTS OF THE PARTIES......................................5

ARTICLE VII. INDEMNIFICATION..............................................6

ARTICLE VIII. TERMINATION AND ABANDONMENT.................................7

RECITALS..................................................................1

AGREEMENT.................................................................1

EXHIBITS

Exhibit A Form of Assignment of Trademarks

SCHEDULES

[Schedule A]: Description of the Trademark

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**TRADEMARK PURCHASE AND ASSIGNMENT AGREEMENT**

This Trademark Purchase and Assignment Agreement (this "Agreement") ismade and entered into as of December 13, 2001, by and between Medipharmco Corporation, a Delaware corporation, having a business address of Address, USA("Buyer"), and HessenAG, a company incorporated in the Federal Republic of Germany, having a business address of Address, Germany ("Seller").

**RECITALS**

WHEREAS, Buyer and Kortalim UK Limited ("Kortalim") have or willenter into that certain Asset Purchase Agreement ("Kortalim Asset PurchaseAgreement") pursuant to which Buyer will purchase all of Kortalim's assetsrelated to the marketing, selling and distribution of the Product (as defined below) in the United States.

WHEREAS, Kortalim markets, sells and distributes the Product under the name "Nekroflex" pursuant to a Distribution Agreement dated as of January 1,1996 by and between Seller and Kortalim.

WHEREAS, Seller is the owner of the United Stated trademark "Nekroflex".

WHEREAS, Buyer and Seller are entering into a Distribution Agreementdated as of December 12, 2001 ("Distribution Agreement") pursuant to whichSeller will manufacture and supply the Product to Buyer and Buyer will market,sell and distribute the Product in the United States.

WHEREAS, Buyer has been informed that Kortalim is the holder of several domain name registrations for the name "Nekroflex" (e.g. Nekroflex.com,Nekroflex.org, Nekroflex.net) transfer of which to Buyer will have to be agreed upon between Buyer and Kortalim;

WHEREAS, in connection with the Kortalim Asset Purchase Agreement and the Distribution Agreement, Seller desires to sell and assign to Buyer, and Buyer desires to buy from Seller the United States trademark "Nekroflex" subject to the terms and conditions of this Agreement.

**AGREEMENT**

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

**ARTICLE I.**

**DEFINITIONS**

SECTION 1.01 DEFINED TERMS.

As used in this Agreement, the following defined terms have themeanings described below (terms not otherwise defined herein shall have the meaning assigned in the Distribution Agreement):

(a) "Contract" means any and all legally binding commitments, contracts, purchase orders, license, security agreements, leases, or other agreements, whether written or oral.

(b) "Effective Date" shall have the meaning as defined in the Distribution Agreement

(c) "Order" means any writ, judgment, decree, injunction or similar order of any Governmental or Regulatory Authority (in each such case whether preliminary or final).

(d) "Person" means any natural person, corporation, general partnership, limited partnership, limited liability company, proprietorship, other business organization, trust, union, association or Governmental or Regulatory Authority.

(e) "Product" means the pharmaceutical product containing imirine as the sole active ingredient marketed and/or sold under thetrademark "Nekroflex."

(f) "Tax" means (i) any net income, alternative or add-onminimum tax, gross income, gross receipts, sales, use, ad valorem, transfer, franchise, profits, license, excise, severance, stamp, occupation, premium, property, environmental or windfall profit tax, custom, duty or other tax, governmental fee or other like assessment imposed by an governmental, regulatory or administrative entity or agency responsible for the imposition of any such tax in the United States; (ii) any Liability for the payment of any amounts of the type described in clause (i) above as a result of being a member of any affiliated, consolidated, combined, unitary or other group for any Taxable period.

(g) "Termination Agreement" means that certain Termination Agreement by and between Seller and Kortalim pursuant to which Seller and Kortalim terminate their relationship with respect to the Product.

(h) "Trademark" means the United States registered trademarks, set forth on Schedule A attached hereto together with all of the following related thereto: (i) goodwill; (ii) any and all rights to sue for present or future infringements; or misappropriations; (iii) any and all rights to use such trademarks as part of a Internet domain name or Internet Web Site; and (iv) any other rights or interests associated with the trademark.

(i) "Trademark Assignment Agreement" means a trademarkassignment agreement by and between Buyer and Seller, substantially in the formof Exhibit A.

(j) "United States" means the United States of America, its territories and possessions, including Washington, D.C. and Puerto Rico.

**ARTICLE II.**

**PURCHASE AND SALE OF ASSETS**

SECTION 2.01 PURCHASE AND SALE OF ASSETS.

(a) Subject to the terms and conditions of this Agreement, on the Effective Date, Seller shall irrevocably assign, sell, transfer, convey, and deliver to Buyer any and all of Seller's right, title and interest, in and to the Trademark.

(b) Subject to the terms and conditions of this Agreement, on the Effective Date, Buyer shall purchase, acquire and accept from Seller the Trademark.

**ARTICLE III.**

**PURCHASE PRICE AND PAYMENT**

SECTION 3.01 PURCHASE PRICE.

As consideration for the Trademark, and subject to the terms and conditions of this Agreement, Buyer shall deliver or cause to be delivered to Seller the sum of Twenty Million and No/100 Dollars (US $20 million) ("Purchase Price") within fifteen (15) days after the Effective Date. The Purchase Price shall be delivered into an account specified by Seller in writing.

**ARTICLE IV.**

**EFFECTIVE DATE**

SECTION 4.01 OBLIGATIONS.

Except for their obligations set forth in Sections 6.01, 6.02, 6.03 and 6.06, prior to the Effective Date, neither Party shall have any obligations or liability hereunder.

SECTION 4.02 DELIVERY.

On the Effective Date Seller shall deliver to Buyer the following: (i)an executed Trademark Assignment Agreement substantially in the form attached hereto as Exhibit A and (ii) such other certificates, instruments, documents and agreements as Buyer may reasonably request. On the Effective Date, Buyer shall deliver to Seller such certificates, instruments, documents and agreements as Seller may reasonably request.

**ARTICLE V.**

**REPRESENTATIONS AND WARRANTIES**

SECTION 5.01 GENERAL.

Each Party to this Agreement represents and warrants to the other Party that: (i) such Party has the requisite power and authority to enter into and perform this Agreement, (ii) this Agreement has been duly authorized by all necessary action on the part of such Party; (iii) the execution and delivery and performance by each Party of this Agreement will not conflict with or result in a violation of or default under such Party's organizational documents or any judgment, order or decree of any court or arbiter to which such Party is bound or any contract, understanding or agreement to which such Party is bound or any applicable Law; (iv) this Agreement constitutes the valid and binding obligation of such Party, and is enforceable against such Party in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, creditor's rights and other similar laws; and (v) it has received good, valuable, legal and sufficient consideration.

SECTION 5.02 LITIGATION.

Seller represents and warrants to Buyer that there is no claim, demand, litigation, action, suit, inquiry, investigation, arbitration or other proceeding pending or to its knowledge threatened against Seller, nor to the knowledge of Seller are there any facts or circumstances which could reasonably be anticipated to result in any such claims, demands, litigation, action, suit, inquiry, investigation, arbitration or other proceeding related to the Trademark, this Agreement or the transactions contemplated hereby which could have an adverse effect on the Trademark or hinder, delay or prevent the transactions contemplated hereby.

SECTION 5.03 TITLE TO THE TRADEMARK.

Seller hereby represents and warrants to Buyer that (i) it has good and marketable title to the Trademark, (ii) there are no adverse claims of ownership on or to the Trademark; and (iii) to Seller's knowledge, there exists no set of facts or circumstances that would indicate that there is any reasonable basis to believe that any Person or persons could or would assert a claim of ownership, right of possession or use in any way adverse to Buyer's rights in and to the Trademark.

SECTION 5.04 OWNERSHIP.

Seller represents and warrants to Buyer that

(i) Schedule A constitutes a true and complete list and description of all United States trademarks licensed or controlled by the Seller in connection with the Product

(ii) the Seller is the sole and exclusive owner of all right, title and interest in the Trademark, and has the exclusive right to use, license and sell the same, free and clear of any claim or conflict with the rights of others;

(iii) no royalties, honorariums or fees are payable by the Seller to any Person by reason of the ownership or use of any of the rights in conjunction to the Trademark;

(iv) to the knowledge of Seller, there have been no claims made against theSeller asserting the invalidity, abuse, misuse, or unenforceability of any of the Trademark and no grounds for any such claims exist;

(v) the Seller has not made any claim of any violation or infringement by others of any of itsTrademark or interests therein and, to the knowledge of the Seller, no groundsfor any such claims exist;

(vi) the Seller has not received any notice that isin conflict with or infringing upon the asserted intellectual property rights ofothers in connection with the Trademark.

SECTION 5.05 SURVIVAL.

All representations and warranties shall survive until the expirationof the applicable statute of limitations but no longer than the expiration dateof the Distribution Agreement.

**ARTICLE VI.**

**COVENANTS OF THE PARTIES**

SECTION 6.01 CONDUCT PRIOR TO CLOSING.

From the date of this Agreement until the Effective Date, neither the Seller nor any of the Seller's Affiliates shall (i) take or fail to take any action which will or could be reasonably expected to have an adverse effect on the Trademark or (ii) assign, sell, transfer, or convey any right title or interest in the Trademark.

SECTION 6.02 REASONABLE EFFORTS.

Each of the Parties shall use its reasonable efforts to take, or cause to be taken, all action, or to do, or cause to be done, all things necessary, proper or advisable under applicable Laws to consummate and make effective the transactions contemplated by this Agreement and to cause the conditions to the obligations of the other Party hereto to consummate the transactions contemplated hereby to be satisfied.

SECTION 6.03 PUBLIC ANNOUNCEMENTS.

Each of Seller and Buyer agree that, prior and subsequent to the Effective Date, it and its representatives shall keep the facts surrounding the terms and negotiation of this Agreement and the transactions contemplated hereby, disclosures made herein and hereunder, and the results of investigations and audits conducted hereunder, confidential and shall not disclose such information to any other Person through a press release or otherwise (except as necessary to carry out the express terms of this Agreement or to the extent such information becomes public information or generally available to the public through no fault of such Party or its Affiliates) without the prior written consent of the other Party, (which will not be unreasonably withheld) unless such Party is legally obligated to publish.

SECTION 6.04 RECORDATION.

The Buyer shall be responsible for applying for the registrations of the Trademark to be transferred to it hereunder. The Seller undertakes to sign the requisite assignment approvals in due form without delay. The Buyer shall assume the costs of assignments and other measures taken by it.

SECTION 6.05 GERMAN TAXES.

(a) Buyer is only entitled to withhold from the purchase price payable to Seller under this Article the Taxes levied or assessed thereon in as far as Seller shall receive a tax-credit for such payments in the Federal Republic of Germany.

(b) Buyer shall provide Seller as soon as reasonably practicable with certified tax receipts required by the German tax authorities for the Taxes deducted from the payments hereunder and paid to the tax authority.

SECTION 6.06 MAINTENANCE AND MONITORING.

(a) After the Effective Date, the Seller shall send the files relating to the Trademark to the Buyer or to an attorney appointed by the Buyer. Responsibility for monitoring of the Trademark, in particular of the renewal dates and of any conflicting trademarks of third parties, shall thus transfer to the Buyer.

(b) Until such time as the transfer of the Trademark will have been entered into the official trademark register, but in no event longer than six months following the Effective Date, the Seller shall administer the Trademarks on a fiduciary basis and shall in this respect work together with the Seller. However, after transfer of responsibility for monitoring of the Trademark to the Buyer, the Seller shall only be obliged and entitled to take measures related to renewal or defence, in particular the filing of oppositions or the institution of legal proceedings, at the explicit request of the Buyer.

SECTION 6.07 ACKNOWLEDGMENT OF RIGHTS.

Seller acknowledges that as of the Effective Date, Buyer will succeed to any and all of its right, title, and standing to: (i) receive all rights and benefits pertaining to the Trademarks; (ii) institute and prosecute all suits and proceedings and take all actions that the Buyer, in its sole discretion, may deem necessary or proper to collect, assert, or enforce any claim, right, or title of any kind in and to the Trademarks (iii) defend and compromise and all such actions, suits or proceedings relating to such transferred and assigned rights, title, interest, and benefits, and do all other such acts and things in relations thereto as the Buyer, in its sole discretion, deems advisable.

**ARTICLE VII.**

**INDEMNIFICATION**

SECTION 7.01 SELLER INDEMNIFICATION.

Seller shall indemnify, reimburse, defend and hold harmless Buyer, its Affiliates, and their respective officers, directors, employees, agents, successors and assigns from and against any and all costs, losses, Liabilities, damages, lawsuits, deficiencies, taxes, fines, penalties, interest, claims and expenses (including reasonable fees and disbursements of attorneys)(collectively, the "Damages"), incurred in connection with, arising out of, or resulting from

(i) any breach of any covenant or agreement of Seller herein,

(ii) the inaccuracy or breach of any representation or warranty made by Seller in this Agreement; and

(iii) any liability or obligation of Seller arising prior to the Effective Date with respect to the Trademarks,

SECTION 7.02 BUYER INDEMNIFICATION.

Buyer shall indemnify, defend and hold harmless Seller, its Affiliates and their respective officers, directors, employees, agents, successors and assigns from and against any and all Damages incurred in connection with, arising out of, or resulting from

(i) any breach of any covenant or agreement of Buyer herein, and

(ii) the inaccuracy or breach of any representation or warranty made by Buyer in this Agreement.

**ARTICLE VIII.**

**TERMINATION AND ABANDONMENT**

SECTION 8.01 METHODS OF TERMINATION.

The transactions contemplated herein may be terminated and/or abandoned at any time prior to the Closing:

(a) by mutual written agreement of Seller and Buyer; or

(b) by either Seller or Buyer if the conditions prior to Effective Date shall not have occurred by June 30th, 2002; provided that the terminating Party is not in material breach of its representations, warranties or obligations hereunder and the terminating Party is not unreasonably causing delay of the Effective Date;

(c) by either Seller or Buyer if prior to Effective Date the other Party becomes insolvent or seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if prior to the Effective Date any such proceeding is instituted against the other Party which proceeding remains undismissed for a period of thirty (30) days;

(d) by either Seller or Buyer if there shall be in effect any Law that prohibits the Closing or if the Closing would violate any non-appealable Order as defined in Article 1 (c); or

(e) by either Seller or Buyer, until fulfillment of all material obligations of both Parties, if the other Party has breached any material obligation hereunder that remains uncured for a period of thirty (30)days after written notice and demand for cure thereof by the non-breaching Party, unless such breach is not capable of cure in which event the non-breaching Party may terminate immediately.

SECTION 8.02 NOTICES.

All notices, requests and other communications hereunder must be in writing and delivered personally or by facsimile transmission or by nationally recognized overnight courier at the following addresses or facsimile numbers:

If to Buyer to:

Medipharmco Corporation Address, USA

Attn: Office of the President

With copies to:

Cramer,Rickers and Walt, P.C.

Address, USA

Attn: Foster M. Kerrington

If to Seller to:

HessenAG

Address,

Federal Republic of Germany Fax: +xxx-xxx-xxx

SECTION 8.03 ENTIRE AGREEMENT.

This Agreement (and all Exhibits and Schedules attached hereto and all other documents delivered in connection herewith) supersedes all prior discussions and agreements between the Parties with respect to the subject matter hereof and contains the sole and entire agreement between the Parties with respect to the subject matter hereof.

SECTION 8.04 AMENDMENT.

This Agreement may be amended, supplemented or modified only by a written instrument duly executed by each Party hereto.

SECTION 8.05 ASSIGNMENT; BINDING EFFECT.

Neither this Agreement nor any right, interest or obligation hereunder may be assigned by either Party without the prior written consent of the other Party which will not be unreasonably withheld or delayed and any attempt to do so will be void. Notwithstanding the foregoing, the Buyer may assign this Agreement and its rights and interests hereunder to any party which acquires allor substantially all of its assets without the consent of the Seller. This Agreement is binding upon, inures to the benefit of and is enforceable by the Parties and their respective successors and permitted assigns.

SECTION 8.06 HEADINGS.

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

SECTION 8.07 SEVERABILITY.

If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future law, and if the rights or obligations of either Party under this Agreement will not be materially and adversely affected thereby,

(a) such provision will be fully severable,

(b) this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never compromised a part hereof,

(c) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom , and

(d) in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar to terms to such illegal, invalid or unenforceable provision as may be possible and reasonably acceptable to the Parties herein.

SECTION 8.08 GOVERNING LAW.

THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF GERMANY EXCEPT THAT ISSUES RELATING TO THE TRADEMARK ITSELF SHALL BE GOVERNED BY THE LAWS OF THE UNITED STATES.

SECTION 8.09 CONSENT TO JURISDICTION AND FORUM SELECTION.

The place of performance of all claims arising from this Agreement and in conjunction with the performance of this Agreement shall be Berlin, Germany. The place of jurisdiction for all disputes arising from this Agreement shall for both parties be the District Court in Cologne, Germany.

SECTION 8.10 EXPENSES.

Except as otherwise provided in this Agreement, each Party shall pay its own expenses and costs incidental to the preparation of this Agreement and to the consummation of the transactions contemplated hereby.

SECTION 8.11 COUNTERPARTS.

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

SECTION 8.12 SCHEDULES, EXHIBITS AND OTHER DOCUMENTS.

The Exhibits, Schedules, certificates and notices specifically referred to herein, and delivered pursuant hereto, are an integral part of this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by the Parties allas of the date first above written.

HESSENAG

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| --- |
| By: |s| Maier |
| ------------------------------------------- |
| Title: Trademark Counsel |
| ---------------------------------------- |
| Name Maier |
| ------------------------------------------ |
| By: |s|Dr. Niemueller |
| ------------------------------------------- |
| Title: Head of ABC Europe |
| ---------------------------------------- |
| Name Dr.Niemueller |
| ------------------------------------------ |

MEDIPHARMCO

CORPORATION

|  |
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| By: |s| H.T. Patel, Ph.D. |
| ------------------------------------------- |
| Title: CEO/Chairman |
| ---------------------------------------- |
| Name H.T. Patel |
| ------------------------------------------ |

**APA#28**

**ASSET PURCHASE AGREEMENT**

This Asset Purchase Agreement (this Agreement) is made as of October 17, 2012,

by and between Sell-It-All Ltd., an Alberta corporation (Seller) with offices XXX, Canada

and Over90 Inc., a Nevada corporation, with offices XXX, USA, or its assigns (Buyer).

In this Agreement,

(i) the Buyer and the Seller are sometimes called the Parties, and

(ii) the Buyer's acquisition of the Assets is sometimes called the Transaction. Capitalized terms that are not defined elsewhere in this Agreement are defined in Section 12. The Seller desires to sell to Buyer, and Buyer desires to purchase from the Seller, for the consideration and on the terms set forth in this Agreement. In consideration of the mutual covenants of the parties set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

**1. SALE AND TRANSFER OF ASSETS;**

**CLOSING 1.1 ASSETS AND ASSUMED LIABILITIES**

(a) Subject to the terms and conditions of this Agreement, at the Closing the Seller will sell, transfer, and convey to Buyer, free and clear of any Encumbrances, and Buyer will purchase from the Seller, all right, title and interest of Seller in those assets of Seller as follows:

(i) all items described in Schedule 1.1(a);

(ii) INTENTIONALLY OMITTED;

(iii) all Governmental Authorizations and all pending applications therefor or renewals thereof, in each case to the extent transferable to Buyer;

(iv) all data and Records related to the Assets of Seller, including client and customer lists and Records, referral sources, research and development reports and Records, production reports and Records, service and warranty Records, equipment logs, operating guides and manuals, financial and accounting Records, creative materials, advertising materials, promotional materials, studies, reports, correspondence and other similar documents and Records and, subject to Legal Requirements, copies of all personnel Records and other Records;

(v) all of the intangible rights and property of Seller relating to the Assets, including Intellectual Property Rights listed in Schedule 2.6(a), and the Software and Patent as listed in Schedule 2.6(c);

(vi) all insurance benefits, including rights and proceeds, arising from or relating to the Assets; and

(vii) all claims of Seller against third parties relating to the Assets, whether choate or inchoate, known or unknown, contingent or noncontingent, including all such claims listed in Schedule 2.4; 1 All of the property and assets to be transferred to Buyer hereunder are herein referred to collectively as the "Assets.".

(b) Subject to the terms and conditions of this Agreement, at the Closing the Buyer will not assume any of the Sellers liabilities and obligations, except to the extent such liabilities and obligations are specifically set forth in Schedule 1.1(b) hereto (collectively, the Assumed Obligations). Notwithstanding anything to the contrary above, Buyer will not assume any liabilities or obligations of the Seller if the existence of such liabilities or obligations either are, or give rise to or result from, facts or circumstances that constitute a misrepresentation or breach of the representations and warranties in this Agreement. The Assumed Obligations are the only liabilities and obligations of the Seller that Buyer will assume in connection with the Contemplated Transactions.

**1.2 PURCHASE PRICE**

The purchase price (the Purchase Price) for the Assets will be paid in the form of Five Million (5,000,000) shares (the Purchase Shares) of Common Stock of Buyer, $0.0001 par value per share as set forth in the following schedule, which Purchase Shares shall be due and delivered to Seller at the Closing: (a) Three million (3,000,000) of the Purchase Shares to Seller; and (b) Two million (2,000,000) of the Purchase Shares pro rata to the Bond Holders as per Schedule 1.1(b).

**2. REPRESENTATIONS AND WARRANTIES OF THE SELLER**

The Seller represents and warrants to Buyer as follows:

**2.1 ORGANIZATION AND GOOD STANDING** The Seller is a corporation duly organized, validly existing, and in good standing under the laws of the Province of Alberta, with full power and authority to conduct its business as it is now being conducted, to own, hold under lease, or otherwise possess or use the properties and assets that it purports to own, hold under lease, or otherwise possess or use, and to perform all its obligations under the Contracts.

**2.2 AUTHORITY; NO CONFLICT**

(a) This Agreement and Sellers Closing Documents constitute the legal, valid, and binding obligation of the Seller, enforceable against the Seller in accordance with its terms. The Seller has the absolute and unrestricted right, power, authority, and capacity to execute and deliver this Agreement and Sellers Closing Documents and to perform its obligations under this Agreement and Sellers Closing Documents. Each person signing this Agreement and Sellers Closing Documents on behalf of Seller has all requisite legal authority to execute and deliver this Agreement and Sellers Closing Documents.

(b) Neither the execution and delivery of this Agreement or Sellers Closing Documents, nor the consummation or performance of any of the Contemplated Transactions will, directly or indirectly:

(i) contravene, conflict with, or result in (with or without notice or lapse of time) a violation or breach of (A) any provision of the organizational documents of the Seller, (B) any 2 resolution adopted by the board of directors (or any Person or group of Persons exercising similar authority), (C) any Legal Requirement or any Order to which the Seller may be subject, or give any Governmental Body or other Person the right (with or without notice or lapse of time) to challenge any of the Contemplated Transactions or to exercise any remedy or obtain any relief under any such Legal Requirement or Order; (D) any of the terms or requirements of, or give any Governmental Body the right (with or without notice or lapse of time) to revoke, withdraw, suspend, cancel, terminate, or modify, any Governmental Authorization that is held by the Seller or that otherwise relates to the Sellers business or any of the Assets, or (E) any provision of, or give any Person the right (with or without notice or lapse of time) to declare a default or exercise any remedy under, including the release of any asset or property of the Seller held in escrow, or to accelerate the maturity or performance of, or to cancel, terminate, or modify, any Contract;

(ii) cause Buyer or the Seller to become subject to, or to become liable for the payment of, any tax or cause any of the Assets to be reassessed or revalued by any taxing authority or other Governmental body;

(iii) result in (with or without notice or lapse of time) the imposition or creation of any Encumbrance upon or with respect to any of the Assets; or (iv) require any notice to or Consent from any Person, except as set forth on Schedule 2.2 hereto.

**2.3 TITLE TO PROPERTIES; ENCUMBRANCES** The Seller has good, sole and marketable right, title and interest to the Assets, free and clear of any Encumbrances. The Seller has the right to convey, and upon the consummation of the transactions contemplated by this Agreement, the Seller will have conveyed and Buyer will be vested with, good and marketable title and interest in and to the Assets, free and clear of all Encumbrances. The Seller has not infringed, and is not infringing, on any copyright, patent, intellectual property right, or Trade Secret of another person. Schedule 2.3 hereto lists all employees and agents of the Seller who participated, in the development of any software, method or idea of or material to the business of the Seller which may be protected or restricted by any copyright, patent or similar law (collectively, the Applications) or any portion thereof or performed any work related to any Applications (such persons are collectively referred to as the Application Developers). Each Application Developer made his contribution to the Applications (a) within the scope of engagement with the Seller, as a work made for hire, and was directed by the Seller to work on the Applications or (b) pursuant to a consulting or other arrangement with the Seller and has assigned all his right, title and interest to the Applications to the Seller. The Applications and every portion thereof are an original creation of the Seller but may contain source code or portions of source code (including any canned program) created by parties other than the Application Developers which are legal for use by Seller and can be legally transferred to Buyer. No government funding or university or college facilities were used in the development of any Applications, and, except for Applications developed pursuant to an Applicable Contract, the Applications were not developed pursuant to a Contract with any person or entity. There are no restrictions on the ability of the Seller (or any successor or assignee of the Seller) to use or otherwise exploit any Applications, and such use or exploitation does not and will not obligate the Seller (or any successor or assign of the Seller, including Buyer) to pay any royalty, fee, or other compensation to any person or entity. Schedule 2.3 hereto contains a complete list of all third party software which is a component of or incorporated in or specifically required to develop or support any of the Sellers products (Embedded Products), and a list of any restrictions on the Sellers unrestricted right to use, incorporate or distribute the Embedded Products. The Seller is not in violation of any license, sublicense or agreement with respect to an Embedded Product. Neither the Seller nor any Representative has received any notice from any Person that is contrary to any of the foregoing representations.

**2.4 LEGAL PROCEEDINGS; ORDERS** Except as set forth on Schedule 2.4 hereto, there is no claim, counter-claim, action, suit, order, proceeding or investigation pending or, to the best knowledge of the Seller formed after due investigation, threatened against or involving the Seller (or pending or threatened against any of the officers, directors or key employees of the Seller), its business or the Assets, or relating to the transactions contemplated hereby, before any court, agency or other governmental body; nor is there any reasonable basis for any such claim, action, suit, proceeding or governmental investigation. The Seller is not subject to or affected by any Order. The Seller has not received any opinion or memorandum or legal advice from legal counsel retained by them to the effect that Seller or any of its employees or agents, from a legal standpoint, to any liability which may be material to the Sellers business or the Assets. The Seller is not engaged in any legal action to recover monies due it or for damages sustained by it.

**2.5 INTENTIONALLY OMITTED**

**2.6 INTELLECTUAL PROPERTY**

(a) Schedule 2.6(a) hereto contains a true and complete list of all copyrights, trademarks, service marks, trade names, patents, patent applications, business names, domain names and other similar intangible property rights and interests (hereinafter sometimes individually and collectively referred to as the Intellectual Property Rights) applied for, issued to or owned by the Seller and which comprise or relate to the Assets, under which the Seller is licensed or franchised, or used in the conduct of the Sellers business as it relates to the Assets, all of which are valid and in good standing and uncontested, except as disclosed on Schedule 2.6(a) hereto. The Seller has delivered to Buyer copies of all documents establishing the Intellectual Property Rights. Except as disclosed on Schedule 2.6(a) hereto, the Seller is not infringing upon or otherwise acting adversely to any Intellectual Property Right owned by any person or persons, and there is no such claim or action pending, or to the best knowledge of the Seller formed after due investigation, threatened with respect thereto. The Seller has no knowledge that any Person is infringing on any Intellectual Property Right of the Seller.

(b) The Seller has taken all reasonable security measures to protect the secrecy, confidentiality, and value of the Trade Secrets, and any other persons who have knowledge of or access to information relating to the Trade Secrets have been put on notice and, if appropriate, have entered into agreements that the Trade Secrets are proprietary to the Seller and are not to be divulged or misused. All of the Trade Secrets are presently valid and protectable, are not part of the public domain, and have not been used, divulged, or appropriated for the benefit of any persons other than the Seller or to the detriment of the Seller. The Seller has no knowledge that any Person is infringing on any Trade Secret of the Seller.

(c) Schedule 2.6(c) hereto contains a complete and accurate list of all software developed by the Seller for itself or for third parties (the Software) which comprises or relates to the Assets. Except for Software developed pursuant to Applicable Contracts, the Seller is in actual and sole possession of the complete source code of the Software and all Design Documentation. Except as set forth in Schedule 2.6(c) hereto there are no defects in any Software, and there are no errors in any Design Documentation, which defects or errors would in any material respect affect the use of any Software or the functioning of any Software in accordance with the specifications for the Software published by the Seller or its 4 customers, the Software has all the features described in the Design Documentation for that Software and materials made available to the Sellers customers, and the Software does not contain any back door, time bomb, Trojan horse, worm, drop dead device, virus (as these terms are commonly used in the computer software industry), or other software routines or hardware components designed to permit unauthorized access, to disable or erase software, hardware, or data, or to perform any other similar type of functions. The Seller has delivered to Buyer complete and accurate records of the Seller with respect to Software fixes (including fixes currently in progress), problem lists, maintenance of the Software, and customer complaints, and all warranty claims (including any pending claims) related to the Software are described in Schedule 2.6(c) hereto. Except as set forth in Schedule 2.6(c) hereto, the Seller has made no representations and warranties with respect to the Software.

**2.7 DISCLOSURE**

(a) No representation or warranty of the Seller in this Agreement or Sellers Closing Documents omits to state a material fact necessary to make the statements herein or therein, in light of the circumstances in which they were made, not misleading.

(b) No notice given pursuant to Section 4.2 will contain any untrue statement or omit to state a material fact necessary to make the statements therein or in this Agreement, in light of the circumstances in which they were made, not misleading.

(c) In the event of any inconsistency between the statements in the body of this Agreement and those in any Schedule hereto or any of Sellers Closing Documents (other than an exception expressly set forth as such in a particular Schedule or Seller Closing Document with respect to a specifically identified representation or warranty), the statements in the body of this Agreement will control.

**2.8 BROKERS OR FINDERS**

Seller has not incurred any obligation or liability, contingent or otherwise, for brokerage or finders fees or agents commissions or other similar payment in connection with this Agreement or any transaction contemplated hereby.

**2.9 OWNERS; SECURITY INTERESTS .** There are no outstanding warrants, options, commitments or rights of any kind to acquire from the Seller any equity or other security interest in the Seller of any kind that would affect the Assets.

**2.10 INTENTIONALLY OMITTED.**

**2.11 OPERATIONS SINCE** August 15, 2012

(a) Since August 15, 2012, there has been (i) no material adverse change in the Assets (individually or in aggregate), or the operations of the Seller related thereto, no fact or condition exists or is contemplated or threatened which might reasonably be expected to cause such a change in the future other than Buyers purchase and use of the Assets and conditions attributable to the overall economy and software business in general and (ii) no damage, destruction, loss or claim, whether or not covered by insurance, or condemnation or other taking, adversely affecting, in any material respect, the Assets or the operations of the Seller related thereto.

(b) Since August 15, 2012, the Seller has conducted its business as it relates to the Assets in the ordinary course consistent with existing operating procedures and practices. Without limiting the generality of the foregoing, since August 15, 2012, except as set forth on Schedule 2.11(b), the Seller has not:

(i) sold, leased, transferred or otherwise disposed of (except in the Ordinary Course of Business), or mortgaged or pledged, or imposed or suffered to be imposed by lien, charge or encumbrance on, any of the Assets;

(ii) canceled any debts owed to, or claims held by the Seller as relates to the Assets (including the settlement of any claims or litigation) other than in the Ordinary Course of Business consistent with past practice;

(iii) canceled or terminated any material contact, relationship, lease or agreement or entered into and become bound by any material contract, relationship, lease or agreement as relates to the Assets;

(iv) delayed payment of any account payable or other liability related to the Assets beyond its due date or the date when such liability would have been paid in the Ordinary Course of Business consistent with the past practice;

(v) entered into, amended, waived or declared (or received a declaration of) default under any Applicable Contract;

(vi) made any distribution or other payment to any equity owner of any Asset; or

(vii) made any agreements, written or oral, to perform any of the above, other than this Agreement.

**2.12 NO UNDISCLOSED LIABILITIES** The Seller is not subject to any liability, commitment or obligation (including unasserted claims whether known or unknown), whether absolute, contingent, accrued or otherwise, which relates to the Assets.

**2.13 TAXES**

The Seller has and will timely file all required federal, state, county and local income, excise, withholding, property, sales, use, franchise and other tax returns, declarations and reports which are required to be filed on or before the date hereof and the Closing, and has paid or reserved for all taxes which have become due pursuant to such returns or pursuant to any assessment which has become payable. All monies required to be withheld by the Seller from employees for income taxes, social security, workmens compensation, unemployment insurance and other payroll taxes have been collected or withheld, and either paid to the respective governmental agencies, set aside in accounts for such purposes, or accrued, reserved against and entered upon the books of the Seller. The returns, declarations and reports referred to in the previous sentences of this Section 2.13 are or will be true and correct and reflect or will reflect accurately all taxable income or tax liabilities for the periods covered thereby. The Seller has not received a notice that any examination of or proceeding with respect to any tax return or report has been Scheduled or conducted. There are no outstanding agreements or waivers extending the statutory period of limitations applicable to any tax return of the Seller.

**3. REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer hereby represents and warrants to the Seller as follows:

**3.1 ORGANIZATION AND GOOD STANDING** Buyer is a corporation duly organized, validly existing, and in good standing under the laws of the State of Nevada, its state of incorporation.

**3.2 AUTHORITY; NO CONFLICT**

(a) This Agreement and Buyers Closing Documents constitute the legal, valid, and binding obligation of Buyer, enforceable against Buyer in accordance with their terms. Buyer has the absolute and unrestricted right, power, and authority to execute and deliver this Agreement and Buyers Closing Documents and to perform its obligations under this Agreement and Buyers Closing Documents.

(b) Neither the execution and delivery of this Agreement and Buyers Closing Documents by Buyer nor the consummation or performance of any of the Contemplated Transactions by Buyer will give any Person the right to prevent, delay, or otherwise interfere with any of the Contemplated Transactions pursuant to:

(i) any provision of Buyers charter documents or bylaws;

(ii) any resolution adopted by the board of directors or the stockholders of Buyer;

(iii) any Legal Requirement or Order to which Buyer may be subject; or

(iv) any Contract to which Buyer is a party or by which Buyer may be bound. Buyer is not required to give any notice to or obtain any Consent from any Person in connection with the execution and delivery of this Agreement by Buyer or the consummation or performance of any of the Contemplated Transactions by Buyer.

**3.3 CERTAIN PROCEEDINGS** There is no pending Proceeding that has been commenced against Buyer and that challenges, or may have the effect of preventing, delaying, making illegal, or otherwise interfering with, any of the Contemplated Transactions. To Buyers knowledge, no such Proceeding has been threatened (orally or in writing).

**3.6 BROKERS OR FINDERS** Buyer and its officers and agents have incurred no obligation or liability, contingent or otherwise, for brokerage or finders fees or agents commissions or other similar payment in connection with this Agreement or any transaction contemplated hereby.

**4. COVENANTS OF THE SELLER**

**4.1 PRESERVE ACCURACY OF REPRESENTATIONS AND WARRANTIES** The Seller shall not take any action which would render any representation, warranty or covenant contained in Section 2 of this Agreement inaccurate as of the Closing Date. Not in limitation of the foregoing, between the date of execution of this Agreement and the Closing Date, Seller shall not, without the prior written approval of Buyer:

(a) enter into any Contract that would affect the Assets, including but not limited to issuing any release or dissolve any non-competition or disclosure agreement related to the Seller or the Assets,

(b) materially change prices, billing practices or rates related to the Assets,

(c) change salaries, bonuses or compensation structure of any employee,

(d) issue any option, commitment or right of any kind to acquire from the Seller any security interest or other interest in the Seller of any kind that might affect or encumber any of the Assets,

(e) merge, liquidate, consolidate, reorganize or change the organic structure of the Seller in such a manner that might affect or encumber any of the Assets,

(f) make any distribution or enter into any transaction that might affect or encumber any of the Assets, or

(g) make any commitment or agreement with respect to the any of foregoing.

**4.2 NOTIFICATION** Between the date of this Agreement and the Closing Date, the Seller will promptly notify Buyer in writing if the Seller becomes aware of any fact or condition that causes or constitutes a misrepresentation or breach of any of the Sellers representations and warranties as of the date of this Agreement, or if the Seller becomes aware of the occurrence after the date of this Agreement of any fact or condition that would cause or constitute a misrepresentation or breach of any such representation or warranty had such representation or warranty been made as of the time of occurrence or discovery of such fact or condition. During the same period, the Seller will promptly notify Buyer of the occurrence of any breach of any covenant of the Seller in this Section 4 or of the occurrence of any event that may make the satisfaction of the conditions in Section 6 impossible or unlikely.

**4.3 BEST EFFORTS** Between the date of this Agreement and the Closing Date, the Seller will use its best efforts to cause the conditions in Section 6 to be satisfied.

**4.4 ACCESS AND INVESTIGATION** During the period from the date of this Agreement to the Closing Date, the Seller will

(i) afford Buyer and its Representatives full and free access to the Sellers personnel, properties, contracts, books and records, and other documents and data which constitute or relate to the Assets,

(ii) furnish Buyer and its Representatives with copies of all such contracts, books and records, and other existing documents and data as Buyer may reasonably request which constitute or relate to the Assets, and

(iii) furnish Buyer and its Representatives with such additional financial, operating, and other data and information which constitute or relate to the Assets as Buyer may reasonably request.

**4.5 ASSIGNMENT OF CONSULTING SERVICES** To facilitate the orderly transfer of the Assets, concurrent with the execution of this Agreement, Charles Zuman will enter into a Consulting Services Agreement with Buyer providing services to Buyer to facilitate the orderly transfer of assets and unencumbered use thereof.

**4.6 NONCOMPETITION, NONSOLICITATION AND NONDISPARAGEMENT**

(a) Noncompetition. For a period of two (2) years after the Closing Date, Seller shall not, anywhere in North America, directly or indirectly invest in, own, manage, operate, finance, control, advise, render services to or guarantee the obligations of any Person engaged in or planning to become engaged in the online contesting business, provided, however, that Seller may purchase or otherwise acquire up to (but not more than) 4.99% of any class of the securities of any Person (but may not otherwise participate in the activities of such Person) if such securities are listed on any national or regional securities exchange or have been registered under Section 12(g) of the Exchange Act.

(b) Nonsolicitation. For a period of two (2) years after the Closing Date, Seller shall not, directly or indirectly:

(i) solicit the business of any Person who is a customer of Buyer;

(ii) cause, induce or attempt to cause or induce any customer, supplier, licensee, licensor, franchisee, employee, consultant or other business relation of Buyer to cease doing business with Buyer, to deal with any competitor of Buyer or in any way interfere with its relationship with Buyer;

(iii) cause, induce or attempt to cause or induce any customer, supplier, licensee, licensor, franchisee, employee, consultant or other business relation of Seller on the Closing Date or within the year preceding the Closing Date to cease doing business with Buyer, to deal with any competitor of Buyer or in any way interfere with its relationship with Buyer; or

(iv) hire, retain or attempt to hire or retain any employee or independent contractor of Buyer or in any way interfere with the relationship between Buyer and any of its employees or independent contractors.

(c) Nondisparagement. After the Closing Date, Seller will not disparage Buyer or any of Buyer's shareholders, directors, officers, employees or agents.

(d) Modification of Covenant. If a final judgment of a court or tribunal of competent jurisdiction determines that any term or provision contained in Section 4.6(a) through (c) is invalid or unenforceable, then the parties agree that the court or tribunal will have the power to reduce the scope, duration or geographic area of the term or provision, to delete specific words or phrases or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision. This Section 4.6 will be enforceable as so modified after the expiration of the time within which the judgment may be appealed. This Section 4.6 is reasonable and necessary to protect and preserve Buyer's legitimate business interests and the value of the Assets and to prevent any unfair advantage conferred on Seller.

**5. COVENANTS OF BUYER**

**5.1 PRESERVE ACCURACY OF REPRESENTATIONS AND WARRANTIES** The Buyer shall refrain from taking any action which would render any representation, warranty or covenant contained in Section 3 of this Agreement inaccurate as of the Closing Date

**5.2 NOTIFICATION**

Between the date of this Agreement and the Closing Date, the Buyer will promptly notify the Seller in writing if the Buyer becomes aware of any fact or condition that causes or constitutes a misrepresentation or breach of any of the Buyers representations and warranties as of the date of this Agreement, or if the Buyer becomes aware of the occurrence after the date of this Agreement of any fact or condition that would cause or constitute a misrepresentation or breach of any such representation or warranty had such representation or warranty been made as of the time of occurrence or discovery of such fact or condition.

**5.3 BEST EFFORTS** Between the date of this Agreement and the Closing Date, Buyer will use its best efforts to cause the conditions in Section 7 to be satisfied.

**6. CONDITIONS PRECEDENT TO BUYERS OBLIGATION TO CLOSE**

Buyers obligation to purchase the Assets and to take the other actions required to be taken by Buyer at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Buyer, in whole or in part):

**6.1 ACCURACY OF REPRESENTATIONS** Each of the Sellers representations and warranties in this Agreement and Sellers Closing Documents must have been accurate in all respects as of the date of this Agreement, and must be accurate in all respects as of the Closing Date as if made on the Closing Date.

**6.2 THE SELLERS PERFORMANCE**

(a) Each of the covenants and obligations that the Seller is required to perform or to comply with pursuant to this Agreement and Sellers Closing Documents at or prior to the Closing must have been duly performed and complied with in all material respects.

(b) The Seller must have delivered to Buyer Sellers Closing Documents and each of the documents and items required to be delivered by the Seller pursuant to Section 9.2, and each of the other covenants and obligations in Section 4.1 and Section 4.3 must have been performed and complied with in all respects.

**6.3 CONSENTS** Each of the Consents identified in Schedule 2.2 hereto must have been obtained and must be in full force and effect.

**6.4 NO PROCEEDINGS** Since the date of this Agreement, there must not have been commenced or threatened (orally or in writing) against Buyer, or against any Related Person of Buyer, any material Proceeding (a) involving any challenge to, or seeking damages or other relief in connection with, any of the Contemplated Transactions, or (b) that may have the effect of preventing, delaying, making illegal, or otherwise interfering with any of the Contemplated Transactions.

**6.5 NO CLAIM REGARDING ASSETS OR SALE PROCEEDS**

There must not have been made or threatened (orally or in writing) by any Person any claim asserting that such Person

(a) has the right to acquire or obtain any interest in the Assets, or

(b) is entitled to all or any portion of the Purchase Price payable for the Assets.

**6.6 NO PROHIBITION** Neither the consummation nor the performance of any of the Contemplated Transactions by the Seller will, directly or indirectly (with or without notice or lapse of time), materially contravene, or conflict with, or result in a material violation of, or cause Buyer or any Person affiliated with Buyer to suffer any material adverse consequence under,

(i) any applicable Legal Requirement or Order, or

(ii) any Legal Requirement or Order that has been published, introduced, or otherwise formally proposed by or before any Governmental Body.

**6.7 DUE DILIGENCE** Buyer has satisfactorily completed its due diligence investigation relating to the Assets.

**7. CONDITIONS PRECEDENT TO SELLERS OBLIGATION TO CLOSE**

The Sellers obligation to sell the Assets and to take the other actions required to be taken by the Seller at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by the Seller, in whole or in part):

**7.1 ACCURACY OF REPRESENTATIONS** Each of Buyers representations and warranties in this Agreement and Buyers Closing Documents must have been accurate in all respects as of the date of this Agreement and must be accurate in all respects as of the Closing Date as if made on the Closing Date.

**7.2 BUYERS PERFORMANCE**

(a) Each of the covenants and obligations that Buyer is required to perform or to comply with pursuant to this Agreement and Buyers Closing Documents at or prior to the Closing must have been performed and complied with in all material respects.

(b) Buyer must have delivered to the Seller each of the documents and payments required to be delivered by Buyer pursuant to Section 9.2.

**7.3 NO PROCEEDINGS** Since the date of this Agreement, there must not have been commenced or threatened (orally or in writing) against the Seller, or against any Related Person of Seller, any material Proceeding (a) involving any challenge to, or seeking damages or other relief in connection with, any of the Contemplated Transactions, or (b) that may have the effect of preventing, delaying, making illegal, or otherwise interfering with any of the Contemplated Transactions.

**7.4 NO PROHIBITION**

Neither the consummation nor the performance of any of the Contemplated Transactions by the Seller will, directly or indirectly (with or without notice or lapse of time), materially contravene, or 11 conflict with, or result in a material violation of, or cause the Seller or any Related Person of Seller to suffer any material adverse consequence under,

(i) any applicable Legal Requirement or Order, or

(ii) any Legal Requirement or Order that has been published, introduced, or otherwise formally proposed by or before any Govern mental Body.

**8. TERMINATION**

**8.1 TERMINATION EVENTS** This Agreement may, by written notice given prior to or at the Closing, be terminated:

(a) by either Buyer or the Seller if a material breach of any provision of this Agreement has been committed by the other party and such breach has not been waived;

(b) either

(i) by Buyer if any of the conditions in Section 6 has not been satisfied as of the Closing Date or if satisfaction of such a condition is or becomes impossible (other than through the failure of Buyer to comply with its obligations under this Agreement) and Buyer has not waived such condition on or before the Closing Date; or

(ii) by the Seller, if any of the conditions in Section 7 has not been satisfied as of the Closing Date or if satisfaction of such a condition is or becomes impossible (other than through the failure of the Seller to comply with its obligations under this Agreement) and the Seller has not waived such condition on or before the Closing Date; or (c) by mutual consent of Buyer and the Seller.

**8.2 EFFECT OF TERMINATION** Each partys right of termination under Section 8.1 is in addition to any other rights it may have under this Agreement or otherwise, and the exercise of a right of termination will not be an election of remedies. If this Agreement is terminated pursuant to Section 8.1, all further obligations of the parties under this Agreement will terminate, except that the obligations in Sections 13.1, 13.5 and 13.9 will survive; provided, however, that if this Agreement is terminated by a party because of the breach of the Agreement by the other party or because one or more of the conditions to the terminating partys obligations under this Agreement is not satisfied as a result of the other partys failure to comply with its obligations under this Agreement, the terminating partys right to pursue all legal remedies will survive such termination unimpaired.

**9. CLOSING**

**9.1 CLOSING DATE** The purchase and sale (the Closing) provided for in this Agreement will take place at the offices of Buyer at 10:00 a.m. (local time) on or before October 31, 2012 (the Closing Date), or at such other time and place as the parties may agree. Subject to the provisions of Section 8, failure to consummate the purchase and sale provided for in this Agreement on the Closing Date will not result in the termination of this Agreement and will not relieve any party of any obligation under this Agreement.

**9.2 CLOSING DELIVERIES** At the Closing:

(a) The Seller will deliver to Buyer:

(i) such bills of sale, assignments, and other good and sufficient instruments of conveyance as are necessary to vest Buyer with good title to the Assets;

(ii) all Design Documentation, any lists of prospective customers, and any problem lists;

(iii) all copies of the source code for the Software and all copies of the Software in machine-readable form that are in the possession of the Seller;

(iv) all of the Sellers business Records related to the Assets (to the extent not previously delivered to Buyer);

(v) a certificate executed by the Chief Executive Officer of the Seller to the effect that (A) each of the Sellers representations and warranties in this Agreement and Sellers Closing Documents was accurate in all respects as of the date of this Agreement and is accurate in all respects as of the Closing Date as if made on the Closing Date (giving full effect to any supplements to any Schedule hereto that were delivered by the Seller to Buyer prior to the Closing Date in accordance with Section 4.2), and (B) the Seller has performed and complied with all covenants and conditions required to be performed or complied with by it prior to or at the Closing;

(vi) a copy of resolutions of the Sellers board of directors, executed after review by them of the information described in Section 11, as authorizing and approving the Sellers execution and delivery of this Agreement and consummation of the Contemplated Transactions; and

(vii) such other documents, instruments, certificates and opinions as Buyer may reasonably request for the purpose of consummating the Contemplated Transactions.

(viii) debt conversion agreements signed by the Bond Holders identified in Schedule 1.1(b) to convert their debt into 2,000,000 Purchase Shares. (b) Buyer will deliver to the Seller:

(viii) share certificates representing the Purchase Shares.

**10. INDEMNIFICATION; REMEDIES**

**10.1 SURVIVAL** All representations and warranties in this Agreement, the Buyers Closing Documents, the Sellers Closing Documents and any other certificate or document delivered pursuant to this Agreement will survive the Closing. The right to indemnification, reimbursement or other remedy based on such representations and warranties will not be affected by any investigation conducted by Buyer or its agents. Notwithstanding the foregoing,

(a) all representations and warranties shall continue in effect if a claim for breach thereof has been made prior to the expiration of the applicable survival period and shall survive until such claim is resolved and

(b) any representation or warranty of which either the Seller or any Representative had knowledge of a misrepresentation or breach at any time prior to the date on which such representation or warranty is made shall survive indefinitely.

**10.2 INDEMNIFICATION AND REIMBURSEMENT BY THE SELLER** The Seller will indemnify and hold harmless Buyer and its employees, officers, directors, stockholders, controlling persons, and affiliates (collectively, the Indemnified Persons), and will reimburse the Indemnified Persons, for any loss, liability, claim, damage, expense (including costs of investigation and defense and reasonable attorneys fees) or diminution of value, but excluding consequential or punitive damages, whether or not involving a third-party claim (collectively, Damages), arising from or in connection with:

(a) any material misrepresentation or breach of any representation or warranty made by the Seller in or pursuant to this Agreement, the Sellers Closing Documents, or any other certificate or document delivered by the Seller pursuant to this Agreement;

(b) any non-compliance with or breach by the Seller of any covenant or obligation of the Seller in this Agreement;

(c) (i) the operation of the Sellers business (including the development, manufacture, sale, shipment, license or use of the Software or other product of, or services provided by, the Seller) prior to the Closing Date, or (ii) any liabilities or obligations of the Seller other than the Assumed Obligations; or

(d) any claim by any Person for brokerage or finders fees or commissions or similar payments based upon any agreement or understanding alleged to have been made by any such Person with the Seller (or any Person acting on its behalf) in connection with any of the Contemplated Transactions.

**10.3 INDEMNIFICATION AND REIMBURSEMENT BY BUYER** Buyer shall indemnify and hold harmless the Seller, and will reimburse the Seller, for any Damages arising from or in connection with:

(a) any claim by any Person arising from the Buyers ownership or utilization of the Assets after the Closing Date (except to the extent such claim relates to a matter for which Buyer is entitled to indemnification pursuant to Section 10.2); or

(b) any claim by any Person for brokerage or finders fees or commissions or similar payments based upon any agreement or understanding alleged to have been made by such Person with Buyer (or any Person acting on its behalf) in connection with any of the Contemplated Transactions.

**10.4 RIGHT OF SETOFF** Upon notice to the Seller specifying in reasonable detail the damages which are the basis for any such set-off, Buyer may set off an amount equal to the known or reasonably anticipated Damages to which it may be entitled under this Section 10 against amounts otherwise payable under Section 1.2. Neither the exercise of nor the failure to exercise such right of set-off will constitute an election of remedies or limit Buyer in any manner in the enforcement of any other remedies that may be available to it.

**10.5 PROCEDURE FOR INDEMNIFICATIONTHIRD PARTY CLAIMS**

(a) Promptly after receipt by an indemnified party under Section 10.2 or 10.3 of notice of a claim against it (a Claim), the indemnified party will, if a claim is to be made against an indemnifying party under such Section, give notice to the indemnifying party of the Claim, but the failure to notify the indemnifying party will not relieve the indemnifying party of any liability that it may have to any indemnified party, except to the extent that the indemnifying party demonstrates that the defense of such action is prejudiced by the indemnified partys failure to give such notice.

(b) If any Claim referred to in Section 10.5(a) is made against an indemnified party and it gives notice to the indemnifying party of the Claim, the indemnifying party will, unless the Claim involves tax liabilities, be entitled to participate in the defense of the Claim and, to the extent that it wishes (unless (i) the indemnifying party is also a party to the Claim and the indemnified party determines in good faith that joint representation would result in a conflict of interest, or

(ii) the indemnifying party fails to provide reasonable assurance to the indemnified party of its financial capacity to defend the Claim and provide indemnification with respect to the Claim), to assume the defense of the Claim with counsel satisfactory to the indemnified party and, after notice from the indemnifying party to the indemnified party of its election to assume the defense of the Claim, the indemnifying party will not, as long as it diligently conducts such defense, be liable to the indemnified party under such Section for any fees of other counsel or any other expenses with respect to the defense of the Claim in each case subsequently incurred by the indemnified party in connection with the defense of the Claim, other than reasonable costs of investigation. If the indemnifying party assumes the defense of a Claim, (a) no compromise or settlement of such claims may be effected by the indemnifying party without the indemnified partys consent unless

(i) there is no finding or admission of any violation of Legal Requirements or any violation of the rights of any Person and no effect on any other Claims that may be made against the indemnified party, and (ii) the sole relief provided is monetary damages that are paid in full by the indemnifying party; and (b) the indemnifying party will have no liability with respect to any compromise or settlement of such claims effected without its consent. If notice is given to an indemnifying party of a Claim and the indemnifying party does not, within ten days after the indemnified partys notice is given, give notice to the indemnified party of its election to assume the defense of the Claim, the indemnifying party will be bound by any determination with respect to the Claim or any compromise or settlement effected by the indemnified party.

(c) Notwithstanding the foregoing, if an indemnified party determines in good faith that there is a reasonable probability that a Claim may adversely affect it or its Related Persons other than as a result of monetary damages for which it would be entitled to indemnification under this Agreement, the indemnified party may, by notice to the indemnifying party, assume the exclusive right to defend, compromise, or settle the Claim, but the indemnifying party will not be bound by any determination of a Claim so defended or any compromise or settlement effected without its consent (which may not be unreasonably withheld).

(d) The Seller and Buyer hereby consent to the non-exclusive jurisdiction of any court in which a Claim is brought against any indemnified person for purposes of any claim that an indemnified party may have under this Agreement with respect to such Claim or the matters alleged therein, and agree that process may be served on the Seller and Buyer with respect to such a claim anywhere in the world.

**10.6 PROCEDURE FOR INDEMNIFICATIONOTHER CLAIMS** A claim for indemnification for any matter not involving a third-party claim may be asserted by notice to the party from whom indemnification is sought.

**11. SECURITIES LAW MATTERS**

The Seller and Buyer agree as follows with respect to the purchase and the sale or other disposition of the Purchase Shares by the Seller after the Closing:

**11.1 ACQUISITION AND DISPOSITION OF PURCHASE** SHARES The Seller represents and warrants that the Seller:

(a) was provided the opportunity to ask questions of and receive answers from Buyer, or its representative, concerning the operations, business and financial condition of Buyer, and all such questions have been answered to his full satisfaction and any information necessary to verify such responses has been made available to Seller;

(b) has received such documents, materials and information as he deems necessary or appropriate for evaluation of Purchase Shares, and further confirms that Seller has carefully read and understands these materials and has made such further investigation as was deemed appropriate to obtain additional information to verify the accuracy of such materials;

(c) confirms that Purchase Shares were not offered to Seller by any means of general solicitation or general advertising;

(d) and its managing representatives have such knowledge and experience in financial and business matters that they are capable of evaluating the merits and risks of an investment in the Purchase Shares;

(e) is acquiring the Purchase Shares for its own account, for investment purposes only, and not with a view towards the sale or other distribution thereof, in whole or in part, and understands and agrees that the Purchase Shares will be restricted securities subject to the restrictions on resale set forth in Rule 502(d) of Regulation D as promulgated by the U.S. Securities and Exchange Commission and, as such, may not be resold without registration under the Securities Act of 1933, as amended, or pursuant to an exemption therefrom.

**12. DEFINITIONS**

For purposes of this Agreement, the following terms have the meanings specified:

Applicable Contract any Contract which relates directly or indirectly to the Assets or to services rendered to or by or to be rendered to or by the Seller.

Buyers Closing Documents the documents to be delivered by Buyer to the Seller pursuant to Section 9.2(b).

Closing Date the date and time as of which the Closing actually takes place. Sellers Closing Documents the documents to be delivered by the Seller to Buyer pursuant to Section 9.2(a).

Consent any approval, consent, ratification, waiver, or other authorization (including any Governmental Authorization).

Contemplated Transactions all of the transactions contemplated by this Agreement, including:

(i) the sale of the Assets by the Seller to Buyer;

(ii) the execution, delivery, and performance of the Sellers Closing Documents and Buyers Closing Documents; and

(iii) the performance by Buyer and the Seller of their respective covenants and obligations under this Agreement and the Parties respective Closing Documents as applicable.

Contract any agreement, contract, obligation, promise, or undertaking (whether written or oral and whether express or implied) that is legally binding and

(a) under which the Seller has or may acquire any rights,

(b) under which the Seller has or may become subject to any obligation or liability, or

(c) by which the Seller or any of the Assets is or may become bound.

Design Documentation all documentation, specifications, manuals, user guides, promotional material, internal notes and memos, technical documentation, drawings, flow-charts, diagrams, source language statements, demo disks, benchmark test results, and other written materials related to, associated with or used or produced in the development of the Software.

Encumbrance any claim, lien, pledge, charge, security interest, equitable interest, option, right of first refusal, condition, or other restriction or adverse claim of rights of any kind, including any restriction on use, transfer, voting (in the case of a security), receipt of income, or exercise of any other attribute of ownership.

Governmental Authorization any approval, consent, license, permit, waiver, or other authorization issued, granted, given, or otherwise made available by or under the authority of any Governmental Body or pursuant to any Legal Requirement.

Governmental Body any:

(i) nation, state, county, city, town, village, district, or other jurisdiction of any nature;

(ii) federal, state, local, municipal, foreign, or other government;

(iii) governmental or quasi-governmental authority of any nature (including any governmental agency, branch, department, official, or other entity and any court or other tribunal);

(iv) multi-national organization or body; or

(v) body exercising, or entitled or purporting to exercise, any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power of any nature. Legal Requirement any federal, state, local, municipal, foreign, or other constitution, ordinance, regulation, statute, treaty, or other law adopted, enacted, implemented, or promulgated by or under the authority of any Governmental Body or by the eligible voters of any jurisdiction, and any agreement, approval, consent, injunction, judgment, license, order, or permit by or with any Governmental Body to which the Seller is a party or by which the Seller is bound. Order any award, injunction, judgment, order, ruling, subpoena, or verdict or other decision entered, issued, made, or rendered by any court, administrative agency, or other Governmental Body or by any arbitrator.

Ordinary Course of Business an action taken by a Person will be deemed to have been taken in the Ordinary Course of Business only if:

(i) such action is consistent with the past practices of such Person and is taken in the ordinary course of the normal day-to-day operations of such Person;

(ii) such action is not required to be authorized by the board of directors of such Person (or by any

Person or group of Persons exercising similar authority); and

(iii) such action is similar in nature and magnitude to actions customarily taken, without any authorization by the board of directors (or any Person or group of Persons exercising similar authority), in the ordinary course of the normal day-to-day operations of other Persons that are in the same line of business as such Person.

Person any individual, corporation (including any non-profit corporation), general or limited partnership, limited liability Seller, joint venture, estate, trust, association, organization, or other entity or Governmental Body.

Proceeding any suit, litigation, arbitration, hearing, audit, investigation, or other action (whether civil, criminal, administrative, investigative, or informal) commenced, brought, conducted, or heard by or before, or otherwise involving, any Governmental Body or arbitrator.

Record --information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Related Person with respect to a particular individual:

(i) each other member of such individuals Family; and

(ii) any Person that is directly or indirectly controlled by any one or more members of such individuals Family. With respect to a specified Person other than an individual:

(i) any Person that, directly or indirectly, controls, is controlled by, or is under common control with such specified Person; and

(ii) each Person that serves as a director, executive officer, general partner, executor, agent, employee or trustee of such specified Person (or in a similar capacity); For purposes of this definition, the Family of an individual includes

(i) such individual,

(ii) the individuals spouse and former spouses,

(iii) any lineal ancestor descendant of the individual, or

(iv) a trust for the benefit of the foregoing. A Person will be deemed to control another Person, for purposes of this definition, if the first Person possesses, directly or indirectly, the power to direct, or cause the direction of, the management policies of the second Person, (x) through the ownership of voting securities, (y) through common directors, trustees or officers, or (z) by contract or otherwise.

Representative with respect to a particular Person, any director, officer, employee, agent, consultant, advisor, or other representative of such Person, including legal counsel, accountants, and financial advisors.

Trade Secrets all licenses, processes, algorithms, formulae, designs, methods, trade secrets, inventions, proprietary or technical information, Design Documentation and data covering or embodied in any software or other assets owned by the Seller or used in the conduct of its business.

**13. GENERAL PROVISIONS**

**13.1 EXPENSES** The Seller and Buyer will each bear their own expenses incurred in connection with the Contemplated Transactions. The Seller will pay any legal, accounting, or other expenses incurred by the Seller in connection with the Contemplated Transactions.

**13.2 NOTICES** All notices, consents, waivers, and other communications under this Agreement must be in writing and will be deemed to have been duly given

(a) when delivered by hand;

(b) when sent by facsimile transmission, provided that a copy is mailed by U.S. certified mail, return receipt requested; or

(c) one day after deposit with a nationally recognized overnight delivery service, in each case to the appropriate addresses and fax numbers set forth below (or to such other addresses and fax numbers as a party may designate by notice to the other parties):

To the Seller: Sell-It-All Inc. Attn: Charles Zuman AddressXXX, Canada

To the Buyer: Over90 Inc. Attn: Rachael Dudson ,AddressXXX, USA

With a copy to: General Counsel With a copy to: Russel Terns , Address,XXX, USA

**13.3 FURTHER ASSURANCES**

The parties agree (a) to furnish upon request to each other such further information, (b) to execute and deliver to each other such other documents, and (c) to do such other acts and things, all as the other party may reasonably request for the purpose of carrying out the intent of the Contemplated Transactions.

**13.4 WAIVER** The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither the failure nor any delay by any party in exercising any right, power, or privilege under this Agreement or the documents referred to in this Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege.

**13.5 ENTIRE AGREEMENT AND MODIFICATION** This Agreement supersedes all prior oral or written agreements between the parties with respect to its subject matter and constitutes (along with the documents referred to in this Agreement) a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter. This Agreement may not be amended except by a written agreement executed by the party to be charged with the amendment.

**13.6 ASSIGNMENTS, SUCCESSORS, AND NO THIRD-PARTY RIGHTS** Neither party may assign any of its rights under this Agreement without the prior consent of the other parties except that Buyer may assign any of its rights under this Agreement to any subsidiary of Buyer; provided, no such assignment shall relieve Buyer of its obligations under this Agreement. Subject to the preceding sentence, this Agreement will apply to, be binding in all respects upon, and inure to the benefit of the successors and permitted assigns of the parties. Nothing expressed or referred to in this Agreement will be construed to give any Person other than the parties to this Agreement any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provision of this Agreement.

**13.7 SEVERABILITY** If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

**13.8 SECTION HEADINGS, CONSTRUCTION** The headings of Sections in this Agreement are provided for convenience only and will not affect their construction or interpretation. All references to Sections refer to the corresponding Sections of this Agreement. All words used in this Agreement will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the word include or including does not limit the preceding words or terms. The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party.

**13.9 CONFIDENTIALITY OF AGREEMENT** The Seller will keep the terms of this Agreement and the other agreements contemplated by this Agreement confidential and will not, without the prior consent of Buyer, disclose such terms to any person or entity other than their accountants and attorneys who agree to be bound by this confidentiality provision, provided that this confidentiality obligation will terminate with respect to any information that becomes generally available to the public through no fault of the Seller or their accountants or attorneys or where required by law.

**13.10 GOVERNING LAW** This Agreement will be governed by and construed under the laws of the State of Nevada without regard to conflicts of laws principles.

**13.11 COUNTERPARTS** This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. IN WITNESS WHEREOF , the parties have executed this Asset Purchase Agreement as of the date first written above.

Seller Sell-It-All Inc. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: Charles Zuman Its: Chief Executive Officer Buyer Over90 Inc \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: Rachel Dudson Its: President

**APA#29**

**ASSET PURCHASE AGREEMENT**

This Asset Purchase Agreement (this " Agreement " ) is entered into by and between WUNDERLens GmbH, a German entity ( " WUNDER-L " ), WUNDERGmbH ("WUNDER" ), and WUNDERLooks GmbH ( " WUNDER-LK " ), each a German company (each, a " Seller " and collectively, the " Sellers " ) and the individual or entity owners and shareholders of each Seller (and their individual shareholders), as set forth on Schedule A hereto (each, a " Seller" ) and Optonerve Technologies, Inc., a Delaware corporation ( " Purchaser " ).

Sellers, Seller Shareholders and Purchaser may each be referred to as a " Party " and collectively as the "Parties. "

WHEREAS , each Seller has developed, acquired, or otherwise owns or has rights to, and is the rightful owner in whole or in part of certain licenses, patents, ideas, trademarks, domain names, technology and other intellectual property and other rights, as more fully defined below and on Exhibit A-1 through Exhibit A-3 hereto, the " Intellectual Property " , as well as certain other equipment, hardware, receivables, and physical assets as enumerated on Exhibit B-1 through hereto, as more fully defined below (the " Tangible Property " and, together with the Intellectual Property and all other assets of the Sellers, the " Assets " ); and

WHEREAS , Purchaser is a wholly owned subsidiary of Showsteppers, Inc., a Nevada corporation ( " STEPPERS " ) which has also made efforts to raise capital through one or more equity, debt or convertible debt or preferred stock financings, and, STEPPERS has deemed it in its best interest to complete the acquisition of the Intellectual Property hereby; and

WHEREAS , Purchaser is acquiring the assets from Sellers simultaneously hereby; and

WHEREAS , Purchaser desires to purchase, and Seller and Seller Shareholders each desires to sell, the Intellectual Property.

NOW THEREFORE, IT IS AGREED AS FOLLOWS:

**Section 1 . Assets Purchased** . Each Seller agrees to sell to Purchaser and Purchaser agrees to purchase from each Seller, on the terms and conditions set forth in this Agreement, all of the Assets of the Sellers, in whatever form and wherever they may be throughout the world, and all rights thereto. The Assets shall include all assets of the Sellers, including, and without limitation:

**1.1 Intellectual Property Purchased** . All Intellectual Property of the Sellers which shall include all

(a) patents, patent applications, provisional patents or applications, trademarks, tradenames, license or sub license rights, developments, ideas, drawings, concepts, copyrights, technologies, formulas, developments, trade secrets, ideas, or, partial or whole interests (whether direct or indirect, contractual, by court order, by operation of law or otherwise) in any of the foregoing, any amendments or supplements or renewals of the foregoing, and in each case whether developed on its own, owned outright, acquired, or acquired through a joint venture interest or otherwise, or whether registered or otherwise;

(b) all rights under the Liquidation Agreement between certain of the Sellers and Vodafone Ventures Limited and certain other entities, dated as of November 8, 2006 (the " Liquidation Agreement " ) or under any other agreement or contract; and

(c) all contract or common law rights or rights that inure as a result of operation of law (but, in each case, excluding obligations), causes of action, rights of indemnity, judgment rights, royalty rights, license fees or rights, easements, credits, or otherwise, and all rights to any intellectual property development agreement, work for hire arrangement, employment agreement or similar arrangement;

(d) all patent rights as set forth on Exhibit A-1 through Exhibit A-3 attached hereto of each of the Sellers wherever the same may be and in whatever form; and

(e) any and all other intellectual or intangible property rights of any of the Sellers throughout the world whether known or unknown, in development currently or hereafter, existing heretofore or hereafter that may be discovered that relate to the foregoing.

**1.2 Tangible Property .** All tangible property of the Sellers, which shall include: any and all physical assets, computers, hardware, drawings, disks, content, software, shareware, hardware, receivables, in each case, including, without limitation, those items set forth on Exhibit B-1 through Exhibit B-3 . . The Purchase Price for the Tangible Property shall be $50,000 cash, in total, allocated equally among each of the three Sellers and paid at or as soon after closing as practicable.

**1.3 All other Assets.** All other assets of the Sellers (but not liabilities) wherever they may lie, including future rights to any of the above. The Parties agree that any and all current or future rights to any Intellectual Property or any other Assets, shall be thereby transferred to Purchaser. Purchaser does not, and shall not acquire liabilities, or assume any leases or other obligations of any kind. Section

**2 . Purchase Price** . The purchase price for the Assets shall be an aggregate of (i) 39,000,000 shares of common stock of STEPPERS, said shares to be issuable directly to Seller Shareholders in such proportions and denominations as set forth on Schedule A (the " STEPPERS Shares" ) and (ii) the amount of US$50,000 allocable among the three Sellers equally and payable in accordance with written instructions to be provided at Closing and paid within 10 days thereafter.

**Section 3 . Closing .**

The closing ( " Closing " ) of the sale and purchase of the Intellectual Property and other Assets shall take place at the offices of Purchaser on or before February 21, 2013 (the " Closing Date " ), or at such other time as the Parties may agree in writing. If Closing has not occurred on or before such date, then either Party may elect to terminate this Agreement without penalty. If, however, the Closing has not occurred because of a breach of contract by one Party, the breaching Party shall remain liable for breach of contract.

**Section 4 . Obligations of Seller and Seller Shareholders at the Closing .** At the Closing, each Seller and Seller Shareholders shall deliver to Purchaser the following:

**4.1** One or more assignments from Sellers and Seller Shareholders irrevocably and unconditionally conveying all of the Assets to Purchaser, as well as all current, future rights thereto, substantially in the form as set forth in Exhibit C attached hereto (each, an " Assignment " );

**4.2** A copy of the resolutions of Seller ' s Board of Directors and Seller Shareholders authorizing the execution, delivery and performance of this Agreement, the Assignments, and any other agreement or instrument to be entered into by Seller in connection herewith, and the transactions contemplated hereby;

**4.3** All necessary consents of, or notices to, third parties, including without limitation, the effective release by any lender to Seller that has a lien or other security interest in the Intellectual Property, any notices or instruments to any licensee, licensor, or agency necessary in order to effectuate the irrevocable transfer and assignment contemplated hereby; and

**4.4** Such other assignments, bills of sale, instruments of conveyance, certificates of officers, notices, consents, authorizations and other documents as reasonably may be requested by Purchaser before, at or after the Closing to consummate this Agreement and the transactions contemplated hereby.

**4.5** Each of Gunther Maisner, Dr. N. Berger shall be subject to at will employment contracts with Purchaser and/or STEPPERS, or consulting agreements with salary caps of 60,000 Euro, each with non-compete and confidentiality provisions, in such form and substance as satisfactory to Purchaser and STEPPERS. All other executives of Sellers shall enter into employment agreements in such form as agreed to by Purchaser, also with similar confidentiality and non-compete provisions.

**Section 5 . Obligations of Purchaser at the Closing** . At the Closing, Purchaser shall:

**5.1** Execute and deliver this Agreement and the Assignments;

**5.2** Deliver necessary resolutions of its Board of Directors and of STEPPERS ' s board of directors, authorizing this Agreement and the Assignments and the issuance of the STEPPERS shares; and

**5.3** Deliver, or cause to be delivered to each Seller Shareholder, the STEPPERS Shares in such amounts and denominations as provided to the Purchaser for such respective Seller Shareholder, as set forth on Schedule A a nd deliver the cash portion of the Purchase Price of $50,000 in total in accordance with instructions provided by Sellers; and

**5.4** Such certificates of officers and other documents as reasonably may be requested by Seller before the Closing to consummate this Agreement and the transactions contemplated hereby.

**Section 6. Joint Venture Agreement .**

Purchaser and WUNDER shall, at or before closing, enter into a joint venture agreement pursuant to which, in addition to all assignments provided hereby, WUNDER irrevocably assigns any and all rights to technologies, research etc., to Purchaser, substantially in the form as annexed hereto as Exhibit D .

**Section 7 . Seller' s and/or Seller Shareholders ' Obligations Before Closing .**

**7.1** Seller ' s Operation of Business Before Closing. Seller agrees that between the date of this Agreement and the Closing Date, Seller will:

**7.1.1** Continue to operate the business that has used the Intellectual Property and other Assets in the usual and ordinary course and in substantial conformity with all applicable laws, ordinances, regulations, rules or orders, and will use its best efforts to pay all renewal fees, license fees, patent fees or patent continuation or renewal fees, or as otherwise necessary to preserve its business organization and preserve the continued operation of its business with its customers, suppliers and others having business relations with Seller.

**7.1.2** Not assign, sell, lease, encumber, allow to be terminated or lapse, or otherwise transfer or dispose of any of the Intellectual Property whatsoever.

**7.1.3** Maintain confidential any trade secrets or other Intellectual Property held, developed or acquired before closing.

**7.2** **Access to Premises and Information** . At all times before and after Closing, each Seller does, hereby provide Purchaser and its representatives with reasonable access during business hours to the assets, titles, contracts and records of Seller and furnish such additional information concerning the Intellectual Property as Purchaser from time to time may reasonably request. Each Seller hereby instructs its counsel and advisers, and shall directly request its counsel and advisors and assignors, from time to time, to cooperate fully with Purchaser to effectuate the transfer of all Intellectual Property hereby to Purchaser.

**7.3 Conditions and Best Efforts** . Seller will use its best efforts to effectuate the transactions contemplated by this Agreement and to fulfill all the conditions of the obligations of Seller under this Agreement, and will do all acts and things as may be required to carry out its obligations under this Agreement and to consummate and complete this Agreement.

**Section 8 . Covenants of Purchaser Before Closing .**

**8.1 Conditions and Best Efforts** . Purchaser will use its best efforts to effectuate the transactions contemplated by this Agreement and to fulfill all the conditions of Purchaser ' s obligations under this Agreement, and shall do all acts and things as may be required to carry out its obligations and to consummate this Agreement.

**8.2 Confidential Information .** Purchaser will not utilize, exploit, disclose to third parties any confidential information received from Seller in the course of investigating, negotiating and performing the transactions contemplated by this Agreement.

**Section 9 . Miscelaneous.**

**8.1 Restrictions On Resale.** S eller and Seller Shareholders understand that the acquisition of STEPPERS Shares by them is restricted under US law and, involves and entails a substantial degree of risk and illiquidity. Such Seller Shareholder is not a US person and does not have a residency or place of business in the United States and is not a US Person as such term is defined under Regulation S of the Securities Act of 1933, as amended (the "Securities Act" ). Seller Shareholder understands that it may not be able to monetize its STEPPERS Shares and that a market for the securities may not develop.

The STEPPERS Shares will not be registeredunder the Securities Act, or the securities laws of any state, and cannot be transferred, hypothecated, sold or otherwise disposed of until:

(i) a registration statement with respect to such securities is declared effective under the Securities Act; or

(ii) Seller, or Buyer, as the case may be, receives an opinion of counsel reasonably satisfactory to it, that an exemption from the registration requirements of the Securities Act is available. The certificate(s) representing the STEPPERS Shares shall contain a legend substantially as follows:

" THE SECURITIES WHICH ARE REPRESENTED BY THIS CERTI FICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE SOLD, TRANSFERRED, HYPOTHECATED OR OTHERWISE DISPOSED OF UNTIL A REGISTRATION STATEMENT WITH RESPECT THERETO IS DECLARED EFFECTIVE UNDER SUCH ACT, OR THE ISSUER RECEIVES AN OPINION OF COUNSEL FOR THE HOLDER REASONABLY SATISFACTORY TO COUNSEL FOR THE ISSUER THAT AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF SUCH ACT IS AVAILABLE. "

**Section 10 . Seller ' s Representations and Warranties.**

Each Seller represents and warrants to Purchaser as follows:

**10.1 Company Existence .** Such Seller is now, and on the Closing Date will be, a company duly organized, validly existing and in good standing under the laws of the Germany, and has all requisite power and authority to own its properties and assets and carry on its business and is good standing in each jurisdiction in which such qualification is required for this Agreement.

**10.2 Company Power and Authorization .** Such Seller has full corporate authority to execute and deliver this Agreement, the Assignment to which they are a party, and, with respect to WUNDER-L, the Joint Venture Agreement, and any other agreement to be executed and delivered by such Seller in connection herewith, and to carry out 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 company action. No other proceedings by such Seller (other than filings or third party creditor or member consents contemplated herein) will be necessary to authorize this Agreement or the carrying out of the transactions contemplated hereby. This Agreement constitutes a valid and binding Agreement of Seller in accordance with its terms.

**10.3 Conflict with Other Agreements, Consents and Approvals .** With respect to

(i) the Certificate of Incorporation, charter, by-laws or any shareholder or operating agreement of Seller as amended and in effect,

(ii) any applicable law, statute, rule or regulation,

(iii) any contract to which Seller is a party or may be bound, or

(iv) any judgment, order, injunction, decree or ruling of any court or governmental authority to which Seller is a party or subject, the execution and delivery by each Seller of this Agreement and any other agreement to be executed and delivered by Seller in connection herewith and the consummation of the transactions contemplated hereby will not

(a) result in any violation, conflict or default, or give to others any interest or rights, including rights of termination, cancellation or acceleration,

(b) require any authorization, consent, approval, exemption or other action by any court or administrative or governmental body, any patent or intellectual property agency or authority, or any taxing or currency authority, which has not been obtained, or any notice to or filing with any court or administrative or governmental body which has not been given or done, or

(c) require the consent of any third party.

**10.4 Compliance with Law** . Such Seller ' s use and utilization of the Intellectual Property and all other Assetsas set forth in the jurisdiction on the respective Exhibit A a nd B w herever located, is in compliance with all known federal, local or other governmental laws or ordinances, the non-compliance with which, or the violation of which, might have a material adverse affect on the Intellectual Property and Seller has received no claim or notice of violation with respect thereto.

**10.5 Title to Intellectual Property .** Such Seller holds good and marketable title to the Intellectual Property, free and clear of restrictions on or conditions to transfer or assignment, and free and clear of liens, pledges, charges or encumbrances.

**10.6 Intellectual Property Rights .** Each Seller and, Seller Shareholder and jointly represents and warrants that:

**10.6.1** Each Seller owns, possesses or has the right to use all its respective Intellectual Property or other Asset rights as presently conducted, or otherwise used by Seller other than as disclosed on the applicable Exhibit A and Exhibit B ;

**10.6.2** No royalties or other amounts are payable by such Seller to other persons by reason of the ownership or the use of the Intellectual Property or other Assets and, each Seller and Seller Shareholder forever waives any rights in any of the foregoing;

**10.6.3**

(i) To the best knowledge of each Seller and each Seller Shareholder, no product or service related to Seller ' s business and marketed and sold by a Seller which utilizes the Intellectual Property violates any license or infringes upon any intellectual property rights of others,

(ii) neither Seller nor such a Seller Shareholder has received any notice that any such product or service conflicts with any intellectual property rights of others, and

(iii) to the best knowledge of Seller and Seller Shareholder, there is no reasonable basis to believe that any such violation, infringement or conflict may exist;

**10.6.4** Neither Seller nor such Seller Shareholder is not a party to, or subject to, any contract which currently requires, or upon the passage of time or occurrence of an event or contingency (whether of default or otherwise) will require, the conveyance of the Intellectual Property;

**10.6.5** Seller has or at Closing will have, obtained and delivered to Purchaser all consents and approvals of third parties necessary to duly transfer to Purchaser all of Seller's rights, title and interest in and to the Intellectual Property.

**10.7 Litigation .** Neither Seller nor any Seller Shareholder has any knowledge of any claim, litigation, proceeding or investigation pending or threatened against Seller that might result in any material adverse change in the ownership, use or exploitation of the Intellectual Property (other than existing Warranty Liabilities or future Warranty Liabilities that may arise from time to time).

**10.8 Brokerage .** Neither Seller nor such Seller Shareholder has employed any broker, finder or similar agent in connection with the transactions contemplated by this Agreement, or taken action that would give rise to a valid claim against any Party for a brokerage commission, finder ' s fee or similar compensation.

**10.9 Accuracy of Representations and Warranties** . None of the representations or warranties of Seller herein contain any untrue statement of a material fact or omit or misstate a material fact necessary in order to make statements in this Agreement not misleading. Seller and Seller Shareholders know of no fact that has resulted, or that in the reasonable judgment of Seller will result in a material change in the business, operations or assets related to the Intellectual Property that has not been set forth in this Agreement or otherwise disclosed to Purchaser. Notwithstanding the foregoing, any representation of Seller Shareholder is made with with respect to itself and the Seller in which it / he is a shareholder and, any representation or warranty of a Seller Shareholder herein that is made with respect to another Seller Shareholder is made based on such Seller Shareholder ' s good faith knowledge.

**Section 11 . Representations of Purchaser .**

Purchaser represents and warrants as follows:

**11.1 Corporate Existence .** Purchaser is now, and on the Closing Date will be, a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, has all requisite corporate power and authority to enter into this Agreement and perform its obligations hereunder. STEPPERS is a corporation duly organized, validly existing and in good standing under the laws of the State of Nevada.

**11.2 Authorization .** Purchaser has full corporate authority to execute and deliver this Agreement and any other agreement to be executed and delivered by Purchaser in connection herewith, and to carry out 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 and shareholder action. No other corporate proceedings by Purchaser will be necessary to authorize this Agreement or the carrying out of the transactions contemplated hereby. This Agreement constitutes a valid and binding Agreement of Seller in accordance with its terms.

**11.3 Conflict with Other Agreements, Consents and Approvals** . With respect to

(i) the certificate of incorporation or bylaws of Purchaser,

(ii) any applicable law, statute, rule or regulation,

(iii) any contract to which Purchaser is a party or may be bound, or

(iv) any judgment, order, injunction, decree or ruling of any court or governmental authority to which Purchaser is a party or subject, the execution and delivery by Purchaser of this Agreement and any other agreement to be executed and delivered by Purchaser in connection herewith and the consummation of the transactions contemplated hereby will not

(a) result in any violation, conflict or default, or give to others any interest or rights, including rights of termination, cancellation or acceleration, or

(b) require any authorization, consent, approval, exemption or other action by any court or administrative or governmental body which has not been obtained, or any notice to or filing with any court or administrative or governmental body which has not been given or done, or

(c) require the consent of any third party

**11.4 Brokerage .** Purchaser has not employed any broker, finder or similar agent in connection with the transactions contemplated by this Agreement, or taken action that would give rise to a valid claim against any party for a brokerage commission, finder's fee or similar compensation.

**11.5 Accuracy of Representations and Warranties .** None of the representations or warranties of Purchaser contain or will contain any untrue statement of a material fact or omit or will omit or misstate a material fact necessary in order to make the statements contained herein not misleading.

**Section 12 . Conditions Precedent to Purchaser ' s Obligations.**

The obligation of Purchaser to purchase the Intellectual Property is subject to the fulfillment, before or at the Closing Date, of each of the following conditions, any one or portion of which may be waived in writing by Purchaser:

**12.1 Representations, Warranties and Covenants of Seller .** The representations and warranties of each Seller and Seller Shareholders contained herein and the information contained in any other documents delivered by Seller in connection with this Agreement shall be true and correct in all material respects at the Closing; and Seller shall have performed all obligations and complied with all agreements, undertakings, covenants and conditions required by this Agreement to be performed or complied with by it or before the Closing.

**12.2 No Suits or Actions** . At the Closing Date no suit, action or other proceeding shall have been threatened or instituted to restrain, enjoin or otherwise prevent the consummation of this Agreement, the contemplated transactions or the ownership or validity of the Intellectual Property.

**12.3 Release of Liens and Perfection of Title; Costs** . All liens against the Intellectual Property shall have been released at or before Closing and Seller shall have perfected title to the Intellectual Property to the satisfaction of Purchaser in Germany and\or such other foreign jurisdictions as specified by Purchaser. All costs associated with the effective transfer of the Intellectual Property shall have been paid by Seller at or before Closing.

**Section 13 . Conditions Precedent to Obligations of Seller .** The obligations of Seller to consummate the transactions contemplated by this Agreement are subject to the fulfillment, before or at the Closing Date, of the following condition which may be waived in writing by Seller:

**13.1 Representations, Warranties and Covenants of Purchaser .** All representations and warranties made in this Agreement by Purchaser shall be true as of the Closing Date as fully as though such representations and warranties had been made on and as of the Closing Date, and Purchaser shall not have violated or shall not have failed to perform in accordance with any covenant contained in this Agreement.

**Section 14 . Indemnification and Survival .**

**14.1 Survival of Representations and Warranties .** All representations and warranties made in this Agreement shall survive the Closing of this Agreement, except that any Party to whom a representation or warranty has been made in this Agreement shall be deemed to have waived any misrepresentation or breach of representation or warranty of which such Party had knowledge before Closing. Any Party learning of a misrepresentation or breach of representation or warranty under this Agreement shall immediately give written notice thereof to the other Party to this Agreement. The representations and warranties in this Agreement shall terminate five (5) years from the Closing Date, and such representations or warranties shall thereafter be without force or effect, except any claim with respect to which notice has been given to the Party to be charged before such expiration date.

**14.2 Seller ' s Indemnification.** Seller and Seller Shareholders each hereby agrees to indemnify and hold Purchaser, its successors and assigns harmless from and against

(i) any and all actual damages, losses, claims, liabilities and obligations relating to the Intellectual Property, contingent or otherwise, arising out of or related to such Seller ' s or such Seller Shareholder ' s utilization of the Intellectual Property at all times through the close of business on the day before the Closing Date,

(ii) any liability or obligation of such Seller or Seller Shareholder which attaches to the Intellectual Property from facts arising before the Closing Date,

(iii) any and all actual damage or deficiency resulting from any material misrepresentation, breach of warranty or covenant, or nonfulfillment of any agreement on the part of such Seller or such Seller Shareholder made in this Agreement, and

(iv) any and all actions, suits, claims, proceedings, demands, assessments, fines, judgments, costs and other expenses (including, without limitation, reasonable audit and attorneys fees) incident to any of the foregoing.

**14.3 Purchaser ' s Indemnification.** Purchaser agrees to defend, indemnify, and hold harmless Seller from and against

(i) any and all claims, liabilities and obligations of every kind and description arising out of or related to the use and utilization of the Intellectual Property after the Closing Date;

(ii) any and all damage or deficiency resulting from any material misrepresentation, breach of warranty or covenant, or nonfulfillment of any agreement on the part of Purchaser under this Agreement, and

(iii) any and all actions, suits, claims, proceedings, investigation, audits, demands, assessments, fines, judgments, costs and other expenses (including, without limitation, reasonable audit and attorneys fees) incident to any of the foregoing.

**Section 15 . Miscellaneous Provisions .**

**15.1 Notices .** Any notice under this Agreement shall be in writing and shall be effective when actually delivered in person or three (3) days after being deposited in the United States mail, registered or certified, postage prepaid, and by email, and addressed to the Party at the address stated in this Agreement or such other address as either Party may designate by written notice to the other.

**15.2 Assignment .** Neither Party may transfer or assign this Agreement without the prior written consent of the other Party.

**15.3 Law Governing .** This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to its rules relating to conflicts of laws.

**15.4 Venue** . The Parties agree that any action on this Agreement shall be brought in a court of competent jurisdiction located in county of New York, in the State of New York.

**15.5 Attorney Fees** . In the event an arbitration, suit or action is brought by any Party under this Agreement to enforce any of its terms, or in any appeal therefrom, it is agreed that the prevailing Party shall be entitled to reasonable attorneys ' fees to be fixed by the arbitrator, trial court and/or appellate court.

**15.6 Presumption .** This Agreement or any section thereof shall not be construed against any Party due to the fact that said Agreement or any section thereof was drafted by said Party.

**15.7 Titles and Captions .** All article, section and paragraph titles or captions contained in this Agreement are for convenience only and shall not be deemed part of the context nor affect the interpretation of this Agreement.

**15.8 Entire Agreement .** This Agreement contains the entire understanding between the Parties and supersedes any prior understandings and agreements between them respecting the subject matter of this Agreement.

**15.9 Modifications Must Be in Writing** . This Agreement may not be changed orally. All modifications of this Agreement must be in writing and must be signed by each Party.

**15.10 Agreement Binding .** This Agreement shall be binding upon the successors and assigns of the Parties.

**15.11 Further Action .** The Parties shall execute and deliver all documents, instruments and assignment, waivers, provide all information and take or forbear from all such action as may be necessary or appropriate to achieve the purposes of this Agreement.

**15.13 Good Faith, Cooperation and Due Diligence .** The Parties covenant, warrant and represent to each other good faith, complete cooperation, due diligence and honesty in fact in the performance of all obligations of the Parties pursuant to this Agreement. All promises and covenants are mutual and dependent.

**15.14 Counterparts .** This Agreement may be executed in several counterparts and all so executed shall constitute one Agreement, binding on both Parties even though both Parties are not signatories to the original or the same counterpart.

**15.15 Parties in Interest .** Nothing herein shall be construed to be to the benefit of any third party, nor is it intended that any provision shall be for the benefit of any third party.

**15.16 Savings Clause .** If any provision of this Agreement, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Agreement, or

the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

**15.17 Separate Counsel .** The Parties acknowledge that each has been represented in this transaction by separate legal counsel and representation in this matter.

[Signature Page Follows]

**APA#30**

**ASSET PURCHASE AGREEMENT**

between

Ozturk Limited irketi

And

TOELOC, Inc.

TABLE OF CONTENTS

ARTICLE I PURCHASE AND SALE 4

Section 1.01 Purchase and Sale of Assets. 4

Section 1.02 [Excluded Assets. 4

Section 1.03 [No Liabilities/Assumption of Liabilities]. 5

Section 1.04 Purchase Price. 5

Section 1.05 [Allocation of Purchase Price. 5

Section 1.06 Withholding Tax. 5

ARTICLE II CLOSING 5

Section 2.01 Closing. 5

Section 2.02 Closing Deliverables. 6

ARTICLE III REPRESENTATIONS AND WARRANTIES OF SELLER 7

Section 3.01 Organization and Authority of Seller; Enforceability. 7

Section 3.02 No Conflicts; Consents. 7

Section 3.03 Title to Purchased Assets. 8

Section 3.04 [Condition of Assets. 8

Section 3.05 [Inventory. 8

Section 3.06 [Intellectual Property. 8

Section 3.07 [Assigned Contracts. 9

Section 3.08 [Permits. 9

Section 3.10 [Compliance With Laws 9

Section 3.11 Legal Proceedings. 10

Section 3.12 Brokers. 10

Section 3.13 [Full Disclosure. 10

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF BUYER 10

Section 4.01 Organization and Authority of Buyer; Enforceability. 10

Section 4.02 No Conflicts; Consents. 11

Section 4.03 Legal Proceedings. 11

Section 4.04 Brokers. 11

ARTICLE V COVENANTS 11

Section 5.01 Public Announcements. 11

Section 5.03 Transfer Taxes. 11

Section 5.04 Further Assurances. 12

ARTICLE VI INDEMNIFICATION 12

Section 6.01 Survival. 12

Section 6.02 Indemnification By Seller. 12

Section 6.04 [Indemnification Procedures. 12

Section 6.05 Tax Treatment of Indemnification Payments. 13

Section 6.06 Effect of Investigation. 13

Section 6.07 Cumulative Remedies. 13

ARTICLE VII , MISCELLANEOUS 14

Section 7.01 Expenses. 14

Section 7.02 Notices. 14

Section 7.03 Headings. 15

Section 7.04 Severability. 15

Section 7.05 Entire Agreement. 15

Section 7.06 Successors and Assigns. 15

Section 7.07 No Third-party Beneficiaries. 16

Section 7.08 Amendment and Modification. 16

Section 7.09 Waiver. 16

Section 7.10 Governing Law. 16

Section 7.11 Submission to Jurisdiction. 16

Section 7.12 Waiver of Jury Trial. 17

Section 7.13 Specific Performance. 17

Section 7.14 Counterparts. 17

**ASSET PURCHASE AGREEMENT**

This Asset Purchase Agreement (this " Agreement "), dated as of January 9, 2013, is entered into between Ozturk Limited irketi , a Turkish corporation (" Seller ") and TOELOC, Inc., a Delaware corporation (" Buyer ").

**RECITALS**

WHEREAS, Seller wishes to sell to Buyer, and Buyer wishes to purchase from Seller, the rights of Seller to the Purchased Assets (as defined herein), subject to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**ARTICLE I**

**PURCHASE AND SALE**

**Section 1.01 Purchase and Sale of Assets.** Subject to the terms and conditions set forth herein, Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase from Seller, all of Seller's right, title and interest in the assets set forth on Section 1.01 of the disclosure schedules (" Disclosure Schedules ") attached hereto (the " Purchased Assets "), free and clear of any mortgage, pledge, lien, charge, security interest, claim or other encumbrance (" Encumbrance "). Additionally, Seller, at its own discretion, may choose to provide Purchaser with one free month of technical support to assist Purchaser's personnel with learning the systems of the Purchased Assets and migrating the Purchased Assets into its own servers and hardware. If Seller, at its own discretion, chooses to continue providing services, additional months shall be billed to the Purchaser at the rate of $3,000 per month for Seller's developer to provide assistance to Purchaser during working hours on a top priority basis. In any event, Seller reserves the right not to provide any services at all, to cease provision of services any time and to change service rates freely, at its own discretion.

**Section 1.02 Excluded Assets.** No assets are excluded from the Purchased Assets.

**Section 1.03 No Liabilities/Assumption of Liabilities.** Buyer shall not assume any liabilities or obligations of Seller of any kind, whether known or unknown, contingent, matured or otherwise, whether currently existing or hereinafter created.

**Section 1.04 Purchase Price.** The aggregate purchase price for the Purchased Assets shall be $160,000 U.S. (the " Purchase Price ") The Buyer shall pay half of this Purchase Price to Seller at the signing of this Agreement and the remaining half at the Closing (as defined herein) in cash, by wire transfer of immediately available funds in accordance with the wire transfer instructions set forth in Section 1.04 of the Disclosure Schedules.

**Section 1.05 Allocation of Purchase Price.** Seller and Buyer agree to allocate the Purchase Price among the Purchased Assets for all purposes (including tax and financial accounting) in accordance with Section 1.05 of the Disclosure Schedules. Buyer and Seller shall file all tax returns (including amended returns and claims for refund) and information reports in a manner consistent with such allocation.]

**Section 1.06 Withholding Tax**. Buyer shall not be entitled to deduct and withhold from the Purchase Price any taxes that Buyer may be required to deduct and withhold under any applicable tax law. All such withheld amounts shall be treated as added to the Purchase Price.

**ARTICLE II**

**CLOSING**

**Section 2.01 Closing.** The closing of the transactions contemplated by this Agreement (the " Closing ") shall take place within one week following the execution of this Agreement (the " Closing Date "). The consummation of the transactions contemplated by this Agreement shall be deemed to occur at 12:01 a.m. on the Closing Date at the offices of TOELOC, Inc., XXX, USA. The Parties agree that due to the nature of the sale and purchase transaction governed by this Agreement, it is not possible to close the transactions contemplated by this Agreement in an instant. Upon execution of this Agreement and subject to receipt of half of the Purchase Price, the Seller will initiate the delivery of the Purchased Assets set out hereunder required for the Closing and within one week, upon completion of delivery of all Purchased Assets, the Closing shall occur and transactions set out in Section 2.02 (other than delivery of the Purchased Assets) shall be carried out.

**Section 2.02 Closing Deliverables**.

(a) At the Closing, Seller shall deliver to Buyer the following:

(i) a bill of sale in the form of Exhibit A hereto (the " Bill of Sale ") and duly executed by Seller, transferring the Purchased Assets to Buyer;

(ii) an assignment and assumption agreement in the form of Exhibit B hereto/in form and substance satisfactory to Buyer (the " Assignment and Assumption Agreement ") and duly executed by Seller, effecting the assignment to and assumption by Buyer of the Purchased Assets;

(iii) an assignments in the form of Exhibit C hereto (the " Intellectual Property Assignments ") and duly executed by Seller, transferring all of Seller's right, title and interest in and to the trademark registrations and applications, copyright registrations and applications and domain name registrations included in the Purchased Assets/Purchased IP (as defined herein)] to Buyer;

(iv) copies of all consents, approvals, waivers and authorizations referred to in Section 3.02 of the Disclosure Schedules;

(v) tax clearance certificates from the taxing authorities in the jurisdictions that impose taxes on Seller or where Seller has a duty to file tax returns in connection with the transactions contemplated by this Agreement and evidence of the payment in full or other satisfaction of any taxes owed by Seller in those jurisdictions;

(vi) a certificate of the Secretary or Assistant Secretary (or equivalent officer) of Seller certifying as to (A) the resolutions of the board of directors of Seller, duly adopted and in effect, which authorize the execution, delivery and performance of this Agreement and the transactions contemplated hereby, and (B) the names and signatures of the officers of Seller authorized to sign this Agreement and the documents to be delivered hereunder;

(vii) such other customary instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to Buyer, as may be required to give effect to this Agreement; and

(b) At the Closing, Buyer shall deliver to Seller the following:

(i) remaining half of the Purchase Price; (ii) the Assignment and Assumption Agreement duly executed by Buyer; and

(iii) a certificate of the Secretary or Assistant Secretary (or equivalent officer) of Buyer certifying as to (A) the resolutions of the board of directors of Buyer, duly adopted and in effect, which authorize the execution, delivery and performance of this Agreement and the transactions contemplated hereby, and (B) the names and signatures of the officers of Buyer authorized to sign this Agreement and the documents to be delivered hereunder.

**ARTICLE III**

**REPRESENTATIONS AND WARRANTIES OF S ELLER**

Seller represents and warrants to Buyer that the statements contained in this Article III are true and correct as of the date hereof. For purposes of this Article III, "Seller's knowledge," "knowledge of Seller" and any similar phrases shall mean the actual or constructive knowledge of any director or officer of Seller, after due inquiry.

**Section 3.01 Organization and Authority of Seller; Enforceability.** Seller is a Turkish corporation duly organized, validly existing and in good standing under the laws of the Republic of Turkey. Seller has full power and authority to enter into this Agreement and the documents to be delivered hereunder, to carry out its obligations hereunder and to consummate the transactions contemplated hereby. The execution, delivery and performance by Seller of this Agreement and the documents to be delivered hereunder and the consummation of the transactions contemplated hereby have been duly authorized by all requisite action on the part of Seller. This Agreement and the documents to be delivered hereunder have been duly executed and delivered by Seller, and (assuming due authorization, execution and delivery by Buyer) this Agreement and the documents to be delivered hereunder constitute legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms.

**Section 3.02 No Conflicts; Consents.** The execution, delivery and performance by Seller of this Agreement and the documents to be delivered hereunder, and the consummation of the transactions contemplated hereby, do not and will not:

(a) violate or conflict with the certificate of incorporation, by-laws or other organizational documents of Seller;

(b) violate or conflict with any judgment, order, decree, statute, law, ordinance, rule or regulation applicable to Seller or the Purchased Assets;

(c) conflict with, or result in (with or without notice or lapse of time or both) any violation of, or default under, or give rise to a right of termination, acceleration or modification of any obligation or loss of any benefit under any contract or other instrument to which Seller is a party or to which any of the Purchased Assets are subject; or

(d) result in the creation or imposition of any Encumbrance on the Purchased Assets. Seller has obtained all consents, approvals, waivers or authorizations required to be obtained by Seller from any person or entity (including any governmental authority) in connection with the execution, delivery and performance by Seller of this Agreement and the consummation of the transactions contemplated hereby, all as set forth in Section 3.02 of the Disclosure Schedules. Seller has obtained all consents, approvals, waivers or authorizations required to be obtained by Seller from any person or entity (including any governmental authority) in connection with the execution, delivery and performance by Seller of this Agreement and the consummation of the transactions contemplated hereby, all as set forth in Section 3.02 of the Disclosure Schedules.

**Section 3.03 Title to Purchased Assets**. Seller owns and has good title to the Purchased Assets, free and clear of Encumbrances.

**Section 3.04 Condition of Assets.** The Purchased Assets included in the Purchased Assets are in good condition and are adequate for the uses to which they are being put, and none of such Purchased Assets are in need of maintenance or repairs except for ordinary, routine maintenance and repairs that are not material in nature or cost.

**Section 3.05 Intellectual Property.**

(a) " Intellectual Property " means any and all of the following in any jurisdiction throughout the world:

(i) trademarks and service marks, including all applications and registrations and the goodwill connected with the use of and symbolized by the foregoing;

(ii) copyrights, including all applications and registrations related to the foregoing;

(iii) trade secrets and confidential know-how;

(iv) patents and patent applications;

(v) internet domain name registrations; and

(vi) other intellectual property and related proprietary rights, interests and protections (including all rights to sue and recover and retain damages, costs and attorneys' fees for past, present and future infringement and any other rights relating to any of the foregoing).

(b) Section 3.05(b) of the Disclosure Schedules lists all Intellectual Property included in the Purchased Assets (" Purchased IP "). Seller owns or has adequate, valid and enforceable rights to use all the Purchased IP, free and clear of all Encumbrances. Seller is not bound by any outstanding judgment, injunction, order or decree restricting the use of the Purchased IP, or restricting the licensing thereof to any person or entity. With respect to the registered Intellectual Property listed on Section 3.05(b) of the Disclosure Schedules,

(i) all such Intellectual Property is valid, subsisting and in full force and effect and

(ii) Seller has paid all maintenance fees and made all filings required to maintain Seller's ownership thereof. For all such registered Intellectual Property, Section 3.05(b) of the Disclosure Schedules lists (A) the jurisdiction where the application or registration is located, (B) the application or registration number, and (C) the application or registration date.

(c) Seller's prior and current use of the Purchased IP has not and does not infringe, violate, dilute or misappropriate the Intellectual Property of any person or entity and there are no claims pending or threatened by any person or entity with respect to the ownership, validity, enforceability, effectiveness or use of the Purchased IP. No person or entity is infringing, misappropriating, diluting or otherwise violating any of the Purchased IP, and neither Seller nor any affiliate of Seller has made or asserted any claim, demand or notice against any person or entity alleging any such infringement, misappropriation, dilution or other violation.

**Section 3.06 Assigned Contracts.** Section 3.05(bSection 3.06 of the Disclosure Schedules includes each contract included in the Purchased Assets and being assigned to and assumed by Buyer (the " Assigned Contracts "). Each Assigned Contract is valid and binding in accordance with its terms and is in full force and effect. None of Seller or, to Seller's knowledge, any other party thereto is in breach of or default under (or is alleged to be in breach of or default under), or has provided or received any notice of any intention to terminate, any Assigned Contract. No event or circumstance has occurred that, with or without notice or lapse of time or both, would constitute an event of default under any Assigned Contract or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of benefit thereunder. Complete and correct copies of each Assigned Contract have been made available to Buyer. There are no disputes pending or threatened under any Assigned Contract.

**Section 3.07 Permits.** Section 3.07 of the Disclosure Schedules lists all permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances and similar rights obtained from governmental authorities included in the Purchased Assets (the " Transferred Permits "). The Transferred Permits are valid and in full force and effect. All fees and charges with respect to such Transferred Permits as of the date hereof have been paid in full. No event has occurred that, with or without notice or lapse of time or both, would reasonably be expected to result in the revocation, suspension, lapse or limitation of any Transferred Permit.

**Section 3.08 Compliance With Laws** Section 3.07Seller has complied, and is now complying, with all applicable country, state and local laws and regulations applicable to ownership and use of the Purchased Assets.

**Section 3.09 Legal Proceedings.** There is no claim, action, suit, proceeding or governmental investigation (" Action ") of any nature pending or, to Seller's knowledge, threatened against or by Seller

(a) relating to or affecting the Purchased Assets; or

(b) that challenges or seeks to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. No event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such Action.

**Section 3.10 Brokers.** No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Seller.

**Section 3.11 Full Disclosure.** No representation or warranty by Seller in this Agreement and no statement contained in the Disclosure Schedules to this Agreement or any certificate or other document furnished or to be furnished to Buyer pursuant to this Agreement contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained therein, in light of the circumstances in which they are made, not misleading.

**ARTICLE IV**

**REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to Seller that the statements contained in this Article IV are true and correct as of the date hereof. For purposes of this Article IV, "Buyer's knowledge," "knowledge of Buyer" and any similar phrases shall mean the actual or constructive knowledge of any director or officer of Buyer, after due inquiry. Section

**4.01 Organization and Authority of Buyer; Enforceability.** Buyer is a corporation duly organized, validly existing and in good standing under the laws of the state of Delaware. Buyer has full corporate power and authority to enter into this Agreement and the documents to be delivered hereunder, to carry out its obligations hereunder and to consummate the transactions contemplated hereby. The execution, delivery and performance by Buyer of this Agreement and the documents to be delivered hereunder and the consummation of the transactions contemplated hereby have been duly authorized by all requisite corporate action on the part of Buyer. This Agreement and the documents to be delivered hereunder have been duly executed and delivered by Buyer, and (assuming due authorization, execution and delivery by Seller) this Agreement and the documents to be delivered hereunder constitute legal, valid and binding obligations of Buyer enforceable against Buyer in accordance with their respective terms.

**Section 4.02 No Conflicts; Consents.** The execution, delivery and performance by Buyer of this Agreement and the documents to be delivered hereunder, and the consummation of the transactions contemplated hereby, do not and will not:

(a) violate or conflict with the certificate of incorporation, by-laws or other organizational documents of Buyer; or

(b) violate or conflict with any judgment, order, decree, statute, law, ordinance, rule or regulation applicable to Buyer. No consent, approval, waiver or authorization is required to be obtained by Buyer from any person or entity (including any governmental authority) in connection with the execution, delivery and performance by Buyer of this Agreement and the consummation of the transactions contemplated hereby.

**Section 4.03 Legal Proceedings**. There is no Action of any nature pending or, to Buyer's knowledge, threatened against or by Buyer that challenges or seeks to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. No event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such Action.

**Section 4.04 Brokers.** No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Buyer.

**ARTICLE V**

**COVENANTS**

**Section 5.01 Public Announcements.** Unless otherwise required by applicable law, neither party shall make any public announcements regarding this Agreement or the transactions contemplated hereby without the prior written consent of the other party (which consent shall not be unreasonably withheld or delayed).

**Section 5.02 Transfer Taxes.** All transfer, documentary, sales, use, stamp, registration, value added and other such taxes and fees (including any penalties and interest) incurred in connection with this Agreement and the documents to be delivered hereunder shall be borne and paid

(i) by Seller, if such taxes and fees are imposed by Turkish laws and

(ii) by Buyer, if such taxes and fees are imposed by U.S. law, when due. Each party shall, at its own expense, timely file any tax return or other document with respect to such taxes or fees and shall cooperate with each other, with respect thereto as necessary.

**Section 5.03 Further Assurances.** Following the Closing, each of the parties hereto shall execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement and the documents to be delivered hereunder.

**ARTICLE VI**

**INDEMNIFICATION**

**Section 6.01 Survival.** All representations, warranties, covenants and agreements contained herein and all related rights to indemnification shall survive the Closing for a period of three months as of the Closing Date.

**Section 6.02 Indemnification By Seller**. Seller shall defend, indemnify and hold harmless Buyer, its affiliates and their respective stockholders, directors, officers and employees from and against all claims, judgments, damages, liabilities, settlements, losses, costs and expenses, including attorneys' fees and disbursements, arising from or relating to:

(a) any inaccuracy in or breach of any of the representations or warranties of Seller contained in this Agreement or any document to be delivered hereunder;

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Seller pursuant to this Agreement or any document to be delivered hereunder; or

(c) any Excluded Asset .

**Section 6.03 Indemnification Procedures.** Whenever any claim shall arise for indemnification hereunder, the party entitled to indemnification (the " Indemnified Party ") shall promptly provide written notice of such claim to the other party (the " Indemnifying Party "). In connection with any claim giving rise to indemnity hereunder resulting from or arising out of any Action by a person or entity who is not a party to this Agreement, the Indemnifying Party, at its sole cost and expense and upon written notice to the Indemnified Party, may assume the defense of any such Action with counsel reasonably satisfactory to the Indemnified Party. The Indemnified Party shall be entitled to participate in the defense of any such Action, with its counsel and at its own cost and expense. If the Indemnifying Party does not assume the defense of any such Action, the Indemnified Party may, but shall not be obligated to, defend against such Action in such manner as it may deem appropriate, including, but not limited to, settling such Action, after giving notice of it to the Indemnifying Party, on such terms as the Indemnified Party may deem appropriate and no action taken by the Indemnified Party in accordance with such defense and settlement shall relieve the Indemnifying Party of its indemnification obligations herein provided with respect to any damages resulting therefrom. The Indemnifying Party shall not settle any Action without the Indemnified Party's prior written consent (which consent shall not be unreasonably withheld or delayed).

**Section 6.04 Tax Treatment of Indemnification Payments.** All indemnification payments made by Seller under this Agreement shall be treated by the parties as an adjustment to the Purchase Price for tax purposes, unless otherwise required by law.

**Section 6.05 Effect of Investigation.** Buyer's right to indemnification or other remedy based on the representations, warranties, covenants and agreements of Seller contained herein will not be affected by any investigation conducted by Buyer with respect to, or any knowledge acquired by Buyer at any time, with respect to the accuracy or inaccuracy of or compliance with, any such representation, warranty, covenant or agreement; provided, however, the Seller shall not be held responsible for any indemnification claim or other remedy for any fact, event and/or circumstance that the Sellerhas disclosed in writing to the Buyer prior to the Closing Date. and/or (ii) the Buyer should have been aware of had the Buyer shown due diligence.

**Section 6.06 Cumulative Remedies.** The rights and remedies provided in this Article VI are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.

**Section 6.07 Time Limitation.** The rights and remedies provided in this Article VI are subject to a time limitation of three months as of the Closing Date. The parties hereby agree that upon lapse of such three months period, all representations, warranties, covenants and agreements contained herein and all related rights to indemnification shall lapse and have no further effect.

**ARTICLE VII ,**

**MISCELLANEOUS**

**Section 7.01 Expenses.** All costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses.

**Section 7.02 Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given

(a) when delivered by hand (with written confirmation of receipt);

(b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested);

(c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or

(d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 7.02):

If to Seller: Address XXX, Turkey Telephone: xxx-xxx-xxx Facsimile: xxx-xxx-xxx E-mail: xxx Attention: Hassan Bilger, CEO

with a copy to: ABCD Legal Consultancy Telephone: xxx-xxx-xxx Facsimile: xxx E-mail: .ABCD@ABCD-law.com Attention: Av. Erkan Uysel ABCD, LL.M., Esq.

If to Buyer: Address XXX, USA Telephone: xxx-xxx-xxx Facsimile: xxx-xxx-xxx E-mail: xxx Attention: Memet Erkul

with a copy to: John Jackson, PA Telephone: xxx-xxx-xxx Facsimile: xxx-xxx-xxx E-mail: xxx Attention: John Jackson, Esq.

**Section 7.03 Headings.** The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

**Section 7.04 Severability**. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

**Section 7.05 Entire Agreement.** This Agreement and the documents to be delivered hereunder constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and the documents to be delivered hereunder, the Exhibits and Disclosure Schedules (other than an exception expressly set forth as such in the Disclosure Schedules), the statements in the body of this Agreement will control.

**Section 7.06 Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. No assignment shall relieve the assigning party of any of its obligations hereunder.

**Section 7.07 No Third-party Beneficiaries.** Except as provided in Article VI, this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

**Section 7.08 Amendment and Modification.** This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto.

**Section 7.09 Waiver.** No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. Section

**7.10 Governing Law.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware, USA without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of Delaware.

**Section 7.11 Submission to Jurisdiction.** Any legal suit, action or proceeding arising out of or based upon this Agreement or the transactions contemplated hereby may be instituted in the federal courts of the United States of America or the courts of the State of Massachusetts in each case located in the City of Cambridge and County of Middlesex, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

**Section 7.12 Waiver of Jury Trial.** Each party acknowledges and agrees that any controversy which may arise under this Agreement is likely to involve complicated and difficult issues and, therefore, each such party irrevocably and unconditionally waives any right it may have to a trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby.

**Section 7.13 Specific Performance.** The parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

**Section 7.14 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

Ozturk Limited irketi

|s|Mehmet BilgenMehmet Bilger Witness Mehmet BilgenMehmet Bilger By |s|Hassan Bilger Name: Hassan BilgerTitle: Chief Executive Officer

TOELOC, Inc.

/s/Francis MorgenFrancis Morgen Witness Francis MorgenFrancis Morgen By /s/Memet Erkul Name: Memet Erkul Title: Chairman of the Board

**APA#31**

**ASSET PURCHASE AGREEMENT**

THIS ASSET PURCHASE AGREEMENT (this "Agreement"), effective as of the 22nd day of September, 2011 (the "Effective Date"), by and between Pecun Pte Ltd, with an address at XXX Singapore ("Seller"), and Distatrans Ltd (f/k/a Backup, Inc.), a Washington corporation with an address at 435 XXX, USA ("Purchaser").

WHEREAS, Seller is the owner of the Assets (as defined herein); and

WHEREAS, Seller wishes to sell, and Purchaser wishes to purchase, the

Assets upon the terms and conditions herein set forth.

NOW, THEREFORE, in consideration of the mutual covenants, representations,

warranties, conditions, and agreements hereinafter expressed, and for other good

and valuable consideration, the receipt and sufficiency which are hereby

acknowledged, the parties hereto agree as follows:

**1. DEFINITIONS.** Without limiting the effect of any other terms defined in the

text of this Agreement, the following words shall have the meaning given them in

this Section 1.

1.1 "Assets" mean the Patents together with the Trademark.

1.2 "Escrow Agent" means Henderson Fife LLP, XXX, U.S.

1.3 "Governmental Authority" means any (i) nation, principality, state,

commonwealth, province, territory, county, municipality, district or other

jurisdiction of any nature; (ii) federal, state, local, municipal, foreign or

other government; (iii) governmental or quasi governmental authority of any

nature (including any governmental division, subdivision, department, agency,

bureau, branch, office, commission, council, board, instrumentality, officer,

official, representative, organization, unit, body or entity and any court or

other tribunal); (iv) multinational organization or body; or (v) person or

entity exercising, or entitled to exercise, any executive, legislative,

judicial, administrative, regulatory, taxing or arbitral authority or power of

any nature.

1.4 "Legal Requirement" means any federal, state, local, municipal, foreign or

other law, statute, legislation, constitution, principle of common law,

resolution, ordinance, code, Order, edict, decree, proclamation, treaty,

convention, rule, regulation, permit, ruling, directive, pronouncement,

requirement (licensing or otherwise), specification, determination, decision,

opinion or interpretation that is, has been or may in the future be issued,

enacted, adopted, passed, approved, promulgated, made, implemented or otherwise

put into effect by or under the authority of any Governmental Authority.

