

# SYKES ENTERPRISES INC

## FORM 8-K (Current report filing)

Filed 02/13/98 for the Period Ending 09/26/97

Address	400 NORTH ASHLEY DRIVE TAMPA, FL 33602
Telephone	8132741000
CIK	0001010612
Symbol	SYKE
SIC Code	7373 - Computer Integrated Systems Design
Industry	Computer Networks
Sector	Technology
Fiscal Year	12/31

# SYKES ENTERPRISES INC

## FORM 8-K (Unscheduled Material Events)

Filed 2/13/1998 For Period Ending 9/26/1997

Address	100 NORTH TAMPA ST STE 3900 TAMPA, Florida 33602
Telephone	813-274-1000
CIK	0001010612
Industry	Computer Networks
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: September 26, 1997

(Date of the earliest event reported)

## SYKES ENTERPRISES, INCORPORATED

(Exact name of Registrant as specified in its charter)

Florida	0-28274	56-1383460
(State or other juris-	(Commission	(I.R.S. Employer
diction of incorporation)	File Number)	Identification Number)

100 North Tampa Street, Suite 3900  
Tampa, Florida 33602-5089  
(Address of principal executive offices) (Zip Code)

813-274-1000  
Registrant's telephone number, including area code

## ITEM 5. OTHER EVENTS

On September 26, 1997, Sykes Enterprises, Incorporated ("Sykes" or the "Company") acquired, through its wholly owned German subsidiary Sykes Enterprises GmbH ("Sykes Germany"), all of the outstanding equity interests of TAS Telemarketing Gesellschaft Fur Kommunikation und Dialog mbH, a limited liability company organized under the laws of the Federal Republic of Germany ("TAS I"), pursuant to an Acquisition Agreement dated September 19, 1997 among the Company, Sykes Germany and Alfons Bromkamp and Christian Frohlich, the shareholders of TAS I (collectively, the "TAS I Sellers"). In exchange for their shares of TAS I, the Sellers received a total of 400,000 unregistered shares of the Company's common stock, \$.01 par value per share ("Common Stock").

Also on September 26, 1997, the Company acquired, through Sykes Germany, all of the outstanding equity interests of TAS Hedi Fabinyi GmbH Telemarketing und Kommunikationskonzepte, a limited company organized under the laws of the Federal Republic of Germany ("TAS II"), pursuant to an Acquisition Agreement dated September 25, 1997 among the Company, Sykes Germany and Hedi Fabinyi, the sole shareholder of TAS II (the "TAS II Seller" and, collectively with the TAS I Sellers, the "Sellers"). In exchange for her TAS II shares, the TAS II Seller received 180,000 unregistered shares of Common Stock.

The amount of consideration paid to the Sellers was determined through arms length negotiations with the Sellers on the basis of TAS I and TAS II as going concerns, and by strategic considerations. As part of the transactions, the Sellers received certain registration rights with respect to fifty percent of their Common Stock.

TAS I and TAS II are based in Bochum, Germany and Stuttgart, Germany, respectively. The companies provide technical call center support and customer care services, database development, consulting and training services on a "for hire" basis to customers in Germany and surrounding countries. TAS I and TAS II will continue their present operations as operating subsidiaries of Sykes Germany.

These combinations were accounted for utilizing the pooling-of-interests method of accounting. Sykes has previously filed its Form 10-Q for the nine months ended September 28, 1997 which reflected the TAS I and TAS II transactions on a restated basis. Accordingly, the accompanying consolidated Selected Financial Data, Management's Discussion and Analysis of Financial Condition and Results of Operations, and Consolidated Financial Statements as of December 1995 and 1996 and for the year ended July 31, 1994, the five months ended December 31, 1994, and for the years ended December 31, 1995 and 1996 have been restated to give retroactive effect to the combination with TAS I and TAS II and include the combined operations of Sykes, TAS I and TAS II for all periods presented.

## **ITEM 7. FINANCIAL STATEMENTS, PRO FORMA FINANCIAL INFORMATION AND EXHIBITS**

(a) Financial statements of business acquired. Not applicable

(b) Pro Forma financial information Not applicable

(c) Exhibits

2.1 Acquisition Agreement, dated September 19, 1997, by and among the holders of all of the capital interests of TAS Telemarketing Gesellschaft Fur Kommunikation und Dialog mbH, Sykes Enterprises, GmbH, and Sykes Enterprises, Incorporated. The schedules and exhibits to this document are not being filed herewith. Sykes Enterprises, Incorporated agrees to furnish supplementary copies of such schedules and exhibits to the Securities and Exchange Commission upon request. (filed herewith)

2.2 Acquisition Agreement, dated September 25, 1997, by and among the holders of all of the capital interests of TAS Hedi Fabinyi GmbH, Sykes Enterprises, GmbH, and Sykes Enterprises, Incorporated. The schedules and exhibits to this document are not being filed herewith. Sykes Enterprises, Incorporated agrees to furnish supplementary copies of such schedules and exhibits to the Securities and Exchange Commission upon request. (filed herewith)

23.1 Consent of Coopers & Lybrand L.L.P.

27.1 Financial Data Schedule (for SEC use only).

## **SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

### **SYKES ENTERPRISES, INCORPORATED**

*By: /s/ Scott J. Bendert  
Scott J. Bendert  
Senior Vice President-Finance  
and Treasurer*

*Date: February 11, 1998*

**SYKES ENTERPRISES, INCORPORATED**

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**SYKES ENTERPRISES, INCORPORATED**

**Selected Financial Data**

The following selected financial data has been derived from the Company's consolidated financial statements. The information below should be read in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations," and the Company's Consolidated Financial Statements and related notes.

	Year Ended	Year Ended	Year Ended	5 Months Ended	Year Ended	Year Ended
	July 31,	July 31,	July 31,	December 31,	December 31,	December 31,
	1992	1993	1994	1994	1995	1996

-----  
(in thousands, except per share amounts)

Statement of Income Data:

Revenue	\$62,814	\$76,379	\$79,752	\$41,420	\$107,894	\$160,011
Income from operations	2,563	1,865	1,518	1,624	4,593	13,325
Net income(1)	1,515	339	428	510	1,821	8,563

Per Share Data:

Net income(1)	\$0.05	\$0.00	\$0.02	\$0.02	\$0.07	\$0.26
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	July 31,	July 31,	July 31,	December 31,	December 31,	December 31,
	1992	1993	1994	1994	1995	1996

-----  
(in thousands, except per share amounts)

Balance Sheet Data:

Working capital	\$ 7,570	\$ 4,611	\$ 4,655	\$ 6,442	\$ 271	\$110,333
Total assets	22,971	23,251	30,001	38,643	56,577	178,526
Long term debt, less current maturities	2,517	2,967	5,546	8,920	9,584	1,567
Shareholder's equity	7,302	7,257	8,964	9,760	12,375	137,087

(1) Adjusted as if an affiliate of the Company included in the consolidated financial statements, which was an S corporation for federal income tax purposes, were subject to income taxes for all periods presented, based on the tax laws in effect during the respective periods.



## MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following should be read in conjunction with the Consolidated Financial Statements, including the notes thereto. The Company completed business combinations with TAS Telemarketing Gesellschaft fur Kommunikatons mbH ("TAS I") and TAS Hedi Fabinyi GmbH on September 26, 1997. These combinations were accounted for utilizing the pooling-of-interests method of accounting. Effective August 1, 1994, the Company changed its fiscal year end from July 31 to December 31. The following discussion compares the twelve months ended December 31, 1996 ("1996") to the twelve months ended December 31, 1995 ("1995"), and 1995 to the twelve months ended December 31, 1994 ("1994"). See Note 16 of Notes to Consolidated Financial Statements for the corresponding selected consolidated financial data. The following discussion and analysis contains forward-looking statements that involve risks and uncertainties. Future events and the Company's actual results could differ materially from the results reflected in these forward-looking statements, as a result of certain of the factors set forth below and elsewhere in this analysis.

### Overview

The Company derives its revenues from providing information technology ("IT") support services and information technology development services and solutions. Revenues from information technology support services provided through the IT call centers and the sale of diagnostic software are recognized as services are rendered. These services are billed on a fee per call, rate per minute, time and material or unit basis. Information technology development services and solutions usually are billed on a time and material basis, generally by the hour, and revenues generally are recognized as the services are provided. Software licensing fees are recognized as revenue when the related software is delivered. Revenues from fixed price contracts, generally with terms of less than one year, are recognized using the percentage-of-completion method. Most of the Company's revenues are derived from non-fixed price contracts. The Company has not experienced material losses due to fixed price contracts and does not anticipate a significant increase in revenues derived from such contracts in the future. Revenues from these information technology services have increased significantly from \$77.9 million in 1994 to \$159.6 million in 1996.

In 1993, in an effort to capitalize on a trend toward the outsourcing of information technology services, the Company began providing information technology support services through the opening of IT call centers while phasing out its non-information technology services. Revenues from these services decreased \$5.0 million from 1994 to 1995 and decreased \$4.1 million from 1995 to 1996. The phase-out of these services was substantially completed in 1995.

Direct salaries and related costs includes direct personnel compensation, statutory and other benefits associated with such personnel and other direct costs associated with providing services to customers. General and administrative expenses include administrative, sales and marketing, occupancy and other indirect costs. General and administrative costs incurred in opening new IT call centers are expensed when incurred. Interest and other income (expense) consists primarily of interest expense and foreign currency transaction gains and losses. Foreign currency transaction gains and losses generally result from exchange rate fluctuations on intercompany transactions.

Grants from local or state governments for the acquisition of property and equipment are deferred and recognized as income over the

corresponding useful lives of the related property and equipment. The deferred grants, net of amortization, totaled \$6.8 million and \$11.7 million at December 31, 1995 and 1996, respectively.

The Company's effective tax rate for the periods presented reflects the effects of foreign taxes, net of foreign income not taxed in the United States, nondeductible expenses for income tax purposes and the provision of potential additional income tax liability resulting from an Internal Revenue Service examination currently being conducted. The Company believes its reserves for any liability that may result from this examination are adequate.

### Results of Operations

The following table sets forth for the periods indicated the percentage of revenues represented by certain items reflected in the Company's statements of income:

Percentage of Revenues -----	Years Ended December 31, -----		
	1994 ----	1995 ----	1996 ----
Revenues	100.0%	100.0%	100.0%
Direct salaries and related costs	65.1	62.6	59.3
General and administrative(1)	31.4	33.2	32.4
	-----	-----	-----
Income from operations	3.5	4.3	8.3
Interest and other income (expense)	(0.5)	(0.8)	0.4
	-----	-----	-----
Income before income taxes	3.0	3.5	8.7
Provision for income taxes(2)	1.5	1.8	3.3
	-----	-----	-----
Net income(1)(2)	1.5%	1.7%	5.4%
	=====	=====	=====

(1) Includes non-cash compensation expense of 0.9% related to the grant of stock options to an executive officer in 1995.

(2) Adjusted as if an affiliate of the Company included in the consolidated financial statements, which was an S corporation for federal income tax purposes, were subject to income taxes for all periods presented, based on the tax laws in effect during the respective periods. See Note 15 of Notes to Consolidated Financial Statements.

### 1996 Compared to 1995

Revenues. Revenues increased \$52.1 million, or 48.3%, to \$160.0 million in 1996 from \$107.9 million in 1995. These results reflect an increase in revenues of \$48.4 million from information technology support services provided through IT call centers and an increase in revenues of \$7.8 million from information technology services and solutions, partially offset by a \$4.1 million reduction in revenues from non-information technology services that were substantially phased out in 1995.

The increase in information technology support services revenues was primarily attributable to an increase in the number of IT call centers providing services throughout the period, the addition of several significant customers since 1995 and the resultant increase in call volumes from clients. During the fourth quarter of 1995, the Company opened two new IT call centers which were fully operational throughout 1996, and opened three additional centers in 1996. In addition, the Company has added 36 customers in its information technology support services since the beginning of 1995, giving it 58 customers that utilized

these services as of December 31, 1996. The increase in revenues for information technology services and solutions was primarily attributable to the increase in hours billed to customers for professional services when compared to the prior period.

**Direct Salaries and Related Costs.** Direct salaries and related costs increased \$27.3 million, or 40.4%, to \$94.8 million in 1996 from \$67.5 million in 1995. As a percentage of revenues, however, direct salaries and related costs decreased to 59.3% in 1996 from 62.6% in the comparable 1995 year. The increase in the amount of direct salaries and related costs was attributable to the addition of personnel to support revenue growth. The decrease as a percentage of revenues resulted from economies of scale associated with spreading costs over a larger revenue base and the continued change in the Company's mix of business reflecting the growth of information technology support services as a percentage of consolidated results.

**General and Administrative.** General and administrative expenses increased 45.0% to \$51.9 million in 1996 from \$35.8 million in 1995. As a percentage of revenues, however, general and administrative expenses decreased to 32.4% in 1996 from 33.2% in 1995. The increase in the amount of general and administrative expenses was primarily attributable to the addition of management and administrative personnel to support the Company's growth and depreciation expenses associated with facility and capital equipment expenditures incurred in connection with the IT call centers.

**Interest and Other Income.** Interest and other income increased to \$649,000 during 1996 from interest and other expense of \$786,000 during 1995. As a percentage of revenues, interest and other income was 0.4% in 1996 from interest and other expense of 0.8% in 1995. The increase was primarily attributable to an increase in the Company's cash position as a result of public offerings completed during 1996. The Company repaid all amounts outstanding under bank borrowing arrangements and invested the remaining net proceeds of the offerings in short term investment grade securities and money market instruments.

**Income Taxes.** Income taxes increased \$3.4 million, or 170.0%, to \$5.4 million during 1996 from \$2.0 million during 1995, and increased as a percentage of revenues to 3.3% from 1.8%, respectively. This increase was attributable to the significant increase in the amount of income before income taxes and in income before income taxes as a percentage of revenues. However, the Company's marginal tax rate decreased to 38.4% during 1996 primarily as a result of nondeductible expenses being a lower percentage of the larger income before income taxes and tax-exempt interest income.

**Net Income.** As a result of the foregoing, net income increased to \$8.6 million in 1996 from \$1.8 million in 1995.

#### **1995 Compared to 1994**

**Revenues.** Revenues increased \$20.5 million, or 23.4%, to \$107.9 million in 1995 from \$87.4 million in 1994. These results reflect an increase in revenues of \$24.8 million from information technology support services provided through IT call centers and an increase in revenues of \$0.7 million from information technology services and solutions. These increases were partially offset by a \$5.0 million reduction in revenues from the non-information technology services that were substantially phased out in 1995.

The increase in information technology support services revenues was primarily attributable to an increase in the number of IT call centers providing services throughout the year, the addition of several significant customers and the resultant increase in call volumes from

clients. During the fourth quarter of 1995, the Company opened two new IT call centers in addition to the four opened during 1994, all four of which were fully operational throughout 1995. In addition, the Company added 27 customers for its information technology support services during 1995, giving it 49 customers that utilized these services as of December 31, 1995. The increase in revenues for information technology services and solutions was primarily attributable to the increase in hours billed to customers for professional services when compared to the prior year.

**Direct Salaries and Related Costs.** Direct salaries and related costs increased 18.5% to \$67.5 million in 1995 from \$56.9 million in 1994. As a percentage of revenues, however, direct salaries and related costs decreased to 62.6% in 1995 from 65.1% in 1994. The increase in the amount of direct salaries and related costs was attributable to the addition of personnel to support revenue growth. The decrease as a percentage of revenues resulted from economies of scale associated with spreading costs over a larger revenue base.

**General and Administrative.** General and administrative expenses increased 30.4% to \$35.8 million in 1995 from \$27.5 million in 1994. As a percentage of revenues, general and administrative expenses increased to 33.2% in 1995 from 31.4% in 1994. The increase in the amount of general and administrative expenses was primarily attributable to the addition of management and administrative personnel to support the Company's growth and depreciation expense associated with facility and capital equipment expenditures incurred in connection with the IT call centers. The increase also was attributable to a non-cash compensation expense of \$949,960 related to the grant of stock options to an executive officer in 1995.

**Interest and Other Expense.** Interest and other expense increased 94.8% to \$786,000 in 1995 from \$403,000 in 1994, and increased as a percentage of revenues to 0.7% from 0.5% respectively. The increase was primarily attributable to an increase in the Company's borrowings and increased rates of interest on such borrowings during 1995. The Company's borrowings increased to \$13.7 million at December 31, 1995 from \$11.1 million at December 31, 1994, primarily as a result of capital expenditures required for the IT call centers.

**Income Taxes.** Income taxes increased \$0.7 million, or 49.3%, to \$2.0 million during 1995 from \$1.3 million in 1994, and increased as a percentage of revenues to 1.8% from 1.5%, respectively. This increase was attributable to the significant increase in the amount of income before income taxes and in income before income taxes as a percentage of revenues. In addition, the Company's marginal tax rate increased to 52.2% in 1995 primarily as a result of nondeductible expenses being a higher percentage of the larger income before income taxes.

**Net Income.** As a result of the foregoing, net income increased to \$1.8 million in 1995 from \$1.3 million in 1994.

### **Quarterly Results**

The following information presents unaudited quarterly operating results for the Company for 1995 and 1996. The data has been prepared by the Company on a basis consistent with the Consolidated Financial Statements included elsewhere in this Form 10-K, and include all adjustments, consisting of normal recurring accruals, that the Company considers necessary for a fair presentation thereof. These operating results are not necessarily indicative of the Company's future performance.

	Quarter Ended							
	4/2/95	7/2/95	10/1/95	12/31/95	3/31/96	6/30/96	9/29/96	12/31/96
	(In thousands, except per share data)							
Revenues	\$22,273	\$25,271	\$26,696	\$33,654	\$34,716	\$36,228	\$40,656	\$48,411
Direct salaries and related costs	14,556	16,383	15,769	20,784	20,006	21,337	24,437	29,050
General and administrative(1)	7,242	7,993	8,845	11,728	11,636	11,675	12,452	16,093
Income from operations	475	895	2,082	1,142	3,074	3,216	3,767	3,268
Interest and other income (expense)	(113)	(248)	(255)	(170)	(312)	100	282	579
Income before income taxes	362	647	1,827	972	2,762	3,316	4,049	3,847
Provision for income taxes(2)	189	371	850	577	945	1,428	1,494	1,497
Net income(2)	\$ 173	\$ 276	\$ 977	\$ 395	\$ 1,817	\$ 1,888	\$ 2,555	\$ 2,350
Net income per share(2)	\$ 0.01	\$ 0.01	\$ 0.04	\$ 0.01	\$ 0.07	\$ 0.06	\$ 0.08	\$ 0.07
Weighted average shares outstanding	27,791	27,791	27,791	27,791	27,791	30,705	34,014	35,714

(1) Includes non-cash compensation expense of \$949,960 related to the grant of stock options to an executive officer in the quarter ended December 31, 1995. Excluding the effect of such expense, income from operations, income before income taxes, and net income for the quarter ended December 31, 1995 would have been \$2.1 million, \$1.9 million and \$0.9 million, respectively, and net income per share would have been \$0.03.

(2) Adjusted as if an affiliate of the Company included in the consolidated financial statements, which was an S corporation for federal income tax purposes, were subject to income taxes for all periods presented, based on the tax laws in effect during the respective periods. See Note 15 of Notes to Consolidated Financial Statements.

### Liquidity and Capital Resources

The Company's primary sources of liquidity are equity offerings, cash flows from operations and available borrowings under its credit facility. The net proceeds to the Company of \$39.7 million from its April 1996 initial public offering were used to repay debt and make capital expenditures. In November 1996, the Company received proceeds, net of offering expenses, of \$71.5 million from the sale of approximately 2.4 million shares of common stock pursuant to a secondary offering. The Company intends to utilize these proceeds and the balance of the funds available from the initial public offering to make additional capital expenditures associated primarily with its technical support services as identified above, and for working capital and general corporate purposes, including possible acquisitions. Pending any such use, the Company will invest the balance of such funds in short-term, investment grade securities or money market instruments.

In December 1995, the Company entered into a \$20.0 million credit facility. This facility consisted of a revolving line of credit of \$12.0 million and an \$8.0 million term loan maturing in May 1997. In addition, in 1994 the Company obtained a \$1.3 million loan to construct one of the IT call centers. The Company used approximately \$16.7 million of the net proceeds of its April 1996 initial public offering to repay all amounts outstanding under the Company's bank borrowings, and no bank borrowings are currently outstanding. Subsequent to the 1996 year end, the Company entered into an agreement replacing its previous credit line with an unsecured revolving \$25.0 million facility. This new facility accrues

borrowings at tiered levels between 125 and 200 basis points above listed Libor pursuant to a defined ratio calculation within the agreement. The facility matures in June 1998, and contains certain covenants associated with tangible net worth, debt and debt funding as defined by the agreement.

During 1996, a subsidiary of the Company entered into a \$2.0 million and a \$1.25 million credit facility. These facilities consisted of a revolving line of credit maturing in November 1997. Both of these credit facilities were canceled subsequent to December 31, 1996.

During 1996, the Company generated approximately \$1.3 million from operating activities, resulting primarily from an increase in the Company's accounts receivable associated with continued growth and resultant effects in mix of business, and a decrease in accounts payable, primarily in the first calendar quarter of 1996, from the payment of uncommonly large fourth quarter 1995 purchases. The Company has used a portion of its proceeds from its initial public offering, together with \$5.3 million received as incentive grants from local and state governmental agencies, to fund \$20.9 million of capital expenditures in 1996 predominantly to construct and outfit three new IT call centers. As a result of the Company's continued expansion, it is anticipated that 1997 capital expenditures will be approximately \$19.0 million, primarily for completing additional IT call centers. Each IT call center requires approximately \$2.0 million to construct and approximately \$5.0 million of capital expenditures to complete the build-out and equip the center.

During 1996, the Company increased its European technical support presence and acquired additional sophisticated information technology capabilities to enhance its technical support services through the acquisitions of Datasvar Support AB and Diagsoft, Inc. ("the acquisitions"). The purchase price for the acquisitions was approximately 1,383,000 shares of the Company's common stock, and were accounted for using the pooling-of-interests method of accounting.

Subsequent to December 31, 1996, the Company acquired Info Systems of North Carolina, Inc. and Telcare Gesellschaft fur Telekommunikations- Mehrwertdienste mbH, TAS Telemarketing Gesellschaft fur Kommunikations und Dialog mbH and TAS Hedi Fabinyi GmbH. The aggregate purchase price for these acquisitions was approximately 2,480,000 shares of the Company's common stock, and were accounted for using the pooling-of-interests method of accounting.

During 1995, the Company generated \$7.5 million in cash from operations. The cash generated during 1995, together with \$2.5 million in net borrowings and \$2.6 million received as incentive grants from local and state governmental agencies in connection with additional IT call centers, was used to fund \$15.5 million of capital expenditures during 1995. Capital expenditures, which consisted primarily of construction of facilities, information technology, telecommunications equipment and computer systems, and furniture and fixtures, were made to support the continued growth and expansion of the IT call centers.

The Company believes that the net proceeds from its secondary offering, combined with available amounts of cash, accessible funds under its credit facilities and cash flows from operations, will be adequate to meet its capital requirements for the foreseeable future.

## **REPORT OF INDEPENDENT ACCOUNTANTS**

To the Board of Directors and Stockholders of Sykes Enterprises, Incorporated

We have audited the accompanying consolidated balance sheets of Sykes Enterprises, Incorporated and subsidiaries as of December 31, 1995 and December 31, 1996, and the related consolidated statements of income, changes in shareholders' equity and cash flows for the year ended July 31, 1994, the five months ended December 31, 1994 and the years ended December 31, 1995 and 1996. We have also audited the financial statement schedule on page 34 of this Form 8-K. These financial statements and financial statement schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and the financial statement schedule based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Sykes Enterprises, Incorporated and subsidiaries as of December 31, 1995 and 1996 and the consolidated results of their operations and their cash flows for the year ended July 31, 1994, the five months ended December 31, 1994, and the years ended December 31, 1995 and 1996, in conformity with generally accepted accounting principles. In addition, in our opinion, the financial statement schedule referred to above, when considered in relation to the basic financial statements taken as a whole, presents fairly, in all material respects, the information required to be included therein.

**Coopers & Lybrand L.L.P.**

Tampa, Florida  
February 11, 1998

**SYKES ENTERPRISES, INCORPORATED**  
**CONSOLIDATED BALANCE SHEETS**

	December 31, 1995	December 31, 1996
	-----	-----
<b>ASSETS</b>		
Current assets		
Cash and cash equivalents.....	\$ 2,972,008	\$ 89,995,036
Receivables, including unbilled.....	23,240,139	42,747,997
Prepaid expenses and other current assets.....	1,925,739	2,328,943
	-----	-----
Total current assets.....	28,137,886	135,071,976
Property and equipment, net.....	26,824,638	41,428,511
Deferred charges and other assets.....	1,614,005	2,025,759
	-----	-----
	\$ 56,576,529	\$178,526,246
	=====	=====
<b>LIABILITIES AND SHAREHOLDERS' EQUITY</b>		
Current liabilities		
Current installments of long-term debt.....	\$ 4,071,207	\$ 1,776,724
Accounts payable.....	8,261,179	7,943,990
Accrued employee compensation and benefits.....	7,349,467	9,633,846
Deferred income taxes.....	3,478,230	-
Other accrued expenses and current liabilities.....	4,706,375	5,384,268
	-----	-----
Total current liabilities.....	27,866,458	24,738,828
Long-term debt.....	9,583,528	1,566,706
Deferred income taxes.....	-	3,464,045
Deferred grants.....	6,751,782	11,669,273
Commitments and contingencies (Notes 2, 9 and 17)	-	-
Shareholders' equity		
Preferred stock, \$0.01 par value, 10,000,000 shares authorized; no shares issued and outstanding.....	-	-
Common stock, \$0.01 par value; 200,000,000 shares authorized; 23,662,394 and 35,320,392 issued and outstanding.....	236,624	353,204
Additional paid-in capital.....	3,326,689	124,915,912
Retained earnings.....	9,991,759	11,827,138
Unearned compensation.....	(1,338,041)	-
Accumulated foreign currency translation adjustments.....	157,730	(8,860)
	-----	-----
Total shareholders' equity.....	12,374,761	137,087,394
	-----	-----
	\$ 56,576,529	\$ 178,526,246
	=====	=====

See accompanying notes to consolidated financial statements



**SYKES ENTERPRISES, INCORPORATED**  
**CONSOLIDATED STATEMENTS OF INCOME**

	Year Ended July 31, 1994	Five Months Ended December 31, 1994	Year Ended December 31, 1995	Year Ended December 31, 1996
	-----	-----	-----	-----
Revenues.....	\$ 79,752,122	\$ 41,420,242	\$ 107,894,184	\$ 160,010,501
Operating expenses				
Direct salaries and related costs.....	50,832,245	28,300,900	67,492,462	94,829,595
General and administrative.....	27,402,222	11,494,882	35,808,360	51,856,353
Total operating expenses.....	78,234,467	39,795,782	103,300,822	146,685,948
Income from operations.....	1,517,655	1,624,460	4,593,362	13,324,553
Other income (expense)				
Interest income.....	-	-	-	945,411
Interest expense.....	(491,474)	(292,932)	(963,356)	(789,057)
Other.....	505,344	(70,094)	177,347	492,533
Total other income (expense).....	13,870	(363,026)	(786,009)	648,887
Income before income taxes.....	1,531,525	1,261,434	3,807,353	13,973,440
Provision for income taxes				
Current.....	258,277	1,152,320	558,757	5,310,665
Deferred.....	806,224	(439,959)	1,255,753	(14,185)
Total provision for income taxes.....	1,064,501	712,361	1,814,510	5,296,480
Net income.....	467,024	549,073	1,992,843	8,676,960
Preferred stock dividends.....	-	-	-	(47,343)
Net income applicable to common shareholders.....	\$ 467,024	\$ 549,073	\$ 1,992,843	\$ 8,629,617
	=====	=====	=====	=====
Pro forma income data (unaudited)				
Income before income taxes.....	\$ 1,531,525	\$ 1,261,434	\$ 3,807,353	\$ 13,973,440
Pro forma provision for income taxes relating to S corporation.....	39,000	39,000	172,000	67,000
Actual provision for income taxes.....	1,064,501	712,361	1,814,510	5,296,480
Total provision and pro forma provision for income taxes.....	1,103,501	751,361	1,986,510	5,363,480
Pro forma net income.....	428,024	510,073	1,820,843	8,609,960
Preferred stock dividends.....	-	-	-	(47,343)
Pro forma net income applicable to common shareholders.....	\$ 428,024	\$ 510,073	\$ 1,820,843	\$ 8,562,617
	=====	=====	=====	=====
Pro forma net income per share.....	\$ 0.02	\$ 0.02	\$ 0.07	\$ 0.26
	=====	=====	=====	=====
Pro forma weighted average common and common equivalent shares outstanding.....	27,790,638	27,790,638	27,790,638	32,416,442
	=====	=====	=====	=====

See accompanying notes to consolidated financial statements

**SYKES ENTERPRISES, INCORPORATED**  
**CONSOLIDATED STATEMENTS OF CHANGES IN SHAREHOLDERS' EQUITY**

	Common Stock Shares -----	Amount -----	Additional Paid-In Capital -----	Retained Earnings -----	Unearned Compensation -----	Accumulated Foreign Currency Translation Adjustment -----
Balance at August 1, 1993.....	23,929,914	\$ 239,299	\$ 2,374,722	\$ 7,367,051	\$ (2,721,607)	\$ (2,413)
Contribution to capital.....	-	-	350,000	-	-	-
Redemption of common stock.....	(545,193)	(5,452)	(94,549)	-	-	-
Issuance of common stock.....	92,556	926	590,333	-	-	-
Foreign currency translation adjustment.....	-	-	-	(21,402)	-	(34,355)
Distribution.....	-	-	-	-	-	-
Unearned employee compensation from Employee Stock Ownership Plan Trust.....	-	-	-	-	454,015	-
Net income.....	-	-	-	467,024	-	-
Balance at July 31, 1994.....	23,477,277	234,773	3,220,506	7,812,673	(2,267,592)	(36,768)
Issuance of common stock.....	-	-	94,065	-	-	-
Foreign currency translation adjustment.....	-	-	-	-	-	18,689
Distribution.....	-	-	-	(51,378)	-	-
Unearned employee compensation from Employee Stock Ownership Plan Trust.....	-	-	-	-	185,981	-
Net income.....	-	-	-	549,073	-	-
Balance at December 31, 1994.....	23,477,277	234,773	3,314,571	8,310,368	(2,081,611)	(18,079)
Issuance of common stock.....	62,013	620	102,477	-	-	-
Repurchase of common stock.....	-	-	(89,128)	-	-	-
Stock dividend.....	123,104	1,231	(1,231)	-	-	-
Foreign currency translation adjustment.....	-	-	-	-	-	175,809
Distribution.....	-	-	-	(311,452)	-	-
Unearned employee compensation from Employee Stock Ownership Plan Trust.....	-	-	-	-	743,570	-
Net income.....	-	-	-	1,992,843	-	-
Balance at December 31, 1995.....	23,662,394	236,624	3,326,689	9,991,759	(1,338,041)	157,730
Merger with Sykes Realty, Inc....	1,830,000	18,300	247,266	(827,554)	-	-
Conversion of redeemable preferred stock.....	448,029	4,480	5,371,872	(5,376,352)	-	-
Issuance of common stock.....	6,427,632	64,277	112,275,824	-	-	-
Repurchase of common stock.....	-	-	(142,702)	-	-	-
Three-for-two stock split.....	2,952,337	29,523	(29,523)	-	-	-
Distribution.....	-	-	-	(590,332)	-	-
Tax effect of non-qualified exercise of stock options.....	-	-	3,866,486	-	-	-
Foreign currency translation adjustment.....	-	-	-	-	-	(166,590)
Preferred stock dividends.....	-	-	-	(47,343)	-	-
Unearned employee compensation from Employee Stock Ownership Plan Trust.....	-	-	-	-	1,338,041	-
Net income.....	-	-	-	8,676,960	-	-
Balance at December 31, 1996.....	35,320,392	\$ 353,204	\$ 124,915,912	\$11,827,138	\$ -	\$ (8,860)

See accompanying notes to consolidated financial statements

**SYKES ENTERPRISES, INCORPORATED**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**

	Year Ended July 31, 1994	Five Months Ended December 31, 1994	Year Ended December 31, 1995	Year Ended December 31, 1996
Cash flows from operating activities				
Net income.....	\$ 467,024	\$ 549,073	\$ 1,992,843	\$ 8,676,960
Depreciation and amortization.....	2,373,735	1,215,551	4,000,338	6,492,336
Deferred compensation.....	-	-	949,960	-
Deferred income taxes.....	806,224	(439,959)	1,255,753	(14,185)
ESOP allocation (unearned compensation).....	454,015	185,981	743,570	1,338,041
Loss (gain) on disposal of property and equipment.....	445,303	36,925	38,022	(54,717)
Changes in assets and liabilities				
Receivables, including unbilled.....	(2,646,851)	(174,304)	(7,939,794)	(19,225,559)
Prepaid expenses and other current assets.....	(1,593,032)	522,426	(56,832)	(403,204)
Deferred charges and other assets.....	(374,467)	1,068,916	(203,357)	(743,451)
Accounts payable.....	1,327,646	1,887,035	1,481,045	(936,775)
Accrued employee compensation and benefits.....	681,818	(159,138)	3,907,546	2,284,379
Other accrued expenses and current liabilities.....	(1,854,763)	182,394	1,303,489	3,982,392
	-----	-----	-----	-----
Net cash provided by operating activities.....	86,652	4,874,900	7,472,583	1,396,217
	-----	-----	-----	-----
Cash flows from investing activities				
Capital expenditure.....	(5,872,247)	(7,059,237)	(15,460,780)	(20,919,863)
Acquisition of business.....	(104,000)	-	-	-
Proceeds from sale of property and equipment.....	70,101	211,218	100,402	201,425
	-----	-----	-----	-----
Net cash used for investing activities.....	(5,906,146)	(6,848,019)	(15,360,378)	(20,718,438)
	-----	-----	-----	-----
Cash flows from financing activities				
Paydowns under revolving line of credit agreements.....	(18,563,000)	(8,123,000)	(32,413,539)	(20,771,718)
Borrowings under revolving line of credit agreements.....	19,043,000	10,383,000	31,013,422	19,916,835
Proceeds from issuance of stock.....	941,259	94,064	79,487	112,340,100
Proceeds from grants.....	700,987	2,567,830	2,603,485	5,263,420
Proceeds from issuance of long-term debt.....	3,735,566	2,157,249	6,233,753	1,611,666
Subsidiary stock redemption.....	(100,000)	-	(65,519)	(142,702)
Payment of long-term debt.....	(926,220)	(700,735)	(2,287,462)	(11,068,087)
Dividends paid.....	(21,402)	(51,378)	(311,452)	(637,675)
	-----	-----	-----	-----
Net cash provided by financing activities.....	4,810,190	6,327,030	4,852,175	106,511,839
	-----	-----	-----	-----
Adjustment for foreign currency translation.....	(34,355)	18,689	175,809	(166,590)
	-----	-----	-----	-----
Net increase (decrease) in cash and cash equivalents.....	(1,043,659)	4,372,600	(2,859,811)	87,023,028
Cash and cash equivalents - beginning.....	2,502,878	1,459,219	5,831,819	2,972,008
	-----	-----	-----	-----
Cash and cash equivalents - ending.....	\$ 1,459,219	\$ 5,831,819	\$ 2,972,008	\$ 89,995,036
	=====	=====	=====	=====
Supplemental disclosures of cash flow information:				
Cash paid during the year for:				
Interest.....	\$ 494,741	\$ 361,613	\$ 1,074,593	\$ 692,625
Income taxes.....	\$ 1,247,247	\$ 210,022	\$ 1,686,658	\$ 3,885,629

See accompanying notes to consolidated financial statements

# SYKES ENTERPRISES, INCORPORATED

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Sykes Enterprises, Incorporated and consolidated subsidiaries (the "Company" or "Sykes") provide comprehensive information technology outsourcing services including information technology support services, consisting of technical product support, help desk services and diagnostic software tools, and information technology development services and solutions, consisting of software design, development, integration and implementation and documentation, foreign language translation and localization services. The Company is also engaged in designing, programming, licensing, installing and supporting hardware and software systems. The Company's services are provided to a wide variety of industries.

