TERADATA CORP /DE/

FORM 8-K
(Current report filing)

Filed 04/06/11 for the Period Ending 04/05/11

Address	10000 INNOVATION DRIVE DAYTON, OH 45342
Telephone	937-242-4800
CIK	0000816761
Symbol	TDC
SIC Code	3571 - Electronic Computers
Industry	Computer Services
Sector	Technology
Fiscal Year	12/31

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of report (Date of earliest event reported): April 5, 2011

TERADATA CORPORATION
(Exact Name of Registrant as Specified in its Charter)

Delaware	**001-33458**	**75-3236470**
(State or Other Jurisdiction of Incorporation)	**(Commission File Number)**	**(I.R.S. Employer Identification No.)**

10000 Innovation Drive **Dayton, Ohio** **(Address of Principal Executive Offices)**	**45342** **(Zip Code)**

Registrant's telephone number including area code: (866) 548-8348

N/A
(Former Name or Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 1.01. Entry into a Material Definitive Agreement.

On April 5, 2011, Teradata Corporation ("Teradata") entered into a Term Loan Agreement with JPMorgan Chase Bank, N.A., as Administrative Agent, Bank of America, N.A., as Syndication Agent, and the other lenders party thereto (the "Term Loan Agreement") under which lenders made an unsecured term loan to Teradata in the principal amount of $300 million. Proceeds from the Term Loan Agreement were used to pay a portion of the cash consideration payable in connection with the acquisition described in Item 2.01 below and to pay fees and expenses incurred in connection with the Term Loan Agreement. Under the terms of the Term Loan Agreement, Teradata is entitled, on one or more occasions prior to the maturity of the loan, subject to the satisfaction of certain conditions, to request additional term loans under the Term Loan Agreement in the aggregate principal amount of up to $300 million, to the extent that existing or new lenders agree to provide such additional term loans.

The term loan is payable in quarterly installments, commencing on June 30, 2012 (with 1.25% of the initial principal amount due on each of the first eight payment dates; 2.50% of the initial principal amount due on each of the next four payment dates; and 5.0% of the initial principal amount due on each of the next three payment dates) with all remaining principal due on April 5, 2016. The outstanding principal amount of the Term Loan Agreement bears interest at a floating rate based upon a negotiated base rate or a Eurodollar rate plus in each case a margin based on the leverage ratio of the Company.

Certain of the Company's material domestic subsidiaries have guaranteed the obligations of Teradata under the Term Loan Agreement.

The Term Loan Agreement contains customary representations and warranties, default provisions and affirmative and negative covenants including, among others, covenants regarding the maintenance of certain financial ratios, covenants relating to financial reporting, compliance with laws, subsidiary indebtedness, limitations on liens, sale and leaseback transactions, sales of assets, mergers and other fundamental changes involving the company, asset sales, entry into certain restrictive agreements and investments.

The foregoing description of the Term Loan Agreement is not complete and is subject to and qualified in its entirety by reference to the Term Loan Agreement, which is attached as Exhibit 1.1 to this Current Report and incorporated herein by reference.

Item 2.01. Completion of Acquisition or Disposition of Assets.

Merger with Aster Data Systems, Inc.

On April 5, 2011, Teradata completed its acquisition of Aster Data Systems, Inc. ("Aster Data"), a leader and pioneer in advanced analytics and the management of a variety of unstructured, diverse data, pursuant to an Agreement and Plan of Merger (the "Merger Agreement"), dated March 2, 2011, by and among Teradata, Aster Data, Oakland Merger Corporation ("Merger Sub"), a wholly owned subsidiary of Teradata, and certain other parties thereto. As provided in the Merger Agreement, Merger Sub was merged with and into Aster Data (the "Merger"), with Aster Data continuing as a wholly owned subsidiary of Teradata.

The aggregate consideration payable by Teradata in the Merger for all of the outstanding capital stock and derivative securities (including all outstanding warrants, stock options and restricted stock units) of Aster Data was $260 million, after adjusting for Aster Data's net indebtedness, transaction expenses and severance or other change-in-control related liabilities (as so adjusted, the "Merger Consideration"). The Merger Consideration excluded (i) the value of Teradata's pre-existing 11.2% equity investment in Aster Data and (ii) cash retention payments to be made following the completion of the Merger for Aster Data's unvested and committed equity awards, which amounts will be paid on pre-existing vesting schedules (subject to the terms and conditions thereof). The Merger Consideration was not adjusted, either positively or negatively, for cash held by Aster Data at closing, which was approximately $16 million.

Under the Merger Agreement, a portion of the Merger Consideration otherwise payable by Teradata in the Merger was placed into an escrow fund as security for the indemnification obligations of Aster Data's security holders under the Merger Agreement for, among other things, breaches of the representations, warranties and covenants made by Aster Data in the Merger Agreement that exceed a specified basket amount and other customary matters.

The foregoing description of the Merger Agreement and the Merger is not complete and is subject to and qualified in its entirety by reference to the Merger Agreement, which is attached as Exhibit 2.1 to this Current Report and incorporated herein by reference.

Forward Looking Statements

This filing and the attached press release contain forward-looking statements. A number of important factors could cause actual results or events to differ materially from those indicated by such forward-looking statements, including Teradata's ability to achieve expected synergies and operating efficiencies within the expected time-frames or at all and to successfully integrate Aster Data's operations into those of Teradata; that such integration may be more difficult, time-consuming or costly than expected; operating costs, customer loss and business disruption (including, without limitation, difficulties in maintaining relationships with employees, customers, clients or suppliers) may be greater than expected following the transaction; market acceptance of Aster Data technology may be slower than expected; recurring revenue may decline, fail to be renewed or fail to grow at expected levels; and the retention of certain key employees of Aster Data may be difficult. Risks, uncertainties and assumptions include: the possibility that expected benefits of the Merger (including, without limitation, technology lead and differentiation, market adoption and revenue growth) may not materialize as expected; that Aster Data's technology portfolio may not be as robust or as easy to integrate into Teradata's existing portfolio as believed; and other risks that are described in Teradata's filings with the Securities and Exchange Commission.

Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The disclosure set forth under Item 1.01 is incorporated herein by reference.

Item 8.01. Other Events.

On April 6, 2011, Teradata issued a press release announcing completion of the Merger, a copy of which is attached as Exhibit 99.1 to this Current Report and incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(d) *Exhibits*

The following exhibits are attached to this Current Report:

Exhibit No.	Description
1.1	Term Loan Agreement dated April 5, 2011 among Teradata Corporation, JPMorgan Chase Bank, N.A., as Administrative Agent, Bank of America, N.A., as Syndication Agent, and the other lenders party thereto.
2.1	Agreement and Plan of Merger, dated March 2, 2011, by and among Teradata Corporation, Oakland Merger Corporation, Aster Data Systems, Inc. and certain other parties thereto.*
99.1	Press Release of Teradata Corporation, dated April 6, 2011.

* The exhibits and schedules to the Agreement and Plan of Merger have been omitted pursuant to Item 601(b)(2) of Regulation S-K and will be provided to the Securities and Exchange Commission upon request.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Teradata Corporation

By: /s/ Laura K. Nyquist
Name: Laura K. Nyquist
Title: General Counsel and Secretary

Dated: April 6, 2011

Index to Exhibits

Exhibit No.	Description
1.1	Term Loan Agreement dated April 5, 2011 among Teradata Corporation, JPMorgan Chase Bank, N.A., as Administrative Agent, Bank of America, N.A., as Syndication Agent, and the other lenders party thereto.
2.1	Agreement and Plan of Merger, dated March 2, 2011, by and among Teradata Corporation, Oakland Merger Corporation, Aster Data Systems, Inc. and certain other parties thereto.*
99.1	Press Release of Teradata Corporation, dated April 6, 2011.

* The exhibits and schedules to the Agreement and Plan of Merger have been omitted pursuant to Item 601(b)(2) of Regulation S-K and will be provided to the Securities and Exchange Commission upon request.

LIST OF OMITTED SCHEDULES AND AGREEMENT TO PROVIDE TO COMMISSION

The following is a list of the schedules to the Agreement and Plan of Merger by and among Teradata Corporation, Oakland Merger Corporation, Aster Data Systems, Inc. and certain other parties thereto (by reference to section headings) which have been omitted from this filing pursuant to Item 601(b)(2) of Regulation S-K. Teradata Corporation will provide the omitted schedules to the Securities and Exchange Commission upon request.

Section 1.1

Certain Definitions

Section 3.1

Organization and Good Standing

Section 3.2

Authority; Enforceability

Section 3.3

Capitalization

Section 3.4

Subsidiaries

Section 3.5

No Conflicts

Section 3.7

Financial Statements

Section 3.8

Absence of Changes

Section 3.9

Absence of Undisclosed Liabilities

Section 3.10

Taxes

Section 3.11

Supplies and Major Customers

Section 3.12

Property

Section 3.13	
Intellectual Property	
Section 3.14	
Contracts	
Section 3.15	
Benefits	
Section 3.16	
Personnel	
Section 3.18	
Insurance	
Section 3.22	
Banking Relationships	
Section 5.1	
Conduct of Business of the Company	
Section 6.17	
Code Review	
Section 7.2	
Conditions to the Obligation of Parent and Merger Sub	

Exhibit 1.1

Published CUSIP Number: _____

$300,000,000

TERM LOAN AGREEMENT

dated as of April 5, 2011,

among

TERADATA CORPORATION ,
as Borrower

JPMORGAN CHASE BANK, N.A. ,
as Administrative Agent

BANK OF AMERICA, N.A. ,
as Syndication Agent

and

the other **LENDERS** party hereto

J.P. MORGAN SECURITIES LLC
and
MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED,
as Joint Lead Arrangers and Joint Bookrunners

TABLE OF CONTENTS PAGE

This **TERM LOAN AGREEMENT** is entered into as of April 5, 2011 (this " Agreement "), among **TERADATA CORPORATION** , a Delaware corporation (the " Borrower "), each lender from time to time party hereto (collectively, the " Lenders " and, individually, a " Lender "), **JPMORGAN CHASE BANK, N.A.** , as Administrative Agent, and **BANK OF AMERICA, N.A.** , as Syndication Agent.

The Borrower has requested the Lenders to make the term loans provided for herein on the Closing Date, the proceeds of which shall be used (a) to fund in part the acquisition (the " Acquisition ") by the Borrower or one of its wholly-owned Subsidiaries by merger of all of the capital stock of Aster Data Systems, Inc. and (b) for general corporate purposes of the Borrower and the Subsidiaries. The Lenders are willing to make such term loans upon the terms and subject to the conditions set forth herein.

Accordingly, the parties hereto agree as follows:

ARTICLE I

Definitions

Section 1.01 Defined Terms . As used in this Agreement, the following terms have the meanings specified below:

" Acquisition " has the meaning assigned to such term in the recitals hereto.

" Acquisition Agreement " means that certain Agreement and Plan of Merger dated March 2, 2011 among the Borrower, Aster Data Systems, Inc., Oakland Merger Corporation and certain other parties pursuant to which the Acquisition is to be effected.

" Additional Lenders " has the meaning assigned to such term in Section 2.20 .

" Additional Term Loan " has the meaning assigned to such term in Section 2.20 .

" Additional Term Loan Tranche " means one or more Additional Term Loans made on the same day.

" Adjusted Eurodollar Rate " means, with respect to any Eurodollar Rate Borrowing for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/16 of 1%) equal to (a) the Eurodollar Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate.

" Adjusted One Month Eurodollar Rate " means, an interest rate per annum equal to the sum of (a) 1.00% per annum plus (b) the Adjusted Eurodollar Rate for a one month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day); provided that, for the avoidance of doubt, the Adjusted Eurodollar Rate for any day shall be based on the rate appearing on the Reuters Screen LIBOR01 Page (or on any successor or substitute page) at approximately 11:00 a.m. London time on such day (without any rounding).

" Administrative Agent " means JPMCB in its capacity as administrative agent for the Lenders under any of the Loan Documents, or any successor administrative agent.

" Administrative Agent's Office " means the Administrative Agent's address and, as appropriate, account set forth in Schedule 9.01 , or such other address or account as the Administrative Agent may from time to time notify the Borrower and the Lenders.

" Administrative Questionnaire " means an Administrative Questionnaire in a form supplied by the Administrative Agent.

" Affiliate " means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

" Aggregate Loan Amount " means the maximum aggregate principal amount of Loans which may be made hereunder.

" Agreement " has the meaning assigned to such term in the preamble hereto.

" Alternate Base Rate " means the highest of (a) the Prime Rate, (b) the Federal Funds Rate plus 0.50% and (c) the Adjusted One Month Eurodollar Rate plus 1.00%. Any change in the Alternate Base Rate due to a change in the Prime Rate, the Federal Funds Rate or the Adjusted One Month Eurodollar Rate shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Rate or the Adjusted One Month Eurodollar Rate, respectively.

" Applicable Percentage " means, with respect to any Lender, the percentage of the aggregate outstanding principal amount of the Loans represented by the aggregate outstanding principal amount of Loans held by such Lender.

" Applicable Rate " means the following percentages per annum, based upon the Leverage Ratio as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 5.01(c) :

Pricing Level	Leverage Ratio	Base Rate Loans	Eurodollar Rate Loans
I	<1.00: 1	0.00%	1.00%
II	≥ 1.00:1 but <1.50:1	0.25%	1.25%
III	≥ 1.50:1 but <2.00:1	0.50%	1.50%
IV	≥ 2.00:1	0.75%	1.75%

For the period from the Closing Date until the first Business Day immediately following the date a Compliance Certificate is delivered for the fiscal quarter ending March 31, 2011 pursuant to Section 5.01(c) , the Applicable Rate shall equal Pricing Level II. Thereafter, any increase or decrease in the Applicable Rate resulting from a change in the Leverage Ratio shall become effective as of the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 5.01(c) ; provided , however , that if a Compliance

Certificate is not delivered when due in accordance with such Section, then Pricing Level IV shall apply as of the first Business Day after the date on which such Compliance Certificate was required to have been delivered.

Notwithstanding anything to the contrary contained in this definition, the determination of the Applicable Rate for any period shall be subject to the provisions of Section 2.13 .

" Approved Fund " has the meaning assigned to such term in Section 9.04(b) .

" Arrangers " means J.P. Morgan Securities LLC and Merrill Lynch, Pierce, Fenner & Smith Incorporated in their capacity as joint lead arrangers and joint book managers.

" Assignment and Assumption " means an Assignment and Assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.04), and accepted by the Administrative Agent, in the form of Exhibit B or any other form approved by the Administrative Agent.

" Attributable Indebtedness " means, on any date, in respect of any lease of the Borrower or any Subsidiary, as lessee, entered into as part of a sale and leaseback transaction subject to Section 6.03 , (a) if such lease is a Capital Lease Obligation, the capitalized amount thereof that would appear on a consolidated balance sheet of the Borrower prepared as of such date in accordance with GAAP, and (b) if such lease is not a Capital Lease Obligation, the capitalized amount of the remaining lease payments under such lease that would appear on a consolidated balance sheet of the Borrower prepared as of such date in accordance with GAAP if such lease were accounted for as a Capital Lease Obligation.

" Audited Financial Statements " means the audited consolidated balance sheet of the Borrower and its Subsidiaries most recently delivered in accordance with Section 5.01(a) , and the related consolidated statements of income or operations, shareholders' equity and cash flows for such fiscal year of the Borrower and its Subsidiaries, including the notes thereto.

" Base Rate Loan " means a Loan that bears interest at a rate based on the Alternate Base Rate.

" Base Rate Loan Borrowing " means a Borrowing comprised of Base Rate Loans.

" Board " means the Board of Governors of the Federal Reserve System of the United States of America.

" Borrower " means Teradata Corporation, a Delaware corporation.

" Borrower Materials " has the meaning set forth in Section 5.02 .

" Borrowing " means all of the Loans or portions thereof of the same Type made, converted or continued on the same date and, in the case of Eurodollar Rate Loans, as to which a single Interest Period is in effect.

" Borrowing Request " means a request by the Borrower for a Borrowing in accordance with Section 2.03 .

" Business Day " means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Administrative Agent's Office is located; provided that, when used in connection with a Eurodollar Rate Loan, the term " Business Day " shall also exclude any day on which banks are not open for dealings in dollars in the London interbank market.

" Capital Lease Obligations " of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

" Change in Control " means (a) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the Securities and Exchange Commission thereunder as in effect on the date hereof) other than an employee benefit plan or related trust of the Borrower or of the Borrower and any Subsidiaries, of shares representing more than 25% of the aggregate ordinary voting power represented by the issued and outstanding capital stock of the Borrower; or (b) occupation of a majority of the seats (other than vacant seats) on the board of directors of the Borrower by Persons who were neither (i) nominated by the board of directors of the Borrower nor (ii) appointed by directors so nominated.

" Change in Law " means (a) the adoption of any law, rule, treaty or regulation after the date of this Agreement, (b) any change in any law, rule, treaty or regulation or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement or (c) compliance by any Lender (or, for purposes of Section 2.15(b) , by any lending office of such Lender or by such Lender's holding company, if any) with any rule, request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

" Closing Date " means the first date on which all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 9.02 (or, in the case of Section 4.01(b) , waived by the Person entitled to receive the applicable payment).

" Code " means the Internal Revenue Code of 1986, as amended from time to time.

" Commitment " means, with respect to each Lender, the commitment of such Lender to make a Loan on the Closing Date. The amount of each Lender's Commitment is set forth on Schedule 2.01 . The aggregate amount of the Lenders' Commitments is $300,000,000.

" Compliance Certificate " means a certificate substantially in the form of Exhibit E .

" Consolidated Cash Interest Expense " means, for any period, the difference for such period between (a) the sum for the Borrower and the Subsidiaries of (i) interest expense and (ii) the portion of any payments or accruals with respect to Capital Lease Obligations allocable to interest expense and (iii) capitalized interest expense and (b) to the extent included in interest expense, the sum for the Borrower and the Subsidiaries of (i) pay-in-kind interest expense and (ii) the amortization of debt discounts, all as determined on a consolidated basis in accordance with GAAP.

" Consolidated EBITDA " means, for any period, the net income (loss) of the Borrower and the Subsidiaries for such period plus , to the extent deducted in computing such consolidated net income and without duplication, the sum of (a) income tax expense, (b) Consolidated Cash Interest Expense, (c) depreciation and amortization expense, and (d) extraordinary losses during such period and nonrecurring noncash charges during such period (provided that any cash expenditure in respect of any such noncash charge will be deducted in computing Consolidated EBITDA for a period in which such expenditure is made), minus , to the extent added in computing such consolidated net income and without duplication, the sum of (i) income tax benefit and (ii) extraordinary or nonrecurring gains during such period, all as determined on a consolidated basis in accordance with GAAP.

" Consolidated Net Income " means, for any period, for the Borrower and its Subsidiaries determined on a consolidated basis, the net income of the Borrower and such Subsidiaries for that period.

" Consolidated Tangible Assets " means, as of the last day of any fiscal quarter of the Borrower, all tangible assets on the consolidated balance sheet of the Borrower and the Subsidiaries, as determined on a consolidated basis in accordance with GAAP.

" Control " 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 ability to exercise voting power, by contract or otherwise. " Controlling " and " Controlled " have meanings correlative thereto.

" Debtor Relief Laws " means the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

" Default " means any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

" Disclosed Matters " means the actions, suits and proceedings and the environmental matters disclosed in Schedule 1.01 .

" dollars " or " $ " refers to lawful money of the United States of America.

" Environmental Laws " means all (a) laws, rules, regulations, codes and ordinances and (b) all orders, decrees, judgments, injunctions or binding agreements issued, promulgated or entered into by any Governmental Authority and by or affecting the Borrower, in each case relating in any way to the environment, preservation or reclamation of natural resources, the management, release or threatened release of any Hazardous Material or to health and safety matters.

" Environmental Liability " means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower or any Subsidiary directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

" ERISA " means the Employee Retirement Income Security Act of 1974, as amended from time to time.

" ERISA Affiliate " means any trade or business (whether or not incorporated) that, together with the Borrower, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Sections 302 and 303 of ERISA and Sections 412 and 430 of the Code, is treated as a single employer under Section 414 of the Code.

" ERISA Event " means (a) any "reportable event", as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30-day notice period is waived); (b) the failure to meet the minimum funding standards of Sections 412 and 430 of the Code; (c) the filing pursuant to Section 412(d) of the Code or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by the Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by the Borrower or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by the Borrower or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; or (g) the receipt by the Borrower or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Borrower or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA.

" Eurodollar Rate " means, with respect to any Eurodollar Rate Loan Borrowing for any Interest Period, the rate appearing on Reuters Screen Page LIBOR01 (or on any successor or

substitute page of Reuters, or any successor to or substitute for Reuters, providing rate quotations comparable to those currently provided on such page of Reuters, as determined by the Administrative Agent from time to time for purposes of providing quotations of interest rates applicable to dollar deposits in the London interbank market) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, as the rate for dollar deposits with a maturity comparable to such Interest Period. In the event that such rate is not available at such time for any reason, then the " Eurodollar Rate " with respect to such Eurodollar Rate Loan Borrowing for such Interest Period shall be the rate at which dollar deposits of $5,000,000 and for a maturity comparable to such Interest Period are offered by the principal London office of the Administrative Agent in immediately available funds in the London interbank market at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period.

" Eurodollar Rate Loan " means a Loan that bears interest at a rate based on the Eurodollar Rate.

" Eurodollar Rate Loan Borrowing " means a Borrowing comprised of Eurodollar Rate Loans.

" Events of Default " has the meaning assigned to such term in Section 7.01 .

" Excluded Taxes " means, with respect to the Administrative Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, (a) income or franchise Taxes imposed on (or measured by) net income by the United States of America, or by the jurisdiction under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located, (b) any branch profits Taxes imposed by the United States of America or any similar Taxes imposed by any other jurisdiction in which the Borrower is located and (c) in the case of a Foreign Lender (other than an assignee pursuant to a request by the Borrower under Section 2.19(b)), (i) any U.S. Federal withholding Taxes resulting from any Law in effect on the date such Foreign Lender becomes a party to this Agreement (or designates a new lending office), (ii) any withholding taxes imposed under FATCA, or (iii) any U.S. Federal withholding Taxes that are attributable to such Foreign Lender's failure (except where such failure is a result of a Change in Law) to comply with Section 2.17(f) , in each case, except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from the Borrower with respect to such withholding Taxes pursuant to Section 2.17(a) .

" FATCA " means Sections 1471 through 1474 of the Code as of the date of this Agreement and any regulations or official interpretations thereof; provided , however , FATCA shall also include any amendments to Sections 1471 through 1474 of the Code if, as amended, FATCA provides a commercially reasonable mechanism to avoid the tax imposed thereunder by satisfying the information reporting and other requirements of FATCA.

" Federal Funds Rate " means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal

Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to JPMCB on such day on such transactions as determined by the Administrative Agent.

" Foreign Lender " means a Lender which is not a U.S. Person.

" Foreign Subsidiary " means a Subsidiary that is not organized under the laws of the United States, any state thereof or the District of Columbia.

" GAAP " means generally accepted accounting principles in the United States of America.

" Governmental Authority " means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

" Guarantee " of or by any Person (the " guarantor ") means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the " primary obligor ") in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided , that the term Guarantee shall not include endorsements for collection or deposit in the ordinary course of business.

" Guarantors " means, collectively, each Subsidiary party to the Guaranty as of the Closing Date and each other Subsidiary of the Borrower that executes and delivers a guaranty or guaranty supplement pursuant to Section 5.08 .

" Guaranty " means the Guaranty Agreement made by the Guarantors in favor of the Secured Parties, substantially in the form of Exhibit D , together with each other guaranty and guaranty supplement delivered pursuant to Section 5.08 .

" Hazardous Materials " means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes regulated pursuant to any Environmental Law.

" Hedging Agreement " means any interest rate protection agreement, foreign currency exchange agreement, commodity price protection agreement or other interest or currency exchange rate or commodity price hedging arrangement.

" Indebtedness " of any Person means, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person in respect of the deferred purchase price of property or services (excluding current accounts payable incurred in the ordinary course of business), (d) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed (if such Person has not assumed such Indebtedness of others, then the amount of Indebtedness of such Person shall be the lesser of (A) the amount of such Indebtedness of others and (B) the fair market value of such property, as reasonably determined by the Borrower), (e) all Guarantees by such Person of Indebtedness of others, (f) all Capital Lease Obligations of such Person, (g) all obligations, contingent or otherwise, of such Person as an account party in respect of standby letters of credit and letters of guaranty (x) supporting Indebtedness or (y) obtained for any purpose not in the ordinary course of business and (h) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

" Indemnified Taxes " means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by any Loan Party under any Loan Document and (b) Other Taxes.

" Information Memorandum " means the Confidential Information Memorandum dated March 7, 2011 relating to the Borrower distributed to prospective Lenders in connection with the syndication of the Commitments.

" Initial Loans " means the Loans made on the Closing Date.

" Interest Election Request " means a request by the Borrower to convert or continue a Borrowing in accordance with Section 2.08 .

" Interest Payment Date " means (a) with respect to any Base Rate Loan, the last Business Day of each March, June, September and December and (b) with respect to any Eurodollar Rate Loan, the last Business Day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Eurodollar Rate Loan Borrowing with an Interest Period of more than three months' duration, each Business Day prior to the last day of such Interest Period that occurs at intervals of three months' duration, after the first day of such Interest Period.

" Interest Period " means, with respect to any Eurodollar Rate Loan Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, two, three or six months (or other periods agreed to by all Lenders) thereafter, as the Borrower may elect; provided , that (i) if any Interest Period would

end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless, in the case of a Eurodollar Rate Loan Borrowing only, such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day and (ii) any Interest Period pertaining to a Eurodollar Rate Loan Borrowing that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

" Investment " means, with respect to any Person, any acquisition or investment (whether or not of a controlling interest) by such Person, by means of any of the following: (a) the purchase or other acquisition of any equity interest in another Person, (b) a loan, advance or extension of credit to, capital contribution to, Guarantee of obligations of, or purchase or other acquisition of any Indebtedness of, another Person, including any partnership or joint venture interest in such other Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of all or substantially all of the assets of another Person that constitute the business or a division or operating unit of another Person. Any binding commitment to make an Investment in any other Person, as well as any option of another Person to require an Investment in such Person, shall constitute an Investment. For purposes of determining compliance with any covenant contained in this Agreement, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

" IRS " means the United States Internal Revenue Service.

" JPMCB " means JPMorgan Chase Bank, N.A. and its successors and assigns.

" Laws " means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

" Lenders " has the meaning specified in the introductory paragraph hereto and includes Additional Lenders.

" Leverage Ratio " means, as of the last day of any fiscal quarter, the ratio as of such day of (a) Total Indebtedness to (b) Consolidated EBITDA for the period of four consecutive fiscal quarters ending on such last day.

" Lien " means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention

agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

" Loan Documents " means this Agreement, each Note, the Fee Letter and the Guaranty.

" Loan Notice " means a notice of (a) a Borrowing, (b) a conversion of Loans from one Type to the other, or (c) a continuation of Eurodollar Rate Loans, pursuant to Section 2.08 , which, in each case, if in writing, shall be substantially in the form of Exhibit A hereto.

" Loan Parties " means, collectively, the Borrower and each Guarantor, or any combination of the foregoing.

" Loans " means the term loans made by the Lenders to the Borrower pursuant to this Agreement, including Additional Term Loans made pursuant to Section 2.20 .

" Margin Stock " means "margin stock" as defined in Regulations U and X of the Board.

" Material Adverse Effect " means a material adverse effect on (a) the business, assets, operations, prospects or condition, financial or otherwise, of the Borrower and the Subsidiaries taken as a whole, (b) the ability of the Borrower to perform any of its obligations under this Agreement or (c) the rights of or benefits available to the Lenders pursuant to this Agreement.

" Material Indebtedness " means Indebtedness (other than the Loans), or obligations in respect of one or more Hedging Agreements, of any one or more of the Borrower and the Subsidiaries in an aggregate principal amount exceeding $25,000,000. For purposes of determining Material Indebtedness, the "principal amount" of the obligations of the Borrower or any Subsidiary in respect of any Hedging Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that the Borrower or such Subsidiary would be required to pay if such Hedging Agreement were terminated at such time.

" Material Subsidiary " means any direct or indirect Subsidiary of the Borrower which (a) has total assets equal to or greater than 5% of Consolidated Tangible Assets (calculated as of the most recent fiscal period with respect to which the Lenders shall have received financial statements required to be delivered pursuant to Sections 5.01(a) or (b) (or if prior to delivery of any financial statements pursuant to such Sections, then calculated with respect to the year end financial statements referenced in Section 3.04(a)) (the " Required Financial Information ")) or (b) has income equal to or greater than 5% of Consolidated Net Income (calculated for the most recent period for which the Lenders have received the Required Financial Information); provided , however , that notwithstanding the foregoing, the term "Material Subsidiary" shall mean each of those Subsidiaries that together with the Borrower and each other Material Subsidiary (i) have assets equal to not less than 80% of Consolidated Tangible Assets (calculated as described above) and (ii) generate not less than 80% of Consolidated Net Income; provided further that if more than one combination of Subsidiaries satisfies such threshold, then those Subsidiaries so determined to be "Material Subsidiaries" shall be specified by the Borrower; provided , further , that there shall be excluded from the definition of "Material Subsidiaries" and the computations set forth above, any Foreign Subsidiaries.

" Maturity Date " means the fifth anniversary of the date of this Agreement.

" Multiemployer Plan " means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

" Non-Recourse Receivables Sale " means a sale of accounts receivable by the Borrower or a Subsidiary to a Person that is not an Affiliate of the Borrower for fair value (i.e., reflecting a fair market discount from face value) and solely for cash consideration payable at the time of such sale; provided that neither the Borrower nor any Subsidiary provides any Guarantee with respect to the payment or collection of any such account receivable or any portion thereof and the purchaser has no recourse to the Borrower or any Subsidiary, or to their assets, in the event of nonpayment of all or any portion of any such account receivable; provided , further , that customary representations and warranties of the Borrower or a Subsidiary in connection with any such sale as to the ownership, validity, absence of Liens, setoff rights and counterclaims and similar matters with respect to the accounts receivable sold (but not as to collectability or creditworthiness of the account debtor) shall not preclude treatment of a sale of such receivables as a Non-Recourse Receivables Sale.

" Note " means a promissory note made by the Borrower in favor of each Lender requesting a note and evidencing Loans made by such Lender, substantially in the form of Exhibit C hereto.

" Obligations " means all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding. Without limiting the generality of the foregoing, the Obligations of the Borrower under the Loan Documents include (a) the obligation to pay principal, interest, charges, expenses, fees, reasonable attorney fees and disbursements, indemnities and other amounts payable by the Borrower under any Loan Document and (b) the obligations of the Borrower to reimburse any amount in respect of any of the foregoing that any Lender, in its sole discretion, may elect to pay or advance on behalf of the Borrower.

" Other Connection Taxes " means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Taxes (other than a connection arising from such Recipient having executed, delivered, enforced, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, or engaged in any other transaction pursuant to, or enforced, any Loan Document, or sold or assigned an interest in any Loan Document).

" Other Taxes " means any present or future stamp, court, documentary, intangible, recording, filing or similar excise or property Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, or from the registration, receipt or perfection of a security interest under, or otherwise with respect to, any

Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment under Section 2.19(b)).

" Participant " has the meaning assigned to such term in Section 9.04(c) .

" Participant Register " has the meaning assigned to such term in Section 9.04(c) .

" PBGC " means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

" Permitted Encumbrances " means:

(a) Liens imposed by law for taxes that are not yet due or are being contested in compliance with Section 5.04 ;

(b) Liens upon the equity interest or assets of any subsidiary that is not a Material Subsidiary securing claims in an aggregate amount at any time outstanding that does not exceed $15,000,000;

(c) carriers', warehousemen's, mechanics', materialmen's, repairmen's and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than 30 days or are being contested in compliance with Section 5.04 ;

(d) pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance and other social security laws or regulations;

(e) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business; and

(f) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of the Borrower or any Subsidiary; provided that the term "Permitted Encumbrances" shall not include any Lien securing Indebtedness.

" Person " means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

" Plan " means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

" Platform " has the meaning set forth in Section 5.02 .

" Prime Rate " means the rate of interest per annum publicly announced from time to time by JPMCB as its prime rate in effect at its principal office in New York City; each change in the Prime Rate shall be effective from and including the date such change is publicly announced as being effective.

" Public Lender " has the meaning set forth in Section 5.02 .

" Recipient " means, as applicable, (a) the Administrative Agent and (b) any Lender.

" Register " has the meaning set forth in Section 9.04(b)(iv) .

" Related Parties " means, with respect to any specified Person, such Person's Affiliates and the respective directors, officers, employees, agents and advisors of such Person and such Person's Affiliates.

" Required Lenders " means, at any time, Lenders holding Loans representing more than 50% of the aggregate outstanding principal amount of all Loans outstanding at such time.

" Responsible Officer " means the chief executive officer, president, chief financial officer, treasurer, assistant treasurer or controller of a Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

" Revolving Credit Agreement " means that certain Revolving Credit Agreement, dated as of October 1, 2007, by and among the Borrower, Bank of America, N.A., as Administrative Agent, and the other Lenders party thereto (as the same has been amended through the date hereof).

" San Diego Facility " means that certain real property located at 17087 Via Del Campo, 17089 Via Del Campo, 17093 Via Del Campo San Diego CA and 17095 Via Del Campo, San Diego, California, and described as Parcel 2 of Parcel Map No. 13441 filed in the Office of the Recorder of the County of San Diego on August 24, 1984 as Document No. 84-324480 of Official Records.

" San Diego Excess Amount " has the meaning specified in Section 6.03(a) .

" Statutory Reserve Rate " means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentage (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board to which the Administrative Agent is subject with respect to the Adjusted Eurodollar Rate, for eurocurrency funding (currently referred to as "Eurocurrency Liabilities" in Regulation D of the Board). Such reserve percentage shall include those imposed pursuant to such Regulation D. Eurodollar Rate Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements

without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage. As of the date hereof the Statutory Reserve Rate is 1.

" subsidiary " means, with respect to any Person (the " parent ") at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

" Subsidiary " means any subsidiary of the Borrower.

" Swap Contract " means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a " Master Agreement "), including any such obligations or liabilities under any Master Agreement.

" Swap Termination Value " means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender).

" Taxes " means any present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

" Total Indebtedness " means, as of any date, the aggregate amount of Indebtedness of the Borrower and the Subsidiaries on such date, without duplication, as determined on a consolidated basis in accordance with GAAP and regardless of whether such Indebtedness would be reflected on a balance sheet.

" Tranche " means (a) the Initial Loans, collectively, and (b) each Additional Term Loan Tranche.

" Transactions " means the execution, delivery and performance by the Borrower of this Agreement, the borrowing of Loans and the use of the proceeds thereof.

" Type ", when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted Eurodollar Rate or the Alternate Base Rate.

" Unfriendly Acquisition " means any acquisition that has not, at the time of the first public announcement of an offer relating thereto, been approved by the board of directors of the Person to be acquired. For purposes of this definition, " acquisition " shall mean any transaction or series of related transactions for the purpose of or resulting, directly or indirectly, in (a) the acquisition of all or substantially all of the assets of a Person, or of any business or division of a Person, (b) the acquisition of in excess of 50% of the capital stock, partnership interests, membership interests or equity of any Person, or otherwise causing any Person to become a subsidiary, or (c) a merger or consolidation or any other combination with another Person (other than a Person that is a Subsidiary) in which the Borrower or a Subsidiary is the surviving entity.

" U.S. Person " means a "United States person" within the meaning of Section 7701(a)(30) of the Code.

" U.S. Tax Certificate " has the meaning assigned to such term in Section 2.17(f)(ii)(D)(2).

" Withdrawal Liability " means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

" Withholding Agent " means any Loan Party and the Administrative Agent.

Section 1.02 Classification of Loans and Borrowings . For purposes of this Agreement, Loans may be classified and referred to by Type (e.g., a "Eurodollar Rate Loan"). Borrowings also may be classified and referred to by Type (e.g., a "Eurodollar Rate Loan Borrowing").

Section 1.03 Terms Generally . The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or

otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person's successors and assigns, (c) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (e) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights and (f) references to "the date hereof" or "the date of this Agreement" shall refer to the Closing Date.

Section 1.04 Accounting Terms; GAAP . Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided that, if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

Section 1.05 Times of Day . Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

ARTICLE II

The Credits

Section 2.01 Commitments . Subject to the terms and conditions set forth herein, each Lender severally agrees to make a Loan in dollars to the Borrower on the Closing Date in an aggregate principal amount equal to such Lender's Commitment.

Section 2.02 Loans and Borrowings . (a) The Loans made on the Closing Date shall be made as part of a Borrowing consisting of Loans made by the Lenders ratably in accordance with their respective Commitments. The failure of any Lender to make its Loans required to be made by it shall not relieve any other Lender of its obligations hereunder; provided that the Commitments of the Lenders are several and no Lender shall be responsible for any other Lender's failure to make Loans as required hereunder.

(b) Subject to Section 2.14 , each Borrowing shall be comprised entirely of Base Rate Loans or Eurodollar Rate Loans as the Borrower may request in accordance herewith. Each Lender at its option may make any Eurodollar Rate Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement.

(c) At the commencement of each Interest Period for any Eurodollar Rate Loan Borrowing, such Borrowing shall be in an aggregate principal amount that is an integral multiple of $1,000,000 and not less than $5,000,000. At the time that each Base Rate Loan Borrowing is made (or a Eurodollar Rate Loan Borrowing is converted in whole or in part into a Base Rate Loan Borrowing), such Base Rate Loan Borrowing shall be in an aggregate amount that is an integral multiple of $1,000,000 and not less than $5,000,000. Borrowings of more than one Type may be outstanding at the same time.

(d) Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

Section 2.03 Initial Borrowing . (a) The $300,000,000 Borrowing on the Closing Date shall be a Base Rate Loan Borrowing and shall be disbursed as provided in the letter of direction referred to in Section 4.01(a)(vii) .

(b) Upon satisfaction of the applicable conditions set forth in Section 4.01 and 4.02 , the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent either by (i) crediting an account of the Borrower on the books of JPMCB with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower.

(c) Except in connection with the incurrence of Additional Term Loans, a Eurodollar Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurodollar Rate Loan. During the existence of a Default, no Loans may be converted to or continued as Eurodollar Rate Loans without the consent of the Required Lenders.

(d) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurodollar Rate Loans upon determination of such interest rate. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in the Prime Rate used in determining the Alternate Base Rate promptly following the public announcement of such change.

(e) After giving effect to all Borrowings, all conversions of Loans from one Type to the other, and all continuations of Loans as the same Type, there shall not be more than four Interest Periods in effect with respect to Loans.

(f) The failure of any Lender to make any Loan to be made by it as part of any Borrowing shall not relieve any other Lender of its obligation, if any, hereunder to make its Loan on the date of such Borrowing, but no Lender shall be responsible for the failure of any other Lender to make any Loan to be made by such other Lender on the date of any Borrowing.

Section 2.04 [Reserved] .

Section 2.05 [Reserved] .

Section 2.06 [Reserved] .

Section 2.07 Payments Generally; Administrative Agent's Clawback . (a) General . All payments to be made by the Borrower shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Administrative Agent's Office in dollars and in immediately available funds not later than 12:00 noon on the date specified herein. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 12:00 noon shall in each case be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by any Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) (i) Funding by Lenders; Presumption by Administrative Agent . Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of Eurodollar Rate Loans (or, in the case of any Borrowing of Base Rate Loans, prior to 12:00 noon on the date of such Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.03 (or, in the case of a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.03) and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the Federal Funds Rate, plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to Base Rate Loans. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(ii) Payments by Borrowers; Presumptions by Administrative Agent . Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon

such assumption, distribute to the Lenders the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender, in immediately available funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the Federal Funds Rate.

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

(c) Failure to Satisfy Conditions Precedent . If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender to the Borrower as provided in the foregoing provisions of this Article II , and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Borrowing set forth in Article IV are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) Obligations of Lenders Several . The obligations of the Lenders hereunder to make Loans and to make payments pursuant to Section 9.03(c) are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment under Section 9.03(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under Section 9.03(c) .

(e) Funding Source . Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

Section 2.08 Interest Elections . (a) Each Borrowing initially shall be of the Type and, as applicable, shall have the Interest Period specified in or pursuant to Section 2.03 or 2.20 , as applicable. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurodollar Rate Loan Borrowing, may elect Interest Periods therefor, all as provided in this Section. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing.

(b) To make an election pursuant to this Section, the Borrower shall notify the Administrative Agent of such election by telephone by (i) in the case of a Eurodollar Rate Loan Borrowing, not later than 11:00 a.m., New York City time, three Business Days before the effective date of such election or (ii) in the case of a Base Rate Loan Borrowing, not later than 11:00 a.m., New York City time, one Business Day before the effective date of such election, immediately followed, in each case by a Loan Notice. Each such telephonic Interest Election

Request and corresponding written Loan Notice shall be irrevocable and shall be confirmed promptly by hand delivery or telecopy to the Administrative Agent of a written Interest Election Request in a form approved by the Administrative Agent and signed by the Borrower.

(c) Each telephonic Interest Election Request and subsequent written Loan Notice shall specify the following information in compliance with Section 2.02 :

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be a Base Rate Loan Borrowing or a Eurodollar Rate Loan Borrowing; and

(iv) if the resulting Borrowing is a Eurodollar Rate Loan Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period".

If any such Interest Election Request requests a Eurodollar Rate Loan Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one month's duration.

(d) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) If the Borrower fails to deliver a timely Interest Election Request with respect to a Eurodollar Rate Loan Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to a Base Rate Loan Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies the Borrower, then, so long as an Event of Default is continuing (i) no outstanding Borrowing may be converted to or continued as a Eurodollar Rate Loan Borrowing and (ii) unless repaid, each Eurodollar Rate Loan Borrowing shall be converted to a Base Rate Loan Borrowing at the end of the Interest Period applicable thereto.

Section 2.09 Termination of Commitments . The Commitments shall automatically and permanently terminate on the Closing Date upon the funding of the Initial Loans.

Section 2.10 Repayment of Loans; Evidence of Debt . (a) The Borrower hereby unconditionally promises to repay the Initial Loans in full by making installment payments of the

principal thereof to the Administrative Agent for the ratable (relative to principal amount of Initial Loans held) account of the Lenders as follows:

(i) on each date set forth below the Borrower shall make a payment in an amount equal to the aggregate initial principal amount of the Initial Loans multiplied by the percentage set forth opposite such date below:

Date	Percentage of Aggregate Initial Principal Amount	Installment Amount
June 30, 2011	0%	$ 0
September 30, 2011	0%	$ 0
December 31, 2011	0%	$ 0
March 31, 2012	0%	$ 0
June 30, 2012	1.25%	$ 5,000,000
September 30, 2012	1.25%	$ 5,000,000
December 31, 2012	1.25%	$ 5,000,000
March 31, 2013	1.25%	$ 5,000,000
June 30, 2013	1.25%	$ 5,000,000
September 30, 2013	1.25%	$ 5,000,000
December 31, 2013	1.25%	$ 5,000,000
March 31, 2014	1.25%	$ 5,000,000
June 30, 2014	2.50%	$ 10,000,000
September 30, 2014	2.50%	$ 10,000,000
December 31, 2014	2.50%	$ 10,000,000
March 31, 2015	2.50%	$ 10,000,000
June 30, 2015	5.0%	$ 20,000,000
September 30, 2015	5.0%	$ 20,000,000
December 31, 2015	5.0%	$ 20,000,000

(ii) On the Maturity Date the Borrower will pay a final installment in an amount equal to the entire unpaid principal balance of the Initial Loans.

(b) The Borrower hereby unconditionally promises to repay the Additional Term Loans comprising each Additional Term Loan Tranche in full by making installment payments of the principal thereof to the Administrative Agent for the ratable (relative to principal amount of such Additional Term Loans held) account of the applicable Additional Lenders as follows:

(i) on each date set forth below occurring after the making of such Additional Term Loans, the Borrower shall make a payment in an amount equal

to the aggregate initial principal amount of the applicable Additional Term Loan Tranche multiplied by the percentage set forth opposite such date below:

Date	Percentage of Aggregate Initial Principal Amount
June 30, 2011	0%
September 30, 2011	0%
December 31, 2011	0%
March 31, 2012	0%
June 30, 2012	1.25%
September 30, 2012	1.25%
December 31, 2012	1.25%
March 31, 2013	1.25%
June 30, 2013	1.25%
September 30, 2013	1.25%
December 31, 2013	1.25%
March 31, 2014	1.25%
June 30, 2014	2.50%
September 30, 2014	2.50%
December 31, 2014	2.50%
March 31, 2015	2.50%
June 30, 2015	5.0%
September 30, 2015	5.0%
December 31, 2015	5.0%

(ii) On the Maturity Date the Borrower will pay a final installment in an amount equal to the entire unpaid principal balance of such Additional Term Loans.

(c) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(d) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the Type thereof and the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender’s share thereof.

(e) The entries made in the accounts maintained pursuant to paragraph (c) or (d) of this Section shall be prima facie evidence of the existence and amounts of the obligations recorded therein; provided that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement.

(f) Any Lender may request that Loans made by it be evidenced by a Note. In such event, the Borrower shall prepare, execute and deliver to such Lender a Note payable to such Lender (or, if requested by such Lender, to such Lender and its registered assigns). Thereafter, the Loans evidenced by such Note and interest thereon shall at all times (including after assignment pursuant to Section 9.04) be represented by one or more Notes payable to the payee named therein (or, if such Note is a registered note, to such payee and its registered assigns).

Section 2.11 Prepayment of Loans . (a) The Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, subject to prior notice in accordance with Section 2.11(b) . Each prepayment shall be applied (i) ratably (relative to the aggregate outstanding principal amount thereof) among the Tranches and (ii) within each Tranche, to the remaining principal installments thereof in inverse order of maturity, allocable to the applicable Lenders ratably relative to the aggregate outstanding principal amount of Loans in such Tranche held.

(b) The Borrower shall notify the Administrative Agent by telephone (confirmed by telecopy) of any prepayment under paragraph (a) above (i) in the case of prepayment of a Eurodollar Rate Loan Borrowing, not later than 11:00 a.m., New York City time, three Business Days before the date of prepayment or (ii) in the case of prepayment of a Base Rate Loan Borrowing, not later than 11:00 a.m., New York City time, one Business Day before the date of prepayment, on the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid. Promptly following receipt of any such notice relating to a Borrowing, the Administrative Agent shall advise the Lenders of the contents thereof. Each partial prepayment of any Borrowing shall be in a minimum amount of $5,000,000 and an integral multiple of $1,000,000. Each prepayment of a Borrowing shall be applied ratably to the Loans included in the prepaid Borrowing. All prepayments of the Loans shall be applied to principal installments on the Loans in the inverse order of maturity. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.13 .

Section 2.12 Fees . The Borrower shall pay fees in the amounts and at the times specified in the Fee Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

Section 2.13 Interest . (a) The Loans comprising each Base Rate Loan Borrowing shall bear interest at the Alternate Base Rate plus the Applicable Rate.

(b) The Loans comprising each Eurodollar Rate Loan Borrowing shall bear interest at the Adjusted Eurodollar Rate for the Interest Period in effect for such Borrowing plus the Applicable Rate.

(c) Notwithstanding the foregoing, if any principal of or interest on any Loan or any fee or other amount payable by the Borrower hereunder is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment, at a rate per annum equal to (i) in the case of overdue principal of any Loan, 2% plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section or (ii) in the case of any other amount, 2% plus the rate applicable to Base Rate Loans as provided in paragraph (a) of this Section.