1.5 "Liability" or "Liabilities" means all liabilities and/or obligations,

direct, indirect, absolute or contingent, whether accrued, vested or otherwise

and whether or not reflected or required to be reflected on the financial

statements of a person or entity.

1.6 "Lien" means any lien, security interest, pledge, option, title retention

agreement, charge, claim, liability, judgment, license, restriction, encumbrance

or rights of others of any nature whatsoever.

1.7 "Order" means any judgment, order, writ, judgment, injunction, or decree of

any court or other Governmental Authority.

1.8 "Patents" means those patents that are listed, identified and described on

Schedule 1.7 hereto and, with respect to such listed patents, all pending,

abandoned, expired, completed and issued U.S. and foreign patent applications

and patents therefor, as applicable (including all renewals, reissues,

re-examinations, divisions, continuations, continuations-in-part and extensions

thereof, foreign equivalence thereto, provisional and non-provisional

applications), whether granted or registered or not, and all rights to obtain

registrations and extensions of registrations, or other legal protections,

wherever such rights exist throughout the world, together with:

(i) all rights

to sue in equity or at law for any and all infringements or other impairments of

such listed patents occurring prior to the date of this Agreement, including the

right to receive and retain the proceeds and damages relating to those

infringements, misappropriation and other impairments or violations thereof, and

any novel change, improvements, additions or expansions of such listed patents;

(ii) all current contracts and future sales and contracts pertaining to such

listed patents;

(iii) all authorizations of Governmental Authorities (and

pending applications therefore), including permits, licenses, certificates,

consents, variances and approvals, and

(iv) all files and documents relating to

any of the foregoing.

1.9 "Trademark" means the trademark identified and described on Schedule 1.8

hereto and any and all pending, expired, abandoned, registered, unregistered,

and common law U.S. and foreign trademark applications and trademarks, service

mark applications and service marks, designs, logos, and trade dress, including

the goodwill related to the foregoing, and all federal and state registrations

thereof related thereto.

**2. SALE AND PURCHASE OF ASSETS; PURCHASE PRICE:**

2.1 On the date ("Closing Date") of the consummation of the transactions

contemplated hereby (the "Closing"), Seller shall convey, sell, transfer and

assign, and cause Ward & Duncik, PA, U.S. registered patent attorneys ("Ward & Dunci"), to deliver to Purchaser evidence of, and Purchaser shall purchase,

acquire and accept from Seller, free from any Liens, all of Seller's right,

title and interest in and to the Assets.

2.2 On the Closing Date, Purchaser shall issue, convey and sell, and cause

Escrow Agent to deliver to Seller, and Seller shall purchase, acquire and accept

from Purchaser, stock certificates of Purchaser for an aggregate of eleven

million (11,000,000) newly-issued shares of common stock of Purchaser (the

"Purchase Price"). Additionally, Seller shall nominate, and Purchaser shall

appoint, two board members (together, the "Seller Directors") to the board of

directors of Purchaser. The initial Seller Directors shall be Edward PhilingtonEdward P. Philingtonand Kathleen Borsodi

**3. ESCROW.** Prior to the Closing Date, Seller and Purchaser shall enter into that

certain escrow agreement attached hereto as Exhibit A (the "Escrow Agreement")

with Escrow Agent, pursuant to which, among other things, Escrow Agent shall

release the items held in escrow by Escrow Agent to the appropriate party hereto

in accordance with the terms and conditions set forth in the Escrow Agreement.

After the execution of the Escrow Agreement and prior to the Closing Date:

3.1 Seller shall deposit with Ward & Duncik one or more assignment documents to

be filed with the U.S. Patent and Trademark Office ("USPTO") assigning,

transferring, selling and conveying all of the Patents to Purchaser in such form

as can be properly filed with the USPTO without any further action of Seller

(i.e., completed, accurate and executed) (the "Assignment Documents"); and

3.2 Purchaser shall deposit with Escrow Agent the Purchase Price.

**4. NO ASSUMPTION OF LIABILITIES.** Purchaser shall not assume any liabilities or

obligations of Seller in connection with, related to or with respect to the

Assets. Without limiting the foregoing, Purchaser shall not assume:

4.1 any Liability of Seller arising out of or in connection with any claim or

proceeding (regardless of whether made or instituted prior to or subsequent to

the Closing Date) to the extent arising out of or in connection with the Assets

which occurred on or prior to the Closing Date; and

4.2 any Liability of Seller arising out of or in connection with non-compliance

with any Legal Requirement or Order applicable to the Assets on or prior to the

Closing Date.

**5. NON-ASSIGNABLE ASSETS:** To the extent that the legal interest in any of the

Assets, or any claim, right or benefit arising thereunder or resulting

therefrom, cannot be sold, assigned, transferred or conveyed hereunder because

it would be invalid or would constitute a breach of any contract or other

commitment to which Seller is a party or by which Seller or any of the Assets

may be bound, or if any consent of a licensor would be required in connection

with the assignment of any such contract or commitment, this Agreement shall not

constitute an assignment of such Asset; PROVIDED, HOWEVER, that any such Asset

shall be held and/or received by Seller for the benefit of Purchaser and its

successors and assigns. Seller will use its reasonable best efforts to obtain

all consents required for the assignment of any Asset to Purchaser. Until such

consent is obtained, Seller will cooperate with Purchaser and its successors and

assigns in any reasonable arrangement designed to provide for Purchaser and its

successors and assigns the benefit of such Asset, including enforcement for the

benefit of Purchaser and its successors and assigns, of any and all rights of

Seller arising out of the breach or cancellation of any contract or other

commitment in connection with such Asset.

**6. SELLER'S REPRESENTATIONS:** Seller hereby represents and warrants to Purchaser

as follows:

6.1 Corporate Existence. Seller is a company duly organized, validly existing

and in good standing under the laws of its jurisdiction of formation, and has

full power and authority to own or lease its properties and to carry on its

business as currently conducted. Seller is duly qualified or licensed to do

business in all the jurisdictions it is required to be so qualified or licensed;

6.2 Authorization. Seller has full power and authority to enter into and perform

its obligations under this Agreement and to consummate the transactions

contemplated hereby. The execution, delivery and performance of this Agreement

by Seller have been duly authorized by all requisite action. This Agreement is

the legal, valid and binding obligation of Seller, enforceable in accordance

with its terms, except that such enforcement may be subject to (i) bankruptcy,

insolvency, reorganization, moratorium or other similar laws affecting or

relating to enforcement of creditors' rights generally, and (ii) general

principles of equity;

6.3 No Violation. The execution and delivery of this Agreement by Seller and the

consummation of the transactions contemplated herein do not and will not

(i)

violate or result in a default under the charter or governing documents of

Seller,

(ii) violate (with or without the giving of notice or the lapse of time

or both) any Legal Requirement or Order applicable to Seller or the Assets,

(iii) violate or breach, or constitute a default under or grounds for

termination of, or result in the acceleration of the performance of the

obligations of Seller under any contract related to the Assets to which Seller

is a party or by which the Assets are bound or affected,

(iv) result in creation

of any lien on any of the Assets or

(v) prevent the carrying out of the

transactions contemplated hereby. No permit, consent, waiver, approval or

authorization of, or declaration to or filing or registration with, any

Governmental Authority or third party is required in connection with the

execution, delivery or performance of this Agreement by Seller or the

consummation by Seller of the transactions contemplated hereby;

**6.4 Licenses and Permits; Compliance with Law**. Seller holds all licenses,

certificates, permits, franchises and rights from all applicable Governmental

Authorities necessary for the use of the Assets. Seller is not presently charged

with, or under governmental investigation with respect to, any actual or alleged

violation of any Legal Requirement or Order, nor is it presently the subject of

any pending or threatened adverse proceeding by any Governmental Authority

having jurisdiction over the Assets;

**6.5 Litigation.** To the best of Seller's knowledge, there is no suit, action,

claim, litigation, grievance, proceeding (administrative, judicial, or in

arbitration, mediation or alternative dispute resolution), Governmental

Authority or grand jury investigation, or other action (any of the foregoing, an

"Action") pending, or to Seller's knowledge, threatened against Seller, by or

against Seller (and Seller has not been a party to any Action including such

claim) involving the Assets, including, without limitation, any Action

challenging, enjoining, or preventing this Agreement, or the consummation of the

transactions contemplated hereby. Seller has not received written notice of any

such claim, asserting the invalidity, misuse or unenforceability, infringement,

misappropriation or other violation of any intellectual property of any third

party, or challenging Seller's ownership of or rights to use any Assets, and, to

Seller's knowledge, there are no grounds for any such claim or challenge;

**6.6 Title.** Seller is the sole and exclusive owner of all right, title and

interest in and to the Assets, and has good title to the Assets, free and clear

of all Liens, including obligations to transfer or license such Assets, and

there exists no material restriction on the use or transfer or licensing of such

Assets. To Seller's knowledge, the Assets are valid and enforceable and Seller

does not have any obligation to compensate any person or entity for its use of

any Assets. Seller has not granted to any person or entity any license (whether

oral, written, implied or otherwise) to use the Assets. To Seller's knowledge,

none of the Assets has been or is subject to any interference, cancellation,

reexamination, reissue, opposition, or any other proceeding challenging

priority, scope, validity, or ownership anywhere in the world;

**6.7 Liabilities.** Seller does not have any Liabilities which are associated with

the Assets. The consummation of the transactions contemplated hereby will not

alter, impair, extinguish or invalidate any Assets owned or used by Seller;

**6.8 Confidentiality.** Seller is taking or has taken all commercially reasonable

actions necessary to maintain, and, to Seller's knowledge, Seller is taking or

has taken all actions necessary to protect, the Assets prior to the effective

date of this Agreement;

**6.9 No Adverse Actions.** Seller has not:

(a) suffered, permitted or incurred the imposition of any Lien or claim

upon any of the Assets;

(b) committed, suffered, permitted or incurred any default in any

Liability which has had or will have a material adverse effect upon

the Assets;

(c) made or agreed to any adverse change in the terms of any contract or

instrument to which it is a party which may have a material adverse

effect on the Assets;

(d) waived, canceled, sold or otherwise disposed of, for less than the

face amount thereof, any claim or right relating to the Assets which

it has against others;

(e) made any disclosure of any confidential or proprietary information of

Seller other than to Purchaser and its representatives, agents,

attorneys and accountants or to Seller's own employees in the ordinary

course;

(f) made any waiver of any claims or rights related to any of the Assets

or abandonment or lapse of any of the Assets; or

(g) committed to do any of the foregoing except as contemplated by this

Agreement.

**6.10 Contracts.** There are no contracts relating to the Assets;

**6.11 Brokers and Finders.** Seller has not retained any broker or finder in

connection with the transactions contemplated herein so as to give rise to any

valid claim for any brokerage or finder's commission, fee or similar

compensation; and

**6.12 Disclosure and Accuracy.** This Agreement and any schedules and exhibits

hereto disclose all facts material to the Assets. No statement contained herein

or in any certificate, schedule, exhibit, list or other instrument furnished to

Purchaser pursuant to the provisions hereof contains or will contain any untrue

statement of any material fact or omits or will omit to state a material fact

necessary in order to make the statements contained herein or therein not

misleading.

**7. PURCHASER'S REPRESENTATIONS:** Purchaser hereby represents and warrants to

Seller as follows:

**7.1 Corporate Existence.** Purchaser is a company duly incorporated, validly

existing and in good standing under the laws of the State of Washington, and has

full power and authority to own or lease its properties and to carry on its

business as currently conducted. Purchaser is duly qualified or licensed to do

business in all the jurisdictions it is required to be so qualified or licensed;

**7.2 Authorization.** Purchaser has full power and authority to enter into and

perform its obligations under this Agreement and to consummate the transactions

contemplated hereby. The execution, delivery and performance of this Agreement

by Purchaser have been duly authorized by all requisite action. This Agreement

is the legal, valid and binding obligation of Purchaser, enforceable in

accordance with its terms, except that such enforcement may be subject to

(i) bankruptcy, insolvency, reorganization, moratorium or other similar laws

affecting or relating to enforcement of creditors' rights generally, and

(ii) general principles of equity;

**7.3 No Violation.** The execution and delivery of this Agreement by Purchaser and

the consummation of the transactions contemplated herein do not and will not

(i) violate or result in a default under the charter or by-laws of Purchaser,

(ii) violate (with or without the giving of notice or the lapse of time or both) any

Legal Requirement or Order applicable to Purchaser, or (iii) prevent the

carrying out of the transactions contemplated hereby. No permit, consent,

waiver, approval or authorization of, or declaration to or filing or

registration with, any Governmental Authority or third party is required in

connection with the execution, delivery or performance of this Agreement by

Purchaser or the consummation by Purchaser of the transactions contemplated

hereby;

**7.4 Brokers and Finders.** Purchaser has not retained any broker or finder in

connection with the transactions contemplated herein so as to give rise to any

valid claim for any brokerage or finder's commission, fee or similar

compensation; and

**7.5 Disclosure and Accuracy.** No statement contained herein or in any

certificate, schedule, exhibit, list or other instrument furnished to Seller

pursuant to the provisions hereof contains or will contain any untrue statement

of any material fact or omits or will omit to state a material fact necessary in

order to make the statements contained herein or therein not misleading.

**8. CONDITIONS TO PURCHASER'S OBLIGATIONS AT CLOSING.** All obligations of

Purchaser under this Agreement are subject to fulfillment on the Closing Date of

each of the following conditions:

**8.1 Representations and Warranties.** The representations and warranties of Seller

contained in Section 6 hereof and elsewhere herein shall be true and correct in

all material respects in each case at and as of the Closing Date as though such

representations and warranties were made at and as of such time;

**8.2 Covenants.** Seller shall have performed and complied in all material respects

with all covenants, agreements and conditions on its part required by this

Agreement to be performed or complied with prior to or at the Closing Date;

**8.3 No Litigation or Contrary Judgment.** On the Closing Date there shall exist no

valid Order, statute, rule, regulation, executive order, stay, decree, judgment

or injunction which prohibits or prevents the consummation of the transactions

contemplated by this Agreement;

**8.4 Assignment.** Seller shall have deposited with Ward & Duncik the Assignment

Documents; and

**8.5 Other Deliveries.** Seller shall deliver or cause to be delivered such other

documents and instruments as may be reasonably requested by Purchaser or its

counsel to consummate the transactions contemplated hereby.

**9. CONDITIONS TO SELLER'S OBLIGATIONS.** All obligations of Seller under this

Agreement are subject to the fulfillment at the Closing Date of each of the

following conditions:

**9.1 Representations and Warranties.** The representations and warranties of

Purchaser contained in Section 7 hereof and elsewhere herein shall be true and

correct in all material respects in each case at and as of the Closing Date as

though such representations and warranties were made at and as of such time;

**9.2. Covenants.** Purchaser shall have performed and complied in all material

respects with all agreements and conditions on its part required by this

Agreement to be performed or complied with prior to or at the Closing Date; and

**9.3 No Litigation or Contrary Judgment.** On the Closing Date there shall exist no

valid Order, statute, rule, regulation, executive order, stay, decree, judgment

or injunction which prohibits or prevents the consummation of the transactions

contemplated by this Agreement.

**9.4 Closing Payment.** Purchaser shall have delivered the Purchase Price to Escrow

Agent.

**10. POST CLOSING COVENANTS**

**10.1 Further Assurances; Cooperation.** From and after the Closing Date, the

parties hereto shall, on request, cooperate with one another by furnishing any

additional information, executing and delivering any additional documents and

instruments, and doing any and all such other things as may be reasonably

required by the parties hereto or their counsel to consummate or otherwise

implement the transactions contemplated by this Agreement. With respect to the

assignment, prosecution, and maintenance of the Assets, Seller and Purchaser

shall reasonably cooperate for the purposes of transferring ownership and the

responsibility to administer, prosecute, and maintain the Assets to Purchaser;

and

**10.2 Public Announcements.** Seller shall not (and Seller shall cause its

directors, officers, employees and agents not to) issue or cause the publication

of any press release or other public announcement with respect to the

transactions contemplated by this Agreement without the prior written consent of

Purchaser.

**11. INDEMNIFICATION:**

**11.1 By Seller.** Seller agrees to indemnify and hold harmless Purchaser and its

affiliates, and their respective shareholders, directors, officers, employees,

successors, assigns, and agents (the "Purchaser Indemnified Persons") from and

against any and all claims, losses, damages, liabilities, expenses or costs

("Losses"), plus reasonable attorneys' fees and expenses incurred in connection

with Losses and/or enforcement of this Agreement, incurred by Purchaser by

reason of or arising out of or in connection with

(i) the breach of any representation or warranty contained herein or in any certificate or other

document delivered to Purchaser pursuant to the provisions of this Agreement,

(ii) the failure of Seller to perform any act required under this Agreement,

(iii) a claim by any third party with respect to any Liability, contract, other

commitment or state of facts which constitutes a breach of any representation or

warranty contained in Section 6 hereof or in any certificate or other document

delivered by or on behalf of Seller to Purchaser pursuant to the provisions of

this Agreement, or

(iv) any Liability of Seller. Purchaser agrees to give prompt

notice to Seller of any claim for which Purchaser seeks indemnification

hereunder, which notice shall include a reasonably detailed description of such

claim, and a period of thirty (30) days to cure such breach, and pay on such

claim. If any claim is brought against Purchaser for which indemnification is

sought from Seller under this Section 11.1, then Purchaser shall control the

contest, defense, settlement or compromise of any such claim (including the

engagement of counsel in connection therewith), at Seller's cost and expense,

including the cost and expense of reasonable attorneys' fees in connection with

such contest, defense, settlement or compromise, and Seller shall have the right

to participate in the contest, defense, settlement or compromise of any such

claim at its own cost and expense, including the cost and expense of reasonable

attorneys' fees in connection with such participation;

PROVIDED, HOWEVER, that

Purchaser shall not settle or compromise any such claim without the prior

written consent of Seller, which consent shall not be unreasonably withheld or

delayed. If Seller fails to assume the defense of such claim within 30 days of

receipt of notice of such claim, or if at any time Seller shall fail to defend

in good faith any such claim, Purchaser may assume the defense thereof and may

employ counsel with respect thereto and all fees and expenses of such counsel

shall be paid by Seller, and Purchaser may conduct and defend such claim in such

manner as it may deem appropriate;

PROVIDED, HOWEVER, that Purchaser shall not

settle or compromise any such claim without the prior written consent of Seller,

which consent shall not be unreasonably withheld or delayed.

**11.2 By Purchaser.** Purchaser agrees to indemnify and hold harmless Seller and

its affiliates, and their respective shareholders, directors, officers,

employees, successors, assigns, and agents (the "Seller Indemnified Persons")

from and against any and all claims, losses, damages, liabilities, expenses or

costs ("Losses"), plus reasonable attorneys' fees and expenses incurred in

connection with Losses and/or enforcement of this Agreement, incurred by Seller

by reason of or arising out of or in connection with

(i) the breach of any representation or warranty contained herein or in any certificate or other

document delivered to Seller pursuant to the provisions of this Agreement,

(ii) the failure of Purchaser to perform any act required under this Agreement or

(iii) a claim by any third party with respect to any Liability, contract, other

commitment or state of facts which constitutes a breach of any representation or

warranty contained in Section 7 hereof or in any certificate or other document

delivered by or on behalf of Purchaser to Seller pursuant to the provisions of

this Agreement. Seller agrees to give prompt notice to Purchaser of any claim

for which Seller seeks indemnification hereunder, which notice shall include a

reasonably detailed description of such claim, and a period of thirty (30) days

to cure such breach, and pay on such claim. If any claim is brought against

Seller for which indemnification is sought from Purchaser under this Section

11.2, then Seller shall control the contest, defense, settlement or compromise

of any such claim (including the engagement of counsel in connection therewith),

at Purchaser's cost and expense, including the cost and expense of reasonable

attorneys' fees in connection with such contest, defense, settlement or

compromise, and Seller shall have the right to participate in the contest,

defense, settlement or compromise of any such claim at its own cost and expense,

including the cost and expense of reasonable attorneys' fees in connection with

such participation;

PROVIDED, HOWEVER, that Seller shall not settle or

compromise any such claim without the prior written consent of Purchaser, which

consent shall not be unreasonably withheld or delayed. If Purchaser fails to

assume the defense of such claim within 30 days of receipt of notice of such

claim, or if at any time Purchaser shall fail to defend in good faith any such

claim, Seller may assume the defense thereof and may employ counsel with respect

thereto and all fees and expenses of such counsel shall be paid by Purchaser,

and Seller may conduct and defend such claim in such manner as it may deem

appropriate;

PROVIDED, HOWEVER, that Seller shall not settle or compromise any

such claim without the prior written consent of Purchaser, which consent shall

not be unreasonably withheld or delayed.

**12. MISCELLANEOUS:**

**12.1 Survival of Representations and Warranties.** Notwithstanding any right of

any party hereto to investigate the affairs of any of the parties hereto and

notwithstanding any knowledge of facts determined or determinable by any party

hereto pursuant to such investigation or right of investigation or otherwise

acquired or learned by any of the parties hereto, each of the parties hereto

shall have the right to rely fully upon the representations, warranties,

covenants and agreements of the other party hereto contained in this Agreement

and to pursue all rights and remedies in connection therewith. All

representations, warranties, covenants and agreements shall survive the Closing

and shall expire on the second (2nd) anniversary of the Closing Date (the

"Survival Date").

**12.2 Notices. All communications required or permitted to be given hereunder**

**shall be in wr**iting and shall be deemed to have been duly given if

(i) delivered personally with receipt acknowledged, (ii) sent by registered or certified mail,

return receipt requested, (iii) sent by telecopy with confirmation or (iv) sent

by overnight courier for next business day delivery, addressed to the parties

hereto at the addresses and facsimile numbers contained herein or to such other

addresses or facsimile numbers as any party hereto shall hereafter specify by

communication to the other party in the manner provided in this Section 12.2.

Notice shall be deemed to have been given, received and dated on the earlier of:

(i) when actually received or upon refusal to accept delivery thereof, (ii) on

the date when delivered personally or via telecopy, (iii) one (1) business day after being sent by overnight courier and (iv) four (4) business days after mailing.

**12.3 Severability.** If any term or provisions of this Agreement is held by a

court of competent jurisdiction to be invalid, void, or unenforceable, the

remainder of the terms and provisions set forth herein shall remain in full

force and effect and shall in no way be affected, impaired or invalidated, and

the parties hereto shall use their best efforts to find and employ an

alternative means to achieve the same or substantially the same result as that

contemplated by such term or provision.

**12.4 Governing Law; Interpretation; Jurisdiction; Waiver of Jury Trial.** This

Agreement shall in all respects be construed in accordance with and governed by

the substantive laws of the State of Washington applicable to contracts executed

and performed entirely within the state, without reference to its choice of law

rules. This Agreement shall be interpreted and construed in accordance with the

laws of the State of Washington without giving effect to the principles of

conflicts of laws thereof. Each party hereto hereby irrevocably submits to the

jurisdiction of the courts of the State of Washington. Each party hereby

irrevocably waives, to the fullest extent permitted by law, any objection which

it may now or hereafter have to the laying of the venue of any such suit, action

or proceeding brought in any such court, any claim that any such suit, action or

proceeding brought in such a court has been brought in an inconvenient forum,

and the right to object, with respect to any such suit, action or proceeding

brought in any such court, and that such court does not have jurisdiction over

such party. In any such suit, action or proceeding, each party hereby waives, to

the fullest extent it may effectively do so, personal service of any summons,

complaint or other process and agrees that the service thereof may be made by

certified or registered mail, addressed to such party at its address set forth

in the preamble herein.

THE PARTIES HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN

ANY PROCEEDING, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. THE PARTIES AGREE THAT ANY OF THEM MAY FILE A COPY OF THIS SECTION 12.4 WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED-FOR AGREEMENT AMONG THE PARTIES IRREVOCABLY TO WAIVE

TRIAL BY JURY AND THAT ANY PROCEEDING WHATSOEVER BETWEEN

THEM SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

**12.5. Entire Agreement.** The parties hereto agree that all understandings and

agreements heretofore made between them with respect to the subject matter

hereof are merged into this Agreement and any schedules and exhibits attached

hereto (collectively the "Transaction Documents"), which fully and completely

express their agreement with respect to the subject matter hereof. There are no

promises, agreements, conditions, understandings, warranties or representations,

oral or written, express or implied, among the parties hereto, other than as set

forth in the Transaction Documents. All prior agreements among the parties

hereto with respect to the subject matter hereof are superseded by the

Transaction Documents, which integrate all promises, agreements, conditions and

understandings among the parties hereto with respect to the matters contained

herein.

**12.6. Termination, Revocation, Waiver, Modification or Amendment.** No

termination, revocation, waiver, modification or amendment of this Agreement

shall be binding unless agreed to in writing and signed by an authorized officer

of each of the parties hereto.

**12.7. Counterparts.** This Agreement may be executed in multiple counterparts,

each of which shall be deemed an original and all of which shall constitute one

and the same agreement. The signature of any party hereto to a counterpart shall

be deemed to be a signature to, and may be appended to, any other counterpart.

**12.8. Assignability.** This Agreement shall not be assignable by any party hereto

without the prior written consent of the other party hereto.

**12.9 Binding Effect.** This Agreement shall be binding upon, and shall inure to

the benefit of, the parties hereto and their respective successors and permitted

assigns.

**12.10 Waiver.** No consent or waiver, express or implied, by any party hereto to

or of any breach or default by any other party in the performance by any other

party of its obligations hereunder shall be deemed or construed to be a consent

to or waiver of any other breach or default in the performance by such other

party of the same or any other obligation of such party hereunder. Failure on

the part of a party hereto to complain of any act or failure to act of any other

party or to declare such other party in default, irrespective of how long such

failure continues, shall not constitute a waiver by such party of its rights

hereunder.

**12.11 Additional Remedies.**  The rights and remedies of any party hereto under

this Agreement shall not be mutually exclusive. The respective rights and

obligations hereunder shall be enforceable by specific performance, injunction

or other equitable remedy, but nothing herein contained is intended to, nor

shall it limit or affect, any other rights in equity or any rights at law or by

statute or otherwise of any party hereto aggrieved as against the other for

breach or threatened breach of any provision hereof, it being the intention of

this Section to make clear the agreement of the parties hereto that their

respective rights and obligations hereunder shall be enforceable in equity as

well as at law or otherwise.

**12.12 Expenses.** Each of the parties hereto shall pay the fees and expenses

incurred by it in connection with the negotiation, preparation, execution and

performance of this Agreement, including, without limitation, reasonable

attorneys' fees.

**12.13 Costs of Enforcement.** Except as otherwise set forth herein, the prevailing

party hereto in any proceeding brought to enforce any provision of this

Agreement shall be entitled to recover the reasonable fees and costs of its

counsel, plus all other costs of such proceeding.

**12.14 Headings.** The headings in this Agreement are for convenience of reference

only and shall not limit or otherwise affect the meaning hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the

date above written.

SELLER

Pecun Pte Ltd

By: |s|Edward Philington

--------------------------------------

Name: Edward Philington

Title: Director

PURCHASER

Distatrans Ltd

(f/k/a Backup, Inc.)

By: |s|Edward Philington

--------------------------------------

Name: Edward Philington

Title: Chief Executive Officer

**APA#32**

**ASSET PURCHASE AGREEMENT**

THIS ASSET PURCHASE AGREEMENT, dated XXXXX 20XX (this " Agreement "), is by and between North American Meds, Inc., a Delaware corporation ("Purchaser"), and BioC Medical (B.C.M), Ltd., an Israeli corporation (" Seller ").

**Recitals**

A. Seller is in the business of developing devices, including active implantable devices, that can affect the behavior of both muscles and nerves of the autonomic system (" BioC Devices ") and manufacturing, marketing, selling and distributing such devices for use in connection with a variety of medical conditions, including medical conditions that fall within a field of use comprised of Urology, Gynecology, Colorectal Disorders, Sexual Dysfunction and related pelvic disorders (the " Field of Use ") and others, principally in the field of cardiology, that fall outside such Field of Use. For purposes of this Agreement, " Urology Business " means Seller's business of designing, manufacturing, marketing, selling and distributing BioC Devices in the Field of Use.

B. Seller has developed Intellectual Property (as defined herein) related to the BioC Devices, including Intellectual Property applicable to BioC Devices generally and Intellectual Property that is uniquely applicable to the Urology Business.

C. Purchaser wishes to obtain an exclusive worldwide license to certain of Seller's Intellectual Property applicable to BioC Devices generally for use exclusively within the Field of Use, as specified in the License Agreement (the " Licensed Intellectual Property "), and Seller is willing to grant such a license.

D. Purchaser wishes to purchase from Seller, and Seller wishes to sell to Purchaser, the Urology Business of Seller, by purchasing certain of Seller's assets, other than the Licensed Intellectual Property, exclusively or primarily related to the Urology Business in consideration for the Purchase Price (as herein defined) and the assumption by Purchaser of the Assumed Liabilities (as herein defined). Agreement

In consideration of the foregoing, incorporated herein by this reference, and the representations, warranties, covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

**ARTICLE 1**

**PURCHASE AND SALE OF ASSETS**

1.1 Purchase and Sale of Assets. Subject to the terms and conditions of this Agreement, simultaneous with the execution hereof (the "Closing"), on the effective date hereof (the "Closing Date"), Seller hereby sells, transfers, conveys, assigns and delivers to Purchaser and Purchaser purchases from Seller, free and clear of any mortgage, lien, pledge, option, security interest, claim, charge, financing statement or other lien of any kind whatsoever, whether or not of record ("Liens"), all of Seller's right, title and interest in and to those assets of Seller which, except as expressly provided below, are exclusively or primarily used within the Urology Business, whether or not appearing on the books and records of Seller, as specified in each of the categories thereof more particularly described below (the "Purchased Assets"):

(a) Equipment and Inventory. Those items of equipment, tooling,

components, supplies and inventory specified on Exhibit 1.1(a)

hereto.

(b) Contracts. Those contracts and consulting agreements specified on

Exhibit 1.1(b) hereto (collectively, the "Assigned Contracts").

(c) Transferred Intellectual Property. All of Seller's rights in and to the

Intellectual Property specified on Exhibit 1.1(c) hereto, all reissues,

re-examinations and extensions thereof, and all invention records

created by internal and external personnel exclusively related to the

Field of Use (hereinafter the "Transferred Intellectual Property").

(d) Governmental Permits. All federal, state, local, foreign and other

governmental licenses, permits, approvals, authorizations, license

applications, registrations and other rights.

(e) Equity Rights in Tricym Israel. All of the equity ownership and rights

to acquire equity ownership, in Tricym, Israel, Ltd, an Israeli

corporation (“Tricym Israel”).

(f) Books and Records of Tricym Israel. All corporate minute books,

records and seals of Tricym Israel.

(g) Goodwill. All of the goodwill of the Urology Business, including the

right to represent oneself as the successor to the Urology Business.

1.2 Excluded Assets. All of Seller's Assets other than those assets expressly enumerated in the foregoing paragraph as Purchased Assets are excluded from the purchase and sale provided for in Section 1.1, and are referred to herein as the "Excluded Assets."

1.3 Assumption of Liabilities.

(a) Assumed Liabilities. Purchaser hereby assumes and agrees to

perform, and to pay or otherwise discharge, in accordance with the

stated written terms of the applicable obligations, the obligations of Seller under the Assigned Contracts listed on Exhibit 1.3(a) , but only

to the extent such performance or payment first arises in the ordinary

course of the Urology Business after the Effective Time, and

specifically excluding any liabilities or obligations arising from or in

connection with any breach, violation, default or failure of

performance of Seller or any third party arising prior to the Effective

Time. The obligations described in this paragraph (a), to the extent

assumed, are hereinafter collectively referred to as the "Assumed

Liabilities". To the extent either party receives any third party invoice

relating to periods or portions thereof for which they are not liable

hereunder, the parties will apportion the amount due from the other

party pursuant to this Section, and the other party will promptly remit

such amount to the invoiced party.

(b) Retained Liabilities. Except for the Assumed Liabilities, Purchaser

shall not assume and hereby expressly disclaims any assumption of

any other liabilities, obligations, debts or payables of any nature of

Seller, whether or not related to the Urology Business, whether fixed

or contingent, known or unknown, liquidated or unliquidated, secured

or unsecured, accrued or unaccrued, or otherwise (the "Retained

Liabilities"). The Retained Liabilities include, without limitation:

(i) Liabilities of Tricym Israel. All liabilities or obligations of

Tricym Israel existing on the Closing Date or regardless of

when asserted, related to periods or portions thereof ending

on or prior to the Closing Date, except for those liabilities set

forth in, and to the extent funded by Seller under, Sections

1.6(a)(xii) and 4.5;

(ii) Long-Term Debt. Any long-term debt, including capitalized

lease or other lease obligations, notes payable and other long-

term debt obligations or lease commitments of any kind;

(iii) Tax Liabilities. Any Tax liabilities of Seller or its Affiliates

(including any Tax liabilities of Tricym Israel) to the extent and

such Taxes relate to taxable period or portions thereof ending

on or prior to the Closing Date or relate to the transactions

contemplated by this Agreement, including without limitation

any transfer, recording or conveyance Taxes or value added

taxes associated with the transactions contemplated by this

Agreement;

(iv) Broker Payments. All amounts owed under any Contract

disclosed in Section 2.23 of the Disclosure Schedule; and

(v) General Liabilities. Any environmental claims or liabilities,

warranty claims or liabilities, product claims or liabilities, toxic

tort, litigation or labor or employment claims or liabilities,

automobile liabilities, general liabilities, workers'

compensation claims and any similar obligations or liabilities

of Seller existing on the Closing Date or, regardless of when

asserted, related to periods or portions thereof ending on or

prior to the Closing Date.

1.4 Purchase Price and Holdback. In addition to assuming the Assumed Liabilities and subject to the terms and conditions of this Agreement, in reliance on the representations, warranties and agreements of Seller contained herein and in consideration of the sale, assignment, transfer and delivery of the Purchased Assets, Purchaser agrees to pay to Seller the sum of $XX,000,000 US (the "Initial Purchase Price"). The Initial Purchase Price will be paid on Closing by wire transfers, in immediately available funds, in the amount of $XX,X00,000, US less the aggregate cash amount set forth on Exhibit 1.6(a)(xi) (the " Closing Date Payment "), to a bank account designated by Seller, and in the amount of $XX,X00,000 (the " Holdback ") to U.S. Bank, National Association, as escrow agent (the " Escrow Agent "), to be held pursuant to the terms of an Escrow Agreement dated of even date herewith among Seller, Purchaser and Escrow Agent in the form attached hereto as Exhibit 1.4 (the " Escrow Agreement ").

1.5 Additional Payments by Purchaser. As additional consideration for the Purchased Assets and subject to the conditions set forth in this Section 1.5 and to Section 5.7, Purchaser shall make the following payments (collectively, the "Contingent Purchase Price," together with the Initial Purchase Price, the "Purchase Price ") to Seller:

(a) $X, X00,000 US (the " First Milestone Payment ") upon Purchaser's

successful completion of the OUS pilot urge incontinence or frequency

clinical trial and corresponding data analysis, as set forth on Exhibit

1.5(a) hereof (the " First Milestone ").

(b) $X,X00,000 US (the " Second Milestone Payment ") payable in two

installments as follows (the " Second Milestone "):

(i) $X,000,000 US at the time thirty (30) devices, assembled and

manufactured by the Purchaser or its third party

subcontractors, are ready to be implanted in patients for

treatment of urge incontinence and/or frequency and the

Purchaser is authorized to apply the CE Mark according to the

Active Implantable Medical Device (AIMD) directives or once

five (5) devices, assembled and manufactured by the Purchaser

or its third party subcontractors, have been implanted in

patients; and

(ii) Contingent upon satisfaction of clause (b)(i), above,

$X,X00,000 US at the time that all of the Designated Employees

have completed one (1) year of employment with Purchaser. In

the event any of the Designated Employees do not complete

one year of employment, the Seller will provide an alternative

employee to Purchaser, or service in lieu of the work done by

the terminated Designated Employee. In such case, this portion

of the Second Milestone Payment will be delayed by the time

such service is not provided to the Purchaser. In its sole

discretion, the Purchaser may choose not to accept an

alternative employee or services if it has found an acceptable

replacement on its own. In such case, this portion of the Second

Milestone will be considered complete on the one (1) year

anniversary of the Designated Employee's start date with the

Purchaser or its Affiliates.

(c) $XX,000,000 US (the " Third Milestone Payment ," collectively with the

First Milestone Payment and the Second Milestone Payment, the "

Milestone Payments ") upon the final marketing approval by the U.S.

Food and Drug Administration (" FDA ") for the first cleared

indication for a device arising out of the Purchased Assets (the " Third

Milestone ," collectively with the First Milestone and the Second

Milestone, the " Milestones ").

For the avoidance of doubt, the parties agree that the First and Second Milestones are independent, and that either could be achieved prior to the other. Notwithstanding the foregoing, any pending Milestones will be deemed to have been achieved upon achievement of the Third Milestone.

Purchaser will notify Seller within thirty (30) days following achievement of each Milestone, and will remit the corresponding Milestone Payment within five (5) business days following such notice, by a wire transfer of immediately available funds to a bank account designated by Seller.

In the event Seller reasonably believes that a Milestone has been achieved and Purchaser has failed to provide timely notice hereunder, Seller may notify Purchaser and Purchaser will remit the Milestone Payment within ten (10) business days following such notice in the manner provided above, or will notify Seller within such period as to any dispute regarding completion of the Milestone.

1.6 Closing. The Closing will be held at the offices of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ or such other place as the parties may agree, at 9:00 a.m. on the Closing Date, local Minneapolis, Minnesota time, or such other time and place as the parties may agree. All matters at the Closing will be considered to take place simultaneously and no delivery of any document will be deemed complete until all transactions and deliveries of documents are completed. The Closing will be effective at 11:59 p.m. United States Central Standard Time on the Closing Date (the " Effective Time ").

(a) At the Closing, Seller shall deliver to Purchaser the following:

(i) Possession and control of the Purchased Assets, together with

such bills of sale and instruments of conveyance, transfer and

assignment, dated as of the Closing Date, as shall be sufficient

to transfer to and vest in Purchaser good, valid, and

marketable title to the Purchased Assets, free and clear of all

Liens, together with documents evidencing release of any Lien

on the Purchased Assets;

(ii) Certified copies of resolutions duly adopted by the Board of

Directors and sole shareholder of Seller, each authorizing the

execution and delivery of this Agreement and all other

documents being entered into by Seller, related to, or arising

from, this Agreement;

(iii) An executed original of the License Agreement between Seller

and Purchaser in the form of Exhibit 1.6(a)(iii) attached hereto

(the " License Agreement ");

(iv) An executed original of the Escrow Agreement, including

execution on behalf of the Escrow Agent;

(v) An executed original of the Transition Services Agreement

between Purchaser and Seller in the form of Exhibit 1.6(a)(v)

attached hereto (the " Transition Services Agreement ,"

collectively with the Escrow Agreement and the License

Agreement, the " Ancillary Agreements ");

(vi) All Consents of or from all Governmental Authorities required

hereunder to consummate the transactions contemplated

herein, and all Consents of or from all Persons shall have been

delivered, made or obtained, and Purchaser shall have received

copies thereof;

(vii) Opinions of counsel to Seller, in the form of Exhibit 1.6(a)(vii)

attached hereto;

(viii) Letters of Resignation and Release of Claims, dated as of the

Effective Time, in substantially the form of Exhibit 1.6(a)(viii)

attached hereto from the officers and directors and Tricym

Israel;

(ix) Applicable documentation regarding tax withholding pursuant

to Section 4.4(f).

(x) Letters of assignment executed by Seller, and any other

required documentation, to consummate the transfer of the

Funds from Seller to Tricym Israel as provided in Section 4.5

hereof;

(xi) A certificate, in the form attached hereto as Exhibit 1.6(a)(xi) ,

dated as of the Closing, and signed by the Seller's Chief

Executive Officer, certifying as to any accrued vacation days or

recuperation pay . . . accrued with respect to the

Designated Employees and the respective cash amounts

needed to cover such benefits through the date of the Closing.

(xii) Copies of the executed employment agreements entered by and between Tricym Israel and the Designated Employees, copies of letters of acknowledgment executed by the Designated Employees with respect to their transfer to Tricym Israel, and such other ancillary documents as Purchaser may deem necessary;

(xiii) A true copy of the notice of transfer of Tricym Israel's shares to Purchaser to be filed with the Israeli Companies Registrar not later than seven (7) calendar days following the Closing, in the form attached hereto as Exhibit 1.6(a)(xiii);

(xiv) A validly executed share certificate covering Tricym Israel's shares to be issued to Purchaser at the Closing in the name of Purchaser, in the form attached hereto as Exhibit 1.6(a)(xiv);

(xv) A copy of the Shareholder Register of Tricym Israel reflecting the transfer of the Tricym Israel's shares to Purchaser, in the form attached hereto as Exhibit 1.6(a)(xv);

(xvi) Executed share transfer deed covering all of the Tricym Israel's shares, in the form attached hereto as Exhibit 1.6(a)(xvi);

(xvii) Certified copies of resolutions duly adopted by the Board of Directors of Tricym Israel with respect to the transfer of Tricym Israel shares to Purchaser; and

(xviii) Such other duly executed agreements, deeds, certificates or other instruments of conveyance, transfer and assignment as shall be necessary, in the opinion of Purchaser, to vest in Purchaser good, valid and marketable title to the Purchased Assets.

(b) At the Closing, Purchaser shall deliver to Seller the following:

(i) The Closing Date Payment;

(ii) Executed originals of each of the License Agreement, the Transition Services Agreement and the Escrow Agreement;

(iii) Opinion of Oppenheimer Wolff & Donnelly LLP, counsel to Purchaser, in the form of Exhibit 1.6(b)(iii) attached hereto;

(iv) Certified copies of resolutions duly adopted by the Board of Directors of Purchaser with respect to transaction; and

(v) An Assumption Agreement in a mutually acceptable form and such other instruments, certificates or documents as shall have been reasonably requested by Seller for the assumption of the Assumed Liabilities; and

(vi) All other documents required to be delivered by Purchaser in connection with the transactions contemplated hereby, including the counterpart signature pages of all other documents referred to in Section 1.6(a) to the extent Purchaser is a party thereto.

1.7 Further Assurances.

(a) After the Closing, Seller shall from time to time, at the request of Purchaser and without further cost or expense to Purchaser, execute and deliver such other instruments of conveyance and transfer as Purchaser may reasonably request in order to more effectively consummate the transactions contemplated herein and to vest in Purchaser good and marketable title to the Purchased Assets.

(b) To the extent assets and rights of Seller in existence at the Effective Time necessary for the conduct of the Urology Business, as currently conducted and as contemplated to be conducted from and after the Closing (other than those disclosed in Schedule 2.7 and other than those licensed pursuant to the License Agreement or placed at the disposal of Purchaser under the Transition Service Agreement) are omitted from the Purchased Assets, Seller will, at its own expense and without additional consideration (except and nominal consideration required), take all necessary action to either: (i) transfer the omitted assets or rights to Purchaser, pursuant to a bill of sale or assignment agreement, free and clear of all Liens, if the assets are exclusively related to the Field of Use; or (ii) if the assets have application both within and outside the Field of Use, license such assets to Purchaser for Purchaser's exclusive use in the Field of Use pursuant to an appropriate addendum to the License Agreement.

(c) To the extent any of the Purchased Assets are not assigned or assignable to Purchaser or if necessary consent to such assignment shall not have been obtained by Seller as of the Closing Date, Seller shall hold in trust for the benefit of Purchaser all of Seller's right, title and interest to such Purchased Assets and, insofar as permissible, from time to time, assign such interest to Purchaser. Seller shall cooperate in any reasonable arrangement to the end that Purchaser shall be provided the use and benefits of such Purchased Assets. Notwithstanding anything in this Agreement to the contrary, neither this Agreement nor any document or instrument delivered pursuant hereto shall constitute an assignment of any claim, contract, license, permit, lease, commitment, sales order or purchased order or any claim or right or any benefit arising thereunder or resulting therefrom, if an attempted assignment thereof without the consent or approval of any other party thereto or issuer thereof would constitute a breach thereof or in any way adversely affect the rights to be assigned.

(d) Nothing in this Section 1.7 shall be deemed to waive any provision set forth in Article 5 or release Seller from its obligation to defend, indemnify and hold Purchaser harmless from any loss, liability or damage suffered by Purchaser resulting from any failure by Seller to transfer and assign the Purchased Assets as required by this Agreement.

1.8 Allocation of Purchase Price. The Purchase Price shall be allocated among the

Purchased Assets in accordance with Purchaser's allocation of such Purchase

Price for financial statement purposes as determined for purposes of

Purchaser's audited financial statements.

**ARTICLE 2**

**REPRESENTATIONS AND WARRANTIES OF SELLER**

As a material inducement to Purchaser to enter into this Agreement, with the understanding that Purchaser will be relying thereon in consummating the transactions contemplated hereunder, Seller hereby represents and warrants to Purchaser that except as set forth in the Disclosure Schedule delivered by Seller to Purchaser on the date hereof (the " Disclosure Schedule "), the statements contained in this Article 2 are true and correct. Any item, information or facts set forth in the Disclosure Schedule will be deemed adequate to disclose an exception to a representation and warranty made in this Article 2 unless a reasonable person would not reasonably understand the exception taken from the item, information or facts on their face. In addition, any item, information or facts disclosed in one section or subsection of the Disclosure Schedule will be deemed to be disclosed in all other applicable sections or subsections of the Schedule if the relevance of such disclosure 8 is reasonably apparent on its face or such disclosure is specifically identified by cross reference or otherwise in the Disclosure Schedule. However, the mere listing (or inclusion of a copy) of a document or other item shall not be deemed adequate to disclose an exception to a representation or warranty made herein (unless the representation or warranty has to do with the existence of the document or other item itself). The disclosure of any matter or item in the Disclosure Schedule shall not be deemed to constitute an acknowledgment that any such matter is required to be disclosed.

2.1 Corporate Organization and Power. Seller is a corporation duly organized and validly existing under the laws of the State of Israel, and has all requisite corporate power and authority, and all governmental licenses, governmental authorizations, governmental consents and governmental approvals, required to carry on its business as now conducted and to own, lease and operate the assets and properties of Seller as now owned, leased and operated. Seller is duly qualified or licensed to do business as a foreign corporation and is in good standing in every jurisdiction in which the character or location of its properties and assets owned, leased or operated by Seller or the nature of the business conducted by Seller requires such qualification or licensing, except where the failure to be so qualified, licensed or in good standing in such other jurisdiction could not, individually or in the aggregate, have a Material Adverse Effect.

2.2 Tricym Israel. Tricym Israel is a corporation duly organized and validly existing under the laws of the State of Israel. All of the outstanding equity interest of Tricym Israel will be, as of the Closing, owned directly by Seller, free and clear of all Liens. Except with respect to Purchaser's rights to acquire all of Seller's equity ownership interest in Tricym Israel under this Agreement, there are no options, warrants or other rights, agreements, arrangements or commitments to which Tricym Israel or Seller is a party of any character relating to the issued or unissued equity interests in Tricym Israel or obligating Tricym Israel to grant, issue or sell any equity interests in Tricym Israel, by sale, lease, license or otherwise.

2.3 Authorization . Seller has the full corporate power and authority to enter into this Agreement and the Ancillary Agreements and to carry out the transactions contemplated herein and therein. The Board of Directors and the shareholder of Seller have taken all action required by law and Seller's Articles of Association and otherwise to duly and validly authorize and approve the execution, delivery and performance by Seller of this Agreement, the Ancillary Agreements and the consummation by Seller of the transactions contemplated herein and therein and no other corporate proceedings on the part of Seller are, or will be, necessary to authorize this Agreement, the Ancillary Agreements or to consummate the transactions contemplated hereby and thereby. This Agreement and the Ancillary Agreements have been duly and validly executed and delivered by Seller and constitute the legal, valid and binding obligations of Seller, enforceable against it in accordance with their respective terms, subject to laws of general application relating to bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and rules of law governing specific performance, injunctive relief or other equitable remedies.

2.4 Non-Contravention. Neither the execution, delivery and performance by Seller of this Agreement or the Ancillary Agreements nor the consummation of the transactions contemplated herein and therein will (a) contravene or conflict with the Articles of Association of Seller, (b) contravene or conflict with or constitute a violation of any provision of any Applicable Law binding upon or applicable to Seller, or any of the Purchased Assets; (c) result in the creation or imposition of any Lien on any of the Purchased Assets, or (d) be in conflict with, constitute (with or without due notice or lapse of time or both) a default under, result in the loss of any material benefit under, or give rise to any right of termination, cancellation, increased payments or acceleration under any terms, conditions or provisions of any note, bond, lease, mortgage, indenture, license, contract, franchise, permit, instrument or other agreement or obligation relating to the Urology Business and to which Seller is a party, or by which any of Seller's properties or assets used in the Urology Business may be bound.

2.5 Consents and Approvals.

(a) No consent, approval, order or authorization of or from, or registration, notification, declaration or filing with (hereinafter sometimes separately referred to as a " Consent " and sometimes collectively as " Consents ") any individual or entity, including without limitation any Governmental Authority or Person, is required in connection with the execution, delivery or performance of this Agreement or the Ancillary Agreements by Seller or the consummation by Seller of the transactions contemplated herein and therein other than as set forth in Schedule 2.5. There are no facts or circumstances that would prevent or materially delay obtaining any of the Consents.

(b) As of the date hereof: (i) Medim Holding Ltd., a Swiss corporation (" Medim ") is the "ultimate parent entity" of the Seller as such term is defined under the Premerger Notification Rules (the " Rules ") to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the " HSR Act "); (ii) Medim has not derived revenues in any manufacturing industry in the 2005 calendar year; (iii) Medim holds less than $11.3 million in total assets, as determined in accordance with Section 801.11 of the Rules to the HSR Act and (iv) Medim had less than $113.4 million in annual net sales, as determined in accordance with Section 801.11 of the Rules to the HSR Act.

2.6 Financial Statements.

(a) From its inception through XXXX 20XX Tricym Israel was a dormant company and therefore had no financial statements. During the period commencing on XXXXX 20XX and ending on Closing Date, Tricym Israel's sole obligations are the payment of salaries to Designated Employees and related supplementary costs associated with the Designated Employees.

(b) Seller has not maintained separate accounts or financial records for the Urology Business and has not prepared or caused to be prepared any financial statements of the Urology Business.

2.7 Purchased Assets. Seller has good and valid right, title and interest in and to the Purchased Assets, free and clear of all Liens. Except as set forth on Schedule 2.7 and except for assets of Seller that are used both in and out of the Field of Use but that are placed at the disposal of Purchaser under the Transition Service Agreement, the Purchased Assets and those Intellectual Property Rights licensed under the License Agreement comprise all of the assets, both tangible and intangible, necessary for the continued conduct of the Urology Business by Purchaser as the Urology Business has been heretofore conducted by Seller and as contemplated to be conducted from and after the Closing, and there are no assets or properties used by Seller in the conduct of the Urology Business that will not be transferred to Purchaser hereunder or licensed under the License Agreement.

2.8 Manufacturing and Marketing Rights. Seller has not granted rights to manufacture, produce, assemble, license, market, or sell any products in the Field of Use to any other person and is not bound by any agreement that affects Seller's right to develop, manufacture, assemble, distribute, market or sell such products in the Field of Use.

2.9 FDA and Regulatory Matters. In connection with the Urology Business.

(a) Seller has obtained all necessary and applicable approvals, clearances, authorizations, licenses and registrations required by Government Authorities to permit the design, development, pre-clinical and clinical testing, manufacture and labeling of its products within the Field of Use in jurisdictions where it currently conducts such activities (collectively, the " Seller Licenses "). Seller is in compliance in all material respects with the terms and conditions of each Seller License. Seller is in compliance in all material respects with all Applicable Laws regarding registration, licensing and certification for each site at which a product within the Field of Use is manufactured, labeled, sold or distributed. All manufacturing operations performed by or on behalf of Seller have been and are being conducted in all material respects in compliance with the applicable quality systems regulations governing the production of medical devices within the Field of Use in the European Union and all other countries where such compliance is required. All non-clinical laboratory studies of products sponsored by Seller and intended to be used to support regulatory clearance or approval have been and are being conducted in compliance in all material respects with the applicable regulations in the European Union and all other countries where such compliance is required, governing the conduct of non clinical laboratory investigations. Seller is in compliance in all material respects with all applicable reporting requirements for all Seller Licenses or plant registrations including, but not limited to, applicable adverse event reporting requirements. Seller does not yet hold a Seller License in the United States, does not conduct any activities described in this Section 2.9 in the United States, and does not represent that its products satisfy Applicable Laws in the United States. The Disclosure Schedule sets forth a list of all Seller Licenses.

(b) Seller is in compliance in all material respects with the requirements of Governmental Authorities and Applicable Laws relating to the maintenance, compilation and filing of reports, including medical device reports, with regard to Seller's products within the Field of Use.

(c) Seller has not received any written notice or other written communication from any Governmental Authority (i) contesting the pre-market clearance or approval of, the uses of or the labeling and promotion of any of Seller's products or (ii) otherwise alleging any violation of Applicable Law by Seller.

(d) There have been no recalls, field notifications or seizures ordered or adverse regulatory actions taken or, to Seller's Knowledge, threatened by any Governmental Authority with respect to any of Seller's products, including any facilities where any such products are produced, processed, packaged or stored, and Seller has not within the last three years, either voluntarily or at the request of any Governmental Authority, initiated or participated in a recall of any product or provided post-sale warnings regarding any product.

(e) Seller has conducted all of its clinical trials with reasonable care and in all material respects in accordance with all Applicable Laws and the stated protocols for such clinical trials. To the extent that there have been any deviations from the clinical protocols, such deviations have been handled in all material respects in compliance with Applicable Laws.

(f) All filings with and submissions to Governmental Authority made by Seller with regard to Seller's products, whether oral, written or electronically delivered, were true, accurate and complete in all material respects as of the date made, and, to the extent required to be updated, as so updated remain true, accurate and complete in all material respects as of the date hereof, and do not materially misstate any of the statements or information included therein, or omit to state a material fact necessary to make the statements therein not misleading.

2.10 Reimbursement/Billing. As Seller has not sold any products in the Urology

Business, there are no issues relating to reimbursement or billing applicable to

the Urology Business.

2.11 Compliance with Applicable Laws. With respect to the Urology Business and

the Purchased Assets, Seller has not violated or infringed, nor is it in violation

or infringement of, any Applicable Law or any order, writ, injunction or decree

of any Governmental Authority in connection with its activities, and Seller and

each of its officers, directors, agents and employees have complied with all

Applicable Laws. No claims have been filed against Seller alleging a violation of

any Applicable Law in connection with the Urology Business and the Purchased

Assets.

2.12 Permits. The Disclosure Schedule sets forth all approvals, authorizations,

certificates, consents, licenses, orders and permits and other similar

authorizations of all Governmental Authorities (and all other Persons)

materially necessary for Seller to conduct the Urology Business and own and

operate the Purchased Assets (the " Permits "). Each Permit is valid and in full

force and effect and none of the Permits will be terminated, revoked, modified or become terminable or impaired in any respect for any reason, except as would not have a Material Adverse Effect. Seller has conducted the Urology Business in compliance with all material terms and conditions of the Permits.

2.13 Litigation. There are no (a) actions, suits, claims, hearings, arbitrations, proceedings (public or private) or governmental investigations that have been brought by or against any Governmental Authority or any other Person (collectively, " Proceedings "), nor any investigations or reviews by any Governmental Authority against or affecting Seller, pending or, to Seller's Knowledge, threatened, against or by Seller relating to the Urology Business or any of the Purchased Assets or which seek to enjoin or rescind the transactions contemplated by this Agreement or the Ancillary Agreements; or (b) existing orders, judgments or decrees of any Governmental Authority naming Seller as an affected party in connection with the Urology Business or otherwise affecting any of the Purchased Assets.

(a) The Disclosure Schedule lists the following Contracts of Seller and Tricym Israel relating to the Urology Business or the Field of Use (collectively, the " Scheduled Contracts "):

(i) Each Contract relating to all machinery, tools, equipment and other tangible personal property (other than inventory and supplies) owned, leased or used by Seller.

(ii) Each supply, manufacturing, marketing, distribution or sale agreement or similar Contract.

(iii) Each consulting, development, joint development, research and development or similar Contract, and each contract under with Seller has granted or obtained a license to Intellectual Property, other than commercial software licenses.

(iv) All acquisition, partnership, joint venture, teaming arrangements or other similar Contracts.

(v) Any Contract under which Seller has agreed not to compete or has granted to a third party an exclusive right that restricts or otherwise adversely affects the ability of Seller to conduct its Urology Business.

(vi) All Contracts with the Designated Employees and all benefit plans applicable to the Designated Employees.

(vii) All Contracts for clinical or marketing trials relating to Seller's products and all Contracts with physicians, hospitals or other healthcare providers, or other scientific or medical advisors.

(b) Seller has delivered to Purchaser true and correct copies (or summaries, in the case of any oral Contracts) of all such Scheduled Contracts. Except as specified in the Disclosure Schedule, none of the Scheduled Contracts contain a provision requiring the consent of any party with respect to the consummation of the transactions contemplated herein. No notice of default arising under any Scheduled Contract has been delivered to or by Seller. Each Scheduled Contract is a legal, valid and binding obligation of Seller, and each other party thereto, enforceable against each such party thereto in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and subject to general principles of equity, and neither the Seller nor any other party thereto is in breach, violation or default thereunder.

2.1 Labor and Employment Matters Concerning the Designated Employees.

(a) Seller has previously delivered to Purchaser complete information regarding the Designated Employees, including their base salaries and bonus and contributions to Manager's Insurance and provident funds. The Designated Employees are employed by Tricym Israel on an "at-will" basis. The Designated Employees have been employed solely in the State of Israel, and, other than in connection with occasional business travel, have not rendered services to Seller or Tricym Israel in any other jurisdiction.

(b) In connection with the Urology Business, Seller is and has been in compliance in all material respects with all Applicable Laws respecting employment and employment practices, terms and conditions of employment and wages and hours, including without limitation any such Applicable Laws respecting employment discrimination and occupational safety and health requirements, and has not and is not engaged in any unfair labor practice. There is no unfair labor practice complaint against Seller pending or, to Seller's Knowledge, threatened before the National Labor Relations Board or any other comparable Governmental Authority. There is no labor strike, dispute, slowdown or stoppage actually pending or, to Seller's Knowledge, threatened against or directly affecting Seller. No labor representation question exists respecting the employees of Seller and there is not pending or, to Seller's Knowledge, threatened any activity intended or likely to result in a labor representation vote respecting the employees of Seller. No grievance or any arbitration proceeding arising out of or under collective bargaining agreements is pending and no claims therefor exist or, to Seller's Knowledge, have been threatened. No collective bargaining agreement is binding and in force against Seller or currently being negotiated by Seller. Seller has not experienced any significant work stoppage or other significant labor difficulty. Seller is not delinquent in payments to any persons for any wages, salaries, commissions, bonuses or other direct or indirect compensation for any services performed by them or amounts required to be reimbursed to such persons, including without limitation any amounts due under any Benefit Plan. Upon termination of the employment of any person, neither Seller, Purchaser nor any subsidiary of Purchaser will, by reason of any agreement or understanding to which Seller is a party, be liable to any of such persons for so-called "severance pay" or any other payments. Within the twelve-month period prior to the date hereof there has not been any expression of intention to Seller by any Designated Employee to terminate such employment.

(c) Seller does not have any employment contract with any of the Designated Employees or any other consultant or person, of the Urology Business, which is not terminable by it at will without liability, upon sixty (60) calendar days prior notice. Schedule 2.15 hereto lists all employment, engagement, consulting, non-competition, intellectual property assignment and/or confidentiality agreements between Seller and any Designated Employee of Seller with respect to the Urology Business. Except as contained in the agreements listed on Schedule 2.15, Seller does not have any deferred compensation agreements or bonus, incentive, profit-sharing, or pension plans currently in force and effect, or any understanding with respect to any of the foregoing.

(d) Neither Seller nor, to Seller's knowledge, any of the Designated Employees of the Urology Business, is obligated under any contract (including licenses, covenants or commitments of any nature) or other agreement, or subject to any judgment, decree or order of any court or administrative agency, that would interfere with the use of such person's best efforts to promote the interests of Seller, or that would conflict with the Urology Business as conducted and as proposed to be conducted. Neither the execution nor delivery of this Agreement, nor the carrying on of the Urology Business by the employees and consultants of Seller, nor the conduct of the Urology Business as proposed to be conducted, will conflict with or result in a breach of the terms, conditions or provisions of, or constitute a default under, any contract, covenant or instrument under which, to the knowledge of Seller any of such Designated Employees is now obligated.

(e) Seller is not a party to any collective bargaining contract, collective labor agreement or other contract or arrangement with a labor union, trade union or other organization or body involving the Designated Employees, or is otherwise required (under any legal requirement, under any contract or otherwise) to provide benefits or working conditions beyond the minimum benefits and working conditions required by law to be provided pursuant to rules and regulation of the Israeli Histadrut (General Federation of Labor), the Coordinating Bureau of Economic Organization and the Industrialists' Association. Seller has not recognized or received a demand for recognition from any collective bargaining representative with respect to the Designated Employees. Seller has complied with all applicable employment laws. Notwithstanding the generality of the prior sentence, (i) Tricym Israel does not have and is not subject to, and no employee of Tricym Israel benefits from, any extension order (tzavei harchava) or any general contract or arrangement with respect to employment or termination of employment except those extension orders that apply to all Israeli companies generally; (ii) all of Designated employees at the Urology Business are "at will" employees subject to the termination notice provisions included in their employment agreements or applicable law; (iii) Tricym Israel obligations to provide statutory severance pay to its employees of the Urology Business pursuant to the Israeli Severance Pay Law (5723-1963) are fully funded or accrued on the books and records of Tricym Israel; (v) all amounts that Tricym Israel is legally or contractually required either (x) to deduct from its employees' salaries or to transfer to such employees' pension or provident, life insurance, incapacity insurance, continuing education fund or other similar funds, as the case may be or (y) to withhold from its employees' salaries and benefits and to pay to any Governmental Authority as required by the Israeli Income Tax Ordinance of Israel [New Version], 1961, as amended and Israeli National Insurance Law or otherwise have, in each case, been duly deducted, transferred, withheld and paid, and Tricym Israel does not have any outstanding obligation to make any such deduction, transfer, withholding or payment; (vi) Tricym Israel is in compliance in all material respects with all applicable legal requirements and contracts relating to employment, employment practices, wages, bonuses and other compensation matters and terms and conditions of employment related to its Designated Employees, including but not limited to The Prior Notice to the Employee Law 2002, The Notice to Employee (Terms of Employment) Law 2002, The Prevention of Sexual Harassment Law (5758-1998), and The Employment by Human Resource Contractors Law 1996; and (vii) in cases where an Designated Employee is entitled to an insurance policy according to his or her employment agreement all obligations of Tricym Israel with respect to statutorily required severance payments to its Designated Employees have been fully satisfied or have been fully funded by contributions to appropriate insurance funds pursuant to the Israeli Severance Pay Law (5723-1963). Tricym Israel has not engaged any employees whose employment would require special licenses or permits, and there are no unwritten policies or customs which, by extension, could entitle employees to rights or benefits in addition to what they are entitled by law. Tricym Israel has not engaged any consultants, sub-contractors or freelancers who, according to Israeli law, would be entitled to the rights of an employee vis a vis Seller, including rights to severance pay, vacation, recuperation pay (Dmei Havaraa) and other employee-related statutory benefits.

(f) Each of the Designated Employees is currently devoting one hundred percent (100%) of his or her business time to the conduct of the business of Seller. Seller is not aware of any Designated Employee planning to work less than full time in the future.

2.16 Urology Business Intellectual Property.

(a) The Disclosure Schedule lists all Urology Business Intellectual Property that is the subject of an invention disclosure and/or record, that is registered with, has been applied for, or has been issued by the U.S. Patent and Trademark Office, U.S. Copyright Office or a corresponding foreign governmental or public authority, or that is licensed to or from any third party(ies), including, in the case of licensed Intellectual Property included therein, a description of the license agreement, the name and address of the licensee or licensor, as the case may be, and the date and term of the agreement and the royalties or other fees payable thereunder. Seller has delivered or made available to Purchaser complete and accurate copies of correspondence, litigation documents, agreements, file histories and office actions relating to the patents and patent applications and invention disclosures listed in the Disclosure Schedule. Each item of Urology Business Intellectual Property owned, licensed or used by Seller immediately prior to the Effective Time hereunder will be owned, licensed or available for use by Purchaser or its Subsidiaries on identical terms and conditions immediately after the Effective Time pursuant to this Agreement or the License Agreement.

(b) Seller owns, free and clear of any Lien, and possesses all right, title and interest, or holds a valid license, in and to all Urology Business Intellectual Property, and has taken all reasonable action to protect the Urology Business Intellectual Property. All patents included in the Urology Business Intellectual Property are valid and enforceable. To the Knowledge of the Seller, the Transferred Intellectual Property and the Intellectual Property licensed under the License Agreement constitutes all the Intellectual Property necessary to the conduct of the Urology Business as it is currently conducted and as it is currently contemplated to be conducted. There are no royalties, fees, honoraria or other payments payable by Seller to any Person by reason of the ownership, development, modification, use, license, sublicense, sale, distribution or other disposition of the Urology Business Intellectual Property other than salaries and sales commissions paid to employees and sales agents in the ordinary course of business. Seller has taken all reasonable security measures to protect the secrecy, confidentiality and value of the Urology Business Intellectual Property.

(c) All personnel, including employees, agents, consultants and contractors, who have contributed to or participated in the conception or development, or both, of the Urology Business Intellectual Property on behalf of Seller and all officers and technical employees of Seller either (i) have been a party to "work-for-hire" arrangements or agreements with Seller in accordance with Applicable Law that has accorded Seller full, effective, sole, exclusive and original ownership of all tangible and intangible property thereby arising, and (ii) have executed appropriate instruments of assignment in favor of Seller as assignee that have conveyed to Seller effective, sole and exclusive ownership of all tangible and intangible property arising thereby.

(d) To the Knowledge of the Seller, the conduct of the Urology Business by Seller has not infringed, misappropriated or conflicted with and does not infringe, misappropriate or conflict with any intellectual property right of any other Person. Seller has not received any notice from any third party of any infringement, misappropriation or violation by Seller of any intellectual property right of any third party and no notice has been received by Seller challenging Seller's ownership or claim to invention priority to any of the Urology Business Intellectual Property. No claim by any third party contesting the validity of any Urology Business Intellectual Property has been made, is currently outstanding or, to the Knowledge of Seller, is threatened or reasonably expected to arise. To the Knowledge of Seller, no third party is infringing any Urology Business Intellectual Property right of Seller.

2.17 Insurance. The Disclosure Schedule contains an accurate and complete list of all insurance policies owned or held by Seller in connection with or relating to the Urology Business, including, but not limited to, general liability, specifying the insurer the policy number, and the term of the coverage. All present policies are in full force and effect and all premiums with respect thereto have been paid. Seller has not been denied any form of insurance and no policy of insurance has been revoked or rescinded during the past five (5) years.

2.18 Tax Matters.

(a) Tricym Israel is not a party to any agreement, contract, arrangement or plan that (i) has resulted or would result, separately or in the aggregate, in connection with this Agreement or any change of control of Tricym Israel, in the payment of any "excess parachute payments" within the meaning of Section 280G of the Code or similar provisions under any foreign laws; or (ii) would obligate Tricym Israel to provide "gross-up" benefits with respect to any excise tax due on any "excess parachute payments" within the meaning of Section 280G of the Code or similar provisions under any foreign laws.

(b) Tricym Israel is not involved in, subject to, or a party to any joint venture, partnership, contract or other arrangement that is treated as a "partnership" for federal, state, local or foreign income Tax purposes. Tricym Israel does not own any interest in an entity that is classified as an entity that is "disregarded as an entity separate from its owner" under Treasury Regulations Section 301.7701-3(b).

(c) The Seller and its shareholder are not subject to any restrictions or limitations pursuant to Part E2 of the Israeli Income Tax Ordinance.

2.19 Product Liability Claims. In connection with the Urology Business, Seller has never received a claim, or incurred any uninsured or insured liability, for or based upon failure to warn, breach of product warranty, strict liability in tort, general negligence, negligent manufacture of product, negligent provision of services or any other allegation of liability, including or resulting in, but not limited to, product recalls, arising from the materials, design, testing, manufacture, packaging, labeling (including instructions for use) or sale of its products or from the provision of services (" Product Liability Claim "). Seller has disclosed to Purchaser each Product Liability Claim received by Seller.

2.20 Relations with Suppliers. In connection with the Urology Business, no material current supplier of Seller has canceled any contract or order for provision of, and there has been no threat by any such supplier not to provide, raw materials, products, supplies or services in the scope of the businesses of Seller either prior to or following the Effective Time. The Disclosure Schedule lists each supplier to Seller relating to the Urology Business that is the source of a particular raw material, product, supply or service with respect to which locating and qualifying a replacement source would involve significant cost or delay.

2.21 Indemnification Obligations. Except for the Indemnification Obligations set forth in the Assigned Contracts hereto, Seller is not a party to any Contract in connection with the Urology Business that contains any provisions requiring Seller to indemnify any Person.

2.22 Absence of Certain Business Practices. In connection with the Urology Business, neither Seller, any director, officer, employee or agent of Seller, nor any other person acting on behalf of Seller, has, directly or indirectly, given or agreed to give any gift or similar benefit or agreed to make or made any payment to any customer, supplier, governmental employee or other person who is or may be in a position to help or hinder the business of Seller, taken as a whole (or assist it in connection with any actual or proposed transaction) which (a) would reasonably be expected to subject Seller or Purchaser to any damage or penalty in any civil, criminal or governmental litigation proceeding, or (b) violated or violates any Applicable Law.

2.23 Brokers. Except as set forth in the Disclosure Schedule, neither Seller nor any of its directors, officers or employees has employed any broker, finder, or financial advisor or incurred any liability for any brokerage fee or commission, finder's fee or financial advisory fee, in connection with the transactions contemplated hereby.

2.24 Chief Scientist; Government Grants. Neither Seller nor Tricym Israel are (a) part of the Chief Scientist Program or (b) party to any governmental grant plan, including the Israeli Investment Center.

2.25 Disclosure. No representation or warranty by Seller in this Agreement and no statement contained or to be contained in any document, certificate or other writing furnished or to be furnished by Seller to Purchaser, contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. There is no fact that has not been disclosed to Purchaser of which any officer or director of Seller is aware which has or could reasonably be expected to have a Material Adverse Effect on the Purchase Assets.

2.26 Investigation by Purchaser. Notwithstanding anything to the contrary in this Agreement (including Section 3.6), (a) no investigation by Purchaser shall affect the representations and warranties of Seller under this Agreement or contained in any other writing to be furnished to Purchaser in connection with the transactions contemplated hereunder and (b) such representations and warranties shall not be affected or deemed waived by reason of the fact that Purchaser knew or should have known that any of the same is or might be inaccurate in any respect.

**ARTICLE 3**

**REPRESENTATIONS AND WARRANTIES OF PURCHASER**

As a material inducement to Seller to enter into this Agreement, with the understanding that Seller will be relying thereon in consummating the transactions contemplated hereunder, Purchaser hereby represents and warrants to Seller that the statements contained in this Article 3 are true and correct.

3.1 Corporate Existence and Power. Purchaser is a corporation duly organized, validly existing and in good standing under the laws of its state of incorporation and has all requisite corporate power and authority, and all governmental licenses, governmental authorizations, governmental consents and governmental approvals, required to carry on its business as now conducted and to own, lease and operate the assets and properties of Purchaser as now owned, leased and operated. Purchaser is duly qualified or licensed to do business as a foreign corporation and is in good standing in every jurisdiction in which the character or location of its properties and assets owned, leased or operated by Purchaser or the nature of the business conducted by Purchaser requires such qualification or licensing, except where the failure to be so qualified, licensed or in good standing in such other jurisdiction could not, individually or in the aggregate, have a Material Adverse Effect.

3.2 Authorization. Purchaser has the requisite corporate power and authority to enter into this Agreement and to carry out the transactions contemplated hereunder. The Board of Directors of Purchaser has taken all action required by law, its Certificate of Incorporation and bylaws and otherwise to duly and validly authorize and approve the execution, delivery and performance by Purchaser of this Agreement and the Ancillary Agreements and the consummation by Purchaser of the transactions contemplated herein and therein and no other corporate proceedings on the part of Purchaser are, or will be, necessary to authorize this Agreement or the Ancillary Agreements or to consummate the transactions contemplated hereby and thereby. This Agreement and the Ancillary Agreements have been duly and validly executed and delivered by Purchaser and, assuming the due authorization, execution and delivery by Seller of this Agreement and the Ancillary Agreement, constitute the legal, valid and binding obligations of Purchaser enforceable against it in accordance with their respective terms, subject to laws of general application relating to bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and rules of law governing specific performance, injunctive relief or other equitable remedies.

3.3 Consents and Approvals. No Consent by any individual or entity, including without limitation any Governmental Authority or Person, is required in connection with the execution, delivery or performance of this Agreement or the Ancillary Agreements by Purchaser or the consummation by Purchaser of the transactions contemplated herein and therein, other than where the failure to make any such filing, or to obtain such permit, authorization, Consent or approval, would not prevent or delay consummation of the transactions contemplated hereby and thereby or would not otherwise prevent Purchaser from performing its obligations under this Agreement or the Ancillary Agreements.

3.4 Brokers. Neither Purchaser nor any of its directors, officers or employees has employed any broker, finder, or financial advisor or incurred any liability for any brokerage fee or commission, finder's fee or financial advisory fee, in connection with the transactions contemplated hereby.

3.5 No Violation. Neither the execution and delivery of this Agreement by Purchaser, the performance by Purchaser of its obligations hereunder nor the consummation by Purchaser of the transactions contemplated hereby will (a) violate, conflict with or result in any breach of any provision of the Certificate of Incorporation or Bylaws of Purchaser, (b) violate, conflict with or result in a violation or breach of, or constitute a default (with or without due notice or lapse of time or both) under the terms, conditions or provisions of any note, bond, mortgage, indenture, deed of trust, license, lease or agreement to which Purchaser is a party or (c) violate any order, writ, judgment, injunction, decree, statute, rule or regulation of any court or domestic or foreign Governmental Body applicable to Purchaser.

3.6 Purchaser Diligence. Subject to Section 2.26, Purchaser hereby acknowledges that it (i) has had ample time and opportunity to consult with its advisors concerning the potential benefits and risks of entering into this Agreement, and (ii) has conducted such due diligence and investigation as it desired, based upon the information provided by Seller.

**ARTICLE 4**

**COVENANTS**

4.1 Confidentiality.

(a) Mutual Covenant . From and after the Closing Date, except as otherwise consented to by the Disclosing Party in writing, (i) Recipient will not, directly or indirectly disclose or use in a manner adverse to the Disclosing Party, any Confidential Information (as defined below) of the Disclosing Party except to the limited extent necessary for Recipient's performance under the Transition Services Agreement or as required by the terms of a valid and effective subpoena or order issued by a court of competent jurisdiction or by a governmental body, (ii) the Confidential Information will be the exclusive property of the Disclosing Party and, any time on or after the Closing Date, if requested by the Disclosing Party, Recipient will promptly deliver to the Disclosing Party all Confidential Information, including all copies thereof, which are in the possession, or under the control of Seller or its agents or representatives, without making or retaining any copies or extracts thereof (except to the limited extent necessary for Seller's performance under the Transition Services Agreement), and (iii) if Recipient or its agents or representatives receives a request to disclose all or any part of the Confidential Information in connection with a legal proceeding, Recipient will (A) immediately notify the Disclosing Party of the existence, terms and circumstances surrounding such request, (B) consult with the Disclosing Party on the advisability of taking legally available steps to resist or narrow such request, and (C) if disclosure of such information is required, and at the Disclosing Party cost and expense, exercise its best efforts to obtain an order or other reliable assurance that confidential treatment will be accorded such portion of the disclosed information which the Disclosing Party so designates.

(b) Definitions. For purposes of this Article 4:

(i) " Confidential Information " means any and all information of the Disclosing Party relating to the management, operations, finances, products, trade secrets, technology, financial data, employee information, computer programs and systems, computer based information, plans, projections, existing and proposed and contemplated projects or investments, formulae, processes, methods, products, manuals, drawings, supplier lists, customer lists, purchase and sales records, marketing information, commitments, correspondence and other information, whether written, oral or computer generated.

(ii) " Recipient " means a party hereto that receives Confidential Information of the other party, regardless of the means of disclosure.

(iii) " Disclosing Party " means a party hereto whose Confidential Information is received by the other party hereto;

(c) Exceptions. The obligations in Section 4.1(a) will not apply to the extent a Disclosing Party's Confidential Information: (i) is in the public domain prior to its disclosure to, or receipt by, the Recipient; (ii) is lawfully in the Recipient's possession prior to disclosure to or receipt by the Recipient; (iii) becomes part of the public domain by publication or otherwise through no unauthorized act or omission on the part of the Recipient or its employees or agents; or (iv) is independently developed by an employee(s) of the Recipient with no access to the disclosed information.

(d) Remedy. The covenants and undertakings contained in this Section 4.1 relate to matters which may be of a special, unique and extraordinary character and a violation of any of the terms of this Section 4.1 may cause irreparable injury to the Disclosing Party, the amount of which may be impossible to estimate or determine and for which adequate compensation may not be available. Therefore, the Disclosing Party shall be entitled to an injunction, restraining order or other equitable relief from a court of competent jurisdiction, restraining any violation or threatened violation of any such terms by Recipient and such other persons as the court orders.

4.2 Further Assurances. Each party hereto shall, before, at and after Closing, execute and deliver such instruments and take such other actions as the other party or parties, as the case may be, may reasonably require in order to carry out the intent of this Agreement.

4.3 Public Announcements. None of the parties hereto shall make any public announcement with respect to the transactions contemplated herein without the prior written consent of the other parties, which consent shall not be unreasonably withheld or delayed. The parties shall maintain this Agreement and the terms hereof in strict confidence, and neither party shall disclose this Agreement or any of its terms to any third party unless specifically ordered to do so by a court of competent jurisdiction after consulting with the other party or unless required by Applicable Law or regulation including, but not limited to, the rules and regulation of the Securities and Exchange Commission, the Israeli Securities Authorities, Tel Aviv stock market and the Nasdaq Stock Market. Notwithstanding the foregoing, the parties may, on a confidential basis, advise and release information regarding the existence and content of this Agreement or the transactions contemplated hereby to their respective Affiliates or any of their agents, accountants, attorneys and prospective lenders or investors in connection with or related to the transactions contemplated by this Agreement.

4.4 Preparation of Tax Returns: Tax Matters.

(a) Pre-Closing Tax Returns . Seller shall timely file at its expense all Tax Returns required to be filed by Tricym Israel relating to the Urology Business on or before the Closing Date; provided , however , that, after the date hereof, Seller shall not file any such Tax Returns, or other returns, elections, claims for refund or information statements with respect to any liabilities for Taxes (other than federal, state or local sales, use, property, withholding or employment tax returns or statements) for any Tax period without providing a copy of such Tax Return to Purchaser at least three (3) days prior to the Closing.

(b) Post-Closing Tax Returns. Purchaser will file (or cause to be filed) all Tax Returns of Tricym Israel required to be filed relating to the Urology Business after the Closing Date, including Tax Returns for Tax periods (or portions thereof) ending on or prior to the Closing Date. All Taxes owing with any such Tax Returns that are considered Retained Liabilities shall be paid by Seller or reimbursed to Purchaser upon Purchaser's request.

(c) Taxes on Transaction. In addition to and without limiting those representations and warranties set forth in Section 2.18 of this Agreement or the definition of Retained Liabilities pursuant to Section 1.3, Seller will pay all Taxes arising from or relating to the transactions contemplated by this Agreement.

(d) Termination of Tax Allocation Agreements. Any and all tax allocation or sharing agreements or arrangements (other than this Agreement), whether or not written, that may have been entered into by and between Tricym Israel and any other person, shall be terminated as to Tricym Israel immediately prior to the Closing, and no payments which are owed by or to Seller pursuant thereto shall be made thereunder.

(e) Assistance and Cooperation. Each of Purchaser and Seller will provide the other with such assistance as may reasonably be requested by each of them in connection with the preparation of any Tax Return, any audit or other examination by any Governmental Authority, or any judicial or administrative proceedings relating to liability for Taxes, and each will provide the other with any records or information which may be relevant to such Tax Return, audit or examination, proceedings or determination. Such assistance shall include making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder and shall include providing copies of any relevant Tax Return and supporting work schedules.

(f) Tax Withholding . Prior to the Closing, Seller shall deliver to Purchaser a certificate issued by the Israeli tax authorities with respect to Seller's Tax withholding obligations. Purchaser or its payment agent shall be entitled to deduct and withhold from the Purchase Price or other payments otherwise payable pursuant to this Agreement, the amounts required to be deducted and withheld under the Code, or any provision of state, local or foreign tax law, with respect to the making of such payments. To the extent that amounts are so withheld, such withheld amounts shall be promptly remitted by Purchaser or its payment agents to the applicable Governmental Authority requiring such withholding and shall be treated for all purposes of this Agreement as having been paid to the person for whom such deduction and withholding was made.

4.5 Assignments to Tricym Israel . At, or prior to the Closing, Seller shall transfer to Tricym Israel all of Sellers' rights in the existing Managers Insurance, Disability Insurance (Ovdan Kosher Avoda), Pension Funds, Educational Funds and any other funds related to social benefits of the Designated Employees (collectively the " Funds ") maintained by Seller on behalf of the Designated Employees during their employment by Seller. Seller will sign all necessary documents and comply with all necessary procedures to accomplish the aforesaid.

4.6 Non-Competition; Enforcement of Employee Agreements.

(a) From and after the Closing Date until the date Purchaser is no longer required to make royalty payments pursuant to the License Agreement:

(i) Seller will not engage, directly or indirectly, through an Affiliate or otherwise, either for its own benefit or for the benefit of any other person, in any business which competes anywhere in the world in the Field of Use provided, however, that the foregoing will not: (A) restrict or prohibit the Seller or any of its Affiliates from maintaining and/or undertaking all other activities of the Seller whether existing at Closing or not, excluding activities in the Field of Use; (B) restrict or prohibit the Seller or any of its Affiliates from making passive investments in persons primarily engaged in any competitive business whose shares of stock are regularly traded on a national securities exchange or on any over-the-counter market, provided the aggregate interest represented by such investments does not exceed five percent (5%) of any class of the outstanding equity or debt securities of any such person; or (C) restrict or prohibit any venture capital firm that may be an Affiliate of Seller from investing in a competitive business; or (D) restrict or prohibit any Person who becomes an Affiliate of Seller as the result of a Change in Control from engaging in a competitive business, other than through the use of Seller's or its other Affiliates' assets or properties (tangible or intangible) or with the assistance, directly or indirectly, of Seller or its other Affiliates or their respective officers, directors and employees.

(ii) Seller will not, and will prevent its Affiliates from taking action to, waive, amend or terminate its rights in the existing non-compete agreements as disclosed in Schedule 4.6(b) hereto; and Seller will, and will cause its Affiliates to, use commercially reasonable efforts to enforce such agreements for the benefit of Purchaser.

(b) The Seller acknowledges that the period of restriction, the geographical areas of restriction and the restraints imposed by the provisions of Section 4.6(a) are fair and reasonably required for the protection of Purchaser. Notwithstanding the foregoing, if the final judgment of a court of competent jurisdiction declares that any term or provision of Section 4.6(a) is invalid or unenforceable, the parties agree that the court making the determination of invalidity or unenforceability will have the power to reduce the scope, duration or area of the term or provision, to delete specific words or phrases or to replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision and this Agreement will be enforceable against the parties as so modified.

(c) All of the covenants in this Section 4.6 shall be construed as an agreement independent of any other provision in this Agreement, and the existence of any claim or cause of action of the Seller against the Purchaser, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by the Purchaser of such covenants. The covenants contained in Section 4.6(a) shall not be affected by any breach of any other provision hereof by any party hereto.

(d) Upon any Change in Control of Seller, Seller will cause the party(ies) acquiring control to execute and deliver an agreement, in the form attached as Exhibit 4.6(d) , acknowledging the provisions of this Section 4.6.

4.7 Conduct of Urology Business after Closing Date. From and after the Closing Date, Purchaser shall, and to the extent applicable, shall cause its Affiliates to, use commercially reasonable efforts to complete the Milestones, which shall include the following: (i) pursuing the steps set forth in Exhibit 1.5(a) ; (ii) taking appropriate steps to complete development and manufacture of devices necessary under Section 1.5(b)(i) and establishing manufacturing of the thirty (30) devices called for by such Section 1.5(b)(i) in accordance with CE Mark regulations and FDA requirements and to obtain a CE Mark in Purchaser's own right; (iii) pursuit of the marketing approval called for under Section 1.5(c), including engaging in such negotiations as are reasonably appropriate with the FDA; and (iv) in good faith not undertaking any action the primary purpose of which is to negatively impact the achievement of the Milestones. Seller acknowledges and agrees that factors beyond Purchaser's control (including Seller's performance under this Agreement and the Transition Services Agreement, as well as the outcomes of clinical trials) may affect Purchaser's ability to complete the Milestones, and that nothing in this Agreement or any Ancillary Agreement will be construed as a guarantee by Purchaser that the Milestones will be achieved.

**ARTICLE 5**

**SURVIVAL AND INDEMNIFICATION**

5.1 Survival. The representations and warranties of each party contained in this Agreement, and the indemnification obligations of Seller with respect thereto, will survive the Closing and shall expire twelve (12) months after the Closing Date. Notwithstanding the preceding sentence, (i) the representations and warranties contained in Section 2.11 ("Urology Business Intellectual Property"), and the indemnification obligations of Seller with respect thereto, shall survive the Closing through the end of the period during which Purchaser is required to make royalty payments to Seller pursuant to the terms of the License Agreement; (ii) the representations and warranties set forth in Sections 2.3 ("Authorization"), 2.7 ("Purchased Assets"), 2.23 ("Brokers"), 3.2 ("Authorization") and 3.4 ("Brokers"), and the respective indemnification obligations of the parties with respect thereto shall survive indefinitely; and (iii) claims involving fraud, criminal activity, intentional misrepresentation or intentional misconduct (collectively, " Fraud Claims ") and the indemnification obligations of the parties with respect thereto shall survive indefinitely. Any representation or warranty that would otherwise terminate in accordance with this Section 5.1 shall continue to survive if a notice of claim pursuant to this Article 5 shall have been timely given under Section 5.4 on or prior to such termination date, until the claim has been satisfied or otherwise resolved as provided herein. The covenants set forth in this Agreement shall survive the Closing indefinitely. The right to indemnification or any other remedy based on representations, warranties, covenants and obligations in this Agreement will not be affected by any investigation conducted with respect to, or any knowledge acquired (or capable of being acquired) at any time, whether before or after the Closing Date, with respect to the accuracy or inaccuracy of or compliance with, any such representation, warranty, covenant or obligation. The waiver of any condition based on the accuracy of any representation or warranty, or on the performance of or compliance with any covenant or obligation, will not affect the right to indemnification or any other remedy based on such representations, warranties, covenants and obligations.

5.2 Indemnification by Seller. Subject to Sections 5.5 and 5.6, Seller agrees to indemnify, defend and hold harmless Purchaser, its Affiliates and their respective directors, officers, employees and agents, from and against any and all Damages asserted against, relating to, imposed upon, suffered or incurred by Purchaser, its officers, directors, employees, agents and Affiliates, in connection with enforcing their indemnification rights pursuant to this Section 5.2 by reason of or resulting from (a) any untrue representation of, or breach of warranty by Seller in any part of this Agreement, (b) any non-fulfillment of any covenant, agreement or undertaking of Seller in any part of this Agreement or in any Ancillary Agreement, (c) any Retained Liability, and (d) any and all costs and expenses including reasonable legal fees and expenses, incurred in connection with enforcing the indemnification rights of Purchaser pursuant to this Section.

5.3 Indemnification by Purchaser. Subject to Sections 5.5 and 5.6, Purchaser agrees to indemnify, defend and hold harmless Seller, its Affiliates and their respective directors, officers, employees and agents, from and against any and all Damages asserted against, relating to, imposed upon, suffered or incurred by Seller in connection with enforcing its indemnification rights pursuant to this Section 5.3 by reason of or resulting from (a) any untrue representation of, or breach of warranty by Purchaser in any part of this Agreement, (b) any non-fulfillment of any covenant, agreement or undertaking of Purchaser in any part of this Agreement or in any Ancillary Agreement, (c) any Assumed Liability, (d) the use, ownership or operation of the Purchased Assets after the Closing Date; unless such Losses or Loss is subject to indemnification by Seller pursuant to Section 5.2 hereof, and (e) any and all costs and expenses including reasonable legal fees and expenses, incurred in connection with enforcing the indemnification rights of Seller pursuant to this Section.

5.4 Claims for Indemnification.

(a) Subject to Section 5.1, whenever any claim arises for indemnification hereunder or an event which may result in a claim for such indemnification has occurred, the party seeking indemnification (the " Indemnified Party "), will promptly notify the party from whom indemnification is sought (the " Indemnifying Party ") of the claim and, when known, the facts constituting the basis for such claim. In the case of any such claim for indemnification hereunder resulting from or in connection with any claim or legal proceedings of a third party (a " Third Party Claim "), the notice to the Indemnifying Party will specify with reasonable specificity, if known, the basis under which the right to indemnification is being asserted and the amount or an estimate of the amount of the liability arising therefrom. The Indemnifying Party shall have the right to dispute and defend all Third Party Claims and thereafter so defend and pay any adverse final judgment or award or settlement amount in regard thereto. Such defense shall be controlled by the Indemnifying Party, and the cost of such defense shall be borne by the Indemnifying Party, except that the Indemnified Party shall have the right to participate in such defense at its own expense; provided, however , that the Indemnifying Party must first acknowledge that the claim is a bona fide indemnification claim under this Agreement. The Indemnified Party shall cooperate in all reasonable respects in the investigation, trial and defense of any such claim, including making personnel, books, and records relevant to the claim available to the Indemnifying Party, without charge, except for reasonable out-of-pocket expenses. If the Indemnifying Party fails to take action within thirty (30) days as set forth above, then the Indemnified Party shall have the right to pay, compromise or defend any Third Party Claim and to assert the amount of any payment on the Third Party Claim plus the reasonable expenses of defense or settlement as the claim. The Indemnified Party shall also have the right and upon delivery of 10 days advance written notice to such effect to the Indemnifying Party, exercisable in good faith, to take such action as may be reasonably necessary to avoid a default prior to the assumption of the defense of the Third Party Claim by the Indemnifying Party, and any reasonable expenses incurred by Indemnified Party so acting shall be paid by the Indemnifying Party. Except as otherwise provided herein, the Indemnified Party will not, except at its own cost and expense, settle or compromise any Third Party Claim for which it is entitled to indemnification hereunder without the prior written consent of the Indemnifying Party, which will not be unreasonably withheld. The parties intend that all indemnification claims be made as promptly as practicable.

(b) If the Indemnifying Party is of the opinion that the Indemnified Party is not entitled to indemnification, or is not entitled to indemnification in the amount claimed in such notice, the Indemnifying Party will deliver, within ten (10) business days after the receipt of such notice, a written objection to such claim and written specifications in reasonable detail of the aspects or details objected to, and the grounds for such objection. If the Indemnifying Party filed timely written notice of objection to any claim for indemnification, the validity and amount of such claim will be determined pursuant to Article 6. If timely notice of objection is not delivered or if a claim by an Indemnified Party is admitted in writing by an Indemnifying Party or if a judgment award is made in favor of an Indemnified Party and no appeal was filed, the Indemnified Party, as a exclusive remedy, will have the right to set-off the amount of such judgment against any amount yet owed, whether due or to become due, by the Indemnified Party or any subsidiary thereof to any Indemnifying Party by reason of this Agreement or any agreement or arrangement or contract to be entered into at the Closing.

(c) Except for any Fraud Claims or any claim for equitable relief specifically provided for in this Agreement, the indemnification remedies provided in this Article 5 will be the parties' exclusive remedies for claims arising out of or resulting from any misrepresentation, breach of warranty, breach of covenant, or non-performance of any obligation to be performed on the part of either party under this Agreement or any of the Ancillary Agreements.

5.5 Indemnification Limits. In the event of any claim for indemnity solely under Sections 5.2(a) or 5.3(a) with respect to representations and warranties (a " Rep Loss "):

(i) subject to Section 5.6, the Indemnified Party under such representation and warranty claim shall not be entitled to indemnification therefor or withholding of the distribution of escrow funds therefor under the Escrow Agreement, unless such Indemnified Party and all related Indemnified Parties, in the aggregate, have sustained Damages in excess of $225US,000 (the " Basket Amount ") in the aggregate, following which event such Indemnified Party and all related Indemnified Parties shall be entitled to indemnification to the extent of all Damages suffered or incurred in excess of the Basket Amount; and

(ii) the maximum amount of indemnification payable to an Indemnified Party and all related Indemnified Parties, in the aggregate, shall be equal to fifty percent (50%) of the total consideration paid (as of a given date, and to the extent increased by amounts subsequently paid) by Purchaser to Seller pursuant to this Agreement and the Ancillary Agreements, including royalty payments, if any, paid pursuant to the License Agreement (the " Maximum Amount ") provided , however , that such limitations shall not apply to any breach of (i) the representations and warranties contained in Sections 2.3 ("Authorization"), 2.5(b) ("Consents and Approvals"), 2.7 ("Purchased Assets"), and 2.23 ("Brokers"). Additionally, and notwithstanding anything herein to the contrary, (i) the Basket Amount and Maximum Amount shall not apply with respect to any Fraud Claims; and (ii) the fact that Purchaser shall also have a Rep Loss claim, in addition to another indemnifiable claim, such as for Retained Liabilities, shall not subject, cause or permit such other indemnifiable claim to count against the Basket Amount or the Maximum Amount. For the purposes of determining whether the Basket Amount and Maximum Amount have been reached, the amount of any Damages related to a breach of a representation or warranty shall be considered without regard to materiality, Material Adverse Effect or similar qualification or exception set forth therein. The parties do not intend that the Basket Amount or the Maximum Amount be deemed to be a definition of what is "material" for any purpose under this Agreement.

5.6 Special Intellectual Property Indemnification . Notwithstanding Sections 5.2 and 5.3, in the event that any Licensed Product (as defined in the License Agreement) that is offered and sold by Purchaser or its Affiliates from and after the Closing Date becomes the subject of any Third Party Claim alleging infringement of such third party's intellectual property rights, then, regardless of whether such claim constitutes a breach of Section 2.16 by Seller, control of the defense of such claim will be governed by Section 6(c) of the License Agreement and Seller will indemnify Purchaser for seventy-five percent (75%) of all Damages in connection therewith, provided, however, that (i) Seller's portion of such Damages shall be payable only out of: (A) any Milestone Payments, up to a maximum of $X million, that are owed during any period in which Purchaser is claiming indemnification under this Section, and, (B) if no Milestone Payments are owed, or if such $X million amount has been paid therefrom, out of royalty payments under the License Agreement are owed during any period in which Purchaser is claiming indemnification under this Section; (ii) payments in respect of such Damages shall be counted towards, and be subject to, the Maximum Amount stated in Section 5.5(ii); and (iii) none of the limitations on Damages set forth in this Section shall apply to any Fraud Claim.

5.7 Right of Set-Off. Except as expressly limited by Section 5.6 above, Purchaser shall be entitled to set-off against any amounts otherwise payable by Purchaser to Seller under this Agreement or the Ancillary Agreements (including without limitation the Holdback, the Contingent Purchase Price and the royalty payments under the License Agreement) any amounts to which Purchaser is entitled based on a claim for indemnification by Purchaser under this Article 5 (collectively, the " Set-Off Amounts "); provided, however, that except for any Set-Off Amount owed under Section 5.6, Purchaser shall be required to deposit any such Set-Off Amounts in an escrow account to be held by the Escrow Agent pending resolution of any such claim. Neither the exercise of, nor the failure to exercise, such right of set-off will constitute an election of remedies or limit Purchaser in any manner in the enforcement of any other remedies that may be available to it. The Set-Off amounts shall be deducted from the total indemnification to which the Indemnified Party is entitled.

**ARTICLE 6**

**DISPUTE RESOLUTION**

6.1. Injunctive Relief . It is expressly agreed among the parties hereto that monetary damages would be inadequate to compensate a party hereto for any breach by Seller of the covenants and agreements in Article 4 hereof. Accordingly, the parties agree and acknowledge that any such violation or threatened violation will cause irreparable injury to Purchaser and that, in addition to any other remedies which may be available, Purchaser shall be entitled to injunctive relief against the threatened breach of Article 4 hereof or the continuation of any such breach without the necessity of proving actual damages and may seek to specifically enforce the terms thereof.

6.2 Dispute. Except as set forth in Section 6.1, any controversy, claim or dispute of whatever nature arising between the parties under this Agreement or any Ancillary Agreement, or in connection with the transactions contemplated hereunder or thereunder, including those arising out of or relating to the breach, termination, enforceability, scope or validity hereof, whether such claim existed prior to or arises on or after the Effective Time (a " Dispute "), shall be resolved by binding arbitration. The agreement to arbitrate contained in this Article 6 shall continue in full force and effect despite the expiration, rescission or termination of this Agreement.

6.3 Notice. No party shall commence an arbitration proceeding pursuant to the provisions set forth below unless such party shall first give a written notice (a "Dispute Notice ") to the other parties setting forth the nature of the Dispute.

6.4 Arbitration.

(a) If the Dispute has not been resolved within thirty (30) days after receipt of the Dispute Notice or such greater period as the parties may agree upon in writing, then the Dispute shall be determined by binding arbitration in New York, New York, U.S.A. The arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association (" AAA ") in effect on the date on which the Dispute Notice is sent, subject to any modifications contained in this Agreement. The Dispute shall be determined by one (1) arbitrator, except that if the Dispute involves an amount in excess of One Million Dollars ($1,000,000) US, exclusive of interest and costs, three (3) arbitrators shall be appointed. Persons eligible to serve as arbitrators shall be members of the AAA Large, Complex Case Panel or a CPR Institute for Dispute Resolution (" CPR ") Panel of Distinguished Neutrals, or persons who have professional credentials similar to those persons listed on such AAA or CPR panels. The award shall be in writing and shall set forth the reasons for the decision of the arbitrator(s). The award shall be final and binding on the parties.

(b) The arbitration shall be governed by the substantive laws of the State of New York without regard to conflicts-of-law rules, and by the arbitration law of the United States Federal Arbitration Act (Title 9, U.S. Code). Judgment upon the award rendered may be entered in any court having jurisdiction.

(c) Except as otherwise required by law, the parties and the arbitrator(s) agree to keep confidential and not disclose to third parties any information or documents obtained in connection with the arbitration process, including the resolution of the Dispute. If a party fails to proceed with arbitration as provided in this Agreement, or unsuccessfully seeks to stay the arbitration, or fails to comply with the arbitration award, or is unsuccessful in vacating or modifying the award pursuant to a petition or application for judicial review, the other party or parties, as applicable, shall be entitled to be awarded costs, including reasonable attorneys' fees, paid or incurred in successfully compelling such arbitration or defending against the attempt to stay, vacate or modify such arbitration award and/or successfully defending or enforcing the award.

**ARTICLE 7**

**DEFINITIONS**

7.1. Definitions. The following terms, as used herein, have the following meanings:

(a) "Affiliate" means, with respect to any Person, any Person directly or indirectly controlling, controlled by or under direct or indirect common control with such other Person, through the ownership of all or part of any Person.

(b) "Applicable Law" means, with respect to any Person, any domestic or foreign, federal, state or local common law or duty, case law or ruling, statute, law, ordinance, policy, guidance, rule, administrative interpretation, regulation, code, order, writ, injunction, directive, judgment, decree or other requirement of any Governmental Authority (including any Environmental, Safety and Health Laws) applicable to such Person or any of its Affiliates or Plan Affiliates or any of their respective properties, assets, officers, directors, employees, consultants or agents (in connection with such officer's, director's, employee's, consultant's or agent's activities on behalf of such Person or any of its Affiliates or Plan Affiliates).

(c) "Change in Control" means, with respect to a party: (a) the sale or transfer of all or substantially all of such party's assets to any Person or group of Persons (other than a subsidiary) by means of any transaction or series of transactions; (b) the acquisition of such party by another Person by means of any transaction or series of transactions (including, without limitation, any reorganization, merger or consolidation, whether of such party with, or into, any other Person or Persons, or otherwise, but excluding (x) any merger effected exclusively for changing the domicile of such party or (y) any consolidation or merger following which holders of equity securities outstanding immediately prior to the merger or consolidation hold more than fifty percent (50%) of the equity securities of the entity surviving the consolidation or merger or an entity controlling the surviving entity after the consolidation or merger); or (c) a transaction or series of transactions in which a Person or group of Persons acquires beneficial ownership of more than fifty percent (50%) of the voting power of the party.

(d) "Code" means the Internal Revenue Code of 1986, as amended, and the regulations or other binding pronouncements promulgated thereunder.

(e) "Contract" means any contract, lease, license, commitment, permit, sales order, purchase order, invoice, warranty and or other agreements or understanding.

(f) "Damages" means all demands, claims, actions or causes of action, assessments, losses, damages, costs, expenses, liabilities, judgments, awards, fines, sanctions, penalties, charges and amounts paid in settlement, without giving effect to any qualifications as to materiality of Material Adverse Effect contained in any representation or warranty contained herein, including, but not limited to, reasonable costs, fees and expenses of attorneys, accountants, bankers and other agents of the Person incurring such expenses.

(g) "Designated Employees" shall be XXXXX, XXXXXX, and XXXXX.

(h) "Environmental, Safety and Health Laws" means all Applicable Laws in any way relating to Environmentally Regulated Materials, toxic torts, occupational health and safety, or the environment.

(i) "Environmentally Regulated Material" means any element, compound, waste, pollutant, contaminant, substance, material or any mixture thereof: (i) the presence of which requires investigation or remediation under any Applicable Law; (ii) that is defined as a "hazardous waste" or "hazardous substance," or chemicals known to cause cancer or reproductive toxicity under any Applicable Law; (iii) that is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic or mutagenic or otherwise hazardous and is regulated by any Governmental Authority having or asserting jurisdiction over Seller; (iv) the presence of which causes a nuisance, trespass or other tortious condition; (v) the presence of which poses a hazard to the health or safety of Persons; (vi) without limitation, that contains gasoline, diesel fuel or other petroleum hydrocarbons, polychlorinated biphenols (PCBs), or asbestos, (vii) that gives rise to any exposure prohibition or warning requirement under any Environmental, Safety and Health Law; or (viii) that is otherwise regulated in any way under any Environmental, Safety and Health Law.

(j) "Governmental Authority" means any foreign, domestic, federal, territorial, state or local governmental authority, quasi-governmental authority, instrumentality, court, government or self-regulatory organization, commission, tribunal or organization or any regulatory, administrative or other agency, or any political or other subdivision, department or branch of any of the foregoing.

(k) "Intellectual Property" shall mean all rights in patents, patent applications, trademarks (whether registered or not), trademark applications, service mark registrations and service mark applications, trade names, trade dress, logos, slogans, tag lines, uniform resource locators, Internet domain names, Internet domain name applications, corporate names, copyright applications, registered copyrighted works and commercially significant unregistered copyrightable works (including proprietary software, books, written materials, prerecorded video or audio tapes, and other copyrightable works), technology, software, trade secrets, know-how, technical documentation, specifications, data, designs and other intellectual property and proprietary rights, other than off-the-shelf computer programs, owned by or licensed to Seller.

(l) "Knowledge" relating to Seller, "Knowledge of Seller" or "Seller's Knowledge" means the knowledge actually possessed, or which, upon the exercise of reasonable due diligence could be possessed, by any director or officer of Seller or its Affiliates.

(m) "Liability" or "Liabilities" means any liabilities, obligations or claims of any kind whatsoever whether absolute, accrued or un-accrued, fixed or contingent, matured or un-matured, asserted or unasserted, known or unknown, direct or indirect, contingent or otherwise and whether due or to become due, including without limitation any foreign or domestic tax liabilities or deferred tax liabilities incurred in respect of or measured by Seller's income, or any other debts, liabilities or obligations relating to or arising out of any act, omission, transaction, circumstance, sale of goods or services, state of facts or other condition which occurred or existed on or before the date hereof, whether or not known, due or payable, whether or not the same is required to be accrued on the financial statements or is disclosed on the Disclosure Schedule.

(n) "Lien" means, with respect to any asset, any mortgage, title defect or objection, lien, pledge, charge, security interest, hypothecation, restriction, encumbrance, adverse claim or charge of any kind in respect of such asset.

(o) "Material Adverse Effect" means any change, effect, fact, event, or circumstance which has had or may reasonably be expected to have a material adverse effect on, or a material adverse change in, as the case may be, without regard to any potential insurance coverage or potential tax benefits, the assets, liabilities, financial condition, results of operations, pricing or operating margins, operations, properties, business, customer, employee or supplier relations or business condition of the Urology Business, taken as a whole; provided , however , that none of the following shall be taken into account in determining whether there has been a Material Adverse Effect: (i) any change, effect, fact, event or circumstance exclusively relating to any acts of terrorism, sabotage, military action or war; (ii) business or economic conditions primarily related to the medical device industry; or (iii) the taking of any action contemplated by this Agreement and the other agreements contemplated hereby.

(p) "Person" means an individual, corporation, partnership, limited liability company, association, trust, estate or other entity or organization, including a Governmental Authority.

(q) "Tax" or "Taxes" means all taxes imposed of any nature including federal, state, local or foreign net income tax, alternative or add-on minimum tax, profits or excess profits tax, franchise tax, gross income, adjusted gross income or gross receipts tax, employment related tax (including employee withholding or employer payroll tax, FICA or FUTA), real or personal property tax or ad valorem tax, sales or use tax, excise tax, stamp tax or duty, any withholding or back up withholding tax, value added tax, including in accordance with the Israeli Law of Value Added Tax -- 1975, severance tax, prohibited transaction tax, premiums tax, environmental tax, intangibles tax or occupation tax, together with any interest or any penalty, addition to tax or additional amount imposed by any Governmental Authority (domestic or foreign) responsible for the imposition of any such tax, including, without limitation, any penalties for failing to report any "reportable transactions" required by Section 6011 of the Code. The term Tax shall also include any Liability of Seller or the Subsidiaries for the Taxes of any other Person under U.S. Treasury Regulations Section 1.1502-6 (or similar provisions of state, local or foreign law), as a transferee or successor by contract or otherwise.

(r) "Tax Return" means all returns, declarations, reports, estimates, forms, information returns, schedules, notices and statements or other document or information required to be filed with or submitted to any Governmental Authority in connection with the determination, assessment, collection or payment of any Tax or in connection with the administration, implementation, or enforcement of or compliance with any legal requirement relating to any Tax.

(s) "Urology Business Intellectual Property" shall refer collectively to all Intellectual Property that is owned by, licensed to or otherwise controlled by Seller in connection with its operation of the Urology Business, including the Transferred Intellectual Property and such items of Intellectual Property licensed under the License Agreement and are currently used in the Field of Use.

The following additional terms are defined elsewhere in this Agreement, as indicated below (whether in singular or plural form): List of Defined Terms

|  |  |  |  |
| --- | --- | --- | --- |
| AAA |  |  | X |
| Agreement |  |  | X |
| Ancillary Agreements |  |  | X |
| Assumed Liabilities |  |  | X |
| Basket Amount |  |  | X |
| BioC Devices |  |  | X |
| Closing |  |  | X |

|  |  |  |  |
| --- | --- | --- | --- |
| Closing Date |  |  | X |
| Closing Date Payment |  |  | X |
| Confidential Information |  |  | X |
| Consent |  |  | X |
| Consents |  |  | X |
| Consulting Agreement |  |  | X |
| Contingent Purchase Price |  |  | X |
| Contracts |  |  | X |
| CPR |  |  | X |
| Tricym Israel |  |  | X |
| Disclosure Schedule |  |  | X |
| Dispute |  |  | X |
| Dispute Notice |  |  | X |
| Effective Time |  |  | X |
| Escrow Agent |  |  | X |
| Escrow Agreement |  |  | X |
| Excluded Assets |  |  | X |
| FDA |  |  | X |
| Field of Use |  |  | X |
| First Milestone |  |  | X |
| First Milestone Payment |  |  | X |
| Fraud Claims |  |  | X |
| Funds |  |  | X |
| Holdback |  |  | X |
| Indemnified Party |  |  | X |
| Indemnifying Party |  |  | X |
| Initial Purchase Price |  |  | X |
| License Agreement |  |  | X |
| Licensed Intellectual Property |  |  | X |
| Liens |  |  | X |
| Maximum Amount |  |  | X |
| Milestone Payments |  |  | X |
| Milestones |  |  | X |
| Permits |  |  | X |
| Proceedings |  |  | X |
| Product Liability Claim |  |  | X |
| Purchase Price |  |  | X |
| Purchased Assets |  |  | X |
| Purchaser |  |  | X |
| Rep Basket |  |  | X |
| Rep Loss |  |  | X |
| Retained Liabilities |  |  | X |
| Scheduled Contracts |  |  | X |
| Second Milestone |  |  | X |
| Second Milestone Payment |  |  | X |
| Seller Licenses |  | X |
| Set-Off Amounts |  | X |
| Third Milestone |  | X |  |
| Third Milestone Payment |  | X |  |
| Third Party Claim |  | X |  |
| Transferred Intellectual Property |  | X |  |
| Urology Business |  | X |  |

**ARTICLE 8**

**MISCELLANEOUS**

8.1 Notices. All notices, requests, demands, claims and other communications hereunder shall be in writing. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly given (a) if personally delivered, when so delivered, (b) if given by facsimile, once such notice or other communication is transmitted to the facsimile number specified below and electronic confirmation is received; or (c) if sent through an overnight delivery service in circumstances to which such service guarantees second day international delivery, the second day following being so sent:

If to Seller:

XXXXXXXX

If to Buyer:

XXXXXXXX

Any party may give any notice, request, demand, claim or other communication hereunder using any other means (including ordinary mail or electronic mail), but no such notice, request, demand, claim or other communication shall be deemed to have been duly given unless and until it actually is received by the individual for whom it is intended. Any party may change the address to which notices, requests, demands, claims and other communications hereunder are to be delivered by giving the other parties notice in the manner herein set forth.

8.2 Amendments; No Waivers.

(a) Subject to Applicable Law, any provision of this Agreement may be amended or waived if, and only if, such amendment or waiver is in writing and signed, in the case of an amendment, by all parties hereto, or in the case of a waiver, by the party against whom the waiver is to be effective.

(b) No waiver by a party of any default, misrepresentation or breach of warranty or covenant hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent default, misrepresentation or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent occurrence. No failure or delay by a party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

8.3 Expenses. Except as otherwise provided herein, all costs, fees and expenses incurred in connection with the negotiation, preparation, execution, delivery and performance of this Agreement and in closing and carrying out the transactions contemplated hereby shall be paid by the party incurring such cost or expense. This Section 8.3 shall survive the termination of this Agreement.

8.4 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. No party hereto may assign either this Agreement or any of its rights, interests or obligations hereunder, by operation of law or otherwise, without the prior written approval of the other party.

8.5 Governing Law; Jurisdiction. This Agreement shall be governed by, construed and enforced in accordance with the internal laws of the State of New York (regardless of the laws that might otherwise govern under applicable principles of conflicts of law).

8.6 Counterparts; Effectiveness. This Agreement may be signed in any number of counterparts and the signatures delivered by facsimile, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective when each party hereto shall have received a counterpart hereof signed by the other parties hereto.

8.7 Entire Agreement. This Agreement (including the Disclosure Schedule, all Exhibits and Schedules and all other agreements referred to herein or therein which are hereby incorporated by reference and the other agreements executed simultaneously herewith) constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings and negotiations, both written and oral, between the parties with respect to the subject matter of this Agreement, including, without limitation, the Confidential Term Sheet dated January 10, 2006. Neither this Agreement nor any provision hereof is intended to confer upon any Person other than the parties hereto any rights or remedies hereunder.

8.8 Captions. The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof. All references to an Article or Section include all subparts thereof.

8.9 Severability. If any provision of this Agreement, or the application thereof to any Person, place or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable or void, the remainder of this Agreement and such provisions as applied to other Persons, places and circumstances shall remain in full force and effect only if, after excluding the portion deemed to be unenforceable, the remaining terms shall provide for the consummation of the transactions contemplated hereby in substantially the same manner as originally set forth at the later of the date this Agreement was executed or last amended.

8.10 Construction. The parties hereto intend that each representation, warranty and covenant contained herein shall have independent significance. If any party has breached any representation, warranty or covenant contained herein in any respect, the fact that there exists another representation, warranty or covenant relating to the same subject matter (regardless of the relative levels of specificity) that the party has not breached shall not detract from or mitigate the fact that the party is in breach of the first representation, warranty or covenant.

8.11 Cumulative Remedies . The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

8.12 Third Party Beneficiaries. No provision of this Agreement shall create any third party beneficiary rights in any Person, including any employee of Purchaser or employee of Seller or any Affiliate thereof (including any beneficiary or dependent thereof).

[Remainder of Page Intentionally Left Blank]

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

|  |  |  |  |
| --- | --- | --- | --- |
| PURCHASER: | NORTH AMERICAN MEDS, INC. | | |
|  | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | |
|  | Name: |
|  | Title: |
| SELLER: | BIOC MEDICAL (B.C.M), LTD. | | |
|  | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | |
|  | Name: |  | |
|  | Title: |  | |
|  |  | |
|  |  | |
|  |  | |

**APA#33**

**ASSET PURCHASE AGREEMENT**

by and between

MILLER’S HOSPITAL, , INC.,

and

CATHIMED, INC.

