

FORM PTO-1618A

Expires 06/30/99

OMB 0651-0027

04-13-2001

U.S. Department of Commerce

Patent and Trademark Office

TRADEMARK

RECC



101673766

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type

- ☐ New
- ☒ Resubmission
Document ID # 101559036
- ☐ Correction of PTO Error
Reel # Frame #
- ☐ Corrective Document
Reel # Frame #

Conveyance Type

- ☐ Assignment ☐ License
- ☐ Security Agreement ☐ Nunc Pro Tunc Assignment
- ☐ Merger Effective Date
Month Day Year
- ☐ Change of Name
- ☒ Other: Contribution and Unit Purchase Agreement (including assignment of trademarks in Section 1.1 (a) (iii))

Conveying Party

☐ Mark if additional names of conveying parties attached

Name Mattel, Inc.

Formerly

Execution Date

Month Day Year

09 30 1999

- ☐ Individual ☐ General Partnership ☐ Limited Partnership ☒ Corporation ☐ Association
- ☐ Other
- ☒ Citizenship/State of Incorporation/Organization - Delaware

Receiving Party

☐ Mark if additional names of receiving attached

Name Genealogy.com, LLC

DBA/AKA/TA

Composed of

Address (line 1) 39500 Stevenson Place

Address (line 2) Suite 204

Address (line 3) Fremont
CityCA
State/Country94539
Zip Code

- ☐ Individual ☐ General Partnership ☐ Limited Partnership ☐
- ☐ Corporation ☐ Association
- ☒ Other - Limited Liability Company
- ☐ Citizenship/State of Incorporation/Organization - Delaware

If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

04/13/2001 LHOELLER 00000200 071700 E114672

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Mail documents to be recorded with required cover sheet(s) information to:
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TRADEMARK
REEL: 002270 FRAME: 0579

Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Correspondent Name and Address

Area Code and Telephone Number (617) 570-1000

Name Robert M. O'Connell, Jr., Esq.

Address (line 1) Goodwin, Procter & Hoar LLP

Address (line 2) Exchange Place

Address (line 3) 53 State Street

Address (line 4) Boston, MA 02109-2881

Pages

Enter the total number of pages of the attached conveyance document including any attachments.

62

Trademark Application Number(s) or Registration Number(s)

☐

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)

Registration Number(s)

2,114,672

Number of Properties

Enter the total number of properties involved

1

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41):

\$ 40.00

Method of Payment:

Enclosed

☐

Deposit Account

☒

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number:

07-1700

Authorization to charge additional fees:

Yes

☒

No

☐

Statement and Signature

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.

Robert M. O'Connell, Jr.
Name and Person Signing

Signature

March 12, 2001

Date Signed

12-22-2000

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Expires 06/30/99

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**RECORDATION FORM COVER SHEET
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Composed of

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12/21/2000 NTHA11 00000027 071700 2114673

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Enter for the first Receiving Party only.

Name

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Address (line 3)

Address (line 4)

Correspondent Name and Address

Area Code and Telephone Number (617) 570-1000

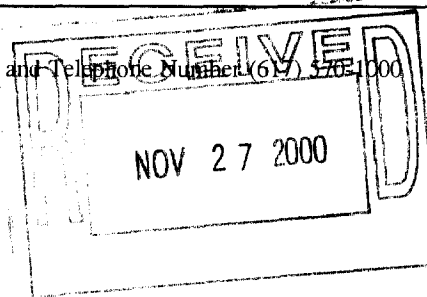
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Fee Amount for Properties Listed (37 CFR 3.41):

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Deposit Account Number:

07-1700

Authorization to charge additional fees:

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No ☐

Statement and Signature

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.

Robert M. O'Connell, Jr.
Name and Person Signing

Signature

November 27, 2000
Date Signed

CONTRIBUTION AND UNIT PURCHASE AGREEMENT

by and among

MATTEL, INC.,

A & E TELEVISION NETWORKS,

GENEALOGY HOLDINGS, LLC,

HEARST COMMUNICATIONS, INC.,

AND

GENEALOGY.COM, LLC

As of September 30, 1999

TRADEMARK

REEL: 002270 FRAME: 0583

This CONTRIBUTION AND UNIT PURCHASE AGREEMENT (this "Agreement") is entered into as of this 30th day of September, 1999 (the "Closing Date") by and among Mattel, Inc., a Delaware corporation (hereinafter referred to as "Mattel"), A & E Television Networks, a New York general partnership ("AETN"), Genealogy Holdings, LLC, a Delaware limited liability company (the "Investor"), Hearst Communications, Inc., a Delaware corporation ("Hearst") and Genealogy.com, LLC, a Delaware limited liability company (the "Company"). Each of Mattel, AETN, the Investor and Hearst is hereinafter referred to as a "Contributor" and, collectively, the "Contributors." Capitalized terms used herein but not defined shall have the meanings ascribed to such terms in Section 10 of this Agreement.

WHEREAS, Mattel (i) has entered into that certain License Agreement with the Company, dated as of the date hereof, in the form attached hereto as Exhibit A (the "License Agreement") pursuant to which Mattel has agreed to license certain of its software programs and trademarks to the Company (the "Licensed Assets") in exchange for the consideration set forth therein; (ii) has entered into that certain Distribution Agreement with the Company, dated as of the date hereof, in the form attached hereto as Exhibit B (the "Distribution Agreement") pursuant to which Mattel and the Company have agreed to the distribution of certain of the Company's software programs and other goods, in exchange for the consideration set forth therein; (iii) has entered into that certain Fulfillment Services Agreement with the Company, dated as of the date hereof, in the form attached hereto as Exhibit C (the "Fulfillment Services Agreement") pursuant to which Mattel has agreed to manufacture certain software programs and perform other services on behalf of the Company and fill orders for such software placed by the Company, all in exchange for the consideration set forth therein;

WHEREAS, Mattel has agreed to contribute certain tangible and intangible assets to the Company valued at \$11,500,000, all in exchange for 4,588,235 Preferred Units of limited liability company interests of the Company (the "Preferred Units") and a \$6,911,765 convertible debt security of the Company in the form of Exhibit D hereto (the "Convertible Note");

WHEREAS, AETN has agreed to contribute an aggregate of \$7,600,000 in cash to the Company, all in exchange for 7,600,000 Preferred Units;

WHEREAS, the Investor has agreed to contribute an aggregate of \$15,800,000 in cash to the Company in exchange for 15,800,000 Preferred Units;

WHEREAS, Hearst has agreed to contribute an aggregate of \$2,600,000 in cash to the Company in exchange for 2,600,000 Preferred Units;

WHEREAS, the Company has agreed to employ those Mattel employees listed on Schedule A attached hereto who accept the Company's offer of employment hereunder (each, a "Scheduled Employee" and, collectively, the "Scheduled Employees"); and

WHEREAS, the Company has agreed to accept the foregoing contributions and has agreed to issue the Preferred Units to Mattel, AETN, the Investor and Hearst as set forth herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties, covenants, and agreements herein contained, and for other good and valuable consideration mutually exchanged by the parties hereto, the receipt and sufficiency of which are hereby acknowledged, Mattel, AETN, the Investor, Hearst and the Company agree as follows:

SECTION 1 - CONTRIBUTION OF ASSETS.

SECTION 1.1 Contribution by Mattel.

(a) Transfer of Contributed Assets. Upon the terms and subject to the conditions set forth in this Agreement, Mattel hereby assigns, transfers, and delivers to the Company, as a capital contribution, free and clear of all Encumbrances, the Contributed Assets. The Contributed Assets includes all tangible assets located at the Fremont Facility and all other assets primarily used by Mattel and its Affiliates in the Genealogy.com Business including, without limitation, the following:

(i) the rights of Mattel in and to the Genealogy Goods, as the Genealogy Goods exist at the Closing Date, including all versions, upgrades, updates, modifications, and other materials related to the Genealogy Goods, in each case whether commercially available or in development as of the Closing Date, and all related source and object code and data structure information, as well as all source code and object code in development, designs, processes, drawings, schematics, blueprints, film footage, scripts, camera-ready copy, copyrights, copyright applications, inventions, processes, know-how, or trade secrets or proprietary information, except to the extent licensed under the License Agreement;

(ii) The technical and descriptive materials (other than those materials held as inventory) relating to the design, development, use or maintenance of the Genealogy Goods (the "Technical Documentation");

(iii) The trade names, trade dress, logos, packaging design, slogans, Internet Domain Names, registered and unregistered trademarks and service marks and applications identified on Schedule 1.1(a) (collectively, "Trademarks");

(iv) All patents, patent applications, patent rights, and inventions and discoveries and invention disclosures (whether or not patented) pertaining to the applications identified on Schedule 1.1(a) (collectively, "**Patents**");

(v) All copyrights in both published and unpublished works, including without limitation all compilations, databases and computer programs, and all copyright registrations and applications, and all derivatives, translations, adaptations and combinations of the above, including those Registered Copyrights identified on Schedule 1.1(a) (collectively, "**Copyrights**");

(vi) All know-how, trade secrets, confidential or proprietary information, research in progress, algorithms, data, designs, processes, formulae, drawings, schematics, blueprints, flow charts, models, prototypes, techniques, Beta testing procedures and Beta testing results (collectively, "**Trade Secrets**");

(vii) All franchises, licenses, permits, consents, approvals, technical information, telephone numbers (other than those used by Mattel in any of its other businesses) and claims of infringement against third parties related to the Contributed Assets (the "**Rights**");

(viii) To the extent permitted by law and by Mattel's contractual obligations, marketing materials, business strategies, outside analyst's plans and reports, outlooks, forecasts and other similar documents related to the Genealogy.com Business (collectively, "**Other Intangibles**"); and

(ix) All tangible personal property identified on Schedule 1.1(a) (the "**Tangible Assets**").