(d) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan; provided that (i) interest accrued pursuant to paragraph (c) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any Eurodollar Rate Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion and (iv) all accrued interest shall be payable on the Maturity Date. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

(e) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate or Adjusted Eurodollar Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

Section 2.14 Alternate Rate of Interest . If prior to the commencement of any Interest Period for a Eurodollar Rate Loan Borrowing:

(a) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted Eurodollar Rate or the Eurodollar Rate, as applicable, for such Interest Period; or

(b) the Administrative Agent is advised by the Required Lenders that the Adjusted Eurodollar Rate or the Eurodollar Rate, as applicable, for such Interest Period will not adequately and fairly reflect the cost to such Lenders (or Lender) of making or maintaining their Loans (or its Loan) included in such Borrowing for such Interest Period;

then the Administrative Agent shall give notice thereof to the Borrower and the Lenders by telephone or telecopy as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (i) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Rate Loan Borrowing shall be ineffective and (ii)

if any Loan Notice requests a Eurodollar Rate Loan Borrowing, such Borrowing shall be made as a Base Rate Loan Borrowing.

Section 2.15 Increased Costs . (a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Adjusted Eurodollar Rate);

(ii) impose on any Lender or the London interbank market any other condition affecting this Agreement or Eurodollar Rate Loans made by such Lender; or

(iii) subject any Recipient to any Taxes on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto (other than (A) Indemnified Taxes and (B) Excluded Taxes);

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Eurodollar Rate Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender or to reduce the amount of any sum received or receivable by such Lender (whether of principal, interest or otherwise), then the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender for such additional costs incurred or reduction suffered.

(b) If any Lender determines that any Change in Law regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement or the Loans made by such Lender to a level below that which such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered.

(c) A certificate of a Lender setting forth the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender pursuant to this Section for any increased costs or reductions incurred more than 270 days prior to the date that such Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's intention to claim compensation therefor; provided further

that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 270-day period referred to above shall be extended to include the period of retroactive effect thereof.

Section 2.16 Break Funding Payments . In the event of (a) the payment of any principal of any Eurodollar Rate Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Eurodollar Rate Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Eurodollar Rate Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.11(b) and is revoked in accordance therewith), or (d) the assignment of any Eurodollar Rate Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 2.19 , then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event. In the case of a Eurodollar Rate Loan, such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Eurodollar Rate Loan had such event not occurred, at the Adjusted Eurodollar Rate that would have been applicable to such Eurodollar Rate Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Eurodollar Rate Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the eurocurrency market. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

Section 2.17 Taxes . (a) Withholding of Taxes; Gross-Up . Each payment by or on account of any Loan Party under any Loan Document shall be made without withholding for any Taxes, unless such withholding is required by any law. If any Withholding Agent determines, in its sole discretion exercised in good faith, that it is so required to withhold Taxes, then such Withholding Agent may so withhold and shall timely pay the full amount of withheld Taxes to the relevant Governmental Authority in accordance with applicable law. If such Taxes are Indemnified Taxes, then the amount payable by such Loan Party shall be increased as necessary so that, net of such withholding (including such withholding applicable to additional amounts payable under this Section), the applicable Recipient receives the amount it would have received had no such withholding been made.

(b) Payment of Other Taxes by the Borrower . The Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Evidence of Payments . As soon as practicable after any payment of Indemnified Taxes by any Loan Party to a Governmental Authority, such Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such

Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(d) Indemnification by the Borrower . The Borrower shall indemnify each Recipient for any Indemnified Taxes that are paid or payable by such Recipient in connection with any Loan Document (including amounts paid or payable under this Section 2.17(d)) and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. The indemnity under this Section 2.17(d) shall be paid within 10 days after the Recipient delivers to any Loan Party a certificate stating the amount of any Indemnified Taxes so paid or payable by such Recipient and describing the basis for the indemnification claim. Such certificate shall be conclusive of the amount so paid or payable absent manifest error. Such Recipient shall deliver a copy of such certificate to the Administrative Agent.

(e) Indemnification by the Lenders . Each Lender shall severally indemnify the Administrative Agent for any Taxes (but, in the case of any Indemnified Taxes, only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so) attributable to such Lender that are paid or payable by the Administrative Agent in connection with any Loan Document and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. The indemnity under this Section 2.17 (e) shall be paid within 10 days after the Administrative Agent delivers to the applicable Lender a certificate stating the amount of Taxes so paid or payable by the Administrative Agent. Such certificate shall be conclusive of the amount so paid or payable absent manifest error.

(f) Status of Lenders . (i) Any Lender that is entitled to an exemption from, or reduction of, any applicable withholding Tax with respect to any payments under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without, or at a reduced rate of, withholding. In addition, any Lender, if requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to any withholding (including backup withholding) or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 2.17(f)(ii)(A) through (F) below) shall not be required if in the Lender's judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender. Upon the reasonable request of such Borrower or the Administrative Agent, any Lender shall update any form or certification previously delivered pursuant to this Section 2.17(f) (to the extent it is legally eligible to do so). If any form or certification previously delivered pursuant to this Section expires or becomes obsolete or inaccurate in any respect with respect to a Lender, such Lender shall promptly (and in any event within 10 days after such expiration, obsolescence or inaccuracy) notify such Borrower and the Administrative

Agent in writing of such expiration, obsolescence or inaccuracy and update the form or certification if it is legally eligible to do so.

(ii) Without limiting the generality of the foregoing, if the Borrower is a U.S. Person, any Lender with respect to such Borrower shall, if it is legally eligible to do so, deliver to such Borrower and the Administrative Agent (in such number of copies reasonably requested by such Borrower and the Administrative Agent) on or prior to the date on which such Lender becomes a party hereto, duly completed and executed copies of whichever of the following is applicable:

(A) in the case of a Lender that is a U.S. Person, IRS Form W-9 certifying that such Lender is exempt from U.S. Federal backup withholding tax;

(B) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (1) with respect to payments of interest under any Loan Document, IRS Form W-8BEN establishing an exemption from, or reduction of, U.S. Federal withholding Tax pursuant to the "interest" article of such tax treaty and (2) with respect to any other applicable payments under this Agreement, IRS Form W-8BEN establishing an exemption from, or reduction of, U.S. Federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(C) in the case of a Foreign Lender for whom payments under this Agreement constitute income that is effectively connected with such Lender's conduct of a trade or business in the United States, IRS Form W-8ECI;

(D) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code both (1) IRS Form W-8BEN and (2) a certificate substantially in the form of Exhibit F (a " U.S. Tax Certificate ") to the effect that such Lender is not (a) a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (b) a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code (c) a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code and (d) conducting a trade or business in the United States with which the relevant interest payments are effectively connected;

(E) in the case of a Foreign Lender that is not the beneficial owner of payments made under this Agreement (including a partnership or a participating Lender) (1) an IRS Form W-8IMY on behalf of itself and (2) the relevant forms prescribed in clauses (A), (B), (C), (D) and (F) of this paragraph (f)(ii) that would be required of each such beneficial owner or partner of such partnership if such beneficial owner or partner were a Lender; provided , however , that if the Lender is a partnership and one or

more of its partners are claiming the exemption for portfolio interest under Section 881(c) of the Code, such Lender may provide a U.S. Tax Certificate on behalf of such partners; or

(F) any other form prescribed by law as a basis for claiming exemption from, or a reduction of, U.S. Federal withholding Tax together with such supplementary documentation necessary to enable the Borrower or the Administrative Agent to determine the amount of Tax (if any) required by law to be withheld.

(iii) If a payment made to a Lender under any Loan Document would be subject to U.S. Federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Withholding Agent, at the time or times prescribed by law and at such time or times reasonably requested by the Withholding Agent, such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Withholding Agent as may be necessary for the Withholding Agent to comply with its obligations under FATCA, to determine that such Lender has or has not complied with such Lender's obligations under FATCA and, as necessary, to determine the amount to deduct and withhold from such payment. Solely for purposes of this Section 2.17(f)(iii) , "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(g) Treatment of Certain Refunds . If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.17 (including additional amounts paid pursuant to this Section 2.17), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments previously made under this Section 2.17 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including any Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid to such indemnifying party pursuant to the previous sentence (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 2.17(g) , in no event will any indemnified party be required to pay any amount to any indemnifying party pursuant to this Section 2.17(g) if such payment would place such indemnified party in a less favorable position (on a net after-Tax basis) than such indemnified party would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This Section 2.17(g) shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes which it deems confidential) to the indemnifying party or any other Person.

(h) Survival . Each party's obligations under this Section 2.17 shall survive any assignment of rights by, or the replacement of, a Lender, the termination of the

Commitments and the repayment, satisfaction or discharge of all other obligations under the Loan Documents.

Section 2.18 Payments Generally; Pro Rata Treatment; Sharing of Set-offs . (a) The Borrower shall make each payment required to be made by it hereunder (whether of principal, interest or fees, or of amounts payable under Section 2.15 , 2.16 or 2.17 , or otherwise) from a location in the United States of America prior to 12:00 noon, New York City time, on the date when due, in immediately available funds, without set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at the Administrative Agent's Office, except that payments pursuant to Sections 2.15 , 2.16 , 2.17 and 9.03 shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder shall be made in dollars.

(b) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, interest and fees then due hereunder, such funds shall be applied (i) first, towards payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, towards payment of principal then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal then due to such parties.

(c) If any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Loans of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph (c) shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans to any assignee or participant, other than to the Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this paragraph (c) shall apply). The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(d) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the Federal Funds Rate.

(e) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.07(b) or 2.18(c) , then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

Section 2.19 Mitigation Obligations; Replacement of Lenders . (a) If any Lender requests compensation under Section 2.15 , or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17 , then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.15 or 2.17 , as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If any Lender requests compensation under Section 2.15 , or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17 , then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04) , all its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) the Borrower shall have received the prior written consent of the Administrative Agent, which consent shall not unreasonably be withheld, (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts) and (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.15 or payments required to be made pursuant to Section 2.17 , such assignment will result in a reduction in such compensation or payments. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

Section 2.20 Additional Term Loans . The Borrower may, at its option, on one or more occasions prior to the Maturity Date, seek to receive one or more additional term loans pursuant to this Section 2.20 (each an " Additional Term Loan "). The Borrower may request Additional Term Loans in a minimum aggregate amount for all Additional Term Loans to be made on a specified day of not less than $50,000,000 or an increment of $5,000,000 in excess thereof by written notice to the Administrative Agent, which notice shall be delivered at a time when no Default has occurred and is continuing and which notice shall specify (a) the proposed date of such Additional Term Loans, which shall (i) be a Business Day upon which a new Interest Period will commence with respect to all outstanding Loans (by virtue of either the expiry of pre-existing Interest Periods or an election made by the Borrower pursuant to Section 2.08) and (ii) be not less than ten Business Days (or such shorter period as may be acceptable to the Administrative Agent and the Persons making the Additional Term Loans (each an " Additional Lender ")), nor more than forty-five days after the date of such notice, (b) the aggregate amount of such Additional Term Loans, (c) the Type of Loans selected and (d) in the case of a Eurodollar Rate Loan Borrowing, the Interest Period applicable thereto; provided , that the aggregate amount of all Additional Term Loans made pursuant to this Section 2.20 shall not exceed $300,000,000 (resulting in a maximum Aggregate Loan Amount of $600,000,000). The Borrower may, after giving such notice, offer the Additional Term Loan on either a ratable basis to the Lenders or a non pro-rata basis to one or more Lenders and/or to other banks or entities reasonably acceptable to the Administrative Agent. Any Lender may, in its sole discretion, accept or reject any offer from the Borrower to make an Additional Term Loan. No consent of any Lender (other than the Lenders participating in such Additional Term Loan) shall be required for any Additional Term Loan pursuant to this Section 2.20 . No Additional Term Loans shall be required to be made unless (a) the Additional Lenders, the Borrower and the Administrative Agent shall have entered into an agreement in form reasonably satisfactory to the Administrative Agent pursuant to which (i) each Additional Lender shall agree to the amount of the new Additional Term Loan to be made by it, (ii) each Additional Lender not party to this Agreement prior to the date of such Additional Term Loan shall agree to assume and accept the obligations and rights of a Lender hereunder, (iii) the Borrower shall deliver a certificate of a Responsible Officer of the Borrower dated the date of the making of the new Additional Term Loans in form and substance satisfactory to the Administrative Agent evidencing the Borrower's compliance, on a pro forma basis after giving effect to the proposed Additional Term Loans, with the financial covenants herein recomputed as of the last day of the most recently ended fiscal quarter of the Borrower for which financial statements are available, and (b) the conditions set forth in paragraphs (a) and (b) of Section 4.02 shall be satisfied and the Administrative Agent shall have received a certificate to that effect dated such date and executed by a Responsible Officer of the Borrower. Substantially contemporaneously with the satisfaction of the foregoing conditions, each Additional Lender shall make available to the Administrative Agent for the account of the Borrower the amount of its Additional Term Loan in immediately available funds as set forth in Section 2.03(b) . Each Additional Term Loan shall be a "Loan" hereunder subject to all the terms and conditions hereof.

ARTICLE III

Representations and Warranties

The Borrower represents and warrants to the Lenders that:

Section 3.01 Organization; Powers . Each of the Borrower and the Subsidiaries is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, has all requisite power and authority to carry on its business as now conducted and, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required.

Section 3.02 Authorization; Enforceability . The Transactions are within the Borrower's corporate powers and have been duly authorized by all necessary corporate and, if required, stockholder action. This Agreement has been duly executed and delivered by the Borrower and constitutes a legal, valid and binding obligation of the Borrower, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

Section 3.03 Governmental Approvals; No Conflicts . The Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect, (b) will not violate in any material respect any applicable law or regulation or the charter, by-laws or other organizational documents of the Borrower or any of the Subsidiaries or any order of any Governmental Authority, other than any such violation by a Subsidiary that individually or taken together with all such violations by the Subsidiaries could not reasonably be expected to result in a Material Adverse Effect, (c) will not violate in any material respect or result in a default under any indenture, agreement or other instrument binding upon the Borrower or any of the Subsidiaries or its assets, or give rise to a right thereunder to require any payment to be made by the Borrower or any of the Subsidiaries, other than any such violation or default by a Subsidiary that individually or taken together with all such violations and defaults by Subsidiaries could not reasonably be expected to result in a Material Adverse Effect, and (d) will not result in the creation or imposition of any Lien on any asset of the Borrower or any of the Subsidiaries.

Section 3.04 Financial Condition; No Material Adverse Change . (a) The Borrower has heretofore furnished to the Lenders its consolidated balance sheet and related statements of operations, changes in shareholders' equity and cash flows as of and for the fiscal year ended December 31, 2010, audited by PriceWaterhouseCoopers, L.L.P.. Such financial statements present fairly, in all material respects, the financial position and results of operations and cash flows of the Borrower and the consolidated Subsidiaries as of such date and for such period in accordance with GAAP, subject to audit adjustments and the absence of footnotes.

(b) There has been no material adverse change with respect to the business, operations, performance, properties or condition (financial or otherwise) of the Borrower and the Subsidiaries, taken as a whole, since December 31, 2010.

Section 3.05 Properties . (a) Each of the Borrower and the Subsidiaries has good title to, or valid leasehold interests in, all its real and personal property material to its business, except for minor defects in title that do not interfere with its ability to conduct its business as currently conducted or to utilize such properties for their intended purposes.

(b) Except for Disclosed Matters, each of the Borrower and the Subsidiaries owns, or is licensed to use, all trademarks, tradenames, copyrights and other intellectual property (other than patents) material to its business without written notice of conflict with the rights of any other Person, except for any such conflicts that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. Except for Disclosed Matters, neither the Borrower nor any Subsidiary is aware of any claim that its products or services infringe any third party patent, except for any such infringements that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

Section 3.06 Litigation and Environmental Matters . (a) There are no actions, suits, proceedings or ongoing investigations by or before any arbitrator or Governmental Authority pending against, nor has the Borrower received written notice threatening any action, suit, proceeding or investigation against or affecting the Borrower or any of the Subsidiaries (i) which could be reasonably expected to have a Material Adverse Effect (other than the Disclosed Matters) or (ii) that involve this Agreement or the Transactions.

(b) Except for the Disclosed Matters and except with respect to any other matters that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, neither the Borrower nor any of the Subsidiaries (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received notice of any claim with respect to any Environmental Liability or (iv) knows of any basis for any Environmental Liability.

(c) Since the date of this Agreement, there has been no change in the status of the Disclosed Matters that, individually or in the aggregate, has resulted in, or materially increased the likelihood of, a Material Adverse Effect.

Section 3.07 Compliance with Laws and Agreements . Each of the Borrower and the Subsidiaries is in compliance with all laws, regulations and orders of any Governmental Authority applicable to it or its property and all indentures, agreements and other instruments binding upon it or its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. No Default has occurred and is continuing.

Section 3.08 Investment Company Status . Neither the Borrower nor any of the Subsidiaries is an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940.

Section 3.09 Taxes . Each of the Borrower and the Subsidiaries has timely filed or caused to be filed all federal and other material Tax returns and reports required to have been filed and has paid or caused to be paid all material Taxes required to have been paid by it, except Taxes that are being contested in good faith by appropriate proceedings and for which the Borrower or such Subsidiary, as applicable, has set aside on its books adequate reserves.

Section 3.10 ERISA . No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably

expected to occur, could reasonably be expected to result in a Material Adverse Effect. The present value of all accumulated benefit obligations under each Plan (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of such Plan by more than 15%.

Section 3.11 Disclosure . The Borrower has disclosed to the Lenders all agreements, instruments and corporate or other restrictions to which it or any of the Subsidiaries is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. None of the reports, financial statements, certificates or other information, including the Information Memorandum, furnished by or on behalf of the Borrower to the Administrative Agent or any Lender in connection with the negotiation of this Agreement or delivered hereunder (as modified or supplemented by other information so furnished), as of the date furnished or delivered by or on behalf of the Borrower, contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

Section 3.12 Federal Reserve Regulations . (a) Neither the Borrower nor any Subsidiary is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying Margin Stock.

(b) No part of the proceeds of the Loans will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, (i) to purchase or carry Margin Stock or to extend credit to others for the purpose of purchasing or carrying Margin Stock or to refund Indebtedness originally incurred for such purpose, or (ii) for any purpose which entails a violation of, or which is inconsistent with, the provisions of the Regulations of the Board, including, without limitation, Regulation T, U or X thereof.

Section 3.13 Use of Proceeds . The proceeds of the Loans will be used only (a) to fund in part the Acquisition and (b) for general corporate purposes of the Borrower and the Subsidiaries, including acquisitions, subject to the limitations set forth in Section 6.06 .

Section 3.14 Subsidiaries . As of the date hereof, the Persons listed on Schedule 3.14 are the only Subsidiaries and the Subsidiaries indicated on such schedule to be Material Subsidiaries are the only Material Subsidiaries.

ARTICLE IV

Conditions

Section 4.01 Certain Conditions of Initial Borrowing . The obligation of each of the Lenders to make its Loan on the Closing Date is subject to satisfaction of the following conditions precedent:

(a) The Administrative Agent's receipt of the following, each of which shall be originals or telecopies (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance satisfactory to the Administrative Agent and each of the Lenders:

(i) executed counterparts of this Agreement and the Guaranty, sufficient in number for distribution to the Administrative Agent, each Lender and the Borrower;

(ii) an original Note executed by the Borrower in favor of each Lender requesting a Note;

(iii) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Administrative Agent may require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer on behalf of such Loan Party in connection with this Agreement and the other Loan Documents to which such Loan Party is a party;

(iv) such documents and certifications as the Administrative Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and that each of the Borrower and Guarantors is validly existing, in good standing and qualified to engage in business in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect, including, certified copies of the Borrower's organization documents, certificates of good standing and/or qualification to engage in business and tax clearance certificates;

(v) favorable written opinions addressed to the Administrative Agent and the Lenders and dated as of the Closing Date of (i) Margaret A. Treese, Chief Corporate and Governance Counsel of the Borrower and (ii) Thompson Hine LLP, special counsel to the Borrower covering such matters relating to the Borrower, this Agreement or the transactions contemplated hereby as the Administrative Agent shall reasonably request;

(vi) a certificate of a Responsible Officer of each Loan Party either (A) attaching copies of all consents, licenses and approvals of Governmental Authorities and other Persons required in connection with the execution, delivery and performance by such Loan Party and the validity against such Loan Party of the Loan Documents to which it is a party, and, required in connection with the Loan Documents and the transactions contemplated thereby, and such consents, licenses and approvals shall be in full force and effect, or (B) stating that no such consents, licenses or approvals are so required;

(vii) a letter of direction containing funds flow information, with respect to the proceeds of the Loans on the Closing Date;

(viii) (A) copies of the financial statements referred to in Sections 5.01(a) and (B), and a certificate signed by a Responsible Officer of the Borrower certifying (1) that the conditions specified in Sections 4.02(a) and (b) have been satisfied, (2) that there has been no event or circumstance since the date of the Audited Financial Statements for the fiscal year ending December 31, 2010, that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect; and (3) compliance with Section 6.11 and 6.12 as of the most recent fiscal quarter end;

(ix) copies of financial projections (including the balance sheets and statements of income and cash flows and giving effect to the Acquisition, the Borrower's acquisition of Aprimo, Inc., and the financing contemplated hereby) of the Borrower and its Subsidiaries for the three fiscal years following the Closing Date, together with such information as the Administrative Agent may reasonably request to confirm the tax, legal, and business assumptions made therein, all in form and substance reasonably satisfactory to the Administrative Agent; and

(x) such other assurances, certificates, documents, consents or opinions as the Administrative Agent or the Required Lenders reasonably may require.

(b) Any fees and expenses required to be paid on or before the Closing Date shall have been paid.

(c) The Borrower shall have (i) completed (or substantially concurrently with the making of the Loans on the Closing Date will complete) the Acquisition substantially in accordance with the terms of the Acquisition Agreement and (ii) delivered to the Administrative Agent a certificate to such effect signed on the Closing Date by a Responsible Officer of the Borrower accompanied by a true, correct and complete copy of the Acquisition Agreement and all amendments thereto.

(d) The Borrower shall have paid all fees, charges and disbursements of counsel to the Administrative Agent (directly to such counsel if requested by the Administrative Agent) to the extent invoiced prior to or on the Closing Date, plus such additional amounts of such fees, charges and disbursements of counsel as shall constitute its reasonable estimate of such fees, charges and disbursements of counsel incurred or to be incurred by it through the closing proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrower and the Administrative Agent).

(e) The Administrative Agent shall have received an effective waiver, in form and substance satisfactory to it, from the "Required Lenders" under the Revolving Credit Agreement with respect to any breach of Section 6.08 of the Revolving Credit Agreement

resulting from any Loan Party's execution and delivery of this Agreement and the other Loan Documents.

Without limiting the generality of the provisions of the last paragraph of Section 9.02 , for purposes of determining compliance with the conditions specified in this Section 4.01 , each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

Section 4.02 Conditions to all Borrowings . The obligation of each Lender to make its Loan on the Closing Date, and the obligation of any Additional Lender to make any Additional Term Loan in accordance with Section 2.20 is subject to the following conditions precedent:

(a) The representations and warranties of the Borrower and each other Loan Party contained in Article III or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct on and as of the date of such Loan or Additional Term Loan, as applicable, (i) except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date, (ii) except that for purposes of this Section 4.02 in connection with any Additional Term Loans, the representations and warranties contained in Section 3.04 shall be deemed to refer to the most recent statements furnished pursuant to subsections (a) and (b), respectively, of Section 5.01 .

(b) No Default shall exist, or would result from such proposed Loan or from the application of the proceeds thereof.

(c) The Administrative Agent shall have received a Loan Notice or the certificates referred to in Section 2.20 with respect to Additional Term Loans, as applicable, in accordance with the requirements hereof.

(d) The Administrative Agent shall have received such other approvals, opinions or documents as the Administrative Agent may reasonably request.

ARTICLE V

Affirmative Covenants

Until the principal of and interest on each Loan and all fees payable hereunder have been paid in full, the Borrower covenants and agrees with the Lenders that:

Section 5.01 Financial Statements and Other Information . The Borrower will furnish to the Administrative Agent:

(a) within 90 days after the end of each fiscal year of the Borrower, its audited consolidated balance sheet and related statements of operations, changes in shareholders' equity and cash flows as of the end of and for such year, setting forth in each case in comparative form

the figures for the previous fiscal year, all reported on by PricewaterhouseCoopers, L.L.P., or other independent registered public accounting firm of recognized national standing (without a "going concern" or like qualification or exception and without any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Borrower and the consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied;

(b) within 45 days after the end of each of the first three fiscal quarters of each fiscal year of the Borrower, its consolidated balance sheet and related statements of operations, changes in shareholders' equity and cash flows as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by one of its Responsible Officers as presenting fairly in all material respects the financial condition and results of operations of the Borrower and the consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes;

(c) concurrently with any delivery of financial statements under clause (a) or (b) above, a Compliance Certificate of a Responsible Officer of the Borrower (i) certifying as to whether a Default has occurred and, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (ii) setting forth reasonably detailed calculations (A) of the components of the Leverage Ratio as of the last day of the fiscal period in respect of which such financial statements are being delivered and (B) confirming compliance with Sections 6.11 and 6.12 and each other provision of Article VI imposing a numerical limit, and (iii) stating whether any change in GAAP or in the application thereof has occurred since the date of the Audited Financial Statements referred to in Section 3.04 and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate;

(d) concurrently with any delivery of consolidated financial statements under clause (a) above, a certificate of the accounting firm that reported on such financial statements stating whether they obtained knowledge during the course of their audit of such consolidated financial statements of any Default insofar as it relates to accounting matters (which certificate may be limited to the extent required by accounting rules or guidelines);

(e) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by the Borrower or any Subsidiary with the Securities and Exchange Commission, or any Governmental Authority succeeding to any or all of the functions of said Commission, or with any national securities exchange, or distributed by the Borrower to its shareholders generally, as the case may be; and

(f) promptly following any request therefor, such other information regarding the operations, business affairs and financial condition of the Borrower or any Subsidiary, or compliance with the terms of this Agreement, as the Administrative Agent or any Lender may reasonably request.

Section 5.02 Notices of Material Events . The Borrower will furnish to the Administrative Agent and each Lender prompt written notice of the following:

(a) the occurrence of any Default;

(b) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or affecting the Borrower or any Subsidiary thereof that could reasonably be expected to result in a Material Adverse Effect;

(c) the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in liability of the Borrower and the Subsidiaries in an aggregate amount exceeding $25,000,000; and

(d) any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect.

Each notice delivered under this Section shall be accompanied by a statement of a Responsible Officer or other executive officer of the Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

Borrower hereby acknowledges that (a) the Administrative Agent and/or the Arrangers will make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, " Borrower Materials ") by posting the Borrower Materials on IntraLinks or another similar electronic system (the " Platform ") and (b) certain of the Lenders (each, a " Public Lender ") may have personnel who do not wish to receive material non-public information with respect to any of the Borrowers or their respective Affiliates, or the respective securities of any of the foregoing and who may be engaged in investment and other market-related activities with respect to such Persons' securities. Borrower hereby agrees that (i) all Borrower Materials that are to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (ii) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent, the Arrangers and the Lenders to treat such Borrower Materials as not containing any material non-public information with respect to the Borrower or its securities for purposes of United States Federal and state securities laws (provided , however , that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 9.12); (iii) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Investor;" and (iv) the Administrative Agent and the Arrangers shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Investor." Notwithstanding the foregoing, no Borrower shall be under any obligation to mark any Borrower Materials "PUBLIC."

Section 5.03 Existence; Conduct of Business . The Borrower will, and will cause each of the Subsidiaries to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits, privileges and franchises

material to the conduct of its business; provided that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution permitted under Section 6.04 .

Section 5.04 Payment of Obligations . The Borrower will, and will cause each of the Subsidiaries to, pay its obligations, including Tax liabilities, that, if not paid, could result in a Material Adverse Effect before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) the Borrower or such Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (c) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect.

Section 5.05 Maintenance of Properties; Insurance . The Borrower will, and will cause each of the Subsidiaries to, (a) keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear excepted, except to the extent the failure to do so could not reasonably be expected to result in a Material Adverse Effect, and (b) maintain, with financially sound and reputable insurance companies, insurance in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations (after giving effect to customary self insurance).

Section 5.06 Books and Records; Inspection Rights . The Borrower will, and will cause each of the Subsidiaries to, keep proper books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities (including with respect to ERISA if applicable). The Borrower will, and will cause each of the Subsidiaries to, permit any representatives designated by the Administrative Agent or any Lender, upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested.

Section 5.07 Compliance with Laws . The Borrower will, and will cause each of the Subsidiaries to, comply in all material respects with all laws, rules, regulations and orders (including ERISA if applicable) of any Governmental Authority applicable to it or its property, except such as may be contested by the Borrower or the applicable Subsidiary in good faith or as to which a bona fide dispute may exist and except for noncompliance by any Subsidiary that individually or taken together with all noncompliance by Subsidiaries could not reasonably be expected to result in a Material Adverse Effect.

Section 5.08 Material Subsidiaries . Within 60 days after the formation or acquisition of any new direct or indirect Material Subsidiary by any Loan Party, the Borrower shall, at the Borrower's expense, (a) cause such Subsidiary, and cause each direct and indirect parent of such Subsidiary (if it has not already done so), to duly execute and deliver to the Administrative Agent a joinder agreement satisfactory to the Administrative Agent, pursuant to which such Material Subsidiary shall join as a party to the Guaranty (or execute and deliver a separate new Guaranty substantially in the form of the existing Guaranty), and (b) if requested by the Administrative Agent or the Required Lenders, deliver to the Administrative Agent, a signed copy of a favorable opinion of counsel for the Loan Parties reasonably acceptable to the

Administrative Agent (certain of which opinions, in the Administrative Agent's discretion, may be given by in-house counsel) as to such matters as the Administrative Agent may reasonably request.

Section 5.09 Use of Proceeds . The proceeds of the Loans shall be used (a) to fund in part the Acquisition and (b) for general corporate purposes of the Borrower and the Subsidiaries not in contravention of any Law or any Loan Document.

ARTICLE VI

Negative Covenants

Until the principal of and interest on each Loan and all fees payable hereunder have been paid in full, the Borrower covenants and agrees with the Lenders that:

Section 6.01 Subsidiary Indebtedness . The Borrower will not permit any Subsidiary to create, incur, assume or permit to exist any Indebtedness, except:

(a) the Obligations;

(b) Indebtedness of any Subsidiary to the Borrower or any other Subsidiary;

(c) Guarantees by any Subsidiary of Indebtedness of the Borrower or any other Subsidiary to the extent such Indebtedness is permitted under this Agreement;

(d) Indebtedness of any Subsidiary as an account party in respect of trade letters of credit;

(e) Indebtedness of a special purpose subsidiary which is established for the purpose of issuing Indebtedness guaranteed by the Borrower and which does not own any material assets other than an intercompany loan(s) to the Borrower; and

(f) other Indebtedness of the Subsidiaries in an aggregate principal amount outstanding at any time that, when aggregated (without duplication) with the aggregate amount of all claims and obligations secured by Liens permitted pursuant to clause (c) of Section 6.02 , with the aggregate amount of Attributable Indebtedness incurred in connection with sale and leaseback transactions permitted pursuant to clause (b) of Section 6.03 and with any San Diego Excess Amount incurred pursuant to clause (a) of Section 6.03 does not exceed the greater of (i) $150,000,000 and (ii) 15% of Consolidated Tangible Assets as of the last day of the most recent fiscal period in respect of which financial statements shall have been delivered pursuant to Section 5.01 .

Section 6.02 Liens . The Borrower will not, and will not permit any Subsidiary to, create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it, except:

(a) Permitted Encumbrances;

(b) filings of UCC financing statements or other similar filings in foreign jurisdictions with respect to Non-Recourse Receivables Sales permitted by Section 6.05 ; and

(c) other Liens not otherwise permitted under the foregoing clauses (a) and (b) securing claims in an aggregate amount at any time outstanding that when aggregated (without duplication) with all Indebtedness incurred under Section 6.01(e) , with the aggregate amount of Attributable Indebtedness incurred in connection with sale and leaseback transactions permitted pursuant to Section 6.03(b) and with the any San Diego Excess Amount incurred pursuant to Section 6.03(a) does not exceed the greater of (i) $150,000,000 and (ii) 15% of Consolidated Tangible Assets as of the last day of the most recent fiscal period in respect of which financial statements shall have been delivered pursuant to Section 5.01 .

Section 6.03 Sale and Leaseback Transactions . The Borrower will not, and will not permit any Subsidiary to, enter into or permit to exist any arrangement, directly or indirectly, with any Person whereby it shall sell or transfer any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rent or lease such property which it intends to use for substantially the same purpose or purposes as the property being sold or transferred; provided , however , that, notwithstanding the above, the Borrower or any Subsidiary may engage in or permit to exist (a) any sale and leaseback of the San Diego Facility, provided that if the Attributable Indebtedness incurred in connection therewith exceeds $100,000,000, the amount of such Attributable Indebtedness in excess of $100,000,000 (the " San Diego Excess Amount ") shall be included in the calculations set forth in Section 6.01(f) , Section 6.02(c) and clause (b) of this Section, and (b) any other sale and leaseback transaction if, immediately after the consummation of such transaction, the aggregate outstanding amount of Attributable Indebtedness incurred in connection with all sale and leaseback transactions referred to in this clause (b) of this Section, when aggregated (without duplication) with any San Diego Excess Amount incurred under clause (a) of this Section, all Indebtedness incurred under Section 6.01(e) and with the aggregate amount of all claims and obligations secured by Liens permitted pursuant to Section 6.02(c) , does not exceed the greater of (i) $150,000,000 and (ii) 15% of Consolidated Tangible Assets as of the last day of the most recent fiscal period in respect of which financial statements shall have been delivered pursuant to Section 5.01 . In addition, and notwithstanding the above, the Borrower and any Subsidiary may, free from the restriction contained in this Section, lease back all or a portion of real property (and any related personal property or fixtures) sold by it, provided that such lease is for a term not in excess of six months and such sale is not entered into for financing purposes.

Section 6.04 Fundamental Changes . (a) The Borrower will not, and will not permit any Subsidiary to, merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or sell, transfer, lease or otherwise dispose of (in one transaction or in a series of transactions) all or substantially all of its assets, or all or substantially all of the stock of any of the Subsidiaries (in each case, whether now owned or hereafter acquired), or liquidate or dissolve, except that, if at the time thereof and immediately after giving effect thereto no Default shall have occurred and be continuing, (i) any Person may merge into the Borrower in a transaction in which the Borrower is the surviving corporation, (ii) any Person may merge with or into any Subsidiary in a transaction in which the surviving entity is a Subsidiary, (iii) any Subsidiary that is not a Material Subsidiary may sell, transfer, lease or otherwise dispose of its assets to the Borrower or to another Subsidiary and any Material

Subsidiary may sell, transfer, lease or otherwise dispose of its assets to the Borrower or any other Material Subsidiary, (iv) any Subsidiary may merge with or into any Material Subsidiary in a transaction in which the surviving entity is a Material Subsidiary and (v) any Subsidiary that is not a Material Subsidiary may liquidate or dissolve if the Borrower determines in good faith that such liquidation or dissolution is in the best interests of the Borrower and is not materially disadvantageous to the Lenders and any distribution or other transfer of assets in connection with such liquidation or dissolution is made to the Borrower or another Subsidiary in an amount consistent with such Person's ownership percentage of the Subsidiary being dissolved or liquidated.

(b) The Borrower will not, and will not permit any Subsidiary to, engage to any material extent in any line of business material to the Borrower and the Subsidiaries, taken as a whole, other than businesses currently conducted by the Borrower and the Subsidiaries and businesses in the information technologies or computer industries and businesses reasonably related thereto.

Section 6.05 Asset Sales . The Borrower will not, and will not permit any Subsidiary to, sell, transfer, lease or otherwise dispose of (in one transaction or in a series of transactions) all or a substantial portion of its assets (whether now owned or hereafter acquired), except that the Borrower and the Subsidiaries may (i) sell, lease or otherwise dispose of inventory as a part of the outsourcing of a manufacturing activity previous conducted by the Borrower pursuant to which the Borrower or the Subsidiaries intend to repurchase substantially all of such inventory (or goods manufactured therewith) for resale to customers, (ii) sell, lease or otherwise dispose of inventory and obsolete equipment, in the ordinary course of business, (iii) sell, lease or otherwise dispose of property in any individual transaction not related to any other such transaction if the aggregate fair market value of the assets sold, leased or otherwise disposed of in such transaction is less than $5,000,000, (iv) sell, lease or otherwise dispose of property to the Borrower or a Subsidiary in any transaction permitted by Section 6.04(a)(iii) , (v) sell accounts receivable in Non-Recourse Receivables Sales, provided that the aggregate amount of accounts receivable of the Borrower and the Subsidiaries which shall have been sold in Non-Recourse Receivables Sales pursuant to this Section 6.05 during any fiscal quarter shall not exceed the greater of (x) $150,000,000 and (y) 15% of the amount equal to the aggregate amount outstanding of all accounts receivable of the Borrower and the Subsidiaries as of the last day of such fiscal quarter plus the aggregate amount of such accounts receivable sold during such quarter in Non-Recourse Receivables Sales, (vi) sell (and leaseback) the San Diego Facility to the extent permitted under Section 6.03 , and (vii) sell, lease or otherwise dispose of property in any other transaction otherwise permitted under this Agreement, provided that the aggregate book value of all assets sold, leased or otherwise disposed of in transactions under this clause (vii) shall not when taken together at the time of each such sale, lease or other disposition exceed the greater of (x) $150,000,000 and (y) 15% of Consolidated Tangible Assets as of the last day of the most recent fiscal period in respect of which financial statements have been delivered pursuant to Section 5.01 at such time.

Section 6.06 Margin Stock; Unfriendly Acquisitions . No Loan proceeds will be used, whether directly or indirectly, and whether immediately, incidentally or ultimately, (a) to purchase or carry Margin Stock or to extend credit to others for the purpose of purchasing or carrying Margin Stock or to refund Indebtedness originally incurred for such purpose, (b) for any

purpose which entails a violation of, or which is inconsistent with, the provisions of the Regulations of the Board, including, without limitation, Regulation T, U or X thereof, or directly or through any Subsidiary, to finance any Unfriendly Acquisition, or (c) upon the occurrence and during the continuation of a Default, to finance any acquisition.

Section 6.07 Fiscal Year . The Borrower will not change its fiscal year end from December 31.

Section 6.08 Restrictive Agreements . The Borrower will not, and will not permit any of the Subsidiaries to, directly or indirectly, enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of the Borrower or any Subsidiary to create, incur or permit to exist any Lien upon any of its property or assets, or (b) the ability of any Subsidiary to pay dividends or other distributions with respect to any shares of its capital stock or to make or repay loans or advances to the Borrower or any other Subsidiary or to Guarantee Indebtedness of the Borrower or any other Subsidiary; provided that (i) the foregoing shall not apply to restrictions and conditions imposed by law or by this Agreement, (ii) the foregoing shall not apply to restrictions and conditions identified on Schedule 6.08 (but shall apply to any amendment or modification expanding the scope of, any such restriction or condition), (iii) the foregoing shall not apply to customary restrictions and conditions contained in agreements relating to the sale of a Subsidiary pending such sale, provided such restrictions and conditions apply only to the Subsidiary that is to be sold and such sale is permitted hereunder, (iv) clause (a) of the foregoing shall not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness, (v) clause (a) of the foregoing shall not apply to customary provisions in leases and other contracts restricting the assignment thereof, (vi) the foregoing shall not apply to such restrictions and conditions applicable to any Subsidiary acquired after the date hereof if such restrictions and conditions existed at the time such Subsidiary was acquired and were not created in anticipation of such acquisition and (vii) the foregoing shall not apply to one or more Subsidiaries having any such restriction or condition so long as any such Subsidiary is not a Material Subsidiary, and each such Subsidiary together with all other such Subsidiaries in the aggregate shall not account for more than 10% of the gross revenues for the most recently ended fiscal year of the Borrower and the Subsidiaries, taken as a whole.

Section 6.09 Transactions with Non-Material Subsidiaries . The Borrower will not, and will not permit any Subsidiary to, enter into any transaction of any kind with any Subsidiary that is not a Material Subsidiary (each, a " Non-Material Subsidiary "), whether or not in the ordinary course of business, other than on fair and reasonable terms substantially favorable to the Borrower or such Subsidiary as would be obtainable by the Borrower or such Subsidiary at the time in a comparable arms' length transaction with a Person other than a Non-Material Subsidiary.

Section 6.10 Investments . The Borrower will not, and will not permit any Subsidiary to, hold any Investments, except (a) Investments permitted under Section 6.01 and not prohibited by Section 6.06 and (b) other Investments that could not reasonably be expected to have a Material Adverse Effect.

Section 6.11 Cash Interest Coverage Ratio . The Borrower will not permit the ratio of Consolidated EBITDA to Consolidated Cash Interest Expense for any period of four consecutive fiscal quarters to be less than 3.00 to 1.00.

Section 6.12 Leverage Ratio . The Borrower will not permit the Leverage Ratio on the last day of any fiscal quarter to be more than 3.00 to 1.00.

ARTICLE VII

Events of Default

Section 7.01 Events of Default . If any of the following events (" Events of Default ") shall occur:

(a) the Borrower shall fail to pay any principal of any Loan when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;

(b) the Borrower shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in clause (a) of this Article VII) payable under this Agreement, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of five days;

(c) any representation or warranty made or deemed made by or on behalf of the Borrower or any Subsidiary in or in connection with this Agreement or any amendment or modification hereof or waiver hereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement or any amendment or modification hereof or waiver hereunder, shall prove to have been materially incorrect when made or deemed made;

(d) the Borrower shall fail to observe or perform any covenant, condition or agreement contained in Section 5.02 or 5.03 (with respect to the Borrower's existence) or in Article VI ;

(e) the Borrower shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those specified in clause (a), (b) or (d) of this Article), and such failure shall continue unremedied for a period of 30 days after notice thereof from the Administrative Agent to the Borrower (which notice will be given at the request of any Lender);

(f) the Borrower or any Subsidiary shall be in default with respect to any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness;

(g) (i) any "Event of Default" shall occur under the Revolving Credit Agreement, as from time to time amended, restated and/or refinanced or (ii) any event or condition occurs that results in any Material Indebtedness becoming due or that enables or permits the holder or holders of any Material Indebtedness or any trustee or agent on its or their

behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof prior to its scheduled maturity and any applicable grace period specified in the agreement or instrument evidencing such Material Indebtedness shall have expired or there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (i) any event of default under such Swap Contract as to which the Borrower or any Subsidiary is the Defaulting Party (as defined in such Swap Contract) or (ii) any Termination Event (as so defined) under such Swap Contract as to which the Borrower or any Subsidiary is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by the Borrower or such Subsidiary as a result thereof is greater than $50,000,000; provided that this clause (g) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness if such sale or transfer is permitted under Section 6.05 ;

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Borrower or any Subsidiary or its debts, or of a substantial part of its assets, under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any Subsidiary or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered;

(i) the Borrower or any Subsidiary shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (h) of this Article, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any Subsidiary or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing;

(j) the Borrower or any Subsidiary shall become unable, admit in writing its inability or fail generally to pay its debts as they become due;

(k) (i) one or more judgments for the payment of money in an aggregate amount in excess of $25,000,000 shall be rendered against the Borrower, any Subsidiary or any combination thereof and the same shall remain undischarged for a period of 30 consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of the Borrower or any Subsidiary to enforce any such judgment or (ii) any non-monetary judgment, order or decree is entered against the Borrower or any Subsidiary which does or would reasonably be expected to have a Material Adverse Effect, and there shall be any period of 30 consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect;

(l) an ERISA Event shall have occurred that, in the opinion of the Required Lenders, when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in a Material Adverse Effect;

(m) a Change in Control shall occur; or

(n) any provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any provision of any Loan Document (excluding any Swap Contract); or any Loan Party denies that it has any or further liability or obligation under any Loan Document (excluding any Swap Contract), or purports to revoke, terminate or rescind any provision of any Loan Document; provided , that this provision shall not apply to any event described in this clause (n) arising with respect to any former Loan Party that ceased to be a Loan Party in a manner permitted hereunder before such event occurred;

then the Administrative Agent may, and at the request of the Required Lenders or upon the occurrence of an event described in the proviso to Section 7.02 , shall, take any or all of the actions described in Section 7.02 .

Section 7.02 Remedies Upon Event of Default . If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

(a) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower; and

(b) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents;

provided , however , that upon the occurrence of any event described in Section 7.01(h) or Section 7.01(i) with respect to the Borrower under the Bankruptcy Code of the United States, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable without further act of the Administrative Agent or any Lender.

Section 7.03 Application of Funds . After the exercise of remedies provided for in Section 7.02 (or after the Loans have automatically become immediately due and payable), any amounts received by the Administrative Agent on account of the Obligations shall be applied by the Administrative Agent in the following order:

First , to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article II) payable to the Administrative Agent in its capacity as such;

Second , to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, interest, and fees) payable to the Lenders (including fees, charges and disbursements of counsel to the respective Lenders (including fees and time charges for attorneys who may be employees of any Lender) and amounts payable under Article II), ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third , to payment of that portion of the Obligations constituting accrued and unpaid fees and interest on the Loans, ratably among the Lenders in proportion to the respective amounts described in this clause Third payable to them;

Fourth , to payment of that portion of the Obligations constituting unpaid principal of the Loans, ratably among the Lenders in proportion to the respective amounts described in this clause Fourth held by them;

Last , the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by Law.

ARTICLE VIII

The Administrative Agent

Each of the Lenders hereby irrevocably appoints JPMCB to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent and the Lenders, and neither any Borrower nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions.

The bank serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent, and such bank and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if it were not the Administrative Agent hereunder.

The Administrative Agent shall not have any duties or obligations except those expressly set forth herein or in the other Loan Documents. Without limiting the generality of the foregoing, (a) the Administrative Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (b) the Administrative Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby that the Administrative Agent is required to exercise in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Section 9.02), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is

contrary to any Loan Document or applicable Law, and (c) except as expressly set forth herein or in the other Loan Documents, the Administrative Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of the Subsidiaries that is communicated to or obtained by the bank serving as Administrative Agent or any of its Affiliates in any capacity. The Administrative Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.02) or in the absence of its own gross negligence or willful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until written notice thereof is given to the Administrative Agent by the Borrower or a Lender, and the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or, except as provided in clause (v) below, conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan or a Borrowing, that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan or Borrowing. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

The Administrative Agent may perform any and all its duties and exercise its rights and powers by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all its duties and exercise its rights and powers through their respective Related Parties. The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facility provided for herein as well as activities as Administrative Agent.

The Administrative Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall

have the right, in consultation with the Borrower, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on behalf of the Lenders, appoint a successor Administrative Agent meeting the qualifications set forth above; provided that if the Administrative Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (2) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 9.03 shall continue in effect for the benefit of such retiring Administrative Agent, its sub agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

The banks (or Affiliates thereof) identified in this Agreement as a "syndication agent," "documentation agent" or "bookrunners" or "Arranger" shall not have any right, power, liability, responsibility or duty under this Agreement other than those applicable to all banks herein.

In case of the pendency of any proceeding under any Debtor Relief Laws or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise.

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due to the Lenders and the Administrative Agent under Sections 2.12 and 9.03) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.12 and 9.03 .

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

The Lenders irrevocably authorize the Administrative Agent, at its option and in its discretion to release any Guarantor from its obligations under the Guaranty if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release any Guarantor from its obligations under the Guaranty pursuant to this Article VIII .

ARTICLE IX

Miscellaneous

Section 9.01 Notices .

(a) General . Except in the case of notices and other communications expressly permitted to be given by telephone, all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, as follows:

(1) if to the Borrower or the Administrative Agent, to the notice address set forth on Schedule 9.01; and

(2) if to any other Lender, to it at its address (or telecopy number) set forth in its Administrative Questionnaire.

Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

(b) Electronic Communications . Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement); provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) The Platform . THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON- INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the " Agent Parties ") have any liability to the Borrower, any Lender or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower's or the Administrative Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided , however , that in no event shall any Agent Party have any liability to the Borrower, any Lender or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc . Each of the Borrower and the Administrative Agent may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the Borrower and the Administrative Agent. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on

record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable Law, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of United States Federal or state securities laws.