DATE: AUGUST 16, 2012

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TABLE OF CONTENTS

ARTICLE I DEFINITIONS 1

ARTICLE II THE TRANSACTIONS 4

2.1 Purchase and Sale of Assets 4

2.2 Retention of Excluded Liabilities and Excluded Assets 4

2.3 Purchase Price 4

2.4 Closing 4

2.5 Deliveries at the Closing 4

2.6 License Grant; Covenant Not to Sue 5

2.7 Allocation of Purchase Price 5

2.8 Investigation; Limitation of Seller Warranties 5

ARTICLE III REPRESENTATIONS AND WARRANTIES OF SELLER 6

3.1 Organization; Capitalization 6

3.2 Due Authorization 6

3.3 No Breach 6

3.4 Title to Acquired Assets 7

3.5 Legal Proceedings 7

3.6 No Brokers 7

3.7 Product Sales Records 7

3.8 Inventory 7

3.9 Regulatory Compliance 7

3.10 Product Liability 7

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF BUYER 8

4.1 Organization 8

4.2 Due Authorization 8

4.3 No Breach 8

4.4 Legal Proceedings 8

4.5 No Brokers 8

4.6 Financing 8

ARTICLE V POST-CLOSING COVENANTS 9

5.1 Press Releases and Public Announcements; Customer Referrals 9

5.2 Production Transfer; Milestone Payment 9

5.3 Indemnification 9

5.4 Noncompetition 10

5.5 Nonsolicitation 11

5.6 Assignment of Normomill Agreement 11

ARTICLE VI MISCELLANEOUS 11

6.1 Confidentiality 11

6.2 No Third-Party Beneficiaries 11

6.3 Entire Agreement 11

6.4 Succession and Assignment 11

6.5 Counterparts 11

6.6 Headings 11

6.7 Notices 12

6.8 Governing Law; Venue 13

6.9 Amendments and Waivers 13

6.10 Severability 13

6.11 Expenses 13

6.12 Construction 13

6.13 Incorporation of Schedule 13

6.14 Specific Performance 13

SCHEDULE 1 ACQUIRED ASSETS

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**ASSET PURCHASE AGREEMENT**

THIS ASSET PURCHASE AGREEMENT (this Agreement ), dated as of August 16, 2012, is made and entered into by and between Miller’s Hospital, , Inc. , a Minnesota corporation ( Seller ), and CATHIMED, Inc. , a Minnesota corporation ( Buyer ). Seller and Buyer are sometimes referred to herein as the Parties and individually as a Party .

RECITALS

WHEREAS, Seller is engaged in the business of designing, developing, manufacturing, marketing and selling the ABCD models (in the models and lengths set forth on Schedule 1 hereto, the

Product ); and

WHEREAS, Buyer desires to purchase, and Seller desires to sell, transfer, convey, assign and deliver to Buyer, certain intellectual property and other assets of Seller related to the Product.

AGREEMENT NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties, agreements and conditions set forth in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I

DEFINITIONS For purposes of this Agreement, the following terms have the meanings specified: Acquired Assets means any and all of Sellers right, title, and interest in and to the assets set forth on Schedule 1 hereto, together with all goodwill related to the same.

Acquired IP has the meaning set forth in Schedule 1 hereto.

Affiliate means a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the Person specified.

Affiliated Group means any affiliated group within the meaning set forth in Section 1504(a) of the Code.

Applicable Laws means any and all laws, ordinances, constitutions, regulations, statutes, treaties, rules, codes, and Injunctions adopted, enacted, implemented, promulgated, issued, entered or deemed applicable by or under the authority of any Governmental Body having jurisdiction over a specified Person or any of such Persons properties or assets.

Buyer Related Documents has the meaning set forth in Section 4.2. 1 Closing has the meaning set forth in Section 2.4.

Closing Date means the date hereof.

Code means the Internal Revenue Code of 1986, as amended from time to time.

Constituent Documents means the organizational and other governing documents of a Party, including the articles of incorporation, bylaws, shareholder agreement, voting agreement, and any other similar agreement.

Contract means any agreement, lease agreement, license agreement, contract, consensual obligation, commitment, arrangement, understanding or undertaking (whether written or oral and whether express or implied) of any type, nature or description that is legally binding. As used herein, the word Contract will be limited in scope if modified by an adjective specifying the type of contract to which this Agreement refers.

Encumbrance means any security or other property interest or right, claim, lien, pledge, encumbrance, hypothecation, option, charge, security interest, contingent or conditional sale, or other title claim or retention agreement or lease, license or use agreement in the nature thereof, whether voluntarily incurred or arising by operation of law, and including any agreement to grant or submit to any of the foregoing in the future.

Excluded Assets means any and all assets, properties and rights of Seller other than the Acquired Assets.

Excluded Liabilities means any and all Liabilities of Seller arising prior to the date hereof, and any and all Liabilities of Seller arising after the date hereof that are unrelated to the Acquired Assets.

Governmental Body means any: (a) nation, state, county, city, town, village, district or other jurisdiction of any nature; (b) federal, state, local, municipal, foreign or other government; (c) governmental or quasi-governmental authority of any nature (including any governmental agency, branch, board, commission, department, instrumentality, office or other entity, and any court or other tribunal); (d) multi-national organization or body; and/or (e) body exercising, or entitled or purporting to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power of any nature.

Injunction means any and all writs, rulings, awards, directives, injunctions (whether temporary, preliminary or permanent), judgments, decrees or orders (whether executive, judicial or otherwise) adopted, enacted, implemented, promulgated, issued, entered or deemed applicable by or under the authority of any Governmental Body.

Knowledge as it relates to any Person means the actual knowledge of such Person if the Person is an individual, or the knowledge of any officer, director, governor or similar position of such Person if such Person is a corporation, partnership, association, limited liability company, trust, unincorporated organization, other entity or group.

Liability or Liabilities means any and all debts, liabilities and/or obligations of any type, nature or description (whether known or unknown, asserted or unasserted, secured or unsecured, absolute or contingent, accrued or unaccrued, liquidated or unliquidated and whether due or to become due).

Permits means all of the federal, state and local governmental permits (including occupancy permits), licenses, consents and authorizations held by Seller or any of its Affiliates, or required in connection with the use, operation or ownership of the Acquired Assets.

Person means any individual, corporation (including any non-profit corporation), general, limited or limited liability partnership, limited liability company, joint venture, estate, trust, association, organization, or other entity or Governmental Body.

Proceeding means any claim, suit, litigation, arbitration, hearing, audit, investigation or other action (whether civil, criminal, administrative or investigative) commenced, brought, conducted, or heard by or before, or otherwise involving, any Governmental Body or arbitrator.

Seller Related Documents has the meaning set forth in Section 3.2.

Tax means all taxes, assessments, charges, duties, fees, levies or other governmental charges, including all federal, state, local, foreign and other income, franchise, profits, capital gains, capital stock, transfer, sales, use, occupation, property, excise, severance, windfall profits, stamp, license, payroll, withholding and other taxes, assessments, charges, duties, fees, levies or other governmental charges of any kind whatsoever (whether payable directly or by withholding and whether or not requiring the filing of a Tax Return), all estimated taxes, deficiency assessments, additions to tax, penalties and interest and any Liability for such amounts as a result either of being a member of a combined, consolidated, unitary or Affiliated Group or of a contractual obligation to indemnify any Person.

Tax Return means any return, declaration, report, claim for refund or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof, filed or required to be filed with any Person.

Threatened means a demand or statement has been made in writing, or any other notice has been given that would lead a reasonably prudent Person to conclude that a claim, Proceeding, dispute, action, or other matter will, with reasonable likelihood, be asserted, commenced, taken or otherwise pursued in the future.

**ARTICLE II**

**THE TRANSACTIONS**

2.1 Purchase and Sale of Assets .

On and subject to the terms and conditions of this Agreement, including the license granted under Section 2.6(a), Buyer agrees to purchase from Seller, and Seller agrees to sell, transfer, convey, assign and deliver, as applicable, to Buyer at the Closing, the Acquired Assets, free and clear of any and all Encumbrances, for the consideration specified in this Article II.

2.2 Retention of Excluded Liabilities and Excluded Assets .

Buyer will not assume or have any responsibility or Liability with respect to the Excluded Liabilities, and Seller will retain all of the Excluded Assets. Notwithstanding the foregoing, Buyer shall be responsible for all Liabilities relating to the Acquired Assets arising on or after the date hereof, and shall indemnify and hold harmless Seller and any of its officers, directors, shareholders, agents or representatives, and defend Seller and any of its officers, directors, shareholders, agents or representatives, against any and all claims, demands, damages, obligations, Liabilities, contractual obligations, and causes of action, of any nature whatsoever, at law or in equity, asserted or unasserted, known or unknown, fixed or contingent, liquidated or unliquidated relating to the Acquired Assets arising on or after the date hereof.

2.3 Purchase Price .

In consideration of the conveyance of the Acquired Assets to Buyer hereunder, Buyer will make the following payments (collectively, the Purchase Price ), by wire transfer of immediately available funds, to Seller:

(a) $2,250,000 upon the execution of this Agreement and the delivery of the documents set forth in Section 2.5(a) below; and (b) $750,000 upon the successful qualification by Buyer or its Affiliates of the manufacturing processes for the manufacture of the RX and OTW Product models (in any size) for use in humans.

2.4 Closing .

The closing of the transactions contemplated by this Agreement (the Closing ) will take place simultaneously with the execution hereof (a) at the offices of Hathaway and Jones, P.A., Address,XXX,USA , or (b) remotely by electronic exchange of documents and signatures. The Closing will be effective as of 12:01 a.m. central daylight savings time on the Closing Date.

2.5 Deliveries at the Closing .

(a) Sellers Deliverables . At the Closing, Seller will execute, where necessary or appropriate, and deliver to Buyer each and all of the following:

(i) a Patent Assignment (the Patent Assignment ) and a Trademark Assignment (the Trademark Assignment ), in form and substance mutually acceptable to Buyer and Seller (the IP Assignments );

(ii) a Bill of Sale in form and substance mutually acceptable to Buyer and Seller (the Bill of Sale ); and

(iii) the inventory, marketing materials, and customer lists described on Schedule 1 hereto.

(b) Buyers Deliverables . At the Closing, Buyer will execute, where necessary or appropriate, and deliver to Seller each and all of the following:

(i) the IP Assignments, duly executed by an authorized officer of Buyer; and

(ii) a copy of the resolutions adopted by Buyers board of directors authorizing the execution of this Agreement and the consummation of the transactions contemplated hereby certified by an officer of Buyer.

2.6 License Grant; Covenant Not to Sue .

(a) Buyer hereby grants to Seller a perpetual, irrevocable, royalty-free, worldwide, nonexclusive, sub-licensable license to the Acquired IP in any field of use except directing, steering, controlling, and supporting a guide wire to access discrete regions of the coronary and peripheral vasculature.

(b) Buyer, on behalf of itself and its Affiliates and any of their respective successors, assigns, affiliated entities, directors, officers, shareholders, legal representatives, distributors and resellers, hereby covenants not

(i) to pursue any claim or cause of action against Seller or its Affiliates, any of their respective successors, assigns, affiliated entities, directors, officers, shareholders, legal representatives, distributors, resellers, customers, or end users alleging that any product manufactured, marketed or sold by Seller or any of its Affiliates as of the date hereof or any future iteration thereof infringes any of the Acquired IP, or

(ii) to take any other action, either directly or indirectly, that interferes with Sellers ability to exercise the license granted to Seller herein.

(c) Except as set forth above, neither Party grants to the other Party any license to use any of its patents, trademarks, service marks, copyrights or other intellectual property.

2.7 Allocation of Purchase Price .

Buyer and Seller will agree on the allocation of the Purchase Price among the Acquired Assets in accordance with the applicable Treasury Regulations. All Tax Returns and reports filed by Buyer and Seller (including Internal Revenue Service Form 8594) will be prepared consistently with such allocation.

2.8 Investigation; Limitation of Seller Warranties .

Buyer is an informed and sophisticated participant in the transactions contemplated by this Agreement and has undertaken such investigation, and has been provided with and has evaluated such documents and information, as it deems necessary in connection with the execution, delivery and performance of this Agreement. Except as otherwise expressly set forth in this Agreement, the Acquired Assets are being sold by Seller

AS IS, WHERE IS AND, SUBJECT TO THE REPRESENTATIONS AND WARRANTIES CONTAINED IN ARTICLE III, WITH ALL FAULTS AND WITHOUT ANY OTHER REPRESENTATION OR WARRANTY OF ANY NATURE WHATSOEVER, EXPRESS OR IMPLIED, ORAL OR WRITTEN, AND IN PARTICULAR, WITHOUT ANY IMPLIED WARRANTY OR REPRESENTATION AS TO CONDITION, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR SUITABILITY.

**ARTICLE III**

**REPRESENTATIONS AND WARRANTIES OF SELLER**

To induce Buyer to enter into this Agreement, Seller hereby represents and warrants to Buyer that each and all of the following statements contained in this Article III are true and correct as of the date hereof.

3.1 Organization; Capitalization .

Seller is duly organized, legally existing and in good standing under the laws of the State of Delaware.

3.2 Due Authorization .

The execution, delivery and performance of this Agreement and the other documents, instruments and agreements to be executed and/or delivered by Seller pursuant to this Agreement (such other documents, instruments and agreements being hereinafter referred to as the Seller Related Documents ), and the consummation of the transactions contemplated hereby and thereby, have been duly and validly authorized by all necessary action in accordance with Applicable Law and Sellers Constituent Documents. This Agreement and the Seller Related Documents have been duly and validly executed and delivered by Seller, and the obligations of Seller hereunder and thereunder are valid, legally binding and enforceable against Seller in accordance with their respective terms.

3.3 No Breach .

Seller has full power and authority to sell, assign, transfer, convey and deliver to Buyer the Acquired Assets. Seller has full power and authority to otherwise perform its obligations under this Agreement and the Seller Related Documents. The execution and delivery of this Agreement and the Seller Related Documents and the consummation of the transactions contemplated hereby and thereby, will not:

(a) violate any provision of Sellers Constituent Documents,

(b) violate any Applicable Laws or Injunction applicable to Seller,

(c) require any filing with, Permit from, authorization, consent or approval of, or the giving of any notice to, any Person,

(d) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give another party any rights of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license, franchise, Permit (including any Permits, approvals or authorizations of any Governmental Body), lease, or other Contract to which Seller is a party, or by which Seller or any of its properties or assets may be bound, or (

e) result in the creation or imposition of any Encumbrance on any of the Acquired Assets.

3.4 Title to Acquired Assets .

Seller holds good, valid and marketable title to all of the Acquired Assets, free and clear of any and all Encumbrances of any kind, nature and description whatsoever. Seller owns, licenses or otherwise has adequate rights to use the Acquired Assets in the manner in which they are presently being used. None of the Acquired Assets or Sellers rights thereto is subject to any actual or, to the Knowledge of Seller, Threatened, Proceeding which could reasonably be expected to result in the revocation, termination, supervision, cancellation or adverse modification of any such property or rights thereto. Upon execution and delivery by Seller of the instruments of conveyance at the Closing, Buyer will become the true and lawful owner of, and will receive good and marketable title to, the Acquired Assets, free and clear of all liens and encumbrances.

3.5 Legal Proceedings .

There are no Proceedings pending or, to Sellers Knowledge, Threatened against Seller that would adversely affect Sellers performance under this Agreement or the consummation of the transactions contemplated herein.

3.6 No Brokers .

No broker, finder or similar agent has been employed by or on behalf of Seller, and no Person with which Seller has had any dealings or communications of any kind is entitled to any brokerage commission, finders fee or any similar compensation in connection with this Agreement or the transactions contemplated hereby.

3.7 Product Sales Records.

Attached in Schedule 1 are true, correct and complete copies of Sellers internally prepared sales records for the Product for the period from January 1, 2010 through June 30, 2012 which are based upon the books and records of Seller and, in all material respect, accurately present the information set forth therein for the respective periods indicated.

3.8 Inventory.

The inventory delivered at the Closing consists of items of a quality which is usable and, with respect to finished goods inventory, salable in each case, in the ordinary course of Sellers business. The finished goods inventory is not obsolete, damaged or defective.

3.9 Regulatory Compliance.

Seller has no Knowledge of any actual or threatened enforcement action or investigation by the Food and Drug Administration (the FDA) or any other Governmental Body that has jurisdiction over Sellers operations relating to the Acquired Assets or the Product. Seller does not have any Knowledge that the FDA or any other Governmental Body is considering such action. Sellers operation of business relating to the Acquired Assets and the Product is, and at all times has been, in material compliance with all applicable laws relating to the Acquired Assets or the Product. Seller has not either voluntarily or involuntarily initiated, conducted or issued, or caused to be initiated, conducted or issued, any recall, field notifications, field corrections, market withdrawal or replacement, safety alert, warning, dear doctor letter, investigator notice, safety alert or other notice or action relating to an alleged lack of safety, efficacy or regulatory compliance of Seller with respect to any Acquired Asset or the Product. Seller has no Knowledge of any facts which are reasonably likely to cause

(1) the recall, market withdrawal or replacement of the Product;

(2) a change in the marketing classification or a material change in the labeling of the Product; or

(3) a termination or suspension of the marketing of the Product.

3.10 Product Liability.

Seller has had no liability (and there is no known basis for any present or future action, lawsuit, proceeding, hearing, investigation, charge, complaint, claim, or demand against any of them giving rise to any liability) arising out of any injury to individuals or property as a result of the ownership, possession, or use of the Product.

**ARTICLE IV**

**REPRESENTATIONS AND WARRANTIES OF BUYER**

To induce Seller to enter into this Agreement, Buyer represents and warrants to Seller that each and all of the following statements contained in this Article IV are true and correct as of the date hereof.

4.1 Organization .

Buyer is duly organized, legally existing and in good standing under the laws of the State of Minnesota.

4.2 Due Authorization .

The execution, delivery and performance of this Agreement and the other documents, instruments and agreements to be executed and/or delivered by Buyer pursuant to this Agreement (such other documents, instruments and agreements being hereinafter referred to as the Buyer Related Documents ) , and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary action, including approval of Buyers board of directors in accordance with Applicable Law and Buyers Constituent Documents. This Agreement and the Buyer Related Documents have been duly and validly executed and delivered by Buyer (or duly and validly adopted by Buyers board of directors in the case of the resolutions described in Section 2.5(b)(iii) above) and the obligations of Buyer hereunder and thereunder are valid, legally binding and enforceable against Buyer in accordance with their respective terms.

4.3 No Breach .

Buyer has full power and authority to perform its obligations under this Agreement and the Buyer Related Documents. The execution and delivery of this Agreement and the Buyer Related Documents and the consummation of the transactions contemplated hereby and thereby will not:

(a) violate any provision of Buyers Constituent Documents,

(b) violate any Applicable Laws or Injunction applicable to Buyer,

(c) require any filing with, Permit from, authorization, consent or approval of, or the giving of any notice to, any Person,

(d) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give another party any rights of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license, franchise, Permit (including any Permits, approvals or authorizations of any Governmental Body), lease, or other Contract to which Buyer is a party, or by which Buyer or any of its properties or assets may be bound.

4.4 Legal Proceedings .

There are no Proceedings pending or, to Buyers Knowledge, Threatened against Buyer that would adversely affect Buyers performance under this Agreement or the consummation of the transactions contemplated herein.

4.5 No Brokers .

No broker, finder or similar agent has been employed by or on behalf of Buyer, and no Person with which Buyer has had any dealings or communications of any kind is entitled to any brokerage commission, finders fee or any similar compensation in connection with this Agreement or the transactions contemplated hereby.

4.6 Financing .

Buyer currently has and will maintain sufficient funds to deliver the Purchase Price and otherwise to perform its obligations hereunder.

**ARTICLE V**

**POST-CLOSING COVENANTS**

5.1 Press Releases and Public Announcements; Customer Referrals.

Neither Party will issue any press release or make any public announcement relating to the subject matter of this Agreement without the prior written approval of the other Party. Notwithstanding the foregoing, Buyer shall be entitled to issue a press release announcing this Agreement provided that such press release is mutually agreed upon by the Parties. Concurrently with or promptly following such press release, if any, Seller will notify all customers that have purchased the Product within one year preceding the Closing that commercial rights to the Product have been transferred to Buyer. Following the Closing Date, Seller will forward all unfulfilled electronic orders, fax orders and phone orders received for the Product to Buyers customer service department.

5.2 Production Transfer; Milestone payment .

Within 14 days after the Closing Date, Seller shall deliver to Buyer all of the manufacturing assets included in the Acquired Assets. For up to 120 days after the Closing Date, or through the earlier successful qualification of all manufacturing processes for the manufacture of human use product (the Production Transfer Period ), Seller shall designate at least one of Sellers employees with sufficient experience in manufacturing the Product to provide at no additional charge to Buyer, by telephone and/or in person, the necessary consultation and reasonable training for Buyers employees to become proficient in the manufacturing processes, vendors, inspection processes and validations for the Product. Seller shall not be required to provide such consultation and training outside of its customary business hours or in excess of 20 hours per week. Following the closing, Buyer and its Affiliates shall use their commercially reasonable best efforts to successfully qualify all manufacturing processes for the manufacture of Products for use in humans. Buyer shall notify Seller in writing within five (5) business days of such successful qualification and shall pay to Seller the amount referenced in Section 2.3(b) hereof within ten (10) days of such notice.

5.3 Indemnification .

(a) Following the Closing,

(i) Seller shall defend, indemnify, and hold harmless Buyer and its Affiliates, and their officers, directors, employees, attorneys, agents, successors and assigns (collectively, the Buyer Indemnified Parties), against any and all legal expenses, costs, settlements, judgments, claims, controversies, demands, rights, disputes, grievances, causes of action, damages, enhanced damages, injunctions, attorneys fees or prejudgment interest ( Losses ) imposed on or incurred by any of the Buyer Indemnified Parties by reason of the manufacture, marketing or sale of the Product by Seller prior to the Closing.

(ii) Buyer shall defend, indemnify, and hold harmless Seller and its Affiliates, and their officers, directors, employees, attorneys, agents, successors and assigns (collectively, the Seller Indemnified Parties), against any and all Losses imposed on or incurred by any of the Seller Indemnified Parties by reason of the manufacture, marketing or sale of the Product by Buyer after the Closing

(b) Each Partys obligations under this Section 5.3 are conditioned on

(i) the Party to be indemnified (the Indemnified Party ) notifying the other Party (the Indemnifying Party ) promptly in writing of such Losses,

(ii) the Indemnified Party giving the Indemnifying Party sole control of the defense of any related Proceeding and any related settlement negotiations; provided, however, that the Indemnified Party will have the right to approve the terms of any settlement or compromise that restricts its rights granted under this Agreement, subjects it to any ongoing obligations or subjects it to any Losses for which it would not be indemnified hereunder, and

(iii) the Indemnified Party cooperating with the Indemnifying Party in such defense (including, without limitation, by making available to the Indemnifying Party all documents and information in the Indemnified Partys possession or control that are relevant to the Proceeding, and by making the Indemnified Partys personnel available to testify or consult with the Indemnifying Party or its attorneys in connection with such defense).

(c) The Losses for which an Indemnified Party is entitled to indemnification pursuant to this Section 5.3 will be reduced by:

(i) all insurance or other third party indemnification proceeds actually received by the Indemnified Party. An Indemnified Party shall use commercially reasonable best efforts to claim and recover any Losses suffered by the Indemnified Party under any such insurance policies or other third party indemnities, and shall remit to the Indemnifying Party any such insurance or other third party proceeds which are paid to the Indemnified Party with respect to Losses for which the Indemnified Party have been previously compensated pursuant to this Section 5.3.

(ii) the net amount of the Tax benefits actually realized by the Indemnified Party by reason of such Loss. An Indemnified Party shall use commercially reasonable best efforts to claim and realize all such Tax benefits.

(d) No Indemnified Party will be entitled to indemnification pursuant to this Section 5.3 for diminution in value, multiples of earnings or cash flows, punitive damages, or for lost profits, consequential, exemplary, incidental, indirect or special damages, except to the extent awarded to a third party.

(e) An Indemnified Party shall use commercially reasonable best efforts to mitigate any and all Losses that would otherwise be indemnifiable hereunder.

(f) All indemnification payments made pursuant to this Section 5.3 will be treated as an adjustment to the Purchase Price unless otherwise required by law.

5.4 Noncompetition .

Neither Seller nor its Affiliates will sell any product manufactured by Seller and used by interventional cardiologists that directly competes with the Product for a period of three (3) years following the Closing Date; provided, however, that this restriction shall not apply to products and/or technologies acquired by Seller or any of its Affiliates after the date of this Agreement.

5.5 Nonsolicitation .

Neither Party nor any of its Affiliates will solicit to hire any employee of the other Party who is involved in this transaction or the production transfer contemplated in Section 5.2 for a period of three (3) years following the Closing Date, provided, however, that the foregoing shall not prohibit a general employment solicitation to the public, general advertising, or similar methods of solicitation not specifically directed at employees of the other Party.

5.6 Assignment of Normomill Agreement .

The parties will use their reasonable efforts (understanding that Seller will not be obligated to incur any further cost or expense) following the Closing to contact Normomill, Incorporated ( Normomill ) and assign that certain License Agreement, dated as of March 17, 2004, by and between Seller (formerly known as Velocimed, Incorporated) and Normomill, as amended, from Seller to Buyer.

**ARTICLE VI**

**MISCELLANEOUS**

6.1 Confidentiality .

Except as set forth in Section 5.1 above, Buyer and Seller will maintain in confidence, and will cause their officers, employees, agents and advisors to maintain in confidence, the existence and terms of the Parties discussions and this Agreement and any written, oral or other information provided by either Party to the other in connection with this Agreement or the transactions contemplated hereby unless

(a) such information is already known to such Party or to others not bound by a duty of confidentiality, or such information becomes publicly available, through no fault of such Party, or

(b) the furnishing or use of such information is required in connection with any Proceedings.

6.2 No Third-Party Beneficiaries .

This Agreement will not confer any rights or remedies on any Person other than the Parties and their successors and permitted assigns.

6.3 Entire Agreement .

This Agreement (including the documents referred to herein) constitutes the entire agreement among the Parties and supersedes any prior understandings, agreements or representations by or between the Parties, written or oral, to the extent they related in any way to the subject matter hereof.

6.4 Succession and Assignment .

This Agreement will be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns but nothing in this Agreement is to be construed as an authorization or right of any Party to assign its rights or delegate its duties under this Agreement without the prior written consent of the other Party.

6.5 Counterparts .

This Agreement may be executed in one or two counterparts, including by facsimile, each of which will be deemed an original but both of which together will constitute one and the same instrument.

6.6 Headings .

The section headings contained in this Agreement are inserted for convenience only and will not affect in any way the meaning or interpretation of this Agreement.

6.7 Notices .

All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement will be in writing and will be deemed to have been given when personally delivered or three business days after being mailed by first class U.S. mail, return receipt requested, or when receipt is acknowledged, if sent by facsimile, telecopy or other electronic transmission device. Notices, demands and communications to Seller and Buyer will, unless another address is specified in writing, be sent to the address indicated below:

If to Seller:

Miller’s Hospital, , Inc. XXXMinnesota Attention: Debbie Mills Facsimile: xxx-xxx-xxx E-mail: xxx With a copy to (which will not constitute notice):

Miller’s Hospital, Inc. XXX, Minnesota Attention: General Counsel Facsimile: xxx-xxx-xxx and Hathaway and Jones, P.A. XXX, Minneapolis, Attention: Erin Honeydew Facsimile: xxx-xxx-xxx E-mail: xxx

If to Buyer:

CATHIMED, Inc. XXX, Minneapolis, Minnesota Attention: Chief Executive Officer Facsimile: xxx-xxx-xxx

With a copy to (which will not constitute notice): CATHIMED, Inc. Minnesota Attention: General Counsel Facsimile: xxx-xxx-xxx

6.8 Governing Law; Venue .

This Agreement, including the documents, instruments and agreements to be executed and/or delivered by the parties pursuant hereto, will be construed, governed by and enforced in accordance with the internal laws of the State of Minnesota, without giving effect to the principles of comity or conflicts of laws thereof. The state and federal courts of Hennepin County, Minnesota shall serve as the exclusive forum for any dispute, claim or action arising out of or in connection with this Agreement. Each Party hereby irrevocably waives any objection which it may have at any time to the venue of any suit, action or proceeding brought in such courts and, specifically, any claim that such suit, action or proceeding is brought in an inconvenient forum and any claim that such courts do not have jurisdiction over such Party. Notwithstanding the foregoing, either Party may seek equitable relief to enforce the confidentiality provisions or other restrictive covenants in any court of competent jurisdiction.

6.9 Amendments and Waivers .

No amendment of any provision of this Agreement will be valid unless the same will be in writing and signed by Seller and Buyer. No waiver by either Party of any default, misrepresentation or breach of warranty or covenant hereunder, whether intentional or not, will be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.

6.10 Severability .

Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction will not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

6.11 Expenses .

Each of the Parties will be responsible for and bear all of its own costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby.

6.12 Construction .

The Parties have participated jointly in the negotiation and drafting of this Agreement and the Seller Related Documents and the Buyer Related Documents (collectively, the Related Documents ). In the event an ambiguity or question of intent or interpretation arises, this Agreement and the Related Documents will be construed as if drafted jointly by the Parties and no presumption or burden of proof will arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement or the Related Documents. Any reference to any federal, state, local or foreign statute or law will be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. The word including will mean including, without limitation.

6.13 Incorporation of Schedule .

The Schedule identified in this Agreement is incorporated herein by reference and made a part hereof.

6.14 Specific Performance .

Each of the Parties acknowledges and agrees that the other Parties would be damaged irreparably in the event any of the provisions of this Agreement are not performed in accordance with their specific terms or otherwise are breached.

Accordingly, each of the Parties acknowledges and agrees that the other Parties will be entitled to an Injunction or Injunctions to prevent breaches of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof in any action instituted in any court of the United States or any state thereof having jurisdiction over the Parties and the matter, in addition to any other remedy to which they may be entitled, at law or in equity, without the necessity of posting bond or proving the inadequacy of money damages.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF , the Parties have executed this Agreement as of the date first written above.

SELLER: BUYER:

Miller’s Hospital, , Inc. , a Delaware corporation CATHIMED, Inc. , a Minnesota corporation

By: By:

Name: Name:

Title: Title:

**APA#34**

**AMENDED AND RESTATED**

**ASSET PURCHASE AGREEMENT**   
**BY AND BETWEEN**

**MADRID VIDEO S.A.   
AND   
SKYELIMITSKYELIMITSKYELIMIT, INC.   
DATED AS OF JULY 1, 2002**   
  
------------PAGE BREAK----------

**AMENDED AND RESTATED ASSET PURCHASE AGREEMENT**This AMENDED AND RESTATED ASSET PURCHASE AGREEMENT, dated as of the 1st   
day of July, 2002 (the "AGREEMENT"), by and between MADRID VIDEO S.A., a   
Spanish SOCIEDAD ANONIMA corporation (the "PURCHASER"), and SKYELIMITSKYELIMITSKYELIMIT, INC., a Delaware corporation (the "SELLER"). Terms used herein and not otherwise defined shall have the meanings set forth in Section 13.3 hereof.   
  
RECITALS   
  
A. The Purchaser and the Seller have entered into an Asset   
Purchase Agreement, dated as of June 18, 2002 (the "ORIGINAL AGREEMENT").   
  
B. It is the intent of the Purchaser and the Seller to amend and   
restate the Original Agreement for the purposes of making certain   
revisions to the Original Agreement.   
  
C. The Seller operates, directly and indirectly through its Business   
Subsidiaries, a Spanish and Portuguese language network of Internet websites,   
including without limitation SkyelimitSkyelimitMedia.com. The Seller also operates, and will   
continue to operate following the Closing, its mobile business and other   
businesses.   
  
D. The board of directors of the Purchaser has determined that it is in   
the best interests of the Purchaser that the Purchaser acquire certain of the   
assets used by or in connection with the Multiple Visions, and has approved this   
Agreement and the transactions contemplated hereby.   
  
E. The parties hereto have agreed that the Seller will sell and the   
Purchaser will acquire the Acquired Assets free and clear of all Liens, Claims,   
Orders, and other Indebtedness other than Permitted Liens.   
  
F. The board of directors of the Seller has determined that it is in the   
best interests of the Seller and its shareholders, that the Seller sell the   
Acquired Assets and, in furtherance thereof, has approved this Agreement and the   
transactions contemplated hereby.   
  
G. Contemporaneously with the execution of this Agreement, the Purchaser   
and Seller are entering into a Stock Purchase Agreement (the "SPANROCK STOCK   
PURCHASE AGREEMENT") pursuant to which the Purchaser will acquire all of the   
issued and outstanding shares of capital stock of SPANROCK S.L., a Spanish   
SOCIEDAD LIMITADA ("SPANROCK") wholly-owned by the Seller.   
  
H. In connection with the acquisition of the Acquired Assets, the   
Purchaser has agreed to deposit a portion of the Purchase Price in the amount of   
$1.0 million (the "ESCROW FUNDS") into an escrow account with Farmville Trust   
Company, and Farmville Trust Company has agreed to serve as escrow agent (the   
"ESCROW AGENT") with respect to the Escrow Funds, holding such funds upon the   
terms and conditions set forth in an escrow agreement by and among the   
Purchaser, the Seller, an affiliate of the Purchaser and the Escrow Agent (the   
"ESCROW AGREEMENT").   
  
I. As an inducement to the Purchaser to enter this Agreement, the Seller   
has agreed to enter into a Transition Licensing Agreement, a copy of which is   
attached hereto as EXHIBIT 8.14, pursuant to which the Seller will grant a license to the   
Purchaser for certain intellectual property owned by the Seller and provide   
certain services related thereto to the Purchaser following the Closing (the   
"TRANSITION LICENSING AGREEMENT").   
  
J. As further inducement to the Purchaser to enter into this Agreement,   
the Seller has agreed to waive certain non-solicitation restrictions with   
respect to those employees of the Seller or its Affiliates listed on SCHEDULE   
5.3 attached hereto (the "BUSINESS EMPLOYEES") so that the Purchaser may offer   
certain or all of such Business Employees employment with the Purchaser or any   
Affiliate thereof upon terms and conditions determined by the Purchaser in its   
sole discretion.   
  
K. The Purchaser and the Seller desire to make certain   
representations, warranties, covenants and agreements in connection with   
the transactions contemplated by this Agreement.   
  
NOW, THEREFORE, in consideration of the representations and warranties,   
covenants and agreements, and subject to the conditions contained herein, the   
Seller and the Purchaser hereby agree as follows:

**ARTICLE I   
  
PURCHASE OF ASSETS**  
1.1 PURCHASE AND SALE OF ACQUIRED ASSETS. Subject to the terms and   
conditions of this Agreement, the Seller agrees to sell, assign, convey and   
transfer to the Purchaser, and the Purchaser agrees to purchase from the Seller,   
those assets used by or in connection with the Multiple Visions, wherever located,   
listed on SCHEDULE 1.1(a) attached hereto ( the "ACQUIRED ASSETS") free and   
clear of any Liens, Claims, Orders and Indebtedness other than Permitted Liens.   
Other than the Acquired Assets listed on SCHEDULE 1.1(a) hereto, the Purchaser   
is not purchasing and will not acquire, any other assets of the Seller pursuant   
to the terms of this Agreement including the assets identified on SCHEDULE   
1.1(b).   
  
1.2 ASSUMED OBLIGATIONS. At the Closing, the Purchaser shall not assume   
any obligations of the Seller or the Multiple Visions other than those obligations   
of the Multiple Visions accruing after the Closing Date under existing Contracts   
of the Multiple Visions to be acquired by the Purchaser and specifically listed on   
SCHEDULE 1.2 hereto (collectively, the "ASSUMED OBLIGATIONS") pursuant to an   
Assignment and Assumption Agreement substantially in the form of EXHIBIT 1.2   
hereto. Each of the Contracts assumed hereunder is independently assumed subject   
to the representations, warranties, covenants and conditions made herein as to   
that Contract. Except as expressly set forth in this Section 1.2 and SCHEDULE   
1.2 hereto, the Purchaser shall not assume or otherwise be responsible at any   
time for any liability, obligation, Indebtedness, Contract or commitment of the   
Multiple Visions or any of the other businesses of the Seller, whether absolute or   
contingent, accrued or unaccrued, asserted or unasserted, or otherwise,   
including, but not limited to, any liabilities, obligations, debts or   
commitments of the Multiple Visions or the Seller

(a) incident to, arising out of   
or incurred with respect to this Agreement and the transactions contemplated   
hereby,

(b) which otherwise arise or are asserted or incurred by reason of   
events, acts or transactions occurring, or the operation of the Multiple Visions,   
prior to or on the Closing Date,

(c) relating to or arising under any Employee   
Benefit Plan,

(d) relating to any employees or former employees of the Seller or   
any of its subsidiaries who are not employed by the Purchaser on or after the Closing or otherwise relating to salaries, wages, bonuses, severance or retention pay or benefits   
accruing, or relating to employment or termination from employment, on or   
prior to the Closing or

(e) for Taxes (except as allocated to the Purchaser   
pursuant to Section 7.2(b) of this Agreement)

(i) related to the Media   
Business or the Acquired Assets or

(ii) arising out of the income, assets or   
operations of the Seller's foreign subsidiaries, in each case for all Tax   
periods (or portions thereof) ending on or prior to the Closing Date   
(including any and all Taxes arising out of the transactions contemplated   
hereby) (collectively, the "EXCLUDED LIABILITIES"). The Seller agrees to   
satisfy and discharge each of the Excluded Liabilities as the same shall   
become due. The Purchaser's assumption of the Assumed Obligations shall in no   
way expand the rights or remedies of third parties against the Purchaser as   
compared to the rights and remedies which such parties would have had against   
the Seller had this Agreement not been consummated.   
  
1.3 METHOD OF CONVEYANCE. The sale, transfer, conveyance and assignment by   
the Seller of the Acquired Assets to the Purchaser in accordance with Section   
1.1 hereof shall be effected on the Closing Date by the execution and delivery   
by the Seller and any Business Subsidiary as applicable, to the Purchaser of   
instruments of transfer including, among others:

(a) the bill of sale in   
substantially the form of EXHIBIT 1.3(a) attached hereto (the "BILL OF SALE"),   
and

(b) the Assignment and Assumption Agreement in substantially the form of   
EXHIBIT 1.2 hereto, and

(c) the assignments of proprietary software, domain   
names and trademarks for the Intellectual Property to be assigned to Purchaser   
in substantially the form of EXHIBIT 1.3(b) attached hereto. At the Closing, all   
of the Acquired Assets shall be transferred by the Seller to the Purchaser free   
and clear of any and all Liens, Claims, Orders and Indebtedness other than   
Permitted Liens, together with any and all consents of third parties required to   
transfer such assets to the Purchaser.   
  
1.4 PURCHASE PRICE. In consideration for the conveyance of the Acquired   
Assets and in reliance on the representations and warranties, covenants and   
agreements of the Seller contained herein and the documents contemplated hereby,   
the Purchaser

(a) on the Closing Date shall assume the Assumed Obligations and

(b) pay to the Seller an aggregate amount equal to $7.0 million in cash (the   
"PURCHASE PRICE"), MINUS the Escrow Funds, MINUS, to the extent not paid by the   
Seller prior to the Closing, any amounts payable on any Contract set forth on   
SCHEDULE 1.2 attached hereto (such net amount being referred to as the "CLOSING   
CASH"). The Closing Cash shall be paid in immediately available funds to such   
account as the Seller shall have specified to the Purchaser three (3) Business   
Days prior to the Closing. The Purchase Price shall be allocated in accordance   
with Section 1.6 hereof.   
  
1.5 ESCROW AGREEMENT. At the Closing, the Purchaser shall wire $1.0   
million (the "ESCROW FUNDS") to the Escrow Agent for deposit as set forth in the   
Escrow Agreement to be governed by the terms of the Escrow Agreement in   
substantially the form of EXHIBIT 8.10 hereto (the "ESCROW AGREEMENT"). The   
Escrow Funds shall be available to compensate the Purchaser, its officers,   
directors, employees, agents and Affiliates for any and all losses (whether or   
not involving a third party Claim), indemnifiable pursuant to Article XII   
hereof.   
  
1.6 ALLOCATION OF PURCHASE PRICE. The Seller and the Purchaser agree to   
allocate the aggregate purchase price to be paid for the Acquired Assets in   
accordance with Section 1060 of the Code. The Seller and the Purchaser agree   
that the Purchaser shall prepare and provide to the Seller a draft allocation of   
the purchase price among the Acquired Assets within ninety (90) days   
after the Closing Date. The Seller shall notify the Purchaser within thirty   
(30) days of receipt of such draft allocation of any objection the Seller may   
have thereto. The Seller and the Purchaser agree to resolve any disagreement   
with respect to such allocation in good faith. In addition, the Seller and   
Purchaser hereby undertake and agree to file timely any information that may   
be required to be filed pursuant to Treasury Regulations promulgated under   
Section 1060(b) of the Code, and shall use the allocation determined pursuant   
to this Section 1.6 in connection with the preparation of Internal Revenue   
Service Form 8594 as such form relates to the transactions contemplated by   
this Agreement. Neither the Seller nor Purchaser shall file any Tax Return or   
other document or otherwise take any position which is inconsistent with the   
allocation determined pursuant to this Section 1.6 except as may be adjusted   
by subsequent agreement following an audit by the IRS or by court decision.   
  
**ARTICLE II   
  
REPRESENTATIONS AND WARRANTIES OF THE SELLER**   
  
The Seller represents and warrants to the Purchaser as of the date hereof:   
  
2.1 CORPORATE ORGANIZATION, ETC. The Seller is a corporation duly   
organized, validly existing and in good standing under the laws of its   
jurisdiction of organization with full corporate power and authority to carry on   
its business as it is now being conducted and to own, operate and lease its   
properties and assets. The Seller and each Business Subsidiary is duly qualified   
or licensed to do business and is in good standing in every jurisdiction in   
which the conduct of its business, the ownership or lease of its properties,   
require it to be so qualified or licensed. Such jurisdictions are set forth in   
SCHEDULE 2.1(a) hereto. True, complete and correct copies of the Seller's   
certificate of incorporation and bylaws as presently in effect are set forth in   
SCHEDULE 2.1(b) hereto.   
  
2.2 AUTHORIZATION, ETC. The Seller has full power and authority to enter   
into this Agreement and the agreements contemplated hereby to which it is a   
party. The execution, delivery and performance of this Agreement and all other   
agreements and transactions contemplated hereby have been duly authorized by the   
Board of Directors of the Seller and, other than obtaining the consent of the   
holder(s) of shares of the Seller's Series A Preferred Stock and the consent of   
the Seller's stockholders solely with respect to the amendment of the Seller's   
certificate of incorporation to change its corporate name, no other corporate   
proceedings on the part of the Seller are necessary to authorize the Seller to   
enter into this Agreement and the agreements contemplated hereby and to   
consummate the transactions contemplated hereby and thereby. A certified copy of   
the resolutions adopted by the Seller's Board of Directors authorizing the   
execution, delivery and performance of this Agreement and all other agreements   
and transactions contemplated hereby is attached hereto as SCHEDULE 2.2. This   
Agreement and all other agreements contemplated hereby to be entered into by the   
Seller each constitutes a legal, valid and binding obligation of the Seller   
enforceable against it in accordance with its terms.   
  
2.3 NO VIOLATION. Except as set forth in SCHEDULE 2.3 hereto, the   
execution, delivery and performance by the Seller of this Agreement, and all   
other agreements contemplated hereby, and the fulfillment of and compliance with   
the respective terms hereof and thereof by the Seller, do not and will not j

(a) conflict with or result in a breach of the terms, conditions or provisions of,

(b) constitute a default or event of default under (whether with or without due   
notice, the passage of time or both),

(c) result in the creation of any Lien, Claim or Order   
(other than Permitted Liens) upon the Acquired Assets or Assumed Obligations   
pursuant to,

(d) give any third party the right to modify, terminate or   
accelerate any obligation under,

(e) result in a violation of, or

(f) require any authorization, consent, approval, exemption or other action by, notice   
to, or filing with any third party or Authority pursuant to, the certificate   
of incorporation or bylaws of the Seller or any applicable Regulation, Order   
or Contract to which the Seller, the Acquired Assets or the Multiple Visions is   
subject. The Seller has complied with all applicable Regulations and Orders   
in connection with the execution, delivery and performance of this Agreement,   
the agreements contemplated hereby and the transactions contemplated hereby   
and thereby.   
  
2.4 FINANCIAL STATEMENTS.   
  
(a) Attached as SCHEDULE 2.4(a) hereto are (i) unaudited year-end   
balance sheets of the Seller as of December 31, 1999, 2000 and 2001 and   
statements of income, stockholders' equity and cash flow of the Seller for each   
of the fiscal years then ended and (ii) the unaudited balance sheet of the   
Seller as of March 31, 2002 and statements of income, stockholders' equity and   
cash flow of the Seller for the period then ended. Such balance sheets fairly   
present in all material respects the financial position of the Seller at the   
respective dates thereof in accordance with GAAP, and such statements of income,   
stockholders' equity and cash flow fairly present in all material respects the   
results of operations for the periods referred to therein in accordance with   
GAAP, except that the unaudited financial statements have no notes attached   
thereto and do not have year-end audit adjustments (none of which would be   
material or recurring). All of the foregoing financial statements were prepared   
from the books and records of the Seller and the Business Subsidiaries, as   
applicable. All properties used in the Multiple Visions operations during the   
period covered by the foregoing financial statements are reflected in such   
financial statements in accordance with and to the extent required by GAAP. The   
foregoing balance sheets and statements of income, stockholders' equity and cash   
flow and the notes thereto are herein collectively referred to as the "FINANCIAL   
STATEMENTS" and March 31, 2002 is herein referred to as the "FINANCIAL STATEMENT   
DATE."   
  
(b) Except as set forth in SCHEDULE 2.4(B) hereto, the Seller does   
not have any Indebtedness, obligation or liability (whether accrued, absolute,   
contingent, unliquidated or otherwise, known or unknown to the Seller, whether   
due or to become due) arising out of transactions entered into at or prior to   
the Closing Date, or any state of facts existing at or prior to the Closing   
Date, other than:

(i) liabilities set forth in the March 31, 2002 balance sheet   
of the Seller, or

(ii) liabilities and obligations that have arisen after the   
Financial Statement Date in the ordinary course of business (none of which is a   
liability resulting from breach of a Contract, Regulation, Order or warranty,   
tort, infringement or Claim) which do not (A) individually exceed $100,000, and   
(B) in the aggregate (as to amount) differ from the liabilities set forth in the   
March 31, 2002 balance sheet in any material respect.   
  
(c) Immediately prior to, and immediately subsequent to, the   
consummation of the sale of the Acquired Assets pursuant to the provisions of   
this Agreement, the Seller will be a solvent corporation with the ability to pay   
its debts as they become due. For purposes of this Agreement, "solvent" shall   
mean that the present fair saleable value of the Seller's assets is greater than   
the amount that will be required to pay the liability on its existing debts as   
they become absolute and matured.   
  
2.5 EMPLOYEES.   
  
(a) The Multiple Visions has been conducted in material compliance   
with all Regulations and Orders affecting employment and employment practices   
applicable to the Multiple Visions, including terms and conditions of employment   
and the payment of wages and hours. None of the Seller's employees is subject to   
a collective bargaining agreement. At the Closing the Multiple Visions will not   
have any liability or obligation to any of its Business Employees other than for   
the payment of salaries, bonuses, if any, and other benefits which are to be   
paid by the Seller in the ordinary course of business or otherwise. Except as   
set forth in SCHEDULE 2.5, the Seller has not taken any action, or failed to   
take any action, that has or would reasonably likely to result in any Claim by   
an employee of the Multiple Visions that he has been constructively terminated or   
due severance payments prior to or in connection with the Closing. Upon the   
consummation of the transactions contemplated hereby and pursuant to the   
agreements referred to herein, there will be no "change in control" bonus or   
other obligations to any employees, consultants or other Persons performing   
services for the Multiple Visions.   
  
(b) The Seller has not violated the Worker Adjustment Notification   
Act (the "WARN ACT") or any similar state or local legal requirement.   
  
2.6 ABSENCE OF CERTAIN CHANGES. Since the Financial Statement Date, the   
Multiple Visions has not experienced any (a) except as set forth on SCHEDULE   
2.6(a), Material Adverse Change; (b) damage, destruction or loss, whether   
covered by insurance or not, having a cost of $100,000 or more; (c) increase in   
the compensation payable to or to become payable to any Business Employee or any   
adoption of or increase in any bonus, insurance, pension or other employee   
benefit plan, payment or arrangement made to, for or with any Business   
Employees;

(d) except as set forth on SCHEDULE 2.6(d), entry into any Contract   
not in the ordinary course of business, including without limitation, any   
capital expenditure;

(e) change in accounting methods or principles or any   
write-down, write up or revaluation of any of the Acquired Assets or Assumed   
Obligations except depreciation accounted for in the ordinary course of business   
and write-downs of inventory which reflect the lower of cost or market and which   
are in the ordinary course of business and in accordance with GAAP;

(f) failure   
to promptly pay and discharge current liabilities or agree with any party to   
extend the payment of any current liability with respect to the Acquired Assets   
or the Assumed Obligations;

(g) Lien placed on any of the Acquired Assets (other   
than Permitted Liens);

(h) sale, assignment, transfer, lease, license or   
otherwise placement of a Lien (other than Permitted Liens) on any of the   
tangible assets that constitute part of the Acquired Assets, except in the   
ordinary course of business consistent with past practice, or canceled any debts   
or Claims;

(i) sale, assignment, transfer, lease, license or otherwise placement   
of a Lien (other than Permitted Liens) on any of the Seller Intellectual   
Property or other intangible assets, disclosure of any confidential information   
related to the Seller Intellectual Property to any Person or abandoned or   
permitted to lapse any of the Seller Intellectual Property; or

(j) agreement,   
whether orally or in writing, to do any of the foregoing.   
  
2.7 CONTRACTS.   
  
(a) Except as set forth in SCHEDULE 2.7(a) hereto, Seller is not a   
party to any written or oral:

(i) Contract relating to the mortgaging, pledging   
or otherwise placing a Lien on any of the Acquired Assets (other than as   
contemplated by the IP Licensing Agreement);

(ii) Contract pursuant to which the   
Purchaser will become the lessor of, or permits any third party to   
hold or operate, any of the Acquired Assets;

(iii) warranty Contract with   
respect to its services rendered or its products sold or leased related to   
the Multiple Visions;

(iv) Contract or non-competition provision in any   
Contract that would prohibit the Purchaser from freely engaging in any aspect   
of the Multiple Visions or competing anywhere in the world;

(v) Contracts   
related to the Multiple Visions with independent agents, brokers, dealers or   
distributors which provide for annual payments in excess of $25,000;

(vi)   
employment, consulting, sales, commissions, advertising or marketing   
Contracts related to the Multiple Visions;

(vii) Contracts related to the Media   
Business providing for "take or pay" or similar unconditional purchase or   
payment obligations;

(viii) Contracts related to the Multiple Visions with   
Persons with which, directly or indirectly, an Affiliate of the Seller also   
has a Contract;

(ix) Contract that requires the consent of any Person, or   
contains any provision that would result in a modification of any rights or   
obligation of any Person thereunder or which would provide any Person any   
remedy (including rescission or liquidated damages), in connection with the   
execution, delivery or performance of this Agreement and the agreements   
contemplated hereby and the consummation of the transactions contemplated   
hereby and thereby;

(x) nondisclosure or confidentiality Contracts related to   
the Multiple Visions;

(xi) power of attorney or other similar Contract or grant   
of agency related to any of the Acquired Assets or the Assumed Obligation; or

(xii) Contract related to the Multiple Visions the breach or termination of   
which would have a Material Adverse Effect or would materially adversely   
affect the Seller's ability to perform under the Transition Licensing   
Agreement.   
  
(b) The Seller has performed all material obligations required to be   
performed by it and is not in default in any material respect under or in   
material breach of nor in receipt of any Claim of default or breach under any   
Contract included in the Acquired Assets or required by Seller to perform its   
obligations under the Transition Licensing Agreement; no event has occurred   
which with the passage of time or the giving of notice or both would result in a   
default, breach or event of non-compliance under any such Contract; the Seller   
does not have any present expectation or intention of not fully performing all   
obligations under such Contracts; the Seller does not have any knowledge of any   
breach or anticipated breach by the other Persons to any such Contract; and   
there are no amounts outstanding, due or owing on any of the Contracts listed on   
SCHEDULE 1.2 attached hereto.   
  
(c) The Seller has delivered to the Purchaser true and complete   
copies of all the Contracts which constitute part of the Acquired Assets or the   
Assumed Obligations and documents listed in the schedules to this Agreement.   
  
2.8 GOVERNMENT CONTRACTS. Neither the Seller, any Business   
Subsidiary nor the Multiple Visions is a party to any Government Contract.   
  
2.9 TITLE AND RELATED MATTERS.   
  
(a) The Seller has good, valid and marketable title to all of the   
Acquired Assets, free and clear of all Liens, Claims, Orders and other   
Indebtedness (other than Permitted Liens). Each of the Acquired Assets that   
is tangible property is in good condition and repair, ordinary wear and tear   
excepted and is free from material defects and damages. At the Closing, the   
Seller shall convey to the Purchaser good and marketable title to the   
Acquired Assets free and clear of all Liens, Claims, Orders and other   
Indebtedness (other than Permitted Liens). All properties used in the Media   
Business as of the Financial Statement Date are reflected in the Financial Statements in accordance with and to the extent required by   
GAAP, except as to those assets that are leased.   
  
(b) None of the Acquired Assets or Assumed Obligations are   
leases for real or personal property.   
  
(c) None of the Acquired Assets is or will be on the Closing Date   
subject to any (i) Contracts of sale or lease, other than pursuant to this   
Agreement and the agreements contemplated to be executed in connection herewith   
or (ii) Liens (other than Permitted Liens).   
  
(d) There has not been since the Financial Statement Date, and will   
not be prior to the Closing Date, any sale, lease, or any other disposition or   
distribution of any of the Acquired Assets, now or hereafter owned by the   
Seller, except as otherwise consented to in writing by the Purchaser.   
Immediately after the Closing, the Purchaser will own, or have the unrestricted   
right to use, the Acquired Assets. The assignment of the Contracts constituting   
an Assumed Obligation hereunder will not give any party thereto a right to alter   
the terms and conditions of any such Contract absent the Purchaser's consent.   
  
2.10 LITIGATION. Except as set forth in SCHEDULE 2.10 hereto, to the   
knowledge of the Seller, there is no Claim or Order threatened against the   
Seller, Multiple Visions or any of the Acquired Assets nor is there any reasonable   
basis therefor. Except as set forth on SCHEDULE 2.10 hereto, the Seller is fully   
insured with respect to each of the matters set forth on SCHEDULE 2.10 and the   
Seller has not received any opinion or a memorandum from legal counsel to the   
effect that it is likely to incur, from a legal standpoint, any liability or   
obligations which could have an adverse effect in excess of $150,000.   
  
2.11 TAX RETURNS.   
  
(a) TAX RETURNS. Except as set forth in SCHEDULE 2.11(a) attached   
hereto, the Seller has timely filed or caused to be timely filed with the   
appropriate taxing authorities all tax returns, statements, forms and reports   
(including elections, declarations, disclosures, schedules, estimates and   
information Tax returns) for Taxes ("TAX RETURNS") that are required to be filed   
by, or with respect to the Multiple Visions or the Acquired Assets, on or prior to   
the Closing Date. Except as set forth in SCHEDULE 2.11(a) attached hereto, the   
Tax Returns have accurately reflected all material liability for Taxes of the   
Multiple Visions and the Acquired Assets for the periods covered thereby.   
  
(b) PAYMENT OF TAXES. All material Taxes and Tax liabilities due by   
or with respect to the income, assets or operations of the Multiple Visions and   
the Acquired Assets for all taxable years or other taxable periods that end on   
or before the Closing Date and, with respect to any taxable year or other   
taxable period beginning on or before and ending after the Closing Date, the   
portion of such taxable year or period ending on and including the Closing Date   
("PRE-CLOSING PERIOD") have been timely paid or will be timely paid in full on   
or prior to the Closing Date, accrued and adequately disclosed and fully   
provided for on the Financial Statements, or with respect to taxable years or   
periods (or portions thereof) beginning after the Financial Statement Date, such   
Taxes and Tax liabilities were incurred in the ordinary course of business.   
  
(c) OTHER TAX MATTERS.   
  
(i) Except as set forth on SCHEDULE 2.11(c)(i), the Seller   
(with respect to the operation of the Multiple Visions or the Acquired Assets) has   
not: (i) been the subject of an audit or other examination of Taxes by the tax   
authorities of any nation, state or locality; (ii) received any notices to the   
effect that such an audit or examination of Taxes is contemplated or pending; or   
(iii) received any notices from any taxing authority relating to any issue which   
could affect the Tax liability of the Seller with respect to the operation of   
the Multiple Visions or the Acquired Assets.   
  
(ii) The Seller (with respect to the operation of the Media   
Business or the Acquired Assets), as of the Closing Date, (A) has not entered   
into an agreement or waiver or been requested to enter into an agreement or   
waiver extending any statute of limitations relating to the payment or   
collection of Taxes, (B) is not presently contesting its Tax liability before   
any court, tribunal or agency, (C) has not granted a power-of-attorney relating   
to Tax matters to any Person and (D) has not applied for and/or received a   
ruling or determination from a taxing authority regarding a past or prospective   
transaction of the Seller.   
  
(iii) Except as set forth on SCHEDULE 2.11(c)(iii) attached   
hereto, all Taxes that the Seller (with respect to the operation of the Media   
Business or the Acquired Assets) is (or was) required by law to withhold or   
collect in connection with amounts paid or owing to any employee, independent   
contractor, creditor, stockholder or other third party have been duly withheld   
or collected, and have been timely paid over to the proper authorities to the   
extent due and payable.   
  
(iv) No claim has ever been made by any taxing authority in a   
jurisdiction where Seller does not file Tax Returns that the Seller (in each   
case with respect to the operation of the Multiple Visions or the Acquired Assets)   
is or may be subject to taxation by that jurisdiction.   
  
(v) There are no tax sharing, allocation, indemnification or   
similar agreements in effect as between the Seller or any predecessor or   
Affiliate thereof and any other party under which Purchaser could be liable for   
any Taxes or other claims of any party after the Closing Date.   
  
(vi) The Seller is not a "foreign person" within the meaning   
of Section 1445 of the Code.   
  
(vii) There are no Liens or security interests (other than   
Permitted Liens) on any of the Acquired Assets that arose in connection with any   
failure (or alleged failure) to pay any Taxes.   
  
2.12 COMPLIANCE WITH LAW AND CERTIFICATIONS.   
  
(a) The Multiple Visions and the Acquired Assets have been operated in   
compliance with all applicable Regulations and Orders, including, without   
limitation, all Regulations relating to the safe conduct of business,   
environmental protection, quality and labeling, antitrust, consumer protection,   
privacy, equal opportunity, discrimination, health, sanitation, fire, zoning,   
building and occupational safety. There are no Claims pending, or   
threatened, nor has the Seller received any notice, regarding any violations   
of any Regulations or Orders enforced by any Authority.   
  
(b) The Seller holds all registrations, accreditations and other   
certifications required for the conduct of the Multiple Visions and the operation   
of the Acquired Assets by any Authority or trade group, and the Multiple Visions   
and the Acquired Assets have been operated in material compliance with the terms   
and conditions of all such registrations, accreditations and certifications. The   
Seller has not received any notice alleging that it has failed to hold any such   
registration, accreditation or other certification.   
  
2.13 EMPLOYEE BENEFIT PLANS. SCHEDULE 2.13 hereto sets forth a complete   
and accurate list of each domestic and foreign employee benefit plan (as defined   
in Section 3(3) of ERISA) or material fringe benefit plan maintained or   
contributed to or required to be contributed to by the Seller with respect to   
any of the Business Employees ("EMPLOYEE BENEFIT PLANS"). The Seller has not   
incurred, and no event has occurred and no condition or circumstance exists that   
could result, directly or indirectly, in, any unsatisfied liability (including,   
without limitation, any indirect, contingent or secondary liability) of the   
Seller under Title IV of ERISA or Section 412 of the Code or Section 302 of   
ERISA arising in connection with any employee pension benefit plan covered or   
previously covered by Title IV of ERISA or such sections of the Code or ERISA.   
No asset or property of the Seller is or may be subject to any Lien arising   
under Section 412(n) of the Code or Section 302(f) or Section 4068 of ERISA. The   
Seller has not been, and does not expect to be, required to provide any security   
under Section 307 of ERISA or Section 401(a)(29) or 412(f) of the Code. The   
Seller has complied in all respects with the applicable requirements of Part 6   
of Subtitle B of Title I of ERISA and Section 4980B of the Code ("COBRA"),   
except to the extent which could result in a material liability to the   
Purchaser. Full payment has been made of all amounts which the Seller is   
required under applicable Regulations or under any Employee Benefit Plan or any   
agreement relating to any Employee Benefit Plan to have paid as contributions or   
premiums thereunder with respect to the Business Employees as of the last day of   
the most recent fiscal year of such Employee Benefit Plan ended prior to the   
date hereof. The execution of this Agreement and the consummation of the   
transactions contemplated hereby, do not constitute a triggering event under any   
Employee Benefit Plan, policy, arrangement, statement, commitment or agreement   
which (either alone or upon the occurrence of any additional or subsequent   
event) will or may result in any payment (whether of severance pay or   
otherwise), "parachute payment" (as such term is defined in Section 280G of the   
Code), acceleration, vesting or increase in benefits to any Business Employee.   
The Seller does not have any obligation under any Employee Benefit Plan or   
otherwise to provide post-employment or retiree welfare benefits to any Business   
Employee, except as specifically required by COBRA.   
  
2.14 INTELLECTUAL PROPERTY.   
  
(a) SCHEDULE 2.14(a) attached hereto sets forth a complete and   
accurate list of all Seller Registered Intellectual Property.   
  
(b) The Seller exclusively owns and otherwise has all requisite   
right, title and interest in or valid and enforceable rights to practice under   
or otherwise use the Seller Intellectual Property. Except as set forth in   
SCHEDULE 2.14(b), each item of Seller Intellectual Property, is owned   
exclusively by the Seller (excluding Intellectual Property licensed to the   
Seller under any Contracts listed on SCHEDULE 2.14(g)) and is free and clear   
of any Liens, Claims, Orders and other Indebtedness (other than Permitted   
Liens).   
  
(c) To the extent that any Seller Intellectual Property has been   
developed or created by any Person other than the Seller, the Seller has either   
(i) obtained ownership of, and is the exclusive owner of, all such Intellectual   
Property by operation of law or by valid assignment of any such rights or (ii)   
has obtained a license under or to such Intellectual Property.   
  
(d) The Seller has taken all commercially reasonable steps   
consistent with the reasonable exercise of its business judgment to protect and   
preserve ownership of the Seller Intellectual Property (excluding Intellectual   
Property licensed to the Seller under any Contracts listed on SCHEDULE 2.14(g)).   
The Seller has secured valid non-disclosure agreements and written assignments   
from all consultants and employees who contributed to the creation or   
development of the Seller Intellectual Property (excluding Intellectual Property   
licensed to the Seller under any Contracts listed on SCHEDULE 2.14(g)). In the   
event that a consultant is concurrently employed by the Seller and a third   
party, the Seller has taken commercially reasonable steps to ensure that any   
Seller Intellectual Property developed by such a consultant does not belong to   
the third party or conflict with the third party's employment agreement (such   
steps include ensuring that all work performed by such a consultant are   
performed only on the facilities of the Seller and only using the resources of   
the Seller).   
  
(e) The Seller has taken all commercially reasonable steps to   
protect and preserve the confidential and other proprietary information and   
trade secrets used in the Multiple Visions or provided by any other Person to the   
Seller subject to a duty of confidentiality, including without limitation,   
know-how, source codes, data collections, ideas, and databases. Without limiting   
the generality of the foregoing, there is an enforced policy requiring each   
employee, consultant and independent contractor providing services to the Media   
Business relating to technology (including software and/or hardware), content or   
management to execute proprietary information, confidentiality and invention and   
copyright assignment Contracts containing substantially the provisions set forth   
in SCHEDULE 2.14(e), all current technology, content and management employees   
and current and former consultants and independent contractors working for the   
benefit of the Multiple Visions in relation to technology, content or management   
have executed such a Contract; all former employees who were employed in   
capacities relating to technology, content or management have signed such a   
Contract, a similar Contract or are otherwise similarly bound. The Seller has   
not breached any agreements of nondisclosure or confidentiality or is currently   
claimed to have done so.   
  
(f) The Seller Intellectual Property, the Intellectual Property   
contemplated to be licensed to Purchaser under the Transition Licensing   
Agreement and the hardware used in the operation of the Acquired Assets and   
contemplated to be used under the Transition Licensing Agreement constitutes all   
of the Intellectual Property necessary and material to operate the websites   
listed on SCHEDULE 1.1(a) as contemplated under the Transition Licensing   
Agreement, including, but not limited to the design, creation, development,   
distribution, marketing, manufacture, use, import, license and sale or offering   
for sale of the products, technology and services related to the Multiple Visions.   
  
(g) SCHEDULE 2.14(g) attached hereto sets forth a complete and   
accurate list of all Contracts to which the Seller or any Business Subsidiary is   
a party with respect to any Seller Intellectual Property including Contracts relative to the licensing of Seller Intellectual Property to third parties or from third parties or where the   
Seller or any Business Subsidiary has authorized the retention of any rights   
to use any Intellectual Property that is or was Seller Intellectual Property   
to any Person.   
  
(h) The Multiple Visions as currently conducted, including the   
design, development, use, import, manufacture and sale of the products,   
technology or services (including products, technology or services currently   
under development and under development as of the Closing Date) does not (i)   
violate, infringe, misuse, or misappropriate the Intellectual Property of any   
Person, (ii) violate any term or provision of any Contract concerning such   
Intellectual Property, (iii) violate the rights of any Person (including   
rights to privacy or publicity), or (iv) constitute unfair competition or an   
unfair trade practice under any Regulation. Except as set forth in SCHEDULE   
2.14(h), which lists any proceedings or actions pending as of the date hereof   
before any court or tribunal (including the U.S. patent and trademark office   
or equivalent authority anywhere in the world) or threatened, related to any   
of the Seller Intellectual Property, the Seller has not received written   
notice, or to the best of their knowledge, other notice, from any Person   
claiming or threatening to claim that the operations of the Multiple Visions or   
any act, product, technology or service (including products, technology or   
services currently under development or under development as of the Closing   
Date) of the Seller violates, infringes, misuses or misappropriates the   
Intellectual Property of any Person or constitutes unfair competition or   
trade practices under any Regulation, including notice of third party patent   
or other Intellectual Property rights from a potential licensor of such   
rights, and no third party claims are pending referencing the above or   
asserting any opposition, abandonment, interference, invalidity or other   
infirmity of any proprietary rights.   
  
(i) Except as set forth on SCHEDULE 2.14(i) hereto, each item of   
Seller Registered Intellectual Property which has been registered or issued   
is valid and subsisting and has not been abandoned, cancelled and all   
necessary registration, maintenance, renewal fees, annuity fees and Taxes in   
connection with such Seller Registered Intellectual Property have been duly   
paid and all necessary documents and certificates in connection with such   
Seller Registered Intellectual Property have been filed with the relevant   
patent, copyright, trademark, Internet domain name registrar or other   
Authorities in the United States or foreign jurisdictions, as the case may   
be, for the purposes of maintaining such Seller Registered Intellectual   
Property which remain in full force and effect as of the Closing Date. The   
Seller has the exclusive right to file, prosecute and maintain all   
applications and registrations with respect to the Seller Registered   
Intellectual Property. In each case in which the Seller has acquired   
ownership of any Seller Intellectual Property rights relating to the Media   
Business from any Person, the Seller has obtained a valid and enforceable   
assignment sufficient to irrevocably transfer all rights in such Intellectual   
Property (including the right to seek damages with respect to such   
Intellectual Property) to the Seller and, to the maximum extent provided for   
by and required to protect the Seller's ownership rights in and to such   
Seller Intellectual Property in accordance with applicable Regulations, the   
Seller has recorded each such assignment of Seller Registered Intellectual   
Property with the relevant governmental or regulatory Authority, including   
the U.S. Patent and Trademark Office, the U.S. Copyright Office, or their   
respective equivalents in any relevant foreign jurisdiction, as the case may   
be.   
  
(j) Other than with respect to the Intellectual Property which   
has been licensed to the Seller as set forth on SCHEDULE 2.14(g) attached   
hereto, there are no Contracts between the Seller and any other Person with respect to Seller Intellectual Property under which there is any dispute (or, to the Seller's knowledge,   
facts that may reasonably lead to a 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 Seller hereunder.   
  
(k) Except as set forth on SCHEDULE 2.14(k) attached hereto, no   
Person is infringing or misappropriating any Seller Intellectual Property.   
Except as set forth on SCHEDULE 2.14(k) attached hereto, to the best of the   
Seller's knowledge, the Seller has not made any Claim in writing of a   
violation, infringement, misuse or misappropriation by any third party   
(including without limitation, any employee of the Seller or any Business   
Subsidiary) of its rights to, or in connection with any Seller Intellectual   
Property which Claim is pending.   
  
(l) Neither this Agreement nor any transactions to be   
accomplished pursuant to this Agreement will (i) result in Purchaser's   
granting any rights or Licenses with respect to the Intellectual Property of   
Purchaser (including, without limitation, the Seller Intellectual Property   
purchased or licensed by the Purchaser) to any Person pursuant to any   
Contract to which the Seller is a party or by which any of their respective   
assets and properties are bound, or (ii) cause a default or breach by the   
Seller of any Contract.   
  
(m) The IT has performed to date in all material respects as   
documented by their vendors, licensors or developers (whether third party or   
in-house), and in accordance with all specifications in user documentation   
and has provided to date all functionality necessary and material in order to   
support the Multiple Visions as currently conducted, and (ii) are, to Seller's   
knowledge, free from material defects in design, workmanship and materials   
which materially affect their performance and contain no "virus", "worm",   
"time-bomb", "trap door", "back door" or other device or feature designed to   
disable or interfere, in any material respect with the functioning of any   
software, firmware or hardware, to corrupt, destroy, encrypt, rename or hide   
data or to permit unauthorized access to the same, except for documented   
software keys and expiration features identified in writing to the   
Purchaser's Chief Technology Officer or such other person in charge of the   
Purchaser's information technology in connection with this transaction or   
under the Transition Licensing Agreement.   
  
(n) Except as set forth on SCHEDULE 2.14(n), (i) all source code   
included in the Seller Intellectual Property, is and at all times has been   
exclusively in the possession and control of the Seller and is not and has   
not been the subject of any source code escrow arrangement nor has any such   
source code been retained off the business premises of the Seller by or is in   
the possession of any current or former contractor, employee, or third party,   
(ii) no customers of, or Persons outside of, the Multiple Visions have been   
provided with or otherwise possess the means of accessing in any manner the   
Seller's IT inventory (except insofar as members of the public may access   
Seller's web sites in the ordinary course) and (iii) the Seller does not have   
any obligation, duty or responsibility, under Contract or otherwise, to   
maintain or support any systems, software or applications provided to or   
otherwise in the possession or control of customers of, or Persons outside   
of, the Multiple Visions.   
  
(o) Except as set forth on SCHEDULE 2.14(o), as of the Closing   
Date, the internet domain names and URLs (as defined in the definition of   
Intellectual Property) in the Seller Intellectual Property direct and resolve   
to the appropriate internet protocol addresses and are accessible to Internet   
users on those certain computers used by the Seller to make the Sites   
(as defined in the definition of Intellectual Property) so accessible   
substantially twenty-four (24) hours per day, seven (7) days per week and are   
operational for downloading content from the those certain computers used by   
the Seller to make the Sites so accessible on a twenty-four (24) hours per   
day, seven (7) days per week basis. The Seller has fully operational back-up   
copies of the Sites (and all related software, databases and other   
information), made from the current versions of the Sites as accessible to   
Internet users. From the date hereof until the Closing Date, back-up copies   
shall have been made no less frequently than every fourteen (14) days and   
such back-up copies shall have been stored in a safe and secure environment,   
fit for the back-up such media, and are not located at the same location of   
the Server. The Seller has no reason to believe that the Sites will not   
operate or will not continue to be accessible to internet users on   
substantially a 24/7 basis prior to, at the time of, and, provided they are   
properly maintained and operated by Purchaser, after the Closing Date.   
  
(p) The goodwill in the Intellectual Property as carried on the   
Seller's March 31, 2002 balance sheet is consistent with (i) accounting   
practice in the Seller's industry; (ii) GAAP or comparable accounting   
practices, in the jurisdiction where the relevant Intellectual Property is   
used, and (iii) the history of the Intellectual Property.   
  
(q) SCHEDULE 2.14(q) attached hereto sets forth a complete and   
accurate list of (i) all in-house content editors and providers or third   
party feeds, which are currently used by the Seller in connection with the   
operation of the Multiple Visions as contemplated to be operated under the   
Transition Licensing Agreement. The Seller has all material rights necessary   
to use on its Sites or otherwise any and all content provided by the content   
editors and providers and third party feeds listed on SCHEDULE 2.14(q) free   
and clear of any valid third party Claims.   
  
2.15 CUSTOMER WARRANTIES. There are no existing, or to the best   
knowledge of the Seller, potential Claims under or pursuant to any warranty,   
whether expressed or implied, on products or services related to the Media   
Business sold prior to the Closing Date. All of the services rendered by the   
Seller (whether directly or indirectly through independent contractors) have   
been performed in conformity with all expressed warranties and with all   
applicable contractual commitments, and, the Seller does not have nor shall   
have any liability for replacement, repair or modification or for other   
damages relating to or arising from any such services which would have a   
Material Adverse Effect. Seller has no reason to expect an increase in   
warranty Claims in the future.   
  
2.16 ENVIRONMENTAL MATTERS. Neither the Multiple Visions nor the   
operation thereof violates or has violated any applicable Environmental Law.   
The Seller is not required to possess Environmental Permits for the conduct   
or operation of the Multiple Visions. The Seller does not and has not   
generated, used, treated or stored, transported to or from, or released or   
disposed of any Hazardous Substances on or at any of its facilities. The   
Seller has not received any notice from any Authority or any private Person   
that the Multiple Visions or the operation of any of its facilities is in   
violation of any Environmental Law or any Environmental Permit or that it is   
responsible (or potentially responsible) for the cleanup of any Hazardous   
Substances at, on or beneath any property owned or leased by the Seller in   
the operation of the Multiple Visions. The Seller has not been the subject of   
any foreign, Federal, state, local, or private Claim involving a demand for   
damages or other potential liability with respect to a violation of   
Environmental Laws or under any common law theories relating to operations or   
the condition of any facilities or property (including underlying   
groundwater) owned, leased, or operated by the Seller.   
  
  
2.17 CAPITAL EXPENDITURES AND INVESTMENTS. The Seller has no budget   
for capital expenditures to be made by or on behalf of the Multiple Visions.   
  
2.18 DEALINGS WITH AFFILIATES. There are no Contracts included in the   
Acquired Assets or Assumed Obligations to which the Seller, on the one hand,   
is a party and an Affiliate of the Seller, on the other hand, is also a party.   
  
2.19 INSURANCE. The Seller has had Policies in full force and effect   
that provide for coverages that are usual and customary as to amount and   
scope in the Multiple Visions. All of the Policies have been in full force and   
effect, all premiums with respect thereto covering all periods up to and   
including the Closing Date have been paid or accrued therefor, and no notice   
of cancellation or termination has been received with respect to any Policy.   
The Seller has not breached or otherwise failed to perform in any material   
respect its obligations under any of the Policies nor has the Seller received   
any adverse notice or communication from any of the insurers party to the   
Policies with respect to any such alleged breach or failure in connection   
with any of the Policies. All Policies are sufficient for compliance with all   
Regulations and all Contracts to which the Multiple Visions and the Acquired   
Assets are subject are to the Seller's best knowledge valid, outstanding,   
collectible and enforceable policies, and will not in any way be affected by,   
or terminate or lapse by reason of, the execution and delivery of this   
Agreement or the consummation of the transactions contemplated hereby.   
  
2.20 BROKERAGE. There are no Claims for brokerage commissions,   
investment banking or finders' fees or expenses or similar compensation in   
connection with the transactions contemplated by this Agreement based on any   
arrangement or Contract binding upon the Seller, the Acquired Assets or the   
Multiple Visions.   
  
2.21 CUSTOMERS AND SUPPLIERS. None of the parties to any Contract   
included in the Acquired Assets or the Assumed Obligations or otherwise   
licensed pursuant to the Transition Licensing Agreement has advised the   
Seller in writing, or to the Seller's knowledge orally notified, within the   
past year that it will stop, or decrease the rate of, supplying materials, or   
changed its price or terms of any products, or services to the Media   
Business. No purchase order or commitment of the Multiple Visions is in excess   
of normal requirements, nor are prices provided therein in excess of current   
market prices for the products or services to be provided thereunder.   
  
2.22 PERMITS. The Permits listed on SCHEDULE 2.22 hereto are the only   
material Permits that have been required for the conduct of the Media   
Business in accordance with applicable Regulations and Orders of any   
Authority. The Multiple Visions has duly and validly held all such Permits, and   
each such Permit has been in full force and effect and, to the best of the   
knowledge of the Seller, no suspension or cancellation of any such Permit is   
threatened and there is no basis for believing that such Permit will not be   
renewable upon expiration.   
  
2.23 IMPROPER AND OTHER PAYMENTS. (a) Neither the Seller nor any of its   
directors, officers, or key employees, or any agent or representative of the   
Multiple Visions nor any Person acting on behalf of any of them, has made, paid   
or received any unlawful bribes, kickbacks or other similar payments to or   
from any Person or Authority, (b) no contributions have been made, directly   
or indirectly, to a domestic or foreign political party or candidate, (c) no   
improper foreign payment (as defined in the Foreign Corrupt Practices Act)   
has been made, and (d) the internal accounting controls of the Seller and each Business Subsidiary are   
adequate to detect any of the foregoing under current circumstances.   
  
2.24 DISCLOSURE. Neither this Agreement nor any of the Contracts,   
exhibits, schedules, attachments, written statements, documents, certificates   
or other items prepared for or supplied to the Purchaser by or on behalf of   
the Seller with respect to the transactions contemplated hereby contains any   
untrue statement or omits a fact necessary to make each statement contained   
herein or therein not misleading except as would not have a Material Adverse   
Effect or would otherwise not materially adversely affect the Seller's   
ability to perform under the Transition Licensing Agreement. There is no fact   
which the Seller has not disclosed to the Purchaser herein and of which the   
Seller, or any of its officers, directors or executive employees is aware   
which could reasonably be anticipated to have a Material Adverse Effect on   
the Multiple Visions or the ability of the Purchaser to operate the Acquired   
Assets.   
  
ARTICLE III   
  
REPRESENTATIONS AND WARRANTIES OF THE PURCHASER   
  
The Purchaser represents and warrants to the Seller as of the date   
hereof:   
  
3.1 CORPORATE ORGANIZATION, ETC. The Purchaser is a corporation duly   
organized, validly existing and in good standing under the laws of its   
jurisdiction of incorporation with full corporate authority to carry on its   
business as it is now being conducted and to own, operate and lease its   
properties and assets. The Purchaser is duly qualified or licensed to do   
business and is in good standing in every jurisdiction in which the conduct   
of its business, the ownership or lease of its properties, require it to be   
so qualified or licensed. True, complete and correct copies of the   
Purchaser's deed of incorporation and bylaws as presently in effect are set   
forth in SCHEDULE 3.1 hereto.   
  
3.2 AUTHORIZATION, ETC. The Purchaser has full power and authority to   
enter into this Agreement and the agreements contemplated hereby to which it   
is a party. The execution, delivery and performance of this Agreement and all   
other agreements and transactions contemplated hereby have been duly   
authorized by the Board of Directors of the Purchaser and no other corporate   
proceedings on the part of the Purchaser, including the approval of the   
Purchaser's stockholders, are necessary to authorize this Agreement, the   
agreements contemplated hereby and the transactions contemplated hereby and   
thereby. This Agreement and all other agreements contemplated hereby to be   
entered into by the Purchaser each constitutes a legal, valid and binding   
obligation of the Purchaser enforceable against it in accordance with its   
terms.   
  
3.3 NO VIOLATION. The execution, delivery and performance by the   
Purchaser of this Agreement, and all other agreements contemplated hereby,   
and the fulfillment of and compliance with the respective terms hereof and   
thereof by the Purchaser, do not and will not (a) conflict with or result in   
a breach of the terms, conditions or provisions of, (b) constitute a default   
or event of default under (whether with or without due notice, the passage of   
time or both), (c) result in the creation of any Lien, Claim or Order upon   
the Purchaser's assets pursuant to, (d) give any third party the right to   
modify, terminate or accelerate any obligation under, (e) result in a   
violation of, or (f) require any authorization, consent, approval, exemption   
or other action by, notice to, or filing with any third party or Authority pursuant to, the deed   
of incorporation or bylaws of the Purchaser or any applicable Regulation,   
Order or Contract to which the Purchaser or its assets is subject. The   
Purchaser has complied with all applicable Regulations and Orders in   
connection with the execution, delivery and performance of this Agreement,   
the agreements contemplated herby and the transactions contemplated hereby   
and thereby.   
  
3.4 BROKERAGE. Except as set forth on SCHEDULE 3.4 attached hereto,   
there are no Claims for brokerage commissions, investment banking or finders'   
fees or expenses or similar compensation in connection with the transactions   
contemplated by this Agreement based on any arrangement or Contract binding   
upon the Purchaser or its Affiliates.   
  
ARTICLE IV   
COVENANTS OF THE SELLER   
  
Until the Closing Date, except as otherwise consented to or approved by   
the Purchaser in writing, the Seller agrees that it shall act, or refrain   
from acting where required hereinafter, to comply with the following:   
  
4.1 OPERATION OF MULTIPLE VISIONS. Except as contemplated by this   
Agreement, during the period from the date of this Agreement to the Closing,   
the Seller shall operate the Acquired Assets and conduct the Multiple Visions   
in the ordinary course of business consistent with commercially reasonable   
business practices and in compliance with applicable Regulations, and use its   
commercially reasonable efforts so as to preserve the current value and   
integrity of the Multiple Visions and the Acquired Assets, pay all Taxes and   
accounts payable as they become due and payable, maintain in full force and   
effect the existence of all Intellectual Property, maintain insurance on the   
Acquired Assets (in amounts and types consistent with past practice), and use   
its commercially reasonable efforts to preserve the goodwill and organization   
of the Multiple Visions and their relationships with customers, vendors,   
suppliers and others having business dealings with the Seller or any Business   
Subsidiary relating to the Multiple Visions. Without limiting the generality of   
the foregoing, prior to the Closing, the Seller shall not, and shall cause   
each of its Affiliates and the Seller's and its Affiliates' officers,   
directors, shareholders, employees, partners, representatives and agents not   
to:   
  
(a) enter into any material Contract which may be included in the   
Acquired Assets or make a material change or modification to any existing   
material Contract included in the Acquired Assets, except for agreements   
relating to sales of inventory and purchase of inventory from suppliers in   
the ordinary course of business and consistent with past practices;   
  
(b) sell, lease, dispose of or otherwise distribute any of the   
Acquired Assets, except for agreements relating to sales of inventory and   
purchase of inventory from suppliers in the ordinary course of business and   
consistent with past practices;   
  
(c) mortgage or pledge any of the Acquired Assets or subject   
any Acquired Assets to any Lien other than Permitted Liens;   
  
(d) materially increase in any manner the salary, bonus,   
severance or other compensation or benefits of any Business Employee;   
(e) adopt any benefit plan for employees of the Multiple Visions or   
except as may be required by applicable Regulations, amend or modify any   
existing Employee Benefit Plan for such employees, except for such retention   
arrangements which the Purchaser shall have no obligations under;   
  
(f) take or omit to take any action that would require disclosure   
under Article II, or that would otherwise result in a breach of any of the   
representations, warranties or covenants made by the Seller in this Agreement   
or in any of the agreements contemplated hereby;   
  
(g) take any action or omit to take any action which act or   
omission would reasonably be anticipated to have a Material Adverse Effect on   
the Multiple Visions or the Acquired Assets except as contemplated by this   
Agreement or any agreement to be executed in connection herewith or in   
connection with the consummation of the transactions contemplated herein or   
therein; or   
  
(h) agree in writing or otherwise to take any of the foregoing   
actions.   
  
Additionally, from the date of this Agreement to the Closing Date, the Seller   
shall promptly consult with the Purchaser about any material matters   
concerning the Acquired Assets or the Multiple Visions.   
  
4.2 FULL ACCESS AND DISCLOSURE. The Seller shall afford to the   
Purchaser and its counsel, accountants, agents and other authorized   
representatives and to financial institutions specified by the Purchaser   
reasonable access during business hours to the Seller's facilities,   
properties, books and records in order that the Purchaser may have full   
opportunity to make such reasonable investigations as they shall desire to   
make of the affairs of the Multiple Visions and the Acquired Assets. The Seller   
shall cause its officers and employees, and shall use its commercially   
reasonable efforts to cause its counsel and auditors to furnish such   
additional financial and operating data and other information as the   
Purchaser shall from time to time reasonably request including, without   
limitation, any internal control recommendations made by its independent   
auditors in connection with any audit of the Seller or the Multiple Visions.   
From time to time prior to the Closing Date, the Seller shall promptly   
supplement or amend information previously delivered to the Purchaser with   
respect to any matter hereafter arising which, if existing or occurring at   
the date of this Agreement, would have been required to be set forth or   
disclosed herein; provided, however, that such supplemental information shall   
not be deemed to be an amendment to any schedule hereto and shall not change   
the risk allocation of this Agreement between the Purchaser and the Seller.   
  
4.3 NON-COMPETITION; NON-SOLICITATION.   
  
(a) Except as contemplated in the Transition Licensing Agreement,   
during the Restricted Period, in the Restricted Area, the Seller and each of   
its Affiliates, agree not to, directly or indirectly, alone or as a partner,   
officer, director, employee, consultant, agent, independent contractor,   
member or stockholder of any Person, operate or develop any Internet web site   
(a "SITE") targeting the general public and from which the Seller or any   
Affiliate generates or intends to generate revenues principally from the sale   
of advertising, including but not limited to banners, newsletters, and the   
sale of any other promotional spaces in the Site, and/or sale of content or services to the Site's users, including but not limited to pay per view, pay per listen, pay per use content or services,   
ecommerce and Internet access; PROVIDED, HOWEVER, that the foregoing shall   
not prohibit Seller or its Affiliates from designing and operating (i) on   
behalf of unaffiliated third parties, Sites intended for use by specific   
segments of the general pubic for the purpose of marketing such third   
parties' goods and services or providing services to its customers; (ii) a   
Site intended for use specifically by users of mobile telephony services;   
(iii) a corporate web site for internal or external use or (iv) the following   
existing websites: guiarj.com.br; guiasp.com.br; paisas.com; openchile.com;   
nacidade.com.br; openchile.cl; panoramas.cl; yoinvito.com; Adnet.com.mx; and   
batepapo.com.br; PROVIDED FURTHER, HOWEVER, that the record or beneficial   
ownership by the Seller as a passive investor of one percent (1%) or less of   
the outstanding publicly traded capital stock of any such Person for   
investment purposes shall not be deemed to be in violation of this Section   
4.3 so long as the Seller does not breach Section 4.4.   
  
(b) The Seller further agrees that, during the Restricted Period,   
in the Restricted Area the Seller shall not in any capacity, either   
separately, jointly or in association with others, directly or indirectly do   
any of the following: (i) employ or seek to employ any Person or agent who is   
then employed or retained by the Purchaser or its Affiliates (or who was so   
employed or retained at any time within the one (1) year prior to the date   
the Seller employs or seeks to employ such Person); (ii) solicit, induce, or   
influence any proprietor, partner, stockholder, lender, director, officer,   
employee, joint venturer, investor, consultant, agent, lessor, supplier,   
customer or any other Person which has a business relationship with the   
Purchaser or its Affiliates, at any time during the Restricted Period, to   
discontinue or reduce or modify the extent of such relationship with the   
Purchaser or its Affiliates; (iii) submit, solicit, encourage or discuss any   
proposal, plan or offer to acquire an interest in any of the Purchaser's or   
its Affiliates' identified potential acquisition candidates and (iv) use any   
of the information contained in the users' databases related to the domains   
acquired by Purchaser and included in SCHEDULE 1.1(a). The "RESTRICTED   
PERIOD" shall mean eighteen (18) months after the date of this Agreement. The   
"RESTRICTED AREA" shall mean worldwide.   
  
(c) The Seller recognizes and agrees that compliance with the   
covenants contained in this Section 4.3 are necessary to protect the   
Purchaser, and that a breach by the Seller of any of the covenants set forth   
in this Section 4.3 could cause irreparable harm to the Purchaser, that the   
Purchaser's remedies at law in the event of such breach would be inadequate,   
and that, accordingly, in the event of such breach, a restraining order or   
injunction or both may be issued against the Seller without the requirement   
that the Purchaser post a bond, in addition to any other rights and remedies   
which are available to the Purchaser. If this Section 4.3 is more restrictive   
than permitted by the laws of any jurisdiction in which the Purchaser seeks   
enforcement hereof, this Section 4.3 shall be limited to the extent required   
to permit enforcement under such laws. In particular, the parties intend that   
the covenants contained in the preceding portions of this Section 4.3 shall   
be construed as a series of separate covenants, one for each location   
specified. Except for geographic coverage, each such separate covenant shall   
be deemed identical in terms. If, in any judicial proceeding, a court shall   
refuse to enforce any of the separate covenants deemed included in this   
Section 4.3, then such unenforceable covenant shall be deemed eliminated from   
these provisions for the purpose of those proceedings to the extent necessary   
to permit the remaining separate covenants to be enforced. If any court of   
competent jurisdiction shall determine the foregoing covenant to be   
unenforceable with respect to the term or the scope of the subject matter or   
geography covered thereby, then such covenant shall nevertheless be enforceable by such court against the other party upon such shorter term or within such lesser scope as may be determined by such court to be reasonable and enforceable.   
  
4.4 CONFIDENTIALITY.   
  
(a) Except as provided in Section 4.4(b), after the Closing Date,   
and for a period of five (5) years thereafter, the Seller agrees that it will   
keep confidential and shall use its best efforts to cause its Affiliates, and   
their respective officers, directors, employees and agents to keep   
confidential all of the Purchaser's and its Affiliates' proprietary   
information that is conveyed to the Purchaser as part of the Acquired Assets   
or is assigned as part of the Assumed Obligations or is otherwise exposed to   
the Seller in the course of the transactions contemplated hereby, including,   
for purposes of this Section 4.4, information about the Multiple Visions'   
business plans and strategies, marketing ideas and concepts, especially with   
respect to unannounced products and services, present and future product   
plans, pricing, traffic volumes, volume estimates, financial data, product   
enhancement information, business plans, marketing plans, sales strategies,   
customer information (including customers' applications and environments),   
market testing information, development plans, specifications, customer   
requirements, configurations, designs, plans, drawings, apparatus, sketches,   
software, hardware, data, prototypes, connecting requirements or other   
technical and business information.   
  
(b) Notwithstanding the foregoing, such proprietary information   
shall not be deemed confidential and the Seller shall have no obligation with   
respect to any such proprietary information that, following the Closing:   
  
(i) is or becomes publicly known through publication,   
inspection of a product, or otherwise, and through no negligence or other   
wrongful act of any of the Seller;   
  
(ii) is received by the Purchaser from a third party without   
similar restriction and without breach of any agreement; or   
  
(iii) is, subject to Section 4.4(c), required to be disclosed   
under applicable Law or judicial process.   
  
(c) If the Seller (or any of its Affiliates or officers,   
directors, employees or agents) is requested or required (by oral question,   
interrogatory, request for information or documents, subpoena, civil   
investigative demand or similar process) to disclose any such proprietary   
information, the Seller will promptly notify the Purchaser of such request or   
requirement and will cooperate with the Purchaser such that the Purchaser may   
seek an appropriate protective order or other appropriate remedy. If, in the   
absence of a protective order or the receipt of a waiver hereunder, the   
Seller (or any of its Affiliates) is in the opinion of the Seller's counsel   
compelled to disclose the proprietary information or else stand liable for   
contempt or suffer other censure or significant penalty, the Seller (or its   
Affiliate) may disclose only so much of the proprietary information to the   
party compelling disclosure as is required by law. The Seller will exercise   
its (and will cause its Affiliates to exercise their) commercially reasonable   
efforts to obtain a protective order or other reliable assurance that   
confidential treatment will be accorded to such proprietary information.   
  
4.5 FULFILLMENT OF CONDITIONS PRECEDENT. The Seller shall use its best   
efforts to obtain at its expense all such waivers, Permits, consents,   
approvals or other authorizations from third Persons and Authorities, and to do all things as may be necessary in connection with transactions contemplated by this Agreement.   
  
4.6 EXCLUSIVITY. From and after the date hereof until the earlier of   
the Closing Date or the termination of this Agreement, the Seller will not,   
and will cause each of its Affiliates and the Seller's and its Affiliates'   
officers, directors, shareholders, employees, partners, representatives and   
agents not to enter into any agreement, negotiate with any other corporation,   
firm or other person, or solicit, encourage, entertain, initiate, pursue or   
consider any inquiries or proposals (whether written or oral) relating to (i)   
the possible disposition of all or any portion of the Acquired Assets or the   
Multiple Visions (except inventory disposed of in the ordinary course of   
business) or (ii) any merger, consolidation or other business combination   
involving any of the Seller which would be inconsistent with the transaction   
contemplated by this Agreement.   
  
4.7 DELIVERIES AFTER CLOSING. From time to time after the Closing, at   
the Purchaser's request and without further consideration from the Purchaser,   
the Seller shall and shall cause any Business Subsidiary, as applicable, to   
execute and deliver such other instruments of conveyance and transfer and   
take such other action as the Purchaser reasonably may require to convey,   
transfer to and vest in the Purchaser and to put the Purchaser in possession   
of any rights or property to be sold, conveyed, transferred and delivered   
hereunder. Among other things, the Seller agrees to promptly notify the   
Purchaser in writing at such time as the Seller receives notification   
(written or otherwise) that it must take certain actions that, if not taken,   
will adversely affect the Registered Intellectual Property or the right of   
the Seller (and following the Closing, the Purchaser) to use same, including   
the payment of any registration, maintenance, renewal fees, annuity fees and   
Taxes or the filing of any documents, applications or certificates for the   
purposes of maintaining, perfecting or preserving or renewing any Seller   
Registered Intellectual Property.   
  
4.8 INTELLECTUAL PROPERTY PROTECTION. During the period from the date   
of this Agreement and continuing until the earlier of (x) the termination of   
this Agreement or (y) the Closing Date, the Seller agrees to take any and all   
actions necessary to protect and preserve the Seller Intellectual Property,   
including, without limitation, to:   
  
(a) at its own expense, make timely payment of all post-issuance   
renewal or other fees required to maintain in force its rights under all   
Seller Registered Intellectual Property;   
  
(b) use or license the use of any trademarks included in the   
Seller Registered Intellectual Property in interstate commerce and to take   
all such other actions as are necessary to preserve such marks as trademarks   
or service marks under the laws of the United States and any other relevant   
countries and, at its own expense, to diligently process and prosecute all   
documents required to maintain trademark registrations, including but not   
limited to affidavits of use and applications for renewals of registration in   
the United States Patent and Trademark Office for all such trademarks, and   
pay all fees and disbursements in connection therewith and not abandon any   
such filing of affidavit of use or any such application of renewal prior to   
the exhaustion of all administrative and judicial remedies without prior   
written consent of the Purchaser;   
  
(c) file copyright applications in the United States Copyright   
Office (and the equivalent office in any other country) where the failure to   
obtain copyright protection could have a Material Adverse Effect on the value of the Seller Intellectual Property) within the appropriate time periods provided under the copyright   
laws of the United States (including, without limitation, those set forth in   
17 U.S.C.) and such other countries, with respect to each copyrightable work   
set forth in SCHEDULE 1.1(a) and with respect to any other work which is   
material to the Seller Intellectual Property;   
  
(d) diligently prosecute all applications for United States and   
foreign copyrights filed pursuant to subsection (c) above and not abandon any   
such application prior to exhaustion of all applicable remedies absent   
written consent of the Purchaser.   
  
4.9 ELECTRONIC DATA PROTECTION. During the period between the date of   
this Agreement and the Closing Date, the Seller shall use its best efforts to   
take any and all commercially reasonable actions necessary to retain all   
electronic data and records relating to the Acquired Assets, including   
without limitation, that electronic data, regardless of format, residing on   
Seller data servers, individual employee's personal computer fixed, disk   
drives, floppy and CD/DVD diskettes on or off-site data archives or backup   
sites or disaster recovery locations, in any media. During this period the   
Seller shall use its commercially reasonable efforts to ensure that no such   
data is lost or destroyed by either electronic/magnetic or physical   
destruction means including intentional loss or destruction by the Seller's   
employees of data files under their control outside the ordinary course of   
business or in connection with any employment terminations or employee   
departures. The Seller shall use its commercially reasonable efforts to take   
such steps to ensure that files and data in each employee's Seller e-mail   
accounts or in storage on or ancillary to seller-owned or controlled computer   
or otherwise located on a Seller's e-mail server or document server is   
archived as of the date of this Agreement and that such archived data will be   
stored under secured conditions to permit ready access and retrieval after   
the Closing Date and that, from the date hereof, no archival storage shall be   
recycled, written over, destroyed or discarded. Notwithstanding anything   
contained in this Section 4.9, the Purchaser acknowledges and agrees that   
some deletion of e-mails by individual users of the services provided by the   
Multiple Visions occurs in the ordinary course of the Multiple Visions and that   
such deletion shall not constitute a breach of the Seller's covenants in this   
Section 4.9.   
  
4.10 INTELLECTUAL PROPERTY. The Seller shall give the Purchaser prompt   
notice that any Person shall have (a) commenced, or shall have notified the   
Seller that it intends to commence, a Claim or (b) provided the Seller with   
notice, in either case which allege(s) that any products or services related   
to the Acquired Assets, Assumed Obligations or Transition Licensing Agreement   
infringes or otherwise violates the intellectual property rights of such   
Person, is available for licensing from a potential licensor providing the   
notice or otherwise alleges that the Seller does not otherwise own or have   
the right to exploit such Intellectual Property, including the Seller   
Intellectual Property.   
  
4.11 BOOKS AND RECORDS. Until the seventh anniversary of the Closing   
Date, the Seller will, to the extent necessary in connection with any Taxes   
(including, without limitation, the tax basis of any Acquired Asset) or other   
matter relating to the Multiple Visions or the Acquired Assets for any period   
ending at or prior to the Closing, and without charge to Purchaser, (i)   
retain and, as the Purchaser may reasonably request, permit the Purchaser and   
its agents to inspect and copy all original books, records and other   
documents and all electronically archived data not deliverable to the   
Purchaser at Closing related to the Multiple Visions or the Acquired Assets and   
(ii) make reasonably available to the Purchaser, the officers, directors,   
employees and agents of the Seller and its Affiliates. The Seller shall, from and after

the Closing Date, preserve all such books, records and other documents related to the   
Business or the Acquired Assets for such seven (7) year period, and,   
thereafter, shall not destroy or dispose of or allow the destruction or   
disposition of such books, records and other documents without first having   
offered in writing to deliver such books, records and other documents to the   
Purchaser at the Purchaser's expense. If the Purchaser fails to request such   
books, records and other documents within thirty (30) days after receipt of   
the notice described in the preceding sentence, the Seller may dispose of   
such books, records and other documents.   
  
4.12 COBRA. The Seller shall be solely responsible for compliance with   
the requirements of COBRA, including, without limitation, the provision of   
continuation coverage, with respect to all employees or former employees of   
the Seller and their qualified beneficiaries for whom a qualifying event   
occurs prior to or in connection with the transactions contemplated by this   
Agreement. The terms "continuation coverage," "qualified beneficiaries," and   
"qualifying event" are used herein with the meanings ascribed to them in   
COBRA.   
  
4.13 EMPLOYEE BENEFITS PLANS. During the period from the date of this   
Agreement to the Closing Date, the Seller shall not terminate any employee   
pension benefit plan subject to Title IV of ERISA maintained or contributed   
to or required to be contributed to by the Seller or any subsidiary thereof.   
  
4.14 PRESS RELEASE. As soon as reasonably practicable after the   
execution of this Agreement, the Seller shall prepare, with the full   
cooperation of Purchaser, a press release to publicly disclose this Agreement   
and the material terms hereof. Within two (2) Business Days of the execution   
of this Agreement, subject to the Purchaser's prior approval, the Seller   
shall file such press release with the Securities and Exchange Commission on   
Form 8-K (the "FORM 8-K").   
  
4.15 CHARTER AMENDMENTS. During the period from the date of this   
Agreement to the Closing Date, the Seller shall adopt board resolutions that   
will (a) propose an amendment to its certificate of incorporation effecting a   
name change, (b) recommend that the amendment be adopted, (c) propose that   
the amendment be considered at the next stockholders' meeting to be held   
within six (6) months of the Closing Date, and (d) approve that the Seller   
file for a use of a fictitious name that shall not contain the name   
"SkyelimitSkyelimitMedia" in Delaware, Florida and New York and any other jurisdiction in   
which the Seller is qualified to do business and shall file such fictitious   
name applications on the Closing Date; provided that the Seller covenants   
that the foregoing amendment of its certificate of incorporation will occur   
not later than six (6) months from the Closing Date. During the period from   
the date of this Agreement to the Closing Date, Seller shall also take steps   
to begin the process of amending the charter documents of each of its   
applicable subsidiaries so that within ninety (90) days following the Closing   
Date, each such organizing document shall be amended for the purpose of   
adopting a corporate name not containing the name "SkyelimitSkyelimitMedia" or any   
variation thereof. A complete and accurate list of such subsidiaries is   
attached hereto as SCHEDULE 4.15. On the Closing Date, the Seller and each   
subsidiary shall cease doing business under the name "SkyelimitSkyelimitMedia" or any   
variation thereof.   
  
ARTICLE V   
COVENANTS OF THE PURCHASER   
  
The Purchaser hereby covenants and agrees with the Seller that:   
  
5.1 CONFIDENTIALITY. Except as may be required by lawful Order of an   
Authority of competent jurisdiction, the Purchaser agrees that unless and   
until the transactions contemplated hereby have been consummated, the   
Purchaser and its respective representatives and Affiliates and their   
representatives and advisors will hold in strict confidence all data and   
information obtained from the Seller in connection with the transactions   
contemplated hereby, except any of the same which (a) was, is now, or becomes   
generally available to the public (but not as a result of a breach of any   
duty of confidentiality by which the Purchaser and its respective   
representatives and advisors are bound); (b) was known to the Purchaser prior   
to its disclosure to the Purchaser as demonstrated by the Purchaser's   
records; or (c) is disclosed to the Purchaser by a third party not known by   
the Purchaser to be subject to any duty of confidentiality to the Seller   
prior to its disclosure to the Purchaser by the Seller. The Purchaser will   
use such data and information solely for the specific purpose of evaluating   
the transactions contemplated hereby. If this Agreement is properly   
terminated, the Purchaser and its Affiliates and their representatives and   
advisors will promptly destroy all such data, information and other written   
material (including all copies thereof) which has been obtained by the   
Purchaser, and the Purchaser will make no further use whatsoever of any of   
such or the information and knowledge contained therein or derived therefrom.   
  
5.2 NON-SOLICITATION. (a) Except with respect to those persons listed   
on SCHEDULE 5.3 hereto, the Purchaser agrees that, during the Restricted   
Period, in the Restricted Area, the Purchaser shall not in any capacity,   
either separately, jointly or in association with others, directly or   
indirectly do any of the following: (i) employ or seek to employ any Person   
or agent who is then employed or retained by the Seller or its Affiliates (or   
who was so employed or retained at any time within the one (1) year prior to   
the date the Purchaser employs or seeks to employ such Person); (ii) solicit,   
induce, or influence any proprietor, partner, stockholder, lender, director,   
officer, employee, joint venturer, investor, consultant, agent, lessor,   
supplier, customer or any other Person which has a business relationship with   
the Seller or its Affiliates (other than the connection with the Media   
Business), at any time during the Restricted Period, to discontinue or reduce   
or modify the extent of such relationship with the Seller or its Affiliates;   
or (iii) submit, solicit, encourage or discuss any proposal, plan or offer to   
acquire an interest in any of the Seller's or its Affiliates' identified   
potential acquisition candidates.   
  
(b) Purchaser recognizes and agree that compliance with the   
covenants contained in this Section 5.2 are necessary to protect Seller, and   
that a breach by Purchaser of any of the covenants set forth in this Section   
5.2 could cause irreparable harm to the Seller, that the Seller's remedies of   
law in the event of such breach would be inadequate, and that, accordingly,   
in the event of such breach, a restraining order or injunction or both may be   
issued against the Purchaser without the requirement that the Seller post a   
bond, in addition to any other rights and remedies which are available to the   
Seller. Notwithstanding anything contained in the foregoing to the contrary,   
the Purchaser and its Affiliates may hire or cause to be hired any person   
employed by the Seller or any Affiliate (i) responding to any newspaper   
advertisement or the like which is directed at a broad audience and does not   
mention the Purchaser by name, or   
(ii) who initiates a solicitation for hire by the Purchaser; PROVIDED,   
HOWEVER, the Purchaser and its Affiliates may hire or cause to be hired any   
person employed or previously employed by the Seller or any Affiliate upon   
entry of an order of Bankruptcy Court approving a plan of liquidation of the   
Multiple Visions or the cessation of operations of the Multiple Visions.   
  
5.3 BUSINESS EMPLOYEES. Prior to or following the Closing, the   
Purchaser or an Affiliate of the Purchaser may offer employment to any or all   
of the Business Employees identified on SCHEDULE 5.3 attached hereto. The   
Seller hereby waives any and all restrictions set forth herein or otherwise   
on the Purchaser or any of its Affiliates related to the Purchaser's ability   
to solicit for employment any or all of the Business Employees. From the date   
hereof to the Closing Date, the Seller shall upon request of the Purchaser   
provide the Purchaser with reasonable access during business hours to the   
Business Employees.   
  
5.4 LICENSING AGREEMENT. Prior to the Closing, the Purchaser and the   
Seller will negotiate a licensing agreement pursuant to which the Purchaser   
will license certain of the Acquired Assets to the Seller in substantially   
the form attached hereto as EXHIBIT 5.4 (the "IP LICENSING AGREEMENT").   
  
ARTICLE VI   
OTHER AGREEMENTS   
  
The parties further agree as follows:   
  
6.1 FURTHER ASSURANCES. Subject to the terms and conditions of this   
Agreement, the parties hereto shall use their best efforts to take, or cause   
to be taken, all action, and to do, or cause to be done, all things   
necessary, proper or advisable under applicable Regulations and Orders to   
consummate and make effective as promptly as possible the transactions   
contemplated by this Agreement and the agreements contemplated hereby, and to   
cooperate with each other in connection with the foregoing, including without   
limitation using their best efforts (a) to obtain all necessary waivers,   
consents, and approvals from other parties to Contracts; (b) to obtain all   
necessary Permits, consents, approvals and authorizations as are required to   
be obtained under any Regulation or Order; (c) to lift or rescind any   
injunction or restraining order or other Order adversely affecting the   
ability of the parties to consummate the transactions contemplated hereby;   
(d) to effect all necessary registrations and filings; and (e) to fulfill all   
conditions to the obligations of the parties under this Agreement. Each of   
the Purchaser and the Seller further covenants and agrees that it shall use   
its respective best efforts to prevent, with respect to a threatened or   
pending preliminary or permanent injunction or other Regulation or Order the   
entry, enactment or promulgation thereof, as the case may be.   
  
6.2 PUBLIC ANNOUNCEMENTS. Except as set forth in Section 4.14, or as   
required by applicable law, neither the Seller nor any Affiliate,   
representative or stockholder of the Seller, shall disclose any of the terms   
of this Agreement to any third party without the Purchaser's prior written   
consent. The form, content and timing of all press releases, public   
announcements or publicity statements with respect to this Agreement and   
transactions contemplated hereby shall be subject to the prior consent and   
approval of the Purchaser, which approval shall not be unreasonably withheld   
or delayed. No press releases, public announcements or publicity statements   
shall be released by the Seller without such prior consent.   
  
6.3 STOCKHOLDER ACTIONS. If between the date hereof and Closing, any   
stockholder of the Seller brings any action to restrain, delay or otherwise   
enjoin the transactions contemplated by this Agreement, the Seller shall use   
its best efforts to obtain the necessary approval or ratification of the   
Seller's execution and delivery of this Agreement and the transactions   
contemplated hereby.   
  
6.4 COVENANTS. During the time period commencing on the date hereof and   
continuing until the Closing Date, the Seller shall:   
  
(a) not agree to create, incur, assume or suffer to exist any   
Lien upon or with respect to any property or assets (real, personal or mixed,   
tangible or intangible), whether now owned or hereafter acquired, used by the   
Seller to perform its obligations under the Transition Licensing Agreement,   
provided that prior to the expiration of the term of the Transition Licensing   
Agreement, the Seller may negotiate and agree to sell such assets effective   
as of the end of the term of the Transition Licensing Agreement;   
  
(b) not declare or pay any dividends, or return any capital, to   
its shareholders or authorize or make any other distribution, payment or   
delivery of property or cash to its shareholders as such, or redeem, retire,   
purchase or otherwise acquire, directly or indirectly, for any consideration,   
any shares of any class of its capital stock or interest of any of its   
shareholders, in each case now or hereafter outstanding (or any options or   
warrants issued by the Seller with respect to its capital stock) or set aside   
any funds for any of the foregoing purposes; provided that the Seller may   
redeem shares of its capital stock for consideration other than cash.   
  
(c) not, directly or indirectly, lend money or credit or make   
advances to any Person, or purchase or acquire any stock, obligations or   
securities of, or any other interest in, or make any capital contribution to,   
any other Person or otherwise form, organize or operate any subsidiaries   
(other than substantially in existence as of the date hereof), or purchase or   
own a futures contract or otherwise become liable for the purchase or sale of   
currency or other commodities at a future date in the nature of a futures   
contract, except that the Seller may acquire and hold receivables owing to   
it, if created or acquired in the ordinary course of business and payable or   
dischargeable in accordance with customary commercial practice;   
  
(d) not sell or transfer any property or assets to, or otherwise   
engage in any other transactions with any Affiliate (as defined in section   
101 of the Bankruptcy Code) of the Seller, other than (i) in the ordinary   
course of business or (ii) in connection with the sale of assets no longer   
required by the Seller to operate the Multiple Visions or perform its   
obligations under the Transition Licensing Agreement, provided in each case   
that such sale or transfer shall be at prices and on terms and conditions not   
less favorable to Seller than could be obtained on an arm's-length basis from   
unrelated third parties;   
  
(e) not agree in writing or otherwise to do any of the   
foregoing;   
  
(f) provide the Purchaser with (i) 48 hours prior written notice   
of the Seller's intention to file a voluntary or petition concerning a   
bankruptcy case and (ii) 24 hours notice of any involuntary bankruptcy filing   
involving the Seller; and   
  
(g) use its cash to pay when due the accounts payable of the   
vendors listed on SCHEDULE 6.4 attached hereto.   
  
Notwithstanding the foregoing, the Seller may from time to time   
request in writing that Purchaser consent to the Seller taking one or more of   
the prohibited actions set forth in this Section 6.4, and to the extent that   
the action(s) desired to be taken by the Seller will not in the Purchaser's   
reasonable determination have a Material Adverse Effect on the Seller's   
liquidity or its ability to perform its obligations under the Transition   
Licensing Agreement, the Purchaser's consent shall not be unreasonably   
withheld or delayed. Failure by the Purchaser to respond to any such written   
request of Seller within three (3) Business Days shall be deemed a grant of   
such consent by the Purchaser.   
  
6.5 INSURANCE. The Seller shall maintain Policies in full force and   
effect that provide for coverages that are usual and customary as to amount   
and scope in the Multiple Visions through the term of the Transition Licensing   
Agreement.   
  
6.6 COMMERCIAL AGREEMENTS. The Seller and the Purchaser agree to   
study the eventual joint cooperation following the Closing Date for the   
following commercial or strategic projects:   
  
(i) a content supply agreement whereby the Purchaser would   
supply the Seller with content for its mobile business;   
  
(ii) application use agreement whereby the Purchaser would offer   
its customers in Latin America and Spain applications and/or mobile portals   
of the Seller; and   
  
(iii) joint development of web-wireless agreement whereby the   
Purchaser and the Seller create a joint team to study, develop and implement   
a web-wireless product using GPRS, UMTS, and/or i-Mode technologies;   
  
(iv) a customer share arrangement whereby each party would offer   
to its customers non-competitive products and services developed by the other   
party;   
  
(v) a program whereby the Purchaser and the Seller would provide   
introductions to their respective large shareholders (A, B, and C in the case of the Seller and D and E in the case of the Purchaser) with the intent to cross   
sell services;   
  
(vi) an ISP service arrangement whereby the Purchaser would   
consider D as a preferred ISP provider in the event the Purchaser   
develops a need for ISP service in Latin America; and   
  
(viii) an arrangement whereby the Purchaser and the Seller   
jointly purchase from suppliers in order to increase efficiencies.   
  
For the avoidance of doubt, neither the Seller nor the Purchaser shall   
not be obligated to negotiate or enter into any of the aforementioned   
arrangements.   
  
6.7 LIMITATION OF USE. After the Closing Date, the Seller, Seller's   
Affiliates and their respective directors, officers, successors, assigns,   
agents and representatives shall not register, or attempt to register, and   
agree that they shall not directly or indirectly use or seek to register any   
Intellectual Property that includes, is identical to or is confusingly   
similar to any of the trademarks, service marks, domain names, trade names,

brand names or other indicia of origin set forth on SCHEDULE 1.1(a), anywhere

in the world in any medium, nor shall any of them challenge or assist any third

party in opposing the rights of Purchaser in any such intellectual property.

Examples of uses precluded hereby include, but are not limited to use: (i) in

conjunction with goods or services related to the Multiple Visions or otherwise;

(ii) on websites, whether Seller's or any third parties' or (iii) in combination

with any other words or marks to act as an indicia of origin.   
  
6.8 PERSONAL DATA AND INFORMATION. Each of the Parties hereto agrees   
that while in possession of user personal data and information it shall and   
shall cause its Affiliates to comply in all material respects with all   
Regulations applicable to maintenance and communication of such personal data   
and related information.   
  
6.9 TAX GOOD STANDING CERTIFICATE. Within fifteen (15) Business Days   
after the Closing, the Seller shall deliver to the Purchaser a certificate   
issued by the appropriate agency of State of New York indicating the Seller's   
good standing with respect to the payment of Taxes in such jurisdiction.   
  
ARTICLE VII   
TAX MATTERS   
  
The parties agree as follows:   
  
7.1 TAXES. Prior to the Closing, the Seller shall not without the prior   
written consent of Purchaser (which consent shall not be unreasonably   
withheld or delayed, it being understood that the Purchaser's withholding of   
consent shall be deemed unreasonable if, by granting such consent, the   
Purchaser's liability for Taxes would not be adversely affected): (i) file or   
cause to be filed any amended Tax Returns or claims for refund with respect   
to the Multiple Visions or the Acquired Assets; (ii) prepare any Tax Returns   
with respect to the Multiple Visions or the Acquired Assets in a manner that is   
inconsistent with the past practices of the Seller with respect to the   
treatment of items on such Tax Returns except to the extent that any   
inconsistency (x) would not materially increase the Purchaser's liability for   
Taxes for any period or (y) is required by law; (iii) incur any material   
liability for Taxes with respect to the Multiple Visions or the Acquired Assets   
other than in the ordinary course of business; or (iv) enter into any   
settlement or closing agreement with a taxing authority that materially   
increase or may materially increase the Tax liability of the Purchaser for   
any period.   
  