The Company completed business combinations with TAS Telemarketing Gesellschaft fur Kommunikation und Dialog mbH ("TAS I") and TAS Hedi Fabinyi GmbH ("TAS II") on September 26, 1997. These combinations were accounted for utilizing the pooling-of-interests method of accounting, and accordingly the accompanying financial statements have been restated to reflect these acquisitions for all periods presented.

Unless otherwise noted, all information has been adjusted to retroactively reflect three-for-two stock splits in the form of 50% stock dividends to shareholders of record on July 18, 1996 and May 19, 1997, which was reflected on the Nasdaq National Market on July 29, 1996 and May 29, 1997, respectively.

### **Note 1 - Summary of Accounting Policies**

**Principles of Consolidation** - The consolidated financial statements include the accounts of Sykes Enterprises, Incorporated and its wholly owned subsidiaries. All significant intercompany transactions and balances have been eliminated in consolidation.

**Change in Fiscal Year** - The Company changed its fiscal year end from July 31 to December 31 effective August 1, 1994. The consolidated statements of income, changes in shareholders' equity and cash flows for the year ended July 31, 1994, the five months ended December 31, 1994 and the years ended December 31, 1995 and 1996 are presented in the accompanying consolidated financial statements.

**Recognition of Revenue** - The Company primarily recognizes its revenue as services are performed. Royalty revenue is recognized at the time royalties are earned and the remaining revenue is recognized on fixed price contracts using the percentage-of-completion method of accounting. Adjustments to fixed price contracts and estimated losses, if any, are recorded in the period when such adjustments or losses are known. Software sales are recognized upon shipment.

**Cash and Cash Equivalents** - Cash and cash equivalents consist of highly liquid short term investments classified as available for sale as defined under the Statement of Financial Accounting Standards No. 115, "Accounting for Certain Investments in Debt and Equity Securities." At December 31, 1996, cash in the amount of approximately \$79,975,000 was held in tax free interest bearing investments, approximately \$6,721,000 was held in taxable

interest bearing investments, both of which are classified as available for sale, and approximately \$136,000 was held in an interest bearing account and pledged as collateral with respect to office space leased in Amsterdam, The Netherlands. It is the Company's intention to continue to maintain the Netherlands' investment throughout the term of the lease.

Shareholder Payable - The Company recorded a net payable due to its majority shareholder of approximately \$645,000 which has been included in accounts payable at December 31, 1995. There was no balance due to the shareholders at December 31, 1996.

Property and Equipment - Property and equipment is recorded at cost and depreciated using the straight-line method over the estimated useful lives of the respective assets. Improvements to leased premises are amortized over the shorter of the related lease term or the useful lives of the improvements. Cost and related accumulated depreciation on assets retired or disposed of are removed from the accounts and any gains or losses resulting therefrom are credited or charged to income. Depreciation expense was approximately \$2,282,000, \$1,125,000, \$4,000,000 and \$7,106,000 for the year ended July 31, 1994, the five months ended December 31, 1994 and the years ended December 31, 1995 and 1996, respectively. Property and equipment includes approximately \$620,000 of additions included in accounts payable at December 31, 1996. Accordingly, this non-cash transaction has been excluded from the accompanying consolidated statement of cash flows for the year ended December 31, 1996.

Land received from various governmental agencies under grants is recorded at fair value (as determined by an independent appraiser) at date of grant. During the years ended December 31, 1995 and 1996 the Company recorded approximately \$1,824,000 and \$317,000, respectively, in land acquisitions as a result of such grants. Accordingly, these non-cash transactions have been excluded from the accompanying consolidated statements of cash flows for the years ended December 31, 1995 and 1996.

Deferred Charges and Other Assets - Deferred charges and other assets consist primarily of a long-term note receivable, deposits, cash value of officers life insurance, and goodwill and covenants not to compete arising from business acquisitions. These intangible assets are being amortized over periods ranging from two to ten years.

Impairment of Long-Lived Assets - The Company reviews long-lived assets and certain identifiable intangibles for impairment and writes down to fair value whenever events or changes in circumstances indicate that the carrying value may not be recoverable. Since adoption, no impairment losses have been recognized.

Income Taxes - Deferred income taxes are recorded to reflect the tax consequences on future years of differences between the tax basis of assets and liabilities and their financial reporting amounts at each year end based on enacted tax laws and statutory tax rates applicable to the periods in which the differences are expected to affect taxable income.

The Company and its consolidated subsidiaries are either taxed as C corporations or have elected to be taxed as an S corporation under the provisions of the Internal Revenue Code through the effective date of the Company's initial public offering (See Note 15). The Company's affiliate which elected to be taxed as an S corporation terminated its S corporation election during the year ended December 31, 1996 and accordingly became subject to federal and state income taxes.

Deferred Grants - Grants for relocation and the acquisition of property and equipment are deferred and recognized in income over the corresponding useful lives of their related property and equipment. There are no significant contingencies associated with the grants that would impact the Company's ability to utilize assets received in association with the grants.

Foreign Currency Translation - The assets and liabilities of the Company's foreign subsidiaries whose functional currency is other than the U.S. Dollar are translated at the exchange rates in effect on the reporting date, and income and expenses are translated at the weighted average exchange rate during the period. The net effect of translation gains and losses are not included in determining net income, but are accumulated as a separate component of shareholders' equity. Foreign currency translation gains and losses are included in determining net income. Such gains and losses are not material for any period presented.

Use of Estimates - The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates; however, management does not believe these differences would have a material effect on operating results.

## **Note 2 - Acquisitions and Mergers**

On July 16, 1996, the Company acquired Datasvar Support AB ("Datasvar") of Stockholm, Sweden in exchange for 370,229 shares of the Company's common stock. Datasvar operates two information technology call centers in Sweden serving the Scandinavian region.

On August 30, 1996, the Company acquired all of the stock of DiagSoft, Inc. ("DiagSoft") in exchange for 1,012,500 shares of the Company's common stock. DiagSoft develops and markets diagnostic software applications which will enhance the Company's technology support services.

On March 31, 1997, the Company acquired Info Systems of North Carolina, Inc. ("Info Systems") in exchange for approximately 1.1 million shares of

the Company's common stock. Info Systems is engaged in the design, development, licensing and support of information management solutions to the retail, manufacturing and distribution industries.

On June 16, 1997 the Company acquired all of the stock of Telcare Gesellschaft fur Telekommunikations-Mehrwertdieste mbH ("Telcare") of Wilhelmshaven, Germany, in exchange for 750,000 shares of the Company's common stock. Telcare operates an information technology call center and provides technical product support and service to numerous industries in Germany, and expands the Company's presence in Europe.

On September 26, 1997, the Company acquired all of the stock of TAS Telemarketing Gesellschaft fur Kommunikation und Dialog mbH ("TAS I") of Bochum, Germany in exchange for 400,000 shares of the Company's common stock. The Company accounted for the acquisition utilizing the pooling- of-interests method of accounting.

On September 26, 1997 the Company acquired all of the stock of TAS Hedi Fabinyi GmbH ("TAS II") of Stuttgart, Germany, in exchange for 180,000 shares of the Company's common stock. The Company accounted for the acquisition utilizing the pooling-of-interest method of accounting.

The above transactions have been accounted for as pooling-of-interests and, accordingly, the consolidated financial statements for the periods presented have been restated to include the accounts of Datasvar, DiagSoft, Info Systems, Telcare, TAS I and TAS II.

Separate results of operations for the periods prior to the merger with Datasvar, DiagSoft, Info Systems, Telcare, TAS I and TAS II are outlined below:

	Year Ended July 31, 1994 -----	Five Months Ended December 31, 1994 -----	Year Ended December 31, 1995 -----
Revenue:			
Sykes.....	\$47,661,706	\$18,167,860	\$ 63,096,660
Datasvar.....	2,659,788	1,486,741	5,341,450
DiagSoft.....	5,267,840	1,957,912	6,156,524
Info Systems.....	17,763,005	16,251,585	23,317,923
Telcare.....	848,697	1,089,997	3,587,292
TAS I.....	4,356,030	1,897,665	4,318,972
TAS II.....	1,195,056	568,482	2,075,363
	-----	-----	-----
Combined.....	\$79,752,122 =====	\$41,420,242 =====	\$ 107,894,184 =====
Net income:			
Sykes.....	\$ 485,023	\$ 34,435	\$ 1,502,946
Datasvar.....	203,993	(32,243)	1,005,548
DiagSoft.....	(79,424)	(157,691)	(112,409)
Info Systems.....	250,662	619,337	(304,526)
Telcare.....	(751,524)	138,333	(489,725)
TAS I.....	266,453	(56,200)	337,453
TAS II.....	91,841	3,102	53,556
	-----	-----	-----
Combined.....	\$ 467,024 =====	\$ 549,073 =====	\$ 1,992,843 =====
Other changes in shareholders' equity:			
Sykes.....	\$ 291,249	\$ (3,185)	\$ 29,054
Datasvar.....	(36,266)	6,987	161,721
DiagSoft.....	(100,000)	-	-
Info Systems.....	736,637	207,654	678,051
Telcare.....	308,225	91,985	46,912
TAS I.....	38,031	(56,358)	(275,691)
TAS II.....	1,640	274	(18,151)
	-----	-----	-----
Combined.....	\$ 1,239,516 =====	\$ 247,357 =====	\$ 621,896 =====

### Note 3 - Concentrations of Credit Risk

Financial instruments which potentially subject the Company to concentrations of credit risk consist principally of trade receivables. With the exception of approximately \$4.2 million of receivables from a significant customer (See Note 14), the Company's credit concentrations are limited due to the wide variety of customers and markets into which the Company's services are sold.



## Note 4 - Receivables

Receivables consist of the following:

	December 31,	
	1995	1996
	----	----
Trade accounts receivable.....	\$ 21,834,973	\$ 35,363,921
Unbilled accounts receivable.....	1,222,293	2,843,193
Notes from officers and related parties.....	190,927	-
Income tax refund receivable.....	-	1,399,165
Other.....	302,685	3,411,717
	-----	-----
	23,550,878	43,017,996
Less allowance for doubtful accounts.....	310,739	269,999
	-----	-----
	\$ 23,240,139	\$ 42,747,997
	=====	=====

## Note 5 - Property and Equipment

Property and equipment consist of the following:

	December 31,	
	1995	1996
	----	----
Land.....	\$ 2,240,746	\$ 2,506,421
Buildings and leasehold improvements.....	9,551,526	15,555,635
Equipment, furniture and fixtures.....	23,439,209	39,088,761
Transportation equipment.....	676,026	631,092
Construction in progress.....	1,499,363	-
	-----	-----
	37,406,870	57,781,909
Less accumulated depreciation.....	10,582,232	16,353,398
	-----	-----
	\$ 26,824,638	\$ 41,428,511
	=====	=====

## Note 6 - Long-term Debt

Long-term debt consists of the following:

	December 31,	
	1995	1996
	----	----
Revolving term line of credit, \$12.0 million maximum, interest at prime, collateralized by certain receivables, property and equipment and intangible assets.....	\$ 414,734	\$ -
Bank term note payable, due March 1, 2001, interest at prime, collateralized by certain receivables, property and equipment and intangible assets.....	7,750,000	-
Notes payable and capital leases, principal and interest payable in monthly installments through December 1999, interest at varying rates up to prime plus 0.25 percent, collateralized by certain receivables and equipment.....	5,490,001	3,343,430
	-----	-----
	13,654,735	3,343,430
Less current portion.....	4,071,207	1,776,724
	-----	-----
	\$ 9,583,528	\$ 1,566,706
	=====	=====

Future principal maturities subsequent to December 31, 1996 are as follows:

1997.....	\$ 1,776,724
1998.....	1,404,202
1999.....	162,504
	-----
	\$ 3,343,430
	=====

Effective December 31, 1996, the Company entered into an agreement replacing its previous credit line with an unsecured revolving \$25.0 million facility. This new facility accrues borrowings at tiered levels between 125 and 200 basis points above listed Libor pursuant to a defined ratio calculation within the agreement. The facility matures in June 1998, and contains certain covenants associated with tangible net worth, debt and debt funding as defined by the agreement. The Company had no borrowings under this facility at December 31, 1996.

The Company had a credit facility comprised of \$12.0 million revolving line of credit and a term note issued in the original amount of \$8.0 million. Borrowings under the credit facility was approximately \$8,165,000 at December 31, 1995. The Company extinguished the debt with the proceeds from its initial public offering and had no borrowings under either credit facility at December 31, 1996.

During 1996, a subsidiary of the Company entered into a \$2.0 million and a \$1.25 million credit facility. These facilities consisted of a revolving line of credit maturing in November 1997. The Company had no borrowings under either credit facility at December 31, 1996 and both of these credit facilities were canceled subsequent to December 31, 1996.

#### Note 7 - Income Taxes

The components of income before income taxes are as follows:

	Year Ended July 31, 1994	Five Months Ended December 31, 1994	Years Ended December 31,	
	-----	-----	1995	1996
	-----	-----	----	----
Domestic.....	\$ 1,324,009	\$ 1,025,388	\$ 1,958,008	\$ 11,337,945
Foreign.....	207,516	236,046	1,849,345	2,635,495
	-----	-----	-----	-----
Total income before income taxes.....	\$ 1,531,525	\$ 1,261,434	\$ 3,807,353	\$ 13,973,440
	=====	=====	=====	=====

Provision for income taxes consists of the following:

	Year Ended July 31, 1994 -----	Five Months Ended December 31, 1994 -----	Years Ended 1995 ----	December 31, 1996 ----
Current:				
Federal.....	\$ (177,723)	\$ 756,998	\$ (174,520)	\$ 3,573,533
State.....	22,492	187,078	(35,875)	610,632
Foreign.....	413,508	208,244	769,152	1,126,500
Total current provision for income taxes.....	258,277	1,152,320	558,757	5,310,665
Deferred:				
Federal.....	808,048	(349,775)	1,054,967	(2,000)
State.....	(1,824)	(90,184)	183,006	56,250
Foreign.....	-	-	17,780	(68,435)
Total deferred provision for income taxes.....	806,224	(439,959)	1,255,753	(14,185)
Total provision for income taxes.....	\$ 1,064,501	\$ 712,361	\$ 1,814,510	\$ 5,296,480

The components of the net deferred tax asset (liability) are as follows:

	December 31,	
	1995 ----	1996 ----
Current:		
Deferred tax asset:		
Accounts payable.....	\$ 428,000	\$ -
Accrued expenses.....	1,534,000	686,000
State operating loss carryforward.....	1,000	-
Bad debt reserve.....	-	15,000
Other.....	(3,230)	53,000
Total current deferred tax asset.....	\$ 1,959,770	\$ 754,000
Deferred tax liability:		
Receivables.....	\$ (5,337,000)	\$ -
State tax refunds.....	(57,000)	-
Property and equipment.....	(44,000)	(149,000)
Cash to accrual-Section 481 adjustment.....	-	(277,000)
Total current deferred tax liability.....	(5,438,000)	(426,000)
Net current deferred tax asset (liability).....	\$ (3,478,230)	\$ 328,000
	=====	=====

	December 31,	
	1995	1996
Non-current:		
Deferred tax asset:		
Deferred compensation.....	\$ 360,000	\$ 240,000
R & D credits.....	25,464	-
Bad debt reserve.....	48,566	-
Accrued expenses.....	87,258	3,000
State operating loss carryforward.....	37,000	-
Other.....	34,386	-
Total non-current deferred tax asset.....	\$ 592,674	\$ 243,000
Deferred tax liability:		
Property and equipment.....	\$ (344,705)	\$ (338,000)
Capitalized software development costs.....	(148,189)	-
Untaxed reserves - foreign.....	(97,318)	(136,000)
Cash to accrual-Section 481 adjustment.....	-	(2,903,000)
Other.....	(246,665)	(330,045)
Total non-current deferred tax liability.....	(836,877)	(3,707,045)
Net non-current deferred tax liability.....	\$ (244,203)	\$ (3,464,045)

The corporation has not recorded deferred income taxes applicable to undistributed earnings of foreign subsidiaries that are indefinitely reinvested in foreign operations. Undistributed earnings amounted to approximately \$2.0 million at December 31, 1996, excluding amounts which, if remitted, generally would result in minimal additional U.S. income taxes because of available foreign tax credits. If the earnings of such foreign subsidiaries were not indefinitely reinvested, a deferred tax liability of approximately \$300,000 would have been required.

In conjunction with the Company's initial public offering, the Company changed its method of accounting for income taxes from the cash basis to the accrual method. The corresponding adjustment will be included in taxable income over a period not to exceed four years.

The following summarizes the principal differences between income taxes at the federal statutory rate and the effective income tax amounts reflected in the financial statements:

	Year Ended July 31, 1994	Five Months Ended December 31, 1994	Years Ended December 31, 1995	December 31, 1996
	-----	-----	----	----
Statutory tax.....	\$ 503,284	\$ 311,116	\$ 1,234,150	\$ 4,246,532
State income taxes net of federal tax benefit.....	61,479	80,007	66,934	315,883
Effect of income not subject to federal and state income tax.....	(13,000)	(21,000)	(155,000)	(284,000)
Change in state tax rate.....	(67,000)	-	-	-
Foreign taxes, net of foreign income not taxed in U.S. ....	333,453	226,818	233,080	614,065
Permanent differences.....	321,551	178,427	366,555	153,000
Tax credits.....	(57,246)	(43,007)	(90,209)	-
Other.....	(18,020)	(20,000)	159,000	251,000
	-----	-----	-----	-----
Total provision for income taxes...	\$ 1,064,501	\$ 712,361	\$ 1,814,510	\$ 5,296,480
	=====	=====	=====	=====

The Company is currently under examination by the Internal Revenue Service for tax years ended July 31, 1991 through 1995. The Company has reviewed various matters that are under consideration and believes that it has adequately provided for any liability that may result from this examination. In the opinion of management, any liability that may arise from prior periods as a result of the examination will not have a material effect on the Company's financial condition or results of operations.

#### Note 8 - Earnings Per Share

Primary earnings per share are based on the weighted average number of common shares and common share equivalents outstanding during the periods and assumes, (i) that the redeemable preferred stock was converted at the beginning of each period, or date of issuance, if later, and (ii) that earnings were increased for preferred dividends that would not have been incurred had conversion taken place. Common share equivalents include, when applicable, dilutive stock options using the treasury stock method. Fully diluted earnings per share assumes, in addition to the above, the additional dilutive effect of stock options.

The numbers of shares used in the earnings per share computation are as follows:

Year Ended July 31,	Five Months Ended December 31,	Years Ended December 31,
------------------------	--------------------------------------	--------------------------

	1994	1994	1995	1996
	----	----	----	----
Primary				
Weighted average				
common outstanding.....	26,407,393	26,407,393	26,407,393	30,873,384
Conversion of				
preferred stock.....	672,044	672,044	672,044	227,151
Stock options.....	711,201	711,201	711,201	1,265,688
	-----	-----	-----	-----
Total primary.....	27,790,638	27,790,638	27,790,638	32,366,223
Fully Diluted				
Additional dilution				
of stock options.....	-	-	-	50,219
	-----	-----	-----	-----
Total fully diluted.....	27,790,638	27,790,638	27,790,638	32,416,442
	=====	=====	=====	=====

## Note 9 - Commitments and Contingencies

The Company leases certain equipment and buildings under operating leases having terms ranging from one to ten years. The building leases contain up to two five year renewal options.

Rental expense under operating leases for the year ended July 31, 1994, the five months ended December 31, 1994 and the years ended December 31, 1995 and 1996 was approximately \$3,174,000, \$1,057,000, \$2,275,000 and \$5,137,000, respectively. Rental expense for an office building leased from the Company's major shareholder, net of subleases was approximately

\$277,000, \$45,000, \$104,000 and \$104,000 for the year ended July 31, 1994, the five months ended December 31, 1994 and the years ended December 31, 1995 and 1996, respectively. The Company has a ten-year operating lease agreement, signed in 1995, with the Company's majority shareholder for its corporate aircraft. The lease expense for 1995 and 1996 was approximately \$51,000 and \$615,000, respectively.

The Company has a five year noncancelable sublease agreement with an unrelated tenant for its Charlotte, N.C. facility. The minimum sublease rental amounts the Company is to receive are approximately \$181,000, \$187,000, and \$94,000 for the years ended December 31, 1997 through 1999, respectively.

The following is a schedule of future minimum rental payments (without regard to the Charlotte, N.C. sublease) under operating leases having a remaining noncancelable term in excess of one year subsequent to December 31, 1996:

Year ----	Related Party -----	Non-Related Party -----	Total Amount -----
1997.....	\$ 896,000	\$ 2,975,000	\$ 3,871,000
1998.....	896,000	2,336,000	3,232,000
1999.....	896,000	1,481,000	2,377,000
2000.....	896,000	1,257,000	2,153,000
2001.....	896,000	1,000,000	1,896,000
Thereafter.....	3,207,000	-	3,207,000
	-----	-----	-----
Total minimum payments required..	\$ 7,687,000	\$ 9,049,000	\$ 16,736,000
	=====	=====	=====

The Company from time to time is involved in legal actions arising in the ordinary course of business. With respect to these matters, management believes that it has adequate legal defenses and/or provided adequate accruals for related costs such that the ultimate outcome will not have a material adverse effect on the Company's future financial position.

#### **Note 10 - Employee Benefit Plans**

The Company maintains a 401(k) plan covering defined employees who meet established eligibility requirements. Under the plan provisions, the Company matches 25% of participant contributions to a maximum matching amount of 1% of participant compensation. Company contributions are funded on a bi-weekly basis. The Company contribution was approximately \$129,000, \$125,000, \$143,000 and \$170,000 for the year ended July 31, 1994, the five months ended December 31, 1994 and the years ended December 31, 1995 and 1996, respectively. In addition, one of the Company's subsidiaries maintains a separate 401(k) plan. There were no Company contributions made to this plan during the periods presented.

In June 1992, one of the Company's subsidiaries established an Employee Stock Ownership Plan ("ESOP") for the benefit of its employees. In August 1992, the ESOP purchased 249,350 shares of the subsidiary's common stock. In connection with the stock purchase, the subsidiary made a cash contribution of \$1.0 million to the ESOP and entered into a note payable

of \$3,105,000. As the debt was repaid, shares were released from collateral and allocated to active employees, based on the proportion of debt service paid in the current year.

#### **Note 11 - Public Offerings**

In April 1996, the Company completed its initial public offering for the sale of 4,500,000 shares of common stock. Coincident with such offering, the underwriters of the offering exercised their 15% over-allotment and accordingly an additional 939,978 shares of the Company's common stock were sold by the Company. The Company received approximately \$39.7 million from the sale of the shares, net of underwriting discounts and expenses associated with such offering. The proceeds were used to repay all outstanding indebtedness and make capital expenditures, with the remaining balance held for general corporate and working capital purposes.

In November 1996, the Company completed a secondary offering for the sale of 2,419,980 shares of common stock, inclusive of the underwriters over-allotment option. The Company received approximately \$71.5 million from the offering, net of underwriting discounts and expenses. The net proceeds were held for general corporate and working capital purposes.

#### **Note 12 - Stock Options**

In 1995, the Company granted options to an executive officer to purchase 1,143,000 shares of common stock at \$3.02 per share. The Company determined that the price was approximately \$0.83 below fair market value at the date of the grant and recognized \$949,960 as compensation expense for the year ended December 31, 1995. The options become exercisable three years from the date of grant, except that one-third were exercisable to the extent that the underlying shares were permitted to be included by the underwriters in an underwritten public offering. In November, 1996 the Company completed its secondary public offering and 381,000 of the options granted to the executive officer were exercised and sold in the offering. The remaining 762,000 options expire if not exercised by the tenth anniversary of their grant date.

Another executive officer was granted options under the Company's 1996 Employee Stock Option Plan to purchase 209,841 shares of the Company's common stock with an exercisable price of (i) 33 1/3% of such shares at \$8.00 per share, (ii) 33 1/3% at \$7.55 per share, and (iii) 33 1/3% at \$6.67 per share. Compensation expense of \$27,634 is recognized in the general and administrative expenses in the accompanying consolidated statements of operations for the year ended December 31, 1996.

1996 Employee Stock Option Plan - The Company's 1996 Employee Stock Option Plan (the "Employee Plan") permits the granting of incentive or nonqualified stock options to purchase up to 2,625,000 shares of the Company's common stock at not less than the fair value at the time the options are granted. Certain other officers and employees hold options to

purchase additional shares of common stock at a range of \$6.67 to \$31.27 per share and vest ratably over the three-year period following the date of grant, except for 180,000 options granted to key employees of DiagSoft, all of which are immediately exercisable. All options granted under the Employee Plan expire if not exercised by the tenth anniversary of their grant date.

Transactions related to the 1996 Employee Stock Option Plan are summarized as follows:

	Shares -----	Option Price -----
Outstanding at December 31, 1995.....	-	
Granted.....	973,605	\$ 6.67 to \$ 31.27
Exercised.....	-	
Expired or terminated.....	(71,813)	\$ 8.00
	-----	
Outstanding at December 31, 1996.....	901,792	\$ 6.67 to \$ 31.27
	=====	

1996 Non-Employee Director Stock Option Plan - The Company's 1996 Non-Employee Director Stock Option Plan (the "Non-Employee Plan") permits the granting of nonqualified stock options to purchase up to 300,000 shares of the Company's common stock to members of the Board of Directors who are not employees of the Company. Each outside director received options to purchase 7,500 shares of common stock at an exercise price of \$12.00 per share and will receive options to purchase 5,000 shares on the day following the annual meeting of shareholders. Thereafter, on the date on which a new outside director is first elected or appointed, he or she will automatically be granted options to purchase 5,000 shares of common stock. All options granted will have an exercise price equal to the then fair market value of the common stock. At December 31, 1996 no options granted were exercisable. All options granted under the Non-Employee Plan expire if not exercised by the tenth anniversary of their grant date.

Transactions related to the 1996 Non-Employee Director Stock Option Plan are summarized as follows:

	Shares	Option Price
Outstanding at December 31, 1995.....	-	
Granted.....	56,250	\$ 8.00
Exercised.....	-	
Expired or terminated.....	-	
	-----	
Outstanding at December 31, 1996.....	56,250	\$ 8.00
	=====	

The Company has adopted the disclosure only provisions of Statement of Financial Accounting Standards No. 123, "Accounting for Stock Based Compensation", but applies Accounting Principles Board Opinion No. 25 and related interpretations in accounting for its plans. Therefore, no compensation expense has been recognized for stock options granted under its plans. If the Company had elected to recognize compensation expense for stock options based on the fair value at grant date, consistent with



the method prescribed by SFAS No. 123, net income and earnings per share would have been reduced to the pro forma amounts as follows:

	Year Ended July 31, 1994	Five Months Ended December 31, 1994	Years Ended December 31, 1995      1996	
	-----	-----	----	----
	(\$ in thousands, except per share amounts)			
Pro forma net income as reported	\$ 428	\$ 510	\$ 1,821	\$ 8,610
Pro forma net income as prescribed by SFAS 123	\$ 428	\$ 510	\$ 624	\$ 7,231
Pro forma net income per share as reported	\$ 0.02	\$ 0.02	\$ 0.07	\$ 0.27
Pro forma net income as prescribed by SFAS 123	\$ 0.02	\$ 0.02	\$ 0.02	\$ 0.22

The pro forma amounts were determined using the Black-Scholes valuation model with the following key assumptions: (i) a discount rate of 6.0% for 1995 and 1996; (ii) a volatility factor initially based upon the average trading price since the Company's common stock has traded on the Nasdaq National Market; (iii) no dividend yield; and (iv) an average expected option life of approximately 3.5 years.