(b) Assigned Contracts. (i) Mattel hereby contributes to the Company, as a capital contribution, all of Mattel's rights and obligations under all the contracts used solely in the Genealogy.com Business (the "**Assigned Contracts**"), subject to the Company's obtaining all consents to assignments required under the Assigned Contracts (the "**Required Consents**") before or after the Closing Date. Mattel and the Company shall each use all commercially reasonable efforts to assist the Company in good faith in obtaining all Required Consents to such assignment. Notwithstanding any other provision of this Agreement, this Agreement shall not constitute an agreement to assign any contract or lease requiring a third-party consent if such an agreement to assign or an attempted assignment would constitute a breach thereof.

(ii) In relation to any of the Assigned Contracts for which a third party consent is not obtained in accordance with subparagraph (i) of this Section 1.1(b) and unless and until any such contract or lease shall be so assigned, the Company shall (insofar as the Company has notice of them and as it is lawful and practicable) perform as Mattel's sub-contractor or sub-licensee for the Company's benefit the obligations of Mattel thereunder from the Closing Date on such terms as shall (insofar as aforesaid)

give to the Company the benefits and obligations of each such contract, lease or license to the same extent as if the same had been assigned to the Company. Mattel shall perform all other obligations that are required to be performed by Mattel under such Assigned Contracts.

(c) Excluded Assets. Except as expressly identified in Section 1.1(a) or (b) or Schedule 1.1(c), Mattel is not contributing to the Company, and there shall not be included in the Contributed Assets, the Assigned Contracts or any of the other assets of Mattel, including without limitation, cash, cash equivalents, finished goods inventory and related component parts and accounts receivable accrued prior to the end of the Banner Blue Division's third (3rd) fiscal quarter, all of which shall be retained by Mattel. Mattel and the Company agree that they shall cooperate with each other following the Closing Date to ensure that any monies received by either of them following the Closing Date are apportioned as provided in this Agreement. An order taken for a product prior to the Banner Blue Division's third (3rd) quarter end shall be deemed accrued prior to such date.

(d) Assumed Liabilities. Subject to the terms and conditions of this Agreement, in reliance on the representations, warranties, covenants, and agreements of the parties contained herein, the Company hereby assumes and agrees to pay, discharge, or fulfill only the following liabilities and obligations: (i) all of the liabilities and obligations in respect of the Contributed Assets arising out of facts or circumstances occurring after the Closing, including, without limitation, any goods or capital improvements that are ordered by Mattel at the request of any of the Scheduled Employees prior to Closing and that are received by the Company on or after the Closing; (ii) all of the liabilities and obligations in respect of the Assigned Contracts which have been assigned to the Company, incurred or accrued on or after the Closing in accordance with their terms, with respect to facts or circumstances occurring after the Closing; (iii) the Assumed Employee Liabilities; (iv) the retention bonuses for the individuals set forth in Schedule 1.1(d) and (v) costs up to an amount equal to \$260,000 incurred by Mattel prior to the Closing in connection with the direct mass mailing done by Banner Blue Division on or about September 23, 1999 (collectively, the "**Assumed Liabilities**"). Notwithstanding anything contained in this Agreement to the contrary, except for the Assumed Liabilities, the Company is not assuming any liabilities of any nature, whether accrued, absolute, contingent or otherwise, known or unknown, asserted or unasserted, including, without limitation, any other liabilities of Mattel that accrued or directly relate to facts or circumstances occurring prior to Closing and the Excluded Employee Liabilities. The liabilities which are not assumed by the Company under this Agreement are hereinafter sometimes referred to as the "**Excluded Liabilities**." The assumption of said liabilities by any party hereunder shall not enlarge any rights of third parties under contracts or arrangements with the Company or Mattel and nothing herein shall prevent any party from contesting in good faith with any third party any of said liabilities.

(e) Conveyance Instruments. In order to effectuate the contribution of the Contributed Assets and Mattel's rights and obligations under the Assigned Contracts as

contemplated by this Section 1.1, Mattel will, at the Closing, or with respect to those third party consents not available, as soon as practicable thereafter, execute and deliver, or cause to be executed and delivered, all such documents or instruments of assignment, transfer, or conveyance, in each case dated the Closing Date (collectively, the "**Conveyance Instruments**"), as the parties shall reasonably deem necessary or appropriate to vest in, transfer, or confirm title to the foregoing.

SECTION 1.2 Contribution by AETN. Upon the terms and subject to the conditions set forth in this Agreement, AETN hereby agrees to transfer and deliver to the Company, as a capital contribution, an aggregate of SEVEN MILLION SIX HUNDRED THOUSAND DOLLARS (\$7,600,000) (the "**AETN Cash Contribution**"). AETN agrees to make the AETN Cash Contribution by a check or wire transfer of immediately available funds at the Closing.

SECTION 1.3 Contribution by the Investor. Upon the terms and subject to the conditions set forth in this Agreement, the Investor hereby agrees to transfer and deliver to the Company, as a capital contribution, an aggregate of FIFTEEN MILLION EIGHT HUNDRED THOUSAND DOLLARS (\$15,800,000) (the "**Investor Cash Contribution**"). The Investor agrees to make the Investor Cash Contribution by a check or wire transfer of immediately available funds at the Closing.

SECTION 1.4 Contribution by Hearst. Upon the terms and subject to the conditions set forth in this Agreement, Hearst hereby agrees to transfer and deliver to the Company, as a capital contribution, an aggregate of TWO MILLION SIX HUNDRED THOUSAND DOLLARS (\$2,600,000) (the "**Hearst Cash Contribution**"). Hearst agrees to make the Hearst Cash Contribution by a check or wire transfer of immediately available funds at the Closing.

SECTION 1.5 Issuance of Units by the Company in Consideration for Contributions.

(a) Mattel. In consideration for the Contributed Assets and Mattel's rights and obligations under the Assigned Contracts, upon the terms and subject to the conditions set forth in this Agreement, on the Closing Date, the Company shall issue to Mattel 4,588,235 Preferred Units and the Convertible Note, and assume the Assumed Liabilities.

(b) AETN. In consideration for the AETN Cash Contribution, upon the terms and subject to the conditions set forth in this Agreement, on the Closing Date, the Company shall issue to AETN 7,600,000 Preferred Units.

(c) Investor. In consideration for the Investor Cash Contribution, upon the terms and subject to the conditions set forth in this Agreement, on the Closing Date, the Company shall issue to the Investor 15,800,000 Preferred Units.

(d) Hearst. In consideration for the Hearst Cash Contribution, upon the terms and subject to the conditions set forth in this Agreement, on the Closing Date, the company shall issue to the Investor 2,600,000 Preferred Units.

SECTION 1.6 Time and Place of Closing. The closing of the contributions of assets and purchases and sales of the Units provided for in this Agreement (the "**Closing**") shall be held at the offices of Goodwin, Procter, & Hoar LLP, Boston, Massachusetts on September 30, 1999, or at such other place or earlier or later date or time as may be fixed by mutual agreement of all parties hereto. For purposes of interpreting this Agreement, the Closing shall be deemed to have been effective immediately prior to the close of business, Pacific Coast time, on the Closing Date.

SECTION 1.7 Further Assurances. Each party hereto shall execute and deliver after the date hereof such instruments and take such other actions as the other party may reasonably request in order to carry out the intent of this Agreement or to better evidence or effectuate the transactions contemplated herein.

SECTION 2 - EVENTS OCCURRING ON THE CLOSING DATE.

SECTION 2.1 Deliveries by Mattel. Simultaneously with the execution and delivery hereof, Mattel has delivered the following:

(a) Limited Liability Company Agreement. An executed copy of the Company LLC Agreement, in the form attached hereto as Exhibit E (the "**Company LLC Agreement**").