7.2 PAYMENT OF TAXES.   
  
(a) The Seller shall be responsible and liable for the timely   
payment of any and all Taxes imposed on or with respect to the Multiple Visions   
or the Acquired Assets for all Pre-Closing Periods, including the portion of   
the taxable period beginning on or prior to the Closing Date and ending after   
the Closing date (the "OVERLAP PERIOD") up to and including the Closing Date.   
For purposes of this Agreement, all Taxes and Tax liabilities with respect to   
the income, property or operations of the Multiple Visions or the Acquired   
Assets that relate to the Overlap Period shall be apportioned between the   
Seller and the Purchaser as follows: (i) in the case of Taxes other than   
income, sales and use and withholding Taxes, on a per diem basis, and (ii) in   
the case of income, sales and use and withholding Taxes, as determined from   
the books and records of the Seller, as though the taxable year of the Seller,   
terminated at the close of business on the Closing Date. In addition, the   
Seller, on the one hand, and the Purchaser, on the other hand, shall pay the   
other the amount of any Taxes allocated to it herein (to the extent that it   
is liable therefor and to the extent not already paid by it) at least five   
(5) Business Days prior to the due date of such Taxes.   
  
(b) All stamp, transfer, documentary, sales and use, value added,   
registration, and other such taxes and fees (including any penalties and   
interest) incurred in connection with this Agreement or any transaction   
contemplated hereby (collectively, the "TRANSFER TAXES") shall be paid by the   
Purchaser, and the Seller shall, at its own expense, properly file on a   
timely basis all necessary Tax Returns, reports, forms, and other   
documentation with respect to any Transfer Tax as requested by the Purchaser.   
  
ARTICLE VIII   
CONDITIONS TO THE OBLIGATIONS OF THE PURCHASER   
  
Each and every obligation of the Purchaser under this Agreement shall   
be subject to the satisfaction, on or before the Closing Date, of each of the   
following conditions unless waived in writing by the Purchaser:   
  
8.1 REPRESENTATIONS AND WARRANTIES; PERFORMANCE. The representations   
and warranties of the Seller contained in Article II and elsewhere in this   
Agreement and all information contained in any exhibit or schedule hereto   
delivered by, or on behalf of, the Seller, to the Purchaser, shall be true   
and correct in all material respects (except for those representations and   
warranties which are qualified by materiality, which shall be true and   
correct in all respects) when made and on the Closing Date as though then   
made. The Seller shall have performed and complied in all material respects   
with all agreements, covenants and conditions required by this Agreement to   
be performed and complied with by it prior to the Closing Date. The president   
and the chief financial officer of the Seller shall have delivered to the   
Purchaser a certificate dated the Closing Date, in substantially the form of   
EXHIBIT 8.1 attached hereto, certifying to the foregoing.   
  
8.2 CONSENTS AND APPROVALS. The Purchaser and the Seller shall have   
obtained any and all consents, approvals, Orders, Permits or other   
authorizations, including any stockholder approval (other than stockholder   
approval relating solely to the amendment of the Seller's certificate of   
incorporation and the charter amendments of its subsidiaries in accordance   
with Section 4.15 hereto), required by all applicable Regulations, Orders and   
Contracts involving the Seller or binding on its properties and assets, with   
respect to the execution, delivery and performance of the Agreement and the   
agreements contemplated hereby, the consummation of the transactions   
contemplated hereby and the conduct of the Multiple Visions in the same manner   
after the Closing Date as before the Closing Date including, without   
limitation, the Purchaser's receipt of the unqualified consent of the   
holder(s) of shares of the Seller's Series A Preferred Stock.   
  
8.3 OPINION OF THE SELLER'S COUNSELS. The Purchaser shall have received   
the opinions of Norton & Wells LLP and Frampton & Hill, LLP   
(which will be addressed to the Purchaser), dated as of the Closing Date, in substantially the forms of EXHIBITS 8.3(a) AND 8.3(b) attached hereto, respectively.   
  
8.4 NO MATERIAL ADVERSE CHANGE. There shall have been no Material   
Adverse Change since the date of this Agreement. The Purchaser shall have   
received certificates dated the Closing Date, of the president and the chief   
financial officer of the Seller, in the form of EXHIBIT 8.4 attached hereto,   
certifying to the foregoing.   
  
8.5 NO PROCEEDING OR LITIGATION. No preliminary or permanent injunction   
or other Order issued by a court of competent jurisdiction or by any   
Authority, or any Regulation or Order promulgated or enacted by any Authority   
shall be in effect which would prohibit, prevent or restrict the consummation   
of the transactions contemplated hereby. There shall be no Claim pending or   
threatened by any stockholder of the Seller alleging that the Seller failed   
to obtain stockholder approval of this Agreement and the transactions   
contemplated hereby. The Seller shall not have received any notification,   
whether in writing or orally, from the Securities and Exchange Commission   
restraining or delaying the consummation of, or requiring that the Seller   
refrain from consummating, the sale of the Acquired Assets or otherwise   
prohibiting, restraining or otherwise enjoining such transaction.   
  
8.6 CONDITION OF ASSETS. None of the Acquired Assets shall have been   
damaged or destroyed, prior to the Closing Date, by fire or other casualty,   
whether or not fully covered by insurance in an aggregate amount of $100,000.   
  
8.7 ACCOUNTING MATTERS. The Purchaser shall have received a   
certificate, dated the Closing Date, of the Seller's chief financial officer   
in the form of EXHIBIT 8.7 attached hereto, (i) as to the accuracy of all of   
the Seller's Financial Statements, and (ii) that all financial information,   
upon which the opinion of Frampton & Hill, LLP referenced in Section   
8.3 is based was prepared by the Seller's management based upon the Seller's   
books and records and, if applicable, upon reasonable estimates and   
assumptions.   
  
8.8 CERTIFICATES OF GOOD STANDING. At the Closing, the Seller shall   
have delivered to the Purchaser certificates issued by the appropriate   
governmental Authorities in those jurisdictions in which the Seller is   
registered or otherwise authorized to transact business evidencing its good   
standing as of a date not more than fifteen (15) days prior to the Closing   
Date.   
  
8.9 SECRETARY'S CERTIFICATE. The Purchaser shall have received   
certificates, by the secretary of the Seller, as to the certificate of   
incorporation and bylaws of the Seller, the resolutions adopted by the board   
of directors of the Seller in connection with this Agreement, the incumbency   
of certain officers of the Seller and the jurisdictions in which the Seller   
are qualified to conduct business in substantially the form of EXHIBIT 8.9   
attached hereto.   
  
8.10 ESCROW AGREEMENT. The Seller shall have executed the Escrow   
Agreement substantially in the form of EXHIBIT 8.10 attached hereto.   
  
8.11 BILL OF SALE. The Seller shall have executed a Bill of Sale in   
the form of EXHIBIT 1.3(a) hereto.   
  
8.12 ASSIGNMENT AND ASSUMPTION AGREEMENT. The Seller shall have   
executed the Assignment and Assumption Agreement in the form of EXHIBIT   
1.2 hereto.   
  
8.13 INTELLECTUAL PROPERTY ASSIGNMENT AGREEMENT. The Seller shall   
have executed Intellectual Property Assignment Agreements substantially in   
the form of EXHIBIT 1.3(b) hereto.   
  
8.14 TRANSITION LICENSING AGREEMENT. The Seller shall have   
executed the Transition Licensing Agreement in substantially the form of   
EXHIBIT 8.14 attached hereto.   
  
8.15 SPANROCK CLOSING. A closing under the SPANROCK Stock Purchase   
Agreement shall have occurred prior to or contemporaneously with the   
Closing hereof.   
  
8.16 OTHER DOCUMENTS. The Seller shall have furnished the Purchaser with   
such other and further documents and certificates, including certificates of the   
Seller's officers and others, as the Purchaser shall reasonably request to   
evidence compliance with the conditions set forth in this Article VIII.   
  
ARTICLE IX   
CONDITIONS TO THE OBLIGATIONS OF THE SELLER   
  
Each and every obligation of the Seller under this Agreement shall be   
subject to the satisfaction, on or before the Closing Date, of each of the   
following conditions unless waived in writing by the Seller:   
  
9.1 REPRESENTATIONS AND WARRANTIES; PERFORMANCE. The representations and   
warranties of the Purchaser contained in Article III and elsewhere in this   
Agreement and all information contained in any exhibit or schedule hereto   
delivered by, or on behalf of the Purchaser to Seller, shall be true and correct   
in all material respects when made and on the Closing Date as though then made   
except for those representations and warranties which are qualified by   
materiality, which shall be true and correct in all respects. The Purchaser   
shall have performed and complied in all material respects with all agreements,   
covenants and conditions required by this Agreement to be performed and complied   
with by it prior to the Closing Date. The president and the chief financial   
officer of the Purchaser shall have delivered to the Seller a certificate dated   
the Closing Date, in substantially the form of EXHIBIT 9.1 attached hereto,   
certifying to the foregoing.   
  
9.2 CONSENTS AND APPROVALS. The Purchaser shall have obtained any and all   
material consents, approvals, Orders, Permits or other authorizations, required   
by all applicable Regulations or Orders involving the Seller, with respect to   
the execution, delivery and performance of the Agreement, and the consummation   
of the transactions contemplated hereby including, without limitation, the   
Seller's receipt of the consent of the holder(s) of shares of the Seller's   
Series A Preferred Stock.   
  
9.3 NO PROCEEDING OR LITIGATION. No preliminary or permanent injunction or   
other Order issued by a court of competent jurisdiction or by any Authority, or   
any Regulation or Order promulgated or enacted by any Authority shall be in   
effect which would prohibit, prevent or restrict the consummation of the   
transactions contemplated hereby.   
  
9.4 SECRETARY'S CERTIFICATE. The Seller shall have received a certificate,   
by the secretary of the Purchaser, dated the Closing Date, as to the resolutions   
adopted by the directors of the Purchaser in connection with this Agreement and   
the incumbency of certain officers of the Purchaser and the jurisdictions in   
which the Purchaser is qualified to conduct business in substantially the form   
of EXHIBIT 9.4 attached hereto.   
  
9.5 ESCROW AGREEMENT. The Purchaser shall have executed the   
Escrow Agreement in substantially the form of EXHIBIT 8.10 attached hereto.   
  
9.6 TRANSITION LICENSING AGREEMENT. The Purchaser shall have   
executed the Transition Licensing Agreement in the form of EXHIBIT 8.14   
attached hereto.   
  
9.7 ASSIGNMENT AND ASSUMPTION AGREEMENT. The Purchaser shall have   
executed the Assignment and Assumption Agreement in the form of EXHIBIT   
1.2 hereto.   
  
9.8 OPINIONS OF PURCHASER'S COUNSEL. The Seller shall have received the   
opinions of White & Case LLP and the Purchaser's general counsel addressed to   
the Seller, dated as of the Closing Date, in substantially the forms attached   
hereto as EXHIBITS 9.8(a) and 9.8(b).   
  
9.9 IP LICENSING AGREEMENT. The Purchaser shall have executed the   
IP Licensing Agreement.   
  
9.10 SPANROCK CLOSING. A closing under the SPANROCK Stock Purchase   
Agreement shall have occurred prior to or contemporaneously with the   
Closing hereof.   
  
ARTICLE X   
CLOSING   
  
10.1 CLOSING. Unless this Agreement shall have been terminated or   
abandoned pursuant to the provisions of Article XI hereof, a closing of the   
transactions contemplated by this Agreement (the "CLOSING") shall be held on   
such date and time (the "CLOSING DATE") agreed to by the Purchaser and the   
Seller in the offices of the Purchaser's counsel, provided that the Closing   
shall not occur, in any event, after July 18, 2002.   
  
10.2 INTERVENING LITIGATION. If prior to the Closing Date any preliminary   
or permanent injunction or other Order issued by a court of competent   
jurisdiction or by any other Authority, or any notice from the Securities and   
Exchange Commission shall restrain or prohibit this Agreement or the   
consummation of the transactions contemplated hereby for a period of fifteen   
(15) days or longer, the Closing shall be adjourned at the option of either   
party for a period of not more than thirty (30) days. If at the end of such   
thirty (30) day period such injunction or Order shall not have been favorably   
resolved, either party may, by written notice thereof to the other, terminate   
this Agreement, without liability or further obligation hereunder.   
  
ARTICLE XI   
TERMINATION AND ABANDONMENT   
  
11.1 METHODS OF TERMINATION. This Agreement may be terminated and   
the transactions herein contemplated may be abandoned at any time:   
  
(a) by mutual consent of the Purchaser and the Seller; or   
  
(b) by the Purchaser or the Seller if the transactions contemplated   
by this Agreement are not consummated on or before July 18, 2002 as a result of,   
among other things, the failure of any of the conditions specified in Articles   
VIII or IX to have been satisfied; PROVIDED THAT if any party has breached or   
defaulted with respect to its obligations under this Agreement on or before such   
date, such party may not terminate this Agreement pursuant to this Section   
11.1(b), and each other party to this Agreement may at its option enforce its   
rights against such breaching or defaulting party and seek any remedies against   
such party, in either case as provided hereunder and by applicable Regulation.   
  
11.2 PROCEDURE UPON TERMINATION. In the event of termination and   
abandonment pursuant to Section 11.1 hereof, and subject to the proviso   
contained in Section 11.1(b) this Agreement shall terminate and shall be   
abandoned, without further action by any of the parties hereto. If this   
Agreement is terminated as provided herein:   
  
(a) each party shall either destroy or redeliver all documents and   
other material of any other party relating to the transactions contemplated   
hereby, whether obtained before or after the execution hereof, to the party   
furnishing the same;   
  
(b) all information received by any party hereto with respect to the   
business of any other party (other than information which is a matter of public   
knowledge or which has heretofore been or is hereafter published in any   
publication for public distribution or filed as public information with any   
governmental authority) shall not at any time be used for the advantage of, or   
disclosed to third parties by, such party to the detriment of the party   
furnishing such information; and   
  
(c) other than as provided in Section 13.13, no non-breaching party   
hereto shall have any liability or further obligation to any other party to this   
Agreement.   
  
ARTICLE XII   
INDEMNIFICATION   
  
12.1 SURVIVAL. All of the terms and conditions of this Agreement, together   
with the representations, warranties and covenants contained herein or in any   
instrument or document delivered or to be delivered pursuant to this Agreement,   
shall survive the execution of this Agreement and the Closing Date until all   
obligations set forth therein shall have been performed and satisfied   
notwithstanding any investigation heretofore or hereafter made by or on behalf   
of any party hereto as follows:

(a) the representations and warranties in Section 2.11 (Tax Returns) and Section 2.13 (Employee Benefit Plans) and their related schedules and the covenants contained in this Agreement shall survive until sixty (60) days after the date as of which the applicable statutes of limitations with respect to such matters expire (after giving effect to any extensions or waivers thereof);

(b) the representations and warranties in Section 2.12 (Compliance with Law and Certifications) and Section 2.16 (Environmental Matters) and their related schedules shall terminate on the sixth anniversary of the Closing Date;

(c) the representations and warranties in Section 2.2 (Authorization, Etc.), Section   
2.9 (Title and Related Matters) and Section 2.20 (Brokerage) and their   
related schedules shall survive indefinitely and not terminate; and

(d) all other representations and warranties in this Agreement and their related   
schedules or in any of the written statements, certificates or other items   
prepared and delivered hereunder or to induce the consummation of any of the   
transactions contemplated hereby, shall terminate upon the twelve (12) month   
anniversary of the Closing Date; PROVIDED that the representations,   
warranties and indemnities for which an indemnification Claim shall be   
pending as of the end of the applicable period referred to herein shall   
survive with respect to such Claim until the final disposition thereof. The   
representations and warranties in this Agreement and the schedules attached   
hereto or in any writing delivered in connection herewith shall in no event   
be affected by any investigation, inquiry or examination made for or on   
behalf of any party or be affected by the knowledge of any officer, director,   
stockholder, employee, partner or agent of any party seeking indemnification   
hereunder or by the acceptance of any certificate or opinion from any third   
party. In addition, in no event will any disclosure of any event or   
circumstance made after the date hereof and prior to the Closing serve to   
amend any representation or warranty for any purpose of this Agreement.   
  
12.2 INDEMNIFICATION BY THE SELLER. Subject to Sections 12.1 and 12.6, the   
Seller agrees to, and shall indemnify the Purchaser and its officers, directors,   
employees, stockholders, representatives and agents on an after-tax basis and   
hold each of them harmless, against and in respect of any and all damage, loss,   
deficiency, liability, obligation, commitment, cost or expense (including the   
reasonable fees and expenses of counsel) resulting from, or in respect of, any   
of the following:   
  
(a) Any breach of a representation or warranty, or non-fulfillment   
of any obligation on the part of the Seller under this Agreement, the Transition   
Licensing Agreement, any document relating hereto or thereto or contained in any   
schedule to this Agreement, or from any misrepresentation in or omission from   
any certificate, schedule, other Contract or instrument delivered by the Seller   
hereunder, or the failure of any representation or warranty made in this   
Agreement to be true and correct as of the Closing Date.   
  
(b) Any and all Excluded Liabilities.   
  
(c) All liability Claims arising against or involving the Media   
Business or concerning any services sold or provided by or on behalf of the   
Multiple Visions on or prior to the Closing Date related to or resulting from an   
alleged defect in design, manufacture, materials or workmanship of any services   
provided, sold or delivered by or on behalf of the Seller or any alleged failure   
to warn, or any alleged breach of express or implied warranties or   
representations.   
  
(d) Warranty Claims relating to products manufactured or shipped or   
services provided by or on behalf of the Multiple Visions prior to the Closing   
Date.   
  
(e) All Taxes imposed on or asserted against the properties, income   
or operations of the Seller for Pre-Closing Periods and any Tax liability of the   
Seller arising in connection with the transactions contemplated hereby (except as

provided by Section 7.2(b)). Any Taxes, penalties or interest attributable to the   
operations of the Seller payable as a result of an audit of any Tax Return   
shall be deemed to have accrued in the period to which such Taxes, penalties   
or interest are attributable.   
  
(f) Any Claims for breaches under or penalties payable with respect   
to any Contracts that are part of the Acquired Assets as a result of late   
delivery of services by the Seller or its Affiliates.   
  
(g) All environmental liability of the Seller, including federal,   
state and local environmental liability, together with any interest or penalties   
thereon or related thereto, that arises or accrues on or prior to the Closing   
Date.   
  
(h) Any failure of the Seller to have good, valid and marketable   
title to the Acquired Assets, free and clear of all Liens (other than Permitted   
Liens), Claims, Orders and Other Indebtedness.   
  
(i) Any Claim for Seller's transaction costs and expenses (other   
than as set forth in 7.2(b)).   
  
(j) Any failure by the Seller to comply with applicable bulk   
sales laws.   
  
(k) Any Claims brought by third parties arising from the operation   
of or related to the Multiple Visions prior to the Closing Date or any Claims   
brought by third parties arising from the operation of or related to that   
portion of the businesses retained by the Seller following to the Closing Date.   
  
(l) Any successor or vicarious liability of the Seller.   
  
(m) All demands, assessments, judgments, costs and reasonable legal   
and other expenses arising from, or in connection with, any action, suit,   
proceeding or Claim incident to any of the foregoing.   
  
12.3 INDEMNIFICATION BY THE PURCHASER. Subject to Sections 12.1 and 12.6,   
the Purchaser agrees to, and shall, indemnify the Seller and its officers,   
directors, employees, stockholders, representatives and agents and hold each   
harmless, against and in respect of any and all damage, loss, deficiency,   
liability, obligation, commitment, cost or expense (including the fees and   
expenses of counsel) resulting from, or in respect of, any of the following:   
  
(a) The breach of any representation or warranty and the   
non-fulfillment of any obligation on the part of the Purchaser under this   
Agreement, the Transition Licensing Agreement, any document relating hereto or   
thereto or contained in any schedule to this Agreement, or from any   
misrepresentation in or omission from any certificate, schedule, other Contract   
or instrument delivered by the Purchaser hereunder, or the failure of any   
representation or warranty made in this Agreement to be true and correct as of   
the Closing Date.   
  
(b) The Assumed Obligations.   
(c) All Taxes imposed on or asserted against the Acquired Assets   
held by the Purchaser for Post-Closing Periods and any Tax liability of the   
Purchaser arising in connection with the transactions contemplated hereby. Any   
Taxes, penalties or interest attributable to the operations of the Purchaser   
payable as a result of an audit of any Tax Return shall be deemed to have   
accrued in the period to which such Taxes, penalties or interest are   
attributable.   
  
(d) All liability Claims arising against or involving the   
SkyelimitSkyelimitMedia.com Business or concerning any services sold or provided by or on   
behalf of the SkyelimitMedia.com Business after the Closing Date related to or   
resulting from an alleged defect in design, manufacture, materials or   
workmanship of any services provided, sold or delivered by or on behalf of the   
Purchaser or any alleged failure to warn, or any alleged breach of express or   
implied warranties or representations.   
  
(e) Warranty Claims relating to products manufactured or shipped or   
services provided by the Purchaser after the Closing Date.   
  
(f) All demands, assessments, judgments, costs and reasonable legal   
and other expenses arising from, or in connection with, any action, suit,   
proceeding or Claim incident to the foregoing.   
  
12.4 THIRD PARTY CLAIMS.   
  
(a) The following procedures shall be applicable with respect to   
indemnification for third party Claims. Promptly after receipt by the party   
seeking indemnification hereunder (hereinafter referred to as the "INDEMNITEE")   
of notice of the commencement of any (i) Tax audit or proceeding for the   
assessment of Tax by any Taxing Authority or any other proceeding likely to   
result in the imposition of a Tax liability or obligation or (ii) any action or   
the assertion of any Claim, liability or obligation by a third party (whether by   
legal process or otherwise), against which Claim, liability or obligation the   
other party to this Agreement (hereinafter the "INDEMNITOR") is, or may be,   
required under this Agreement to indemnify such Indemnitee, the Indemnitee   
shall, if a Claim thereon is to be, or may be, made against the Indemnitor,   
notify the Indemnitor in writing of the commencement or assertion thereof and   
give the Indemnitor a copy of such Claim, process and all legal pleadings. The   
Indemnitor shall have the right to (i) participate in the defense of such action   
with counsel of reputable standing and (ii) assume the defense of such action by   
agreeing to assume such defense within ten (10) days of transmittal of the   
notice of the Claim by the Indemnitee, in writing unless such Claim (A) may   
result in criminal proceedings, injunctions or other equitable remedies in   
respect of the Indemnitee or its business; (B) may result in liabilities which,   
taken with other then existing Claims under this Article XII, would not be fully   
indemnified hereunder; (C) may have a Material Adverse Effect on the business or   
financial condition of the Indemnitee after the Closing Date (including an   
effect on the Tax liabilities, earnings or ongoing business relationships of the   
Indemnitee); (D) is for an alleged amount of less than $25,000; (E) upon   
petition by the Indemnitee, if an appropriate court rules that the Indemnitor   
failed or is failing to vigorously prosecute or defend such Claim, in which   
event the Indemnitee shall assume the defense; or (F) also involves the   
Indemnitor or its Affiliate as a party and counsel to the Indemnitee determines   
in good faith that joint representation would give rise to a conflict of   
interest.   
  
(b) The Indemnitor and the Indemnitee shall cooperate in the defense   
of any third party Claims. In the event that the Indemnitor assumes or   
participates in the defense of such third party Claim as provided herein, the   
Indemnitee shall make available to the Indemnitor all relevant records and take   
such other action and sign such documents as are reasonably necessary to defend   
such third party Claim in a timely manner. If the Indemnitee shall be required   
by judgment or a settlement agreement to pay any amount in respect of any   
obligation or liability against which the Indemnitor has agreed to indemnify the   
Indemnitee under this Agreement, the Indemnitor shall promptly reimburse the   
Indemnitee in an amount equal to the amount of such payment plus all expenses   
(including legal fees and expenses) incurred by such Indemnitee in connection   
with such obligation or liability subject to this Article XII. No Indemnitor, in   
the defense of any such Claim, shall, except with the consent of the Indemnitee,   
consent to entry of any judgment or enter into any settlement that does not   
include as an unconditional term thereof the giving by the claimant or plaintiff   
to such Indemnitee of a release from all liability with respect to such Claim.   
In addition, with respect to a Claim for Taxes, the Indemnitor shall not enter   
into any settlement or arrangement with any taxing authority without the prior   
written consent of the Indemnitee, such consent not to be unreasonably withheld   
or delayed. In the event that the Indemnitor does not accept the defense of any   
matter for which it is entitled to assume as provided above, the Indemnitee   
shall have the full right to defend such Claim.   
  
(c) Prior to paying or settling any Claim against which an   
Indemnitor is, or may be, obligated under this Agreement to indemnify an   
Indemnitee, the Indemnitee must first supply the Indemnitor with a copy of a   
final court judgment or decree holding the Indemnitee liable on such Claim or   
failing such judgment or decree, must first receive the written approval of the   
terms and conditions of such settlement from the Indemnitor, which shall not be   
unreasonably withheld or delayed; provided however, that no written approval is   
required from the Indemnitor as to any third party Claim (i) that results solely   
in injunctions or other equitable remedies in respect of the Indemnitee or its   
business; (ii) that settles liabilities, or portions thereof, that are not   
subject to indemnification hereunder; or (iii) is for an amount of less than   
$25,000.   
  
(d) An Indemnitee shall have the right to employ its own counsel in   
any case and the fees and expenses of such counsel shall be at the expense of   
the Indemnitee unless (i) the employment of such counsel shall have been   
authorized in writing by the Indemnitor in connection with the defense of such   
Claim; (ii) the Indemnitor has not employed counsel in the defense of such Claim   
after ten (10) days notice; or (iii) such Indemnitee has reasonably concluded   
that there may be defenses available to it which are contrary to, or   
inconsistent with, those available to the Indemnitor; in any of the foregoing   
events such fees and expenses shall be borne by the Indemnitor.   
  
12.5 SECURITY FOR THE INDEMNIFICATION OBLIGATION.   
  
(a) The parties hereby agree that, subject to the following   
provisions of this Section 12.5, any Claims for indemnification by the Purchaser   
against the Seller hereunder shall be satisfied by the Purchaser first by   
recourse against the Escrow Funds pursuant to the terms of the Escrow Agreement.   
All payments for indemnifiable damages made pursuant to this Article XII shall   
be treated as adjustments to the Purchase Price.   
  
(b) Each Indemnitor shall pay the indemnification amount claimed by   
the Indemnitee in immediately available funds promptly within ten (10) days   
after the Indemnitee provides the Indemnitor with written notice of a Claim   
hereunder unless the Indemnitor in good faith disputes such Claim. If the   
Indemnitor disputes such Claim in good faith, then promptly after the resolution   
of such dispute, the amount finally determined to be due shall be paid by the   
Indemnitor to the Indemnitee in immediately available funds within ten (10) days   
of such dispute resolution. In the event the Indemnitor fails to pay the   
Indemnitee the amount of such indemnification Claim within such ten (10) day   
period the Indemnitor shall pay the Indemnitee interest on the amount of such   
indemnification Claim at a rate of ten percent (10%) per annum, compounded   
monthly from the date of the original written notice of such indemnification   
Claim until the indemnification Claim is paid in full.   
  
(c) If any Indemnitor fails to comply with its obligations to make   
cash payments to an Indemnitee in an aggregate amount sufficient to reimburse   
the Indemnitee for all losses resulting from an indemnified Claim, the   
Indemnitee may pursue any and all rights and remedies against the Indemnitor   
available in law or in equity, and shall be entitled to payment of its   
reasonable attorneys' fees.   
  
12.6 LIMITATIONS.   
  
(a) Neither party shall be required to indemnify the other party   
under Sections 12.2 and 12.3 until the indemnifiable damages, individually or in   
the aggregate, exceed $150,000 (the "HURDLE RATE"), at which point such   
indemnifying party shall be responsible for all indemnifiable damages that may   
arise, irrespective of the Hurdle Rate; and provided that indemnifiable damages   
shall accumulate until such time as they exceed the Hurdle Rate, whereupon the   
party to be indemnified shall be entitled to seek indemnification for the full   
amount of such damages.   
  
(b) Absent fraud, the aggregate amount of indemnifiable damages for   
which the Seller or the Purchaser shall be liable pursuant to this Article XII   
(other than for breaches of representations and warranties contained in Sections   
2.2, 2.9, 2.11, 2.13 and 3.2 or for intentional misrepresentations or breaches   
of covenants and other agreements) shall not exceed the Purchase Price.   
  
(c) The parties agree that any Claim for indemnification under the   
SPANROCK Stock Purchase Agreement shall be pursuant to such agreement and not   
hereunder.   
  
ARTICLE XIII   
MISCELLANEOUS PROVISIONS   
  
13.1 AMENDMENT AND MODIFICATION. This Agreement may be amended, modified   
and supplemented only by written agreement of all the parties hereto with   
respect to any of the terms contained herein. No course of dealing between or   
among the parties shall be deemed effective to modify, amend, waive or discharge   
any part of this Agreement or any rights or obligations of any party under or by   
reason of this Agreement.   
  
13.2 WAIVER OF COMPLIANCE; CONSENTS. Any failure of any party hereto to   
comply with any obligation, covenant, agreement or condition herein may be   
waived in writing by the other parties hereto, but such waiver or failure to insist

upon strict compliance with such obligation, covenant, agreement or condition shall

not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.   
Whenever this Agreement requires or permits consent by or on behalf of any   
party hereto, such consent shall be given in writing to be effective.   
  
13.3 CERTAIN DEFINITIONS.   
  
"ACQUIRED ASSETS" shall have the meaning set forth in Section 1.1.   
  
"AFFILIATE" means, with regard to any Person,

(a) any Person,   
directly or indirectly, controlled by, under common control of, or controlling   
such Person;

(b) any Person, directly or indirectly, in which such Person holds,   
of record or beneficially, five percent (5%) or more of the equity or voting   
securities;

(c) any Person that holds, of record or beneficially, five percent   
(5%) or more of the equity or voting securities of such Person;

(d) any Person   
that, through Contract, relationship or otherwise, exerts a substantial   
influence on the management of such Person's affairs;

(e) any Person that,   
through Contract, relationship or otherwise, is influenced substantially in the   
management of its affairs by such Person;

(f) any director, officer, partner or   
individual holding a similar position in respect of such Person; or

(g) as to   
any natural Person, any Person related by blood, marriage or adoption and any   
Person owned by such Persons, including without limitation, any spouse, parent,   
grandparent, aunt, uncle, child, grandchild, sibling, cousin or in-law of such   
Person; PROVIDED, HOWEVER, that for purposes hereof (except for purposes of   
Section 4.4 hereof), neither D Enterprises, Inc. nor its Affiliates   
(other than the Seller and any subsidiary or other entity in which the Seller or   
any subsidiary thereof has an investment) shall be considered Affiliates of the   
Seller.   
  
"ASSIGNMENT OF INTELLECTUAL PROPERTY" shall have the meaning set   
forth in Section 1.3.   
  
"ASSUMED OBLIGATIONS" shall have the meaning set forth in Section   
1.2.   
  
"AUTHORITY" means any governmental, regulatory or administrative   
body, agency, commission, board, arbitrator or authority, any court or judicial   
authority, any public, private or industry regulatory authority, whether   
international, national, federal, state or local.   
  
"BILL OF SALE" shall have the meaning set forth in Section 1.3.   
  
"BUSINESS DAY" means any day which is not a Saturday or Sunday or   
any other day on which commercial banks are required or authorized to close in   
New York, New York, Miami, Florida or Madrid, Spain.   
  
"BUSINESS EMPLOYEES" means those persons listed on SCHEDULE 5.3   
hereto.   
  
"BUSINESS SUBSIDIARY" means the following entities wholly owned by   
the Seller to the extent that it is part of the Multiple Visions and it owns an   
Acquired Asset: SkyelimitSKYELIMITSKYELIMIT Americas (S.A.), SkyelimitSKYELIMITdo Brasil, Ltda.,   
SkyelimitSKYELIMITChile Ltda., SkyelimitSKYELIMITArgentina SRL, SMN de Mexico SRL, SkyelimitSKYELIMIT  
Network S.L., SkyelimitSKYELIMITSRL, SkyelimitSKYELIMITColombia, SRL, Servicios Skyelimit Mexico S de   
RL de CV, SkyelimitSKYELIMITUruguay SRL, and SPANROCK, S.L.   
  
"CLAIM" means any action, claim, lawsuit, demand, suit, inquiry,   
hearing, investigation, notice of a violation or noncompliance, litigation,   
proceeding, arbitration, appeals or other dispute, whether civil, criminal,   
administrative or otherwise.   
  
"CLOSING" shall have the meaning set forth in Section 10.1.   
  
"CLOSING CASH" shall have the meaning set forth in Section 1.4.   
  
"CLOSING DATE" shall have the meaning set forth in Section 10.1.   
  
"COBRA" shall have the meaning set forth in Section 2.13.   
  
"CODE" means the Internal Revenue Code of 1986, as amended, and the   
regulations promulgated, and rulings issued, thereunder.   
  
"CONTRACT" means any agreement, contract, commitment, instrument,   
document, license and/or permit (issued by an Authority or other third party   
relating to the operation of any of the Acquired Assets or conduct of the Media   
Business), certificate or other binding arrangement or understanding, whether   
written or oral.   
  
"EMPLOYEE BENEFIT PLAN" shall have the meaning set forth in Section   
2.13.   
  
  
"ENVIRONMENTAL LAWS" means all federal, state, regional or   
local statutes, laws, rules, regulations, codes, ordinances, orders,   
plans, injunctions, decrees, rulings, licenses, rule of common law, and   
changes thereto or judicial or administrative interpretations thereof, or   
similar laws of foreign jurisdictions where the Seller conducts business,   
any of which govern or relate to pollution, protection of the environment,   
public health and safety, air emissions, water discharges, waste disposal,   
hazardous or toxic substances, solid or hazardous waste, petroleum or   
petroleum products or occupational health and safety, as any of these   
terms are or may be defined in such statutes, laws, rules, regulations,   
codes, orders, ordinances, plans, injunctions, decrees, rulings, licenses   
and changes thereto or judicial or administrative interpretations thereof,   
including, without limitation: the Comprehensive Environmental Response,   
Compensation and Liability Act of 1980 ("CERCLA"), as amended by the   
Superfund Amendment and Reauthorization Act of 1986 ("SARA"), 42 U.S.C.   
Section9601, ET SEQ.; the Solid Waste Disposal Act, as amended by the   
Resource Conversation and Recovery Act of 1976 and subsequent Hazardous   
and Solid Waste Amendments of 1984, 42 U.S.C. Section6901 ET SEQ. (herein,   
collectively "RCRA"); the Hazardous Materials Transportation Act, as   
amended, 49 U.S.C. Section1801, ET SEQ.; the Clean Water Act, as amended,   
33 U.S.C. Section1311, ET SEQ.; the Clean Air Act, as amended, 42 U.S.C.   
Section7401-7642; the Safe Drinking Water Act, as amended, 42 U.S.C.   
Section300f, ET SEQ.; the Toxic Substances Control Act, as amended   
("TSCA"), 15 U.S.C. Section2601 ET SEQ.; the Federal Insecticide,   
Fungicide, and Rodenticide Act as amended ("FIFRA"), 7 U.S.C.   
Section136-136y; the Emergency Planning and Community Right-to-Know Act of   
l986, as amended ("EPCRA"), 42 U.S.C. Section11001, ET SEQ. (Title III of   
SARA); the Endangered Species Act, as amended ("ESA"), 7 U.S.C.   
Section136, 16 U.S.C. Section460, ET SEQ.; and the Occupational Safety and   
Health Act of 1970 ("OSHA"), as amended, 29 U.S.C. Section651, ET SEQ.   
  
"ENVIRONMENTAL PERMIT" means Permits, certificates, approvals,   
licenses, decrees, consents, Orders and other authorizations relating to or   
required by Environmental Law and necessary or desirable for the Seller's   
business.   
  
"ERISA" means the Employee Retirement Income Security Act of 1974,   
as amended from time to time, and the Regulations issued thereunder.   
  
"ERISA AFFILIATE" means each person (as defined in Section 3(9) of   
ERISA) which together with the Seller or their respective subsidiaries would be   
deemed to be a "single employer" within the meaning of Section 414 of the Code.   
  
"ESCROW AGENT" means the Farmville Trust Company and its successors   
and assigns, as provided in the Escrow Agreement.   
  
"ESCROW AGREEMENT" shall have the meaning set forth in Section 1.5.   
  
"ESCROW FUNDS" shall have the meaning set forth in Section 1.5.   
  
"EXCLUDED LIABILITIES" shall have the meaning set forth in Section   
1.2.   
  
"FINANCIAL STATEMENTS" shall have the meaning set forth in Section   
2.4.   
  
"FINANCIAL STATEMENT DATE" shall have the meaning set forth in   
Section 2.4.   
  
"GAAP" means U.S. generally accepted accounting principles,   
consistently applied, as in existence at the date hereof.   
  
"GOVERNMENT CONTRACT" means any bid, quotation, proposal, contract,   
work authorization, lease, commitment or sale or purchase order of the Seller   
that is with the United States government, any state, local or foreign Authority   
or Government Entity to supply goods and/or services to the United States   
government or any state, local or foreign Authority.   
  
"GOVERNMENT ENTITY" means a federal, state, provincial, local,   
county or municipal government, governmental, regulatory or administrative   
agency, department, court or judicial entity, commission, board, bureau,   
industry regulatory authority or other Authority or instrumentality, domestic or   
foreign.   
  
"GUARANTEE" means any guarantee or other contingent liability (other   
than any endorsement for collection or deposit in the ordinary course of   
business), direct or indirect with respect to any obligations of another Person,   
through a Contract or otherwise, including, without limitation, (a) any   
endorsement or discount with recourse or undertaking substantially equivalent to   
or having economic effect similar to a guarantee in respect of any such   
obligations and (b) any Contract (i) to purchase, or to advance or supply funds   
for the payment or purchase of, any such obligations, (ii) to purchase, sell or   
lease property, products, materials or supplies, or transportation or services,   
in respect of enabling such other Person to pay any such obligation or to assure   
the owner thereof against loss regardless of the delivery or nondelivery of the   
property, products, materials or supplies or transportation or services or (iii)   
to make any loan, advance or capital contribution to or other Investment in, or   
to otherwise provide funds to or for, such other Person in respect of enabling   
such Person to satisfy an obligation (including any liability for a dividend,   
stock liquidation payment or expense) or to assure a minimum equity, working   
capital or other balance sheet condition in respect of any such obligation.   
  
"HAZARDOUS SUBSTANCES" shall be construed broadly to include any   
toxic or hazardous substance, material, or waste, any petroleum or petroleum   
products or motor oil, pesticides, explosive or radioactive materials, asbestos   
in any form that has or threatens to become friable, urea formaldehyde foam   
insulation, dielectric fluid containing levels of polychlorinated biphenyls, and   
radon gas, any chemicals, materials or substances, including raw products or raw   
materials, defined or included in the definition of "hazardous materials,"   
"hazardous substances," "hazardous wastes," "restricted hazardous wastes,"   
"toxic substances," "toxic pollutants," or words of similar import, under any   
applicable Environmental Laws, any other chemical, material, substance, mixture   
or by-product, exposure to which is prohibited, limited, or regulated by any   
Government Entity and any other contaminant, pollutant or constituent thereof,   
whether liquid, solid, semi-solid, sludge and/or gaseous, the presence of which   
requires investigation or remediation under any Environmental Law or which are   
regulated, listed or controlled by, under or pursuant to any Environmental Law,   
or which has been or shall be determined or interpreted at any time by any   
Government Entity to be a hazardous or toxic substance regulated under any other   
Regulation or Order, or which causes or poses a threat to cause contamination or   
a nuisance on the premises or any adjacent premises or a hazard to the   
environment or to the health or safety of persons, flora, or fauna on the   
premises.   
  
"INDEBTEDNESS" with respect to any Person means (a) any obligation   
of such Person for borrowed money, including, without limitation: (i) any   
obligation or liabilities incurred for all or any part of the purchase price of   
property or other assets or for the cost of property or other assets constructed   
or of improvements thereto, other than accounts payable included in current   
liabilities and incurred in respect of property purchased in the ordinary course   
of business, (whether or not such Person has assumed or become liable for the   
payment of such obligation) (whether accrued, absolute, contingent, unliquidated   
or otherwise, known or unknown, whether due or to become due); (ii) the face   
amount of all letters of credit issued for the account of such Person and all   
drafts drawn thereunder; (iii) obligations incurred for all or any part of the   
purchase price of property or other assets or for the cost of property or other   
assets constructed or of improvements thereto, other than accounts payable   
included in current liabilities and incurred in respect of property purchased in   
the ordinary course of business (whether or not such Person has assumed or   
become liable for the payment of such obligation) secured by Liens; (iv)   
capitalized lease obligations; and (v) all Guarantees of such Person; (b)   
accounts payable of such Person that have not been paid within sixty (60) days   
of their due date and are not being contested; (c) annual employee bonus   
obligations that are not accrued on the Financial Statements; and (d)   
retroactive insurance premium obligations.   
  
"INDEMNITEE" shall have the meaning set forth in Section 12.4.   
  
"INDEMNITOR" shall have the meaning set forth in Section 12.4.   
  
"INTELLECTUAL PROPERTY" means all foreign and domestic, registered,   
unregistered or pending applications for trademarks, trade names, trade dress,   
service marks, service names, brand names and other indicia of origin, patents   
and patent rights (including provisional applications), utility models and   
utility model rights, registered, unregistered or pending applications for   
copyrights, mask works, or similar materials eligible for copyright or mask work   
registration, product designs, product packaging, business and product names,   
logos, slogans, rights of publicity, trade secrets, inventions and methods   
(whether or not patentable or reduced to practice), invention disclosures,   
improvements, processes, formulae, industrial models, designs,   
specifications, moral and economic rights of authors and inventors (however   
denominated), technology, methodologies, computer and electronic data, data   
processing programs, computer applications and operating program software   
(including all source code and object code) (including flow charts, diagrams,   
descriptive texts and programs, computer printouts and similar items), firmware,   
development tools, flow charts, annotations, all Web addresses, uniform resource   
locators ("URLS"), internet domain names applications and registrations   
therefor, and the corresponding internet sites (including any content and other   
materials accessible and/or displayed thereon, collectively, the "SITES"), all   
data bases and data collections and all rights therein, any other confidential   
and proprietary right or information, whether or not subject to statutory   
registration, and all derivatives, improvements and refinements thereof as well   
as all related technical information, manufacturing, engineering and technical   
drawings, know-how, and goodwill associated with any of the foregoing   
trademarks, trade names, trade dress, service marks, service names, brand names,   
business and product names, logos, slogans or other indicia of origin, and the   
right to sue for past infringement, if any, in connection with any of the   
foregoing.   
  
"INVESTMENT" means (a) any direct or indirect ownership, purchase or   
other acquisition by a Person of any notes, obligations, instruments, capital   
stock, Options, securities or ownership interests (including partnership   
interests and joint venture interests) of any other Person; and (b) any capital   
contribution or similar obligation by a Person to any other Person.   
  
"IP LICENSING AGREEMENT" shall have the meaning set forth in Section   
5.4.   
  
"IT" shall mean Seller's information technology to be transferred or   
included in the Acquired Assets, Assumed Obligations or to be licensed under the   
Transition Licensing Agreement relating to the maintenance and performance of   
Seller's computer structure, including, but not limited to, hardware and/or   
application technology infrastructure, computer software programs, servers and   
other related inventory.   
  
"SPANROCK" shall have the meaning set forth in the Recitals.   
  
"SPANROCK STOCK PURCHASE AGREEMENT" shall have the meaning set forth   
in the Recitals.   
  
"LIEN" means any (a) security interest, lien, mortgage, pledge,   
hypothecation, encumbrance, Claim, easement, charge, restriction on transfer or   
otherwise, or interest of another Person of any kind or nature, including any   
conditional sale or other title retention Contract or lease in the nature   
thereof; (b) any filing or agreement to file a financing statement as debtor   
under the Uniform Commercial Code or any similar statute; and (c) any   
subordination arrangement in favor of another Person; provided that any   
obligations to provide banners and other similar promotions sold by the Seller   
as of the Closing Date, which obligations shall remain the sole and exclusive   
responsibility of the Seller following the Closing Date, shall not constitute a   
Lien for purposes hereof.   
  
"MATERIAL ADVERSE CHANGE" means any developments or changes which   
would have a Material Adverse Effect.   
  
"MATERIAL ADVERSE EFFECT" means any circumstances, state of facts or   
matters which have, or which might reasonably be expected to have, a material   
adverse effect in respect the operations, properties, assets, liabilities, affairs, condition

(financial or otherwise) or results of the Multiple Visions taken as a whole; PROVIDED,   
HOWEVER, that the effects solely resulting from the Seller's announcement of the   
transactions contemplated by this Agreement and the agreements to be executed in   
connection herewith shall not constitute a Material Adverse Effect. Without   
limiting the generality of the foregoing, any Claim that the Acquired Assets   
(other than the Acquired Assets set forth on Schedule 2.14(i)) infringe or   
require a license under the Intellectual Property of a third party shall be   
deemed to have a Material Adverse Effect.   
  
"MULTIPLE VISIONS" shall mean the Seller's operation of its Spanish-   
and Portuguese-language network of Internet websites, including without   
limitation, SkyelimitMedia.com, and all services and assets owned or provided by the   
Seller's Internet network to support and maintain those websites operated by   
SPANROCK. For purposes hereof, the parties agree that SPANROCK, the Seller's   
wireless business and the following websites operated by the Seller shall not   
deemed part of the Multiple Visions: xxx,xxx,xxx  
"ORIGINAL AGREEMENT" shall have the meaning set forth in the   
Preamble.   
  
"OPTION" means any subscription, option, warrant, right, security,   
Contract, commitment, understanding, stock appreciation right, phantom stock   
option, profit participation or arrangement by which the Seller is bound to   
issue any additional shares of its capital stock or an interest in the equity or   
equity appreciation of the Seller or rights pursuant to which any Person has a   
right to purchase shares of the Seller's capital stock or an interest in the   
equity or equity appreciation of the Seller.   
  
"ORDER" means any writ, decree, order, judgment, injunction, rule,   
ruling, Lien, voting right, consent of or by a Government Entity.   
  
"OVERLAP PERIOD" shall have the meaning set forth in Section 7.2(a).   
  
"PERMITS" means all permits, licenses, registrations, certificates,   
Orders, qualifications or approvals required by any Authority or other Person.   
  
"PERMITTED LIENS" means Liens for Taxes not yet delinquent or being   
contested by the Seller in good faith through appropriate procedures (the   
payment of which Taxes shall remain the sole and exclusive responsibility of the   
Seller) and any and all rights granted to the Seller upon the Closing pursuant   
to the IP Licensing Agreement and the Transition Licensing Agreement.   
  
"PERSON" means any corporation, partnership, joint venture, limited   
liability company, organization, entity, Authority or natural person.   
  
"POLICIES" means all Contracts that insure (a) the Seller's or any   
of its subsidiaries' properties, plant and equipment for loss or damage; and (b)   
the Seller or any of its subsidiaries, officers, directors, employees or agents   
against any liabilities, losses or damages (or lost profits) for any reason or   
purpose.   
  
"POST-CLOSING PERIOD" means any taxable year or other taxable period   
beginning after the Closing Date and the portion of the Overlap Period after the   
Closing Date.   
  
"PRE-CLOSING PERIOD" shall have the meaning set forth in Section   
2.11(b).   
  
"PURCHASE PRICE" shall have the meaning set forth in Section 1.4.   
  
"PURCHASER" shall have the meaning set forth in the Preamble.   
  
"REGISTERED INTELLECTUAL PROPERTY" means all Seller Intellectual   
Property that consists of United States, international and foreign: (a) patents   
and patent applications (including provisional applications); (b) registered   
trademarks and servicemarks, applications to register trademarks and   
servicemarks, intent-to-use applications, other registrations or applications to   
trademarks or servicemarks; (c) registered copyrights and applications for   
copyright registration; (d) any mask work registrations and applications to   
register mask works; and (e) any other Intellectual Property 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, whether domestic or foreign, PROVIDED, HOWEVER, that Seller   
Intellectual Property shall not be deemed Registered Intellectual Property   
merely by reason of the filing with respect thereto of a financing statement   
pursuant to the Uniform Commercial Code (or corresponding commercial statute of   
the applicable jurisdiction).   
  
"REGULATION" means any rule, law, code, statute, regulation,   
ordinance, requirement, announcement, policy, guideline, rule of common law or   
other binding action of or by a Governmental Entity and any judicial   
interpretation thereof.   
  
"RESTRICTED AREA" shall have the meaning set forth in Section   
4.3(b).   
  
"RESTRICTED PERIOD" shall have the meaning set forth in Section   
4.3(b).   
  
"SELLER" shall have the meaning set forth in the Preamble.   
  
"SELLER INTELLECTUAL PROPERTY" means any and all Intellectual   
Property listed on SCHEDULE 1.1(a) attached hereto.   
  
"SELLER REGISTERED INTELLECTUAL PROPERTY" means all domestic or   
foreign Registered Intellectual Property owned by, held by another for the   
benefit of, filed in the name of, assigned to or applied for by, or held by a   
third party for the benefit of, the Seller or any Business Subsidiary related to   
the Multiple Visions.   
  
"SITE" shall have the meaning set forth in Section 4.3(a).   
  
"TAX RETURNS" shall have the meaning set forth in Section 2.11(a).   
  
"TAX" or "TAXES" means all taxes, assessments, charges, duties,   
fees, levies or other governmental charges, including, without limitation, all   
Federal, state, local, foreign and other income, franchise, profits, gross   
receipts, capital gains, capital stock, transfer, property, sales, use,   
value-added, occupation, property, excise, severance, windfall profits, stamp,   
license, payroll, social security, withholding and other taxes, assessments,   
charges, duties, fees, levies or other governmental charges of any kind   
whatsoever, including any fees or charges due under any Environmental Permits or   
Environmental Laws (whether payable directly or by withholding and whether or   
not requiring the filing of a Tax Return), all estimated taxes, deficiency   
assessments, additions to tax, penalties and interest and shall include any liability for   
such amounts as a result either of being a member of a combined, consolidated,   
unitary or affiliated group or of a contractual obligation to indemnify any   
person or other entity.   
  
"TAXING AUTHORITIES" means Internal Revenue Service and any other   
Federal, state, or local Authority which has the right to impose Taxes on the   
Seller.   
  
"TRANSFER TAXES" shall have the meaning set forth in Section 7.2(b).   
  
"TRANSITION LICENSING AGREEMENT" shall have the meaning set forth in   
the Recitals.   
  
13.4 NOTICES. All notices, requests and other communications hereunder   
must be in writing and will be deemed to have been duly given only if delivered   
personally against written receipt or by facsimile transmission against   
facsimile confirmation or mailed by internationally recognized overnight courier   
prepaid, to the parties at the following addresses or facsimile numbers:   
  
(a) If to the Seller, to:   
  
SkyelimitSKYELIMITSKYELIMIT, Inc.   
Address,XXX,U.S.A.   
Facsimile: xxx-xxx-xxx   
Attn: President   
  
with a copy to (which shall not constitute notice to the   
Seller):   
  
Hughes, Hubbard & Reed LLP   
201 South Biscayne Boulevard   
Suite 2500   
Miami, FL 33131-4332   
Facsimile: (305) 371-8759   
Attn: Timothy J. McCarthy, Esq.   
  
or to such other Person or address as the Seller shall furnish by notice   
to the Purchaser in writing.   
  
(b) If to the Purchaser, to:   
  
MADRID VIDEO U.S.A., Inc.   
Ribera del Sena s/n   
Edificio APOT pl. 3(a)   
28042 Madrid   
Spain   
Facsimile: 34 91 202 0541   
Attn: Luis Arguello, General Counsel   
  
  
-46-   
  
  
with a copy to (which shall not constitute notice to the   
Purchaser):   
  
White & Case LLP   
200 South Biscayne Boulevard   
Suite 4900   
Miami, Florida 33131   
Facsimile: (305) 358-5744   
Attn: Jeffrey M. Oshinsky, Esq.   
  
or to such other Person or address as the Purchaser shall furnish by   
notice to the Seller in writing.   
  
If to the Escrow Agent:   
  
Farmville Trust Company   
520 Madison Avenue   
New York, New York 10022   
Facsimile: (212) 425-0513   
Attn: James D. Nesci   
  
All such notices, requests and other communications will (a) if delivered   
personally to the address as provided in this Section 13.4, be deemed given upon   
delivery, (b) if delivered by facsimile transmission to the facsimile number as   
provided for in this Section 13.4, be deemed given upon facsimile confirmation,   
and (c) if delivered by overnight courier to the address as provided in this   
Section 13.4, be deemed given on the earlier of the first business day following   
the date sent by such overnight courier or upon receipt (in each case regardless   
of whether such notice, request or other communication is received by any other   
Person to whom a copy of such notice is to be delivered pursuant to this Section   
13.4). Any party from time to time may change its address, facsimile number or   
other information for the purpose of notices to that party by giving notice   
specifying such change to the other party hereto.   
  
13.5 ASSIGNMENT. This Agreement and all of the provisions hereof shall be   
binding upon and inure to the benefit of the parties hereto and their respective   
successors and permitted assigns, but neither this Agreement nor any of the   
rights, interests or obligations hereunder shall be assigned by any of the   
parties hereto without the prior written consent of the other parties, except   
that the Purchaser may, without the prior approval of the Seller, assign its   
rights, interests and obligations hereunder to any Affiliate, and may grant   
Liens in respect of its rights and interests hereunder to its lenders (and any   
agent for the lenders), and the parties hereto consent to any exercise by such   
lenders (and such agent) of their rights and remedies with respect to such   
collateral. In the event of any such assignment, the Purchaser agrees that it   
shall remain bound by its obligations herein.   
  
13.6 GOVERNING LAW, SUBMISSION TO JURISDICTION. Except as and to the   
extent required to consummate the transactions contemplated by this Agreement   
under Delaware law, this Agreement, any ancillary agreements and any other   
closing documents shall be governed by and construed in accordance with the laws   
of the State of Florida as applied to Contracts entered into by Florida   
residents and performed entirely in Florida, without giving effect to its   
principles or rules regarding conflicts of laws, other than such principles   
directing application of the laws of   
Florida. Each party hereto irrevocably agrees that any legal action or   
proceeding with respect to this Agreement or for recognition and enforcement of   
any judgment in respect hereof brought by another party hereto or its successors   
or assigns may be brought and determined by either a state court or federal   
court sitting in the Southern District of Florida and each party hereto hereby   
irrevocably submits with regard to any such action or proceeding for itself and   
in respect to its property, generally and unconditionally, to the nonexclusive   
jurisdiction of the aforesaid courts. Each party hereto hereby irrevocably   
waives, and agrees not to assert, by way of motion, as a defense, counterclaim   
or otherwise, in any action or proceeding with respect to this Agreement, (a)   
any Claim that it is not personally subject to the jurisdiction of the   
above-named courts for any reason other than the failure to serve process in   
accordance with this Section 13.6, (b) that it or its property is exempt or   
immune from jurisdiction of any such court or from any legal process commenced   
in such courts (whether through service of notice, attachment prior to judgment,   
attachment in aid of execution of judgment, execution of judgment or otherwise),   
and (c) to the fullest extent permitted by applicable law, that (i) the suit,   
action or proceeding in any such court is brought in an inconvenient forum, (ii)   
the venue of such suit, action or proceeding is improper and (iii) this   
Agreement, or the subject matter hereof, may not be enforced in or by such   
courts.   
  
13.7 COUNTERPARTS. This Agreement may be executed in two or more   
counterparts (including by means of telecopied signature pages), each of which   
shall be deemed an original, but all of which together shall constitute one and   
the same instrument. Counterpart signatures need not be on the same page and   
shall be deemed effective upon receipt.   
  
13.8 HEADINGS. The article and section headings contained in this   
Agreement are for reference purposes only and shall not affect in any way the   
meaning or interpretation of this Agreement.   
  
13.9 ENTIRE AGREEMENT. This Agreement, including the schedules and   
exhibits hereto and the contracts, documents, certificates and instruments   
referred to herein, embodies the entire agreement and understanding of the   
parties hereto in respect of the transactions contemplated by this Agreement and   
supersedes all prior contracts, representations, warranties, promises,   
covenants, arrangements, communications and understandings, oral or written,   
express or implied, between the parties with respect to such transactions. There   
are no contracts, representations, warranties, promises, covenants, arrangements   
or understandings between the parties with respect to the transactions   
contemplated hereby, other than those expressly set forth or referred to herein.   
  
13.10 INJUNCTIVE RELIEF. The parties hereto agree that in the event of a   
breach of any provision of this Agreement or a failure by a party to perform in   
accordance with the specific terms herein, the aggrieved party or parties may be   
damaged irreparably and without an adequate remedy at law. The parties therefore   
agree that in the event of a breach of any provision of this Agreement, the   
aggrieved party or parties may elect to institute and prosecute proceedings in   
any court of competent jurisdiction to enforce specific performance or to enjoin   
the continuing breach of such provision without the requirement of posting a   
bond, as well as to obtain damages for breach of this Agreement. By seeking or   
obtaining any such relief, the aggrieved party shall not be precluded from   
seeking or obtaining any other relief to which it may be entitled.   
  
13.11 DELAYS OR OMISSIONS. No delay or omission to exercise any right,   
power or remedy accruing to any party hereto, upon any breach or default of any   
other party under this Agreement, shall impair any such right, power or remedy

of such party nor shall it be construed to be a waiver of any such breach or

default, or an acquiescence therein, or of or in any similar breach or default

thereafter occurring; nor shall any waiver of any single breach or default be

deemed a waiver of any other breach or default theretofore or thereafter

occurring. Any waiver, permit, consent or approval of any kind or character

on the part of any party hereto of any breach or default under this Agreement,

or any waiver on the part of any party of any provisions or conditions of this

Agreement must be made in writing   
and shall be effective only to the extent specifically set forth in such   
writing. All remedies, either under this Agreement or by law or otherwise   
afforded to any party, shall be cumulative and not alternative.   
  
13.12 SEVERABILITY. Wherever possible, each provision of this Agreement   
shall be interpreted in such manner as to be effective and valid under   
applicable Regulations, but if any provision of this Agreement or the   
application of any such provision to any Person or circumstance shall be held to   
be prohibited by, illegal or unenforceable under applicable law in any respect   
by a court of competent jurisdiction, such provision shall be ineffective only   
to the extent of such prohibition or illegality or unenforceability, without   
invalidating the remainder of such provision or the remaining provisions of this   
Agreement.   
  
13.13 EXPENSES. Each of the parties shall bear its own expenses, including   
without limitation, brokerage or investment banking, accounting and legal fees   
and expenses, with respect to this Agreement and the transactions contemplated   
hereby. If any legal action or other proceeding relating to this Agreement, the   
agreements contemplated hereby, the transactions contemplated hereby or thereby   
or the enforcement of any provision of this Agreement or the agreements   
contemplated hereby is brought against any party, the prevailing party in such   
action or proceeding shall be entitled to recover all reasonable expenses   
relating thereto (including reasonable attorney's fees and expenses) from the   
party against which such action or proceeding is brought in addition to any   
other relief to which such prevailing party may be entitled.   
  
13.14 NO THIRD PARTY BENEFICIARIES. This Agreement is for the sole benefit   
of the parties and their permitted successors and assigns and nothing herein   
express or implied shall be construed to give any person, other than the parties   
of such permitted successors and assigns, any legal or equitable rights   
hereunder.   
  
13.15 SCHEDULES. No exceptions to any representations or warranties   
disclosed on one schedule shall constitute an exception to any other   
representation or warranties made in this Agreement unless the substance of such   
exception is disclosed as provided herein on each such applicable schedule or a   
specific cross reference to a disclosure on another schedule is made. All   
schedules and exhibits attached hereto or referred to herein are hereby   
incorporated in and made a part of this Agreement as if set forth in full   
herein.   
  
13.16 NO STRICT CONSTRUCTION. The parties have participated jointly in the   
negotiation and drafting of this Agreement. In the event an ambiguity or   
question of intent or interpretation arises, this Agreement shall be construed   
as if drafted jointly by the parties, and no presumption or burden of proof   
shall arise favoring or disfavoring any party by virtue of the authorship of any   
of the provisions of this Agreement.   
  
13.17 CONSTRUCTION. Unless the context of this Agreement otherwise   
requires, (i) words of any gender include each other gender and the neuter, (ii)   
words using the singular or plural number also include the plural or singular number, respectively, (iii) the terms "hereof," "herein," "hereby" and derivative or similar

words refer to this entire Agreement as a whole and not to any particular Article,

Section or other subdivision, (iv) the terms "Article" or "Section" or other subdivision refer to   
the specified Article, Section or other subdivision of the body of this   
Agreement, (v) the phrases "ordinary course of business" and "ordinary course of   
business consistent with past practice" refer to the Multiple Visions and practice   
of the Seller and the Multiple Visions, (vi) the words "include," "includes" and   
"including" shall be deemed to be followed by the phrase "without limitation,"   
and (vii) when a reference is made in this Agreement to exhibits, such reference   
shall be to an exhibit to this Agreement unless otherwise indicated. All   
accounting terms used herein and not expressly defined herein shall have the   
meanings given to them under GAAP. When used herein, the terms "party" or   
"parties" refer to the Seller, on the one hand, and the Purchaser, on the other,   
and the terms "third party" or "third parties" refers to Persons other than the   
Seller or the Purchaser.   
  
13.18 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO KNOWINGLY,   
VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT OR ANY SCHEDULE OR EXHIBIT HERETO, OR ANY COURSE OF CONDUCT, COURSE OF DEALING OR STATEMENTS (WHETHER VERBAL OR WRITTEN) RELATING TO THE FOREGOING. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES HERETO   
TO ENTER INTO THIS AGREEMENT.   
  
  
IN WITNESS WHEREOF, the parties hereto have made and entered into this   
Amended and Restated Asset Purchase Agreement the date first hereinabove set   
forth.   
  
MADRID VIDEO S.A.   
  
  
  
  
  
By:   
----------------------------------------   
Antonio Anguita Ruiz   
Chief Executive Officer   
  
  
SKYELIMITSKYELIMITSKYELIMIT, INC.   
  
  
By:   
----------------------------------------   
Jose Manuel Tost   
President   
  
---------PAGE BREAK-------  
  
TABLE OF CONTENTS   
  
ARTICLE I PURCHASE OF ASSETS..................................................2   
1.1 Purchase and Sale of Acquired Assets................................2   
1.2 Assumed Obligations.................................................2   
1.3 Method of Conveyance................................................3   
1.4 Purchase Price......................................................3   
1.5 Escrow Agreement....................................................3   
1.6 Allocation of Purchase Price........................................3   
  
ARTICLE II REPRESENTATIONS AND WARRANTIES OF THE SELLER........................4   
2.1 Corporate Organization, Etc.........................................4   
2.2 Authorization, Etc..................................................4   
2.3 No Violation........................................................4   
2.4 Financial Statements................................................5   
2.5 Employees...........................................................6   
2.6 Absence of Certain Changes..........................................6   
2.7 Contracts...........................................................6   
2.8 Government Contracts................................................7   
2.9 Title and Related Matters...........................................7   
2.10 Litigation..........................................................8   
2.11 Tax Returns.........................................................8   
2.12 Compliance with Law and Certifications..............................9   
2.13 Employee Benefit Plans.............................................10   
2.14 Intellectual Property..............................................10   
2.15 Customer Warranties................................................14   
2.16 Environmental Matters..............................................14   
2.17 Capital Expenditures and Investments...............................15   
2.18 Dealings with Affiliates...........................................15   
2.19 Insurance..........................................................15   
2.20 Brokerage..........................................................15   
2.21 Customers and Suppliers............................................15   
2.22 Permits............................................................15   
2.23 Improper and Other Payments........................................15   
2.24 Disclosure.........................................................16   
  
ARTICLE III REPRESENTATIONS AND WARRANTIES OF THE PURCHASER....................16   
3.1 Corporate Organization, Etc........................................16   
3.2 Authorization, Etc.................................................16   
3.3 No Violation.......................................................16   
3.4 Brokerage..........................................................17   
  
ARTICLE IV COVENANTS OF THE SELLER............................................17   
4.1 Operation of Multiple Visions........................................17

4.2 Full Access and Disclosure.........................................18   
4.3 Non-Competition; Non-Solicitation..................................18   
4.4 Confidentiality....................................................20   
4.5 Fulfillment of Conditions Precedent................................20   
4.6 Exclusivity........................................................21   
4.7 Deliveries After Closing...........................................21   
4.8 Intellectual Property Protection...................................21   
4.9 Electronic Data Protection.........................................22   
4.10 Intellectual Property..............................................22   
4.11 Books and Records..................................................22   
4.12 COBRA..............................................................23   
4.13 Employee Benefits Plans............................................23   
4.14 Press Release......................................................23   
4.15 Charter Amendments.................................................23   
  
ARTICLE V COVENANTS OF THE PURCHASER.........................................24   
5.1 Confidentiality....................................................24   
5.2 Non-Solicitation...................................................24   
5.3 Business Employees.................................................25   
5.4 Licensing Agreement................................................25   
  
ARTICLE VI OTHER AGREEMENTS...................................................25   
6.1 Further Assurances.................................................25   
6.2 Public Announcements...............................................25   
6.3 Stockholder Actions................................................26   
6.4 Covenants..........................................................26   
6.5 Insurance..........................................................27   
6.6 Commercial Agreements..............................................27   
6.7 Limitation of Use..................................................27   
6.8 Personal Data and Information......................................28   
6.9 Tax Good Standing Certificate......................................28   
  
ARTICLE VII TAX MATTERS........................................................28   
7.1 Taxes..............................................................28   
7.2 Payment of Taxes...................................................28   
  
ARTICLE VIII CONDITIONS TO THE OBLIGATIONS OF THE PURCHASER.....................29   
8.1 Representations and Warranties; Performance........................29   
8.2 Consents and Approvals.............................................29   
8.3 Opinion of the Seller's Counsels...................................29   
8.4 No Material Adverse Change.........................................30   
8.5 No Proceeding or Litigation........................................30   
8.6 Condition of Assets................................................30   
8.7 Accounting Matters.................................................30   
8.8 Certificates of Good Standing......................................30   
8.9 Secretary's Certificate............................................30   
8.10 Escrow Agreement...................................................30

8.11 Bill of Sale.......................................................30   
8.12 Assignment and Assumption Agreement................................31   
8.13 Intellectual Property Assignment Agreement.........................31   
8.14 Transition Licensing Agreement.....................................31   
8.15 SPANROCK Closing...................................................31   
8.16 Other Documents....................................................31   
  
ARTICLE IX CONDITIONS TO THE OBLIGATIONS OF THE SELLER........................31   
9.1 Representations and Warranties; Performance........................31   
9.2 Consents and Approvals.............................................31   
9.3 No Proceeding or Litigation........................................31   
9.4 Secretary's Certificate............................................32   
9.5 Escrow Agreement...................................................32   
9.6 Transition Licensing Agreement.....................................32   
9.7 Assignment and Assumption Agreement................................32   
9.8 Opinions of Purchaser's Counsel....................................32   
9.9 IP Licensing Agreement.............................................32   
9.10 SPANROCK Closing...................................................32   
  
ARTICLE X CLOSING............................................................32   
10.1 Closing............................................................32   
10.2 Intervening Litigation.............................................32   
  
ARTICLE XI TERMINATION AND ABANDONMENT........................................33   
11.1 Methods of Termination.............................................33   
11.2 Procedure Upon Termination.........................................33   
  
ARTICLE XII INDEMNIFICATION....................................................33   
12.1 Survival...........................................................33   
12.2 Indemnification by the Seller......................................34   
12.3 Indemnification by the Purchaser...................................35   
12.4 Third Party Claims.................................................36   
12.5 Security for the Indemnification Obligation........................37   
12.6 Limitations........................................................38   
  
ARTICLE XIII MISCELLANEOUS PROVISIONS...........................................38   
13.1 Amendment and Modification.........................................38   
13.2 Waiver of Compliance; Consents.....................................38   
13.3 Certain Definitions................................................39   
13.4 Notices............................................................46   
13.5 Assignment.........................................................47   
13.6 Governing Law, Submission to Jurisdiction..........................47   
13.7 Counterparts.......................................................48   
13.8 Headings...........................................................48   
13.9 Entire Agreement...................................................48   
13.10 Injunctive Relief..................................................48   
13.11 Delays or Omissions................................................48   
13.12 Severability.......................................................49   
13.13 Expenses...........................................................49   
13.14 No Third Party Beneficiaries.......................................49   
13.15 Schedules..........................................................49   
13.16 No Strict Construction.............................................49   
13.17 Construction.......................................................49   
13.18 WAIVER OF JURY TRIAL...............................................50   
  
  
  
  
  
SCHEDULES AND EXHIBITS   
  
  
  
SCHEDULE RESPONSIBILITY   
-------- ("SELLER" OR "PURCHASER")   
-------------------------   
  
1.1 Acquired Assets....................................................................P   
1.2 Assumed Obligations................................................................P   
1.6 Allocation of Purchase Price.......................................................P/S   
2.1(a) Foreign Qualifications of the Seller...............................................S   
2.1(b) Certificate of Incorporation and Bylaws of the Seller..............................S   
2.2 Seller Board of Director's Resolution..............................................S   
2.3 No Violation.......................................................................S   
2.4(a) Financial Statements...............................................................S   
2.4(b) Indebtedness.......................................................................S   
2.5 Employee Matters...................................................................S   
2.6(a) Absence of Certain Change..........................................................S   
2.6(d) Contracts Not in the Ordinary Course of Business...................................S   
2.7(a) Contracts..........................................................................S   
2.10 Litigation.........................................................................S   
2.11 Tax Returns........................................................................S   
2.13 ERISA Matters List of Plans........................................................S   
2.14(a) Seller Registered Intellectual Property............................................S   
2.14(b) Licensed Intellectual Property.....................................................S   
2.14(e) Form of Seller's Confidentiality Agreement.........................................S   
2.14(g) Third Party Licenses...............................................................S   
2.14(h) IP Litigation......................................................................S   
2.14(i) Maintenance........................................................................S   
2.14(k) Infringement.......................................................................S   
2.14(n) Source Codes.......................................................................S   
2.14(o) Site Operations....................................................................S   
2.14(q) Content Providers..................................................................S   
2.22 Permits............................................................................S   
3.1 Deed of Incorporation and Bylaws of the Purchaser..................................P   
3.4 Brokerage..........................................................................P   
4.15 Charter Amendments.................................................................S   
5.3 Business Employees.................................................................P   
6.4 Critical Vendors...................................................................P   
  
  
  
  
  
EXHIBIT RESPONSIBILITY   
------- --------------   
  
1.2 Form of Assignment and Assumption Agreement.........................P   
1.3(a) Form of Bill of Sale................................................P   
1.3(b) Form of Intellectual Property Assignment Agreement..................P   
5.4 Form of IP Licensing Agreement......................................S   
8.1 Form of Officer's Certificate - Seller..............................P   
8.3(a) Form of Norton & Wells Opinion...............................P   
8.3(b) Form of Frampton & Hill Opinion.............................S/P   
8.4 Form of Officer's Certificate - No Material Adverse Change..........P   
8.7 Form of Accounting Certificate......................................P   
8.9 Form of Secretary's Certificate - Seller............................P   
8.10 Form of Escrow Agreement............................................P   
8.14 Transition Licensing Agreement......................................P   
9.1 Form of Officer's Certificate - Purchaser...........................P   
9.4 Form of Secretary's Certificate - Purchaser.........................P   
9.8(a) Form of White & Case Opinion........................................P   
9.8(b) Form of Purchaser's General Counsel Opinion.........................P

**APA#35**

**MASTER ASSET PURCHASE AGREEMENT**

This MASTER ASSET PURCHASE AGREEMENT (“Agreement”)

made this 7th day of September, 2004

between

Torpranten, Inc., a Delaware corporation (“TOR”),

on the one hand,

and

LUNALuna Srl, an Italian corporation (“LUNA”),

on the other hand.

WITNESSETH:

WHEREAS, LUNA has developed certain technology, the Licensed Product (as hereinafter defined) for which they are in the process of converting into a device which may be used to treat, among other things, various diseases;

WHEREAS, LUNA has not yet delivered a working, testable prototype of the Licensed Product;

WHEREAS, LUNA desires to grant a license to TOR, and TOR desires to obtain such a license, with respect to certain technology developed by LUNA and pertaining to the Licensed Product (the “Product”), as more fully described hereinbelow;

WHEREAS, LUNA desires to sell, assign and transfer to TOR certain assets of LUNA pertaining to such technology and the Licensed Product, and TOR desires to purchase and acquire from LUNA, such assets as hereinafter described, in each case upon the terms and conditions hereinafter set forth;

WHEREAS, TOR has agreed to pay certain sums to LUNA for the LUNA Assets as set forth in this Agreement, some of such amounts are to be used by LUNA to complete the prototypes of the Licensed Product for delivery to TOR; and

WHEREAS, LUNA undertakes to complete the development of the Licensed Product in such form and in such manner as to be able to deliver to TOR the Licensed Product for commercial use as quickly as possible.

NOW, THEREFORE, in consideration of the premises and covenants herein contained and intending to be legally bound hereby, the parties hereto agree as follows:

1. Certain Definitions. The definitions set forth in the Recitals are hereby incorporated into this Agreement and, in addition, the following terms have the following meanings (covenants contained in this Section shall be considered agreed to by the parties to the same extent as if incorporated into the covenants of this Agreement):

“Acquired Assets” shall have the meaning set forth in Section 2.1.

“Amendment to Supply Agreement” means the date on which TOR enters into an amendment of a supply agreement enjoyed by LUNA, as more specifically described in confidential Schedule 1.1(b).

“Assumed Contracts” shall have the meaning set forth in Section 2.1(b).

“Assumed Obligations” shall have the meaning set forth in Section 3.2.1.

“cCSAus Approval” means the date on which Canadian Standard Association issues its approval of the Licensed Product with US deviations.

“CE Mark Approval” means a mark issued by a Notified Body and indicating that the Licensed Product satisfies all directives of the European Union applicable to medical applications in TOR’s Field of Use.

“Closing” has the meaning set forth in Section 4.1.

“Closing Date” has the meaning set forth in Section 4.1.

“Closing Payment” has the meaning set forth in Section 3.1.1(a).

“Commission” has the meaning set forth in Section 5.21(i).

“Contemplated Transaction” means each transaction contemplated by this Agreement or any Related Document.

“Completion” means the date on which all of the following are completed: (1) all technology relating to the Licensed Product (including vendor agreements, manufacturing processing instructions and related files, and quality system documentation) is complete and transferred in readable electronic format to TOR; and (2) LUNA has delivered to TOR pre-production Prototypes of the Licensed Product together with related documentation.

“Contracts” means any agreement, contract, consensual obligation, promise or undertaking (whether written or oral and whether express or implied), whether or not legally binding.

“Effective Time” means 12:01 a.m. (Eastern Time) on the day after the Closing Date.

“Environment” means soil, land surface or subsurface strata, surface waters (including navigable waters and ocean waters), groundwaters, drinking water supply, stream sediments, ambient air (including indoor air), plant and animal life and any other environmental medium or natural resource.

“Environmental Law” means any Legal Requirement that requires or relates to:

(a) advising appropriate authorities, employees or the public of intended or actual Releases of pollutants or hazardous substances or materials, violations of discharge limits or other prohibitions and the commencement of activities, such as resource extraction or construction, that could have significant impact on the Environment;

(b) preventing or reducing to acceptable levels the Release of pollutants or hazardous substances or materials into the Environment;

(c) reducing the quantities, preventing the Release or minimizing the hazardous characteristics of wastes that are generated;

(d) assuring that products are designed, formulated, packaged and used so that they do not present unreasonable risks to human health or the Environment when used or disposed of;

(e) protecting resources, species or ecological amenities;

(f) reducing to acceptable levels the risks inherent in the transportation of hazardous substances, pollutants, oil or other potentially harmful substances;

(g) cleaning up pollutants that have been Released, preventing the Threat of Release or paying the costs of such clean up or prevention; or

(h) making responsible parties pay private parties, or groups of them, for damages done to their health or the Environment or permitting self-appointed representatives of the public interest to recover for injuries done to public assets.

“Escrow Agreement” shall have the meaning set forth in Section 3.1.2.

“Equipment” shall have the meaning set forth in Section 2.1(a).

“Excluded Assets” shall have the meaning set forth in Section 2.2.

“FDA” means the United States Food and Drug Administration.

“FDA Clearance” means the later of (A) the date on which LUNA obtains CE Mark Approval, (B) the date on which cCSAus Approval occurs; or (C) date on which TOR has obtained 510(k) clearance from the FDA for the Licensed Product. TOR shall advise LUNA in writing of 510(k) clearance promptly following the date on which TOR receives written notice from the FDA of such 510(k) clearance.

“GAAP” means U.S. generally accepted accounting principles, consistently applied.

“Governing Documents” means with respect to any particular entity,

(a) if a corporation, the articles or certificate of incorporation and the bylaws;

(b) if a general partnership, the partnership agreement and any statement of partnership; (c) if a limited partnership, the limited partnership agreement and the certificate of limited partnership;

(d) if a limited liability company, the articles of organization and operating agreement; (e) if another type of Person, any other charter or similar document adopted or filed in connection with the creation, formation or organization of the Person;

(f) all equityholders’ agreements, voting agreements, voting trust agreements, joint venture agreements, registration rights agreements or other agreements or documents relating to the organization, management or operation of any Person or relating to the rights, duties and obligations of the equityholders of any Person; and

(g) any amendment or supplement to any of the foregoing.

“Governmental Body” means any:

(a) nation, state, county, city, town, borough, village, district or other jurisdiction;

(b) federal, state, local, municipal, foreign or other government;

(c) governmental or quasi-governmental authority of any nature (including any agency, branch, department, board, commission, court, tribunal or other entity exercising governmental or quasi-governmental powers);

(d) multinational organization or body;

(e) body exercising, or entitled or purporting to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; or

(f) official of any of the foregoing.

“International Product Launch” means the sale by TOR of not less than the number units, set forth in confidential Schedule 1.1(b), of Licensed Products bearing the CE Mark to purchasers located outside of the United States and for use outside of the United States.

“Legal Requirement” means any federal, state, local, municipal, foreign, international, multinational or other constitution, law, ordinance, principle of common law, code, regulation, statute or treaty.

“Licensed Product” means the product using technology, know-how, trade secrets and other intellectual property developed or obtained by LUNA, as more specifically described on confidential Schedule 1.1(a) hereto, including all modifications, changes, adaptations, and improvements thereto.

“Lien” means any lien, pledge, mortgage, security interest, claim, lease, charge, option, right of first refusal, special assessment, unsatisfied pre-emptive right, easement, servitude, transfer restriction under any shareholder or similar agreement, encumbrance or any other restriction or limitation whatsoever.

“Liability” means with respect to any Person, any liability or obligation of such Person of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise, and whether or not the same is required to be accrued on the financial statements of such Person.

“Milestones” means each of the events identified in Section 3.1.1.

“Permits” means any license, authorization, permit, certificate, order or approval of, and any required registration.

“Person” means an individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a Governmental Body.

“TOR’s Field of Use” means all applications and uses of the Licensed Products and Product, as now or hereinafter comprised, including without limitation, medical and veterinary applications, other than LUNA’s Field of Use.

“Power Supply Agreements” means the date on which TOR enters into agreements with LUNA’s vendors of components of a power supply, as more specifically described in confidential Schedule 1.1(b).

“Purchase Price” shall have the meaning set forth in Section 3.

“Prototype” means a pre-production prototype of the Licensed Product which incorporates the design changes described in Section 9.3 and any other design changes required by LUNA’s Notified Body.

“Registration Period” shall have the meaning set forth in Section 3.1.2(c).

“Related Document(s)” means each agreement, instrument, schedule and other document (other than this Agreement) which is executed and delivered at Closing or which is otherwise executed and delivered in connection with this Agreement.

“Release” means any release, spill, emission, leaking, pumping, pouring, dumping, emptying, injection, deposit, disposal, discharge, dispersal, leaching or migration on or into the Environment or into or out of any property.

“SEC Documents” has the meaning set forth in Section 6.3.

“Securities Act” has the meaning set forth in Section 5.21(i).

“Shares” has the meaning set forth in Section 3.1.2.

“LUNA’s Field of Use” means applications and uses of the Licensed Products and Product Technology in food processing, fluid processing and water sterilization.

“LUNA’s Notified Body” shall be the entity disclosed in confidential Schedule 1.1(b).

“Threat of Release” means a reasonable likelihood of a Release that may require action in order to prevent or mitigate damage to the Environment that may result from such Release.

“United States” means the United States of America, its territories and possessions, any State of the United States and the District of Columbia.

“U.S. Product Launch” means the sale by TOR of not less than the number of units, set forth on confidential Schedule 1.1(b), of Licensed Products, cleared by the FDA, to purchasers located within the United States for use in the United States.

**2. Purchase and Sale.**

2.1 Transfer of Purchased Assets. On the terms, and subject to the conditions set forth in this Agreement, on the Closing Date, LUNA shall sell, convey, assign and transfer to TOR and TOR shall acquire from LUNA, effective as of the Effective Time, for the Purchase Price, free and clear of all Liens, the following specified tangible and intangible assets (collectively, the “Acquired Assets”):

(a) all owned or leased fixtures, equipment, machinery, parts, tools, dies, jigs, patterns, testing fixtures, molds, and all other tangible personal property (other than the Inventory) used or necessary for use, or utilized, in connection with the manufacture of the Licensed Product, including, those items of tangible personal property listed on confidential Schedule 2.1(a) (collectively, the “Equipment”);

(b) all Contracts of LUNA relating to the sourcing of component parts for the Licensed Product or to technical or supply arrangements relating to the Licensed Product with LUNA’s customers, including those Contracts listed on confidential Schedule 2.1(b) (the “Assumed Contracts”);

(c) all other tangible and intangible assets of LUNA necessary or appropriate for the manufacture and sale of Licensed Product, including two (2) pre-manufacturing Prototypes of the Licensed Product.

Notwithstanding the foregoing, the transfer of the Acquired Assets pursuant to this Agreement shall not include the assumption of any Liability related to the Acquired Assets unless TOR expressly assumes that Liability pursuant to Section 3.2.

2.2 Excluded Assets. Notwithstanding anything to the contrary contained in Section 2.1 or elsewhere in this Agreement, the following assets of LUNA (collectively, the “Excluded Assets”) are not part of the sale and purchase contemplated hereunder, are excluded from the Acquired Assets and shall remain the property of LUNA after the Closing: an inventory of component parts of the Licensed Product sufficient to manufacture not more than ten (10) units of Licensed Product. Any assets of LUNA not specifically defined as “Acquired Assets” in Section 2.1 shall not be acquired by TOR. If LUNA opts to build such components into product similar to Licensed Product for sale or use only in LUNA’s Field of Use, LUNA shall build the units of product itself or through subcontractors who have agreed to keep the technology related to the Licensed Product confidential and shall not affix a trademark of TOR on such units. On the other hand, if and only if LUNA desires to sell or use any such units in TOR’s Field of Use, LUNA must contract for TOR to build such units for the fee set forth in confidential Schedule 2.2.

3. Purchase Price. As consideration for the purchase and sale of the Acquired Assets and entering into the License, TOR shall make the following payments and shall assume the following obligations and liabilities of LUNA (such payments and the assumption of such obligations and liabilities are referred to collectively as the “Purchase Price”):

3.1 Consideration.

3.1.1 Subject to other provisions of this Agreement bearing upon payment of consideration, TOR shall pay to LUNA the aggregate sum of $1,400,000, at the times, and subject to the satisfaction of each applicable Milestone, as set forth below:

(a) The sum of $200,000.00 at Closing (the “Closing Payment”).

(b) The sum of $200,000.00 within 10 days following TOR’s receipt of written notice from LUNA of Completion.

(c) The sum of $150,000.00 within 10 days following the execution and delivery to TOR of the Amendment to Supply Agreement.

(d) The sum of $50,000.00 within 10 days following the execution and delivery to TOR of the Power Supply Agreements.

(e) The sum of $100,000.00 within 10 days following TOR’s receipt of written notice from LUNA that LUNA has obtained CE Mark Approval (and otherwise fulfilling the covenants of Section 9.4), but no earlier than 10 days following Completion.

(f) The sum of $100,000.00 within 10 days following TOR’s receipt of written notice from LUNA that LUNA has obtained cCSAus Approval (and otherwise fulfilling the covenants of Section 9.4), but no earlier than 10 days following Completion.

(g) The sum of $100,000.00 within 10 days following LUNA’s receipt of written notice from TOR that FDA Clearance has been obtained and at the latest on January 15, 2005.

(h) The sum of $200,000.00 within 10 days following LUNA’s receipt of written notice from TOR of the occurrence of International Product Launch and at the latest on the date set forth on confidential Schedule 3.1.1. TOR shall promptly inform LUNA of the attainment of this Milestone.

(i) The sum of $200,000.00 within 10 days following LUNA’s receipt of written notice from TOR of the occurrence of U.S. Product Launch and at the latest on the date set forth on confidential Schedule 3.1.1. TOR shall promptly inform LUNA of the attainment of this Milestone.

(j) The sum of $100,000 to be paid within 10 days following TOR’s receipt of written notice from LUNA of the issuance of patent claims in both the US and Europe covering the Licensed Product and Product, where consistent with Section 9.6 hereof such claims must have issued on or before the date set forth on confidential Schedule 3.1.1.

3.1.2 Form of Payment; Escrow.

(a) Payment of the consideration described in Section 3.1.1 may be either in U.S. funds or in TOR common stock (“Shares”), at TOR’s sole and absolute discretion. If TOR elects to pay with its common stock, it shall notify LUNA and the Escrow Agent on or before TOR’s notification of concurrence in the attainment of a Milestone, except as provided in the next sentence. In the case of the deemed concurrence of the attainment of a Milestone, TOR shall notify LUNA of TOR’s election prior to the applicable payment of the consideration attributable to the attainment of that Milestone. Upon payment of the Closing Payment and payment of that portion of the Purchase Price attributable to the Milestones under Sections 3.1.1(b), 3.1.1(c), 3.1.1(d), 3.1.1(e), and 3.1.1(f) (whether in cash or Shares) in accordance with Section 3.1.2(e) and Section 3.1.2(f), respectively, TOR and LUNA will immediately send a joint notice to the Escrow Agent. Unless the parties mutually agree otherwise, each share of common stock shall be valued at the mean of the Nasdaq closing prices for TOR common stock on the 10 trading days prior to the Closing Date or prior to TOR’s concurrence or deemed concurrence of the attainment of the applicable Milestone. Such election to pay with common stock shall not adversely affect and compromise LUNA’S right of payment of the entire consideration described in Section 3.1.1. Common stock held for payment shall be held by a third-party escrow agent (the “Escrow Agent”) and administered according to the terms set forth in the Escrow Agreement (the “Escrow Agreement”) attached as Exhibit A. If TOR desires to issue Shares as permitted herein, LUNA shall, in each instance, reaffirm in writing to TOR each of its representations and warranties contained in Section 5.21. TOR shall be responsible for the reasonable, pre-agreed costs of the Escrow Agent.

(b) At any time that the Shares remain held by the Escrow Agent or have not been released for cancellation on the books and records of TOR, such Shares (the “Escrowed Shares”) shall be deemed not to be issued and outstanding shares of the Common Stock on the books and records of TOR (the “Outstanding Shares”), and with respect to any of the Escrowed Shares, no person shall have any rights as a stockholder, including without limitation, the right to vote or direct the vote of such Escrowed Shares, or to any stock or other dividends, distributions or rights shall be granted, issued, declared or paid on any Outstanding Shares, or any securities or fractions thereof shall be issued pursuant to any stock split involving any of the shares of the Outstanding Shares, or any distribution of other securities shall be made with respect to the Outstanding Shares pursuant to the recapitalization or reclassification of the Outstanding Shares or the reorganization of any issuer of such other securities, at any time that such Escrowed Shares remain held by the Escrow Agent. At Closing, TOR may deliver to the Escrow Agent Shares, containing legends required under this Agreement, Related Agreements and applicable Legal Requirements, which it may elect to use for payments due upon attainment of Milestones, if at all, and TOR may add additional Shares to such Escrowed Shares at any time with further Shares delivered to the Escrow Agent. Shares added to the Escrowed Shares shall be deemed to be Escrowed Shares.

(c) If TOR elects to pay with its common stock at Closing, TOR shall deliver such Shares, containing legends required under this Agreement, Related Agreements and applicable Legal Requirements, directly to LUNA. TOR shall undertake to commence registration of Shares delivered at Closing promptly after Closing. TOR shall likewise commence registration of any other Shares, containing legends required under this Agreement, Related Agreements and applicable Legal Requirements, that it may have tendered to the Escrow Agent at Closing, as described in Section 3.1.2(b). TOR shall have 30 days in which to register such Shares, except that TOR shall have 90 days in the event that the Commission undertakes to review the registration statement filed by TOR (such 30 or 90 day period, as applicable, referred to as the “Registration Period”). If such Shares are registered with the Commission, then TOR shall promptly notify LUNA and the Escrow Agent. In the event that such Shares due or otherwise tendered at Closing shall not have been registered within the Registration Period, then LUNA shall give TOR formal notice of the such failure and demand cure of the same, whereupon TOR shall make such payment in cash within 10 days after the end of the Registration Period and LUNA and the Escrow Agent shall return the tendered Shares to TOR for cancellation. As to any Milestone other than those listed in Section 3.1.2(f), TOR shall have the longer of the Registration Period or 30 days after the submission of the applicable Milestone to register the applicable Shares, or, if applicable, to effect a post-effective amendment or supplemental amendment or prospectus to an applicable registration, and in the event that TOR does not deliver registered Shares within such time-frames, then LUNA shall give TOR formal notice of such failure and demand cure of the same, whereupon TOR shall make such payment in cash within 10 days after the end of such time-frames. In the event that LUNA’s right to sell Shares is contingent upon delivery of an appropriate prospectus to its buyer, TOR shall issue a blanket opinion to its transfer agent that it may issue, free of legend, Shares which LUNA shall have sold to its buyer, provided LUNA or LUNA’s broker represents that the appropriate prospectus has been so delivered and provided that the registration statement and its ancillary filings remain current and effective.

(d) Upon attainment of a Milestone set forth in Section 3.1(b) through 3.1(j), LUNA shall notify TOR and the Escrow Agent of the same. TOR shall have 10 days in which to notify the Escrow Agent whether it concurs that the Milestone has been attained, except in the case of the Milestone set forth in Section 3.1.1(b), as to which TOR shall have 15 days. If TOR does not concur, it shall notify LUNA and the Escrow Agent of the same and shall provide reasonably detailed information stating the grounds for which it does not concur. If TOR gives no answer to the Escrow Agent or to LUNA, it shall be deemed that TOR has concurred. Where such concurrence shall be deemed to have occurred, then the applicable Milestone shall be deemed to have been attained. LUNA shall be deemed to have acquired the right to a Milestone payment upon the earlier of TOR’s actual or deemed concurrence or a binding determination that TOR’s non-concurrence shall be reversed in favor of a determination that LUNA is entitled to the Milestone payment.

(e) If TOR elects to make any such payment with its Shares and such Shares shall not have been timely registered in accordance with Section 3.1.2(c), then unless TOR shall have timely made such payment in cash, TOR shall be deemed not to have made such payment and such failure shall constitute a default of this Agreement. In such a case, acting in accordance with Sections 12.5, LUNA shall have the right to terminate this Agreement and Related Agreements that have been delivered to TOR and to nullify such Related Agreements which have not been delivered to TOR but which are being held by the Escrow Agent. Furthermore, where the defaulted payment is the Closing Payment or Milestone Payments, demanded at Closing as described in Section 3.1.2(f) and accepted or deemed accepted by TOR within the time-frame set for each discrete Milestone, then in such a case, LUNA may seek to rescind, as of the Closing Date, this Agreement and Related Agreements that have been delivered to TOR and to nullify Related Agreements which have not been delivered to TOR but which are being held by the Escrow Agent.

(f) LUNA hereby notifies TOR that LUNA believes that the Milestones under Sections 3.1.1(b), 3.1.1(c), 3.1.1(d), 3.1.1(e) and 3.1.1(f) have been attained, and LUNA shall on the Closing Date convey to TOR the requisite proof that such Milestones have been attained. TOR shall within the prescribed time-frame for each Milestone either concur in or object to a Milestone. As to those Milestones in which TOR has concurred or which TOR is deemed to have concurred as to attainment, TOR shall pay for Milestones in the same manner and time-frame within which TOR shall make the Closing Payment. If TOR fails to pay for any such Milestone presented at Closing and accepted by TOR for payment, then as with a default in the Closing Payment and in accordance with Sections 3.1.2(c), 3.1.2(e) and 12.5, LUNA may seek to rescind as of the Closing Date this Agreement and Related Agreements that have been delivered to TOR and to nullify Related Agreements which have not been delivered to TOR but which are being held by the Escrow Agent.

(g) TOR may elect to pay a Milestone before the Milestone shall have been attained, in which case such Milestone shall be deemed paid upon attainment of that Milestone.

3.2 Assumption of Certain Obligations.

3.2.1 At the Closing, LUNA shall assign to TOR and TOR shall assume and agree to timely perform, pay and discharge, on and after the Effective Time, the following, and only the following, obligations of LUNA (all such assumed obligations being collectively referred to as the “Assumed Obligations”): all obligations devolving on TOR which accrue and arise pursuant to the Assumed Contracts on or after the Effective Time.

3.2.2 Except for those liabilities and obligations of LUNA expressly enumerated in Section 3.2.1 which TOR agrees to assume pursuant to the provisions of this Agreement, TOR shall not assume or otherwise be responsible or liable for any other liabilities or obligations of LUNA. LUNA shall remain liable for all of its liabilities and obligations which have not been expressly assumed by TOR pursuant to this Section.

3.3 Allocation of Purchase Price. Five (5) days prior to Closing, the parties will agree to an allocation of the Purchase Price among the Acquired Assets and the rights assigned to TOR under the License Agreement, which will be attached to this Agreement prior to Closing as Schedule 3.3. The parties hereto will adhere to such allocation for all purposes, including without limitation federal and state income tax purposes. LUNA and TOR agree to cooperate in preparing and filing IRS Form 8594 reflecting that allocation.

4. Closing.

4.1 Closing Date. The purchase and sale provided for in this Agreement (the “Closing”) will take place at a location agreed in writing by the parties, commencing at 10:00 a.m. (local time) on the date that is five (5) Business Days following the satisfaction or waiver of the conditions set forth in Sections 8.1 and 8.2, unless TOR and LUNA otherwise agree, and subject to Sections 3 and 12. The date on which the Closing occurs shall be deemed to be the “Closing Date.”

4.2 Deliveries of the Parties at Closing.

4.2.1 LUNA’S Deliveries. At the Closing, LUNA will, in addition to those deliveries identified under Section 8.1 deliver:

(a) all of the Equipment and other tangible acquired assets to TOR;

(b) this Master Asset Purchase Agreement executed by LUNA to TOR, with a copy to the Escrow Agent;

(c) an Assignment and Assumption Agreement, executed by LUNA, in substantially the form attached hereto as Exhibit B assigning to TOR all of LUNA’S respective right, title and interest in and to each of the Assumed Contracts (the “Assignment and Assumption Agreement”) to the Escrow Agent;

(d) a Bill of Sale in substantially the form attached hereto as Exhibit C, executed by LUNA, conveying in the aggregate all other property included in the Acquired Assets, to the Escrow Agent;

(e) such other deeds, bills of sale, assignments, certificates of title, documents and other instruments of transfer and conveyance, executed by LUNA, as may reasonably be requested by TOR, each in form and substance satisfactory to TOR and its legal counsel to the Escrow Agent;

(f) a License Agreement, and the Security Agreement described therein, executed by LUNA, in the form attached hereto as Exhibit D (the “License Agreement”) to the Escrow Agent;

(g) an amendment to those certain Distribution Agreements, dated December 11, 2000, between LUNA, and LUNA’s South African affiliate, and TOR in the form attached hereto as Exhibit E (the “Amendment to Distribution Agreement”), executed by LUNA, to the Escrow Agent;

(h) the Escrow Agreement, executed by LUNA, to Escrow Agent and TOR;

(i) a Registration Rights Agreement, executed by LUNA, executed by LUNA, in the form attached hereto as Exhibit F (the “Registration Rights Agreement”) to TOR;

(j) to TOR, a certificate executed by LUNA as to the accuracy of its representations and warranties as of the date of this Agreement and as of the Closing, and as to their compliance with and performance of their covenants and obligations to be performed or complied with at or before the Closing; and

(k) to TOR, a certificate of the Secretary of LUNA certifying, as complete and accurate as of the Closing, attached copies of the Governing Documents of LUNA, certifying and attaching all requisite resolutions or actions of LUNA’S board of directors approving the execution and delivery of this Agreement and the consummation of the Contemplated Transactions and certifying to the incumbency and signatures of the officers of LUNA executing this Agreement and any other document relating to the Contemplated Transactions.

(l) notice to TOR of such Milestones which LUNA asserts have been attained, and the proof and other documentation necessary to corroborate such assertions and which LUNA proffers in accordance with Section 3.1.2(f).

Until TOR shall have paid the Closing Payment and payments for Milestones identified in Section 3.1.2(f), TOR shall have the permission of LUNA to use the Product Technology described in the License Agreement to the extent that such use is necessary for TOR to fulfill its covenants found elsewhere in this Agreement, but in no case shall such permission be to TOR to sell any Licensed Product, as defined in the License Agreement; such permission may be revoked on thirty (30) days’ prior written notice by LUNA. When and as TOR shall have paid the Closing Payment and payments for Milestones identified in Section 3.1.2(f), the Escrow Agent shall immediately deliver to TOR the agreements described in Sections 4.2.1(c), (d), (e), (f) and (g), whereupon such agreements shall be deemed to have first entered into force and effect.

4.2.2. TOR’s Deliveries. At the Closing, TOR will, in addition to those deliveries required under Section 8.2, deliver:

(a) the Closing Payment to LUNA;

(b) this Master Asset Purchase Agreement, executed by TOR, to LUNA with a copy to the Escrow Agent;

(c) the Assignment and Assumption Agreement, executed by TOR, to the Escrow Agent;

(d) the License Agreement, and the Security Agreement described therein, executed by TOR, to the Escrow Agent;

(e) the Amendment to Distribution Agreement, executed by TOR, to the Escrow Agent;

(f) the Escrow Agreement, executed by TOR, to LUNA and Escrow Agent;

(g) the Registration Rights Agreement, executed by TOR, to LUNA;

(h) the stand-by letter of credit described in Section 7.2.2 to LUNA;

(i) to LUNA, a certificate executed by TOR as to the accuracy of its representations and warranties as of the date of this Agreement and as of the Closing; and

(j) to LUNA, a certificate of the Secretary of TOR certifying, as complete and accurate as of the Closing, attached copies of the Governing Documents of TOR, certifying and attaching all requisite resolutions or actions of TOR’s board of directors approving the execution and delivery of this Agreement and the consummation of the Contemplated Transactions and certifying to the incumbency and signatures of the officers of TOR executing this Agreement and any other document relating to the Contemplated Transactions.

5. Representations and Warranties of LUNA. LUNA hereby represents, warrants and covenants to TOR on and as of the date hereof, unless stated to the contrary below, and on and as of the Effective Time as follows:

5.1 Organization and Good Standing. LUNA is a corporation duly organized, validly existing and in good standing under the Legal Requirements of Italy. LUNA is duly qualified as a corporation, and has all requisite corporate power and authority to carry on its business and to own, lease and operate its properties, in each of the jurisdictions where such business is conducted and such properties are owned, leased and operated.

5.2 Binding Effect. This Agreement and each document or instrument executed and to be executed by LUNA in connection herewith are and will be the legal, valid and binding obligations of LUNA, enforceable against it in accordance with its respective terms, except as limited by bankruptcy, insolvency or other Legal Requirements affecting generally the enforcement of creditors’ rights and doctrines of equity relating to the availability of specific performance as a remedy.

5.3 Authorization. The execution, delivery and performance by LUNA of this Agreement and each instrument executed and to be executed by LUNA in connection herewith, and consummation of the transactions provided for herein and therein, are and will be within the corporate powers of LUNA; will have been duly authorized by all necessary corporate action on the part of LUNA by the Closing Date; and do not and will not contravene any Legal Requirement, regulation, judgment, decree, order or award relating to LUNA or conflict with or result in any breach of any of the terms, conditions or provisions of, or constitute a default under, or result in the creation of any lien, charge, security interest or encumbrance upon any of the assets or properties of LUNA, or infringe upon or impair the proprietary rights of any third party, pursuant to any provisions of any Governing Document, indenture, mortgage, lease, security agreement, partnership agreement, supply agreement, research agreement, development agreement, nondisclosure agreement or other agreement to which LUNA is a party or by which LUNA is bound.

5.4 Title. LUNA owns the Acquired Assets, Licensed Product and the Product free and clear of all Liens, royalties or supply obligations or any other encumbrances or third party claims of any nature whatsoever; LUNA has all necessary right, power and authority to enter into this Agreement and each document or instrument executed and to be executed by LUNA in connection herewith, and there is no restriction of any kind on the right of LUNA to use and exploit the Licensed Product and the Product. Upon consummation of the transactions provided for herein (and delivery of the Prototypes pursuant to Section 9.1), TOR shall have good and marketable title to the Acquired Assets and two (2) Prototypes.

5.5 Balance Sheet.

5.5.1 LUNA has no debts, liabilities (other than accrued salaries) related to the Acquired Assets, Product, Licensed Product and Prototypes, obligations or commitments of any kind or nature of a type that would be included in a balance sheet prepared in accordance with GAAP except those incurred since December 31, 2003 in the normal, regular and customary course of business and reflected on the books and records of LUNA.

5.5.2 Since December 31, 2003, there has not been any change in the financial condition, assets, properties, liabilities, business, results of operations or prospects of LUNA other than changes in the normal, regular and customary course of business, none of which, individually or in the aggregate, has been materially adverse, or any labor trouble, property dispute, lease or contract dispute, or other claim or event, or any condition of any character whatsoever materially and adversely affecting, or which would materially and adversely affect, the financial position, business or prospects of LUNA regarding the Acquired Assets, Product License, Licensed Product and Prototypes. Without limiting the generality of the foregoing, since December 31, 2003, LUNA has not: (A) incurred any obligation or liability, absolute or contingent, except current liabilities and obligations under contracts entered into in the normal, regular and customary course of business and consistent with the requirements of its business that are reflected on the books and records of LUNA; or (B) mortgaged, pledged or subjected to lien, charge, security interest or other encumbrance any of its assets; (C) suffered the loss or destruction of any assets or properties, whether or not covered by insurance; or (D) entered into transactions other than in the normal, regular and customary course of business.

5.6 Licensed Product Warranty. The Licensed Product is designed so as to maintain the optical, power and cooling functions under ordinary and reasonably anticipated conditions of transport and use, including without limitation mechanical shock and vibration encountered in shipment and use under customary temperature and environmental conditions as stated in the operator’s manual, and therefore shall have no material warranty costs by reason of such design, whether resulting from a need to repair the Licensed Product at the time of installation or at any time thereafter, for a period as set forth in confidential Schedule 5.6. The Licensed Product, as manufactured in accordance with the specifications provided by LUNA, shall be marketable for their intended use, free of defect.

5.7 All Assets Required to Manufacture the Licensed Product. The rights under the Product License, the Acquired Assets and the Prototypes shall constitute all of the assets, properties, contract rights and other rights that are required to manufacture the Licensed Product in the manner in which LUNA contemplates to manufacture the Licensed Product and as TOR anticipates so manufacturing the Licensed Product, provided that TOR improves its premises in a manner reasonably sufficient to accommodate and utilize the Acquired Assets.

5.8 Manufacturing Costs and Viability.

(a) Confidential Schedule 5.8(a) sets forth a true and correct list of LUNA’s costs of material costs to manufacture a single Licensed Product.

(b) The Licensed Product can be manufactured by TOR at a cost of not more than the cost set forth on confidential Schedule 5.8(a).

(c) For a cost of not more than the cost set forth on confidential Schedule 5.8(c), TOR shall be able to acquire those items of tangible and intangible personal property listed on confidential Schedule 5.8(c) which assets, when taken together with the Acquired Assets, to complete all leasehold improvements necessary to replicate (in the United States) LUNA’s manufacturing and assembly operations in Rome.

(d) TOR will be able to replicate, in the Montgomeryville, Pennsylvania area, LUNA’s manufacturing and assembly operations in the Rome, Italy area.

5.9 Adverse Events. To the best of LUNA’s knowledge, there are no market conditions which will have or can reasonably be expected to have a material adverse impact on the marketability of the Licensed Product. There are no material design or quality concerns with respect to the Licensed Product, except as TOR has disclosed to LUNA and which are set forth in confidential Schedule 5.9.

5.10 Regulatory Approval.

5.10.1 The Licensed Product, without substantial or material modification, will be able to meet such specifications as will be necessary for TOR to obtain 510(k) clearance from the U.S. Food and Drug Administration, from agencies or agents of the European Union, from Canadian Standard Association (“cCSAus”) with US deviations, and, with immaterial modifications, from Health Canada. Without limiting the generality of the foregoing, the Licensed Product will comply with IEC 60601-1:1993 and 60601-1-2:2001 for electromagnetic compatibility, and IEC 60601-1:1988 + A1:1991 + A2:1995 + A3:1996 for general requirements for safety, along with US and Canadian deviations. As to IEC 60601-1-4:1996 + A1:1999 for programmable electrical medical systems, TOR shall be entitled as a third-party beneficiary to rely on the opinion which LUNA’s Notified Body rendered to LUNA, namely that this standard does not apply to the Licensed Product, and furthermore LUNA represents to TOR that LUNA has caused the software of the Licensed Product to be successfully validated and verified in accordance with FDA requirements.

5.10.2 LUNA’s quality system reflects the requirements of ISO 13485, applicable to medical devices.

5.11 Contracts.

5.11.1 Confidential Schedule 2.1(b) is a true and correct list of all contracts, agreements and other instruments to which LUNA is a party or is bound which relate to the Acquired Assets, the Licensed Product and the Product (collectively, the “Material Contracts”). Attached hereto as confidential Schedule 5.11.1 are true, correct and complete copies of all Material Contracts for the Licensed Product, including, without limitation, LUNA’s contract with the vendor described in the Amendment of Supply Agreement and its vendors of the proprietary power supply. LUNA is not in default under any Material Contract and LUNA has not received any notice or claim to the contrary. LUNA knows of no default under any such Material Contract by any other party thereto.

5.11.2 TOR shall be able to assume the Material Contracts with respect to the Acquired Assets, the Licensed Products and the Product. TOR shall be at liberty to source equivalent goods and services supplied under such Material Contracts from other third-parties, except with respect to those Material Contracts which LUNA has noted in confidential Schedule 2.1(b) where use of third-party sources would violate contractual or property rights of LUNA vendors under such Material Contracts as are set forth in confidential Schedule 2.1(b).

5.12 Claims and Litigation. With respect to the Acquired Assets, the Licensed Product and the Product there are no material claims, suits, legal, administrative, arbitration or other proceedings pending or threatened against or affecting LUNA, and, to the best of LUNA’s knowledge, there is no existing basis for any thereof. There are no outstanding judgments, decrees, orders or awards or specific administrative regulations relating to LUNA, the Acquired Assets, the Licensed Product or the Product.

5.13 No Misleading Statements. Neither this Agreement, nor any other information furnished to TOR by or on behalf of LUNA in connection with the transactions contemplated hereby, nor any of the exhibits, schedules, instruments or certificates executed and delivered by or on behalf of LUNA and referred to in this Agreement and the exhibits hereto or executed and delivered concurrently herewith, contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein or therein not misleading.

5.14 Other Business Names. Except as disclosed on Schedule 5.14 hereto, LUNA has not used any business name or address during the three years immediately prior to the Closing Date other than “LUNA Srl”.

5.15 Relationships with Vendors. LUNA is in good standing under its agreements and other relationships with the key vendors previously described or identified to TOR by LUNA, and no financial or other disputes or disagreements are pending or, to the best knowledge of LUNA, threatened by or against such persons or entities.

5.16 Consents and Approvals. Except as set forth on Schedule 5.16 hereto, no consent of any Person and no approval or authorization of, or declaration or filing with, any governmental or regulatory authority is required for the valid authorization, execution and delivery by LUNA of this Agreement or any instrument or other agreement contemplated hereby or for consummation of the transactions contemplated hereby.

5.17 Compliance with Legal Requirement; Governmental and Industrial Approvals. LUNA has complied in all material respects with all Legal Requirements, orders, judgments and decrees now and heretofore applicable to its business, assets, properties or operations. LUNA has not received any notice of any asserted or pending violation of any such Legal Requirements, orders, judgments or decrees. LUNA has all Permits of all national, federal, state or local governmental or regulatory bodies necessary for it to operate its properties, assets and facilities as presently operated and to conduct its business as presently conducted (“Necessary Permits”) and, to the knowledge of LUNA, all other permits, licenses, orders, ratings and approvals required by applicable Legal Requirement or regulation. All Necessary Permits and other permits are in full force and effect, and to the best knowledge of LUNA (i) no suspension or cancellation of any Necessary Permit is threatened, (ii) there is no reason to believe that on expiration any Necessary Permit will not be renewed and (iii) none of the Necessary Permits will be adversely affected by the consummation of the transactions contemplated in this Agreement.

5.18 Environmental Matters. LUNA has obtained all permits, licenses and other authorizations which are required under Environmental Laws. As used in this Agreement, Environmental Laws consist of any and all federal, state and local Legal Requirements and regulations relating to health and safety and pollution or protection of the environment, including Legal Requirements and requirements relating to emissions, discharges, releases or threatened releases of pollutants, contaminants, chemicals, or industrial toxic or hazardous substances or wastes into the environment, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of pollutants, contaminants, chemicals, or industrial, toxic or hazardous substances or wastes. LUNA is in material compliance with all terms and conditions of the required permits, licenses and authorization, and is also in material compliance with all other provisions of any applicable Environmental Laws. There is no civil, criminal or administrative action, suit, demand, claim, hearing, notice or demand letter, notice of violation, investigations, or proceeding pending or, to the best knowledge of LUNA threatened against LUNA relating to any Environmental Law.

5.19 No Infringement. The Acquired Assets, the Licensed Product and the Prototypes do not infringe upon any patents, trade secrets or other proprietary rights or property of any third party or in TOR’s Field of Use. There are no patents owned or licensed by others and no trade secrets or other proprietary rights or property of others which would be infringed or misused by TOR or sublicensees making, having, using and/or selling the Licensed Product in TOR’s Field of Use. The Product represents all of the patents, trade secrets and other proprietary rights or property that are: (i) owned or controlled by LUNA or under which LUNA is empowered to grant licenses of sublicenses relating to the manufacture, use or sale of the Licensed Product in TOR’s Field of Use, and (ii) are necessary or useful to the manufacture, use or sale of the Licensed Product in TOR’s Field of Use, each as contemplated by the rights granted to TOR under this Agreement and the License Agreement, and all as described on confidential Schedule 5.19. Except as described on confidential Schedule 5.19, LUNA has not disclosed to any Person, in any manner or form, any of the Product.

5.20 Intangibles. LUNA has no patents, trademarks, service marks or trade names, or any applications and registrations for the foregoing or any licenses, sub-licenses and other agreements relating to the foregoing and pertaining in any manner to the Licensed Product, except for such matters listed on confidential Schedule 5.20 with such applications, registrations, licenses, etc. attached hereto. Without limiting Section 5.19, to LUNA’s best knowledge, no action taken by LUNA infringes upon or otherwise violates the patent, trademark, service mark, trade name or other proprietary rights of any third party, and LUNA has not received any claim or notice to the contrary.

5.21 Securities Warranties. With respect to the Shares, which may be issued and delivered by TOR to LUNA pursuant to Section 3.1.2 hereof, LUNA represents and warrants to TOR that:

(a) LUNA has had an opportunity to ask questions and receive answers concerning the terms and conditions of the offering of the Shares and to obtain any additional information regarding TOR or any of the other documents provided to LUNA regarding TOR.

(b) LUNA has executed this Agreement outside the United States and LUNA is acquiring the Shares in an Offshore Transaction (as defined in Rule 902(h) of Regulation S). The Shares were not offered to LUNA in the United States, and at the time of execution of this Agreement and at the time of any offer to LUNA to acquire Shares hereunder, LUNA was outside of the United States. LUNA is not a U.S. Person (as defined in Rule 902(k) of Regulation S).

(c) LUNA is not acquiring the Shares pursuant to an arrangement with, or for the account of benefit of, a U.S. Person, nor is LUNA’s purchase of the Shares part of a plan or scheme to evade the registration provisions of the Securities Act.

(d) LUNA is acquiring the Shares for its own account for investment and not with a view to or for resale in connection with any distribution of the Shares. LUNA has not offered or sold any portion of the Shares and has no present intention of dividing the Shares with others or of selling, distributing or otherwise disposing of any portion of the Shares either currently or after the passage of a fixed or determinable period of time or upon the occurrence or non-occurrence of any predetermined event or circumstance. LUNA is not acting as and agrees not to act as a “distributor” (as defined in Rule 902(d) of Regulation S) with respect to the TOR Shares. LUNA shall not engage in any hedging transaction with respect to the TOR Shares unless such actions are in compliance with the Securities Act.

(e) LUNA is not acquiring Shares as a result of or subsequent to any general solicitation or general advertising, article, notice or other communication published in any newspaper, magazine, or similar media or broadcast over television or radio, or presented at any seminar or meeting.