### Note 13 - International Operations

The Company's international operations are conducted from offices located in Amsterdam, The Netherlands; Wilhelmshaven, Bochum and Stuttgart Germany; and Sveg, Jarvso, and Stockholm, Sweden. With the exception of the Stockholm office, each facility provides technical support services for regions throughout Europe. The revenue, income before income taxes and total assets of the Company associated with its international operations are as follows:

	Year Ended July 31, 1994	Five Months Ended December 31, 1994	Years Ended December 31, 1995      1996	
	-----	-----	----	----
Revenue.....	\$ 10,179,929	\$ 5,784,566	\$ 18,108,550	\$ 29,356,835
Income before income taxes.....	207,515	236,046	1,849,345	2,644,225
Total assets.....	5,418,729	7,120,705	11,056,242	14,477,412

#### **Note 14 - Significant Customers**

Significant customers of the Company comprised 19%, 23%, 22% and 27% of the Company's consolidated revenues for the year ended July 31, 1994, the five months ended December 31, 1994 and the years ended December 31, 1995 and 1996 respectively. Two customers comprised 22% and 19% of the Company's revenues for the years ended December 31, 1995 and 1996, respectively. Revenues from one customer amounted to 19%, 13%, 11% and 8% for the year ended July 31, 1994 the five months ended December 31, 1994 and the years ended December 31, 1995 and 1996, respectively.

#### **Note 15 - Pro Forma Disclosures**

**Preferred Stock** - In connection with an agreement entered into in February 1996, the Company's majority shareholder transferred all the newly issued shares of the Company's outstanding preferred stock and all of the outstanding non-voting common stock to a related party. Effective immediately prior to the Company's initial public offering, the preferred stock and non-voting common stock was automatically converted into shares of common stock. These shares were sold in connection with such offering.

**Pro Forma Income Taxes** - An affiliate of the Company had elected to be treated as an S corporation for federal and state income tax purposes. As such, the affiliate's taxable income was reported to and subject to tax to the affiliate's shareholder. Prior to the Company's initial public offering, the Company's affiliate terminated its S corporation election and accordingly became subject to federal and state income taxes. The pro forma provision for income taxes reported on the consolidated statements of operations presents federal and state income taxes that would have been incurred if the affiliate had been subject to tax as a C corporation. In addition, the Company changed its method of accounting for income taxes from the cash basis to the accrual method in connection with the offering. The corresponding adjustment will be included in taxable income over a period not to exceed four years.

**Pro Forma Net Income Per Share** - In March 1996, the Company was a North Carolina corporation and amended its Articles of Incorporation to authorize the issuance of up to 10,000 shares of \$1,000 par value per share preferred stock. At that time, the Company approved a 95-to-1 stock split of all outstanding common stock. Subsequent to the amendment and stock split, the Company changed its state of incorporation from North Carolina to Florida and changed the authorized number of shares of common stock from 100,000 to 50,000,000. As part of the change of state of incorporation, each share of common stock of the North Carolina corporation was exchanged for 88 shares (198 shares as adjusted for a three-for-two stock split during 1996 and for a three-for-two stock split during 1997) of common stock of the Company. All applicable share and per share amounts in the accompanying financial statements have been retroactively adjusted to reflect these events.

Weighted average common shares outstanding includes the common share equivalents discussed in Note 8 applying the treasury stock method. In addition, the calculation includes certain preferred stock issued during the year that was converted to common stock immediately prior to the

closing of and sold in the Company's initial public offering. Such shares were deemed outstanding for all periods presented.

In addition, the Company issued 2,745,000 shares of common stock as a result of the merger involving Sykes Realty, Inc. immediately prior to the offering, which shares were deemed outstanding for all periods presented.

#### Note 16 - Selected Financial Data

Effective August 1, 1994, the Company changed its fiscal year end from July 31 to December 31. Accordingly, the financial statements for December 31, 1994 reflect the Company's results of income for a five month period.

Selected financial data for the twelve months ended December 31, 1994, 1995 and 1996 consists of:

	Years Ended December 31,		
	1994	1995	1996
	----	----	----
	(Unaudited)		
Revenues.....	\$ 87,426,317	\$ 107,894,184	\$ 160,010,501
	-----	-----	-----
Operating expenses:			
Direct salaries and related costs.....	56,943,293	67,492,462	94,829,595
General and administrative.....	27,450,703	35,808,360	51,856,353
	-----	-----	-----
Total operating expense.....	84,393,996	103,300,822	146,685,948
	-----	-----	-----
Income from operations.....	3,032,321	4,593,362	13,324,553
Other income (expense)			
Interest.....	(556,483)	(963,356)	156,354
Other.....	153,084	177,347	492,533
	-----	-----	-----
Total other income (expense).....	(403,399)	(786,009)	648,887
	-----	-----	-----
Income before income taxes.....	2,628,922	3,807,353	13,973,440
Provision for income taxes.....	1,291,478	1,814,510	5,296,480
	-----	-----	-----
Net income.....	1,337,444	1,992,843	8,676,960
Preferred stock dividends.....	-	-	47,343
	-----	-----	-----
Net income applicable to common shareholders.	\$ 1,337,444	\$ 1,992,843	\$ 8,629,617
	=====	=====	=====
Pro forma income data (unaudited)			
Income before income taxes.....	\$ 2,628,922	\$ 3,807,353	\$ 13,973,440
Pro forma provision for income taxes relating to S corporation.....	39,000	172,000	67,000
Actual provision for income taxes.....	1,291,478	1,814,510	5,296,480
	-----	-----	-----
Total provision and pro forma provision for income taxes.....	1,330,478	1,986,510	5,363,480
	-----	-----	-----
Pro forma net income.....	1,298,444	1,820,843	8,609,960
Preferred stock dividends.....	-	-	(47,343)
	-----	-----	-----
Pro forma net income applicable to common shareholders.....	\$ 1,298,444	\$ 1,820,843	\$ 8,562,617
	=====	=====	=====
Pro forma net income per share.....	\$ 0.05	\$ 0.07	\$ 0.26
	=====	=====	=====
Pro forma weighted average common and common equivalent shares outstanding.....	27,790,638	27,790,638	32,416,442
	=====	=====	=====

## **Note 17 - Subsequent Events**

Effective January 1, 1997, the Company acquired all of the common stock of Traffic, N.V. of Brussels, Belgium, and certain other assets, for \$1.8 million in cash. The transaction will be accounted for under the purchase method of accounting and has been approved by the boards of directors of both companies. Traffic, N.V. specializes in foreign language translation and multi-media documentation development. Pro forma information is not presented, as the operating results are not material to the Company's consolidated results.

On December 31, 1997, the Company acquired all of the issued and outstanding stock of McQueen International Limited ("McQueen") in exchange for approximately 3.54 million shares of the Company's common stock. Under the terms of the agreement, the transaction is to be accounted for utilizing the pooling-of-interests method of accounting. McQueen, a corporation organized and existing under the laws of Scotland, provides inbound call center support and customer service, software fulfillment and foreign language translation and localization services.

**SYKES ENTERPRISES, INCORPORATED**

**SCHEDULE II - VALUATION AND QUALIFYING ACCOUNTS**

**Allowance for Doubtful Accounts**

	Beginning Balance -----	Additional Charge to Cost and Expenses -----	Deductions(1) -----	Ending Balance -----
Year ended July 31, 1994.....	\$ 225,667	\$ 24,776	\$ -	\$ 250,453
Five months ended December 31, 1994.....	250,453	36,871	94,928	192,396
Year ended December 31, 1995.....	192,396	251,200	132,857	310,739
Year ended December 31, 1996.....	310,739	89,681	130,421	269,999

---

(1) Write-off and recoveries

**EXHIBIT 2.1**

**ACQUISITION AGREEMENT**

**BY AND AMONG**

**THE**

**SHAREHOLDERS**

**OF**

**TAS TELEMARKETING GESELLSCHAFT FUR  
KOMMUNIKATION UND DIALOG MBH,**

**SYKES ENTERPRISES, INCORPORATED,**

**AND**

**SYKES ENTERPRISES GMBH**

**Dated September 19, 1997**

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## ACQUISITION AGREEMENT

THIS ACQUISITION AGREEMENT is made and entered into as of September 19, 1997, by and among the undersigned persons (collectively, the "Sellers"), being the holders of all the outstanding capital interests of TAS Telemarketing Gesellschaft fur Kommunikation und Dialog mbH, a limited liability company organized under the laws of the Federal Republic of Germany (the "Company"), each such Seller being an individual residing in, and a citizen of, the Federal Republic of Germany, Sykes Enterprises GmbH, a limited liability company organized and existing under the laws of the Federal Republic of Germany ("Buyer"), and SYKES ENTERPRISES, INCORPORATED, a corporation organized and existing under the laws of Florida ("SEi").

### RECITALS

WHEREAS, the Sellers own all of the issued capital interests of the Company (the "Company Quotas");

WHEREAS, the Company owns sixty-four percent (64%) of the issued capital interests of TST Teleservice Team Gesellschaft fur Dienstleistung und Vertrieb mbH ("TST"), fifty percent (50%) of the issued capital interests of TOP Teleshopping GmbH ("TOP") and fifty percent (50%) of the issued capital interests of HCD Human Call Centre Design Planungsgesellschaft mbH, each a limited liability company organized and existing under the laws of the Federal Republic of Germany (collectively, the "Subsidiaries," and together with the Company, the "Companies");

WHEREAS, the Company owns forty-nine percent (49%) of the issued capital interests of KEP Call Gesellschaft fur Mehrwertdienste im Telekommunikationsbereich mbH ("KEP") and twenty-two percent (22%) of the issued capital interests of TAS Telemarketing Gesellschaft fur Kommunikation, Dialog und Kooperation GmbH, each a limited liability company organized and existing under the laws of the Federal Republic of Germany (collectively, the "Investments");

WHEREAS, it is intended that seventeen percent (17%) of the issued capital interest of TOP will be transferred to the Company by Alfons Bromkamp, one of the Sellers ("Bromkamp"), in contemplation of the transactions herein provided for;

WHEREAS, SEi owns all of the issued capital interests of Buyer;

WHEREAS, the Sellers desire to sell the Company Quotas in exchange for shares of SEi's common stock, and SEi is willing to cause the Buyer to purchase the Company Quotas from the Sellers in exchange for shares of SEi's common stock, on the terms and subject to the conditions hereinafter set forth; and

WHEREAS, SEi intends to treat the acquisition by the Buyer of the Company Quotas as a "pooling of interests" for financial accounting purposes.

NOW, THEREFORE, in consideration of the premises and of the mutual representations, warranties, covenants and agreements hereinafter set forth and for other good and valuable considerations, the receipt and sufficiency of which are hereby expressly acknowledged by the Sellers, the Buyer and SEi, and intending to be legally bound, the parties hereto agree as follows:

## **ARTICLE I**

### **DEFINITIONS**

Section 1.1. Definitions. The terms defined in this Article shall have the following respective meanings for all purposes of this Agreement:

"Affiliate" means, with respect to any Person, an officer, director or beneficial owner of five percent (5%) or more of the issued and outstanding shares of any class of capital stock or other equity of such Person, a family member of such Person, if an individual, and any other Person controlling, controlled by or under common control with such Person.

"Alternative Transaction" means any merger, consolidation, sale of substantial assets, sale of capital interests or securities or similar transaction involving the Company or any Subsidiary, other than the transactions contemplated by this Agreement.

"Business" means the businesses conducted by the Company, the Subsidiaries and the Investments, or by any of them, as of the date of this Agreement or as of the Closing Date, in each case as the context permits or implies, which consist of providing the following services on a "for hire" basis:

- (i) call center services;
- (ii) telemarketing and teleselling services;
- (iii) fulfillment services for telemarketing and call center customers;
- (iv) database development services for telemarketing and call center customers; and
- (v) consulting and training services related to the above service categories.]

"Business Day" means any day on which banks are open for business in New York, New York.

"Closing" means the consummation and effectuation of the transactions contemplated herein pursuant to the terms and conditions of this Agreement, which shall be held on the 26th day of September, 1997, at 10:00 AM in the offices of Schon Nolte Finkelburg & Clemm in Hamburg, Federal Republic of Germany, or on such other date or at such other time or place as is mutually agreed by the parties hereto.

"Closing Date" means the date on which the Closing actually occurs.

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

"Customers" shall have the meaning set forth in Section 4.15.

"Disclosure Schedule" means the disclosure schedule document executed by Sellers as of the date hereof and previously delivered to the Buyer and SEi, without any amendment thereto subsequent to the date hereof.

"Employee Benefit Plan" means any pension, retirement, profit sharing, savings, thrift, stock bonus, stock option, stock purchase, restricted stock purchase, stock ownership, stock appreciation right, phantom stock, deferred compensation, supplemental retirement, deferred bonus, severance, change of control, parachute, health, medical, dental, vision, prescription drugs, fitness, dependent care, educational assistance, group legal services, life insurance, accidental death, accidental dismemberment, sick pay, short-term or long-term disability, supplemental unemployment income, training, apprenticeship, scholarship, tuition reimbursement, employee assistance, employee discount, subsidized cafeteria, fringe benefit, vacation, holiday, employer-sponsored recreational facility, or other employee pension benefit or welfare benefit plan, policy, contract, or arrangement, or other similar fringe or employee benefit plan, program, policy, contract, or arrangement, written or oral, qualified or nonqualified, funded or unfunded, foreign or domestic.

"Escrow Agent" means Firststar Trust Company of Milwaukee, Wisconsin, or such other person as SEi and the Sellers shall mutually agree upon, in its capacity as escrow agent.

"Financial Statements" has the meaning set forth in Section 4.7.

"Form 10-Q Balance Sheet" means the unaudited balance sheet dated June 30, 1997 (and any related notes thereto), found in the quarterly report filed on Form 10-Q filed with the Securities and Exchange Commission for the quarterly period ended June 30, 1997, a copy of which is included as part of the SEi Filings.

"GGAAP" means generally accepted accounting principles as in effect in the Federal Republic of Germany on December 31, 1996.

"Grants" means governmental grants, subsidies, guarantees and/or loans provided to or for the benefit of a Person.

"Intellectual Property" means all intellectual property and intellectual property rights, whether arising under the laws of the Federal Republic of Germany or any other jurisdiction including, without limitation, (i) all patents, patent applications, continuations in part, divisions, reissues and patent disclosures, (ii) all copyrights, whether registered or unregistered, and pending applications to register the same, (iii) anything recognizable as a trademark, service mark or trade dress at common law or under the laws of any country, whether registered or not, which is used to identify the source and quality of goods or services or to distinguish them from those of others, and all registrations and applications for registration, including intent-to-use registrations and applications for registration, (iv) all licenses, sublicenses and rights to use any Intellectual Property of any other Person, (v) all names used

to identify a particular company, business, subsidiary or division thereof, (vi) all confidential and proprietary ideas, trade secrets, know how, concepts, methods, processes, formulae, reports, data, customer lists, mailing lists, business plans or other proprietary information, including, without limitation, with respect to any Person, any formulae, pattern, device or compilation of information which is used in such Person's business and which derives independent commercial value from not being generally known or readily ascertainable through independent development or reverse engineering by other Persons who can obtain economic value from its disclosure or use, and (vii) all other forms of proprietary information.

"Interim Balance Sheets" means the unaudited consolidated balance sheet of the Company and the Subsidiaries, and the unaudited balance sheets of each of the Investments, in each case dated as of the Interim Balance Sheet Date (and any related notes thereto), a copy of which is included as part of the Financial Statements.

"Interim Balance Sheet Date" means July 31, 1997.

"Leased Real Property" means all real property and premises currently leased to the Company, the Subsidiaries and the Investments.

"Material Adverse Effect" means, with respect to any Person, a material adverse effect on the financial condition, results of operations or business prospects of such Person.

"NASDAQ" means The Nasdaq National Stock Market, Inc.'s National Market.

"Person" means an individual, partnership, limited liability company, corporation, trust, unincorporated organization, association or joint venture or a government, agency, political subdivision or instrumentality thereof.

"Purchase Price Shares" means the 400,000 shares of SEi Stock to be issued to the Sellers in consideration of the transfer and assignment of the Company Quotas.

"Related Agreements" means the agreements described in Section

"SEC" means the United States Securities and Exchange Commission.

"SEi Filings" means the following filings made by SEi with the SEC: the annual report on Form 10-K for the annual period ending December 31, 1996, the quarterly reports on Form 10-Q for the quarterly periods ending March 30, 1997, and June 30, 1997, and the Annual Report to Stockholders and related proxy statement filed on Schedule 14A with respect to an annual meeting of SEi's shareholders held on May 8, 1997.

"SEi Stock" means SEi's common stock, \$.01 par value per share.

"Seller's Shares" means, with respect to any Seller, a number of shares of SEi Stock equal to the product (rounded to the nearest whole share) of (A) the Purchase Price Shares, multiplied by (B) such Seller's percentage ownership (expressed as a decimal) in the Company as shown in Section 2.1.

"Taxes" means all taxes, assessments, and charges imposed by any national, federal, state, provincial, local, or foreign taxing authority, including social security, insurance and other state-sponsored pension funds and all interest, penalties and additions thereto.

"Transfer Agent" means Firststar Trust Company of Milwaukee, Wisconsin, in its capacity as transfer agent for SEi Stock.

"USGAAP" means generally accepted accounting principles as in effect in the United States on December 31, 1996.

## **ARTICLE II**

### **PURCHASE, SALE AND ASSIGNMENT OF SHARES**

Section 2.1. Purchase and Sale of Shares. Upon the terms and subject to the conditions hereof, each of the Sellers hereby sells to Buyer and Buyer hereby buys from each of the Sellers, all of such Seller's right, title and interest in and to the Company Quotas set forth below opposite the name of such Seller together with the right to receive dividends with respect to such Company Quotas as of January 1, 1997, and the applicable capital reserve, in each case in consideration for the delivery of the Purchase Price Shares as provided in Article III below.

Company Quotas

Name	Share Capital	Percentage Interest
Alfons Bromkamp	DM64,400	87%
Christian Frohlich	DM 9,600	13%
Total	DM74,000	100%

Section 2.2. Assignment of Shares. Each of the Sellers hereby assigns and transfers such Seller's Company Quotas, as specified in Section 2.1 together with the right to receive dividends on the such Company Quotas as of January 1, 1997, to Buyer at the Closing and Buyer hereby accepts such assignments. All such assignments are subject to:

- (a) the delivery of the Purchase Price Shares in accordance with Article III hereof;
- (b) the non-occurrence of a termination of this Agreement in accordance with Section 7.1 prior to the Closing; and
- (c) the fulfillment or waiver of all of the conditions precedent specified in Article VIII and Article IX.

Each of the Sellers hereby consents to the sales and transfers effected herein and waives any preemptive rights or rights of first refusal he may have under the Articles of Association of the Company.

**ARTICLE III**

**DELIVERY OF PURCHASE PRICE SHARES**

Section 3.1. Delivery of Purchase Price Shares. Upon the terms and subject to the conditions hereof, SEi shall issue, and Buyer shall deliver, the Purchase Price Shares as follows:

- (a) to the Escrow Agent promptly following the Closing, a certificate or certificates issued in the name of each Seller, each such certificate bearing the legend provided for in Section 4.28(g) and evidencing a number of shares equal to twenty percent (20%) of the



applicable Seller's Shares, rounded down to the nearest whole share, to be held in accordance with a Pledge and Escrow Agreement dated as of the Closing Date by and among SEi, Buyer, the Sellers and the Escrow Agent substantially in the form of Exhibit A (the "Pledge and Escrow Agreement"); and

(b) to each of the Sellers at the Closing, a certificate or certificates or, at SEi's option, an original or a facsimile copy of an irrevocable letter of instructions (accompanied by an original or facsimile of a letter from the Transfer Agent acknowledging receipt of such letter of instructions) to the Transfer Agent for the issue and delivery of a certificate or certificates, issued in such Seller's name, each such certificate bearing or to bear the legend provided for in Section 4.28(g) and evidencing or to evidence a number of shares equal to the applicable Seller's Shares remaining after delivery of Seller's Shares for the account of such Seller in accordance with Section 3.1(a) above.

## **ARTICLE IV**

### **REPRESENTATIONS AND WARRANTIES OF THE SELLERS (GARANTIEN)**

The Sellers hereby represent and warrant to SEi and Buyer as follows, the representations and warranties in Sections 4.3 through 4.5 relating to individual Sellers and their respective Company Quotas being made severally by each such Seller, and all other representations and warranties in this Article IV being made jointly and severally by the Sellers:

#### Section 4.1. Corporate Organization.

(a) The Company is a limited liability company duly organized and validly existing under the laws of the Federal Republic of Germany and has the full right, power and authority to own, lease and operate all of its properties and assets and to carry out the Business as it is presently conducted by the Company. The Company is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the ownership of property or the conduct of its Business requires such qualification or license. Except for the Subsidiaries, the Investments and as set forth in Section 4.1(a) of the Disclosure Schedule, there are no corporations, joint ventures, partnerships or other entities or arrangements in which the Company, directly or indirectly, owns any capital stock or any equity interest.

(b) Each of the Subsidiaries and, to the knowledge of the Sellers, the Investments is a limited liability company duly organized and validly existing under the laws of the Federal Republic of Germany with the full right, power and authority to own, lease and operate all of its respective properties and assets and to carry out the Business as it is presently conducted by such Subsidiary or Investment. Each of the Subsidiaries and, to the knowledge of the Sellers, the Investments is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the ownership of property or the conduct of its Business requires such qualification or license. Except as set forth in Section 4.1(b) of the Disclosure Schedule, there are no corporations, joint ventures, partnerships or other entities or arrangements in which any Subsidiary or, to the knowledge of the Sellers, any Investment directly or indirectly, owns any capital stock or any equity interest.

#### Section 4.2. Capitalization.

(a) The aggregate stated share capital of the Company consists of DM100,000. The Company Quotas, which represent all issued share capital of the Company, have been duly authorized and validly issued, are fully paid and nonassessable, were issued without violation of any preemptive rights, and can be transferred to Buyer as provided herein free of any preemptive rights. The Company has not repaid any stated share capital to any of the Sellers, or to any prior holder of the Company's share capital, or paid out any other equity capital in a manner which would adversely affect the Company's ability to pay dividends in a situation in which the Company would otherwise be permitted to pay dividends according to German law. The redemption of the issued share capital in the nominal amount of DM26,000 held by Pilz & Partner on September 17, 1997 has been duly and validly effected in accordance with German law and the Company's Articles of Association. Without intending to limit the foregoing, Section 4.2(a)(i) of the Disclosed Schedule sets forth a true, complete and correct in all material respects computation of the Company's capital in excess of stated share capital as of September 17, 1997. Except for this Agreement and as set forth in Section 4.2(a)(ii) of the Disclosure Schedule, there are no options, warrants or other rights, nor any agreements, commitments or arrangements of any kind, relating to the subscription for or the issuance, voting, acquisition, sale, repurchase, transfer or disposition of (i) any share capital of the Company or securities convertible into or exchangeable for share capital of the Company, or (ii) any options, warrants or subscription rights relating to any such share capital or other securities of the Company.

(b) The aggregate stated share capital of the Subsidiaries and the Investments, and the percentage and monetary amount of such share capital owned by the Company, are set forth in Section 4.2(b) of the Disclosure Schedule. The issued share capital set forth in Section 4.2(b) of the Disclosure Schedule with respect to each of the Subsidiaries and, to the knowledge of the Sellers, the Investments has been duly authorized and validly issued, is fully paid and nonassessable, and was issued without violation of any preemptive rights. The Subsidiaries and, to the knowledge of the Sellers, the Investments have not repaid any stated share capital to any holder of their respective share capital, or to any prior holder of such share capital, or paid out any other equity capital in a manner which would adversely affect the such Subsidiary's or Investment's ability to pay dividends in a situation in which such Subsidiary or Investment would otherwise be permitted to pay dividends according to German law. Except for this Agreement and as set forth in Section 4.2(b) of the Disclosure Schedule, there are no options, warrants or other rights, nor any agreements, commitments or arrangements of any kind, relating to the subscription for or the issuance, voting, acquisition, sale, repurchase, transfer or disposition of (i) any share capital of, or securities convertible into or exchangeable for share capital of, the Subsidiaries or, to the knowledge of the Sellers, the Investments, or (ii) any options, warrants or subscription rights relating to any such share capital or other securities of the Subsidiaries or, to the knowledge of the Sellers, the Investments.

Section 4.3. Authority; Binding Effect. Each of the Sellers has all requisite right, power and authority to execute, deliver and perform this Agreement and the Related Agreements to which such Seller is a party. This Agreement and the Related Agreements to which the Sellers are parties have been duly and validly executed and delivered by the Sellers and constitute the legal, valid and binding obligations of each of the Sellers, enforceable against each of the Sellers in accordance with their respective terms.

Section 4.4. Ownership of Share Capital; Title.

(a) Except as disclosed in Section 4.4(a) of the Disclosure Schedule, each of the Sellers owns of record and beneficially the Company Quotas set forth beside such Seller's name in Section 2.1. All issued share capital of the Company have been owned of record and beneficially at all times exclusively by individual citizens of, or other Persons organized and existing under the laws of, the Federal Republic of Germany. Each of the Sellers has and will have, on the Closing Date,

good, marketable and valid title to the Company Quotas to be sold by such Seller hereunder, free and clear of all liens, pledges, encumbrances, claims, security interests, charges, voting trusts, voting agreements, other agreements, rights, options, warrants or other restrictions of any kind, nature or description, other than those referenced in Section 4.2(a)(ii) of the Disclosure Schedule. The execution, delivery, notarization and performance of this Agreement will convey to Buyer at the Closing good title to the Company Quotas free and clear of all claims, liens, encumbrances, security interests, charges or restrictions on transfer of any nature whatsoever, other than those contained in the Company's or TOP's respective Articles of Association. No Seller is involved in any proceedings by or against such Seller under any bankruptcy laws or under any other insolvency or debtor's relief act.

(b) Except as disclosed in Section 4.4(b) of the Disclosure Schedule, the Company owns of record and beneficially the share capital in the Subsidiaries and the Investments set forth in Section 4.2(b) of the Disclosure Schedule. All issued share capital of the Subsidiaries and, to the knowledge of the Sellers, the Investments has been owned of record and beneficially at all times exclusively by individual citizens of, or other Persons organized and existing under the laws of, the Federal Republic of Germany. The Company has and will have, on the Closing Date, good, marketable and valid title to such share capital, free and clear of all liens, pledges, encumbrances, claims, security interests, charges, voting trusts, voting agreements, other agreements, rights, options, warrants or other restrictions of any kind, nature or description, other than those referenced in Section 4.4(b) of the Disclosure Schedule.

Section 4.5. The Sellers' Consents and Approvals; No Violations. Except as set forth in Section 4.5 of the Disclosure Schedule, the execution, delivery and performance by each of the Sellers of this Agreement and the Related Agreements to which he is a party will not (with or without the giving of notice or the passage of time, or both)

(a) violate any applicable provision of law or any rule or regulation of any national, federal, state, provincial or local administrative agency or governmental authority applicable to the Sellers, or any order, writ, injunction, judgment or decree of any court, administrative agency or governmental authority applicable to the Sellers, (b) violate or require any consent, waiver or approval under (except for the matters

referenced in Section 4.5 of the Disclosure Schedule), result in a breach, modification or termination of any provisions of, constitute a default under, affect the rights under or enforceability of, or result in the imposition of any pledge, security interest or other encumbrance upon any of the Company Quotas or the share capital of the Subsidiaries or the Investments pursuant to, any agreement, indenture, mortgage, deed of trust, lease, license, or other instrument to which any Seller is a party or by which any of them is bound, or any license, permit or certificate held by any of them including, without limitation, those listed on the Disclosure Schedule, or (c) based upon the information provided to Sellers with respect to Buyer, require any consent or approval by, notice to or registration with any governmental authority or other Person which is applicable to any Seller.

Section 4.6. Consents and Approvals; No Violations. Except as set forth in Section 4.6 of the Disclosure Schedule, the execution, delivery and performance by each of the Sellers of this Agreement and the Related Agreements to which he is a party will not (with or without the giving of notice or the passage of time, or both) (a) violate any provision of law or any rule or regulation of any national, federal, state, provincial or local administrative agency or governmental authority applicable to the Company, the Subsidiaries or, to the knowledge of the Sellers, the Investments, or any order, writ, injunction, judgment or decree of any court, administrative agency or governmental authority applicable to the Company, the Subsidiaries or, to the knowledge of the Sellers, the Investments, (b) violate the organizational documents of the Company, the Subsidiaries or the Investments, (c) violate or require any consent, waiver or approval under, result in a breach, modification or termination of any provisions of, constitute a default under, affect the rights under or enforceability of, result in the imposition of any pledge, security interest or other encumbrance pursuant to, or give any Person the right to terminate, modify or renegotiate any provision of, any agreement, indenture, mortgage, deed of trust, lease, license, or other instrument to which the Company, the Subsidiaries or, to the knowledge of the Sellers, the Investments is a party or by which the Company, the Subsidiaries or, to the knowledge of the Sellers, the Investments is bound, or any license, permit or certificate held by the Company, the Subsidiaries or, to the knowledge of the Sellers, the Investments including, without limitation, those listed on the Disclosure Schedule, (d) based upon the information provided to Sellers with respect to Buyer, require any consent or approval by, notice to or registration with any governmental authority or other Person which is applicable to the Company, the Subsidiaries or, to the knowledge of the Sellers, the Investments, or (e) result in the creation

of any lien, claim, encumbrance or charge upon any property or assets of the Company, the Subsidiaries or, to the knowledge of the Sellers, the Investments.

#### Section 4.7. Financial Statements.

(a) Section 4.7(a) of the Disclosure Schedule contains (i) the audited consolidated balance sheet and the related audited consolidated income statement (including any related notes thereto) of the Company and the Subsidiaries, and the audited balance sheet and the related audited income statement (including any related notes thereto) of each of the Investments, in each case as of and for the fiscal years ended December 31, 1994, December 31, 1995 and December 31, 1996, and (ii) the Interim Balance Sheets and the related unaudited consolidated income statements of the Company and the Subsidiaries, and the Interim Balance Sheets and the related unaudited income statements of each of the Investments, in each case as of and for the seven-month period ending as of the Interim Balance Sheet Date (including any related notes thereto) (collectively, the "Financial Statements").

(b) Except as set forth on Section 4.7(b) of the Disclosure Schedule and to the knowledge of the Sellers with respect to Financial Statements relating to the Investments, the Financial Statements

(i) are true, correct and complete in all material respects; (ii) are in accordance with the books and records of the Company, the Subsidiaries and each of the Investments; (iii) have been prepared in accordance with principles of orderly bookkeeping and GGAAP applied on a consistent basis throughout the periods involved, respecting principles of prudence and continuity; (iv) fairly present, in the case of each year-end balance sheet and the Interim Balance Sheet, the financial positions of the Company and the Subsidiaries, and of each of the Investments, as of the respective dates thereof and, in the case of the related income statements, the results of operations and earnings of the Company and the Subsidiaries, and of each of the Investments, for the respective periods indicated; and (v) in the case of the Interim Balance Sheets, were prepared in accordance with principles applicable to a year-end balance sheet and present information comparable to other balance sheets included in the Financial Statements.

#### Section 4.8. Undisclosed Liabilities. Except as set forth on

Section 4.8 of the Disclosure Schedule, neither the Company, nor any the Subsidiaries nor, to the knowledge the Sellers, any of the Investments has any liabilities (absolute, accrued, contingent or otherwise) which are

required to be reflected in a balance sheet or in the notes thereto under GGAAP, except (a) liabilities reflected or reserved against in the Interim Balance Sheets, and (b) liabilities incurred since the Interim Balance Sheet Date in the ordinary course of business, or which, in the aggregate, do not exceed DM10,000 with respect to such Person.