(b) License Agreement. An executed copy of the License Agreement, in the form attached hereto as Exhibit A.

(c) Distribution Agreement. An executed copy of the Distribution Agreement, in the form attached hereto as Exhibit B.

(d) Fulfillment Services Agreement. An executed copy of the Fulfillment Services Agreement, in the form attached hereto as Exhibit C.

(e) Transition Services Agreement. An executed copy of the Transition Services Agreement, in the form attached hereto as Exhibit F (the "**Transition Services Agreement**").

(f) Genealogy Goods. Copies of the following: (i) all technical data, product literature and other documentation relating to the Genealogy Goods, all in form and substance reasonably satisfactory to the Company; (ii) all electronic files, gold masters, source code and related documentation and materials relating to the Genealogy Goods; and (iii) a list

of "most frequently asked questions" to Mattel's customer support and technical support personnel for the Genealogy Goods.

SECTION 2.2 Deliveries by AETN. Simultaneously with the execution and delivery hereof, AETN has delivered the following:

(a) Limited Liability Company Agreement. An executed copy of the Company LLC Agreement, in the form attached hereto as Exhibit E.

(b) Funds. The AETN Cash Contribution by check or wire transfer of immediately available funds.

SECTION 2.3 Deliveries by the Investor. Simultaneously with the execution and delivery hereof, the Investor has delivered the following:

(a) Limited Liability Company Agreement. An executed copy of the Company LLC Agreement, in the form attached hereto as Exhibit E.

(b) Funds. The Investor Cash Contribution by check or wire transfer of immediately available funds.

SECTION 2.4 Deliveries by Hearst. Simultaneously with the execution and delivery hereof, Hearst has delivered the following:

(a) Limited Liability Company Agreement. An executed copy of the Company LLC Agreement, in the form attached hereto as Exhibit E.

(b) Funds. The Hearst Cash Contribution by check or wire transfer of immediately available funds.

SECTION 2.5 Deliveries by the Company. Simultaneously with the execution hereof, the Company has delivered the following:

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(b) License Agreement. An executed copy of the License Agreement, in the form attached hereto as Exhibit A.

(c) Distribution Agreement. An executed copy of the Distribution Agreement, in the form attached as Exhibit B.

(d) Fulfillment Services Agreement. An executed copy of the Fulfillment Services Agreement, in the form attached as Exhibit C.

(e) Transition Services Agreement. An executed copy of the Transition Services Agreement, in the form attached hereto as Exhibit F.

SECTION 3 - REPRESENTATIONS AND WARRANTIES OF MATTEL.

Mattel represents and warrants to the Company as follows:

SECTION 3.1 Investment Status. Mattel is an "accredited investor" as such term is defined in Rule 501 under the Securities Act of 1933. Mattel is purchasing the Preferred Units for its own account, for investment only and not with a view to, or any present intention of, effecting a distribution of such securities or any part thereof except pursuant to a registration or an available exemption under applicable law. Mattel acknowledges that its Preferred Units have not been registered under the Securities Act or the securities laws of any state or other jurisdiction and cannot be disposed of unless they are subsequently registered under the Securities Act and any applicable state laws or exemption from such registration is available.

SECTION 3.2 Authority. Mattel has full legal right, authority and power to enter into this Agreement and each agreement, document and instrument to be executed and delivered by or on behalf of Mattel pursuant to or as contemplated by this Agreement and to carry out the transactions and perform fully its obligations contemplated hereby and thereby, and the execution, delivery and performance by Mattel of this Agreement and each such other agreement, document and instrument have been duly authorized by all necessary action under Mattel's certificate of incorporation and by-laws. This Agreement and each agreement, document and instrument executed and delivered by Mattel pursuant to or as contemplated by this Agreement constitute, or when executed and delivered will constitute, valid and binding obligations of Mattel enforceable in accordance with their respective terms subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally, and general principles of equity.

SECTION 3.3 Investment Banking; Brokerage Fees. Mattel has not incurred or become liable for any broker's or finder's fee, banking fees or similar compensation relating to or in connection with this Agreement or the transactions contemplated hereby.

SECTION 3.4 Non-Contravention. The execution, delivery and performance by Mattel of this Agreement and the related documents to be executed and delivered by Mattel do not: (i) violate or result in a default (whether after the giving of notice, lapse of time or both) under any contract or obligation to which Mattel is a party or by which Mattel is bound, or any provision of Mattel's organizational documents; (ii) violate or result in a violation of, or constitute a default under, any provision of any law, regulation or rule, or any order of, or any

restriction imposed by, any court or governmental agency applicable to Mattel; (iii) require from Mattel any notice to, declaration or filing with, or consent or approval of, any governmental authority or other third party; or (iv) result in the creation or imposition of any mortgage, pledge, lien, security interest or other charge or encumbrance on any of the Contributed Assets, in each of clauses (i) through (iv) except as would not, individually or in the aggregate, have a material adverse effect on the Company, or Mattel's ability to perform its obligation hereunder or under the other documents contemplated by Section 2.1.

SECTION 3.5 Organization and Good Standing. Mattel, Inc. is a corporation duly organized, validly existing and in good standing under the corporate laws of the State of Delaware. Mattel, Inc. is duly licensed or qualified to transact business as a foreign corporation and is in good standing in each jurisdiction in which the nature of the business or the character of the properties owned or leased by Mattel, Inc. requires such licensing or qualification, except where the failure to so qualify would not have a material adverse effect on Mattel, or Mattel's ability to perform its obligation hereunder or under the other documents contemplated by Section 2.1.

SECTION 3.6 Tangible Assets. Mattel has good and marketable title free and clear of all claims to the Tangible Assets owned by Mattel, except for claims that would not, individually or in the aggregate, have a material adverse effect on the Contributed Assets. With respect to Tangible Assets leased by Mattel as lessee, all leases, conditional sale contracts, franchises or licenses pursuant to which Mattel may hold or use (or permit others to hold or use) such Tangible Assets are valid and in full force and effect, and there is not under any of such instruments any existing default or event of default or event which with notice or lapse of time or both would constitute such a default, except for such defaults that would not, individually or in the aggregate, have a material adverse effect on the Contributed Assets, or Mattel's ability to perform its obligation hereunder or under the other documents contemplated by Section 2.1. The Tangible Assets are in good condition, ordinary wear and tear excepted, for property of comparable type, age and usage.

SECTION 3.7 Sufficiency of Contributed Assets, Assigned Contracts and Licensed Assets. The Contributed Assets, the Assigned Contracts and the Licensed Assets, when taken together with the administrative, support and distribution services to be performed by Mattel under the Transition Services Agreement, the Fulfillment Services Agreement and the Distribution Agreement, include all of the assets, properties, rights, privileges, claims and contracts of every kind and nature, real and personal, tangible and intangible, absolute or contingent, owned or licensed by Mattel or any of its Affiliates, and that are used by Mattel or any of its Affiliates primarily for the operation of the Genealogy.com Business and located at the Fremont Facility or, in the case of tangible assets (exclusive of computer services) located elsewhere, material to the Genealogy.com Business exclusive of corporate overhead services, including, without limitation, legal and human resources.

SECTION 3.8 Litigation. Except as set forth on Schedule 3.8, there is no (a) action, suit, claim or proceeding pending or, to the Knowledge of Mattel, threatened, against or affecting the Contributed Assets (whether or not Mattel is a party or prospective party thereto), or to the Knowledge of Mattel, pending or threatened against or affecting the Assigned Contracts, at law or in equity, or before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, (b) arbitration proceeding relating to the Contributed Assets, or to the Knowledge of Mattel, relating to the Assigned Contracts or (c) governmental inquiry pending or, to the Knowledge of Mattel, threatened against, involving or affecting the Contributed Assets, or to the Knowledge of Mattel, threatened against, involving or affecting the Assigned Contracts. There are no outstanding orders, writs, judgments, injunctions or decrees of any court, governmental agency or arbitration tribunal against, involving or affecting, the Contributed Assets, or to the Knowledge of Mattel, against, involving or affecting the Assigned Contracts.

SECTION 3.9 Intellectual Property.

(a) **Ownership of Intellectual Property Assets.** Mattel is the exclusive owner of, and has good, valid and marketable title to all of the Intellectual Property Assets free and clear of all mortgages, pledges, charges, liens, equities, security interests, or other Encumbrances or has obtained all rights to assign or, to the extent otherwise consistent with the terms of this Agreement, the Intellectual Property Rights. No claim is pending or, to Mattel's Knowledge, threatened against Mattel and/or its officers, employees, and consultants to the effect that Mattel's right, title and interest in and to the Intellectual Property Assets is invalid or unenforceable by Mattel. All former and current employees, consultants and contractors of Mattel have executed written instruments with Mattel that assign to Mattel all rights to any inventions, improvements, discoveries, or information relating to the business of Mattel.