(e) Reliance by Administrative Agent and Lenders . The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices (including telephonic Borrowing Requests and Loan Notices) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Administrative Agent, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

Section 9.02 Waivers; Amendments . (a) No failure or delay by the Administrative Agent or any Lender in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent and the Lenders hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by the Borrower or any other Loan Party therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent, any Lender may have had notice or knowledge of such Default at the time.

(b) Neither this Agreement nor any provision hereof may be waived, amended or modified, except pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders or by the Borrower and the Administrative Agent with the consent of the Required Lenders; provided that no such agreement shall (i) increase the Commitment of any Lender without the written consent of such Lender, (ii) reduce the principal amount of any Loan or reduce the rate of interest thereon, or reduce any fees payable hereunder, or change the manner of computation of any financial ratio (including any change in any applicable defined term) used in determining the Applicable Rate that would result in a reduction of any interest rate on any Loan or any fee payable hereunder without the written consent of each

Lender directly affected thereby, (iii) postpone the scheduled date of payment of any principal amount of any Loan, or any interest thereon, or any fees payable hereunder, or reduce the amount of, waive or excuse any such payment, without the written consent of each Lender affected thereby, (iv) change Section 2.18(b) or (c) in a manner that would alter the pro rata sharing of payments required thereby, without the written consent of each Lender, (v) change any of the provisions of this Section or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender, (vi) waive any condition set forth in Section 4.01(a) without the written consent of each Lender, or (vii) release any Guarantor from the Guaranty without the written consent of each Lender; provided further that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent hereunder without the prior written consent of the Administrative Agent. Notwithstanding the foregoing, this Agreement may be amended to provide for Additional Term Loans in the manner contemplated by Section 2.20 and without any additional consents.

Section 9.03 Expenses; Indemnity; Damage Waiver . (a) The Borrower shall pay (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent, the Arrangers and their respective Affiliates, including the reasonable fees, charges and disbursements of counsel (including the allocated costs and expenses of in-house counsel), in connection with the syndication of the credit facility provided for herein, the preparation and administration of this Agreement or any amendments, modifications or waivers of the provisions hereof (whether or not the transactions contemplated hereby or thereby shall be consummated) and (ii) all out-of-pocket expenses incurred by the Administrative Agent or any Lender, including the fees, charges and disbursements of any counsel (including, in the case of the Administrative Agent, allocated costs and expenses of in-house counsel) for the Administrative Agent or any Lender, in connection with the enforcement or protection of its rights in connection with this Agreement, including its rights under this Section, or in connection with the Loans made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans.

(b) The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), each Arranger, each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an " Indemnitee ") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the fees, charges and disbursements of any counsel for any Indemnitee), and shall indemnify and hold harmless each Indemnitee from all fees and time charges and disbursements for attorneys who may be employees of any Indemnitee, incurred by any Indemnitee or asserted against any Indemnitee by any third party or by the Borrower or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions (including the Acquisition) contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents, (ii) any Loan or the use or proposed use of the proceeds therefrom, (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrower or any of the Subsidiaries, or any

Environmental Liability related in any way to the Borrower or any of the Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Loan Party, and regardless of whether any Indemnitee is a party thereto, **IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY OR SOLE NEGLIGENCE OF THE INDEMNITEE** ; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee.

(c) To the extent that the Borrower fails to pay any amount required to be paid by it to the Administrative Agent under paragraph (a) or (b) of this Section, each Lender severally agrees to pay to the Administrative Agent such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent, in its capacity as such.

(d) To the extent permitted by applicable law, the Borrower shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby, the Transactions, any Loan or the use of the proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(e) All amounts due under this Section shall be payable promptly after written demand therefor.

(f) The agreements in this Section shall survive the resignation of the Administrative Agent, the replacement of any Lender, and the repayment, satisfaction or discharge of all the other Obligations.

Section 9.04 Successors and Assigns . (a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (i) the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors

and assigns permitted hereby, Participants (to the extent provided in paragraph (c) of this Section) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld) of the Administrative Agent, provided that no consent of the Administrative Agent shall be required for an assignment of all or any portion of a Loan to a Lender, an Affiliate of a Lender or an Approved Fund.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender or an Affiliate of a Lender or an assignment of the entire remaining amount of the assigning Lender's Loans, the amount of the Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than $5,000,000 unless each of the Borrower and the Administrative Agent otherwise consent, provided that no such consent of the Borrower shall be required if an Event of Default has occurred and is continuing;

(B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of $3,500; and

(D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire in which the assignee designates one or more "Credit Contacts" to whom all syndicate-level information (which may contain material non-public information about the Borrower and its Affiliates and their related parties or their respective securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable laws, including Federal and state securities laws.

For the purposes of this Section 9.04(b) , the term " Approved Fund " has the following meaning:

" Approved Fund " means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) a Lender, (b) an

Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) of this Section, from and after the effective date specified in each Assignment and Assumption the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.15 , 2.16 , 2.17 and 9.03). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (c) of this Section.

(iv) The Administrative Agent, acting for this purpose as an agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the principal amount of (and interest on) the Loans owing to, each Lender pursuant to the terms hereof from time to time (the " Register "). The entries in the Register shall be conclusive, and the Borrower, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(v) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section and any written consent to such assignment required by paragraph (b) of this Section, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register; provided that if either the assigning Lender or the assignee shall have failed to make any payment required to be made by it pursuant to Section 2.07(b) or 9.03(c) , the Administrative Agent shall have no obligation to accept such Assignment and Assumption and record the information therein in the Register unless and until such payment shall have been made in full, together with all accrued interest thereon. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(c) Any Lender may, without the consent of the Borrower or the Administrative Agent, sell participations to one or more banks or other entities (a " Participant ") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of the Loans owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent, and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 9.02(b) that affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.15 , 2.16 and 2.17 (subject to the requirements and limitations therein, including the requirements under Section 2.17(f) (it being understood that the documentation required under Section 2.17(f) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant (i) agrees to be subject to the provisions of Sections 2.18 and 2.19 as if it were an assignee under paragraph (b) of this Section; and (ii) shall not be entitled to receive any greater payment under Sections 2.15 or 2.17 , with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.18(c) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under this Agreement (the " Participant Register "); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any Participant or any information relating to a Participant's interest in any Commitments, Loans, Letters of Credit or its other obligations under any Loan Document) except to the extent that such disclosure is necessary to establish that such Commitment, Loan, Letter of Credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary.

(d) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(e) The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state Laws based on the Uniform Electronic Transactions Act.

Section 9.05 Survival . All covenants, agreements, representations and warranties made by the Borrower herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of any Loans, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid. The provisions of Sections 2.15 , 2.16 , 2.17 and 9.03 and Article VIII shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans or the termination of this Agreement or any provision hereof.

Section 9.06 Counterparts; Integration; Effectiveness . This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, any notes issued pursuant to it and any separate letter agreements with respect to fees payable to the Administrative Agent constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01 , this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 9.07 Severability . Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

Section 9.08 Right of Setoff; Payments Set Aside . (a) If an Event of Default shall have occurred and be continuing, each of the Lenders and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and

apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations at any time owing by such Lender or Affiliate to or for the credit or the account of the Borrower against any of and all the obligations of the Borrower now or hereafter existing under this Agreement held by such Lender, as the case may be, irrespective of whether or not such Lender shall have made any demand under this Agreement and although such obligations may be unmatured. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender may have.

(b) To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent or any Lender, or the Administrative Agent or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (i) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (ii) each Lender severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect, recovery or payment. The obligations of the Lenders under clause (ii) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

Section 9.09 Governing Law; Jurisdiction; Consent to Service of Process . (a) This Agreement shall be construed in accordance with and governed by the law of the State of New York.

(b) The Borrower hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State court or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that the Administrative Agent or any Lender may otherwise have to bring any action or proceeding relating to this Agreement against the Borrower or its properties in the courts of any jurisdiction.

(c) The Borrower hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any court referred to in paragraph (b) of this Section. Each of the parties hereto

hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.01 . Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

Section 9.10 WAIVER OF JURY TRIAL . EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY 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 AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 9.11 Headings . Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

Section 9.12 Confidentiality . (a) Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (i) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (ii) to the extent requested by any regulatory authority, (iii) to the extent required by applicable laws or regulations or by any subpoena or similar legal process (in which event, the party receiving such subpoena or legal process will, if permitted, as promptly as practicable give notice thereof to the Borrower and use reasonable efforts, at the expense of the Borrower, to cooperate with the Borrower in seeking a protective order), (iv) to any other party to this Agreement, (v) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder, (vi) subject to an agreement containing provisions substantially the same as those of this Section and naming the Borrower as a third party beneficiary (in the absence of a provision naming the Borrower as a third party beneficiary, the applicable Lender hereby agrees to use its reasonable efforts, at the expense of the Borrower, upon the request of the Borrower to enforce such agreement), to (A) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (B) any counterparty to, or any prospective counterparty to (or such counterparty or prospective counterparty's advisors), any swap, securitization or derivative transaction referenced to credit or other risks arising under this Agreement, (vii) with the consent of the Borrower or (viii) to the extent such Information (A) becomes publicly available other than as a result of a breach of this Section or (B) becomes available to the Administrative Agent or any Lender on a

nonconfidential basis from a source other than the Borrower not known by it to be bound by obligations of confidentiality. For the purposes of this Section, " Information " means all information received from the Borrower relating to the Borrower or its business, other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by the Borrower; provided that, in the case of information received from the Borrower after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

(b) EACH LENDER ACKNOWLEDGES THAT INFORMATION AS DEFINED IN SECTION 9.12(a) FURNISHED TO IT PURSUANT TO THIS AGREEMENT MAY INCLUDE MATERIAL NON-PUBLIC INFORMATION CONCERNING THE BORROWER AND ITS RELATED PARTIES OR THEIR RESPECTIVE SECURITIES, AND CONFIRMS THAT IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL NON-PUBLIC INFORMATION AND THAT IT WILL HANDLE SUCH MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH THOSE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS. ALL INFORMATION, INCLUDING REQUESTS FOR WAIVERS AND AMENDMENTS, FURNISHED BY THE BORROWER OR THE ADMINISTRATIVE AGENT PURSUANT TO, OR IN THE COURSE OF ADMINISTERING, THIS AGREEMENT WILL BE SYNDICATE-LEVEL INFORMATION, WHICH MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION ABOUT THE BORROWER AND ITS RELATED PARTIES OR ITS RESPECTIVE SECURITIES. ACCORDINGLY, EACH LENDER REPRESENTS TO THE BORROWER AND THE ADMINISTRATIVE AGENT THAT IT HAS IDENTIFIED IN ITS ADMINISTRATIVE QUESTIONNAIRE A CREDIT CONTACT WHO MAY RECEIVE INFORMATION THAT MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH ITS COMPLIANCE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

Section 9.13 Interest Rate Limitation . Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable law (collectively the " Charges "), shall exceed the maximum lawful rate (the " Maximum Rate ") which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate.

Section 9.14 USA Patriot Act . Each Lender hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the " Act "), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender to identify the Borrower in accordance with the Act.

Section 9.15 No Advisory or Fiduciary Responsibility . In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower and each other Loan Party acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent and the Arrangers are arm's-length commercial transactions between the Borrower, each other Loan Party and their respective Affiliates, on the one hand, and the Administrative Agent and the Arrangers, on the other hand, (B) each of the Borrower and the other Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Borrower and each other Loan Party is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Administrative Agent and the Arrangers each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower, any other Loan Party or any of their respective Affiliates, or any other Person and (B) neither the Administrative Agent nor either Arranger has any obligation to the Borrower, any other Loan Party or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent and the Arrangers and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, the other Loan Parties and their respective Affiliates, and neither the Administrative Agent nor either Arranger has any obligation to disclose any of such interests to the Borrower, any other Loan Party or any of their respective Affiliates. To the fullest extent permitted by law, each of the Borrower and the other Loan Parties hereby waives and releases any claims that it may have against the Administrative Agent and either Arranger with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

[Signature Pages Follow]

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.

TERADATA CORPORATION, as Borrower

By: _____
Name:
Title:

JPMORGAN CHASE BANK, N.A., as Administrative Agent and Lender

By: _____
Name:
Title:

BANK OF AMERICA, N.A., as Syndication Agent

By: _____
Name:
Title: Vice President

BANK OF AMERICA, N.A., as a Lender

By: _____
Name:
Title: Vice President

[_____], as a Lender

By: _____
Name:
Title:

Schedule 1.01

DISCLOSED MATTERS

In the normal course of business, the Borrower is subject to proceedings, lawsuits, claims and other matters, including those that relate to the environment, health and safety, employee benefits, export compliance, intellectual property, tax matters, and other regulatory compliance and general matters, including those described below.

The Borrower is subject to governmental investigations and requests for information from time to time. As previously reported prior to Teradata's separation from NCR Corporation, a Maryland corporation (" NCR "), the United States Department of Justice is conducting an investigation regarding the propriety of the Borrower's arrangements or understandings with others in connection with certain federal contracts and the adequacy of certain disclosures related to such contracts. The investigation arises in connection with civil litigation in federal district court filed under the qui tam provisions of the civil False Claims Act against a number of information technology companies, including the Borrower. The complaints against the Borrower remain under seal. The Borrower continues to conduct its analysis of such claims focusing on the propriety of certain transactions under federal programs under which the Borrower was a contractor. During 2008 the Borrower shared evidence with the Justice Department of questionable conduct that the Borrower uncovered and is continuing to cooperate with the Justice Department in its investigation, and has initiated discussions to resolve this matter.

A separate portion of the government's investigation relates to the adequacy of pricing disclosures made to the government in connection with negotiation of NCR's General Services Administration Federal Supply Schedule as it relates to the Borrower, prior to Teradata's separation from NCR, and to whether certain subsequent price reductions were properly passed on to the government. Both NCR and the Borrower are participating in this aspect of the investigation, with respect to certain products and services of each, and each will assume financial responsibility for its own exposures, if any, without indemnification from the other. At this time, the Borrower is unable to determine the extent of its liability with respect to this aspect of the investigation.

The Borrower has an accrual of approximately $3 million related to the current best estimate of probable liability relating to these matters. The Borrower believes the amounts provided in its financial statements are adequate in light of the probable and estimable liabilities. However, because such matters are subject to many uncertainties, the outcomes are not predictable and there can be no assurances that the actual amounts required to satisfy alleged liabilities from the matters described above and other matters, and to comply with applicable laws and regulations, will not exceed the amounts reflected in the Borrower's financial statements or will not have a material adverse effect on its results of operations, financial condition or cash flows.

Schedule 2.01

COMMITMENTS

LENDER	COMMITMENT	PERCENTAGE
JPMorgan Chase Bank, N.A.	$ 60,000,000	20.0000000000%
Bank of America, N.A.	$ 60,000,000	20.0000000000%
The Bank of Tokyo-Mitsubishi UFJ, Ltd.	$ 45,000,000	15.0000000000%
Citibank N.A.	$ 45,000,000	15.0000000000%
U.S. Bank National Association	$ 45,000,000	15.0000000000%
Standard Chartered Bank	$ 15,000,000	5.0000000000%
Wells Fargo Bank, N.A.	$ 15,000,000	5.0000000000%
HSBC Bank	$ 15,000,000	5.0000000000%
TOTALS	**$300,000,000.00**	**100.0000000000%**

Schedule 2.01
to the
Teradata Term Loan Agreement

Schedule 3.14

SUBSIDIARIES OF TERADATA CORPORATION

Name of Subsidiary	Organized under the Laws of
Teradata International, Inc.*	Delaware
Teradata US, Inc.**	Delaware
Teradata Operations, Inc.**	Delaware
Teradata Government Systems LLC	Delaware
Teradata Taiwan LLC	Delaware
Teradata Argentina Holdings LLC	Delaware
Teradata Belgium Holdings LLC	Delaware
Teradata Bermuda Holdings LLC	Delaware
Teradata Brazil Holdings LLC	Delaware
Teradata Chile Holdings LLC	Delaware
Teradata Colombia Holdings LLC	Delaware
Teradata Egypt Holdings LLC	Delaware
Teradata India Holdings LLC	Delaware
Teradata Indonesia Holdings LLC	Delaware
Teradata International Services LLC	Delaware
Teradata Mexico Holdings LLC	Delaware
Teradata Netherlands Holdings LLC	Delaware
Teradata New Zealand Holdings LLC	Delaware
Teradata Philippines LLC	Delaware
Teradata Ukraine Holdings LLC	Delaware
TD Nameholder Corporation	Delaware
Aprimo, Inc.	Delaware
Aster Data Systems, Inc.	Delaware
Teradata de Argentina S.R.L.	Argentina
Teradata Australia Pty Ltd	Australia
Aprimo (Australia) Pty Limited	Australia
Teradata GmbH	Austria
Teradata Bermuda IP Holdings L.P.	Bermuda
Teradata Financing Holdings L.P.	Bermuda
Teradata Bermuda Holdings ULC	Bermuda
Teradata Bermuda Operations Holdings ULC	Bermuda
Teradata Belgium SNC	Belgium
TRDT Brasil Tecnologia Ltda.	Brazil
TRDT Brasil Holdings Ltda.	Brazil
Teradata Information Systems (Beijing) Limited	China
Teradata Canada ULC	Canada
Teradata Chile Tecnologías de Información Limitada	Chile
TDC Colombia Limitada	Colombia
Teradata Czeska republika spol. s r.o.	Czech Republic
Teradata Danmark ApS	Denmark
Teradata Egypt WLL	Egypt
Teradata Finland Oy	Finland

* Indicates a Subsidiary Guarantor
** Indicates a Material Subsidiary and Subsidiary Guarantor

Name of Subsidiary	Organized under the Laws of
Teradata France S.A.S.	France
Aprimo SARL	France
Teradata GmbH	Germany
Aprimo Software GmbH	Germany
Teradata (Hong Kong) Limited	Hong Kong
Protagona Worldwide Limited	Hong Kong
Teradata Magyarorszag Kft.	Hungary
Teradata India Private Limited	India
PT. Tdata Indonesia	Indonesia
Teradata Ireland Limited	Ireland
Teradata Ireland Holdings L.P.	Ireland
Teradata Ireland Operations L.P.	Ireland
Teradata International Sales Limited	Ireland
Teradata Italia S.r.l.	Italy
Teradata Japan Ltd.	Japan
TeraWarehouse Korea Co., Ltd.	Korea
TData Corporation (Malaysia) Sdn. Bhd.	Malaysia
Teradata Holdings México, S. de R. L. de C.V.	Mexico
Teradata Solutions México, S. de R.L. de C.V.	Mexico
Teradata de México, S. de R.L. de C.V.	Mexico
Teradata Holdings B.V.	Netherlands
Teradata Holdings GCC B.V.	Netherlands
Teradata Netherlands B.V.	Netherlands
Aprimo International B.V.	Netherlands
Aprimo B.V.	Netherlands
Teradata (NZ) Corporation	New Zealand
Teradata Norge AS	Norway
Teradata Pakistan (Private) Limited	Pakistan
Teradata Global Consulting Pakistan (Private) Limited	Pakistan
Teradata Philippines, LLC, Manila Branch	Philippines
Teradata GCC (Philippines), Inc.	Philippines
Teradata Polska Sp. z o.o.	Poland
“Teradata” LLC	Russia
Teradata (Singapore) Pte. Ltd.	Singapore
Teradata Iberia SL	Spain
Teradata Sweden AB	Sweden
Teradata (Schweiz) GmbH	Switzerland
Teradata Taiwan LLC, Taiwan branch	Taiwan
Teradata (Thailand) Co., Ltd.	Thailand
Teradata Bilisim Sistemleri Limited Sirketi	Turkey
Teradata (UK) Limited	United Kingdom
Aprimo UK Limited	United Kingdom
Aster Data Systems Limited	United Kingdom
Teradata Ukraine LLC	Ukraine

* Indicates a Subsidiary Guarantor
** Indicates a Material Subsidiary and Subsidiary Guarantor

Schedule 6.08

Existing Restrictions

Restrictions under Section 6.08 of the Revolving Credit Agreement and any substantially similar restrictions included in any credit agreement initially or successively refinancing the Revolving Credit Agreement.

Schedule 9.01

Notice Addresses

Administrative Agent :

JPMorgan Chase Bank, N.A.
10 South Dearborn, 7 th Floor
Chicago, IL, 60603-2003
Attention: Darren Cunningham
Telephone No. (312) 385-7080
Telecopy No. (888) 292-9533
darren.cunningham@jpmchase.com

Borrower :

Teradata Corporation
1000 Innovation Drive
Dayton, OH 45342
Attention: Assistant Treasurer
Telecopy No. (937) 719-9027

Exhibit 2.1

AGREEMENT AND PLAN OF MERGER

BY AND AMONG

TERADATA CORPORATION,

OAKLAND MERGER CORPORATION,

ASTER DATA SYSTEMS, INC.

AND

SHAREHOLDER REPRESENTATIVE SERVICES LLC,
AS THE EXCLUSIVE REPRESENTATIVE OF
THE INDEMNIFYING PARTIES NAMED HEREIN

Dated as of March 2, 2011

TABLE OF CONTENTS

Exhibits

Exhibit A	–	Form of Escrow Agreement
Exhibit B	–	Form of Voting Agreement
Exhibit C	–	Form of Stockholder Written Consent
Exhibit D	–	Form of Joinder Agreement
Exhibit E-1	–	Form of Continuing Employee Unvested Cash Plan
Exhibit E-2	–	Form of Continuing Employee Unvested Cash Plan Agreement
Exhibit F	–	Form of Letter of Transmittal
Exhibit G	–	Form of Director and Officer Resignation and Release Letter
Exhibit H	–	Form of Legal Opinion
Exhibit I	–	Form of FIRPTA Certificate
Exhibit J	–	Form of Company Option Commitment Letter

Schedules

Disclosure Schedule		
Schedule 1.1(e)	–	Certain Change in Control Payments
Schedule 1.1(m)	–	Company Option Commitments
Schedule 5.1(c)	–	Designated Individuals
Schedule 6.17	–	Code Scrub Requirements
Schedule 7.2(f)(i)	–	Key Employees
Schedule 7.2(f)(ii)	–	Continuing Employees
Schedule 7.2(g)	–	List of Key Stockholders and Non-Competition Terms
Schedule 7.2(o)(i)	–	Certain Contracts
Schedule 7.2(o)(ii)	–	Contracts to be Terminated
Schedule 7.2(o)(iv)	–	Contract Consents
Schedule 7.2(p)(v)	–	Company Employee Plans

Index of Defined Terms

Term	Section
Company Stockholders	1.1(aa)
Company Treasury Stock	2.7(b)(ii)
Company Warrants	1.1(bb)
Consents	3.6
Contaminants	3.13(s)
Continuing Employee	1.1(cc)
Continuing Employee Employment Agreements	6.12(a)
Continuing Employee Pool	1.1(dd)
Continuing Employee Unvested Cash Plan	1.1(ee)
Continuing Employee Unvested Cash Plan Agreement	1.1(ff)
Contract	1.1(gg)
Controls	3.7(b)
Damages	8.2(f)
Delaware Law	Preamble
DGCL	1.1(hh)
Director and Officer Resignation and Release Letter	6.13
Disclosure Schedule	ARTICLE 3
Dissenting Shares	2.7(b)(iv)(A)
Domain Names	1.1(tt)
Effective Time	2.2
Electronic Delivery	10.3
Employee	1.1(ii)
Employee Agreement	1.1(jj)
Environmental Laws	1.1(kk)
Equity Awards	1.1(ll)
ERISA	3.15(a)
ERISA Affiliate	3.15(a)
Escrow Agent	Preamble
Escrow Agreement	Preamble
Escrow Fund	2.8(b)
Escrow Percentage	1.1(mm)
Estimated Closing Date Balance Sheet	6.16
Final Invoices	6.10
Financial Statements	3.7(a)
Fully Diluted Shares	1.1(mm)
GAAP	1.1(oo)
Governmental Authority	1.1(pp)
Hazardous Substance	1.1(qq)
Hazardous Substance Activity	1.1(rr)
HSR Act	1.1(c)
Indebtedness	1.1(ss)
Indemnification Claim	8.2(c)(i)
Indemnifying Party or Indemnifying Parties	8.2(a)
In-Licenses	3.13(i)
Intellectual Property	1.1(tt)
Intellectual Property Contracts	3.13(i)
Joinder Agreement or Joinder Agreements	Preamble
Key Employee Employment Agreements	Preamble
Key Employees	Preamble

Term	Section
Key Stockholder	Preamble
Key Stockholders	Preamble
Knowledge	1.1(uu)
Law	1.1(vv)
Leased Premises	3.12(c)
Liabilities	1.1(ww)
Lost Certificate Indemnity Agreement	2.8(g)
Lost Stock Affidavit	2.8(g)
Major Customers	3.11
Major Suppliers	3.11
Material Contract or Material Contracts	3.14(b)
Merger	Preamble
Merger Consideration	1.1(xx)
Merger Sub	Preamble
Noncompetition Agreements	Preamble
Non-Continuing Employee	1.1(yy)
Non-Disclosure Agreement	6.7(a)
Officer's Certificate	8.2(c)(i)
Open Source Material	1.1(zz)
Option Consideration	1.1(aaa)
Out-Licenses	3.13(i)
Outside Date	9.1(b)
Parent	Preamble
Parent Indemnified Parties	8.2(a)
Parent-Owned Company Capital Stock	2.7(b)(iii)
Patents	1.1(tt)
Paying Agent	2.8(a)
Payment Spreadsheet	6.9(a)
PCBs	3.20(b)
Permits	1.1(bbb)
Person	1.1(ccc)
Personal Data	1.1(ddd)
Per Share Consideration	1.1(eee)
Plan	3.15(a)
Potential 280G Benefit	6.2(a)
Pre-Closing Taxes	1.1(fff)
Pre-Closing Tax Period	1.1(ggg)
Pro Rata Share	1.1(hhh)
Real Property Leases	3.12(c)
Registered Intellectual Property	1.1(iii)
Related Party	3.14(a)(vi)
Representative	Preamble
Representative Expense Amount	1.1(jjj)
Representative Expense Fund	2.8(c)
Representative Losses	8.3(f)(iii)
Requisite Stockholder Approval	3.2(c)
RoHS Directive	1.1(kk)
Securities Act	3.3(b)
Security Interest	1.1(kkk)

Term	Section
Shrink-Wrap Code	1.1(lll)
Soliciting Materials	6.1(b)
Special Representations	8.1(a)
Specified Company Representations	7.2(a)(i)
Specified Parent Representations	7.3(a)(i)
Statement of Transaction Expenses	6.10
Stock Restriction Agreement	1.1(mmm)
Stockholder Written Consent or Stockholder Written Consents	Preamble
Straddle Period	1.1(mmm)
Subsidiary	1.1(ooo)
Survival Period	8.1(a)
Surviving Corporation	2.1
Tax or Taxes	1.1(ppp)
Tax Incentive	3.10(l)
Tax Law	1.1(rrr)
Tax Return	1.1(sss)
Taxing Authority	1.1(qqq)
Technology	1.1(ttt)
Third Party Claim	8.2(e)
Threshold	8.2(b)(iv)
Trademarks	1.1(tt)
Transaction Expenses	1.1(uuu)
Transaction Payroll Taxes	1.1(vvv)
Transfer Taxes	2.8(f)
Unvested Company Capital Stock	1.1(www)
Unvested Company Option	1.1(xxx)
Unvested Company Optionholder	1.1(yyy)
Unvested Equity Award	1.1(zzz)
Unvested Equity Award Documents	2.8(d)(iii)
Unvested Equity Awardholder	1.1(aaaa)
Unvested Escrow Adjustment	1.1(bbbb)
Unvested Escrow Amount	2.8(b)(ii)
Vested Company Capital Stock	1.1(cccc)
Vested Company Option	1.1(dddd)
Vested Company Optionholder	1.1(eeee)
Vested Company Stockholder	1.1(ffff)
Vested Escrow Amount	1.1(gggg)
Voting Agreement	Preamble
WARN Act	3.16(g)
WEEE Directive	1.1(kk)

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (this " Agreement ") is made and entered into as of March 2, 2011 by and among Teradata Corporation, a Delaware corporation (" Parent "), Oakland Merger Corporation, a Delaware corporation and wholly owned subsidiary of Parent (" Merger Sub "), Aster Data Systems, Inc., a Delaware corporation (the " Company "), and Shareholder Representative Services LLC, a Colorado limited liability company, solely in its capacity as the exclusive representative of the Indemnifying Parties in connection with the transactions contemplated by this Agreement (the " Representative ").

W I T N E S S E T H:

WHEREAS, the Board of Directors of the Company has determined that the merger of Merger Sub with and into the Company (the " Merger ") pursuant to which (i) each outstanding share of Company Capital Stock will be cancelled and converted into the right to receive the Merger Consideration set forth herein, and (ii) the Company will become a wholly owned subsidiary of Parent, as well as all of the other transactions contemplated by this Agreement are fair to and in the best interests of the Company and its stockholders, and in furtherance thereof, the Board of Directors of the Company has determined that this Agreement is advisable and has approved this Agreement in accordance with applicable provisions of the laws of the State of Delaware (" Delaware Law ") and approved the Merger and the other transactions contemplated by this Agreement.

WHEREAS, the Board of Directors of the Company has resolved to unanimously recommend that the Company Stockholders adopt this Agreement in accordance with Delaware Law and approve the Merger and the other transactions contemplated by this Agreement.

WHEREAS, the Board of Directors of Parent has determined that this Agreement, the Merger and the other transactions contemplated by this Agreement are desirable and in the best interests of Parent, Merger Sub and their respective stockholders, and in furtherance thereof the Board of Directors of Merger Sub and the Board of Directors of Parent, as the sole stockholder of Merger Sub, have determined that this Agreement is advisable and have approved and adopted this Agreement in accordance with the applicable provisions of Delaware Law and have approved the Merger and the other the transactions contemplated by this Agreement.

WHEREAS, concurrently with the execution and delivery of this Agreement, and as a condition and inducement to the willingness of Parent and Merger Sub to enter into this Agreement, Parent, the Representative and Wells Fargo Bank, National Association, as escrow agent (the " Escrow Agent "), are entering into an escrow agreement in the form attached as Exhibit A (the " Escrow Agreement "), the effectiveness of which is contingent upon the consummation of the Merger, pursuant to which the Escrow Agent will hold a portion of the Merger Consideration otherwise payable to the Indemnifying Parties under this Agreement as partial security against the indemnification obligations of the Indemnifying Parties under this Agreement.

WHEREAS, concurrently with the execution and delivery of this Agreement, and as a condition and inducement to the willingness of Parent and Merger Sub to enter into this Agreement, the officers and directors of the Company and certain Company Securityholders have entered into a Voting Agreement dated as of the date hereof and in the form attached hereto as Exhibit B (the " Voting Agreement ") pursuant to which each such director, officer and Company Securityholder has agreed to vote in favor of approval of this Agreement and the transactions

contemplated hereby and to take certain other actions in furtherance of the consummation of the Merger upon the terms and subject to the conditions set forth in the Voting Agreement.

WHEREAS, immediately following the execution and delivery of this Agreement, the Company will (i) solicit written consents in the form attached hereto as Exhibit C (each, a " Stockholder Written Consent " and collectively, the " Stockholder Written Consents ") from holders of outstanding shares of Company Capital Stock holding a sufficient number of shares of Company Capital Stock to obtain the Requisite Stockholder Approval and (ii) obtain from each such stockholder and deliver to Parent an executed joinder agreement in substantially the form attached hereto as Exhibit D (each, a " Joinder Agreement " and collectively, the " Joinder Agreements ").

WHEREAS, concurrently with the execution and delivery of this Agreement, and as a condition and inducement to the willingness of Parent and Merger Sub to enter into this Agreement, (i) except as set forth on Schedule 7.2(g) , each of the Persons listed in Schedule 7.2(g) (each, a " Key Stockholder " and collectively, the " Key Stockholders ") has entered into and delivered to Parent a non-competition and non-solicitation agreement, to be effective as of the Closing Date and through the period specified in Schedule 7.2(g) (collectively, the " Noncompetition Agreements ") and (ii) each of the Persons listed in Schedule 7.2(f)(i) (collectively, the " Key Employees ") has entered into such employment documents as Parent my reasonably request, including an "at will" employment arrangement with Parent or a subsidiary thereof to be effective as of the Closing Date pursuant to his or her execution and delivery of an offer letter, which may contain terms specific to each particular Key Employee, including the terms of retention awards, if any, to be offered to such Key Employee, and a proprietary information and inventions assignment agreement, each in a form acceptable to Parent (collectively, the " Key Employee Employment Agreements ").

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing premises and the mutual representations, warranties, covenants and agreements herein contained, and intending to be legally bound hereby, the parties hereby agree as follows:

ARTICLE 1
DEFINITIONS AND INTERPRETATIONS

1.1 Certain Definitions . For purposes of and under this Agreement, the following terms shall have the following respective meanings:

(a) " Action " shall mean any private or governmental action, suit, claim, charge, cause of action or suit (whether in contract or tort or otherwise), litigation (whether at law or in equity, whether civil or criminal), assessment, arbitration, investigation, audit, hearing, complaint, demand or other proceeding to, from, by or before any arbitrator, court, tribunal or other Governmental Authority.

(b) " Affiliate " shall mean, with respect to any Person, any other Person directly or indirectly controlling, directly or indirectly controlled by, or under direct or indirect common control with, such Person, or if such Person is a partnership, any general partner of such Person or a Person controlling any such general partner. For purposes of this definition, " control " (including " controlled by " and " under common control with ") shall mean the power, directly or indirectly, to direct or cause the direction of the management and policies of such Person, whether

through the ownership of voting securities or partnership or other ownership interests, by contract or otherwise.

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

(d) " Business Day(s) " shall mean each day that is not a Saturday, Sunday or other day on which banking institutions located in New York, New York are authorized or obligated by law or executive order to close.

(e) " Change in Control Payments " shall mean (i) any severance payment to any Non-Continuing Employee, retention, bonus or other similar payment to any Employee under any Contract existing prior to the date of this Agreement or Company Employee Plan, (ii) any forgiveness of Indebtedness, or (iii) any increase of any benefits otherwise payable by the Company including any "parachute payments" under Section 280G of the Code for which 280G Approval is not properly obtained, in each case of the immediately preceding clauses (i), (ii) and (iii), which are payable or become effective as a result of the execution and delivery of this Agreement by the Company or the consummation of the Merger or any other the transactions contemplated hereby. For the avoidance of doubt and without limiting the foregoing, (A) no payments made pursuant to Section 2.7(c) or Section 6.12(d) of this Agreement shall be considered a Change in Control Payment, and (B) each of the payments set forth on Schedule 1.1(e) shall be considered a Change in Control Payment for all purposes of and under this Agreement.

(f) " Code " shall mean the Internal Revenue Code of 1986, as amended.

(g) " Company Capital Stock " shall mean all of the capital stock of the Company, including Company Common Stock and Company Preferred Stock.

(h) " Company Common Stock " shall mean the common stock of the Company, par value $0.0001 per share, including any shares of Company Preferred Stock converted into shares of Company Common Stock immediately prior to, or upon the occurrence of, the Merger.

(i) " Company Debt " shall mean any Indebtedness of the Company or any of its Subsidiaries outstanding as of immediately prior to the Effective Time.

(j) " Company Intellectual Property " shall mean any Intellectual Property that is, or is purported to be, owned by, or exclusively licensed to, the Company or any of its Subsidiaries.

(k) " Company Material Adverse Effect " shall mean any change, event, circumstance or effect that, individually or in the aggregate with all other changes, events, circumstances and effects, is or is reasonably likely to be materially adverse to the business, condition (financial or otherwise), assets, liabilities or results of operations of the Company and its Subsidiaries, taken as a whole; *provided* , *however* , that in determining whether a Company Material Adverse Effect has occurred, is reasonably likely to occur, would reasonably be expected to occur, or would occur, there shall be excluded any effect on the Company or any of its Subsidiaries resulting from, or arising out of, any of the following (either alone or in combination):

(i) changes in, or conditions affecting, the U.S. or international economy generally, the financial markets, or the industry in which the Company operates, provided that such changes or conditions do not have a materially disproportionate or unique effect on the Company relative to other companies operating in the industry in which the Company operates;

(ii) changes in laws, rules or regulations, or in GAAP, or in the interpretation of any of the foregoing by any Person other than the Company, provided that such changes do not have a materially disproportionate or unique effect on the Company relative to other companies operating in the industry in which the Company operates;

(iii) acts of terrorism, war or other force majeure events;

(iv) any change (including any cancellation of, or delays in, customer purchases or orders or any reduction in customer order forecasts) demonstrably resulting from the announcement of this Agreement or the pendency of the Merger or any other transactions contemplated by this Agreement;

(v) any failure by the Company to meet any of its financial projections, forecasts or estimates, in and of itself (it being understood that any underlying cause(s) of any such failure may be deemed to constitute, in and of itself, a Company Material Adverse Effect and may be taken into consideration when determining whether a Company Material Adverse Effect has occurred, is reasonably likely to occur, would reasonably be expected to occur, or would occur); and

(vi) compliance by the Company with this Agreement, any express actions taken by the Company that are required to be taken by the Company pursuant to this Agreement or that are requested by Parent in writing, or any actions not taken by the Company at the express written request of Parent.

(l) " Company Option " shall mean all issued and outstanding options (including commitments to grant options), whether vested or unvested, to acquire shares of Company Capital Stock.

(m) " Company Option Commitments " shall mean those contractual commitments made by the Company to certain Continuing Employees to grant to such Continuing Employees options to purchase shares of Company Common Stock, which options the Company has not granted as of the date of this Agreement, specified on Schedule 1.1(m) , which schedule shall specify the number of shares of Company Common Stock underlying the option grants that the Company was contractually committed to grant and the exercise price and vesting schedule that would have otherwise applied to each such grant.

(n) " Company Option Commitment Letter " shall mean the letter entered into by the Company and each Continuing Employee to whom the Company made a Company Option Commitment, which letter contains the payment (including the deemed exercise price), vesting conditions and other terms by which the Company Option Commitment Pool is payable to such Continuing Employee, a copy of which is attached hereto as Exhibit J .

(o) " Company Option Commitment Pool " shall mean the aggregate amount payable to holders of Company Option Commitments, assuming such Company Option Commitments were Company Options, which amount will be withheld from the Merger Consideration at Closing for payment to the Continuing Employees specified on Schedule 1.1(m)

to whom the Company made a Company Option Commitment pursuant to the Company Option Commitment Letters.

(p) " Company Preferred Stock " shall mean all preferred stock of the Company, including the Company Series Seed Preferred Stock, the Company Series A Preferred Stock, the Company Series B Preferred Stock, and the Company Series C Preferred Stock.

(q) " Company Privacy Policy " shall mean any external or internal, past or present privacy policy of the Company, including any policy relating to: (A) the privacy of users of any Company Product or website of the Company or any of its Subsidiaries, (B) the collection, storage, disclosure, and transfer of any Personal Data, or (C) any Employee information

(r) " Company Products " shall mean any products or service offerings of the Company and its Subsidiaries that have been or are being marketed, sold, offered, provided or distributed, or that the Company or any of its Subsidiaries intends to market, sell, offer, provide or distribute, including any products or service offerings under development, and including any such products or services that form the basis, in whole or in part, of any revenue or business projection made by the Company and its Subsidiaries, or provided by Company in connection with the negotiation of this Agreement

(s) " Company Registered Intellectual Property " shall mean all of the Registered Intellectual Property owned by, filed in the name of, or held in the name of the Company or any of its Subsidiaries.

(t) " Company Securities " shall mean all securities of the Company, including all Company Capital Stock, Company Options, Company Warrants, all other securities that are convertible into, or exercisable or exchangeable for, securities of the Company and any rights to acquire any of the foregoing securities of the Company, whether vested or unvested and whether subject to the satisfaction of time-based, performance-based or other conditions or criteria.

(u) " Company Securityholders " shall mean all holders of Company Securities, including all Company Stockholders, all holders of Company Options, all holders of Company Option Commitments and all holders of Company Warrants.

(v) " Company Series A Preferred Stock " shall mean the Company Preferred Stock designated "Series A Preferred Stock" in the Charter.

(w) " Company Series B Preferred Stock " shall mean the Company Preferred Stock designated "Series B Preferred Stock" in the Charter.

(x) " Company Series C Preferred Stock " shall mean the Company Preferred Stock designated "Series C Preferred Stock" in the Charter.

(y) " Company Series Seed Preferred Stock " shall mean the Company Preferred Stock designated "Series Seed Preferred Stock" in the Charter.

(z) " Company Stock Plans " shall mean the Company's 2005 Stock Plan and any other stock option plans or other equity-related plans of the Company or any of its Subsidiaries.

(aa) " Company Stockholders " shall mean all holders of Company Capital Stock.

(bb) " Company Warrants " shall mean all issued and outstanding warrants to purchase Company Capital Stock.

(cc) " Continuing Employee " shall mean each of (i) the Key Employees and (ii) each other Employee of the Company who both (x) prior to the Closing has entered into an "at will" employment arrangement with Parent or a subsidiary thereof to be effective as of the Closing Date, pursuant to his or her execution and delivery of an offer letter and a proprietary information and inventions assignment agreement, each in a form acceptable to Parent, and (y) as of the Closing, has not breached, terminated, rescinded or repudiated (formally or informally) any such arrangement.

(dd) " Continuing Employee Pool " shall mean an amount to be withheld from the Merger Consideration at Closing for payment to Continuing Employees holding Unvested Equity Awards equal in value to the sum of (i) the aggregate Option Consideration otherwise payable in respect of all outstanding Unvested Company Options and (ii) the product obtained by multiplying (x) the Per Share Consideration by (y) the aggregate number of Unvested Company Capital Stock, in each case, held by Continuing Employees immediately prior to the Effective Time, the distribution from which is subject to the terms and conditions of the Continuing Employee Unvested Cash Plan and the applicable Continuing Employee Unvested Cash Plan Agreement; *provided* , *however* , that the parties hereto acknowledge and agree that to the extent that any right to receive payments in respect of any Unvested Equity Award is terminated, then any amounts that remain unpaid with respect to such Unvested Equity Award shall be forfeited and returned to Parent and shall not be returned to, and will no longer constitute a part of, the Continuing Employee Pool.

(ee) " Continuing Employee Unvested Cash Plan " shall mean the plan, including the related Continuing Employee Unvested Cash Plan Agreements, containing the payment, vesting conditions and other terms by which the Continuing Employee Pool is payable to Continuing Employees who hold outstanding Unvested Equity Awards immediately prior to the Effective Time, a copy of which is attached hereto as Exhibit E-1.

(ff) " Continuing Employee Unvested Cash Plan Agreement " shall mean the agreements to be entered into by Parent with each Continuing Employee who hold one or more Unvested Equity Awards in connection with the Continuing Employee Unvested Cash Plan, a copy of the standard form of which is attached hereto as Exhibit E-2 .

(gg) " Contract " shall mean any written or oral legally binding contract, agreement, instrument, commitment or undertaking of any nature (including leases, licenses, mortgages, notes, guarantees, sublicenses, subcontracts, letters of intent and purchase orders) by the Company, or to which the Company is a party.

(hh) " DGCL " shall mean the General Corporation Law of the State of Delaware, as amended, or any successor statute thereto.

(ii) " Employee " shall mean any current or former or retired employee, consultant, contractor or director of the Company or any ERISA Affiliate.

(jj) " Employee Agreement " shall mean each employment, change in control, severance, consulting, relocation, repatriation, expatriation, visa, work permit or other agreement, contract or understanding between the Company and its Subsidiaries or any ERISA Affiliate and any Employee.

(kk) " Environmental Laws " shall mean all applicable laws (including common laws), directives, guidance, rules, regulations, orders, treaties, statutes, and codes promulgated by any Governmental Authority which prohibit, regulate or control any Hazardous Substance or any Hazardous Substance Activity, including, without limitation, 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 ").

(ll) " Equity Awards " shall mean outstanding Company Options and outstanding Unvested Company Capital Stock with respect to which a valid and timely election under Section 83(b) of the Code has not been made.

(mm) " Escrow Percentage " shall mean the quotient obtained by dividing (x) Forty-One Million Dollars ($41,000,000), by (y) the aggregate amount of cash payable pursuant to Section 2.7 of this Agreement in respect of all shares of Company Capital Stock (disregarding (i) all Dissenting Shares and (ii) all shares of Parent-Owned Company Capital Stock), Vested Company Options and Unvested Equity Awards (whether or not such cash amounts are ultimately paid in respect of such Unvested Equity Awards due to the valid forfeiture of any rights to any such payments in respect of Unvested Equity Awards).

(nn) " Fully Diluted Shares " shall mean a number equal to (x) the aggregate number of shares of Company Common Stock which are outstanding as of immediately prior to the Effective Time, plus (y) the maximum aggregate number of shares of Company Common Stock issuable upon full exercise, exchange or conversion of all Company Securities, all calculated on a fully diluted, as converted to Company Common Stock basis, which are outstanding as of immediately prior to the Effective Time, plus (z) the total number of shares of Company Common Stock underlying the option grants that the Company was contractually committed to grant pursuant to the Company Option Commitments had such grants been made, minus the sum of (A) the maximum aggregate number of shares of Unvested Company Capital Stock held by Non-Continuing Employees which are repurchased pursuant to Section 2.7(c)(ii)(A) , and (B) the maximum aggregate number of shares of Company Common Stock issuable upon the exercise of Unvested Company Options held by Non-Continuing Employees which are cancelled or terminated without the payment of any consideration pursuant to Section 2.7(c)(ii)(A) .

(oo) " GAAP " shall mean U.S. generally accepted accounting principles applied on a consistent basis.

(pp) " Governmental Authority " shall mean any U.S. federal, state, municipal or local or any foreign government, or political subdivision thereof, or any authority, agency or commission entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or Taxing Authority or power, any court or tribunal (or any department, bureau or division thereof), or any arbitrator or arbitral body.

(qq) " Hazardous Substance " shall mean any material, emission, or substance that has been designated by any Governmental Authority or by applicable federal, state or local Law to be radioactive, toxic, a pollutant, a contaminant, hazardous, or otherwise a danger to health, reproduction, or the environment.

(rr) " Hazardous Substance Activity " shall mean the transportation, transfer, recycling, storage, use, treatment, manufacture, removal, remediation, release, labeling, exposure of others to, sale, or distribution of any Hazardous Substance or any product or waste containing a

Hazardous Substance, including, without limitation, any required payment of waste fees or charges (including so-called e-waste fees) and compliance with any recycling, product take-back or product content requirements (including RoHS, WEEE, and China RoHS).

(ss) " Indebtedness " shall mean all Liabilities and obligations, including any applicable penalties (including with respect to any prepayment thereof), interest and premiums, (i) for borrowed money, (ii) evidenced by notes, bonds, debentures, letters of credit or similar instruments, (iii) for the deferred purchase price of goods or services (other than trade payables or accruals incurred in the ordinary course of business), (iv) under capital leases, (v) relating to or arising out of any Change in Control Payments, or (vi) in the nature of guarantees of the obligations described in the immediately preceding clauses (i) – (v), inclusive, of any other Person.

(tt) " Intellectual Property " shall mean any or all of the following and all worldwide common law and statutory rights in, arising out of, or associated therewith (whether existing now or in the future): (i) United States and foreign patents and utility models and applications therefor and all reissues, divisions, re-examinations, renewals, extensions, provisionals, continuations and continuations-in-part thereof (" Patents "); (ii) rights in inventions (whether patentable or not), improvements, trade secrets, proprietary information, know how, and any rights in technology, software, invention disclosures, technical data and customer lists; (iii) copyrights, copyrights registrations and applications therefor, and all other rights corresponding thereto throughout the world; (iv) domain names, uniform resource locators, other names and locators associated with the Internet, and applications or registrations therefor (" Domain Names "); (v) industrial designs and any registrations and applications therefor; (vi) trade names, logos, common law trademarks and service marks, trademark and service mark registrations, related goodwill and applications therefor throughout the world (" Trademarks "); (vii) all rights in databases and data collections; (viii) all moral and economic rights of authors and inventors, however denominated; and (ix) any similar or equivalent rights to any of the foregoing (as applicable).