Section 4.9. Taxes. Except as set forth in Section 4.9 of the Disclosure Schedule, each of the Company, the Subsidiaries and, to the knowledge of the Sellers, the Investments has timely filed all returns, declarations, reports, information returns and statements required to be filed by it (the "Returns") in respect of any Taxes and has paid all Taxes currently due and payable by it. Except as set forth in Section 4.9 of the Disclosure Schedule and to the knowledge of the Sellers with respect to Returns relating exclusively to the Investments, the Returns accurately and completely reflect the facts regarding the income, properties, operations and status of any entity required to be shown thereon, and no notice of any proposed deficiency, assessment or levy in respect of Taxes has been received by the Company, the Subsidiaries or, to the knowledge of the Sellers, the Investments. Except as set forth in Section 4.9 of the Disclosure Schedule, neither the Company, nor any of the Subsidiaries, nor, to the knowledge of the Sellers, any of the Investments is currently or, during the past three years, has been the subject of an audit or in receipt of a notice that it is being or will be audited by a relevant Taxing authority, or has agreed to any extension of time of any applicable statute of limitations period, and each of the Company, the Subsidiaries and, to the knowledge of the Sellers, the Investments has duly withheld from each payment from which such withholding is required by law, the amount of all Taxes required to be withheld therefrom and has paid the same (to the extent due) together with the employer's share of the same, if any, to the proper Tax receiving officers. Except as set forth in

Section 4.9 of the Disclosure Schedule, the charges, accruals, and reserves for Taxes due, or accrued but not yet due, relating to the income, properties or operations of each of the Company, the Subsidiaries and, to the knowledge of the Sellers, the Investments for any period prior to or including the Closing Date as reflected on the books of each of the Company, the Subsidiaries and, to the knowledge of the Sellers, the Investments are adequate in all material respects to cover such Taxes, all Tax deficiencies which have been proposed or asserted against the Company, any Subsidiary or, to the knowledge of the Sellers, any Investment have been fully paid or finally settled, and no issue has been raised in any examination which, by application of similar principles, can be expected to result in the proposal or assertion of a Tax deficiency for any other year not so examined, neither the Company, nor any of the Subsidiaries,

nor, to the knowledge of the Sellers, any of the Investments has received any Tax incentive, abatement or other credit with respect to its assets, the Business it conducts, its employees or otherwise which contains provisions for the repayment of any Tax benefit, and each of the Company, the Subsidiaries and, to the knowledge of the Sellers, the Investments has incurred liabilities for Taxes only in the ordinary course of the Business. Neither the Company, nor any of the Subsidiaries, nor, to the knowledge of the Sellers, any of the Investments has ever conducted business in the United States, has ever had any assets, employees or shareholders located or resident in the United States, or has ever made any election with the United States Internal Revenue Service regarding Taxes in the United States.

#### Section 4.10. Title to Properties.

(a) Neither the Company, nor any of the Subsidiaries, nor, to the knowledge of the Sellers, any of the Investments owns or has ever owned, in whole or in part, any interest in any real property. Section 4.10(a) of the Disclosure Schedule sets forth a complete and accurate list (subdivided by Person) of all fixed assets owned by the Company, the Subsidiaries and the Investments and used in the Business as of the Interim Balance Sheet Date.

(b) Except for the normal reservation of title of suppliers to the extent not paid and as set forth in Section 4.10(b) of the Disclosure Schedule, each of the Company, the Subsidiaries and, to the knowledge of the Sellers, the Investments has good and marketable title to all the personal property and assets (tangible and intangible) reflected as owned by it on the Interim Balance Sheets or acquired since the Interim Balance Sheet Date (except for properties and assets disposed of since such date in the ordinary course of business and consistent with past practice), free and clear of all liens, charges, security interests or other encumbrances of any nature whatsoever.

(c) Except as set forth on Section 4.10(c) of the Disclosure Schedule and to the knowledge of the Sellers with respect to the Investments, all such assets (i) are now in the possession of the Company, the Subsidiaries or the Investments, (ii) are not subject to claims by any other Person with a right to possession of all or any part of such assets, (iii) are in good operating condition (ordinary wear and tear excepted), (iv) are not, individually or in the aggregate, in need of any repairs which individually or in the aggregate could cost in excess of DM10,000, and (v) are located on the Leased Real Property.



Section 4.11. Absence of Changes. Except as set forth in Section 4.11 of the Disclosure Schedule, since December 31, 1996, each of the Company, the Subsidiaries and, to the knowledge of the Sellers, the Investments has operated only in the ordinary course of the Business in all material respects and there has not been with respect to the such Person:

- (a) any change or changes in the Business, financial condition, properties, results of operations or assets or liabilities, or any development or event involving a prospective change, other than changes in the ordinary course of the Business and other than changes which singularly or in the aggregate, have not had and will not have a Material Adverse Effect;
- (b) any material damage or destruction, loss or other casualty, however arising and whether or not covered by insurance;
- (c) any labor dispute or any other similar event or condition of any character involving employees of such Person;
- (d) any indebtedness incurred for borrowed money (except by endorsement for collection or for deposit of negotiable instruments received in the ordinary course of the Business it conducts);
- (e) any change in the accounting methods, procedures or practices or any change in depreciation or amortization policies or rates theretofore adopted;
- (f) any amendment or termination of any contract, agreement, lease, franchise or license;
- (g) any amendment of its organizational documents;
- (h) any mortgage, pledge or other encumbering of any property or assets;
- (i) any material liability or obligation incurred, except current liabilities incurred in the ordinary course of the Business it conducts, or any cancellation or compromise of any material debt or claim, or any waiver or release of any right of substantial value to the Business it conducts;

(j) any sale, transfer, lease, abandonment or other disposal of any machinery, equipment or real property with a fair market value in excess of DM10,000 or, except in the ordinary course of the Business it conducts, any sale, transfer, lease, abandonment or other disposal of any portion of any other properties or assets (real, personal or mixed, tangible or intangible);

(k) any transfer, disposal or grant of any rights under any Intellectual Property owned by such Person, or any disposal of or disclosure to any other Person other than representatives of Buyer or SEi of any material trade secret, formula, process or know-how not theretofore a matter of public knowledge; except, in each case, in the ordinary course of the Business it conducts;

(l) any bonus or other increase in the compensation of its officers, employees or directors, or any agreement entered into with any officer, employee or director, except, in each case, in the ordinary course of the Business it conducts and consistent with past practice;

(m) any single capital expenditure made, or any commitment to make any capital expenditure, in excess of DM10,000 for any tangible or intangible capital assets, additions or improvements, except in the ordinary course of the Business it conducts;

(n) any declaration, payment or reservation for payment of any dividend or other distribution in respect of the share capital of such Person or any other securities, or any redemption, purchase or other acquisition, directly or indirectly, of any share capital or other securities of such Person;

(o) any grant or extension of any power-of-attorney or guaranty in respect of the obligation of any other Person;

(p) any forward purchase commitments involving more than DM10,000 in the aggregate or any other purchase commitments that are not in the ordinary course of the Business it conducts;

(q) the adoption of any ruling, law, ordinance, statute, rule, regulation, code, or other requirement of any governmental authority which adversely affects such Person or the Business it conducts;

or

(r) any entry into any binding agreement, whether in writing or otherwise, to take any action described in this Section 4.11.

#### Section 4.12. Intellectual Property.

(a) Section 4.12(a) of the Disclosure Schedule contains a list and description (including information with respect to registration) of all Intellectual Property owned or used by the Company, any Subsidiary or, to the knowledge of the Sellers, any Investment, subdivided by Person and type of Intellectual Property. Each of the Company, the Subsidiaries and, to the knowledge of the Sellers, the Investments owns or has the right to use all Intellectual Property used by it in the conduct of the Business as presently conducted by it. Except for the rights and licenses granted to the Company, the Subsidiaries or the Investments under software contracts, the Company, a Subsidiary or, to the knowledge of the Sellers, an Investment, as indicated in Section 4.12(a) of the Disclosure Schedule, owns all right, title and interest in the Intellectual Property required to be identified on Section 4.12(a) of the Disclosure Schedule, free and clear of any encumbrance. Neither the Company, nor any of the Subsidiaries nor, to the knowledge of the Sellers, any of the Investments has granted, transferred, or assigned any right or interest in its Intellectual Property to any other Person.

(b) Except as disclosed in Section 4.12(b) of the Disclosure Schedule, no fees or royalties are payable or will be payable under any software contracts listed in Section 4.12(a) of the Disclosure Schedule as a result of the continued use of licensed software by the Person indicated as licensing such software in Section 4.12(a) of the Disclosure Schedule in the ordinary course of the Business conducted by such Person, other than fees or royalties due for upgrades and fees or royalties that do not exceed DM20,000 per year in the aggregate.

(c) Except as disclosed in Section 4.12(c) of the Disclosure Schedule and to the knowledge of the Sellers with respect to the Investments, (i) all registrations for Intellectual Property required to be identified in Section 4.12(a) of the Disclosure Schedule as being owned by the Company, a Subsidiary or an Investment are valid and in force and applications to register any unregistered Intellectual Property so identified are pending and in good standing, all without challenge of any kind and to the best knowledge of the Sellers, there is no basis for any such challenge; and (ii) the Company, a Subsidiary or an Investment has the exclusive right to bring actions for infringement or unauthorized use of the Intellectual Property identified as being owned by such Person, and

there is, to the best knowledge of the Sellers, no basis for any such action.

(d) Except as disclosed in Section 4.12(d) of the Disclosure Schedule, all trade secrets of each of the Company, the Subsidiaries and, to the knowledge of the Sellers, the Investments (i) have at all times been maintained in confidence, and (ii) have not been disclosed to employees, consultants or other third parties except on a "need to know" basis in connection with their respective performance of duties to the Company, a Subsidiary or an Investment, as applicable.

(e) Except as disclosed in Section 4.12(e) of the Disclosure Schedule, no claims have been asserted by any Person against the Company, any Subsidiary or, to the knowledge of the Sellers, any Investment claiming ownership of or right to use any of the Intellectual Property required to be disclosed on Section 4.12(a) of the Disclosure Schedule (other than ownership of Intellectual Property licensed to the Company, a Subsidiary or an Investment under the software contracts listed on Section 4.12(a) of the Disclosure Schedule) nor, to the best knowledge of the Sellers, is there any basis for any such claim. The use of the Intellectual Property by each the Company, the Subsidiaries and, to the knowledge of the Sellers, the Investments has not infringed on the rights of any Person and, except as disclosed in Section 4.12(e) of the Disclosure Schedule, no claim of infringement or any misuse or misappropriation of any the Intellectual Property of any other Person has been made or asserted against the Company, any Subsidiary or, to the knowledge of the Sellers, any Investment in respect of the Business conducted by it, nor is there, to the best knowledge of the Sellers, any basis for any such claim.

Section 4.13. Leases. Section 4.13 of the Disclosure Schedule contains an accurate and complete list of all leases pursuant to which the Company, a Subsidiary or, to the knowledge of the Sellers, an Investment leases real or personal property. Except as set forth in Section 4.13 of the Disclosure Schedule, all such leases are in full force and effect and are valid, binding and enforceable in accordance with their terms; there are no existing defaults or events which, with the giving of notice or the lapse of time or both, would constitute a default thereunder by the Company, the Subsidiary or, to the knowledge of the Sellers, the Investment, as applicable, or any other parties thereto. Except as set forth in Section 4.13 of the Disclosure Schedule, all leased items of personalty are in good operating condition, are in a state of good maintenance and repair and are adequate and suitable for the purpose for

which they are presently being used. Each such lease contains terms and conditions obtained from independent third parties and negotiated in good faith at arms-length. None of the rights of the Company, the Subsidiary or, to the knowledge of the Sellers, the Investment, as applicable, under each such lease is subject to termination or modification as a result of the transactions contemplated hereby.

#### Section 4.14. Bank Accounts; Investments; Powers of Attorney.

(a) Section 4.14(a) of the Disclosure Schedule sets forth the names and locations of all banks, trust companies, savings and loan associations and other financial institutions at which the Company, a Subsidiary or, to the knowledge of the Sellers, an Investment maintains safe deposit boxes or accounts of any nature and the names (and limits, if any) of all persons authorized to draw thereon, make withdrawals therefrom or have access thereto.

(b) Section 4.14(b) of the Disclosure Schedule sets forth a list (subdivided by Person) and description (including interest rates and other significant terms) of all funds, securities and other instruments in which excess cash of the Company, the Subsidiaries and, to the knowledge of the Sellers, the Investments was invested as of the Interim Balance Sheet Date (the "Investments"). All such Investments are investment grade and can be liquidated within one business day without being discounted.

(c) Except as set forth in Section 4.14(c) of the Disclosure Schedule and to the knowledge of the Sellers with respect to the Investments and Affiliates exclusively of the Investments, neither the Company, nor any of the Subsidiaries, nor any of the Investments, nor any of their respective Affiliates beneficially or of record owns any shares of SEi Stock.

(d) Neither the Company nor any of the Subsidiaries nor, to the knowledge of the Sellers, any of the Investments has granted or extended to any Person, or is otherwise subject to or bound by, any power of attorney which remains in effect, except for the authorizations set forth in Section 4.14(a) of the Disclosure Schedule.

#### Section 4.15. Material Contracts and Customers.

(a) To the knowledge of the Sellers with respect to the Investments, Section 4.15(a) of the Disclosure Schedule contains a true

and correct list (subdivided by Person) of all material contracts, agreements or other understandings or arrangements, written or oral, or commitments therefor, relating to the Business, assets or liabilities of Company, the Subsidiaries, or, to the Sellers' knowledge the Investments, (collectively, the "Contracts"). Except as set forth in Section 4.15(a) of the Disclosure Schedule, neither the Company, nor any of the Subsidiaries, nor, to the knowledge of the Sellers, any of the Investments, is a party to, or otherwise bound by, any written or oral, formal or informal:

- (i) purchase orders and other contracts, in each case for the sale of goods or services, in excess of DM40,000 (net of value added taxes) individually or, for any group of related purchase orders and contracts, in the aggregate;
- (ii) contracts, agreements or commitments for the purchase of materials or services which are not required by such Person in the current operation of the Business in the ordinary course, or any agreements or commitments for the sale of goods or services which are inadequate to recover current costs of such Person;
- (iii) contracts involving the expenditure for the purchase of material, supplies, equipment or services of more than DM40,000 per contract;
- (iv) contracts not otherwise referenced involving the expenditure of more than DM40,000 (per contract) which are not cancelable within thirty (30) days without penalty;
- (v) contracts relating to the leasing (as lessor or lessee) or the conditional purchase or sale by such Person of any property, whether real, personal or mixed;
- (vi) contracts to which such Person is a party or by which any of its assets are bound and that require consent by any other Person in connection with the transaction contemplated hereby, either to prevent a breach or continue the effectiveness thereof;
- (vii) contracts or arrangements with any governmental body, agency or authority;
- (viii) indentures, mortgages, promissory notes, loan agreements, capital leases, security agreements or other agreements

or commitments for the borrowing of money, or the deferred purchase price of assets, or which create a lien or encumbrance on any assets of such Person;

(ix) guarantees of the obligations of third parties or agreements to indemnify third parties (other than indemnification provisions provided in the ordinary course to or for the benefit of the customers of such Person);

(x) agreements which restrict such Person from doing business in any geographic location;

(xi) policies of insurance in force and effect with respect to such Person, the Business it conducts or its assets;

(xii) contracts or agreements not otherwise referenced with any of the Sellers or their Affiliates;

(xiii) license agreements (as licensee or licensor) with third parties;

(xiv) employment or consulting agreements which vary materially from the model employment referenced in Section 4.18(b) or which involve the payment of DM50,000 or more during any twelve-month period;

(xv) distributor, dealer, sales, advertising, agency, manufacturer's representative, franchise or similar contracts or any contract relating to the payment of a commission;

(xvi) collective bargaining or other agreements with labor unions;

(xvii) contracts or agreements for charitable contributions by such Person;

(xviii) any contract or agreement which could reasonably be expected to have a Material Adverse Effect on such Person; or

(xix) other contracts outside the ordinary course of the Business such Person conducts which are not otherwise described in this Subsection.

(b) True and complete copies of each of the Contracts have been made available to Buyer and SEi by the Sellers. Each of the Contracts is in full force and effect and there exists no default or event which, with the giving of notice or lapse of time or both, would constitute a default thereunder by the Company, a Subsidiary or an Investment, as applicable, or, to the knowledge of the Sellers, by any other party thereto. Except as referenced in Section 4.6 of the Disclosure Schedule, none of the rights of the Company, a Subsidiary or to the Sellers' knowledge an Investment, as applicable, under any of the Contracts is subject to termination or modification as a result of the transactions contemplated hereby. No notice of termination or nonrenewal has been given under any Contract. All Contracts contain terms and conditions not less favorable to the Company, the Subsidiary or to the Sellers' knowledge the Investment, as applicable, than those that would be obtained from independent third parties and have been negotiated in good faith at arms-length. None of the Contracts with suppliers of goods or services to the Company, a Subsidiary or to the Sellers' knowledge an Investment, as applicable, requires the payment of any commission, royalty, fee, brokerage fee or other similar charge. For the purposes of Section 4.15(a), "material" contracts means contracts described in Section 4.15(a)(i) through (xix). The amounts set forth in this Section 4.15 with respect to the Contracts shall not be deemed to represent any standard of "materiality" with respect to the Contracts or otherwise for any other purpose and shall have no application to any other Section of this Agreement.

(c) Section 4.15(c) of the Disclosure Schedule contains a list (subdivided by Person) of the name and location of the five (5) largest customers (the "Customers") and the five (5) largest suppliers, in each case measured by revenues generated or amounts paid, of each of the Company, the Subsidiaries and, to the knowledge of the Sellers, the Investments as of the Interim Balance Sheet Date. The relationships of each of the Company, the Subsidiaries and, to the knowledge of the Sellers, the Investments with its respective Customers are good, and no Seller is aware of any intention of any such Customers or suppliers to terminate or modify any of such relationships. Neither the Company, nor any of the Subsidiaries nor, to the knowledge of the Sellers, any of the Investments is generally required to provide bonding or any other security arrangements in connection with any transactions with its customers or suppliers.



#### Section 4.16. Related Transactions.

(a) Except as set forth in Section 4.16 of the Disclosure Schedule, neither the Company, the Subsidiaries nor, to the knowledge of the Sellers, the Investments has any contractual relationship with, or any obligation or liability owed to, any of its Affiliates, any Affiliate of the Sellers, or any entity of which one or more Sellers is an Affiliate. All such contractual relationships are on terms that are no less favorable to the Company than would be the case with a non-affiliated party.

(b) Except as set forth in Section 4.16 of the Disclosure Schedule, neither the Sellers nor any director or officer of the Company, nor any director or officer of any of the Subsidiaries nor, to the knowledge of the Sellers, any director or officer of any of the Investments, nor any Affiliate of any of them has any interest, direct or indirect, in any Person which (i) is a competitor, customer, subcontractor or supplier of the Company, any of the Subsidiaries or any of the Investments, or (ii) has an existing relationship with, or an interest in, the Company, any of the Subsidiaries or any of the Investments, including but not limited to lessors of real or personal property and Persons against which rights or options are exercisable by the Company, any of the Subsidiaries or any of the Investments.

Section 4.17. Insurance. Section 4.17(a) of the Disclosure Schedule contains an accurate and complete list (subdivided by Person) of all policies of insurance presently maintained with respect to the Company, a Subsidiary or, to the knowledge of the Sellers, an Investment including, without limitation, "key man" insurance with respect to any employee. Such list includes a description of coverage, the amount of coverage and the name of the insurer or an indication that the Company, the Subsidiary or the Investment, as the case may be, has self-insured any particular aspect of the Business. All such policies are in full force and effect and no notice of cancellation or termination has been received with respect to any such policy and there is, and has been, no default by the Company, the Subsidiary, or, to the knowledge of the Sellers, the Investment, as applicable, with respect to its obligations under any such policy. Except as set forth in Section 4.17(b) of the Disclosure Schedule, the Sellers, the Company, the Subsidiaries and, to the knowledge of the Sellers, the Investments have not received during the past two (2) years any written notice or other written communication from any insurance company declining to write insurance with respect to the Business, or canceling or amending any of the Company's, a Subsidiary's or an Investment's insurance policies or proposing to do so.

Section 4.17(c) of

the Disclosure Schedule sets forth a summary of information (subdivided by Person) pertaining to property damage, personal injury and products liability claims filed by the Company, the Subsidiaries and, to the knowledge of the Sellers, the Investments during the past five (5) years which exceed DM2,000 in any instance, all of which have been paid or are being defended by the Company's, a Subsidiary's, or an Investment's insurance carriers and involve no exposure to the Company, the Subsidiaries or the Investments. Section 4.17(d) of the Disclosure Schedule sets forth a complete list of any claims that the Company, a Subsidiary or, to the knowledge of the Sellers, an Investment has under any of its insurance policies which have not been fully paid.

#### Section 4.18. Labor Matters.

(a) Except to the extent set forth in Section 4.18(a) of the Disclosure Schedule, (i) each of the Company, the Subsidiaries and, to the knowledge of the Sellers, the Investments is in compliance with all rulings, laws, ordinances, statutes, rules, regulations, codes, and other requirements of any governmental authority with respect to employment and employment practices, (ii) there is no unfair labor practice charge or complaint against the Company, a Subsidiary or, to the knowledge of the Sellers, an Investment pending before or, to the best knowledge of the Sellers, threatened to be brought before any labor grievance board, authority or tribunal, nor has any such charge or complaint been, to the best knowledge of the Sellers, threatened against the Company, a Subsidiary or an Investment; (iii) there is no labor strike, dispute, slowdown, or stoppage pending against or affecting the Company, a Subsidiary or, to the knowledge of the Sellers, an Investment; (iv) neither the Company, nor any of the Subsidiaries, nor, to the knowledge of the Sellers, any of the Investments is a party to any collective bargaining agreement or contract with any labor union and no works council exists with respect to employees of the Company, a Subsidiary or, to the knowledge of the Sellers, an Investment; (v) neither the Company, nor any of the Subsidiaries, nor, to the knowledge of the Sellers, any of the Investments has experienced any labor difficulty during the last three (3) years; and (vi) there are no other controversies pending between the Company, any of the Subsidiaries or, to the knowledge of the Sellers, any of the Investments and any of their respective employees, including, without limitation, claims arising under any labor laws. There has not been any adverse change in relations with employees of the Company, any Subsidiary or, to the knowledge of the Sellers, any of the Investments as a result of any announcement or other disclosure of the transactions contemplated by this Agreement.

(b) Section 4.18(b) of the Disclosure Schedule sets forth a list (subdivided by Person) of the names of all employees, consultants, officers and directors of the Company, the Subsidiaries and, to the knowledge of the Sellers, the Investments as of the date hereof, including length of employment and date of birth. Except as indicated on Section 4.18(b) of the Disclosure Schedule, all employees have executed one of the Company's, a Subsidiary's or, to the knowledge of the Sellers, an Investment's model employment agreements, as appropriate, or an agreement which does not vary materially from the appropriate model agreement. The Sellers have delivered to SEi (i) copies of the model employment agreements of each of the Company and the Subsidiaries, (ii) copies of all written employment agreements to which the Company, a Subsidiary or, to the knowledge of the Sellers, an Investment is a party with any of their respective employees identified in Section 4.18(b) of the Disclosure Schedule as having agreements which vary materially from the applicable model employment agreements, (iii) written summaries of the terms of all oral employment agreements that are other than at-will and which vary materially from the applicable model employment agreements, and (iv) a schedule (subdivided by Person) of compensation for all employees.

#### Section 4.19. Employee Benefit Plans.

(a) Set forth in Section 4.19 of the Disclosure Schedule is an accurate and complete list (subdivided by Person) of each Employee Benefit Plan (other than Employee Benefit Plans provided by statute) maintained or contributed to by the Company, the Subsidiaries or, to the knowledge of the Sellers, the Investments.

(b) Except as set forth in Section 4.19 of the Disclosure Schedule, all amounts that the Company, a Subsidiary or, to the knowledge of the Sellers, an Investment are required to have contributed to any Employee Benefit Plan have been contributed within the time prescribed by applicable law and all benefits, expenses, and other amounts due and payable and all transfers or payments required to be made with respect to any Employee Benefit Plan have been paid within the time prescribed by the applicable documents and governing law.

(c) Except as set forth in Section 4.19 of the Disclosure Schedule and to the knowledge of the Sellers with respect to Employee Benefit Plans relating exclusively to the Investments, there are no claims (other than routine claims for benefits) or lawsuits pending with respect to any Employee Benefit Plan.

(d) Except as set forth in Section 4.19 of the Disclosure Schedule and to the knowledge of the Sellers with respect to Employee Benefit Plans relating exclusively to the Investments, the Sellers have previously delivered or made available to Buyer and SEi true and complete copies of the plan documents for each Employee Benefit Plan identified in Section 4.19 of the Disclosure Schedule.

Section 4.20. Litigation. Except as set forth in Section 4.20 of the Disclosure Schedule, there are no claims, actions, suits, or proceedings pending or, to the best knowledge of the Sellers, threatened against the Company, any Subsidiary or, to the knowledge of the Sellers, any Investment relating to this Agreement or the transactions contemplated hereby or to the Business or the properties of any of them at law or in equity or before or by any national, federal, state, provincial, local, or foreign court or other governmental department, commission, board, agency, instrumentality or authority, nor any arbitration proceeding, in each case including, without limitation, any claims relating to environmental matters. Neither the Company, nor any of the Subsidiaries nor, to the knowledge of the Sellers, any of the Investments is subject to any adverse judgment, order, writ, injunction or decree of any court or governmental body.

Section 4.21. Compliance with Laws. Except as set forth in Section 4.21 of the Disclosure Schedule, each of the Company, the Subsidiaries and, to the knowledge of the Sellers, the Investments has conducted the Business conducted by it so as to comply with in all material respects, and is not in material violation of, nor has it received any written notice claiming it is in material violation of any order, law, ordinance, statute, rule or regulation applicable to it, or to the Business conducted by it or any of the property or assets of it including, without limitation, any environmental or worker safety and protection laws and regulations. Each of the Company, the Subsidiaries and, to the knowledge of the Sellers, the Investments has all material licenses, permits, certificates of occupancy and authorizations necessary to conduct the Business conducted by it.

Section 4.22. Books and Records. The books, accounts and records of each of the Company, the Subsidiaries and, to the knowledge of the Sellers, the Investments (a) are located at their respective headquarters located at the addresses set forth in Section 4.22 of the Disclosure Schedule, (b) are correct and complete in all material respects, (c) have been maintained in accordance with law and good business practice, and (d) constitute all the books, accounts and records

necessary to carry on the Business conducted by it in the manner in which it is currently being conducted and has over the preceding twelve (12) months been carried on. The copies of the organizational documents and of the minutes of all Quota holder and director meetings of the Company, the Subsidiaries and, to the knowledge of the Sellers, the Investments hereto delivered by the Sellers to Buyer and SEi are complete and correct.

Section 4.23. Copies of Documents. Each of the Sellers, the Company and the Subsidiaries has delivered or specifically made available to Buyer, SEi and their advisors true, complete and correct copies of all documents referred to in this Agreement or in any Section of the Disclosure Schedule with the understanding and intention that Buyer and SEi may and will rely upon the completeness and accuracy thereof.

Section 4.24. Adequacy of Assets. Except as set forth in Section 4.24 of the Disclosure Schedule, the assets of each of the Company, the Subsidiaries and, to the knowledge of the Sellers, the Investments, and the facilities, assets and services to which each of the Company, the Subsidiaries or, to the knowledge of the Sellers, the Investments has a contractual right of use include all rights, properties, assets, facilities and services necessary or appropriate for the carrying on of the Business it conducts in the manner in which it is currently being and has over the immediately preceding twelve (12) months been carried on, and neither the Company, nor any of the Subsidiaries nor, to the knowledge of the Sellers, any of the Investments depend in any respect upon the use of assets owned by, or facilities or services provided by, any of the Sellers or any Affiliate of any of them.

Section 4.25. Grants. The Company, the Subsidiaries and, to the knowledge of the Sellers, the Investments have never received any Grants.

Section 4.26. Accounts Receivable. Section 4.26 of the Disclosure Schedule sets forth a true and correct list (subdivided by Person) and aging of all unpaid accounts receivable owing to the Company, the Subsidiaries or, to the knowledge of the Sellers, the Investments as of the Interim Balance Sheet Date. The accounts receivable of the Company, the Subsidiaries and, to the knowledge of the Sellers, the Investments including, without limitation, those reflected in Section 4.26 of the Disclosure Schedule, constitute or will constitute as of the respective dates thereof, legal, valid, binding and enforceable claims arising from bona fide transactions in the ordinary course of the Business and, except to the extent reserved against on the Interim Balance Sheet,

are or will be as of the respective dates thereof collectible in the ordinary course of the Business and are not subject to any known counterclaims or set-offs. The reserves for doubtful accounts and allowances with respect to the accounts receivables generated after the Interim Balance Sheet Date and prior to the Closing will be established on the basis of evaluation of specific accounts and age classifications in accordance with GGAAP.

Section 4.27. Brokers and Finders. No agent, broker, investment banker, person or firm acting on behalf of the Company, the Subsidiaries, the Sellers or any Affiliate of any of them, or to the knowledge of the Sellers, on behalf of the Investments or any Affiliate of any of them, is or will be entitled to any brokers' or finders' fee or any other commission or similar fee directly or indirectly from any of the parties hereto in connection with the transactions contemplated hereby.

Section 4.28. Investment Intent; Information Disclosures.

(a) Each of the Sellers acknowledges that the SEi Stock to be received by such Seller will be acquired for such Seller's own account and without any view to the distribution of any part thereof without registration under applicable federal and state securities laws, or the delivery to SEi of an opinion of counsel that registration is not required in accordance with Section 4.28(e) hereof. Each Seller represents that such Seller does not have any agreements or arrangements to sell, transfer or grant a participation with respect to the Purchase Price Shares.

(b) Each Seller understands that the shares of SEi Stock constituting the Purchase Price Shares are not registered under the United States federal or state securities laws in part on the grounds that the transactions contemplated hereby are exempt from registration under the Securities Act of 1933 (the "1933 Act") pursuant to Section 4(2) thereof, and that Buyer's and SEi's reliance on such exemption is predicated on each Seller's representations set forth herein.

(c) Each Seller represents that such Seller has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its investment in the Purchase Price Shares, and has the ability to bear the economic risks of such investment. Each Seller further represents that such Seller has had

(i) access, prior to the Closing Date, to the SEi Filings (ii) the opportunity to ask questions of, and receive answers from, SEi concerning SEi and the Purchase Price Shares, and (iii) the opportunity to obtain

additional information (to the extent SEi possessed such information or could acquire it without unreasonable expense) necessary to verify the accuracy of any information received or to which such Seller had access.

(d) Each Seller understands and agrees that the Purchase Price Shares may not be sold, transferred or otherwise disposed of without registration under the 1933 Act and applicable state laws, unless exemptions from registration requirements are available, and that in the absence of an effective registration statement covering the Purchase Price Shares or an available exemption from applicable registration requirements, the Purchase Price Shares must be held indefinitely. In particular, the Purchase Price Shares may not be sold pursuant to Rule 144 promulgated under the 1933 Act unless all of the conditions of such rule are met.

(e) Each Seller agrees that such Seller will not offer, sell, mortgage, pledge or otherwise dispose of any of the Purchase Price Shares (other than pursuant to an effective registration statement under the 1933 Act) unless and until such Seller delivers an opinion of counsel satisfactory to SEi, or SEi delivers to the Sellers an opinion of counsel, that registration under applicable federal or state securities laws is not required.

(f) In addition, each Seller agrees that such Seller shall not sell, assign, pledge, encumber or otherwise transfer any of the Purchase Price Shares (or any interest therein) unless:

(i) such transfer occurs after financial results reflecting at least thirty days of post-Closing combined operations of the Company and SEi have been prepared and published within the meaning of Section 201.01 of the SEC's Codification of Financial Reporting Policies; and

(ii) either (A) such transfer occurs after the first anniversary of the Closing, or (B) after giving effect to the transfer, such Seller will continue to own at least fifty percent (50%) of the Purchase Price Shares issued to him at the Closing (adjusted to account for any additional shares issued in respect of such shares by way of stock splits, stock dividends or otherwise).

(g) Each Seller agrees that all certificates for Purchase Price Shares shall bear a legend in substantially the following form:

The securities represented by this certificate have not been registered, qualified, recommended, approved or disapproved under United States federal securities law or state securities laws. The shares represented by this certificate may not be sold, transferred or otherwise disposed of by an investor without (i) registration under federal and state securities laws, or (ii) delivery of an opinion of counsel satisfactory to the corporation that neither the sale nor the proposed transfer constitutes a violation of any United States federal or state securities law.