(b) **Patents.** Schedule 1.1(a) sets forth a complete and accurate list and summary description of all Patents used in the conduct of the Genealogy.com Business. All of the issued Patents are currently in compliance with formal legal requirements (including without limitation payment of filing, examination and maintenance fees and proofs of working or use), are valid and enforceable, and are not subject to any maintenance fees or taxes or actions falling due within ninety (90) days after the date of the Closing. In each case where a Patent is held by Mattel by assignment, the assignment has been duly recorded with the U.S. Patent and Trademark Office and all other jurisdictions of registration. No Patent has been or is now involved in any interference, reissue, re-examination or opposition proceeding. To Mattel's Knowledge, there is no potentially interfering patent or patent application of any third party.

(c) **Trademarks.** Schedule 1.1(a) sets forth a complete and accurate list and summary description of all Trademarks used in the conduct of the Genealogy.com Business. All Trademarks that have been registered with the United States Patent and Trademark Office and all other jurisdictions of registration are currently in compliance with formal legal requirements (including without limitation the timely post-registration filing of affidavits of use

and incontestability and renewal applications). In each case where a Trademark is held by Mattel by assignment, the assignment has been duly recorded with the U.S. Patent and Trademark Office and all other jurisdictions of registration. No Trademark has been or is now involved in any opposition, invalidation or cancellation proceeding and, to Mattel's Knowledge, no such action is threatened with respect to any of the Trademarks.

(d) Copyrights. Schedule 1.1(a) sets forth a complete and accurate list and summary description of all registered and pending Copyrights used in the conduct of the Genealogy.com Business. All Copyrights that have been registered with the United States Copyright Office are identified on such Schedule and are currently in compliance with formal legal requirements, are valid and enforceable. In each case where a Copyright is held by Mattel by assignment, the assignment has been duly recorded with the U.S. Copyright Office and all other jurisdictions of registration. None of the source or object code, algorithms, or structure included in Intellectual Property Assets is copied from, based upon, or derived from any other source or object code, algorithm or structure in violation of the rights of any third party. Any substantial similarity of Intellectual Property Assets to any computer program owned by any third party did not result from Intellectual Property Assets being copied from, based upon, or derived from any such computer software program in violation of the rights of any third party.

(e) Trade Secrets. Mattel has taken all reasonable security measures (including, without limitation, entering into appropriate confidentiality and nondisclosure agreements with all officers, directors, employees, and consultants of Mattel and any other persons with access to the Trade Secrets) to protect the secrecy, confidentiality and value of all Trade Secrets. To the Knowledge of Mattel, there has not been any breach by any party to any such confidentiality or non-disclosure agreement. The Trade Secrets have not been disclosed by Mattel to any person or entity other than employees or contractors of Mattel or other third parties who had a need to know and use the Trade Secrets in the course of their employment or contract performance. Except as set forth on Schedule 1.1(a), (i) Mattel has not directly or indirectly granted any rights or interests in the source code of the Programs, and (ii) since Mattel developed the source code of the Programs, Mattel has not provided, licensed or disclosed the source code of the Programs to any person or entity. Mattel has the right to use, free and clear of claims of third parties, all Trade Secrets. To the Knowledge of Mattel, no third party has asserted that the use by Mattel of any Trade Secret violates the rights of any third party.

(f) Other Intangibles. Schedule 1.1(a) sets forth a complete and accurate list of Other Intangibles used in the conduct of the Genealogy.com Business.

(g) Exclusivity of Rights. Mattel has the exclusive right to use, license, distribute, transfer and bring infringement actions with respect to the Intellectual Property Assets it owns. Except as set forth on Schedule 3.9(g), Mattel (i) has not granted to any party any exclusive rights to use any of its Intellectual Property Assets; and (ii) is not obligated to and does not pay

royalties or other fees to anyone for Mattel's ownership, use, license or transfer of any of its Intellectual Property Assets.

(h) Licenses Received. Assigned Contracts include all licenses or other agreements under which Mattel is granted rights by others in Intellectual Property Assets. All such licenses or other agreements are in full force and effect, Mattel is not in default and, to the Knowledge of Mattel there is no material default by any other party thereto. True and complete copies of all such licenses or other agreements, and any amendments thereto, have been made available to the Contributors, and to the Knowledge of Mattel, the licensors under the licenses and other agreements under which Mattel is granted rights have all requisite power and authority to grant the rights purported to be conferred thereby.

(i) Licenses Granted. All licenses or other agreements under which Mattel has granted rights to others in Intellectual Property Assets are listed in Schedule 3.9(i). Except as set forth thereon, all such licenses or other agreements are in full force and effect, Mattel is not in default thereunder, and to the Knowledge of Mattel there is no material default by any other party thereto. True and complete copies of all such licenses or other agreements, and any amendments thereto, have been provided to the Contributors.

(j) Affirmative Obligations. Mattel has no obligation to any other person to maintain, modify, improve or upgrade the Programs.

(k) Infringement. None of the Intellectual Property Assets manufactured and sold, nor any process or know-how used, by Mattel infringes or is alleged to infringe any patent, trademark, service mark, trade name, copyright or other proprietary right or is a derivative work based on the work of any other person.

(l) Nondisclosure Contracts. A complete list of all Nondisclosure Contracts is provided on Schedule 3.9(l) attached hereto. Each of the Nondisclosure Contracts is a valid and binding obligation of Mattel enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally.

SECTION 3.10 The Assigned Contracts. Each of the Assigned Contracts is a valid and binding obligation of Mattel and the other parties thereto, enforceable in accordance with its terms, except as may be affected by bankruptcy, insolvency, moratorium or similar laws affecting creditors' rights generally and general principles of equity relating to the availability of equitable remedies. Except as set forth on Schedule 3.8, there have not been any defaults by Mattel or, to the Knowledge of Mattel, defaults or any claims of default or claims of nonenforceability by the other party or parties under or with respect to any of the Assigned Contracts which, individually or in the aggregate, would have a material adverse effect on the Company or on the Company's ability to conduct the Genealogy.com Business after the Closing.

SECTION 3.11 Compliance with Law. Except as set forth in Schedule 3.11, Mattel is in compliance with all, and is not in violation of any, law, ordinance, order, decree, rule or regulation of any governmental agency or authority applicable to the Contributed Assets or the Assigned Contracts, the violation of or noncompliance with which could have a material adverse effect on the Company or on the Company's ability to conduct the Genealogy.com Business after the Closing, and Mattel's ability to consummate the transactions contemplated under this Agreement.

SECTION 3.12 Employees; Labor Matters. Mattel is not delinquent in payments to any of the Scheduled Employees for any wages, salaries, commissions, bonuses or other direct compensation for any services performed for it to the date hereof or amounts required to be reimbursed to such Scheduled Employees. To the Knowledge of Mattel, there are no charges of employment discrimination or unfair labor practices, nor are there any strikes, slowdowns, stoppages of work, or any other concerted interference with normal operations existing, pending or threatened against Mattel and involving the Scheduled Employees.

SECTION 3.13 Revenues; Balance Sheet. The revenues for the Genealogy.com Business for the eight (8) month period ended August 31, 1999 were not materially less than \$17,600,000.

SECTION 3.14 Domain Name.

(a) Mattel properly registered the Domain Name with Network Solutions, Inc. or InterNIC without committing fraud or misrepresentation;

(b) There are no existing or threatened claims or proceedings by any third party relating to Mattel's use, registration, or ownership of the Domain Name;

(c) Neither the Domain Name nor the Trademark is subject to any outstanding order, decree, judgment, stipulation, written restriction, undertaking, or agreement that would prevent Mattel from complying with any of its obligations under this Agreement;

(d) Neither the Domain Name nor the Trademark is subject to Encumbrances;

(e) Mattel has not granted any licenses to or authorized any third parties to use (i) the Domain Name or any confusingly similar domain name or (ii) the Mark or any confusingly similar trademark or service mark; and

(f) Other than the Domain Name and the Mark, Mattel does not own any domain name or trademark registrations or applications containing the term "genealogy", a component or alternate spelling thereof or other similar or confusingly similar term.

SECTION 3.15 Year 2000.

(a) Genealogy Goods.

(i) Each of the Genealogy Goods is Year 2000 Compliant, is designed to be used prior to, on and after January 1, 2000; will operate consistently, predictably and accurately, in all material respects without interruption or manual intervention, during each such time period and the transitions between them, in relation to dates it encounters or processes; and

(ii) All date recognition and processing by each of the Genealogy Goods will correctly recognize and process the date of February 29, and any related data, during Leap Years.