(f) LUNA or its representative, if any, has been provided with, or given reasonable access to, full and fair disclosure of all material information concerning TOR;

(g) LUNA has a preexisting personal or business relationship with TOR or certain of its officers, directors or controlling persons, or by reason of its business or financial experience, LUNA could reasonably be assumed to have the capacity to represent its own interests in connection with this Agreement;

(h) LUNA understands and hereby acknowledges that the Shares will be issued pursuant only to those restrictions imposed by and exemptions available pursuant to applicable federal and state Legal Requirements and that the certificates to be issued in respect of the Shares may bear a legend in the form set forth in Section 9.9.6; in part, TOR’s reliance upon such exemptions is based on the representations and warranties made by LUNA in this Section 5.21;

(i) LUNA agrees that the certificates to be issued in respect of the Shares shall bear a legend in the form set forth in Section 9.9.6 reflecting the status of the Shares as restricted securities under the Securities Act of 1933, as amended (the “Securities Act”) and acknowledges that the transfer agent or registrar for TOR may be instructed to restrict the transfer of the TOR Shares not made in accordance with the Securities Act or in accordance with such legend and any other restrictions provided in this Agreement;

(j) LUNA hereby agrees that it will not sell, transfer, hypothecate, pledge, assign or otherwise dispose of any of the Shares, except pursuant to the terms of this Agreement and to a registration statement filed under the provisions of the Securities Act, a favorable no-action or interpretive letter received from the United States Securities and Exchange Commission (the “Commission”) or an opinion of counsel satisfactory to TOR that such sale, transfer, hypothecation, pledge, assignment or other disposition will not violate the registration requirements of the Securities Act, and does not in any way violate the terms of this Agreement;

(k) LUNA hereby acknowledges that: (i) the Shares referred to herein are being acquired after adequate investigation of the business plan and prospects of TOR; (ii) that LUNA is not relying upon the accuracy of any predictions as to the future prospects or developments of TOR or its business and is well informed as to the business of TOR and has reviewed its operations and financial statements; (iii) LUNA or its professional advisors have discussed the financial condition and business operations of TOR with the officers, directors and principal stockholders of TOR and has been afforded the opportunity to ask questions with respect thereto; and (iv) there can be no assurance that TOR will achieve its business objectives or, in particular, that it will ever have cash available for distribution to its stockholders; and

(l) LUNA either alone or with LUNA’s representative has such experience in business and financial matters that it is capable of evaluating the merits and risks of an investment in the Shares. LUNA acknowledges that the Shares are speculative and involve a high degree of risk, including the potential loss of LUNA’s investment herein and LUNA has taken cognizance of and understands the risk factors related to the purchase of the securities.

5.22 No Brokerage. LUNA has not made any agreement or taken any other action which might cause TOR to become entitled to a commission or brokerage fee as a result of the transactions contemplated hereby.

5.23 No Other Representations. The representations and warranties of TOR set forth herein constitute the sole and exclusive representations and warranties of TOR to LUNA in connection with the transactions contemplated hereby, and LUNA acknowledges and agrees that TOR is not making any representation or warranty whatsoever express or implied, beyond those expressly given in this Agreement.

6. Representations and Warranties of TOR. TOR hereby represents, warrants and covenants to LUNA on and as of the date hereof, unless stated to the contrary below, and on and as of the Effective Time as follows:

6.1 Binding Effect. This Agreement and each instrument executed and to be executed by TOR in connection herewith are and will be the legal, valid and binding obligations of TOR, enforceable in accordance with their respective terms, except as limited by bankruptcy, insolvency or other Legal Requirements affecting generally the enforcement of creditors’ rights and doctrines of equity relating to the availability of specific performance as a remedy.

6.2 Authorization. The execution, delivery and performance by TOR of this Agreement and each instrument executed and to be executed by TOR in connection herewith, and consummation of the transactions provided for herein and therein, are and will be within the powers of TOR, have been duly authorized by all necessary action, require no governmental approval, and do not and will not contravene any Legal Requirement, regulation, judgment, decree, order or award relating to TOR or conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, any indenture, mortgage, lease, security agreement, partnership agreement or other agreement to which TOR is a party or by which TOR is bound.

6.3 Commission Documents. TOR has furnished, or offered to furnish, to LUNA a true and complete copy of TOR’s Annual Report on Form 10-K for the year ended December 31, 2003, TOR’s Quarterly Report on Form 10-Q for the three months ended March 31, 2004, and any other statement, report, registration statement (other than registration statements on Form S-8) or definitive proxy statement filed by TOR with the Commission during the period commencing December 31, 2003, and ending on the date hereof. TOR will, promptly upon the filing thereof, also furnish to LUNA all statements, reports (including, without limitation, quarterly reports on Form 10-Q and current reports on Form 8-K), registration statements and definitive proxy statements filed by TOR with the Commission during the period commencing on the date hereof and ending on the Closing Date (all such materials required to be furnished to LUNA pursuant to this sentence or pursuant to the next preceding sentence of this Section 6.3 being called, collectively, the “SEC Documents”).

6.4 No Brokerage. TOR has not made any agreement or taken any other action which might cause LUNA to become entitled to a commission or brokerage fee as a result of the transactions contemplated hereby.

7. Pre-Closing Covenants and Agreements.

7.1 Covenants of LUNA. Except as otherwise first approved in writing by TOR or as otherwise set forth in this Agreement, LUNA covenants and agrees with TOR that interval, if any, between the date hereof and the Closing Date or the termination of this Agreement in accordance with its terms:

7.1.1 Conduct of Business. The business of LUNA shall be conducted in the same manner as conducted on the date of this Agreement.

7.1.2 Conduct in Ordinary Course. With reference to the Acquired Assets, LUNA shall not enter into any transaction other than in the normal, regular and customary course of business pursuant to agreements in which the obligations of any party thereto, other than obligations relating to confidentiality, require performance by such party for a period of not more than 60 days from the date of such agreement.

7.1.3 Accuracy of Representations and Warranties. LUNA shall take all action required to be taken by it to cause its representations and warranties made herein to be true and correct on and as of the Closing Date with the same force and effect as if such representations and warranties had been made on and as of the Closing Date.

7.1.4 TOR’s Access. TOR shall have reasonable access to LUNA’s place of business in Rome and all information relating to the Licensed Product and the Acquired Assets, during normal business hours and upon pre-arrangement with LUNA, in order that TOR shall have full opportunity to make such further investigation as it shall desire to make of LUNA’s business and affairs as related to the Product License. In the event of the termination of this Agreement for any reason, TOR shall use its best efforts to maintain the confidentiality of and not to disclose any such information received by it from LUNA in connection with this Agreement. In the event of the termination of this Agreement for any reason, TOR shall neither use nor permit any third party to use to its competitive advantage any information that TOR may obtain from LUNA hereunder.

7.1.5 Maintain Insurance. LUNA shall continue in full force and effect all policies of insurance maintained by it.

7.1.6 Maintain Relations. LUNA shall use its best efforts to keep available to TOR the employees of LUNA with knowledge of the Acquired Assets, Licensed Product and the Prototypes and to preserve the current relationships of LUNA with vendors, suppliers, customers, landlords and other persons having business relationships with it.

7.1.7 Maintenance of Property. LUNA shall maintain its properties in their customary condition and repair.

7.1.8 Inconsistent Activities. Unless and until this Agreement has been terminated pursuant to Section 12 hereof, LUNA shall not, nor shall LUNA permit any of its officers, directors, representatives, agents or affiliates to, solicit, encourage, initiate or participate in any negotiations or discussions with respect to any offer or proposal to acquire any significant component of LUNA’s rights relating to the Acquired Assets, Licensed Product or Prototypes, with any party other than TOR or its designees.

7.1.9 Necessary Action; No Amendments. LUNA shall take all necessary action and shall use its best efforts to cause the satisfaction of all conditions precedent to the closing, obtain all material consents and approvals required for consummation of the transactions contemplated by this Agreement. LUNA shall neither modify, amend nor terminate, nor allow any modification, amendment or termination of, a Material Contract prior to the Closing Date without the prior written consent of TOR.

7.1.10 Best Efforts. LUNA shall use its best efforts to cause all of the conditions set forth in Section 8.1 hereof to be satisfied on the Closing Date.

7.1.11 Recovery of Drawings. LUNA agrees to use its best efforts to cause any product similar to the Licensed Product and previously disclosed or furnished to any third party in any form or manner to be returned to LUNA as promptly as practicable.

7.1.12 No Trading in TOR Stock. LUNA shall not trade in TOR common stock after the execution of this Agreement and prior to the Closing.

7.1.13 Access and Information. From the date hereof until the Closing Date, upon reasonable notice to LUNA from TOR, LUNA shall permit TOR and its employees, agents, counsel, accountants, engineers, consultants and other representatives at their sole cost, risk and expense reasonable access during hours mutually acceptable to LUNA and TOR to all of the properties, books, contracts and records of LUNA related to the Acquired Assets and the Licensed Products, and during such period, LUNA shall furnish TOR with all such statements (financial and otherwise), records and documents, or copies thereof at TOR’s expense, and all such other reasonable information concerning the Acquired Assets and the Licensed Products as TOR shall, from time to time, reasonably request. TOR agrees to hold harmless and indemnify LUNA from and against any loss, liability, damage or expense caused by the intentional or negligent acts or omissions of TOR or its employees, agents, counsel, accountants, engineers, consultants or other representatives while on LUNA’s property.

7.1.14 Schedules. LUNA shall notify TOR of any event, condition, circumstance or change occurring following execution of this Agreement which requires amendment, deletion or addition to any Schedule so that each Schedule shall be true and correct as of the Effective Date. LUNA shall promptly revise any Schedule for which revision is necessary pursuant to this provision and provide the revised Schedule to TOR. If LUNA makes a revision to any Schedule pursuant to this Section 7.1.14, the representations and warranties shall not be modified as a result thereof and at the time of such revision and as a result thereof, TOR shall determine whether TOR shall waive the condition to the obligations of TOR to consummate the Contemplated Transactions.

7.1.15 Release and Termination of Liens. On or before the Closing Date, LUNA shall cause (x) the release and termination of all Liens of any Person on any of the Acquired Assets, except for the Assumed Obligations, and (y) the execution and delivery to TOR of all UCC-3 financing statements or the equivalent under the Legal Requirement of the jurisdiction, state or country in which the Purchased Assets are located, and such other documentation, in form and substance satisfactory to TOR.

7.2 Covenants of TOR.

7.2.1 TOR covenants and agrees with LUNA that TOR shall use its best efforts to cause all of the conditions set forth in Section 8.2 hereof to be satisfied on the Closing Date.

7.2.2 As of the Closing Date, TOR shall have caused a bank of international standing, including without limitation Bank of America or AmSouth Bank (which are deemed acceptable), to issue a stand-by letter of credit to be accepted by a bank of LUNA’s choice, maturing no sooner than 90 days from the Closing Date, to secure the purchase by LUNA of, and payment for, components and services, described in confidential Schedule 7.2.2, necessary to complete the development of the Licensed Product. Payment for such components and services will not exceed an amount described in confidential Schedule 7.2.2 and will not be due until the components and services have been delivered to (which the parties estimate to be within the timeframe described in confidential Schedule 7.2.2), and inspected and accepted by, LUNA. TOR will be permitted to cancel payment to LUNA under the letter of credit of such bank and substitute therefor TOR common stock, provided TOR shall have already paid LUNA, on the Closing Date, at least an amount equal to the letter of credit in cash or common stock. At such time as such common stock shall be registered in accordance with this agreement, LUNA shall immediately return the letter of credit shall to TOR. Any such payment under the letter of credit (and/or common stock substituted therefor) shall be credited toward and reduce the payment required under Section 3.1.1(a) through (j). In the event that this Agreement is terminated prior to Closing pursuant to Section 12.1 or 12.2, then LUNA shall surrender the letter of credit to TOR for cancellation. In the event that this Agreement is terminated under circumstances described in Sections 3.1.2(e) or 3.1.2(f), then LUNA shall not be obliged to surrender the letter of credit to TOR but may apply such letter of credit to the components being purchased in reliance on such letter of credit, and shall forward such components to TOR after they have been delivered to LUNA.

7.2.3 Consistent with Section 3.1 hereof and subject to Section 3.1.2(e), if TOR elects to pay with Shares of its common stock, TOR shall undertake that Shares offered for payment on attainment of each applicable Milestone set forth above will be registered within 30 days after attainment of each Milestone. In case of non-registration of such Shares offered for payment at the applicable Milestone within 30 days after attainment of such Milestone, TOR shall pay the due sum in U.S funds within 10 days after receipt of written notice by LUNA. In such latter case, LUNA shall return the non-registered Shares to TOR for cancellation.

8. Conditions to Closing.

8.1 Conditions Precedent to Obligations of TOR. The obligations of TOR to proceed with the transactions contemplated hereby are subject to the satisfaction of the following conditions unless waived in writing by TOR:

8.1.1 Opinion of Counsel to LUNA. TOR shall have received from counsel to LUNA an opinion, dated the Closing Date, in form and substance satisfactory to TOR.

8.1.2 Compliance and Representations Correct. All of the terms and conditions contained in this Agreement to be complied with and performed by LUNA at or before the Closing Date shall have been complied with and performed in all material respects, and the representations and warranties made by LUNA in this Agreement shall continue to be correct in all material respects, at and as of the Closing Date, with the same force and effect as though such representations and warranties had been made at and as of the Closing Date, except for changes contemplated by this Agreement. LUNA shall have delivered to TOR a certificate, dated the Closing Date, signed by LUNA, evidencing compliance with the provisions of this Section 8.1.2.

8.1.3 Litigation. There shall not have been instituted or threatened any action or proceeding before any court or governmental agency or other regulatory or administrative agency or commission, by any governmental or other regulatory or administrative agency or commission or any private person challenging any of the transactions contemplated hereby or otherwise directly or indirectly relating to the transactions contemplated hereby.

8.1.4 Governmental Action. There shall not have been any action taken by any court, government or governmental agency, domestic or foreign, rendering any party to this Agreement unable to consummate the transactions contemplated hereby, otherwise making such transactions illegal or limiting in any material manner the right of TOR to exercise directly or indirectly control over the Product or over the Acquired Assets.

8.1.5 Satisfactory Proceedings. All proceedings to be taken in connection with the consummation of the transactions contemplated by this Agreement and all documents incident thereto shall be reasonably satisfactory in form and substance to TOR and its counsel, and TOR and its counsel shall have received copies of such documents as TOR and its counsel may have reasonably requested in connection with said transactions from the date hereof to the Closing Date.

8.1.6 Additional Documents. LUNA shall have caused the documents and instruments required by Section 4.2.1 to be timely delivered.

8.1.7 Consents. All consents and approvals shown on Schedule 5.16 hereto shall have been obtained.

8.1.8 Due Diligence. TOR shall be satisfied, in its sole and absolute discretion and without penalty or additional payment to LUNA, with the results of such further due diligence it may undertake, in supplement to, but not in duplication of, the content and results of the due diligence which it conducted in January 2004 in Rome, of the Licensed Product, the Product and the Acquired Assets and the licenses and rights granted hereunder and the Schedules and Exhibits to this Agreement.

8.2 Conditions Precedent to Obligations of LUNA. The obligations of LUNA to proceed with the transactions contemplated hereby are subject to the satisfaction of the following conditions unless waived in writing by LUNA:

8.2.1 Opinion of Counsel to TOR. LUNA shall have received from Lima & Vetucci, LLP, counsel to TOR, an opinion, dated the Closing Date, in form and substance satisfactory to LUNA.

8.2.2 Compliance and Representations Correct. All of the terms and conditions contained in this Agreement to be complied with and performed by TOR at or before the Closing Date shall have been complied with and performed in all material respects, and the representations and warranties made by TOR in this Agreement shall continue to be correct in all material respects, at and as of the Closing Date, with the same force and effect as though such representations and warranties had been made at and as of the Closing Date, except for changes contemplated by this Agreement. TOR shall have delivered to LUNA a certificate, dated the Closing Date, signed by the president of TOR evidencing compliance with the provisions of this Section 8.2.2.

8.2.3 Litigation. There shall not have been instituted or threatened any action or proceeding before any court or governmental agency or other regulatory or administrative agency or commission, by any governmental or other regulatory or administrative agency or commission or any private person challenging any of the transactions contemplated hereby or otherwise directly or indirectly relating to the transactions contemplated hereby.

8.2.4 Payment for the Attained Milestones, Additional Documents and Deliveries. TOR shall have caused the deliveries, payments, documents and instruments required by Section 4.2.2, Section 7.2.2, Section 3.1.2(e) or Section 3.1.2(f).

8.2.5 Governmental Action. There shall not have been any action taken by any court, government or governmental agency, domestic or foreign, rendering any party to this Agreement unable to consummate the transactions contemplated hereby or otherwise making such transactions illegal.

8.2.6 Delivery of Shares to Escrow. TOR shall have delivered to the Escrow Agent under the Escrow Agreement, the number of Shares set forth therein.

8.2.7 Satisfactory Proceedings. All proceedings to be taken in connection with the consummation of the transactions contemplated by this Agreement and all documents incident thereto shall be reasonably satisfactory in form and substance to LUNA and its counsel, and LUNA and its counsel shall have received copies of such documents as LUNA and its counsel may have reasonably requested in connection with said transactions from the date hereof to the Closing Date.

8.3 Conditions Precedent to Obligations of TOR with Respect to each Milestone. The obligations of TOR to pay a portion of the Purchase Price with respect to the satisfaction of a Milestone, is, in each instance, subject to the satisfaction of the following conditions unless waived in writing by TOR:

8.3.1 Compliance and Representations Correct. All of the terms and conditions contained in this Agreement to be complied with and performed by LUNA at or before the date of payment of the portion of the Purchase Price relating to the applicable Milestone shall have been complied with and performed in all material respects, and the representations and warranties made by LUNA in this Agreement shall continue to be correct in all material respects, at and as of such date, with the same force and effect as though such representations and warranties had been made at and as of such date, except for changes contemplated by this Agreement. On the date of the payment of the portion of the Purchase Price applicable to a particular Milestone, LUNA shall have delivered to TOR a certificate, dated as of such date, evidencing compliance with the provisions of this Section 8.3.1.

8.3.2 Litigation. There shall not have been instituted or threatened any action or proceeding before any court or governmental agency or other regulatory or administrative agency or commission, by any governmental or other regulatory or administrative agency or commission or any private person challenging any of the transactions contemplated hereby or otherwise directly or indirectly relating to the transactions contemplated hereby.

9. Closing and Post-Closing Covenants and Agreements.

9.1 Procurement of Molds; Prototypes.

9.1.1 Promptly following the Closing Date, but not later than November 15, 2004, LUNA shall procure molds for the Licensed Product (after taking into account the design changes described in Section 9.3) and upon receipt of correctly and accurately manufactured molds, immediately convey the same, at no additional cost, by appropriate instrument to TOR.

9.1.2 As of the Closing, LUNA shall have manufactured at its sole expense and delivered to TOR two Prototypes of the Licensed Product, and concurrently conveyed the same, at no additional cost, by appropriate instrument to TOR.

9.2 Transitional Matters.

9.2.1 Until LUNA completes the removal of the tangible personal property included in the Acquired Assets from LUNA’s premises, LUNA shall at its sole cost and expense maintain such premises and adequately secure the same. LUNA shall, at its sole cost, use its reasonable best efforts to cause all of the Acquired Assets to be removed and shipped to TOR (F.O.B. LUNA) promptly following the Closing. TOR shall pay all shipping, delivery, tariffs and other costs. LUNA shall bear the cost of any damage to its premises or injury to any Person or thing occurring by reason of the removal of such property or the shipment to TOR.

9.2.2 After the Closing Date and until TOR has established direct relations with LUNA’s vendors, LUNA will continue to liaise with such vendors on TOR’s behalf in order to maintain the goodwill of such vendors and to maintain the flow of goods and services in the ordinary course of business. Accordingly, LUNA shall stand ready to make a stocking order for TOR of components sufficient for the number of units of Licensed Product set forth on confidential Schedule 9.2.2 to be built by TOR, and shall procure the same pursuant to TOR’s written directive, and if such directive is given no later than November 30, 2004, TOR may pay for the same by means of its registered common stock before LUNA places the orders therefor.

9.2.3 After Completion, TOR shall have seventy-five (75) days in which to assimilate the technology and become ready to produce Licensed Product by FDA Clearance. During this period, LUNA shall lend technical assistance and advice to TOR. LUNA’s costs of travel outside the EU for such assistance shall be reimbursed to LUNA by TOR.

9.3 Implementation of Design Changes. LUNA shall adopt and implement those design changes to the Licensed Product as set forth in confidential Schedule 5.9 hereto, together with the manufacturing documentation as defined in the definition of “Completion” and as described in Section 9.4, the CE Mark Approval requirements as defined herein and the cCSAus Approval requirements as defined herein and as described in Section 9.4.

9.4 CE Mark and cCSAus Applications. LUNA, at its sole cost and expense, shall have applied for CE Mark and cCSAus Approval on the Licensed Product on or before May 31, 2004. It is understood that TOR may elect to use LUNA’s Notified Body for purposes of maintaining the CE Mark or may elect to use a different third-party. The reports of LUNA’s Notified Body (LUNA’s third party consultant for CE Mark) and of cCSAus shall reflect specific cognizance of the applicable design changes to the Licensed Product desired by TOR and described in Schedule 5.9. LUNA shall transfer to TOR copies in electronic format of its files and records underlying such approvals within five (5) days of receiving such respective approvals.

9.5 FDA Clearance. TOR shall be entitled to submit application with the FDA for a general 510(k) clearance for the Licensed Product in its own name. It shall do so no later than seventy-five (75) days after Completion. LUNA shall cooperate with TOR and provide all necessary documentation and information on the Licensed Product to such end.

9.6 Patent Applications. LUNA shall have filed patent applications for the Licensed Product no later than July 15, 2004, such applications to be submitted at least to the European Patent Office and the US Patent and Trademark Office, and shall diligently pursue issuance of valid and enforceable claims under the applications, to the end that such claims shall have issued no later than the date set forth in confidential Schedule 3.1.1. LUNA shall notify TOR of all correspondence between LUNA and the patent authorities, and shall afford TOR the opportunity to review and comment on such correspondence, to the end that working together, LUNA and TOR increase the likelihood of the issuance of valid and enforceable claims. Such applications, as soon as they are made, shall be attached to this Agreement at confidential Schedule 5.20.

9.7 Negotiation with Vendor. Within the first three (3) years of the term of the License Agreement, TOR and LUNA shall enter negotiations with the vendor described in the Amendment to Supply Agreement with a view to securing from that vendor a commitment to supply TOR for a further five (5) years, in addition to the five (5) year initial term of the Supply Agreement with the vendor.

9.8 No Trading in TOR Stock. LUNA shall not trade in TOR common stock within fifteen (15) days before those Milestones set forth in Section 3.1.1(a) through (g).

9.9 Matters Related to the Shares. Subject to the terms and conditions of the Registration Rights Agreement:

9.9.1 LUNA consents to TOR making a notation on its records and giving instructions to any transfer agent of the Shares in order to implement the restrictions on transfer established in this Section 9.9. The Shares have no preemptive rights and only such anti-dilution protections and rights as are provided by Delaware law.

9.9.2 LUNA understands that at the time of Closing the Shares have not been registered under the Securities Act, and have been issued in reliance upon an exemption therefrom for non-public or limited offerings. LUNA agrees that it will not make any resale, transfer or other disposition of the Shares except in accordance with the provisions of Regulation S (Rule 901 through 905 and Preliminary Notes), pursuant to registration under the Securities Act, or pursuant to an available exemption from registration (accompanied by an opinion of counsel acceptable to TOR that such resale, transfer or other disposition is exempt from the registration provisions of all applicable federal and state laws). LUNA agrees not to engage in any hedging transactions with regard to the Shares unless the same are in compliance with the Securities Act. LUNA understands and agrees that TOR makes no representation as to the compliance with applicable local laws of any territory or jurisdiction outside the United States in connection with the Shares.

9.9.3 LUNA understands and agrees that the Shares being purchased hereunder may be transferred by any holder thereof only pursuant to: (i) a public offering thereof registered under the Securities Act, (ii) Rule 144 of the Commission (or any similar rule in force at the time of such transfer) if such rule is available, (iii) the provisions of Regulation S; or (iv) any other legally available means of transfer, including without limitation transfers permitted by a registration under Form S-3.

9.9.4 LUNA understands that stop transfer instructions have been or will be placed on any certificates or other documents evidencing the Shares so as to restrict the resale, pledge, hypothecation or other transfer thereof in accordance with the provisions hereof. The parties agree that TOR shall refuse to register any transfer of the Shares not made in accordance with an effective registration statement, the provisions of Regulation S (Rule 901 through 905, and Preliminary Notes), pursuant to registration under the Securities Act, or pursuant to an available exemption from registration under the Securities Act (accompanied by an opinion of counsel acceptable to TOR that such resale, transfer or other disposition is exempt from the registration provisions of all applicable federal and state laws). TOR shall not treat as the owner of the Shares, or otherwise accord voting or dividend rights to, any transferee to whom Shares have been transferred in contravention of this Agreement.

9.9.5 In connection with the transfer of any Shares other than in a public offering registered under the Act, any holder thereof which is bound by the conditions contained in this Section 9.9 shall deliver written notice to TOR describing in reasonable detail the transfer or proposed transfer, and, if requested by TOR, an opinion of counsel that is knowledgeable in securities Legal Requirement matters and reasonably acceptable to TOR, to the effect that such transfer may be effected without registration under the Act and under applicable state securities Legal Requirements. In addition, if any such holder delivers to TOR an opinion of counsel that no subsequent transfer of such Shares will require registration under the Act or under applicable state securities Legal Requirements, TOR shall promptly upon such contemplated transfer deliver new certificates for such Shares that do not bear the restrictive legend set forth in Section 9.9.6 hereof, and subsequent transferees shall not be bound by the conditions contained in this Section 9.9. If TOR is not required to deliver new certificates for such Shares not bearing such legend, the holder thereof shall not transfer such Shares until the prospective transferee has confirmed to TOR in writing his or its agreement to be bound by the conditions contained in this Section 9.9.

9.9.6 Each certificate for the Shares, and any shares of capital stock received in respect thereof, whether by reason of a stock split or share reclassification thereof, a stock dividend thereon or otherwise, shall be stamped or otherwise imprinted with a legend in substantially the following form:

THE SHARES REPRESENTED BY THIS CERTIFICATE HAVE BEEN ACQUIRED FOR INVESTMENT AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 OR THE SECURITIES LAWS OF ANY STATE. THESE SHARES MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION UNLESS: (1) TORPRANTEN, INC. (THE “COMPANY”) RECEIVES AN OPINION OF COUNSEL REASONABLY ACCEPTABLE TO THE COMPANY AND ITS COUNSEL STATING THAT SUCH SALE OR TRANSFER MAY BE EFFECTED PURSUANT TO AN EXEMPTION UNDER SUCH ACT FROM THE REGISTRATION REQUIREMENTS OF THE ACT AND PURSUANT TO APPLICABLE STATE SECURITIES LAWS; (II) SAID SHARES HAVE BEEN REGISTERED PURSUANT TO THE SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”), OR (III) IN ACCORDANCE WITH THE PROVISIONS OF REGULATION S UNDER THE ACT. HEDGING TRANSACTIONS INVOLVING THE SHARES MAY NOT BE CONDUCTED UNLESS THEY ARE IN COMPLIANCE WITH THE ACT.

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO THE TERMS AND CONDITIONS OF AN ESCROW AGREEMENT BETWEEN TORPRANTEN, INC. AND THE HOLDER, DATED SEPTEMBER 7, 2004

THE SECURITIES REPRESENTED HEREBY ARE SUBJECT TO RESTRICTIONS ON TRANSFER CONTAINED IN A REGISTRATION RIGHTS AGREEMENT DATED AS OF SEPTEMBER 7, 2004, A COPY OF WHICH IS ON FILE AT THE PRINCIPAL OFFICE OF THE COMPANY”

9.10 Additional Covenants.

9.10.1 TOR and LUNA agree to use their best efforts to obtain all such approvals other than for the US and the European Union as TOR may reasonably request as promptly as practicable after the execution hereof. TOR hereby agrees to pay any necessary filing or registration fees to obtain any such approval which it seeks to obtain

9.10.2 The Licensed Product shall, upon Completion, be able to meet such specifications as will be necessary for TOR to obtain 510(k) clearance from the U.S. Food and Drug Administration, from agencies or agents of the European Union, from Canadian Standards Association (“cCSAus”) and, with immaterial modifications, from Health Canada.

Without limiting the generality of the foregoing, the Licensed Product will comply with IEC 60601-1:1993 and 60601-1-2:2001 for electromagnetic compatibility, and IEC 60601-1:1988 + A1:1991 + A2:1995 + A3:1996 for general requirements for safety, along with US and Canadian deviations. LUNA agrees that it shall be liable for the cost of any modifications to the Licensed Product as may be determined to be necessary in order to obtain any such approval. As to IEC 60601-1-4:1996 + A1:1999 for programmable electrical medical systems, TOR shall be entitled as a third-party beneficiary to rely on the opinion which LUNA’s Notified Body rendered to LUNA, namely that this standard does not apply to the Licensed Product, and furthermore LUNA represents to TOR that LUNA has caused the software of the Licensed Product to be successfully validated and verified in accordance with FDA requirements.

9.10.3 TOR shall promptly cooperate with LUNA and LUNA’s bankers and brokers in matters relating to the Shares. For example, TOR shall promptly issue to its transfer agent opinions related to lifting the legend on the Shares.

9.10.4 In the first year after Closing, TOR shall split equally with LUNA such additional broker’s fees as LUNA may incur in respect of the Shares in the event that LUNA uses a US broker to hold or deal in the Shares, but TOR shall not be obliged to bear as its shares more than $5,000 of such additional fees.

10. Survival and Indemnification.

10.1 Survival of Representations, Warranties and Covenants. The parties hereto agree that the representations, warranties and covenants contained herein shall survive the Closing hereof (through the expiration of the respective statutes of limitation) irrespective of any investigation made by or on behalf of any of the parties hereto.

10.2 Indemnification by TOR. TOR agrees to indemnify and hold LUNA harmless from and against:

(i) any and all loss, liability, damage or deficiency resulting from any misrepresentation, breach of warranty representation or nonfulfillment of any covenant or agreement on the part of TOR under the terms of this Agreement or any document or instrument executed by TOR in connection herewith;

(ii) any and all claims for product liability relating to Licensed Product, except to the extent such claims relate to any Licensed Product directly manufactured or produced by LUNA or at the direction of LUNA and relate to the Product; and

(iii) any and all actions, suits, proceedings, claims, demands, assessments, judgments, costs and expenses, including, without limitation, reasonable attorneys’ fees, incident to the foregoing subparagraphs (i) and (ii), and only such subparagraphs (and on appeal therefrom), regardless of whether or not LUNA prevails in such matter. If TOR believes that it is not obliged to indemnify LUNA under the provisions of this Section 10.2, and it submits such dispute for arbitral resolution, then during the pendency of such arbitration TOR shall not be required to perform hereunder vis-à-vis LUNA, nor may LUNA act on rights vis-à-vis TOR which it deems to have been granted to it hereunder.

10.3 Indemnification by LUNA. LUNA agrees to indemnify and hold TOR harmless from and against:

(i) any and all loss, liability, damage or deficiency resulting from any misrepresentation, breach of warranty representation or nonfulfillment of any covenant or agreement on the part of LUNA under the terms of this Agreement or any document or instrument executed by LUNA in connection herewith;

(ii) any and all claims for product liability relating to Licensed Product, to the extent such claims relate to any Licensed Product directly manufactured or produced by LUNA, or manufactured at the direction of LUNA, or are due to deficiencies in the technical direction given by LUNA in respect of the Licensed Products;

(iii) any and all loss, liability, damage or deficiency resulting from any misrepresentation, breach of representation or warranty or nonfulfillment of any covenant or agreement on the part of LUNA under the terms of this Agreement or any document or instrument executed by LUNA in connection herewith; and

(iv) any and all actions, suits, proceedings, claims, demands, assessments, judgments, costs and expenses, including, without limitation, reasonable attorneys’ fees, incident to the foregoing subparagraphs (i), (ii) and (iii), and only such subparagraphs (and on appeal therefrom), regardless of whether or not TOR prevails in such matter. Notwithstanding the foregoing of this Section 10.3, LUNA does not in any way indemnify and hold TOR harmless from and against liabilities, obligations, damages, claims and third party rights caused by incorrect and careless use of Licensed Products or use of such products for any purpose other than the ordinary purpose for which Licensed Products are used. If LUNA believes that it is not obliged to indemnify TOR under the provisions of this Section 10.3, and it submits such dispute for arbitral resolution, then during the pendency of such arbitration LUNA shall not be required to perform hereunder vis-à-vis TOR, nor may TOR act on rights vis-à-vis LUNA which it deems to have been granted to it hereunder.

10.4 Right of Set-Off. TOR shall have the right, subject to approval by an arbitral panel, to recover by set-off any and all amounts for which TOR is entitled to indemnification under this Agreement from LUNA against all payments due or which may become due hereunder, in the order of their maturity or in any other order that TOR shall elect, until the cumulative amount so set off shall equal the total amount due to TOR, and in such manner of apportionment among the parties as is, in the reasonable exercise of TOR’s discretion, equitable in the circumstances. TOR shall not suspend payments to LUNA of Royalties due under the License Agreement while LUNA, in accordance with Section 12.6 hereof, seeks to dispose of Shares in an orderly manner.

10.5 Third Party Claims. The party to this Agreement entitled to indemnification under this Section 10 (hereinafter for purposes of this Section 10 referred to as “Indemnitee”) shall notify the party required to indemnify pursuant to this Section 10 (hereinafter for purposes of this Section 10 referred to as “Indemnitor”) within 15 days after the Indemnitee’s receipt of notice from any third party of any claim, demand, suit or proceeding with respect to which indemnification may be sought under the terms of this Agreement. Indemnitor shall be entitled, at its expense, to contest or otherwise defend against any such claim, demand, suit or proceeding through representatives and counsel of its own choice, in which event Indemnitee shall, upon Indemnitor’s request, cooperate in connection with such defense or contest by the preparation and furnishing of evidence and by making employees available to testify, at no cost to Indemnitor except for the reimbursement of costs and expenses incurred by Indemnitee in connection therewith. Nothing set forth herein shall preclude Indemnitee from defending such claim, demand, suit or proceeding on its own behalf, in which case Indemnitor shall cooperate with Indemnitee to the same extent contemplated by the foregoing sentence. If Indemnitor fails to protest or defend any such claim, demand, suit or proceeding within 30 days after receipt of the notice specified in the first sentence of this Section 10.5, Indemnitee shall have the right following such 30-day period, at its discretion, to settle, defend or pay the same, in which event Indemnitor’s indemnification shall extend to and include the amount of such settlement or payment and/or the costs and legal expenses of such defense. The failure to notify Indemnitor promptly as set forth above of any such claim, demand, suit or proceeding shall not relieve Indemnitor’s liability to indemnify Indemnitee under this Section 10.

10.6 Cooperation in Litigation. Except for litigation between TOR and LUNA, each of the parties hereto shall fully cooperate with the other in the defense or prosecution of any existing or future litigation or proceeding against or by such other party relating to or arising out of the business sold hereunder prior to or after the Closing Date. The party receiving cooperation shall pay the expenses, including legal fees and disbursements, of the cooperating party and its officers, directors and employees reasonably incurred in connection with such litigation.

11. Further Assurances. If at any time after the Closing Date any further assignments, conveyances or assurances in law are necessary or desirable to vest, perfect or confirm of record in LUNA the title to any of the Acquired Assets, or to confirm the assumption by TOR of any liability or obligation of LUNA expressly assumed by TOR hereunder, or otherwise to carry out the provisions hereof, the proper officers and directors of LUNA or of TOR, as the case may be, shall execute and deliver any and all proper deeds, assignments, instruments of assumption, powers of attorney and assurances in law, and do all things necessary or proper to vest, perfect or confirm title to such property or rights in TOR or to confirm the assumption by TOR of any such liability or obligation of LUNA, as the case may be, and otherwise to carry out the provisions hereof.

12. Term and Termination. This Agreement shall remain in effect until the complete payment to LUNA of the consideration set forth under Section 3.1.1. This Agreement may be terminated at any time by the parties as follows:

12.1 Mutual Agreement. By mutual written agreement of LUNA and TOR; or

12.2 By TOR. By written notice of TOR to LUNA if any condition set forth in Section 8.1 is not satisfied on or prior to the Closing Date and such condition is not waived by TOR on or prior to the Closing Date, and TOR is not in material default of its obligations under this Agreement; or

12.3 By LUNA. By written notice of LUNA to TOR if any condition set forth in Section 8.2 is not satisfied on or prior to the Closing Date and such condition is not waived by LUNA on or prior to the Closing Date, and LUNA is not in material default of its obligations under this Agreement; or

12.4 Liabilities of the Parties. In the event of the termination of this Agreement by any party hereto pursuant to this Section 12, the parties hereto shall have no liability under this Agreement of any nature whatsoever (other than pursuant to this Sections 12.4 and 12.5) to the other parties hereto (including without limitation, any liability for damages or for the costs and expenses incurred in connection with the negotiation of this Agreement), unless any party is in default under its obligations under this Agreement, in which event the party in default shall be liable to the other party for such default, and such non-defaulting party shall be entitled to any and all remedies available at law or in equity or under this Agreement. In the event that a condition precedent to the obligations of a party hereto is not satisfied, nothing herein shall be deemed to require any such party to terminate this Agreement rather than to waive such condition precedent and proceed with the Closing.

12.5 Termination and Effect Thereof. LUNA may terminate this Agreement:

(i) where the termination is pursuant to Section 3.1.2(e) or Section 3.1.2(f), and

(ii) if and only if TOR shall have defaulted on a payment obligation under Section 3.1.1 of this Agreement. If TOR makes such allegedly defaulted payment under protest prior to submitting the alleged default to arbitration in accordance with this Agreement, LUNA shall thereby cease to have as a remedy therefor the termination of this Agreement, but if TOR does not make such allegedly defaulted payment under protest prior to submitting the alleged default to arbitration, then this Agreement and the Related Agreements shall be terminated by LUNA, and TOR shall suspend its rights under those agreements, until a decision shall have issued from the arbitration. If TOR submits any such an alleged default to arbitration, then TOR shall have the burden of proof. In case of termination or rescission of this Agreement or nullification of Related Agreements held by the Escrow Agent under Section 3.1.2, TOR shall immediately return to LUNA all technology relating to the Licensed Product (including vendor agreements, manufacturing processing instructions and related files, and quality system documentation), the pre-production Prototypes of the Licensed Product together with related documentation, all tangible and intangible assets, all documents and deliveries of LUNA related to the Licensed Product, all Related Documents, as well as the documents evidencing attainment of Milestones delivered by LUNA to TOR.

12.6 Notice of Breach or Default and Cure. Except for monetary breaches described in Sections 3.1.2(e) and 3.1.2(f), in the event that a party hereto believes that another party hereto is in breach of an obligation hereunder, the party alleging breach shall give written notice to the allegedly breaching party of the alleged breach within sixty (60) days of the occurrence of such alleged breach. Such written notice shall set forth in reasonable detail the basis for alleging that a breach has occurred. The allegedly breaching party shall have fifteen (15) days in which to cure a monetary breach or submit to arbitration in accordance with this Agreement such monetary breach, and sixty (60) days in which to cure a non-monetary breach or submit to arbitration in accordance with this Agreement such non-monetary breach. Termination of this Agreement shall not be a remedy under this Section 12.6. Termination of this Agreement shall be a remedy only under Section 12.5 hereof. In the event that LUNA agrees or is directed to cure a monetary breach, LUNA shall have an interval of no less than thirty (30) days in which to go about an orderly disposal of TOR Shares, if it so chooses, and to cure such breach; furthermore, LUNA shall have the right to additional intervals of thirty (30) days, up to a maximum of five (5) such additional intervals, provided LUNA makes, as to each interval, a prima facie prior showing of diligence in procuring the means by which to cure the breach, and during the pendency of such intervals, TOR shall not suspend payments to LUNA of Royalties due under the License Agreement.

13. Miscellaneous. The parties further agree as follows:

13.1 Sales and Transfer Taxes. All sales, use, transfer or other taxes or fees attributable to the transfer of the Acquired Assets shall be paid by LUNA.

13.2 Expenses. The parties hereto shall, except as otherwise specifically provided herein, bear their respective expenses incurred in connection with the preparation, execution and performance with this Agreement, the Related Documents and the Contemplated Transactions, including without limitation, all fees and expenses of the parties’ respective agents, representatives, counsel and accountants.

13.3 Funds. All funds and moneys referred to herein, or payable hereunder, are and shall be, in U.S. Dollars.

13.4 Parties in Interest. This Agreement shall inure solely to the benefit of and shall be binding upon the successors and assigns of the parties hereto.

13.5 Prior Agreements; Modifications. This Agreement shall supersede all prior agreements, documents or other instruments with respect to the matters covered hereby, saving and excepting the Confidential Disclosure Agreement dated October 15, 2003 between LUNA and TOR, which shall continue in force. Where the terms of this Agreement and the terms of the Confidential Disclosure Agreement may conflict, the terms of this Agreement shall control. This Agreement may be amended only by an instrument in writing, duly signed by or on behalf of the parties hereto.

13.6 Captions. The captions in this Agreement are for convenience only and shall not be considered a part of or affect the construction or interpretation of any provision hereof.

13.7 Governing Law and Arbitration.

13.7.1 The terms of this Agreement shall be governed by, and interpreted and construed in accordance with the provisions of, the law of the Commonwealth of Pennsylvania, without giving effect to any choice of law provisions.

13.7.2 Any dispute or controversy arising out of or in relation to this Agreement hereof shall be determined and settled solely and exclusively by arbitration in the City of Philadelphia, Pennsylvania, in the English language and in accordance with the Commercial Rules of the American Arbitration Association then in effect, by a panel of 3 arbitrators, and judgment upon the award rendered by the arbitrator(s) may be entered in any court of competent jurisdiction. Each of the parties hereto hereby consents to the personal jurisdiction of such forum for the purposes of this Agreement. LUNA hereby irrevocably appoints the Secretary of State of Pennsylvania to accept service of process on its behalf. In the event that any party institutes any action or suit to enforce this Agreement or to secure relief from any default hereunder or breach hereof, the non-prevailing party or parties shall reimburse the prevailing party or parties for all costs and expenses, including reasonable attorneys’ fees, incurred in connection therewith and in enforcing or collecting any judgment rendered therein (including any appeal therefrom). The arbitration and the parties’ agreement therefor shall be deemed to be self-executing, and if either party fails to appear at a properly noticed arbitration proceeding, an award may be entered against such party despite such failure to appear.

13.8 Counterparts. This Agreement may be executed in any number of counterparts, each of which, when so executed, shall constitute an original copy hereof.

13.9 Notices. All notices required or permitted to be given pursuant to this Agreement shall be in writing, and shall be delivered either personally, by overnight delivery service or by U.S. certified or registered mail, postage prepaid, return-receipt requested and addressed to the parties at their respective addresses as they appear below. Notices sent by overnight delivery service shall be deemed received on the business day following the date of deposit with the delivery service. Mailed notices shall be deemed received upon the earlier of the date of delivery shown on the return-receipt, or the third business day after the date of mailing. Notwithstanding the foregoing, actual receipt of notice by a party shall constitute notice given in accordance with this Agreement on the date received, unless deemed earlier received pursuant to this section.

To TOR:

Torpranten, Inc.

Address, XXX,U.S.A.

Attention: President

with a copy to:

Lima & Vetucci, LLP

Address, U.S.A.

Attention: Frans Magnuson, Esquire

To LUNA:

LUNA Srl

Address, XXX,

Rome

Italy

Attention: President

with a copy to:

Claudio Montalbane

Italy

Attention: Vincenza Glorione Esquire

Any party may from time to time change its address for purpose of notices to that party by a similar notice specifying a new address, but no such change shall be deemed to have been given until it is actually received by the parties to be charged therewith.

13.10 Public Announcements. TOR and LUNA shall use their best efforts to agree upon the form and content of a press release or public announcement of the execution of this Agreement as promptly as practicable after execution hereof to the extent such agreement is not reached prior to the date hereof. Notwithstanding the foregoing, LUNA agrees not to make any such announcement without prior consent to the form and content thereof by TOR and acknowledges that TOR, as a public company, will be required to and may make such an announcement without the prior consent of LUNA in the event the parties are unable to reach agreement on the form and content thereof within a reasonable period of time after the execution hereof.

13.11 Force Majeure. In the event that the performance by any party hereto of its obligations hereunder shall be interrupted or delayed by any occurrence not occasioned by the conduct of either party hereto, whether such occurrence be an act of God or the common enemy or the result of war, riot, civil commotion or sovereign conduct, then the party whose performance is so delayed or interrupted shall be excused from such performance for such period of time as is reasonably necessary after the occurrence to remedy the effects thereof, but in no event shall such excused time exceed 180 days.

13.12 Severability. In the event that any particular provision or provisions of this Agreement or the other agreements contained herein shall for any reason hereafter be determined to be unenforceable, or in violation of any Legal Requirement, governmental order or regulation, such unenforceability or violation shall not affect the remaining provisions of such agreements, which shall continue in full force and effect and be binding upon the respective parties hereto.

13.13 Amendment or Waiver. Every right and remedy provided herein shall be cumulative with every other right and remedy, whether conferred herein, at Legal Requirement, or in equity, and may be enforced concurrently herewith, and no waiver by any party of the performance of any obligation by the other shall be construed as a waiver of the same or any other default then, theretofore, or thereafter occurring or existing. At any time prior to the Closing Date, this Agreement may be amended by a writing signed by all parties hereto, with respect to any of the terms contained herein, and any term or condition of this Agreement may be waived or the time for performance hereof may be extended by a writing signed by the party or parties for whose benefit the provision is intended. This Agreement may not be amended or modified, except by a written agreement signed by all parties hereto.

IN WITNESS WHEREOF, each of the parties hereto, intending to be legally bound hereby, has caused this Agreement to be signed in its name by the undersigned thereunto duly authorized, all as of the date first above written.

“TOR”:

TORPRANTEN, INC.,

a Delaware corporation

By:

/s/

--------------------------------------------------------------------------------

Name:

Title:

President/CEO

“LUNA”:

LUNA SRL,

an Italian corporation

By:

/s/

--------------------------------------------------------------------------------

Name:

Title:

Managing Director

**APA#36**

**ASSET PURCHASE AGREEMENT**

dated as of August 14, 2012

by and between

HEALIMED, INC.

and

SORENS AB

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TABLE OF CONTENTS

Article I DEFINITIONS

Section 1.1 Definitions

Section 1.2 Glossary of Defined Terms

Section 1.3 Interpretation

Article II PURCHASE AND SALE

Section 2.1 Purchase and Sale of the Purchased Assets

Section 2.2 Excluded Assets

Section 2.3 Assumed Liabilities

Section 2.4 Excluded Liabilities Article III PURCHASE PRICE; ALLOCATION OF PURCHASE PRICE

Section 3.1 Purchase Price

Section 3.2 Purchase Price Adjustment

Section 3.3 Allocation of Purchase Price.

Section 3.4 Inventory

Section 3.5 Proration of Certain Items

Section 3.6 TSA Preparedness Purchase Price Adjustment

Article IV CLOSING Section

4.1 Closing Date

Section 4.2 Closing Deliveries by the Seller

Section 4.3 Closing Deliveries by the Purchaser

4.4 German Closing Article

V REPRESENTATIONS AND WARRANTIES OF THE SELLER

Section 5.1 Organization; Authority; Qualification; Capitalization

Section 5.2 No Conflict

Section 5.3 Governmental Consents and Approvals

Section 5.4 Financial Statements; No Undisclosed Liabilities

Section 5.5 Litigation

Section 5.6 Properties

Section 5.7 Compliance with Laws

Section 5.8 Environmental Matters

Section 5.9 FDA and Regulatory Matters

Section 5.10 Employee Benefits

Section 5.11 Tax Matters

Section 5.12 Intellectual Property

Section 5.13 Contracts

Section 5.14 Labor and Employment Matters

Section 5.15 Brokers

Section 5.16 Customers and Suppliers

Section 5.17 Absence of Changes

Section 5.18 Foreign Corrupt Practices Act; Import/Export Matters

Section 5.19 Books and Records

Section 5.20 Insurance

Section 5.21 Inventories; Tangible Personal Property

Section 5.22 Accounts and Notes Receivable and Payable

Section 5.23 Sufficiency

Section 5.24 Disclaimer Article

VI REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

Section 6.1 Organization and Authority of the Purchaser

Section 6.2 No Conflict

Section 6.3 Governmental Consents and Approvals

Section 6.4 Litigation

Section 6.5 Compliance with Laws

Section 6.6 Sufficiency of Funds

Section 6.7 Brokers

Section 6.8 Investigation by the Purchaser; No Knowledge of Breach

Article VII ADDITIONAL COVENANTS AND AGREEMENTS

Section 7.1 Conduct of the Business

Section 7.2 Access to Information; Confidentiality

Section 7.3 Regulatory and Other Authorizations; Notices and Consents

Section 7.4 Notifications; Disclosure Schedules

Section 7.5 Release of Indemnity Obligations

Section 7.6 Intellectual Property Matters

Section 7.7 Transition Services; Space License Agreements

Section 7.8 Further Action

Section 7.9 Books, Records and Files

Section 7.10 Litigation Support

Section 7.11 Allocation of Business Income

Section 7.12 Non-Solicitation

Section 7.13 Covenant Not to Engage in Certain Competitive Activities

Section 7.14 Acquisition Proposals

Section 7.15 Confidentiality

Section 7.16 Additional Financial Information

Section 7.17 Discharge of Encumbrances

Section 7.18 Risk of Loss

Section 7.19 Identification of Certain Allocated Employees

Section 7.20 Loss History

Section 7.21 Seller Intercompany Contracts

Section 7.22 Cooperation with Respect to Certain Actions

Section 7.23 Cooperation with Respect to Certain Software

Section 7.24 Identification of Certain Fixed Assets

Section 7.25 BABOLANX Matters

Article VIII EMPLOYEE MATTERS

Section 8.1 Transferred Employees

Section 8.2 Compensation and Employee Benefits

Section 8.3 Employee Liabilities

Section 8.4 Non-Solicitation

Section 8.5 WARN Laws

Section 8.6 Assistance with Certain Agreements

Article IX TAXES

Section 9.1 Periodic Taxes

Section 9.2 Taxes Attributable to Other Periods

Section 9.3 Refunds

Section 9.4 Resolution of Tax Controversies

Section 9.5 Conveyance Taxes Section 9.6 VAT

Section 9.7 Cooperation on Tax Matters

Article X CONDITIONS

Section 10.1 Conditions to Obligations of the Seller

Section 10.2 Conditions to Obligations of the Purchaser

Article XI TERMINATION

Section 11.1 Termination

Section 11.2 Effect of Termination

Article XII INDEMNIFICATION AND SURVIVAL

Section 12.1 Survival of Representations and Warranties

Section 12.2 Indemnification by the Purchaser

Section 12.3 Indemnification by the Seller

Section 12.4 Limitations on Indemnification

Section 12.5 Claims for Indemnification Section 12.6 Tax Effect

Section 12.7 Insurance Offset

Section 12.8 Exclusivity

Section 12.9 Treatment of Indemnification Payments

Article XIII MISCELLANEOUS

Section 13.1 Assignment

Section 13.2 Public Announcements

Section 13.3 Expenses

Section 13.4 Severability

Section 13.5 No Third Party Beneficiaries

Section 13.6 Waiver

Section 13.7 Governing Law

Section 13.8 Jurisdiction

Section 13.9 Waiver of Jury Trial

Section 13.10 Other Remedies; Specific Performance

Section 13.11 Headings

Section 13.12 Counterparts

Section 13.13 Further Documents

Section 13.14 Notices

Section 13.15 Performance of Obligations by Subsidiaries or Affiliates;

Documentation Under Local Law

Section 13.16 Entire Agreement

Schedule 1.1(a) Products

Schedule 1.1(b) 1 Seller Knowledge Persons

Schedule 1.1(b) 2 Purchaser Knowledge Persons

Schedule 1.1(c) Certain Permitted Encumbrances

Schedule 1.1(d) Seller Brands

Schedule 2.1(a) Owned Business Real Property

Schedule 2.1(b) Leased Business Real Property

Schedule 2.1(c) Fixed Assets

Schedule 2.2(i) Excluded Leased Business Real Property

Schedule 2.2(w) Certain Excluded Assets

Schedule 2.4(o) Certain Excluded Liabilities

Schedule 3.4 Inventory Procedures

Schedule 7.1 Interim Operating Covenants

Schedule 7.8 Key Contracts

Schedule 7.19(a) Selection Criteria

Schedule 8.1(b)(i) Provisions Applicable to Non-U.S. Automatically Transferred Employees

Schedule 8.1(b)(ii) Provisions Applicable to U.S. Transferred Employees and Non-U.S. Transferred Employees By Agreement

Schedule 8.1(b)(iv) Provisions Applicable to Seller Other Business Employees

Schedule 9.5 Austrian Tax Legend

Schedule 10.1(f) Clone Preparedness

Schedule 12.3(e) Certain Indemnification Matters

Exhibit A Form of Bill of Sale and Assignment and Assumption Agreement

Exhibit B Form of Deed

Exhibit C Form of Intellectual Property Assignment Agreement

Exhibit D Form of Seller Trademark License Agreement

Exhibit E Form of Transition Services Agreement

Exhibit F Form of German Real Property Transfer Agreement

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**ASSET PURCHASE AGREEMENT**

**THIS ASSET PURCHASE AGREEMENT**, dated as of August 14, 2012, is entered into by and between HEALIMED, Inc., a Texas corporation (the Seller ), and SORENS AB, a Swedish Aktiebolag (the Purchaser ). The Seller and the Purchaser are each referred to individually as a Party and collectively as the Parties . Capitalized terms used but not otherwise defined herein have the meanings set forth in **Section** 1.1 herein.

**WHEREAS**, the Seller, directly and through its various Subsidiaries, is engaged in, among other things, the Business;

**WHEREAS**, the Seller wishes to sell, or cause its Subsidiaries to sell, to the Purchaser, and the Purchaser wishes to purchase from the Seller, all right, title and interest of the Seller and its Subsidiaries in and to the Purchased Assets, and in connection therewith the Purchaser is willing to assume the Assumed Liabilities, all upon the terms and subject to the conditions set forth herein;

**WHEREAS**, the Seller and its Subsidiaries also conduct the Seller Other Businesses at numerous locations both within and outside the United States, which businesses and operations are being retained by the Seller and its Subsidiaries and are not being transferred to, or acquired by, the Purchaser;

**WHEREAS**, in connection with the purchase of the Purchased Assets, the Purchaser is willing to employ the Business Employees as provided herein; and

**NOW, THEREFORE**, in consideration of the premises and mutual covenants, agreements and provisions herein contained, and intending to be legally bound, the parties hereto agree as follows:

Article I

**DEFINITIONS**

**Section** **1.1 Definitions .** The following terms have the following meanings when used herein:

Action means any claim, demand, action, lawsuit, mediation, arbitration, inquiry, proceeding or investigation by or before any third party or any Governmental Authority.

Affiliate means, with respect to any Person, any other Person directly or indirectly controlling or controlled by, or under direct or indirect common control with, such Person. For purposes of this definition, a Person shall be deemed to control another Person if it (a) owns or controls more than fifty percent (50%) of the voting equity of the other Person (or other comparable ownership if the Person is not a corporation) or (b) possesses the power to direct or cause the direction of the management policies of a Person, by contract or otherwise.

**Agreement** means this Asset Purchase Agreement, including all schedules and exhibits hereto, as it may be amended from time to time in accordance with its terms.

**CURE-ABC Business** means the business unit of the Seller and its Subsidiaries known as CURE-ABC that provides advanced wound care therapies other than those of the Business, including therapies based on the Sellers negative pressure technology platform.

**Ancillary Agreements** means each of (a) the Bill of Sale and Assignment and Assumption Agreement, (b) the Intellectual Property Assignment Agreement, (c) the Seller Trademark License Agreement, (d) the Transition Services Agreement, (e) the Space License Agreements, (f) the Escrow Agreement, (g) the German Real Estate Transfer Agreement, and (h) any other agreements which the Parties determine are reasonably necessary or advisable in connection with the transactions contemplated by this Agreement and the other Ancillary Agreements. Bill of Sale and Assignment and Assumption

**Agreement** means a bill of sale and assignment and assumption agreement, in substantially the form attached hereto as Exhibit A ;

**Books, Records and Files** means any studies, reports, records (including shipping and personnel records), books of account, Contracts, instruments, surveys, data (including financial, sales, purchasing, research and development, human resources and operating data), computer data, disks, tapes, business plans, product designs and plans, marketing plans, customer lists, supplier lists, distributor lists and records, marketing materials and plans, shipping documents, customer and supplier communications and correspondence, transaction data and similar transaction level data and records, account documentation, Intellectual Property files, correspondence and other documents, records and files required to be maintained under applicable Law (including FDCA) in respect of the Business Products, whether or in electronic, paper or other form.

**Business** means the business unit of the Seller and its Subsidiaries known as Healing Systems that researches, invents, designs, develops, manufactures, has manufactured, packages, labels, uses, markets, distributes, imports, exports, offers for sale, offers for rent or lease, sells, rents, leases, services in connection with any of the foregoing activities, and provides Healing Systems, including hospital beds, mattress replacement systems overlays and patient mobility devices, including in the categories of critical care, wound care and bariatric care, including the Business Products.

**Business Day** means any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by Law to be closed in the City of New York.

**Business Intellectual Property** means all Business Owned Intellectual Property and all Business Licensed Intellectual Property.

**Business Licensed Intellectual Property** means all Intellectual Property used in, held for use in, or related to, the Business or the Business Products that is held by license by the Seller or any of its Subsidiaries, including that Intellectual Property identified in Section 5.12(b) of the Seller Disclosure Schedule; provided , however , that Business Licensed Intellectual Property does not include Excluded Software.

**Business Owned Intellectual Property** means all Intellectual Property used in, held for use in, or related to, the Business or the Business Products and owned, in whole or in part, by the Seller or any of its Subsidiaries, including that Intellectual Property identified in Section 5.12(a) of the Seller Disclosure Schedule; provided , however , that Business Owned Intellectual Property does not include (a) Seller Brands, and (b) Excluded Software.

**Business Products** means all of the

(i) products of the Seller and its Subsidiaries set forth on Schedule 1.1(a) and any other products formerly or currently designed, developed, manufactured, packaged, labeled, marketed, offered for sale, offered for lease, offered for rent, sold, leased, rented, distributed, serviced, imported or exported by or on behalf of the Business;

(ii) products that are being developed by or for the Business:

(a) for which human clinical trials or preclinical trials have been completed; or

(b) for which design has been locked or frozen in anticipation of an application to the FDA or other Governmental Authority for approval, clearance or permission to market, offer for sale or sell such product; or

(c) for which the Seller or its Subsidiaries in respect of the Business (1) has initiated clinical trials or preclinical trials, or (2) applied to the FDA or any other Governmental Authority for approval, clearance or permission to market, offer for sale, sell, distribute, import or export such product, including 510(k) clearance; and (iii) products which Seller or any of its Subsidiaries intended to or currently intends to (or designed or developed, or is designing or developing with a view to) manufacture, have manufactured, package, label, market, offer for sale, offer for lease, offer for rent, sell, lease, rent, distribute, service, import or export after the date hereof and/or prior to the Closing relating to the Business.

**Claim Notice** means written notification of a Third Party Claim and, if then reasonably determinable, specifying in reasonable detail the nature of and basis for such Third Party Claim, together with the estimated amount of the Losses arising from such Third Party Claim.

**Code** means the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder.

**Compensation and Benefit Plans** means each Employee Agreement and each bonus, jubilee pay, seniority pay, deferred compensation, pension, retirement, profit-sharing, thrift, savings, employee stock ownership, stock bonus, stock purchase, restricted stock, stock option, phantom stock,other equity-based compensation, employment, termination, termination indemnity, severance, compensation, welfare, medical, health, disability, sick leave, vacation pay, old age or other plan, agreement, policy or arrangement for the benefit of any current or former officer, employee, director, retiree, or independent contractor or any spouse, dependent or beneficiary thereof, whether or not such Compensation and Benefit Plan is or is intended to be

(i) arrived at through collective bargaining or otherwise,

(ii) funded or unfunded,

(iii) covered or qualified under the Code, ERISA or other applicable law, (iv) set forth in an Employment Agreement or consulting agreement, or

(v) written or oral.

**Competition Consent** means any consent, approval, authorization, registration, declaration, filing, notice of, under any Competition Law, or the expiration or termination of a waiting period under any Competition Law, in each case required to permit the consummation of the transactions contemplated by this Agreement.

**Competition Law** means any Law that prohibits, restricts or regulates actions having the purpose or effect of monopolization or restraint of trade or lessening of competition through merger or acquisition.

**Confidential Information** means all trade secrets and other confidential and/or proprietary information of a Person, including

(a) information or data contained in or derived from reports, investigations, research, work in progress, codes, marketing and sales programs, forecasts, budgets, financial information and projections, cost summaries, pricing formulas, pricing and marketing information, identities and information of customers, suppliers and other commercial partners, contract analyses, financial information, projections, confidential filings with any state or federal agency;

(b) all other confidential concepts, methods, procedures, processes, ideas, products, designs, Software, materials or information prepared or performed for, by or on behalf of such Person including by its employees, officers, directors, agents, representatives, or independent contractors/consultants; and

(c) the terms of this Agreement or any of the Ancillary Agreements, or any of the transactions contemplated hereby and thereby.

**Consent** means any consent, approval, authorization, registration, declaration, filing, notice of, with or to any Person or under any Law or any Contract in each case required to permit the consummation of the transactions contemplated by this Agreement.

**Contract** means any loan or credit agreement, bond, debenture, note, mortgage, indenture, lease, supply agreement, license agreement, covenant not to sue, development agreement or other contract, agreement, obligation, commitment or instrument (whether written or oral) that is legally binding, including all amendments thereto.

**Deed** means a special warranty deed conveying the Owned Business Real Property to the Purchaser, subject only to Permitted Encumbrances, in the form of Exhibit B hereto or in such other form as is customarily used in the locality in which the Owned Business Real Property is located.

**Employee Agreement** means an employment, retention, severance, invention assignment, non-disclosure, non-compete, non-solicitation, or other similar agreement between the Seller and a Transferred Employee.

**Encumbrance** means any lien, pledge, deed of trust, hypothecation, charge, mortgage, security interest, title defect, voting trust, shareholders agreement, proxy, encumbrance, lien, burden, license, charge or other similar restriction, lease, sublease, title retention agreement, option, easement, covenant, encroachment or other adverse claim, license, covenant not to sue, or other encumbrance.

**Environmental Law** means any Law related to

(i) the protection, preservation, investigation or restoration of the environment or natural resources; or

(ii) the presence, management, handling, use, disposal, actual or threatened release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing or migrating into or through the environment or any natural or man-made structure of any Hazardous Substances, including: (i) the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ( CERCLA ); (ii) the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq., ( RCRA );

(iii) the Emergency Planning and Community Right to Know Act (42 U.S.C. §§11001 et seq.);

(iv) the Clean Air Act (42 U.S.C. §§ 7401 et seq.);

(v) the Federal Water Pollution Control Act (33 U.S.C. §§1251 et seq.);

(vi) the Toxic Substances Control Act (15 U.S.C. §§2601 et seq.);

(vii) the Hazardous Materials Transportation Act (49 U.S.C. §§ 5101 et seq.);

(viii) the Safe Drinking Water Act (41 U.S.C. §§300f et seq.);

(ix) any state, county, municipal, local or foreign statues, laws or ordinances similar or analogous to the federal statutes listed in parts (i) - (viii) of this subparagraph;

(x) any amendments existing as of the Closing Date to the statutes, laws or ordinances listed in parts (i) - (ix) of this subparagraph; and

(xi) any rules, regulations, guidelines, directives, orders or the like adopted pursuant to or implementing the statutes, laws, ordinances and amendments listed in parts (i) - (x) of this subparagraph.

**Ergo-Asyst Agreement** means the Asset Purchase Agreement, dated December 31, 2010, by and among AB Technology LLC, a Florida limited liability company, BC Holdings LLC, a Florida limited liability company, John A. Cramer, Jr., MD, and Gertrud Steiner, as amended.

**ERISA** means the Employee Retirement Income Security Act of 1974, as amended, and the applicable rules and regulations promulgated thereunder.

**ERISA Affiliate of the Seller or its Subsidiaries** means any other entity which, together with the Seller or such Affiliates would be treated as a single employer under Code Section 414 or ERISA Section 4001(b).

**Excluded Software** means all Software of the Seller and its Subsidiaries (whether owned or licensed from a third party) other than

(i) any local operating system or other platform (in the version originally acquired thereon) resident on any personal computers, laptops, handheld device or other computer hardware or firmware included in the Purchased Assets,

(ii) any Software included or embedded in any Business Products, or

(iii) any Software used in the design, manufacture or testing of any Business Products, provided that the foregoing clauses (i) and (iii) shall not apply with respect to any Software (i.e. any of same shall constitute Excluded Software) that is utilized by the Seller and its Subsidiaries (A) in connection with the Seller Other Businesses (including jointly with the Business) or (B) pursuant to any license that is not transferable or is transferable only with the payment of a licensing, relicensing, transfer or other charge unless (and then only to the extent), with respect to Software that is transferable and is utilized by the Seller and its Subsidiaries exclusively in connection with the Business, the Purchaser pays all such licensing, relicensing, transfer or other charges.

**FDA** means the United States Food and Drug Administration and any successor entity.

**FDCA** means the Federal Food, Drug, and Cosmetic Act, as amended, including the rules and regulations promulgated thereunder.

**GAAP** means United States generally accepted accounting principles in effect from time to time applied consistently throughout the periods.

**German Owned Business Real Property** means the Owned Business Real Property identified in Schedule 2.1(a) located at XXX Germany.

**German Real Property Transfer Agreement** means that certain Agreement on the Sale and Purchase of Real Property between HMI Medizinprodukte GmbH (previously Schmerzweg Produkte GmbH Gesellschaft für medizinische und Rehabilitations-erzeugnisse) and Purchaser in substantially the form attached hereto as Exhibit F with respect to the German Owned Business Real Property.

**Governmental Authority** means any legislative, executive, judicial, quasijudicial or other public authority, agency, department, bureau, commission, division, unit, court or other public body, including international, supranational, foreign, federal, state and local bodies.

**Governmental Order** means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

**Hazardous Substances** means (a) petroleum products and by-products, asbestos and asbestos-containing materials, urea formaldehyde foam insulation, medical or infectious wastes, polychlorinated biphenyls, radon gas, radioactive substances, chlorofluorocarbons and all other ozone-depleting substances, and (b) any other chemical, material, substance, waste, pollutant or contaminant that is prohibited, limited or regulated by or pursuant to any Environmental Law, including RCRA hazardous wastes and CERCLA hazardous substances.

**Healthcare Laws** means the Medicare (Title XVIII of the Social Security Act) and Medicaid (Title XIX of the Social Security Act), the federal Anti-kickback Statute (42 U.S.C. § 1320a-7b(b)), the Stark Anti-Self-Referral Law (42 U.S.C. §§ 1395nn), the Anti-Inducement Law (42 U.S.C. § 1320a-7a(a)(5)), the civil False Claims Act (31 U.S.C. §§ 3729 et seq.), the administrative False Claims Law (42 U.S.C. § 1320a-7b(a)), the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. § 1320d et seq.), as amended by the Health Information Technology for Economic and Clinical Health Act (42 U.S.C. § 17921(2) et seq.), the exclusion laws (42 U.S.C. 1320a-7), the European Medical Device Directives (Directive 93/42/EEC, 90/385/EEC, and 98/79/EC as amended) (the Medical Device Directives ) and any European Economic Area Member State laws implementing the provisions of these directives, the Misleading and Comparative Advertising Directive (2006/114/EC), the Unfair Commercial Practices Directive (2005/29/EC), and any European Economic Area Member State laws implementing the provisions of these directives, all regulations or guidance promulgated pursuant to such Laws, any similar state and local statutes, regulations, rules, ordinances, judgments, and orders, and any other Law that is related to kickbacks, patient or program charges, recordkeeping, coding, documentation requirements, reimbursement, referrals, the hiring of employees or acquisition of services or supplies from those who have been excluded from government health care programs, quality, safety, privacy, security, licensure, accreditation or any other aspect of the manufacture and sale of pharmaceutical or medical device products.

**HSR Act** means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

**Indebtedness** means, as applied to any person,

(a) all indebtedness for borrowed money, whether current or funded, or secured or unsecured,

(b) all indebtedness for the deferred purchase price of property or services represented by a note or other security,

(c) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property),

(d) all indebtedness secured by a purchase money mortgage or other lien to secure all or part of the purchase price of property subject to such mortgage or lien,

(e) any liability in respect of bankers acceptances or letters of credit,

(f) any obligations under leases required to be capitalized in accordance with GAAP,

(g) any interest rate protection, swap agreement or collar agreement, in each case, to the extent payable if such obligation is terminated at Closing; and

(h) all indebtedness referred to in clauses (a), (b), (c), (d), (e) or (f) above which is directly or indirectly guaranteed by or which such person has agreed (contingently or otherwise) to purchase or otherwise acquire or in respect of which it has otherwise assured a creditor against loss.

**Indemnified Party** means any Person asserting a claim for indemnification under any provision of Article XII .

**Indemnifying Party** means any Person against whom a claim for indemnification is being asserted under any provision of Article XII .

**Indemnity Notice** means written notification pursuant to Section 12.5(b) of a claim for indemnity under Article XII by an Indemnified Party, specifying in reasonable detail the nature of and basis for such claim, together with the amount or, if not then reasonably determinable, the estimated amount (if practicable), determined in good faith, of the Losses arising from such claim.

**Intellectual Property** means any and all intellectual property and proprietary rights of any kind or description in any jurisdiction throughout the world, and all rights therein or pertaining thereto, including:

(a) all patents, patent applications and statutory invention registrations, including any other counterparts of any of the foregoing worldwide, and including all provisional, divisionals, continuations, continuations-in-part, requests for continued examination, continued prosecution applications, re-issues, re-examinations, any national phase PCT applications, any PCT international applications, and any patents issuing or granted from any of the foregoing applications or claiming priority to any of the foregoing applications or patents or serving as a basis for a claim of priority for any of the foregoing applications or patents;

(b) all Trademarks;

(c) all published and unpublished works of authorship and copyrights rights therein, industrial designs, industrial models and proprietary designs, and all registrations, and applications for registration for any of the foregoing, and all renewals, extensions, restorations and reversions thereof;

(d) all Software, data, databases and compilations of information; and

(e) all Confidential Information, including confidential and proprietary information, inventions, invention disclosures, formulas, processes, methods, techniques, designs, developments, discoveries, technology, research, trade secrets, know-how, modifications, improvements, moral rights, or publicity rights, whether or not patented, patentable, copyrightable, reduced to practice or registered.

**Intellectual Property Assignment Agreement** means the intellectual property assignment agreement entered into between the Seller or any of its Subsidiaries and the Purchaser to transfer Business Intellectual Property constituting Purchased Assets to the Purchaser, in substantially the form attached hereto as Exhibit C .

**IRS** means the United States Internal Revenue Service.

**Knowledge** means, when used in connection with the Seller with respect to any matter in question, the actual knowledge of those Persons listed on Schedule 1.1(b) 1 as of the date hereof after making due inquiry of, in each case, the current management-level employee of the Seller or its Subsidiaries having principal responsibility for such matter and, when used in connection with the Purchaser with respect to any matter in question, the actual knowledge of those Persons listed on Schedule 1.1(b) 2 as of the date hereof after making due inquiry of, in each case, the current management-level employee of the Purchaser or its Affiliates having principal responsibility for such matter.

**Law** means any United States federal, state, local or foreign statute, law, ordinance, regulation, rule, directive, code, order, Governmental Orders or notices issued or promulgated by any Governmental Authority, or other requirement or rule of law.

**Liabilities** means any and all debts, liabilities and obligations, whether accrued or fixed, absolute or contingent, known or unknown, matured or unmatured or determined or determinable, including those arising under any Law, Action or Governmental Order and those arising under any Indebtedness or Contract.

**Material Adverse Effect** means any event, change or effect that

(a) is materially adverse to the business, operations, properties, financial condition or results of operations of the Seller and its Subsidiaries with respect to the Business, taken as a whole, or

(b) would prevent or materially delay the consummation by the Seller of the transactions contemplated by this Agreement; provided , however , that none of the following shall be deemed (either alone or in combination) to constitute, and no event, change or effect attributable to any of the following shall be taken into account in determining whether there has been, a Material Adverse Effect:

(i) the execution of this Agreement or the public disclosure or consummation of the transactions contemplated by this Agreement or any of the Ancillary Agreements, including the loss or departure of Business Employees, or other service providers of the Business, or the termination, reduction or any other adverse development in the Business relationship with any of its customers, suppliers, distributors or other business partners, in each case to the extent proximately caused by such execution or public disclosure;

(ii) (A) financial, credit or securities markets in the U.S. or any location in which the Business operates, or (B) general economic conditions in the industries and markets in which the Business operates, except in the case of this clause (ii) to the extent that the effects thereof have a disproportionate effect on the Seller or the Business;

(iii) the failure, in and of itself, of the Business to meet the sales, earnings or other financial or non-financial projections and estimates furnished to the Purchaser in the virtual data room maintained by the Seller in connection with the transactions contemplated by this Agreement (provided that the facts or occurrences giving rise to or contributing to such failure that are not otherwise excluded from the definition of Material Adverse Effect may be taken into account in determining whether there has been a Material Adverse Effect);

(iv) acts of war or terrorism (or the escalation of the foregoing) or natural disasters or other force majeure events;

(v) changes in any Law applicable to the Business or GAAP (or the interpretation thereof), except in the case of this clause (v) to the extent thatthe effects thereof have a disproportionate effect on the Seller or the Business;

(vi) any action expressly required or permitted to be taken pursuant to this Agreement or any Ancillary Agreement, or taken with the prior written consent of the Purchaser after the date hereof;

(vii) any action or inaction by the Purchaser or its Affiliates after the date hereof; or

(viii) any change or effect resulting from the failure of the Purchaser to reasonably consent to any of the actions proscribed in Section 7.1 .

**Measurement Revenue** means the annualized revenue of the Business based on all completed calendar months after June 30, 2012 and prior to the date on which TSA Preparedness occurs; provided , that , for purposes of this definition, the date on which TSA Preparedness occurs shall be no later than the Closing Date. For example, (i) if TSA Preparedness occurs in November 2012, revenue of the Business for the four months of July 2012, August 2012, September 2012 and October 2012 shall be multiplied by 3 to derive the annualized revenue of the Business for purposes of the Measurement Revenue, (ii) if TSA Preparedness occurs in February 2013, revenue for the Business for the seven months of July 2012, August 2012, September 2012, October 2012, November 2012, December 2012 and January 2013 shall be multiplied by 1.7143 to derive the annualized revenue of the Business for purposes of the Measurement Revenue, and (iii) if TSA preparedness occurs after June 30, 2013, the Measurement Revenue shall be the revenue of the Business for the most recently completed last twelve months.

**Permitted Encumbrances** means

(a) statutory Encumbrances for Taxes or other governmental charges not yet delinquent or the amount or validity of which is being contested in good faith by appropriate proceedings;

(b) mechanics, materialmens, architects, carriers, workers, repairers, warehousemens, landlords and other like statutory Encumbrances arising or incurred in the ordinary course of business, either securing payments not yet delinquent or that are being contested in good faith by appropriate proceedings;

(c) deposits or pledges made in connection with, or to secure payment of, workers compensation, unemployment insurance, old age pension programs mandated under applicable Law or other social security;

(d) Encumbrances arising under equipment leases with third parties entered into in the ordinary course of business and any ordinary course obligations under any Business Contracts;

(e) those exceptions to title to the Purchased Assets listed on Schedule 1.1(c) with respect to Owned Business Real Property;

(f) Encumbrances securing or created by or in respect of any of the Assumed Liabilities;

(g) any state of facts that a current survey of the Owned Business Real Property would disclose;

(h) Encumbrances not created by the Business that affect the underlying fee interest of any Leased Business Real Property and that do not materially affect business operations at such Leased Business Real Property as currently conducted by the Seller and its Subsidiaries;

(i) Encumbrances to be released at or prior to Closing; and

(j) except with respect to Business Intellectual Property, such Encumbrances as do not materially affect the use or value of the properties or assets subject thereto or affected thereby or otherwise materially impair business operations at such properties (for the purposes for which such properties or assets are currently being used by the Seller or its Subsidiaries).

**Person** means any individual, corporation, partnership, limited partnership, joint venture, limited liability company, trust or unincorporated organization or Governmental Authority or any other entity.

**Post-Closing Tax Period** means any taxable period (or portion thereof) commencing after the Closing, including such portion of any Straddle Period commencing after the Closing.

**Pre-Closing Tax Period** means any taxable period (or portion thereof) ending on or prior to the Closing, including such portion of any Straddle Period up to and including the Closing.

**Purchaser Disclosure Schedule** means the disclosure schedules of the Purchaser delivered to the Seller as of the date hereof.

**Real Property** means all land, buildings and other structures, facilities or improvements located thereon and all easements, licenses, rights and appurtenances relating to the foregoing.

**Registrations** means authorizations or approvals issued by any Governmental Authority held by the Seller or its Subsidiaries (including premarket notifications, investigational device exemptions, clearances and approvals, establishment registrations, product listings, manufacturing approvals or authorizations, CE markings, pricing and reimbursement approvals, labeling approvals or their foreign equivalent), or provider agreements, whether through fiscal intermediaries or otherwise, with Medicare, applicable state programs (including Medicaid), TRICARE or similar government provider programs, in each case that are used or held for use in the Business.

**Regulatory Consent** means any consent, approval, authorization, registration, declaration, filing, notice of, with or to any Person or under any Law, excluding any Competition Law, in each case required to permit the consummation of the transactions contemplated by this Agreement.

Schedules means the schedules attached hereto.

**Seller Brands** means the Trademarks HEALIMED, Inc., HEALIMED, HEALIMED & Design, HMI, HMI & Design, HMI & Design (Globe & Staff), HMI USA, HMI Express, HMI The Best, HMI The Best & Design, Miscellaneous Design (Star Logo), The Best, Changing the Standard of Healing, and CURE-ABC, and all Trademarks identified in Schedule 1.1(d) .

Seller Disclosure Schedule means the disclosure schedules of the Seller delivered to the Purchaser as of the date hereof, as amended pursuant to Section 7.4(b) .

**Seller Other Businesses** means all businesses conducted prior to the Closing by the Seller and its Subsidiaries, in each case that are not included in the Business, including the CURE-ABC Business. Software means computer programs or data, whether in source code (human readable format), object code (machine readable format), firmware or other form, and all design, development, flow charts and other materials, whether in electronic, paper or other form, relating to any of the foregoing and all user manuals, systems manuals, and other documentation of any kind, whether in electronic, paper or other form, relating to any of the foregoing.

**Straddle Period** means any taxable period beginning before the Closing Date and ending on or after the Closing Date.

**Subsidiary or Subsidiaries** means, with respect to any Person, any corporation, partnership, joint venture or other legal entity of which such Person owns, directly or indirectly, 50% or more of the stock or other equity interests the holder of which is generally entitled to vote for the election of the board of directors or other governing body of such corporation or other legal entity.

**Tangible Personal Property** means all office equipment and supplies, machinery, equipment, supplies, vehicles, tools, spare parts, production supplies, furniture and fixtures and other items of tangible personal property (other than Inventory) owned by the Seller or its Subsidiaries and used primarily in, primarily held for use in, or primarily related to the Business.

**Tax or Taxes** means any federal, state, local or foreign taxes, charges, fees, duties, tariffs, levies or other assessments, including income, gross receipts, net proceeds, ad valorem, turnover, real property, personal property, sales, use, franchise, excise, value added, goods and services, license, payroll, unemployment, environmental, customs duties, capital stock, disability, stamp, user, transfer, fuel, excess profits, occupational and interest equalization, windfall profits, alternative or add-on minimum, estimated, registration, withholding, social security (or similar), or other tax of any kind whatsoever, whether computed on a separate or consolidated, unitary or combined basis or in any other manner, including any interest, penalty, or addition thereto, whether disputed or not, together with any installments with respect thereto and any estimated payments or estimated taxes and whether disputed or not, including any liability for Taxes as a result of being a member of a consolidated, combined, unitary or aggregate group for any taxable period and any liability for Taxes of another Person pursuant to a Contract, as a transferee or successor, or under Treasury Regulations Section 1.1502-6 or analogous state, local or foreign Law or otherwise, and including any liability for abandoned or unclaimed property.

**Tax Authority** means the IRS and any other federal, state, local or foreign Governmental Authority responsible for the administration, enforcement or collection of any Tax.

**Tax Return** means any return, report, declaration, election, estimate, information statement, claim for refund and return, or other document (including any related or supporting information and any amendment to any of the foregoing) filed or required to be filed with any Tax Authority with respect to Taxes. Transaction Expenses shall mean all fees and expenses of the Seller and its Subsidiaries arising, incurred or accrued on or prior to the Closing in connection with the negotiation, execution and delivery of this Agreement and the Ancillary Agreements and the consummation of the transactions contemplated hereby and thereby, including legal, accounting, and financial fees and expenses, regardless of whether such fees and expenses are paid or to be paid by the Seller before or after the Closing.

**Transition Services** means those assets and services provided by or on behalf of the Seller to the Purchaser pursuant to the Transition Services Agreement.

**Treasury Regulations** means the Federal income tax regulations promulgated under the Code as such regulations may be amended from time to time.

**Technimotion** means Technimotion, LLC, a Delaware limited liability company.

**Trademarks** means all trademarks, service marks, certification marks, trade dress, logos, slogans, trade names, corporate names, business names, product names, URLs, domain names, other electronic identifiers (e.g., Twitter and Facebook handles), and other source identifiers, together with all translations, adaptations, derivations and combinations of any of the foregoing, all goodwill associated with any of the foregoing, and all registrations and applications for registration thereof, including all extensions, modifications and renewals of same. TSA Preparedness

the satisfaction or waiver of the conditions to the Parties respective obligation to consummate the transactions contemplated by this Agreement set forth in Section 10.1(f) and Section 10.2(f) .

**United States** means the United States of America and its territories and possessions (other than Puerto Rico).

**VAT** means any value-added tax, goods and services tax or similar tax. Section 1.2 Glossary of Defined Terms . The following terms have the meanings set forth in the Sections set forth below:

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| Acquired Business | Section 7.14(b) |
| Acquisition Proposal | Section 7.15 |
| Additional Intellectual Property | Section 7.6(b) |
| Allocated Employees | Section 5.14(a) |
| Allocated Employees Objection Letter | Section 7.19(b) |
| Allocation | Section 3.3(b) |
| Assumed Ergo-Asyst Liabilities | Section 2.3 |
| Assumed Liabilities | Section 2.3 |
| Audited Financial Statements | Section 5.4(a) |
| Basket | Section 12.4(b)(ii) |
| Bill of Sale and Assignment and Assumption Agreement | Section 4.2(a) |
| Business Contract | Section 2.1(f) |
| Business Employees | Section 8.1(a)(v) |
| Confidentiality Agreement | Section 7.2(b) |
| Conveyance Taxes | Section 9.4 |
| Closing | Section 4.1 |
| Closing Date | Section 4.1 |
| Covered Losses | Section 12.4(b)(ii) |
| Dedicated Employees | Section 5.14(a) |
| Delayed Transfer | Section 4.4(b) |
| Delayed Transfer Date | Section 4.4(b) |
| Delayed Transfer Inventory | Section 3.2(c) |
| Delayed Transfer Employees | Section 4.4(a) |
| Delayed Transfer Purchase Price | Section 4.4(a) |
| Delayed Transfer Purchased Assets | Section 4.4(a) |
| Delayed Transfer Termination Notice | Section 4.4(d) |
| Designated Prepaid Expenses | Section 2.1(o) |

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| Disputed Allocated Employee Items | Section 7.19(b) |
| Disputed Items | Section 3.2(d) |
| Disputed TSA Employee Items | Section 7.19(d) |
| Employee Benefit Plan | Section 5.10(a) |
| Escrow Agent | Section 4.4(a) |
| Escrow Agreement | Section 4.4(a) |
| Escrow Fund | Section 4.4(a) |
| Estimated Modified Working Capital Amount | Section 3.2(a) |
| Estimated Measurement Revenue Amount | Section 3.6(e) |
| Estimated TSA Employee Liability Amount | Section 8.1(b)(iii) |
| Excluded Assets | Section 2.2 |
| Excluded Business Contracts | Section 2.1(f) |
| Excluded Leased Business Real Property | Section 2.2(i) |
| Excluded Liabilities | Section 2.4 |
| Export Approvals | Section 5.18(b) |
| FCPA | Section 5.18(a) |
| Final Delayed Transfer Inventory Adjustment | Section 4.4(e) |
| Final Measurement Revenue Amount | Section 3.6(f) |
| Final Modified Working Capital Amount | Section 3.2(c) |
| Final TSA Employee Liability Amount | Section 8.1(b)(iii) |
| Financial Statements | Section 5.4 |
| Fixed Assets | Section 2.1(c) |
| German BABOLANX Registration | Section 7.25 |
| Immigration Laws | Section 5.14(f) |
| Independent Accounting Firm | Section 3.2(d) |
| Initial Allocation | Section 3.3(a) |
| Inventory | Section 2.1(i) |
| Leased Business Real Property | Section 2.1(b) |
| Losses | Section 12.2 |
| Maximum Amount | Section 12.3(b)(iii) |
| Measurement Revenue Disputed Items | Section 3.6(g) |
| Measurement Revenue Objection Letter | Section 3.6(g) |
| Minimum Amount | Section 12.4(b)(i) |
| Modified Working Capital Amount | Section 3.2(a) |
| Non-U.S. Automatically Transferred Employee | Section 8.1(a)(ii) |
| Non-U.S. Business Employee | Section 8.1(a)(iii) |
| Non-U.S. Transferred Employee | Section 8.1(a)(iv) |
| Non-U.S. Transferred Employee By Agreement | Section 8.1(a)(v) |
| Objection Letter | Section 3.2(d) |
| OUS Allocated Employees | Section 5.14(a) |
| OUS TSA Employees | Section 5.14(a) |
| Outside Date | Section 11.1(b) |

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| Owned Business Real Property | Section 2.1(a) |
| Party and Parties | Preamble |
| Periodic Taxes | Section 9.1 |
| Post-Closing Adjustment | Section 3.2(d) |
| Post-Closing Measurement Revenue Adjustment | Section 3.6(h) |
| Post-Closing Periodic Tax Period | Section 9.1 |
| Post-Delayed Transfer Adjustment | Section 4.4(f) |
| Pre-Closing Periodic Tax Period | Section 9.1 |
| Prepaid Inventory | Section 2.1(i) |
| Prorated Expenses | Section 3.5(a) |
| Prorations Schedule | Section 3.5(a) |
| Purchase Price | Section 3.1 |
| Purchased Assets | Section 2.1 |
| Purchaser | Preamble |
| Purchaser Closing Certificate | Section 3.2(c) |
| Purchaser Delayed Transfer Inventory Certificate | Section 4.4(e) |
| Purchaser Indemnified Parties | Section 12.3 |
| Purchaser Measurement Revenue Certificate | Section 3.6(e) |
| Qualified Appraiser | Section 7.14(c) |
| Relevant Employer | Section 8.1(a)(vii) |
| Relevant Jurisdiction | Section 9.5(b) |
| Restricted Period | Section 7.14(a) |
| Revised TSA Preparedness Notice | Section 3.6(d) |
| Seller | Preamble |
| Seller Allocated Employees List | Section 7.19(a) |
| Seller Fundamental Representations | Section 12.1 |
| Seller Indemnified Parties | Section 12.2 |
| Seller Intercompany Contract | Section 7.21 |
| Seller Other Business Employee | Section 8.1(a)(x) |
| Seller Statutory Representations | Section 12.1 |
| Seller Trademark License Agreement | Section 7.6 |
| Shared Employees | Section 5.14(a) |
| BABOLANX Cap | Section 7.25 |
| Social Security Act | Section 5.9(c) |
| Space License Agreements | Section 7.7(d) |
| Target Modified Working Capital Amount | Section 3.2(b) |
| Territory | Section 7.14(c) |
| Third Party Claim | Section 12.5(a) |
| Transferred Employees | Section 8.1(a)(vi) |
| Transferred Permits | Section 2.1(l) |
| Transferred Registrations | Section 2.1(g) |
| Transition Services Agreement | Section 7.7 |

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| TSA Employee Liability Adjustment Amount | Section 8.1(b)(iii) |
| TSA Employees Objection Letter | Section 7.19(d) |
| TSA Preparedness Notice | Section 3.6(c) |
| TSA Preparedness Deficiencies | Section 3.6(c) |
| TSA Preparedness Dispute Notice | Section 3.6(c) |
| TSA Process Notice | Section 3.6(b) |
| TSA Process Deficiencies | Section 3.6(b) |
| TSA Process Dispute Notice | Section 3.6(b) |
| U.S. Allocated Field Service Employees | Section 5.14(a) |
| U.S. Allocated Non-Field Service Employees | Section 5.14(a) |
| U.S. Business Employee | Section 8.1(a)(i) |
| U.S. Transferred Employee | Section 8.1(a)(ii) |
| U.S. TSA Employees | Section 5.14(a) |
| WARN Act | Section 5.14(h) |

**Section 1.3 Interpretation** . Unless otherwise required by the context in which any term appears: (a) The singular shall include the plural, the plural shall include the singular, and the masculine shall include the feminine and neuter. (b) References to Articles, Sections, Schedules or Exhibits shall be to articles, sections, schedules or exhibits of or to this Agreement, and references to paragraphs or clauses shall be to separate paragraphs or clauses of the section or subsection in which the reference occurs. (c) The words herein, hereof, herewith and hereunder and words of similar import shall refer to this Agreement as a whole and not to any particular section or subsection of this Agreement, the words include, includes or including shall mean including, without limitation and the word or shall not be exclusive. (d) The term day shall mean a calendar day, commencing at 12:00 a.m. (prevailing Central time). The term week shall mean any seven consecutive day period commencing on a Sunday, and the term month shall mean a calendar month; provided that when a period measured in months commences on a date other than the first day of a month, the period shall run from the date on which it commences to the corresponding date in the next month and, as appropriate, to succeeding months thereafter. Whenever an event is to be performed or a payment is to be made by a particular date and the date in question falls on a day which is not a Business Day, the event shall be performed, or the payment shall be made, on the next succeeding Business Day; provided, however, that all calculations shall be made regardless of whether any given day is a Business Day and whether or not any given period ends on a Business Day. (e) All references to dollars or $ shall be deemed references to the lawful money of the United States of America.

(f) All references to a particular entity shall include such entitys successors and permitted assigns unless otherwise specifically provided herein. (g) All references herein to any Law or to any Contract or other agreement shall be to such Law, Contract or other agreement as amended, supplemented or modified from time to time unless otherwise specifically provided herein. (h) All references herein to any document, information or other item that the Seller has provided or made available to the Purchaser shall be deemed to include any such document, information or other item made available to the Purchaser prior to the date hereof (or such other time specified herein) in the virtual data room maintained by the Seller in connection with the transactions contemplated by this Agreement. (i) The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event of an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provisions of this Agreement. The language in all parts of this Agreement shall be construed, in all cases, according to its fair meaning. Article II

**PURCHASE AND SALE**

**Section 2.1 Purchase and Sale of the Purchased Assets** . Subject to Section 4.4 , upon the terms and subject to the conditions of this Agreement, at the Closing, the Seller shall sell, convey, assign and transfer, or cause its Subsidiaries to sell, convey, assign and transfer, to the Purchaser or one or more of its Affiliates the Purchased Assets, and the Purchaser or one or more of its Affiliates shall purchase the Purchased Assets free and clear of all Encumbrances other than Permitted Encumbrances. As used herein, the term Purchased Assets means the following:

(i) all the assets, rights, properties and businesses of the Seller and its Subsidiaries, of every kind and description and wherever located, whether tangible or intangible, real, personal or mixed, that are primarily used, or primarily held for use, in the Business, except the Excluded Assets, and

(ii) the additional assets, rights and properties of the Seller and its Subsidiaries described below in this Section 2.1 , except the Excluded Assets. The Purchased Assets include the following:

(a) the owned Real Property listed on Schedule 2.1(a) (the Owned Business Real Property );

(b) the leased Real Property listed on Schedule 2.1(b) (the Leased Business Real Property );

(c) those fixed assets (including fixed assets in which Seller or its Subsidiary holds a leasehold interest (or similar rights) and including computer hardware, handheld devices, vehicles and equipment held for rent) (the Fixed Assets ) and other Tangible Personal Property

(i) located in, at, on or primarily sold, deployed, serviced, leased or rented from, any of the Owned Business Real Property or Leased Business Real Property, and

(ii) otherwise primarily used in, primarily held for use in, or primarily related to the Business (including the items described as conveyed (or similar language) on Schedule 2.1(c) )(for the avoidance of doubt, the Seller has prepared Schedule 2.1(c) in a good faith effort to reflect (i) the assets and rights described in this Section 2.1(c) as indicated by items described as conveyed (or similar language) and (ii) the assets and rights described in Section 2.2(a) as indicated by items described as retained, non-conveyed or excluded (or similar language), provided that Schedule 2.1(c) shall be subject to Section 7.24 );

(d) all Software used in, held for use in, or related to the Business, but excluding the Excluded Software;

(e) all Business Owned Intellectual Property and all rights of the Seller and its Subsidiaries to the Business Licensed Intellectual Property, but excluding for the avoidance of doubt the Excluded Software and the Seller Brands;

(f) subject to Section 7.8 , all rights under any Contract related to the Business, in each case only to the extent related to the Business or any other Purchased Assets (the Business Contracts ), provided that with respect to lease agreements and similar Contracts covering the Leased Business Real Property, the Business Contracts and the Purchased Assets shall include all rights under such lease agreements and similar Contracts;

(g) Registrations to the extent exclusively used in, or exclusively related to, the Business, in each case to the extent transferable to the Purchaser under applicable Law (such Registrations, collectively, the Transferred Registrations );

(h) all Actions, causes of action, choses in action, rights of recovery and rights of set-off of any kind (including the right to sue and recover for past infringements or misappropriations or violations of Business Intellectual Property) against third parties (other than Seller or any of its Subsidiaries), in each case to the extent arising from, or to the extent related to, the Business, except to the extent any of the foregoing relate to

(i) Excluded Assets, the Seller Other Businesses or Excluded Liabilities or

(ii) intercompany receivables between the Seller and any of its Subsidiaries, or between any Subsidiary of the Seller and any other Subsidiary of the Seller; (i) all inventories, including raw materials, works in process, semi-finished and finished products, stores, replacement and spare parts, packaging materials, operating supplies and inventory on consignment, in transit or deposited in a warehouse, in each case to the extent primarily used in, primarily held for use in, or primarily related to, the Business ( Inventory ), together with all inventories not yet received but for which Seller or its Subsidiaries have prepaid the purchase price ( Prepaid Inventory );

(j) all Books, Records and Files (other than Tax Returns and related Books, Records and Files) to the extent primarily used in, primarily held for use in, or primarily related to, the Business; provided , however , that the Seller may redact any information to the extent used in, or related to, the Excluded Assets or the Seller Other Businesses from Books, Records and Files and similar materials conveyed pursuant to this Section 2.1(j) ; provided, further, that such redaction shall not impair any information related to the Business, the Business Products or the Business Intellectual Property contained therein; and provided , further , that the Books, Records and Files conveyed pursuant to this Section 2.1(j) shall not include

(i) purchase orders, invoices, shipping documents, and ordinary course communications and correspondence submitted to or received from customers related to sales or

(ii) transaction data relating to any transaction occurring prior to January 1, 2010;

(k) all advertising, marketing and promotional materials and all other printed or written materials, including website content, in each case to the extent primarily used in, primarily held for use in, or primarily related to, the Business; provided, that the Seller does not convey or grant any right or license to any Seller Brands in connection therewith except as otherwise specifically set forth in this Agreement or any Ancillary Agreement;

(l) all permits, licenses, certifications and approvals from all permitting, licensing, accrediting and certifying agencies, and the rights to all data and records held by such permitting, licensing and certifying agencies, in each case to the extent transferable and exclusively used in, exclusively held for use in, or exclusively related to, the Business (such permits, licenses, certifications and approvals, collectively, the Transferred Permits );

(m) all goodwill of the Business as going concern (excluding any goodwill associated with the Sellers name and other Excluded Assets);

(n) all claims or benefits in, to or under any express or implied warranties from suppliers of goods or services (other than Seller or any of its Subsidiaries) relating to Inventory sold or delivered, assets held for rent, or services provided, to the Seller or any of its Subsidiaries prior to the Closing, to the extent relating to any of the Business, the Purchased Assets or the Assumed Liabilities; and

(o) all security deposits and similar amounts made by the Seller and its Subsidiaries in connection with the Purchased Assets (the Designated Prepaid Expenses ).

**Section 2.2 Excluded Assets** . Notwithstanding anything to the contrary in this Agreement, the Seller does not sell, transfer, convey, assign or deliver to the Purchaser, and the Purchaser shall not purchase or otherwise acquire, and the Purchased Assets shall not include, any right, title and interest in or to any of the following assets of the Seller or its Subsidiaries, whether or not the following would otherwise be included within the Purchased Assets (such assets being collectively referred to hereinafter as the Excluded Assets ):

(a) all the assets, rights and properties of every kind and description and wherever located, whether tangible or intangible, real, personal or mixed, that are primarily used in, primarily held for use in, or primarily related to the Seller Other Businesses (including the items described as retained, non-conveyed or excluded (or similar language) on Schedule 2.1(c) );

(b) other than Inventory, Prepaid Inventory, Business Products, and other Fixed Assets and Tangible Personal Property primarily used in, primarily held for use in, or primarily related to the Business, those Fixed Assets and other Tangible Personal Property located in, at, on or primarily deployed, serviced or rented from, any of the Excluded Leased Business Real Property;

(c) all rights of the Seller and its Subsidiaries arising under this Agreement, the Ancillary Agreements or from the consummation of the transactions contemplated hereby or thereby;

(d) all cash and cash equivalents, securities and negotiable instruments on hand, in lock boxes, in financial institutions or elsewhere, including any cash residing in any collateral cash account securing any obligation or contingent obligation;

(e) all accounts, notes and other receivables (whether or not invoiced), including any value added Taxes or similar Taxes levied on such accounts receivable, any unpaid interest accrued on such accounts receivable and all file documentation related to such accounts, notes and other receivables, including invoices, shipping documents, and ordinary course communications and correspondence submitted to or received from customers related to such sales;

(f) all intercompany receivables or accounts or rights under Contract between the Seller and any of its Subsidiaries, or between any Subsidiary of the Seller and any other Subsidiary of the Seller;

(g) all shares of capital stock, partnership interests, membership interests and other ownership interests in any Person;

(h) all prepayments, security deposits, refunds and prepaid expenses, other than Prepaid Inventory;

(i) the leased Real Property listed on Schedule 2.2(i) (the Excluded Leased Business Real Property );

(j) all rights in

(i) Seller Brands, except the rights granted to the Purchaser to the Seller Brands pursuant to the Seller Trademark License Agreement, and

(ii) the Excluded Software, including the Intellectual Property in and Contracts covering the Excluded Software;

(k) all rights under any Contract that is not related to the Business, and, to the extent not related to the Business, all rights under any Contract that is related to the Business, provided that with respect to lease agreements and similar Contracts covering the Excluded Leased Business Real Property, the Excluded Assets shall include all rights under such lease agreements and similar Contracts;

(l) all Registrations, permits, licenses, certifications and approvals from all permitting, licensing, accrediting and certifying agencies that are not transferable pursuant to applicable Law or are used in, held for use in or related to the Seller Other Businesses (including all Medicare and similar provider numbers, reimbursement numbers and similar certifications and rights), and the rights to all data and records held by such permitting, licensing and certifying agencies;

(m) all insurance policies and all Actions, credits, causes of action or rights thereunder and proceeds thereof;

(n) all assets of any Compensation and Benefit Plans that are maintained or contributed to by the Seller or any of its Subsidiaries, except for those assets that are transferred to the Purchaser pursuant to Article VIII ;

(o) any right to any refund or credit with respect to Taxes in accordance with the provisions of Article IX ;

(p) any assets that have been disposed of in compliance with this Agreement after the date hereof and prior to the Closing;

(q) all claims or benefits in, to or under any express or implied warranties from suppliers of goods and services relating to Inventory sold or delivered, or services provided, to the Seller or any of its Subsidiaries prior to the Closing, to the extent relating to any of the Excluded Liabilities or the Excluded Assets;

(r) other than as provided in Section 2.1(h) , all rights of the Seller and its Subsidiaries in and to any Actions, causes of action, claims and defenses against third parties (including indemnification and contribution);

(s) Tax Returns of the Seller or its Subsidiaries, including those used in, or related to, the Purchased Assets or the Business;

(t) all Books, Records and Files to the extent

(i) primarily used in, primarily held for use in, or primarily related to the Seller Other Businesses, Excluded Assets or Excluded Liabilities, wherever located, including the Tax Returns and Books, Records and Files relating to Taxes of the Seller or its Subsidiaries,

(ii) comprising personnel files of Transferred Employees or that are required to be maintained by the Seller or its Subsidiaries by Law,

(iii) comprising purchase orders, invoices, shipping documents, and ordinary course communications and correspondence submitted to or received from customers related to sales, and (iv) comprising transaction data relating to any transaction occurring prior to January 1, 2010;

(u) assets, rights and properties of the Seller and its Subsidiaries related to the Sellers home office, overhead, administrative and related activities that generally support all of the Sellers and its Subsidiaries businesses (including customer administration and contracting (including call centers), regulatory and quality compliance, legal, finance and accounting, human resources, sales and marketing, and information technology (including the clone management information system contemplated by the Transition Services Agreement)) that are not, as to Tangible Personal Property,

(i) located in, at or on the Owned Business Real Property or Leased Business Real Property, or

(ii) of the nature described in Sections 2.1 (f) , (g) , (h) , (j) , (k) , (l), (m) and (n) ; (v) any other assets, rights and properties of the Seller and its Subsidiaries not included in the definition of Purchased Assets in Section 2.1 ; and (w) the other assets set forth on Schedule 2.2(w) .

**Section** **2.3 Assumed Liabilities .** At the Closing, the Purchaser shall assume and agree to pay, perform and discharge when due, any and all

(i) Liabilities to the extent relating to or arising out of, the Business, the Purchased Assets or the Transferred Employees (including any Liabilities under any Contract included in the Purchased Assets relating to or arising out of any period of time after the Closing or any Liability accrued in the Modified Working Capital Amount, but excluding any other Liability under any such Contract, including any such Liability in respect of any pre-Closing breach thereof), in each case only to the extent relating to, arising during, or attributable to any period of time after the Closing, other than the Excluded Liabilities set forth in Section 2.4 below,

(ii) other than as provided in Section 2.4(e) , Liabilities of Seller and its Subsidiaries to make any payment required to be made after the Closing pursuant to the Ergo-Asyst Agreement (the Assumed Ergo-Asyst Liabilities ), and (iii) the Liabilities assumed pursuant to Section 8.2 (collectively, together with all other obligations and Liabilities of the Seller and the Sellers Subsidiaries assumed by the Purchaser, the Ancillary Agreements and the Schedules hereto and thereto, the Assumed Liabilities ).

**Section** **2.4 Excluded Liabilities** . At the Closing, the Seller or its Subsidiaries shall retain (or, if necessary, expressly assume), and shall pay, perform and discharge when due, and the Purchaser shall not assume or have any responsibility for, any of the following Liabilities (collectively, the Excluded Liabilities ) notwithstanding any disclosure thereof on the Seller Disclosure Schedule:

(a) all Liabilities of the Seller or any of its Subsidiaries (but excluding Liabilities for which Purchaser is responsible pursuant to Section 8.2 ) or relating to or arising out of the Business or the Purchased Assets, in each case to the extent relating to, arising during, or attributable to any period of time on or prior to the Closing Date (in each case, whether asserted prior to, on or after the Closing);

(b) all Liabilities of the Seller or any of its Subsidiaries to the extent relating to or arising out of the Seller Other Businesses or the Excluded Assets, whether relating to, arising during, or attributable to any period of time prior to, on or after the Closing Date;

(c) all Liabilities retained by the Seller or any of its Subsidiaries pursuant to Article VIII and Article IX ;

(d) all accounts payable, accrued expenses (except to the extent accrued in the Modified Working Capital Amount), notes payable and other payables of the Seller and its Subsidiaries (but excluding Liabilities for which the Purchaser is responsible pursuant to Section 8.2 );

(e) any Liability to make any Milestone Payment (as defined in the Ergo-Asyst Agreement) pursuant to the Ergo-Asyst Agreement;

(f) all Indebtedness of the Seller or any of its Subsidiaries, provided that the Liabilities of Technimotion under the Ergo-Asyst Agreement shall not constitute Indebtedness;

(g) all intercompany Liabilities, payables and loans between the Seller and any of its Subsidiaries, or between any Subsidiary of the Seller and any other Subsidiary of the Seller; and

(h) all Liabilities under any Contracts included in the Purchased Assets (other than any Liability under any Contracts accrued in the Modified Working Capital Amount, but including any Liability in respect of any pre-Closing performance or breach of any such Contract) to the extent relating to, arising during, or attributable to any period of time prior to the Closing;

(i) any Liabilities or obligations of the Seller or any of its Subsidiaries under this Agreement or the Ancillary Agreements;

(j) any Liabilities of the Seller or its Subsidiaries in respect of any Action alleging that the manufacture, offer for sale, sale, importation or use of the Business Products prior to the Closing interferes with, conflicts with, infringes upon, misappropriates or otherwise violates (or interfered with, conflicted with, infringed upon, misappropriated or otherwise violated) any Intellectual Property rights of any third party, but only to the extent such Liabilities relate to the period of time prior to the Closing;

(k) other than those obligations expressly assumed by the Purchaser in accordance with Section 8.2 , any Liabilities or obligations of the Seller or any of its Subsidiaries related to any Compensation and Benefit Plan maintained, sponsored or contributed to by the Seller or its Subsidiaries including, for avoidance of doubt, any such Liabilities or obligations in respect of

(i) any severance, change in control, redundancy or similar termination payments or benefits that may become payable to any Business Employee in connection with the transactions contemplated by this Agreement, including any Business Employee who does not become a Transferred Employee, and

(ii) any non-recurring payments or proposed non-recurring payments by the Seller or any of its Subsidiaries to the Business Employees to provide an incentive to the Business Employees to remain employed with the Business for a designated period or through a designated event (or employed with the Purchaser through the Closing or a designated period thereafter);

(l) any and all Transaction Expenses of the Seller and any of its Subsidiaries;

(m) all Liabilities of the Seller and its Subsidiaries related to the Real Property or the Business arising from Environmental Laws to the extent occurring or existing on or before Closing;

(n) any actual or alleged Liability of the Seller and its Subsidiaries, including any such Liability for death or injury to any person or property as a result of any actual or alleged defect in or harm caused by any Business Product (or any other product) sold, leased, rented, distributed, imported, exported or used prior to the Closing;

(o) all Taxes relating to any Pre-Closing Tax Period with respect to the Purchased Assets or the Business; and

(p) the other Liabilities of the Seller or any of its Subsidiaries set forth on Schedule 2.4(p) .

**Article III**

**PURCHASE PRICE; ALLOCATION OF PURCHASE PRICE**

**Section 3.1 Purchase Price** .

Subject to the terms and conditions of this Agreement, at the Closing, as full consideration for the sale, transfer, conveyance and assignment of the Purchased Assets to the Purchaser, the Purchaser shall

(i) deliver to the Seller (or one or more of its designees, including one or more of its Subsidiaries) one or more wire transfers of immediately available funds to the wire transfer address or addresses (as provided by the Seller to the Purchaser on or before the Business Day prior to the Closing Date), equal to Two Hundred Seventy-Five Million Dollars ($275,000,000) in the aggregate (the Purchase Price ), subject to adjustment pursuant to Section 3.2 , Section 3.5 , Section 3.6 and Section 4.4 , and

(ii) assume the Assumed Liabilities. The Purchaser shall be entitled to deduct and withhold from the Purchase Price any Tax as required under all applicable Law, except to the extent that, with respect to a particular Tax, the Purchaser has received a certificate or other documentation from the Seller that is reasonably acceptable to the Purchaser certifying that the Seller is exempt from withholding on such Tax. The Purchaser shall notify the Seller in writing at least fifteen (15) days prior to the Closing of any such certificate or documentation. To the extent that the Purchaser is required to deduct and withhold any Tax, such amount shall be treated as delivered to the Seller at Closing for all purposes of this Agreement, and the Purchaser shall promptly and timely deliver all amounts so withheld to the appropriate Tax Authority in accordance with applicable Law. To the extent any portion of the Purchase Price paid to the Seller is allocable to Purchased Assets sold by any Subsidiary of the Seller in accordance with the Initial Tax Allocation and/or the Allocation, such portion of the Purchase Price so paid to the Seller shall be deemed to have been paid to the Seller on behalf of such Subsidiary, with the same effect as if such payment had been made directly to such Subsidiary.

**Section** **3.2 Purchase Price Adjustment**

(a) Not less three (3) days prior to the Closing Date, the Seller shall deliver to the Purchaser a certificate setting forth in reasonable detail its good faith estimate (the Estimated Modified Working Capital Amount ) of the Modified Working Capital Amount. As used herein, the term Modified Working Capital Amount shall mean an amount, positive or negative, equal to the sum of:

(i) the book value of the Inventory (together with, but without duplication, sheets, cushions and other similar items constituting part of the Purchased Assets, to the extent normally recorded on the balance sheet of the Business as working capital items) as of the Closing Date determined in accordance with Section 3.4 , plus

(ii) the book value of the Prepaid Inventory as of the Closing Date determined in accordance with Section 3.4 , plus

(iii) the aggregate amount as of the Closing Date of the Designated Prepaid Expenses, minus (iv) the aggregate amount as of the Closing Date of all of the Liabilities assumed by the Purchaser pursuant to Article VIII in respect of the Transferred Employees (other than U.S. TSA Employees and OUS TSA Employees), minus (v) the aggregate minimum amount of the Subsequent Payments (as defined in the Ergo-Asyst Agreement) payable in accordance with Section 2.7(b) of the Ergo-Asyst Agreement (to the extent not paid as of the Closing), in each case determined in accordance with GAAP and on the same basis and applying the same accounting principles, policies and practices that were used by the Seller in preparing the relevant elements of the Financial Statements.

(b) In the event that the Estimated Modified Working Capital Amount is an amount greater than Fifty Million Dollars ($50,000,000) (the Target Modified Working Capital Amount ), the Purchase Price payable at the Closing shall be adjusted upward by the amount the Estimated Modified Working Capital Amount exceeds the Target Modified Working Capital Amount. In the event that the Estimated Modified Working Capital Amount is less than the Target Modified Working Capital Amount, the Purchase Price payable at the Closing shall be adjusted downward by the amount the Target Modified Working Capital Amount exceeds the Estimated Modified Working Capital Amount.

(c) As promptly as practical, but in no event more than one hundred twenty (120) days following the Closing Date, the Purchaser shall deliver to the Seller a certificate (the Purchaser Closing Certificate ) setting forth in reasonable detail Purchasers calculation of the Modified Working Capital Amount (as ultimately determined in accordance with the remaining provisions of this Section 3.2 , the Final Modified Working Capital Amount ), and the basis for calculating each of the components thereof. If the Purchaser shall have exercised the option set forth in Section 4.4(a) , the Purchaser Closing Certificate shall include the Purchasers calculation of the book value of the Inventory (together with, but without duplication, sheets, cushions and other similar items constituting part of the Purchased Assets, to the extent normally recorded on the balance sheet of the Business as working capital items) and Prepaid Inventory included in the Delayed Transfer Purchased Assets as of the Closing Date (the Delayed Transfer Inventory ), and the amount of such Delayed Transfer Inventory shall be deemed a part of the Final Modified Working Capital Amount. The Seller shall provide the Purchaser (at the Purchasers cost and expense) with such reasonable assistance and access to facilities and Books, Records and Files as the Purchaser may request in connection with the Purchasers calculation of the Delayed Transfer Inventory.

(d) Within thirty (30) days following delivery of the Purchaser Closing Certificate by the Purchaser, the Seller may object to the calculation of the Final Modified Working Capital Amount or the calculations used for the components thereof by delivering to the Purchaser such objections in writing and setting forth in reasonable detail the basis for such objections (the Objection Letter ). If the Seller does not deliver the Objection Letter in accordance with the foregoing sentence, the Final Modified Working Capital Amount set forth in the Purchaser Closing Certificate shall be final and binding on the Parties. The Purchaser and the Seller shall use their commercially reasonable efforts to resolve any differences set forth in the Objection Letter (the Disputed Items ). If the Parties cannot resolve the Disputed Items within fifteen (15) days following the delivery of the Objection Letter, then the Disputed Items shall be submitted to a mutually agreeable independent accounting firm of recognized standing and national reputation (the Independent Accounting Firm ) within five (5) Business Days thereafter. The Parties shall submit to the Independent Accounting Firm all materials and back-up related to the Disputed Items, including an aggregate estimate of the value of the Disputed Items, and each Party shall have the opportunity to present any material related to the Disputed Items to the Independent Accounting Firm and to discuss the Disputed Items with the Independent Accounting Firm. Each Party agrees to cooperate with and assist the Independent Accounting Firm in making the final determination, including granting reasonable access to employees and records. The Independent Accounting Firm shall make its determination as reasonably promptly as possible, but in no event later than thirty (30) days following submission of the Disputed Items by each Party. The determination of the Independent Accounting Firm shall be final and binding on the Parties and shall replace and supersede the previous Final Modified Working Capital Amount for the purposes of the obligations set forth in Section 3.2(e) . The fees of the Independent Accounting Firm shall be paid by the Party whose aggregate estimate of the Disputed Items differs most greatly from the determination of the Independent Accounting Firm (or, if the Parties estimates differ in equal amounts, the fees shall be paid equally by the Parties).

(e) In the event that the Final Modified Working Capital Amount is an amount greater or less than the Estimated Modified Working Capital Amount, there shall be a post-closing adjustment whereby the Seller or the Purchaser, as applicable, shall pay to the other the difference of such amounts (the Post-Closing Adjustment ). In the event that the Final Modified Working Capital Amount is greater than the Estimated Modified Working Capital Amount, the Purchaser shall pay to the Seller an amount equal to the Post-Closing Adjustment. In the event that the Final Modified Working Capital Amount is less than the Estimated Modified Working Capital Amount, the Seller shall pay to the Purchaser an amount equal to the Post-Closing Adjustment. Any payments made pursuant to this Section 3.2(e) shall be made within five (5) Business Days following the determination of the Final Modified Working Capital Amount and shall be by wire transfer of immediately available funds to the address disclosed by the Purchaser or the Seller, as applicable, with respect thereto.