The securities represented by this certificate are subject to certain transfer restrictions set forth in an Acquisition Agreement dated as of September 19th, 1997 (a copy of which may be obtained from the Company at its principal executive office), and may not be sold, assigned, pledged, encumbered or otherwise transferred except in compliance with the terms and conditions of such agreement.

Section 4.29 Pooling of Interests. The Sellers acknowledge that SEi intends to account for the acquisition of the Company Quotas as a pooling of interests, and that qualifying for such accounting treatment is dependent in part upon actions taken, or not taken, by the Company and the Sellers both before and after the date hereof. In this regard, and with the understanding that SEi is relying thereon in making its commitment to enter into this transaction, the Sellers warrant that the Sellers, the Company and their respective Affiliates have not, directly or indirectly, taken any of the following actions, which Sellers acknowledge could prevent SEi from obtaining such pooling accounting treatment:

- (a) acquired or sold, assigned, transferred or otherwise disposed of, or reduced any risk relative to, any Company Quotas or SEi Stock in contemplation of the transactions provided for herein;
- (b) paid or received any dividends or other distributions with respect to the capital interests of the Company, other than distributions in the ordinary course of the Company's Business and not in contemplation of the transactions provided for herein;
- (c) altered the relative ownership interests of the Sellers in the Company in contemplation of the transactions provided for herein;



(d) disposed of any part of the assets of the Company within the nine months preceding the date hereof or in contemplation of the transactions provided for herein;

(e) become a party to any contract, document, instrument or any written or oral agreement regarding the sale, assignment or transfer of, or allowed to be created any rights or obligations for the sale, assignment or transfer of, or explicitly or impliedly agreed to sell, assign or transfer any of the Company Quotas held by any of the Sellers to any other Seller or any Affiliate of any other Seller; or

(f) entered into any agreement to do any of the forgoing, including without limitation, any agreement to distribute or dispose of any part of the assets of the Company upon the consummation of the transactions provided for herein.

**Section 4.30 Restrictive Covenants.** Except as disclosed in Section 4.30 of the Disclosure Schedule, neither the Company, nor any of the Subsidiaries nor, to the knowledge of the Sellers, any of the Investments is subject to, or a party to, any mortgage, lien, lease, license, permit, agreement, contract, instrument, law, rule, ordinance, regulation, order, judgment or decree, or any other restriction of any kind or character, which materially adversely affects its Business practices, operations or condition or any of its assets or properties, which restricts its ability to acquire any property or conduct its Business in any area or which would prevent consummation of the transactions contemplated by this Agreement, compliance by it with the terms, conditions and provisions hereof or the operation of its Business by it after the date hereof on substantially the same basis as heretofore operated by it.

**Section 4.31 Product Liabilities and Warranties.** There are no express or implied warranties applicable to products or services sold or provided by the Company, the Subsidiaries or, to the knowledge of the Sellers, the Investments except as provided by statute or disclosed on Section 4.31 of the Disclosure Schedule. Except as set forth in Section 4.31 of the Disclosure Schedule, there is no action, suit, proceeding or claim pending or, to the best knowledge of the Sellers, threatened against the Company, a Subsidiary or, to the knowledge of the Sellers, an Investment under any warranty, express or implied, and there is no basis upon which any claim could be made. Section 4.31 of the Disclosure Schedule also summarizes all product liability claims that have been asserted against the Company, the Subsidiaries and, to the knowledge of

the Sellers, the Investments during the five (5) years preceding the date of this Agreement.

Section 4.32 Disclosure. None of the representations or warranties by the Sellers herein, no statement contained in any certificate, list or other writing furnished to Buyer or SEi pursuant hereto and no statement contained in any Section of the Disclosure Schedule, taken as a whole, contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein or therein, in light of the circumstances in which they were made, not misleading. There is no fact known to the Sellers which materially and adversely affects the Business, the Company, the Subsidiaries or, to the knowledge of the Sellers, the Investments, or the prospects or financial condition of the Company, the Subsidiaries or, to the knowledge of the Sellers, the Investments, which has not been set forth in this Agreement or in a Section of the Disclosure Schedule.

## **ARTICLE V**

### **REPRESENTATIONS AND WARRANTIES OF SEI AND BUYER (GARANTIEN)**

SEi and Buyer, jointly and severally, hereby represent and warrant to the Sellers as follows:

Section 5.1. Corporate Organization. Each of Buyer and SEi is a corporation or limited liability company, as the case may be, duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and has the full right, power and authority to own, lease and operate all of its properties and assets and to carry out its business as it is presently conducted.

Section 5.2. Capitalization of SEi. All issued and outstanding shares of SEi Stock have been, and upon issuance the Purchase Price Shares will be, duly authorized and validly issued, fully paid and nonassessable. The issuance of the Purchase Price Shares is not subject to any preemptive right or right of first refusal that has not or will not be satisfied or waived.

Section 5.3. Authority. Each of Buyer and SEi has all requisite right, power and authority to execute, deliver and perform this

Agreement. The execution, delivery and performance of this Agreement and the Related Agreements by Buyer and SEi have been duly and validly authorized and approved by all necessary corporate action. This Agreement has been duly and validly executed and delivered by Buyer and SEi and, assuming this Agreement has been duly authorized, executed and delivered by the Sellers, constitutes the legal, valid and binding obligation of Buyer and SEi, enforceable against each of them in accordance with its terms.

Section 5.4. SEi's Consents and Approvals; No Violations. The execution, delivery and performance of this Agreement by Buyer and SEi will not (with or without the giving of notice or the passage of time, or both), (a) violate in any material respect any applicable provision of law or any rule or regulation of any administrative agency or governmental authority applicable to Buyer or SEi, or any order, writ, injunction, judgment or decree of any court, administrative agency or governmental authority applicable to Buyer or SEi, (b) violate the organizational documents of Buyer or the Articles of Incorporation or Bylaws of SEi, (c) violate or require any consent, waiver or approval under, result in a breach, modification or termination of any of any provisions of, constitute a default under, affect the rights under or enforceability of, result in the imposition of any pledge, security interest or other encumbrance pursuant to, give any Person the right to terminate, modify or renegotiate any provision of, any material agreement, indenture, mortgage, deed of trust, lease, license, or other instrument to which Buyer or SEi is a party or by which Buyer or SEi is bound, or any material license, permit or certificate held by Buyer or SEi (other than any consents which will have been obtained on or prior to the Closing Date), or (d) based upon the information provided to Buyer with respect to Sellers, require any material consent or approval by, notice to, or registration with any governmental authority.

Section 5.5. Litigation. There are no claims, actions, suits, or proceedings pending or, to the best knowledge of Buyer and SEi, threatened, against Buyer or SEi relating to this Agreement or the transactions contemplated hereby or to the business or property of Buyer or SEi, at law or in equity or before or by any national, federal, state, provincial, local, or foreign court or other governmental department, commission, board, agency, instrumentality or authority, or any arbitration proceeding, in each case which are likely to have a Material Adverse Effect. Neither Buyer nor SEi is subject to any judgment, order, writ, injunction or decree of any court or governmental body.

Section 5.6. Brokers and Finders. No agent, broker, investment banker, Person or firm acting on behalf of Buyer, SEi or any Affiliate of either of them is or will be entitled to any brokers' or finders' fee or any other commission or similar fee directly or indirectly from any of the parties hereto in connection with the transactions contemplated hereby.

Section 5.7. SEi Information. SEi has delivered to the Sellers true and complete copies of the SEi Filings. At the date hereof, the SEi Filings, taken as a whole, do not contain any untrue statement of a material fact or omit any material fact necessary to make the statements contained herein, in light of the circumstances in which they were made, not misleading.

Section 5.8 No Material Adverse Change. Since June 30, 1997, SEi has not suffered any Material Adverse Effect.

Section 5.9. Undisclosed Liabilities. SEi has no liabilities (absolute, accrued, contingent or otherwise) required by USGAAP to be reflected or reserved against in the consolidated statement of assets and liabilities of SEi except (a) liabilities reflected or reserved against in the Form 10-Q Balance Sheet, and (b) liabilities incurred since March 30, 1997 in the ordinary course of business, and which, in the aggregate, do not have a Material Adverse Effect.

Section 5.10. Compliance with Laws. Each of Buyer and SEi has conducted its business so as to comply with, and is not in violation of, nor has it received any written notice claiming it is in violation of, any order, law, ordinance, statute, rule or regulation applicable to it, or to its business or any of its property or assets including, without limitation, any environmental or worker safety and protection laws and regulations, except to the extent that such non-compliance would not have a Material Adverse Effect. Each of Buyer and SEi has all material licenses, permits, certificates of occupancy and authorizations necessary to conduct its business.

## ARTICLE VI

### FURTHER COVENANTS AND AGREEMENTS

Section 6.1. Covenants of the Sellers Pending the Closing. The Sellers covenant and agree that, pending the Closing and prior to the termination of this Agreement, and except as otherwise agreed to in writing by Buyer and SEi, the Sellers shall or, as appropriate shall cause the Company or the Subsidiaries to, or use its best efforts to cause the Investments to:

- (a) conduct the Business solely in the ordinary course and consistent with the past practices of the Company, the Subsidiaries and the Investments;
- (b) not take or intentionally omit to take any action which would result in a breach of any of the Sellers' representations and warranties hereunder in any material respect;
- (c) continue to maintain and service the physical assets used by the Company, the Subsidiaries and the Investments in the conduct of the Business consistent with past practices;
- (d) use its reasonable efforts to preserve the Business and organization of the Company, the Subsidiaries and the Investments, to keep available the services of the Company's, the Subsidiaries' and the Investments' present employees and agents and to maintain the relations and goodwill with the suppliers, customers (including the Customers), distributors and any others having business relations with the Company, a Subsidiary or an Investment in connection with the Business;
- (e) use its and their reasonable efforts to cause all of the conditions to the obligations of Buyer and SEi under this Agreement to be satisfied on or prior to the Closing Date and to obtain, prior to the Closing, all consents of all third parties and governmental authorities necessary for the consummation by the Sellers, the Company, the Subsidiaries and the Investments of the transactions contemplated hereby. All such consents will be in writing and executed counterparts will be delivered to Buyer and SEi at or prior to the Closing.

- (f) cooperate with Buyer and SEi in making arrangements to obtain licenses, permits and certificates required to conduct the Business or own the Company Quotas at Closing;
- (g) provide Buyer's and SEi's officers, employees, counsel, accountants and other representatives with full access to, during normal business hours, all of the books and records of the Company, the Subsidiaries and the Investments, make available to representatives of Buyer and SEi, knowledgeable employees of the Company, the Subsidiaries and the Investments, for reasonable periods of time to answer inquiries of such representatives with respect to Buyer's and SEi's investigation of the Company, the Subsidiaries and the Investments and permit such representatives of Buyer and SEi to consult with the officers, employees, accountants and counsel of the Sellers; provided, that no such activities unreasonably interfere with the operation of the Business;
- (h) not grant to any Person a power of attorney or similar authority to act for the Company, a Subsidiary or any Investment;
- (i) not enter into any guarantee of the obligations of any Person to the extent such guarantee shall survive the Closing;
- (j) not amend the charter, Articles of Association or other organizational documents of the Company, any Subsidiary or any Investment;
- (k) make no change in the amount of issued share capital of the Company, any Subsidiary or any Investment or issue or create any option, warrant or any other security of the Company, any Subsidiary or any Investment;
- (l) not increase the compensation payable or to become payable to any officer, employee or agent of the Company, any Subsidiary or any Investment other than in the ordinary course of the Business, nor make any bonus payment or arrangement to or with any officer, employee or agent of the Company, any Subsidiary or any Investment other than in the ordinary course of the Business;
- (m) not make any dividends or other distributions in respect of the Company Quotas;

(n) not sell, transfer, lease, abandon or otherwise dispose of (or commit to do so) any fixed assets of the Company, any Subsidiary or any Investment; and

(o) not enter into any contract or commitment calling for payment to or by the Company, any Subsidiary or any Investment of an aggregate amount of more than DM10,000, which is not terminable by such Person on less than thirty (30) days' notice without penalty.

Section 6.2. Covenants of Buyer and SEi Pending the Closing. Buyer and SEi covenant and agree that, pending the Closing and prior to the termination of this Agreement, and except as otherwise agreed to in writing by the Sellers, each of Buyer and SEi:

(a) shall not take or intentionally omit to take any action which would result in a breach of any of its representations and warranties hereunder in any material respect.

(b) shall use its reasonable efforts to cause all of the conditions to the obligations of the Sellers under this Agreement to be satisfied on or prior to the Closing Date and to obtain prior to the Closing, all consents of all third parties and governmental authorities necessary for the consummation by it of the transactions contemplated hereby. All such consents will be in writing and executed counterparts thereof will be delivered to the Sellers at or prior to the Closing.

(c) shall promptly disclose to the Sellers any information relating to its representations and warranties hereunder which, because of an event occurring after the date hereof, is incomplete or is no longer correct in any material respect.

Section 6.3. Filings. Promptly after the execution of this Agreement, each of the parties hereto shall prepare and make or cause to be made any required filings, submissions and notifications under the laws of any domestic or foreign jurisdictions to the extent that such filings are necessary to consummate the transactions contemplated hereby and will use its reasonable efforts to take all other actions necessary to consummate the transactions contemplated hereby in a manner consistent with applicable law. Each of the parties hereto will furnish to the other party such necessary information and reasonable assistance as such other party may reasonably request in connection with the foregoing.

Section 6.4. Effective Time of Closing and Transfer. The Closing shall be effective for all purposes as of the close of business on the Closing Date.

Section 6.5. Announcements. Except as expressly contemplated by this Agreement, the parties will mutually agree as to the time, form and content before issuing any press releases or otherwise making any public statements or statements to third parties with respect to transactions contemplated hereby and shall not issue any press release or, except as necessary to perform their respective obligations hereunder, discuss the transactions contemplated hereby with any third party prior to reaching mutual agreement with respect thereto, except as may be required by law. Notwithstanding the foregoing, in the event prior to the Closing any party hereto is required by law or the rules of any stock exchange on which such party's securities are traded to make a statement with respect to the transactions contemplated herein, such party shall notify in writing the other party hereto as to the time, form and content of such statement.

Section 6.6. Costs and Expenses. Whether or not the transactions contemplated by this Agreement are consummated, each party hereto shall pay its own costs and expenses (including legal fees and expenses) incurred in connection with due diligence reviews, the preparation, negotiation and execution of this Agreement and all other agreements, certificates, instruments and documents delivered hereunder, and all other matters relating to the transactions contemplated hereby. All German transfer and intangible Taxes, if any, arising in connection with the sale and assignment of the Company Quotas hereunder shall be paid by the Sellers. All transfer and intangible Taxes, if any, in connection with the sale and delivery of the Purchase Price Shares hereunder shall be paid by SEi. All fees and charges arising from notary requirements applicable to the sale and assignment of Company Quotas shall be paid by the Buyer.

Section 6.7. Further Assurances.

(a) Subject to the terms and conditions herein provided, each of the parties hereto agrees to use its reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate and make effective the transactions contemplated by this Agreement. If at any time after the Closing Date any further action is necessary or desirable to carry out the purposes of this



Agreement, the parties hereto shall take or cause to be taken all necessary action including, without limitation, the execution and delivery of such further instruments and documents as may be reasonably requested by the other party for such purposes or otherwise to consummate and give effect to the transactions contemplated hereby. If any consent or approval required for the consummation of the transactions contemplated hereby is waived by the parties, at the request of the Buyer the Sellers shall cooperate with SEi, and attempt in good faith, to obtain such consent or approval during the one year period immediately following the Closing.

(b) From and after the Closing Date, the Buyer and/or SEi agree to promptly inform the Sellers of any Tax audit of the Company, a Subsidiary or, if known by the Buyer and/or SEi, an Investment by a Tax authority and to give or, with respect to an Investment, use their best efforts to give, the Sellers the opportunity to participate in such a Tax audit. Furthermore, the Sellers shall be entitled to request the Buyer, SEi, the Company, a Subsidiary or an Investment to duly and timely file the appropriate recourse against any Tax assessment resulting in a higher Tax burden for any period prior to the Closing Date. If such request is not honored, the Buyer shall cause the Company, or the Subsidiary, or shall use its best efforts to the Investment, as appropriate, upon request by one or more of the Sellers, to file such recourse nonetheless, provided that in this case the Sellers who have made such request shall be liable to reimburse the Company, such Subsidiary or such Investment, as applicable, for all fees and expense incurred in the recourse proceedings to the extent such fees and expenses are not borne by third parties.

Section 6.8. Certain Agreements. On or before the Closing Date, Buyer, SEi, and the Sellers will execute the Pledge and Escrow Agreement in the form of Exhibit A, the Sellers and SEi will execute the Registration Rights Agreement in the form of Exhibit B, and the Sellers will execute, or cause to be executed, an employment agreement between the Company and each of Alfons Bromkamp and Werner Bromkamp in the form of Exhibit C, in each case to be effective upon the Closing Date.

Section 6.9. Non-Disclosure; Covenant Not to Compete.

(a) The parties hereto acknowledge that (i) the covenants contained in this Section 6.9 are a material inducement to the consummation by Buyer and SEi of the transactions contemplated by this Agreement and (ii) Buyer and SEi would not have entered into or performed this Agreement but for the covenants herein contained.

(b) Each of the Sellers agrees that, unless acting with the prior consent of Buyer and SEi, it will not, either alone or in conjunction with any other Person, or directly or indirectly through any entity that it now or in the future controls, for a period of three years from the Closing Date: (i) employ or solicit the employment of any Person who within the month preceding the Closing Date had been an employee of the Company, a Subsidiary or an Investment; (ii) directly or indirectly engage or participate, whether as officer, employee, director, agent, consultant, shareholder, partner, or otherwise, in the ownership, management, marketing or operation of any enterprise which is engaged in any part of the Business within Europe (other than solely through the ownership of equity securities or equivalent interests of any entity at a level which does not create the ability to influence or control management of the entity); or (iii) conduct any part of the Business with any Person that is a Customer of the Company, a Subsidiary or an Investment as of the Closing Date.

(c) It is stipulated and agreed that the Sellers have become acquainted with confidential and privileged information of the Company, the Subsidiaries and the Investments relating to customer files, customer lists, special customer matters, sales methods and techniques, merchandising concepts and plans, new site locations, business plans, sources of supply and vendors, special business relationships with vendors, agents and brokers, promotional materials and information, financial matters, mergers, acquisitions, selective personnel matters and confidential processes, designs, formulas, ideas, plans, devices or materials and other similar matters which are confidential (any and all such information being referred to herein as the "Confidential Information"); and that the use of the Confidential Information against the Company would seriously damage the Business. As a consequence of the above, each of the Sellers agrees that, unless acting with the prior written consent of Buyer, such Seller shall, whether acting alone, in conjunction with any other Person, or directly or indirectly through any entity that such Seller now or in the future controls: not use, divulge, publish or otherwise reveal or allow to be revealed any aspect of the Confidential Information to any Person; refrain from any action or conduct which might reasonably or foreseeably be expected to compromise the confidentiality or proprietary nature of the Confidential Information; and shall have no right to apply for or to obtain any patent, copyright, or other form of Intellectual Property protection with regard to the Confidential Information.

(d) The parties hereto acknowledge and agree that any remedy at law for any breach of the provisions of this Section 6.9 would be inadequate and the Sellers hereby consent to the granting by any court of competent jurisdiction of an injunction or other suitable relief and without the posting of any bond or the necessity of actual monetary loss being proved, in order that such breach may be effectively restrained.

Section 6.10. Pooling of Interests. The Sellers shall not, and shall not permit the Company, to take, any of the following actions, each of which could result in the transfer of the Company Quotas not qualifying to be accounted for as a pooling of interests: (a) acquiring or transferring any capital interests of the Company or any SEi Stock during the thirty (30) days prior to the Closing Date, and (b) selling, assigning or transferring, or agreeing or allowing to be created any rights or obligation for the sale, assignment or transfer of, any of the Purchase Price Shares or any other SEi Stock in violation of the restrictions set forth in Section 4.28(f)(i).

Section 6.11. Exclusive Dealing. During the period from the date of this Agreement through and including the Closing Date, the Sellers shall not, and shall not permit the Company, the Subsidiaries, the Investments or any of their respective directors, officers, employees, representatives or agents to, directly or indirectly, solicit, initiate or participate in any negotiations with any Person other than SEi and the Buyer and their respective representatives, agents and Affiliates, concerning any Alternative Transaction. The Sellers shall immediately notify SEi and Buyer of any proposal or offer received by, any information requested from, or any discussions or negotiations sought to be initiated or continued with, the Sellers, the Company, the Subsidiaries or the Investments in respect of an Alternative Transaction and shall, in any such notice to SEi and Buyer, indicate the terms and conditions of any proposals or offers or the nature of any requests, discussions or negotiations.

Section 6.12. Release of Bromkamp Guarantee. No later than October 31, 1997, the Sellers, Buyer and SEi shall arrange for the release of the personal guarantee of Bromkamp of obligations of the Company in the amount of DM1,000,000 to Volksbank Essen.

Section 6.13. Purchase of Coplön Investment. On or prior to May 31, 1998, or, if earlier the date of any sale by Bromkamp of any of his Seller's Shares, Bromkamp will purchase from the Company, and the Company will transfer to Bromkamp, the Coplön investment shown on the

Interim Balance Sheet, for a purchase price equal to the difference between DM200,000 and any payments received by the Company subsequent to Closing in respect of the Coplon investment.

## **ARTICLE VII**

### **TERMINATION**

Section 7.1. Termination. This Agreement may be terminated at any time prior to the Closing:

(a) by mutual written agreement executed by the Sellers, Buyer and SEi;

(b) by the Sellers, Buyer or SEi at any time after September 26, 1997 if, through no fault of the party seeking termination, the Closing shall not have occurred;

(c) by the Sellers, Buyer or SEi, if any governmental or regulatory authority, agency or commission, including courts of competent jurisdiction, domestic or foreign, shall have issued an order, decree, or ruling or taken other action, restraining, enjoining or otherwise prohibiting the transactions contemplated hereby and such order, decree, ruling or other action shall have become final and nonappealable;

(d) by Buyer or SEi, if there has been a material violation or breach by the Sellers of any agreement or any representation or warranty contained in this Agreement which (i) is not curable, (ii) has rendered the satisfaction of any condition to the obligations of Buyer and SEi impossible, and (iii) has not been waived by Buyer and SEi; or

(e) by the Sellers, if there has been a material violation or breach by Buyer or SEi of any agreement, representation or warranty contained in this Agreement which (i) is not curable, (ii) has rendered the satisfaction of any condition to the obligations of the Sellers impossible, and (iii) has not been waived by the Sellers.

Section 7.2. Procedure and Effect of Termination. In the event of termination of this Agreement pursuant to Section 7.1 hereof, written notice thereof shall forthwith be given to the other parties hereto and this Agreement (other than Section 6.6 hereof and as provided in paragraph (b) below) shall terminate and the transactions contemplated

hereby shall be abandoned without further action by the parties hereto. If this Agreement is terminated as provided herein:

- (a) all information with respect to the Business, the Company, the Subsidiaries or the Investments received by and in the possession of Buyer, SEi or any Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with Buyer or SEi shall be returned to the Sellers or destroyed by Buyer or SEi;
- (b) any termination pursuant to subparagraph (b), (c), (d), or (e) of Section 7.1 shall not be deemed a waiver of any rights or remedies otherwise available under this Agreement, by operation of law or otherwise; and
- (c) all filings, applications and other submissions made pursuant to Section 6.3 hereof or prior to the execution of this Agreement in contemplation thereof shall, to the extent practicable, be withdrawn from the agency or other Person to which made.

## **ARTICLE VIII**

### **CONDITIONS TO BUYER'S AND SEI'S OBLIGATIONS**

Each and every obligation of Buyer and SEi to consummate the transactions described in this Agreement shall be subject to the fulfillment, or the waiver by Buyer and SEi on or before the Closing Date, of the following conditions precedent:

Section 8.1 The Sellers' Closing Deliveries. The Sellers shall have delivered, or caused to be delivered, to Buyer and SEi at or prior to the Closing, unless specifically waived by Buyer and SEi in their sole discretion, each of the following:

- (a) the Registration Rights Agreement and the Pledge and Escrow Agreement referenced in Section 6.8, in each case executed by the Sellers and, in the case of the Pledge and Escrow Agreement, by the Escrow Agent;
- (b) the employment agreements referenced in Section 6.8 executed by the Company and each of Alfons Bromkamp and Werner Bromkamp;

(c) valid and binding consents of all Persons whose consent or approval is required to be set forth in Sections 4.5 and 4.6 of the Disclosure Schedule;

(d) with respect to each Seller, three separate guaranteed stock powers duly endorsed in blank and a Certificate of Foreign Status on Form W-8;

(e) the certificates referenced in Sections 8.2 and 8.3;

(f) the declaration of Werner Bromkamp waiving any possible claims against the Company based upon his sub-participation agreement with Bromkamp; and

(g) evidence satisfactory to SEi that the Company is the record owner of sixty-seven percent (67%) of the issued capital interest of TOP.

**Section 8.2. Representations and Warranties True.** The representations and warranties of the Sellers contained in this Agreement, as modified by the Disclosure Schedule, shall have been true on the date hereof in all material respects, and shall be true on the Closing Date in all material respects with the same effect as though such representations and warranties were made on and as of such date and the Sellers shall have delivered to Buyer and SEi on the Closing Date a certificate, dated as of the Closing Date, to such effect.

**Section 8.3. Performance.** The Sellers shall have, in all material respects, performed and complied with all covenants required by this Agreement to be performed or complied with by them prior to or at the Closing and the Sellers shall have delivered to Buyer and SEi on the Closing Date a certificate, dated as of the Closing Date, to such effect.

**Section 8.4. Governmental Consents and Approvals.** All necessary and appropriate governmental consents, approvals and filings shall have been obtained or made and all applicable waiting periods (including any extensions thereof) relating thereto shall have expired or otherwise terminated.

**Section 8.5. No Injunction or Proceeding.** No governmental or regulatory authority, agency or commission, including courts of competent jurisdiction, domestic or foreign, shall have issued an order, decree, or ruling or taken other action, restraining, enjoining or otherwise

prohibiting the transactions contemplated hereby, which order, decree, ruling or other action remains in effect.

## **ARTICLE IX**

### **CONDITIONS TO THE SELLERS' OBLIGATIONS**

Each and every obligation of the Sellers to consummate the transactions described in this Agreement shall be subject to the fulfillment, or the waiver by the Sellers, on or before the Closing Date, of the following conditions precedent:

Section 9.1. Delivery of Purchase Price Shares. Buyer and SEi shall have delivered or caused to be delivered the Purchase Price Shares in accordance with Article III hereof.

Section 9.2. Buyer's and SEi's Closing Deliveries. Buyer and SEi shall deliver, or cause to be delivered, to the Sellers at the Closing, unless specifically waived by the Sellers in their sole discretion, each of the following:

(a) the Registration Rights Agreement and the Pledge and Escrow Agreement referenced in Section 6.8, executed by SEi and, in the case of the Pledge and Escrow Agreement, the Buyer and the Escrow Agent;

(b) a certified copy of the resolutions of the Board of Directors of SEi authorizing the execution, delivery and performance of this Agreement and the Related Agreements and the consummation of transactions contemplated hereby and thereby; and

(c) the certificates referenced in Sections 9.3 and 9.4 hereof.

Section 9.3. Representations and Warranties True. The representations and warranties of Buyer and SEi contained in this Agreement, as modified by the Disclosure Schedule, shall have been true on the date hereof in all material respects and shall be true on the Closing Date in all material respects, with the same effect as though such representations and warranties were made on and as of such date, and Buyer and SEi shall have delivered to the Sellers on the Closing Date a certificate, dated as of the Closing Date, to such effect.

Section 9.4. Performance. Buyer and SEi shall have, in all material respects, performed and complied with all covenants required by this Agreement to be performed or complied with by them prior to or at the Closing and Buyer and SEi shall have delivered to the Sellers on the Closing Date a certificate, dated as of the Closing Date, to such effect.

Section 9.6. Governmental Consents and Approvals. All necessary and appropriate governmental consents, approvals and filings shall have been obtained or made and all applicable waiting periods (including any extensions thereof) relating thereto shall have expired or otherwise terminated.

Section 9.7. No Injunction or Proceeding. No governmental or regulatory authority, agency or commission, including courts of competent jurisdiction, domestic or foreign, shall have issued an order, decree, or ruling or taken other action, restraining, enjoining or otherwise prohibiting the transactions contemplated hereby, which order, decree, ruling or other action remains in effect.

## **ARTICLE X**

### **INDEMNIFICATION**

Section 10.1. Indemnification by the Sellers.

(a) The Sellers severally agree, pro-rata in proportion to the Purchase Price Shares they receive, to reimburse, indemnify and hold SEi, the Buyer, the Company, the Subsidiaries, the Investments and their respective officers, directors, shareholders, employees and agents harmless from and against any and all demands, claims, actions, suits, liabilities, damages, losses, judgments, costs and expenses (including, without limitation, reasonable attorneys' fees) but excluding any claims for punitive damages or consequential damages relating to, resulting from or arising out of:

(i) any breach or inaccuracy of the representations or warranties made hereunder by the Sellers;

(ii) any breach or violation of any covenant or agreement made hereunder by the Sellers;

(iii) the redemption described in Section 4.2(a);



(iv) matters referred to in Section 4.8 of the Disclosure Schedule in respect of Taxes payable for any period ending prior to Closing and from the Closing until such date as TST no longer provides services to the Company;

(v) allegations by or in right of Norbert Bromkamp or Iris Weismuller, as shareholders or employees of TST, in respect of the arrangements between the Company and TST prior to Closing and from the Closing until such date as TST no longer provides services to the Company;

(vi) obligations existing or alleged to exist as of the Closing Date under any pension promise for any employee of the Company, a Subsidiary or an Investment other than Alfons Bromkamp and Werner Bromkamp, or

(vii) any termination of the contracts between TOP and QVC as a result of the consummation of the transactions contemplated by this Agreement.

#### Section 10.2. Indemnification by Buyer and SEi.

(a) Buyer and SEi jointly and severally agree to reimburse, indemnify and hold each of the Sellers harmless from and against any and all demands, claims, actions, suits, liabilities, damages, losses, judgments, costs and expenses (including, without limitation, reasonable attorneys' fees but excluding any claims for punitive damages or consequential damages) relating to, resulting from or arising out of:

(i) any breach or inaccuracy of the representations or warranties made hereunder by Buyer and SEi; or

(ii) any breach or violation of any covenant or agreement made hereunder by Buyer and SEi.

#### Section 10.3. Survival of Representations

. Except for the representations and warranties contained in Sections 4.1, 4.2, 4.4 and 4.9, the representations and warranties made pursuant to this Agreement including, without limitation, all representations and warranties made in any exhibit or schedule or certificate delivered thereunder, shall survive until and through the second anniversary of the Closing Date at which time such representations and warranties shall expire. The representations and warranties set forth in Sections 4.1 and 4.2 of this Agreement shall survive until and through the tenth

anniversary of the Closing Date. The representations and warranties set forth in Section 4.4 of this Agreement shall survive indefinitely. The representations and warranties set forth in Section 4.9 of this Agreement shall survive until and through six months after all amounts for Taxes applicable to the Company, the Subsidiaries or the Investments, their respective employees and the transactions contemplated by this Agreement, in the case of Section 4.9 become final and non-appealable for all periods through or including the Closing Date, at which time such representations and warranties shall expire.