(uu) " Knowledge " shall mean (i) with respect to any Person, the actual knowledge of the members of the board of directors (or equivalent governing body) of such Person; (ii) with respect to the Company, the actual knowledge of Quentin Galivan, John Calonico, Anastasios Argyros and Mayank Bawa; and (iii) with respect to Parent, the actual knowledge of its executive officers.

(vv) " Law " shall mean U.S. federal, state, municipal or local or foreign laws, statutes, standard ordinances, codes, resolutions, promulgations, rules, regulations, orders, judgments, writs, injunctions, decrees, or any other similar legal requirements having the force or effect of law.

(ww) " Liabilities " shall mean all debts, liabilities and obligations, whether accrued or fixed, absolute or contingent, matured or unmatured, determined or determinable, asserted or unasserted, known or unknown, including those arising under any Law, Action or governmental order and those arising under any Contract, excluding in all cases the performance obligations thereunder.

(xx) " Merger Consideration " shall mean (i) Three Hundred Twenty-Five Million Dollars ($325,000,000), *plus* (ii) the sum of (x) the aggregate exercise price of all Company Options and the deemed exercise price of the Company Option Commitments (as specified on Schedule 1.1(m)) that are cancelled or terminated and exchanged for the right to receive a portion of the Merger Consideration pursuant to Section 2.7(c) and (y) the aggregate exercise price of all Company Warrants that are cancelled or terminated and exchanged for the

right to receive a portion of the Merger Consideration pursuant to Section 2.7(c), *minus* (iii) the sum of (x) the aggregate amount of all Transaction Expenses (whether paid prior to the Effective Time or becoming payable at or as of the Effective Time), (y) the aggregate amount of any and all Company Debt as of immediately prior to the Effective Time (without giving effect to the payment or other discharge of any such Company Debt in connection with the Merger and the other transactions contemplated by this Agreement, including the payment or discharge of any Change in Control Payments), and (z) the aggregate amount (without duplication of any cash amounts contemplated by the immediately preceding clause (y) of this clause (iii)) of any and all Change in Control Payments that become payable at or as of the Effective Time or as a result of the consummation of the Merger or any other transactions contemplated by this Agreement.

(yy) " Non-Continuing Employee " shall mean each Employee of the Company or any Subsidiary of the Company who is not a Continuing Employee.

(zz) " Open Source Material " shall mean any software or other material or content that is distributed or made available as "open source software" or "free software", or is otherwise publicly distributed or made generally available in source code or equivalent form under terms that permit modification and redistribution of such software or other material or content. Open Source Material includes, without limitation, software that is licensed under the GNU General Public License, GNU Lesser General Public License, Mozilla License, Common Public License, Apache License, BSD License, or a similar license.

(aaa) " Option Consideration " shall mean an amount in cash, without interest, equal to the excess, if any, of the Per Share Consideration over the per share exercise price of the Company Option.

(bbb) " Permits " shall mean all permits, registrations, certifications, clearances, consents, concessions, grants, franchises, licenses and other governmental authorizations and approvals.

(ccc) " Person " shall mean any natural person, company, corporation, limited liability company, general or limited partnership, trust, proprietorship, joint venture, or other business entity, unincorporated association, organization or enterprise, or any Governmental Authority.

(ddd) " Personal Data " shall mean any piece of information that allows the identification of a natural person, including a natural person's name, street address, telephone number, e-mail address, photograph, social security number, driver's license number, passport number, credit or debit card number.

(eee) " Per Share Consideration " shall mean an amount of cash equal to the quotient obtained by dividing (x) the Merger Consideration by (y) the Fully Diluted Shares (including any shares of Parent-Owned Company Capital Stock; *provided , however* , that, for the avoidance of doubt, any such shares of Parent-Owned Company Capital Stock shall be cancelled without any payment of any consideration therefor pursuant to Section 2.7(b)(iii) and, except as otherwise set forth herein, the Per Share Consideration otherwise payable in respect of such shares of Parent-Owned Capital Stock shall be retained by Parent and not otherwise paid hereunder).

(fff) " Pre-Closing Taxes " shall mean any Taxes of the Company or any of its Subsidiaries attributable to any Pre-Closing Tax Period that are not yet paid (including such Taxes that are not yet due and payable) as of the Closing Date, including any Transaction Payroll Taxes and Transfer Taxes imposed or levied on the Company or any of its Subsidiaries in connection with

the transactions contemplated by this Agreement; *provided , however* , that any real, personal and intangible property Taxes for any Straddle Period shall be allocated to the portion of the Straddle Period ending on the Closing Date on a daily basis, and all other Taxes for any Straddle Period shall be allocated as if such Straddle Period ended on the Closing Date, except that exemptions, allowances or deductions that are calculated on an annual basis (including depreciation and amortization deductions), other than with respect to property placed in service after the Closing, shall be allocated on a daily basis.

(ggg) " Pre-Closing Tax Period " shall mean any taxable period or portion thereof ending on or prior to the Closing Date.

(hhh) " Pro Rata Share " shall mean, with respect to each Company Securityholder, an amount on a pro rata basis calculated based on the aggregate Merger Consideration otherwise payable to each Company Securityholder pursuant to this Agreement in respect of the Company Securities of such Company Securityholder (without giving effect to any escrow contributions or holdbacks contemplated by this Agreement) relative to the aggregate Merger Consideration payable in respect of all Company Securities.

(iii) " Registered Intellectual Property " shall mean all United States, international and foreign: (i) Patents, including applications therefor; (ii) registered Trademarks, applications to register Trademarks, including intent-to-use applications, or other registrations or applications related to Trademarks; (iii) copyrights registrations and applications to register copyrights; (iv) domain name registrations; and (v) 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 private, state, government or other public or quasi public legal authority at any time.

(jjj) " Representative Expense Amount " shall mean $250,000.

(kkk) " Security Interest " shall mean any mortgage, security interest, pledge, encumbrance, restriction on the right to sell or dispose (and in the case of securities, vote) or lien (whether arising by contract or by operation of law and whether voluntary or involuntary), excepting restrictions contained in Intellectual Property Contracts.

(lll) " Shrink-Wrap Code " shall mean generally commercially available binary code (other than development tools and development environments) where available for a cost of not more than $5,000 for perpetual license for a single user or work station (or $25,000 in the aggregate for all users and work stations); *provided , however* , that the term " Shrink-Wrap Code " shall not include any Open Source Materials.

(mmm) " Stock Restriction Agreement " shall mean any stock restriction, repurchase, forfeiture or other similar agreement between the Company and any other Person pursuant to which the Company has a right to repurchase shares of Company Capital Stock held by such Person upon terms and subject to certain conditions set forth therein.

(nnn) " Straddle Period " shall mean any taxable period beginning prior to and ending after the Closing Date.

(ooo) " Subsidiary " shall mean, with respect to any party, any corporation or other organization, whether incorporated or unincorporated, of which (i) at least a majority of the securities or other interests having by their terms ordinary voting power to elect a majority of the board of directors or others performing similar functions with respect to such corporation or other

organization is directly or indirectly owned or controlled by such party, corporation or organization or by any one or more of its Subsidiaries, or (ii) such party, corporation or organization or any other Subsidiary of such party, corporation or organization is a general partner (excluding any such partnership where such party, corporation or organization or any Subsidiary of such party does not have a majority of the voting interest in such partnership).

(ppp) " Tax " or " Taxes " shall mean (i) all U.S. federal, state and local and non-U.S. taxes, charges, fees, imposts, levies or other assessments, including all income, gross receipts, capital, sales, use, ad valorem, value added, transfer, franchise, profits, inventory, escheat, capital stock, license, withholding, payroll, employment, social security, social insurance, unemployment, excise, severance, stamp, occupation, property and estimated taxes, customs duties, fees, assessments and charges of any kind whatsoever, together with any interest, penalties, fines, additions to Tax or additional amounts (whether disputed or not) imposed by any Taxing Authority, (ii) any Liability for the payment of any amounts of the type described in clause (i) of this sentence as a result of being a member of an affiliated, consolidated, combined, unitary, aggregate or similar group for any Taxable period (including any arrangement for group or consortium relief or similar arrangement), and (iii) any Liability for the payment of any amounts of the type described in clause (i) or (ii) of this sentence of any other Person as a result of any express or implied obligation, agreement or arrangement with respect to such amounts, as a transferee or successor or otherwise by operation of law.

(qqq) " Taxing Authority " shall mean the IRS or any other governmental body (whether state, local or non-U.S.) responsible for the administration of any Tax.

(rrr) " Tax Law " shall mean any Law (whether domestic or foreign) relating to Taxes.

(sss) " Tax Return " shall mean any return, report or statement filed or required to be filed with respect to any Tax, including any information return, declaration of estimated tax, claim for refund, election, or voluntary disclosure agreement, and any schedule, addendum or attachment thereto, and any amendment thereof.

(ttt) " Technology " shall mean computer programs (whether in source code, object code, or other form), databases, compilations and data, technology supporting the foregoing, and all documentation, including user manuals and training materials, related to any of the foregoing.

(uuu) " Transaction Expenses " shall mean (i) all fees and expenses (including any and all legal, accounting, consulting, investment banking, financial advisory, data room provider and brokerage fees and expenses) incurred by the Company, any of its Subsidiaries, any other Person for which the Company or its Subsidiaries may pay or reimburse such Person or otherwise may be obligated to pay or reimburse such Person or may be or may become liable in connection with this Agreement, the Merger or any of the transactions contemplated hereby; (ii) any and all costs and expenses relating to or arising from obtaining or maintaining a tail policy for the Company's director's and officer's insurance, if applicable; and (iii) any and all Transaction Payroll Taxes. For the avoidance of doubt, for all purposes of and under this Agreement, " Transaction Expenses " shall not include any fees and expenses incurred by Parent other than Transaction Payroll Taxes.

(vvv) " Transaction Payroll Taxes " shall mean any employment or payroll Taxes with respect to any Change in Control Payments and the payments that are paid or payable

pursuant to Section 2.7(c)(i) and Section 2.7(c)(ii)(B)(1) , whether paid or payable by Parent, the Company or its Subsidiaries.

(www) " Unvested Company Capital Stock " shall mean all shares of Company Common Stock that are subject to a right of repurchase by the Company or other similar risk of forfeiture to the Company, whether pursuant to a Stock Restriction Agreement executed in connection with or at any time following the issuance of such Company Common Stock or otherwise, as of immediately prior to the Effective Time, and is not released from such right of repurchase or other restriction as a result of the Merger.

(xxx) " Unvested Company Option " shall mean any Company Option (or portion thereof) that is unvested as of immediately prior to the Effective Time and does not vest as a result of, or in connection with, the Merger.

(yyy) " Unvested Company Optionholder " shall mean any Person holding Unvested Company Options.

(zzz) " Unvested Equity Award " shall mean any Unvested Company Option, Company Option Commitment or Unvested Company Capital Stock outstanding immediately prior to or upon the occurrence of the Merger at the Effective Time.

(aaaa) " Unvested Equity Awardholder " shall mean any Person holding an Unvested Equity Award as of immediately prior to or upon the occurrence of the Merger at the Effective Time.

(bbbb) " Unvested Escrow Adjustment " shall mean an amount of cash equal to the aggregate of all Unvested Escrow Amounts. For the avoidance of doubt, the Unvested Escrow Adjustment shall constitute a portion of each of the Continuing Employee Pool and the Company Option Commitment Pool.

(cccc) " Vested Company Capital Stock " shall mean all shares of Company Common Stock other than Unvested Company Capital Stock.

(dddd) " Vested Company Option " shall mean any Company Option (or portion thereof) that is vested immediately prior to the Effective Time, or vests as a result of, or in connection with, the Merger at the Effective Time.

(eeee) " Vested Company Optionholder " shall mean any Person holding Vested Company Options as of immediately prior to the Merger.

(ffff) " Vested Company Stockholder " shall mean any Person holding shares of Vested Company Capital Stock as of immediately prior to the Effective Time.

(gggg) " Vested Escrow Amount " shall mean an amount of cash equal to (i) Forty-One Million Dollars ($41,000,000), minus (ii) the Unvested Escrow Adjustment.

1.2 Other Capitalized Terms . For all purposes of and under this Agreement, all capitalized terms that are not defined in the preamble or recitals hereto, or in Section 1.1 , shall have the respective meanings ascribed to such terms throughout this Agreement.

1.3 Certain Interpretations .

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

(b) When a reference is made in this Agreement to an Article or a Section, such reference shall be to an Article or a Section of this Agreement unless otherwise indicated. The words “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) The words “include”, “includes” and “including” when used herein shall be deemed in each case to be followed by the words “without limitation”.

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

(e) All references in this Agreement to a legal entity (including the Company) shall be deemed to refer to such entity and its Subsidiaries unless the context otherwise requires.

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

(g) Documents or other information and materials shall be deemed to have been “made available” by the Company if and only if the Company has posted such documents and information and other materials to a virtual data room managed by the Company at https://services.intralinks.com/login/?w=913282&p=3 at least 24 hours prior to the execution and delivery of this Agreement by the parties hereto.

(h) Article, section, paragraph, exhibit and schedule references are to the articles, sections, paragraphs, exhibits and schedules of this Agreement unless otherwise specified.

(i) The meaning assigned to each term defined herein shall be equally applicable to both the singular and the plural forms of such term, and words denoting any gender shall include all genders. Where a word or phrase is defined herein, each of its other grammatical forms shall have a corresponding meaning.

(j) A reference to any party to this Agreement or any other agreement or document shall include such party’s successors and permitted assigns.

(k) A reference to any specific legislation or to any provision of any legislation shall include any amendment to, and any modification or re-enactment thereof, any legislative provision substituted therefor and all regulations and statutory instruments issued thereunder or pursuant thereto.

(l) References to “$” and “Dollars” are to U.S. dollars.

(m) No summary of this Agreement or any Exhibit or Schedule delivered herewith prepared by or on behalf of any party will affect the meaning or interpretation of this Agreement or any such Exhibit or Schedule.

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

ARTICLE 2
THE MERGER

2.1 The Merger . Upon the terms and subject to the conditions set forth in this Agreement and the applicable provisions of Delaware Law, at the Effective Time, Merger Sub shall be merged with and into the Company, whereupon the separate corporate existence of Merger Sub shall cease and the Company shall continue as the surviving corporation and as a wholly owned Subsidiary of Parent. The Company as the surviving corporation of the Merger is hereinafter sometimes referred to herein as the " Surviving Corporation ."

2.2 Effective Time . Upon the terms and subject to the conditions set forth in this Agreement, the parties hereto shall cause the Merger to become effective by filing a certificate of merger in customary form (the " Certificate of Merger ") with the Secretary of State of the State of Delaware in accordance with the relevant provisions of Delaware Law as soon as practicable after the Closing (but in any event on the Closing Date if the Closing occurs at a time in which such filings are accepted for filing by the Secretary of State of the State of Delaware, or the first Business Day thereafter if the Closing occurs at a time in which such filings are not accepted for filing by the Secretary of State of the State of Delaware). The actual time of acceptance of such filing by the Secretary of State of the State of Delaware (or any later time as may be mutually agreed upon in writing by Parent and the Company and expressly designated as the effective time of the Merger in the Certificate of Merger) is referred to herein as the " Effective Time ."

2.3 Closing . Unless this Agreement is earlier terminated pursuant to Section 9.1 , the Merger shall be consummated at a closing (the " Closing ") to occur on a Business Day as soon as practicable, but in no event later than three Business Days following the satisfaction or waiver (if permitted hereunder) of all of the conditions set forth in ARTICLE 7 other than those conditions that by their nature are to be satisfied at the Closing (but subject to the fulfillment or waiver of those conditions at the Closing) at the offices of Parent, 10000 Innovation Drive, Miamisburg, Ohio 45342, unless another date and/or place is mutually agreed upon in writing by Parent and the Company. The date upon which the Closing actually occurs hereunder is referred to herein as the " Closing Date ."

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

2.5 Certificate of Incorporation; Bylaws; Corporate Records .

(a) Certificate of Incorporation . Unless otherwise determined by Parent prior to the Effective Time, at the Effective Time, the Amended and Restated Certificate of Incorporation of the Company, as amended and in effect immediately prior to the Effective Time (the " Charter " and, together with the Bylaws of the Company, as in effect immediately prior to the Effective Time, the " Company Organizational Documents "), shall be amended and restated in its

entirety to read identically to the Certificate of Incorporation of Merger Sub as in effect immediately prior to the Effective Time, except that the name of the Surviving Corporation as stated in such amended and restated certificate of incorporation shall be "Aster Data Systems, Inc.," whereupon such certificate of incorporation as so amended and restated shall be the certificate of incorporation of the Surviving Corporation until thereafter amended in accordance with the DGCL and such certificate of incorporation.

(b) Bylaws . Unless otherwise determined by Parent prior to the Effective Time, at the Effective Time, the Bylaws of the Company, as in effect immediately prior to the Effective Time, shall be amended and restated in their entirety to read identically to the Bylaws of Merger Sub as in effect immediately prior to the Effective Time, except that the name of the Surviving Corporation as stated in such amended and restated bylaws shall be "Aster Data Systems, Inc.," whereupon such bylaws shall be the bylaws of the Surviving Corporation until thereafter amended in accordance with the DGCL, the certificate of incorporation of the Surviving Corporation and such bylaws.

(c) Corporate Records . At the Closing, the Company shall deliver or cause to be delivered to Parent the original stock books, stock ledgers, minute books and corporate seal, if any, of the Company and each of its Subsidiaries and other controlled Affiliates.

2.6 Directors and Officers of Surviving Corporation .

(a) Directors . Unless otherwise determined by Parent prior to the Effective Time, the directors of Merger Sub immediately prior to the Effective Time shall be the directors of the Surviving Corporation until their respective successors are duly elected or appointed and qualified, or their earlier death, resignation or removal.

(b) Officers . Unless otherwise determined by Parent prior to the Effective Time, the officers of Merger Sub immediately prior to the Effective Time shall be the officers of the Surviving Corporation until their respective successors are duly elected or appointed and qualified, or their earlier death, resignation or removal.

2.7 Effect on Securities of Constituent Corporations .

(a) Merger Sub Capital Stock . Upon the terms and subject to the conditions set forth in this Agreement, at the Effective Time, by virtue of the Merger and without any action on the part of Parent, Merger Sub or the Company, each share of common stock of Merger Sub that is outstanding immediately prior to the Effective Time shall be converted into and become, and shall thereupon represent, one fully paid and nonassessable share of common stock of the Surviving Corporation, with the same rights, powers and privileges as the shares so converted and shall thereupon constitute the only outstanding shares of capital stock of the Surviving Corporation.

(b) Company Capital Stock .

(i) Vested Company Capital Stock . At the Effective Time, by virtue of the Merger and without any action on the part of Parent, Merger Sub, the Company or the holders of shares of Vested Company Capital Stock, upon the terms and subject to the conditions set forth in this Section 2.7 and throughout this Agreement, each outstanding share of Vested Company Capital Stock (other than Company Treasury Stock, Parent-Owned Company Capital Stock, Dissenting Shares and Unvested Company Capital Stock) shall be cancelled and extinguished and converted automatically into the right to receive an amount of cash (without

interest) equal to the Per Share Consideration, less (x) the amounts that Parent is entitled to withhold to fund the Escrow Fund pursuant to Section 2.8(b) and (y) the amounts that Parent is entitled to withhold to fund the Representative Expense Fund pursuant to Section 2.8(c) , upon the surrender of such certificate (or alternatively, a Lost Stock Affidavit and a Lost Certificate Indemnity Agreement) in accordance with the terms of this Agreement and in the manner provided herein. From and after the Effective Time, each share of Vested Company Capital Stock that is cancelled and converted into the right to receive Merger Consideration by virtue of the Merger pursuant to this Section 2.7(b)(i) shall no longer be outstanding and shall be automatically cancelled and retired and shall cease to exist, and each holder of a certificate formerly representing shares of Vested Company Capital Stock shall cease to have any rights with respect thereto other than the right to receive, upon the terms and subject to the conditions set forth in this Agreement, that portion of the Merger Consideration payable in respect of the shares of Vested Company Capital Stock evidenced by such certificate pursuant to this Section 2.7(b)(i) (less applicable Tax withholding, the amounts that Parent is entitled to withhold to fund the Escrow Fund pursuant to Section 2.8(b) , and the amounts that Parent is entitled to withhold to fund the Representative Expense Fund pursuant to Section 2.8(c)), upon the surrender of such certificate (or alternatively, a Lost Stock Certificate Affidavit and a Lost Certificate Indemnity Agreement) in accordance with the terms of this Agreement and in the manner provided herein. For purposes of calculating the amount of cash payable to each Company Stockholder in respect of such stockholder's shares of Vested Company Capital Stock pursuant to this Section 2.7(b)(i) , (A) all of the shares of Vested Company Capital Stock held by each Company Stockholder shall be aggregated on a certificate-by-certificate basis, (B) the amount of cash payable in respect of each such certificate shall be rounded down to the nearest cent and (C) no cash shall be paid in respect of fractional shares.

(ii) Company Treasury Stock . At the Effective Time, by virtue of the Merger and without any action on the part of Parent, Merger Sub or the Company, each share of Company Capital Stock that is outstanding and owned by the Company as treasury stock as of immediately prior to the Effective Time (" Company Treasury Stock ") shall cease to be outstanding, shall be cancelled without payment of any consideration therefor and shall thereupon cease to exist.

(iii) Parent Owned Company Capital Stock . At the Effective Time, by virtue of the Merger and without any action on the part of Parent, Merger Sub or the Company, each share of Company Capital Stock that is outstanding and owned by Parent or any of its Subsidiaries as of immediately prior to the Effective Time (" Parent-Owned Company Capital Stock ") shall cease to be outstanding, shall be cancelled without payment of any consideration therefor and shall thereupon cease to exist and the Per Share Consideration otherwise payable in respect of such shares of Parent-Owned Capital Stock shall be retained by Parent and not otherwise paid hereunder.

(iv) Dissenting Shares .

(A) Notwithstanding anything in this Agreement to the contrary, any shares of Company Capital Stock outstanding immediately prior to the Effective Time eligible under Section 262 of the DGCL (" Section 262 ") to exercise appraisal rights and held by a holder who has not voted in favor of the Merger or consented thereto in writing and who is entitled to demand, and properly demands, appraisal of such shares pursuant to Section 262 and complies in all respects with the provisions of Section 262 and has not effectively withdrawn or lost the right to demand relief as a dissenting stockholder under the DGCL as of the Effective Time (collectively, the " Dissenting Shares ") shall not be converted into or represent the right to receive Merger Consideration pursuant to in Section 2.7(b)(i) , and the holder or holders of such shares

shall be entitled only to such rights as may be granted to such holder or holders in Section 262. Notwithstanding the provisions of this Section 2.7(b)(iv) , if any holder of Dissenting Shares shall effectively withdraw or lose (through failure to perfect or otherwise) the right to appraisal under Section 262, or a court of competent jurisdiction shall determine that such holder is not entitled to the relief provided by Section 262, then, as of the later of the Effective Time and the occurrence of such event, such holder's shares shall automatically be converted into and represent only the right to receive the applicable portion of the Merger Consideration payable in respect of such shares pursuant to Section 2.7(b)(i) , without interest, upon surrender of the certificate representing such shares.

(B) The Company shall (1) comply with the requirements of Section 262, (2) give Parent prompt notice of any written demand received by the Company pursuant to Section 262, of withdrawals of such demands, and provide copies of any documents or instruments served pursuant to the DGCL and received by the Company and (3) give Parent the opportunity to direct all negotiations and proceedings with respect to any such demands. The Company shall not make any payment or settlement offer prior to the Effective Time of the Merger with respect to any such demand unless Parent shall have consented in writing to such payment or settlement offer.

(C) Any amount paid by Parent, the Company or the Surviving Corporation to any Person with respect to Dissenting Shares pursuant to Section 262 in excess of the amount payable pursuant to Section 2.7(b)(i) for each such Dissenting Share (following the Effective Time, such amount, unless determined in a final, non-appealable judgment of a court, shall be subject to the written approval of the Representative, which approval shall not be unreasonably withheld, conditioned or delayed), and all interest, costs, expenses and fees as incurred by the Company, Parent or the Surviving Corporation in connection with the exercise of all rights under Section 262, shall constitute "Damages" for purposes of this Agreement, and Parent and the Surviving Corporation, as the case may be, shall, without limiting any other rights, be entitled to recover such Damages from the Escrow Fund.

(c) Vested Company Options, Unvested Equity Awards and Company Warrants .

(i) Vested Company Options . No outstanding Vested Company Options shall be assumed by Parent. At the Effective Time, each then outstanding and unexercised Vested Company Option shall, by virtue of the Merger, be terminated and the holder thereof shall be entitled to receive, with respect to each share of Company Capital Stock subject thereto, the Option Consideration less (x) the amounts that Parent is entitled to withhold to fund the Escrow Fund pursuant to Section 2.8(b) and (y) the amounts that Parent is entitled to withhold to fund the Representative Expense Fund pursuant to Section 2.8(c) .

(ii) Unvested Equity Awards . No outstanding Unvested Equity Awards shall be assumed by Parent.

(A) Non-Continuing Employees . At the Closing, each then outstanding Unvested Equity Award held by any Non-Continuing Employee shall be cancelled or terminated without the payment of any consideration (other than any required payment for the repurchase of any Unvested Company Capital Stock held by any Non-Continuing Employee, which shall be repurchased by the Company in accordance with Section 6.14(a) pursuant to their existing terms and conditions upon the termination of employment, or consulting or advisory services of the impacted Employee).

(B) Continuing Employees .

(1) At the Effective Time, the vesting with respect to each then outstanding Unvested Equity Award held by an Employee who, effective immediately after the Closing, will be a Continuing Employee, shall be accelerated such that effective immediately prior to the Closing such Unvested Equity Awards shall vest as to that number of shares that would have otherwise vested as of March 31, 2011 if all other conditions to vesting had been satisfied as of such date.

(2) At the Effective Time, by virtue of the Merger, each then outstanding Unvested Equity Award that is not accelerated pursuant to Section 2.7(c)(ii)(B)(1) held by an Employee who, effective immediately after the Closing, will be a Continuing Employee shall, in the case of Unvested Company Options, be cancelled pursuant to their terms and, in the case of Unvested Company Capital Stock, be cancelled pursuant to their terms and this Section 2.7(c)(ii)(B) . Notwithstanding the foregoing, Parent shall provide each Continuing Employee who, as of the Effective Time, held any Unvested Company Options or shares of Unvested Company Capital Stock, subject to (1) surrender of the certificate or agreement representing such Unvested Equity Award, (2) the terms set forth in, and the execution and delivery of, such Continuing Employee's Continuing Employee Unvested Cash Plan Agreement, (3) the continued employment of the Unvested Equity Awardholder with Parent or a Subsidiary thereof, and (4) such other terms set forth in the Continuing Employee Unvested Cash Plan, an amount of cash from the Continuing Employee Pool, without interest, equal to: (x) with respect to Unvested Company Options, the Option Consideration, and (y) with respect to shares of Unvested Company Capital Stock, the Per Share Consideration multiplied by the number of shares of Unvested Company Capital Stock subject to the applicable Unvested Equity Award, in each case less the amounts that Parent is entitled to withhold pursuant to Sections 2.8(b) and 2.8(c) . Notwithstanding anything to the contrary in this Section 2.7 or elsewhere in this Agreement, at the Effective Time, any portion of the Continuing Employee Pool to which a Company Securityholder is entitled at the Effective Time shall be payable to such Company Securityholder only in accordance with the terms and conditions of the Continuing Employee Unvested Cash Plan Agreement to which such Company Securityholder is a party. Except (aa) as contemplated by the terms and conditions of the Continuing Employee Unvested Cash Plan and (bb) as provided in Section 2.8(b) , the payment of the Merger Consideration pursuant to this Agreement in exchange for Company Securities that constitute Unvested Equity Awards immediately prior to the Effective Time shall be subject to the same restrictions and vesting arrangements that were applicable to such shares of Unvested Equity Awards immediately prior to or at the Effective Time. Parent shall provide each Continuing Employee who, as of the Effective Time, held Company Option Commitment, subject to (1) the terms set forth in, and the execution and delivery of, such Continuing Employee's Company Option Commitment Letter and (2) the continued employment of the Continuing Employee with Parent or a Subsidiary thereof, an amount of cash from the Company Option Commitment Pool, without interest, equal to the excess, if any, of the Per Share Consideration over the deemed per share exercise price of such Company Option Commitment as specified on Schedule 1.1(m) less (x) the amounts that Parent is entitled to withhold to fund the Escrow Fund pursuant to Section 2.8(b) and (y) the amounts that Parent is entitled to withhold to fund the Representative Expense Fund pursuant to Section 2.8(c) . Any amount payable to a Company Securityholder pursuant to this Agreement in respect of Unvested Equity Awards shall not be paid by Parent or the Paying Agent at the Effective Time and shall instead be paid by Parent or the Paying Agent (directly or indirectly, including through a payroll processor) to such Company Securityholder only after the date that such Unvested Equity Awards would have become vested or released from the Company's repurchase right under the applicable vesting schedule in effect in respect of such Unvested Equity Awards immediately prior to or at the Effective Time (subject to the restrictions

and other terms of such vesting schedule), less the amounts with respect thereto withheld by Parent or deposited into the Escrow Fund in accordance with Section 2.8(b) or the Representative Expense Fund pursuant to Section 2.8(c) . Notwithstanding the foregoing or anything to the contrary set forth herein or in the Continuing Employee Unvested Cash Plan or any Company Option Commitment Letter, Parent shall be entitled to pay all cash amounts that become payable pursuant to this Section 2.7(c)(ii) in respect of Unvested Equity Awards that vest during each calendar quarter following the Effective Time on Parent's first regularly-scheduled payroll date of the calendar quarter immediately following the vesting date of such Unvested Equity Awards, subject to the terms and conditions of the Continuing Employee Unvested Cash Plan Agreement or Company Option Commitment Letter, as applicable; *provided* , *however* , that no Continuing Employee will forfeit any amount earned as a result of his or her continuing service as a result of the foregoing quarterly payment structure. Each Continuing Employee Unvested Cash Plan Agreement or Company Option Commitment Letter, as applicable, shall provide that any amount payable pursuant to this Agreement to a Continuing Employee who is a party to such Continuing Employee Unvested Cash Plan Agreement or Company Option Commitment Letter, as applicable, shall be (A) withheld by Parent (and constitute a portion of the Continuing Employee Pool or the Company Option Commitment Pool, as applicable) in order to secure Parent's repurchase rights or such Continuing Employee's vesting provisions applicable to such Continuing Employee's Unvested Equity Award as of immediately prior to the Effective Time; and (B) upon payment to such Continuing Employee, subject to withholding by Parent pursuant to the terms and conditions of this Agreement, including Sections 2.8(b)(ii) and 2.8(f) , and shall be paid without interest.

(iii) Company Warrants . No outstanding Company Warrants, if any, shall be assumed by Parent, and the Company shall use its reasonable best efforts to cause each such Company Warrant to be either (i) exercised by the holder of such Company Warrant in full or (ii) to the extent not exercised in full, terminated or cancelled as of immediately prior to the Effective Time, either pursuant to their own terms or pursuant to an agreement with the holder thereof.

(iv) Necessary Actions . Prior to the Effective Time, and subject to the review and approval of Parent, the Company shall take all actions necessary to effect the transactions anticipated by this Section 2.7 under the Company Stock Plans, all agreements evidencing Company Option, all agreements evidencing Company Warrant and any other plan or arrangement of the Company (whether written or oral, formal or informal), including delivering all required notices and obtaining any required consents, such that at the Effective Time the Company shall not have any outstanding equity interests other than shares of Company Capital Stock and Company Options outstanding.

2.8 Payment Procedures .

(a) Closing Payment Fund . As promptly as practicable following the Effective Time (but, in any event, within one Business Day following the Closing Date), Parent shall deposit, or cause to be deposited, with Wells Fargo Bank, National Association (the " Paying Agent ") an amount in cash equal to the aggregate amounts payable pursuant to Section 2.7(b) (such funds being referred to herein as the " Closing Payment Fund "). All funds held from time to time in the Closing Payment Fund shall be invested by the Paying Agent as directed by Parent pending payment thereof by the Paying Agent to the Company Securityholders in accordance with the terms hereof. All interest and other earnings from any investment of funds held from time to time in the Closing Payment Fund shall be the sole and exclusive property of Parent, and no part of such interest or other earnings shall accrue to or for the benefit of any Company Securityholders. Notwithstanding anything to the contrary in this Agreement, in the event that the Closing Payment

Fund is insufficient to make the aggregate payments contemplated by Section 2.7(b) , Parent shall promptly deposit additional cash into the Closing Payment Fund in an amount sufficient to make all such payments on a timely basis.

(b) Escrow Fund . All amounts deposited with the Escrow Agent pursuant to this Section 2.8(b) are referred to in the aggregate as the " Escrow Fund ."

(i) Vested Company Capital Stock and Vested Company Options . Notwithstanding anything to the contrary set forth in this Agreement, Parent shall be entitled to withhold from the aggregate Merger Consideration otherwise payable to the Company Securityholders pursuant to Section 2.7 in respect of Vested Company Capital Stock and Vested Company Options an amount of cash equal in the aggregate to the Vested Escrow Amount. The Vested Escrow Amount shall be withheld from each such Company Securityholder in accordance with such Company Securityholder's Escrow Percentage attributable to such Company Securityholder's Vested Company Capital Stock and Vested Company Options. As soon as practicable following the Effective Time (but, in any event, within one Business Day following the Closing Date), Parent shall deposit, or cause to be deposited, with the Escrow Agent an amount in cash equal to the Vested Escrow Amount. The Vested Escrow Amount shall be held and distributed in accordance with the terms and conditions of the Escrow Agreement. The Escrow Agent shall hold the Vested Escrow Amount as partial security for the indemnification obligations of the Indemnifying Parties in accordance with the terms and conditions set forth herein. The Vested Escrow Amount (or any portion thereof) shall be distributed at the times and upon the terms and conditions set forth in the Escrow Agreement.

(ii) Unvested Equity Awards . With respect to any amounts paid to a Company Securityholder pursuant to Section 2.7(c)(ii)(B) or the Continuing Employee Unvested Cash Plan or from the Company Option Commitment Pool pursuant to a Company Option Commitment Letter, from the Effective Time until the 24-month anniversary of the Closing Date, Parent shall be entitled to withhold from such amount an amount of cash equal to the Escrow Percentage of such amount (any such amounts, an " Unvested Escrow Amount "). Parent may withhold any Unvested Escrow Amount or, in its sole discretion deposit, or cause to be deposited, with the Escrow Agent any Unvested Escrow Amount. To the extent applicable, following the 24-month anniversary of the Closing Date, from any amounts paid to a Company Securityholder pursuant to Section 2.7(c)(ii)(B) , the Continuing Employee Unvested Cash Plan or from the Company Option Commitment Pool pursuant to a Company Option Commitment Letter, Parent shall be entitled to withhold all or any portion of such amount necessary to satisfy such Company Securityholder's indemnification obligations with respect to any Outstanding Claim (as such term is defined in the Escrow Agreement), which amounts may, at Parent's option, be deposited with the Escrow Agent. Any amounts deposited with the Escrow Agent pursuant to this Section 2.8(b)(ii) shall be held and distributed in accordance with the terms and conditions of the Escrow Agreement, and upon any such deposit with the Escrow Agent, Parent shall provide written notice thereof to the Representative, identifying the Company Securityholder to which such deposit relates and the corresponding deposit amount. The Escrow Agent shall hold any amounts deposited with the Escrow Agent pursuant to this Section 2.8(b)(ii) as partial security for the indemnification obligations of the Indemnifying Parties in accordance with the terms and conditions set forth herein. Any amounts (or any portion thereof) deposited with the Escrow Agent pursuant to this Section 2.8(b)(ii) shall be distributed at the times and upon the terms and conditions set forth in the Escrow Agreement. Notwithstanding anything to the contrary in this Agreement, Parent shall not be entitled to withhold more than the Unvested Escrow Adjustment in the aggregate from all such Company Securityholders pursuant to this Section 2.8(b)(ii) .

(iii) Tax Treatment . For U.S. federal income tax purposes, any payment to the Company Securityholders other than holders of Equity Awards of any portion of the Escrow Amount will be treated as deferred contingent purchase price eligible for installment sale treatment under Section 453 of the Code and any corresponding provision of foreign, state or local law, as appropriate, and will be subject to imputation of interest under Section 483 or Section 1274 of the Code. Any interest and earnings on the Vested Escrow Amount will be included in the gross income of Parent pursuant to Section 468B(g) of the Code. In no event shall the total amount of the Vested Escrow Amount, including any interest and earnings thereon, to be paid to the Company Securityholders under this Agreement exceed an amount to be designated pursuant to this Agreement, which is intended to ensure that the right of the Company Securityholders to any such payments is not treated as a contingent payment without a stated maximum selling price under Section 453 of the Code and the Treasury Regulations promulgated thereunder. Neither Parent nor the Company shall take a position in any Tax Return or examination or other administrative or judicial proceeding (including any ruling request) relating to any Tax that is inconsistent with such treatment, except as otherwise required by a Taxing Authority. Any payment of any portion of the Vested Escrow Amount to a holder of Equity Awards will be treated as compensation reportable on Forms W-2 to be issued by the Company and includable in gross income of such holder at the time of payment.

(c) Representative Expense Fund . Notwithstanding anything to the contrary set forth in this Agreement, Parent shall be entitled to withhold from the aggregate Merger Consideration otherwise payable to each Company Securityholder pursuant to Section 2.7 an amount of cash equal to the Representative Expense Amount. The Representative Expense Amount shall be withheld from each such Company Securityholder in accordance with such Company Securityholder's Pro Rata Share. As soon as practicable following the Effective Time (but, in any event, within one Business Day following the Closing Date), Parent shall deposit, or cause to be deposited, with the Representative an amount in cash equal to the Representative Expense Amount (such funds being referred to herein as the " Representative Expense Fund "). The Representative Expense Fund shall be held by the Representative as agent and for the benefit of the Company Securityholders in a segregated client bank account and shall be used solely for the purposes of paying directly, or reimbursing the Representative for, any third party expenses pursuant to this Agreement. The Representative will hold these funds separate from its corporate funds, will not use these funds for its operating expenses or any other corporate purposes and will not voluntarily make these funds available to its creditors in the event of bankruptcy. Each holder of Company Securities shall be deemed to have contributed to the Representative Expense Fund such holder's Pro Rata Share of the Representative Expense Amount, to be held by the Representative pursuant to this Agreement. If, as of immediately prior to the Effective Time, a holder of Company Securities shall hold any Unvested Equity Awards, then all or a portion of any Merger Consideration otherwise payable under this Agreement in respect of any Vested Company Capital Stock or Vested Company Options held by such Unvested Equity Awardholder as of immediately prior to the Effective Time shall be withheld and deposited into the Representative Expense Fund prior to the deposit of any amounts payable under this Agreement in respect of any Unvested Equity Awards held by such Unvested Equity Awardholder as of immediately prior to the Effective Time, until such Unvested Equity Awardholder's entire contribution to the Representative Expense Fund (in respect of all Company Securities held by such Unvested Equity Awardholder, whether vested or unvested) has been withheld and deposited into the Representative Expense Fund. Thereafter, any amounts payable to such Unvested Equity Awardholder under this Agreement shall be withheld and deposited into the Representative Expense Fund by Parent if and only to the extent necessary to satisfy such Unvested Equity Awardholder's entire Representative Expense Fund contribution obligation under this Agreement (with the understanding and agreement that any amounts so deposited into the Representative Expense Fund on behalf of any such

Unvested Equity Awardholder shall vest prior to any amounts payable under this Agreement in respect of any Unvested Equity Award held by such Unvested Equity Awardholder that is not so deposited into the Representative Expense Fund). The Representative Expense Amount shall be held and distributed in accordance with the provisions of this Agreement. The Representative shall hold the Representative Expense Fund as partial security for the reimbursement obligations of the Indemnifying Parties in accordance with the terms and conditions set forth herein. The Company Securityholders shall not receive interest or other earnings on the Representative Expense Fund and the Company Securityholders irrevocably transfer and assign to the Representative any ownership right that they may have in any interest that may accrue on funds held in the Representative Expense Fund. The Company Securityholders acknowledge that the Representative is not providing any investment supervision, recommendations or advice. The Representative shall have no responsibility or liability for any loss of principal of the Representative Expense Fund other than as a result of its gross negligence or willful misconduct.

(d) Exchange Procedures . Subject to the conditions set forth in this Agreement:

(i) As soon as commercially practicable after the Effective Time (and, within two Business Days following the Closing Date if the Payment Spreadsheet is delivered in accordance with Section 6.9(a)), Parent shall cause the Paying Agent to mail or otherwise deliver to each Company Stockholder a letter of transmittal in substantially the form attached hereto as Exhibit F (the " Letter of Transmittal ") to the address set forth opposite such Company Stockholder's name on the Payment Spreadsheet. After receipt of such Letter of Transmittal, such Company Stockholder shall surrender the certificates representing his, her or its shares of the Company Capital Stock (the " Company Stock Certificates ") to the Paying Agent for cancellation together with duly completed and validly executed Letter of Transmittal (it being understood that certificates representing Company Preferred Stock that has been converted or that has been deemed converted to Company Common Stock immediately prior to the Effective Time shall suffice for this purpose). Upon surrender of the Company Stock Certificates and Letter of Transmittal, the holder of such Company Stock Certificates shall be entitled to receive from the Paying Agent as soon as commercially practicable thereafter (but, in any event, within three Business Days following receipt by the Paying Agent of such Company Stock Certificates and Letter of Transmittal in good order), by delivery of a check or by such other payment mechanism approved by Parent in its reasonable discretion (it being acknowledged and agreed that the Company's 10 largest stockholders and their Affiliates (calculated on a fully diluted, as converted to Company Common Stock basis) will be entitled to request payment by means of a wire transfer from the Paying Agent), the cash constituting the portion of the Closing Payment Fund to which such Company Stockholder is entitled less any applicable Tax withholding. The Company Stock Certificates so surrendered shall be cancelled. Until so surrendered, after the Effective Time, subject to appraisal rights under the DGCL, each Company Stock Certificate will be deemed, for all corporate purposes thereafter, to evidence only the right to receive the consideration provided for in this Agreement. No portion of the Closing Payment Fund shall be paid to any Company Stockholder unless and until the holder of record of such Company Stock Certificate shall surrender such Company Stock Certificate and the Letter of Transmittal pursuant hereto.

(ii) As soon as commercially practicable after the Closing Date, and upon receipt by the Paying Agent or Parent, as applicable, of such documents that Parent or the Paying Agent may reasonably require (which documents shall be substantially similar to the Letter of Transmittal) in order to effect the payment of the portion of the Closing Payment Fund with respect of Vested Company Options, each holder of Vested Company Options shall be entitled to receive from the Paying Agent or Parent (directly or indirectly, including through a payroll

processor), as applicable, the portion of the Merger Consideration to which such holder is entitled pursuant to Section 2.7(c)(i) , less any applicable Tax withholding.

(iii) As soon as commercially practicable after the Effective Time, Parent or the Surviving Corporation shall mail or otherwise deliver to each holder of Unvested Equity Awards who is a Continuing Employee a copy of the Continuing Employee Unvested Cash Plan, a Continuing Employee Unvested Cash Plan Agreement and such other documents as may be reasonably required by Parent (collectively, the " Unvested Equity Award Documents "). Each holder of Unvested Equity Awards who is a Continuing Employee shall be responsible for delivering to Parent his or her executed Unvested Equity Award Documents, together with the certificate(s) or agreement(s) representing his or her cancelled Unvested Equity Awards after the Closing. Subject to the receipt by Parent of such Unvested Equity Award Documents and the terms and conditions of the Continuing Employee Unvested Cash Plan and such holder's Continuing Employee Unvested Cash Plan Agreement, such holder of Unvested Equity Awards shall be entitled to receive from Parent out of the Continuing Employee Pool the payments that such holder is eligible to receive pursuant to Section 2.7(c)(ii)(B) (without interest and less any applicable Tax withholding). The payments made to the holders of Unvested Equity Awards pursuant to their Continuing Employee Unvested Cash Plan Agreements shall be subject to applicable income or employment Tax withholding as required under the Code or any provision of applicable Tax Law. No payments shall be made to the holder of any Unvested Equity Awards who is a Continuing Employee in connection with the Continuing Employee Unvested Cash Plan unless and until such holder shall have delivered to Parent the Unvested Equity Award Documents and any other documents that Parent may reasonably require pursuant thereto.

(iv) If payment of any portion of the applicable Closing Payment Fund is to be made to a Person other than the Person in whose name the surrendered Company Securities are registered, it shall be a condition of payment that the Person requesting such payment (A) shall have paid any transfer and other Taxes required by reason of the payment of those amounts to a Person other than the registered holder of the Company Securities surrendered, and shall have established to the satisfaction of Parent that such Tax has been paid, or (B) shall have established to the satisfaction of Parent that such Tax is not applicable. From and after the Effective Time, until surrendered as contemplated by this Section 2.7 , each certificate or agreement formerly representing Company Securities shall be deemed to represent for all purposes only the right to receive the applicable Merger Consideration, if any, in respect of such Company Securities formerly represented thereby in accordance with the terms of this Agreement and in the manner provided herein.

(e) Termination of Closing Payment Fund; No Liability . At any time following the six-month anniversary of the Effective Time, subject to abandoned property, escheat or similar Law, Parent shall be entitled to require the Paying Agent to deliver to it all or any portion of the Closing Payment Fund (including any earnings received with respect thereto) that has not been disbursed to holders of Company Securities, and thereafter such holders of Company Securities shall be entitled to look only to Parent (subject to abandoned property, escheat or other similar Law), and only as general creditors thereof, with respect to the applicable Merger Consideration payable in respect thereof, without any interest thereon. Notwithstanding the foregoing, none of Parent, the Surviving Corporation or the Paying Agent shall be liable to any holder of a certificate or agreement formerly representing Company Securities for any amounts delivered to a public official pursuant to any applicable abandoned property, escheat or similar Law. Any amounts remaining unclaimed by holders of Company Securities two years after the Effective Time (or such earlier date, immediately prior to such time when the amounts would otherwise escheat to or become the property of any Governmental Authority) shall become, to the

extent permitted by applicable Law, including any abandoned property, escheat or similar Law, the property of Parent, free and clear of any claims or interest of any Person previously entitled thereto.

(f) Withholding Rights and Transfer Taxes . Parent, the Company, the Surviving Corporation, the Paying Agent and the Escrow Agent shall be entitled to deduct and withhold from any consideration payable or otherwise deliverable pursuant to this Agreement to any Person such amounts as may be required to be deducted or withheld therefrom under any provision of U.S. federal, state, local or non-U.S. Law in respect of Taxes or under any applicable Law, and to request and be provided any necessary and validly executed Tax forms, including valid Internal Revenue Service Form W-9 or the appropriate version of Form W-8, as applicable, and any similar information; *provided , however ,* that to the extent that any payment to any Person is not reduced by such deductions or withholdings, such Person shall indemnify Parent and its Affiliates (including, after the Effective Time, the Surviving Corporation) for any amounts imposed by and paid over to any Taxing Authority with respect to any such Taxes, together with any costs and expenses relating thereto (including reasonable attorneys' fees and costs of investigation). To the extent that such amounts are so deducted or withheld pursuant to this Section 2.8(f) , such amounts shall be treated for all purposes under this Agreement as having been paid to the Person to whom such amounts would otherwise have been paid. All sales, use, value-added, goods and services, gross receipts, excise, registration, recording, stamp duty, transfer or other similar Taxes or governmental fees (" Transfer Taxes ") imposed or levied in connection with the transactions contemplated by this Agreement shall be borne by the party on whom such tax is assessed.