(b) For purposes of this Section:

(i) "Leap Year" means any year during which an extra day is added in February (*e.g.*, the year 2000 is a Leap Year); and

(ii) "Year 2000 Compliant" means dates before, on or after January 1, 2000, encountered and/or processed by the Genealogy Goods will be correctly recognized, calculated, sorted, stored, displayed and/or otherwise processed in any level of computer hardware or software, including, but not limited to, microcode, firmware, application programs, system software, utilities, files and databases.

SECTION 4 - REPRESENTATIONS AND WARRANTIES OF AETN.

AETN represents and warrants to the Company as follows:

SECTION 4.1 Investment Status. AETN is an "accredited investor" as such term is defined in Rule 501 under the Securities Act. AETN is purchasing the Preferred Units for its own account, for investment only and not with a view to, or any present intention of, effecting a distribution of such securities or any part thereof except pursuant to a registration or an available exemption under applicable law. AETN acknowledges that its Preferred Units have not been registered under the Securities Act or the securities laws of any state or other jurisdiction and cannot be disposed of unless they are subsequently registered under the Securities Act and any applicable state laws or exemption from such registration is available.

SECTION 4.2 Authority. AETN has full legal right, authority and power to enter into this Agreement and each agreement, document and instrument to be executed and delivered by or on behalf of AETN pursuant to or as contemplated by this Agreement and to

carry out the transactions and to perform fully its obligations contemplated hereby and thereby, and the execution, delivery and performance by AETN of this Agreement and each such other agreement, document and instrument have been duly authorized by all necessary action. This Agreement and each agreement, document and instrument executed and delivered by AETN pursuant to or as contemplated by this Agreement constitute, or when executed and delivered will constitute, valid and binding obligations of AETN enforceable in accordance with their respective terms subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally, and general principles of equity.

SECTION 4.3 Investment Banking: Brokerage Fees. AETN has not incurred or become liable for any broker's or finder's fee, banking fees or similar compensation relating to or in connection with this Agreement or the transactions contemplated hereby.

SECTION 4.4 Non-Contravention. The execution, delivery and performance by AETN of this Agreement and the related documents to be executed and delivered by AETN do not: (i) violate or result in a default (whether after the giving of notice, lapse of time or both) under any contract or obligation to which AETN is a party or by which AETN is bound, or any provision of any constituent document of AETN; (ii) violate or result in a violation of, or constitute a default under, any provision of any law, regulation or rule, or any order of, or any restriction imposed by, any court or governmental agency applicable to AETN; (iii) require from AETN any notice to, declaration or filing with, or consent or approval of, any governmental authority or other third party; or (iv) accelerate any obligation under or give rise to a right of termination or result in the loss of benefit under any indenture or loan or credit agreement or any other material agreement, contract, instrument, mortgage, lien, lease, permit, authorization, order, writ, judgment, injunction, decree, determination or arbitration award to which AETN is a party or by which the property of AETN is bound or affected, or result in the creation or imposition of any mortgage, pledge, lien, security interest or other charge or encumbrance on any of the assets or properties of AETN, in each of clauses (i) through (iv) except as would not, individually or in the aggregate, have a material adverse effect on the Company.

SECTION 5 - REPRESENTATIONS AND WARRANTIES OF THE INVESTOR.

The Investor represents and warrants to the Company as follows:

SECTION 5.1 Investment Status. The Investor is an "accredited investor" as such term is defined in Rule 501 under the Securities Act. The Investor is purchasing the Preferred Units for its own account, for investment only and not with a view to, or any present intention of, effecting a distribution of such securities or any part thereof except pursuant to a registration or an available exemption under applicable law. The Investor acknowledges that its Preferred Units have not been registered under the Securities Act or the securities laws of any state or other jurisdiction and cannot be disposed of unless they are subsequently registered

under the Securities Act and any applicable state laws or exemption from such registration is available.

SECTION 5.2 Authority. The Investor has full legal right, authority and power to enter into this Agreement and each agreement, document and instrument to be executed and delivered by or on behalf of the Investor pursuant to or as contemplated by this Agreement and to carry out the transactions and to perform fully its obligations contemplated hereby and thereby, and the execution, delivery and performance by the Investor of this Agreement and each such other agreement, document and instrument have been duly authorized by all necessary action. This Agreement and each agreement, document and instrument executed and delivered by the Investor pursuant to or as contemplated by this Agreement constitute, or when executed and delivered will constitute, valid and binding obligations of the Investor enforceable in accordance with their respective terms subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally, and general principles of equity.

SECTION 5.3 Investment Banking; Brokerage Fees. The Investor has not incurred or become liable for any broker's or finder's fee, banking fees or similar compensation relating to or in connection with this Agreement or the transactions contemplated hereby.

SECTION 5.4 Non-Contravention. The execution, delivery and performance by the Investor of this Agreement and the related documents to be executed and delivered by the Investor do not: (i) violate or result in a default (whether after the giving of notice, lapse of time or both) under any contract or obligation to which the Investor is a party or by which the Investor is bound, or any provision of any constituent document of the Investor; (ii) violate or result in a violation of, or constitute a default under, any provision of any law, regulation or rule, or any order of, or any restriction imposed by, any court or governmental agency applicable to the Investor; (iii) require from the Investor any notice to, declaration or filing with, or consent or approval of, any governmental authority or other third party; or (iv) accelerate any obligation under or give rise to a right of termination or result in the loss of benefit under any indenture or loan or credit agreement or any other material agreement, contract, instrument, mortgage, lien, lease, permit, authorization, order, writ, judgment, injunction, decree, determination or arbitration award to which the Investor is a party or by which the property of the Investor is bound or affected, or result in the creation or imposition of any mortgage, pledge, lien, security interest or other charge or encumbrance on any of the assets or properties of the Investor, in each of clauses (i) through (iv) except as would not, individually or in the aggregate, have a material adverse effect on the Company.

SECTION 6 - REPRESENTATIONS AND WARRANTIES OF HEARST.

Hearst represents and warrants to the Company as follows:

SECTION 6.1 Investment Status. Hearst is an "accredited investor" as such term is defined in Rule 501 under the Securities Act. Hearst is purchasing the Preferred Units for its own account, for investment only and not with a view to, or any present intention of, effecting a distribution of such securities or any part thereof except pursuant to a registration or an available exemption under applicable law. Hearst acknowledges that its Preferred Units have not been registered under the Securities Act or the securities laws of any state or other jurisdiction and cannot be disposed of unless they are subsequently registered under the Securities Act and any applicable state laws or exemption from such registration is available.

SECTION 6.2 Authority. Hearst has full legal right, authority and power to enter into this Agreement and each agreement, document and instrument to be executed and delivered by or on behalf of Hearst pursuant to or as contemplated by this Agreement and to carry out the transactions and to perform fully its obligations contemplated hereby and thereby, and the execution, delivery and performance by Hearst of this Agreement and each such other agreement, document and instrument have been duly authorized by all necessary action. This Agreement and each agreement, document and instrument executed and delivered by Hearst pursuant to or as contemplated by this Agreement constitute, or when executed and delivered will constitute, valid and binding obligations of Hearst enforceable in accordance with their respective terms subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally, and general principles of equity.

SECTION 6.3 Investment Banking; Brokerage Fees. Hearst has not incurred or become liable for any broker's or finder's fee, banking fees or similar compensation relating to or in connection with this Agreement or the transactions contemplated hereby.

SECTION 6.4 Non-Contravention. The execution, delivery and performance by Hearst of this Agreement and the related documents to be executed and delivered by Hearst do not: (i) violate or result in a default (whether after the giving of notice, lapse of time or both) under any contract or obligation to which Hearst is a party or by which Hearst is bound, or any provision of any constituent document of Hearst; (ii) violate or result in a violation of, or constitute a default under, any provision of any law, regulation or rule, or any order of, or any restriction imposed by, any court or governmental agency applicable to Hearst; (iii) require from Hearst any notice to, declaration or filing with, or consent or approval of, any governmental authority or other third party; or (iv) accelerate any obligation under or give rise to a right of termination or result in the loss of benefit under any indenture or loan or credit agreement or any other material agreement, contract, instrument, mortgage, lien, lease, permit, authorization, order, writ, judgment, injunction, decree, determination or arbitration award to which Hearst is a party or by which the property of Hearst is bound or affected, or result in the creation or imposition of any mortgage, pledge, lien, security interest or other charge or encumbrance on any of the assets or properties of Hearst, in each of clauses (i) through (iv) except as would not, individually or in the aggregate, have a material adverse effect on the Company.

SECTION 7 - REPRESENTATIONS AND WARRANTIES OF THE COMPANY.

The Company represents and warrants to each of the Contributors as follows:

SECTION 7.1 Organization and Good Standing. The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. The Company is duly licensed or qualified to transact business as a foreign corporation and is in good standing in each jurisdiction in which the nature of the business or the character of the properties owned or leased by the Company requires such licensing or qualification, except where the failure to so qualify would not have a material adverse impact on the Company.