**Section 10.4. Indemnification Claims Procedures.** All claims for indemnification by any party seeking indemnification (the "Indemnified Party") from another party (the "Indemnifying Party") under Sections 10.1 and 10.2 shall be asserted and resolved as follows:

(a) In the event that any claim or demand for which the Indemnifying Party would be liable to any Indemnified Party hereunder is asserted against or sought to be collected from any Indemnified Party by a third party, the Indemnified Party shall promptly notify the Indemnifying Party (and any known pertinent insurance carrier) in reasonable detail of such claim or demand and the amount or the estimated amount thereof to the extent then feasible (which estimate shall not be conclusive of the final amount of such claim and demand) (the "Claim Notice"). The Indemnifying Party shall have thirty (30) days from the personal delivery or mailing of the Claim Notice (the "Notice Period") to notify the Indemnified Party whether or not the Indemnifying Party desires to defend the Indemnified Party against such claim or demand. All costs and expenses incurred by the Indemnifying Party in defending such claim or demand shall be a liability of, and shall be paid by, the Indemnifying Party. In the event that the Indemnifying Party notifies the Indemnified Party within the Notice Period that it desires to defend the Indemnified Party against such claim or demand and except as hereinafter provided, the Indemnifying Party shall have the right to defend the Indemnified Party by counsel of the Indemnifying Party's own choosing, either in the Indemnifying Party's name, or the Indemnified Party's name by appropriate proceedings. If any Indemnified Party desires to participate in, but not control, any such defense or settlement it may do so at its sole cost and expense and, in any event, the Indemnified Party shall cooperate with the Indemnifying Party and such counsel. To the extent the Indemnifying Party shall control or participate in the defense or settlement of any third party claim or demand, the Indemnified Party shall give to the Indemnifying Party and its counsel access to, during normal business hours, the relevant business records and other documents, and shall permit them to

consult with the employees and counsel of the Indemnified Party to the extent consistent with the application of relevant evidentiary privileges. The Indemnifying Party shall keep the Indemnified Party reasonably apprised of the course of any negotiations or proceedings and the Indemnifying Party shall not settle any claim or demand without the consent of the affected Indemnified Party, which consent shall not be unreasonably withheld or unduly delayed. As soon as reasonably practicable after the Indemnifying Party has reached a final decision as to whether or not all or any portion of the obligations related to such claim or demand are obligations for which the Indemnifying Party is required to indemnify such Indemnified Party hereunder and, in any event, prior to entering into any such settlement or other final resolution of any claim or demand, the Indemnifying Party shall notify the Indemnified Party in writing of its position as to whether or not all or any portion of the obligations related to such claim or demand are obligations for which the Indemnifying Party is required to indemnify such Indemnified Party in accordance with this Article X.

(b) If the Indemnifying Party elects or is deemed to have elected not to take over the defense of any such claim or demand, the Indemnified Party shall have the right to defend, compromise and settle such claim or demand on such terms as the Indemnified Party in his, her or its discretion may determine, subject to the prior consent of the Indemnifying Party, which consent shall not be unreasonably withheld or unduly delayed, and the Indemnifying Party shall continue to be bound to indemnify the Indemnified Party in accordance with and to the extent provided under the terms of this Article X. The Indemnified Party shall or shall direct in writing its counsel to deliver to the Indemnifying Party copies of all correspondence and other matters relating to such claim or demand. Notwithstanding the foregoing, to the extent that the claim or demand involves or could result in claims against, or potential liability of, the Indemnifying Party the extent or nature of which were not known by the Indemnifying Party as of the date the Indemnifying Party elects or is deemed to have elected not to take over the defense of such claim or demand, the Indemnifying Party shall, by written notice to the Indemnified Party, be entitled to take over the defense of such claim or demand.

(c) In the event an Indemnified Party should have a claim against the Indemnifying Party hereunder which does not involve a claim or demand being asserted against or sought to be collected from it by a third party, the Indemnified Party shall promptly send a Claim Notice with respect to such claim to the Indemnifying Party.

(d) The Indemnified Party's failure to give reasonably prompt notice to the Indemnifying Party of any actual, threatened or possible claim or demand which may give rise to a right of indemnification hereunder shall not relieve the Indemnifying Party of any liability which it may have to an Indemnified Party except to the extent the failure to give such notice prejudiced the Indemnifying Party.

Section 10.5. Right of Set-Off. In addition to any other remedy available in equity or at law, the Indemnified Party shall be entitled to set off the amount of any obligation for which it is entitled to be indemnified under this Article X against any amounts payable to the Indemnifying Party hereunder or under any other agreement contemplated hereby.

Section 10.6. Limitation of Liability.

(a) Notwithstanding any other provision of this Agreement, neither the aggregate liability hereunder of the Buyer and SEi on the one hand, nor the aggregate liability hereunder of the Sellers on the other hand, shall exceed DM21,000,000, and the aggregate liability of each Seller shall not exceed his pro rata share of such amount based upon the ratio of his Seller's Shares to the Purchase Price Shares.

(b) In addition to the limitation set forth above in Section 10.6(a), the aggregate liability of the Sellers hereunder for claims for indemnity under Section 10.1(a)(iii) shall be limited as follows:

(i) Sellers shall be responsible for all such claims until the aggregate amount exceeds DM520,500;

(ii) Sellers shall have no responsibility for any additional such claims until the aggregate amount (including amounts for which Sellers are responsible) exceeds DM 1,041,000; and

(iii) Seller shall be responsible for fifty percent (50%) of any claims in excess of DM 1,041,000.

(c) In addition to the limitation set forth above in Section 10.6(a), the aggregate liability of the Sellers hereunder for claims for indemnity under Section 10.1(a)(vii) shall be limited to the sum of anticipated profits on the contract from the termination date to the end of the "initial period" under the contract.

(d) The Sellers shall be liable to indemnify the Buyer for claims on account of Taxes only to the extent additional Taxes resulting from field audits are not compensated by lowered Tax burdens in following years resulting from such additional Taxes. To the extent additional capitalization of items originally treated as expenses entail additional depreciations in future years, the liability of the Sellers on account of additional Taxes shall be reduced by the discounted cash value of the additional depreciation, discounted at a rate of 5% per year.

## **ARTICLE XI**

### **MISCELLANEOUS**

Section 11.1. Governing Law. This Agreement and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the Federal Republic of Germany. Any disputes arising under this Agreement shall be resolved in accordance with the provisions of the separate Arbitration Agreement which has been executed by the parties as of the date hereof.

Section 11.2. Entire Understanding, Waiver, Etc. This Agreement sets forth the entire understanding of the parties and supersedes any and all prior or contemporaneous agreements, arrangements and understandings relating to the subject matter hereof, and the provisions hereof may not be changed, modified, waived or altered except by an agreement in writing signed by the party entitled to the benefit of the provision(s) to be waived hereto. A waiver by any party of any of the terms or conditions of this Agreement, or of any breach thereof, shall not be deemed a waiver of such term or condition for the future, or of any other term or condition hereof, or of any subsequent breach thereof.

Section 11.3. Severability; Gaps. If any provision of this Agreement or the application of such provision shall be held by a court of competent jurisdiction to be unenforceable, or otherwise be or become invalid or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect. In addition, any gap or omission in the terms of this Agreement shall not prejudice its validity, and the remaining provisions of this Agreement shall remain in full force and effect. Any gap in the terms of this Agreement, whether caused by the invalidity or unenforceability of any provision, or by an omission or otherwise, shall be filled by a provision which legally and economically most closely matches the intent of the parties hereto with respect to the

gap. The parties hereto undertake to enter from time to time into such amendments as are necessary or appropriate to document the provisions filling such gaps.

Section 11.4. Captions. The captions herein are for convenience only and shall not be considered a part of this Agreement for any purpose, including, without limitation, the constructions or interpretation of any provision hereof.

Section 11.5. Notices. All notices, requests, demands and other communications (collectively, "Notices") that are required or may be given under this Agreement shall be in writing. All Notices shall be deemed to have been duly given or made: if by hand, immediately upon delivery; if by telecopier or similar device, immediately upon sending, provided notice is sent on a Business Day during the hours of 9:00 a.m. and 6:00 p.m. at the location of the party receiving the Notice, but if not, then immediately upon the beginning of the first Business Day after being sent; if by FedEx, Express Mail or any other reputable overnight delivery service, three Business Days after being placed in the exclusive custody and control of said courier; and if mailed by certified mail, return receipt requested, ten Business Days after mailing.

Notwithstanding the foregoing, with respect to any Notice given or made by telecopier or similar device, such Notice shall not be effective unless and until (i) the telecopier or similar advice being used prints a written confirmation of the successful completion of such communication by the party sending the Notice, and (ii) a copy of such Notice is deposited in first class mail to the appropriate address for the party to whom the Notice is sent. In addition, notwithstanding the foregoing, a Notice of a change of address by a party hereto shall not be effective until received by the party to whom such Notice of a change of address is sent. All Notices are to be given or made to the parties at the following addresses (or to such other address as either party may designate by Notice in accordance with the provisions of this Section):

(a) If to the Sellers:

Alfons Bromkamp  
Am alten Bahnhof 64 46244 Bottrop  
Federal Republic of Germany Facsimile: 011 49 20 458 50 14

Christian Frohlich Droste Hulshoff Strabe 3 51519 Odenthal  
Federal Republic of Germany Facsimile: 011 49 21 74 41 652

(b) If to SEi:

Sykes Enterprises, Incorporated 100 North Tampa Street Suite 3900  
Tampa, Florida 33602 Attention: Scott J. Bendert Vice President-Finance Telephone: 001 (813) 274-1000 Facsimile: 001 (813) 273 0148

(c) If to Buyer:

Sykes Enterprises GmbH  
c/o Sykes Enterprises, Incorporated  
100 North Tampa Street  
Suite 3900  
Tampa, Florida 33602  
Attention: Scott J. Bendert,  
Vice President-Finance  
Telephone: 001 (813) 274-1000  
Facsimile: 001 (813) 273 0148

Section 11.6. Successors and Assigns. Neither this Agreement nor any of the rights or obligations arising hereunder shall be assignable by any party without the prior written consent of the other parties hereto; provided, however, that notwithstanding the foregoing SEi may assign its rights and obligations under this Agreement to any wholly owned subsidiary of SEi which agrees in writing to be bound by and to perform fully all of SEi's obligations hereunder and, provided that in the event of any such assignment by SEi, SEi shall remain liable hereunder for the performance of SEi's obligations hereunder notwithstanding such assignment.

Section 11.7. Parties in Interest. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Nothing in this Agreement, express or implied, shall confer upon any Person, other than

the parties hereto, and their successors and permitted assigns, any rights or remedies under or by reason of this Agreement.

Section 11.8. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

Section 11.9. Construction of Terms. Any reference herein to the masculine or neuter shall include the masculine, the feminine and the neuter, and any reference herein to the singular or plural shall include the opposite thereof. The parties to this Agreement acknowledge that each party and counsel to each party has participated in the drafting of this Agreement and agree that this Agreement shall not be interpreted against one party or the other based upon who drafted it.

Section 11.10. SEi Guarantee. SEi hereby guarantees for the benefit of the Sellers the full and prompt performance by the Buyer of all of its obligations toward the Sellers under this Agreement.



IN WITNESS WHEREOF, the parties have duly executed this Agreement on the day and year first above written.

**SELLERS:**

*/s/ Alfons Brokamp  
Alfons Bromkamp*

*/s/ Christian Frohlich  
Christian Frohlich*

*SEI:*

**SYKES ENTERPRISES, INCORPORATED**

*/s/ Scott J. Bendert  
Scott J. Bendert, Vice President - Finance*

**BUYER:**

**SYKES ENTERPRISES GMBH**

*/s/ Scott J. Bendert  
Scott J. Bendert, Director*

**EXHIBIT 2.2**

**ACQUISITION AGREEMENT**

**BY AND AMONG**

**THE**

**SHAREHOLDER**

**OF**

**TAS HEDI FABINYI GMBH TELEMARKETING**

**UND KOMMUNIKATIONSKONZEPTE,**

**SYKES ENTERPRISES, INCORPORATED,**

**AND**

**SYKES ENTERPRISES GMBH**

**Dated September 25, 1997**

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## **ACQUISITION AGREEMENT**

THIS ACQUISITION AGREEMENT is made and entered into as of September 25, 1997, by and among the undersigned person (the "Seller"), being the holder of all the outstanding capital interests of TAS Hedi Fabinyi GmbH Telemarketing und Kommunikationskonzepte, a limited liability company organized under the laws of the Federal Republic of Germany (the "Company"), such Seller being an individual residing in, and a citizen of, the Federal Republic of Germany, Sykes Enterprises GmbH, a limited liability company organized and existing under the laws of the Federal Republic of Germany ("Buyer"), and SYKES ENTERPRISES, INCORPORATED, a corporation organized and existing under the laws of Florida ("SEi").

### **RECITALS**

WHEREAS, the Seller owns all of the issued capital interests, consisting of one share in the nominal amount of DM50,000, of the Company (the "Quotas");

WHEREAS, SEi owns all of the issued capital interests of Buyer;

WHEREAS, the Seller desires to sell the Quotas in exchange for shares of SEi's common stock, and SEi is willing to cause the Buyer to purchase the Quotas from the Seller in exchange for shares of SEi's common stock, on the terms and subject to the conditions hereinafter set forth; and

WHEREAS, SEi intends to treat the acquisition by the Buyer of the Quotas as a "pooling of interests" for financial accounting purposes.

NOW, THEREFORE, in consideration of the premises and of the mutual representations, warranties, covenants and agreements hereinafter set forth and for other good and valuable considerations, the receipt and sufficiency of which are hereby expressly acknowledged by the Seller, the Buyer and SEi, and intending to be legally bound, the parties hereto agree as follows:

### **ARTICLE I**

#### **DEFINITIONS**

Section 1.1. Definitions. The terms defined in this Article shall have the following respective meanings for all purposes of this Agreement:

"Affiliate" means, with respect to any Person, an officer, director or beneficial owner of five percent (5%) or more of the issued

and outstanding shares of any class of capital stock or other equity of such Person, a family member of such Person, if an individual, and any other Person controlling, controlled by or under common control with such Person.

"Alternative Transaction" means any merger, consolidation, sale of substantial assets, sale of capital interests or securities or similar transaction involving the Company, other than the transactions contemplated by this Agreement.

"Business" means the business conducted as of the date of this Agreement or as of the Closing Date, as the context permits or implies, by the Company, which consists of providing the following services on a "for hire" basis:

- (i) call center services;
- (ii) telemarketing and teleselling services;
- (iii) fulfillment services for telemarketing and call center customers;
- (iv) database development services for telemarketing and call center customers; and
- (v) consulting and training services related to the above service categories.

"Business Day" means any day on which banks are open for business in New York, New York.

"Closing" means the consummation and effectuation of the transactions contemplated herein pursuant to the terms and conditions of this Agreement, which shall be held on the 26th day of September, 1997, at 10:00 AM in the offices of Schon Nolte Finkelnburg & Clemm in Hamburg, Federal Republic of Germany, or on such other date or at such other time or place as is mutually agreed by the parties hereto.

"Closing Date" means the date on which the Closing actually occurs.

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

"Customers" shall have the meaning set forth in Section 4.15.

"Disclosure Schedule" means the disclosure schedule document executed by the Seller as of the date hereof and previously delivered to the Buyer and SEi, without any amendment thereto subsequent to the date hereof.

"Employee Benefit Plan" means any pension, retirement, profit sharing, savings, thrift, stock bonus, stock option, stock purchase,



restricted stock purchase, stock ownership, stock appreciation right, phantom stock, deferred compensation, supplemental retirement, deferred bonus, severance, change of control, parachute, health, medical, dental, vision, prescription drugs, fitness, dependent care, educational assistance, group legal services, life insurance, accidental death, accidental dismemberment, sick pay, short-term or long-term disability, supplemental unemployment income, training, apprenticeship, scholarship, tuition reimbursement, employee assistance, employee discount, subsidized cafeteria, fringe benefit, vacation, holiday, employer-sponsored recreational facility, or other employee pension benefit or welfare benefit plan, policy, contract, or arrangement, or other similar fringe or employee benefit plan, program, policy, contract, or arrangement, written or oral, qualified or nonqualified, funded or unfunded, foreign or domestic.

"Escrow Agent" means Firststar Trust Company of Milwaukee, Wisconsin, or such other person as SEi and the Seller shall mutually agree upon, in its capacity as escrow agent.

"Financial Statements" has the meaning set forth in Section 4.7.

"Form 10-Q Balance Sheet" means the unaudited balance sheet dated June 30, 1997 (and any related notes thereto), found in the quarterly report filed on Form 10-Q filed with the Securities and Exchange Commission for the quarterly period ended June 30, 1997, a copy of which is included as part of the SEi Filings.

"GGAAP" means generally accepted accounting principles as in effect in the Federal Republic of Germany on December 31, 1996.

"Grants" means governmental grants, subsidies, guarantees and/or loans provided to or for the benefit of a Person.

"Intellectual Property" means all intellectual property and intellectual property rights, whether arising under the laws of the Federal Republic of Germany or any other jurisdiction including, without limitation, (i) all patents, patent applications, continuations in part, divisions, reissues and patent disclosures, (ii) all copyrights, whether registered or unregistered, and pending applications to register the same, (iii) anything recognizable as a trademark, service mark or trade dress at common law or under the laws of any country, whether registered or not, which is used to identify the source and quality of goods or services or to distinguish them from those of others, and all registrations and applications for registration, including intent-to-use registrations and applications for registration, (iv) all licenses, sublicenses and rights to use any Intellectual Property of any other Person, (v) all names used to identify a particular company, business, subsidiary or division thereof, (vi) all confidential and proprietary ideas, trade secrets, know how, concepts, methods, processes, formulae, reports, data, customer lists, mailing lists, business plans or other proprietary information, including, without limitation, with respect to any Person, any formulae, pattern, device or compilation of information which is used in such Person's business and which derives independent commercial value from not being generally known or readily ascertainable through independent

development or reverse engineering by other Persons who can obtain economic value from its disclosure or use, and (vii) all other forms of proprietary information.

"Interim Balance Sheets" means the unaudited balance sheet of the Company dated as of the Interim Balance Sheet Date (and any related notes thereto), a copy of which is included as part of the Financial Statements.

"Interim Balance Sheet Date" means July 31, 1997.

"Leased Real Property" means all real property and premises currently leased to the Company.

"Material Adverse Effect" means, with respect to any Person, a material adverse effect on the financial condition, results of operations or business prospects of such Person.

"NASDAQ" means The Nasdaq National Stock Market, Inc.'s National Market.

"Person" means an individual, partnership, limited liability company, corporation, trust, unincorporated organization, association or joint venture or a government, agency, political subdivision or instrumentality thereof.

"Purchase Price Shares" means the 180,000 shares of SEi Stock to be issued to the Seller in consideration of the transfer and assignment of the Quotas pursuant to this Agreement.

"Related Agreements" means the agreements described in Section 6.8.

"SEC" means the United States Securities and Exchange Commission.

"SEi Filings" means the following filings made by SEi with the SEC: the annual report on Form 10-K for the annual period ending December 31, 1996, the quarterly reports on Form 10-Q for the quarterly periods ending March 30, 1997, and June 30, 1997, and the Annual Report to Stockholders and related proxy statement filed on Schedule 14A with respect to an annual meeting of SEi's shareholders held on May 8, 1997.

"SEi Stock" means SEi's common stock, \$.01 par value per share.

"Taxes" means all taxes, assessments, and charges imposed by any national, federal, state, provincial, local, or foreign taxing authority, including social security, insurance and other state-sponsored pension funds and all interest, penalties and additions thereto.

"Transfer Agent" means Firststar Trust Company of Milwaukee, Wisconsin, in its capacity as transfer agent for SEi Stock.

"USGAAP" means generally accepted accounting principles as in effect in the United States on December 31, 1996.

## **ARTICLE II**

### **PURCHASE, SALE AND ASSIGNMENT OF SHARES**

Section 2.1. Purchase and Sale of Shares. Upon the terms and subject to the conditions hereof, the Seller hereby sells to Buyer and Buyer hereby buys from the Seller, all of the Seller's right, title and interest in and to the Quotas, together with the right to receive dividends with respect to the Quotas as of January 1, 1997, and the applicable capital reserve, in each case in consideration for the delivery of the Purchase Price Shares as provided in Article III below.

Section 2.2. Assignment of Shares. The Seller hereby assigns and transfers the Quotas as specified in Section 2.1, together with the right to receive dividends on the Quotas as of January 1, 1997, to Buyer at the Closing and Buyer hereby accepts such assignments. All such assignments are subject to:

- (a) the delivery of the Purchase Price Shares in accordance with Article III hereof;
- (b) the non-occurrence of a termination of this Agreement in accordance with Section 7.1 prior to the Closing; and
- (c) the fulfillment or waiver of all of the conditions precedent specified in Article VIII and Article IX.

The Seller hereby consents to the sale and transfer effected herein and waives any preemptive rights or rights of first refusal she may have under the Articles of Association of the Company.

## **ARTICLE III**

### **DELIVERY OF PURCHASE PRICE SHARES**

Section 3.1. Delivery of Purchase Price Shares. Upon the terms and subject to the conditions hereof, SEi shall issue, and Buyer shall deliver, the Purchase Price Shares as follows:

(a) to the Escrow Agent promptly following the Closing, a certificate or certificates issued in the name of the Seller, each such certificate bearing the legend provided for in Section 4.28(g) and evidencing a number of shares equal to ten percent (10%) of the Purchase Price Shares, rounded down to the nearest whole share, to be held in accordance with a Pledge and Escrow Agreement dated as of the Closing Date by and among SEi, Buyer, the Seller and the Escrow Agent substantially in the form of Exhibit A (the "Pledge and Escrow Agreement"); and

(b) to the Seller at the Closing, a certificate or certificates or, at SEi's option, an original or a facsimile copy of an irrevocable letter of instructions (accompanied in case of a facsimile copy by an original or facsimile of a letter from the Transfer Agent acknowledging receipt of such letter of instructions) to the Transfer Agent for the issue and delivery of a certificate or certificates, issued in the Seller's name, each such certificate bearing or to bear the legend provided for in Section 4.28(g) and evidencing or to evidence a number of shares equal to the Purchase Price Shares remaining after delivery of Purchase Price Shares for the account of the Seller in accordance with Section 3.1(a) above.

## **ARTICLE IV**

### **REPRESENTATIONS AND WARRANTIES OF THE SELLER (GARANTIEN)**

The Seller hereby represents and warrants to SEi and Buyer as follows:

Section 4.1. Corporate Organization. The Company is a limited liability company duly organized and validly existing under the laws of the Federal Republic of Germany and has the full right, power and authority to own, lease and operate all of its properties and assets and to carry out the Business as it is presently conducted by the Company. The Company is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the ownership of property or the conduct of its Business requires such qualification or license. Except as set forth in Section 4.1 of the Disclosure Schedule, there are no corporations, joint ventures, partnerships or other entities or arrangements in which the Company, directly or indirectly, owns any capital stock or any equity interest.

Section 4.2. Capitalization. The aggregate stated share capital of the Company consists of DM50,000. The Quotas, which represent all issued share capital of the Company, have been duly authorized and validly issued, are fully paid and nonassessable, were issued without violation of any preemptive rights, and can be transferred to Buyer as provided herein free of any preemptive rights. The Company has not repaid any stated share capital to the Seller, or to any prior holder of the Company's share capital, or paid out any other equity capital in a manner which would adversely affect the Company's ability to pay dividends in a situation in which the Company would otherwise be permitted to pay dividends according to German law. Except for this Agreement and as set forth in Section 4.2 of the Disclosure Schedule, there are no options, warrants or other rights, nor any agreements, commitments or arrangements of any kind, relating to the subscription for or the issuance, voting,

acquisition, sale, repurchase, transfer or disposition of (i) any share capital of the Company or securities convertible into or exchangeable for share capital of the Company, or (ii) any options, warrants or subscription rights relating to any such share capital or other securities of the Company.

Section 4.3. Authority; Binding Effect. The Seller has all requisite right, power and authority to execute, deliver and perform this Agreement and the Related Agreements to which the Seller is a party. This Agreement and the Related Agreements to which the Seller is a party have been duly and validly executed and delivered by the Seller and constitute the legal, valid and binding obligations of the Seller, enforceable against the Seller in accordance with their respective terms.

Section 4.4. Ownership of Share Capital; Title. Except as disclosed in Section 4.4 of the Disclosure Schedule, the Seller owns of record and beneficially all of the Quotas. All issued share capital of the Company has been owned of record and beneficially at all times exclusively by individual citizens of, or other Persons organized and existing under the laws of, the Federal Republic of Germany. The Seller has and will have, on the Closing Date, good, marketable and valid title to the Quotas, free and clear of all liens, pledges, encumbrances, claims, security interests, charges, voting trusts, voting agreements, other agreements, rights, options, warrants or other restrictions of any kind, nature or description, other than those referenced in Section 4.4 of the Disclosure Schedule. The execution, delivery, notarization and performance of this Agreement will convey to Buyer at the Closing good title to the Quotas free and clear of all claims, liens, encumbrances, security interests, charges or restrictions on transfer of any nature whatsoever, other than those contained in the Company's Articles of Association. The Seller is not involved in any proceedings by or against the Seller under any bankruptcy laws or under any other insolvency or debtor's relief act.

Section 4.5. The Seller's Consents and Approvals; No Violations. Except as set forth in Section 4.5 of the Disclosure Schedule, the execution, delivery and performance by the Seller of this Agreement and the Related Agreements to which she is a party will not (with or without the giving of notice or the passage of time, or both) (a) violate any applicable provision of law or any rule or regulation of any national, federal, state, provincial or local administrative agency or governmental authority applicable to the Seller, or any order, writ, injunction, judgment or decree of any court, administrative agency or governmental authority applicable to the Seller, (b) violate or require any consent, waiver or approval under (except for the matters referenced in Section 4.5 of the Disclosure Schedule), result in a breach, modification or termination of any provisions of, constitute a default under, affect the rights under or enforceability of, or result in the imposition of any pledge, security interest or other encumbrance upon any of the Quotas pursuant to, any agreement, indenture, mortgage, deed of trust, lease, license, or other instrument to which the Seller is a party or by which she is bound, or any license, permit or certificate held by her including, without limitation, those listed on the Disclosure Schedule, or (c) based upon the information provided to the Seller with respect to Buyer, require any consent or approval by, notice to or

registration with any governmental authority or other Person which is applicable to the Seller.

Section 4.6. Consents and Approvals; No Violations. Except as set forth in Section 4.6 of the Disclosure Schedule, the execution, delivery and performance by the Seller of this Agreement and the Related Agreements to which she is a party will not (with or without the giving of notice or the passage of time, or both) (a) violate any provision of law or any rule or regulation of any national, federal, state, provincial or local administrative agency or governmental authority applicable to the Company or any order, writ, injunction, judgment or decree of any court, administrative agency or governmental authority applicable to the Company, (b) violate the organizational documents of the Company, (c) violate or require any consent, waiver or approval under, result in a breach, modification or termination of any provisions of, constitute a default under, affect the rights under or enforceability of, result in the imposition of any pledge, security interest or other encumbrance pursuant to, or give any Person the right to terminate, modify or renegotiate any provision of, any agreement, indenture, mortgage, deed of trust, lease, license, or other instrument to which the Company is a party or by which the Company is bound, or any license, permit or certificate held by the Company including, without limitation, those listed on the Disclosure Schedule, (d) based upon the information provided to the Seller with respect to Buyer, require any consent or approval by, notice to or registration with any governmental authority or other Person which is applicable to the Company, or (e) result in the creation of any lien, claim, encumbrance or charge upon any property or assets of the Company.

Section 4.7. Financial Statements.

(a) Section 4.7(a) of the Disclosure Schedule contains (i) the audited balance sheet and the related audited income statement (including any related notes thereto) of the Company as of and for the fiscal years ended December 31, 1994, December 31, 1995 and December 31, 1996, and (ii) the Interim Balance Sheet and the related unaudited income statements of the Company as of and for the seven-month period ending as of the Interim Balance Sheet Date (including any related notes thereto) (collectively, the "Financial Statements").

(b) Except as set forth on Section 4.7(b) of the Disclosure Schedule, the Financial Statements (i) are true, correct and complete in all material respects; (ii) are in accordance with the books and records of the Company; (iii) have been prepared in accordance with principles of orderly bookkeeping and GGAAP applied on a consistent basis throughout the periods involved, respecting principles of prudence and continuity; (iv) fairly present, in the case of each year-end balance sheet and the Interim Balance Sheet, the financial position of the Company as of the respective dates thereof and, in the case of the related income statements, the results of operations and earnings of the Company for the respective periods indicated; and (v) in the case of the Interim Balance Sheet, were prepared in accordance with principles applicable to a year-end balance sheet and present information comparable to other balance sheets included in the Financial Statements.

Section 4.8. Undisclosed Liabilities. Except as set forth on

Section 4.8 of the Disclosure Schedule, the Company has no liabilities (absolute, accrued, contingent or otherwise) which are required to be reflected in a balance sheet or in the notes thereto under GGAAP, except

(a) liabilities reflected or reserved against in the Interim Balance Sheet, and (b) liabilities incurred since the Interim Balance Sheet Date in the ordinary course of business, or which, in the aggregate, do not exceed DM10,000 with respect to the Company.

Section 4.9. Taxes. Except as set forth in Section 4.9 of the Disclosure Schedule, the Company has timely filed all returns, declarations, reports, information returns and statements required to be filed by it (the "Returns") in respect of any Taxes and has paid all Taxes currently due and payable by it. Except as set forth in Section 4.9 of the Disclosure Schedule, the Returns accurately and completely reflect the facts regarding the income, properties, operations and status of any entity required to be shown thereon, and no notice of any proposed deficiency, assessment or levy in respect of Taxes has been received by the Company. Except as set forth in Section 4.9 of the Disclosure Schedule, the Company is not currently nor, during the past three years, has been the subject of an audit or in receipt of a notice that it is being or will be audited by a relevant Taxing authority, or has agreed to any extension of time of any applicable statute of limitations period, and the Company has duly withheld from each payment from which such withholding is required by law, the amount of all Taxes required to be withheld therefrom and has paid the same (to the extent due) together with the employer's share of the same, if any, to the proper Tax receiving officers. Except as set forth in Section 4.9 of the Disclosure Schedule, the charges, accruals, and reserves for Taxes due, or accrued but not yet due, relating to the income, properties or operations of the Company for any period prior to or including the Closing Date as reflected on the books of the Company are adequate in all material respects to cover such Taxes, all Tax deficiencies which have been proposed or asserted against the Company have been fully paid or finally settled, and no issue has been raised in any examination which, by application of similar principles, can be expected to result in the proposal or assertion of a Tax deficiency for any other year not so examined, the Company has not received any Tax incentive, abatement or other credit with respect to its assets, the Business, its employees or otherwise which contains provisions for the repayment of any Tax benefit, and the Company has incurred liabilities for Taxes only in the ordinary course of the Business. The Company has never conducted business in the United States, has never had any assets, employees or shareholders located or resident in the United States, and has never made any election with the United States Internal Revenue Service regarding Taxes in the United States.

Section 4.10. Title to Properties.

(a) The Company does not own and never has owned, in whole or in part, any interest in any real property. Section 4.10(a) of the Disclosure Schedule sets forth a complete and accurate list of all fixed assets owned by the Company and used in the Business as of the Interim Balance Sheet Date.

(b) Except for the normal reservation of title of suppliers to the extent not paid and as set forth in Section 4.10(b) of the Disclosure Schedule, the Company has good and marketable title to all the personal property and assets (tangible and intangible) reflected as owned by it on the Interim Balance Sheet or acquired since the Interim Balance Sheet Date (except for properties and assets disposed of since such date in the ordinary course of business and consistent with past practice), free and clear of all liens, charges, security interests or other encumbrances of any nature whatsoever.

(c) Except as set forth on Section 4.10(c) of the Disclosure Schedule, all such assets (i) are now in the possession of the Company, (ii) are not subject to claims by any other Person with a right to possession of all or any part of such assets, (iii) are in good operating condition (ordinary wear and tear excepted), (iv) are not, individually or in the aggregate, in need of any repairs which individually or in the aggregate could cost in excess of DM10,000, and (v) are located on the Leased Real Property.