(g) Lost, Stolen or Destroyed Certificates . In the event that any certificate(s) which formerly represented shares of Company Capital Stock shall have been lost, stolen or destroyed, upon the making and delivery of an affidavit of that fact by the Company Stockholder in form reasonably satisfactory to Parent (a " Lost Stock Affidavit "), Parent shall instruct the Paying Agent to pay such Company Stockholder the portion of the Merger Consideration to which such Company Stockholder is entitled to pursuant to Section 2.7(a) ; *provided , however ,* that Parent may, in its sole discretion (acting in good faith) and as a condition precedent to issuing such instruction to the Paying Agent, require the owner of such lost, stolen or destroyed certificate(s) to deliver an agreement of indemnification in form reasonably satisfactory to Parent, or a bond in such sum as Parent may reasonably direct as indemnity, against any claim that may be made against Parent, the Surviving Corporation or the Paying Agent with respect to the certificate(s) alleged to have been lost, stolen or destroyed (the " Lost Certificate Indemnity Agreement ").

2.9 Transfer Books; No Further Ownership Rights in the Shares . At the Effective Time, the stock transfer books of the Company shall be closed, and thereafter there shall be no further registration of transfers of the shares of Company Capital Stock on the records of the Company. From and after the Effective Time, the holders of certificates formerly evidencing ownership of the shares of Company Capital Stock outstanding immediately prior to the Effective Time shall cease to have any rights with respect to such shares, except as otherwise provided for herein or by applicable Law. After the Effective Time, the Surviving Corporation or the Paying Agent shall cancel and exchange, as provided in this Section 2.9 , any presented certificate representing shares of Company Capital Stock outstanding immediately prior to the Effective Time.

2.10 Taking of Further Necessary Action . Each of Parent, the Company and the Representative will take all such reasonable and lawful action as may be necessary or appropriate in order to effectuate the Merger in accordance with this Agreement as promptly as possible. If, at any time after the Effective Time, any such further action is necessary or desirable to carry out the purposes of this Agreement and to vest the Surviving Corporation with full right, title and

possession to all assets, property, rights, privileges, powers and franchises of the Company, the officers and directors of the Company immediately prior to the Effective Time are and will remain fully authorized in the name of the Company or otherwise to take, and shall take, upon request by Parent, all such lawful and necessary action.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Subject to any exceptions that are expressly and specifically set forth in the disclosure schedule delivered by the Company to Parent and Merger Sub concurrently with the execution and delivery of this Agreement, dated as of the date hereof (the " Disclosure Schedule ") (it being understood and hereby agreed that (i) the information set forth in the Disclosure Schedule shall be disclosed under separate section and subsection references that correspond to the sections and subsections of this ARTICLE 3 to which such information relates, and (ii) the information set forth in each section and subsection of the Disclosure Schedule shall qualify (A) the representations and warranties set forth in the corresponding section or subsections of this ARTICLE 3 , and (B) any other representations and warranties set forth in this ARTICLE 3 if and solely to the extent that it is reasonably apparent on the face of such disclosure (without reference to the documents referenced therein) that it applies to such other representations and warranties), the Company hereby represents and warrants to Parent and Merger Sub as of the date hereof and as of the Closing Date as if such representations and warranties were made at and as of the Closing Date (except for such representations and warranties as are made only as of a specific date, which shall be only made as of such date), as follows:

3.1 Organization and Good Standing .

(a) The Company and each of its Subsidiaries is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation and has full corporate power and authority to conduct its business as currently conducted and as proposed to be conducted by it. The Company and each of its Subsidiaries is duly qualified to do business as a foreign corporation and is in good standing in every jurisdiction where the properties, owned, leased or operated, or the business conducted by it, requires such qualification, except for such failures to be so duly qualified and in good standing that would not have a Company Material Adverse Effect.

(b) Prior to the date of this Agreement, the Company has made available to Parent true, complete and correct copies of the Company Organizational Documents as currently in effect and the organizational documents of each of the Company's Subsidiaries. The Company Organizational Documents and those of its Subsidiaries are in full force and effect and the Company is not in violation of (and has not previously violated) any provision of its Company Organizational Documents, nor are any of the Company's Subsidiaries in violation of any provision of their respective organizational documents.

(c) The operations now being conducted by the Company and each of its Subsidiaries are not (and have never been) conducted under any other name.

(d) Schedule 3.1(d) of the Disclosure Schedule lists the directors and officers of the Company and each of its Subsidiaries as of the date hereof.

3.2 Authority; Enforceability .

(a) The Company has all necessary corporate power and authority to execute and deliver this Agreement, the Escrow Agreement and each certificate and other instrument required hereby to be executed and delivered by the Company pursuant hereto and to perform its obligations hereunder and thereunder and to consummate the Merger and the other transactions contemplated hereby and thereby. The execution, delivery and performance by the Company of this Agreement, the Escrow Agreement and each certificate and other instrument required to be executed and delivered by the Company pursuant hereto and the consummation by the Company of the Merger and the other transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate action on the part of the Company except for the receipt of the Stockholder Written Consents. The Board of Directors of the Company has unanimously determined that it is fair to, advisable and in the best interests of the Company Stockholders to enter into a business combination upon the terms and subject to the conditions of this Agreement, has unanimously approved this Agreement, the Escrow Agreement the Merger and the other transactions contemplated hereby and thereby and has unanimously resolved to recommend that the Company Stockholders adopt this Agreement and approve the Merger and the other transactions contemplated hereby and, other than obtaining the Requisite Stockholder Approval, no other corporate proceedings on the part of the Company are necessary to authorize this Agreement, the Escrow Agreement or any certificate or other instrument required to be executed and delivered by the Company pursuant hereto or to consummate the Merger or any other transactions contemplated hereby or thereby. None of such actions by the Board of Directors of the Company have been amended, rescinded or modified. This Agreement, the Escrow Agreement and each certificate and other instrument required to be executed and delivered by the Company pursuant hereto has been (or will be) duly and validly executed and delivered by the Company and, assuming the due authorization, execution and delivery by Parent, Merger Sub and the Representative, constitutes (or will constitute) a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, subject to bankruptcy, insolvency, reorganization or similar laws of general application affecting the rights and remedies of creditors, and to general equity principles.

(b) The Merger Consideration into which each share of Company Capital Stock will be converted in the Merger, if any, conforms to the Company Organizational Documents and no Company Stockholder shall be entitled to receive any different or additional amount in the Merger with respect to shares of Company Capital Stock held by such Company Stockholder.

(c) Schedule 3.2(c) of the Disclosure Schedule specifies the vote of the holders of any of Company Capital Stock necessary to adopt this Agreement and approve the Merger and the other transactions contemplated hereby under applicable Law, the Company Organizational Documents or any Contract to which the Company is a party or is otherwise bound (the " Requisite Stockholder Approval "). The Company has notified (or will notify following the date hereof and prior to the Effective Time) the holders of Company Capital Stock of the transactions contemplated hereby as and to the extent required by the terms and conditions of the Company Organizational Documents and Delaware Law and as contemplated herein. The information furnished on or in any document mailed, delivered or otherwise furnished to the Company Stockholders in connection with the solicitation of their consent to, and adoption of, this Agreement and the Merger did not contain, and will not contain, at or prior to the Effective Time, any untrue statement of a material fact and will not omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which made not misleading.

3.3 Capitalization .

(a) The authorized capital stock of the Company consists of an aggregate of 58,135,926 shares of Company Capital Stock, consisting of an aggregate of 37,750,000 shares of Company Common Stock and an aggregate of 20,385,926 shares of Company Preferred Stock, of which an aggregate of 3,000,000 shares have been designated Company Series Seed Preferred Stock, an aggregate of 6,313,226 shares have been designated Company Series A Preferred Stock, an aggregate of 6,072,700 shares have been designated Company Series B Preferred Stock, and an aggregate of 5,000,000 of which have been designated Company Series C Preferred Stock. As of the date hereof, (i) an aggregate of 9,318,890 shares of Company Common Stock are issued and outstanding, (ii) an aggregate of 3,000,000 shares of Company Series Seed Preferred Stock are issued and outstanding, (iii) an aggregate of 6,134,893 shares of Company Series A Preferred Stock are issued and outstanding, (iv) an aggregate of 6,054,966 shares of Company Series B Preferred Stock are issued and outstanding, and (v) an aggregate of 4,784,689 shares of Company Series C Preferred Stock are issued and outstanding. The Company has reserved an aggregate of 9,500,000 shares of Company Common Stock for issuance under the Company Stock Plans, and an aggregate of 6,329,573 shares of Company Common Stock are issuable upon the exercise of Company Options outstanding as of the date hereof. The Company has reserved 51,881 shares of Company Series A Preferred Stock and 8,594 shares of Company Series B Preferred Stock for issuance pursuant to warrants.

(b) All of the issued and outstanding shares of Company Capital Stock have been duly authorized and validly issued and are fully paid and nonassessable. All of the issued and outstanding shares of Company Capital Stock and other Company Securities have been offered, issued and sold by the Company in compliance with U.S. federal and applicable state securities laws. Except as set forth in this Section 3.3 , no subscription, warrant, option, convertible security or other right (contingent or otherwise) to purchase or acquire any shares of Company Capital Stock is authorized or outstanding. All of the issued and outstanding shares of Company Preferred Stock and other Company Securities will convert into shares of Company Common Stock at or prior to the effective time as a result of the transactions contemplated by this Agreement. The Company does not have any obligation (whether written, oral, contingent or otherwise) to issue any subscription, warrant, option, convertible security or other right or to issue or distribute to holders of any shares of Company Capital Stock any evidences of indebtedness or assets of the Company. The Company does not have any obligation (whether written, oral, contingent or otherwise) to purchase, redeem or otherwise acquire any shares of its capital stock or any interest therein or to pay any dividend or make any other distribution in respect thereof. There are no outstanding or authorized stock appreciation, phantom stock or similar rights with respect to the Company. There are no agreements, written or oral, between the Company and any holder of its securities or others, or among any holders of its securities, relating to the acquisition (including rights of first refusal, anti-dilution or pre-emptive rights), disposition, registration under the Securities Act of 1933, as amended (the " Securities Act "), or voting of the Company Capital Stock.

(c) Schedule 3.3(c) of the Disclosure Schedule contains a true, complete and correct list of all of the Company Stockholders as of the date hereof, setting forth the shares of Company Capital Stock held by each Company Stockholder as of the date of this Agreement.

(d) Schedule 3.3(d) of the Disclosure Schedule contains a true, complete and correct list of all persons who, at the close of business on the date of this Agreement, hold Company Options, indicating, with respect to each Company Option, the number of shares of Company Common Stock issuable upon the exercise of such Company Option, and the exercise price, date of grant, vesting schedule and expiration date thereof, including the extent to which any

vesting had occurred as of the date of this Agreement and the extent to which the vesting of such Company Option will be accelerated by the consummation of the Merger and the other transactions contemplated by this Agreement or by the termination of employment or engagement or change in position of any holder thereof following or in connection with the consummation of the Merger. All Company Options have been granted or issued at an exercise price equal to the fair market value of the underlying Company Common Stock, as determined by the Board of Directors of the Company at the date of grant or issuance, and none of the Company Options constitute "deferred compensation" under Section 409A of the Code. True, complete and correct copies of each Company Option Plan and all agreements and instruments relating to or issued under each such plan (including executed copies of all Contracts relating to each Company Option and the shares of Company Common Stock purchased under such plan) have been made available to Parent's counsel, and such plans and Contracts have not been amended, modified or supplemented since being made available to Parent's counsel, and there are no Contracts or understandings to amend, modify or supplement such plans or Contracts in any case form those made available to Parent's counsel.

(e) Schedule 3.3(e) of the Disclosure Schedule contains a true, complete and correct list of all persons who, at the close of business on the date of this Agreement, hold Company Warrants, indicating, with respect to each Company Warrant, the number and type of shares of Company Capital Stock issuable upon the exercise of such Company Warrant, and the exercise price and expiration date thereof.

3.4 Subsidiaries . Schedule 3.4 of the Disclosure Schedule contains a true, complete and correct list of each Subsidiary of the Company. Except for the Subsidiaries of the Company set forth in Schedule 3.4 of the Disclosure Schedule, the Company does not own or control, directly or indirectly, any equity or similar interest in, or any interest convertible into or exchangeable or exercisable for any equity or similar interest in, or have any commitment or obligation to invest in, purchase any securities or obligations of, fund, guarantee, contribute or maintain the capital of or otherwise financially support any corporation, partnership, joint venture or other business association or entity.

3.5 No Conflicts . The execution and delivery of this Agreement, the compliance with the provisions of this Agreement, and the consummation of the Merger and the other transactions contemplated hereby will not (i) conflict with or violate the Company Organizational Documents, (ii) conflict with, result in a breach of, constitute (with or without due notice or lapse of time or both) a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify or cancel, or require any notice, consent or waiver under, or result in the loss of any benefit to which the Company is entitled under, any material Contract, Permit, Security Interest or other interest to which the Company is a party or by which the Company is bound or to which its assets are subject, (iii) result in the creation or imposition of any Security Interest upon any material assets of the Company, or (iv) violate any Law applicable to the Company or any Company Securityholder or any of their respective properties or assets.

3.6 Governmental Filings and Consents . No consent, approval, order or authorization of, or registration, declaration or filing with (together, the " Consents "), any Governmental Authority is required on the part of the Company, any of its Subsidiaries or, to the Knowledge of the Company, any Company Securityholder in connection with the execution and delivery of this Agreement or the consummation of the Merger or any other transactions contemplated hereby, except for (i) the filing of the Certificate of Merger, (ii) filings required under, and compliance with any other applicable requirements of, the HSR Act and any applicable foreign Antitrust Laws, and (iii) such other consents, authorizations, filings, approvals, notices and registrations which, if not

obtained or made, would not be material to the Company and would not prevent, materially alter or materially delay the consummation of the Merger or any of the other transactions contemplated by this Agreement.

3.7 Financial Statements .

(a) Schedule 3.7(a) of the Disclosure Schedule contains a true, correct and complete copy of the following financial statements (collectively, the " Financial Statements "): (a) the audited consolidated balance sheet and consolidated statements of income, changes in stockholders' equity and cash flow as of January 31, 2010 and for the twelve-month period then ended, and (b) the unaudited consolidated balance sheet of the Company as of January 31, 2011 (the " Balance Sheet ") and consolidated statements of income, changes in stockholders' equity and cash flow as of and for the twelve month period then ended. The Financial Statements (i) are derived from and the in accordance with the books and records of the Company, (ii) have been prepared in accordance with GAAP (except that such unaudited Financial Statements do not contain footnotes) applied on a consistent basis throughout the periods indicated and consistent with each other except as may be indicated in the notes thereto, (iii) fairly present in all material respects the consolidated financial condition of the Company at the dates therein indicated and the consolidated results of operations and cash flows of the Company for the periods therein specified (subject to normal recurring year-end audit adjustments, none of which individually or in the aggregate will be material in amount), and (iv) are true, complete and correct in all material respects. The Company has identified all uncertain tax positions contained in all Tax Returns filed by the Company and its Subsidiaries and has established adequate reserves and made any appropriate disclosures in the Financial Statements in accordance with the requirements of ASC 740-10 (formerly Financial Interpretation No. 48 of FASB Statement No. 109, Accounting for Uncertain Tax Positions).

(b) The Company has in place systems and processes (including the maintenance of proper books and records) that (i) provide reasonable assurances regarding the reliability of the Financial Statements and (ii) in a timely manner accumulate and communicate to the Company's principal executive officer and principal financial officer the type of information that would be required to be disclosed in the Financial Statements (such systems and processes are herein referred to as the " Controls "). To the Knowledge of the Company, there has not been any complaint, allegation, deficiency, assertion or claim, whether written or oral, regarding the Controls or the Financial Statements. To the Knowledge of the Company, there have been no instances of fraud, whether or not material, that occurred during any period covered by the Financial Statements. The Company has in place a revenue recognition policy consistent with GAAP.

(c) Schedule 3.7(c) of the Disclosure Schedule contains a true, correct and complete list of all of the accounts receivable of the Company and an aging schedule relating thereto, each as of the end of the last completed calendar month prior to the date hereof. All of the accounts receivable of the Company, whether reflected on the Balance Sheet (in which case such accounts or notes receivable have been properly reflected in the Balance Sheet in accordance with GAAP) or arising since the date of the Balance Sheet, have arisen from bona fide transactions in the ordinary course of business consistent with past practice. Except to the extent of the allowance for doubtful accounts on the Balance Sheet, such accounts receivable and any accounts receivable arising between such date and the Closing Date (collectively, the " Accounts Receivable ") are, to the Knowledge of the Company, fully collectible and no Account Receivable is subject to any counterclaim, set-off, defense, Security Interest, claim, or other encumbrance. No agreement for deduction, free goods, discount or other deferred price or quantity adjustment has been made with respect to any Account Receivable except as set forth in Schedule 3.7(c) of the Disclosure

Schedule. The Company has not invoiced or otherwise charged any of its customers for amounts in excess of the amounts that such customer had theretofore agreed to pay for the good and services provided to it by the Company.

3.8 Absence of Changes . Since the date of the Balance Sheet through the date hereof, (i) no Company Material Adverse Effect has occurred, and (ii) without limiting the generality of the foregoing, neither the Company nor any of its Subsidiaries has:

(a) declared, set aside, made or paid any dividend or other distribution in respect of its capital stock, or agreed to do any of the foregoing, or purchased or redeemed or agreed to purchase or redeem, directly or indirectly, any shares of its capital stock;

(b) issued or sold any shares of its capital stock of any class or any options, warrants, conversion or other rights to purchase any such shares or any securities convertible into or exchangeable for such shares;

(c) adopted, amended, modified, or terminated in any material respect any Company Employee Plan, agreement trust, fund, arrangement for the benefit of employees or any collective bargaining agreement (other than as may have been required by the terms of the Company Employee Plan or collective bargaining agreement, or as may have been required by applicable Law);

(d) increased any compensation or fringe benefits, paid any bonus, granted any increase in severance or termination pay or otherwise changed any of the terms of employment or service for any of its Employees;

(e) entered into any loan or advanced any money or other property with any of its employees, officers, directors or consultants outside the ordinary course of business consistent with past practice;

(f) incurred any indebtedness for purchase money or borrowed money;

(g) mortgaged, pledged or subjected to any Security Interest, any of its properties or assets, tangible or intangible;

(h) acquired or disposed of any assets or properties (whether tangible or intangible) having a value in excess of $100,000 (singly or in the aggregate);

(i) forgiven or cancelled any debts or claims, or waived any rights, having a value in excess of $100,000;

(j) incurred a capital expenditure or made a commitment exceeding $100,000 individually or $500,000 in the aggregate;

(k) changed accounting methods or practices (including any change in depreciation or amortization policies or rates) by the Company other than as required by GAAP;

(l) made or changed any material Tax election, adopted or changed any Tax accounting method, agreed to or settled any claim or assessment relating to Taxes, entered into any closing agreement in respect of Taxes, or extended or waived any of the limitation periods applicable to any claim or assessment relating to Taxes;

(m) revaluated any of its assets (whether tangible or intangible), including writing down the value of inventory or writing off, discounting or otherwise compromising any notes or accounts receivable in an amount in excess of $25,000;

(n) made any payment of any nature to any Company employee, director or consultant other than salary or fees payable in the ordinary course of business consistent with past practice;

(o) received notice of any claim or potential claim of ownership, interest or right by any person other than the Company of the Intellectual Property owned by or developed or created by the Company or one of its Subsidiaries or of infringement by the Company or one of its Subsidiaries of any other Person's Intellectual Property;

(p) commenced or settled any lawsuit or become aware of the commencement, settlement, notice or threat of any lawsuit or proceeding or other investigation against the Company, the Subsidiaries or their affairs, or any reasonable basis for any of the foregoing;

(q) engaged in any purchase or sale of any interest in real property, grant of any Security Interest in any real property, agreement to lease, sublease, license or otherwise occupy any real property, or any alteration, amendment, modification, violation or termination of any of the terms of any Real Property Lease; or

(r) entered into any agreement, commitment or obligation to do any of the foregoing.

3.9 Absence of Undisclosed Liabilities . Neither the Company nor any of its Subsidiaries has any Liabilities, except for (a) Liabilities and obligations shown on the Balance Sheet, including proper accrual for bonuses and commissions, (b) Liabilities and obligations which have arisen since the date of the Balance Sheet in the ordinary course of business consistent with past practice, and (c) obligations incurred pursuant to or in connection with this Agreement, the Merger and the other transactions contemplated hereby. Except as set forth in Schedule 3.9 of the Disclosure Schedule, there is no Company Debt. Except for Liabilities reflected in the Financial Statements, neither the Company nor any of its Subsidiaries has any off balance sheet Liability of any nature to, or any financial interest in, any third party or entities the purpose or effect of which is to defer, postpone, reduce or otherwise avoid or adjust the recording of debt expenses incurred by the Company or any of its Subsidiaries. All reserves that are set forth in or reflected in the Company Balance Sheet have been established in accordance with GAAP consistently applied.

3.10 Taxes .

(a) The Company and its Subsidiaries have prepared and timely filed all required U.S. federal, state, local, and non-U.S. returns Tax Returns relating to any and all Taxes concerning or attributable to the Company, its Subsidiaries or their operations, and such Tax Returns are true and correct and have been completed in accordance with applicable Law.

(b) The Company and its Subsidiaries have (i) timely paid all Taxes they are required to pay, and (ii) timely paid or withheld with respect to their employees and other third parties (and timely paid over any withheld amounts to the appropriate Taxing authority) all U.S. federal and state, and non-U.S. income taxes, Federal Insurance Contribution Act amounts, Federal Unemployment Tax Act amounts and other Taxes required to be paid or withheld, whether or not such payments are in connection with any Tax Return.

(c) Neither the Company nor any of its Subsidiaries has been delinquent in the payment of any Tax, nor is there any Tax deficiency outstanding, assessed or proposed against the Company or any of its Subsidiaries, nor has the Company or any of its Subsidiaries executed or requested any outstanding waiver of any statute of limitations on or extension of the period for the assessment or collection of any Tax. No power of attorney that is currently in force has been granted by or with respect to the Company or any of its Subsidiaries in connection with any matter relating to Taxes.

(d) Neither the Company nor any of its Subsidiaries has been notified of any request for an audit, examination or proceeding with respect to any Return of the Company or its Subsidiaries, nor, to the Knowledge of the Company, is any such audit, examination or proceeding presently in progress. No adjustment relating to any Return filed by the Company or its Subsidiaries has been proposed by any tax authority to the Company, any of its Subsidiaries or any representative thereof. No claim has ever been made that the Company or any of its Subsidiaries is or may be subject to taxation in a jurisdiction in which it does not file Tax Returns.

(e) Neither the Company nor any of its Subsidiaries has any liabilities for unpaid Taxes as of the date of the Balance Sheet that had not been accrued or reserved on the Balance Sheet, whether asserted or unasserted, contingent or otherwise, and the Company has not incurred any liability for Taxes since the date of the Balance Sheet other than in the ordinary course of business.

(f) The Company has made available to Parent or its legal counsel or accountants copies of all Tax Returns, Tax opinions and legal memoranda, audit reports, letter rulings and similar documents for the Company and its Subsidiaries for all periods since its inception.

(g) There are (and immediately following the Effective Time there will be) no Security Interests on the assets of the Company or any of its Subsidiaries relating to or attributable to Taxes other than Security Interests for Taxes not yet due and payable. There is no basis for the assertion of any claim relating or attributable to Taxes which, if adversely determined, would result in any Security Interest for Taxes on the assets of the Company or any of its Subsidiaries.

(h) The Company is not, and has not been at any time, a "United States Real Property Holding Corporation" within the meaning of Section 897(c)(2) of the Code.

(i) Neither the Company nor any of its Subsidiaries has (a) ever been a member of an affiliated group (within the meaning of Code §1504(a)) filing a consolidated U.S. federal income tax Return or a Return under similar state, local or non-U.S. Tax laws (other than a group the common parent of which was Company), (b) ever been a party to any Tax sharing, indemnification or allocation agreement, nor does the Company or any of its Subsidiaries owe any amount pursuant to such an agreement, (c) any liability for the Taxes of any person under Treas. Reg. § 1.1502-6 (or any similar provision of state, local or foreign Law, including any arrangement for group or consortium relief or similar arrangement), as a transferee or successor, by contract, by operation of law or otherwise, and (d) ever been a party to any joint venture, partnership or, to the Knowledge of the Company, other agreement that could be treated as a partnership for Tax purposes.

(j) Neither the Company nor any of its Subsidiaries has constituted either a "distributing corporation" or a "controlled corporation" in a distribution of stock intended to qualify for tax-free treatment under Section 355 of the Code.

(k) Neither the Company or any of its Subsidiaries has participated in a reportable transaction under Treas. Reg. § 1.6011-4(b), including any transaction that is the same as or substantially similar to one of the types of transactions that the Internal Revenue Service has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance as a listed transaction, as set forth in Treas. Reg. § 1.6011-4(b)(2).

(l) The Company and its Subsidiaries are in 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. Copies of any documents relating to any such Tax Incentives have been made available to Parent or its legal counsel or accountants.

(m) Neither the Company nor any of its Subsidiaries is subject to Tax in any country other than its country of incorporation or formation by virtue of being treated as a resident of or having a permanent establishment, other place of business or a source of income in that country. Neither the Company nor any of its Subsidiaries is liable for any tax as the agent of any other Person, business or enterprise or constitutes a permanent establishment or other place of business of any other Person, business or enterprise for any Tax purpose.

(n) The Company and its Subsidiaries are in compliance in all material respects with all applicable transfer pricing laws and regulations, including the execution and maintenance of contemporaneous documentation substantiating the transfer pricing practices and methodology of the Company and its Subsidiaries. The prices for any property or services (or for the use of any property) provided by or to the Company or its Subsidiaries are arm's length prices for purposes of all applicable transfer pricing laws, including Treasury Regulations promulgated under Section 482 of the Code.

(o) There currently are no limitations on the utilization of the net operating losses or other similar items of the Company under Section 269 of the Code or any comparable provision of state, local or non-U.S. Tax Law. There is no deferred gain or loss allocable to the Company or any of its Subsidiaries arising out of any deferred intercompany transaction as defined in Treas. Reg. § 1.1502-13 or any comparable provision of state, local or non-U.S. Tax Law. Neither the Company nor any of its Subsidiaries has engaged in a transaction that is subject to the dual consolidated loss rule of Section 1503(d) of the Code.

(p) Neither the Company nor any of its Subsidiaries will be required to include any income or gain or exclude any deduction or loss from income for any taxable period or portion thereof after the Closing as a result of any (a) change in method of accounting made prior to the Closing, (b) closing agreement under Section 7121 of the Code executed prior to the Closing, (c) deferred intercompany gain or excess loss account under Treasury Regulations under Section 1502 of the Code in connection with a transaction consummated prior to the Closing (or in the case of each of (a), (b) and (c), under any similar provision of applicable Law), (d) installment sale or open transaction disposition consummated prior to the Closing or (e) amount received prior to the Closing.

(q) There is no Contract to which the Company or any of its subsidiaries is a party, including the provisions of this Agreement, covering any Employee of the Company, which, individually or collectively, could give rise to the payment of any amount that would not be deductible pursuant to Sections 280G or 404 of the Code. Except as set forth in Schedule 3.10(q) of the Disclosure Schedule, no payment or benefit which has been, will be or may be made with

respect to any Employee will, or could reasonably be expected to, be characterized as a "parachute payment," within the meaning of Section 280G(b)(2) of the Code as a result of the transactions contemplated by this Agreement, either alone or in conjunction with any other event (whether contingent or otherwise). Except as set forth in Schedule 3.10(q) of the Disclosure Schedule, there is no Contract to which the Company or any ERISA Affiliate is a party or by which it is bound to compensate any Employee for excise Taxes paid pursuant to Section 4999 of the Code. Schedule 3.10(q) of the Disclosure Schedule contains a true, complete and correct list of all Persons who are "disqualified individuals" (within the meaning of Section 280G of the Code and the regulations promulgated thereunder) as determined as of the date hereof.

(r) Except as set forth in Schedule 3.10(r) of the Disclosure Schedule, the Company is not party to any Contract that is a "nonqualified deferred compensation plan" subject to Section 409A of the Code and the regulations and other guidance promulgated thereunder. The Company is not a party to, or otherwise obligated under, any Contract that provides for a gross up of Taxes imposed by Section 409A of the Code. Each such nonqualified deferred compensation plan has been operated in compliance, in all material respects, with Section 409A of the Code. No stock option or other right to acquire Company Capital Stock or other equity of the Company (i) has an exercise price that was less than the fair market value of the underlying equity as of the date such option or right was granted (determined in a manner consistent with Section 409A of the Code); (ii) has any feature for the deferral of compensation other than the deferral of recognition of income until the later of exercise or disposition of such option or rights; (iii) has been granted after December 31, 2004, with respect to any class of stock of the Company that is not "service recipient stock" (within the meaning of applicable regulations under Section 409A of the Code); or (iv) has failed to be properly accounted for in accordance with GAAP in the Financials.

3.11 Suppliers and Major Customers . Schedule 3.11 of the Disclosure Schedule sets forth a true, complete and correct list of each supplier of goods or services to the Company to whom the Company paid in the aggregate more than $175,000 since January 31, 2010 (the " Major Suppliers "), together with, in each case, the amount paid during such period. Schedule 3.11 of the Disclosure Schedule also sets forth a true, complete and correct list of each customer of the Company from whom the Company received more than $200,000 in the aggregate in collections or accounts receivable since January 31, 2010 (the " Major Customers "), together with, in each case, the amount of the order received during such period. Since January 31, 2010, no Major Supplier or Major Customer has terminated its relationship with the Company or materially reduced or changed the pricing or other terms of its business with the Company, or provided notice to Company of its intent do any of the foregoing. The Company is not engaged in any material dispute with any Major Supplier or Major Customer and, to the Knowledge of the Company, no Major Supplier or Major Customer intends to terminate, limit or reduce its business relations with the Company, or materially reduce or change the pricing or other terms of its business with the Company. To the Knowledge of the Company, the consummation of the transactions contemplated by this Agreement would not reasonably be expected to have an adverse effect on the business relationship of the Company with any Major Supplier or Major Customer.

3.12 Property .

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

(b) The Company and each of its Subsidiaries has good and marketable title to, or, in the case of leases of properties and assets, a valid leasehold interest in, all properties and assets (whether real, personal, tangible or intangible) necessary to conduct all of the businesses and

operations of the Company and its Subsidiaries as currently conducted, including all properties and assets reflected on the Balance Sheet or acquired after the date of the Balance Sheet, and none of such properties or assets is subject to any Security Interest. This Section 3.12 does not apply to Intellectual Property.

(c) Schedule 3.12(c) of the Disclosure Schedule contains a true, complete and correct list of all of the existing leases, subleases, licenses, or other agreements (collectively, the " Real Property Leases ") under which the Company or any of its Subsidiaries uses or occupies or has the right to use or occupy, now or in the future, any real property (the " Leased Premises ") the name of the lessor, the date and term of the Real Property Lease and each amendment thereto and the aggregate annual rental payable thereunder. The Company has made available to Parent true, complete and correct copies of all Real Property Leases (including all modifications, amendments, supplements, consents, waivers and side letters thereto and all agreements in connection therewith, including all work letters, improvement agreements, estoppel certificates, subordination agreements, and guarantees). The Closing will not affect the enforceability against any Person of any Real Property Lease or any rights of the Company or any of its Subsidiaries thereunder or otherwise with respect to any Leased Premises, including the right to the continued use and possession of the Leased Premises for the conduct of business as presently conducted, and will not conflict with, result in a breach of, constitute (with or without due notice or lapse of time or both) a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify or cancel, or require any notice, consent or waiver under, or result in the loss of any benefit to which the Company or any of its Subsidiaries is entitled under, any Real Property Leases.

(d) The Real Property Leases are each in full force and effect and are valid and binding obligations of the Company or one of its Subsidiaries, and neither the Company nor any of its Subsidiaries are in breach of or default under, nor have they received written notice of any breach of or default under, any Real Property Lease and, to the Knowledge of the Company, no event has occurred that with notice or lapse of time or both would constitute a material breach or material default thereunder by the Company, any of its Subsidiaries or any other party thereto. Neither the Company nor any of its Subsidiaries have transferred or assigned any interest in any Real Property Lease, nor have they subleased or otherwise granted rights of use or occupancy of any of the premises described therein to any other person or entity. The Company or one of its Subsidiaries currently occupies all of the Leased Premises for the operation of its business and there is no other person or entity with a right to occupy the Leased Premises. The Leased Premises and the personal property owned or leased by the Company or any of its Subsidiaries are in good operating condition and repair and free from any material defects, reasonable wear and tear excepted, and are suitable for the uses for which they are being used in all material respects. The operations of the Company and each of its Subsidiaries does not, nor to the Knowledge of the Company, does any Leased Premises violate in any material respect any applicable building code, zoning requirement or other Law relating to such property or operations thereon. Neither the Company nor one of its Subsidiaries could be required to expend more than $10,000 in causing any Leased Premises to comply with the surrender conditions set forth in the applicable Real Property Lease. The Company or one of its Subsidiaries has performed all of its obligations under any termination agreements pursuant to which it has terminated any leases of real property that are no longer in effect and has no continuing liability with respect to such terminated real property leases. Neither the Company nor any of its Subsidiaries is party to any agreement or subject to any claim that may require the payment of any real estate brokerage commissions, and no such commission is owed with respect to any of the Leased Premises.

3.13 Intellectual Property .

(a) Schedule 3.13(a) of the Disclosure Schedule sets forth a true, complete and correct list of the Company Registered Intellectual Property (including the jurisdiction in which each such item of Intellectual Property has been registered or filed and the applicable registration, application or serial number or similar identifier).

(b) Neither the Company nor any of its Subsidiaries has claimed any "small business status" in the application for or registration of any Company Registered Intellectual Property, nor any other status that, to the Knowledge of the Company, would not be applicable to Parent or the Surviving Company. To the Knowledge of the Company, there is no information, materials, facts or circumstances, including any information or fact that would constitute prior art not in the file wrapper, that would render any of the Company Registered Intellectual Property that is not an application invalid or unenforceable, or would adversely affect any pending application for any Company Registered Intellectual Property. Neither the Company nor any of its Subsidiaries have misrepresented, or failed to disclose, any facts or circumstances known to it in any application for any Company Registered Intellectual Property that would constitute fraud or a misrepresentation with respect to such application or that would otherwise affect the enforceability of any Company Registered Intellectual Property.

(c) The Company is the sole and exclusive beneficial and record owner of all Company Intellectual Property, including Company Registered Intellectual Property and no other Person has any other ownership rights thereto (contingent or otherwise).

(d) All Company Registered Intellectual Property is valid (to the Knowledge of the Company), subsisting and in full force and effect (except with respect to applications) and has not expired or been cancelled or abandoned. If any Company Registered Intellectual Property is later found to be invalid, such finding will not be predicated on any act or omission by the Company or any of its Subsidiaries, nor on any information or event about which the Company knew or should have known. All necessary registration, maintenance and renewal fees have been paid, and all necessary documents and certificates in connection with such Company Registered Intellectual Property have been filed with the relevant patent, copyright, trademark or other equivalent authorities in the U.S. or foreign jurisdictions, as the case may be, for the purposes of perfecting, prosecuting and maintaining such Company Registered Intellectual Property. There are no actions that must be taken by the Company and its Subsidiaries within 90 days of the Closing Date with respect to any item of Company Registered Intellectual Property, 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 Company Registered Intellectual Property.

(e) There is no pending (and at no time within the two years prior to the date of this Agreement has there been pending any) Action before any court, government agency or arbitral tribunal in any jurisdiction challenging the use, ownership, validity, enforceability or registerability of any Company Registered Intellectual Property, nor has the Company received written notice threatening any such Action. The Company is not a party to any settlements, covenants not to sue, consents, decrees, stipulations, judgments or orders resulting from Actions which permit third parties to use any Company Registered Intellectual Property.

(f) The Company owns, or has valid rights to use, all of the Intellectual Property and Technology used or held for use in, or necessary to conduct, the business of the Company and its Subsidiaries, as currently conducted and as proposed to be conducted. To the

extent that any Patents would be infringed by the conduct of the business of the Company and its Subsidiaries, as currently conducted and as proposed to be conducted, including the manufacture, use, sale or import of any Company Products, the Company or its Subsidiaries are the exclusive owner of such patents or have secured appropriate rights from the owner through license or other agreement to make, use, sell and import such Company Products and otherwise conduct the business of Company and its Subsidiaries.

(g) The conduct of the business of the Company and its Subsidiaries, including the use, development, marketing, sale and provision of Company Products, as previously conducted, as currently conducted and as planned to be conducted (under the current product roadmaps and business plans of the Company) does not and will not (i) infringe, dilute, misappropriate or otherwise violate any Intellectual Property or other proprietary right owned by any third party, or (ii) to the Knowledge of the Company, constitute unfair competition or trade practices under the Laws of any jurisdiction.

(h) There is no pending (and at no time within the three years prior to the date of this Agreement has there been pending or threatened any) Action alleging that the conduct of the business of the Company or any of its Subsidiaries infringes, dilutes, misappropriates, or otherwise violates or constitutes the unauthorized use of, or will infringe, dilute, misappropriate, or otherwise violate or constitute the unauthorized use of, the Intellectual Property of any third party (nor, to the Knowledge of the Company, is there any basis therefor), nor has the Company received written notice threatening any such Action (nor, to the Knowledge of the Company, any threat not in writing that is reasonably likely to result in any such Action). Neither the Company nor any of its Subsidiaries is a party to any settlement, covenant not to sue, consent, decree, stipulation, judgment, or order (including those resulting from any Action) which (i) restricts the rights of the Company or any of its Subsidiaries to use any Intellectual Property, (ii) restricts the business of the Company or any of its Subsidiaries in order to accommodate a third party's Intellectual Property or (iii) requires any future payment by the Company or any of its Subsidiaries. The Company has not received any communication from any third party offering to license to the Company any Intellectual Property, other than as contained in advertisements or sales communications to license or obtain generally commercially available Technology.

(i) Schedule 3.13(i) of the Disclosure Schedule is a true, complete and correct list of all Contracts to which the Company or any of its Subsidiaries is a party (1) pursuant to which the Company or any of its Subsidiaries has licensed, granted a covenant not to sue or immunity from infringement, or assigned or is obligated to license, grant or assign any Company Intellectual Property to a third party, or otherwise relating to any Company Intellectual Property (" Out-Licenses "), other than (i) non-exclusive licenses entered into in the ordinary course of business in connection with the sale of Company Products, (ii) standard non-disclosure agreements that do not materially differ in substance from the Company's standard forms, which have been made available to Parent, and (iii) standard contractor agreements that do not materially differ in substance from the Company's standard forms, which have been made available to Parent, or (2) pursuant to which a third party has licensed, granted a covenant not to sue or immunity from infringement, or assigned any Intellectual Property to the benefit of Company or any of its Subsidiaries (" In-Licenses ", and together with Out-Licenses, the " Intellectual Property Contracts "), excluding only Contracts for Shrink-Wrap and standard non-disclosure agreements that do not materially differ in substance from the Company's standard forms, which have been made available to Parent. There are no Contracts between the Company or any of its Subsidiaries and any third party with respect to the Intellectual Property under which there is any known dispute regarding the scope of such Contract or performance under such Contract, including with respect to any payments to be made or received by the Company and its Subsidiaries thereunder.

(j) To the Knowledge of the Company, no third party is infringing, diluting, misappropriating, or otherwise violating or engaged in the unauthorized use of any Company Intellectual Property, and no Actions, suits, claims or proceedings have been brought against any third party by the Company alleging that a third party is infringing, diluting, misappropriating, or otherwise violating or engaged in the unauthorized use of any Company Intellectual Property.

(k) All Company Intellectual Property is, and following Closing will be, fully transferable, alienable or licensable by Parent after the Closing without restriction and without payment of any kind to any third party.

(l) The Company and each of its Subsidiaries have taken commercially reasonable steps to obtain, maintain and protect the Company Intellectual Property, including requiring each current and former employee, consultant and independent contractor who has made any contributions to the development of any Company Product to execute a Proprietary Information and Inventions Agreement under which Company or its Subsidiaries has obtained a valid and enforceable assignment sufficient to irrevocably transfer all such Intellectual Property (excepting, to the extent applicable, non-assignable moral rights) (including the right to seek past and future damages with respect thereto) (in each case, which agreement does not materially differ in form or substance, with respect to such Intellectual Property matters, from the Company's standard forms which have been provided by Company to Parent) under which such employee, consultant or independent contractor has not retained and does not have any rights or licenses with respect to any such Intellectual Property developed for the Company or its Subsidiaries or using resources owned or provided by the Company or its Subsidiaries. Other than under a confidentiality or non-disclosure agreement or contractual provision relating to confidentiality and non-disclosure, there has been no disclosure to any third party of confidential information or Trade Secrets of the Company related to any Company Product. Assignments of the Registered Intellectual Property listed in Schedule 3.13(a) of the Disclosure Schedule to the Company have been duly executed and filed with the U.S. Patent and Trademark Office or Copyright Office, Governmental Authority or any equivalent foreign authority, as applicable.

(m) Neither the Company nor any of its Subsidiaries has granted (other than to employees or consultants of the Company under Proprietary Information and Inventions Agreements or written confidentiality agreements, as applicable) nor is the Company or any of its Subsidiaries obligated to grant access or a license to any of the source code of the Company or any of its Subsidiaries for any Company Product (including in any such case any conditional right to access or under which the Company has established any escrow arrangement for the storage and conditional release of any of its source code for any Company Product). The execution of this Agreement and the consummation of the transactions contemplated by this Agreement will not result in a release of any source code owned by the Company or any of its Subsidiaries or the grant of incremental rights to a Person with regard to such source code. The source code for all Company Products that include software has been documented in a professional manner that is both: (i) consistent with customary code annotation conventions and customary practices in the software industry; and (ii) sufficient to independently enable a programmer of reasonable skill and competence to understand, analyze, and interpret program logic, correct errors and improve, enhance, modify and support the Company Products. All Company software, both before and after the completion of the Code Scrub Requirements, conforms to and performs substantially in accordance in all material respects with all specifications, drawings, representations and warranties related to such software provided to the Company's customers.

(n) Schedule 3.13(n) of the Disclosure Schedule accurately identifies and generally describes (A) each item of Open Source Material that is or has been contained in, or

distributed with, each Company Product or from which any part of any Company Product has been derived, or which is or has been distributed or made available to any third party by or for the Company or any of its Subsidiaries, (B) a reference to the applicable license terms for each such item of Open Source Material, (C) the Company Product to which each such item of Open Source Material relates, and (D) whether (and if so, in a general manner, how) each such item of Open Source Material has been modified or distributed by or for the Company or its Subsidiaries. Neither the Company nor any of its Subsidiaries has used any Open Source Material in a manner that grants or would require the grant of a license to any Person of any Company Product (excepting such Open Source Materials themselves, as unmodified in a material manner by Company) or Company Intellectual Property or, in each case, any portion thereof. The Open Source Materials have not been exploited in a manner that imposes or purports to impose a requirement or condition that the Company Intellectual Property (or any portion thereof) be (i) disclosed or distributed in source code form, (ii) licensed for the purpose of making modifications or derivative works, or (iii) redistributable at no charge.

(o) Neither the execution of this Agreement nor the consummation by the Company of the transactions contemplated by this Agreement will result in any violation, loss or impairment of ownership by the Company or any of its Subsidiaries of, or the right of any of them to use, with respect to any Technology or Intellectual Property, nor require the consent of any Governmental Authority or third party with respect to any such Technology or Intellectual Property. Neither this Agreement nor the consummation of the transactions contemplated by this Agreement, nor an assignment to Parent, by operation of law or otherwise, of any Contract to which the Company or any of its Subsidiaries is a party, will result in (A) Parent or its Affiliates granting to any third party any right in any Intellectual Property, (B) Parent or its Affiliates being bound by, or subject to, any non-compete or other restriction on the operation or scope of their respective businesses, or (C) Parent or its Affiliates being obligated to pay any royalties or other amounts to any third party in excess of those payable by Company or any of its Subsidiaries prior to the Closing.

(p) Neither the Company nor any of its Subsidiaries has assigned or transferred to any third party rights in any Intellectual Property that is or was Company Intellectual Property, and has not granted any exclusive rights in any Company Intellectual Property to any third party.

(q) No government funding, facilities of a university, college, other educational institution or research center was used in the development of any Company Intellectual Property or Intellectual Property purported to be owned by the Company or any of its Subsidiaries. No current or former employee, consultant or independent contractor of the Company or any of its Subsidiaries, who was involved in, or who contributed to, the creation or development of any Company Intellectual Property or Intellectual Property purported to be owned by the Company, has performed services for the government, university, college, or other educational institution or research center during a period of time during which such employee, consultant or independent contractor was also performing services for the Company or any of its Subsidiaries.

(r) The Company has made available to Parent (i) all documentation and notes in the Company’s possession that relate to the testing of Company Products and (ii) a true, complete and correct list of all known bugs, defects and errors in each version of the Company Products that are currently being commercially distributed. The Company Products do not currently contain any other bugs, defects, errors or problems that cannot be corrected by the Parent in the ordinary course of business with a reasonable expenditure of engineering resources.

(s) All Company Products that are currently being commercially distributed, and all software and firmware owned by, or purported to be owned by, the Company and its Subsidiaries (and all parts thereof): (i) will function in the same manner immediately following the Closing as they currently function and (ii) are free of any disabling codes or instructions and any "back door," "time bomb," "Trojan horse," "worm," "drop dead device," "virus" or other software routines or hardware components that are designed to permit unauthorized access or the unauthorized disruption, impairment, disablement or erasure of such Company Product or Company software or firmware (or all parts thereof) or data or other software of users (" Contaminants ").

(t) The Company and each of its Subsidiaries has taken commercially reasonable steps and implemented commercially reasonable procedures to ensure that information technology systems used in connection with the operation of the Company are free from Contaminants. The Company and each of its Subsidiaries has appropriate disaster recovery plans, procedures and facilities for their businesses and has taken reasonable steps to safeguard the information technology systems utilized in the operation of the business of the Company and each of its Subsidiaries as it is currently conducted. There have been no unauthorized intrusions or breaches of the security of its information technology systems. The Company and each of its Subsidiaries has implemented any and all security patches or upgrades that are generally available for the Company's information technology systems where, in the Company's reasonable judgment, such patches or upgrades are required.

(u) Schedule 3.13(u) of the Disclosure Schedule contains each Company Privacy Policy and identifies, with respect to each Company Privacy Policy, the period of time during which such policy was or has been in effect, whether the terms of a later Company Privacy Policy apply to the data or information collected under such privacy policy; and, if so, the mechanism (e.g., opt-in, opt-out, notice) used to apply the later Company Privacy Policy to such data or information. The Company and each of its Subsidiaries has complied with all applicable Company Privacy Policies and Laws relating to privacy, data protection, and the collection and use of personally identifiable information. The Company and each of its Subsidiaries has at all times made all disclosure to users or customers required by applicable Laws relating to privacy and none of such disclosures have been inaccurate in any material respect or materially misleading or deceptive or in violation of any applicable laws. The Company and each of its Subsidiaries takes reasonable measures to ensure that such information is protected against unauthorized access, use, modification, and other misuse. No breach or violation of any such security policy has occurred and there has been no unauthorized or illegal use of or access to any of the data in any databases that include Personal Data. None of the execution, delivery, or performance of this Agreement, the consummation of any of the transactions contemplated by this Agreement or Parent's possession of any Personal Data will result in any violation of any Company Privacy Policy or applicable Law with respect to privacy. Neither the Company nor any of its Subsidiaries has received a complaint regarding the Company's or any of its Subsidiaries' collection, use or disclosure of personally identifiable information or other Personal Data.