SECTION 7.2 Authorization and Enforceability. The Company has the full power and authority to enter into this Agreement and to carry out the transactions and to perform fully its obligations contemplated hereby. The execution, delivery and performance of this Agreement and the documents contemplated hereby, and the consummation of the transactions contemplated hereby and thereby, including the issuance and sale of the Units, have been duly authorized and approved by the Company. This Agreement, and each of the other agreements, documents and instruments to be executed and delivered by the Company have been duly executed and delivered by, and constitute the valid and binding obligation of the Company, enforceable against the Company in accordance with their terms subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally, and general principles of equity. Upon the closing of the transactions contemplated hereby, all of the Units issued pursuant to this Agreement (i) will have been duly authorized and validly issued to each of the Contributors, (ii) will be fully paid and nonassessable, and (iii) will have been issued in compliance with all applicable state and federal laws concerning the issuance of securities.

SECTION 7.3 No Prior Activity. The Company was formed for the purpose of entering into the transactions contemplated hereby, has not engaged in any activity before the date hereof other than in connection with the transactions contemplated hereby and has not incurred any liabilities as of the date hereof, except in connection with the transactions contemplated by this Agreement.

SECTION 7.4 Investment Banking: Brokerage Fees. The Company has not incurred or become liable for any broker's or finder's fee, banking fees or similar compensation relating to or in connection with this Agreement or the transactions contemplated hereby.

SECTION 7.5 Contributed Assets. Officers of the Company selected the assets that comprise the Contributed Assets, and the Contributed Assets consist of only those assets necessary for the Company to operate the Genealogy.com Business.

SECTION 8 - RIGHTS AND OBLIGATIONS SUBSEQUENT TO CLOSING.

SECTION 8.1 Survival of Warranties. Each of the representations, warranties, agreements, covenants and obligations herein or in any schedule, exhibit or certificate delivered by any party to the other party incident to the transactions contemplated hereby are material, shall be deemed to have been relied upon by the other party and shall survive the Closing for the applicable surviving period set forth below regardless of any investigation and shall not merge in the performance of any obligation by either party hereto. Each of the representations and warranties set forth in Sections 3.2, 3.3, 3.6, 4.2, 4.3, 5.2, 5.3, 6.2, 6.3, 7.2 and 7.4 shall survive the Closing until the expiration of all applicable statute of limitations under all applicable governing law. Each of the representations and warranties set forth in Section 3.9 shall survive the Closing for two (2) years. All other representations and warranties herein shall survive the Closing for eighteen (18) months.

SECTION 8.2 (a) Collection of Assets. Subsequent to the Closing, the Company shall have the right and authority to collect all receivables (accrued after the Closing) and other items transferred, sublicensed or assigned to it by Mattel hereunder and Mattel agrees that it will promptly transfer or deliver to the Company from time to time, any property that Mattel may receive with respect to any claims, contracts, licenses, leases, commitments, sales orders, purchase orders, receivables or any other items accrued in connection with the Contributed Assets, the Assigned Contracts (subject to Section 1.1(b)) after the Closing.

(b) (i) Cooperation. Mattel agrees to cooperate with the Company and to follow the Company' instructions in order to effectuate the transfer of the Domain Name in a timely manner. Specifically, Mattel agrees to prepare and transmit the necessary Network Solutions, Inc. or InterNIC registration deletion template and/or to correspond with Network Solutions, Inc. or InterNIC to authorize transfer of the Domain Name.

(ii) No Use of Similar Domain Name. Mattel agrees to not use or register any domain name, trademark or service mark containing the term "genealogy," a component or alternate spelling thereof or other similar or confusingly similar term. .

(iii) No Objection to Registration of Domain Name or Trademark. Mattel agrees not to object to or otherwise challenge the Company's use and registration worldwide of any domain name, trademark or service mark containing the term "genealogy" or any similar or confusingly similar term.

SECTION 8.3 Expenses. The Company shall pay all out of pocket third-party costs and expenses incurred or to be incurred by each of the parties in negotiating and preparing this Agreement and the other documents contemplated hereby, and in carrying out and completing the transactions contemplated by this Agreement and such other documents.

SECTION 8.4 Notice of Default. Promptly upon the occurrence of, or promptly upon any party hereto becoming aware of the impending or threatened occurrence of, any event which would cause or constitute a breach or default, or would have caused or constituted a breach or default had such event occurred or been known to such party prior to the date hereof, of any of the representations, warranties or covenants of such party contained in or referred to in this Agreement or in any Schedule or Exhibit referred to in this Agreement, such party shall give detailed written notice thereof to each of the other parties hereto and shall use its commercially reasonable efforts to prevent or promptly remedy the same.

SECTION 8.5 Contributed Assets. If the Contributed Assets include assets that are not necessary for the Company to operate the Genealogy.com Business as it is presently conducted by Mattel, the Company shall notify Mattel of its possession of such assets and promptly assign, transfer and deliver such assets to Mattel.

SECTION 8.6 Confidentiality. Each party agrees that such party, its officers, directors, agents and representatives will hold in strict confidence, and will not use, any confidential or proprietary data or information obtained from the other parties with respect to its business or financial condition or otherwise without the written approval of such other parties, as applicable. Information generally known in the industry or which has been disclosed by third parties which have a right to do so shall not be deemed confidential or proprietary information for purposes of this Section 8.6.

SECTION 8.7 Invention and Confidentiality Agreements. As soon as reasonably practicable, (i) the Company shall offer employment to each of the Scheduled Employees on terms comparable to the current employment arrangement between Mattel and such Scheduled Employee, and (ii) the Company shall enter into an Invention and Confidentiality Agreement with each of its employees containing provisions which prohibit such employee from disclosing confidential information of the Company, and (iii) provide for the assignment to the Company of any inventions of such employee, subject to Section 2870 of the California Labor Code. In addition, the Company shall use its commercially reasonable efforts to cause each employee to enter into an agreement prohibiting such employee from soliciting or hiring employees of the Company for a period of 12 months following such employee's termination of employment with the Company.

SECTION 8.8 Non-solicitation of Mattel Employees. Until the one year anniversary of the Closing Date, (i) the Company shall not, without the consent of Mattel's Senior Vice President of Human Resources, solicit employees of Mattel or its wholly owned subsidiaries, other than the Scheduled Employees, for the purpose of offering or encouraging any such employees to become employees, contractors or agents of the Company, and (ii) Mattel shall not, without the consent of the Company's President, solicit employees of the Company or its wholly owned subsidiaries for the purpose of offering or encouraging any such employees to become employees, contractors or agents of Mattel.

SECTION 8.9 Medical Plans. On or before six (6) months after the Closing Date, the Company shall cause the Scheduled Employees who accept employment with the Company to be covered by one or more medical benefit plans (the "**Company's Medical Plans**") which shall make available benefits to such employees and their dependents which in the aggregate are substantially comparable to the benefits which were provided to such employees and their dependents by Mattel's medical plans. Company's Medical Plans shall not contain any "pre-existing conditions" exclusions or limitations or "actively at work" requirements which would cause any of such employees or their dependents to be excluded from Company's Medical Plans immediately after the Closing Date, except to the extent such exclusions or requirements were applicable under Mattel's medical plans immediately prior to the Closing. The Company shall give effect, in determining any deductible and maximum out-of-pocket limitations, to claims incurred and amounts paid by, and amounts reimbursed to, such employees with respect to similar plans maintained by Mattel for their benefit immediately prior to the Closing Date.

SECTION 8.10 Employment and Non-competition Agreements. As soon as reasonably practicable after the Closing, the Company shall enter into an Employment and Noncompetition Agreement with Robert J. Armstrong, in form and substance acceptable to the Company, and including the terms set forth in term sheet agreed to by the Company and Mr. Armstrong on the date hereof.

SECTION 8.11 Non-competition. As a material inducement to the Contributors to enter into this Agreement and consummate the transactions contemplated hereby, Mattel agrees, on behalf of itself and on behalf of its Affiliates, that, for a period ending one (1) year after the termination of the Distribution Agreement (the "**Non-Compete Period**"), it will not, whether as the result of an Acquisition (as defined below) or otherwise, without the prior written consent of the Contributors, directly or indirectly, in any capacity, whether as owner, partner, director, shareholder, consultant, agent, employee, co-venturer or otherwise, engage or participate in, be employed by or assist in any manner or in any capacity, or have any interest in or make any loan to any person, firm, corporation or business which engages in an Internet based genealogy business or the creation of genealogical data (a "**Competing Business**") so long as the Company or any of the Company's subsidiaries (or its or their successor, if any) shall engage in such activity.