Section 4.11. Absence of Changes. Except as set forth in Section 4.11 of the Disclosure Schedule, since December 31, 1996, the Company has operated only in the ordinary course of the Business in all material respects and there has not been with respect to the Company:

(a) any change or changes in the Business, financial condition, properties, results of operations or assets or liabilities, or any development or event involving a prospective change, other than changes in the ordinary course of the Business and other than changes which singularly or in the aggregate, have not had and will not have a Material Adverse Effect;

(b) any material damage or destruction, loss or other casualty, however arising and whether or not covered by insurance;

(c) any labor dispute or any other similar event or condition of any character involving employees of the Company;

(d) any indebtedness incurred for borrowed money (except by endorsement for collection or for deposit of negotiable instruments received in the ordinary course of the Business);

(e) any change in the accounting methods, procedures or practices or any change in depreciation or amortization policies or rates theretofore adopted;

(f) any amendment or termination of any contract, agreement, lease, franchise or license;

(g) any amendment of its organizational documents;



(h) any mortgage, pledge or other encumbering of any property or assets;

(i) any material liability or obligation incurred, except current liabilities incurred in the ordinary course of the Business, or any cancellation or compromise of any material debt or claim, or any waiver or release of any right of substantial value to the Business;

(j) any sale, transfer, lease, abandonment or other disposal of any machinery, equipment or real property with a fair market value in excess of DM10,000 or, except in the ordinary course of the Business, any sale, transfer, lease, abandonment or other disposal of any portion of any other properties or assets (real, personal or mixed, tangible or intangible);

(k) any transfer, disposal or grant of any rights under any Intellectual Property owned by the Company, or any disposal of or disclosure to any other Person other than representatives of Buyer or

SEi of any material trade secret, formula, process or know-how not theretofore a matter of public knowledge; except, in each case, in the ordinary course of the Business;

(l) any bonus or other increase in the compensation of its officers, employees or directors, or any agreement entered into with any officer, employee or director, except, in each case, in the ordinary course of the Business and consistent with past practice;

(m) any single capital expenditure made, or any commitment to make any capital expenditure, in excess of DM10,000 for any tangible or intangible capital assets, additions or improvements, except in the ordinary course of the Business;

(n) any declaration, payment or reservation for payment of any dividend or other distribution in respect of the Quotas or any other securities, or any redemption, purchase or other acquisition, directly or indirectly, of any Quotas or other securities of the Company;

(o) any grant or extension of any power-of-attorney or guaranty in respect of the obligation of any other Person;

(p) any forward purchase commitments involving more than DM10,000 in the aggregate or any other purchase commitments that are not in the ordinary course of the Business;

(q) the adoption of any ruling, law, ordinance, statute, rule, regulation, code, or other requirement of any governmental authority which adversely affects the Company or the Business; or

(r) any entry into any binding agreement, whether in writing or otherwise, to take any action described in this Section 4.11.

#### Section 4.12. Intellectual Property.

(a) Section 4.12(a) of the Disclosure Schedule contains a list and description (including information with respect to registration) of all Intellectual Property owned or used by the Company, subdivided by type of Intellectual Property. The Company owns or has the right to use all Intellectual Property used by it in the conduct of the Business as presently conducted by it. Except for the rights and licenses granted to the Company under software contracts, the Company owns all right, title and interest in the Intellectual Property required to be identified on Section 4.12(a) of the Disclosure Schedule, free and clear of any encumbrance. The Company has not granted, transferred, or assigned any right or interest in its Intellectual Property to any other Person.

(b) Except as disclosed in Section 4.12(b) of the Disclosure Schedule, no fees or royalties are payable or will be payable under any software contracts listed in Section 4.12(a) of the Disclosure Schedule as a result of the continued use of licensed software by the Company in the ordinary course of the Business, other than fees or royalties due for upgrades and fees or royalties that do not exceed DM20,000 per year in the aggregate.

(c) Except as disclosed in Section 4.12(c) of the Disclosure Schedule, (i) all registrations for Intellectual Property required to be identified in Section 4.12(a) of the Disclosure Schedule as being owned by the Company are valid and in force and applications to register any unregistered Intellectual Property so identified are pending and in good standing, all without challenge of any kind and to the best knowledge of the Seller, there is no basis for any such challenge; and  
(ii) the Company has the exclusive right to bring actions for infringement or unauthorized use of the Intellectual Property identified as being owned by the Company, and there is, to the best knowledge of the Seller, no basis for any such action.

(d) The Company has promulgated and used its best efforts to enforce a trade secret protection program. To the best knowledge of the Seller, there has been no violation of any such program by any Person. Except as disclosed in Section 4.12(d) of the Disclosure Schedule, all trade secrets of the Company (i) have at all times been maintained in confidence, and (ii) have not been disclosed to employees, consultants or other third parties except on a "need to know" basis in connection with their respective performance of duties to the Company.

(e) Except as disclosed in Section 4.12(e) of the Disclosure Schedule, no claims have been asserted by any Person against the Company claiming ownership of or right to use any of the Intellectual Property required to be disclosed on Section 4.12(a) of the Disclosure

Schedule (other than ownership of Intellectual Property licensed to the Company under the software contracts listed on Section 4.12(a) of the Disclosure Schedule) nor, to the best knowledge of the Seller, is there any basis for any such claim. The use of the Intellectual Property by the Company has not infringed on the rights of any Person and, except as disclosed in Section 4.12(e) of the Disclosure Schedule, no claim of infringement or any misuse or misappropriation of any of the Intellectual Property of any other Person has been made or asserted against the Company in respect of the Business, nor is there, to the best knowledge of the Seller, any basis for any such claim.

Section 4.13. Leases. Section 4.13 of the Disclosure Schedule contains an accurate and complete list of all leases pursuant to which the Company leases real or personal property. Except as set forth in Section 4.13 of the Disclosure Schedule, all such leases are in full force and effect and are valid, binding and enforceable in accordance with their terms; there are no existing defaults or events which, with the giving of notice or the lapse of time or both, would constitute a default thereunder by the Company or any other parties thereto. Except as set forth in Section 4.13 of the Disclosure Schedule, all leased items of personalty are in good operating condition, are in a state of good maintenance and repair and are adequate and suitable for the purpose for which they are presently being used. Each such lease contains terms and conditions obtained from independent third parties and negotiated in good faith at arms-length. None of the rights of the Company under each such lease is subject to termination or modification as a result of the transactions contemplated hereby.

Section 4.14. Bank Accounts; Investments; Powers of Attorney.

(a) Section 4.14(a) of the Disclosure Schedule sets forth the names and locations of all banks, trust companies, savings and loan associations and other financial institutions at which the Company maintains safe deposit boxes or accounts of any nature and the names (and limits, if any) of all persons authorized to draw thereon, make withdrawals therefrom or have access thereto.

(b) Section 4.14(b) of the Disclosure Schedule sets forth a list and description (including interest rates and other significant terms) of all funds, securities and other instruments in which excess cash of the Company was invested as of the Interim Balance Sheet Date (the "Investments"). All such Investments are investment grade and can be liquidated within one business day without being discounted.

(c) Except as set forth in Section 4.14(c) of the Disclosure Schedule, neither the Company nor any of its Affiliates beneficially or of record owns any shares of SEi Stock.

(d) The Company has not granted or extended to any Person, nor is the Company otherwise subject to or bound by, any power of attorney which remains in effect, except for the authorizations set forth in Section 4.14(a) of the Disclosure Schedule.

Section 4.15. Material Contracts and Customers.

(a) Section 4.15(a) of the Disclosure Schedule contains a true and correct list of all material contracts, agreements or other understandings or arrangements, written or oral, or commitments therefor, relating to the Company, the Business, or the assets or liabilities of Company (collectively, the "Contracts"). Except as set forth in Section 4.15(a) of the Disclosure Schedule, the Company is not a party to, or otherwise bound by, any written or oral, formal or informal:

(i) purchase orders and other contracts, in each case for the sale of goods or services, in excess of DM40,000 (net of value added taxes) individually or, for any group of related purchase orders and contracts, in the aggregate;

(ii) contracts, agreements or commitments for the purchase of materials or services which are not required by the Company in the current operation of the Business in the ordinary course, or any agreements or commitments for the sale of goods or services which are inadequate to recover current costs of the Company;

(iii) contracts involving the expenditure for the purchase of material, supplies, equipment or services of more than DM40,000 per contract;

(iv) contracts not otherwise referenced involving the expenditure of more than DM40,000 (per contract) which are not cancelable within thirty (30) days without penalty;

(v) contracts relating to the leasing (as lessor or lessee) or the conditional purchase or sale by the Company of any property, whether real, personal or mixed;

(vi) contracts to which the Company is a party or by which any of its assets are bound and that require consent by any other Person in connection with the transaction contemplated hereby, either to prevent a breach or continue the effectiveness thereof;

(vii) contracts or arrangements with any governmental body, agency or authority;

(viii) indentures, mortgages, promissory notes, loan agreements, capital leases, security agreements or other agreements or commitments for the borrowing of money, or the deferred purchase price of assets, or which create a lien or encumbrance on any assets of the Company;

(ix) guarantees of the obligations of third parties or agreements to indemnify third parties (other than indemnification provisions provided in the ordinary course to or for the benefit of the customers of the Company);

- (x) agreements which restrict the Company from doing business in any geographic location;
- (xi) policies of insurance in force and effect with respect to the Company, the Business or its assets;
- (xii) contracts or agreements not otherwise referenced with the Seller or her Affiliates;
- (xiii) license agreements (as licensee or licensor) with third parties;
- (xiv) employment or consulting agreements which vary materially from the model employment agreements referenced in Section 4.18(b) or which involve the payment of DM50,000 or more during any twelve month period;
- (xv) distributor, dealer, sales, advertising, agency, manufacturer's representative, franchise or similar contracts or any contract relating to the payment of a commission;
- (xvi) collective bargaining or other agreements with labor unions;
- (xvii) contracts or agreements for charitable contributions by the Company;
- (xviii) any contract or agreement which could reasonably be expected to have a Material Adverse Effect on the Company; or
- (xix) other contracts outside the ordinary course of the Business which are not otherwise described in this Subsection.

(b) True and complete copies of each of the Contracts have been made available to Buyer and SEi by the Seller. Each of the Contracts is in full force and effect and there exists no default or event which, with the giving of notice or lapse of time or both, would constitute a default thereunder by the Company or, to the knowledge of the Seller, by any other party thereto. Except as referenced in Section 4.6 of the Disclosure Schedule, none of the rights of the Company under any of the Contracts is subject to termination or modification as a result of the transactions contemplated hereby. No notice of termination or nonrenewal has been given under any Contract. All Contracts contain terms and conditions not less favorable to the Company than those that would be obtained from independent third parties and have been negotiated in good faith at arms-length. None of the Contracts with suppliers of goods or services to the Company requires the payment of any commission, royalty, fee, brokerage fee or other similar charge. For the purposes of Section 4.15(a), "material" contracts means contracts described in Section 4.15(a)(i) through (xix). The amounts set forth in this Section 4.15 with

respect to the Contracts shall not be deemed to represent any standard of "materiality" with respect to the Contracts or otherwise for any other purpose and shall have no application to any other Section of this Agreement.

(c) Section 4.15(c) of the Disclosure Schedule contains a list of the name and location of the five (5) largest customers (the "Customers") and the five (5) largest suppliers, in each case measured by revenues generated or amounts paid, of the Business as of the Interim Balance Sheet Date. The relationships of each of the Company with the Customers are good, and the Seller is not aware of any intention of any such Customers or suppliers to terminate or modify any of such relationships. The Company is not generally required to provide bonding or any other security arrangements in connection with any transactions with its customers or suppliers.

#### Section 4.16. Related Transactions.

(a) Except as set forth in Section 4.16 of the Disclosure Schedule, the Company has no contractual relationship with, or any obligation or liability owed to, any of its Affiliates, any Affiliate of the Seller, or any entity of which the Seller is an Affiliate. All such contractual relationships are on terms that are no less favorable to the Company than would be the case with a non-affiliated party.

(b) Except as set forth in Section 4.16 of the Disclosure Schedule, neither the Seller nor any director or officer of the Company, nor any Affiliate of any of them has any interest, direct or indirect, in any Person which (i) is a competitor, customer, subcontractor or supplier of the Company, or (ii) has an existing relationship with, or an interest in, the Company including but not limited to lessors of real or personal

property and Persons against which rights or options are exercisable by the Company.

Section 4.17. Insurance. Section 4.17(a) of the Disclosure Schedule contains an accurate and complete list of all policies of insurance presently maintained with respect to the Company including, without limitation, "key man" insurance with respect to any employee. Such list includes a description of coverage, the amount of coverage and the name of the insurer or an indication that the Company has self-insured any particular aspect of the Business. All such policies are in full force and effect and no notice of cancellation or termination has been received with respect to any such policy and there is, and has been, no default by the Company with respect to its obligations under any such policy. Except as set forth in Section 4.17(b) of the Disclosure Schedule, the Seller and the Company have not received during the past two (2) years any written notice or other written communication from any insurance company declining to write insurance with respect to the Business, or canceling or amending any of the Company's insurance policies or proposing to do so. Section 4.17(c) of the Disclosure Schedule sets forth a summary of information pertaining to property damage, personal injury and products liability claims filed by the Company during the past five (5) years which exceed DM2,000 in any instance, all of which have been paid or are being defended by the Company's insurance carriers and

involve no exposure to the Company. Section 4.17(d) of the Disclosure Schedule sets forth a complete list of any claims that the Company has under any of its insurance policies which have not been fully paid to the Company.

#### Section 4.18. Labor Matters.

(a) Except to the extent set forth in Section 4.18(a) of the Disclosure Schedule, (i) the Company is in compliance with all rulings, laws, ordinances, statutes, rules, regulations, codes, and other requirements of any governmental authority with respect to employment and employment practices, (ii) there is no unfair labor practice charge or complaint against the Company pending before or, to the best knowledge of the Seller, threatened to be brought before any labor grievance board, authority or tribunal, nor has any such charge or complaint been, to the best knowledge of the Seller, threatened against the Company; (iii) there is no labor strike, dispute, slowdown, or stoppage pending against or affecting the Company; (iv) the Company is not a party to any collective bargaining agreement or contract with any labor union and no works council exists with respect to employees of the Company; (v) the Company has not experienced any labor difficulty during the last three (3) years; and (vi) there are no other controversies pending between the Company and any of its employees including, without limitation, claims arising under any labor laws. There has not been any adverse change in relations with employees of the Company as a result of any announcement or other disclosure of the transactions contemplated by this Agreement.

(b) Section 4.18(b) of the Disclosure Schedule sets forth a list of the names of all employees, consultants, officers and directors of the Company as of the date hereof, including length of employment and date of birth. Except as indicated on Section 4.18(b) of the Disclosure Schedule, all employees have executed one of the Company's model employment agreements. The Seller has delivered to SEi (i) copies of the Company's model employment agreements, (ii) copies of all written employment agreements to which the Company is a party with any of its employees identified in Section 4.18(b) of the Disclosure Schedule as having agreements which vary materially from the model employment agreements, (iii) written summaries of the terms of all oral employment agreements that are other than at-will and which vary materially from the applicable model employment agreements, and (iv) a schedule of compensation for all employees.

#### Section 4.19. Employee Benefit Plans.

(a) Set forth in Section 4.19 of the Disclosure Schedule is an accurate and complete list of each Employee Benefit Plan (other than Employee Benefit Plans provided by statute) maintained or contributed to by the Company.

(b) Except as set forth in Section 4.19 of the Disclosure Schedule, all amounts that the Company is required to have contributed to

any Employee Benefit Plan have been contributed within the time prescribed by applicable law and all benefits, expenses, and other amounts due and payable and all transfers or payments required to be made with respect to any Employee Benefit Plan have been paid within the time prescribed by the applicable documents and governing law.

(c) Except as set forth in Section 4.19 of the Disclosure Schedule, there are no claims (other than routine claims for benefits) or lawsuits pending with respect to any Employee Benefit Plan.

(d) Except as set forth in Section 4.19 of the Disclosure Schedule, the Seller has previously delivered or made available to Buyer and SEi true and complete copies of the plan documents for each Employee Benefit Plan identified in Section 4.19 of the Disclosure Schedule.

Section 4.20. Litigation. Except as set forth in Section 4.20 of the Disclosure Schedule, there are no claims, actions, suits, or proceedings pending or, to the best knowledge of the Seller, threatened against the Company relating to this Agreement or the transactions contemplated hereby or to the Business or the properties of the Company at law or in equity or before or by any national, federal, state, provincial, local, or foreign court or other governmental department, commission, board, agency, instrumentality or authority, nor any arbitration proceeding, in each case including, without limitation, any claims relating to environmental matters. The Company is not subject to any adverse judgment, order, writ, injunction or decree of any court or governmental body.

Section 4.21. Compliance with Laws. Except as set forth in Section 4.21 of the Disclosure Schedule, the Company has conducted the Business so as to comply with in all material respects, and is not in material violation of, nor has it received any written notice claiming it is in material violation of any order, law, ordinance, statute, rule or regulation applicable to it, or to the Business or any of the property or assets of it including, without limitation, any environmental or worker safety and protection laws and regulations. The Company has all material licenses, permits, certificates of occupancy and authorizations necessary to conduct the Business.

Section 4.22. Books and Records. The books, accounts and records of the Company (a) are located at its headquarters at, Reutlinger Strabe 46, 73728 Esslingen, Federal Republic of Germany, (b) are correct and complete in all material respects, (c) have been maintained in accordance with law and good business practice, and (d) constitute all the books, accounts and records necessary to carry on the Business in the manner in which it is currently being conducted and has over the preceding twelve (12) months been carried on. The copies of the organizational documents and of the minutes of all Quota holder and director meetings of the Company hereto delivered by the Seller to Buyer and SEi are complete and correct.



Section 4.23. Copies of Documents. Each of the Seller and the Company has delivered or specifically made available to Buyer, SEi and their advisors true, complete and correct copies of all documents referred to in this Agreement or in any Section of the Disclosure Schedule with the understanding and intention that Buyer and SEi may and will rely upon the completeness and accuracy thereof.

Section 4.24. Adequacy of Assets. Except as set forth in Section 4.24 of the Disclosure Schedule, the assets of the Company and the facilities, assets and services to which the Company has a contractual right of use include all rights, properties, assets, facilities and services necessary or appropriate for the carrying on of the Business in the manner in which it is currently being and has over the immediately preceding twelve (12) months been carried on, and the Company does not depend in any respect upon the use of assets owned by, or facilities or services provided by, the Seller or any of her Affiliates.

Section 4.25. Grants.

(a) Section 4.25(a) of the Disclosure Schedule sets forth a true, correct and complete description of all Grants received by the Company during the past five years, including (i) all amounts paid to the Company to date, and (ii) all conditions to the receipt of payments by the Company with respect to such Grants.

(b) The consummation of the transactions contemplated hereby will not affect the right of the Company to retain the Grants. Except as set forth in Section 4.25(b) of the Disclosure Schedule, no facts or circumstances exist that could, directly or indirectly, (i) cause or contribute to the revocation of any of the Grants, (ii) cause or contribute to an obligation of the Company to repay any Grants or (iii) otherwise cause or contribute to the failure of the Company to receive the full amounts of the Grants.

Section 4.26. Accounts Receivable. Section 4.26 of the Disclosure Schedule sets forth a true and correct list and aging of all unpaid accounts receivable owing to the Company as of the Interim Balance Sheet Date. The accounts receivable of the Company including, without limitation, those reflected in Section 4.26 of the Disclosure Schedule, constitute or will constitute as of the respective dates thereof, legal, valid, binding and enforceable claims arising from bona fide transactions in the ordinary course of the Business and, except to the extent reserved against on the Interim Balance Sheet, are or will be as of the respective dates thereof collectible in the ordinary course of the Business and are not subject to any known counterclaims or set-offs. The reserves for doubtful accounts and allowances with respect to the accounts receivables generated after the Interim Balance Sheet Date and prior to the Closing will be established on the basis of evaluation of specific accounts and age classifications in accordance with GGAAP.

Section 4.27. Brokers and Finders. The Seller has not entered into any arrangement with any agent, broker, investment banker, person or firm acting on behalf of the Company, the Seller or any Affiliate of any of them pursuant to which any Person is or will be entitled to any

brokers' or finders' fee or any other commission or similar fee directly or indirectly from the Company, the Buyer or SEi in connection with the transactions contemplated hereby.

Section 4.28. Investment Intent; Information Disclosures.

(a) The Seller acknowledges that the SEi Stock to be received by the Seller will be acquired for the Seller's own account and without any view to the distribution of any part thereof without registration under applicable federal and state securities laws, or the delivery to SEi of an opinion of counsel that registration is not required in accordance with Section 4.28(e) hereof. The Seller represents that the Seller does not have any agreements or arrangements to sell, transfer or grant a participation with respect to the Purchase Price Shares.

(b) The Seller understands that the shares of SEi Stock constituting the Purchase Price Shares are not registered under the United States federal or state securities laws in part on the grounds that the transactions contemplated hereby are exempt from registration under the Securities Act of 1933 (the "1933 Act") pursuant to Section 4(2) thereof, and that Buyer's and SEi's reliance on such exemption is predicated on the Seller's representations set forth herein.

(c) The Seller represents that the Seller has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its investment in the Purchase Price Shares, and has the ability to bear the economic risks of such investment. The Seller further represents that the Seller has had

(i) access, prior to the Closing Date, to the SEi Filings (ii) the opportunity to ask questions of, and receive answers from, SEi concerning SEi and the Purchase Price Shares, and (iii) the opportunity to obtain additional information (to the extent SEi possessed such information or could acquire it without unreasonable expense) necessary to verify the accuracy of any information received or to which the Seller had access.

(d) The Seller understands and agrees that the Purchase Price Shares may not be sold, transferred or otherwise disposed of without registration under the 1933 Act and applicable state laws, unless exemptions from registration requirements are available, and that in the absence of an effective registration statement covering the Purchase Price Shares or an available exemption from applicable registration requirements, the Purchase Price Shares must be held indefinitely. In particular, the Purchase Price Shares may not be sold pursuant to Rule 144 promulgated under the 1933 Act unless all of the conditions of such rule are met.

(e) The Seller agrees that the Seller will not offer, sell, mortgage, pledge or otherwise dispose of any of the Purchase Price Shares (other than pursuant to an effective registration statement under the 1933 Act) unless and until the Seller delivers an opinion of counsel satisfactory to SEi, or SEi delivers to the Seller an opinion of counsel, that registration under applicable federal or state securities laws is not required.

(f) In addition, the Seller agrees that the Seller shall not sell, assign, pledge, encumber or otherwise transfer any of the Purchase Price Shares (or any interest therein) unless:

(i) such transfer occurs after financial results reflecting at least thirty days of post-Closing combined operations of the Company and SEi have been prepared and published within the meaning of Section 201.01 of the SEC's Codification of Financial Reporting Policies; and

(ii) either (A) such transfer occurs after the first anniversary of the Closing, or (B) after giving effect to the transfer, the Seller will continue to own at least fifty percent (50%) of the Purchase Price Shares issued to her at the Closing (adjusted to account for any additional shares issued in respect of such shares by way of stock splits, stock dividends or otherwise).

(g) The Seller agrees that all certificates for Purchase Price Shares shall bear a legend in substantially the following form:

The securities represented by this certificate have not been registered, qualified, recommended, approved or disapproved under United States federal securities law or state securities laws. The shares represented by this certificate may not be sold, transferred or otherwise disposed of by an investor without

(i) registration under federal and state securities laws, or

(ii) delivery of an opinion of counsel satisfactory to the corporation that neither the sale nor the proposed transfer constitutes a violation of any United States federal or state securities law.

The securities represented by this certificate are subject to certain transfer restrictions set forth in an Acquisition Agreement dated as of September 25, 1997 (a copy of which may be obtained from the Company at its principal executive office), and may not be sold, assigned, pledged, encumbered or otherwise transferred except in compliance with the terms and conditions of such agreement.

Section 4.29 Pooling of Interests. The Seller acknowledges that SEi intends to account for the acquisition of the Quotas as a pooling of interests, and that qualifying for such accounting treatment is dependent in part upon actions taken, or not taken, by the Company and the Seller both before and after the date hereof. In this regard, and with the understanding that SEi is relying thereon in making its commitment to enter into this transaction, the Seller warrants that the Seller, the Company and their respective Affiliates have not, directly or indirectly, taken any of the following actions, which Seller acknowledges could prevent SEi from obtaining such pooling accounting treatment:

(a) acquired or sold, assigned, transferred or otherwise disposed of, or reduced any risk relative to, any Quotas or SEi Stock in contemplation of the transactions provided for herein;

(b) paid or received any dividends or other distributions with respect to the capital interests of the Company, other than distributions in the ordinary course of the Company's Business and not in contemplation of the transactions provided for herein;

(c) altered the relative ownership interests of the Seller in the Company in contemplation of the transactions provided for herein;

(d) disposed of any part of the assets of the Company within the nine months preceding the date hereof or in contemplation of the transactions provided for herein;

(e) become a party to any contract, document, instrument or any written or oral agreement regarding the sale, assignment or transfer of, or allowed to be created any rights or obligations for the sale, assignment or transfer of, or explicitly or impliedly agreed to sell, assign or transfer any of the Quotas held by the Seller; or

(f) entered into any agreement to do any of the forgoing, including without limitation, any agreement to distribute or dispose of any part of the assets of the Company upon the consummation of the transactions provided for herein.

**Section 4.30 Restrictive Covenants.** Except as disclosed in Section 4.30 of the Disclosure Schedule, the Company is not subject to, or a party to, any mortgage, lien, lease, license, permit, agreement, contract, instrument, law, rule, ordinance, regulation, order, judgment or decree, or any other restriction of any kind or character, which materially adversely affects its Business practices, operations or condition or any of its assets or properties, which restricts its ability to acquire any property or conduct its Business in any area or which would prevent consummation of the transactions contemplated by this Agreement, compliance by it with the terms, conditions and provisions hereof or the operation of its Business by it after the date hereof on substantially the same basis as heretofore operated by it.

**Section 4.31 Product Liabilities and Warranties.** There are no express or implied warranties applicable to products or services sold or provided by the Company except as provided by statute or disclosed on

Section 4.31 of the Disclosure Schedule. Except as set forth in Section 4.31 of the Disclosure Schedule, there is no action, suit, proceeding or claim pending or, to the best knowledge of the Seller, threatened against the Company under any warranty, express or implied, and there is no basis upon which any claim could be made. Section 4.31 of the Disclosure Schedule also summarizes all product liability claims that have been asserted against the Company during the five (5) years preceding the date of this Agreement.

Section 4.32 Disclosure. None of the representations or warranties by the Seller herein, no statement contained in any certificate, list or other writing furnished to Buyer or SEi pursuant hereto and no statement contained in any Section of the Disclosure Schedule, taken as a whole, contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein or therein, in light of the circumstances in which they were made, not misleading. There is no fact known to the Seller which materially and adversely affects the Business, the Company, or the prospects or financial condition of the Company, which has not been set forth in this Agreement or in a Section of the Disclosure Schedule.

## **ARTICLE V**

### **REPRESENTATIONS AND WARRANTIES OF SEI AND BUYER (GARANTIEN)**

SEi and Buyer, jointly and severally, hereby represent and warrant to the Seller as follows:

Section 5.1. Corporate Organization. Each of Buyer and SEi is a corporation or limited liability company, as the case may be, duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and has the full right, power and authority to own, lease and operate all of its properties and assets and to carry out its business as it is presently conducted.

Section 5.2. Capitalization of SEi. All issued and outstanding shares of SEi Stock have been, and upon issuance the Purchase Price Shares will be, duly authorized and validly issued, fully paid and nonassessable. The issuance of the Purchase Price Shares is not subject to any preemptive right or right of first refusal that has not or will not be satisfied or waived.

Section 5.3. Authority. Each of Buyer and SEi has all requisite right, power and authority to execute, deliver and perform this Agreement. The execution, delivery and performance of this Agreement and the Related Agreements by Buyer and SEi have been duly and validly authorized and approved by all necessary corporate action. This Agreement has been duly and validly executed and delivered by Buyer and SEi and, assuming this Agreement has been duly authorized, executed and delivered by the Seller, constitutes the legal, valid and binding obligation of Buyer and SEi, enforceable against each of them in accordance with its terms.

Section 5.4. SEi's Consents and Approvals; No Violations. The execution, delivery and performance of this Agreement by Buyer and SEi will not (with or without the giving of notice or the passage of time, or

both), (a) violate in any material respect any applicable provision of law or any rule or regulation of any administrative agency or governmental authority applicable to Buyer or SEi, or any order, writ, injunction, judgment or decree of any court, administrative agency or governmental authority applicable to Buyer or SEi, (b) violate the organizational documents of Buyer or the Articles of Incorporation or Bylaws of SEi, (c) violate or require any consent, waiver or approval under, result in a breach, modification or termination of any of any provisions of, constitute a default under, affect the rights under or enforceability of, result in the imposition of any pledge, security interest or other encumbrance pursuant to, give any Person the right to terminate, modify or renegotiate any provision of, any material agreement, indenture, mortgage, deed of trust, lease, license, or other instrument to which Buyer or SEi is a party or by which Buyer or SEi is bound, or any material license, permit or certificate held by Buyer or SEi (other than any consents which will have been obtained on or prior to the Closing Date), or (d) based upon the information provided to the Buyer with respect to the Seller, require any material consent or approval by, notice to, or registration with any governmental authority.

Section 5.5. Litigation. There are no claims, actions, suits, or proceedings pending or, to the best knowledge of Buyer and SEi, threatened, against Buyer or SEi relating to this Agreement or the transactions contemplated hereby or to the business or property of Buyer or SEi, at law or in equity or before or by any national, federal, state, provincial, local, or foreign court or other governmental department, commission, board, agency, instrumentality or authority, or any arbitration proceeding, in each case which are likely to have a Material Adverse Effect. Neither Buyer nor SEi is subject to any judgment, order, writ, injunction or decree of any court or governmental body.

Section 5.6. Brokers and Finders. Neither SEi nor the Buyer has entered into any arrangement with any agent, broker, investment banker, Person or firm acting on behalf of Buyer, SEi or any Affiliate of either of them pursuant to which any Person is or will be entitled to any brokers' or finders' fee or any other commission or similar fee directly or indirectly from the Seller in connection with the transactions contemplated hereby.

Section 5.7. SEi Information. SEi has delivered to the Seller true and complete copies of the SEi Filings. At the date hereof, the SEi Filings, taken as a whole, do not contain any untrue statement of a material fact or omit any material fact necessary to make the statements contained herein, in light of the circumstances in which they were made, not misleading.

Section 5.8 No Material Adverse Change. Since June 30, 1997, SEi has not suffered any Material Adverse Effect.

Section 5.9. Undisclosed Liabilities. SEi has no liabilities (absolute, accrued, contingent or otherwise) required by USGAAP to be reflected or reserved against in the consolidated statement of assets and liabilities of SEi except (a) liabilities reflected or reserved against in

the Form 10-Q Balance Sheet, and (b) liabilities incurred since March 30, 1997 in the ordinary course of business, and which, in the aggregate, do not have a Material Adverse Effect.

Section 5.10. Compliance with Laws. Each of Buyer and SEi has conducted its business so as to comply with, and is not in violation of, nor has it received any written notice claiming it is in violation of, any order, law, ordinance, statute, rule or regulation applicable to it, or to its business or any of its property or assets including, without limitation, any environmental or worker safety and protection laws and regulations, except to the extent that such non-compliance would not have a Material Adverse Effect. Each of Buyer and SEi has all material

licenses, permits, certificates of occupancy and authorizations necessary to conduct its business.

## **ARTICLE VI**

### **FURTHER COVENANTS AND AGREEMENTS**

Section 6.1. Covenants of the Seller Pending the Closing. The Seller covenants and agrees that, pending the Closing and prior to the termination of this Agreement, and except as otherwise agreed to in writing by Buyer and SEi, the Seller shall or, as appropriate shall cause the Company to:

- (a) conduct the Business solely in the ordinary course and consistent with the past practices of the Company;
- (b) not take or intentionally omit to take any action which would result in a breach of any of the Seller's representations and warranties hereunder in any material respect;
- (c) continue to maintain and service the physical assets used by the Company in the conduct of the Business consistent with past practices;
- (d) use its reasonable efforts to preserve the Business and organization of the Company, to keep available the services of the Company's present employees and agents and to maintain the relations and goodwill with the suppliers, customers (including the Customers), distributors and any others having business relations with the Company in connection with the Business;
- (e) use its and their reasonable efforts to cause all of the conditions to the obligations of Buyer and SEi under this Agreement to be satisfied on or prior to the Closing Date and to obtain, prior to the Closing, all consents of all third parties and governmental authorities

necessary for the consummation by the Seller and the Company of the transactions contemplated hereby. All such consents will be in writing and executed counterparts will be delivered to Buyer and SEi at or prior to the Closing.