(v) The Company's and its Subsidiaries' business as currently conducted and as proposed to be conducted (under the current product roadmaps and business plans of the Company) does not and will not involve the use or development of, or engaging in, encryption technology, or other Technology whose development, commercialization or export is restricted under applicable U.S. Law, and the Company's and its Subsidiaries' business as currently conducted and as proposed to be conducted (under the current product roadmaps and business plans of the Company) does not and will not require the Company or any of its Subsidiaries to

obtain a license from a Governmental Authority regulating the development, commercialization or export of Technology.

(w) Neither the Company nor any of its Subsidiaries is now or has ever been a member or promoter of, participant in, or a contributor to, any industry standards body or any similar organization that could reasonably be expected to require or obligate the Company or any of its Subsidiaries to disclose, grant or offer to any other Person any license or right to any Company Intellectual Property or restrict or impair the Company's enforcement of the Company Intellectual Property.

(x) Neither the Company nor any of its Subsidiaries has received or requested an opinion letter from counsel that any Company Product, or the operation of the business of the Company or its Subsidiaries as previously or currently conducted, or as proposed to be conducted, infringes or misappropriates, or would infringe or misappropriate, the Intellectual Property of any third party.

(y) No person other than the Company and its Subsidiaries has ownership rights granted by the Company or any of its Subsidiaries to an improvement made by or for the Company or any of its Subsidiaries in any Company Intellectual Property. All Company Intellectual Property will be fully transferable, alienable or licensable by Parent or the Surviving Company without restriction and without payment of any kind to any third party.

(z) The Company Intellectual Property is not subject to any exclusive license or right granted to a third party.

(aa) Each item of Company Intellectual Property is free and clear of any Security Interests.

(bb) Other than with respect to industry standard indemnity provisions contained in agreements entered in the ordinary course of business (such as indemnity provisions that do not materially differ in substance from those in the Company's standard form(s) of end-use license (including attachments) (copies of which have been made available to Parent)), Schedule 3.13(bb) of the Disclosure Schedule lists all Contracts between the Company or one of its Subsidiaries, on the one hand, and any other Person, on the other hand, wherein or whereby the Company or one of its Subsidiaries has agreed to, or assumed, any obligation or duty to indemnify, reimburse, hold harmless, guaranty or otherwise assume or incur any obligation or Liability or provide a right of rescission with respect to the infringement or misappropriation by the Company or one of its Subsidiaries or such other Person of the Intellectual Property of any Person other than the Company or any of its Subsidiaries.

(cc) Schedule 3.13(cc) of the Disclosure Schedule lists all Company Products.

3.14 Contracts .

(a) Neither the Company nor any of its Subsidiaries is a party to, subject to or otherwise bound by:

(i) any Contract or series of related Contracts which requires aggregate future expenditures by the Company in excess of $100,000 or which might result in payments by or to the Company in excess of $100,000 or is otherwise material to the business of the Company or any of its Subsidiaries;

(ii) any Contract for the purchase of equipment in excess of $75,000;

(iii) any Contract that expires more than one year after the date of this Agreement and is not terminable by Company on 90 days notice (or less) without penalty;

(iv) any Contract (other than a Contract entered into in the ordinary course of business consistent with past practice) with support or indemnification obligations that cannot be terminated with 90 days' notice (or less) without penalty;

(v) any distributor, reseller or similar Contract under which the Company does not have the right to terminate without penalty on 90 days' notice (or less);

(vi) any Contract (other than those related to Company Securities or required to be disclosed pursuant to Section 3.14(a)(xvii)) with any current or former stockholder, employee, officer or director of the Company, or any "affiliate" or "associate" of such persons (as such terms are defined in the rules and regulations promulgated under the Securities Act) (any of the foregoing, a " Related Party "), including any Contract providing for the furnishing of services by, rental of real or personal property from, or otherwise requiring payments to or from any Related Party;

(vii) any Contract limiting the freedom of the Company or any of its Subsidiaries to engage or participate, or compete with any other Person, in any line of business, market or geographic area, or to make use of any Intellectual Property, or any Contract granting most favored nation pricing, exclusive sales, distribution, marketing or other exclusive rights, rights of refusal, rights of first negotiation or similar rights and/or terms to any Person, or any Contract otherwise limiting the right of the Company or any of its Subsidiaries to sell, distribute or manufacture any products or services or to purchase or otherwise obtain any software, components, parts, subassemblies or services;

(viii) all Intellectual Property Contracts, excluding only Contracts for Shrink-Wrap Code, non-disclosure agreements, and contractor agreements entered in the ordinary course of business;

(ix) all licenses, sublicenses and other Contracts pursuant to which the Company or any of its Subsidiaries has agreed to any restriction on the right of the Company or any of its Subsidiaries to use or enforce any Company Intellectual Property or pursuant to which the Company or any of its Subsidiaries agrees to encumber, transfer or sell rights in or with respect to any Company Intellectual Property;

(x) any Contract providing for the development of any Technology or Intellectual Property, independently or jointly, by or for the Company or any of its Subsidiaries;

(xi) any trust, loan agreement, indenture, note, bond, debenture or any other document or Contract evidencing Indebtedness to any Person, any capitalized lease obligation, or any commitment to provide any of the foregoing, or any agreement of guaranty, indemnification or other similar commitment with respect to the obligations or Liabilities of any other Person;

(xii) any Contract for the disposition of any material portion of the assets or business (whether by merger, sale of stock, sale of assets or otherwise) of the Company or any of its Subsidiaries;

(xiii) any Contract for the acquisition of the business or capital stock of another party (whether by merger, sale of stock, sale of assets or otherwise);

(xiv) any Contract concerning a joint venture, joint development or other similar arrangement with one or more Persons;

(xv) any hedging, futures, options or other derivative Contract;

(xvi) any Contract creating any obligation with respect to the payment of any severance, retention, bonus, success, change of control or other similar payment to any Person the payment or acceleration of which is triggered by the Company entering into this Agreement, or the consummation of any of the transactions contemplated hereby or any subsequent transactions or events;

(xvii) any Contract for the employment of any director, officer, employee or consultant of the Company or any of its Subsidiaries or any other type of Contract with any officer, employee or consultant of the Company or any of its Subsidiaries that is not immediately terminable by the Company or such Subsidiary without cost or Liability, including any Contract requiring it to make a payment to any director, officer, employee or consultant on account of the Merger, any transaction contemplated by this Agreement or any Contract that is entered into in connection with this Agreement;

(xviii) any Contract under which the Company or any of its Subsidiaries provides any consulting, software implementation, deployment, development services or support services with payments to the Company in excess of $25,000;

(xix) any Contract with any labor union or any collective bargaining agreement or similar contract with its employees;

(xx) any Contract with any investment banker, broker, advisor or similar party, or any accountant, legal counsel or other Person retained by the Company or any of its Subsidiaries, in connection with this Agreement and the transactions contemplated hereby;

(xxi) any confidentiality, secrecy or non-disclosure Contract other than any such Contract entered into with customers and distributors in the ordinary course of business pursuant to the Company's standard (substantially unmodified form) (a copy or copies of which has been made available to Parent);

(xxii) any settlement agreement; or

(xxiii) any Real Property Lease.

(b) True, complete and correct copies of each Material Contract (including all amendments thereto) have been made available to Parent. Each Contract set forth in Schedule 3.14(a) of the Disclosure Schedule or any other Schedule of the Disclosure Schedule (or required to be so disclosed therein, whether or not actually disclosed therein) (each, a " Material Contract " and collectively, the " Material Contracts ") is a valid and binding agreement of the Company and is in full force and effect in accordance with its terms. The Company is not in default or breach under the terms of any of the Material Contracts (a "default" being defined for purposes hereof as an actual default or event of default or the existence of any fact or circumstance which would, upon receipt of notice or passage of time, constitute a default or right of termination), nor will the consummation of the Merger or any other transactions contemplated by this Agreement

give rise to any such default or breach and, to the Knowledge of the Company, (A) no other party to any such Material Contracts is in default or breach of such Material Contracts, and (B) no event has occurred that with notice or the passage of time would constitute a default or breach thereunder by the Company or would permit the modification or premature termination of any such Material Contracts by any other party thereto.

3.15 Benefit Plans .

(a) For purposes of this Agreement, the term " Company Employee Plan " or " Plan " shall mean any employee benefit plan (as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (" ERISA "), whether or not subject to ERISA), any bonus, profit sharing, compensation, pension, retirement, "401(k)," "SERP," severance, savings, deferred compensation, fringe benefit, insurance, post-retirement health or welfare benefit, life, stock option, stock purchase, restricted stock, equity compensation, stock appreciation right, restricted stock unit, tuition refund, service award, company car or car allowance, scholarship, housing or living allowances, relocation, disability, accident, sick pay, sick leave, accrued leave, vacation, paid time off, holiday, termination, unemployment, individual employment, consulting, executive compensation, incentive, commission, payroll practices, retention, change in control, non-competition, other plan, agreement, policy, trust fund or arrangement (whether written or unwritten, insured or self-insured), and any plan subject to Sections 125, 127, 129, 137 or 423 of the Code, currently maintained, sponsored or contributed to by the Company, any Subsidiary of the Company, other Person under common control with the Company or any of its Subsidiaries within the meaning of 414(b), (e), (m) or (o) of the Code and the regulations promulgated thereunder (an " ERISA Affiliate ") or to which the Company or any ERISA Affiliate is a party. Schedule 3.15(a) of the Disclosure Schedule includes a true, complete and correct list of all Plans, and the Company has made available to Parent a true, complete and correct copy of each Plan as well as, if applicable, a copy of each trust or other funding arrangement, each summary plan description and summary of material modifications, and the most recent determination letter received from the IRS, if any. The Company has made available to Parent true, complete and correct copies of all Form 5500 Series annual reports for each Plan for the prior three years (if such forms were required to be filed), together with all schedules, attachments, and related opinions and copies of any correspondence from or to the IRS, the Department of Labor or other U.S. government department or agency relating to an audit or penalty assessment with respect to any Plan or relating to requested relief from any Liability or penalty relating to any Plan.

(b) Each Plan and each funding vehicle related to such Plan is currently in compliance in all material respects with, and has been administered and operated in material compliance with, its terms and all applicable statutes, orders, rules and regulations. Each Plan which is intended to be a "qualified plan" as described in Section 401(a) of the Code has been determined by the IRS to so qualify and such plan has received an opinion, advisory or determination letter stating that such plan is qualified, and there are no facts which might adversely affect such qualification.

(c) Neither the Company nor its ERISA Affiliates maintains, sponsors or contributes to any Plan subject to Title IV of ERISA or any "multiemployer plan" (as such term is defined in Section 3(37) of ERISA), nor have they incurred any Liability, including withdrawal Liability, with respect to any such Plan.

(d) The Company and each ERISA Affiliate has made or will accrue prior to the Closing Date all payments and contributions (including insurance premiums) due and payable as of the Closing Date to each Plan as required to be made under the terms of such Plan.

(e) With respect to all Plans and related trusts, there are no "prohibited transactions," as that term is defined in Section 406 of ERISA or Section 4975 of the Code, that have occurred that could subject any Plan, related trust or party dealing with any such Plan or related trust to any tax or penalty on prohibited transactions imposed by Section 502 of ERISA or Sections 4975 through 4980 of the Code.

(f) There are no actions, suits, arbitrations or claims (other than routine claims for benefits by employees of the Company or any ERISA Affiliate, beneficiaries or dependents of such employees arising in the normal course of operation of a Plan) pending, or to the Knowledge of the Company, threatened, with respect to any Plan or any fiduciary or sponsor of a Plan with respect to their duties under such Plan or the assets of any trust under any such Plan.

(g) The Company does not have any obligations under any Plan to provide post-retirement or post-employment benefits (including disability, health, and life, or death benefits) to any employee or any former employee of the Company other than as required by COBRA or applicable state Law.

(h) Schedule 3.15(h) of the Disclosure Schedule lists all Change in Control Payments which will or may become payable as a result of the Company entering into this Agreement or the consummation of any of the transactions contemplated hereby.

(i) Neither the Company nor any ERISA Affiliate currently maintains, has established, sponsors, participates in or contributes to any plan maintained or contributed to by the Company pursuant to the Law or applicable custom or rule of any applicable jurisdiction outside of the United States, and neither the Company nor any ERISA Affiliate has ever had any obligation to maintain, establish, sponsor, participate in or contribute to any such plan.

3.16 Personnel .

(a) None of the execution and delivery of this Agreement, the consummation of the Merger or any other transaction contemplated hereby or any termination of employment or service (or constructive termination or other change) of any Employee in connection therewith or subsequent thereto will, individually or together with the occurrence of some other event, (i) result in any payment (including severance, unemployment compensation, golden parachute, bonus or otherwise) becoming due to any Person, (ii) materially increase or otherwise enhance any benefits otherwise payable by the Company or any of its Subsidiaries, (iii) result in the acceleration of the time of payment or vesting of any such benefits, except as required under Section 411(d)(3) of the Code, (iv) increase the amount of compensation due to any Person, or (v) result in the forgiveness in whole or in part of any outstanding loans made by the Company or any of its Subsidiaries to any Person.

(b) The Company and each of its Subsidiaries is in compliance in all material respects with all Law respecting employment, discrimination in employment, fair employment practices, equal employment, terms and conditions of employment, meal and rest periods, leaves of absence, employee privacy, worker classification (including the proper classification of workers as independent contractors and consultants), wages (including overtime wages), compensation and hours of work, and occupational safety and health and employment practices, and is not engaged in any unfair labor practice. Except as set forth in Schedule 3.16(b) of the Disclosure Schedule,

neither the Company nor any of its Subsidiaries has engaged any employee whose employment would require special licenses or permits. The Company or any of its Subsidiaries has, in all material respects, withheld all amounts required by law or by agreement to be withheld from the wages, salaries, and other payments to employees; and is not liable for any arrears of wages, compensation, Taxes, penalties or other sums for failure to comply with any of the foregoing. The Company or any of its Subsidiaries has paid in full to all employees, independent contractors and consultants all wages, salaries, commissions, bonuses, benefits and other compensation due to or on behalf of such employees, independent contractors and consultants. Neither the Company nor any of its Subsidiaries has any material liability with respect to any misclassification of: (i) any Person as an independent contractor rather than as an employee, (ii) any employee leased from another employer, or (iii) any employee currently or formerly classified as exempt from overtime wages. Neither the Company nor any of its Subsidiaries is liable for any payment to any trust or other fund or to any Governmental Authority, with respect to unemployment compensation benefits, social security or other benefits or obligations for employees (other than routine payments to be made in the normal course of business and consistently with past practice). There are no unwritten policies or customs that, by extension, could entitle employees of the Company or any Subsidiary of the Company to benefits in addition to those to which they are entitled pursuant to applicable Law (including unwritten customs concerning the payment of statutory severance pay when it is not legally required). Neither the Company nor any of its Subsidiaries has engaged any consultants, sub-contractors or freelancers who, according to applicable Law, would be entitled to the rights of an employee with respect to the Company or such Subsidiary, including rights to severance pay, vacation, and other employee-related statutory benefits. Neither the Company nor any of its Subsidiaries has any obligations under COBRA (or similar Law) with respect to any former employees or qualifying beneficiaries thereunder, except for obligations that are not material in amount. Neither the Company nor any of its Subsidiaries is a party to a conciliation agreement, consent decree or other agreement or order relating to employment matters with any Government Authority. There are no material controversies pending or, to the Knowledge of the Company, threatened, between the Company or any of its Subsidiaries and any of their respective employees or other service providers, which controversies have or have threatened to result in an action, arbitration, suit, proceeding, claim, arbitration or investigation before any Governmental Authority.

(c) Schedule 3.16(c) of the Disclosure Schedule sets forth a true, complete and correct list as of the Closing Date of all severance Contracts, employment Contracts and Contracts providing for any Change in Control Payment to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries is bound. Except for the foregoing, neither the Company nor any of its Subsidiaries has any obligation to pay any amount or provide any benefit to any former employee or officer, other than obligations (i) for which Company has established a reserve for such amount on the Balance Sheet and (ii) pursuant to Contracts entered into after the date of the Balance Sheet and disclosed in Schedule 3.16(c) of the Disclosure Schedule.

(d) Neither the Company nor any of its Subsidiaries is a party to or bound by any collective bargaining agreement or other labor union Contract (including any Contract or agreement with any works council, trade union, or other labor-relations entity) with respect to any employee or other service provider, and no such collective bargaining agreement other union Contract is being negotiated by the Company or any of its Subsidiaries. There is no pending demand for recognition or any other request or demand from a labor organization for representative status with respect to any employee or other service provider of the Company or any of its Subsidiaries. To the Knowledge of the Company, there are no current activities or proceedings of any labor union to organize the employees of the Company or any of its Subsidiaries. There is no

labor dispute, strike or work stoppage against the Company or any of its Subsidiaries pending or, to the Knowledge of the Company, threatened which may interfere with the respective business activities of the Company or any of its Subsidiaries. The consummation of the transactions contemplated by this Agreement will not entitle any Person (including any works council, trade union or other labor-relations entity) to any payments under any Labor Agreement or require the Company or any Seller to consult with, provide notice to, or obtain the consent or opinion of, any union, works council, or similar labor relations entity. Neither the Company nor any of its Subsidiaries, nor to the Knowledge of the Company, any of their respective representatives or employees, has committed any material unfair labor practice in connection with the operation of the respective businesses of the Company or any of its Subsidiaries, and there is no charge or complaint against the Company or any of its Subsidiaries by the National Labor Relations Board or any comparable Governmental Authority pending or to the Knowledge of the Company, threatened.

(e) The Company has made available to Parent a true, complete and correct list of the names, positions and rates of compensation of all current officers, directors, and employees of the Company and each of its Subsidiaries, showing each such person's name, position, place of employment, date of hire, annual remuneration (including commission and bonus opportunity), status as exempt/non-exempt and fringe benefits for the current fiscal year.

(f) The Company has made available to Parent a true, complete and correct list of all of its consultants, advisory board members, seconded workers, and independent contractors since January 1, 2009, who have received compensation from the Company of $20,000 or more and for each the initial hire date or date of the engagement, a description of the remuneration arrangements applicable to each, a brief description of the services provided, the specific entity for whom they provide services, and whether the engagement has been terminated by either party, including the effective date of such termination.

(g) The Company and each of its Subsidiaries is in compliance in all material respects with the Worker Adjustment Retraining Notification Act of 1988, as amended (" WARN Act "), or any similar state or local Law. In the past year, (i) neither the Company nor any of its Subsidiaries has effectuated a "plant closing" (as defined in the WARN Act) affecting any site of employment or one or more facilities or operating units within any site of employment or facility of its business, (ii) there has not occurred a "mass layoff" (as defined in the WARN Act) affecting any site of employment or facility of the Company or any of its Subsidiaries, and (iii) neither the Company nor any of its Subsidiaries has been affected by any transaction or engaged in layoffs or employment terminations sufficient in number, including as aggregated, to trigger application of any similar state, local or foreign Law or regulation. Neither the Company nor any of its Subsidiaries has caused any of its respective employees to suffer an "employment loss" (as defined in the WARN Act) during the 90 day period prior to the Closing Date. No termination prior to the Closing would trigger any notice or other obligations under the WARN Act or similar state, local or foreign Law.

(h) The Company has made available to Parent true, complete and correct copies of all election statements under Section 83(b) of the Code that are in the Company's possession or subject to its control with respect to any unvested securities or other property issued by the Company or any ERISA Affiliate to any of their respective employees, non-employee directors, consultants and other service providers.

3.17 Government Funding . Neither the Company nor any of its Subsidiaries has applied for or received any financial assistance from any supranational, national, local or foreign authority or government agency.

3.18 Insurance . Schedule 3.18 of the Disclosure Schedule contains a true, complete and correct list as of the date hereof of all insurance policies maintained by or on behalf of the Company and each of its Subsidiaries. Such list includes the type of policy, form of coverage, policy number and insurer, coverage dates, named insured, limit of liability. True, complete and correct copies of each listed policy have been made available to Parent. Such policies are in full force and effect and each of its Subsidiaries has complied in all material respects with the provisions of such policies.

3.19 Litigation . There is no (a) Action pending, or to the Knowledge of the Company, threatened against or affecting the Company or any of its Subsidiaries, any of the assets or properties of the Company or any of its Subsidiaries, or the Merger or the other transactions contemplated hereby, (b) governmental inquiry or investigation pending or, to the Knowledge of the Company, threatened against or affecting the Company, any of its Subsidiaries, or any of their respective assets or properties (including any inquiry as to the qualification of the Company or any of its Subsidiaries to hold or receive any license or Permit) or (c) to the Knowledge of the Company, any Actions pending or threatened against any Related Party in connection with the business of the Company or any of its Subsidiaries. Neither the Company nor any of its Subsidiaries is in default with respect to any order, writ, injunction or decree of any Governmental Authority known to or served upon the Company or any of its Subsidiaries. There is no Action by the Company or any of its Subsidiaries pending, threatened or contemplated against any other Person.

3.20 Compliance with Laws; Permits .

(a) The Company and each of its Subsidiaries is in compliance in all material respects with, and has complied in all material respects with, and as of the date of this Agreement has not received any written notices of violation with respect to, any Law with respect to the conduct of its business, or the ownership or operation of its business (including the keeping of all required registers and timely filing or delivery of all required documents under the provisions of any applicable Law). To the Knowledge of the Company, neither the Company nor any of its Subsidiaries is under investigation with respect to, has been threatened to be charged with, nor has been given notice of, any violation of any Law.

(b) All Permits (i) pursuant to which the Company or any of its Subsidiaries currently operates or holds any interest in their respective assets or properties, or (ii) which are required for the operation of the business of the Company or any of its Subsidiaries as currently conducted or the holding of any such interest, has been issued or granted to the Company or such Subsidiary, and all such Permits are in full force and effect and constitute all Permits required to permit the Company or such Subsidiary to operate or conduct its business as it is currently conducted and hold any interest in its properties or assets.

(c) The Company and each of its Subsidiaries has conducted its export transactions in accordance with applicable provisions of the U.S. export control laws and regulations.

(d) Neither the Company nor any of its Subsidiaries (including, to the Knowledge of the Company, any of their respective officers, directors, agents, employees or other

Person associated with or acting on their behalf) has, directly or indirectly, taken any action which would cause it to be in violation of the Foreign Corrupt Practices Act of 1977, as amended, or any rules or regulations thereunder, used any corporate funds for unlawful contributions, gifts, entertainment or other unlawful expenses relating to political activity, made any unlawful payment to foreign or domestic government officials or employees or made any bribe, rebate, payoff, influence payment, kickback or other similar unlawful payment.

3.21 Environmental Matters .

(a) The Company and each of its Subsidiaries is and has been in compliance with all Environmental Laws in all material respects.

(b) Neither the Company nor any of its Subsidiaries has received any notice of any noncompliance of its past or present operations with Environmental Laws.

(c) No notices, administrative actions or suits are pending or, to the Knowledge of the Company, threatened relating to an actual or alleged violation of any applicable Environmental Law by the Company or any of its Subsidiaries.

(d) Neither the Company nor any of its Subsidiaries has (i) disposed of, emitted, discharged, handled, stored, transported, used or released any Hazardous Substances; (ii) distributed, sold or otherwise placed on the market Hazardous Substances or any product containing Hazardous Substances; (iii) arranged for the disposal, discharge, storage or release of any Hazardous Substances; or (iv) exposed any employee or other individual to any Hazardous Substances so as to give rise to any liability or corrective or remedial obligation under any Environmental Law.

(e) Except in compliance with Environmental Laws and in a manner that would not subject the Company or any of its Subsidiaries to liability, no Hazardous Substances are present in, on or under any property, including the land and the improvements, ground water and surface water thereof, that the Company or its Subsidiaries has at any time ever owned, operated, occupied or leased.

(f) Neither the Company nor any of its Subsidiaries have, nor are they required to have, any Permit, for their Hazardous Substance Activities.

(g) To the Knowledge of the Company, there are no underground storage tanks located on, asbestos containing materials located at, or any polychlorinated biphenyls (" PCBs ") or PCB-containing equipment used or stored on any site owned, leased or otherwise used by the Company or any of its Subsidiaries.

(h) Neither the Company nor any of its Subsidiaries has entered into any agreement that may require it to guarantee, reimburse, pledge, defend, hold harmless or indemnify any other party with respect to liabilities arising out of any Environmental Law or the Hazardous Substance Activities of the Company, any of its Subsidiaries or any other Person.

(i) The Company has made available to Parent true, complete and correct copies of all material environmental records, reports, notifications, permits, correspondence, engineering studies and environmental studies or assessments in the possession or control of the Company, any of its Subsidiaries or any of its representatives or advisors.

3.22 Banking Relationships . Schedule 3.22 of the Disclosure Schedule sets forth a true, complete and correct list of the name and location of each bank, brokerage or investment firm, savings and loan or similar financial institution in which the Company or any of its Subsidiaries has an account or a safe deposit box or other arrangement, and the names of all Persons authorized to draw on or who have access to such account or safe deposit box or such other arrangement. If requested by Parent, on or prior to the Closing Date, the Company will have provided Parent with the account numbers and on-line access to all such accounts. Except as set forth in Schedule 3.22 of the Disclosure Schedule, there are no outstanding powers of attorney executed by or on behalf of the Company or any of its Subsidiaries.

3.23 Books and Records . The Company has made available to Parent or its counsel true, complete and correct copies of (a) all documents identified on the Disclosure Schedule, (b) the minute books containing records of all proceedings, consents, actions and meetings of the Board of Directors of the Company and its Subsidiaries, committees thereof and stockholders of the Company and each of its Subsidiaries, (c) the stock ledger, journal and other records reflecting all stock issuances and transfers and all stock option and warrant grants and agreements of the Company and each of its Subsidiaries, and (d) Permits, orders and consents issued by any Governmental Authority with respect to the Company and each of its Subsidiaries, or any securities of the Company or any of its Subsidiaries, and all applications for such Permits, orders and consents. The minute books of the Company and each of its Subsidiaries made available to Parent contain a true, complete and correct summary of all meetings of directors and stockholders or actions by written consent since the time of incorporation of the Company or the respective Subsidiary through the date of this Agreement, and reflect all transactions referred to in such minutes accurately in all material respects. The books, records and accounts of the Company and each of its Subsidiaries (i) are true, complete and correct in all material respects, (ii) have been maintained in accordance with reasonable business practices on a basis consistent with prior years, and (iii) are stated in reasonable detail and accurately and fairly reflect the transactions and dispositions of the assets and properties of the Company and each of its Subsidiaries.

3.24 Brokers and Finders . All negotiations relating to this Agreement and the Escrow Agreement and the transactions contemplated hereby and thereby have been carried on without the intervention of any Person acting on behalf of the Company or any of its Affiliates in such manner as to give rise to any valid claim against the Company or Parent for any investment banker, brokerage or finder's commission, fee or similar compensation.

3.25 Anti-Takeover Statute Not Applicable . No "business combination," "fair price," "moratorium," "control share acquisition" or other similar anti-takeover statute or regulation or anti-takeover provision in the Company Organizational Documents is applicable to the Company, any shares of Company Capital Stock or other Company Securities, this Agreement, the Merger or any of the other transactions contemplated by this Agreement.

3.26 Certain Relationships and Related Transactions . None of the officers and directors of the Company or any of its Subsidiaries and, to the Knowledge of the Company, none of the Employees or Company Securityholders, nor, to the Knowledge of the Company, any immediate family member of an officer, director, Employee or Company Securityholder, has any direct or indirect ownership, participation, royalty or other interest in, or is an officer, director, employee of or consultant or contractor for any firm, partnership, entity or corporation that competes with, or does business with, or has any contractual arrangement with, the Company or any of its Subsidiaries (except with respect to any interest in less than 5% of the stock of any corporation whose stock is publicly traded). None of such officers, directors, Employees or Company Securityholders or immediate family members is a party to or, to the Knowledge of the Company,

otherwise directly or indirectly interested in, any Contract to which the Company or any of its Subsidiaries is a party or by which the Company, any of its Subsidiaries or any of their respective assets or properties may be bound or affected, other than normal employment, compensation and benefit arrangements for services as an officer, director or employee thereof. To the Knowledge of the Company, none of such officers, directors, Employees, Company Securityholders or immediate family members has any interest in any property, real or personal, tangible or intangible (including any Intellectual Property) that is used in, or that relates to, the business of the Company or any of its Subsidiaries, except for the rights of stockholders under applicable Law.

3.27 Disclosures . To the Knowledge of the Company, neither this Agreement nor any Exhibit or Schedule hereto (including the Disclosure Schedule) contains an untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein, in light of the circumstances under which they were made and taken as a whole, not misleading. There is no fact that the Company has not disclosed to Parent in writing and of which the Company has Knowledge that would or is reasonably likely to cause a Company Material Adverse Effect.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES BY PARENT AND MERGER SUB

Parent and Merger Sub hereby represent and warrant to the Company, as of the date hereof and as of the Closing Date as if such representations and warranties were made at and as of the Closing Date (except for such representations and warranties as are made only as of a specific date, which shall be made only as of such date), as follows:

4.1 Organization and Good Standing . Each of Parent and Merger Sub is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation. Neither Parent nor Merger Sub is in violation of any of the provisions of its certificate of incorporation or bylaws, except as would not have a material adverse effect on the ability of Parent to consummate the transactions contemplated by this Agreement.

4.2 Authority; Enforceability . Parent and Merger Sub have all necessary corporate power and authority to execute and deliver this Agreement, the Escrow Agreement and each certificate and other instrument required to be executed and delivered by Parent and Merger Sub pursuant hereto and to perform their obligations hereunder and thereunder and to consummate the Merger and the other transactions contemplated hereby and thereby. The execution, delivery and performance by Parent and Merger Sub of this Agreement, the Escrow Agreement and each certificate and other instrument required to be executed and delivered by Parent and Merger Sub pursuant hereto and the consummation by Parent and Merger Sub of the Merger and the other transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate action on the part of Parent and Merger Sub. The Board of Directors of each of Parent and Merger Sub has unanimously determined that this Agreement, the Merger and the other transactions contemplated hereby are desirable and in the best interests of Parent, Merger Sub and their respective stockholders, respectively, has unanimously approved this Agreement, the Escrow Agreement, the Merger and the other transactions contemplated hereby, and no other corporate proceedings on the part of Parent or Merger Sub are necessary to authorize this Agreement, the Escrow Agreement or any certificate or other instrument required to be executed and delivered by Parent or Merger Sub pursuant hereto or to consummate the Merger or any other transactions contemplated hereby or thereby. None of such actions by the Board of Directors of Parent or Merger Sub has been amended, rescinded or modified. Each of this Agreement, the

Escrow Agreement and each certificate and other instrument required to be executed and delivered by Parent or Merger Sub pursuant hereto has been (or will be) duly and validly executed and delivered by Parent or Merger Sub and, assuming the due authorization, execution and delivery by the Company and the Representative, constitutes (or will constitute) a legal, valid and binding obligation of Parent and Merger Sub, enforceable against Parent and Merger Sub in accordance with its terms, subject to bankruptcy, insolvency, reorganization or similar laws of general application affecting the rights and remedies of creditors, and to general equity principles.

4.3 No Conflicts . The execution and delivery of this Agreement, the Escrow Agreement and each certificate and other instrument required to be executed and delivered by Parent and Merger Sub pursuant hereto, the compliance with the provisions of this Agreement, the Escrow Agreement and each certificate or other instrument required to be executed and delivered by Parent and Merger Sub pursuant hereto and the consummation of the Merger and the other transactions contemplated hereby and thereby, will not (a) conflict with or violate the certificate of incorporation or bylaws of Parent or Merger Sub, (b) conflict with, result in a breach of, constitute (with or without due notice or lapse of time or both) a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify or cancel, or require any notice, consent or waiver under, or result in the loss of any benefit to which Parent or Merger Sub is entitled under, any Contract, Permit, Security Interest or other interest to which Parent or Merger Sub is a party or by which Parent, Merger Sub is bound or to which its assets are subject, (c) result in the creation or imposition of any Security Interest upon any assets of Parent or Merger Sub, or (d) violate any Law applicable to Parent or Merger Sub or any of their respective properties or assets.

4.4 Governmental Filings and Consents . No Consent of any Governmental Authority is required on the part of Parent or Merger Sub in connection with the execution and delivery of this Agreement or the Escrow Agreement or the consummation of the Merger or any other transactions contemplated hereby or thereby, except for (i) the filing of the Certificate of Merger, (ii) filings required under, and compliance with any other applicable requirements of, the HSR Act and any applicable foreign Antitrust Laws, and (iii) such other consents, authorizations, filings, approvals, notices and registrations which, if not obtained or made, would not prevent, materially alter or materially delay the consummation of the Merger or any of the other transactions contemplated by this Agreement.

4.5 Funds . On the Closing Date, Parent will have sufficient funds to pay the aggregate Merger Consideration payable in respect of shares of Company Capital Stock in the Merger pursuant to this Agreement.

ARTICLE 5
CONDUCT PRIOR TO THE EFFECTIVE TIME

During the time period from the date hereof until the earlier to occur of (i) the Effective Time or (ii) the valid termination of this Agreement in accordance with the provisions of Section 9.1 , the Company covenants and agrees with Parent as follows:

5.1 Conduct of Business of the Company .

(a) Except as expressly contemplated by this Agreement, as set forth in Schedule 5.1(a) of the Disclosure Schedule, or as Parent shall otherwise consent in writing, the Company shall operate its business in the usual, regular and ordinary course in substantially the same manner as heretofore conducted, pay its debts and Taxes when due, pay or perform its other

obligations when due (subject to the right of Parent to review and approve any Tax Returns in accordance with this Agreement), and, to the extent not inconsistent with such business, use reasonable best efforts to preserve intact its present business organizations, keep available the services of its present officers and key employees and preserve its relationships with its customers, suppliers, distributors, licensors, licensees, and others having business dealings with it.

(b) Except as expressly contemplated by this Agreement, as set forth in Schedule 5.1(b) of the Disclosure Schedule, or as Parent shall otherwise consent in writing, the Company shall not (and shall cause its Subsidiaries not to):

(i) declare, set aside or pay any dividends on, or make any other distributions (whether in cash, stock or property) in respect of any Company Capital Stock, or split, combine or reclassify any Company Capital Stock, or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for shares of Company Capital Stock;

(ii) repurchase, redeem or otherwise acquire, directly or indirectly, any shares of Company Capital Stock (or options, warrants or other rights exercisable therefor) other than pursuant to the terms of any Stock Restriction Agreement;

(iii) issue, grant, deliver or sell any shares of Company Capital Stock or any securities convertible into, or subscriptions, rights, warrants or options to acquire, or other agreements or commitments of any kind or character obligating it to issue, grant, deliver or sell any such shares or other convertible securities convertible into Company Capital Stock, in each case other than the issuance of shares of Company Common Stock pursuant to the exercise of Company Options or the conversion of shares of Company Preferred Stock or the issuance of shares of Company Capital Stock upon the exercise of Company Warrants outstanding as of the date of this Agreement;

(iv) cause or permit any amendments to its Charter, Bylaws or other equivalent organizational documents;

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

(vi) other than in the ordinary course of business consistent with past practice, sell, lease, license or otherwise dispose of any of its properties or assets, including the sale of any accounts receivable of the Company or grant or otherwise create or consent to the creation of any easement, covenant, restriction, assessment or charge affecting any owned property or leased property or any part thereof;

(vii) convey, assign, sublease, license or otherwise transfer all or any portion of any owned property or leased property or any interest or rights therein;

(viii) adopt a plan of complete or partial liquidation, dissolution, restructuring, recapitalization or other reorganization;

(ix) pay any Indebtedness (other than (A) as expressly required by and in compliance with the required payment terms thereof and (B) the payment of trade debt in the ordinary course of business);

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

(xi) make any expenditure or enter into any commitment or transaction exceeding $100,000 (other than the payment of rent, payroll or payments pursuant to scheduled debt payments, payments for capital assets for which purchase orders have been issued prior to the date hereof and interest obligations on Company Debt in the ordinary course of business and consistent with past practice);

(xii) (A) sell, license or transfer to any Person any rights to any Company Intellectual Property or enter into any agreement with respect to any Company Intellectual Property with any Person or with respect to any Intellectual Property of any Person (except for license agreements with customers in the ordinary course of business and consistent with past practice), (B) buy or license any Intellectual Property or enter into any agreement with respect to the Intellectual Property of any Person, (C) enter into any agreement with respect to the development of any Intellectual Property with a third party, (D) or change pricing or royalties charged by the Company to its customers or licensees under existing Contracts, or the pricing or royalties set or charged by Persons who have licensed Intellectual Property to the Company, in either case, where such changes would survive the Closing;

(xiii) terminate or extend, or materially amend, waive, modify, or violate the terms of, any Contract disclosed on the Disclosure Schedule (or agree to do so), or enter into any Contract that would have been required to have been disclosed in Schedule 3.12(c) , Schedule 3.13(i) or Schedule 3.14(a) of the Disclosure Schedule had such Contract been entered into prior to the date hereof (except for renewal or extension of agreements with customers in the ordinary course of business and consistent with past practice);

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

(xv) enter into or materially amend, waive or modify the terms of any Contract pursuant to which any other party is granted marketing, distribution, development or similar rights of any type or scope with respect to any Company Product or Technology of the Company or its Subsidiaries;

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

(xvii) grant any loans to others (other than advances to employees for travel and business expenses in the ordinary course of business consistent with past practice) or purchase debt securities of others or amend the terms of any outstanding loan agreement;

(xviii) revalue any of its assets (whether tangible or intangible), including writing off notes or accounts receivable, settle, discount or compromise any accounts receivable, or reverse any reserves other than in the ordinary course of business and consistent with past practice;

(xix) pay, discharge or satisfy, in an amount in excess of $50,000 in the aggregate, any claim, liability, loan or obligation (absolute, accrued, asserted or unasserted, contingent or otherwise), other than the payment, discharge or satisfaction in the ordinary course of business of liabilities reflected or reserved against in the Balance Sheet;

(xx) make or change any material Tax election, adopt or change any Tax accounting method, enter into any closing agreement in respect of Taxes, settle any claim or assessment relating to Taxes, consent to any extension or waiver of the limitation period applicable to any claim or assessment relating to Taxes, or file or amend any income or other material Tax Return unless such Tax Return or amended Tax Return has been provided to Parent for review within a reasonable period prior to the due date for filing and Parent has consented to such filing, which consent shall not be unreasonably withheld;

(xxi) enter into or amend any licensing, distribution, joint venture, strategic alliance or joint marketing or any similar arrangement or agreement;

(xxii) change its accounting policies or procedures, including with respect to reserves for doubtful accounts, or payment or collection policies or practices;

(xxiii) engage in any purchase or sale of any interest in real property, grant any Security Interest in any real property, agree to lease, sublease, license or otherwise occupy any real property, or alter, amend, modify, violate or terminate any of the terms of any Real Property Lease; *provided , however ,* that notwithstanding the foregoing, the Company may terminate that certain Virtual Office Agreement between Abbey Business Centres Limited and the Company's United Kingdom Subsidiary dated July 6, 2009 on the terms specified in that certain termination letter submitted to Abbey Business Centres Limited by the Company, dated December 16, 2010 without Parent's consent;

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

(xxv) grant any severance or termination pay (in cash or otherwise) to any Employee, including any officer, except payments made pursuant to standard written agreements outstanding on the date hereof and disclosed in the Disclosure Schedule;

(xxvi) adopt or amend any Company Employee Plan, enter into any Employee Agreement, pay or agree to pay any special bonus or special remuneration to any director or Employee, or increase or agree to increase the salaries, wage rates, or other compensation or benefits of any Employee, except payments made pursuant to written agreements outstanding on the date hereof and disclosed in the Disclosure Schedule;

(xxvii) except as provided in Section 2.7(c)(ii)(B)(1) , accelerate the vesting or exercisability of any Company Options or Unvested Company Capital Stock;

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

(xxix) take, or agree in writing or otherwise to take, or propose to take, any of the actions described in Section 5.1(b)(i) through Section 5.1(b)(xxviii) , inclusive, or any other action that would (A) cause or result in any of the representations and warranties of the Company set forth herein to be untrue or incorrect, (B) prevent or materially hinder the Company from performing its covenants hereunder or consummating the Merger or any other transaction contemplated hereby, or (C) delay the consummation of the Merger or any other transaction contemplated hereby.

(c) If the Company (including any of its Subsidiaries) desires to take or not take any action that would require the written consent of Parent pursuant to Sections 5.1(a) or 5.1(b) , prior to taking or not taking such action, the Company may request such written consent by sending an email or fax to each of the individuals set forth in Schedule 5.1(c) , and the Company may not take or refrain from taking such action until such consent in writing (which may be by email or fax) has been received from one of the individuals in Schedule 5.1(c) .

(d) Parent acknowledges and agrees that: (i) nothing contained in this Agreement shall give Parent, directly or indirectly, the right to control or direct the Company's or its Subsidiaries' operations prior to the Effective Time, (ii) prior to the Effective Time, the Company shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over its and its Subsidiaries' respective operations, and (iii) notwithstanding anything to the contrary set forth in this Agreement, no consent of Parent shall be required with respect to any matter set forth in Section 5.1 or elsewhere in this Agreement to the extent that the requirement of such consent would, upon advice of the Company's counsel, violate any applicable law.

5.2 No Solicitation .

(a) The Company will immediately cease and cause to be terminated any and all existing activities, discussions or negotiations with any Persons conducted prior to or on the date of this Agreement with respect to any Acquisition Proposal. For all purposes of and under this Agreement, the term " Acquisition Proposal " shall mean any inquiry, offer, proposal or indication of interest (other than this Agreement or any other inquiry, offer, proposal or indication of interest by Parent), or any public announcement of intention to make any inquiry, offer, proposal or indication of interest (including any request for information from the Company or the Company Representatives), contemplating, relating to or otherwise involving in any way (i) any acquisition of the Company or any of its Subsidiaries or controlled Affiliates, whether effected pursuant to a tender or exchange offer, purchase of stock or assets, merger, consolidation or other form of transaction; (ii) any merger, consolidation or other similar transaction with or involving the Company or any of its Subsidiaries or controlled Affiliates as a result of which the Company Stockholders, as a group, immediately prior to such transaction would own less than 80% of the voting equity interests in the surviving or resulting entity of such transaction immediately after the consummation thereof; (iii) any sale by the Company of any stock or assets of the Company or any of its subsidiaries or controlled Affiliates (other than the issuance of shares of Company Capital Stock in connection with the exercise or conversion of convertible securities outstanding as of the date hereof or the sale of assets in the ordinary course of business consistent with past practice); or (iv) any joint venture or other strategic investment in or involving the Company or any of its Subsidiaries or controlled Affiliates.

(b) Neither the Company nor any of its Subsidiaries will, nor will any of them authorize or permit any of their respective directors, officers, employees, Affiliates, or any investment banker, attorney or other advisor or representative retained by any of them (all of the foregoing collectively being the " Company Representatives ") to, directly or indirectly, (i) solicit, initiate, seek, knowingly encourage, or induce (or assist in or cooperate with any Person in) the making, submission or announcement of any inquiry, offer, proposal or indication of interest that constitutes, or would reasonably be expected to lead to, an Acquisition Proposal, (ii) enter into, participate in, maintain or continue any discussions, communications or negotiations regarding any inquiry, offer, proposal or indication of interest that constitutes, or would reasonably be expected to lead to, an Acquisition Proposal, or otherwise take any action to facilitate or support any inquiry, offer, proposal or indication of interest that constitutes, or would reasonably be expected to lead to,

an Acquisition Proposal, (iii) agree to, accept, approve, endorse or recommend (or publicly propose or announce any intention or desire to agree to, accept, approve, endorse or recommend) inquiry, offer, proposal or indication of interest that constitutes, or would reasonably be expected to lead to, any Acquisition Proposal, (iv) enter into any letter of intent, binding or nonbinding term sheet or any other Contract contemplating or otherwise relating to any Acquisition Proposal, (v) submit any Acquisition Proposal to the vote of any holders of Company Capital Stock, (vi) consummate or otherwise effect a transaction providing for any transaction contemplated by an Acquisition Proposal, or (vii) disclose or make available any information not customarily disclosed to any Person concerning the Company's businesses, properties, assets or technologies, or afford to any Person access to its properties, technologies, books or records.

(c) The Company shall immediately notify Parent orally and in writing after receipt by the Company and/or any Company Representatives of (i) any Acquisition Proposal, (ii) any inquiry, proposal, offer or indication of interest that constitutes, or would reasonably be expected to lead to, an Acquisition Proposal, (iii) any other notice that any Person is considering making an Acquisition Proposal, or (iv) any request for information by any Person or Persons (other than Parent) not customarily disclosed to any Person concerning the Company's businesses, properties, assets or technologies. Such notice shall, to the extent permitted under existing non-disclosure agreements (it being understood that the Company shall use its commercially reasonable efforts to cause the counterparty to such non-disclosure agreement to waive compliance therewith in respect of the Company's obligations pursuant to this Section 5.2(c)), describe (A) the terms and conditions of such Acquisition Proposal, inquiry, proposal, offer or indication of interest notice or request, and (B) the identity of the Person or Group (as defined in Section 13(d) of the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder) making any such Acquisition Proposal, inquiry, proposal, offer, or indication of interest notice or request. The Company shall keep Parent fully informed of the status and details of, and any modification to, any such Acquisition Proposal, inquiry, proposal, offer or indication of interest notice or request and any correspondence or communications related thereto and shall provide to Parent a true, complete and correct copy of such Acquisition Proposal, inquiry, proposal, offer or indication of interest notice or request and any amendments, correspondence and communications related thereto, if it is in writing, or a reasonable written summary thereof, if it is not in writing. The Company shall provide Parent with 72 hours prior notice (or such lesser prior notice as is provided to the members of the Board of Directors of the Company) of any meeting of the Board of Directors of the Company at which the Board of Directors of the Company is reasonably expected to discuss any Acquisition Proposal.

(d) The Company shall be deemed to have breached the terms of this Section 5.2 if any Company Representatives shall take any action, whether in his or her capacity as such or in any other capacity, that is prohibited by this Section 5.2 . The parties hereto agree that irreparable damage would occur in the event that the provisions of this Section 5.2 were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed by the parties hereto that Parent shall be entitled to an injunction or injunctions (without proof of damages) to prevent breaches or threatened breaches of the provisions of this Section 5.2 and to enforce specifically the terms and provisions hereof, this being in addition to any other remedy to which Parent may be entitled at law or in equity and the parties hereby agree to waive any requirements for posting a bond in connection with any such action.

ARTICLE 6
ADDITIONAL AGREEMENTS

6.1 Solicitation of Requisite Stockholder Approval; Joinder Agreements .

(a) As soon as practicable following the execution and delivery of this Agreement, the Company shall take all action necessary in accordance with this Agreement, Delaware Law, and the Company Organizational Documents to solicit a Stockholder Written Consent from each Company Stockholder. Promptly following the Company's receipt of the Requisite Stockholder Approval, but in no event later than five (5) Business Days after Parent has approved such materials pursuant to this Section 6.1 , the Company shall deliver to any Company Stockholder who has not executed a Stockholder Written Consent a notice of approval of the Merger and the adoption of this Agreement by written consent of the Company Stockholders pursuant to the applicable provisions of the DGCL and the Company Organizational Documents, which notice shall constitute the notice to Company Stockholders required by Delaware Law that appraisal rights may be available to Company Stockholders in accordance with the DGCL.

(b) Any materials to be submitted to the Company Stockholders in connection with the Company's solicitation of the Company Stockholders described above or notices with respect to appraisal rights (the " Soliciting Materials ") shall be subject to review and approval by Parent and shall include information regarding the Company, the terms of the Merger, this Agreement and the unanimous recommendation of the Board of Directors of the Company in favor of the adoption of this Agreement and approval of the Merger and the other transactions contemplated hereby. All Soliciting Materials shall include the unanimous recommendation of the Board of Directors of the Company that all Company Stockholders consent to the adoption of this Agreement and approve the Merger and the other transactions contemplated hereby. Neither the Board of Directors of the Company nor any committee thereof shall withhold, withdraw, amend or modify, or propose to withhold, withdraw, amend or modify, such unanimous recommendation at any time for any reason. The Company shall promptly advise Parent in writing if at any time prior to the Closing the Company shall become aware of any facts that might make it necessary or appropriate to amend or supplement the Soliciting Materials in order to make the statements contained or incorporated by reference therein not misleading or to comply with applicable Law. Anything to the contrary contained herein notwithstanding, the Company shall not include in the Soliciting Materials any information with respect to Parent or its Affiliates which has not been consented to in writing by Parent prior to such inclusion except as required pursuant to applicable Law.