Notwithstanding the foregoing:

- (a) Mattel shall not be prohibited from selling CD-ROM or CD-DVD versions of genealogical software applications; and
- (b) Mattel shall not be prohibited from engaging in an Acquisition so long as the Company or entity so acquired does not conduct a Competing Business as a significant portion of its business.

For the purposes of this Section 8.11, an "Acquisition" shall be defined as acquiring by merger, purchase of assets or otherwise, any business, entity or operation which may include a segment, division, business unit, or other operational component or product line.

Mattel agrees to enforce, and to cause any other existing or future subsidiaries or affiliates of Mattel to enforce the agreements set forth in this Section 8.11.

The parties hereto agree that it would be difficult to measure any damages caused to the Company which might result from any breach of this Section 8.11, and that in any event money damages would be an inadequate remedy for any such breach. Accordingly, the parties agree in connection with any breach of this Section 8.11 the Company shall be entitled, in addition to all other remedies that it may have, to an injunction or other appropriate equitable relief to restrain any such breach without showing or proving any actual damage to the Company.

SECTION 8.12 Fremont Facility Matters. Following the obtaining of a consent from the landlord to the assignment of the Fremont Facility lease to the Company, the Company shall reimburse Mattel for the security deposit under such lease. Further, in the event Mattel is not released from all future obligations under such lease in connection with such consent to assignment, or if such consent cannot be obtained, the Company shall reimburse Mattel for any obligations Mattel incurs under such lease in the respect to Company's period of occupancy.

SECTION 9 - INDEMNIFICATION.

SECTION 9.1 Indemnification by Mattel. Mattel agrees to indemnify and hold the Company and its subsidiaries and Affiliates and persons serving as officers, directors, partners or employees thereof (individually a "**Mattel Indemnified Party**" and collectively the "**Mattel Indemnified Parties**") harmless from and against any damages, liabilities, losses (excluding lost profits), taxes, fines, penalties, costs, and expenses (including, without limitation, reasonable fees of counsel) of any kind or nature whatsoever (whether or not arising out of third-party claims and including all amounts paid in investigation, defense or settlement of the foregoing) (collectively, "**Costs**") which may be sustained or suffered by any of them arising out of or based upon any of the following matters:

(a) fraud, intentional misrepresentation or a deliberate or willful breach by Mattel of any of its representations, warranties or covenants under this Agreement or in any certificate, schedule or exhibit delivered pursuant hereto;

(b) any other breach of any representation or warranty of Mattel under this Agreement or in any certificate, schedule or exhibit delivered pursuant hereto, or by reason of

any claim, action or proceeding asserted or instituted growing out of any matter or thing constituting a breach of such representations or warranties;

(c) any failure by Mattel to perform and discharge any of the Excluded Liabilities or any breach by Mattel of Section 8.11;

(d) any other breach of any covenant of Mattel under this Agreement or in any certificate, schedule or exhibit delivered pursuant hereto;

(e) any claim or liability in connection with any Employee Program in which any of the Scheduled Employees participated in connection with his or her employment by Mattel; and

(f) 85% of the Costs of obtaining any Required Consent or Costs resulting from the failure to obtain any Required Consent, including, without limitation, any Costs associated with providing or obtaining a contract to replace any Assigned Contract, or the benefit thereof, with respect to which a Required Consent was not obtained.

SECTION 9.2 Limitations on Indemnification by Mattel. Notwithstanding the foregoing, the right of the Mattel Indemnified Parties to indemnification under Section 9.1 shall be subject to the following provisions:

(a) No indemnification shall be payable pursuant to Section 9.1(b) above to any Mattel Indemnified Party, unless the total of all claims for indemnification pursuant to Section 9.1(b) shall exceed \$90,000 in the aggregate, whereupon the full amount of such claims shall be recoverable in accordance with the terms hereof;

(b) The maximum aggregate liability of Mattel, and the maximum amount of damages which may be recovered by the Mattel Indemnified Parties from Mattel pursuant to Section 9.1(b), Section 9.1(d) and Section 9.1(f), together with those amounts under Section 8.4 of the License Agreement shall not exceed \$5,000,000;

(c) Notwithstanding anything in this Agreement to the contrary, any damages, liabilities, losses, taxes, fines, penalties, cost and expenses (including reasonable fees of counsel) of any kind or nature whatsoever (whether or not arising out of third-party claims and including all amounts paid in investigation, defense for settlement of the foregoing) which may be sustained or suffered by any Mattel Indemnified Party arising out of or based upon Section 3.9 (a "Section 3.9 Claim") shall not be subject to Section 9.2(a) and Section 9.2(b).

With respect to any claim under Section 9.1(f), it is the intent of the parties hereto that the Company shall bear the remaining fifteen percent (15%) of the Costs associated with such claims.

SECTION 9.3 Indemnification by AETN. AETN agrees to indemnify and hold the Company its and subsidiaries and Affiliates and persons serving as officers, directors, partners or employees thereof (individually an “**AETN Indemnified Party**” and collectively the “**AETN Indemnified Parties**”) harmless from and against any damages, liabilities, losses, taxes, fines, penalties, costs, and expenses (including, without limitation, reasonable fees of counsel) of any kind or nature whatsoever (whether or not arising out of third-party claims and including all amounts paid in investigation, defense or settlement of the foregoing) which may be sustained or suffered by any of them arising out of or based upon any of the following matters:

(a) fraud, intentional misrepresentation or a deliberate or willful breach by AETN of any of its representations, warranties or covenants under this Agreement or in any certificate, schedule or exhibit delivered pursuant hereto;

(b) any other breach of any representation or warranty of AETN under this Agreement or in any certificate, schedule or exhibit delivered pursuant hereto, or by reason of any claim, action or proceeding asserted or instituted growing out of any matter or thing constituting a breach of such representations or warranties; and

(c) any other breach of any covenant of AETN under this Agreement or in any certificate, schedule or exhibit delivered pursuant hereto, or by reason of any claim, action or proceeding asserted or instituted growing out of any matter or thing constituting a breach of such covenants.

SECTION 9.4 Limitations on Indemnification by AETN. Notwithstanding the foregoing, the right of AETN Indemnified Parties to indemnification under Section 9.3 shall be subject to the following provisions:

(a) No indemnification shall be payable pursuant to Section 9.3(b) above to any AETN Indemnified Party, unless the total of all claims for indemnification pursuant to Section 9.3(b) shall exceed \$500,000 in the aggregate, whereupon the full amount of such claims shall be recoverable in accordance with the terms hereof; and

(b) The maximum aggregate liability of AETN, and the maximum amount of damages which may be recovered by AETN Indemnified Parties from AETN pursuant to Section 9.3(b) and Section 9.3(c) shall not exceed \$5,000,000.

SECTION 9.5 Indemnification by the Investor. The Investor agrees to indemnify and hold the Company its and subsidiaries and Affiliates and persons serving as officers, directors, partners or employees thereof (individually an “**Investor Indemnified Party**” and collectively the “**Investor Indemnified Parties**”) harmless from and against any damages, liabilities, losses, taxes, fines, penalties, costs, and expenses (including, without limitation, reasonable fees of counsel) of any kind or nature whatsoever (whether or not arising

out of third-party claims and including all amounts paid in investigation, defense or settlement of the foregoing) which may be sustained or suffered by any of them arising out of or based upon any of the following matters:

(a) fraud, intentional misrepresentation or a deliberate or willful breach by the Investor of any of its representations, warranties or covenants under this Agreement or in any certificate, schedule or exhibit delivered pursuant hereto;

(b) any other breach of any representation or warranty of the Investor under this Agreement or in any certificate, schedule or exhibit delivered pursuant hereto, or by reason of any claim, action or proceeding asserted or instituted growing out of any matter or thing constituting a breach of such representations or warranties; and

(c) any other breach of any covenant of the Investor under this Agreement or in any certificate, schedule or exhibit delivered pursuant hereto, or by reason of any claim, action or proceeding asserted or instituted growing out of any matter or thing constituting a breach of such covenants.

SECTION 9.6 Limitations on Indemnification by the Investor. Notwithstanding the foregoing, the right of the Investor Indemnified Parties to indemnification under Section 9.5 shall be subject to the following provisions:

(a) No indemnification shall be payable pursuant to Section 9.5(b) above to any Investor Indemnified Party, unless the total of all claims for indemnification pursuant to Section 9.5(b) shall exceed \$500,000 in the aggregate, whereupon the full amount of such claims shall be recoverable in accordance with the terms hereof; and

(b) The maximum aggregate liability of the Investor, and the maximum amount of damages which may be recovered by the Investor Indemnified Parties from the Investor pursuant to Section 9.5(b) and Section 9.5(c) shall not exceed \$5,000,000.