(f) cooperate with Buyer and SEi in making arrangements to obtain licenses, permits and certificates required to conduct the Business or own the Quotas at Closing;

(g) provide Buyer's and SEi's officers, employees, counsel, accountants and other representatives with full access to, during normal business hours, all of the books and records of the Company, make available to representatives of Buyer and SEi, knowledgeable employees of the Company for reasonable periods of time to answer inquiries of such representatives with respect to Buyer's and SEi's investigation of the Company and permit such representatives of Buyer and SEi to consult with the officers, employees, accountants and counsel of the Seller; provided, that no such activities unreasonably interfere with the operation of the Business;

(h) not grant to any Person a power of attorney or similar authority to act for the Company;

(i) not enter into any guarantee of the obligations of any Person to the extent such guarantee shall survive the Closing;

(j) not amend the charter, Articles of Association or other organizational documents of the Company;

(k) make no change in the amount of issued share capital of the Company or issue or create any option, warrant or any other security of the Company;

(l) not increase the compensation payable or to become payable to any officer, employee or agent of the Company other than in the ordinary course of the Business, nor make any bonus payment or arrangement to or with any officer, employee or agent of the Company other than in the ordinary course of the Business;

(m) not make any dividends or other distributions in respect of the Quotas;

(n) not sell, transfer, lease, abandon or otherwise dispose of (or commit to do so) any fixed assets of the Company; and

(o) not enter into any contract or commitment calling for payment to or by the Company of an aggregate amount of more than DM10,000, which is not terminable by the Company on less than thirty (30) days' notice without penalty.



Section 6.2. Covenants of Buyer and SEi Pending the Closing. Buyer and SEi covenant and agree that, pending the Closing and prior to the termination of this Agreement, and except as otherwise agreed to in writing by the Seller, each of Buyer and SEi:

(a) shall not take or intentionally omit to take any action which would result in a breach of any of its representations and warranties hereunder in any material respect.

(b) shall use its reasonable efforts to cause all of the conditions to the obligations of the Seller under this Agreement to be satisfied on or prior to the Closing Date and to obtain prior to the Closing, all consents of all third parties and governmental authorities necessary for the consummation by it of the transactions contemplated hereby. All such consents will be in writing and executed counterparts thereof will be delivered to the Seller at or prior to the Closing.

(c) shall promptly disclose to the Seller any information relating to its representations and warranties hereunder which, because of an event occurring after the date hereof, is incomplete or is no longer correct in any material respect.

Section 6.3. Filings. Promptly after the execution of this Agreement, each of the parties hereto shall prepare and make or cause to be made any required filings, submissions and notifications under the laws of any domestic or foreign jurisdictions to the extent that such filings are necessary to consummate the transactions contemplated hereby and will use its reasonable efforts to take all other actions necessary to consummate the transactions contemplated hereby in a manner consistent with applicable law. Each of the parties hereto will furnish to the other party such necessary information and reasonable assistance as such other party may reasonably request in connection with the foregoing.

Section 6.4. Effective Time of Closing and Transfer. The Closing shall be effective for all purposes as of the close of business on the Closing Date.

Section 6.5. Announcements. Except as expressly contemplated by this Agreement, the parties will mutually agree as to the time, form and content before issuing any press releases or otherwise making any public statements or statements to third parties with respect to transactions contemplated hereby and shall not issue any press release or, except as necessary to perform their respective obligations hereunder, discuss the transactions contemplated hereby with any third party prior to reaching mutual agreement with respect thereto, except as may be required by law. Notwithstanding the foregoing, in the event prior to the Closing any party hereto is required by law or the rules of any stock exchange on which such party's securities are traded to make a statement with respect to the transactions contemplated herein, such party shall notify in writing the other party hereto as to the time, form and content of such statement.

Section 6.6. Costs and Expenses. Whether or not the transactions contemplated by this Agreement are consummated, each party hereto shall pay its own costs and expenses (including legal fees and expenses) incurred in connection with due diligence reviews, the preparation, negotiation and execution of this Agreement and all other agreements, certificates, instruments and documents delivered hereunder, and all other matters relating to the transactions contemplated hereby. All German transfer and intangible Taxes, if any, arising in connection with the sale and assignment of the Quotas hereunder shall be paid by the Seller. All transfer and intangible Taxes, if any, in connection with the sale and delivery of the Purchase Price Shares hereunder shall be paid by SEi. All fees and charges arising from notary requirements applicable to the sale and assignment of the Quotas shall be paid by the Buyer.

Section 6.7. Further Assurances.

(a) Subject to the terms and conditions herein provided, each of the parties hereto agrees to use its reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate and make effective the transactions contemplated by this Agreement. If at any time after the Closing Date any further action is necessary or desirable to carry out the purposes of this Agreement, the parties hereto shall take or cause to be taken all necessary action including, without limitation, the execution and delivery of such further instruments and documents as may be reasonably requested by the other party for such purposes or otherwise to consummate and give effect to the transactions contemplated hereby. If any consent or approval required for the consummation of the transactions contemplated hereby is waived by the parties prior to Closing, at the request of Buyer the Seller shall cooperate with SEi, and attempt in good faith, to obtain such consent or approval during the one year period immediately following the Closing.

(b) From and after the Closing Date, the Buyer and/or SEi agree to promptly inform the Seller of any Tax audit of the Company by a Tax authority and to give the Seller the opportunity to participate in such a Tax audit. Furthermore, the Seller shall be entitled to request the Buyer, SEi and/or the Company to duly and timely file the appropriate recourse against any Tax assessment resulting in a higher Tax burden for any period prior to the Closing Date. If such request is not honored, the Buyer shall cause the Company, upon request by the Seller, to file such recourse nonetheless, provided that in this case the Seller shall be liable to reimburse the Company for all fees and expense incurred in the recourse proceedings to the extent such fees and expenses are not borne by third parties.

Section 6.8. Certain Agreements. On or before the Closing Date, Buyer, SEi, and the Seller will execute the Pledge and Escrow Agreement in the form of Exhibit A, the Seller and SEi will execute the Registration Rights Agreement in the form of Exhibit B, and the Seller will execute, or cause to be executed, an employment agreement between the Company and the Seller in the form of Exhibit C, in each case to be effective upon the Closing Date.

Section 6.9. Non-Disclosure; Covenant Not to Compete.

(a) The parties hereto acknowledge that (i) the covenants contained in this Section 6.9 are a material inducement to the consummation by Buyer and SEi of the transactions contemplated by this Agreement and (ii) Buyer and SEi would not have entered into or performed this Agreement but for the covenants herein contained.

(b) The Seller agrees that, unless acting with the prior consent of Buyer and SEi, it will not, either alone or in conjunction with any other Person, or directly or indirectly through any entity that it now or in the future controls, for a period of three years from the Closing Date: (i) employ or solicit the employment of any Person who within the month preceding the Closing Date had been an employee of the Company; (ii) directly or indirectly engage or participate, whether as officer, employee, director, agent, consultant, shareholder, partner, or otherwise, in the ownership, management, marketing or operation of any enterprise which is engaged in any part of the Business within Europe (other than solely through the ownership of equity securities or equivalent interests of any entity at a level which does not create the ability to influence or control management of the entity); or (iii) conduct any part of the Business with any Person that is a Customer of the Company as of the Closing Date.

(c) It is stipulated and agreed that the Seller has become acquainted with confidential and privileged information of the Company relating to customer files, customer lists, special customer matters, sales methods and techniques, merchandising concepts and plans, new site locations, business plans, sources of supply and vendors, special business relationships with vendors, agents and brokers, promotional materials and information, financial matters, mergers, acquisitions, selective personnel matters and confidential processes, designs, formulas, ideas, plans, devices or materials and other similar matters which are confidential (any and all such information being referred to herein as the "Confidential Information"); and that the use of the Confidential Information against the Company would seriously damage the Business. As a consequence of the above, the Seller agrees that, unless acting with the prior written consent of Buyer, the Seller shall, whether acting alone, in conjunction with any other Person, or directly or indirectly through any entity that the Seller now or in the future controls: not use, divulge, publish or otherwise reveal or allow to be revealed any aspect of the Confidential Information to any Person; refrain from any action or conduct which might reasonably or foreseeably be expected to compromise the confidentiality or proprietary nature of the Confidential Information; and shall have no right to apply for or to obtain any patent, copyright, or other form of Intellectual Property protection with regard to the Confidential Information.

(d) The parties hereto acknowledge and agree that any remedy at law for any breach of the provisions of this Section 6.9 would be inadequate and the Seller hereby consents to the granting by any court of competent jurisdiction of an injunction or other suitable relief and without the posting of any bond or the necessity of actual monetary loss being proved, in order that such breach may be effectively restrained.

Section 6.10. Pooling of Interests. The Seller shall not, and shall not permit the Company, to take, any of the following actions, each of which could result in the transfer of the Quotas not qualifying to be accounted for as a pooling of interests: (a) acquiring or transferring any capital interests of the Company or any SEi Stock during the thirty (30) days prior to the Closing Date, and (b) selling, assigning or transferring, or agreeing or allowing to be created any rights or obligation for the sale, assignment or transfer of, any of the Purchase Price Shares or any other SEi Stock in violation of the restrictions set forth in Section 4.28(f)(i).

Section 6.11. Exclusive Dealing. During the period from the date of this Agreement through and including the Closing Date, the Seller shall not, and shall not permit the Company or any of their respective directors, officers, employees, representatives or agents to, directly or indirectly, solicit, initiate or participate in any negotiations with any Person other than SEi and the Buyer and their respective representatives, agents and Affiliates, concerning any Alternative Transaction. The Seller shall immediately notify SEi and Buyer of any proposal or offer received by, any information requested from, or any discussions or negotiations sought to be initiated or continued with, the Seller or the Company in respect of an Alternative Transaction and shall, in any such notice to SEi and Buyer, indicate the terms and conditions of any proposals or offers or the nature of any requests, discussions or negotiations.

Section 6.12. Release of Collateral. No later than October 31, 1997, the Seller, Buyer and SEi shall arrange for the release of the following collateral granted to Deutsche Bank AG by the Seller as collateral for the Company's obligations:

- (a) a capital life insurance policy;
- (b) a risk life insurance policy;
- (c) an insurance policy at the Sparkassenversicherung; and
- (d) a personal guarantee in the amount of DM430,000.

Section 6.13. Use of the Seller's Name. The Seller agrees that, so long as and only so long as the Company is owned by SEi, the Company has and will continue to have the right to use "Hedi Fabinyi" as a part of its name.

## ARTICLE VII

### TERMINATION

Section 7.1. Termination. This Agreement may be terminated at any time prior to the Closing:

- (a) by mutual written agreement executed by the Seller, Buyer and SEi;
- (b) by the Seller, Buyer or SEi at any time after September 26, 1997 if, through no fault of the party seeking termination, the Closing shall not have occurred;
- (c) by the Seller, Buyer or SEi, if any governmental or regulatory authority, agency or commission, including courts of competent jurisdiction, domestic or foreign, shall have issued an order, decree, or ruling or taken other action, restraining, enjoining or otherwise prohibiting the transactions contemplated hereby and such order, decree, ruling or other action shall have become final and nonappealable;
- (d) by Buyer or SEi, if there has been a material violation or breach by the Seller of any agreement or any representation or warranty contained in this Agreement which (i) is not curable, (ii) has rendered the satisfaction of any condition to the obligations of Buyer and SEi impossible, and (iii) has not been waived by Buyer and SEi; or
- (e) by the Seller, if there has been a material violation or breach by Buyer or SEi of any agreement, representation or warranty contained in this Agreement which (i) is not curable, (ii) has rendered the satisfaction of any condition to the obligations of the Seller impossible, and (iii) has not been waived by the Seller.

Section 7.2. Procedure and Effect of Termination. In the event of termination of this Agreement pursuant to Section 7.1 hereof, written notice thereof shall forthwith be given to the other parties hereto and this Agreement (other than Section 6.6 hereof and as provided in paragraph (b) below) shall terminate and the transactions contemplated hereby shall be abandoned without further action by the parties hereto. If this Agreement is terminated as provided herein:

- (a) all information with respect to the Business or the Company received by and in the possession of Buyer, SEi or any Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with Buyer or SEi shall be returned to the Seller or destroyed by Buyer or SEi;
- (b) any termination pursuant to subparagraph (b), (c),
- (d), or (e) of Section 7.1 shall not be deemed a waiver of any rights or remedies otherwise available under this Agreement, by operation of law or otherwise; and

(c) all filings, applications and other submissions made pursuant to Section 6.3 hereof or prior to the execution of this Agreement in contemplation thereof shall, to the extent practicable, be withdrawn from the agency or other Person to which made.

## **ARTICLE VIII**

### **CONDITIONS TO BUYER'S AND SEI'S OBLIGATIONS**

Each and every obligation of Buyer and SEi to consummate the transactions described in this Agreement shall be subject to the fulfillment, or the waiver by Buyer and SEi on or before the Closing Date, of the following conditions precedent:

Section 8.1 The Seller's Closing Deliveries. The Seller shall have delivered, or caused to be delivered, to Buyer and SEi at or prior to the Closing, unless specifically waived by Buyer and SEi in their sole discretion, each of the following:

- (a) the Registration Rights Agreement and the Pledge and Escrow Agreement referenced in Section 6.8, in each case executed by the Seller and, in the case of the Pledge and Escrow Agreement, by the Escrow Agent;
- (b) the employment agreements referenced in Section 6.8 executed by the Company and the Seller;
- (c) valid and binding consents of all Persons whose consent or approval is required to be set forth in Sections 4.5 and 4.6 of the Disclosure Schedule;
- (d) three separate guaranteed stock powers duly endorsed in blank and a Certificate of Foreign Status on Form W-8; and
- (e) the certificates referenced in Section 8.2 and 8.3.

Section 8.2. Representations and Warranties True. The representations and warranties of the Seller contained in this Agreement, as modified by the Disclosure Schedule, shall have been true on the date hereof in all material respects, and shall be true on the Closing Date in all material respects with the same effect as though such representations and warranties were made on and as of such date and the Seller shall have delivered to Buyer and SEi on the Closing Date a certificate, dated as of the Closing Date, to such effect.

Section 8.3. Performance. The Seller shall have, in all material respects, performed and complied with all covenants required by this Agreement to be performed or complied with by them prior to or at the Closing and the Seller shall have delivered to Buyer and SEi on the Closing Date a certificate, dated as of the Closing Date, to such effect.

Section 8.4. Governmental Consents and Approvals. All necessary and appropriate governmental consents, approvals and filings shall have been obtained or made and all applicable waiting periods (including any extensions thereof) relating thereto shall have expired or otherwise terminated.

Section 8.5. No Injunction or Proceeding. No governmental or regulatory authority, agency or commission, including courts of competent jurisdiction, domestic or foreign, shall have issued an order, decree, or ruling or taken other action, restraining, enjoining or otherwise prohibiting the transactions contemplated hereby, which order, decree, ruling or other action remains in effect.

## **ARTICLE IX**

### **CONDITIONS TO THE SELLER'S OBLIGATIONS**

Each and every obligation of the Seller to consummate the transactions described in this Agreement shall be subject to the fulfillment, or the waiver by the Seller, on or before the Closing Date, of the following conditions precedent:

Section 9.1. Delivery of Purchase Price Shares. Buyer and SEi shall have delivered or caused to be delivered the Purchase Price Shares in accordance with Article III hereof.

Section 9.2. Buyer's and SEi's Closing Deliveries. Buyer and SEi shall deliver, or cause to be delivered, to the Seller at the Closing, unless specifically waived by the Seller in her sole discretion, each of the following:

- (a) the Registration Rights Agreement and the Pledge and Escrow Agreement referenced in Section 6.8, executed by SEi and, in the case of the Pledge and Escrow Agreement, the Buyer and the Escrow Agent;
- (b) a certified copy of the resolutions of the Board of Directors of SEi authorizing the execution, delivery and performance of this Agreement and the Related Agreements and the consummation of transactions contemplated hereby and thereby; and
- (c) the certificates referenced in Sections 9.3 and 9.4 hereof.

Section 9.3. Representations and Warranties True. The representations and warranties of Buyer and SEi contained in this Agreement, as modified by the Disclosure Schedule, shall have been true on the date hereof in all material respects and shall be true on the Closing Date in all material respects, with the same effect as though such representations and warranties were made on and as of such date, and Buyer and SEi shall have delivered to the Seller on the Closing Date a certificate, dated as of the Closing Date, to such effect.

Section 9.4. Performance. Buyer and SEi shall have, in all material respects, performed and complied with all covenants required by this Agreement to be performed or complied with by them prior to or at the Closing and Buyer and SEi shall have delivered to the Seller on the Closing Date a certificate, dated as of the Closing Date, to such effect.

Section 9.6. Governmental Consents and Approvals. All necessary and appropriate governmental consents, approvals and filings shall have been obtained or made and all applicable waiting periods (including any extensions thereof) relating thereto shall have expired or otherwise terminated.

Section 9.7. No Injunction or Proceeding. No governmental or regulatory authority, agency or commission, including courts of competent jurisdiction, domestic or foreign, shall have issued an order, decree, or ruling or taken other action, restraining, enjoining or otherwise prohibiting the transactions contemplated hereby, which order, decree, ruling or other action remains in effect.

## **ARTICLE X**

### **INDEMNIFICATION**

Section 10.1. Indemnification by the Seller.

(a) The Seller agrees to reimburse, indemnify and hold SEi, the Buyer, the Company, and their respective officers, directors, shareholders, employees and agents harmless from and against any and all demands, claims, actions, suits, liabilities, damages, losses, judgments, costs and expenses (including, without limitation, reasonable attorneys' fees but excluding any claims for punitive damages or consequential damages) relating to, resulting from or arising out of:

- (i) any breach or inaccuracy of the representations or warranties made hereunder by the Seller;
- (ii) any breach or violation of any covenant or agreement made hereunder by the Seller.

Section 10.2. Indemnification by Buyer and SEi.

(a) Buyer and SEi jointly and severally agree to reimburse, indemnify and hold the Seller harmless from and against any and all demands, claims, actions, suits, liabilities, damages, losses, judgments, costs and expenses (including, without limitation, reasonable attorneys' fees but excluding any claims for punitive damages or consequential damages) relating to, resulting from or arising out of:



(i) any breach or inaccuracy of the representations or warranties made hereunder by Buyer and SEi; or

(ii) any breach or violation of any covenant or agreement made hereunder by Buyer and SEi.

**Section 10.3. Survival of Representations.** Except for the representations and warranties contained in Sections 4.1, 4.2, 4.4, 4.9 and 4.25, the representations and warranties made pursuant to this Agreement including, without limitation, all representations and warranties made in any exhibit or schedule or certificate delivered thereunder, shall survive until and through the second anniversary of the Closing Date at which time such representations and warranties shall expire. The representations and warranties set forth in Sections 4.1 and 4.2 of this Agreement shall survive until and through the tenth anniversary of the Closing Date. The representations and warranties set forth in Section 4.4 of this Agreement shall survive indefinitely. The representations and warranties set forth in Sections 4.9 and 4.25 of this Agreement shall survive until and through six months after all amounts for Taxes applicable to the Company, their respective employees and the transactions contemplated by this Agreement, in the case of Section 4.9, and all amounts for Grants from the government in the case of Section 4.25, become final and non-appealable for all periods through or including the Closing Date, at which time such representations and warranties shall expire.

**Section 10.4. Indemnification Claims Procedures.** All claims for indemnification by any party seeking indemnification (the "Indemnified Party") from another party (the "Indemnifying Party") under Sections 10.1 and 10.2 shall be asserted and resolved as follows:

(a) In the event that any claim or demand for which the Indemnifying Party would be liable to any Indemnified Party hereunder is asserted against or sought to be collected from any Indemnified Party by a third party, the Indemnified Party shall promptly notify the Indemnifying Party (and any known pertinent insurance carrier) in reasonable detail of such claim or demand and the amount or the estimated amount thereof to the extent then feasible (which estimate shall not be conclusive of the final amount of such claim and demand) (the "Claim Notice"). The Indemnifying Party shall have thirty (30) days from the personal delivery or mailing of the Claim Notice (the "Notice Period") to notify the Indemnified Party whether or not the Indemnifying Party desires to defend the Indemnified Party against such claim or demand. All costs and expenses incurred by the Indemnifying Party in defending such claim or demand shall be a liability of, and shall be paid by, the Indemnifying Party. In the event that the Indemnifying Party notifies the Indemnified Party within the Notice Period that it desires to defend the Indemnified Party against such claim or demand and except as hereinafter provided, the Indemnifying Party shall have the right to defend the Indemnified Party by counsel of the Indemnifying Party's own choosing, either in the Indemnifying Party's name, or the Indemnified Party's name by appropriate proceedings. If any Indemnified Party desires to participate in, but not control, any such defense or settlement it may do so at its sole cost and expense and, in any event, the Indemnified Party shall cooperate with the Indemnifying Party and such counsel. To the extent the Indemnifying Party shall control or participate in the defense or settlement of any third party claim or demand, the Indemnified Party shall give to the Indemnifying Party and its counsel access to, during normal business hours, the

relevant business records and other documents, and shall permit them to consult with the employees and counsel of the Indemnified Party to the extent consistent with the application of relevant evidentiary privileges. The Indemnifying Party shall keep the Indemnified Party reasonably apprised of the course of any negotiations or proceedings and the Indemnifying Party shall not settle any claim or demand without the consent of the affected Indemnified Party, which consent shall not be unreasonably withheld or unduly delayed. As soon as reasonably practicable after the Indemnifying Party has reached a final decision as to whether or not all or any portion of the obligations related to such claim or demand are obligations for which the Indemnifying Party is required to indemnify such Indemnified Party hereunder and, in any event, prior to entering into any such settlement or other final resolution of any claim or demand, the Indemnifying Party shall notify the Indemnified Party in writing of its position as to whether or not all or any portion of the obligations related to such claim or demand are obligations for which the Indemnifying Party is required to indemnify such Indemnified Party in accordance with this Article X.

(b) If the Indemnifying Party elects or is deemed to have elected not to take over the defense of any such claim or demand, the Indemnified Party shall have the right to defend, compromise and settle such claim or demand on such terms as the Indemnified Party in his, her or its discretion may determine, subject to the prior consent of the Indemnifying Party, which consent shall not be unreasonably withheld or unduly delayed, and the Indemnifying Party shall continue to be bound to indemnify the Indemnified Party in accordance with and to the extent provided under the terms of this Article X. The Indemnified Party shall or shall direct in writing its counsel to deliver to the Indemnifying Party copies of all correspondence and other matters relating to such claim or demand. Notwithstanding the foregoing, to the extent that the claim or demand involves or could result in claims against, or potential liability of, the Indemnifying Party the extent or nature of which were not known by the Indemnifying Party as of the date the Indemnifying Party elects or is deemed to have elected not to take over the defense of such claim or demand, the Indemnifying Party shall, by written notice to the Indemnified Party, be entitled to take over the defense of such claim or demand.

(c) In the event an Indemnified Party should have a claim against the Indemnifying Party hereunder which does not involve a claim or demand being asserted against or sought to be collected from it by a third

party, the Indemnified Party shall promptly send a Claim Notice with respect to such claim to the Indemnifying Party.

(d) The Indemnified Party's failure to give reasonably prompt notice to the Indemnifying Party of any actual, threatened or possible claim or demand which may give rise to a right of indemnification hereunder shall not relieve the Indemnifying Party of any liability which it may have to an Indemnified Party except to the extent the failure to give such notice prejudiced the Indemnifying Party.

**Section 10.5. Right of Set-Off.** In addition to any other remedy available in equity or at law, the Indemnified Party shall be entitled to set off the amount of any obligation for which it is entitled to be indemnified under this Article X against any amounts payable to the Indemnifying Party hereunder or under any other agreement contemplated hereby.

**Section 10.6. Limitation of Liability.** (a) Notwithstanding any other provision of this Agreement, neither the aggregate liability hereunder of the Buyer and SEi on the one hand, nor the aggregate liability hereunder of the Seller on the other hand, shall exceed DM9,200,000.

(b) The Seller shall be liable to indemnify the Buyer for claims on account of Taxes only to the extent additional Taxes resulting from field audits are not compensated by lowered Tax burdens in following years resulting from such additional Taxes. To the extent additional capitalization of items originally treated as expenses entail additional depreciations in future years, the liability of the Seller on account of additional Taxes shall be reduced by the discounted cash value of the additional depreciation, discounted at a rate of 5% per year.

## **ARTICLE XI**

### **MISCELLANEOUS**

**Section 11.1. Governing Law.** This Agreement and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the Federal Republic of Germany. Any disputes arising under this Agreement shall be resolved in accordance with the provisions of the separate Arbitration Agreement which has been executed by the parties as of the date hereof.

**Section 11.2. Entire Understanding, Waiver, Etc.** This Agreement sets forth the entire understanding of the parties and supersedes any and all prior or contemporaneous agreements, arrangements and understandings relating to the subject matter hereof, and the provisions hereof may not be changed, modified, waived or altered except by an agreement in writing signed by the party entitled to the benefit of the provision(s) to be waived hereto. A waiver by any party of any of the terms or conditions of this Agreement, or of any breach thereof, shall not be deemed a waiver of such term or condition for the future, or of any other term or condition hereof, or of any subsequent breach thereof.

**Section 11.3. Severability; Gaps.** If any provision of this Agreement or the application of such provision shall be held by a court of

competent jurisdiction to be unenforceable, or otherwise be or become invalid or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect. In addition, any gap or omission in the terms of this Agreement shall not prejudice its validity, and the remaining provisions of this Agreement shall remain in full force and effect. Any gap in the terms of this Agreement, whether caused by the invalidity or unenforceability of any provision, or by an omission or otherwise, shall be filled by a provision which legally and economically most closely matches the intent of the parties hereto with respect to the gap. The parties hereto undertake to enter from time to time into such amendments as are necessary or appropriate to document the provisions filling such gaps.

Section 11.4. Captions. The captions herein are for convenience only and shall not be considered a part of this Agreement for any purpose, including, without limitation, the constructions or interpretation of any provision hereof.

Section 11.5. Notices. All notices, requests, demands and other communications (collectively, "Notices") that are required or may be given under this Agreement shall be in writing. All Notices shall be deemed to have been duly given or made: if by hand, immediately upon delivery; if by telecopier or similar device, immediately upon sending, provided notice is sent on a Business Day during the hours of 9:00 a.m. and 6:00 p.m. at the location of the party receiving the Notice, but if not, then immediately upon the beginning of the first Business Day after being sent; if by FedEx, Express Mail or any other reputable overnight delivery service, three Business Days after being placed in the exclusive custody and control of said courier; and if mailed by certified mail, return receipt requested, ten Business Days after mailing.

Notwithstanding the foregoing, with respect to any Notice given or made by telecopier or similar device, such Notice shall not be effective unless and until (i) the telecopier or similar advice being used prints a written confirmation of the successful completion of such communication by the party sending the Notice, and (ii) a copy of such Notice is deposited in first class mail to the appropriate address for the party to whom the Notice is sent. In addition, notwithstanding the foregoing, a Notice of a change of address by a party hereto shall not be effective until received by the party to whom such Notice of a change of address is sent. All Notices are to be given or made to the parties at the following addresses (or to such other address as either party may designate by Notice in accordance with the provisions of this Section):

(a) If to the Seller:

Ms. Hedi Fabinyi  
Lerchenbergstr. 49 73733 Esslingen  
Federal Republic of Germany Telephone: 011 49 711 32 47 63 Facsimile: 011 49 711 93 97 95 91

(b) If to SEi:

Sykes Enterprises, Incorporated 100 North Tampa Street Suite 3900

Tampa, Florida 33602 Attention: Scott J. Bendert, Vice President-Finance Telephone: 001 (813) 274-1000 Facsimile: 001 (813) 273 0148

(c) If to Buyer:

Sykes Enterprises GmbH  
c/o Sykes Enterprises, Incorporated  
100 North Tampa Street  
Suite 3900  
Tampa, Florida 33602  
Attention: Scott J. Bendert,  
Vice President-Finance  
Telephone: 001 (813) 274-1000  
Facsimile: 001 (813) 273 0148

Section 11.6. Successors and Assigns. Neither this Agreement nor any of the rights or obligations arising hereunder shall be assignable by any party without the prior written consent of the other parties hereto; provided, however, that notwithstanding the foregoing SEi may assign its rights and obligations under this Agreement to any wholly owned subsidiary of SEi which agrees in writing to be bound by and to perform fully all of SEi's obligations hereunder and, provided that in the event of any such assignment by SEi, SEi shall remain liable hereunder for the performance of SEi's obligations hereunder notwithstanding such assignment.

Section 11.7. Parties in Interest. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Nothing in this Agreement, express or implied, shall confer upon any Person, other than the parties hereto, and their successors and permitted assigns, any rights or remedies under or by reason of this Agreement.

Section 11.8. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

Section 11.9. Construction of Terms. Any reference herein to the masculine or neuter shall include the masculine, the feminine and the neuter, and any reference herein to the singular or plural shall include the opposite thereof. The parties to this Agreement acknowledge that each

party and counsel to each party has participated in the drafting of this Agreement and agree that this Agreement shall not be interpreted against one party or the other based upon who drafted it.

Section 11.10. SEi Guarantee. SEi hereby guarantees for the benefit of the Seller the full and prompt performance by the Buyer of all of its obligations toward the Seller under this Agreement.

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the day and year first above written.

**SELLER:**

*/s/ Hedi Fabinyi*  
*Hedi Fabinyi*

*SEI:*

**SYKES ENTERPRISES, INCORPORATED**

*/s/ Scott J. Bendert*  
*Scott J. Bendert, Vice President - Finance*

**BUYER:**

**SYKES ENTERPRISES GMBH**

*/s/ Scott J. Bendert*  
*Scott J. Bendert, Director*

**EXHIBIT 23.1**

**CONSENT OF INDEPENDENT ACCOUNTANTS**

We consent to the incorporation by reference in the registration statement of Sykes Enterprises, Incorporated on Form S-3 (File No. 333-38513) and the registration statement of Sykes Enterprises, Incorporated on Form S-8 (File No. 333-23681) of our report dated February 11, 1998, on our audits of the consolidated financial statements and financial statement schedules of Sykes Enterprises, Incorporated and subsidiaries as of December 31, 1995 and 1996, and for the year ended July 31, 1994, the five months ended December 31, 1994, and the year ended December 31, 1995 and 1996, which report is included in this Current Report on Form 8-k.

Tampa, Florida

**February 12, 1998 COOPERS & LYBRAND L.L.P.**

## ARTICLE 5

This schedule contains summary consolidated financial information extracted from Form 10-K for the year ended December 31, 1996 and is qualified in its entirety by reference to such Form 10-K.

PERIOD TYPE	12 MOS
FISCAL YEAR END	DEC 31 1996
PERIOD START	JAN 01 1996
PERIOD END	DEC 31 1996
CASH	3,298,888
SECURITIES	86,696,148
RECEIVABLES	43,017,996
ALLOWANCES	269,999
INVENTORY	0
CURRENT ASSETS	135,071,976
PP&E	57,781,909
DEPRECIATION	16,353,398
TOTAL ASSETS	178,526,246
CURRENT LIABILITIES	24,738,828
BONDS	0
PREFERRED MANDATORY	0
PREFERRED	0
COMMON	353,204
OTHER SE	136,734,190
TOTAL LIABILITY AND EQUITY	178,526,246
SALES	0
TOTAL REVENUES	160,010,501
CGS	0
TOTAL COSTS	94,829,595
OTHER EXPENSES	51,856,353
LOSS PROVISION	(492,533)
INTEREST EXPENSE	(156,354)
INCOME PRETAX	13,973,440
INCOME TAX	5,296,480
INCOME CONTINUING	8,676,960
DISCONTINUED	0
EXTRAORDINARY	0
CHANGES	0
NET INCOME	8,676,960
EPS PRIMARY	0.26
EPS DILUTED	0.26

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**End of Filing**

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