(c) As soon as practicable following the execution and delivery of this Agreement, the Company shall distribute a Joinder Agreement to each Company Securityholder, request that each such Company Securityholder execute a Joinder Agreement on or prior to the Closing Date and use commercially reasonable efforts to obtain an executed Joinder Agreement from each such Company Securityholder on or prior to the Closing Date (it being understood and hereby agreed that the Company need not pay any amounts to any such Company Securityholder to obtain any such Joinder Agreement).

6.2 Solicitation of 280G Approval .

(a) Promptly following the execution of this Agreement, but in no event later than three Business Days after the date Parent has approved such materials pursuant to Section 6.1 , the Company shall obtain from each Person, if any, who might receive any payments and/or benefits subject to an excise tax under Section 280G of the Code in connection with the

consummation of the Merger (a " Potential 280G Benefit ") a duly executed waiver with respect to any payments and/or benefits, if any, that Parent determines may separately or in the aggregate constitute "parachute payments" (within the meaning of Section 280G of the Code and the regulations promulgated thereunder) in the form to be agreed to by Parent and the Company (each, a " 280G Waiver "), and (ii) submit to the Company Stockholders for approval (in a manner satisfactory to Parent) by such number of Company Stockholders as is required by the terms of Section 280G(b)(5)(B) of the Code, any payments and/or benefits, if any, that Parent and Company together have determined may separately or in the aggregate, constitute "parachute payments" (within the meaning of Section 280G of the Code and the regulations promulgated thereunder), such that such payments and benefits shall not be deemed to be "parachute payments" under Section 280G of the Code, and, if applicable, prior to the Effective Time the Company shall deliver to Parent evidence satisfactory to Parent (x) that a vote of the Company Stockholders was solicited in conformance with Section 280G and the regulations promulgated thereunder, and, if applicable, the requisite Company Stockholder approval was obtained with respect to any payments and/or benefits that were subject to the Company Stockholder vote (the " 280G Approval "), or (y) that the 280G Approval was not obtained and as a consequence that such "parachute payments" shall not be made or provided, pursuant to the applicable 280G Waiver which were executed by the affected individuals on the date of this Agreement.

(b) Any materials to be submitted to the Company Stockholders in connection with the Company's solicitation of the 280G Approval (the " 280G Soliciting Materials ") shall be subject to review and approval by Parent. The Company will promptly advise Parent in writing if at any time prior to the Closing the Company shall become aware of any facts that might make it necessary or appropriate to amend or supplement the 280G Soliciting Materials in order to make the statements contained or incorporated by reference therein not misleading or to comply with applicable Law. Anything to the contrary contained herein notwithstanding, the Company shall not include in the 280G Soliciting Materials any information with respect to Parent or its Affiliates or associates, the form and content of which shall not have been consented to in writing or electronically by Parent or its legal counsel prior to such inclusion, except as required pursuant to applicable Law.

6.3 Reasonable Best Efforts to Complete; Third Party Consents .

(a) Subject to the terms and conditions set forth in this Agreement, each of Parent, Merger Sub and the Company shall use its reasonable best efforts to take promptly, or cause to be taken promptly, all actions, and to do promptly, or cause to be done promptly, all things necessary, proper or advisable under applicable laws and regulations to satisfy the conditions set forth in ARTICLE 7 and to remove any injunctions or other impediments or delays, legal or otherwise, in order to consummate and make effective the transactions contemplated by this Agreement for the purpose of securing to the parties hereto the benefits contemplated by this Agreement.

(b) In furtherance and not in limitation of Section 6.3(a) , the Company shall use its (i) reasonable best efforts to obtain all necessary consents, waivers and approvals of any parties to the Contracts set forth in Schedule 7.2(o)(i) , Schedule 7.2(o)(ii) , Schedule 7.2(o)(iii) and Schedule 7.2(o)(iv) 6.3(b) and (ii) commercially reasonable efforts to obtain all other necessary consents, waivers and approvals of any parties to any other Contracts to which the Company is a party that are required in connection with the transactions contemplated by this Agreement in order to ensure that all such Contracts remain in full force and effect from and after the Effective Time in accordance with their respective terms and to preserve all rights of, and benefits to, Parent and the Surviving Corporation under such Contracts from and after the Effective Time. All such consents,

waivers and approvals shall be in a form and substance reasonably acceptable to Parent. In the event that the other parties to any such Contract, including any lessor or licensor of any Real Property Leases, conditions its grant of a consent, waiver or approval (including by threatening to exercise a "recapture" or other termination right) upon, or otherwise require in response to a notice or consent request relating to this Agreement, the payment of a consent fee, "profit sharing" payment or other consideration, including increased rent payments or other payments under the Contract or the provision of additional security (including a guaranty), the Company shall not make or commit to make any such payment or provide any such consideration without Parent's prior written consent; *provided , however* , that the failure of Parent to provide such consent within a reasonable period after the Company's request therefor shall be deemed a waiver of the requirement to obtain such consent otherwise required pursuant to this Section 6.3(b) .

6.4 Regulatory Approvals .

(a) In furtherance and not in limitation of the terms of Section 6.3 , each of the Company, any of its Subsidiaries and Parent shall promptly execute and file, or join in the execution and filing of, any application, notification or other document that may be necessary in order to obtain the authorization, approval or consent of any Governmental Authority, whether federal, state, local or foreign, that may be reasonably required, or that Parent may reasonably request, in connection with the consummation of the transactions contemplated hereby. Each of the Company and Parent shall use its reasonable best efforts to obtain all such authorizations, approvals and consents. To the extent permitted by applicable Law, each of the Company and Parent shall promptly inform the other of any material communication between the Company or Parent (as applicable) and any Governmental Authority regarding the transactions contemplated hereby. If the Company or Parent or any Affiliate thereof shall receive any formal or informal request for supplemental information or documentary material from any Governmental Authority with respect to the transactions contemplated hereby, then the Company or Parent (as applicable) shall make, or cause to be made, as soon as reasonably practicable, a response in compliance with such request; *provided , however* , that the Company or Parent (as applicable) shall provide the other with a reasonable opportunity to review such response prior to submission. Each of the Company and Parent shall direct, in its sole discretion, the making of such response, but shall consider in good faith the views of the other.

(b) Without limiting the generality or effect of Section 6.4(a) , each of the Company and Parent shall, as soon as practicable, make any initial filings required under the HSR Act and any other Antitrust Laws in connection with the Merger and the other transactions contemplated by this Agreement. To the extent permitted by applicable Law, the parties hereto shall consult and cooperate with one another, and consider in good faith the views of one another, in connection with any analyses, appearances, presentations, memoranda, briefs, arguments, opinions and proposals made or submitted by or on behalf of any party hereto in connection with proceedings under or relating to any Antitrust Laws. Each of the Company and Parent shall use its reasonable best efforts to take such actions as may be required to cause the expiration of the notice periods under any applicable Antitrust Laws with respect to the transactions contemplated by this Agreement as promptly as possible after the execution of this Agreement.

(c) Notwithstanding the foregoing or anything to the contrary set forth in this Agreement, it is expressly understood and agreed that (x) neither Parent nor the Company shall have any obligation to litigate any administrative or judicial action or proceeding that may be brought in connection with the transactions contemplated by this Agreement, and (y) Parent shall not be required to (i) agree to any license, sale or other disposition or holding separate (through the establishment of a trust or otherwise), of shares of capital stock or of any business, assets or

property of Parent, or of the Company or its Affiliates, or the imposition of any limitation on the ability of any of them to conduct their businesses or to own or exercise control of such assets, properties and stock, or (ii) take any action under Section 6.3 , this Section 6.4 or any other provision of this Agreement if any Governmental Authority that has the authority to enforce any Antitrust Law seeks, or authorizes its staff to seek, a preliminary injunction or restraining order to enjoin consummation of any transaction contemplated by this Agreement.

6.5 Notification of Certain Matters .

(a) The Company shall give prompt notice to Parent of (i) the occurrence or non-occurrence of any event that would reasonably be expected to cause any representation or warranty of the Company set forth in this Agreement to be untrue or inaccurate at or prior to the Effective Time, and (ii) any failure of the Company to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder, in either case, such that the conditions set forth in Sections 7.2(a) or 7.2(b) would not be satisfied.

(b) Parent shall give prompt notice to the Company of (i) the occurrence or non-occurrence of any event that would cause any representation or warranty of Parent or Merger Sub set forth in this Agreement to be untrue or inaccurate at or prior to the Effective Time, and (ii) any failure of Parent or Merger Sub to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder, in either case, such that the conditions set forth in Sections 7.3(a) or 7.3(b) would not be satisfied.

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

6.6 Access to Information . During the period from the date hereof and prior to the earlier of the Effective Time or the termination of this Agreement, except as otherwise prohibited by applicable Law (it being understood and agreed that the parties shall use their reasonable best efforts to cause any information that is withheld pursuant to applicable Law to be provided or made available in a manner that is not prohibited by applicable Law), the Company shall afford Parent and its accountants, counsel and other representatives, reasonable access during the Company's normal business hours to (i) all of the Company's assets, properties, books, Contracts, commitments and records, (ii) all other information concerning the business, properties and employees (subject to restrictions imposed by applicable Law) of the Company as Parent may reasonably request, including the Company's source code, and (iii) all employees of the Company as identified by Parent. The Company shall provide to Parent and its accountants, counsel and other representatives copies of internal financial statements (including Tax Returns and supporting documentation) promptly upon request. The Company shall provide access to and facilitate meetings with the customers of the Company identified by Parent and shall full give Parent access to the Company's technical information, including the ability to conduct a thorough architectural review of the Company's current code base and any planned future releases.

6.7 Confidentiality .

(a) The parties acknowledge and agree that the existence of this Agreement, the Disclosure Schedule, the Escrow Agreement and the documents and instruments contemplated hereby and thereby, the terms and conditions hereof and thereof, and the transactions contemplated hereby and thereby, shall constitute "Confidential Information" under and within the meaning of the Non-Disclosure Agreement, dated as of July 19, 2009, as amended as of August 25, 2010 and as further amended as of December 23, 2010, by and between the Company and Parent (the " Non-Disclosure Agreement ").

(b) Unless otherwise required by applicable Law, the Representative agrees that it (and its legal, financial, accounting and other representatives) shall hold in confidence all non-public information regarding Parent, Merger Sub, the Company, any Company Securityholders, this Agreement and the transactions contemplated hereby in accordance with the terms of the Non-Disclosure Agreement as if the Representative were a party thereto. Notwithstanding the terms of the Non-Disclosure Agreement, the Representative may share information with the Indemnifying Parties following the Effective Time in connection with its role as the Representative, so long as each such Indemnifying Party is obligated to keep such information confidential.

6.8 Public Announcements . Neither the Company nor the Company Stockholders shall (nor will they permit, as applicable, any of their respective officers, directors, partners, members, stockholders, agents, representatives or Affiliates to), directly or indirectly, issue any statement or communication to any third party (other than its agents that are bound by confidentiality restrictions and other than communications with Company Stockholders and third parties to obtain the consents and approvals required under this Agreement and applicable Law) regarding the subject matter of this Agreement or the transactions contemplated hereby, including, if applicable, the termination of this Agreement and the reasons therefor or any disputes or arbitration proceedings, without the prior written consent of Parent. Notwithstanding anything herein to the contrary in this Section 6.8 or Section 6.7(b) , following the Closing the Representative shall be permitted to publicly announce that it has been engaged to serve as the Representative in connection with the Merger as long as such announcement does not disclose any of the other terms of the Merger or the other transactions contemplated herein. Prior to the Closing, Parent shall not issue any statement or communication to any third party (other than its agents that are bound by confidentiality restrictions) regarding the subject matter of this Agreement or the transactions contemplated hereby, including, if applicable, the termination of this Agreement and the reasons therefor or any disputes or arbitration proceedings, without the prior written consent of the Company, except that this restriction shall be subject to Parent's obligation to comply with applicable securities laws and the rules of the New York Stock Exchange. Notwithstanding the foregoing, this Section 6.7 shall not prevent Parent from issuing any statement or communication that is reasonably necessary in response to an inquiry by or a public statement or announcement made by any third party with respect to the transactions contemplated by this Agreement.

6.9 Payment Spreadsheet .

(a) At least 10 Business Days prior to the scheduled Closing Date, the Company shall prepare a draft payment spreadsheet in a form reasonably acceptable to Parent and the Paying Agent (the " Payment Spreadsheet "), which shall set forth the following information as of the Closing:

(i) The calculation of "Merger Consideration", including a separate line item for each adjustment thereto in accordance with the definition of "Merger Consideration" hereunder;

(ii) A calculation of the "Per Share Merger Consideration" in accordance with the definition of "Per Share Merger Consideration" hereunder;

(iii) A calculation of the "Escrow Percentage" and "Unvested Escrow Adjustment;"

(iv) With respect to each Company Stockholder other than Company Stockholders who hold Unvested Company Capital Stock only, (1) such Person's address, (2) the number, class and series of Company Capital Stock (other than shares of Unvested Company Capital Stock) held by such Person, (3) the respective certificate number(s) representing such shares, (4) if acquired on or after January 1, 2011, the respective date(s) of acquisition of such shares and such Person's basis in such shares, (5) the portion of the Closing Payment Fund to be paid to such Company Stockholder at the Closing in respect of such shares, (6) such Company Stockholder's Pro Rata Share of the Vested Escrow Amount expressed as a percentage and a Dollar amount, (7) such Company Stockholder's Pro Rata Share of the Representative Expense Amount expressed as a percentage and a Dollar amount, (8) the identification of any shares that were eligible for an election under Section 83(b) of the Code, including the date of issuance of such shares, and, to the Knowledge of the Company, whether such election under Section 83(b) of the Code was timely made, (9) the identification of any shares that were purchased upon exercise of an incentive stock option that was exercised within twelve months prior to the Effective Time and the ordinary income recapture amounts required to be reported to any Taxing Authority in connection therewith, and (10) such other relevant information that Parent or the Paying Agent may reasonably request;

(v) With respect to each holder of Unvested Company Capital Stock, (1) such Person's address, (2) the number of shares of Unvested Company Capital Stock held by such Person, (3) the respective certificate number(s) representing such shares, (4) if acquired on or after January 1, 2011, the respective date(s) of acquisition of such shares and such Person's basis in such shares, (5) the vesting arrangement(s) with respect to such shares, (6) the identification of any shares eligible for an election under Section 83(b) of the Code, including the date of issuance of such shares, and, to the Knowledge of the Company, whether such election under Section 83(b) of the Code was timely made, (7) with respect to such shares held by Continuing Employees, the amount of cash to be retained and placed into the Continuing Employee Pool (including such Person's Unvested Escrow Amount, a listing of the number of such shares that will vest each month following the Closing Date, the day of the month on which such vesting will occur and the payments owed to such holder in each quarter following the Closing Date (assuming, in each case, that all other vesting obligations are otherwise satisfied)), (8) such Person's Pro Rata Share of the Unvested Escrow Amount expressed as a percentage and a Dollar amount, (9) such Person's Pro Rata Share of the Representative Expense Amount expressed as a percentage and a Dollar amount, and (10) such other relevant information that Parent or the Paying Agent may reasonably request;

(vi) With respect to each holder of a Company Option, (1) such Person's address, (2) the number of shares of Company Capital Stock underlying each Company Option held by such Person, (3) the respective exercise price per share of such Company Option, (4) the respective grant date(s) of such Company Option, (5) the respective vesting arrangement(s) with respect to any Unvested Company Options, (6) whether the holder of such Company Option is a Continuing Employee, (7) whether such Company Option is an incentive stock option or a

non-qualified stock option, (8) in the case of Vested Company Options, the portion of the Closing Payment Fund to be paid to the holder at Closing, and in the case of Unvested Company Options held by Continuing Employees, the amount of cash to be retained and placed into the Continuing Employee Pool (including such Person's Unvested Escrow Amount, a listing of the number of shares that will vest each month following the Closing Date, the day of the month on which such vesting will occur and the payments owed to such holder in each quarter following the Closing Date (assuming, in each case, that all other vesting obligations are otherwise satisfied)), (9) such Person's Pro Rata Share of the Vested Escrow Amount expressed as a percentage and a Dollar amount, (10) such Person's Pro Rata Share of the Representative Expense Amount expressed as a percentage and a Dollar amount, and (11) such other relevant information that Parent or the Paying Agent may reasonably request;

(vii) With respect to the holder of the Company Warrants that will be cashed out in connection with the Closing, (1) such Person's address, (2) the number and class and series of shares of Company Capital Stock underlying each Company Warrant held by such Person, (3) the respective exercise price per share of such Company Warrant, (4) the date of issuance of each Company Warrant, (5) such Person's basis (as provided by such Person) in the shares of Company Capital Stock issuable with respect to each such Company Warrant), (6) the portion of the Closing Payment Fund to be paid to the holder at Closing, (7) such Person's Pro Rata Share of the Vested Escrow Amount expressed as a percentage and a Dollar amount, (8) such Person's Pro Rata Share of the Representative Expense Amount expressed as a percentage and a Dollar amount, and (9) such other relevant information that Parent or the Paying Agent may reasonably request; and

(viii) With respect to each Continuing Employee who is a party to a Company Option Commitment Letter, (1) such Person's address, (2) the number of shares of Company Capital Stock underlying each Company Option Commitment held by such Person, (3) the respective deemed exercise price per share of such Company Option Commitment, (4) the respective intended grant date(s) of such Company Option Commitment, (5) the respective vesting arrangement(s) with respect to such Company Option Commitment, (6) the amount of cash to be retained and placed into the Company Option Commitment Pool (including such Person's Unvested Escrow Amount, a listing of the number of shares that will vest each month following the Closing Date, the day of the month on which such vesting will occur and the payments owed to such holder in each quarter following the Closing Date (assuming, in each case, that all other vesting obligations are otherwise satisfied)), (7) such Person's Pro Rata Share of the Unvested Escrow Amount expressed as a percentage and a Dollar amount, (8) such Person's Pro Rata Share of the Representative Expense Amount expressed as a percentage and a Dollar amount, and (9) such other relevant information that Parent or the Paying Agent may reasonably request.

(b) In the event that any information set forth in the Payment Spreadsheet becomes inaccurate at any time prior to the Effective Time, the Company shall deliver a revised Payment Spreadsheet, together with a new certification consistent with Section 6.9(a) , whereupon such revised Payment Spreadsheet shall be deemed to be the "Payment Spreadsheet" for all purposes of and under this Agreement.

(c) The Company acknowledges and agrees that the Paying Agent, Escrow Agent and Parent and its agents shall be entitled to rely on the Payment Spreadsheet for purposes of making any payments hereunder.

(d) At least three Business Days prior to the scheduled Closing Date, the Company shall prepare a final copy of the Payment Spreadsheet, certified as true, complete and correct by the Chief Executive Officer and the Chief Financial Officer of the Company.

6.10 Fees and Expenses . Except as otherwise provided in this Agreement, (i) all fees, costs and expenses of Parent or Merger Sub incurred in connection with this Agreement and the transactions contemplated hereby, including fees and expenses of financial advisors, financial sponsors, legal counsel and other advisors, shall be paid by Parent whether or not the Merger is consummated and (ii) all fees, costs and expenses of the Company, the Representative and the Company Securityholders incurred in connection with this Agreement and the transactions contemplated hereby, including fees and expenses of financial advisors, financial sponsors, legal counsel and other advisors, shall be obligations of the Company Securityholders, which will either be paid by the Company prior to Closing or deducted from the Merger Consideration as set forth in this Agreement. All fees, costs and expenses of the Company identified herein shall be treated as Transaction Expenses under this Agreement, subject to reimbursement by a claim for indemnification pursuant to ARTICLE 8 . Within five Business Days of (but in any event no later than three Business Days prior to) the Closing, the Company shall (x) prepare in good faith and deliver to Parent an estimate (the " Statement of Transaction Expenses ") of all Transaction Expenses, and (y) use its reasonable best efforts to deliver to Parent a final invoice (collectively, the " Final Invoices ") of all outstanding and unpaid fees, costs and expenses from each third party financial advisor, legal counsel, accountant, consultant or other agent or representative engaged by the Company in connection the transactions contemplated hereby.

6.11 Company Director and Officer Indemnification .

(a) The Surviving Corporation shall fulfill and honor in all respects the obligations of the Company pursuant to (i) each indemnification agreement in effect between the Company and each person who is a director or officer of the Company or any of its Subsidiaries as of the date hereof; *provided* , *however* , that such indemnification agreements are set forth in the Disclosure Schedule and made available to Parent prior to the date hereof, and (ii) any indemnification provision under the Charter or Bylaws of the Company or equivalent organizational documents of any of its Subsidiaries as in effect on the date of this Agreement (each of the persons to be indemnified pursuant to the agreements and provisions referred to in clauses (i) and (ii) of this Section 6.11 being referred to herein as a " Company Indemnified Party "). The Charter and Bylaws (or equivalent organizational documents) of the Surviving Corporation and its Subsidiaries shall contain provisions with respect to indemnification and exculpation from liability that are substantially similar to those set forth in the Charter or Bylaws (or equivalent organizational documents) of the Company and its Subsidiaries, respectively, as in effect on the date of this Agreement, which provisions shall not be amended, repealed or otherwise modified for a period of six years after the Effective Time in any manner that would materially and adversely affect the rights thereunder of any Company Indemnified Party.

(b) Prior to the Closing, the Company shall, at its expense and on behalf of the Surviving Corporation, purchase a "tail" prepaid policy of directors' and officers' liability insurance coverage to take effect as of the Effective Time (which policy, for avoidance of doubt, shall be paid prior to the Effective Time and not be an accounts payable of the Company as of the Effective Time). From the Effective Time until the six year anniversary of the Effective Time, Parent shall not, and shall cause the Surviving Corporation not to, terminate such "tail" insurance policy and any other fully paid insurance policies of the Company with respect to directors' and officers' liability insurance in effect as of the Effective Time covering a Company Indemnified Party. For the avoidance of doubt, neither Parent nor the Surviving Corporation shall be obligated

to make any payments in respect of any directors' and officers' liability insurance. Each Company Indemnified Person shall be a third party beneficiary of this Section 6.11 .

6.12 Employees; Change in Control Payments .

(a) The Company shall use its commercially reasonable efforts to cause each of the Employees (excluding the Key Employees) who is offered employment with Parent to become a Continuing Employee, each of whom shall have executed and delivered an employment offer letter and proprietary information and invention assignment agreement, each in a form acceptable to Parent and effective on the Closing Date (collectively, the " Continuing Employee Employment Agreements "). Each Continuing Employee shall be given credit for purposes of Parent's 401(k) plan, medical and dental plan, short-term disability plan, vacation, severance and service recognition awards (other than any awards of Parent's common stock) for the full period of their employment with the Company.

(b) Prior to the Effective Time, the Company shall provide a notice of termination of employment to each of the Non-Continuing Employees, and, unless instructed otherwise by Parent in writing, a notice of termination of the consulting relationship to each of the Company's consultants. The Company shall obtain valid general release of claims and separation agreement, in a form reasonably acceptable to Parent, from each Non-Continuing Employee.

(c) Prior to the Effective Time, the Company shall pay all Change in Control Payments which will become payable at the Effective Time as a result of the Company entering into this Agreement or the consummation of any of the transactions contemplated hereby.

(d) Immediately prior to the Effective Time, the Company shall pay all Employees for any accrued but unused vacation, sick-leave, compensatory or other paid time off such that immediately after the Effective Time, no Employee shall have any amounts outstanding in respect of such paid time off pursuant to any Company Employee Plan or otherwise.

(e) Prior to the Effective Time, the Company shall provide a Company Option Commitment Letter to each Continuing Employee to whom the Company had made a Company Option Commitment and each such Continuing Employee shall have executed a copy of such Company Option Commitment Letter.

6.13 Resignation of Officers and Directors . The Company shall cause each director and officer of the Company to execute a resignation and release letter in the form attached hereto as Exhibit G (the " Director and Officer Resignation and Release Letter "), effective as of the Effective Time.

6.14 Equity Awards .

(a) Unvested Company Options Awards and Unvested Company Capital Stock . Except as required by Section 2.7(c)(ii)(B)(1) , the Company shall not exercise any discretion to accelerate the vesting of any outstanding Unvested Company Option or Unvested Company Capital Stock as a result of the transactions contemplated by this Agreement. Upon the termination of employment, consulting or advisory services of a Non-Continuing Employee, the Company shall, prior to the Effective Time, take all necessary actions to cancel any Unvested Company Capital Stock held by such Non-Continuing Employee; *provided , however* , that the Company shall repurchase, prior to the Effective Time, any Unvested Company Capital Stock held by such Non-Continuing Employee to the extent permitted by the terms and conditions of any applicable restricted stock purchase agreement or other agreement with the Company.

(b) Company Options . Before the Closing Date, the Company shall take all such actions as are necessary (including, to the extent necessary, obtaining written consents or waivers from the holders of Company Options) such that, immediately prior to the Effective Time, each Company Option that is outstanding and unexercised shall be cancelled as of the Effective Time and entitled only to the benefits on and subject to the terms of Section 2.7(c) .

(c) Company Warrants . Before the Closing Date, the Company shall take all actions as are necessary such that, immediately prior to the Effective Time, each Company Warrant has been either (i) exercised by the holder of such Company Warrant in full or (ii) to the extent not exercised in full, terminated or cancelled as of immediately prior to the Closing, either pursuant to its terms or pursuant to an agreement with the holder thereof.

6.15 Continuing Employee Pools . At the Closing, Parent shall adopt the Continuing Employee Unvested Cash Plan and the Company Option Commitment Pool and shall establish and retain such pools for the benefit of the holders of the Company Unvested Options, Unvested Company Capital Stock and Company Option Commitments who are Continuing Employees, which will be governed, as applicable, by the terms and conditions of the Continuing Employee Unvested Cash Plan and the Continuing Employee Unvested Cash Plan Agreement, or the Company Option Commitment Letter. For the avoidance of doubt, participation in either of the Continuing Employee Unvested Cash Plan or the Company Option Commitment Letters shall not alter the "at will" nature of any such Continuing Employee's employment with Parent following the Closing and, subject to any vested and unpaid payments required under the terms of the Continuing Employee Unvested Cash Plan or the Company Option Commitment Letter, as applicable, Parent shall have the right to terminate any such Continuing Employee at any time and for any or no reason. The parties hereto acknowledge and agree that to the extent that any right to receive payments in respect of any Company Unvested Options, Unvested Company Capital Stock and Company Option Commitments is terminated (e.g., as a result of the termination of service) any amounts that remain unpaid at that time shall be forfeited and returned to Parent and shall not be returned to, and will no longer constitute a part of, the respective Employee Pool.

6.16 Closing Date Balance Sheet . The Company shall deliver to Parent (a) not less than five (5) Business Days prior to the Closing Date, an estimated consolidated balance sheet of the Company dated as of the anticipated date of the Closing and prepared in accordance with GAAP applied on a consistent basis throughout the period indicated and consistent with Financial Statements, which balance sheet shall be in a form reasonably satisfactory to Parent (the " Estimated Closing Date Balance Sheet "), and (b) not less than one (1) Business Day prior to the Closing Date, a final consolidated balance sheet of the Company dated as of the Closing and prepared in accordance with GAAP applied on a consistent basis throughout the period indicated and consistent with Financial Statements, which balance sheet shall be in a form reasonably satisfactory to Parent (the " Closing Date Balance Sheet ").

6.17 Code Review . The Company shall undertake and complete the requirements set forth in Schedule 6.17 (the " Code Scrub Requirements ").

6.18 Tax Matters .

(a) Tax Returns Filed Before the Closing Date . The Company will cause to be prepared and timely filed all Tax Returns of the Company or any of its Subsidiaries required to be filed on or after the date of this Agreement and prior to the Closing Date. Such Tax Returns shall be prepared in accordance with applicable Law and in a manner consistent with prior practice (unless otherwise required by applicable Law), shall be provided to Parent for review not later than

15 days prior to the due date for filing, shall be revised to reflect Parent's reasonable comments, and shall not be filed without Parent's approval, which shall not be unreasonably withheld, conditioned or delayed.

(b) Tax Returns Filed On or After the Closing Date . Parent will cause to be prepared and timely filed all Tax Returns of the Company or any of its Subsidiaries required to be filed on or after the Closing Date. With respect to any such Tax Return for any Pre-Closing Tax Period, including any Straddle Period (a " Pre-Closing Tax Return "), if such Pre-Closing Tax Return reflects Taxes for which Parent will seek indemnification pursuant to ARTICLE 8 , then not later than 20 days prior to the due date for the filing of such Pre-Closing Tax Return (or, if such due date is within 45 days following the Closing Date, as promptly as practicable following the Closing Date), Parent shall provide the Representative with a copy of any such Tax Return that reflects only operations and Taxes relating to the Company or any of its Subsidiaries, or a pro forma Tax Return reflecting only such operations and Taxes. Parent shall not be entitled to indemnification for Taxes pursuant to ARTICLE 8 if the Damages stem from (i) taking a position on a Pre-Closing Tax Return that is not consistent with prior practice (unless required by applicable Law) or (ii) making an election made under Section 338(g) of the Code in connection with the Merger. Neither Parent nor the Company shall amend, modify or otherwise change any such Pre-Closing Tax Return after filing without the prior consent of the Representative if such amendment, modification or change could give rise to an indemnification claim for Taxes under ARTICLE 8 , which consent shall not be unreasonably withheld, conditioned or delayed.

(c) Consolidation Matters . The parties hereto acknowledge and agree that a consolidated U.S. federal income Tax Return for the affiliated group (within the meaning of Section 1504 of the Code) that includes Parent, the Company and its Subsidiaries will be filed for periods starting after the Closing Date. The parties hereto acknowledge and agree that, as a consequence of the transactions contemplated hereby, (i) the taxable year of the Company shall close for U.S. federal income tax purposes at the end of the day on the Closing Date, (ii) to the extent that applicable Law in other taxing jurisdictions so permits, the taxable year of the Company shall close for income Tax purposes at the end of the day on the Closing Date, and (iii) all U.S. federal, state, local and non-U.S. income Tax Returns shall be filed consistently on the foregoing basis.

(d) Cooperation; Audits . In connection with the preparation of Tax Returns, audit examinations, and any proceedings relating to the Tax liabilities of the Company or any of its Subsidiaries for which an indemnification claim could be made pursuant to ARTICLE 8 , Parent and the Company, on the one hand, and the Representative and the Company Securityholders, on the other hand, shall cooperate fully with each other, including by furnishing or making available during normal business hours the records, personnel (as reasonably required), books of account, powers of attorney or other materials necessary or helpful for the preparation of such Tax Returns, the conduct of audit examinations or the defense of claims relating to such Taxes.

(e) Termination of Tax Sharing Agreements . Anything in any other agreement to the contrary notwithstanding, the Company and each of its Subsidiaries shall take all action necessary to cease and terminate any Tax allocation, sharing or indemnity agreement or arrangement (other than between the Company and any of its wholly-owned Subsidiaries) effective at the Effective Time, and all obligations thereunder shall terminate and no additional payments shall be made thereunder after the Effective Time, except with respect to any claims in effect as of such termination.

6.19 Further Assurances .

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

(b) In furtherance of the forgoing, prior to the Closing, the Company shall pay the issue fee for U.S. Patent Application No. 12/877,136, including any large issue fees.

ARTICLE 7
CONDITIONS TO THE MERGER

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

(a) Requisite Stockholder Approval . The Company shall have obtained the Requisite Stockholder Approval.

(b) Requisite Governmental Approvals .

(i) Any waiting period applicable to the Merger and the other transactions contemplated by this Agreement under the HSR Act and any other applicable Antitrust Laws shall have expired or been terminated early.

(ii) Parent and the Company shall have obtained all consents and approvals from all Governmental Authorities, and submitted all requisite filings and made all requisite notifications with all Governmental Authorities, in each case that Parent reasonably determines to be necessary or appropriate in order to consummate the Merger and the other transactions contemplated by this Agreement.

(c) No Prohibitive Laws . No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Law which is in effect and which has the effect of making the Merger or any other transaction contemplated by this Agreement illegal or otherwise prohibits or otherwise restrains the consummation of the Merger or any other transaction contemplated by this Agreement.

(d) No Prohibitive Injunctions or Orders . No temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other similar legal restraint shall be in effect that has the effect of making the Merger or any other transaction contemplated by this Agreement illegal or otherwise prohibits or otherwise restrains the consummation of the Merger or any other transaction contemplated by this Agreement.

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

(a) Representations and Warranties .

(i) Each of the representations and warranties of the Company set forth in Section 3.1 (Organization and Good Standing), Section 3.2 (Authority; Enforceability), and Section 3.25 (Anti-Takeover Statute Not Applicable) (together, the " Specified Company

Representations ") (x) shall have been true and correct in all respects as of the date of this Agreement, and (y) shall be true and correct in all respects on and as of the Closing Date with the same force and effect as if made on and as of the Closing Date (other than the representations and warranties set forth in the Specified Company Representations that address matters only as of a specified date, which need be true and correct in all respects only as of such date); and

(ii) Each of the representations and warranties of the Company set forth in this Agreement (other than the Specified Company Representations) and in any certificates or other instruments delivered by the Company hereunder (x) shall have been true and correct in all material respects as of the date of this Agreement, and (y) shall be true and correct in all material respects on and as of the Closing Date with the same force and effect as if made on and as of the Closing Date (other than any such representations and warranties that address matters only as of a specified date, which need be true and correct in all respects only as of such date).

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

(c) No Company Material Adverse Effect . Since the date of this Agreement, there shall not have occurred any Company Material Adverse Effect.

(d) No Legal Proceedings or Threats . There shall be no legal action, suit, claim or proceeding of any kind or nature pending before any Governmental Authority (whether brought by a Governmental Authority) or threatened by any Governmental Authority or any other Person against Parent, Merger Sub, the Company, or any of their respective properties or any of their respective directors or officers (in their capacities as such) that (i) seeks to prohibit the consummation of the Merger or any other transaction contemplated hereby, (ii) seeks to impose limitations on the ability of Parent and Merger Sub to consummate the Merger and the other transactions contemplated by this Agreement, (iii) seeks to prohibit or impose any limitations on the ownership or operation by Parent of all or any portion of businesses or assets of Parent, Merger Sub, the Company or any of their respective Affiliates, or to compel Parent, Merger Sub or the Company to dispose of or hold separate any portion of the businesses or assets of Parent, Merger Sub, the Company or any of their respective Affiliates, or (iv) seeks to impose limitations on the ability of Parent or Merger Sub effectively to exercise full rights of ownership of all Company Capital Stock.

(e) No Burdensome Regulatory Conditions . No Governmental Authority shall have enacted, issued, promulgated, enforced, entered or deemed applicable to the Merger any Law, statute, rule, regulation, executive order or decree (whether temporary, preliminary or permanent) which is in effect and which has the effect of (i) prohibiting Parent's ownership or operation of any portion of the business of the Company or any of its Subsidiaries, or (ii) compelling Parent or the Company to dispose of or hold separate all or any portion of the business or assets of Parent, the Company or any of their respective Subsidiaries, in either case in connection with the Merger or any other transaction contemplated by this Agreement.

(f) New Employment Arrangements .

(i) The Key Employee Employment Agreements executed and delivered on the date of this Agreement by each of the Key Employees listed in Schedule 7.2(f)(i) shall be in full force and effect.

(ii) At least ninety percent (90%) of the Continuing Employees specified in Schedule 7.2(f)(ii) shall have executed a Continuing Employee Employment Agreement and such agreements shall be in full force and effect.

(g) Non-Competition Agreements . The Non-Competition Agreements executed and delivered by each Key Stockholder listed in Schedule 7.2(g) shall be in full force and effect as of the Closing and shall have a term as specified in Schedule 7.2(g) , and no breaches, disputes or informal or formal repudiations by any Key Stockholder of his Non-Competition Agreement shall have occurred or be imminent or explicitly threatened.

(h) Resignation and Release of Directors and Officers . Parent shall have received the Director and Officer Resignation and Release Letter, effective as of the Closing, of each director and officer of the Company.

(i) Conversion of Company Preferred Stock . Parent shall have received evidence, reasonably satisfactory to Parent, that all outstanding shares of Company Preferred Stock shall have been converted into shares of Company Common Stock, effective no later than as of immediately prior to the Effective Time, in accordance with the terms of the Charter as in effect as of the date of this Agreement.

(j) Warrants . Parent shall have received evidence, reasonably satisfactory to Parent, that any and all warrants to purchase shares of Company Capital Stock have been fully exercised, or will be so exercised as of the Effective Time, and shall no longer be outstanding as of the Effective Time.

(k) Dissenting Shares . The Company shall have delivered the Soliciting Materials in accordance with applicable provisions of Delaware Law, and Company Stockholders entitled to receive no more than five percent (5%) of the Merger Consideration otherwise payable to holders of Company Capital Stock by virtue of the Merger pursuant to the terms of this Agreement (solely for purposes of calculating the foregoing percentage under this Section 7.2(k) , disregarding (i) all Dissenting Shares and (ii) all shares of Parent-Owned Company Capital Stock) shall continue to have a right to exercise appraisal or similar rights under Delaware Law with respect to their Company Capital Stock by virtue of the Merger.

(l) Joinder Agreements . Parent shall have received a duly executed Joinder Agreement from Company Securityholders (excluding Parent and its Affiliates) who are entitled to receive in the aggregate no less than ninety percent (90%) of the amounts otherwise payable pursuant to Section 2.7 by virtue of the Merger pursuant to the terms of this Agreement (solely for purposes of calculating the foregoing percentage under this Section 7.2(k) , disregarding (i) all Dissenting Shares, and (ii) and all shares of Parent-Owned Company Capital Stock).

(m) Section 280G Matters . Parent shall have received evidence, reasonably satisfactory to Parent, that the requisite stockholders of the Company (i) have approved by the requisite vote any Potential 280G Benefits or (ii) have voted upon such Potential 280G Benefits and the requisite vote was not obtained with respect to the Potential 280G Benefits and that any “disqualified individual” (as such term is defined in the Treasury Regulations promulgated under Section 280G of the Code) shall forfeit any Potential 280G Benefits pursuant to the terms of the 280G Waivers.

(n) Legal Opinion . Parent shall have received a legal opinion of Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP, counsel to the Company, covering the matters set forth in Exhibit H .

(o) Contracts . At or prior to the Closing, the Company shall have delivered, or caused to be delivered, to Parent evidence (to the reasonably satisfactory to Parent):

(i) that the terms of the Contracts set forth in Schedule 7.2(o)(i) shall have been extended in accordance with the terms set forth in Schedule 7.2(o)(i) ;

(ii) that the Contracts set forth in Schedule 7.2(o)(ii) have been terminated without any further Liabilities or other obligations of the Company or any of its Subsidiaries;

(iii) [intentionally omitted]; and

(iv) that the consent or waiver of all third parties under the Contracts set forth in Schedule 7.2(o)(iv) has been obtained without any conditions thereto or limitations thereon.

(p) Closing Deliveries of the Company . At or prior to the Closing, the Company shall have delivered, or caused to be delivered, to Parent the following:

(i) the Payment Spreadsheet;

(ii) the Statement of Transaction Expenses, the Final Invoices, the Estimated Closing Date Balance Sheet and the Closing Date Balance Sheet;

(iii) a certificate of the Chief Executive Officer of the Company, dated the Closing Date and in form and substance reasonably satisfactory to Parent, certifying as to the matters set forth in Sections 7.2(a) , 7.2(b) and 7.2(c) (the " Company Bring-Down Certificate ");

(iv) a certificate of the Secretary of the Company, dated as of the Closing Date and in form and substance reasonably satisfactory to Parent, certifying (i) the Company Organizational Documents, (ii) the resolutions adopted by the Board of Directors of the Company and stockholders to authorize this Agreement, the Merger and the other transactions contemplated hereby, and (iii) the incumbency and signatures of the officers of the Company executing this Agreement and the other agreements, instruments and other documents executed by or on behalf of the Company pursuant to this Agreement or otherwise in connection with the transactions contemplated hereby copies of which actions shall be attached to such certificate;

(v) evidence reasonably satisfactory to Parent as to the termination of the Company Employee Plans referred to in Schedule 7.2(p)(v) ;

(vi) evidence reasonably satisfactory to Parent as to the payment of all Change in Control Payments which will or may become payable as a result of the Company entering into this Agreement or the consummation of any of the transactions contemplated hereby;

(vii) evidence reasonably satisfactory to Parent of the termination or waiver of any rights of co-sale, voting, registration, first refusal, board observation, information or redemption in favor of any Company Stockholder which by their terms survive the Effective Time,

and the termination of the Contracts providing any such rights, in each case effective as of the Effective Time;

(viii) a certificate from the Secretary of State of the State of Delaware and each other state or other U.S. jurisdiction in which the Company and, if applicable, any Subsidiary thereof is qualified to do business as a foreign corporation (or the closest equivalent thereof in the event that any jurisdiction does not provide such certificates), each dated within three Business Days prior to the Closing Date, certifying that the Company is in duly qualified to transact business and/or is in good standing (as applicable in each such jurisdiction) and that all applicable state franchise taxes or fees of the Company through and including the date of the certificate have been paid;

(ix) FIRPTA documentation, including a notice to the IRS, in accordance with the requirements of Section 1.897-2(h)(2) and Section 1.1445 – 2(c)(3) of the Regulations, in the form attached hereto as Exhibit I , dated as of the Closing Date and executed by the Company, together with written authorization for Parent to deliver such notice form to IRS on behalf of the Company after the Closing;

(x) a payoff letter in respect of any and all Company Debt, in a form satisfactory to Parent (which shall include a statement expressly releasing all Security Interest in any stock or assets of the Company and any of its Subsidiaries upon receipt of the relevant payoff amount set forth therein) executed by the Company and each applicable holder of Company Debt;

(xi) evidence reasonably satisfactory to Parent of the completion of the Code Scrub Requirements; and

(xii) evidence reasonably satisfactory to Parent of the payment of the issue fee for U.S. Patent Application No. 12/877,136, including any large issue fees.

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

(a) Representations and Warranties .

(i) Each of the representations and warranties of Parent and Merger Sub set forth in Section 4.1 (Organization and Good Standing) and Section 4.2 (Authority) (collectively, the " Specified Parent Representations ") (x) shall have been true and correct in all respects as of the date of this Agreement and (y) shall be true and correct in all respects on and as of the Closing Date with the same force and effect as if made on and as of the Closing Date (other than the representations and warranties set forth in the Specified Parent Representations that address matters as of a specified date, which need be true and correct in all respects only as of such date).

(ii) Each of the representations and warranties of Parent and Merger Sub set forth in this Agreement (other than the Specified Parent Representations) (x) shall have been true and correct in all material respects as of the date of this Agreement and (y) shall be true and correct in all material respects on and as of the Closing Date with the same force and effect as if made on and as of the Closing Date (other than any such representations and warranties that address matters as of a specified date, which need be true and correct in all material respects only as of such date).

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

(c) Closing Deliveries of Parent and Merger Sub . At or prior to the Closing, Parent and Merger Sub shall have delivered, or caused to be delivered, to the Company a certificate of a senior executive of Parent and of Merger Sub, dated the Closing Date and in form and substance reasonably satisfactory to the Company, certifying as to the matters set forth in Sections 7.3(a) and 7.3(b) .

ARTICLE 8
SURVIVAL; INDEMNIFICATION; REPRESENTATIVE

8.1 Survival .

(a) If the Merger is consummated, (i) other than as set forth below, the representations and warranties of the Company set forth in this Agreement and in the Company Bring-Down Certificate shall survive the Closing and the Effective Time and shall remain in full force and effect, regardless of any investigation or disclosure made by or on behalf of any of the parties hereto, until 11:59 p.m. (California time) on the date that is the twenty four (24) month anniversary of the Closing Date, (ii) the representations and warranties of the Company set forth in Sections 3.3 (Capitalization) and Section 3.2 (Authority; Enforceability) and the corresponding representations and warranties set forth in the Company Bring-Down Certificate shall survive the Closing and the Effective Time and shall remain in full force and effect until the expiration of the applicable statute of limitations, and (iii) the representations and warranties of the Company set forth in Section 3.10 (Taxes) and the corresponding representations and warranties set forth in the Company Bring-Down Certificate shall survive the Closing and the Effective Time and shall remain in full force and effect until the expiration of the applicable statute of limitations in respect of the Taxes that are the subject of such representations and warranties (the survival periods referred to in the immediately preceding clauses (i), (ii) and (iii) of this Section 8.1(a) being referred to herein as the " Survival Period "), regardless of any investigation or disclosure made by or on behalf of any of the parties hereto (such representations and warranties of the Company described in the immediately preceding clauses (ii) and (iii) of this Section 8.1(a) being referred to herein as the " Special Representations "); *provided , however* , that in the event of any fraud or intentional misrepresentation of or by the Company with respect to any representations or warranties set forth in this Agreement or the Company Bring-Down Certificate, such representations and warranties shall survive the Closing and the Effective Time and shall remain in full force and effect in perpetuity, regardless of any investigation or disclosure made by or on behalf of any of the parties hereto. In the event that any Parent Indemnified Party shall deliver an Officer's Certificate to the Representative duly setting forth a claim for indemnification under this ARTICLE 8 in respect of a breach of a representation or warranty of the Company set forth in this Agreement or the Company Bring-Down Certificate prior to the expiration of the Survival Period (or such longer period applicable to such representation and warranty as set forth above) applicable to the representation or warranty of the Company on which such claim is based, then such representation or warranty shall continue in full force and effect with respect to such claim until the final resolution of such claim. No right to indemnification under this ARTICLE 8 in respect of a breach of a representation or warranty of the Company set forth in this Agreement or the Company Bring-Down Certificate that is set forth in an Officer's Certificate delivered prior to the expiration of the applicable Survival Period (or such longer period applicable to such representation and warranty as set forth above) shall be limited, restricted, impaired or otherwise affected by the expiration of the Survival Period applicable to such representation or warranty, and the expiration

of the Survival Period (or such longer period applicable to such representation and warranty as set forth above) applicable to any representation or warranty of the Company set forth in this Agreement or the Company Bring-Down Certificate shall not limit, restrict, impair or otherwise affect in any manner the rights of any Indemnified Party under this ARTICLE 8 , or otherwise under applicable Law, arising out of fraud or any intentional misrepresentation. Notwithstanding any other provision of this Agreement, it is the intention of the parties hereto that the foregoing Survival Period (or such longer period applicable to such representation and warranty as set forth above) and termination dates supersede any applicable statute of limitations applicable to such representations and warranties.

(b) If the Merger is consummated, the representations and warranties of each of the Company Stockholders set forth in their respective Joinder Agreements or in any certificate or other instrument delivered by any Company Stockholder under or pursuant to this Agreement, a Joinder Agreement or in connection with the Merger or any other transactions contemplated hereby or thereby shall survive the Closing and the Effective Time and shall remain in full force and effect without limitation in accordance with the terms thereof.

(c) If the Merger is consummated, the representations and warranties of Parent and Merger Sub set forth in this Agreement, or in any certificate or other instrument required to be delivered under or pursuant to this Agreement or in connection with the Merger or any other transactions contemplated hereby, shall terminate and expire at and as of the Effective Time and thereafter be of no further force or effect whatsoever.