**Section** **3.3 Allocation of Purchase Price** .

(a) Not less than three (3) Business Days prior to the Closing, the Seller shall provide to the Purchaser an allocation of the Purchase Price and the Assumed Liabilities (and other obligations hereunder, other than those included in the Excluded Liabilities) among the Purchased Assets and the Business to the extent necessary to determine the purchase price amount to be stated in any local Bill of Sale and Assignment and Assumption Agreement and to the extent necessary to determine any liability for Conveyance Taxes (the Initial Allocation ). The Initial Allocation shall be prepared by the Seller in accordance with Section 1060 of the Code and the Treasury Regulations thereunder (or applicable or analogous state, local or foreign Laws). The Initial Allocation shall be deemed to be accepted by and shall be conclusive and binding on the Purchaser unless the Purchaser delivers within thirty (30) days after the Closing a written notice to the Seller stating each and every item that the Purchaser disputes (it being understood that any amounts not disputed shall be final and binding). If the Seller does not agree with a change proposed by the Purchaser, then the Seller and the Purchaser shall negotiate in good faith to resolve such dispute.

(b) As soon as practicable, and in any event not later than the later of

(i) thirty (30) days after the final determination of the Purchase Price, as adjusted pursuant to Section 3.2 , 3.6 and 4.4 hereof, and

(ii) the date that is one hundred fifty (150) days after the Closing, the Seller shall provide to the Purchaser a revised allocation of the Purchase Price, as adjusted pursuant to Section 3.2 , 3.6 and 4.4 hereof, and the Assumed Liabilities (and other obligations hereunder, other than those included in the Excluded Liabilities) among the Purchased Assets and the Business (the Allocation ). The Allocation shall be prepared by the Seller in accordance with Section 1060 of the Code and the Treasury Regulations thereunder (or applicable or analogous state, local or foreign Laws). The Allocation shall be deemed to be accepted by and shall be conclusive and binding on the Purchaser unless the Purchaser delivers within thirty (30) days after the date on which the Allocation is delivered to the Purchaser a written notice to the Seller stating each and every item that the Purchaser disputes (it being understood that any amounts not disputed shall be final and binding). If the Seller does not agree with a change proposed by the Purchaser, then the Seller and the Purchaser shall negotiate in good faith to resolve such dispute. If the Seller and the Purchaser cannot agree on the resolution of the dispute, then the Allocation shall be made in accordance with an allocation provided by the Independent Accounting Firm, the expense of which shall be shared equally by the Purchaser and the Seller. The Parties shall submit to the Independent Accounting Firm all materials and back-up related to the Allocation, and each Party shall have the opportunity to discuss the Allocation with the Independent Accounting Firm. Each Party agrees to cooperate with and assist the Independent Accounting Firm in making the final determination.

The Independent Accounting Firm shall make its determination as reasonably promptly as possible, but in no event later than thirty (30) days. The determination of the Independent Accounting Firm shall be final and binding on the Parties.

(c) Each of the Seller and the Purchaser shall

(i) be bound by the Initial Allocation for purposes of determining Taxes, and

(ii) prepare and file, and cause its Subsidiaries to prepare and file, its Tax Returns on a basis consistent with the Initial Allocation; provided, however, that as soon the Allocation is final and binding as provided in (b) above, each of the Seller and the Purchaser shall

(i) be bound by the Allocation for purposes of determining Taxes, and

(ii) prepare and file, and cause its Subsidiaries to prepare and file, its Tax Returns on a basis consistent with the Allocation. The Seller and the Purchaser shall not take any position inconsistent with the Initial Allocation until the Allocation is final and binding in any Tax Return, in any refund claim, in any litigation, or otherwise unless required by a final determination by an applicable Tax Authority or to the extent otherwise required by Law. Once the Allocation is final and binding, the Seller and the Purchaser shall not take any position inconsistent with the Allocation in any Tax Return, in any refund claim, in any litigation, or otherwise unless required by a final determination by an applicable Tax Authority or to the extent otherwise required by Law.

**Section 3.4 Inventory** . Prior to the Closing (but not less than five (5) Business Days prior to the Closing Date), the Seller shall cause cycle count procedures to be performed for a minimum of 25% of the aggregate Inventory and Prepaid Inventory balance by employees or representatives of the Seller or its Subsidiaries. Such cycle count procedures shall be performed in a manner consistent as to methodology and accuracy rate with the Sellers historical cycle count procedures with respect to Inventory at the Sellers facilities in general (including, for avoidance of doubt, the Sellers facilities located at 4950 Stout Drive San Antonio, Texas), a summary of which is set forth on Schedule 3.4 hereto. The Seller shall permit representatives or employees of the Purchaser to observe such inventory processes at the Sellers main manufacturing plant and such other locations as the Parties mutually agree. The cost of conducting such activities shall be borne by the Seller. All Inventory and Prepaid Inventory shall continue to be valued in accordance with GAAP and on the same basis and applying the same accounting principles, policies and practices that were used by the Seller in preparing the relevant elements of the preparation of the Financial Statements.

**Section** **3.5 Proration of Certain Items .**

(a) All receipts and disbursements related to the Business Licensed Intellectual Property, the Owned Business Real Property, Leased Business Real Property, leases of Tangible Personal Property, maintenance and utility charges, assessments and other similar charges against real estate except for Periodic Taxes (the Prorated Expenses ), shall be prorated to the Closing Date on a per diem basis. Not less than three (3) days prior to the Closing Date, the Seller shall prepare and deliver to the Purchaser for its review and comment a prorations schedule setting forth the Sellers good faith estimate of the Prorated Expenses calculated through the Closing Date (the Prorations Schedule ). At the Closing, the Purchase Price shall be increased or decreased, as the case may be, in respect of the Prorated Expenses as reflected in the Prorations Schedule mutually agreed by the Seller and the Purchaser. All income and expense reporting in respect of the Prorated Expenses shall be determined in accordance with GAAP.

(b) If, following the Closing, either Party discovers an error or omission in the Prorations Schedule, or if there is any need to adjust or recalculate the Prorated Expenses based on new information, such Party shall notify the other Party within thirty (30) calendar days thereafter (but not more than one hundred eighty (180) days following the Closing), providing evidence of payment and a statement setting forth the other Partys share thereof, if applicable. If necessary, during the thirty (30) days thereafter, the Parties shall negotiate reasonably and in good faith to promptly agree on any adjustment to the Purchase Price required. Promptly, and in any event within thirty (30) days following the determination of any such adjustment to the Purchase Price, the Party obligated to make a payment to adjust the Purchase Price pursuant to this Section 3.5 shall make such payment to the other Party.

**Section** **3.6 TSA Preparedness Purchase Price Adjustment** .

(a) If

(i) TSA Preparedness does not occur on or prior to October 31, 2012,

(ii) the Measurement Revenue is less than Two Hundred Ten Million Dollars ($210,000,000),

(iii) the Purchaser and its Affiliates shall have complied in all material respects with their obligations under Section 7.7(b) and (c) , and (iv) all of the other conditions set forth in Section 10.1 shall have been satisfied or waived at or before the time at which TSA Preparedness occurs (other than conditions that can only be satisfied at the Closing) and the Purchaser would be prepared to consummate the transactions contemplated by this Agreement save for the failure of the condition set forth in Section 10.2(f) (and the Purchaser shall have certified as such to the Seller in writing, assuming, for the purposes hereof and thereof, that the conditions set forth in Section 10.2(a) , (d) and (e) would be satisfied as of the Closing Date), then the Parties agree that the Purchase Price payable by the Purchaser at the Closing shall be reduced by an amount equal to the product of (a) 1.19 multiplied by (b) the positive amount, if any, of the difference of (A) Two Hundred Thirty Million Dollars ($230,000,000) minus (B) the Measurement Revenue. The Measurement Revenue shall be determined in accordance with GAAP except as noted in the final sentence of this Section 3.6(a) and on the same basis and applying the same accounting principles, policies and practices that were used by the Seller in preparing the relevant elements of the preparation of the unaudited contribution margin profit and loss statement of the Business for the six-month period ended June 30, 2012 included in the Financial Statements, including the use of budgeted foreign currency exchange rates to translate such Financial Statements into U.S. Dollars.

(b) In addition to the Parties respective rights and obligations under Sections 7.7(b) and (c) , at any time not less than twenty (20) Business Days prior to the earliest date on which the Seller reasonably anticipates the condition set forth at Section 10.2(f) could be deemed satisfied, the Seller shall deliver to the Purchaser written notice (the TSA Process Notice ) signed by the Seller that summarizes in reasonable detail

(i) the Sellers good faith summary of the status of the Sellers progress in respect of its obligations under Sections 7.7(b) and (c) and the expected date(s) on which the Seller would reasonably expect TSA Preparedness to be achieved and a TSA Preparedness Notice contemplated by Section 3.6(c) to be provided to the Purchaser,

(ii) the Sellers good faith estimate as to its schedule for providing the Purchaser with the TSA Preparedness Notice contemplated by Section 3.6(c) and the schedule and process for the Purchasers right to review and confirm TSA Preparedness as contemplated by Section 3.6(c) , and

(iii) the Sellers good faith summary, in such detail and accompanied by such documentation as the Seller may reasonably deem appropriate, of the material assets and resources that the Seller would propose to utilize in order to perform the transition services described in the Transition Services Agreement, including specifically, delivery of the following monthly sales reports for the Business under the Transition Services Agreement: (A) reports of sales and orders for the Business two (2) Business Days after each month end, and (B) profit and loss statements and balance sheet reports for the Business four (4) Business Days after each month end. Within five (5) Business Days after the date of the TSA Process Notice, the Purchaser shall provide written notice (the TSA Process Dispute Notice ) to the Seller if the Purchaser has determined in good faith that the material assets and resources described by the Seller in the TSA Process Notice to be utilized by the Seller in respect of the matters described in clause (iii) of the preceding sentence are inadequate to provide for TSA Preparedness to be achieved in respect of such matters (which notice shall describe in reasonable detail the facts and circumstances on which the Purchaser bases such determination (the TSA Process Deficiencies )). If the Purchaser provides the Seller with the TSA Process Dispute Notice, then the Parties shall confer to address the matters raised therein, other than any of same disputed by the Seller in good faith, and the Seller shall use its commercially reasonable efforts to cure, as promptly as practicable, any undisputed TSA Process Deficiencies.

(c) In addition to the Parties respective rights and obligations under Sections 7.7(b) and (c) , at any time following five (5) Business Days after the Sellers delivery of the TSA Process Notice, and after the Seller shall have cured the undisputed TSA Process Deficiencies, if applicable, and upon the Sellers good faith determination that TSA Preparedness has been achieved, the Seller shall deliver to the Purchaser a written notice (the TSA Preparedness Notice ) signed by the Seller that includes a certification that the Seller has determined reasonably and in good faith that TSA Preparedness has been achieved as of such date, which TSA Preparedness Notice shall be accompanied by such documentation as the Seller may reasonably deem appropriate reflecting the results of the Sellers internal testing processes of TSA Preparedness (such documentation to include end-user test protocols and results). During the five (5) Business Day period following delivery of the TSA Preparedness Notice, the Purchaser shall be given a reasonable opportunity to review and confirm whether TSA Preparedness has been achieved. As promptly as practicable, and in any event within six (6) Business Days after the date of the TSA Preparedness Notice, the Purchaser shall provide written notice (the TSA Preparedness Dispute Notice ) to the Seller if the Purchaser has determined in good faith that TSA Preparedness has not been achieved (which notice shall describe in reasonable detail the facts and circumstances on which the Purchaser bases such determination (the TSA Preparedness Deficiencies )).

(d) Subject to the remaining provisions of this Section 3.6(d) , if the Purchaser does not provide the Seller with a TSA Preparedness Dispute Notice, TSA Preparedness shall be deemed to have occurred (and the conditions set forth in Sections 10.1(f) and 10.2(f) shall be deemed to have been satisfied) as of the date of the TSA Preparedness Notice, and, in the event the TSA Preparedness Notice shall have been given on or prior to October 31, 2012, there shall be no reduction to the Purchase Price for purposes of the Closing pursuant to this Section 3.6 . If the Purchaser does provide the Seller with the TSA Preparedness Dispute Notice, then the Seller shall use its reasonable best efforts to cure, as promptly as practicable, any such TSA Preparedness Deficiencies, other than any of same disputed by the Seller in good faith. At any time after the Seller shall have cured the undisputed TSA Preparedness Deficiencies, if applicable, the Seller shall deliver to the Purchaser a second TSA Preparedness Notice (the Revised TSA Preparedness Notice ) signed by the Seller that includes a certification that the Seller has determined reasonably and in good faith that all undisputed TSA Preparedness Deficiencies have been cured, describing any asserted TSA Preparedness Deficiencies that the Seller disputes in good faith, and certifying that the Seller has determined reasonably and in good faith that TSA Preparedness has been achieved as of such date. Subject to the remaining provisions of this Section 3.6(d) , if the Purchaser has provided a TSA Preparedness Dispute Notice, TSA Preparedness shall be deemed to have occurred (and the conditions set forth in Sections 10.1(f) and 10.2(f) shall be deemed to have been satisfied) as of the date on which the Seller delivers the Revised TSA Preparedness Notice and, in the event the Revised TSA Preparedness Notice shall have been given

(i) on or prior to October 31, 2012, there shall be no reduction to the Purchase Price for purposes of the Closing pursuant to this Section 3.6 , or

(ii) after October 31, 2012, then, subject to the satisfaction of the remaining conditions set forth in Section 3.6(a) to the application of the Purchase Price adjustment pursuant to this Section 3.6 , there shall be an adjustment to the Purchase Price for purposes of the Closing pursuant to this Section 3.6 . Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge and agree that neither the consummation of the Closing (including any deemed achievement of TSA Preparedness for purposes thereof) nor any failure by the Purchaser to deliver a TSA Process Dispute Notice or TSA Preparedness Dispute Notice shall be deemed to preclude, prevent, waive, settle or compromise any right, claim or dispute that the Purchaser may have, whether discovered or arising prior to, on or after the Closing, in respect of

(i) any claim for indemnification pursuant to Article XII in respect of any breach or failure by the Seller to comply with any covenant or agreement hereunder (including under Sections 7.7(b) or (c) ),

(ii) any claim under the Transition Services Agreement for any breach thereof or failure to perform thereunder, or

(iii) any claim in respect of any adjustment to the Purchase Price pursuant to this Section 3.6 (provided that the Purchaser must assert any claim for adjustment to the Purchase Price pursuant to this Section 3.6 on or before the later of (i) the date that is one hundred twenty (120) days after the Closing Date and (ii) February 28, 2013) based on whether the Seller shall have, as a particular date,

(i) (A) completed in all material respects, at its sole cost and expense, the set-up of the management information system clone (as contemplated by the Transition Services Agreement) in accordance with the specifications set forth on Schedule 10.1(f) , and (B) completed in all material respects such other set-up activities and arrangements, at its sole cost and expense, such as to enable the Seller to provide the Purchaser with the services contemplated to be performed by the Seller pursuant to the Transition Services Agreement, and

(ii) delivered to the Purchaser a certificate, dated as of the Closing Date, signed on behalf of the Seller by an officer of the Seller to the effect that the foregoing criteria have been satisfied by the Seller.

(e) If each of the conditions described in clauses

(i), (iii) and (iv) of Section 3.6(a) has been satisfied such that there may be an adjustment to the Purchase Price at the Closing pursuant to this Section 3.6 , then: (i) not less three (3) days prior to the Closing Date, the Seller shall deliver to the Purchaser a certificate (the Purchaser Measurement Revenue Certificate ) setting forth in reasonable detail its good faith estimate (the Estimated Measurement Revenue Amount ) of the Measurement Revenue, and the resulting adjustment to the Purchase Price, if any, pursuant to this Section 3.6 , and (ii) if the Estimated Measurement Revenue Amount is less than Two Hundred Ten Million Dollars ($210,000,000), the Purchase Price payable at the Closing shall be adjusted downward by the amount of the Purchase Price adjustment determined in accordance with Section 3.1(a) , assuming for purposes of such calculation that the Measurement Revenue is in an amount equal to the Estimated Measurement Revenue Amount.

(f) If there was an adjustment to the Purchase Price at the Closing in accordance with the preceding provisions of this Section 3.6, then as promptly as practical, but in no event more than one hundred twenty (120) days following the Closing Date, the Purchaser shall deliver to the Seller a certificate setting forth in reasonable detail the Purchasers calculation of the Measurement Revenue (as ultimately determined in accordance with the remaining provisions of this Section 3.6 , the Final Measurement Revenue Amount ) and the resulting adjustment to the Purchase Price, if any, pursuant to this Section 3.6 .

(g) Within thirty (30) days following delivery of the Purchaser Measurement Revenue Certificate by the Purchaser, the Seller may object to the calculation of the Final Measurement Revenue Amount or the calculations used for the components thereof by delivering to the Purchaser such objections in writing and setting forth in reasonable detail the basis for such objections (the Measurement Revenue Objection Letter ). The Purchaser and the Seller shall use their commercially reasonable efforts to resolve any differences set forth in the Measurement Revenue Objection Letter (the Measurement Revenue Disputed Items ). If the Parties cannot resolve the Measurement Revenue Disputed Items within fifteen (15) days following the delivery of the Measurement Revenue Objection Letter, then the Measurement Revenue Disputed Items shall be submitted to the Independent Accounting Firm within five (5) Business Days thereafter. The Parties shall submit to the Independent Accounting Firm all materials and back-up related to the Measurement Revenue Disputed Items, including an aggregate estimate of the value of the Measurement Revenue Disputed Items, and each Party shall have the opportunity to present any material related to the Measurement Revenue Disputed Items to the Independent Accounting Firm and to discuss the Measurement Revenue Disputed Items with the Independent Accounting Firm. Each Party agrees to cooperate with and assist the Independent Accounting Firm in making the final determination, including granting reasonable access to employees and records. The Independent Accounting Firm shall make its determination as reasonably promptly as possible, but in no event later than thirty (30) days following submission of the Measurement Revenue Disputed Items by each Party. The determination of the Independent Accounting Firm shall be final and **binding** on the Parties and shall replace and supersede the previous Final Measurement Revenue Amount for the purposes of the obligations set forth in this Section 3.6 . The fees of the Independent Accounting Firm shall be paid by the Party whose aggregate estimate of the Measurement Revenue Disputed Items differs most greatly from the determination of the Independent Accounting Firm (or, if the Parties estimates differ in equal amounts, the fees shall be paid equally by the Parties).

(h) If there is to be a Purchase Price adjustment pursuant to this Section 3.6 and the amount of such Purchase Price adjustment, based on the Final Measurement Revenue Amount, differs from the amount of such adjustment made to the Purchase Price paid at the Closing, based on the Estimated Measurement Revenue Amount, there shall be a post-Closing adjustment whereby the Seller or the Purchaser, as applicable, shall pay to the other the difference of such adjustment amounts (the Post-Closing Measurement Revenue Adjustment ). In the event that the Purchase Price adjustment pursuant to this Section 3.6 , based on the Final Measurement Revenue Amount, is greater than the amount of such adjustment, if any, made to the Purchase Price paid at the Closing, based on the Estimated Measurement Revenue Amount, the Seller shall pay to the Purchaser an amount equal to the Post-Closing Measurement Revenue Adjustment. In the event that the Purchase Price adjustment pursuant to this Section 3.6 , based on the Final Measurement Revenue Amount, is less than the amount of such adjustment made to the Purchase Price paid at the Closing, based on the Estimated Measurement Revenue Amount, the Purchaser shall pay to the Seller an amount equal to the Post-Closing Measurement Revenue Adjustment. Any payments made pursuant to this Section 3.6(h) shall be made within five (5) Business Days following the determination of the Final Measurement Revenue Amount and shall be by wire transfer of immediately available funds to the address disclosed by the Purchaser or the Seller, as applicable, with respect thereto.

**Article IV CLOSING**

**Section 4.1 Closing Date**

(a) Subject to the terms and conditions of this Agreement, the sale and purchase of the Purchased Assets and the assumption of the Assumed Liabilities contemplated by this Agreement shall take place at a closing (the Closing ) to be held at the offices of Holler Ram and Borta Incorporated, Address, XXX, U.S.A., at 10:00 a.m. Central time, on the third (3 rd ) Business Day following the satisfaction or waiver of each of the conditions set forth in Article X (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of those conditions at the Closing) or at such other place, time or date as the Seller and the Purchaser may mutually agree in writing (the day on which the Closing takes place, the Closing Date ).

(b) The Parties agree and acknowledge that the Closing shall be effective in each jurisdiction where the Seller and its Subsidiaries conduct the Business as of 00:01 a.m. local time on the Closing Date.

**Section** **4.2 Closing Deliveries by the Seller**. At the Closing, the Seller shall deliver, and, as applicable, shall cause its Subsidiaries to deliver, to the Purchaser:

(a) a counterpart of the Bill of Sale and Assignment and Assumption Agreement (and, if requested by the Purchaser or the Seller not less than ten (10) Business Days prior to the Closing, comparable instruments as may be reasonably required to effectuate the assignment of designated Purchased Assets to and/or the assumption of designated Assumed Liabilities by a designated Affiliate or Affiliates of the Purchaser; provided , that any such Assumed Liabilities assumed by a designated Affiliate of the Purchaser shall continue to constitute Assumed Liabilities hereunder for all purposes);

(b) a counterpart of the Intellectual Property Assignment Agreement;

(c) a counterpart of the Seller Trademark License Agreement;

(d) counterparts of the Transition Services Agreement, the Space License Agreements and the Escrow Agreement;

(e) one or more deeds of conveyance, substantially in the form of the Deed, as are necessary to transfer to the Purchaser the Owned Real Property (other than as provided in Section 4.2(f) ) in recordable form;

(f) a counterpart of the German Real Property Transfer Agreement;

(g) the certificate required by Section 10.2(a) , in a form reasonably acceptable to the Purchaser;

(h) a certificate, in a form reasonably acceptable to the Purchaser, setting forth in reasonable detail the Estimated Modified Working Capital Amount and a calculation of the amount payable by the Purchaser at Closing in satisfaction of its obligations under Section 3.1 ;

(i) as to the Seller and any of its Subsidiaries organized under the laws of the United States and conveying real property located within the United States to the Purchaser pursuant hereto, a certification of the Seller and/or such Subsidiary that the Seller or such Subsidiary, as appropriate, is not a foreign person within the meaning set forth in Treasury Regulation Section 1.1445-2(b)(2);

(j) to the extent required by Law to avoid the Purchaser being required to withhold any portion of the Purchase Price payable at the Closing (notice of which requirement the Purchaser shall give to the Seller in writing at least fifteen (15) days prior to the Closing) a tax clearance certificate or similar certificate or documentation from the Tax Authority for each U.S. state in which the Seller or any of its Subsidiaries conducts Business, owns the Purchased Assets or files Tax Returns stating that such entity does not owe any Taxes; provided , that the rules of such U.S. state provide for a procedure whereby it will issue such a certificate or any similar certificate or documentation from any applicable Tax Authority for one or more such Taxes in response to a request therefor;

(k) as to any of its Subsidiaries of the Seller organized under the laws of a foreign country, any and all certifications, affidavits, or other documentation of the Seller and/or such Affiliates as may be required under applicable Laws stating that such Affiliate is exempt from withholding (notice of which requirement the Purchaser shall give to the Seller in writing at least fifteen (15) days prior to the Closing);

(l) such affidavits or indemnities of the Seller as reasonably required by the Purchasers title insurer with respect to liens and title matters sufficient to enable Purchasers title insurer to issue its owners title insurance policy for the Owned Business Real Property without exception other than Permitted Encumbrances;

(m) a certificate of the Seller, in a form reasonably acceptable to the Purchaser, certifying as to

(i) the terms and effectiveness of the Certificate of Formation and the Bylaws of the Seller,

(ii) certificates of good standing dated as of a recent date from the Secretary of State of the State of Texas evidencing the good standing of the Seller, and

(iii) the valid adoption of resolutions of the Board of Directors of the Seller approving this Agreement and the transactions contemplated hereby; and

(n) Uniform Commercial Code termination statements, requests for reconveyance of deeds of trust, and such other Lien release or termination documents (which do not correspond to an Assumed Liability), in a form reasonably acceptable to the Purchaser (including for filing or recordation with the filing or recordation office of the applicable Governmental Authority) in order to release and terminate all Encumbrances (other than Permitted Encumbrances) on the Purchased Assets on or prior to the Closing Date.

**Section** **4.3 Closing Deliveries by the Purchaser** . At the Closing, the Purchaser shall deliver to the Seller:

(a) the Purchase Price; provided, however, that the Initial Allocation to the German Owned Business Real Property shall be deposited into a notarial escrow account as provided in the German Real Property Transfer Agreement and delivered to Seller only upon satisfaction of the conditions to release set forth therein;

(b) a counterpart of the Bill of Sale and Assignment and Assumption Agreement (and, if requested by the Purchaser or the Seller not less than ten (10) Business Days prior to the Closing, comparable instruments as may be reasonably required to effectuate the assignment of designated Purchased Assets to and/or the assumption of designated Assumed Liabilities by a designated Affiliate or Affiliates of the Purchaser; provided , that any such Assumed Liabilities assumed by a designated Affiliate of the Purchaser shall continue to constitute Assumed Liabilities hereunder for all purposes.

(c) a counterpart of the Intellectual Property Assignment Agreement;

(d) counterparts of the Transition Services Agreement, the Space License Agreements and the Escrow Agreement;

(e) a counterpart of the German Real Property Transfer Agreement; and

(f) the certificate required by **Section** 10.1(a) .

**Section** **4.4 German Closing .**

(a) Notwithstanding anything to the contrary in this Agreement, at the Purchasers option, and in its sole discretion, the Parties shall exclude from the transactions contemplated by this Agreement to be consummated at the Closing any portion of the Purchased Assets that is not assignable or transferable without a Competition Consent under the Competition Laws of the Federal Republic of Germany (the Delayed Transfer Purchased Assets ), together with any Dedicated Employees or Allocated Employees located in the Federal Republic of Germany (the Delayed Transfer Employees ) to the extent that such Competition Consent shall not have been given prior to the Closing; provided , however , that

(i) if the Purchaser elects to exercise such option to so exclude the Delayed Transfer Purchased Assets and Delayed Transfer Employees from the transactions to be consummated at the Closing, the Purchaser shall provide written notice of such election to the Seller at least thirty (30) days prior to the Closing, and

(ii) the exclusion of the Delayed Transfer Purchased Assets and the Delayed Transfer Employees from the transactions consummated at the Closing shall be subject to the receipt of such Competition Consents, if any, as may be required under the Laws of the Federal Republic of Germany as may be required to consummate the Closing on the Purchased Assets other than the Delayed Transfer Purchased Assets, evidence of which Consents, if any, the Purchaser shall provide to the Seller. For the avoidance of doubt, if the Delayed Transfer Purchased Assets are to be excluded from the transactions contemplated by this Agreement to be consummated at the Closing, the Parties shall not enter into the German Real Property Transfer Agreement until the Delayed Transfer Date, and no portion of the Purchase Price shall be paid into the notarial escrow account contemplated thereby until the Delayed Transfer Date. In the event that the Delayed Transfer Purchased Assets and Delayed Transfer Employees are not assigned or transferred at the Closing as contemplated by the foregoing sentence, the Parties agree that the Purchase Price payable by the Purchaser at the Closing (after giving effect to any adjustments at the Closing pursuant to Section 3.2 and Section 3.6 ) shall be reduced by fourteen percent (14%) (the Delayed Transfer Purchase Price ) and the Delayed Transfer Purchase Price shall be deposited at Closing by the Purchaser in escrow with an institution acting as escrow agent as shall be acceptable to the Purchaser and the Seller (the Escrow Agent ) and which amount, together with all interest and earnings thereon (collectively, the Escrow Fund ) shall be held pursuant to the terms of this Agreement and a reasonable and customary written escrow agreement (the Escrow Agreement ), the form of which the Seller and the Purchaser shall negotiate in good faith between the date hereof and the Closing. Further, at the Closing, the Parties shall enter such distribution agreement(s), license agreement(s) and other agreements and instruments as are reasonably necessary or appropriate for the Seller and its Subsidiaries to operate the Delayed Transfer Purchased Assets and the related portion of the Business after the Closing and prior to the Delayed Transfer or any Delayed Transfer Termination Notice. For purposes of determining the amount, if any, of any adjustments to the Purchase Price at the Closing for purposes of calculating the Delayed Transfer Purchase Price and the Purchase Price payable at the Closing, the provisions of Sections 3.2 and 3.6 shall apply as if the Delayed Transfer Purchased Assets and Delayed Transfer Employees were not being excluded from the Closing pursuant to this Section 4.4 . (b) Subject to and as promptly as practicable (but in no event more than thirty (30) Business Days) following the date on which any Competition Consent under the Competition Laws of the Federal Republic of Germany is obtained, the Purchaser and the Seller shall consummate the assignment and transfer of the Delayed Transfer Purchased Assets and Delayed Transfer Employees in accordance with applicable Law (each such transfer and assignment, a Delayed Transfer , and the date of such Delayed Transfer, the Delayed Transfer Date ). The Escrow Agent shall disburse the Escrow Fund to the Seller on the earlier to occur of

(i) the Delayed Transfer Date or

(ii) the Outside Date (regardless of whether the Delayed Transfer shall have occurred). For all purposes of this Agreement, with respect to the Delayed Transfer Purchased Assets (and the portion of the Business, the Assumed Liabilities and Excluded Liabilities related to the Delayed Transfer Assets), the Closing shall be deemed occur upon the consummation of the Delayed Transfer and the Closing Date shall be deemed to occur on the Delayed Transfer Date.

(c) From the Closing Date until the Delayed Transfer Date, if applicable,

(i) the Parties shall use their commercially reasonable efforts to structure and support the Delayed Transfer Purchased Assets and Delayed Transfer Employees in such a manner as to satisfy the requirements of any Governmental Authority of the Federal Republic of Germany or under the Competition Laws of the Federal Republic of Germany, and

(ii) the Seller shall operate the Delayed Transfer Purchased Assets (including employment of the Delayed Transfer Employees) and the portion of the Business relating thereto for its own account and continue to observe its obligations under this Agreement applicable to the Business, the Purchased Assets and the Business Employees prior to the Closing in respect of Delayed Transfer Purchased Assets and the Delayed Transfer Employees (for this purpose, as if the Closing had not occurred) until the Delayed Transfer Date. From and after the consummation of a Delayed Transfer, the Delayed Transfer Purchased Assets shall be treated as Purchased Assets hereunder, and the Delayed Transfer Employees shall be treated as Transferred Employees for all purposes then applicable (including, for the avoidance of doubt, Article V and Article VII ).

(d) If the Delayed Transfer Purchased Assets and Delayed Transfer Employees shall have been excluded from the Closing in accordance with this Section 4.4 , then:

(i) the provisions of Sections 7.12 and 7.13 shall not apply with respect to the activities of the Seller and its Subsidiaries in operating the Delayed Transfer Purchased Assets and Delayed Transfer Employees prior to the Delayed Transfer Date,

(ii) except as provided herein, the provisions of Section 3.2 and Section 3.6 shall not apply with respect to the consummation of the Delayed Transfer, and

(iii) the consummation of the Delayed Transfer shall not be subject to the conditions set forth in Sections 10.1 and 10.2 ; provided , that , each Partys obligation to consummate the Delayed Transfer shall be conditioned on (A) the execution and delivery by the other Party of the deliveries contemplated, respectively, by Sections 4.2 and 4.3 , in each case as the same may be modified to convey the Delayed Transfer Purchased Assets to the Purchaser, for the Purchaser to assume the Assumed Liabilities relating to the Delayed Transfer Purchased Assets and the Delayed Transfer Employees, and to otherwise consummate the Delayed Transfer, all of which the Parties hereby covenant and agree to execute and deliver in the periods contemplated by Section 4.4(b) ), (B) any waiting period (and any extension thereof) under the Competition Laws of the Federal Republic of Germany applicable to the purchase of the Delayed Transfer Purchased Assets and transfer of the Delayed Transfer Employees having expired or shall have been terminated, and (C) no Governmental Authority of the Federal Republic of Germany having enacted, issued, promulgated, enforced or entered any Law or Governmental Order (whether temporary, preliminary, or permanent) that has the effect of making the Delayed Transfer illegal or otherwise prohibit the consummation of the Delayed Transfer. The Parties acknowledge that, if the Closing shall have occurred and the Delayed Transfer Purchased Assets and Delayed Transfer Employees shall have been excluded from the Closing in accordance with this Section 4.4 , the occurrence of the Outside Date shall have no effect on the Parties respective rights and obligations under this Section 4.4 (and, for the avoidance of doubt, the Seller shall remain obligated to transfer the Delayed Transfer Purchased Assets and Delayed Transfer Employees to the Purchaser as contemplated by this Section 4.4 without regard to the occurrence of the Outside Date), subject to the remaining provisions of this Section 4.4 . The provisions of this Section 4.4 shall survive the Closing. However, if the Delayed Transfer shall not have occurred on or prior to the date that is one hundred eighty (180) days after the Outside Date, then at any time thereafter the Seller may notify the Purchaser in writing (a Delayed Transfer Termination Notice ) that the provisions of this Section 4.4 have terminated, whereupon neither the Seller nor the Purchaser shall have any further rights or obligations under this Section 4.4 or otherwise under this Agreement in respect of the Delayed Transfer Purchased Assets, except that

(i) the Delayed Transfer Purchased Assets shall constitute Excluded Assets and all Liabilities relating thereto shall constitute Excluded Liabilities and

(ii) the provisions of Sections 7.12 and 7.13 shall not apply with respect to the activities of the Seller and its Subsidiaries in operating the Delayed Transfer Purchased Assets and the related portion of the Business. From and after any Delayed Transfer Termination Notice, the Seller and its Subsidiaries shall be free to deal with the Excluded Assets in such manner as it chooses, free and clear of any Encumbrance hereunder. Between the Closing and the delivery of any Delayed Transfer Termination Notice, the Seller agrees to reasonably cooperate with the Purchaser, at the Purchasers expense, in any efforts by the Purchaser to find an alternate party to acquire all (but not less than all) of the Delayed Transfer Purchased Assets and assume the related Assumed Liabilities, including the execution and delivery of such instruments of transfer as are reasonably required to effect any such alternate transaction, provided that in no event shall the Seller or any of its Subsidiaries be required to execute any document or instrument or enter into any transaction on terms less favorable to the Seller and its Subsidiaries than those that would apply under this Agreement and the Ancillary Agreements if the Delayed Transfer were consummated. The proceeds of any such alternate transaction effected prior to any Delayed Transfer Termination Notice shall be for the account of the Purchaser.

(e) As promptly as practical, but in no event more than sixty (60) days following the Delayed Transfer Date, the Purchaser shall deliver to the Seller a certificate (the Purchaser Delayed Transfer Inventory Certificate ) setting forth in reasonable detail Purchasers calculation of the Delayed Transfer Inventory, measured as of the time of the Delayed Transfer rather than the Closing Date (as ultimately determined in accordance with the remaining provisions of this Section 4.4 , the Final Delayed Transfer Inventory Amount ), and the basis for calculating the same. Within fifteen (15) days following delivery of the Purchaser Delayed Transfer Inventory Certificate by the Purchaser, the Seller may object to the calculation of the Final Delayed Transfer Inventory Amount or the calculations used for the same in a manner consistent with the process provided in Section 3.2 to resolve objections to Final Modified Working Capital Amount.

(f) In the event that the Final Delayed Transfer Inventory Amount is an amount greater or less than the Delayed Transfer Inventory as reflected in the Final Modified Working Capital Amount, there shall be an adjustment following the Deferred Transfer Date whereby the Seller or the Purchaser, as applicable, shall pay to the other the difference of such amounts (the Post-Delayed Transfer Adjustment ). In the event that the Final Delayed Transfer Inventory Amount is greater than the Delayed Transfer Inventory as reflected in the Final Modified Working Capital Amount, the Purchaser shall pay to the Seller an amount equal to the Post-Delayed Transfer Adjustment. In the event that the Final Delayed Transfer Inventory Amount is less than the Delayed Transfer Inventory as reflected in the Final Modified Working Capital Amount, the Seller shall pay to the Purchaser an amount equal to the Post-Delayed Transfer Adjustment. Any payments made pursuant to this Section 4.4(f) shall be made within five (5) Business Days following the determination of the Final Delayed Transfer Inventory Amount and shall be by wire transfer of immediately available funds to the address disclosed by the Purchaser or the Seller, as applicable, with respect thereto.

**Article V REPRESENTATIONS AND WARRANTIES OF THE SELLER**

Except as set forth in the Seller Disclosure Schedule (it being understood and agreed by the Parties that disclosure of any item in any section or subsection of the Seller Disclosure Schedule shall be deemed disclosure with respect to any other section or subsection of the Seller Disclosure Schedule to which the relevance of such item is reasonably apparent), the Seller hereby represents and warrants to the Purchaser as follows:

**Section 5.1 Organization; Authority; Qualification; Capitalization .** The Seller is a corporation duly incorporated, validly existing and in good standing under the Laws of the State of Texas and has all necessary corporate power and authority to enter into, execute and deliver this Agreement, to carry out its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement by the Seller, the performance by the Seller of its obligations hereunder and the consummation by the Seller of the transactions contemplated hereby have been duly authorized by all requisite corporate action on the part of the Seller. This Agreement has been duly executed and delivered by the Seller, and, assuming due authorization, execution and delivery by the Purchaser, this Agreement is a legal, valid and binding obligation of the Seller, enforceable against it in accordance with its terms, subject in each case to the effect of any applicable bankruptcy, reorganization, insolvency, moratorium, rehabilitation, liquidation, fraudulent conveyance, preferential transfer or similar Laws now or hereafter in effect relating to or affecting creditors rights and remedies generally and subject, as to enforceability, to the effect of general equitable principles (regardless of whether enforcement is sought in a proceeding in equity or at law).

**Section** **5.2 No Conflict .** Assuming that all Consents and other actions described in Section 5.3 have been obtained, and except as may result from any facts or circumstances relating solely to the Purchaser (other than simply the change of the owner or operator of the Business) or as set forth in Section 5.2 of the Seller Disclosure Schedule, the execution, delivery and performance of this Agreement by the Seller do not and shall not

(a) violate, conflict with or result in the breach of the certificate of incorporation or bylaws of the Seller,

(b) conflict with or violate in any material respect any Law or Governmental Order applicable to the Seller, or the Purchased Assets or

(c) conflict with, result in any breach of, constitute a default (or event which with the giving of notice or lapse of time, or both, would become a default) under, require any Consent under, or give to others any rights of termination, amendment, acceleration, suspension, revocation or cancellation of, any Contract set forth on Section 5.13 of the Seller Disclosure Schedule.

**Section** **5.3 Governmental Consents and Approvals .** The execution, delivery and performance of this Agreement by the Seller do not and shall not require any material Regulatory Consent or Competition Consent of or action by any Governmental Authority, except

(a) to the extent applicable, as required by the HSR Act and the Competition Laws of any other relevant jurisdiction,

(b) for any notification, or where appropriate, consultation, Consent or negotiation with a works council, union, labor board or relevant Governmental Authority concerning the transactions contemplated by this Agreement, or

(c) as may be necessary as a result of any facts or circumstances relating solely to the Purchaser or any of its Affiliates (other than simply the change of the owner or operator of the Business).

**Section** **5.4 Financial Statements; No Undisclosed Liabilities .**

(a) Attached hereto at Section 5.4(a) of the Seller Disclosure Schedule are correct and complete copies of the

(i) audited balance sheet, income statements and cash flow statements of the Business as of December 31, 2011 (Successor) and for the period of November 4, 2011 through December 31, 2011 (Successor), the period of January 1, 2011 through November 3, 2011 (Predecessor) (the Audited Financial Statements ),

(ii) an unaudited contribution margin profit and loss statement of the Business for the six-month period ended June 30, 2012, and

(iii) the unaudited revenue of the Business for the one-month period ended July 31, 2012 (collectively with the Audited Financial Statements, the Financial Statements ). The Audited Financial Statements have been prepared in accordance with GAAP and fairly present in all material respects and the financial condition and results of operations of the Business as of the respective dates of and for the periods referred to therein in accordance with Rule 3-05 of Regulation S-X. Except for the absence of footnotes and year-end adjustments (none of which, if made, would be material) and that the other Financial Statements utilize budgeted foreign currency exchange rates to translate such Financial Statements into U.S. Dollars, the other Financial Statements have been prepared in accordance with GAAP and fairly present in all material respects the results of operations of the Business for the periods referred to therein. Except as set forth in Section 5.4(a) of the Seller Disclosure Schedule, the unaudited contribution margin profit and loss statements included in the Financial Statements do not reflect the operations of any material entity or business not intended to constitute a part of the Business after giving effect to all such transactions and reflect all material direct and indirect costs and expenses that historically have been incurred by or allocated to the Business reasonably and in a manner consistent with past practices.

(b) Except as set forth on Section 5.4(b) or

(i) as may have been incurred in the ordinary course of business since December 31, 2011, or

(ii) as will be included in the calculation of the Modified Working Capital, there are no material Liabilities or Indebtedness affecting the Business or the Purchased Assets that are not reflected in or reserved against in the Financial Statements (including the notes thereto).

**Section 5.5 Litigation .** No material Action by or against the Seller or any of its Subsidiaries is pending or, to the Knowledge of the Seller, threatened, by or before any Governmental Authority or by any third party that relates to the Purchased Assets or the Business including any material Action relating to any injury or alleged injury to person or property, or economic damages, as a result of any Business Product, nor is there any material written demand or letter of any Governmental Authority or any Governmental Order outstanding against, or, to the Knowledge of the Seller, is any material investigation pending or threatened by any Governmental Authority involving the Business or the Purchased Assets. No Action by or against the Seller or any of its Subsidiaries is pending, or to the Knowledge of the Seller, threatened, that would reasonably be expected to affect in any material respect the legality, validity or enforceability of this Agreement or the Ancillary Agreements or prevent the consummation of the transactions contemplated hereby or thereby.

**Section 5.6 Properties** .

(a) Except as set forth on Section 5.6(a) of the Seller Disclosure Schedule,

(i) Schedule 1.1(a) includes all of the products currently manufactured, packaged, labeled, marketed, offered for sale, sold, leased, rented, distributed, serviced, imported or exported by or on behalf of the Business,

(ii) Schedule 2.1(a) includes and describes all of the Real Property owned by the Seller and its Subsidiaries and primarily used in, primarily held for use in, or primarily related to the Business,

(iii) Schedule 2.1(b) and Schedule 2.2(i) collectively include and describe all of the material Real Property leased by the Seller and its Subsidiaries and primarily used in, primarily held for use in, or primarily related to the Business, and with respect to all Contracts providing for the lease of the Leased Business Real Property, accurately set forth in all material respects the material terms of such Contracts, and

(iv) Schedule 2.1(c) includes and accurately describes as conveyed (or similar language) all material Fixed Assets and material Tangible Personal Property owned or leased by the Seller and its Subsidiaries and primarily used in, primarily held for use in, or primarily related to the Business. The Seller and/or one or more of its Subsidiaries has valid and marketable fee simple title to, or valid leasehold or sublease interests or other comparable Contract rights in or relating to, all of the Owned Business Real Property and Leased Business Real Property (as applicable), Inventory, Fixed Assets, and other Tangible Personal Property included in the Purchased Assets, except as have been disposed of in the ordinary course of business and except for Permitted Encumbrances. There are no outstanding options or rights of first refusal to purchase the Owned Business Real Property or any portion thereof or interest therein. The Seller has delivered to the Purchaser correct and complete copies of all leases relating to Leased Business Real Property. Each parcel included in the Owned Business Real Property is assessed for real property tax purposes as a wholly independent tax lot, separate from adjoining land or improvements not constituting a part of that parcel. The Seller and its Subsidiaries, as applicable, have complied in all material respects with the terms of all leases relating to Leased Business Real Property, and all leases relating to Leased Business Real Property are legal, valid, binding, enforceable, and in full force and effect. Neither the Seller nor any of its Subsidiaries has received any written notice of any event or occurrence that has resulted or could result (with or without the giving of notice, the lapse of time or both) in a material default with respect to any lease regarding the Leased Business Real Property to which it is a party. Except as set forth on Section 5.6(a) of the Seller Disclosure Schedule, each lease with respect to Leased Business Real Property grants the tenant under the lease the exclusive right to use and occupy the demised premises thereunder.

(b) The Owned Business Real Property and, to the Knowledge of the Seller, the Leased Business Real Property, comply with in all material respects with applicable Laws (including zoning, planning, and building code requirements). There are no pending or, to the Knowledge of the Seller, threatened, condemnation, eminent domain or other similar proceedings against or affecting any portion of the Owned Business Real Property or, to the Knowledge of the Seller, the Leased Business Real Property. There is no Action pending or, to the Knowledge of the Seller, threatened, relating to the ownership, lease, use, occupancy or operation by any person of any Owned Business Real Property or, to the Knowledge of the Seller, the Leased Business Real Property. The use and operation of the Real Property in the conduct of the Business as currently conducted does not violate in any material respect any instrument of record or agreement affecting the Owned Business Real Property or the Leased Business Real Property. Neither the Seller nor any of its Subsidiaries is in violation in any material respect of any covenant, condition, restriction, easement or order of any governmental authority having jurisdiction over such property or any other person entitled to enforce the same affecting the Owned Business Real Property or the Leased Business Real Property or the use or occupancy thereof.

**Section** **5.7 Compliance with Laws .** Neither the Seller nor any of its Subsidiaries is, or within the past five (5) years has been, in material violation of any applicable Law with respect to the Business or the Purchased Assets. The Seller and/or one or more of its Subsidiaries holds, and within the past five (5) years has held, all material permits and other governmental authorizations that are and were necessary to conduct the Business and operate the Purchased Assets as presently and then conducted and operated, respectively. Section 5.7 of the Seller Disclosure Schedule sets forth a list of all material Registrations, permits, licenses, certifications and approvals of the Seller and its Subsidiaries issued by any Governmental Authorities and permitting, licensing, accrediting and certifying agencies that are used in, held for use in, or related to the Business. As of the date hereof, all such permits and other governmental authorizations held by the Seller and/or one or more of its Subsidiaries are in effect and no appeal or other Action is pending or, to the Knowledge of the Seller, threatened to revoke or modify any such permits or other governmental authorizations. Notwithstanding the foregoing, this Section 5.7 shall not apply to

(i) Environmental Laws and any permits required thereunder, which are exclusively the subject of the representations and warranties contained in Section 5.8 ,

(ii) other than with respect to the list of material Registrations set forth on Section 5.7 of the Seller Disclosure Schedule, FDA matters and any permits or governmental authorizations required thereunder, which are exclusively the subject of the representations and warranties contained in Section 5.9 ;

(iii) employee benefits, which are exclusively the subject of the representations and warranties contained in Section 5.10 or

(iv) Tax matters, which are exclusively the subject of the representations and warranties contained in Section 5.11 .

**Section** **5.8 Environmental Matters .** With respect to the Purchased Assets and the ownership or operation thereof:

(a) the Seller and its Subsidiaries are, and within the past five (5) years have been, in compliance in all material respects with all applicable Environmental Laws with respect to the operation by the Seller and its Subsidiaries of the Business and the ownership and operation of the Purchased Assets in furtherance thereof;

(b) neither the Seller nor any of its Subsidiaries is subject to or, to the Knowledge of the Seller, threatened with any Actions by any Person alleging material non-compliance with any Environmental Law; and (c) there has been no material release by the Seller or any of its Subsidiaries of a Hazardous Substance at any of the Owned Business Real Property or Leased Business Real Property that is required to be remediated under or result in a violation of or liability under applicable Environmental Law, and no Hazardous Substances are present at any of the Owned Business Real Property or Leased Business Real Property in quantities or under circumstances that would reasonably be expected to result in any material Liability or violation under any Environmental Law.

**Section** **5.9 FDA and Regulatory Matters .**

(a) With respect to the operation of the Business and the development, manufacture, packaging, labeling, marketing, offer for sale, sale, distribution, import and export of the Business Products and any Purchased Assets that are subject to such Laws, the Seller and its Subsidiaries are, and for the past five (5) years have been, in compliance in all material respects with applicable Healthcare Laws, Registrations, the FDCA and similar Laws of any foreign Governmental Authority. All manufacturing operations performed by or on behalf of the Seller or its Subsidiaries, to the extent relating to the Business, are being, and for the past five (5) years have been, conducted in material compliance with the Quality Systems Regulation of the FDA in 21 CFR Part 820 and, to the extent applicable to the Seller or any of its Subsidiaries with respect to the Business, counterpart regulations of foreign Governmental Authorities. All

(i) nonclinical laboratory studies of Business Products under development that support or are intended to support applications for research or marketing permits from the FDA and are sponsored by the Seller or any of its Subsidiaries with respect to the Business; and

(ii) clinical studies of Business Products under development sponsored by the Seller or any of its Subsidiaries with respect to the Business are being, and for the past five (5) years have been, conducted in material compliance with applicable Healthcare Laws, the FDCA and, to the extent applicable, its implementing regulations at 21 C.F.R. Parts 50, 54, 56, 58 and 812 and, to the extent applicable to the Seller or any of its Subsidiaries with respect to the Business, counterpart regulations of foreign Governmental Authorities. No Business Product is, or within the past three (3) years has been, at the time such Business Product is or was sold, distributed, or leased by Seller or any of its Subsidiaries (1) adulterated within the meaning of 21 U.S.C. § 351 (or similar Laws) in any material respect, (2) misbranded within the meaning of 21 U.S.C. § 352 (or similar Laws) in any material respect, or (3) in material violation of the FDCA, including 21 U.S.C. § 360 or § 360e (or similar Laws) or is a banned device within the meaning of the FDCA Act, 21 USC § 360f (or similar Laws).

(b) Except as provided on Section 5.9(b) of the Seller Disclosure Schedule, neither the Seller nor any of its Subsidiaries has received written notice of and, to the Knowledge of the Seller, neither the Seller nor any of its Subsidiaries is the subject of, any Actions, causes of action, claims, 483 observations, subpoenas, investigations, demands or notices relating to alleged non-compliance in respect of the Business or the Business Products with any Healthcare Laws, the FDCA or with any similar foreign Laws. Except as provided on Section 5.9(b) of the Seller Disclosure Schedule, there have been no recalls, field notifications, or seizures ordered (or, to the Knowledge of the Seller, threatened) by the FDA or any other Governmental Authority with respect to any of the Business Products, and except as provided on Section 5.9(b) of the Seller Disclosure Schedule, neither the Seller nor any of its Subsidiaries has within the last five (5) years, either voluntarily or at the request of any Governmental Authority, initiated or conducted a recall or market withdrawal of any Business Product or issued a safety alert, warning, or dear doctor letter. As of the date hereof, the Seller and/or one or more of its Subsidiaries holds all registrations, listings, 510(k) premarket notifications, and other authorizations required under the FDCA (any similar foreign Laws) for or material to any of the Business Products or any other Purchased Assets that are regulated by the FDA or other Governmental Authorities. As of the date hereof, all such registrations, listings, 510(k)s, and other authorizations held by the Seller or any of its Subsidiaries are in effect and no appeal or other Action is pending or, to the Knowledge of the Seller, threatened to revoke or modify any such permits or other governmental authorizations.

(c) With respect to the Business, none of the Seller or its Subsidiaries, nor, to the Knowledge of the Seller, any officer, employee or agent of the Seller or any of its Subsidiaries has been convicted of any crime or engaged in any conduct for which such Person or entity could be excluded from participating in the federal health care programs under **Section** 1128 of the Social Security Act of 1935, as amended (the Social Security Act ) or any similar Law.

(d) With respect to the Business, none of the Seller or its Subsidiaries, nor to the Knowledge of the Seller, any officer, employee or agent of the Seller or any of its Subsidiaries, has engaged in any activities that are prohibited under 42 U.S.C. § 1320a-7b, or 31 U.S.C. §§ 3729-3733 (or other Laws related to false or fraudulent claims) or similar Laws related to soliciting or receiving any remuneration (including any kickback, bribe or rebate), directly or indirectly, overtly or covertly, in cash or in kind or offering to pay or receive such remuneration

(i) in return for referring an individual to a person for the furnishing, or arranging for the furnishing of, any item or service for which payment may be made in whole or in part by Medicare or Medicaid or other federal healthcare programs, or

(ii) in return for purchasing, leasing, or ordering or arranging for or recommending purchasing, leasing, or ordering any good, facility, service or item for which payment may be made in whole or in part by Medicare or Medicaid or other federal healthcare programs, or similar Laws of any country in which the Business sells any Business Products or otherwise transacts any business.

(e) To the Knowledge of the Seller, there are no facts, circumstances or conditions that would reasonably be expected to form the basis for any Action against or affecting the Business relating to or arising under

(i) the FDCA or

(ii) the Social Security Act or regulations of the Office of the Inspector General of the Department of Health and Human Services, or

(iii) similar Governmental Authorities of any foreign jurisdiction.

(f) With respect to the Business, the Seller and its Subsidiaries currently operate, and during the past five (5) years have operated, in material compliance with the AdvaMed Code of Ethics on Interactions with Health Care Professionals.

**Section** **5.10 Employee Benefits** .

(a) Section 5.10 of the Seller Disclosure Schedule sets forth a complete and accurate list of each material Compensation and Benefit Plan currently maintained, sponsored or contributed to, or required to be contributed to, by the Seller or any of its Subsidiaries or their respective ERISA Affiliates for the benefit of any current or former Business Employee (collectively, whether or not material and whether or not set forth on Section 5.10 of the Seller Disclosure Schedule, the Employee Benefit Plans ).

(b) With respect to each of the Employee Benefit Plans set forth in Section 5.10 of the Seller Disclosure Schedule, the Seller has provided to the Purchaser copies of each of the following documents, as applicable:

(i) each Employee Benefit Plan (including all amendments thereto);

(ii) the annual report and actuarial report, if required under ERISA or the Code or other applicable Laws, with respect to each such Employee Benefit Plan for the last plan year ending prior to the date hereof;

(iii) the most recent summary plan description, together with each summary of material modifications, if required under ERISA or other applicable Laws, with respect to such Employee Benefit Plan; and

(iv) the most recent determination letter received from the IRS with respect to each Employee Benefit Plan that is intended to be qualified under Section 401(a) of the Code.

(c) Each of the Employee Benefit Plans has been operated and administered in all material respects in compliance with its terms and applicable Laws, including ERISA and the Code. There are no pending or, to the Knowledge of the Seller, threatened claims by or on behalf of any of the Employee Benefit Plans, by any Business Employee or beneficiary thereof covered under any such Employee Benefit Plan or otherwise involving any such Employee Benefit Plan (other than routine claims for benefits). Each Employee Benefit Plan intended to qualify under Section 401(a) of the Code has either received a favorable determination letter from the IRS with respect to its qualified status under the Code, or may make such amendments as may be required to obtain a favorable determination letter from the IRS within the remedial amendment period. (d) Neither Seller nor its Subsidiaries have (nor their respective ERISA Affiliates) currently or have formerly sponsored, maintained, contributed to, or been obligated under ERISA or otherwise to contribute to

(i) a defined benefit plan (including a defined benefit plan as defined in ERISA Section 3(35) and Code Section 414(j),

(ii) a multi-employer plan (as defined in ERISA Sections 3(37) and 4001(a)(3)),

(iii) a multiple employer plan (meaning a plan sponsored by more than one employer within the meaning of ERISA Sections 4063 or 4064 or Code Section 413(c), or (iv) a multiple employer welfare arrangement (as defined in ERISA Section 3(40)). The Seller and its Subsidiaries and their respective ERISA Affiliates have not incurred, and there are no circumstances under which either could reasonably incur, any liability under Title IV or ERISA or any obligations under Code Section 412. Neither the Seller nor its Subsidiaries have any liability or obligation to provide welfare benefits, including death or medical benefits with respect to any person beyond his or her retirement or other termination of service other than

(i) coverage mandated by Part 6 of Title I of ERISA or Code Section 4980B or similar state law or

(ii) disability benefits under a welfare plan that is fully provided for by insurance. There are no Employee Benefit Plans that Purchaser will be required to assume by operation of Law for Business Employees who are situated outside the United States, other than as required by applicable Law in respect of Non-U.S. Automatically Transferred Employees.

**Section** **5.11 Tax Matters .**

(a) All material Tax Returns that were required to have been filed by the Seller or any of its Subsidiaries in respect of or in relation to the Business or the Purchased Assets have been duly and timely filed (taking into account any extensions of time in which to file). All such Tax Returns are true, correct and complete in all material respects.

(b) The Seller and each of its Subsidiaries has timely paid or withheld and remitted all material Taxes in respect of, in relation to or that may otherwise affect the Business or the Purchased Assets that are due and owing by such entity with respect to, or relating to, all Pre-Closing Tax Periods (whether or not shown as due on any Tax Return), or such entity has established (or has had established on its behalf and for its sole benefit and recourse) an adequate accrual for all material Taxes, including Taxes imposed as a result of an audit by any Tax Authority, through the end of the last period for which such entity ordinarily records items on its books.

(c) There are no Encumbrances for Taxes (other than Permitted Encumbrances) upon any of the Purchased Assets or the Business.

(d) Except as set forth on Section 5.11(d) of the Seller Disclosure Schedule, no material claim has ever been made in writing by a Tax Authority in a jurisdiction where the Seller or any of its Subsidiaries do not file Tax Returns for a specific Tax alleging that the Seller or any of its Subsidiaries may be subject to such Taxes by that jurisdiction in respect of or in relation to the Business or the Purchased Assets. There are no pending or, to the Knowledge of the Seller, threatened audits, examinations, deficiencies, assessments or collection Actions by any Tax Authority for any Tax in respect of or in relation to the Business or the Purchased Assets.

(e) Neither the Seller nor any of its Subsidiaries is a party to, or bound by, any Tax indemnity, Tax sharing or Tax allocation agreement with respect to or in relation to the Business or the Purchased Assets.

(f) Neither the Seller nor any of its Subsidiaries has made any change in accounting method or tax election that would reasonably be expected to defer Taxes in respect of or in relation to the Business or the Purchased Assets from any Pre-Closing Tax Period to any Post-Closing Tax Period.

**Section** **5.12 Intellectual Property .**

(a) Business Owned Intellectual Property . Section 5.12(a) of the Seller Disclosure Schedule sets forth a complete and accurate list of all of the following that are owned by the Seller or one of its Subsidiaries and used in, held for use in, or related to the Business or the Business Products, including, as applicable, the nature (e.g., patent, trademark, etc.) thereof, the application number, the filing date, the registration number, the registration date, the jurisdiction, the record owner and the status:

(i) all patents and patent applications, and patent disclosures for which Seller or one of its Subsidiaries has approved the preparation of a patent application directed thereto, together with reissuances, provisional patent applications, divisionals, continuations, continuations-in-part, revisions, extensions, requests for continued examination, continued prosecution applications, and examinations relating to any of the foregoing;

(ii) all registered Trademarks and material unregistered trademarks, service marks, certification marks, trade names, corporate names and product names (but excluding Seller Brands);

(iii) all copyright registrations and applications for copyright registration, and renewals and extensions thereof, and all material unregistered works of authorship;

(iv) all industrial designs, and registrations and applications directed thereto;

(v) all domain name registrations, URLs and Twitter and Facebook handles;

(vi) all material Software and databases (but excluding Excluded Software); and

(vii) all other registered Intellectual Property, and applications for registration of Intellectual Property.

(b) Business Licensed Intellectual Property . To the extent that the Seller or one of its Subsidiaries do not own all right, title and interest in and to any Intellectual Property, free and clear of all Encumbrancess, used in, held for use in, or related to (with respect to related to, provided that such Intellectual Property is necessary to operate the Business or commercialize or operate one or more of the Business Products), and do not have the unrestricted, perpetual and irrevocable right to use, without restriction, any Intellectual Property used in, held for use in, or related to (with respect to related to, provided that such Intellectual Property is necessary to operate the Business or commercialize or operate one or more of the Business Products) the Business or the Business Products, the Seller or one of its Subsidiaries has an enforceable right and license from the third party that owns all right, title and interest in and to such Intellectual Property to use such Intellectual Property without restriction in the Business and in connection with the Business Products. Section 5.12(b) of the Seller Disclosure Schedule sets forth a complete and accurate list of

(i) all patents and applications therefor, registered trademarks and applications therefor, domain name registrations and copyright registrations and applications therefore, and all other Intellectual Property which is the subject of a registration or an application to register, included in the Business Licensed Intellectual Property, including, as applicable, and to the Knowledge of the Seller, the nature (e.g., patent, trademark, etc.) thereof, the application or registration number, the filing date or registration date, the jurisdiction, and the record owner; and

(ii) all written licenses, assignments and other agreements relating thereto to which the Seller or any of its Subsidiaries is a party relating to the Business or the Business Products (other than licenses of Excluded Software and commercial off-the-shelf computer software for which the license fee and all other fees, in the aggregate, amount to less than Fifty Thousand Dollars ($50,000), or implied licenses relating to the Business Products held by the purchaser of such Business Products).

(c) Ownership . Either the Seller or one of its Subsidiaries owns all right, title and interest in and to all Intellectual Property (other than the Intellectual Property which is the subject of the licenses identified on Section 5.12(b) of the Seller Disclosure Schedule), free and clear of all Encumbrances (other than Permitted Encumbrances), and has the unrestricted (in an Intellectual Property context), perpetual (subject to the natural expiration of patents and copyright registrations, provided that extensions thereof are not available) and irrevocable right to use without restriction, all Intellectual Property (other than the Intellectual Property which is the subject of the licenses identified on Section 5.12(b) of the Seller Disclosure Schedule and licenses in respect of Excluded Software), used in, held for use in, or related to (with respect to related to, provided that such Intellectual Property is necessary to operate the Business or commercialize or operate one or more of the Business Products) the Business or in connection with any Business Products, including that Intellectual Property identified on Section 5.12(a) of the Seller Disclosure Schedule. The Business Owned Intellectual Property is not subject to any other material restrictions or limitations regarding ownership, use (including with respect to the manufacture, importation, sale, lease, rent, offer for sale, offer for lease, offer for rent, distribution, reproduction, creation of derivative works based on, performance or display), license or disclosure other than pursuant to a written obligation set forth in Section 5.13 of the Seller Disclosure Schedule. Except for the abandoned or lapsed Intellectual Property set forth on the Annexes to Section 5.12(a) of the Seller Disclosure Schedule, the Business has used reasonable efforts to protect, maintain and preserve all material Business Owned Intellectual Property, including trade secrets, in all jurisdictions worldwide with respect thereto in full force and effect. The Business has a valid license or other legal right under the Business Licensed Intellectual Property, subject to the terms of the license agreements governing the Business Licensed Intellectual Property.

(d) Validity . No Action is pending or, to the Knowledge of the Seller, is or has been threatened in writing, that challenges the legality, validity, enforceability, use (including the manufacture, importation, sale, lease, rent, offer for sale, offer for lease, offer for rent, distribution, reproduction, creation of derivative works based on, performance or display) or ownership of any material item of Business Owned Intellectual Property, in whole or in part, and to the Knowledge of the Seller, no fact or circumstance exists which would form the basis for such an Action. Except as set forth in Section 5.12(a) of the Seller Disclosure Schedule, no registration or application included in the Business Owned Intellectual Property (if any) has lapsed, expired or been abandoned, or canceled or opposed, or is the subject of any cancellation, opposition, interference or other contested proceedings, or is otherwise pending, and, to the Knowledge of the Seller, no fact or circumstance exists which would form the basis for any of the foregoing. Neither the Seller nor any of its Subsidiaries has disclosed any Business Owned Intellectual Property of a confidential nature (including trade secrets) to any person or entity, except pursuant to a Contract set forth on Section 5.13 of the Seller Disclosure Schedule.

(e) No Infringement of Third Parties . No Action or claim is pending or, to the Knowledge of the Seller, is or has been threatened in writing, alleging that the Business or any aspect of the Business, or the manufacture, offer for sale, offer for lease, offer for rent, sale, lease, rent, importation or use of the Business Products or Sellers or any of its Subsidiaries currently proposed products, interferes with, conflicts with, infringes upon, misappropriates or otherwise violates or otherwise unlawfully uses any Intellectual Property rights of any third party, or that challenges or seeks to deny or restrict the exclusive ownership by, use by or license rights of, the Seller or any of its Subsidiaries of any Business Owned Intellectual Property or Business Licensed Intellectual Property. Except as set forth in Section 5.12(e) of the Seller Disclosure Schedule, in the conduct of the Business, neither the Seller or any of its Subsidiaries have infringed, misappropriated or otherwise violated or unlawfully used any valid Intellectual Property of any third party.

(f) No Infringement by Third Parties; No License to Third Parties . To the Knowledge of the Seller, no third party has interfered with, infringed upon, misappropriated, or otherwise come into conflict with or violated or unlawfully used (or is engaging in any activity that interferes with, infringes, misappropriates or otherwise conflicts with or violates or unlawfully uses) any material item of Business Intellectual Property and no written notice or demand has been made by or on behalf of Seller against any third party. Except as set forth in Section 5.12(f) of the Seller Disclosure Schedule, neither the Seller nor any of its Subsidiaries has granted any license or other right to any third party with respect to the Business Owned Intellectual Property or Business Licensed Intellectual Property.

(g) All Intellectual Property . The Business Owned Intellectual Property and the Business Licensed Intellectual Property collectively include all Intellectual Property, other than the Excluded Software and Seller Brands,

(i) in or relating to any Business Products or process or product manufactured, imported, offered for sale, offered for lease, offered for rent, sold, leased, rented or used by or on behalf of the Seller or any of its Subsidiaries in connection with the Business; or

(ii) that is used in, held for use in, or related to (with respect to related to, provided that such Intellectual Property is necessary to operate the Business or commercialize or operate one or more of the Business Products) the Business.

(h) Filing, Prosecution and Recordation . All material documents, recordations and certificates in connection with the Business Owned Intellectual Property and the Business Licensed Intellectual Property have been filed with the relevant patent, copyright, trademark or other authorities in the United States and non-U.S. jurisdictions, as the case may be, for the purposes of prosecuting, maintaining and perfecting such Intellectual Property. To the Knowledge of Seller, except as set forth in Section 5.12(h) of the Seller Disclosure Schedule, none of the labels or other packaging or marketing materials with respect to the Sellers or any of its Subsidiaries processes, products, works of authorship, inventions, other items and/or services contain any false, inaccurate or incorrect marking for, any of the Business Owned Intellectual Property or any of the Business Licensed Intellectual Property.

(i) No Rights of Third Parties . To the Knowledge of the Seller, all past employees, officers and contractors of the Seller and its Subsidiaries, and all other third parties, that have invented, authored or otherwise created, designed, developed or reduced to practice any Intellectual Property for or on behalf of the Seller or any of its Subsidiaries in respect of the Business, and all current employees, officers and contractors of the Seller and its Subsidiaries and all other third parties that have invented, authored or otherwise created, designed, developed or reduced to practice any Intellectual Property for or on behalf of the Seller or any of its Subsidiaries in respect of the Business, or that are likely to invent, author or otherwise create, design, develop or reduce to practice Intellectual Property for or on behalf of the Seller or any of its Subsidiaries in the future in respect of the Business, have executed written agreements assigning all of their right, title and interest in and to any inventions, works of authorship or other Intellectual Property or future Intellectual Property to the Seller or one of its Subsidiaries, the forms of which agreements have been supplied by the Seller to the Purchaser. To the Knowledge of the Seller, none of its present or former employees, officers or contractors is in violation of any such agreement with the Seller or any of its Subsidiaries, and the Seller and its Subsidiaries have used and will continue to use their respective commercially reasonable efforts to prevent any such violation. To the Knowledge of the Seller, no present or former employee, officer or contractor who has invented, authored or otherwise created, designed, developed or reduced to practice any Intellectual Property for or on behalf of the Seller or any of its Subsidiaries in respect of the Business, or contributed to any of the foregoing, is bound by any contractual obligation that restricts or limits in any way the scope of such Intellectual Property or requires such person to transfer, assign or disclose information concerning his or her work or contribution in such Intellectual Property to any person or entity other than Seller or one of its Subsidiaries.

(j) No Indemnification Obligations . Except pursuant to a written contractual obligation set forth on Section 5.12(i) of the Seller Disclosure Schedule, neither the Seller nor any of its Subsidiaries has entered into any Contract to indemnify, defend or hold harmless any person or entity against any claim of infringement, misappropriation or violation or unlawful use of any Intellectual Property in respect of the Business or the Business Products.

(k) Absence of Certain Restrictions . There are no written Consents, settlements, judgments, injunctions, decrees, awards, stipulations, orders or similar obligations to which Seller or any of its Subsidiaries is a party, or to which Seller or any of its Subsidiaries is otherwise bound, in each case that relate to the Business Owned Intellectual Property or the Intellectual Property of another person or entity or that will restrict the rights of the Seller or any of its Subsidiaries to use, transfer, license, enforce or otherwise exploit any Business Owned Intellectual Property or restrict the conduct of the Business or the use of the Business Products.

(l) Certain Software . The Seller represents and warrants that each item of Software contemplated to be identified by the Seller pursuant to Section 7.23 is readily available in the market place under substantially the same rights licensed by the applicable third party to the Seller or any of its Subsidiaries, and that all material license and other fees paid by the Seller or any of its Subsidiaries in respect of such Software to the applicable third party licensing such Software to the Seller or any of its Subsidiaries have been included in the Audited Financial Statements previously provided by the Seller to the Purchaser (to the extent incurred in the respective periods covered thereby).

**Section** **5.13 Contracts** .

(a) Section 5.13 of the Seller Disclosure Schedule sets forth each of the following Contracts of the Seller or any of its Subsidiaries included within the Purchased Assets, or by which the Purchased Assets are bound:

(i) Employee Agreements with any employee who is a party to a retention agreement with the Seller or any of its Subsidiaries;

(ii) Any Contract (other than any Contract listed on Section 5.13 of the Seller Disclosure Schedule in response to any other provision of this Section 5.13(a) ) that individually involves annual payment commitments of the Seller and its Subsidiaries in excess of Three Hundred Thousand Dollars ($300,000) that cannot be terminated by the Seller or its Subsidiary without penalty upon prior notice of ninety (90) days or less;

(iii) Any Contract (other than any Contract listed on Section 5.13 of the Seller Disclosure Schedule in response to any other provision of this Section 5.13(a) ) containing payment commitments (contingent or otherwise) of the Seller or any of its Subsidiaries that would be reasonably expected to exceed Five Hundred Thousand Dollars ($500,000) that cannot be terminated by the Seller or its Subsidiary without penalty;

(iv) Any Contract containing exclusive distributorship or similar provisions or materially restricting any right of the Seller or any of its Subsidiaries to conduct the Business, utilize Intellectual Property or compete in any material respect with any Person or in any line of business or geographic area;

(v) Any Contract with respect to a material partnership or joint venture agreement;

(vi) Any Contract with respect to the license, assignment or transfer of any Intellectual Property or right therein to or from the Seller or any of its Subsidiaries (other than licenses of commercial off-the-shelf computer software for which the license fee and all other fees, in the aggregate, amount to less than Fifty Thousand Dollars ($50,000), licenses extended in the ordinary course of business pursuant to any distributor agreement or implied licenses relating to the Business Products held by the purchaser or other user of such Business Products);

(vii) Any Contract providing for a third-party to manufacture any Business Products;

(viii) Any supply agreement or similar Contract with any of the suppliers set forth on Section 5.16 of the Seller Disclosure Schedule;

(ix) Any purchase agreement or similar Contract (other than ordinary course purchase orders) with any of the customers set forth on Section 5.16 of the Seller Disclosure Schedule;

(x) Any material distributor agreement;

(xi) Any material or single-source supply Contract or any supply Contract requiring the exclusive purchase of any of the Business Products for a period of one (1) year or more or the purchase of a stated portion of requirements;

(xii) Any Contract with any labor union or association representing any employee of the Seller or any of its Subsidiaries;

(xiii) Any Contract relating to the acquisition (by merger, purchase of stock or assets or otherwise) of any operating business or material assets (other than acquisitions of Inventory and equipment in the ordinary course of business) or the capital stock of any other Person since January 1, 2010; and

(xiv) Any Contract providing for the lease of any Leased Business Real Property.

(b) The Seller has delivered or has caused to be delivered to the Purchaser correct and complete copies of each Contract listed in Section 5.13 of the Seller Disclosure Schedule, as such Contracts are amended to date. Each such Contract is a valid, binding and enforceable obligation of the Seller or any of its Subsidiaries, as applicable, and, to the Knowledge of the Seller, of the other party or parties thereto, and is in full force and effect. Except as set forth in Section 5.13 of the Seller Disclosure, neither the Seller nor any of its Subsidiaries is in default in any material respect under any such Contracts, nor, to the Knowledge of the Seller, is any other party to any such Contracts in breach of or default in any material respect thereunder, and to the Knowledge of the Seller, no event has occurred that with the lapse of time or the giving of notice or both would constitute a breach or default in any material respect of the Seller or any of its Subsidiaries or any other party thereunder. No party to any such Contracts has exercised any termination rights with respect thereto.

**Section** **5.14 Labor and Employment Matters .**

(a) Section 5.14(a)

(i) of the Seller Disclosure Schedule sets forth a true and correct list, as of the date hereof, of all employees of the Seller and its Subsidiaries dedicated exclusively to the Business (the Dedicated Employees ), identifying job title, job location, base pay, bonus target, date of hire, and status as full-time or part-time. Section 5.14(a)

(ii) of the Seller Disclosure Schedule sets forth a true and correct overview, by country, approximate number and function, of (i) all employees of the Seller and its Subsidiaries (other than the Dedicated Employees) that allocate a portion of their time to the Business ( Shared Employees ) and (ii) all Shared Employees that the Seller has determined, on a preliminary basis, may, subject to the terms of this Agreement, become Transferred Employees (the Allocated Employees ), including (

A) all U.S.-based Allocated Employees other than U.S. Allocated Field Service Employees and U.S. TSA Employees (the U.S. Allocated Non-Field Service Employees ),

(B) all non-U.S. based Allocated Employees other than OUS TSA Employees (the OUS Allocated Employees ),

(C) all U.S.-based Allocated Employees who are anticipated to provide services on behalf of the Seller and its Subsidiaries pursuant to the Transition Services Agreement and may, subject to the terms of this Agreement, become Transferred Employees after the Closing upon the timelines set forth in the Transition Services Agreement (the U.S. TSA Employees ),

(D) all non-U.S.-based Allocated Employees who are anticipated to provide services on behalf of the Seller and its Subsidiaries pursuant to the Transition Services Agreement and may, subject to the terms of this Agreement, become Transferred Employees after the Closing upon the timelines set forth in the Transition Services Agreement (the OUS TSA Employees ), and

(E) all U.S.-based field service employees that are Allocated Employees (the U.S. Allocated Field Service Employees ). As provided pursuant to Section 7.19 or otherwise with the prior written consent of the Purchaser (such consent not to be unreasonably withheld, conditioned or delayed, including to reflect ordinary course voluntary employee departures), the Seller may update Section 5.14(a)(i) and (ii) of the Seller Disclosure in the ordinary course of business from time to time from the date of this Agreement until Closing. The Seller and its Subsidiaries are in compliance in all material respects with applicable Laws regarding classification of the Business Employees as exempt or non-exempt. All amounts due to the Business Employees for salary, wages, bonuses, commissions, vacation with pay, sick days and benefits under the Employee Benefit Plans have been paid by the Seller or its Subsidiaries.

(b) Section 5.14(b) of the Seller Disclosure Schedule sets forth a true and correct list of each individual independent contractor/consultant currently retained by the Seller or its Subsidiaries exclusively in connection with the operation of the Business who is paid at a rate in excess of One Hundred Thousand Dollars ($100,000) per annum, identifying roles and stating the terms of their compensation and whether they are subject to a Contract. Except for the independent contractors/consultants set forth on Section 5.14(b) of the Seller Disclosure Schedule, no individual independent contractors/consultants are retained by the Seller that provide material products or services to the Business. The classification as an independent contractor/consultant of each independent contractor/consultant retained by the Seller or any of its Subsidiaries in connection with the operation of the Business is in compliance with applicable Law. The Seller or its Subsidiaries have paid all outstanding fees, expenses and obligations due and owing to each independent contractor/consultant retained by the Seller or its Subsidiaries in connection with the operation of the Business.

(c) Except as set forth in Section 5.14(c) of the Seller Disclosure Schedule, neither the Seller nor any of its Subsidiaries is a party to any labor, works council, trade union or collective bargaining agreements, memoranda of understanding, settlements or other labor agreements or Contracts with any union, works council, trade union, labor organization or other employee representative group applicable to the Business or the Business Employees.

(d) There are no pending or, to the Knowledge of the Seller, threatened strikes, lockouts, work stoppages or slowdowns involving the Business Employees.

(e) There are no unfair labor practice or other similar proceedings involving the Business Employees before the National Labor Relations Board or any labor court or tribunal pending or, to the Knowledge of the Seller, threatened against the Seller or its Subsidiaries.

(f) Seller and its Subsidiaries are in compliance in all material respects with all applicable Laws regarding the right of the Business Employees to work in the jurisdictions in which they work, including, with respect to the United States, the Immigration Reform and Control Act of 1986 (and the rules and regulations promulgated thereunder) (collectively, the Immigration Laws ).

(g) There are no material outstanding citations, assessments, penalties, fines, liens, charges, surcharges, or other amounts due or owing pursuant to any workplace safety Laws applicable to the Business Employees.

(h) Except as set forth in Section 5.14(h) of the Seller Disclosure Schedule, neither the Seller nor any of its Subsidiaries has effectuated a plant closing, mass layoff or relocation, as those terms are defined either by the federal Worker Adjustment and Retraining Notification Act Pub. L. 100-379, 102 stat. 890 (1988) (the WARN Act ) or by similar U.S. state Laws or similar non-U.S. Laws governing employment terminations, potentially impacting the Business Employees within the six (6) months prior to the Closing.

(i) Section 5.14(i) of the Seller Disclosure Schedule sets forth the name and other information relating to each Business Employee who is a party to a retention agreement with the Seller or any of its Subsidiaries, including the amount of any retention bonus, stay bonus or deal bonus payable under such retention agreement, upon and subject to the terms set forth therein.

**Section** **5.15 Brokers .** The Seller shall be solely responsible for the fees and expenses of any broker, finder or investment banker entitled to any brokerage, finders or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Seller.

**Section** **5.16 Customers and Suppliers** . Section 5.16 of the Seller Disclosure Schedule lists, with respect to the Business, the Sellers and its Subsidiaries

(a) thirty largest customers in terms of sales during the year ended December 31, 2011, including the approximate total sales to each such customer during such period and the six month period ended June 30, 2012, and (b) the twenty largest suppliers in terms of payments, and the approximate amount of such payments, during

(i) the year ended as of the December 31, 2011 and

(ii) the six month period ended June 30, 2012. Except as set forth in Section 5.16 of the Seller Disclosure Schedule, neither the Seller nor any of its Subsidiaries has received any written notice and, to the Knowledge of the Seller, neither the Seller nor any of its Subsidiaries has received any other notice of that any such customer or supplier (i) has terminated, or intends to terminate its relationship with the Business, (ii) has substantially reduced or will substantially reduce, the use of products, goods or services of the Business, including in each case after the consummation of the transactions contemplated hereby, or

(iii) in the case of any supplier, has materially adversely changed the pricing of its products, goods or services used by the Business.

**Section** **5.17 Absence of Changes .** Except as set forth in Section 5.17 of the Seller Disclosure Schedule, since December 31, 2011,

(i) the Business has been conducted in all material respects in the ordinary course of business consistent with past practices and

(ii) none of the following has occurred or arisen with respect to any of the Business or the Purchased Assets:

(a) Any change, event or effect that would have a Material Adverse Effect on the operations, results of operations or condition (financial or other) of the Business or the Purchased Assets;

(b) Any material Liability, damage, destruction or loss of any nature, whether or not covered by insurance, with respect to the Businesses or the Purchased Assets, other than items incurred in the ordinary course of business;

(c) Any material increase in (or experience of any material change in the assumptions underlying or the methods of calculating) any bad debt, contingency, or other reserve, other than in the ordinary course of business consistent with past practices;

(d) Any material payment, discharge or satisfaction of any Encumbrance or Liability other than in the ordinary course of business;

(e) The writing off as uncollectible of any account receivable that exceed, individually or in the aggregate, Five Hundred Thousand Dollars ($500,000), other than in the ordinary course of business consistent with past practices;

(f) Any material compromise with respect to debts, claims or rights or disposal of any of its rights, properties or assets which comprise the Purchased Assets other than in the ordinary course of business consistent with past practices;

(g) Any commitment, agreement or transactions (other than in the ordinary course of business consistent with past practices) involving aggregate value that exceeds, individually or in the aggregate, Three Hundred Thousand Dollars ($300,000), or made aggregate capital commitments (other than in accordance with applicable budgets provided to the Purchaser prior to the date hereof or otherwise in the ordinary course of business consistent with past practices) that exceed, individually or in the aggregate, Three Hundred Thousand Dollars ($300,000); (h) Any sale, assignment, transfer or other disposal of any material Purchased Asset, except sales of inventory and dispositions of obsolete equipment in the ordinary course of business;

(i) Any sale, license, assignment or transfer of any Business Owned Intellectual Property to any other person other than the Purchaser, or any abandonment, lapse or Encumbrance of any material Business Owned Intellectual Property;

(j) Any material increase in salaries, wages or employee benefits, or any arrangement for payment of any bonus or special compensation for any employee or independent contractor/consultant other than in the ordinary course of business consistent with past practices;

(k) Any hiring, commitment to hiring or termination of any employee other than in the ordinary course of business or hiring in anticipation of the consummation of the transactions contemplated by this Agreement and the services to be provided by the Seller and its Subsidiaries under the Transition Services Agreement;

(l) Any material change in any method of accounting or accounting principle, tax election, practice, or policy;

(m) Any act that could reasonably be expected to subject any of the material Purchased Assets to any Encumbrance other than a Permitted Encumbrance;

(n) Any termination or amendment of any material Contract (other than by the termination or expiration of such material Contract in accordance with its terms) or suffered any loss or termination or threatened loss or termination of any material Contract, other than in the ordinary course of business;

(o) Any agreement, commitment or offer, whether in writing or otherwise, to take any action described in this Section 5.17 .

**Section** **5.18 Foreign Corrupt Practices Act; Import/Export Matters** .

(a) With respect to the Business, neither the Seller nor any of its Subsidiaries (including any of their respective offices, directors, agents, or employees) has, directly or indirectly taken any action which would cause it to be in material violation of the Foreign Corrupt Practices Act of 1977, as amended, or any rules or regulations thereunder or any similar anti-corruption or anti-bribery Law applicable to the Seller or its Subsidiaries in any jurisdiction other than the United States (in each case, as in effect at the time of such action) (collectively, the FCPA ) or in material violation of the FCPA,

(i) relating to political activity, used any corporate funds for unlawful contributions, gifts, entertainment or other unlawful expenses relating to political activity,

(ii) made, offered or authorized any unlawful payment to foreign or domestic government officials or employees, whether directly or indirectly, or

(iii) made, offered or authorized any unlawful bribe, rebate, payoff, influence payment, kickback or other similar unlawful payment, whether directly or indirectly, except for any of the foregoing which is no longer subject to potential claims of violation as a result of the expiration of the applicable statute of limitations.

(b) With respect to the Business, the Seller and its Subsidiaries have at all times as to which the applicable statute of limitations has not yet expired, conducted their respective import and export transactions materially in accordance with (x) all applicable United States import, export and re-export controls, including the United States Export Administration Act and Regulations and Foreign Assets Control Regulations and (y) all other applicable import/export controls in other countries in which the Business is conducted. Without limiting the foregoing, with respect to the Business:

(i) The Seller and its Subsidiaries have obtained, and are in compliance in all material respects with, all material export licenses, license exceptions and other consents, notices, waivers, approvals, orders, authorizations, registrations, declarations, classifications and filings with any Governmental Authority required for

(A) the export and re-export of products, services, software and technologies and

(B) releases of technologies and software to foreign nationals located in the United States and abroad ( Export Approvals );

(ii) there are no pending or, to the Knowledge of the Seller, threatened in writing claims against the Seller or its Subsidiaries with respect to such Export Approvals; and

(iii) no Export Approvals with respect to the transactions contemplated by this Agreement are required to be obtained by the Seller or any of its Subsidiaries, or the Seller anticipates that any such Export Approvals can be obtained in a reasonably timely manner without material cost;

**Section** **5.19 Books and Records .** The Books, Records and Files of the Seller and its Subsidiaries with respect to the Business included within the Purchased Assets are, to the Knowledge of the Seller, true and correct in all material respects and, to the Knowledge of the Seller, have been maintained in all material respects in accordance with reasonable business practice.

**Section** **5.20 Insurance** . Set forth in Section 5.20 of the Seller Disclosure Schedule is a list of all material self-insurance programs and material commercial insurance policies held by or applicable to the Business setting forth, in respect of each such policy, the policy name, policy number, carrier, term, type and limits of coverage, deductible or self-insured retentions, and annual premium.

**Section** **5.21 Inventories; Tangible Personal Property .**

(a) Substantially all of the Inventory (including any of same reflected in working capital items other than inventory items) and Prepaid Inventory are in good and marketable condition, and are saleable, usable and/or rentable (as applicable) in the ordinary course of business consistent with past practices, except for obsolete, excess, damaged, slow-moving or otherwise unusable inventory, which have been written off or written down in the Financial Statements in a manner consistent with past practice and in accordance with GAAP consistently applied.

(b) Each item of Tangible Personal Property included in the Purchased Assets (including the Fixed Assets) is in good repair and operating condition, ordinary wear and tear excepted, except for obsolete, excess, damaged, slow-moving or otherwise unusable Tangible Personal Property, which have been written off or written down in the Financial Statements in a manner consistent with past practice and in accordance with GAAP consistently applied. Except as set forth on Section 5.21 of the Seller Disclosure Schedule and for Tangible Personal Property subject to rental arrangements entered in the ordinary course of business, all of the Tangible Personal Property included in the Purchased Assets (including the Fixed Assets) is in the possession of the Seller or its Subsidiaries.

**Section** **5.22 Accounts and Notes Receivable and Payable .**

(a) All accounts and notes receivable of the Seller and its Subsidiaries relating to the Business have arisen from bona fide transactions in the ordinary course of business consistent with past practices.

(b) All material accounts payable of the Seller and its Subsidiaries relating to the Business included in the most recent Financial Statements or arising after the date thereof are the result of bona fide transactions in the ordinary course of business consistent with past practices.

**Section** **5.23 Sufficiency .** Except as set forth on Section 5.23 of the Seller Disclosure Schedule, assuming sufficient liquidity is available to the Purchaser, the Purchased Assets (other than those included in the Excluded Assets), together with the rights made available to the Purchaser pursuant to the Ancillary Agreements (and assuming performance by the Purchaser and, if applicable, its Affiliates of their responsibilities under this Agreement and the Ancillary Agreements), are sufficient for the Purchaser to continue to conduct the Business immediately after the Closing Date in all material respects in the ordinary course of business, as such Business is being conducted by the Seller and its Subsidiaries as of the Agreement Date (except for such changes in the operation of such Business as are contemplated or permitted hereby or by the Ancillary Agreements).

**Section** **5.24 Disclaimer .**

EXCEPT AS SET FORTH IN THIS AGREEMENT AND IN THE ANCILLARY AGREEMENTS, NONE OF THE SELLER, ITS SUBSIDIARIES OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR REPRESENTATIVES MAKES OR HAVE MADE ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AT LAW OR IN EQUITY, IN RESPECT OF THE SELLER, ITS SUBSIDIARIES OR THE BUSINESS. ANY SUCH OTHER REPRESENTATION OR WARRANTY IS HEREBY EXPRESSLY DISCLAIMED.

**Article VI REPRESENTATIONS AND WARRANTIES OF THE PURCHASER**

Except as set forth in the Purchaser Disclosure Schedule (it being understood and agreed by the Parties that disclosure of any item in any section or subsection of the Purchaser Disclosure Schedule shall be deemed disclosure with respect to any other section or subsection of the Purchaser Disclosure Schedule to which the relevance of such item is reasonably apparent), the Purchaser hereby represents and warrants to the Seller as follows:

**Section** **6.1 Organization and Authority of the Purchaser .** The Purchaser is a Swedish Aktiebolag duly organized, validly existing and in good standing (to the extent such concepts are applicable) under the Laws of Sweden and has all necessary organizational power and authority to enter into, execute and deliver this Agreement, to carry out its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement by the Purchaser, the performance by the Purchaser of its obligations hereunder and the consummation by the Purchaser of the transactions contemplated hereby have been duly authorized by all requisite corporate or similar action on the part of the Purchaser. This Agreement has been duly executed and delivered by the Purchaser, and, assuming due authorization, execution and delivery by the Seller, this Agreement is a legal, valid and binding obligation of the Purchaser enforceable against it in accordance with its terms, subject in each case to the effect of any applicable bankruptcy, reorganization, insolvency, moratorium, rehabilitation, liquidation, fraudulent conveyance, preferential transfer or similar Laws now or hereafter in effect relating to or affecting creditors rights and remedies generally and subject, as to enforceability, to the effect of general equitable principles (regardless of whether enforcement is sought in a proceeding in equity or at law).

**Section** **6.2 No Conflict** . Assuming that all Consents and other actions described in Section 6.3 have been obtained, and except as may result from any facts or circumstances relating solely to the Seller or its Subsidiaries, the execution, delivery and performance by the Purchaser of this Agreement do not and shall not

(a) violate, conflict with or result in the breach of any provision of the certificate of incorporation or bylaws (or similar organizational documents) of the Purchaser,

(b) conflict with or violate any Law or Governmental Order applicable to the Purchaser or its assets, properties or businesses or

(c) conflict with, result in any breach of, constitute a default (or event which with the giving of notice or lapse of time, or both, would become a default) under, require any consent under, or give to others any rights of termination, amendment, acceleration, suspension, revocation or cancellation of, any Contract to which the Purchaser is a party, except, in the case of clauses (b) and (c), for any such conflict, violation, breach or default that would not materially and adversely affect the ability of the Purchaser to carry out its obligations under, and to consummate the transactions contemplated by, this Agreement.

**Section** **6.3** **Governmental Consents and Approvals .** The execution, delivery and performance by the Purchaser of this Agreement do not and shall not require any Competition Consent or Regulatory Consent of, or action by, any Governmental Authority, except

(a) as required by the HSR Act and the Competition Laws of Federal Republic of Germany and the Republic of Austria,

(b) for any notification, or where appropriate, consultation, consent or negotiation with a works council, union, labor board or relevant Governmental Authority (other than under or in respect of any Competition Law) concerning the transactions contemplated by this Agreement or

(c) where failure to obtain such Consent or to take such action, make such filing or make such notification, would not prevent or materially delay the consummation by the Purchaser of the transactions contemplated by this Agreement.

**Section** **6.4 Litigation .** As of the date hereof, no Action by or against the Purchaser is pending or, to the Knowledge of the Purchaser, threatened, challenging the legality, validity or enforceability of this Agreement or the consummation of the transactions contemplated hereby.

**Section** **6.5 Compliance with Laws .** The Purchaser is not in violation of any Law applicable to the Purchaser, except for violations that would not have a material adverse effect on the ability of the Purchaser to perform its obligations under this Agreement and consummate the transactions contemplated hereby.

**Section** **6.6 Sufficiency of Funds .** The Purchaser has, or will have as of the Closing, sufficient cash in immediately available funds to pay the Purchase Price and all costs, fees and expenses to be paid by the Purchaser that are necessary to consummate the transactions contemplated by this Agreement, and the Purchaser has furnished to the Seller written evidence thereof.

**Section** **6.7 Brokers .** The Purchaser shall be solely responsible for the fees and expenses of any broker, finder or investment banker entitled to any brokerage, finders or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Purchaser.

**Section** **6.8 Investigation by the Purchaser;** No Knowledge of Breach .

(a) The Purchaser has conducted its own independent review and analysis of the Business and the Purchased Assets and acknowledges that the Purchaser has been provided access to the Purchased Assets for this purpose. In entering into this Agreement, the Purchaser has relied solely upon the representations, warranties, covenants and agreements of the Seller herein and in the Ancillary Agreements and its own investigation and analysis, and the Purchaser acknowledges that, except for the representations and warranties of the Seller expressly set forth herein and in the Ancillary Agreements, neither the Seller nor any of its directors, officers, employees, agents or advisors or any other Person makes, and the Purchaser has not relied upon, any representation or warranty, either express or implied, as to the accuracy or completeness of any of the information provided or made available to the Purchaser or any of its directors, officers, employees, agents or advisors. Without limiting the generality of the foregoing, except for the representations and warranties of the Seller expressly set forth herein and in the Ancillary Agreements, neither the Seller nor any of its directors, officers, employees, agents or advisors or any other Person has made a representation or warranty to the Purchaser with respect to any material, documents or information relating to the Purchased Assets made available to the Purchaser or its directors, officers, employees, agents or advisors in any data room, confidential memorandum, other offering materials or otherwise, except as expressly and specifically covered by a representation or warranty set forth in Article V .

(b) The Purchaser has no Knowledge that any representation or warranty of the Seller set forth in Section 5.23 (Sufficiency) is untrue or incorrect.

**Article VII ADDITIONAL COVENANTS AND AGREEMENTS**

**Section** **7.1 Conduct of the Business .** From the date of this Agreement until the Closing (or until the earlier termination of this Agreement in accordance with Section 11.1 **),** except as required by applicable Law, as set forth on Schedule 7.1 , as contemplated by or required to implement this Agreement or any Ancillary Agreement or as otherwise waived or consented to in writing by the Purchaser (which consent shall not be unreasonably withheld, conditioned or delayed and, as to paragraph (g) below, which consent shall be deemed given if

(i) a notice setting forth such matter in reasonable detail is given to the Purchaser (including by email to Bertil Lindgren, Lasse Frederickson and Norm Anderson at their respective email addresses set forth on Schedule 7.1 (or such other individual(s) as any of them may designate), and

(ii) the Purchaser shall not have responded by consenting to or declining its consent to such matter within five (5) Business Days after its receipt of such notice), the Seller shall:

(a) carry on the Business in the ordinary course of business consistent with past practice;

(b) maintain, service and protect the Purchased Assets on a basis consistent with past practice, maintain insurance coverages with respect to the Business and the Purchased Assets comparable to those in effect on the date hereof, maintain the Inventory and Prepaid Inventory at customary operating levels consistent with past practices, expend amounts budgeted for capital expenditures through the Closing in all material respects in the manner and at the times specified therein, replace in accordance with past practices any inoperable, worn out or obsolete material Purchased Assets with assets of comparable quality and, in the event of a casualty, loss or damage to any material Purchased Assets prior to the Closing, either fully repair or replace such Purchased Assets with assets of comparable quality and quantity or, if the Purchaser agrees, transfer any insurance proceeds with respect thereto to the Purchaser at the Closing;

(c) use commercially reasonable efforts to preserve intact the goodwill of the Business and the relationships of the Seller with its customers, vendors, suppliers, employees, contractors and others having business relations with the Business;

(d) maintain the Books, Records and Files of the Seller and its Subsidiaries primarily related to the Business on a basis consistent with past practice;

(e) make all necessary and material filings and payments with Governmental Authorities related to the Business in a timely manner, and use commercially reasonable efforts to maintain in effect all existing permits required or appropriate for the ongoing operation of the Business as presently conducted; and

(f) not

(i) sell, assign, convey, transfer or lease (as lessor) any Purchased Assets, other than assets used, consumed or replaced in the ordinary course of business, or

(ii) write off, forgive, waive or otherwise cancel, in whole or in part, any material account receivable of the Seller primarily related to the Business, except as required by GAAP or applicable Law;

(g) not enter into any material Contract, or violate, materially amend or otherwise materially modify or waive any of the terms of any material Contracts (including any contract set forth on Section 5.13 of the Seller Disclosure Schedule);

(h) not

(A) adopt, enter into, terminate or materially amend any collective bargaining agreement or any material Employee Benefit Plan, or (other than as required pursuant to the terms of any collective bargaining agreement or Employee Benefit Plan set forth on Section 5.10 of the Seller Disclosure Schedule) materially change benefits or employment conditions thereunder, including notice periods;

(B) grant (other than as required pursuant to the terms of any Employee Benefit Plans set forth on Section 5.10 of the Seller Disclosure Schedule) any change in control, retention, severance or termination compensation or benefits to, or increase in any manner the change in control, retention, severance or termination compensation or benefits of, any current or former director, officer, key employee or independent contractor/consultant of the Seller or its Subsidiaries, other than any of the foregoing as to which the Purchaser shall have no Liability and no requirement to maintain comparable benefits under Section 8.2(a) ; or (C) take any action to accelerate the vesting or time of payment of any compensation or benefit under any agreement or Employee Benefit Plan;

(i) not

(i) sell, license, sublicense, covenant with respect to, assign, or transfer any Business Owned Intellectual Property to any other person other than the Purchaser and other than licenses to distributors or customers of the Seller in the ordinary course of business consistent with past practices, or encumber any Business Owned Intellectual Property (other than Permitted Encumbrances);

(ii) sublicense, assign or transfer any Business Licensed Intellectual Property to any person other than Purchaser and other than licenses to distributors or customers of the Seller in the ordinary course of business consistent with past practices; or

(iii) allow any of the material Business Owned Intellectual Property to lapse, expire or abandon, or otherwise fail to be maintained;

(j) not commence any material Action related to the Business or the Purchased Assets other than

(i) for the routine collection of bills,

(ii) in such cases where it in good faith determines that failure to commence suit would result in the material impairment of the Business; provided , that the Seller consults with Purchaser prior to the filing of such a suit, or

(iii) with respect to this Agreement;

(k) not create or incur or suffer to be created or incurred any Encumbrance on any of the Purchased Assets, other than Permitted Encumbrances;

(l) except as set forth in applicable budgets provided to the Purchaser prior to the date hereof, not commit to make any capital expenditures, capital additions or capital improvements requiring payment of an amount greater than Five Hundred Thousand Dollars ($500,000) in the aggregate; or (m) enter into any Contract or commitment to engage in any conduct that would violate the foregoing provisions of this Section 7.1 ; provided , however , except as expressly provided in this Section 7.1 , nothing in this Section 7.1 shall prohibit the Seller or its Subsidiaries from conducting their businesses, including the Business, in their reasonable discretion. Nothing contained herein shall give the Purchaser, directly or indirectly, the right to control or direct the operations of the Seller prior to Closing.

**Section** **7.2 Access to Information; Confidentiality .**

(a) From the date hereof until the Closing, upon reasonable notice, the Seller shall:

(i) afford the Purchaser and its authorized representatives reasonable access to the properties and Books, Records and Files of the Seller and its Subsidiaries with respect to the Business, and

(ii) furnish to the officers, directors, employees, and authorized representatives of the Purchaser such additional financial and operating data and other information regarding the Business (or copies thereof) as the Purchaser may from time to time reasonably request; provided , however , that any such access or furnishing of information shall be scheduled and coordinated through Max Walcott or Klaus Bernster (or such other individual(s) as designated by the Seller) at the Seller and shall be conducted at the Purchasers expense, during normal business hours, under the supervision of the Sellers personnel and in such a manner as not to interfere with the normal operations of the Seller and its Subsidiaries (whether the Business or any of the Seller Other Businesses). Notwithstanding anything to the contrary in this Agreement, the Seller shall not be required to disclose any information to the Purchaser if such disclosure would be reasonably likely to (x) cause significant competitive harm to the Business if the transactions contemplated hereby are not consummated, (y) jeopardize any attorney-client or other legal privilege or (z) contravene any applicable Laws, fiduciary duty or binding agreement entered into prior to the date hereof, and in no event shall the Seller or any of its respective Subsidiaries be required to provide access to or copies of any income Tax Returns of the Seller or any such Subsidiary except as provided in Section 9.4 . (b) The terms of the Confidentiality Agreement, dated as of March 6, 2012, between the Purchaser and the Seller (as amended, the Confidentiality Agreement ), shall continue in full force and effect until the Closing, at which time such Confidentiality Agreement and the obligations of the Purchaser under this Section 7.2(b) shall terminate; provided , however , that, from and after the Closing, except as would have been permitted under the terms of the Confidentiality Agreement, the Purchaser shall, and shall cause its officers, directors, employees, authorized representatives and Affiliates to, treat and hold as confidential, and not disclose to any Person the Confidential Information relating to the Seller and the Excluded Assets. If this Agreement is, for any reason, terminated prior to the Closing, the Confidentiality Agreement shall continue in full force and effect.

(c) Nothing provided to the Purchaser pursuant to Section 7.2(a) shall in any way amend or diminish the Purchasers obligations under the Confidentiality Agreement. The Purchaser acknowledges and agrees that any Confidential Information (as defined in the Confidentiality Agreement) provided to the Purchaser pursuant to Section 7.2(a) or otherwise by or on behalf of the Seller or any officer, director, employee or authorized representative shall be subject to the terms and conditions of the Confidentiality Agreement.

**Section** **7.3 Regulatory and Other Authorizations; Notices and Consents .**

(a) Each of the Seller and the Purchaser shall use its reasonable best efforts to obtain promptly all Consents of all Governmental Authorities that may be or become necessary for the performance of its and the other Partys obligations pursuant to, and the consummation of the transactions contemplated by, this Agreement and the Ancillary Agreements (including securing the transfer, reissuance or procurement of the Transferred Registrations and Transferred Permits effective as of the Closing Date. The Seller and the Purchaser shall cooperate with one another in promptly seeking to obtain all such Consents; provided , however , that the Seller shall not be required to pay any fees (other than its own attorneys fees) or other payments to any such Governmental Authorities in order to obtain any such Consent. Further, the Seller shall reasonably consult with the Purchaser in connection with the Purchasers efforts to obtain replacement Registrations, permits, licenses, certifications and approvals relating to the Business not included in the Transferred Registrations and Transferred Permits, provided that the Seller shall not be required to prepare any applications or other documentation, provide any legal advice or pay any fees or other amounts in connection with such activities.

(b) Neither the Seller nor the Purchaser shall knowingly enter into any acquisition or other agreement, make any announcement with respect to any transaction or take any other action that could reasonably be expected to have the effect of materially delaying, impairing or impeding the receipt of any Consents of any Governmental Authority contemplated by this Agreement and the Ancillary Agreements. The Seller and the Purchaser each agree to make, or to cause to be made, if required, an appropriate filing of a notification and report form pursuant to the HSR Act with respect to the transactions contemplated by this Agreement as promptly as practicable after the date of this Agreement (in any event within ten (10) Business Days thereafter) and to supply promptly any additional information and documentary material that may be requested pursuant to the HSR Act. The Seller and the Purchaser each agree to make, or to cause to be made, if required,

(i) an appropriate pre-notification filing pursuant to the Competition Law of the Federal Republic of Germany and the Republic of Austria with respect to the transactions contemplated by this Agreement as promptly as practicable after the date of this Agreement (in any event within fifteen (15) Business Days thereafter), and

(ii) an appropriate filing or notification pursuant to the Competition Law of the Federal Republic of Germany and the Republic of Austria with respect to the transactions contemplated by this Agreement as promptly as practicable after receipt of confirmation from the applicable Government Authority that such filing or notification is ready for submission (in any event within two (2) Business Days thereafter)), and to supply promptly any additional information and documentary material that may be requested pursuant to the Competition Law of the Federal Republic of Germany and the Republic of Austria. If any objections are asserted with respect to the transactions contemplated hereby under any Competition Law or if any suit or proceeding is instituted or threatened by any Governmental Authority or any private party challenging any of the transactions contemplated hereby as violative of any Competition Law, each of the Purchaser and the Seller shall use its reasonable best efforts to promptly resolve such objections and the Purchaser shall, at its sole cost and expense, defend any such instituted suit or proceeding that seeks to restrict, prevent or prohibit the consummation of the transactions contemplated by this Agreement, in order to enable the transactions contemplated by this Agreement and the Ancillary Agreements to be consummated as promptly as practicable. In furtherance of the foregoing, the Purchaser shall, in such manner and with such terms and timing as the Purchaser shall determine in its reasonable discretion, but in any event in such manner as will allow the transactions contemplated hereby to be consummated as promptly as practicable and prior to the Outside Date, and shall cause its Affiliates to, take any and all action, including agreeing to hold separate, divest, or license any of the businesses or properties or assets of the Purchaser or any of its Affiliates (including any Purchased Assets), to terminate any existing relationships and contractual rights and obligations, and propose, offer or commit to alter their business or commercial practices in any way, or otherwise propose, offer, take or commit to take any action that limits the Purchasers freedom of action with respect to, or the Purchasers ability to retain any of the Purchased Assets, the Business or any Business Product as may be required by

(i) the applicable Governmental Authority in order to resolve such objections as such Governmental Authority may have to such transactions under any Competition Law, or

(ii) any domestic or foreign court or other tribunal, in any Action brought by a private party or Governmental Authority challenging such transactions as violative of any Competition Law, in order to avoid the entry of, or to effect the dissolution, vacating, lifting, altering or reversal of, any order, decision, ruling, holding, or any other legal impediment that has the effect of restricting, preventing or prohibiting the consummation of the transactions contemplated by this Agreement. Further, subject to the limitations set forth below, the Seller shall, in such manner and with such terms and timing as the Purchaser shall determine in its reasonable discretion, but in any event in such manner as will allow the transactions contemplated hereby to be consummated as promptly as practicable and prior to the Outside Date, and shall cause its Subsidiaries to, take any and all action in respect of the Purchased Assets, including agreeing to hold separate, divest, or license any Purchased Assets, as may be required by

(i) the applicable Governmental Authority in order to resolve such objections as such Governmental Authority may have to such transactions under any Competition Law, or

(ii) any domestic or foreign court or other tribunal, in any Action brought by a private party or Governmental Authority challenging such transactions as violative of any Competition Law, in order to avoid the entry of, or to effect the dissolution, vacating, lifting, altering or reversal of, any order, decision, ruling, holding, or any other legal impediment that has the effect of restricting, preventing or prohibiting the consummation of the transactions contemplated by this Agreement; provided , however , that

(i) the taking, or commitment to take, any such action by the Seller or any of its Subsidiaries is and shall be expressly conditioned upon, and shall be effective only upon, the consummation of the Closing. The fees for all necessary registrations, filings and submissions made pursuant to this Section 7.3 shall be the responsibility of the Purchaser.

(c) The Purchaser shall have the right to determine and direct the strategy and process by which the Parties shall obtain required Regulatory Consents and Competition Consents of all Governmental Authorities in sufficient time to achieve Closing by the Outside Date; provided , however , that the Purchaser will consult with and consider in good faith the views of the Seller in connection therewith and shall comply with its obligations under this Agreement to achieve all Competition Consents required as a condition in sufficient time to achieve Closing by the Outside Date. The Seller shall not, without the Purchasers prior written consent (which may be given, conditioned or withheld in the Purchasers sole discretion), propose, offer or commit to any action, including agreeing to hold separate or to divest any of the businesses or properties or assets of the Purchaser or any of its Affiliates (including any Purchased Assets) or to terminate any existing relationships and contractual rights and obligations, or propose, offer or commit to alter their business or commercial practices in any way, or otherwise propose, offer, take or commit to take any action that limits the Purchasers freedom of action with respect to, or the Purchasers ability to retain any of the Purchased Assets, the Business or any Business Product, or otherwise receive the full benefits of this Agreement. Each Party shall promptly notify the other Party of any communication it or any of its Affiliates receives from any Governmental Authority relating to the matters that are the subject of this Agreement and permit the other Party to review in advance any proposed communication by such Party to any Governmental Authority relating to the matters that are the subject of this Agreement. Neither Party shall agree to participate in any meeting, including any telephonic meeting, with any Governmental Authority in respect of any filings, investigation or other inquiry related to the transactions contemplated by this Agreement unless it consults with the other Party in advance and, to the extent permitted by such Governmental Authority, gives the other Party the opportunity to attend and participate at such meeting. Subject to the Confidentiality Agreement, the Parties shall coordinate and cooperate fully with each other in exchanging such information and providing such assistance as the other Party may reasonably request in connection with the foregoing and in seeking early termination of any applicable waiting periods including under the HSR Act and any other applicable Competition Laws. Subject to the Confidentiality Agreement, the Parties shall provide each other with copies of all correspondence, filings or communications between them or any of their representatives, on the one hand, and any Governmental Authority or members of its staff, on the other hand, with respect to this Agreement and the transactions contemplated by this Agreement, except any confidential information or business secrets, which information shall be provided to counsel on a counsel-to-counsel basis only.

**Section** **7.4 Notifications; Disclosure Schedules .**

(a) Prior to the Closing Date, the Seller shall promptly advise the Purchaser in writing of it obtaining Knowledge of any change or development that would have a Material Adverse Effect and the Purchaser shall promptly advise the Seller in writing or any change or development that would have a material adverse effect on the ability of the Purchaser to perform its obligations under this Agreement and the Ancillary Agreements and consummate the transactions contemplated hereby and thereby; provided that such disclosure shall have no effect for the purposes of determining the satisfaction of any condition to Closing set forth in Article X or for determining whether the Seller has breached any of its representations and warranties hereunder for any other purpose.

(b) From time to time prior to the Closing, the Seller shall have the obligation to promptly disclose in writing to the Purchaser any material matter of which it obtains Knowledge and arising or discovered after the date of this Agreement that, if existing at, or occurring on or before, or discovered on or before, the date of this Agreement, would have been required to be disclosed on the Seller Disclosure Schedule in order to render any of the representations and warranties in Article V hereof true and correct. From time to time prior to the Closing, the Seller may supplement or amend the Seller Disclosure Schedule (including to add any new sections or schedules thereto) with respect to any matter arising after the delivery thereof that, if existing at, or occurring on, the date of this Agreement, could have been set forth on, or described in, the Seller Disclosure Schedule. Any such supplement or amendment of the Seller Disclosure Schedule shall not give rise to any additional right of the Purchaser to terminate this Agreement; provided that such supplement or amendment shall not impair the Purchasers right to terminate this Agreement pursuant to Section 11.1(f) ; provided further that such supplement or amendment shall not

(i) cure any breach of, or non-compliance with, any representation other provision of this Agreement, or

(ii) limit or otherwise affect the remedies available hereunder to the Purchaser with respect to such breach or noncompliance. Any supplement or amendment hereunder shall be provided to the Purchaser promptly upon the Seller obtaining Knowledge of the applicable matter, but in no event later than two (2) Business Days prior to the Closing Date; provided that a new supplement or amendment will be provided prior to the Closing for any fact, event or occurrence that arises following the second (2nd) Business Day prior to the Closing but prior to the Closing.

**Section** **7.5 Release of Indemnity Obligations .**

(a) The Seller and the Purchaser shall cooperate with each other with a view to entering into arrangements effective as of the Closing whereby the Purchaser would be substituted for the Seller in any guarantees, letters of comfort, indemnities or similar arrangements entered into by the Seller in respect of the Business (but only to the extent such guarantees, letters of comfort, indemnities or arrangements constitute Assumed Liabilities). If the Purchaser cannot enter into such arrangements, the Seller shall not terminate such guaranty arrangements without the Purchasers consent; provided , however , that the Purchaser shall enter into a separate guaranty with the Seller to guarantee the performance of the obligations of the relevant Person pursuant to the Contract underlying such guaranty arrangements.

(b) After the Closing, each of the Seller and the Purchaser, at the request of the other Party, shall use, and shall cause their respective Subsidiaries to use, commercially reasonable efforts to obtain any Consent, substitution or amendment required to novate or assign all Assumed Liabilities to the Purchaser and any Excluded Liabilities to the Seller, and obtain in writing the unconditional release of the Seller and its Subsidiaries with respect to the Assumed Liabilities and the unconditional release of the Purchaser with respect to the Excluded Liabilities.

**Section** **7.6 Intellectual Property Matters .**

(a) The Seller and its Subsidiaries shall retain (and the Purchaser or its Affiliates shall not acquire) any ownership of and, except to the extent provided herein or in the Ancillary Agreements, any other rights to any Seller Brands, whether or not used in the Business. At the Closing, the Seller shall grant to the Purchaser and its Affiliates, for a period from the Closing until the exhaustion of any Business Products (as Inventory or Fixed Assets) in existence as of the Closing or any packaging, labels, displays, promotional and other similar materials relating to the Business Products in existence at the Closing bearing the Seller Brands, a non-exclusive, sub-licensable, non-assignable, irrevocable, worldwide, fully paid up, and royalty-free right and license to use the Seller Brands on such existing Business Products (as Inventory or Fixed Assets) and such existing packages, labels, displays, promotional and other similar materials relating to the Business Products as used in, held for use in or related to the Business at the Closing, and otherwise as the Seller Brands were used by the Seller or its Subsidiaries immediately prior to Closing in connection with the Business, for the sole purpose of operating the Business by the Purchaser and its Affiliates; provided , that , except as required by Law (including displaying the manufacturer of a product), the Purchaser shall use its commercially reasonable efforts to, and to cause its Affiliates to, in a reasonably expeditious manner, remove or cover all Seller Brands on any Business Products held for rent or any packaging, labels, displays, promotional and other similar materials relating to such Business Products held for rent from time to time in connection with the Purchasers ordinary course service, maintenance and replacement activities, which removal or covering, with respect to framed Business Products held for rent, shall be completed within two (2) years after the Closing to the extent the same can be accomplished through a process of covering the Seller Brands or other method that is not unduly burdensome, and, with respect to other durable Business Products held for rent, shall be completed within their normal replacement cycle; provided , further , that the Purchaser shall not be required to take any action to remove or cover any Seller Brands on any Business Product in such a manner as would materially deface any Business Products or render the same commercially unmarketable. The foregoing license grants shall be made by the Seller and, to the extent applicable, its Subsidiaries, and the particular terms of such license grants shall be set forth in a trademark license agreement with the Purchaser and, to the extent applicable, its Affiliates, in substantially the form attached hereto as Exhibit D (the Seller Trademark License Agreement ). As soon as reasonably practicable after the Closing, but in no event later than three-hundred sixty-five (365) days after the Closing, the Purchaser shall, and shall cause its Affiliates to,

(i) cease to use and remove or cover all Seller Brands and as a trade name, corporate name or domain name from all materials except, with respect to the Seller Brands, in accordance with the Seller Trademark License Agreement and

(ii) otherwise cease use of any Seller Brand for which the Purchaser has not been granted a license pursuant to the Seller Trademark License Agreement, including removing such Seller Brands from signs, billboards, telephone listings, stationery, office forms or other similar materials of the Business. Except as expressly provided in this Section 7.6 or in the Seller Trademark License Agreement, the Purchaser and its Affiliates shall have no right to use in any way the Seller Brands.

(b) In the event that there is any Intellectual Property of the Seller or its Subsidiaries as of the date hereof or as of the Closing (other than the Seller Brands, which are covered by the Seller Trademark License Agreement upon the terms set forth therein) that is not contained in the Business Owned Intellectual Property and such Intellectual Property would be infringed by the manufacture, use, sale, offer for sale, lease, offer for lease, rent, offer for rent, importation, distribution, reproduction, creation of derivative works based on, performance or display of Business Products (as the same exist as of the Closing) or packaging, labels, displays, promotional or other materials relating to the Business or the Business Products by the Purchaser or its Affiliates ( Additional Intellectual Property ), then, following the Closing, the Seller hereby grants to the Purchaser and its Affiliates a non-exclusive, fully paid-up, transferable, royalty free, worldwide, perpetual, irrevocable license and right including the right to grant sublicenses to such Additional Intellectual Property. Such license and rights shall extend to all distributors and resellers of the Purchaser as well as all customers of the Purchaser or any of its Affiliates, or any customers of any distributor or reseller of the foregoing.

**Section** **7.7 Transition Services; Space License Agreements** .

(a) At the Closing, the Seller shall enter into a transition services agreement with the Purchaser and, to the extent applicable, its Affiliates, in substantially the form attached hereto as Exhibit E and on such other terms and provisions as the Parties shall mutually agree in writing (the Transition Services Agreement ).

(b) The Seller shall use its reasonable best efforts to promptly perform and complete, as promptly as practicable but in any event prior to the Closing Date,

(i) all of the set-up and transition services described in the Transition Services Agreement that are required to be performed by it prior to the Closing, including readiness of the clone management information system contemplated by the Transition Services Agreement and to demonstrate satisfaction of the specifications set forth on Schedule 10.1(f) for purposes of the Closing, and

(ii) such other undertakings as may be required by it in order to satisfy the conditions set forth in Sections 10.1(f) and 10.2(f) . Between the date of this Agreement and the Closing, the Purchaser shall, and shall cause its Affiliates to, use commercially reasonable efforts to cooperate with the Seller and its Subsidiaries in their efforts to perform and complete such set-up and transition services, including promptly providing such information and data, and attending and participating in such meetings, testing and other activities, as the Seller or its Subsidiaries may reasonably request. Without limiting the generality of the foregoing, the Purchaser agrees that

(i) the Purchaser shall reasonably collaborate with and use its commercially reasonable efforts to provide information and feedback to the Seller, and

(ii) on up to two (2) occasions prior to the Closing, it shall cause its appropriate representatives to be present onsite at the Sellers facility in San Antonio, Texas, and potentially on one (1) additional occasion at a Seller facility in Europe (such presence, on any occasion, not to exceed two (2) Business Days), upon not less than five (5) Business Days prior notice from the Seller, for any demonstration of performance or similar activities to be conducted by the Seller in connection with such set-up and transition services, including for the purpose of demonstrating or testing TSA Preparedness. The Purchaser shall in good faith give prompt notice to the Seller during or promptly after any such demonstration(s) or similar activities, or at any other time between the date hereof and the Closing, of any material deficiencies, facts or circumstances identified by the Purchaser that would cause TSA Preparedness not to occur. The Seller shall afford the Purchaser a reasonable opportunity to review and confirm that such management information system clone has been completed in all material respects in accordance with the specifications set forth on Schedule 10.1(f) . The Parties acknowledge and agree that, for all purposes under this Agreement (including Sections 3.6 , 10.1(f) and 10.2(f) ), the management information system clone will be demonstrated for TSA preparedness in a test environment with a copy of production data. The cut-over to the management information system clone will take place over the weekend immediately following the Closing, and the management information system clone will go live as of the open of business on the Monday following the Closing. The Seller will cause any transactions occurring during the time period between the Closing and the live operation of the management information system clone to be manually entered into such management information system clone.

(c) At least sixty (60) days prior to the anticipated Closing Date, the Seller shall perform and complete the extraction and delivery to the Purchaser of a representative sample of the respective types of master electronic data to be provided to the Purchaser pursuant to the following sentence. At least thirty (30) days prior to the anticipated Closing Date, the Seller shall perform and complete the extraction and delivery to the Purchaser of the master electronic data (excluding historical data) held or maintained by the Seller and its Subsidiaries relating to customer data, order data and product information for any jurisdiction not supported under the clone management information system contemplated by the Transition Services Agreement, including data reasonably required for the Purchaser to prepare for customer fulfillment, service, billing and product regulatory compliance with respect to the Business in such jurisdiction as of immediately following the Closing. Not less than three (3) days prior to the anticipated Closing Date, the Seller shall provide the Purchaser with any applicable updates to the master electronic data to be provided to the Purchaser pursuant to the preceding sentence. At least sixty (60) days prior to the anticipated Closing Date (or the date of any anticipated transfer of Business Employees to the Purchaser occurring after the Closing pursuant to the Transition Services Agreement), the Seller shall perform and complete the extraction and delivery to the Purchaser of the relevant electronic data (excluding historical data) held or maintained by the Seller and its Subsidiaries relating to the Business Employees with respect to the Business Employees contemplated to be Transferred Employees at the Closing (or such later date) as reasonably required by the Purchaser to prepare for the functioning of the Purchasers payroll and employee benefits systems as of immediately following the Closing (or such later date). The Purchaser shall, and shall cause its Affiliates to, reasonably cooperate with the Seller and its Subsidiaries in their efforts to perform and complete the extraction and delivery of such electronic data. The Parties acknowledge that all such electronic data shall be delivered in the same format and quality as that in which it is currently maintained by the Seller, and the Seller shall provide the Purchaser with a dictionary explaining the various fields in the relevant data.

(d) Between the date hereof and the Closing, the Seller and the Purchaser shall negotiate in good faith one or more reasonable and customary written space license agreements or similar instruments in favor of the Seller and its Subsidiaries in respect of portions of the Owned Business Real Property and the Leased Business Real Property historically dedicated to the operation of Seller Other Businesses, and in favor of the Purchaser and its Affiliates in respect of portions of the Excluded Leased Business Real Property historically dedicated to the operation of the Business, each in form and substance mutually satisfactory to the Parties (the Space License Agreements ). Upon the written request of the Purchaser during the ninety (90) day period from and after the Closing, the Seller and the Purchaser shall negotiate in good faith and enter into Space License Agreements in respect of such additional portions of the Excluded Leased Business Real Property historically dedicated to the operation of the Business as may be reasonably requested or required by the Purchaser to avoid material disruption to the conduct of the Business in any of the localities in which the Seller and its Subsidiaries currently conduct the Business, but in which no Owned Business Real Property or Leased Business Real Property is located.

**Section** **7.8 Further Action .**

(a) Each of the Seller and the Purchaser shall use its commercially reasonable efforts to take, or cause to be taken, all appropriate action, to do or cause to be done all things necessary, proper or advisable under applicable Law and the Purchased Assets (including Contracts included in the Purchased Assets, Transferred Registrations, and Transferred Permits, as well as any such items that would be Purchased Assets but for the lack of a Consent), and to prepare, execute and deliver such documents and other papers and any other agreements, as may be necessary to

(i) carry out the provisions of this Agreement and the Ancillary Agreements,

(ii) consummate and make effective the sale, transfer and conveyance of the Purchased Assets, the assignment and assumption of the Assumed Liabilities and the exclusion of the Excluded Liabilities pursuant to this Agreement, and

(iii) to consummate and make effective the other transactions contemplated by this Agreement and the Ancillary Agreements, including using commercially reasonable efforts to ensure satisfaction of the conditions precedent to such Partys obligations hereunder and thereunder and including to obtain all required Consents from third parties (including in respect of any Contracts). The Parties acknowledge that, except as may be otherwise provided with respect to the delivery of electronic Books, Records and Files as contemplated by Section 7.7 and/or the Transition Services Agreement, physical delivery of the Purchased Assets to the Purchaser, where applicable, shall be effectuated as of the Closing through delivery of possession thereof to the Purchaser or its Affiliates at the Owned Business Real Property or Leased Business Real Property where such Purchased Assets are then located (or from which such Purchased Assets are primarily deployed); provided , that with respect to

(i) any Purchased Assets that are as of the Closing deployed in rental, leasing or similar arrangements, or held by any distributor or other third party for the benefit of the Seller or any of its Subsidiaries, such Purchased Assets shall remain subject to such arrangement for the benefit of the Purchaser and its Affiliates, and

(ii) any other tangible Purchased Assets located at any facility of the Seller or any of its Subsidiaries other than the Owned Business Real Property or Leased Business Real Property, the Seller shall deliver such Purchased Assets

(i) to a location designated by the Purchaser within the same country as they are located as of the Closing (but in no event, within the United States, to a location greater than five hundred (500) miles from such location), or

(ii) if the Purchaser does not have a location in such country, then to a location designated by the Purchaser in any other country to a location but in no event to a location greater than five hundred (500) miles from such location, in each case, the cost of such delivery to be borne by the Seller.

(b) The Seller and the Purchaser shall each be responsible for the payment of one-half of any amounts necessary to obtain any required Consents from third parties (including in respect of any Contracts); provided , that the Parties respective obligations to use commercially reasonable efforts or reasonable best efforts to obtain such Consents shall include the obligation to make payments to third parties, not to exceed Two Hundred Thousand Dollars ($200,000) in the aggregate (for each of the Seller and the Purchaser) for all such payments, as may be required to effectuate assignment of any Contracts (including Contracts included in the Purchased Assets, as well as any Contracts that would be Purchased Assets but for the lack of a Consent). Additionally, the Seller shall use its reasonable best efforts to take, or cause to be taken, all appropriate action, to do or cause to be done all things necessary, proper or advisable to obtain all required Consents from third parties in respect of the Contracts set forth on Schedule 7.8 ; provided , that the Purchaser shall not be responsible for one-half of any amounts necessary to obtain any such Consents and the Sellers obligations to use such reasonable best efforts to obtain any such Consents as to such Contracts shall include the obligation to make payments to third parties (in addition to any payments made in accordance with the preceding sentence), not to exceed Two Hundred Thousand Dollars ($200,000) in the aggregate for all such payments, as may be required to effectuate assignment of any such Contracts set forth on Schedule 7.8 .

(c) Notwithstanding anything in this Agreement to the contrary, this Agreement shall not constitute an agreement to assign, assume, license, sublicense or otherwise provide rights with respect to any Purchased Asset (including any rights, assets or properties that would be Purchased Assets assuming the receipt of all applicable Consents) or any right thereunder if an attempted assignment, license or other provision, without the Consent of, or other action by, any third party, would constitute a breach or other contravention of a Contract with such third party or would in any way adversely affect the rights of the Purchaser or its Affiliates or the Seller or its Subsidiaries relating to such Purchased Assets. To the extent that any Purchased Asset (including any rights, assets or properties that would be Purchased Assets assuming the receipt of all applicable Consents) is not transferred, asigned, distributed, licensed, delivered to or assumed by the Purchaser pursuant to the preceding sentence, or any of the transfers, assignments, distributions, licenses, deliveries and the assumptions required to be made in connection with the transactions contemplated by this Agreement shall not have been consummated at Closing (or at such other time as is contemplated hereby), the Parties shall reasonably cooperate and use their commercially reasonable efforts (for no more than nine (9) months, as to Contracts, after which such transfer, assignment, distribution, license, delivery or assumption is first attempted) to effect such consummation as promptly thereafter as reasonably practicable, including executing and delivering such further instruments of transfer and assumption and taking such other actions as the Parties may reasonably request in order to effectuate the purposes of this Agreement or to more effectively transfer to the Purchaser or confirm the Purchasers right, title to or interest in, all of the Purchased Assets, to put the Purchaser in actual possession and operating control thereof and to permit the Purchaser to exercise all rights with respect thereto (including rights under Contracts and other arrangements as to which the Consent of any third party to the transfer thereof shall not have previously been obtained). Prior to such transfer, assignment, distribution, license, delivery or assumption, upon written request of the Purchaser, the Seller shall use its commercially reasonable efforts to provide or obtain for the Purchaser, at no cost to the Seller or any of its Subsidiaries, an arrangement with respect to the applicable Purchased Assets (including Contracts included in the Purchased Assets, Transferred Registrations and Transferred Permits, as well as any Contracts that would be Purchased Assets but for the failure of a Consent, and, to the extent permitted by Law and for a reasonable transition period after the Closing to afford the Purchaser the opportunity to obtain appropriate replacements for same, Registrations, permits, licenses, certifications and approvals related to the Business not included in the Purchased Assets but that are prior to the Closing used by the Seller and its Subsidiaries in connection with the Business) under which the Purchaser will receive substantially comparable benefits and perform the obligations under such assets, including, in certain circumstances, the Purchaser subleasing or continuing operations in a leased facility prior to obtaining consent to assignment of the lease for such facility; provided , that , any Liabilities relating to or arising out of any period of time after the Closing in respect of any such arrangements shall be deemed Assumed Liabilities, except to the extent relating to or arising out of any gross negligence or willful misconduct of the Seller. With respect to any such arrangement, the Parties shall reasonably cooperate to make such amendments to this Agreement and the Transition Services Agreement as are appropriate under the circumstances, including with respect to the timing of the transfer of Business Employees and the scope of the services to be provided under the Transition Services Agreement. The Seller and the Purchaser shall treat and deal with any such portion of the Purchased Assets that have not been so assigned, licensed, sublicensed, delivered or assumed as if full legal and equitable title to such portion of the Purchased Assets had passed from the Seller to the Purchaser on the Closing Date, and all rights and benefits (financial and otherwise) after the Closing shall be deemed the Purchasers and all Liabilities after the Closing in respect thereof shall constitute Assumed Liabilities. If and when any such Consent shall be obtained (the cost of obtaining any such Consent, if any (other than the cost of obtaining any Registrations, permits, licenses, certifications and approvals related to the Business not included in the Purchased Assets, which shall be borne by the Purchaser), shall be borne by the Parties in accordance with Section 7.8(b) ) or such agreement, lease, license or other right included in the Purchased Assets shall otherwise become assignable or sublicenseable, the Seller shall promptly assign or sublicense its agreed-to rights and obligations thereunder to the Purchaser without payment of further consideration and the Purchaser shall, without the payment of any further consideration therefor, assume such rights and obligations.

(d) In connection with any Contract included within the Purchased Assets, the Parties shall, subject to any limitations under applicable Law, reasonably cooperate with each other in all respects in seeking to obtain any required Consent thereunder in connection with the transactions contemplated hereby. Without limiting the generality of the foregoing, the Parties shall designate representatives of each Party to confer and develop a plan with respect to seeking such Consents, including for the purposes of coordinating meetings and other communications with any such Contract counterparty relating to the continuity of the business relationship with such party in connection with the Business after the Closing. (e) In the event that the Parties determine that certain assets, rights or properties which properly constitute Purchased Assets were not transferred to the Purchaser at Closing, the Seller shall promptly take all steps reasonably necessary to transfer and deliver any and all of such assets to the Purchaser without the payment by the Purchaser of any further consideration therefor. In the event that the Parties determine that certain Excluded Assets were transferred to the Purchaser at Closing, then the Purchaser shall promptly take all steps reasonably necessary to transfer and deliver any and all of such Excluded Assets to the Seller without the payment by the Seller of any further consideration therefor.

**Section** **7.9 Books, Records and Files .** The Purchaser and the Seller agree that the Seller may maintain copies of any Books, Records and Files that are included in the Purchased Assets and that are delivered to the Purchaser hereunder (but excluding any Books, Records and Files related to any Business Intellectual Property) and the Seller may prepare a comprehensive index and file plan of such Books, Records and Files to the extent required by and in accordance with any bona fide document or record retention policy of the Seller in effect from time to time; provided , that such Books, Records and Files shall remain subject to the other provisions of this Agreement (including those provisions of Section 7.16 ). The Purchaser agrees to retain and maintain all Books, Records and Files included in the Purchased Assets for a period of at least seven (7) years after the Closing (plus any additional time as required by Law or during which the Purchaser has been advised by the Seller that

(i) there is an ongoing Tax audit with respect to periods prior to the Closing or

(ii) any such period is otherwise open to assessment; provided that only such Books, Records and Files reasonably related to the appropriate Tax audit or period as advised by the Seller shall be subject to such time extension). During such period, the Purchaser agrees to give the Seller and its representatives reasonable cooperation, access (including copies) and staff assistance, as needed, during normal business hours and upon reasonable notice, with respect to the Books, Records and Files delivered to the Purchaser hereunder, and the Seller agrees to give the Purchaser and its representatives reasonable cooperation, access and staff assistance, as needed, during normal business hours and upon reasonable notice, with respect to the Books, Records and Files relating to the Business and retained by the Seller, in each case as may be necessary for general business purposes, including the defense of litigation, the preparation of Tax returns and financial statements and the management and handling of Tax audits; provided , further that such cooperation, access and assistance shall be conducted at the Sellers sole cost and expense and shall not unreasonably disrupt the normal operations of the Purchaser or the Seller or their respective Subsidiaries. Notwithstanding anything to the contrary contained in this Agreement, neither the Seller nor any of its respective Subsidiaries shall be required to provide access to or copies of any income Tax Returns of the Seller or any such Affiliate, except as provided in Section 9.4 .

**Section** **7.10 Litigation Support .** For so long as any Party or any Affiliate of a Party is actively contesting or defending against any Action brought by or against any third party (including any Governmental Authority) in connection with:

(a) this Agreement or the transactions contemplated hereby; or

(b) any fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action, failure to act, or transaction on or before the Closing Date relating to the Business, the Purchased Assets, the Excluded Liabilities or the Assumed Liabilities, the other Party shall cooperate with the contesting or defending Party (or Affiliate of a Party) and its counsel in the contest or defense, make available its personnel, and provide such testimony and access to its books and records as shall be reasonably requested in connection with the contest or defense, all at the sole cost and expense of the contesting or defending Party (or Affiliate of a Party) (unless the contesting or defending Party is entitled to indemnification for the foregoing under this Agreement).

**Section** **7.11 Allocation of Business Income .**

(a) Except as otherwise provided in Article II , it is the intention of the Parties that, as between the Parties, the Seller shall be entitled to all income attributable to the Business conducted prior to the Closing and the Purchaser shall be entitled to all income attributable to the Business conducted from and after the Closing. All such income shall be reported in accordance with GAAP.

(b) With respect to any of the Purchased Assets that as of the Closing are deployed in rental, leasing or similar arrangements, the Seller will bill the appropriate customer(s) or other third parties for all rentals, lease payments and other amounts earned through the Closing, and the Purchaser will be responsible for all billings in respect thereof after the Closing. Notwithstanding the foregoing, the Parties may prior to the Closing mutually agree in writing as to alternate arrangements as to all or any portion of such Purchased Assets, in which case such alternate arrangements shall apply with respect thereto.

(c) Except as otherwise provided in Article II , each Party shall pay to the other Party, promptly after receipt thereof, any amount received by said Party from any third party with respect to

(i) rentals, fees or other revenues relating to the Business and attributable to the ownership period of the other Party; and

(ii) products delivered, services performed or other obligations performed by the other Party and attributable to the ownership period of such other Party.

**Section** **7.12 Non-Solicitation** . Without the prior written consent of the Purchaser, for a period of two (2) years following the Closing, neither the Seller nor any of its Subsidiaries shall

(i)

(a) hire or

(b) directly or indirectly, recruit, solicit or induce any Transferred Employees who continues to be employed by the Purchaser or its Affiliate to terminate his or her employment with the Purchaser or its Affiliates or to seek or accept employment with any Person other than the Purchaser or its Affiliates (in each case contemplated by the foregoing clause (b), other than general solicitations not specifically targeted at any Transferred Employee(s)), or

(ii) directly or indirectly, solicit or induce any independent contractors, customers, suppliers of the Purchaser or its Affiliates to terminate its contractual relationship with the Purchaser or its Affiliates relating to the Business, except, in the case of actions covered by this clause (ii), in connection with any activities permitted to be taken by the Seller and its Subsidiaries pursuant to Section 7.13 .

**Section** **7.13 Covenant Not to Engage in Certain Competitive Activities .**

(a) Except as otherwise provided in this Section 7.13 or unless otherwise agreed to in writing by the Purchaser, for a period commencing at and contingent upon the occurrence of the Closing Date and ending on the third (3rd) anniversary of the Closing Date (the Restricted Period ), neither the Seller nor any of its respective Subsidiaries shall, anywhere in the Territory (defined below),

(i) engage, directly or indirectly, as owner, manager, agent, licensor or joint venturer in the ownership, management, operation or control of, any business or entity that engages in the Business,

(ii) acquire, develop or own any business or entity engaged in the Business, or

(iii) be a shareholder, holder of a partnership interest in, member or equity holder of, exercise management control over, or acquire or maintain any material interest in, any entity that engages in the Business.

(b) Notwithstanding the provisions of paragraph (a) above, during the Restricted Period, the Seller and its respective Subsidiaries shall not be prohibited from (i) acquiring shares of capital stock or assets of any other Person that has operations that would otherwise be restricted under paragraph (a) or from continuing to operate such Acquired Business (including within the Business) (an Acquired Business ) if the primary purpose or effect of such acquisition transaction shall not be for the Seller or its respective Subsidiaries to engage in the Business and either (x) the portion of the Acquired Business that is engaged in the Business had sales in its last full fiscal year immediately preceding such acquisition of less than Twenty Five Million Dollars ($25,000,000) and such sales represented 10% or less of the total sales of the Acquired Business, or (y) the Seller and its Subsidiaries as promptly as practicable, but in no event later than the first anniversary of such acquisition, at its option, either divest all of its ownership interest in, or cease to operate, such Acquired Business or the portion thereof that violates paragraph (a) above, or (ii) acquiring or owning, directly or indirectly, not more than an aggregate of two percent (2%) of any class of stock listed on a national securities exchange or traded in any established over-the-counter market. The Seller shall

(i) provide the Purchaser with written notice within thirty (30) days following the consummation of any acquisition of the shares of capital stock or assets of any Acquired Business during the Restricted Period, which notice shall include reasonable detail as to the identity and size of the Acquired Business, and

(ii) in the event that the Seller elects to divest all of its ownership interest in any Acquired Business during the Restricted Period, provide the Purchaser with prior notice and a reasonable opportunity to

(i) participate in any auction or other sale process undertaken by the Seller in respect of such divesture, or

(ii) engage in discussions with and submit a proposal to the Seller in respect of such divestiture.

(c) For purposes of this Section 7.13 , Territory means any country in the world where the Seller and its Subsidiaries are engaged in any respect in the Business on the Closing Date.

**Section** **7.14 Acquisition Proposals .** The Seller agrees that, from the date hereof through the Closing Date (or the earlier termination of this Agreement), neither it nor any of its respective Subsidiaries (including, for the avoidance of doubt, any of the Sellers or any of its respective Subsidiaries officers or directors), shall, and shall cause their respective employees, agents and representatives not to (and shall not authorize any of them to) directly or indirectly:

(i) solicit, initiate, encourage, knowingly facilitate or induce any inquiry with respect to, or the making, submission or announcement of, any Acquisition Proposal (defined below),

(ii) participate in any discussions or negotiations regarding, or furnish to any Person any nonpublic information with respect to, or take any other action to knowingly facilitate any inquiries or the making of any proposal that constitutes or may reasonably be expected to lead to, any Acquisition Proposal,

(iii) approve, endorse or recommend any Acquisition Proposal, or

(iv) enter into any letter of intent or similar document or any contract, agreement or commitment contemplating or otherwise relating to any Acquisition Proposal or transaction contemplated thereby. The Seller and its respective Subsidiaries and their respective officers, directors, employees, agents and representatives shall immediately cease any and all existing activities, discussions or negotiations with any third parties conducted heretofore with respect to any Acquisition Proposal. For purposes of this Section 7.14 , an Acquisition Proposal shall include any offer or proposal, relating to any transaction or series of related transactions regarding the sale or other disposition of all or any of the Purchased Assets or the Business, whether by sale of assets, sale of equity, merger, liquidation or otherwise (other than assets sold and replaced in the ordinary course of business).

**Section** **7.15 Confidentiality .**

(a) The Seller recognizes that it and its Subsidiaries has had access to and knowledge of certain Confidential Information concerning the Purchased Assets, the Business, the Business Products and the Purchaser. The Seller acknowledges that such Confidential Information is valuable, proprietary and confidential to the Business and that the Purchaser has paid substantial consideration and incurred substantial costs to acquire such Confidential Information. The Seller agrees that such Confidential Information shall be kept in strict confidence and treated as valuable, proprietary and confidential. The Seller agrees that it will not (and will not permit its Subsidiaries or any of their respective personnel to), at any time, directly or indirectly, disclose, divulge, or make known to any person, use, or otherwise appropriate for its own benefit or the benefit of others any of such Confidential Information, or permit any person to examine or make copies of any documents that contain or are derived from such Confidential Information, without the prior written consent of the Purchaser. The Seller agrees to take (and cause its Subsidiaries and their respective personnel to take) reasonable measures to prevent the inadvertent or accidental disclosure of any such Confidential Information. Nothing in this Section 7.15 shall limit the ability of the Seller or its Subsidiaries to disclose Confidential Information (A) to its respective accountants, financial advisors, and legal counsel (provided that such accountants, financial advisors and legal counsel agree to keep such information confidential to the same extent that would be required of the Seller hereunder), and (B) to the extent of any publicly-released disclosures made by the Purchaser.

(b) The Purchaser recognizes that the Transferred Employees have had access to and knowledge of, and certain of the Books, Records and Files contained within the Purchased Assets may contain, Confidential Information concerning the Excluded Assets, the Sellers Other Businesses, the products of the Sellers Other Businesses, and Seller and its Subsidiaries. The Purchaser acknowledges that such Confidential Information is valuable, proprietary and confidential to the Seller and its Subsidiaries and that the Seller and its Subsidiaries have paid substantial consideration and incurred substantial costs to acquire or develop such Confidential Information. The Purchaser agrees that such Confidential Information is the intellectual property of the Seller and its Subsidiaries. The Purchaser further agrees that it will not (and will not permit its Affiliates to)

(i) direct or solicit any Transferred Employee to, directly or indirectly, disclose, divulge, or make known to any person any such Confidential Information known by such Transferred Employee or

(ii) use, or otherwise appropriate for its own benefit or the benefit of others any of such Confidential Information known by any Transferred Employees. The Purchaser shall cooperate with the Seller (at the Sellers cost) to enforce the terms of any applicable confidentiality agreements between the Seller and the Transferred Employees. With respect to any such Confidential Information contained within in any Books, Records and Files contained within the Purchased Assets, the Purchaser agrees that it will not (and will not permit its Affiliates to), at any time, directly or indirectly, disclose, divulge, or make known to any person, use, or otherwise appropriate for its own benefit or the benefit of others any of such Confidential Information, or permit any person to examine or make copies of any documents that contain or are derived from such Confidential Information, without the prior written consent of the Seller, and the Purchaser agrees to take (and cause its Affiliates to take) reasonable measures to prevent the inadvertent or accidental disclosure of any such Confidential Information. Nothing in this Section 7.15 shall limit the ability of the Purchaser or its Affiliates to disclose Confidential Information (A) to its respective accountants, financial advisors, and legal counsel (provided that such accountants, financial advisors and legal counsel agree to keep such information confidential to the same extent that would be required of the Seller hereunder), and (B) to the extent of any publicly-released disclosures made by the Seller.

(c) In the event the Seller or its Subsidiaries, or the Purchaser or its Affiliates, are requested or required by any Law, by any Governmental Authority or by litigation discovery requests, subpoena, civil investigative demand, or similar processes) to disclose any of the Confidential Information prohibited to be disclosed by it pursuant to this Section 7.15 , the Party requested or required to so disclose such Confidential Information agrees to provide the other Party with prompt written notice of such request or requirements so that the non-disclosing Party, at its sole cost and expense, may seek an appropriate protective order or waive compliance with the provisions of this Section 7.15 . If, in the absence of a protective order or a receipt of a waiver by the non-disclosing Party under this Agreement, the disclosing party is nonetheless, in the written opinion of its counsel, legally compelled to disclose the Confidential Information, the disclosing party may disclose only that portion of such Confidential Information that the disclosing party is advised by written opinion of its counsel is legally required, without liability to the non-disclosing party under this Agreement; provided , that , the disclosing party exercises its commercially reasonable efforts to obtain assurance that confidential treatment will be accorded such Confidential Information, including by cooperating with the non-disclosing party to obtain an appropriate protective order.

(d) The Seller and the Purchaser each hereby acknowledges and agrees that the provisions with respect to the Confidential Information recited herein are in addition to, and not in lieu of, any rights or remedies that the Seller or its Subsidiaries, and the Purchaser and its Affiliates, may have available pursuant to the Laws of any jurisdiction or at common law to prevent the disclosure of Confidential Information, and the enforcement by a Party of its rights and remedies pursuant to this Agreement shall not be construed as a waiver of any other rights or available remedies that such Party may possess at law or equity.

**Section** **7.16 Additional Financial Information .** Within thirty (30) calendar days following the end of

(i) each calendar month prior to the Closing, the Seller shall deliver to the Purchaser complete copies of the unaudited contribution margin profit and loss statement of the Business for each month then ended, together with corresponding year-to-date amounts, and

(ii) each calendar quarter prior to the Closing, the Seller shall deliver to the Purchaser a statement of the balances for the accounts comprising Modified Working Capital and net property, plant and equipment as of the end of such calendar quarter. The financial statements described in this Section 7.16 shall be in the same format and deemed to be part of the Financial Statements described in Section 5.4 and covered by the representations contained in Section 5.4 . Within ten (10) calendar days of the end of any calendar month prior to the Closing, the Seller shall deliver to the Purchaser a calculation of the revenue for the most recent calendar month completed for use in determining the Measurement Revenue, which revenue shall be determined in accordance with GAAP (with the exception of translating revenue into U.S. Dollars using budgeted foreign currency exchange rates) and on the same basis and applying the same accounting principles, policies and practices that were used by the Seller in preparing the relevant elements of the preparation of the June 30, 2012 contribution margin profit and loss statements included in the Financial Statements.

**Section** **7.17 Discharge of Encumbrances .** As soon as practicable after the date hereof, but in no event later than the Closing, the Seller shall use commercially reasonable efforts to ascertain and discharge all Encumbrances (other than Permitted Encumbrances), if any, to which any of the Purchased Assets.

**Section** **7.18 Risk of Loss .** For the avoidance of doubt, the Seller shall maintain all risk of condemnation, destruction, loss or damage due to fire or other casualty from the date of this Agreement until the Closing.

**Section** **7.19 Identification of Certain Allocated Employees** .

(a) Not more than ten (10) Business Days following the date hereof (or, with respect to OUS Allocated Non-Field Service Employees within the sales function, on or prior to August 31, 2012), the Seller shall prepare and provide to the Purchaser for review a list of all Allocated Employees (other than the U.S. TSA Employees and OUS TSA Employees) and containing

(i) information with respect to such Allocated Employees that is consistent with the information set forth on Section 5.14(a)(i) of the Seller Disclosure Schedule with respect to Dedicated Employees and

(ii) as applicable, designations of the Allocated Employees set forth therein as U.S. Allocated Non-Field Service Employees, OUS Allocated Employees and U.S. Allocated Field Service Employees (the Seller Allocated Employees List ). The Allocated Employees set forth in the Seller Allocated Employees List shall be selected by the Seller in good faith based on a reasonable and fair allocation of the Shared Employees as between the Business and the CURE-ABC Business and the selection criteria set forth on Schedule 7.19(a) and shall be consistent in all material respects as to function, jurisdiction and quantities with the overview of Allocated Employees set forth on Section 5.14(a)(ii) of the Seller Disclosure Schedule.

(b) Prior to, and following the delivery of the Seller Allocated Employees List, the Seller shall provide the Purchaser with a reasonable access to the Sellers employees or consultants responsible for preparing the Seller Allocated Employees List and such reasonable information and documentation as the Purchaser may from time to time request regarding the selection criteria and processes applied by the Seller in preparing the Seller Allocated Employees List and the application thereof. The Sellers delivery of the Seller Allocated Employees List shall be accompanied by reasonable documentation with respect to the Sellers selection of employees for the Seller Allocated Employees List and the compliance of the Seller Allocated Employees List with the foregoing criteria. For a period of two (2) weeks following the Purchasers receipt of the Seller Allocated Employees List, the Seller and the Purchaser shall consult in good faith to facilitate the Purchasers review of the Seller Allocated Employees List and to resolve and modify the same in response to such requests or objections, if any, as may be reasonably raised by the Purchaser in connection therewith based on the failure in any material respect of the Seller to have determined the Allocated Employees set forth on the Seller Allocated Employees List in accordance with Section 7.19(a) . If, following such period, the Purchaser objects to the Seller Allocated Employees List, or the inclusion or omission of any Allocated Employees therein, in each case based on the failure of the Seller to comply in any material respect with the provisions of this Section 7.19 or the standards and requirements applicable thereunder to the selection of such Allocated Employees, the Purchaser may object to the Seller Allocated Employees List by delivering to the Seller such objections in writing and setting forth in reasonable detail the basis for such objections (the Allocated Employees Objection Letter ). The Purchaser and the Seller shall use their commercially reasonable efforts to resolve any differences set forth in the Allocated Employees Objection Letter (the Disputed Allocated Employee Items ). If the Parties cannot resolve the Disputed Allocated Employee Items within fifteen (15) days following the delivery of the Allocated Employees Objection Letter, then the Disputed Allocated Employee Items shall be resolved by binding arbitration conducted by a single arbitrator with relevant experience in transactions comparable to the transactions contemplated by this Agreement, provided that if the parties cannot agree on an arbitrator within fifteen (15) days after the end of such fifteen (15) day period, each party would nominate a single arbitrator with such qualifications within five (5) days of the end of such further fifteen (15) day period and those two potential arbitrators would be required, within a further ten (10) day period, to select a third arbitrator to make the determination. Each Party agrees to cooperate with and assist the arbitrator in making its determination, including granting reasonable access to employees and records. The arbitrator shall make its determination as reasonably promptly as possible, but in no event later than thirty (30) days following submission of the Disputed Allocated Employee Items by each Party. The determination of the arbitrator contemplated hereby shall be final and binding on the Parties and shall replace and supersede the previous Seller Allocated Employees List for the purposes of the obligations set forth herein. The fees of the arbitrator shall be shared equally by each Party.

(c) Section 5.14(a)(i) of the Seller Disclosure Schedule shall be supplemented to set forth, in addition to the Dedicated Employees, the Allocated Employees identified by the Purchaser and the Seller in the final Seller Allocated Employees List pursuant to Section 7.19 containing

(i) information with respect to such Allocated Employees that is consistent with the information set forth on Section 5.14(a)(i) of the Seller Disclosure Schedule with respect to Dedicated Employees and

(ii) as applicable, designations of the Allocated Employees set forth therein as U.S. Allocated Non-Field Service Employees, OUS Allocated Employees and U.S. Allocated Field Service Employees. (d) After the Closing, and at least sixty (60) days prior to the anticipated transfer to the Purchaser of any U.S. TSA Employees or OUS TSA Employees in accordance with the timelines set forth in the Transition Services Agreement, the Seller shall prepare and provide to the Purchaser for review a list of the applicable U.S. TSA Employees and/or OUS TSA Employees to be so transferred and containing information with respect to such U.S. TSA Employees and/or OUS TSA Employees that is consistent with the information set forth on Section 5.14(a)(i) of the Seller Disclosure Schedule with respect to Dedicated Employees. The U.S. TSA Employees and/or OUS TSA Employees set forth in such list shall be selected by the Seller in good faith based on a reasonable and fair allocation of the Sellers remaining Allocated Employees as between the Business and the CURE-ABC Business and the selection criteria set forth in Section 7.19(a) and shall be consistent in all material respects as to function, jurisdiction and quantities with the overview of the U.S. TSA Employees and OUS TSA Employees set forth on Section 5.14(a)(ii) of the Seller Disclosure Schedule. Prior to, and following the delivery of such list, the Seller shall provide the Purchaser with a reasonable access to the Sellers employees or consultants responsible for preparing such list and such reasonable information and documentation as the Purchaser may from time to time request regarding the selection criteria and processes applied by the Seller in preparing such list and the application thereof. The Sellers delivery of the such list shall be accompanied by reasonable documentation with respect to the Sellers selection of employees for such list and the compliance of the Seller Allocated Employees List with the foregoing criteria. For a period of two (2) weeks following the Purchasers receipt of such list, the Seller shall consult in good faith to facilitate the Purchasers review of the list and to resolve and modify the same in response to such requests or objections, if any, as may be reasonably raised by the Purchaser in connection therewith. If, following such period, the Purchaser objects to such list, or the inclusion or omission of any U.S. TSA Employees and/or OUS TSA Employees therein, in each case based on the failure of the Seller to comply in any material respect with the provisions of this Section 7.19 or the standards and requirements applicable thereunder to the selection of such U.S. TSA Employees and/or OUS TSA Employees, the Purchaser may object to such list by delivering to the Seller such objections in writing and setting forth in reasonable detail the basis for such objections (the TSA Employees Objection Letter ). The Purchaser and the Seller shall use their commercially reasonable efforts to resolve any differences set forth in the TSA Employees Objection Letter (the Disputed TSA Employee Items ). If the Parties cannot resolve the Disputed TSA Employee Items within fifteen (15) days following the delivery of the TSA Employees Objection Letter, then the Disputed TSA Employee Items shall be resolved by binding arbitration in accordance with Section 7.19(b) , and the provisions of Section 7.19(b) shall apply, as if the Disputed TSA Employee Items were Disputed Allocated Employee Items.

**Section** **7.20 Loss History .** As promptly as practicable following the date hereof but, in any case, at least thirty (30) days prior to the Closing Date, the Seller shall prepare and provide to the Purchaser a claims and loss history with respect to the Business under any insurance programs set forth on Section 5.20 of the Seller Disclosure Schedule.

**Section** **7.21 Seller Intercompany Contracts** . Prior to the Closing, the Seller shall, and shall cause its Subsidiaries to, terminate or amend all Contracts of any kind between or among the Seller and/or any of its Subsidiaries that relate to the Business, any of the Business Products or any of the Business Intellectual Property (a Seller Intercompany Contract ) such that, as of and after the Closing, neither the Purchaser nor any of its Affiliates, nor any of the Purchased Assets, the Business Products or the Business Intellectual Property shall be bound or encumbered by, or subject to, the terms of any such Seller Intercompany Contract.

**Section** **7.22 Cooperation with Respect to Certain Actions .** Prior to and after the Closing, the Seller shall use its commercially reasonable efforts to keep the Purchaser apprised of any material facts, proceedings and developments with respect to the Actions described in items 4, 5 and 8 of Section 5.5 of the Seller Disclosure Schedule. The Seller shall not, with respect to any such Action, admit liability to, or settle, compromise or discharge any such Action without the prior consent of the Purchaser (which consent shall not be unreasonably withheld, conditioned or delayed) to the extent that:

(i) such Action seeks, in lieu of or in addition to monetary losses, any injunctive or other equitable relief, that relates to or would be applicable to the Purchased Assets or the Business,

(ii) such Action relates to or arises in connection with any investigation, criminal action, indictment, allegation or Action by any Governmental Authority that relates to the Purchased Assets or the Business, including any of the same relating to any alleged violation or non-compliance with any Laws.

**Section** **7.23 Cooperation with Respect to Certain Software .** Between the date hereof and the the Closing, the Seller shall use its commercially reasonable efforts to identify each of the following Software licensed by the Seller or any its Subsidiaries from a third party, other than any such Software that is utilized exclusively by the Seller and its Subsidiaries in connection with the Seller Other Businesses:

(i) any local operating system or other platform (in the version originally acquired thereon) resident on any personal computers, laptops, handheld device or other computer hardware or firmware included in the Purchased Assets, or

(ii) any Software used in the design, manufacture or testing of any of the Business Products. With respect to any such Software identified by the Seller that is used exclusively in connection with the Business, the Seller shall use its commercially reasonable efforts to determine whether or not the applicable license covering such Software is transferable or is transferable only with the payment of a licensing, relicensing, transfer or other charge, and shall provide the Purchaser a reasonable description of its findings with respect to each such Software.

**Section** **7.24 Identification of Certain Fixed Assets .** Between the date hereof and the Closing, the Seller shall use its commercially reasonable efforts to further identify and confirm in writing to the Purchaser the Fixed Assets to be part of the Purchased Assets and the Excluded Assets in accordance with Section 2.1 and Section 2.2 , in each case to also include updating Schedule 2.1(c) to so reflect the Fixed Assets that are Purchased Assets and Excluded Assets. In connection therewith, the Parties shall collaborate with each other to provide updates or revisions to Schedule 2.1(c) , whereupon the Seller and the Purchaser shall reasonably confer to finalize and make appropriate updates and amendments to such Schedule.

**Section** **7.25 BABOLANX Matters .** Prior to the Closing, the Seller will use its reasonable best efforts to acquire the rights to the German trademark registration BABOLANX (the German BABOLANX Registration ) for use in the Business Products, which rights shall constitute part of the Purchased Assets to the extent the Seller so acquires them, provided that the Seller shall not be required to pay a purchase price more than the amount set forth on Schedule 7.25 (the BABOLANX Cap ) in seeking to acquire the German BABOLANX Registration. If the Seller is not successful in acquiring the German BABOLANX Registration, the Seller shall reimburse the Buyer for reasonable expenses associated with rebranding the product for the German market, such reasonable expenses not to exceed the BABOLANX Cap, and shall indemnify the Purchaser for all defense costs reasonably incurred in connection with defending any Action asserted by the holder of the German BABOLANX Registration.

**Article VIII EMPLOYEE MATTERS**

**Section** **8.1 Transferred Employees .**

(a) Definitions .

(i) U.S. Business Employee means any employee employed by the Seller or its Subsidiaries in the United States (or an employee who is classified as an expatriate employee) who as of and at the Closing (or, with respect to any U.S. TSA Employee, at the date of transfer of such U.S. TSA Employees as contemplated by the Transition Services Agreement) is

(A) a Dedicated Employee, including any such employee who is inactive because of vacation, holiday or on a legally required leave of absence, but excluding any such employee who is inactive for other reasons or on short- or long-term disability, or

(B) an Allocated Employee, including any such employee who is inactive because of a legally required leave of absence or due to vacation or holiday, but excluding any such employee who is inactive for other reasons or on short- or long-term disability.

(ii) U.S. Transferred Employee means each U.S. Business Employee who accepts an offer of employment with the Purchaser or one of its Affiliates immediately following the Closing (or, with respect to any U.S. TSA Employee, at the date of transfer of such U.S. TSA Employees as contemplated by the Transition Services Agreement).

(iii) Non-U.S. Business Employee means any employee employed by the Seller or its Subsidiaries outside the United States as of and at the Closing (or, with respect to any OUS TSA Employee, at the date of transfer of such OUS TSA Employees as contemplated by the Transition Services Agreement) who as of and at the Closing (or, with respect to any OUS TSA Employee, at the date of transfer of such OUS TSA Employees as contemplated by the Transition Services Agreement) is (A) a Dedicated Employee, including any such employee who is inactive because of a legally required leave of absence or due to vacation or holiday, but excluding (except with respect to Non-U.S. Automatically Transferred Employees) any such employee who is inactive for other reasons or on short- or long-term disability, or (B) an Allocated Employee, including any such employee who is inactive because of a legally required leave of absence or due to vacation or holiday, but excluding (except with respect to Non-U.S. Automatically Transferred Employees) any such employee who is inactive for other reasons or on short- or long-term disability.

(iv) Non-U.S. Automatically Transferred Employee means each Non-U.S. Business Employee who will transfer automatically to the Purchaser or one of its Affiliates by operation of Law as a result of the transactions contemplated hereby. Reasonably in advance of the Closing, the Seller and the Purchaser shall cooperate in good faith to identify those Non-U.S Business Employees reasonably anticipated to be Non-U.S. Automatically Transferred Employees at the Closing.

(v) Non-U.S. Transferred Employee By Agreement means each Non-U.S. Business Employee who will not transfer automatically to the Purchaser or one of its Affiliates by operation of Law as a result of the transfer of the Business and who accepts an offer of employment with the Purchaser or one of its Affiliates immediately following the Closing (or, with respect to any OUS TSA Employee, at the date of transfer of such OUS TSA Employees as contemplated by the Transition Services Agreement). Reasonably in advance of the Closing, the Seller and the Purchaser shall cooperate in good faith to identify those Non-U.S Business Employees reasonably anticipated to be Non-U.S. Transferred Employees By Agreement.

(vi) Non-U.S. Transferred Employee means

(i) each Non-U.S. Automatically Transferred Employee and

(ii) each Non-U.S. Transferred Employee By Agreement.

(vii) Business Employees means U.S. Business Employees and Non-U.S. Business Employees, collectively.

(viii) Transferred Employees means U.S. Transferred Employees and Non-U.S. Transferred Employees, collectively.

(ix) Relevant Employer means, in respect of a Business Employee, the Seller or any of its Subsidiaries that is the Business Employee's employer.

(x) Seller Other Business Employees means any employee employed by the Seller or its Subsidiaries, whether inside or outside the United States as of and at the Closing (or, at the date of transfer of U.S. TSA Employees or OUS TSA Employees as contemplated by the Transition Services Agreement), who is not a Business Employee.

(b) Transfer of Employment; TSA Employee Liability Payments .

(i) In respect of Non-U.S. Automatically Transferred Employees, the provisions of Schedule 8.1(b)(i) shall apply. Between the date of this Agreement and the Closing, the Seller and the Purchaser shall cooperate in good faith to determine and comply with appropriate country-specific requirements, which shall include all applicable labor matters in such jurisdictions as contemplated under Section 8.2(f) and shall be consistent, to the extent practicable and except as otherwise provided in this Article VIII or Schedule 8.1(b)(i) or as mutually agreed, with the allocation between the Parties of Liabilities provided for herein with respect to the Transferred Employees.

(ii) In respect of U.S. Transferred Employees, Non-U.S. Transferred Employees By Agreement and Seller Other Business Employees, the provisions of Schedule 8.1(b)(ii) apply. Between the date of this Agreement and the Closing, the Seller and the Purchaser shall cooperate in good faith to determine and comply with appropriate country-specific requirements, which shall include all applicable labor matters in such jurisdictions as contemplated under Section 8.2(f) and shall be consistent, to the extent practicable and except as otherwise provided in this Article VIII or Schedule 8.1(b)(ii) or as mutually agreed, with the allocation between the Parties of Liabilities provided for herein with respect to the Transferred Employees.

(iii) Not less three (3) days prior to any of transfer of U.S. TSA Employees or OUS TSA Employees as contemplated by the Transition Services Agreement, the Seller shall deliver to the Purchaser a certificate setting forth in reasonable detail its good faith estimate (with respect to such transfer, the Estimated TSA Employee Liability Amount ) of the aggregate amount as of the date of such transfer of all of the Liabilities assumed by the Purchaser pursuant to this Article VIII in respect of the U.S. TSA Employees and OUS TSA Employees who become Transferred Employees on such date (with respect to such transfer, as ultimately determined in accordance with the remaining provisions of this Section 8.1(b)(iii) , the Final TSA Employee Liability Amount ), in each case determined in accordance with GAAP and on the same basis and applying the same accounting principles, policies and practices that were used by the Seller in preparing the relevant elements of the Financial Statements. Upon such U.S. TSA Employees and OUS TSA Employees becoming Transferred Employees, the Seller shall pay to the Purchaser an amount in cash equal to the Estimated TSA Employee Liability Amount. Within sixty (60) days following the transfer of the U.S. TSA Employees or the OUS TSA Employees, the Purchaser may object to the calculation of the Final TSA Employee Liability Amount or the calculations used for the same in a manner consistent with the process provided in Section 3.2 to resolve objections to Final Modified Working Capital Amount. In the event that the Final TSA Employee Liability Amount is an amount greater or less than the Estimated TSA Employee Liability Amount, there shall be an adjustment whereby the Seller or the Purchaser, as applicable, shall pay to the other the difference of such amounts (with respect to such transfer, the TSA Employee Liability Adjustment Amount ). In the event that the applicable Final TSA Employee Liability Amount is greater than the Estimated TSA Employee Liability Amount, the Seller shall pay to the Purchaser an amount equal to the TSA Employee Liability Adjustment Amount. In the event that the Final TSA Employee Liability Amount is less than the Estimated TSA Employee Liability Amount, the Purchaser shall pay to the Seller an amount equal to the TSA Employee Liability Adjustment Amount. Any payments made pursuant to this Section 8.1(b)(iii) shall be made within five (5) Business Days following the determination of the Final TSA Employee Liability Amount and shall be by wire transfer of immediately available funds to the address disclosed by the Purchaser or the Seller, as applicable, with respect thereto.

**Section** **8.2 Compensation and Employee Benefits** .

(a) Compensation and Benefits Comparability . For a period of at least one (1) year following the Closing (or such longer period as may be required under applicable Law), each Transferred Employee who is from time to time in the employment of the Purchaser or any of its Affiliates shall receive a base salary and employee benefits package on terms that, in the aggregate, are substantially comparable as that in effect for each such Transferred Employee immediately prior to the Closing, including

(i) base salary or wage rates, incentive compensation opportunity and other cash compensation,

(ii) employee benefits and

(iii) ordinary-course severance benefits (but excluding all change in control bonuses, retention bonuses and equity-based awards). Except as required by Law, nothing contained in this Agreement shall be construed as requiring the Purchaser or any of its Affiliates to continue the employment of any specific person. The Purchaser shall further take such actions as may be required under applicable Law such that the employment of each Business Employee who is intended to be a Non-U.S. Automatically Transferred Employee automatically transfers to the Purchaser or one of its Affiliates by operation of Law as a result of the transactions contemplated hereby.

(b) Retention Liabilities . The Purchaser shall assume and be responsible for any retention, change in control or similar payments or benefits set forth on Section 5.14(i) of the Seller Disclosure Schedule that may become payable to any Transferred Employee in connection with the transactions contemplated by this Agreement, but only to the extent set forth on the Seller Disclosure Schedule and accrued in the Modified Working Capital Amount in the case of Transferred Employees employed as of the Closing Date.

(c) Service Credit . The Purchaser shall recognize the prior service and seniority of each Transferred Employee as if such service had been performed with, and such seniority has been earned with, the Purchaser for purposes of eligibility and vesting (but not benefit accrual, other than with respect to severance benefits) under the employee benefit plans and policies provided by the Purchaser to the Transferred Employees following the Closing to the same extent such service and seniority is recognized by the Seller or its Subsidiaries immediately prior to the Closing. For the avoidance of doubt, the Purchaser shall not be under any obligation to grant pension benefits to any Transferred Employee retroactively as if such Transferred Employee had been employed by the Purchaser since the date of his or her initial employment by the Seller or one of the Sellers Subsidiaries.

(d) Assumed Employee Accruals . The Purchaser shall assume and be responsible for accrued, unused or banked vacation, sick leave and paid time off earned prior to the Closing Date (or, with respect to any U.S. TSA Employee or OUS TSA Employee who become Transferred Employees, the date of transfer of such U.S. TSA Employee or OUS TSA Employee as contemplated by the Transition Services Agreement), but only to the extent accrued in the Modified Working Capital Amount, in the case of Transferred Employees employed as of the Closing Date (or, with respect to any U.S. TSA Employees or OUS TSA Employees who become Transferred Employees, only to the extent accrued in calculating the applicable Final TSA Employee Liability Amount), and as permitted by Law.

(e) Employee Welfare Benefit Plans . With respect to any employee welfare benefit plan (which for purposes of this Agreement shall include employee medical, prescription drug, dental, disability, employee life, dependent life, accidental death and travel accident insurance plans and similar programs) maintained by the Purchaser or any of its Affiliates in which Transferred Employees are eligible to participate after the Closing, the Purchaser shall, and shall cause its Affiliates to use commercially reasonable efforts to,

(i) waive all limitations as to preexisting conditions and exclusions with respect to participation and coverage requirements applicable to such Transferred Employees to the extent such conditions and exclusions were satisfied or did not apply to such Transferred Employees under the employee welfare benefit plans maintained by the Seller or any of its Subsidiaries immediately prior to the Closing (or, with respect to any U.S. TSA Employee or OUS TSA Employee who become Transferred Employees, the date of transfer of such U.S. TSA Employee or OUS TSA Employee as contemplated by the Transition Services Agreement) and

(ii) provide each Transferred Employee with credit for any co-payments and deductibles paid by such Transferred Employee in the plan year in which the Closing (or, with respect to any U.S. TSA Employee or OUS TSA Employee who become Transferred Employees, the date of transfer of such U.S. TSA Employee or OUS TSA Employee as contemplated by the Transition Services Agreement) occurs prior to the Closing (or such later date) in satisfying any analogous deductible or out-of-pocket requirements to the extent applicable under any such plan.

(f) Labor Matters . The Purchaser and the Seller shall, and shall cause their Affiliates to, cooperate to take all steps, on a timely basis, as are required under applicable Law to notify, consult with, or negotiate the effect, impact, terms or timing of the transactions contemplated by this Agreement with each Business Employee, works council, union, labor board, employee group, or Governmental Authority where so required under applicable Law.

(g) Incentive Compensation . The Purchaser shall continue and assume each annual performance period in effect at the Closing under each incentive compensation bonus plans in which any Transferred Employee participates for the year in which the Closing occurs, with appropriate adjustment (as determined by the Purchaser in good faith) to the applicable performance targets to take into account the transactions contemplated by this Agreement, but only to the extent accrued in the Modified Working Capital Amount. The Purchaser shall, and shall cause its Affiliates to, make and assume such bonus payments at the time prescribed by the applicable plans. With respect to any such bonus plan under which the making or amount of any bonus payment is based in whole or in part on the financial or other performance of the Business or a Transferred Employee, or any other similar metric(s), and the period for measurement of such performance covers both the period of time prior to and after the Closing, the Purchaser shall take the pre-Closing portion of such performance (based on the performance of the Business as operated by the Seller and its Subsidiaries or the performance of such Transferred Employee during the time period employed by the Seller or any of its Subsidiaries) into account for purposes of such measurement.

(h) No Third-Party Beneficiaries . Notwithstanding any other provision of this Article VIII , the parties acknowledge and agree that nothing in this Article VIII is intended to grant, and nothing shall be deemed or construed to establish, rights of any kind in any third party as a beneficiary of this Agreement.

**Section** **8.3 Employee Liabilities .** Except to the extent otherwise specifically set forth in this Article VIII , the Seller shall retain

(i) all Liabilities with respect to Business Employees who do not become Transferred Employees, regardless of whether such Liabilities arise prior to, on or after the Closing, and

(ii) all Liabilities with respect to Transferred Employees arising or attributable to the period prior to the Closing (or, with respect to any U.S. TSA Employee or OUS TSA Employee who become Transferred Employees, the date of transfer of such U.S. TSA Employee or OUS TSA Employee as contemplated by the Transition Services Agreement), including accrued payroll, vacation and bonus amounts as of the Closing (or such later date) and including any Liabilities under the Sellers or any of its Affiliates Compensation and Benefit Plans. For the avoidance of doubt, notwithstanding anything to the contrary set forth in Schedule 8.1(b)(i) or Schedule 8.1(b)(ii) , any requirements of applicable Law in respect of the transfer of any Business Employees, or any undertaking or Contract entered into by the Parties to comply therewith, the Parties acknowledge that as a matter of Contract the Purchaser shall not assume any Liabilities from the Seller or any of its Subsidiaries in respect of the Business Employees except as expressly set forth in Section 8.2 .

**Section** **8.4 Non-Solicitation .** Without the prior written consent of the Seller, neither the Purchaser nor any of its Affiliates shall, for a period of one (1) year following the Closing, hire

(i) any person who was employed by the Seller or any of its Subsidiaries (whether as an employee or independent contractor) in the Business but who is not a Transferred Employee and who is employed by the Seller or any of its Subsidiaries, or

(ii) any employee of the Seller or any Subsidiary of the Seller who the Purchaser came into contact with in connection with the negotiation of this Agreement to terminate his or her employment with the Seller or its Subsidiaries or to seek or accept employment with the Purchaser or any of its Affiliates.

**Section** **8.5 WARN Laws** . The Seller agrees to refrain from taking any action that would result in ten (10) or more of the Business Employees suffering a termination or Employment Loss, as defined by the WARN Act, within the ninety (90) calendar days immediately preceding the Closing. On or before the Closing Date, the Seller shall provide to the Purchaser a list of any Business Employee layoffs, by location, implemented by the Seller or its Subsidiaries in the ninety (90)-day period preceding the Closing Date. The Seller shall inform the Purchaser of the Sellers intent to provide notice under the WARN Act and provide Purchaser with a copy of the proposed notice or notices at least two (2) Business Days prior to issuing said notice.

**Section** **8.6 Assistance with Certain Agreements** . Effective at the Closing, the Seller

(i) shall, to the extent permitted by Law, assign to the Purchaser any nondisclosure and non-competition agreement, confidentiality agreement or other covenants not to compete previously entered into between the Seller or its Subsidiaries and any Business Employees (or any former employees of the Seller or its Subsidiaries), but in each case only to the extent relating to the Business and the Purchased Assets and expressly not with respect to the Seller Other Business and the Excluded Assets, and

(ii) to the extent such agreements or covenants not to compete are not assignable, shall (A) (solely for the benefit of the Purchaser and its Affiliates) release all of the Business Employees and such former employees from such agreements and covenants not to compete relating to the Business (but not the Seller Other Businesses or other businesses of the Purchaser) and (B) if requested by the Purchaser from time to time, cooperate with and use its commercially reasonable efforts to assist the Purchaser, at the Purchasers sole cost and expense, to provide to the Purchaser the benefit of any such confidentiality agreements or covenants not to compete that are not assignable.

**Article IX TAXES**

**Section 9.1 Periodic Taxes** . All personal property Taxes, real property Taxes and similar ad valorem obligations and any other Taxes (excluding VAT and Conveyance Taxes) calculated periodically with respect to the book value or fair market value levied with respect to the Purchased Assets or the Business for a Straddle Period ( Periodic Taxes ) shall be apportioned between the Seller and the Purchaser as of the Closing Date based on the number of days of such Straddle Period prior to the Closing Date (with respect to any such taxable period, the Pre-Closing Periodic Tax Period ), and the number of days of such Straddle Period beginning with and including the Closing Date (with respect to any such taxable period, the Post-Closing Periodic Tax Period ), respectively. The Seller shall be liable for the proportionate amount of such Periodic Taxes that is attributable to the Pre-Closing Periodic Tax Period, and the Purchaser shall be liable for the proportionate amount of such Periodic Taxes that is attributable to the Post-Closing Periodic Tax Period. In the event that the amount of any Periodic Tax is not known by the Seller and the Purchaser at the Closing, the proration shall be made based upon the amount of the most recent available information, and the Seller and the Purchaser agree to reimburse each other, as the case may be, once the amount of such Periodic Tax becomes known. To the extent any periodic Taxes for a Straddle Period are assessed or payable on both Purchased Assets and Excluded Assets, the Parties shall reasonably cooperate to determine the amount of periodic Taxes for such Straddle Period that are allocable to the Purchased Assets and shall include the amount so allocated in the amount of Periodic Taxes to be apportioned under this Section 9.1 . The Purchaser shall be responsible for preparing and filing all Tax Returns for Periodic Taxes required to be filed after the Closing; provided , however , such Tax Returns shall be subject to the approval of the Seller, which shall not be unreasonably withheld, conditioned or delayed. The Seller and the Purchaser agree to consult and resolve in good faith any issue arising as a result of the review of such Periodic Tax Returns and to mutually consent to the filing of such returns. The Seller shall remit its share of such Periodic Taxes to the Purchaser no earlier than ten (10) days before the due date for such Periodic Taxes.

**Section** **9.2 Taxes Attributable to Other Periods .** Notwithstanding anything in this Agreement to the contrary, the Seller shall be responsible for all Taxes relating to any Pre-Closing Tax Period with respect to the Purchased Assets or the Business. The Purchaser shall be responsible for all Taxes relating to a Post-Closing Tax Period with respect to the Purchased Assets or the Business.

**Section** **9.3 Refunds .** The Seller shall be entitled to retain or, to the extent actually received by the Purchaser or its Affiliates, receive payment promptly from the Purchaser or any of its Affiliates of, any refund or credit with respect to Taxes paid by the Seller or any of its Subsidiaries with respect to any Pre-Closing Tax Period relating to the Purchased Assets or the Business. For purposes of this Section 9.3 , the term refund shall include amounts arising by reason of amended Tax Returns filed after the Closing, a reduction in Taxes and the use of an overpayment of Taxes as an audit or other Tax offset. Upon the reasonable request of the Seller and at the expense of the Seller, the Purchaser shall prepare and file, or cause to be prepared and filed, all claims for refunds relating to a Pre-Closing Tax Period; provided , however , that the Purchaser shall not be required to file a claim for a refund to the extent the claim relates to a carryback of an item. The Purchaser shall be entitled to retain or, to the extent actually received by the Seller or its Subsidiaries, receive payment promptly from the Seller or any of its Subsidiaries of, any refund or credit with respect to Taxes with respect to any Post-Closing Tax Period relating to the Purchased Assets or the Business. For the avoidance of doubt, the Purchaser shall be entitled to all refunds or credits relating to VAT imposed on the transfer of the Purchased Assets and the Business pursuant to this Agreement.

**Section** **9.4 Resolution of Tax Controversies .** If a claim shall be made by any Tax Authority that might result in an indemnity payment to the Purchaser or any of its Affiliates pursuant to Section 9.1 or Section 12.3 , the Purchaser shall promptly notify the Seller of such claim. As soon as reasonably practicable after the receipt of such notice, the Seller shall provide the Purchaser access to all Tax Returns, Books, Records and Files that are reasonably necessary to contest the subject of such claim. In the event that a Tax Authority determines a deficiency in any Tax, the Party ultimately responsible for such Tax under this Agreement, whether by indemnity or otherwise, shall have authority to determine whether to dispute such deficiency determination and to control the prosecution or settlement of such dispute; provided that with respect to Straddle Periods, the Purchaser shall control the dispute. The Party that is not ultimately responsible for such Tax under this Agreement shall have the right to participate at its own expense in the conduct of any such proceeding involving a Tax claim that would adversely affect such Party. With respect to any Straddle Period, neither the Purchaser nor the Seller, respectively, shall accept any proposed adjustment or enter into any settlement or agreement in compromise for any material proceeding relating to the Business or the Purchased Assets without obtaining the consent, which shall not be unreasonably withheld, from the Seller or the Purchaser, respectively.

**Section** **9.5 Conveyance Taxes .** Notwithstanding any other provision of this Agreement to the contrary, all transfer, conveyance, documentary, recording, sales, use, stamp and other similar Taxes (including all applicable real estate transfer Taxes, but excluding any VAT or Taxes based on or attributable to income or capital gains) (including any penalties and interest thereon) imposed by any Tax Authority in connection with the transfer of the Purchased Assets or the Business to the Purchaser or its Affiliates by this Agreement ( Conveyance Taxes ) shall be shared equally by the Purchaser, on the one hand, and the Seller, on the other hand, regardless of which Party or its Subsidiaries are obligated to pay such Conveyance Taxes under applicable Tax Laws. The Parties agree (and shall cause their respective Affiliates) to reasonably cooperate with each other with respect to the filing of any such Tax Returns and other documentation with respect to all such Conveyance Taxes. The Parties acknowledge that, with respect to the Republic of Austria, the language set forth on the attached Schedule 9.5 is herein incorporated by reference herein and deemed to be a legend to this Agreement.

**Section** **9.6 VAT .** (a) The amount of any payment for a supply of goods or services or the value of any supply made or deemed to have been made pursuant to this Agreement with respect to the transfer of the Purchased Assets will be exclusive of any VAT properly chargeable on the supply, and the amount of the VAT will be borne by the Purchaser in addition to any payment due under this Agreement at the time the supply is made. In the event that any VAT is imposed upon or imposed against the Seller or any of its Subsidiaries, the Seller will promptly notify the Purchaser of the VAT amount on a valid VAT invoice that, if recovery of VAT as input VAT by the Purchaser is relevant, complies with formal and other requirements under applicable Law for use by the Purchaser in recovery of such VAT as input VAT. Upon receipt thereof, the Purchaser will promptly remit to the Seller the VAT amount specified in such VAT invoice, in addition to the payment for the transfer of the Purchased Assets, and the Seller will make, or will cause to be made, any payments to the applicable Tax Authorities as required under applicable Law. Notwithstanding the previous sentence and solely for Austrian purposes, upon receipt of an Austrian VAT invoice, the Purchaser will promptly remit to the Seller the VAT amount specified in such VAT invoice by way of transfer of the input VAT credit from the Purchaser´s tax account directly to the Seller´s tax account (pursuant to Section 215 (4) of the Austrian Fiscal Code) after the input VAT credit has been assessed by the Austrian tax authorities.

(b) The Purchaser hereby represents and warrants to the Sellers that prior to Closing each entity (whether the Purchaser or a designated Affiliate) acquiring Purchased Assets, or (if relevant) assuming the Assumed Liabilities, the supply of which, but for the availability of an exemption for the transfer of a going concern, would for VAT purposes be treated as made in any jurisdiction (the Relevant Jurisdiction ) will be registered for VAT in such Relevant Jurisdiction and on or before Closing, the Purchaser will provide the Seller with the VAT registration number of the Purchaser or its applicable Affiliate with respect to such Relevant Jurisdiction or other evidence of such valid VAT registration for such Relevant Jurisdiction, and shall as soon as is practical after Closing provide the Seller with a copy of a certificate of VAT registration (if applicable) for each such Purchaser or designated Affiliate of the Purchaser in a Relevant Jurisdiction, valid as at the date of Closing.

(c) The Purchaser agrees to indemnify and hold harmless the Seller and its Subsidiaries against any Liability for VAT, fines, surcharges, interest or penalties arising to the Seller or any of the Sellers Subsidiaries as a result of the failure of the transfer of the Purchased Assets to qualify, in whole or in part, as a transfer of a going concern, unless such failure is attributable to the Seller.

(d) In the event that:

(i) an amount of VAT is payable under the terms of this Agreement and the consideration as stated on the relevant VAT invoice in respect of such amount of VAT differs from the actual consideration for the relevant supply for VAT purposes (which will include where the Purchase Price is adjusted in accordance with Section 3.2 , 3.6 and 4.4 , where the allocation of consideration to any Purchased Assets or Assumed Liabilities is amended or where no VAT invoice was actually issued), or

(ii) where a Governmental Authority determines in writing that a supply by the Seller or an Affiliate of the Seller in respect of which the Purchaser or an Affiliate of the Purchaser has paid VAT should properly be characterized as a transfer of a going concern, the parties agree to co-operate in good faith to correct the respective invoices/VAT returns.

**Section** **9.7 Cooperation on Tax Matters .**

(a) The Purchaser and the Seller shall cooperate fully, as and to the extent reasonably requested by the other Party, in connection with the filing of Tax Returns pursuant to this Article IX , any audit, litigation or other proceeding with respect to Taxes and with respect to the structuring of the acquisition of the Business and the Purchased Assets pursuant to this agreement. Such cooperation shall include the retention and (upon the other Party's request) the provision of records and information which are reasonably relevant to any such audit, litigation or other proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder.

(b) The Purchaser and the Seller further agree, upon request, to use commercially reasonable efforts to obtain any certificate or other document from any Tax Authority or any other Person as may be reasonably necessary to mitigate, reduce or eliminate any Tax that would be imposed under applicable Law with respect to the transactions contemplated hereby.

(c) The Purchaser and the Seller further agree, upon request, to provide the other Party with all reasonably requested information in their possession that either Party may be required to report with respect to the transactions contemplated hereby pursuant to Section 6043 of the Code and all Treasury Regulations promulgated thereunder (or applicable or analogous state, local or foreign Laws).

**Article X CONDITIONS**

**Section 10.1 Conditions to Obligations of the Seller .** The obligations of the Seller to consummate the transactions contemplated by this Agreement shall be subject to satisfaction (or, to the extent permitted by applicable Law, waiver) at or prior to the Closing of the following conditions:

(a) Representations, Warranties and Covenants .

(i) Each of the representations and warranties of the Purchaser contained in this Agreement shall be true and correct as of the Closing, with the same force and effect as if made as of the Closing (other than such representations and warranties as are made as of another date, which shall be true and correct as of such date), except in either case where any failure of such representations and warranties to be so true and correct (without giving effect to any qualification as to materiality or material adverse effect set forth therein) would not have a material adverse effect on the ability of the Purchaser to perform its obligations under this Agreement or prevent or materially delay the consummation of the transactions contemplated hereby in accordance with the terms hereof;

(ii) Each of the covenants and agreements contained in this Agreement to be complied with by the Purchaser on or before the Closing shall have been complied with in all material respects; and

(iii) The Seller shall have received a certificate, dated as of the Closing Date, signed on behalf of the Purchaser by an officer of the Purchaser to the effect that, to each such officers knowledge, the conditions set forth in Section 10.1(a)(i) and 10.1(a)(ii) have been satisfied by the Purchaser, as applicable.

(b) Governmental Approvals . Any waiting period (and any extension thereof) under the HSR Act and the Competition Laws of Federal Republic of Germany (subject to the rights of the Purchaser pursuant to Section 4.4 ) and the Republic of Austria applicable to the purchase of the Business contemplated by this Agreement shall have expired or shall have been terminated.

(c) No Order . No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Law or Governmental Order (whether temporary, preliminary or permanent) that has the effect of making the transactions contemplated by this Agreement illegal or otherwise prohibiting the consummation of such transactions contemplated by this Agreement.

(d) Ancillary Agreements . The Purchaser shall have delivered a duly executed counterpart of the Ancillary Agreements to the Seller.

(e) Closing Deliveries . The Purchaser shall have duly executed and delivered each of the deliveries contemplated by Section 4.3 .

(f) TSA Preparedness . The Seller shall have (A) completed in all material respects, at its sole cost and expense, the set-up of the management information system clone (as contemplated by the Transition Services Agreement) in accordance with the specifications set forth on Schedule 10.1(f) , and (B) completed in all material respects such other set-up activities and arrangements, at its sole cost and expense, such as to enable the Seller to provide the Purchaser with the services contemplated to be performed by the Seller pursuant to the Transition Services Agreement.

**Section** **10.2 Conditions to Obligations of the Purchaser .** The obligations of the Purchaser to consummate the transactions contemplated by this Agreement shall be subject to satisfaction (or, to the extent permitted by applicable Law, waiver) at or prior to the Closing of the following conditions:

(a) Representations, Warranties and Covenants .

(i) Each of the representations and warranties of the Seller contained in this Agreement shall be true and correct as of the Closing, with the same force and effect as if made as of the Closing (other than such representations and warranties as are made as of another date, which shall be true and correct as of such date), except in either case where any failure of such representations and warranties to be so true and correct (without giving effect to any qualification as to materiality or Material Adverse Effect set forth therein) would not result in a Material Adverse Effect;

(ii) Each of the covenants and agreements contained in this Agreement shall be complied with by the Seller on or before the Closing shall have been complied with in all material respects; and

(iii) Since the date of this Agreement there shall have been no Material Adverse Effect that has not been cured.

(iv) The Purchaser shall have received a certificate, dated as of the Closing Date, signed on behalf of the Seller by an officer of the Seller, to the effect that, to such officers knowledge, the conditions set forth in Section 10.2(a)(i) , 10.2(a)(ii) and Section 10.2(a)(iii) have been satisfied by the Seller. (b) Governmental Approvals . Any waiting period (and any extension thereof) under the HSR Act and the Competition Laws of the Federal Republic of Germany and the Republic of Austria applicable to the purchase of the Business contemplated by this Agreement shall have expired or shall have been terminated.

(c) No Order . No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Law or Governmental Order (whether temporary, preliminary or permanent) that has the effect of making the transactions contemplated by this Agreement illegal or otherwise prohibiting the consummation of such transactions contemplated by this Agreement.

(d) Ancillary Agreements . The Seller shall have delivered a duly executed counterpart of the Ancillary Agreements to the Purchaser.

(e) Closing Deliveries . The Seller or its applicable Subsidiaries shall have duly executed and delivered each of the deliveries contemplated by Section 4.2 . (f) TSA Preparedness . The Seller shall have

(i) (A) completed in all material respects, at its sole cost and expense, the set-up of the management information system clone (as contemplated by the Transition Services Agreement) in accordance with the specifications set forth on Schedule 10.1(f) , and (B) completed in all material respects such other set-up activities and arrangements, at its sole cost and expense, such as to enable the Seller to provide the Purchaser with the services contemplated to be performed by the Seller pursuant to the Transition Services Agreement, and

(ii) delivered to the Purchaser a certificate, dated as of the Closing Date, signed on behalf of the Seller by an officer of the Seller to the effect that the foregoing criteria have been satisfied by the Seller.

(g) Required Consents . The Seller shall have received the Consents required in connection with the consummation of the transactions contemplated by this Agreement pursuant to those Contracts listed on Schedule 10.2(g) .

**Article XI TERMINATION**

**Section 11.1 Termination .** This Agreement may be terminated at any time prior to the Closing in the following circumstances:

(a) by the mutual written consent of the Seller and the Purchaser;

(b) by either the Seller or the Purchaser, if the Closing shall not have occurred by August 14, 2013 (the Outside Date ); provided , however , that the right to terminate this Agreement under this Section 11.1(b) shall not be available to any Party whose failure to fulfill any obligation under this Agreement shall have been the cause of, or shall have resulted in, the failure of the Closing to occur on or prior to such date;

(c) by either the Seller or the Purchaser in the event that any Governmental Order of any Governmental Authority restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement in such jurisdiction shall have become final and non-appealable; provided , however , that the right to terminate this Agreement under this Section 11.1(c) shall not be available to any Party whose failure to fulfill any obligation under this Agreement shall have been the cause of, or shall have resulted in, the failure of the Closing to occur on or prior to such date;

(d) by either the Seller or the Purchaser, by giving written notice of such termination to the other Party, if such other Party or one of its Subsidiaries (or, in the case of the Purchaser, one of its Affiliates) shall have breached any of its material obligations or agreements under this Agreement and such breach shall be incapable of cure or has not been cured within thirty (30) days following the giving of written notice by the non-breaching Party to the other Party of such breach (or, if the Outside Date is fewer than thirty days from provision of such notice, cured by the Outside Date);

(e) by the Seller, by giving written notice of such termination to the Purchaser, if there has been a breach of the representations and warranties of the Purchaser contained in this Agreement which

(i) would result in the failure of the condition set forth in Section 10.1(a)(i) ; and (ii) cannot be or is not cured through the use of commercially reasonable efforts during the thirty (30) Business Day period after the Seller notifies the Purchaser in writing of the existence of such breach (or, if earlier, by the Outside Date); (f) by the Purchaser, by giving written notice of such termination to the Seller, if there has been a breach of the representations and warranties of the Seller contained in this Agreement which (i) would result in the failure of the condition set forth in Section 10.2(a)(i) ; and

(ii) cannot be or is not cured through the use of commercially reasonable efforts during the thirty (30) Business Day period after the Purchaser notifies the Seller in writing of the existence of such breach (or, if earlier, by the Outside Date); or (g) by either the Seller or the Purchaser, by giving written notice of such termination to the other Party at any time after October 31, 2012, if at the time of such notice all of the conditions set forth in Section 10.1 and Section 10.2 (other than conditions that can only be satisfied at the Closing) shall have been satisfied or waived and as of such date the Measurement Revenue is less than One Hundred Sixty Million Dollars ($160,000,000).

**Section** **11.2 Effect of Termination .** In the event of termination of this Agreement as provided in Section 11.1 , this Agreement shall forthwith become void and there shall be no liability on the part of either Party except

(a) as set forth in Section 7.2 and Article XIII ; and

(b) that nothing herein shall relieve either Party from liability for any breach of this Agreement occurring prior to such termination.

**Article XII INDEMNIFICATION AND SURVIVAL**

**Section 12.1 Survival of Representations and Warranties .**

The representations and warranties of the Parties contained in this Agreement shall survive the Closing for a period of eighteen (18) months from the Closing Date and shall expire thereafter; provided , however , that the representations and warranties of the Seller contained in **(**i) Section 5.1 (Organization; Authority; Qualification; Capitalization), Section 5.2 (No Conflict), the second and third sentences of Section 5.6(a) (Properties) and Section 5.15 (Brokers) (collectively, the Seller Fundamental Representations ) shall survive the Closing indefinitely; and (ii) Section 5.8 (Environmental Matters), Section 5.9 (FDA and Regulatory Matters), paragraphs (c) and (d) of Section 5.10 (Employee Benefits) and Section 5.11 (Tax Matters) (collectively, the Seller Statutory Representations ) shall survive the Closing until ninety (90) days following the expiration of the applicable statutes of limitations with respect to the matters covered therein; provided , further , that such representations or warranties shall survive beyond the period stated in the foregoing proviso with respect to (but only with respect to) any inaccuracy therein or breach thereof, notice of which shall have been duly given in accordance with Sections 12.4 and 12.5 prior to the expiration of the applicable period. The covenants and agreements of the Parties contained in this Agreement shall survive indefinitely unless the covenantor agreement specifies a term, in which case such covenant or agreement shall survive for such specified term and thereafter until ninety (90) days following the expiration of the applicable statutes of limitations with respect to the matters covered therein. No claim for indemnification in respect of any breach of or inaccuracy in any warranty or representation, or any breach or failure to perform any covenant or agreement, contained in this Agreement may be made after the respective date on which such representation, warranty, covenant or agreement ceases to survive as described above.

**Section** **12.2 Indemnification by the Purchaser .** Subject to the other provisions of this Article XII , from and after the Closing, the Purchaser shall indemnify, hold harmless and reimburse the Seller and its Subsidiaries, officers, directors, agents, successors and assigns (the Seller Indemnified Parties ) from and against and in respect of any and all losses, damages, claims, interest, awards, judgments, penalties, Liabilities, costs and expenses (including reasonable attorneys fees) (collectively, Losses ) which any Seller Indemnified Parties may actually suffer or incur to the extent arising out of or related to:

(a) any breach of or inaccuracy in any warranty or representation of the Purchaser contained in this Agreement; provided , that solely for purposes of determining Losses hereunder, but not for purposes of determining any breach or inaccuracy, without giving effect to any materiality, Material Adverse Effect or similar qualification therein;

(b) any breach by the Purchaser of, or failure by the Purchaser to perform, any of its covenants or other agreements set forth in this Agreement which by its terms is to be performed prior to or at the Closing;

(c) any breach by the Purchaser of, or failure by the Purchaser to perform, any of its covenants or other agreements set forth in this Agreement not covered by Section 12.2(b) ; and (d) the Assumed Liabilities.

**Section** **12.3 Indemnification by the Seller .** Subject to the other provisions of this Article XII , from and after the Closing, the Seller shall indemnify, hold harmless and reimburse the Purchaser and its Affiliates, officers, directors, agents, successors and assigns (the Purchaser Indemnified Parties ) from and against and in respect of any and all Losses which any Seller Indemnified Parties may actually suffer or incur to the extent arising out of or related to:

(a) any breach of or inaccuracy in any warranty or representation of the Seller contained in this Agreement; provided , that solely for purposes of determining Losses hereunder, but not for purposes of determining any breach or inaccuracy, without giving effect to any materiality, Material Adverse Effect or similar qualification therein;

(b) any breach by the Seller of, or failure by the Seller to perform, any of its covenants or other agreements set forth in this Agreement which by its terms is to be performed prior to or at the Closing;

(c) any breach by the Seller of, or failure by the Seller to perform, any of its covenants or other agreements set forth in this Agreement not covered by Section 12.3(b) ;

(d) the Excluded Liabilities and Excluded Assets; and

(e) the matters set forth on Schedule 12.3(e)A and Schedule 12.3(e)B .

**Section** **12.4 Limitations on Indemnification** .

(a) Notwithstanding anything to the contrary contained in this Agreement (but except as provided on Schedule 12.3(e)A and Schedule 12.3(e)B ), no amounts shall be payable as a result of any claim in respect of Losses arising under Section 12.2 or Section 12.3 to the extent it asserts a claim for consequential, incidental, indirect, special or punitive damages, including losses or damages caused by loss of use, profits or revenue, inventory or use charges, cost of purchased or replacement power, interest charges or cost of capital (except and to the extent that such Losses are actually paid to an unaffiliated third party).

(b) Notwithstanding anything to the contrary contained in this Agreement, the indemnity obligations of the Seller under this Article XII shall be limited as set forth in this Section 12.4(b) :

(i) no indemnity shall be payable by the Seller under Section 12.3(a) with respect to any individual claim for Losses that does not exceed Fifty Thousand Dollars ($50,000) (the Minimum Amount ); provided , that , the Minimum Amount shall not be applicable to any breach or inaccuracy of the Seller Fundamental Representations;

(ii) with respect to individual Losses that are in excess of the Minimum Amount (the Covered Losses ), no indemnity shall be payable by the Seller under Section 12.3(a) until the aggregate of such Covered Losses exceeds an amount equal to .6% of the Purchase Price (after giving effect to the adjustment, if any, contemplated by Sections 3.6 and 4.4 , except that any such adjustment contemplated by Section 4.4 that is subsequently paid to the Seller in accordance with the terms of this Agreement shall be disregarded) (the Basket ) and then only for such Covered Damages in excess of the Basket; provided that , the Basket shall not be applicable to any breach or inaccuracy of the Seller Fundamental Representations; and

(iii) Seller shall have no further indemnity obligations under Sections 12.3(a) or, to the extent that the Seller has notified the Purchaser prior to the Closing in accordance with Section 7.4 of the applicable failure by the Seller to perform its covenants or other agreements set forth in this Agreement which by its terms are to be performed prior to or at the Closing, 12.3(b) , once the aggregate of all Covered Losses paid by it equals an amount equal to 12.5% of the Purchase Price (after giving effect to the adjustment, if any, contemplated by Sections 3.6 and 4.4 , except that any such adjustment contemplated by Section 4.4 that is subsequently paid to the Seller in accordance with the terms of this Agreement shall be disregarded) (the Maximum Amount ); provided , that , the Maximum Amount shall not be applicable to any breach or inaccuracy of the Seller Fundamental Representations.

(c) The Purchaser shall in good faith attempt to mitigate the Purchaser Indemnified Parties Losses upon and after becoming aware of any event or condition which could reasonably be expected to give rise to any Losses that are indemnifiable hereunder; provided , that this subsection (c) shall neither expand nor limit the obligations of any Purchaser Indemnified Party to so mitigate Losses under applicable Law.

**Section** **12.5 Claims for Indemnification .** All claims for indemnification by any Indemnified Party shall be asserted and resolved as set forth in this Section 12.5 :

(a) Third Party Claims . In the event that any written claim or demand for which an Indemnifying Party may be liable to any Indemnified Party hereunder is asserted against or sought to be collected from any Indemnified Party by a third party, such Indemnified Party shall promptly, but in no event later than fifteen (15) days following such Indemnified Partys receipt of such claim or demand (including a copy of any related written third party demand, claim or complaint) (the Third Party Claim ), deliver a Claim Notice to the Indemnifying Party. The Indemnifying Party shall be relieved of its obligations to indemnify the Indemnified Party with respect to such Third Party Claim to the extent that the Indemnified Party fails to timely deliver the Claim Notice and the Indemnifying Party is actually prejudiced thereby. If a Third Party Claim is made against an Indemnified Party, the Indemnifying Party shall be entitled to participate therein and to assume the defense thereof; provided , that , the Indemnifying Party shall provide written notice to the Indemnified Party which notice shall confirm its obligation to indemnify the Indemnified Party pursuant to this Article XII with respect to such Third-Party Claim and inform the Indemnified Party of counsel to handle the Thirty Party Claim on behalf of the Indemnifying Party (which counsel shall be reasonably satisfactory to the Indemnified Party). After notice from the Indemnifying Party to the Indemnified Party of such election to so assume the defense thereof, the Indemnifying Party shall not be liable to the Indemnified Party for any legal expenses of other counsel or any other expenses subsequently incurred by the Indemnified Party in connection with the defense thereof. The Indemnified Party shall cooperate fully with the Indemnifying Party and its counsel in the defense against any such Third Party Claim. The Indemnified Party shall have the right to participate at its own expense in the defense of any Third Party Claim. Neither the Indemnifying Party, on the one hand, nor the Indemnified Party, on the other hand, shall admit liability to, or settle, compromise or discharge any Third Party Claim without the prior consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed; provided , however , the Indemnifying Party may settle, compromise or discharge any Third Party Claim the defense of which was assumed by the Indemnifying Party if such Third Party Claim provides only for the payment of monetary damages. In the event the Indemnifying Party elects not to defend any Third Party Claim, the Indemnified Party shall defend against such Third Party Claim in good faith and in a commercially reasonable manner at the cost and expense of the Indemnifying Party, and the Indemnifying Party shall have the right to participate in such defense at its own expense.

(b) Direct Claims . In the event any Indemnified Party should have a claim under Section 12.2 or Section 12.3 against any Indemnifying Party that does not involve a Third Party Claim, the Indemnified Party shall promptly deliver an Indemnity Notice to the Indemnifying Party.

(c) In the event of any claim for indemnity under Section 12.3 , the Purchaser agrees to give the Seller and its representatives reasonable access to the books and records and employees of the Purchaser in connection with the matters for which indemnification is sought to the extent the Seller reasonably deems necessary in connection with its rights and obligations under this Article XII .

**Section** **12.6 Tax Effect .** Any indemnification obligation of an Indemnifying Party under this Agreement shall be adjusted so as to give effect to any net reduction in federal, state, local or foreign Tax liability recognized (either by decrease in Taxes paid or increase in a refund due) at any time by the Indemnified Party in connection with the satisfaction by the Indemnifying Party of any such indemnification obligation.

**Section** **12.7 Insurance Offset .** If any Losses sustained by an Indemnified Party are covered by an insurance policy or an indemnification, contribution or similar obligation of another Person (other than an Affiliate of such Indemnified Party), the Indemnified Party shall use commercially reasonable efforts to collect such insurance proceeds or indemnity, contribution or similar payments. If the Indemnified Party actually receives such insurance proceeds or indemnity, contribution or similar payments prior to being indemnified, held harmless and reimbursed under **Section** 12.2 or Section 12.3 , as applicable, with respect to such Losses, the payment by an Indemnifying Party under this Article XII with respect to such Losses shall be reduced by the net amount of such insurance proceeds or indemnity, contribution or similar payments to the extent related to such Losses, less reasonable attorneys fees and other expenses incurred in connection with such recovery. If the Indemnified Party receives such insurance proceeds or indemnity, contribution or similar payments after being indemnified and held harmless by an Indemnifying Party with respect to such Losses, the Indemnified Party shall pay to the Indemnifying Party the net amount of such insurance proceeds or indemnity, contribution or similar payment to the extent related to such Losses, less reasonable attorneys fees and other expenses incurred in connection with such recovery. If any Indemnified Party receives payment under this Article XII on account of a claim that an Indemnifying Party believes in good faith is covered by an insurance policy or an indemnification, contribution or similar obligation of another Person (other than an Affiliate of such Indemnified Party), that Indemnified Party shall

(i) on written request of the Indemnifying Party assign, to the extent assignable, its rights under such insurance policy or indemnification, contribution or similar obligation with respect to such claim to the Indemnifying Party and

(ii) be relieved of any further obligation to pursue collection of such insurance or indemnification, contribution or similar obligation (except that, if requested to do so by the Indemnifying Party, the Indemnified Party shall reasonably cooperate with the Indemnifying Party at the Indemnifying Partys sole expense, to collect any such insurance or indemnification, contribution or similar obligation).

**Section** **12.8 Exclusivity .** After the Closing, the indemnities set forth in this Article XII shall be the sole and exclusive remedy of the Parties, their successors and assigns, and their respective officers, directors, employees, agents and Affiliates with respect to this Agreement, the events giving rise to this Agreement and the transactions contemplated hereby, except for equitable remedies in respect of any breach by any Party to perform any of its covenants or other agreements set forth in this Agreement (with respect to which the Parties shall be entitled to seek non-monetary or equitable remedies including specific performance). The indemnities set forth in this Article XII apply only to matters arising out of this Agreement. Any Loss arising under or pursuant to an Ancillary Agreement shall be governed by the indemnification obligations, if any, contained in such Ancillary Agreement. Nothing in this Article XII shall limit any remedy the Purchaser Indemnified Parties may have against any Person for actual fraud or any willful and material breach of this agreement.

**Section** **12.9 Treatment of Indemnification Payments .** To the extent permitted by Law, any amounts payable pursuant to Article IX or this Article XII shall be considered adjustments to the Purchase Price for all income Tax purposes, and the Parties and their respective Affiliates agree to take no position inconsistent with such treatment in any Tax Return or proceeding before any Tax Authority.

**Article XIII MISCELLANEOUS**

**Section 13.1 Assignment .** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns; provided , however , that no assignment shall be made by either Party without the prior written consent of the other Party. Notwithstanding the foregoing, either Party may assign all or any portion of its rights and obligations under this Agreement without such consent (i) to an Affiliate or (ii) in connection with a sale, merger or other transaction involving a transfer of substantially all of its assets; provided that such assigning Party shall remain primarily liable for its obligations hereunder.

**Section** **13.2 Public Announcements** . Neither Party shall issue or make any public announcement, press release or other public disclosure regarding this Agreement or its subject matter without the other Partys prior written consent, except for any such disclosure that is, in the opinion of the disclosing Partys counsel, required by applicable Law or the rules of a stock exchange on which the securities of the disclosing party are listed. In the event a Party is, in the opinion of its counsel, required to make a public disclosure by applicable Law or the rules of a stock exchange on which its securities are listed, such Party shall, to the extent practicable, submit the proposed disclosure in writing to the other Party prior to the date of disclosure and provide the other Party a reasonable opportunity to comment thereon.

**Section** **13.3 Expenses .** Whether or not the transactions contemplated hereby are consummated, and except as otherwise specified herein, each Party shall bear its own expenses with respect to the transactions contemplated by this Agreement.

**Section** **13.4 Severability** . Each of the provisions contained in this Agreement shall be severable, and the unenforceability of one shall not affect the enforceability of any others or of the remainder of this Agreement.

**Section** **13.5 No Third Party Beneficiaries .** This Agreement is for the sole benefit of the Parties hereto and their permitted assigns, and nothing herein, express or implied (including Article XII ), shall give or be construed to give to any other Person any legal or equitable rights hereunder.

**Section 13.6 Waiver .** The failure of any Party to enforce any condition or part of this Agreement at any time shall not be construed as a waiver of that condition or part, nor shall it forfeit any rights to future enforcement thereof. Any waiver hereunder shall be effective only if delivered to the other Party hereto in writing by the Party making such waiver.

**Section** **13.7 Governing Law .** This Agreement shall be construed and enforced in accordance with and governed by the Laws of the State of New York, without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New York.

**Section** **13.8 Jurisdiction .** The Parties hereto irrevocably agree that any Action seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall be exclusively brought in any federal or state court located in New York, New York, and any appellate courts therefrom and that any cause of action arising out of this Agreement shall be deemed to have arisen from a transaction of business in the State of New York, and each of the Parties hereby irrevocably consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such Action and irrevocably waives, to the fullest extent permitted by Law, any objection that it may now or hereafter have to the laying of the venue of any such Action in any such court or based on lack of venue, improper venue, inconvenient forum or lack of personal jurisdiction. Process in any such Action may be served on any Party anywhere in the world, whether within or without the jurisdiction of such court. Without limiting the foregoing, each Party agrees that service of process on such Party as provided in Section 13.14 shall be deemed effective service of process on such Party.

**Section** **13.9 Waiver of Jury Trial .**

EACH OF THE PARTIES HERETO WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH OF THE PARTIES HERETO HEREBY (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (B) ACKNOWLEDGES THAT IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 13.9 .

**Section 13.10 Other Remedies; Specific Performance** . Except as otherwise provided herein, any and all remedies herein expressly conferred upon a Party will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by Law or equity upon such party, and the exercise by a Party of any one remedy will not preclude the exercise of any other remedy. The Parties acknowledge that, in view of the uniqueness of the Business, the Purchased Assets, and the transactions contemplated by this Agreement, each Party would not have an adequate remedy at Law for money damages in the event that this Agreement has not been performed in accordance with its terms, and therefore agrees that the other Party shall be entitled to seek an injunction or injunctions to prevent breaches of this Agreement and specific enforcement of the terms hereof in addition to any other remedy to which it may be entitled (in accordance with Section 13.8 ), at Law or in equity.

**Section** **13.11 Headings .** The headings of the sections and subsections of this Agreement are inserted for convenience only and shall not be deemed to constitute a part hereof.

**Section** **13.12 Counterparts** . The Parties may execute this Agreement (including by electronic transmission) in one or more counterparts, and each fully executed counterpart shall be deemed an original.

**Section** **13.13 Further Documents** . Each of the Purchaser and the Seller shall, and shall cause its respective Subsidiaries (and, with respect to the Purchaser, its Affiliates) to, at the request of the other Party, execute and deliver to such other Party all such further instruments, assignments, assurances and other documents as such other Party may reasonably request in connection with the carrying out of this Agreement and the transactions contemplated hereby.

**Section** **13.14 Notices .** All communications, notices and Consents provided for herein shall be in writing and be given in person or by means of facsimile or electronic mail (with request for assurance of receipt in a manner typical with respect to communications of that type), by overnight courier or by mail, and shall become effective:

(a) on delivery if given in person;

(b) on the date of transmission if sent by facsimile and/or electronic mail;

(c) one (1) Business Day after delivery to the overnight service; or

(d) four (4) Business Days after being mailed, with proper postage and documentation, for first-class registered or certified mail, prepaid. Notices shall be addressed as follows:

If to the Purchaser, to: SORENS AB

Address SORENS

Sweden

Attn: Bo Dereks

Facsimile Number: xxx-xxx-xxx

Email (if provided simultaneously by facsimile): bo.dereks@SORENS.com with copies to: Simpson and AvilaLLP

Address, XXX

Attn: Harry Jamison, Esq.

Facsimile Number: xxx-xxx-xxx

Email (if provided simultaneously by facsimile): h.jamison@avila.com If to the Seller, to: HEALIMED, Inc.

Address, XXX,U.S.A.

Attn: General Counsel

Facsimile Number: xxx-xxx-xxx

Email (if provided simultaneously by facsimile): g.ken@HMI1.com with copies to: Holler Ram and Borta Incorporated

Address, U.S.A.

Attn: Valerie Williamson

Facsimile Number: xxx-xxx-xxx

Email (if provided simultaneously by facsimile): v.williamson@hollerram.com provided ,

however , that if any Party shall have designated a different address by notice to the others, then to the last address so designated.

**Section** **13.15 Performance of Obligations by Subsidiaries or Affiliates; Documentation Under Local Law .** Any obligation of the Seller under or pursuant to this Agreement may be satisfied, met or fulfilled, in whole or in part, at the Sellers sole and exclusive option, either by the Seller directly or by any Subsidiary of the Seller that the Seller causes to satisfy, meet or fulfill such obligation in whole or in part. Any obligation of the Purchaser under or pursuant to this Agreement may be satisfied, met or fulfilled, in whole or in part, at the Purchasers sole and exclusive option, either by the Purchaser directly or by any Affiliate that the Purchaser causes to satisfy, meet or fulfill such obligation, in whole or in part. With respect to any particular action, the use of the words the Seller shall also means the Seller shall cause the particular action to be performed, and the use of the words the Purchaser shall also means the Purchaser shall cause the particular action to be performed. Each of the Seller and the Purchaser guarantees the performance of all actions, agreements and obligations to be performed by any of their respective Subsidiaries (and, with respect to the Purchaser, its Affiliates) under the terms and conditions of this Agreement. Upon the request of the other Party, each Party shall enter into one or more separate agreements or instruments as are reasonably necessary or appropriate to give effect to the transactions contemplated by this Agreement (including purchase agreements or other instruments entered into pursuant to local Laws and customs of foreign jurisdictions), which agreements and instruments shall be subject to and consistent with the provisions of this Agreement.

**Section** **13.16 Entire Agreement .** This Agreement may not be amended, supplemented or otherwise modified except by an instrument in writing signed by each of the Parties hereto. This Agreement and the Confidentiality Agreement contain the entire agreement of the Parties hereto with respect to the transactions covered hereby, superseding all negotiations, prior discussions and preliminary agreements made prior to the date hereof.

**Section** **13.17 Bulk Sales Law .** The Purchaser hereby waives compliance by the Seller or any of its Subsidiaries with any applicable bulk sale or bulk transfer laws, other than any bulk sale or bulk transfer laws relating to Taxes, of any jurisdiction in connection with the sale of the Purchased Assets to the Purchaser. \* \* \* \* \*

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective duly authorized officers as of the date first above written.

SORENS AB By:

Name:

Title: HEALIMED, INC. By:

Name:

Title:

**APA#37**

**ASSET PURCHASE AGREEMENT**

This Asset Purchase Agreement ("Agreement") is made and entered into this 9th day of June, 2010, by and between FDAKG Holdings, Inc., a Michigan Corporation, (referred to herein as "Seller"), and Uni-Iuve Corporation , a California Corporation, DBA Globaiuve (referred to herein as "Buyer"). Whereas Seller is an established corporation in the marketing and sale of products related to Nutritional products and has developed a Distributorship Organization of Independent Business Owners (IBO) or independent authorized agents for the sale of its products, including the VORA-YUM , ABC, DEF, GHI product brands. Whereas Buyer wishes to acquire and seller wishes to sell I transfer, among other things, its Distributorship Organization and the VORA-YUM , ABC, DEF, GHI product lines and this Agreement is to witness the following:

**WlTNESSETH**:

**1. Sale of Business Assets .** Seller shall sell, transfer, convey, assign and deliver to the Purchaser and Purchaser shall purchase from the Seller subject to the terms and conditions set forth in this Agreement, the following Described Property: Certain business assets and properties owned or utilized by Seller including but not limited to: Seller's Distributorship/Customer Organization , rights, and usage of intellectual property (including websites, and URLs), trademarks, and tradenames associated with the AB International, VORA-YUM , ABC, DEF, brands and product lines, certain product inventory (some to be purchased up front and some to be held on consignment-specific details to be listed in the "Schedule of Property") all of which are required to represent itself as carrying on the Business in succession to Seller and the right to use any words indicating that the Business is so carried on.

**2. Purchase Price .** Seller shall receive from Purchaser certain fees as described below for the purchase of the Described Property.

A.) Royalties. Seller shall receive ten percent (10%), of the Net Sales from all members of Seller's Distributorship Organization for the first forty-eight (48) months. Thereafter, Seller shall receive four percent (4%), of the Net Sales from all members of Seller's Distributorship Organization. Net Sales shall mean the gross invoiced sales price for all Products, Consignment Inventory and/or future manufactured products sold by Purchaser and its affiliates to third parties, less the following amounts:

(I) credits or allowances actually given or made for rejection of, and for uncollectible amounts on, or return of previously sold Products;

(2) any charges for freight, freight insurance, shipping, and other transportation costs;

(3) any tax, tariff, duty or governmental charge; and

(4) any import or export duties or their equivalent borne by the seller.

B.) Cash Bonus. Purchaser shall pay Seller a one-time bonus, to be paid upon achieving certain sales objectives within a 48 month time frame.

i. If sales volumes are at least $1,000,000 for 3 months, an additional $75,000 cash bonus will be payable.

ii. If sales volumes are at least $2,500,000 for 3 months, an additional $150,000 cash bonus will be payable.

iii. If Sales volumes are at least 3,000,000 for 3 months, a New Corvette or cash equiva lent bonus will be payable.

iv. If sales volume s are at least $5,000,000 for 3 months, an additional $1,000,000 cash bonus will be payable.

v. If Sales volumes are at least 6,000,000 for 3 months, a New Ferrari or cash equivalent bonus will be payable.

C.) Pre-payment for Inventory. Purchaser shall purchase one hundred and twenty-five thousand dollars ($125,000) worth of the remaining inventory from Seller. Within one hundred and twenty (120) days after the date of the first commercial sale of the Products, Purchaser shall pay Seller twenty-five thousand dollars ($25,000) for additional inventory. This specific payment shall be for second group of purchased Product identified in the Schedule of Property. Any sales shall first come from the pre-paid inventory and then from the rest of the inventory, which shall be on consignment at Sellers warehouse.

D.) Grandfather Provision. Seller shall be incorporated into the genealogy system for determining commissions within Purchaser's systems. Two Seller representatives (Martin Ferret and Travis Bagget) will be placed at the Fiji Double Diamond level. (Seller shall not be able to obtain any dream bonuses because of this Grandfather Provision. If Seller built out the structure to qualify for the dream bonuses, without the benefit of this Grandfather Provision, then such bonuses would be available to Seller.) This will enable Seller to receive regular commissions on the sales of distributors in Seller's downlines along with all distributors coming over as part of this Agreement. Each distributor will be in a like position as they were in the AB International structure. Commissions will be calculated using Purchaser's regular commission structure and at regular intervals.

**3. Payment of Purchase Price.** The purchase price, as provided in Paragraph 2, shall be paid by the Purchaser in the following manner:

A.) Fifteen days after the end of each calendar month commencing with the month after the Closing Date, Purchaser shall pay Seller the described percentage of such prior month's product sales attributable to Seller's distributor organization. Any such payment shall be past due if not received by Seller before the 301 day of such month.

B.) Cash Bonus will be analyzed at the end of each three month period. If Seller has achieved any level described in Paragraph 2, such amount associated with that level shall be paid to Seller within 30 days after the end of the three month block.

C.) With respect to the inventory, the Schedule of Property shall list out which products will be purchased for the amount noted in paragraph 2 above. This amount shall be paid by wire transfer, by Purchaser shortly after on the Closing Date upon confirmation that such inventory is being shipped to Purchaser. Seller shall ship this inventory and the entire remaining inventory to Purchaser on consignment, along with a list of such inventory shipped and the inventory cost. Fifteen days after the end of each calendar month commencing with the month after the Closing Date, Purchaser shall pay Seller the cost, as listed on the inventory provided to Purchaser, of all inventory sold the prior month which was on consignment. Each month, Purchaser shall also provide a monthly report of inventory sold and inventory remaining on hand.

D.) Commission payments shall follow Purchaser's regular business cycle, which currently is payment of commissions once per month on the fifteenth (l5th) of each month or next business day.

**4. Term.** The nature of this Agreement is to last for the life of Seller. However, the following issues may termination this Agreement if not cured within thirty (30) days and such cure must meet the approval of the offended party.

A.) If Seller materially breaches paragraphs 6, 7, 8, and/or 9, and is not cured to the approval of Purchaser, Purchaser shall be able to terminate this Agreement and completely retain the rights to Seller's products, inventory, distributor organization and other assets described within this Agreement.

B.) If Purchaser materially breaches paragraphs 6, 10, and/or 11, and is not cured to the approval of Seller, Seller shall be able to terminate this Agreement and recover such damages as described in this Agreement, including the ability to terminate this Agreement and completely retain the rights to Seller's products, inventory, distributor organization and other assets described within this Agreement.

**5. Closing.** Seller agrees to close this transaction no later than June 18, 2010. (the "Closing Date").

**6. Post-Closing Obligations of Seller/Purchaser.**

A.) Seller agrees to use its best efforts in assisting with the transition / transfer of the Seller's distributor/customer organization and records to Purchaser. After Closing, Seller agrees to refer all order and inquiries related to the subject matter of this Agreement to Purchaser. Seller further agrees to allow reasonable access to historic al financial information as necessary.

B.) Purchaser agrees to allow Seller reasonable access to its books and records for audit purposes of the net product sales attributable to the Seller's distributor organization. Purchaser agrees further to reasonably cooperate with Seller's request s for information. Seller shall notify Purchaser no less than ten (I0) business days prior to the date of its intended inspection of books and records. Such information shall be confidential and Seller shall not disseminate such information and may only use it for audit purposes.

C.) Purchaser agrees to use its best efforts to maintain and increase the sales of the Seller's distributor organization exclusively licensed from Seller. Purchaser further agrees not to materially alter, transfer, assign, or otherwise dispose of such distributor organization until payment in full and the maturity of this agreement.

D.) Purchaser shall use its best efforts to sell the inventory acquired from Seller and to prioritize the sale of such inventory.

E.) Purchaser and Seller acknowledge that Seller's Distributorship Organization, inventory, and the other assets constitute valuable assets to Purchaser. Purchaser and Seller therefore agree that during the term of this Agreement and for two (2) year period after this Agreement, Sellers shall not contract, utilize or attempt to utilize whether directly or indirectly, any portion of the either Seller's and/or Purchaser's Distributorship Organizations, if such action could have the effect of re-directing the resources and skills of such Distributors or Distributor ship Organizations. Such action would have serious and undeterminable financial ramifications that Seller could be held responsible for.

**7. Covenants of Seller.** Seller covenants that the assets being purchased by Purchaser can be legally acquired.

**8. Seller's Representations and Warranties.** Seller represents and warrants to Purchaser the following matters as of the date hereof, each of which shall also be true and complete as of the Closing Date as if made on the date of Closing, and each shall be deemed to be independently material:

A.) That Seller is a corporation duly organized, validly existing and in good standing under the laws of the state of Michigan. That all signatures to this Agreement have full corporate power to carry on the business as it is now being conducted and to enter into this Agreement on behalf of Seller and to bind Seller to the terms thereof.

B.) That the execution of this Agreement by Seller and its delivery to Purchaser have been duly authorized by Seller's Board of Directors and such Agreement and the execution and delivery thereof have been duly approved by all the holders of Seller's outstanding shares; and no further corporate action is necessary on Seller's part to make this Agreement valid and binding upon it in accordance with its terms.

C.) That Seller is neither a foreign corporation, foreign person, nor intermediary for a foreign corporation or foreign person, subject to withholding requirements of the Internal Revenue Service.

**9. Breach of Representations and Warranties.** In the event that any of the above representations or warranties are breached, then Purchase r shall have the right to recover its damages from Seller.

**10. Purchaser's Representations and Warranties.** Purchaser represents and warrants as follow, to - wit:

A.) That Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the state of California and has full corporate power to carry on its business as it is now being conducted and to enter into and fully perform its obligations under the term of this Agreement.

B.) That the proprietary information relating to the distributor organization made the subject of this Agreement shall remain confidential and neither Purchaser nor Seller shall release or otherwise disclose, except as required by Jaw, such information without the prior written consent of the other party.

**11. Default.** If Purchaser fails to timely pay or fails to perform any of Purchasers obligations or breaches any of Purchasers representations or warranties , Seller may recover its damages, elect to rescind this Agreement and/or seek any and all equitable or legal remedies available.

**12. Other Documents.** Seller further agrees to execute and deliver to Purchase r all deeds, assignments, documents of title, and other instruments which may be necessary to effect the transfer of the assets and properties described in this Agreement.

**13. Notices.** Any notice, request, demand, instruction or other communication to be given to either party hereunder, except for those required to be delivered at Closing, shall be in writing and shall be deemed to be delivered upon the earlier of actual-receipt (whether by hand delivery or delivery service) or upon deposit with the U.S. Postal Service, registered or certified mail, postage prepaid, return receipt requested, and addressed as follows:

If to Seller: FDAKG Holdings, INC Attn: Martin Ferret ,Address, U.S.A.

If to Purchaser:

Globaiuve Attn: Brent Konig ,Address, U.S.A.

**14. Governing Law / Jurisdiction.** This Agreement is being executed and delivered, and is intended to be performed, in the State of California, and the laws of such State shall govern the validity, construction, enforcement and interpretation of this Agreement unless otherwise specified herein.

**15. Entirety and Amendments.** This Agreement and the Exhibits attached hereto embody the entire agreement between the parties and supersedes all prior agreements and understandings, if any, relating to the Subject Property and may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought. Further, the prevailing party in any litigation between the parties shall be entitled to recover, as a part of its judgment reasonable attorney's fees.

**16. Invalid Provisions.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provisions shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of the Agreement. The remaining provisions of the Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement. Furthermore , in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid or enforceable.

**17. Parties Bound.** This Agreement shall be binding upon and inure to the benefit of Purchaser and Seller and their respective heirs, personal representatives, successors and assigns.

**18. Further Acts.** In addition to the acts recited in this Agreement to be perforn1ed by Seller and Purchaser, Purchaser and Seller agree to perform or cause to be performed at or after Closing any and all such further acts as may be reasonably necessary to consummate the sale contemplated hereby.

**19. Third Party Beneficiaries.** The rights, privileges, benefits and obligations arising under or created by this Agreement are intended to apply to and shall only apply to Purchaser and Seller and no other persons or entities.

**20. Purchaser's Authority.** The person executing this Agreement on behalf of Purchaser warrants to Seller that he has the Authority to execute this Agreement on behalf of Purchaser and to bind Purchaser pursuant to the terms hereof.

**21. Effective Date.** The effective date of this Agreement shall be the date this Agreement is executed by both Seller and Purchaser. Reference s to "Date of Agreement" are to the effective date.

**22. Captions.** The captions herein contained are for the purpose of identification only and shall not be considered in construing this Agreement.

**23. Time is of Essence.** Time is of the essence of this Agreement and each and every provision hereof.

**24. Survivability.** This Agreement shall be binding upon and inure to the benefit of Purchaser and Seller and their respective heirs, legal representatives, successors, and assigns. In the event of change of ownership or management of either party, this Agreement will remain in full force and effect upon the successors of either Purchaser and/or Seller.

**25. Assignment.** Purchaser may assign its right, title and interest in and to the agreement to any person or entity, upon approval of Seller.

**26. Arbitration / Attorney's fees.** Any controversy or claim arising out of or related to this Agreement or its subject matter, or the breach thereof, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA"), but not administered by the AAA, before a panel of three Arbitrators whose compensation therefore shall be set by agreement of the parties should such proceeding become necessary. The panel shall be selected by each party selecting one neutral arbitrator and the persons thus selected shall select a third arbitrator who may not be a person suggested by either party. Judgment upon the award rendered by the arbitrator may be entered in any Court having jurisdiction thereof. Any Arbitration shall be conducted in San Diego, California. The non-prevailing party in any cause of action brought hereunder, pursuant hereto, or in connection herewith, inclusive without limitation of an act ion for declaratory or equitable relief, shall be liable for the reasonable attorney's fees, expenses and costs of suit incurred by the prevailing party therein.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed on the date and year first above written.

BUYER: Uni-Iuve Corporation, DBA Globaiuve, a California corporation

By: |s|Brent Konig Name: Brent Konig Title: General Manager

SELLER: FDAKG Holdings, Inc. A Michigan Corporation

By: |s|Martin Ferret Name: Martin Ferret Title: CEO

**APA #39**

**ASSET PURCHASE AGREEMENT**

THIS ASSET PURCHASE AGREEMENT (the Agreement) is entered into as of this XX day of XXXXXX 20XX, by and between VISTAZOO, INC., a Delaware corporation (Vistazoo), VISTAZOO (ASIA PACIFIC) LIMITED, a company organized under the laws of Hong Kong and a wholly-owned subsidiary of Vistazoo (Seller), and CORAL CAPITAL INC., a Cayman Islands corporation (Coral), for itself and for the benefit of a subsidiary of Coral to be formed for the purpose of completing the transactions described herein (Buyer) (provided, that Buyer shall execute, deliver and become a party to this Agreement at Closing). Capitalized terms are defined in Article I.

**RECITALS**

A. The Buyer desires to purchase the Purchased Assets from Seller and to assume the Assumed Liabilities, on the terms and conditions set forth herein; and

B. Seller desires to sell the Purchased Assets and to assign the Assumed Liabilities to Buyer, on the terms and conditions set forth herein; and

C. Coral, for the benefit of a company organized under the laws of Japan which will be a wholly-owned subsidiary of Coral (the Japan Affiliate), is entering into an Asset Purchase Agreement (the Japan Purchase Agreement), dated as of the date hereof, pursuant to which the Japan Affiliate will acquire the Purchased Assets referred to therein (the Japan Purchased Assets) and will assume the Assumed Liabilities referred to therein; and

D. Vistazoo, which is the parent company of the Seller, will enter into additional agreements, as of Closing, with Coral, the Buyer and the Japan Affiliate, relating to the transactions provided for herein and in the Japan Purchase Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants, representations, warranties, conditions, and agreements hereinafter expressed, the Parties agree as follows:

**ARTICLE I**

**DEFINITIONS**

Without limiting the effect of any other terms defined in the text of this Agreement, the following words shall have the meaning given them in this Article I:

1.1 Acquisition Proposal has the meaning set forth in Section 6.8(a).

1.2 Affiliate means, with respect to any Person, any Person which is controlling, controlled by, or under common control with, directly or indirectly through any Person, the Person referred to, and, if the Person referred to is a natural person, any member of such Persons immediate family. The term control (including, with correlative meaning, the terms controlled by and under common control with) as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

1.3 Agreement means this Agreement as executed on the date hereof and as amended or supplemented in accordance with the terms hereof, including all Schedules and Exhibits hereto, as attached hereto at the time of signing and as subsequently updated or amended by Vistazoo, subject to approval, in their sole discretion, by Coral or the Buyer of such updates or amendments.

1.4 Asia Pacific Business means the Business referred to herein and the Business referred to in the Japan Purchase Agreement, collectively.

1.5 Assumed Contracts means those Contracts to which Seller is a party or by which it is bound as of the Effective Time and which are exclusively related to the Business. For the avoidance of doubt, the Assumed Contracts include all of those Contracts listed on Section 1.5 and Section 3.7 of the Disclosure Schedules.

1.6 Assumed Liabilities means all of the debts, liabilities and obligations of Seller as of the Effective Time listed on Section 1.6 of the Disclosure Schedules or arising out of or pertaining to the Assumed Contracts.

1.7 Arbitrator shall have the meaning Section 10.9.

1.8 Accounting Firm shall have the meaning Section 2.4(c).

1.9 Business means the business of publishing travel and entertainment offers from various travel and entertainment companies by means of the internet, email newsletter and alert services and similar media, in the Territory, as such business has been conducted by Seller and the Seller Subsidiaries, but not including the business related to the xx.com website and domain name.

1.10 Business Day means any day which is not a Saturday, Sunday or a legal holiday in the State of New York, United States of America.

1.11 Buyer has the meaning set forth in the preamble.

1.12 Closing means the consummation of the transactions contemplated by this Agreement, as provided for in Section 2.3.

1.13 Closing Balance Sheet has the meaning set forth in Section 2.4(a).

1.14 Closing Date means such date as shall be mutually agreed upon by the Parties (which shall in any event be within five (5) Business Days from the satisfaction or waiver of all applicable conditions to Closing set out herein).

1.15 Code means the United States Internal Revenue Code of 1986, as amended.

1.16 Contract means any contract, agreement, lease, indenture, mortgage, deed of trust, evidence of indebtedness, binding commitment or instrument to which Seller or the Seller Subsidiaries (in respect of the Business) is a party or by which it is bound.

1.17 Effective Time means the effective time of the Closing, which shall be deemed to be as of 11:59 p.m. Hong Kong Time on the Closing Date.

1.18 Employee means any person that is a full-time employee of the Business working for Seller or the Seller Subsidiaries on the Closing Date.

1.19 Encumbrances means mortgages, liens, charges, claims, security interests, easements or other encumbrances.

1.20 Excluded Assets means all of the assets, properties, rights and interests of Seller listed in Section 1.20 of the Disclosure Schedule.