(d) All of the covenants and other agreements of Parent, Merger Sub, the Company and the Representative set forth in this Agreement (excluding the indemnification obligations set forth in this ARTICLE 8) shall terminate and expire at and as of the Effective Time; *provided , however* , that (i) notwithstanding the foregoing or anything to the contrary set forth in this Agreement, the covenants and other agreements of Parent, the Surviving Corporation, the Company, the Representative set forth in this Agreement or the Company Bring-Down Certificate that contemplate performance following the Closing and the Effective Time shall survive the Closing and the Effective Time and shall remain in full force and effect following the Closing and the Effective Time in accordance with their respective terms; (ii) no right to indemnification under this ARTICLE 8 in respect of a breach of a covenant or other agreement set forth in this Agreement or the Company Bring-Down Certificate which is set forth in an Officer's Certificate delivered to the Representative prior to the expiration of the applicable Survival Period (or such longer period applicable to such covenant or other agreement as set forth above) shall be affected by the expiration of such covenant or other agreement; and (iii) in the event of any fraud or intentional breach of or by the Company with respect to any covenant or other agreement set forth in this Agreement or the Company Bring-Down Certificate, such covenant or other agreement shall survive the Closing and the Effective Time and shall remain in full force and effect in perpetuity, regardless of any investigation or disclosure made by or on behalf of any of the parties hereto.

8.2 Indemnification of Parent Indemnified Parties .

(a) Indemnification . Subject to the limitations set forth in this ARTICLE 8 , from and after the Effective Time, each Company Securityholder (each, an " Indemnifying Party " and, collectively, the " Indemnifying Parties ") shall severally, and not jointly, indemnify and hold harmless Parent and each of its Subsidiaries (including, following the Effective Time, the Surviving Corporation and its Subsidiaries) and their respective directors, officers, employees, Affiliates and other persons who control or are controlled by Parent or any of its Subsidiaries, and their respective agents and other representatives (collectively, the " Parent Indemnified Parties ")

from, against and in respect of any and all Damages directly or indirectly paid, sustained or incurred against by Parent Indemnified Parties (or any of them) directly or indirectly resulting from, arising out of or in connection with, or in any way related to, any of the following:

(i) any failure of any representation or warranty made by the Company in this Agreement or the Company Bring-Down Certificate (as qualified by the Disclosure Schedule), other than the Special Representations, to be true and correct as of the date hereof or as of the Closing Date as if such representation or warranty had been made at and as of the Closing Date;

(ii) any failure of any Special Representations made by the Company in this Agreement or the Company Bring-Down Certificate (as qualified by the Disclosure Schedule) to be true and correct as of the date hereof or as of the Closing Date as if such Special Representation had been made at and as of the Closing Date;

(iii) any breach or non-fulfillment of any covenant or other agreement made or to be performed by the Company in this Agreement or the Company Bring-Down Certificate;

(iv) any inaccuracy in the Payment Spreadsheet;

(v) any and all Company Debt, to the extent that such Company Debt is not included in the calculation of the Merger Consideration at the Closing or exceeds the amount of Company Debt set forth in the Payment Spreadsheet and included in the calculation of the Merger Consideration at the Closing;

(vi) any and all Change in Control Payments, to the extent that such Change in Control Payments are not included in the calculation of Merger Consideration at the Closing or exceeds the amount of Change in Control Payments set forth in the Payment Spreadsheet and included in the calculation of the Merger Consideration at the Closing;

(vii) all Transaction Expenses, to the extent that such Transaction Expenses are not included in the calculation of Merger Consideration at the Closing or exceed the amount of Transaction Expenses set forth in the Payment Spreadsheet and the Statement of Transaction Expenses and included in the calculation of the Merger Consideration at the Closing;

(viii) any Pre-Closing Taxes, except to the extent that any such Taxes were included in the definition of Transaction Expenses as a reduction to the Merger Consideration or otherwise properly accrued or reserved for on the Balance Sheet;

(ix) any amount paid by Parent, the Company or the Surviving Corporation to any Company Stockholder with respect to Dissenting Shares in excess of the value that such Person would have received in the Merger for such Dissenting Shares had such shares been converted pursuant to Section 2.7(b) hereof, and all interest, costs, expenses and fees incurred by Parent, the Company or the Surviving Corporation in connection with the exercise or attempted exercise of any dissenter's rights; and

(x) any fraud, intentional misrepresentation or intentional breach by the Company (or any of its directors, officers, employees, affiliates and other persons who control or are controlled by the Company or any of its Subsidiaries, and their respective agents and other representatives) in connection with this Agreement or the transactions contemplated hereby.

(b) Limitations on Indemnification .

(i) Notwithstanding anything to the contrary set forth in this Agreement, nothing set forth in this ARTICLE 8 or elsewhere in this Agreement shall limit the liability of (A) subject to Section 9.2, the Company for any breach of this Agreement if the Merger is not consummated, or (B) any Indemnifying Party for (1) any Indemnification Claim pursuant to clause (x) of Section 8.2(a) , (2) any claims or causes of action arising out of or relating to the Joinder Agreement entered into with such Indemnifying Party, or (3) for any other claims or causes of action arising out of or relating to fraud, intentional misrepresentation or intentional breach under applicable Law. Provided that it has complied with Section 8.2(b)(ii) , any Parent Indemnified Party shall be entitled to bring claims directly against any Company Securityholder in connection with any claims or causes of action arising out of or relating to the Joinder Agreement of such Company Securityholder and may recover any Damages directly or indirectly paid, sustained or incurred by such Parent Indemnified Party directly from such Company Securityholder in respect thereof.

(ii) Notwithstanding anything to the contrary set forth in this Agreement, if the Merger is consummated, (A) the Escrow Fund shall be the Parent Indemnified Parties' sole and exclusive remedy, security and source of recovery for any Indemnification Claims under and pursuant to clause (i) of Section 8.2(a) , and (B) the Parent Indemnified Parties shall not be entitled to recover any Damages in respect of any Indemnification Claims under or pursuant to clause (i) of Section 8.2(a) , in the aggregate, in excess of the funds held in the Escrow Fund; *provided* , *however* , that notwithstanding the foregoing or anything to the contrary set forth in this Agreement, the preceding restrictions set forth in this Section 8.2(b)(ii) shall not in any way limit or otherwise restrict any right in respect of any Indemnification Claims under or pursuant to clauses (ii) through (x) of Section 8.2(a) , inclusive, or any other claims or causes of action arising out of fraud, intentional misrepresentation or intentional breach under applicable Law.

(iii) Notwithstanding anything to the contrary set forth in this Agreement, if the Merger is consummated, the Parent Indemnified Parties shall not be entitled to recover any Damages from any Indemnifying Party in respect of any Indemnification Claims under or pursuant to clause (ii) through (ix) of Section 8.2(a) , inclusive, in the aggregate, in excess of an amount equal to the Merger Consideration actually received by each Indemnifying Party; *provided* , *however* , that notwithstanding the foregoing or anything to the contrary set forth in this Agreement, the preceding restrictions set forth in this Section 8.2(b)(iii) shall not in any way limit or otherwise restrict any right in respect of any Indemnification Claims against any Indemnifying Party under or pursuant to clause (i) or (x) of Section 8.2(a) , or any other claims or causes of action arising out of fraud, intentional misrepresentation or intentional breach under applicable Law.

(iv) Notwithstanding anything contained herein to the contrary, no Indemnified Party may receive cash from the Escrow Fund in respect of any claim for indemnification that is made pursuant to clause (i) of Section 8.2(a) unless and until an Indemnified Party pays, suffers or accrues Indemnifiable Damages in an aggregate amount greater than One Million Dollars ($1,000,000) (the " Threshold "), in which case the Indemnified Party may make claims for indemnification and may receive cash from the Escrow Fund for all Indemnifiable Damages including the entire amount of the Threshold.

(v) Notwithstanding anything to the contrary set forth in this Agreement, if the Merger is consummated, Parent acknowledges and agrees (on behalf of itself and all Parent Indemnified Parties) that all applicable statutes of limitations or other claims periods

with respect to claims thereunder shall be shortened to the survival and claims periods expressly set forth in Section 8.1 .

(vi) All amounts required to be paid to a Parent Indemnified Party pursuant to the terms of this ARTICLE 8 shall be reduced by any amount actually received by any Indemnified Party under any insurance policies (net of any correspondent premium increase or related cost of obtaining such insurance related payment); *provided* , *however* , that in no event shall a Parent Indemnified Party be required to seek recovery under any insurance policy.

(vii) For the avoidance of doubt, in the event that a particular matter entitles a Parent Indemnified Party to indemnification pursuant to more than one clause of Section 8.2(a) , such Parent Indemnified Party shall be entitled to recover a particular dollar of Damages associated with such matter only once under this ARTICLE 8 .

(viii) In the event that any Parent Indemnified Party is entitled to receive indemnification under this ARTICLE 8 from all Indemnifying Parties, then after the Parent Indemnified Parties have exhausted or made claims upon all assets in the Escrow Fund, each Indemnifying Party shall be severally and not jointly responsible and liable for its Pro Rata Share of the amount of such indemnification obligation, not to exceed the portion of the Merger Consideration actually received by such Company Securityholder; *provided* , *however* , that the foregoing shall not in any way limit or otherwise restrict any right in respect of any claims or causes of action arising out of or relating to fraud, intentional misrepresentation or intentional breach under applicable Law.

(ix) Indemnification claims may be made for Damages arising out of, resulting from or in connection with indemnification claims under or pursuant to clauses (i) and (ii) of Section 8.2(a) may be made at any time prior to the expiration of the Survival Period applicable to the representation or warranty that is the basis for such claim. Indemnification claims may be made for Damages arising out of, resulting from or in connection with indemnification claims under or pursuant to clauses (iii) through (ix), inclusive, of Section 8.2(a) at any time and from time to time prior to the expiration of the statute of limitations under applicable Law.

(c) Indemnification Claims .

(i) If a Parent Indemnified Party is of the opinion that it has or may acquire a right to indemnification under this ARTICLE 8 (each, an " Indemnification Claim "), such Parent Indemnified Party shall so notify the Representative in a written notice, signed by such Parent Indemnified Party, or any officer thereof (each, an " Officer's Certificate ") delivered on or prior to the expiration of the Survival Period (or such longer period applicable to such representation and warranty as set forth above): (i) stating that such Indemnified Party has directly or indirectly paid, sustained or incurred any Damages, or reasonably anticipates that it will directly or indirectly pay, sustain or incur any Damages; (ii) specifying in reasonable detail the individual items of Damages included in the amount so stated (and the method of computation of each such item of Damages, if applicable), the date each such item of Damages was paid, sustained or incurred, or the basis for such reasonably anticipated Damages; (iii) a brief description in reasonable detail (to the extent available to such Parent Indemnified Party) of the facts, circumstances or events giving rise to each item of Damages based on such Parent Indemnified Party's good faith belief thereof, including the identity and address of any third-party claimant and copies of any formal demand or complaint relating thereto; and (iv) the basis for indemnification under Section 8.2 to which such item of Damages is related (including, if applicable, the specific nature of the misrepresentation, or the breach of warranty or covenant). Following the delivery of

an Officer's Certificate, the Representative and its representatives and agents shall, except as otherwise prohibited by applicable Law, be given access during normal business hours (including electronic access, to the extent available) as they may reasonably require to the books and records of the Surviving Corporation and access during normal business hours to such personnel or representatives of the Surviving Corporation and Parent, including the individuals responsible for the matters that are subject of the Officer's Certificate, as they may reasonably require for the purposes of resolving any disputes or responding to any matters or inquiries raised in the Officer's Certificate.

(ii) If the Representative shall not object in writing pursuant to Section 8.2(c)(iii) to any individual items of Damages set forth in an Officer's Certificate delivered by Parent pursuant to Section 8.2(c)(i) within 30 days after the Representative's receipt of such Officer's Certificate, the Representative shall be conclusively deemed to have acknowledged and irrevocably consented, for and on behalf of the Indemnifying Parties, to the Parent Indemnified Party recovery of the full amount of all such items of Damages set forth in such Officer's Certificate solely to the extent that such Damages do not exceed the Escrow Fund at such time. Upon receipt of any Officer's Certificate, the Escrow Agent shall not release any portion of the Escrow Fund to Parent or any other Parent Indemnified Party or Parties pursuant to this Agreement or the Escrow Agreement unless and until (i) the Escrow Agent shall have received written authorization from the Representative to release any portion of the Escrow Fund, or (ii) the Representative shall have failed to object in writing pursuant to Section 8.2(c)(iv) to any individual items of Damages set forth in such Officer's Certificate within 30 days after the Representative's receipt of such Officer's Certificate.

(iii) In the event that the Escrow Agent shall receive written authorization from the Representative to release to Parent or any other Parent Indemnified Party or Parties any portion of the Escrow Fund pursuant to Section 8.2(c)(i) , the Escrow Agent shall release such portion of the Escrow Fund in accordance with such written instructions. In the event that the Representative shall have failed to object in writing pursuant to Section 8.2(c)(iv) to any individual items of Damages set forth in an Officer's Certificate relating to a claim for indemnification pursuant to Section 8.2 within 30 days after the Representative's receipt of such Officer's Certificate, the Escrow Agent shall promptly release to Parent or any other Parent Indemnified Party or Parties (as instructed by Parent in writing) from the Escrow Fund an amount of cash equal to the amount of all such items of Damages specified in such Officer's Certificate with respect to which the Representative has not objected in writing pursuant to Section 8.2(c)(iv) . Any cash released to Parent or any other Parent Indemnified Party or Parties pursuant to the preceding sentence shall be deemed to reduce each Indemnifying Party's interest in the Escrow Fund in accordance with his, her or its Pro Rata Share of the Escrow Fund.

(iv) In the event that the Representative shall seek to contest any individual items of Damages set forth in an Officer's Certificate received from Parent pursuant to Section 8.2(c)(i) , the Representative shall notify Parent in writing, within 30 days after receipt of such Officer's Certificate, of the Representative's objection, which notice shall set forth a brief description in reasonable detail of the Representative's basis for objecting to each item of Damages based on the Representative's good faith belief thereof. Upon Parent's receipt of a written notice of objection from the Representative pursuant to the preceding sentence, Parent and the Representative shall attempt in good faith to agree upon the rights of the respective parties with respect to the disputed items of Damages. If the Representative and Parent should so agree, a memorandum setting forth the agreement reached by the parties with respect to such disputed items of Damages shall be prepared and signed by both parties and, in the case of a claim against the Escrow Fund, shall be furnished to the Escrow Agent. The Escrow Agent shall be entitled to rely

on any such memorandum and make distributions from the Escrow Fund in accordance with the instructions set forth in any such memorandum.

(v) If within 60 days after the Representative's receipt of such Officer's Certificate, and after good faith negotiations, the parties are unable to agree on the rights of the respective parties with respect to any disputed items of Damages set forth in an Officer's Certificate, either Parent or the Representative may submit any such dispute for resolution pursuant to the provisions of Section 10.9 . The decision resulting therefrom shall be nonappealable, binding and conclusive upon the parties to this Agreement and the Escrow Agent shall be entitled to act in accordance with such decision and the Escrow Agent shall distribute the Escrow Fund in accordance therewith. Judgment upon any award rendered pursuant to the provisions of Section 10.9 may be entered in any court having jurisdiction. Notwithstanding anything to the contrary in this Agreement, this Section 8.2(c)(v) shall be subject to the terms and conditions of the Escrow Agreement.

(d) Company Securityholders . Notwithstanding any provision of this Agreement, the Company Organizational Documents or any agreement between the Company and any Company Securityholder entered into prior to the Closing to the contrary, in no event shall the Surviving Corporation, as the successor in interest to the Company by virtue of the Merger, or Parent be obligated to reimburse, contribute, indemnify or hold harmless any Company Securityholder in its capacity as a Company Securityholder for or in connection with any Damages or indemnification obligations of any Company Securityholder under this ARTICLE 8 .

(e) Third Party Actions . In the event any Action is instituted against a Parent Indemnified Party which involves or appears reasonably likely to involve an Indemnification Claim hereunder (a " Third Party Claim "), Parent will, promptly after receipt of notice of any such Action, notify the Representative (or, in the event indemnification is being sought hereunder directly from an Indemnifying Party, such Indemnifying Party) of the commencement thereof. The failure to so notify the Representative (or, in the event indemnification is being sought hereunder directly from an Indemnifying Party, such Indemnifying Party) of the commencement of any such Action will relieve the Indemnifying Parties from liability in connection therewith only if and to the extent that such failure materially and adversely affects the ability of the Indemnifying Parties to defend their interests in such Action. Parent shall have the right, in its sole discretion, to control the defense or settlement of such Action; *provided , however* , that the Representative (or, in the event indemnification is being sought hereunder directly from an Indemnifying Party, such Indemnifying Party) and its counsel (at such party's sole expense) may participate in (but not control the conduct of) the defense of such Action; and *provided further* that, except with the consent of the Representative (or, in the event indemnification is being sought hereunder directly from an Indemnifying Party, such Indemnifying Party), no settlement of any such Action with third party claimants shall be determinative of the amount of Damages relating to such matter. In the event that the Representative has consented to any such settlement, the Indemnifying Parties shall have no power or authority to object under any provision of this ARTICLE 8 to the amount of any such Indemnification Claim against the Escrow Fund, or against the Indemnifying Parties directly, as the case may be, with respect to such settlement.

(f) Definition of Damages . For all purposes of and under this Agreement, the term "Damages" shall mean the amount of (i) any direct, indirect, consequential, incidental or other damage (including lost profits and diminution in value), loss, liability, claim, deficiency, Tax, judgment, fine, penalty, cost or other expense (including reasonable attorneys', accountants', consultants' and experts' fees and expenses, and any costs and expenses incurred in connection with the preparation and filing of any Tax Return) directly or indirectly paid, sustained or incurred

by the Parent Indemnified Parties (or any of them), (ii) any and all reasonable fees and costs of enforcing the Parent Indemnified Party's rights under this Agreement, and (iii) any and all reasonable fees and costs defending any Third Party Actions that result in an indemnification payment received by a Parent Indemnified Party pursuant to this Agreement. For purposes of determining the amount of any Damage suffered or incurred by a Parent Indemnified Party, any qualifications in the representations, warranties and covenants with respect to a "Company Material Adverse Effect" (which instead shall be read as any adverse effect or change, except in the case of the reference to "Company Material Adverse Effect" in the first clause of the introduction to Section 3.8 , which shall continue to be read as "Company Material Adverse Effect"), "materiality," "material" or similar terms shall be disregarded and will not have any effect with respect to the calculation of the amount of any Damages attributable to a breach of any representation, warranty or covenant of the Company set forth in this Agreement or the Company Bring-Down Certificate.

(g) Treatment of Indemnification Payments . The Indemnifying Parties and Parent agree to treat (and cause their Affiliates to treat) any payments received pursuant to Section 8.2 as adjustments to the Merger Consideration for all Tax purposes, to the maximum extent permitted by Law.

(h) Effect of Investigation; Reliance . The right to indemnification, payment of Damages or any other remedy hereunder 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 representation, warranty, covenant or agreement made by the Company or any other matter. The waiver of any condition based on the accuracy of any such representation or warranty, or on the performance of or compliance with any such covenant or agreement, will not affect the right to indemnification, payment of Damages, or any other remedy based on any such representation, warranty, covenant or agreement. No Parent Indemnified Party shall be required to show reliance on any representation, warranty, certificate or other agreement in order for such Parent Indemnified Party to be entitled to indemnification hereunder.

8.3 Representative .

(a) Acknowledgement . Each of the Indemnifying Parties, by voting in favor of the adoption of this Agreement, the approval of the principal terms of the Merger and the other transactions contemplated hereunder, the consummation of the Merger or participating in the Merger and receiving the benefits thereof, including the right to receive the consideration payable in connection with the Merger, and/or entering into a Joinder Agreement shall be deemed to have approved the designation and appointment of, and hereby designates and appoints, Shareholder Representative Services LLC as the Representative under the terms set forth herein, and as his, her or its true and lawful agent, proxy and attorney-in-fact, to execute and deliver this Agreement and the Escrow Agreement on their behalf and exercise all or any of the powers, authority and discretion conferred on the Representative under this Agreement. Each Company Securityholder hereby agrees to receive correspondence from the Representative, including in electronic form.

(b) Powers of the Representative . The Representative shall have and may exercise all of the powers conferred upon him, her or it pursuant to this Agreement and the Escrow Agreement, which shall include:

(i) The power to execute any agreement or instrument in connection with the transactions contemplated hereby for and on behalf of the Indemnifying Parties;

(ii) The power to give or receive any notice or instruction permitted or required under this Agreement or the Escrow Agreement, or any other agreement, document or instrument entered into or executed in connection herewith, to be given or received by any Indemnifying Party, and each of them (other than notice for service of process relating to any Action before a court or other tribunal of competent jurisdiction, which notice must be given to each Indemnifying Party individually, as applicable), and to take any and all action for and on behalf of Indemnifying Parties, and each of them, under this Agreement, the Escrow Agreement or any other such agreement, document or instrument;

(iii) The power (subject to the provisions of Section 8.3(c) hereof) to contest, negotiate, defend, compromise or settle any Indemnification Claims or Actions for which a Parent Indemnified Party may be entitled to indemnification through counsel selected by the Representative and solely at the cost, risk and expense of the Indemnifying Parties, authorize payment to any Parent Indemnified Party of any of the Escrow Fund, or any portion thereof, in satisfaction of any Indemnification Claims, agree to, negotiate, enter into settlements and compromises of, and demand arbitration and comply with orders of courts and awards of arbitrators with respect to such Indemnification Claims, resolve any Indemnification Claims, take any actions in connection with the resolution of any dispute relating hereto or to the transactions contemplated hereby by arbitration, settlement or otherwise, and take or forego any or all actions permitted or required of any Indemnifying Party or necessary in the judgment of the Representative for the accomplishment of the foregoing and all of the other terms, conditions and limitations of this Agreement and the Escrow Agreement;

(iv) The power to consult with legal counsel, independent public accountants and other experts selected by it, solely at the cost and expense of the Indemnifying Parties;

(v) The power to review, negotiate and agree to and authorize any payments from the Escrow Fund in satisfaction of any payment obligation, in each case, on behalf of the Indemnifying Parties, as contemplated thereunder;

(vi) The power to waive any terms and conditions of this Agreement or the Escrow Agreement providing rights or benefits to the Indemnifying Parties (other than the payment of the Merger Consideration in accordance with the terms hereof and in the manner provided herein); and

(vii) The power to take any actions in regard to such other matters as are reasonably necessary for the consummation of the transactions contemplated hereby and in the Escrow Agreement or as the Representative reasonably believes are in the best interests of the Indemnifying Parties;

provided , however , that notwithstanding the foregoing or anything to the contrary set forth herein, the powers conferred above shall not authorize or empower the Representative to do or cause to be done any of the foregoing (i) in a manner that improperly discriminates between or among the Indemnifying Parties; or (ii) as to any matter insofar as such matter relates solely and exclusively to a single Indemnifying Party, whereupon the Representative may appoint the Indemnifying Party who is alleged to be in breach to handle all matters related to such indemnification claim on behalf of the Representative, and all references to the Representative in such event shall include also such Indemnifying Party. Without implying that other actions would constitute an improper discrimination, each of the Indemnifying Parties agrees that discrimination between or among Indemnifying Parties solely on the basis of the respective number of shares of Company Capital

Stock held by each Company Stockholder shall not be deemed to be improper. Further, notwithstanding anything herein to the contrary, the Representative shall not be entitled to, and shall not, take any action that would (i) cause any Indemnifying Party's liability to Parent hereunder to exceed its portion of the Escrow Fund, (ii) result in the amounts payable hereunder to any Indemnifying Party being distributed in any manner other than as set forth in this Agreement and the Escrow Agreement, or (iii) result in an increase of any Indemnifying Party's indemnity with respect to Parent or other obligations with respect to Parent or liabilities with respect to Parent under this Agreement (including, for the avoidance of doubt, any change to the nature of the indemnity obligations with respect to Parent), without (in each case) such Indemnifying Party's prior written consent.

(c) Procedures Upon Receipt of Indemnification Claims . The Representative shall have the discretion to take such action as he, she or it shall determine to be in the best interest of all of the Indemnifying Parties, including authorizing the distribution to any Parent Indemnified Party of any portion of the Escrow Fund; *provided , however* , that, in any event, all Indemnifying Parties are treated in substantially the same manner.

(d) Notices . After the Effective Time, any notice given to the Representative will constitute notice to each and all of the Indemnifying Parties at the time notice is given to the Representative. After the Effective Time, any action taken by, or notice or instruction received from, the Representative will be deemed to be action by, or notice or instruction from, each and all of the Indemnifying Parties. Except as otherwise contained herein, after the Effective Time Parent, Merger Sub, the Company and the Surviving Corporation may, and the Escrow Agent will, disregard any notice or instruction received from any one or more individual Indemnifying Parties.

(e) Agreement of the Representative . The Representative hereby agrees to do such acts, and execute further documents, as shall be reasonably necessary to carry out the provisions of this Agreement and the Escrow Agreement.

(f) Reimbursement and Liability of the Representative .

(i) At the Closing, the Representative Expense Amount shall be deducted from the amounts due to each holder of Company Securities pursuant to Section 2.8(c) and transferred to the Representative to be held in a segregated client funds account, as an expense fund to cover such reasonable out-of-pocket expenses incurred by the Representative in the performance of his or her duties hereunder. Any remaining funds not used by the Representative shall be paid to the Paying Agent for distribution to the Company Securityholders contributing to such fund, based on each Company Securityholder's Pro Rata Share, upon conclusion of the Representative's duties hereunder. However, in any event (and particularly in the event that the Representative Expense Fund is not sufficient to cover the reasonable out-of-pocket expenses incurred by the Representative in the performance of his, her or its duties hereunder), each Indemnifying Party agrees that such Indemnifying Party's Pro Rata Share of such reasonable out-of-pocket expenses that are not covered by the Representative Expense Fund may be deducted by the Representative from amounts to be distributed to the Indemnifying Parties from the Escrow Fund prior to delivery of such amounts to the Indemnifying Parties.

(ii) The Representative shall not be personally liable as the Representative to any Indemnifying Party for any act done or omitted hereunder as Representative other than such actions or omissions to act attributable to gross negligence or willful misconduct.

(iii) The Company Securityholders (other than Parent) shall severally, but not jointly based on their Pro Rata Share, indemnify, defend and hold harmless the Representative and its successors and assigns from and against any and all claims, demands, suits, actions, causes of action, losses, damages, obligations, liabilities, costs and expenses (including attorneys' fees and court costs) (collectively, "Representative Losses") arising as a result of or incurred in connection with any actions taken or omitted to be taken by the Representative pursuant to the terms of this Agreement, in each case as such Representative Loss is incurred or suffered; *provided* that in the event that it is finally adjudicated that a Representative Loss or any portion thereof was primarily caused by the gross negligence or willful misconduct of the Representative, the Representative will reimburse the Company Securityholders (other than Parent) the amount of such indemnified Representative Loss attributable to such gross negligence or willful misconduct. If not paid directly to the Representative by the Company Securityholders (other than Parent), any such losses, liabilities or expenses may be recovered by the Representative from (A) the funds in the Representative Expense Fund and (B) the amounts in the Escrow Account otherwise distributable to Company Securityholders (other than Parent) pursuant to the terms hereof and the Escrow Agreement at the time of each distribution in accordance with written instructions delivered by the Representative to the Escrow Agent; *provided* that while this section allows the Representative to be paid from the Representative Expense Fund and the Escrow Account, nothing in this Agreement shall be construed as to relieve the Company Securityholders (other than Parent) from their obligation to promptly pay such Representative Losses as such Representative Losses are suffered or incurred, nor to prevent the Representative from seeking any remedies available to it at law or otherwise.

(iv) In connection with the Closing, the Company shall provide the Representative with copies of the following: (A) the Company Bring-Down Certificate; (B) the Unvested Equity Award Documents; and (C) the Payment Spreadsheet.

8.4 Reliance on the Representative . Parent and its Affiliates (including, after the Effective Time, the Surviving Corporation) and the Escrow Agent shall be entitled to rely on the appointment of Shareholder Representative Services LLC as Representative and treat such Representative as the duly appointed attorney-in-fact of each Indemnifying Party and as having the duties, power and authority provided for in this Agreement and the Escrow Agreement. None of Parent or its Affiliates (including, after the Effective Time, the Surviving Corporation) or the Escrow Agent shall be liable to any Indemnifying Party for any actions taken or omitted by them in reliance upon any instructions, notice or other instruments delivered by the Representative. No resignation of the Representative shall become effective unless at least 30 days prior written notice of the resignation of such Representative shall be provided to Parent and the Escrow Agent. Parent and its Affiliates (including, after the Effective Time, the Surviving Corporation) and the Escrow Agent shall be entitled to rely at any time after receipt of any such notice on the most recent notice so received. The Indemnifying Parties holding a majority interest in the Escrow Fund held in escrow at such time may remove the Representative by a written instrument delivered to the Representative, Parent and the Company, and, in such event and also if the Representative shall resign or be unable or unwilling to serve in such capacity, his, her or its successor who shall serve and exercise the powers of the Representative hereunder shall be appointed by a written instrument signed by Indemnifying Parties holding a majority interest in the Escrow Fund held in escrow at such time and delivered to Parent and the Escrow Agent.

8.5 Remedies Exclusive . From and after Closing, except for equitable remedies or in the event of fraud, willful breach or intentional misrepresentation, the rights of the Indemnified Parties to indemnification relating to this Agreement or the transactions contemplated hereby shall be strictly limited to those contained in this ARTICLE 8 and such indemnification rights shall be

the exclusive remedies of the Indemnified Parties subsequent to the Closing Date with respect to any matter in any way relating to this Agreement or arising in connection herewith. Except in the event of fraud, willful breach or intentional misrepresentation, or as provided in this ARTICLE 8 , no action shall be brought or maintained by any party against any Indemnifying Party, and no recourse shall be brought or granted against any Indemnifying Party, by virtue of or based upon any alleged misstatement or omission respecting an inaccuracy in or breach of any of the representations, warranties or covenants of any of the Company or any Indemnifying Party set forth or contained in this Agreement or the Company Bring-Down Certificate.

ARTICLE 9
TERMINATION, AMENDMENT AND WAIVER

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

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

(b) by either Parent or the Company, if the Closing Date shall not have occurred by August 1, 2011 (the " Outside Date "); *provided , however* , that if any of the conditions specified in Section 7.1(b) shall not have been satisfied on or prior to such date, either Parent or the Company may elect, by written notice to the other party at least one day prior to such date, to extend the Outside Date to November 1, 2011; *provided further* that the right to terminate this Agreement under this Section 9.1(b) shall not be available to any party whose action or failure to act has been a principal cause of or resulted in the failure of the Merger to occur on or before such date and such action or failure to act constitutes a breach of this Agreement;

(c) by either Parent or the Company, if: (i) any Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Law, statute, rule, regulation, executive order or decree (whether temporary, preliminary or permanent) which is in effect and which has the effect of making the Merger or any other transaction contemplated by this Agreement illegal or otherwise prohibits or otherwise restrains the consummation of the Merger or any other transaction contemplated by this Agreement, or (ii) any Governmental Authority shall have issued or granted a restraining order, injunction, or other similar legal restraint, in any such case that has the effect of making the Merger or any other transaction contemplated by this Agreement illegal or otherwise prohibits or otherwise restrains the consummation of the Merger or any other transaction contemplated by this Agreement, and such order, injunction or restraint shall have become final and nonappealable;

(d) by Parent, if any Governmental Authority shall have taken any action, or enacted, issued, promulgated, enforced, entered or deemed applicable to the Merger any Law, statute, rule, regulation, executive order or decree (whether temporary, preliminary or permanent) that has the effect of (i) prohibiting Parent's ownership or operation of any portion of the business of the Company or any of its Subsidiaries, or (ii) compelling Parent or the Company to dispose of or hold separate all or any portion of the business or assets of Parent, the Company or any of their respective Subsidiaries, in either case in connection with the Merger or any other transaction contemplated by this Agreement;

(e) by Parent, if (i) there has been a breach of any representation, warranty, covenant or agreement of the Company set forth in this Agreement such that, if not cured on or prior to the Closing Date, the conditions set forth in Sections 7.2(a) or 7.2(b) would not be satisfied and such breach has not been cured within 20 days after written notice thereof to the Company;

provided , *however* , that no cure period shall be required for a breach which by its nature cannot be cured, or (ii) a Company Material Adverse Effect has occurred following the date hereof;

(f) by the Company, if there has been a breach of any representation, warranty, covenant or agreement of Parent or Merger Sub set forth in this Agreement such that, if not cured on or prior to the Closing Date, the conditions set forth in Sections 7.3(a) or 7.3(b) would not be satisfied and such breach has not been cured within 20 days after written notice thereof to Parent; *provided* , *however* , that no cure period shall be required for a breach which by its nature cannot be cured; or

(g) by Parent, if, within four hours immediately following the execution and delivery of this Agreement by the parties hereto, the Company shall not have obtained and delivered to Parent (i) Stockholder Written Consents representing the Requisite Stockholder Approval and (ii) Joinder Agreements signed by each Company Stockholder executing the Stockholder Written Consents.

9.2 Effect of Termination . In the event of termination of this Agreement as provided in Section 9.1 , this Agreement shall forthwith become void and there shall be no liability or obligation on the part of Parent, Merger Sub, the Company or their respective officers, directors or stockholders; *provided* , *however* , that notwithstanding any termination of this Agreement, following any termination of this Agreement in accordance with its terms, any party hereto shall remain liable thereafter for any fraud or any intentional misrepresentation or intentional breach of this Agreement that occurred prior to such termination; and *provided further* that the provisions of Section 6.7 (Confidentiality) , Section 6.8 (Public Announcements) , Section 6.10 (Fees and Expenses) , this Section 9.2 and ARTICLE 10 shall remain in full force and effect and survive any termination of this Agreement pursuant to the terms of this ARTICLE 9 .

9.3 Amendments; No Waiver . Subject to applicable Law, any provision of this Agreement may be amended or waived prior to the Effective Time if, but 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 each party against whom the waiver is to be effective; *provided* , *however* , that, for purposes of this Section 9.3 , the Company Securityholders agree that any amendment or waiver of the Agreement signed by the Representative shall be binding upon and effective against each of the Company Securityholders whether or not they have signed such amendment or waiver. No course of dealing and no failure or delay on the part of any party hereto in exercising any right, power or remedy conferred by this Agreement shall operate as a waiver thereof or otherwise prejudice such party's rights, powers and remedies. The failure of any of the parties to this Agreement to require the performance of a term or obligation under this Agreement or the waiver by any of the parties to this Agreement of any breach hereunder shall not prevent subsequent enforcement of such term or obligation or be deemed a waiver of any subsequent breach hereunder. No single or partial exercise of any right, power or remedy conferred by this Agreement shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

ARTICLE 10
MISCELLANEOUS

10.1 Notices . All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been given: (i) when delivered personally, (ii) the next Business Day, if sent by a nationally-recognized overnight delivery service (unless the records of the delivery service indicate otherwise), (iii) three Business Days after deposit in the United States

mail, certified and with proper postage prepaid, addressed as follows; or (iv) upon delivery if sent by electronic mail:

(a) if to Parent, to:

Teradata Corporation
10000 Innovation Drive
Miamisburg, Ohio 45342
Attention: Legal Notices
Email: lawnotices@teradata.com

with a copy (which shall not constitute notice) to:

Wilson Sonsini Goodrich & Rosati
Professional Corporation
One Market Street
Spear Tower, Suite 3300
San Francisco, California 94105
Attention: Michael S. Ringler
Email: mringler@wsgr.com

(b) if to the Company (prior to the Effective Time), to:

Aster Data Systems, Inc.
999 Skyway Road, Suite 100
San Carlos, California 94070
Attention: Chief Executive Officer
Email: quentin.gallivan@asterdata.com

with a copy (which shall not constitute notice) to:

Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP
1200 Seaport Boulevard
Redwood City, California 94063
Attention: Robert V. Gunderson, Jr.
Email: rgunderson@gunder.com

(c) if to the Representative, to:

Shareholder Representative Services LLC
601 Montgomery Street, Suite 2020
San Francisco, California 94111
Attention: Managing Director
Email: deals@shareholderrep.com

with a copy (which shall not constitute notice) to:

Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP
1200 Seaport Boulevard
Redwood City, California 94063
Attention: Robert V. Gunderson, Jr.
Email: rgunderson@gunder.com

Any party or other recipient may from time to time change its address for purposes of this Agreement by giving notice of such change as provided herein. Any notice to be given to any Indemnifying Party hereunder shall be given to the Representative or, if for any reason there ceases to be a Representative, to each Indemnifying Party.

10.2 Successors and Assigns . All covenants and agreements and other provisions set forth in this Agreement and made by or on behalf of any of the parties hereto shall bind and inure to the benefit of the successors, heirs and permitted assigns of such party, whether or not so expressed. None of the parties may assign or transfer any of their respective rights or obligations under this Agreement without the consent in writing of the Company, Parent and the Representative. Notwithstanding the foregoing, nothing contained in this Agreement shall prohibit Parent from merging the Surviving Company with and into Parent or assigning any of the rights hereunder to a direct or indirect Subsidiary of Parent following the Effective Time.

10.3 Counterparts . This Agreement and any signed agreement or instrument entered into in connection with this Agreement, and any amendments hereto or thereto, may be executed in two or more counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which together shall constitute one and the same instrument. Any such counterpart, to the extent delivered by means of a fax machine or by .pdf, .tif, .gif, .jpeg or similar attachment to electronic mail (any such delivery, an " Electronic Delivery ") shall be treated in all manner and respects as an original executed counterpart and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. No party hereto shall raise the use of Electronic Delivery to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of Electronic Delivery as a defense to the formation of a contract, and each such party forever waives any such defense, except to the extent that such defense relates to lack of authenticity.

10.4 Severability . In the event that any one or more of the provisions contained herein is held invalid, illegal or unenforceable in any respect for any reason in any jurisdiction, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions hereof shall not be in any way impaired or affected (so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party), it being intended that each of parties' rights and privileges shall be enforceable to the fullest extent permitted by applicable Law, and any such invalidity, illegality and unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction (so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party).

10.5 Specific Performance . The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to seek an injunction or injunctions (without proof of damages) to prevent breaches of

this Agreement and to enforce specifically the terms and provisions hereof, this being in addition to any other remedy to which they are entitled at law or in equity and the parties hereby agree to waive any requirements for posting a bond in connection with any such action.

10.6 Other Remedies . Except to the extent set forth otherwise herein, any and all remedies herein expressly conferred upon a party will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon such party, and the exercise by a party of any one remedy will not preclude the exercise of any other remedy.

10.7 Third Parties . Except as specifically set forth or referred to herein, nothing herein expressed or implied is intended or shall be construed to confer upon or give to any Person any rights or remedies under or by reason of this Agreement or any other certificate, document, instrument or agreement executed in connection herewith nor be relied upon other than the parties hereto and their permitted successors or assigns. The representations and warranties in this Agreement are the product of negotiations among the parties and are for the sole benefit of the parties hereto in accordance with and subject to the terms and conditions of this Agreement, and are not necessarily intended as characterization of actual facts or circumstances as of the date of this Agreement or as of any earlier date. Without limiting anything else in this Section 10.7 , the representations and warranties made in this Agreement are not intended to, and do not, confer upon any Person (other than, to the extent expressly permitted, such Person's assignees) any rights or remedies hereunder.

10.8 Governing Law . This Agreement, including the validity hereof and the rights and obligations of the parties hereunder, shall be construed in accordance with and governed by the laws of the State of Delaware applicable to contracts made and to be performed entirely in such state (without giving effect to the conflicts of laws provisions thereof).

10.9 Consent to Jurisdiction; Binding Arbitration . Without limiting the other provisions of this Section 10.9 , the parties hereto agree that any legal proceeding by or against any party hereto or with respect to or arising out of this Agreement shall be arbitrated in the Court of Chancery of the State of Delaware pursuant to the arbitration proceedings set out in 10 Del. C. § 349 and the Court of Chancery Rules relating thereto, including Court of Chancery Rules 96, 97, and 98; *provided , however ,* that any legal proceeding by or against any party hereto or with respect to or arising out of this Agreement, if any, that is not eligible for arbitration in the Court of Chancery of the State of Delaware pursuant to the arbitration proceedings set out in 10 Del. C. § 349 shall be brought exclusively in the Court of Chancery of the State of Delaware (or, only if the Court of Chancery of the State of Delaware declines to accept jurisdiction over a particular matter, any federal court within the State of Delaware). The parties agree that the decision of the arbitrator will be final and binding and not subject to appeal. By execution and delivery of this Agreement, each party hereto irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and to the appellate courts therefrom solely for the purposes of disputes arising under the this Agreement and not as a general submission to such jurisdiction or with respect to any other dispute, matter or claim whatsoever. The parties hereto irrevocably consent to the service of process out of any of the aforementioned courts in any such action or proceeding by the delivery of copies thereof by overnight courier to the address for such party to which notices are deliverable hereunder. Any such service of process shall be effective upon delivery. Nothing herein shall affect the right to serve process in any other manner permitted by applicable Law. The parties hereto hereby waive any right to stay or dismiss any action or proceeding under or in connection with this Agreement brought before the foregoing courts on the basis of (i) any claim that it is not personally subject to the jurisdiction of the above-named courts for any reason, or that it or any of its property is immune from the above-described legal process,

(ii) that such action or proceeding is brought in an inconvenient forum, that venue for the action or proceeding is improper or that this Agreement may not be enforced in or by such courts, or (iii) any other defense that would hinder or delay the levy, execution or collection of any amount to which any party hereto is entitled pursuant to any final judgment of any court having jurisdiction.

10.10 Entire Agreement . This Agreement, including the Disclosure Schedule (and all exhibits and schedules thereto) and all Exhibits and Schedules to this Agreement, and all other agreements referred to herein (including the Escrow Agreement) is complete, and all promises, representations, understandings, warranties and agreements with reference to the subject matter hereof, and all inducements to the making of this Agreement relied upon by all the parties hereto, have been expressed herein or in such Disclosure Schedule, Schedules, Exhibits or such other agreements and this Agreement, including such Disclosure Schedule, Schedules, Exhibits and such other agreements supersedes any prior understandings, agreements or representations by or among the parties, written or oral, to the extent that they related in any way to the subject matter hereof.

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

[Remainder of page intentionally left blank . Signature page follows .]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement under seal as of the day and year first above written.

TERADATA CORPORATION

By: _____
Name: _____
Title: _____

OAKLAND MERGER CORPORATION

By: _____
Name: _____
Title: _____

ASTER DATA SYSTEMS, INC.

By: _____
Name: _____
Title: _____

SHAREHOLDER REPRESENTATIVE SERVICES LLC, solely in its capacity as Representative of the Indemnifying Parties

By: _____
Name: _____
Title: _____

Exhibit 99.1

NEWS RELEASE

For further information:

Dan Conway
Public Relations
858-663-4689
dan.conway@teradata.com

For Release on April 6, 2011

Teradata Completes Acquisition of Aster Data
Bringing together two leaders to deliver powerful insights for organizations

SAN DIEGO, California - Teradata (NYSE:TDC) has completed its acquisition of Aster Data Systems, Inc., a leader in big data analytics. The acquisition will expand Teradata's portfolio and bring businesses greater depth of analytic insight and faster time to value as they unlock the full potential of their big data.

Please follow this link to view the full social media version of this news release on Teradata.com
http://www.teradata.com/t/News-Releases/2011/Teradata-Completes-Acquisition-of-Aster-Data/

"With the powerful combination of Teradata and Aster Data, customers will be able to quickly solve complex business problems by leveraging relational and new data sources and types to improve growth and drive profitability," said Mike Koehler, president and chief executive officer, Teradata Corporation. "We will be able to drive analytical insight that no other single vendor can deliver."

"Teradata is the first company to help its customers harness the power of emerging big data and provide breakthrough performance and scalability by combining our leading business analytics and data warehousing solutions with Aster Data's innovative big data solutions," said Scott Gnau, chief development officer, Teradata Corporation.

"We believe this is a significant acquisition for Teradata that will provide long-term technology benefits, particularly for dealing with large and complex data sets. Specifically, Aster Data brings expertise in combining SQL and MapReduce-based analysis," said Matt Aslett, senior analyst, The 451 Group. "The addition of Aster Data strengthens Teradata's hand in the increasingly important data warehousing market."

Teradata is the long-recognized leader in solving large-scale big data problems within the integrated data warehouse. The new opportunity is to leverage, not discard, the emerging big data. The explosion of this data is being generated by social media, web interactions, e-commerce, sensors, machines and intelligent mobile devices. The acquisition of Aster Data enables customers to easily address and solve both halves of the big data problem by applying Teradata's core competency and big data leadership to address both traditional and emerging big data challenges. This is made possible by leveraging the power of Aster Data's patent-pending structured query language, SQL-MapReduce™ technology, which is a framework for integrating analytic applications written in a variety of programming languages. This unique and tight integration of SQL and MapReduce provides unparalleled ease of use and extends the power of MapReduce to business users with the common language of SQL.

"The Aster Data solution allows organizations to differentiate their business so that they can compete and win in today's market by utilizing innovative data-driven analytic applications against big data types," said Mayank Bawa, chief customer officer and co-founder, Aster Data. "By joining forces with Teradata, our customers will have new analytic capabilities enabling them to now solve problems in a way that is simply unmatched in the market."

Teradata will offer the Aster Data solution as a stand-alone software solution, as well as a component of the Teradata Integrated Analytics portfolio, to store and process data. It will include pre-packaged analytics functions and tools for rapid analytics development. Aster Data's unique capabilities supports Teradata's heritage of scalability, manageability, and performance.

"With Teradata, we will enable a new set of solutions that will allow customers to harness the large volumes of non-relational data," said Tasso Argyros, chief technology officer and co-founder, Aster Data. "The data analytic possibilities that are now available to our customers are nothing short of limitless; as part of Teradata, we will continue to be bold and innovative."

Customers will be able to rapidly uncover new and changing patterns in their data.

- **Digital marketing optimization** – The Aster Data solution enables cross-marketing media analysis of user behavior, intent and actions across search, ad media, and web properties to create a comprehensive view of user behavior across channels. This enables optimized ad targeting, cross-channel attribution, deep personalization, influencer marketing, and related applications. This analysis provides business intelligence to drive highly personalized offers, better loyalty programs, and higher view-to-buy ratios, which generate more sales than generic offers. Done properly, a small marketing expense can result in viral adoption of products and services.
- **Fraud detection and prevention –** The number of cyber attacks is accelerating at unprecedented rates and many systems and processes are unable to respond. The number of cyber attacks is accelerating at unprecedented rates and many systems and processes are unable to respond. The Aster Data solution enables analyses of big data transactions, interactions, and systems. These capabilities make it possible to detect, block, and prevent malicious users, networks, and programs engaged in fraud.
- **Social network and relationship analysis** – The Aster Data solution enables organizations to uncover deep social relationships and interactions hidden in purchasing behavior, online activity, and social networks. These insights can be used for behavioral analysis, influencer marketing, "virality" analysis, crowd sourcing, and similar applications to drive sales growth.

Relevant resources:

James Kobielus, Forrester Research, Inc. Blog - Teradata Acquiring Aster Data, Driving MapReduce Deeply Into Its Strategy http://blogs.forrester.com/james_kobielus/11-03-03-teradata_acquiring_aster_data_driving_mapreduce_deeply_into_its_strategy

Teradata Magazine - Big Data: It's going mainstream, and it's your next opportunity http://www.teradatamagazine.com/v11n01/Features/Big-Data/

Teradata News Release - Teradata Integrated Analytics Portfolio Transforms Teradata Warehouses Into Analytic Services Environments http://www.teradata.com/t/News-Releases/2010/Teradata-Integrated-Analytics-Portfolio-Transforms-Teradata-Warehouses-Into-Analytic-Services-Environments/

GigaOm - Interview with Stephen Brobst, chief technology officer, Teradata Corporation http://gigaom.com/cloud/sensor-networks-top-social-networks-for-big-data-2/

About Teradata

Teradata is the world's leader in data warehousing and integrated marketing management through its database software , data warehouse appliances , and enterprise analytics . For more information, visit teradata.com .

# # #