1.21 Excluded Liabilities means those debts, liabilities and obligations of Seller listed on Section 1.21 of the Disclosure Schedules.

1.22 Excluded Party has the meaning set forth in Section 6.8(b).

1.23 GAAP means generally accepted accounting principles in the United States.

1.24 Hosting Agreement has the meaning set forth in Section 7.5(d).

1.25 Indemnifying Party has the meaning set forth in Section 9.3.

1.26 Indemnity Basket has the meaning set forth in Section 9.6(a).

1.27 Indemnity Cap has the meaning set forth in Section 9.6(c).

1.28 Injured Party has the meaning set forth in Section 9.3.

1.29 Intellectual Property means patents, inventions, designs, models, know-how, trade secrets, trademarks, trade dress, service marks, copyrights, business names, source codes, domain names and other material business identifiers, registrations and applications and all renewals of the foregoing and rights to apply for any of the foregoing, and all the goodwill associated therewith, and rights to sue or take any other action with respect to any past or future infringement, misappropriation, dilution or other violation of any rights with respect to the foregoing. This term does not include non-proprietary information, know-how or processes otherwise available to the industry or public, or rights obtained pursuant to licenses associated with software and other intellectual property generally made available for purchase or use by industry or the public.

1.30 IRS means the United States Internal Revenue Service.

1.31 Japan Affiliate has the meaning set forth in the Recitals.

1.32 Japan Purchase Agreement has the meaning set forth in the Recitals.

1.33 Japan Purchased Assets has the meaning set forth in the Recitals.

1.34 Law or Laws means any statute, law, ordinance, decree, order, injunction, rule, directive, or regulation of any government or quasi-governmental authority, and includes rules and regulations of any regulatory or self-regulatory authority compliance with which is required by law, in effect on the date hereof in the Territory.

1.35 License Agreement has the meaning set forth in Section 7.5(b).

1.36 Loss or Losses means each and all of the following items to the extent actually paid or incurred: losses, liabilities, damages, judgments, fines, costs, penalties, amounts paid in settlement and reasonable out-of-pocket costs and expenses incurred in connection therewith (including, without limitation, costs and expenses of suits and proceedings, and reasonable fees and disbursements of counsel), but net of any insurance proceeds received or receivable by the Injured Party with respect to such Losses, and net of any tax benefit received or receivable by the Injured Party in respect of such Losses. Notwithstanding anything to the contrary herein, in no event shall special, speculative, incidental, punitive, indirect or consequential damages or damages for lost profits be deemed to be Losses, except that the foregoing exclusion shall not apply to the extent such items are included in a third-party claim.

1.37 Material Adverse Effect means a material adverse effect on the assets, business, financial condition or results of operations of the Business taken as a whole.

1.38 Net Working Capital has the meaning set forth in Section 2.4(a).

1.39 Notice of Claim has the meaning set forth in Section 9.3.

1.40 Notice of Dispute has the meaning set forth in Section 2.4(b).

1.41 Notice of Intent to Exercise has the meaning set forth in Section 5.9(d).

1.42 Notice Period has the meaning set forth in Section 6.8(e).

1.43 Option Agreement means the Option Agreement, dated this date, between Coral and Vistazoo, relating to, among other things, the Purchased Assets and the Buyer.

1.44 Ordinary Course means, with respect to the Business, the ordinary course of commercial operations customarily engaged in by Seller or the Seller Subsidiaries with respect to the Business and consistent with past or current practice.

1.45 Party means Seller or the Buyer, and Parties means both of them.

1.46 Person means an individual, general or limited partnership, corporation (including any non-profit corporation), business trust, limited liability company, limited liability partnership, joint stock company, estate, trust, association, organization, unincorporated association, joint venture or other entity.

1.47 Permitted Encumbrances means, collectively, (a) Encumbrances that are disclosed in the Disclosure Schedules, (b) liens for Taxes, fees, levies, duties or other governmental charges of any kind which are not yet delinquent or are being contested in good faith by appropriate proceedings, (c) liens for mechanics, materialmen, laborers, employees, suppliers or similar liens arising by operation of Law which are not material to the Business as a whole, (d) rights or liens of any lessors with respect to any of the leased real property or leased personal property and (e) in the case of real property, and only to the extent such items do not materially and adversely impact the operation of such real property in the Ordinary Course, any matters, restrictions, covenants, conditions, limitations, rights, rights of way, encumbrances, encroachments, reservations, easements, agreements and other matters of record, such state of facts of which an accurate survey or inspection of the property would reveal, and the provisions of any Law.

1.48 Post-Closing Periods means all taxable periods of Seller commencing after the Effective Time and the portion of any Straddle Period ending after the Effective Time.

1.49 Pre-Closing Periods means all taxable periods of Seller ending on or before the Effective Time and the portion of any Straddle Period commencing prior to the Effective Time.

1.50 Purchase Price has the meaning set forth in Section 2.2.

1.51 Purchased Assets means the assets owned by Seller listed in Section 1.51 of the Disclosure Schedules, and all other assets of the Seller other than the Excluded Assets.

1.52 Referral Agreement has the meaning set forth in Section 7.5(e).

1.53 Records has the meaning set forth in Section 6.3.

1.54 Representatives means directors, officers, employees, Affiliates, investment bankers, attorneys, accountants and other advisors or representatives.

1.55 Seller has the meaning set forth in the preamble.

1.56 Seller Subsidiaries means, collectively, the following entities, all of which are direct or indirect wholly-owned subsidiaries of Seller, and whose shares and other equity ownership interests are included within the Purchased Assets hereunder: (i) Vistazoo (Australia) Pty Limited; (ii) Vistazoo (Hong Kong) Limited; (iii) Vistazoo China Limited; and (iv) Beijing Vistazoo Travel Information Technology Limited.

1.57 Solicitation Period End-Date has the meaning set forth in Section 6.8(a).

1.58 Straddle Period means any taxable period of Seller that begins before and ends after the Effective Time.

1.59 Superior Proposal has the meaning set forth in Section 6.8(c).

1.60 Tax or Taxes means all material taxes, charges, fees, levies, or other like governmental assessments applicable to the Business in the countries in which it operates, including, without limitation, all material federal, possession, state, city, county and foreign (or governmental unit, agency, or political subdivision of any of the foregoing) income, profits, employment (including unemployment insurance and employee income tax withholding), franchise, gross receipts, sales, use, transfer, stamp, occupation, property, capital, severance, premium, windfall profits, tariff, customs, duties, ad valorem, value-added and excise taxes, and any other governmental charges of the same or similar nature; and all penalties, additions to tax and interest relating to any such taxes, premiums or charges. Any one of the foregoing Taxes shall be referred to sometimes as a Tax.

1.61 Tax Returns means all returns, reports, estimates, declarations, claims for refund, information returns or statements relating to, or required to be filed in connection with any Taxes, including any schedule or attachment thereto, and including any amendment or supplement thereof.

1.62 Territory means all countries located in those time zones that are more than five (5) hours ahead of Greenwich Mean Time, based on Standard time, including, without limitation, India and Pakistan, but excluding Russia.

1.63 Total Current Assets means total current assets plus deposits, less current portion as such line items are defined and reported on Sellers consolidated balance sheet in the Ordinary Course and determined in accordance with GAAP.

1.64 Total Current Liabilities means total current liabilities plus deferred rent plus commitments and contingencies as such line items are defined and reported on Sellers consolidated balance sheet in the Ordinary Course and determined in accordance with GAAP.

1.65 Transition Services Agreement has the meaning set forth in Section 7.5(g).

1.66 Vistazoo has the meaning set forth in the preamble.

1.67 Voting Agreement has the meaning set forth in Section 7.5(f).

**ARTICLE II**

**PURCHASE AND SALE OF THE BUSINESS**

2.1 Transfer of Assets and Liabilities. Upon the terms and subject to the conditions of this Agreement, at the Closing and as of the Effective Time:

(a) Seller shall sell, assign, transfer and convey to the Buyer, and the Buyer shall purchase, acquire and accept from Seller, all of Sellers right, title and interest in and to the Purchased Assets, free and clear of all Encumbrances other than Permitted Encumbrances; and

(b) Buyer shall assume all of the obligations of Seller in respect of the Assumed Liabilities.

2.2 Consideration. The consideration that the Buyer shall pay Seller for the Purchased Assets and other rights of the Buyer hereunder shall be XX Million Dollars ($XX,000,000.00 US)(the Purchase Price ), subject to adjustment as provided in Section 2.4 of this Agreement.

2.3 Closing. The Closing shall take place at 9:00 a.m., United States Central Time, on the Closing Date at the offices of XXXXX in St. Louis, Missouri, or at such other place or time, or in such other method (including via email or other electronic transmission), as the Parties may agree in writing. At Closing, Seller shall deliver or cause to be delivered to the Buyer possession of the Purchased Assets and the documents and other items identified in Article VII, and the Buyer shall deliver to Seller (a) by wire transfer of immediately available funds, in accordance with the wire transfer instructions set forth on Schedule 2.3, the Purchase Price and (b) the documents and other items identified in Article VIII.

2.4 Purchase Price Adjustment.

(a) Promptly after the Closing Date, and in any event not later than thirty (30) calendar days following the Closing Date, Buyer shall prepare, or cause to be prepared, and deliver to Seller a consolidated balance sheet of Seller and the Seller Subsidiaries as of the Effective Time (the Closing Balance Sheet). Such Closing Balance Sheet shall be accompanied by a statement calculating the Net Working Capital, which shall be the Total Current Assets of the Business minus the Total Current Liabilities of the Business.

(b) Buyer shall permit Seller and its accountants to review promptly upon request all accounting records, work papers and computations used by Buyer in the preparation of such Closing Balance Sheet and the computation of Net Working Capital. If Seller disputes the Net Working Capital as calculated by Buyer, not more than forty-five (45) calendar days after the date Seller receive Buyers calculation thereof, Seller shall deliver to Buyer a notice of its objection to the Closing Balance Sheet (such notice to contain a statement of the basis of Sellers objection) (a Notice of Dispute ). Seller hereby waives the right to assert any objection with respect to the Closing Balance Sheet that is not asserted in the Notice of Dispute delivered to Buyer by Seller within forty-five (45) calendar days after the delivery of the Closing Balance Sheet. If Seller fails to deliver a Notice of Dispute within such forty-five (45) calendar day period, Seller shall be deemed to have accepted the Closing Balance Sheet as prepared by Buyer.

(c) Upon receipt of a Notice of Dispute, Buyer shall promptly consult with Seller in good faith with respect to their specified points of disagreement in an effort to resolve the dispute. If any such dispute cannot be resolved by Buyer and Seller within thirty (30) calendar days (or longer, as mutually agreed by the Parties) after Buyer receives the Notice of Dispute, the Parties shall refer the dispute to a national accounting firm in the United States, as agreed by the Parties (the Accounting Firm), as an arbitrator to finally determine, as soon as practicable, and in any event within twenty (20) calendar days after such reference, all points of disagreement with respect to the calculation of the Net Working Capital. If the Parties fail to select an Accounting Firm within the thirty (30) calendar day period or any Accounting Firm selected by them shall not have agreed to perform the services called for hereunder, the Accounting Firm shall thereupon be selected in accordance with the International Rules of the American Arbitration Association, with preference being given to any independent, national accounting firm in the United States that has no material relationship with any of the Parties. For purposes of such arbitration, each Party shall submit a proposed calculation of the Net Working Capital. The Accounting Firm shall decide only those matters in dispute, and may not assign a value to any item in dispute which is either higher or lower than the respective calculations for such item submitted by the parties. The Accounting Firm shall apply the terms of Section 2.4 of this Agreement, and shall otherwise conduct the arbitration under such procedures as the Parties may agree or, failing such agreement, under then prevailing International Rules of the American Arbitration Association. The fees and expenses of the arbitration and the Accounting Firm incurred in connection with the calculation of the Net Working Capital shall be shared equally by the Parties; provided, that such fees and expenses shall not include, so long as a Party complies with the procedures of this Section 2.4, the other Parties outside counsel or accounting fees. All determinations by the Accounting Firm shall be final, conclusive and binding with respect to the calculation of the Net Working Capital in the absence of fraud or manifest error.

(d) The Purchase Price shall be adjusted as follows, based on

(i) the Net Working Capital set forth on the Closing Balance Sheet finally determined under this Section 2.4 and

(ii) the Net Working Capital set forth on the Closing Balance Sheet finally determined under Section 2.4 of the Japan Purchase Agreement:

Seller shall pay to Buyer the amount by which the total Net Working

Capital set forth on both Closing Balance Sheets is less than XX Thousand Dollars ($XX,000 US), or Buyer shall pay to Seller the amount by which the total Net Working Capital set forth on both Closing Balance Sheets is greater than XX Thousand Dollars ($XX,000 US); provided that any such payment shall be allocated 55.6% to the Purchase Price hereunder and the remainder shall be allocated to the Purchase Price under the Japan Purchase Agreement. Any payment so required to be made by Buyer or Seller shall be by transfer of immediately available funds not more than five (5) Business Days after final determination thereof.

2.5 Taxes.

(a) All customs, sales, use, value-added, gross receipts, registration, stamp duty or other similar transfer Taxes incurred in connection with the transfer and sale of the Purchased Assets as contemplated by the terms of this Agreement, including all recording or filing fees, notarial fees and other similar costs of Closing, that may be imposed upon, or payable, collectible or incurred, shall be borne by the Buyer. The parties agree to furnish or cause to be furnished to each other, upon request, as promptly as practical, such information (including reasonable access to books and records) and assistance as is reasonably necessary in an effort to allow Buyer to minimize all such Taxes.

(b) Except as provided in Section 2.5(a), any Taxes with respect to the Purchased Assets or the Business for any Pre-Closing Periods shall be borne by Seller. The Buyer shall be responsible for any Taxes with respect to the Purchased Assets or the Business for any Post-Closing Periods and for any Taxes to the extent set forth in Section 2.5(a). All Taxes collected by Seller from third parties prior to the Effective Time, including, but not limited to, sales and use Taxes and all payroll withholding Taxes, including both employee and employer portions, shall be paid by Seller to the appropriate governmental authority.

(c) Property Taxes covering any Straddle Period shall be pro-rated between Seller and the Buyer based upon the number of days in the Straddle Period ending as of the Effective Time and number of days in the Straddle Period ending after the Effective Time, respectively. The portion of such Tax that relates to the portion of such Tax period ending as of the Effective Time shall be deemed to be the amount of such Tax for the entire Tax period multiplied by a fraction the numerator of which is the number of days in the Tax period ending as of the Effective Time and the denominator of which is the number of days in the entire Tax period.

(d) The Buyer and Seller agree to furnish or cause to be furnished to each other, upon request, as promptly as practical, such information (including reasonable access to books and records) and assistance as is reasonably necessary for the filing of any Tax Return, the conduct of any Tax audit, and for the prosecution or defense of any claim, suit or proceeding relating to any Tax matter. The Buyer and Seller shall cooperate with each other in the conduct of any Tax audit or other Tax proceedings and each shall execute and deliver other documents as are reasonably necessary to carry out the intent of this Section 2.5(d). Any Tax audit or other Tax proceeding shall be deemed to be a third party claim subject to the procedures set forth in Section 9.4 of this Agreement.

(e) The Buyer shall promptly pay or shall cause prompt payment to be made to Seller of all refunds of Taxes and interest thereon received by, or credited against any Tax liability of the Buyer or any Affiliate of the Buyer attributable to Taxes paid by Seller or its Affiliates with respect to any Pre-Closing Period. Seller shall promptly pay or shall cause prompt payment to be made to Buyer of all refunds of Taxes and interest thereon received by, or credited against any Tax liability of Seller or any Affiliate of the Seller attributable to Taxes paid by Buyer or its Affiliates with respect to any Post-Closing Period.

2.6 Allocation of Purchase Price. Within ninety (90) calendar days following the Closing, the Parties shall mutually agree to an allocation of the Purchase Price among the Purchased Assets. Seller and the Buyer shall report the acquisition of the Purchased Assets for all Tax purposes in a manner consistent with such allocation, and shall take no position inconsistent therewith or contrary thereto, unless required by Law. The allocation may not be amended or changed without the mutual written consent of the Parties. The Buyer and Seller hereby agree and acknowledge that such allocation shall be made in accordance with Section 1060 of the Code and the regulations thereunder.

2.7 Completion of Transfers.

(a) The entire beneficial interest in and to, and the risk of loss with respect to, the Purchased Assets, shall, regardless of when legal title thereto shall be transferred to the Buyer, pass to the Buyer at Closing as of the Effective Time. All operations of the Business shall be for the account of Seller up to and including the Effective Time and shall be for the account of the Buyer thereafter. In the event legal title to any of the Purchased Assets or the Assumed Liabilities is not transferred at Closing, Seller shall hold such Purchased Assets or Assumed Liabilities as nominee for the Buyer until completion of such transfers.

(b) In the event that the legal interest in any of the Purchased Assets or the Assumed Liabilities to be sold, assigned, transferred or conveyed pursuant to this Agreement, or any claim, right or benefit arising thereunder or resulting therefrom cannot be sold, assigned, transferred or conveyed hereunder as of the Closing Date because any waiting or notice period has not expired or any consents or approvals required for such sale, assignment, transfer or conveyance have not been obtained or waived, then the legal interest in such Purchased Assets or Assumed Liabilities shall not be sold, assigned, transferred or conveyed unless and until such waiting or notice period shall have expired or until approval, consent or waiver thereof is obtained. In such event, Seller, at its expense, and the Buyer shall and shall cause its designated Affiliates, at their expense, to use commercially reasonable efforts to cooperate in obtaining such consents or approvals as may be necessary to complete such transfers as soon as practicable. Except as provided in Section 7.2, the failure of Seller to obtain any required consents or approvals prior to Closing shall not affect the Buyers obligations to close under this Agreement or to pay, or cause to be paid, the Purchase Price. Nothing in this Agreement shall be construed as an attempt to assign to the Buyer any legal interest in any of the Purchased Assets or the Assumed Liabilities which, as a matter of Law or by the terms of any legally binding contract, engagement or commitment to which Seller is subject, is not assignable without the consent of any other Party, unless such consent shall have been given.

(c) Pending the assignments, conveyances and transfers referred to in Section 2.7(b), Seller shall hold any such non-assigned, non-conveyed and non-transferred Purchased Assets or Assumed Liabilities for the benefit and at the risk of the Buyer and shall cooperate with the Buyer in any Lawful and reasonable arrangements designed to provide the benefits of ownership thereof to the Buyer.

2.8 Excluded Liabilities. Seller acknowledges that the Excluded Liabilities are the obligations of Seller and not of the Buyer, and the Buyer is not assuming any of the Excluded Liabilities under the terms of this Agreement.

2.9 Further Assurance. From and after the Closing, the Parties shall do such acts and execute such documents and instruments as may be reasonably required to make effective the transactions contemplated hereby.

**ARTICLE III**

**REPRESENTATIONS AND WARRANTIES OF SELLER AND VISTAZOO**

Seller hereby makes the representations and warranties set forth in Sections 3.1 through 3.13, each of which is true and correct on the date hereof and as of the Closing Date, and which shall survive the Closing Date and the transactions contemplated hereby to the extent set forth herein. Vistazoo hereby makes the representations and warranties set forth in Sections 3.13 through 3.15, each of which is true and correct on the date hereof and as of the Closing Date, and which shall survive the Closing Date and the transactions contemplated hereby to the extent set forth herein.

3.1 Seller and Seller Subsidiaries Existence and Power.

(a) Seller has the corporate power and authority to execute and deliver this Agreement, to perform its obligations hereunder, and to consummate the transactions contemplated hereby. Seller has the corporate power and authority to transfer the Purchased Assets and to consummate the transactions contemplated hereby.

(b) Seller is duly organized, validly existing and in good standing under the laws of Hong Kong. The Seller Subsidiaries are each duly organized, validly existing and in good standing under the laws of their respective jurisdictions of formation or organization, and are duly qualified in each jurisdiction where the conduct of their Business so requires except where the failure to be so qualified would not have a Material Adverse Effect.

(c) Seller and the Seller Subsidiaries are not a party to, subject to or bound by any material Contract (including the Assumed Contracts), Encumbrance, Law or organizational document (i.e. articles, charters, bylaws, operating agreements, shareholders agreements and other similar agreements, documents and instruments) which would

(i) be breached or violated or their obligations thereunder accelerated or increased (whether or not with notice or lapse of time or both) in any material respect by the execution or delivery by Seller of this Agreement or the performance by Seller of the transactions contemplated by this Agreement, or

(ii) prevent the carrying out of the transactions contemplated hereby.

Except as set forth on Section 3.1 of the Disclosure Schedule or otherwise provided for herein, no permit, consent (including any consent with respect to the Assumed Contracts), waiver, approval or authorization of, or declaration to or filing or registration with, any governmental or regulatory authority or third party is required in connection with the execution, delivery or performance of this Agreement by Seller or the consummation by Seller of the transactions contemplated hereby, except for any such permits, consents, waivers, approvals, authorizations, declarations, filings or registrations the failure of which to obtain does not have and will not have a Material Adverse Effect. The transactions contemplated hereby will not result in the creation of any material Encumbrance against the Purchased Assets.

(d) Seller and the Seller Subsidiaries each has the power and authority to own, lease and use its assets and to transact the business in which it is engaged, and each holds all material authorizations, franchises, licenses and permits required therefor.

3.2 Seller Valid and Enforceable Agreement; Authorization. This Agreement has been duly executed and delivered by Seller and constitutes a legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except that such enforcement may be subject to (i) bankruptcy, insolvency, reorganization, moratorium or other similar Laws affecting or relating to enforcement of creditors rights generally, and (ii) general principles of equity. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized, approved and ratified by all necessary corporate action on the part of Seller.

3.3 Ownership and Capitalization of Seller Subsidiaries. Seller directly or indirectly owns all of the issued and outstanding stock or other equity interests of the Seller Subsidiaries, all of which stock or other equity interests are duly authorized, validly issued, fully paid and non-assessable, and all of which are solely owned beneficially and of record by Seller (provided, that Beijing Vistazoo Travel Information Technology Limited is solely owned beneficially and of record by Vistazoo China Limited). There are no options, warrants, calls, commitments, convertible securities (debt, equity or otherwise), rights (including conversion, preemptive, participation or stock appreciation rights) or agreements relating to the stock or other equity interests of the Seller Subsidiaries. Seller has no other subsidiaries, other than the Seller Subsidiaries as described herein.

3.4 Taxes. Except as set forth on Section 3.4(a) of the Disclosure Schedules, all Tax Returns in respect of Pre-Closing Periods required to be filed with respect to the Purchased Assets or the Seller Subsidiaries have been filed in a timely manner (taking into account all extensions of due dates) and all Taxes for Pre-Closing Periods affecting the Purchased Assets or the Seller Subsidiaries (other than Excluded Liabilities), that are due and payable have been paid. No deficiencies for any Taxes (including penalties and interest) in respect of Purchased Assets or the Seller Subsidiaries have been asserted or assessed in writing which remain unpaid and which would have a Material Adverse Effect.

3.5 Litigation. Except as set forth on Section 3.5 of the Disclosure Schedules, there are no material actions, suits or proceedings pending or, to Sellers knowledge, threatened against Seller or the Seller Subsidiaries (in respect of the Business). Seller and the Seller Subsidiaries (in respect of the Business) are not subject to any order, judgment, writ, injunction or decree of any court or governmental or regulatory authority or body (excluding any such matters of general applicability or applicable to entities situated similarly to Seller or the Seller Subsidiaries rather than to them specifically).

3.6 Condition of Real and Personal Property.

(a) All of the leased real property which are material to the conduct of the Business have been maintained in reasonable condition in the Ordinary Course in a manner consistent with past maintenance practices of the Business.

(b) All tangible personal property which is material to the conduct of the Business has been maintained in reasonable operating condition and repair, in the Ordinary Course in a manner consistent with past maintenance practices of the Business.

3.7 Contracts.

(a) Section 3.7 sets forth a list (including all amendments) of all (i) Assumed Contracts and (ii) Contracts of the Seller Subsidiaries, which require payments by Seller, the Seller Subsidiaries or another party thereto in excess of $10,000 during any calendar year or which are otherwise material to the Business (such listed Contracts being referred to as the Material Contracts).

(b) The terms of all Material Contracts have been complied with in all material respects by Seller, the Seller Subsidiaries and, to Sellers knowledge, by the other parties to such Material Contract. The Material Contracts are in full force and effect, and Seller and the Seller Subsidiaries have not waived any of their material rights thereunder.

(c) Neither the Seller nor the Seller Subsidiaries have given or received any written notice of any intention to terminate, repudiate or disclaim any Material Contract.

3.8 Title. Seller is the sole owner of all right, title and interest in and to the Purchased Assets. Each of the Seller Subsidiaries is the sole owner of all right, title and interest in and to the assets, rights and properties that it purports to own.

3.9 Licenses and Permits. Except as set forth on Section 3.9 of the Disclosure Schedules, Seller and the Seller Subsidiaries (in respect of the Business) have all governmental permits, licenses and authorizations necessary under Law for the conduct of the Business as presently conducted in the Ordinary Course, and all such permits, licenses and authorizations are valid and in full force and effect in all material respects. Seller and the Seller Subsidiaries are, and at all times have been, in compliance in all material respects with the terms and requirements of all such permits, licenses and authorizations. Neither Seller nor and the Seller Subsidiaries have received any notice of any revocation or non-renewal of such permits, licenses and authorizations.

3.10 Compliance with Laws. Except as set forth on Section 3.10 of the Disclosure Schedules, Seller and the Seller Subsidiaries (in respect of the Business) are in compliance in all material respects with all applicable Laws, rules and regulations currently in effect.

3.11 Labor Matters.

(a) Except as set forth on Section 3.11 of the Disclosure Schedule, there are no material controversies existing, pending or, to Sellers knowledge, threatened with any association or union or collective bargaining representative of the Employees of the Business.

(b) Except as set forth on Section 3.11 of the Disclosure Schedule, there is no charge or complaint relating to unfair labor practice pending against Seller or the Seller Subsidiaries (in connection with its operation of the Business), nor is there any labor strike, work stoppage, grievance or other labor dispute pending or, to Sellers knowledge, threatened against Seller or the Seller Subsidiaries in relation to the Business.

3.12 Intellectual Property Matters. All domain names and web site addresses included in the Intellectual Property have been registered in the name of Seller or the Seller Subsidiaries, as applicable, and are in compliance in all material respects with all formal legal requirements.

3.13 Brokers, Finders. No finder, broker, agent, or other intermediary acting on behalf of Seller or Vistazoo is entitled to a commission, fee, or other compensation in connection with the negotiation or consummation of this Agreement or any of the transactions contemplated hereby.

3.14 Vistazoo Existence and Power.

(a) Vistazoo has the corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder.

(b) Vistazoo is duly organized, validly existing and in good standing under the laws of the State of Delaware, United States of America.

(c) Vistazoo is not a party to, subject to or bound by any material Contract, Encumbrance, Law or organizational document which would

(i) be breached or violated or its obligations thereunder accelerated or increased (whether or not with notice or lapse of time or both) in any material respect by the execution or delivery by it of this Agreement or the performance by Seller of the transactions contemplated by this Agreement, or

(ii) prevent the carrying out of the transactions contemplated hereby. Except as set forth on Section 3.14 of the Disclosure Schedule or otherwise provided for herein, no permit, consent, waiver, approval or authorization of, or declaration to or filing or registration with, any governmental or regulatory authority or third party is required in connection with the execution, delivery or performance of this Agreement by Vistazoo.

3.15 Vistazoo Valid and Enforceable Agreement; Authorization. This Agreement has been duly executed and delivered by Vistazoo and constitutes a legal, valid and binding obligation of Vistazoo, enforceable against Vistazoo in accordance with its terms, except that such enforcement may be subject to (i) bankruptcy, insolvency, reorganization, moratorium or other similar Laws affecting or relating to enforcement of creditors rights generally, and (ii) general principles of equity. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized, approved and ratified by all necessary corporate action on the part of Vistazoo.

3.16 No Other Representations or Warranties. Except for the representations and warranties contained in this Article III, neither Seller, Vistazoo nor any other Person, makes any other express or implied representation or warranty on behalf of Seller, Vistazoo or any other Affiliate of Seller or Vistazoo with respect to the Business, the Purchased Assets, the Assumed Liabilities or otherwise with respect to the subject matter of this Agreement.

**ARTICLE IV**

**REPRESENTATIONS AND WARRANTIES OF BUYER**

The Buyer hereby makes the following representations and warranties to Seller, each of which is true and correct as of the Closing Date, and which shall survive the Closing Date and the transactions contemplated hereby to the extent set forth herein.

4.1 Existence and Power.

(a) The Buyer has the corporate power and authority to enter into this Agreement, to perform its obligations hereunder, and to consummate the transactions contemplated hereby.

(b) The Buyer is duly incorporated, validly existing and in good standing under the laws of Hong Kong.

(c) The Buyer is not a party to, subject to or bound by any material Contract, Encumbrance, Law or organizational document (i.e. articles, charters, bylaws, operating agreements, shareholders agreements and other similar agreements, documents and instruments) which would prevent Buyer from performing its obligations hereunder or consummating the transactions contemplated hereby. Except as set forth on Section 4.1 of the Disclosure Schedules or otherwise provided for herein, no permit, consent, waiver, approval or authorization of, or declaration to or filing or registration with, any governmental or regulatory authority or third party is required in connection with the execution, delivery or performance of this Agreement by the Buyer or the consummation by the Buyer of the transactions contemplated hereby, except for any such permits, consents, waivers, approvals, authorizations, declarations, filings or registrations the failure of which to obtain does not have and will not have a material adverse effect on Buyers ability to perform its obligations hereunder or consummate the transactions contemplated hereby.

4.2 Valid and Enforceable Agreement; Authorization. This Agreement constitutes a legal, valid and binding obligation of the Buyer, enforceable against it in accordance with its terms, except that such enforcement may be subject to (i) bankruptcy, insolvency, reorganization, moratorium or other similar Laws affecting or relating to enforcement of creditors rights generally and (ii) general principles of equity. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized, approved and ratified by all necessary action on the part of the Buyer. The Buyer has full authority to enter into and deliver this Agreement, to perform its obligations hereunder, and to consummate the transactions contemplated hereby.

4.3 Brokers, Finders. No finder, broker, agent, or other intermediary acting on behalf of the Buyer is entitled to a commission, fee, or other compensation in connection with the negotiation or consummation of this Agreement or any of the transactions contemplated hereby.

4.4 Litigation. There are no actions, suits, proceedings, orders or investigations pending or threatened against the Buyer or any of the Buyers Affiliates, at Law or in equity, which if adversely determined would have a material adverse effect on the Buyers performance under this Agreement or the consummation of the transactions contemplated hereby. There are no injunctions, decrees or unsatisfied judgments outstanding against or related to the Buyer which would have a material adverse effect on the Buyers performance under this Agreement or the consummation of the transactions contemplated hereby.

4.5 Funds. The Buyer has, and at all times will have, sufficient funds on hand or available pursuant to unconditional commitments to pay the Purchase Price and any adjustment thereof.

4.6 No Knowledge of Breach of Seller Representation. As of the Closing, Buyer has no knowledge of any current, material breach by Seller of Sellers representations or warranties contained in this Agreement or any other agreements contemplated hereby. For purposes of this provision, Buyers knowledge means the actual knowledge at Closing of John Doe.

4.7 No Other Representations or Warranties. Except for the representations and warranties contained in this Article IV, neither the Buyer, nor any other Person, makes any other express or implied representation or warranty on behalf of the Buyer.

**ARTICLE V**

**REPRESENTATIONS AND WARRANTIES OF CORAL**

Coral hereby makes the following representations and warranties to Seller, each of which is true and correct on the date hereof and as of the Closing Date, and which shall survive the Closing Date and the transactions contemplated hereby to the extent set forth herein.

5.1 Existence and Power.

(a) Coral has the corporate power and authority to enter into this Agreement, to perform its obligations hereunder, and to consummate the transactions contemplated hereby.

(b) Coral is duly incorporated, validly existing and in good standing under the laws of the Cayman Islands.

(c) Coral is not a party to, subject to or bound by any material Contract, Encumbrance or Law or organizational document (i.e. articles, charters, bylaws, operating agreements, shareholders agreements and other similar agreements, documents and instruments) which would prevent Coral from performing its obligations hereunder or consummating the transactions contemplated hereby. Except as set forth on Section 5.1 of the Disclosure Schedules or otherwise provided for herein, no permit, consent, waiver, approval or authorization of, or declaration to or filing or registration with, any governmental or regulatory authority or third party is required in connection with the execution, delivery or performance of this Agreement by Coral or the consummation by Coral of the transactions contemplated hereby, except for any such permits, consents, waivers, approvals, authorizations, declarations, filings or registrations the failure of which to obtain does not have and will not have a material adverse effect on Corals ability to perform its obligations hereunder or consummate the transactions contemplated hereby.

5.2 Valid and Enforceable Agreement; Authorization. This Agreement constitutes a legal, valid and binding obligation of Coral, enforceable against it in accordance with its terms, except that such enforcement may be subject to (i) bankruptcy, insolvency, reorganization, moratorium or other similar Laws affecting or relating to enforcement of creditors rights generally and (ii) general principles of equity. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized, approved and ratified by all necessary action on the part of Coral. Coral has full authority to enter into and deliver this Agreement, to perform its obligations hereunder, and to consummate the transactions contemplated hereby.

5.3 Brokers, Finders. No finder, broker, agent, or other intermediary acting on behalf of Coral is entitled to a commission, fee, or other compensation in connection with the negotiation or consummation of this Agreement or any of the transactions contemplated hereby.

5.4 Litigation. There are no actions, suits, proceedings, orders or investigations pending or threatened against Coral or any of Corals Affiliates, at Law or in equity, which if adversely determined would have a material adverse effect on Corals performance under this Agreement or the consummation of the transactions contemplated hereby. There are no injunctions, decrees or unsatisfied judgments outstanding against or related to Coral which would have a material adverse effect on Corals performance under this Agreement or the consummation of the transactions contemplated hereby.

5.5 Funds. The Buyer has, and at all times will have, sufficient funds on hand or available pursuant to unconditional commitments to pay the Purchase Price and any adjustment thereof. Additionally, Coral will cause the Buyer and the Japan Affiliate to have, at the Closing Date, sufficient funds on hand, in an aggregate amount no less than XX Million Dollars ($XX,000,000.00 US), to execute their business plans with respect to the Purchased Assets and the Japan Purchased Assets.

5.6 No Knowledge of Breach of Seller Representation. As of the Closing, Coral has no knowledge of any current, material breach by Seller of Sellers representations or warranties contained in this Agreement or any other agreements contemplated hereby. For purposes of this provision, Corals knowledge means the actual knowledge at Closing of John Doe.

5.7 No Other Representations or Warranties. Except for the representations and warranties contained in this Article V, neither Coral, nor any other Person, makes any other express or implied representation or warranty on behalf of the Buyer.

**ARTICLE VI**

**ADDITIONAL COVENANTS OF THE PARTIES**

6.1 Conduct of Business Until Closing. Except as set forth on Schedule 6.1 or otherwise provided in this Agreement, or as Coral may otherwise consent to or approve in writing on and after the date hereof and prior to the Closing Date with respect to the Business, which consent shall not be unreasonably withheld, Seller agrees (in respect of the Business):

(a) (i) to conduct its business, operations, activities and practices in all material respects in accordance with past practice and (ii) to use commercially reasonable efforts to preserve its current business organization and existing business relationships and prospects in all material respects;

(b) neither to (i) change the overall character of the business, operations, activities and practices in any material way; nor (ii) except in the Ordinary Course, sell, lease, or grant any option to sell or lease, give a security interest in or otherwise create any Encumbrance (other than a Permitted Encumbrance) on any material part of its assets;

(c) not to sell, license or transfer any material Intellectual Property rights other than in the Ordinary Course;

(d) not to enter into any binding agreement or arrangement with the IRS (or any similar Tax authority), with respect to the Business, which relates to any period or periods after the Effective Time; or

(e) not to enter into any agreement (conditional or otherwise) to do any of the actions prohibited or restricted by any of the foregoing.

6.2 Access Pending Closing. Seller shall, at all reasonable times prior to Closing, make its facilities, properties, books and records (each in respect of the Business) available during normal business hours to the Buyer and Coral, their representatives, financial and legal advisors, lenders and auditors, and to furnish or cause to be furnished to such persons during such period all such information and data concerning the same as such persons may reasonably request. Notwithstanding the above, Seller may limit such access to the extent it reasonably deems necessary to avoid disruption of the Business.

6.3 Books and Records. From and after the Closing, the Buyer shall provide Coral, Seller and their Affiliates and their representatives with reasonable access, subject to customary restrictions and confidentiality obligations, for any reasonable purpose, including but not limited to (a) preparing Tax Returns or (b) defending any claim in respect of which a Notice of Claim has been served on Seller, during normal business hours, to all books and records related to the Purchased Assets, including, but not limited to, accounting and Tax records, sales and purchase documents, notes, memoranda, and any other electronic or written data ( Records ) pertaining or relating to the period prior to the Effective Time. To the extent deemed necessary by Seller and its Affiliates with respect to their other business operations, Seller and its Affiliates may retain copies of such Records prior to providing the originals to the Buyer, or, as soon as practicable after Closing, the Buyer shall provide to Seller and its Affiliates copies of all or any portion of such Records as requested by Seller and its Affiliates. Unless otherwise consented to in writing by Seller, the Buyer shall not, for a period of ten (10) years following the date hereof or such longer period as retention thereof is required by applicable Law, destroy, alter or otherwise dispose of (or allow the destruction, alteration or disposal of) any of the Records without first offering to surrender to Seller such Records.

6.4 Confidentiality; Announcements.

(a) The Buyer and Coral acknowledge that, in the course of their investigations of the Business, they and their representatives have and will become aware of confidential information and documents of the Business, and that their use of such confidential information and documents, or communication of such information to third parties, prior to Closing, could be detrimental to Seller or the Business. Each of the Buyer and Coral covenants that prior to Closing all information and documents concerning the Business reviewed by them or their representatives in connection with this Agreement or the transactions contemplated hereby and, following either Closing or termination of this Agreement, all such information and documents to the extent related to any of the Excluded Assets or the Excluded Liabilities and any confidential information known to the Buyer or Coral (including through any employee) with respect to other businesses operated by Seller or any of its Affiliates, shall be maintained in confidence and shall not be disclosed or used by the Buyer, Coral or their representatives without Sellers prior written consent, unless they can demonstrate that such information is

(i) otherwise publicly available,

(ii) required to be disclosed pursuant to judicial order, regulation or Law, or

(iii) required to be disclosed by the rules of a securities exchange on which the Buyer or Coral may from time to time be listed, or

(iv) disclosed to any Person that proposes to finance, in whole or in part, the Purchased Assets, solely for the purpose of permitting such party to evaluate the advisability of providing such financing.

With respect to information and documents related to the Business, at Sellers request in the event that the Closing shall not occur, and, with respect to information and documents related to the Excluded Assets, the Excluded Liabilities or other businesses operated by Seller or any of its Affiliates, as soon as practicable following Closing,

(i) the Buyer and Coral shall, and shall cause their representatives to (to the extent reasonably practicable with respect to information and documents related to Excluded Assets, the Excluded Liabilities or other businesses operated by Seller or any of its Affiliates should the Closing occur), promptly destroy all information and documents concerning the Business, the Excluded Assets, the Excluded Liabilities or other businesses operated by Seller or any of its Affiliates, as the case may be (including any copies thereof or extracts therefrom), and

(ii) the Buyer and Coral shall keep confidential and shall not use any such information or documents unless required to disclose such information or documents pursuant to judicial order, regulation or Law. In the event that the Buyer, Coral or any of their representatives becomes legally compelled to disclose any such information or documents as referred to in this paragraph, the Buyer shall provide Seller with prompt written notice before such disclosure, sufficient to enable Seller either to seek a protective order, at its expense, or other appropriate remedy preventing or prohibiting such disclosure or to waive compliance with the provisions of this Section 6.4 or both.

(b) Following the Closing, Seller shall maintain, and shall cause its Affiliates to maintain, in confidence any information it or they may have in relation to the Business, other than with respect to the Excluded Assets and the Excluded Liabilities, and such information shall not be disclosed or used by Seller or its Affiliates without the Buyers prior written consent, unless such information is

(i) otherwise publicly available (except as a result of a breach hereof by Seller or its affiliates),

(ii) required to be disclosed pursuant to judicial order, regulation or Law or

(iii) required to be disclosed by the rules of the NASDAQ Global Select Market or any other applicable exchange or quotation system.

In the event that Seller or any of its Affiliates or representatives become legally compelled to disclose any such information or documents as referred to in this paragraph, Seller shall, to the extent reasonably practicable, provide the Buyer with prompt written notice before such disclosure, sufficient to enable the Buyer either to seek a protective order, at its expense, or other appropriate remedy preventing or prohibiting such disclosure or to waive compliance with the provisions of this Section 6.4.

6.5 Advertiser and Subscriber Information.

(a) As promptly as reasonably practicable following the Closing, Seller shall make available, and shall cause its Affiliates to make available, to Buyer information relating to advertisers, subscribers and Web site visitors pertaining to the Territory ( Client Information ) to the extent permitted by applicable Law. Seller or its Affiliates may withhold any Client Information to the extent it reasonably believes (based on the opinion of legal counsel) that providing such could violate applicable Law or the terms of any agreement to which Seller or any of its Affiliates is a party. Seller represents and warrants that it is not currently aware of any Laws or agreements which would prevent Seller from providing such Client Information.

(b) Buyer shall not use any Client Information in any way that could violate the privacy policies of Seller or its Affiliates as in effect as of the Closing Date. Buyer further agrees to comply with all applicable data protection and privacy Laws in connection with the use of such Client Information.

6.6 Filings; Cooperation.

(a) Prior to the Closing, the Parties shall take such commercially reasonable actions as may be necessary to satisfy the conditions to Closing set forth in Article VII and Article VIII.

(b) On or after the Closing Date, the Parties shall, on request, cooperate with one another by furnishing any additional information, executing and delivering any additional documents and instruments and doing any and all such other things as may be reasonably required by the Parties or their counsel to consummate or otherwise implement the transactions contemplated by this Agreement. In connection with the Excluded Liabilities, the Buyer shall, and shall cause its Affiliates and employees to, reasonably aid, cooperate with and assist Seller in its defense of such Excluded Liabilities, at Sellers cost and expense, by, among other things, providing Seller with full access to pertinent Records at such times as such other Party may reasonably request.

6.7 Obligations with Respect to Employees.

(a) Seller shall be responsible for all employment-related liabilities incurred or accrued prior to the Closing with respect to all Employees and other employees or former employees of the Business, including without limitation any liabilities in connection with all salaries, wages, bonuses, business expenses, retirement allowance and other reimbursements, termination pay, wrongful dismissal claims, employment insurance premiums, workers compensation payments, income tax and applicable pension plan deductions and other payments to be made to or on behalf of such individuals or otherwise, whether such claims are asserted before or after the Effective Time; provided, however, that Seller shall not be responsible for obligations to Employees for any earned and accrued but unpaid vacation leave. Buyer shall be responsible for all such employment-related liabilities incurred or accrued after the Closing with respect to the Employees in their capacity as employees of Buyer.

(b) Buyer will treat the period of employment with the Seller of the Employees as employment or engagement with the Buyer for all purposes. Coverage for Employees under Buyers compensation and employee plans and other programs shall commence as of the date provided in such plans and programs, provided, however, that each Employee shall receive credit under Buyers employee vacation policy for each such Employees period of service with Seller through the Closing Date. As of his or her first day of employment with Buyer, an Employee shall be permitted to take with Buyer any unused vacation time that has accrued with Seller and was credited as of Closing.

6.8 Acquisition Proposals.

(a) Notwithstanding any other provision of this Agreement to the contrary, during the period beginning on the date hereof and continuing until 11:59 p.m. (Eastern Time) on the thirtieth (30th) calendar day thereafter, or such earlier date as shall be specified by the Seller (the Solicitation Period End-Date), Seller and its Representatives shall have the right to directly or indirectly:

(i) initiate, solicit and encourage Acquisition Proposals, including by way of providing access to non-public information pursuant to (but only pursuant to) one or more confidentiality agreements, provided that Seller shall promptly provide to Buyer any non-public information relating to the Business that is provided to any Person given such access which was not previously provided to or made available to Buyer; and

(ii) enter into and maintain discussions or negotiations with respect to potential Acquisition Proposals or otherwise cooperate with or assist or participate in, or facilitate, any such inquiries, proposals, discussions or negotiations.

As used herein, the term Acquisition Proposal means any inquiry, offer or proposal made by a Person or group at any time relating to any (i) direct or indirect acquisition of more than 50% of the assets of the Asia Pacific Business, taken as a whole, (ii) direct or indirect beneficial ownership of more than 50% of the aggregate outstanding equity securities of Seller and its affiliate which is party to the Japan Purchase Agreement (the Seller Japan Affiliate), or (iii) any merger, consolidation or other business combination, recapitalization or similar transaction, including any single or multi-step transaction or series of related transactions involving Seller and the Seller Japan Affiliate.

(b) Subject to Section 6.8(c) and except with respect to any Person who made an Acquisition Proposal received by Seller prior to the Solicitation Period End-Date with respect to which the requirements of Sections 6.8(c)(i), 6.8(c)(iii) and 6.8(c)(iv) have been satisfied as of the Solicitation Period End-Date and thereafter continuously through the date of determination, from the Solicitation Period End-Date until the Effective Time or, if earlier, the termination of this Agreement in accordance with Section 10.2, Seller shall not, and shall cause its Representatives not to, directly or indirectly:

(i) initiate, or solicit or knowingly facilitate or encourage (including by way of providing information) the making, submission or announcement of any inquiries, proposals or offers that constitute or may reasonably be expected to lead to, any Acquisition Proposal or engage in any discussions or negotiations with respect thereto or otherwise knowingly cooperate with or knowingly assist or participate in, or knowingly facilitate or knowingly encourage any such inquiries, proposals, discussions or negotiations or

(ii) approve, endorse or recommend, or publicly propose to approve or recommend, an Acquisition Proposal or enter into any merger agreement, letter of intent, agreement in principle, share purchase agreement, asset purchase agreement or share exchange agreement, option agreement or other similar agreement relating to an Acquisition Proposal or enter into any agreement or agreement in principle requiring Seller to abandon, terminate or fail to consummate the transactions contemplated hereby or breach its obligations hereunder or propose or agree to do any of the foregoing.

Except with respect to any Acquisition Proposal received on or prior to the Solicitation Period End-Date with respect to which the requirements of Section 6.8(c)(i), 6.8(c)(iii) and 6.8(c)(iv) have been satisfied as of the Solicitation Period End-Date and continuously thereafter (any Person so submitting such Acquisition Proposal, an Excluded Party), as determined, with respect to any

Excluded Party, by the board of directors of Seller no later than the later of (A) the Solicitation Period End-Date and (B) only if such Acquisition Proposal is received less than two (2) Business Days prior to the Solicitation Period End-Date, the second (2) Business Day following the date on which Seller received such Excluded Parties Acquisition Proposal (it being understood that following the Solicitation Period End-Date until such time as the board of directors of Seller determines that a Person is an Excluded Party, Seller shall not be permitted to take any action with respect to such Person that it would not be permitted to take with respect to non-Excluded Parties pursuant to Section 6.8(c)), Seller shall immediately cease, and shall cause its Representatives to terminate, any solicitation, knowing encouragement, discussion or negotiation or knowing cooperation with or knowing assistance or participation in, or knowing facilitation or knowing encouragement of any such inquiries, proposals, discussions or negotiations with any Persons conducted theretofore by Seller or its Representatives with respect to any Acquisition Proposal, and shall request to be returned or destroyed all non-public information provided by or on behalf of Seller to such Person. Notwithstanding anything contained in Section 6.8 to the contrary, any Excluded Party shall cease to be an Excluded Party for all purposes under this Agreement with respect to any Acquisition Proposal immediately at such time as such Acquisition Proposal made by such Party is withdrawn, terminated or fails in the reasonable determination of the board of directors of Seller to satisfy the requirements of Sections 6.8(c)(i), 6.8(c)(ii), 6.8(c)(iii) and 6.8(c)(iv).

(c) Notwithstanding anything to the contrary contained in Section 6.8(b), if at any time following the date of this Agreement and prior to the Effective Time

(i) Seller and the Seller Japan Affiliate have received a written Acquisition Proposal from a third party that the board of directors of Vistazoo believes in good faith to be bona fide,

(ii) such Acquisition Proposal did not occur as a result of a breach of this Section 6.8 or the corresponding provision of the Japan Purchase Agreement,

(iii) the board of directors of Vistazoo determines in good faith, after consultation with its financial advisors and outside counsel, that such Acquisition Proposal constitutes or may reasonably be expected to result in a Superior Proposal and

(iv) after consultation with its outside counsel, the board of directors of Vistazoo determines in good faith that the failure to take such actions or any of the actions described in the following clauses (A) and (B) would be inconsistent with its fiduciary duties to the stockholders of Vistazoo under applicable Law, then Seller may (A) furnish information (including non-public information) with respect to Seller and its subsidiaries to the Person making such Acquisition Proposal and (B) participate in discussions or negotiations with the Person making such Acquisition Proposal regarding such Acquisition Proposal; provided that Seller (x) gives Buyer written notice of the identity of such Person and of Sellers intention to furnish information to, or enter into discussions with, such Person at least one (1) Business Day prior to furnishing any such information to, or entering into discussions with, such Person, (y) will not, and will not allow any of its subsidiaries or Representatives to disclose any non-public information to such Person without first entering or having entered into a confidentiality agreement and (z) contemporaneously with making available any such information to such Person provide to Buyer any information concerning Seller or its subsidiaries provided to such other Person which was not previously provided to or made available to Buyer. Notwithstanding anything to the contrary contained in Section 6.8(b) or this Section 6.8(c), prior to the Effective Time, Seller shall in any event be permitted to take the actions described in clauses (A) and (B) above with respect to any Excluded Party for so long as they are an Excluded Party.

As used herein, the term Superior Proposal means any bona fide Acquisition Proposal made in writing that (A) is on terms that the board of directors of Vistazoo has determined in good faith (after consultation with outside counsel and financial advisors) are more favorable to Vistazoo’s stockholders from a financial point of view than this Agreement and (B) which the board of directors of Vistazoo has determined in good faith (after consultation with outside counsel and financial advisors) is reasonably likely to be consummated.

(d) Within 24 hours following the Solicitation Period End-Date (or, with respect to any Excluded Party who is determined to be an Excluded Party following the Solicitation Period End-Date in accordance with Section 6.8(b)(B), within 24 hours of such determination), Seller shall notify Buyer in writing of the identity of each Excluded Party and of the material terms and conditions of the Acquisition Proposal received from such Excluded Party. From and after the Solicitation Period End-Date, in the event that Seller or its subsidiaries or Representatives receives any of the following, Seller shall promptly (but not more than one (1) Business Day after such receipt) notify Buyer thereof:

(i) any Acquisition Proposal or written indication by any Person that would reasonably be expected to result in an Acquisition Proposal (and provide the material terms and conditions thereof);

(ii) any request (other than from an Excluded Party, it being understood that Seller shall continue to comply with its obligations under Section 6.8(a)(i) with respect to such Excluded Party) for non-public information relating to the Business other than requests for information in the ordinary course of business and unrelated to an Acquisition Proposal; or

(iii) any inquiry or request for (other than from or by an Excluded Party) discussions or negotiations regarding any Acquisition Proposal. Without limitation of Section 6.8, following the Solicitation Period End-Date, Seller shall promptly (within one (1) Business Day) inform Buyer of any material changes, developments, discussions or negotiations relating to any Acquisition Proposal, indication, inquiry or request (including the material terms and conditions thereof and of any material modification thereto), and any material developments, discussions and negotiations, including furnishing copies of any material written inquiries and correspondence, in all cases whether in connection with an Excluded Party or third party pursuant to Section 6.8(c)(B).

Without limiting the foregoing, Seller shall promptly (within one (1) Business Day) notify Buyer if it or any of its Affiliates determines to provide non-public information or to engage in discussions or negotiations concerning an Acquisition Proposal pursuant to Section 6.8(c) other than with an Excluded Party, in each case after the Solicitation Period End-Date. Seller shall not, and shall cause its subsidiaries not to, enter into any confidentiality agreement with any Person subsequent to the date of this Agreement that prohibits Seller from providing such information to Buyer. Seller shall not, and shall cause its of subsidiaries not to, terminate, waive, amend or modify any provision of, or grant permission or request under, any standstill or confidentiality agreement to which they or any of their subsidiaries is a party, and Seller shall, and shall cause its subsidiaries, to enforce the provisions of any such agreement; provided, however, that Seller may permit a proposal to be made under a standstill agreement if Vistazoo’s board of directors determines in good faith, after consultation with outside counsel, that Sellers failure to do so would be inconsistent with the fiduciary duties of the board of directors to the stockholders of Vistazoo under applicable Law.

(e) Notwithstanding anything in Section 6.8(b)(ii) to the contrary, if Seller or any of its Affiliates receives an Acquisition Proposal which the board of directors of Seller or any of its Affiliates concludes in good faith, after consultation with outside counsel and its financial advisors, constitutes a Superior Proposal after giving effect to all of the adjustments to the terms of this Agreement which may be offered by Buyer, including pursuant to clause (ii) below, the board of directors of Seller or any of its Affiliates may at any time prior to the Effective Time, if it determines in good faith, after consultation with outside counsel, that the failure to take such action or any of the actions described below would be inconsistent with the fiduciary duties of the board of directors to the stockholders of Seller or any of its Affiliates under applicable Law, (i) approve or recommend such Superior Proposal, and/or (ii) terminate this Agreement to enter into a definitive agreement with respect to such Superior Proposal; provided, however, that the board of directors of Seller or any of its Affiliates may not approve or recommend such Superior Proposal pursuant to the foregoing clause (i) or terminate this Agreement pursuant to the foregoing clause (ii) (it being agreed that any such purported termination shall be null and void and of no effect) unless such (A) Superior Proposal did not result from a breach by Seller of this Section 6.8, (B) with respect to clause (ii) above, the Company pays the applicable termination fee pursuant to Section 10.2, (C) the Seller shall also terminate the Japan Purchase Agreement pursuant to the corresponding provisions of that agreement and (D):

(i) Seller shall have provided prior written notice to Buyer, of its intention to take any action contemplated in Section 6.8(d) with respect to a Superior Proposal at least four (4) Business Days in advance of taking such action (the Notice Period ), which notice shall set forth the material terms and conditions of any such Superior Proposal (including the identity of the party making such Superior Proposal); and

(ii) prior to Sellers approval or recommendation of such Superior Proposal or termination of this Agreement to enter into a proposed definitive agreement with respect to such Superior Proposal, Seller shall provide Buyer the opportunity to submit an amended written proposal or to make a new written proposal to the board of directors of Seller during the Notice Period and shall itself and shall cause its Representatives to, during the Notice Period, negotiate in good faith with Buyer (to the extent Buyer so requests in writing) to make such adjustments to the terms and conditions of this Agreement so that such Superior Proposal ceases to constitute a Superior Proposal.

In the event of any subsequent material revisions to such Superior Proposal, Seller shall deliver a new written notice to Buyer and comply with the requirements of this Section 6.8(d), and the Notice Period shall recommence.

(f) Nothing contained in this Agreement (including, without limitation, this Section 6.8) shall prohibit the board of directors of Vistazoo from disclosing the fact that the board of directors of Vistazoo has received an Acquisition Proposal and the terms of such proposal, if the board of directors of Vistazoo determines, after consultation with its outside legal counsel, that the failure to take any such actions would be inconsistent with its fiduciary duties under applicable Law or to comply with obligations under federal securities Laws or the NASDAQ Global Select Market or the rules and regulations of any U.S. securities exchange upon which the capital stock of Vistazoo is listed.

**ARTICLE VII**

**CONDITIONS PRECEDENT TO OBLIGATIONS OF BUYER AND CORAL**

The obligation of the Buyer and Coral to proceed with the Closing shall be subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions precedent, any of which may be waived in whole or in part by the Buyer or Coral:

7.1 Accuracy of Representations and Warranties and Performance of Obligations. All representations and warranties made by Seller and Vistazoo in this Agreement shall be true and correct in all material respects (or, to the extent such representations and warranties are already qualified by materiality, such representations and warranties shall be true and correct in all respects) on and as of the Closing Date with the same effect as if such representations and warranties had been made on and as of the Closing Date, except to the extent that any such representation or warranty by its terms relates to an earlier date, and except to the extent of any change permitted by the terms of this Agreement or consented to by the Buyer, and Seller and Vistazoo shall have performed or complied in all material respects with all covenants, agreements and conditions contained in this Agreement on its part required to be performed or complied with at or prior to the Closing. Seller and Vistazoo shall deliver to the Buyer at the Closing a certificate of an officer of Seller certifying that the conditions stated in this Section 7.1 have been fulfilled.

7.2 Consents and Approvals. The filings with government authorities or any other third parties described on Section 3.1 or Section 7.2 of the Disclosure Schedules shall have been made and any necessary authorizations, consents or approvals required from such authorities or third parties set forth on Section 3.1 or Section 7.2 of the Disclosure Schedules, shall have been obtained and shall be in full force and effect.

7.3 No Contrary Judgment or Litigation. On the Closing Date there shall exist no valid judicial order which prohibits the consummation of the transactions contemplated by this Agreement. On the Closing Date there shall exist no pending litigation which seeks to prohibit the consummation of the transactions contemplated by this Agreement.

7.4 Japan Purchase Agreement. The Japan Purchase Agreement shall have been executed and delivered by the parties thereto, and the closing thereunder shall occur substantially simultaneously with the Closing hereunder.

7.5 Deliveries. Seller shall have made or tendered, or caused to be made or tendered, delivery to the Buyer of the following documents:

(a) a bill of sale with respect to the Purchased Assets, duly executed by Seller;

(b) an assignment and assumption agreement with respect to the Assumed Contracts, duly executed by Seller;

(c) a license agreement (the License Agreement ), in the form attached hereto as Exhibit A , pursuant to which Vistazoo shall grant Buyer a perpetual fully paid-up license for use of certain Intellectual Property in the Territory as provided therein, duly executed by Vistazoo;

(d) a Hosting Services Agreement (the Hosting Agreement ), in the form attached hereto as Exhibit B , pursuant to which Vistazoo shall agree to host and manage the software used to run and manage Sellers e-mail subscriber and advertiser databases, Web sites, e-mail newsletter and alert services, and intranet site, as implemented by the Buyer, duly executed by Vistazoo;

(e) a Referral Agreement (the Referral Agreement ), in the form attached hereto as Exhibit C , pursuant to which the Parties shall agree to share revenues generated from the publishing fees described therein, duly executed by Seller;

(f) a Voting Agreement (the Voting Agreement ), in the form attached hereto as Exhibit D , duly executed by the principal shareholder of Vistazoo;

(g) a Transition Services Agreement (the Transition Services Agreement ), in the form attached hereto as Exhibit E , pursuant to which Vistazoo shall agree to provide certain transition services to Buyer following the Closing Date as described therein, duly executed by Vistazoo;

(h) the Option Agreement, duly executed by Vistazoo;

(i) the certificates required by an officer of Seller and Vistazoo pursuant to Section 7.1;

(j) original stock certificates (or other appropriate documents or instruments evidencing Sellers equity ownership therein) for the Seller Subsidiaries (except with respect to Beijing Vistazoo Travel Information Technology Limited), duly endorsed (or accompanied by stock powers or other appropriate assignment documents) for transfer to Buyer; and

(k) such other customary documents, instruments or certificates as shall be reasonably requested by the Buyer and as shall be consistent with the terms of this Agreement.

7.6 No Material Adverse Effect. Between the date hereof and the Closing Date, there shall not have occurred any fact, event, circumstance or effect which has had, or is reasonably likely to have, a Material Adverse Effect on the Purchased Assets, the Business, the financial condition or results of operations of the Business, or the assets, properties and rights utilized in the Business, taken as a whole. For purposes of this Section, Material Adverse Effect shall not be deemed to include any changes resulting from general economic, regulatory or political conditions, circumstances that affect the industries in which the Business operates generally, or the announcement or pendency of the transactions provided for in this Agreement.

7.7 Due Diligence and Disclosure Schedules. Buyer and Coral shall have completed their legal, operational, business, regulatory and other due diligence investigation with respect to the Purchased Assets, the Assumed Liabilities, the Seller Subsidiaries, the Business and the transactions contemplated herein, and the results of such investigation shall be satisfactory to Buyer and Coral in their sole discretion. Seller shall have delivered final Disclosure Schedules to Buyer and Coral, which shall be satisfactory to Buyer and Coral in their sole discretion.

7.8 Formation of Buyer. Coral shall have formed and appropriately qualified Buyer for purposes of closing of the transactions contemplated herein.

**ARTICLE VIII**

**CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLER**

The obligation of Seller to proceed with the Closing shall be subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions precedent, any of which may be waived in whole or in part by Seller:

8.1 Accuracy of Representations and Warranties and Performance of Obligations. All representations and warranties made by the Buyer and Coral in this Agreement shall be true and correct in all material respects (or, to the extent such representations and warranties are already qualified by materiality, such representations and warranties shall be true and correct in all respects) on and as of the Closing Date with the same effect as if such representations and warranties had been made on and as of the Closing Date, except to the extent that any such representation or warranty by its terms relates to an earlier date, and except to the extent of any change permitted by the terms of this Agreement or consented to by Seller, and the Buyer shall have performed or complied in all material respects with all covenants, agreements and conditions contained in this Agreement on its part required to be performed or complied with at or prior to the Closing. The Buyer shall deliver to Seller at the Closing a certificate of an officer of the Buyer certifying that the conditions stated in this Section 8.1 have been fulfilled.

8.2 Consents and Approvals. The filings with government authorities or any other third parties listed on Section 8.2 of the Disclosure Schedules shall have been made and any necessary authorizations, consents or approvals required from such authorities or third parties set forth on Section 8.2 of the Disclosure Schedules shall have been obtained and shall be in full force and effect.

8.3 No Contrary Judgment. On the Closing Date there shall exist no valid judicial order which prohibits the consummation of the transactions contemplated by this Agreement.

8.4 Deliveries. The Buyer shall have made or tendered, or caused to be made or tendered, delivery to Seller of the Purchase Price in accordance with Section 2.3 and the following documents:

(a) this Agreement, duly executed by Buyer;

(b) an assignment and assumption agreement with respect to the Assumed Contracts, duly executed by Buyer;

(c) the License Agreement, duly executed by Coral, the Buyer and the Japan Affiliate;

(d) the Hosting Agreement, duly executed by the Coral, the Buyer and the Japan Affiliate;

(e) the Referral Agreement, duly executed by the Buyer;

(f) the Voting Agreement, duly executed the principal shareholder of Vistazoo;

(g) the Transition Services Agreement, duly executed by Coral, the Buyer and the Japan Affiliate;

(h) the Option Agreement, duly executed by Coral; and

(i) the certificate required by an officer of the Buyer pursuant to Section 8.1;

(j) such other customary documents, instruments or certificates as shall be reasonably requested by Seller and as shall be consistent with the terms of this Agreement.

8.5 Japan Purchase Agreement. The Japan Purchase Agreement shall have been executed and delivered by the parties thereto, and the closing thereunder shall occur substantially simultaneously with the Closing hereunder.

8.6 Expiration of the Solicitation Period End-Date. The Solicitation Period End-Date shall have expired or been terminated by the Seller.

**ARTICLE IX**

**INDEMNIFICATION**

9.1 Indemnification by Seller. Subject to the limitations set forth in this Article IX, Seller shall indemnify and hold harmless the Buyer against and in respect of any and all Losses arising from:

(a) any breach or violation of any of the provisions of this Agreement by Seller or any of its Affiliates (other than with respect to any of the representations and warranties made in Article III by Seller and/or Vistazoo which shall be covered by Section 9.1(b));

(b) any breach of any of the representations and warranties made in Article III by Seller and/or Vistazoo;

(c) the ownership, use or possession of the Purchased Assets, or the conduct or operation of the Business, occurring prior to the Effective Time;

(d) the ownership, use or possession of the Excluded Assets;

(e) the Excluded Liabilities; or

(f) any claim relating to or arising out of Sellers use of Client Information prior to the Effective Time.

Any indemnification provided for under this Section 9.1 shall be deemed also to extend to directors, shareholders, officers and employees (in their capacity as such) of the Buyer.

9.2 Indemnification by Buyer. The Buyer shall indemnify and hold harmless Seller against and in respect of any and all Losses arising from:

(a) any breach or violation of the covenants made in this Agreement by the Buyer or any of its Affiliates;

(b) any breach of any of the representations or warranties made in Article IV by the Buyer;

(c) the ownership, use or possession of the Purchased Assets, or the conduct or operation of the Business, occurring at or after the Effective Time (except, in each such case, to the extent that the Buyer is entitled to be indemnified pursuant to Section 9.1); or

(d) any claim relating to or arising out of Buyers use of Client Information after the Effective Time.

Any indemnification provided for under this Section 9.2 shall be deemed also to extend to directors, shareholders, officers and employees (in their capacity as such) of Seller and its Affiliates.

9.3 Notice and Payment of Losses. Upon obtaining knowledge of any Loss, the Party entitled to indemnification (the Injured Party ) shall promptly notify the Party liable for such indemnification (the Indemnifying Party ) in writing of such Losses which the Injured Party has determined have given or could give rise to a claim under Section 9.1 or 9.2 (such written notice being hereinafter referred to as a Notice of Claim ); provided, however, that failure of an Injured Party timely to give a Notice of Claim to the Indemnifying Party shall not release the Indemnifying Party from its indemnity obligations set forth in this Article IX except to the extent that such failure adversely affects the ability of the Indemnifying Party to defend such claim or increases the amount of indemnification which the Indemnifying Party is obligated to pay hereunder, in which event the amount of indemnification which the Injured Party shall be entitled to receive shall be reduced to an amount which the Injured Party would have been entitled to receive had such Notice of Claim been timely given. The Injured Party shall use commercially reasonable efforts to mitigate any continuing Losses (including without limitation by using its commercially reasonable efforts to obtain any applicable insurance proceeds) and to obtain or use any Tax savings, benefit, relief, deduction or credit available to the Injured Party. The Injured Party shall not make any admission of liability, agreement or compromise with any Person in relation to a Loss without prior consultation with the Indemnifying Party. If the Injured Party settles or compromises any third party claims, or initiates action which is for the purpose in whole or in part of causing a claim to be asserted, prior to giving a Notice of Claim to the Indemnifying Party, the Indemnifying Party shall be released from its indemnity obligation. A Notice of Claim shall specify in reasonable detail, to the extent known by the Injured Party, the nature and, to the extent reasonably calculable, estimated amount of any such claim giving rise to a right of indemnification. The Indemnifying Party shall satisfy its obligations under Section 9.1 or 9.2, as the case may be, within sixty (60) Business Days of its receipt of a Notice of Claim; provided, however, that for so long as the Indemnifying Party is disputing its liability or defending a third-party claim in good faith pursuant to Section 9.4, its obligations to indemnify the Injured Party with respect thereto shall be suspended until a final unappealable judgment of a court of competent jurisdiction is given in relation to such claim. The Indemnifying Party shall have thirty (30) Business Days (or such shorter period of time that the Injured Party may be required to respond to any suit or governmental action) after receipt of a Notice of Claim to notify the Injured Party (a) whether or not it disputes its liability to the Injured Party with respect to such Notice of Claim and (b) whether it elects to defend a third-party claim pursuant to Section 9.4.

9.4 Defense of Third-Party Claims. With respect to any action or any claim set forth in a Notice of Claim relating to a third-party claim, the Indemnifying Party may defend, in good faith and at its expense, any such claim or demand, and the Injured Party, at its expense, shall have the right, but not the obligation, to participate (but not control) at its expense in the defense of any such third-party claim. So long as the Indemnifying Party assumes and thereafter diligently defends any such third-party claim, the Injured Party shall not settle or compromise such third-party claim without the consent of the Indemnifying Party. If such claim is settled by the Injured Party without the Indemnifying Partys consent, the Injured Party shall be deemed to have waived all rights hereunder for money damages arising out of such claim. The Indemnifying Party may settle or compromise such third-party claim without the consent of the Injured Party solely for monetary damages with no admission of fault on the part of the Injured Party, unless there has not been a complete release of the Injured Party, in which case the Indemnifying Party may not settle or compromise such third-party claim without the consent of the Injured Party, which consent shall not be unreasonably withheld. The Injured Party shall make available to the Indemnifying Party or its representatives all records and other materials reasonably required for use in contesting any third-party claim. The Injured Party shall cooperate fully with the Indemnifying Party in the defense of all such claims. If the Indemnifying Party elects not to defend any such third-party claims, or elects to defend such claims but thereafter fails to diligently pursue such defense, the Injured Party shall have no obligation to do so, but may defend, settle or compromise any such third-party claim at the risk and expense of the Indemnifying Party. The Indemnifying Party will not, however, be responsible for any Losses if and to the extent that they arise from action taken or omitted to be taken by the Injured Party in bad faith, fraudulently, negligently or as a result of a breach of this Agreement by the Injured Party.

9.5 Survival of Representations and Warranties. All of the representations and warranties made by any Party in Article III and Article IV shall survive for a period of twelve (12) months following the Closing Date and thereafter to the extent a Notice of Claim is made prior to such expiration with respect to any breach of such representation or warranty occurring prior to such expiration and set out in such Notice of Claim; provided that the representations and warranties of the parties set forth in Sections 3.1, 3.2, 3.3 and 3.8, with respect to Seller, Sections 3.14 and 3.15, with respect to Vistazoo, Sections 4.1 and 4.2, with respect to Buyer, and Sections 5.1 and 5.2, with respect to Coral (collectively for all parties, the Fundamental Representations), shall survive the Closing Date indefinitely. No party shall be entitled to indemnification for breach of any representation and warranty set forth in Article III and Article IV unless a Notice of Claim of such breach has been given to the Indemnifying Party within the period of survival of such representation and warranty as set forth herein.

9.6 Limitation on Indemnification.

(a) The provisions for indemnity under Sections 9.1(b) and 9.2(b), as the case may be, shall be effective only when the aggregate amount of any single Loss (or series of related Losses) for which indemnification is sought from Seller or the Buyer, under Sections 9.1(b) or 9.2(b), respectively, when added to the amounts for which indemnification is sought under the corresponding provisions of the Japan Purchase Agreement, exceeds XX Thousand Dollars ($XX,000.00 US) in the aggregate, but then to the full extent of such Losses (including the first $XX,000.00 of such Losses).

(b) The provisions for indemnity under Sections 9.1(b) and 9.2(b), as the case may be, shall be effective only when the aggregate amount of all Losses, for which indemnification is sought from Seller or the Buyer, under Sections 9.1(b) or 9.2(b), respectively (excluding Losses for which indemnification would not be available as a result of clause (a) above), when added to the amounts for which indemnification is sought under the corresponding provisions of the Japan Purchase Agreement, exceeds XX Thousand Dollars ($XX,000.00 US) (the Indemnity Basket ), in which event the Indemnifying Party shall be liable for all Losses in excess of such amount.

(c) The indemnification obligations of Seller or the Buyer pursuant to Sections 9.1(b) or 9.2(b), as the case may be, shall be effective only until the aggregate dollar amount paid by the Indemnifying Party in respect of all Losses indemnified against under such Sections, when added to the amounts of Losses indemnified against under the corresponding provisions of the Japan Purchase Agreement, equals XX Thousand Dollars ($XXX,000.00 US) (the Indemnity Cap ).

(d) Notwithstanding the foregoing, the limitations of Sections 9.6(a), 9.6(b) and 9.6(c) shall not apply to any breach arising out of the Fundamental Representations or from the fraud or intentional misrepresentation of a party.

(e) All indemnification obligations shall be paid in U.S. Dollars in the United States.

(f) Notwithstanding anything in this Agreement to the contrary, no liability, obligation, contract or other matter shall constitute a breach of any representation or warranty of Seller or entitle the Buyer to indemnification hereunder, to the extent that Seller demonstrates:

(i) that the liability, obligation, contract or other matter arises or is materially increased in circumstances in which the Buyer acts or omits to act after the Closing and knows or should reasonably have known that such act or omission would give rise to or increase such a claim and a reasonable alternative course of action which would not prejudice the Buyer was available to the Buyer which would not have given rise to such claim or a claim of such amount;

(ii) that the liability, obligation, contract or other matter is set out in the Disclosure Schedules;

(iii) that the liability, obligation, contract or matter which would otherwise constitute a breach was actually known to the Buyer as of the date hereof or actually known to the Buyer as of the Closing Date and would have given the Buyer the right not to proceed with the Closing had the Buyer elected to exercise such right;

(iv) that the liability, obligation, contract or other matter arises or is increased as a result of any increase in Tax rates after Closing, or the passing of any Law with retrospective effect, or any provision or reserve related to the Closing being insufficient by reason only of any increase in Tax rates after Closing;

(v) that the liability, obligation, contract or other matter arises as a result of any change in the accounting policy or practice of the Business introduced after Closing; or

(vi) that the liability, obligation, contract or other matter arises or is increased as a result of any act or omission of Seller undertaken prior to Closing, at the written request of, or with the prior written approval of, the Buyer.

(g) If Seller pays to the Buyer an amount in respect of any claim under this Agreement and the Buyer subsequently recovers from a third party (including an insurer) a sum which is related to that claim, the Buyer shall promptly repay to Seller so much of the amount paid by Seller, as applicable, as does not exceed the sum recovered from the third party less all reasonable costs, charges and expenses incurred by the Buyer in obtaining that payment and in recovering that sum from the third party.

(h) Seller shall not be liable for any breach or non-fulfillment of any of the representations or warranties contained herein, if and to the extent that the Loss occasioned thereby has been recovered under the same or any other representation or warranty contained herein.

(i) Nothing shall diminish the Buyers common law obligation to mitigate its loss.

9.7 Characterization of Indemnity Payments. Any indemnification payments made pursuant to this Agreement shall be considered, to the extent permissible under Law, as adjustments to the Purchase Price for all Tax purposes.

9.8 Exclusive Remedy. In the absence of fraud, and except for obtaining equitable remedies, the indemnification provisions set forth in this Article IX shall provide the exclusive remedy for breaches of any covenant, agreement, representation or warranty set forth in this Agreement or any other agreement ancillary hereto executed pursuant to this Agreement.

**ARTICLE X**

**MISCELLANEOUS PROVISIONS**

10.1 Notice. All notices, requests, demands, and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given and made upon (i) in the case of personal delivery or delivery by facsimile, on the date of such delivery, (ii) in the case of nationally-recognized overnight courier, on the next Business Day following dispatch and (iii) in the case of mailing, on the third (3rd) Business Day following such mailing if sent by certified mail, return receipt requested, postage prepaid. All such notices, requests, demands and other communications shall be addressed at the address or facsimile number shown in this Section 10.1 for, or such other address or facsimile number as may be designated in writing hereafter by, such Party:

If to the Buyer:

If to Coral:

If to Seller:

10.2 Termination; Termination Fee. This Agreement may only be terminated by (i) mutual written consent of Seller and Coral, (ii) Seller or Coral, if the Closing shall not have occurred on or before XXXX, 20XX, other than as a result of the breach of this Agreement by the Party seeking to so terminate this Agreement, (iii) Coral, due to a material breach hereof by Seller or Vistazoo, which (if capable of cure) remains uncured for 10 days after written notice thereof to Seller, (iv) Seller, due to a material breach hereof by Coral, which (if capable of cure) remains uncured for 10 days after written notice thereof to Coral or (v) Coral or Seller if the board of directors of the Vistazoo or any committee thereof shall approve, adopt or recommend any Superior Proposal or Acquisition Proposal or Seller shall have executed any letter of intent, memorandum of understanding or similar Contract relating to any Superior Proposal or Acquisition Proposal; provided, that this Agreement shall be terminated, without further action by the parties, if the Japan Purchase Agreement shall be terminated for any reason (and, as provided in the Japan Purchase Agreement, such agreement shall be terminated, without further action by the parties thereto, if this Agreement shall be terminated for any reason). In the event of any termination of the Agreement as provided in this Section 10.2, this Agreement shall forthwith become wholly void and of no further force and effect and there shall be no liability on the part of the Buyer, Seller, Coral or Vistazoo except (i) with respect to any breach of this Agreement occurring prior to termination, (ii) that the provisions of Section 6.4(a) shall survive any such termination of this Agreement and (iii) if Coral or Seller terminates this Agreement pursuant to Section 10.2(v), above, within two Business Days after the date of such termination, Seller shall pay Coral (by wire transfer of immediately available funds) an aggregate of XX Thousand Dollars ($XX000.00 US) as a termination payment under this Agreement and the Japan Purchase Agreement, which shall be paid to, or as directed by, Coral, by wire transfer of immediately available funds to one or more account(s) specified by Coral in writing.

10.3 Entire Agreement. This Agreement and the Disclosure Schedules and Exhibits hereto embody the entire agreement and understanding of the Parties hereto with respect to the subject matter hereof, and supersede all prior and contemporaneous agreements and understandings relative to such subject matter.

10.4 Severability. If any provision hereof shall be held invalid or unenforceable by any court of competent jurisdiction or as a result of future legislative action, such holding or action shall be strictly construed and shall not affect the validity or effect of any other provision hereof, as long as the remaining provisions, taken together, are sufficient to carry out the overall intentions of the Parties as evidenced hereby.

10.5 Assignment; Binding Agreement. This Agreement and various rights and obligations arising hereunder shall inure to the benefit of and be binding upon the Parties hereto and their successors and permitted assigns. Neither this Agreement nor any of the rights, interests, or obligations hereunder shall be transferred, delegated, or assigned by the Parties hereto without the prior written consent of the other Party (which consent shall not be unreasonably withheld), except that Coral shall have the right to designate a subsidiary entity to act as the Buyer hereunder, and the Buyer shall have the right to transfer and assign its rights hereunder to any entity which is controlled by the Buyer or by the Affiliates of the Buyer. No such assignment shall relieve the Buyer of any liability or obligation hereunder.

10.6 Expenses. Seller shall pay all costs and expenses incurred on its and Vistazoos behalf in connection with the negotiation, preparation and execution of this Agreement and the consummation of the transactions contemplated hereby, including, without limitation, the fees and expenses of its attorneys, accountants, advisors and other representatives, whether in connection with consultation or communication with, or other assistance to, the Buyer, Coral or their advisors or representatives or otherwise. Coral shall pay all costs and expenses incurred on its or Buyers behalf in connection with the negotiation, preparation and execution of this Agreement and the consummation of the transactions contemplated hereby, including, without limitation, the fees and expenses of its attorneys, accountants advisors and other representatives, whether in connection with consultation or communication with, or other assistance to, Seller, Vistazoo or their advisors or representatives or otherwise.

10.7 Counterparts.. This Agreement may be executed simultaneously in multiple counterparts, and in separate counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

10.8 Headings; Interpretation. The article and section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of the Agreement. Each reference in this Agreement to an Article, Section, Schedule or Exhibit, unless otherwise indicated, shall mean an Article or a Section of this Agreement or a Schedule or Exhibit attached to this Agreement, respectively. References herein to days, unless otherwise indicated, are to consecutive calendar days. All Parties have participated substantially in the negotiation and drafting of this Agreement and agree that no ambiguity herein should be construed against the draftsman. For the purposes of determining whether any amount of local currency exceeds or is less than any U.S. Dollar amount referred to in this Agreement, the exchange rate prevailing on the relevant date (or, if the relevant date is not a Business Day, on the immediately preceding Business Day) as published by The Wall Street Journal shall be used. References to a corporation or company shall be construed so as to include any corporation, company or other body corporate, wherever and however incorporated or established.

10.9 Governing Law. This Agreement shall in all respects be construed in accordance with and governed by the substantive laws of the State of New York applicable to contracts executed and performed entirely within the state, without reference to its choice of law rules.

10.10 Arbitration. In the event of any dispute hereunder, the parties shall use their reasonable efforts to resolve such dispute through discussions by their authorized representatives. Any dispute which is not so resolved within 15 calendar days after the start of such discussions (or such longer period as may be mutually agreed) shall be resolved by arbitration in accordance within the commercial arbitration rules of the American Arbitration Association (AAA). The arbitration proceedings, including the rendering of an award, shall take place in the Borough of Manhattan, New York, New York. The arbitration panel shall consist of three persons, one chosen by each of the Buyer and the Seller, and the third chosen by such two arbitrators. If the first two arbitrators are unable to agree on the third arbitrator, the third arbitrator shall be appointed by the AAA. If either Party does not select an arbitrator within 10 days after a request for arbitration hereunder, the arbitrator chosen by the other Party shall act as the sole arbitrator. The arbitration proceedings shall be conducted in accordance with the International Arbitration Rules of AAA. The award of such arbitral tribunal shall be final. Judgment upon such award may be entered by the prevailing Party in any court having jurisdiction. The award of the arbitral tribunal may be alternatively or cumulatively for monetary damages. The arbitral tribunal may issue interim awards and order any provisional measures which should be taken to preserve the respective rights of a Party. The arbitral tribunal shall charge all costs and expenses of the arbitration, including the fees and expenses of the arbitral tribunal and any experts, to the non-prevailing Party; provided that if the tribunal determines that there is not a prevailing Party, such costs and expenses shall be allocated between the parties as the arbitral tribunal deems fair and reasonable taking into account the extent to which parties relative positions have prevailed.

10.11 Disclosure Generally. If and to the extent any information required to be furnished in any Disclosure Schedule is contained in this Agreement or in any other Disclosure Schedule, such information shall be deemed to be included in all of the Disclosure Schedules in which the information would otherwise be required to be included to the extent the relationship of such information to such other Disclosure Schedule is reasonably apparent on the face of the applicable disclosure. The inclusion of any information in any Disclosure Schedule shall not be deemed to be an admission or acknowledgment that such information is material or outside the Ordinary Course.

10.12 No Third Party Beneficiaries or Other Rights. Nothing herein shall grant to or create in any Person not a party hereto, or any such Persons Affiliates, any right to any benefits hereunder, and no such party shall be entitled to sue either Party to this Agreement with respect thereto. The representations and warranties contained in this Agreement are made for purposes of this Agreement only and shall not be construed to confer any additional rights on the Parties under applicable state or federal or foreign securities Laws.

10.13 Knowledge. Whenever to Sellers knowledge, to its knowledge, known or a similar phrase is used with respect to Seller to qualify a representation or warranty of Seller, the knowledge so referred to shall be deemed to be the current, actual knowledge of any of the current executive officers of Seller.

10.14 Vistazoo Guarantee. Vistazoo hereby unconditionally guarantees the performance of the obligations of Seller under this Agreement.

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IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed as of the date first above written.

|  |  |  |
| --- | --- | --- |
|  | SELLER | |
|  | VISTAZOO (ASIA PACIFIC) LIMITED | |
|  |  |  |
|  |  |  |
|  | By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  |
|  | Name: |  |
|  | Title: | Director |
|  |  |  |
|  |  |  |
|  | CORAL | |
|  | CORAL CAPITAL INC. | |
|  |  |  |
|  |  |  |
|  | By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | |s|John Doe |
|  | Name: | John Doe |
|  | Title: | Director |
|  |  |  |
|  |  |  |
|  | VISTAZOO | |
|  | VISTAZOO INC. | |
|  |  |  |
|  |  |  |
|  | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | | |
|  | Name: |  |
|  | Title: | CFO |

[BUYER SIGNATURE FOR CLOSING]

|  |  |  |
| --- | --- | --- |
|  | BUYER | |
|  |  |  |
|  |  |  |
|  | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  |
|  | Name: |  |
|  | Title: |  |

**APA#38**

**ASSET PURCHASE AGREEMENT**  
  
This Asset Purchase Agreement (the "Agreement") is effective as of the 26th day  
of May, 2011 (the "Effective Date"),  
BETWEEN:  
Monotrok, Inc., a Nevada corporation having an office at XXX,U.S.A., ("MONOTROK");  
AND:  
SG Bolvaria Pte. Ltd., a Singapore company/corporation having an office XXX,, Singapore, ("SG BOLVARIA");

WHEREAS:  
  
A.the authorized common share capital of MONOTROK consists of 1,500 Million shares  
of common stock (the "MONOTROK Common Shares") of which approximately 353 Millionshares are currently issued and outstanding; and  
B.SG BOLVARIA presently owns 100% of the shares of Bolvarianova Singapore Pte Ltd  
("Bolvarianova") and Nevtrol AG ("Nevtrol"), together with associated  
intellectual, physical and real property associated with the operations of these  
entities (collectively "the Assets").  
  
C.MONOTROK has agreed to purchase, and SG BOLVARIA has agreed to sell one hundred  
percent (100%) of its ownership in the Assets and Monotrok has agreed to assume 100% of the liabilities and the assets of SG BOLVARIA, except for the advances made by the parties listed in Appendix 1, under the terms and conditions outlined in this Agreement (the "Asset Purchase"); and  
  
D. it is the intent of SG BOLVARIA to transfer to MONOTROK, as part of the Asset  
Purchase, all operational assets and liabilities of SG BOLVARIA including but not  
limited to, its affiliated companies, entities, IP, patents and patents pending  
or any form of ownership or licensing rights, except for the advances made by  
the parties listed in Appendix 1.  
  
E.It is in the intent of MONOTROK to continue conducting Bolvarianova's business in  
substantially the same manner as Bolvarianova has in the past, except for the  
addition of manufacturing facilities, and with management and other employees  
remaining in their current positions with Bolvarianova post-transaction.  
  
Following closing, Bolvarianova will conduct its business out of its current  
locations.  
  
**NOW, THEREFORE**, in consideration of the covenants and representations set forth  
herein, and for other good and valuable consideration, the parties agree as  
follows:  
  
**1.ASSET PURCHASE**  
  
1.1Subject to the terms and conditions of this Agreement, at the Time of Closing:  
(a)  
MONOTROK shall, as to ownership of SG BOLVARIA's assets, transfer sixty million  
(60,000,000) of MONOTROK restricted Common Shares (the "Purchase Shares"); and  
(b)  
SG BOLVARIA shall cause to be issued to the benefit of MONOTROK, ownership  
instruments representing 100% interest in the Assets; and  
(c)  
MONOTROK shall, within five (5) days of signing this Agreement, deposit $60,000  
into an operating bank account as described in Appendix 2 for the benefit of  
conducting the business of the Assets; and  
(d)  
MONOTROK will make its best efforts to raise, prior to October 1, 2011 at least  
$2.5 million USD with a target of $5 million USD ("Financing"). This money will  
be used to finance the Asset's operations, including development of the  
pancreatic cancer product, continued R&D, services already underway and in  
negotiations, establishment of manufacturing facilities in Southeast  
Asia/Singapore and in conjunction with MONOTROK, the hiring of a dedicated  
business development manager; and  
(e)  
MONOTROK agrees to provide $60,000 in non-refundable monthly financing to the  
operations of the Assets, due no later than the tenth (10th) day of every month  
until the terms of Section 1.1(d) are fulfilled to be deposited in the same bank  
account referred to in paragraph (c) above. This monthly payment shall be  
credited towards the amount of financing required to be provided under Section  
1.1(d); and  
(f)  
Monotrok shall, upon execution of this Agreement acquire 100% of Nevtrol  
shares and the patent rights to SG BOLVARIA Pancreatic Cancer Product for  
consideration of $200,000 USD to be paid in tranches as follows: $50,000 USD  
within five business days of this Agreement; $100,000 USD on the earlier of i)  
30 days of signing this Agreement or ii) Closing Date, and $50,000 USD at  
Closing Date and to be deposited in the same bank account referred to in  
paragraph (c) above. The Nevtrol' s shares will be kept in escrow by an  
attorney satisfactory to both parties until Financing is closed; and  
(g)  
The sooner of 18 months or within 1 month of date of Financing, a repayment of  
the loans, not to exceed $500,000 from the proceeds, made to Nevtrol prior  
to aquisition by Monotrok will be made in cash or Monotrok common shares at a 25%  
discount price to the market at the recipients discretion.

1.2  
Except as expressly noted otherwise, the transactions contemplated under this  
Agreement shall be completed (the "Completion") at the offices of MONOTROK, or  
at such other place as may be agreed between the parties, at 5 p.m. local time  
in Eastern time, or at such other time as may be agreed between the parties,  
(the "Time of Closing") on a date specified by the parties, which shall be no  
later than the second Business day after satisfaction or waiver (subject to  
applicable law) of the conditions set forth in Section 2 (other than those  
conditions which by their nature are to be satisfied at the Closing, but subject  
to the satisfaction or waiver of those conditions), or on such other date as may  
be agreed between the parties (the "Closing Date"). The Parties hereto agree  
that all conditions precedent to Closing shall be met no later than October 1,  
2011 (the "Deadline"), unless both parties hereto agree to extend such date in  
writing.  
  
2.CONDITIONS PRECEDENT  
2.1  
SG BOLVARIA's obligation to carry out the terms of this Agreement and to complete  
its transaction contemplated under this Agreement is subject to the fulfilment  
to the satisfaction of SG BOLVARIA of each of the following conditions at or  
prior to the Time of Closing:  
(a)  
MONOTROK shall have complied with all of its covenants and agreements contained  
in this Agreement; and  
(b)  
MONOTROK shall transfer, or will cause to be transferred, to SG BOLVARIA the  
Purchase Shares; and  
(c)  
MONOTROK shall have fulfilled its funding obligations under Section 1.1 (c), (e),  
and (f); and  
(d)  
MONOTROK shall have appointed a representative of SG BOLVARIA to serve as a Board  
member of MONOTROK prior to the Closing; and  
(e)  
MONOTROK shall be trading on the OTCQB with at minimum two market makers and a  
valid trading symbol, and it shall not be trading subject to the National  
Association of Securities Dealers (the "NASD") Rule 6740(a) the so called  
"Unsolicited Order Exception"; and  
(f)  
MONOTROK shall have filed a Form 8-K with material contracts and relateddisclosures satisfactory to SG BOLVARIA; and  
(g)  
MONOTROK shall have acquired the subsidiary Bolvarianova Singapore based in  
Singapore, Singapore; and  
(h)  
MONOTROK shall enter into employment agreements satisfactory to Sven Herger  
and Igge van Trop with compensation of approx 14,400 USD (based on conversion of  
18,000 Singapore dollars) per month; and  
(i)  
MONOTROK shall enter into agreements to the satisfaction of Sven Herger and  
Igge van Trop by which a 1.5% inventor repayment fee from net sales (including  
licensing fees and royalties) of any products using the ABC and/or  
DEF technologies (including Cancer Products) is paid to Sven Herger  
and Igge van Trop.  
  
The conditions set forth above are for the exclusive benefit of SG BOLVARIA and  
may be waived by SG BOLVARIA in whole or in part at any time at or before the  
Time of Closing, as long as such conditions are waived in writing.

2.2  
MONOTROK's obligation to carry out the terms of this Agreement and to complete  
the transactions contemplated under this Agreement are subject to the fulfilment  
to MONOTROK's satisfaction of each of the following conditions at or prior to the  
Time of Closing:  
(a)  
SG BOLVARIA shall have complied with all of its covenants and agreements  
contained in this Agreement; and  
(b)  
SG BOLVARIA and its representations and warranties contained in this Agreement or  
contained in any certificates or documents delivered by it pursuant to this  
Agreement shall be completely true and correct in all material respects as if  
such representations and warranties had been made by SG BOLVARIA as of the  
Closing Date; and  
c)  
SG BOLVARIA shall have received Board of Directors approval for the completion of  
the transaction as outlined herein; and  
(d)  
SG BOLVARIA shall deliver to the benefit of MONOTROK, documents representing  
ownership in the Assets as outlined herein; and  
(e)  
SG BOLVARIA shall have appointed a representative of MONOTROK to serve as a Board  
member of BOLVARIANOVA SINGAPORE Pte. Ltd. prior to the Closing; and  
(f)  
SG BOLVARIA shall have ensured that the rights to the name Bolvarianova Singapore  
Pte Ltd shall have become the property of MONOTROK so that a subsidiary with the  
same or similar name can be created under the MONOTROK company;  
The conditions set forth above are for the exclusive benefit of MONOTROK and may  
be waived by MONOTROK in whole or in part at or before the Time of Closing, as  
long as such conditions are waived in writing.  
2.3  
The parties acknowledge and agree, each with the other that this Agreement and  
all of the transactions contemplated under this Agreement are subject to receipt  
of any regulatory approvals that may be required under applicable laws. If any  
such approvals are required but are not obtained by the Closing Date, then this  
Agreement shall terminate and be of no further force or effect.  
  
2.4  
This Agreement shall immediately terminate and be of no further force or effect  
in the event that prior to the Completion:  
(a)  
MONOTROK is issued a cease trade or similar order from the U.S. Securities and  
Exchange Commission (the "SEC") or the NASD halting trading in MONOTROK's common  
stock on the OTC listing for any reason; or  
(b)  
MONOTROK fails to perform on the financing commitments under Section 1.1 (c),  
(e), and (f); or  
(c)  
MONOTROK and SG BOLVARIA agree to terminate this Agreement by mutual written  
consent; or  
(d)  
MONOTROK or SG BOLVARIA enters into liquidation, whether compulsorily or  
voluntarily, or compounds with its creditors or suffers any similar action in  
consequence of debt.

Each of the foregoing shall be considered a "Terminating Event". In the event of  
Cancellation or Termination of this Agreement without consummation, Monotrok  
shall receive a pro-rata ownership percentage in SG BOLVARIA based on 0.8496% of  
SG BOLVARIA's shares for every $60,000 USD payment and 2.83% of SG BOLVARIA for the payment of the $200,000.

2.5  
In the event MONOTROK is unable to fulfill its obligations under Section 1.1 (d),  
SG BOLVARIA shall have the option of continuing to receive the monthly payments  
of $60,000 as outlined in Section 1.1 (e) or of unwinding the sale of the  
Assets. If SG BOLVARIA elects to unwind the sale, SG BOLVARIA shall return the  
Purchase Shares to MONOTROK and all monies paid by MONOTROK to SG BOLVARIA under this agreement shall be credited towards the purchase of ownership in SG BOLVARIA on a pro-rata basis as outlined in Section 2.4. SG BOLVARIA shall notify MONOTROK in writing no later than October 10, 2011 of its election under this Section 2.5 and on a monthly basis thereafter.The conditions set forth above are for the exclusive benefit of SG BOLVARIA and may be waived by SG BOLVARIA in whole or in part at or before the Time of Closing, as long as such conditions are waived by SG BOLVARIA in writing.  
  
3.COVENANTS, AGREEMENTS AND ACKNOWLEDGEMENTS

3.1  
SG BOLVARIA covenants and agrees with MONOTROK that SG BOLVARIA shall:  
(a)  
from and including the Effective Date through and including the Time of Closing,  
permit MONOTROK, through its directors, officers, employees and authorized agents  
and representatives, at MONOTROK's own cost, full access to the books, records  
and property of the Assets including, without limitation, all of the assets,  
contracts, correspondence, accounts and minute books, so as to permit MONOTROK to  
make such investigation as MONOTROK considers advisable; and  
(b)  
provide to MONOTROK all such further documents, instruments and materials and do  
all such acts and things as may be required by MONOTROK to obtain any regulatory  
approvals that may be required under applicable laws; and  
(c)  
from and including the Effective Date through to and including the Time of  
Closing, do all such acts and things that may be necessary to ensure that all of  
the representations and warranties of SG BOLVARIA contained in this Agreement or  
any certificates or documents delivered by any of them pursuant to this  
Agreement remain true and correct; and  
(d)  
from and including the Effective Date through and including the Time of Closing,  
preserve and protect all of the goodwill, assets, business and undertaking of SG  
BOLVARIA and, without limiting the generality of the foregoing, carry on the  
development of the Assets in a reasonable and prudent manner; and  
(e)  
from and including the Effective Date through and including the Time of Closing,  
keep confidential all discussions and communications (including all information  
communicated therein) between the parties, and all written and printed materials  
of any kind whatsoever exchanged or given access to by the parties, except only  
any information or material that:  
(i)  
was in the public domain at the time of disclosure to a party (the "Recipient");  
or  
(ii)  
was already in the possession of the Recipient prior to disclosure, as  
demonstrated by the Recipient through tangible evidence; or  
(iii)  
subsequently enters the public domain through no fault of the Recipient or any  
officer, director, employee or agent of the Recipient; or  
(iv)  
is required to be disclosed by law or by a court or regulatory authority of  
competent jurisdiction; and, if so requested by SG BOLVARIA, MONOTROK shall  
arrange for any director, officer, employee, authorized agent or representative  
of any member of SG BOLVARIA to enter into, and MONOTROK shall enter into, a  
non-disclosure agreement with SG BOLVARIA in a form acceptable to SG BOLVARIA  
acting reasonably; and  
Page 6 of 13  
(f)  
not waive any Asset rights of material value; and  
(g)  
not cause Assets to enter into any transaction or into any contracts or  
agreements or modifications or cancellations thereof, other than in the ordinary  
course of business; and  
(h)  
not use any Asset funds other than in the ordinary course of business as  
theretofore carried on.

3.2  
MONOTROK covenants and agrees with SG BOLVARIA that:  
(a)  
MONOTROK will not dispose or pledge any Assets between Effective Date and  
Financing date unless approved in writing by Sven Herger and Igge van Trop;  
and  
(b)  
MONOTROK will not between Effective Date and Financing date take any debt into  
the name of SG BOLVARIA or its affiliates except for the advances made in 1.1 (e)  
and any liabilities generated during the normal course of business; and  
(c)  
Between Effective Date and Financing date, all cash generated by the Assets of  
SG BOLVARIA and its affiliates will remain in Singapore to be used for the  
operations of the Assets. Should the Transaction be terminated for whatever  
reason, the cash generated by the Assets will remain the property of SG BOLVARIA  
and its affiliates; and  
(d)  
from and including the Effective Date through and including the Time of  
Financing, keep confidential all discussions and communications (including all  
information communicated therein) between the parties, and all written and  
printed materials of any kind whatsoever exchanged or given access to by the  
parties, except only any information or material that:  
(i)  
was in the public domain at the time of disclosure to a party (the "Recipient");  
or  
(ii)  
was already in the possession of the Recipient prior to disclosure, as  
demonstrated by the Recipient through tangible evidence; or  
(iii)  
subsequently enters the public domain through no fault of the Recipient or any  
officer, director, employee or agent of the Recipient; or  
(iv)  
is required to be disclosed by law or by a court or regulatory authority of  
competent jurisdiction;  
(e)  
and, if so requested by MONOTROK, SG BOLVARIA shall arrange for any director,  
officer, employee, authorized agent or representative of any member of  
MONOTROK to enter into, and SG BOLVARIA shall enter into, a non-disclosure  
agreement with MONOTROK in a form acceptable to MONOTROK acting reasonably  
  
4.REPRESENTATIONS AND WARRANTIES  
  
4.1

For the Purposes of this Section 4, an individual will be deemed to have  
  
"Knowledge" of a particular fact or other matter if:  
  
(a)  
such individual is actually aware of such fact or other matter at the time in  
question; and  
(b)  
a person (other than an individual) will be deemed to have "Knowledge" of a  
particular fact or other matter if any individual who is serving as a director,  
officer, partner, executor, or trustee of such Person (or in similar capacity)  
has, or at anytime had, "Knowledge" of such fact or other matter.

4.2  
In order to induce MONOTROK to enter into this Agreement and complete its  
transactions contemplated hereunder, SG BOLVARIA, to the best of its Knowledge,  
represents and warrants that as of the Closing Date:  
(a)  
The Assets were duly incorporated under the laws of Singapore or of  
Liechtenstein and:  
(i)  
SG BOLVARIA has the power, authority and capacity to enter into this Agreement  
and carry out its terms; and  
(ii)  
The Assets are in good standing with respect to the filing of all annual reports  
required under the laws of Singapore or of Liechtenstein; and  
(b)  
the Articles of Incorporation and Bylaws of Bolvarianova Singapore Pte Ltd and  
Nevtrol AG, as amended have not been altered. Bolvarianova Singapore Pte Ltd  
and Nevtrol AG are in good standing as of the Effective Date, and will be in  
good standing as of the Time of Closing; and  
(c)  
all of the material transactions of Bolvarianova Singapore Pte Ltd and  
Nevtrol AG which are required to be recorded or filed in or with the books  
or records have been promptly and properly so recorded or filed and the minute  
books contain all records of the meetings and proceedings of the shareholders  
and directors since incorporation; and  
(d)  
Bolvarianova Singapore Pte Ltd and Nevtrol AG hold all licenses and permits  
that are required for carrying on their business in the manner in which such  
business has been carried on; and  
(e)  
Bolvarianova Singapore Pte Ltd and Nevtrol AG are the registered and  
beneficial owner of all rights, title and interest in and to all tangible and  
intangible property associated with all business carried on by Bolvarianova  
Singapore Pte Ltd and Nevtrol AG and the other assets listed on Schedule  
4.2(e) to this Agreement, subject only to such qualifications and limitations as are indicated in Schedule 4.2(e);-

(f)  
each item of machinery and equipment of any kind whatsoever comprised in the  
Assets is in reasonable operating condition and in a state of reasonable  
maintenance and repair taking into account its age and use; and  
(g)  
any and all, but not limited to the deposit, savings, investment and brokerage  
accounts and safety deposit boxes of Bolvarianova Singapore Pte Ltd and  
Nevtrol AG are listed on Schedule 4.2(g) attached hereto; and  
(h)  
Bolvarianova Singapore Pte Ltd and Nevtrol AG have the corporate power to own  
the assets they own, and to carry on the business, and are duly qualified to  
carry on business in all jurisdictions in which they carry on business; and  
(i)  
save for any costs and expenses arising in the ordinary course of business, all  
material outstanding liabilities, whether direct, indirect, absolute, contingent  
or otherwise, whatsoever of Bolvarianova Singapore Pte Ltd and Nevtrol AG  
have been disclosed in writing to MONOTROK prior to the Effective Date and will  
be disclosed prior to the Time of Closing, and except as otherwise disclosed in  
the Financial Statements or in writing on Schedule 4.2 (i).  
(j)  
except as set forth on Schedule 4.2(j) of this Agreement:  
(i)  
no dividends or other distributions of any kind whatsoever on any shares in the  
capital of Bolvarianova Singapore Pte Ltd and Nevtrol AG have been made,  
declared or authorized; and  
(ii)  
Bolvarianova Singapore Pte Ltd and Nevtrol AG are not indebted to any of the  
Shareholders, and  
(iii)  
none of the Shareholders or any other officer, director or employee of  
Bolvarianova Singapore Pte Ltd and Nevtrol AG is indebted or under obligation  
to Bolvarianova Singapore Pte Ltd and Nevtrol AG on any account whatsoever;  
and  
(k)  
except as may be noted on appropriate Schedule 4.2(k) to this Agreement, all  
"Material Contracts" (defined herein as contracts with a value greater than  
$99,999) are in good standing in all material respects and not in default in any  
respect; and  
(l)  
Bolvarianova Singapore Pte Ltd and Nevtrol AG are not in material breach of  
any applicable law, ordinance, statute, regulation, by-law, order or decree of  
any kind whatsoever including, without limitation, any applicable securities  
laws; and  
(m)  
all tax returns and reports of Bolvarianova Singapore Pte Ltd and Nevtrol AG  
other than for fiscal year 2011 that are required by law to have been filed have  
been filed and are substantially true, complete and correct and all taxes and  
other government charges of any kind whatsoever of Bolvarianova Singapore Pte Ltd  
and Nevtrol AG have been paid or disclosed in writing to MONOTROK; and  
(n)  
except as otherwise disclosed in writing on Schedule 4.2 (n) there are no  
material (defined as having claims or potential liability in excess of $99,999)  
actions, suits, judgements, investigations or proceedings of any kind whatsoever  
outstanding, pending or known to be threatened against or affecting Bolvarianova  
Singapore Pte Ltd and Nevtrol AG at law or in equity or before or by any  
federal, provincial, state, municipal or other governmental department,  
commission, board, bureau or agency of any kind whatsoever and there is no basis  
therefore; and  
(o)  
SG BOLVARIA has good and sufficient power, authority and capacity to enter into  
this Agreement and complete its respective transactions contemplated under this  
Agreement on the terms and conditions set forth herein; and  
(p)  
this Agreement has been duly executed and delivered by SG BOLVARIA and, assuming  
the due authorization, execution and delivery hereof by MONOTROK, constitutes a  
legal, valid and binding obligation of SG BOLVARIA, enforceable against it in  
accordance with its terms subject to:  
(i)  
bankruptcy, insolvency, moratorium, reorganization and other laws relating to or  
affecting the enforcement of creditors' rights generally; and  
(ii)  
the fact that equitable remedies, including the remedies of specific performance  
and injunction, may only be granted in the discretion of a court; and  
(q)  
the execution and delivery of this Agreement, the performance of its obligations  
under this Agreement and the Completion will not:  
(i)  
conflict with, or result in the breach of or the acceleration of any  
indebtedness under, or constitute default under, any of the Corporate Documents  
of SG BOLVARIA, or any of the terms of any indenture, mortgage, agreement, lease,  
licence or other instrument of any kind whatsoever, or any judgement or order of  
any kind whatsoever of any court or administrative body of any kind whatsoever  
by which any of them is bound; nor  
(ii)  
result in the violation of any law or regulation applicable to SG BOLVARIA;  
(r)  
Bolvarianova Singapore Pte Ltd and Nevtrol AG are in compliance in all  
material respects with all federal, state and municipal environmental laws and  
regulations (the "Environmental Laws"); and were and remains duly incorporated  
and validly existing under the laws of Singapore or Liechtenstein, and are in  
good standing with respect to all filings required by Singapore or Liechtenstein  
as of the Effective date; and  
(s)  
SG BOLVARIA has taken all necessary or desirable actions, steps and corporate  
and other proceedings to approve or authorize, validly and effectively, the  
entering into of, and the execution, delivery and performance of, this  
Agreement; and  
(t)  
the execution, delivery and performance of this Agreement and each of the other  
agreements contemplated or referred to herein by SG BOLVARIA, and the completion  
of the transactions contemplated hereby, will not constitute or result in a  
violation or breach of or default under:  
(i)  
any term or provision of any of the memorandum, articles or other related  
documents of SG BOLVARIA; or  
(ii)  
the terms of any indenture, agreement (written or oral), instrument or  
understanding or other obligation or restriction to which SG BOLVARIA is a party

or by which it is bound; or  
(iii)  
any term or provision of any licenses, registrations or qualifications of SG  
BOLVARIA or any order of any court, governmental authority or regulatory body or  
any applicable law or regulation of any jurisdiction.

4.3  
In order to induce SG BOLVARIA to enter into this Agreement and complete its  
transactions contemplated hereunder, MONOTROK, to the best of its knowledge,  
represents and warrants that as of the Closing Date:  
(a)  
MONOTROK was duly incorporated under the laws of Nevada and:  
(i)  
has the power, authority and capacity to enter into this Agreement and carry out  
its terms; and  
(ii)  
is in good standing with respect to the filing of all annual reports required  
under the laws of the State of Nevada; and  
(b)

MONOTROK has performed a diligent search of Bolvarianova Singapore Pte Ltd and  
Nevtrol AG financials and is aware of the liabilities as of the Closing Date  
and accepts those liabilities and others that may arise as a result the normal  
course of business; and  
(c)  
MONOTROK accepts and agrees to the transfer to MONOTROK, as part of the Asset  
Purchase, all assets and liabilities of SG BOLVARIA, except for the advances made  
by the parties listed in Appendix 1 without recourse; and  
(d)  
MONOTROK has taken all necessary or desirable actions, steps and corporate and  
other proceedings to approve or authorize, validly and effectively, the entering  
into of, and the execution, delivery and performance of, this Agreement.

4.4  
The representations and warranties of SG BOLVARIA and MONOTROK contained in this  
Agreement shall be true at the Time of Closing as though they were made at the  
Time of Closing, and they shall survive the Completion and remain in full force  
and effect thereafter for the benefit of the respective parties to this  
Agreement.

5.  
INDEMNITIES

5.1  
Indemnities:  
(a)  
notwithstanding the completion of the transactions contemplated under this  
Agreement or MONOTROK's Investigation, the representations, warranties and  
acknowledgements contained in this Agreement shall survive the Completion and  
shall continue in full force and effect thereafter for the benefit of the  
recipient. If any of the representations, warranties or acknowledgements given  
by either party is found to be untrue, then the offending party covenants to  
indemnify and save harmless the affected party from and against any and all  
liability, claims, debts, demands, suits, actions, penalties, fines, losses,  
costs (including legal fees, disbursements and taxes as charged on a lawyer and  
own client basis), damages and expenses of any kind whatsoever which may be  
brought or made against the affected party by any person, firm or corporation of  
any kind whatsoever or which may be suffered or incurred by the affected party,  
directly or indirectly, arising out of or as a consequence of any such  
misrepresentation or breach of warranty, acknowledgement, covenant or agreement.  
  
6.EXECUTION DELIVERY; CLOSING DELIVERY

6.1

Concurrent with the execution of this Agreement SG BOLVARIA shall deliver to  
MONOTROK:  
(a)  
certified true copies of the resolutions of the directors of SG BOLVARIA  
evidencing that the directors of SG BOLVARIA have approved this Agreement and all  
of the transactions of SG BOLVARIA contemplated hereunder, subject to the  
prerequisites described herein; and

6.2  
Concurrent with the execution of this Agreement, MONOTROK shall deliver to SG  
BOLVARIA:  
(a)  
true copies of the resolutions of the directors of MONOTROK, evidencing that the  
directors of MONOTROK have approved this Agreement and all of the transactions of  
MONOTROK contemplated hereunder, subject to the prerequisites described herein;  
and

6.3  
At the Time of Closing, MONOTROK shall deliver to SG BOLVARIA:  
(a)  
certified true copies of the resolutions of the directors of MONOTROK evidencing  
that the directors of MONOTROK have approved the transactions of MONOTROK  
contemplated hereunder, specifically referring to:  
(i)  
the transfer of the Purchase Shares from MONOTROK to SG BOLVARIA as provided for  
in this Agreement; and  
(b)  
the SG BOLVARIA Share Certificates; and  
(c)  
any unpaid cash consideration as required hereunder; and  
(d)  
employment contracts to the benefit and satisfaction of Sven Herger and  
Igge van Trop; and  
(e)  
agreements to the benefit and satisfaction of Sven Herger and Igge van Trop  
by which a 1.5% inventor repayment fee from net sales (including licensing fees  
and royalties) of any products using the ABC and/or DEF  
technologies (including Cancer Products) is paid to Sven Herger and Igge van Trop.

6.4  
At the Time of Closing, SG BOLVARIA shall deliver to MONOTROK:  
(a)  
certified true copies of the resolutions of the directors of SG BOLVARIA  
evidencing that the directors of SG BOLVARIA have approved the terms of this  
agreement. Documents evidencing the transfer of ownership in the Assets to  
Monotrok; and  
(b)  
All pertinent and necessary corporate records, seals, financial information,  
intellectual property, etc; and  
(c)  
any other materials that are, in the opinion of the attorneys for MONOTROK,  
reasonably required to complete the transactions contemplated under this  
Agreement.

7.GENERAL

7.1  
Time and each of the terms and conditions of this Agreement shall be of the  
essence of this Agreement and any waiver by the parties of this paragraph 7.1 or  
any failure by them to exercise any of their rights under this Agreement shall  
be limited to the particular instance and shall not extend to any other instance  
or matter in this Agreement or otherwise affect any of their rights or remedies  
under this Agreement.  
  
7.2  
The Schedules to this Agreement incorporated by reference and the recitals to  
this Agreement constitute a part of this Agreement.

7.3  
This Agreement constitutes the entire Agreement between the parties hereto in  
respect of the matters referred to herein and there are no representations,  
warranties, covenants or agreements, expressed or implied, collateral hereto  
other than as expressly set forth or referred to herein.

7.4  
The headings in this Agreement are for reference only and do not constitute  
terms of the Agreement.

7.5  
The provisions contained in this Agreement which, by their terms, require  
performance by a party to this Agreement subsequent to the Closing Date of this  
Agreement, shall survive the Closing Date of this Agreement.

7.6  
No alteration, amendment, modification or interpretation of this Agreement or  
any provision of this Agreement shall be valid and binding upon the parties  
hereto unless such alteration, amendment, modification or interpretation is in  
written form executed by the parties directly affected by such alteration,  
amendment, modification or interpretation.  
7.7  
Whenever the singular or masculine is used in this Agreement the same shall be  
deemed to include the plural or the feminine or the body corporate as the  
context may require.

7.8  
The parties hereto shall execute and deliver all such further documents and  
instruments and do all such acts and things as any party may, either before or  
after the Closing Date, reasonably require in order to carry out the full intent  
and meaning of this Agreement.

7.9  
Any notice, request, demand and other communication to be given under this  
Agreement shall be in writing and shall be delivered by hand to the appropriate  
party at the address as first set out above or to such other addresses or by  
such other means as may be designated in writing by the parties hereto in the  
manner provided for in this paragraph, and shall be deemed to have been received  
on the date of delivery by hand, or if delivered by e-mail or telecopy, then on  
the date transmission completes.

7.10  
This Agreement shall be subject to, governed by, and construed in accordance  
with the laws of the State of Nevada and the parties agree to the exclusive  
jurisdiction of the courts of the State of Utah for the resolution of all  
disputes arising under this Agreement.

7.11  
The parties acknowledge that each of them has had the benefit of legal counsel  
of its own choice and has been afforded an opportunity to review this Agreement  
with its legal counsel and that this Agreement shall be construed as if jointly  
drafted by the parties hereto.

7.12  
Should any clause, sentence, paragraph, subsection, Section or Article of this  
Agreement be judicially declared to be invalid, unenforceable or void, suchdecision will not have the effect of invalidating or voiding the remainder of  
this Agreement, and the parties agree that the part or parts of this Agreement  
so held to be invalid, unenforceable or void will be deemed to have been  
stricken herefrom by the parties, and the remainder will have the same force and  
effectiveness as if such stricken part or parts had never been included herein.

7.13  
This Agreement may be signed by the parties in as many counterparts as may be  
deemed necessary, each of which so signed shall be deemed to be an original, and  
all such counterparts together shall constitute one and the same instrument. A  
copy of this Agreement signed by one party and faxed to another party shall be  
deemed to have been executed and delivered by the signing party as though an  
original. A photocopy of this Agreement shall be effective as an original for  
all purposes.

IN WITNESS WHEREOF the parties have hereunto set their hands and seals as of the  
Effective Date:

"Seller"  
"Purchaser"  
/s/ Igge van Trop  
/s/ Peter Maier  
Igge van Trop, Ph.D.  
Peter Maier, M.S., Ph.D.  
CEO, SG BOLVARIA PTE LTD  
President & CEO, MONOTROK, INC.