SECTION 9.7 Indemnification by Hearst. Hearst agrees to indemnify and hold the Company its and subsidiaries and Affiliates and persons serving as officers, directors, partners or employees thereof (individually a "**Hearst Indemnified Party**" and collectively the "**Hearst Indemnified Parties**") harmless from and against any damages, liabilities, losses, taxes, fines, penalties, costs, and expenses (including, without limitation, reasonable fees of counsel) of any kind or nature whatsoever (whether or not arising out of third-party claims and including all amounts paid in investigation, defense or settlement of the foregoing) which may be sustained or suffered by any of them arising out of or based upon any of the following matters:

(a) fraud, intentional misrepresentation or a deliberate or willful breach by Hearst of any of its representations, warranties or covenants under this Agreement or in any certificate, schedule or exhibit delivered pursuant hereto;

(b) any other breach of any representation or warranty of Hearst under this Agreement or in any certificate, schedule or exhibit delivered pursuant hereto, or by reason of any claim, action or proceeding asserted or instituted growing out of any matter or thing constituting a breach of such representations or warranties; and

(c) any other breach of any covenant of Hearst under this Agreement or in any certificate, schedule or exhibit delivered pursuant hereto, or by reason of any claim, action or proceeding asserted or instituted growing out of any matter or thing constituting a breach of such covenants.

SECTION 9.8 Limitations on Indemnification by Hearst. Notwithstanding the foregoing, the right of Hearst Indemnified Parties to indemnification under Section 9.7 shall be subject to the following provisions:

(a) No indemnification shall be payable pursuant to Section 9.7(b) above to any Investor Indemnified Party, unless the total of all claims for indemnification pursuant to Section 9.7(b) shall exceed \$500,000 in the aggregate, whereupon the full amount of such claims shall be recoverable in accordance with the terms hereof; and

(b) The maximum aggregate liability of Hearst, and the maximum amount of damages which may be recovered by Hearst Indemnified Parties from Hearst pursuant to Section 9.7(b) and Section 9.7(c) shall not exceed \$5,000,000.

SECTION 9.9 Indemnification by the Company. The Company agrees to indemnify and hold each of the Contributors and their respective subsidiaries and Affiliates and persons serving as officers, directors, partners or employees thereof (individually a "**Company Indemnified Party**" and collectively the "**Company Indemnified Parties**") harmless from and against any damages, liabilities, losses, taxes, fines, penalties, costs, and expenses (including, without limitation, reasonable fees of counsel) of any kind or nature whatsoever (whether or not arising out of third-party claims and including all amounts paid in investigation, defense or settlement of the foregoing) which may be sustained or suffered by any of them arising out of or based upon any of the following matters:

(a) fraud, intentional misrepresentation or a deliberate or willful breach by the Company of any of its representations, warranties or covenants under this Agreement or in any certificate, schedule or exhibit delivered pursuant hereto;

(b) any other breach of any representation or warranty of the Company under this Agreement or in any certificate, schedule or exhibit delivered pursuant hereto, or by

reason of any claim, action or proceeding asserted or instituted growing out of any matter or thing constituting a breach of such representations or warranties;

(c) any breach of any other covenant of the Company under this Agreement or in any certificate, schedule or exhibit delivered pursuant hereto, or by reason of any claim, action or proceeding asserted or instituted growing out of any matter or thing constituting a breach of such covenants; and

(d) the Assumed Liabilities.

SECTION 9.10 Limitations on Indemnification by the Company. Notwithstanding the foregoing, the right of the Company Indemnified Parties to indemnification under Section 9.9 shall be subject to the following provisions:

(a) No indemnification shall be payable pursuant to Section 9.9(b) above to any Company Indemnified Party, unless the total of all claims for indemnification pursuant to Section 9.9(b) shall exceed \$500,000 in the aggregate, whereupon the full amount of such claims shall be recoverable in accordance with the terms hereof; and

(b) The maximum aggregate liability of the Company, and the maximum amount of damages which may be recovered by the Company Indemnified Parties from the Company pursuant to Section 9.9(b) and Section 9.9(c) shall not exceed \$5,000,000.

SECTION 9.11 Notice; Defense of Claims. An indemnified party may make claims for indemnification hereunder by giving written notice thereof to the indemnifying party within the period in which indemnification claims can be made hereunder. If indemnification is sought for a claim or liability asserted by a third party, the indemnified party shall also give written notice thereof to the indemnifying party promptly after it receives notice of the claim or liability being asserted (and in any event within 15 calendar days after the service of the citation or summons), but the failure to do so shall not relieve the indemnifying party from any liability except to the extent that it is prejudiced by the failure or delay in giving such notice. Such notice shall summarize the bases for the claim for indemnification and any claim or liability being asserted by a third party. Within 20 days after receiving such notice the indemnifying party shall give written notice to the indemnified party stating whether it disputes the claim for indemnification and whether it will defend against any third party claim or liability at its own cost and expense. The indemnifying party shall be entitled to direct the defense against a third party claim or liability with counsel selected by it (subject to the consent of the indemnified party, which consent shall not be unreasonably withheld) as long as the indemnifying party is conducting a good faith and diligent defense. The indemnified party shall at all times have the right to fully participate in the defense of a third party claim or liability at its own expense directly or through counsel; provided, however, that if the named parties to the action or proceeding include both the indemnifying party and the indemnified party and the indemnified party is advised in writing by the indemnifying party's counsel that

representation of both parties by the same counsel would be inappropriate under applicable standards of professional conduct, the indemnified party may engage separate counsel at the expense of the indemnifying party. If no such notice of intent to dispute and defend a third party claim or liability is given by the indemnifying party, or if such good faith and diligent defense is not being or ceases to be conducted by the indemnifying party, the indemnified party shall have the right, at the expense of the indemnifying party, to undertake the defense of such claim or liability (with counsel selected by the indemnified party), provided, however, that such claim or liability shall not be compromised or settled without the written consent of the indemnifying party, which consent shall not be unreasonably withheld. If the indemnified party settles or compromises such claim or liability without the prior written consent of the indemnifying party, the indemnifying party will bear no liability hereunder for or with respect to such claim or liability. In the event the indemnified party assumes the defense of the claim or liability, the indemnified party will keep the indemnifying party reasonably informed of the progress of any such defense, compromise or settlement. If the third party claim or liability is one that by its nature cannot be defended solely by the indemnifying party, then the indemnified party shall make available such information and assistance as the indemnifying party may reasonably request and shall cooperate with the indemnifying party in such defense, at the expense of the indemnifying party.

SECTION 10 - CERTAIN DEFINITIONS.

“Affiliate” means, as to any person or entity, any other person or entity that controls, is controlled by or is under common control with it (whether by virtue of ownership, voting power, management or otherwise).

“Assigned Contracts” means the contracts set forth on Schedule 1.1(b).

“Assumed Liabilities” shall have the meaning set forth in Section 1.1(e).

“Assumed Employee Liabilities” means all liabilities and obligations relating to events occurring after the Closing in respect of the Scheduled Employees who accept employment with the Company arising out of their employment with the Company (including, without limitation, employee benefits and salaries after the Closing); provided, however, that Assumed Employee Liabilities shall not include any liability to any Scheduled Employee arising out of the termination of any such employee by Mattel.

“Closing” shall have the meaning set forth in Section 1.6.

“Contributed Assets” means the tangible and intangible assets set forth on Schedule 1.1(a), but shall in no event include the Assigned Contracts or the Licensed Assets.

"Employee Program" means (A) all employee benefit plans within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), including, but not limited to, multiple employer welfare arrangements (within the meaning of ERISA Section 3(4)), plans to which more than one unaffiliated employer contributes and employee benefit plans (such as foreign or excess benefit plans) which are not subject to ERISA; and (B) all material stock or cash option plans, restricted stock plans, bonus or incentive award plans, severance pay policies or agreements, deferred compensation agreements, supplemental income arrangements, vacation plans, and all other employment or employee benefit plans, agreements, policies, programs and arrangements not described in (A) above. In the case of an Employee Program funded through an organization described in Section 501(c)(9) of the Internal Revenue Code of 1986, as amended, each reference to such Employee Program shall include a reference to such organization.

"Encumbrances" means title defects, liens, pledges, claims, rights of first refusal, options, charges, security interests, mortgages, or other encumbrances of any nature whatsoever.

"Excluded Liabilities" shall have the meaning set forth in Section 1.1(e).

"Excluded Employee Liabilities" means all liabilities and obligations relating to events occurring before the Closing in respect of the Scheduled Employees (including, without limitation, employee benefits and salaries earned or accrued prior to the Closing).

"Fremont Facility" shall mean the Banner Blue division's leased facility located at 39500 Stevenson Place, Fremont, California and two related storage spaces.

"Genealogy Goods" means any genealogy related data (stored in any medium), videos, books and similar materials, including, without limitation, items listed on Exhibit B of the Distribution Agreement.

"Genealogy.com Business" means the development and marketing of computer software and other goods on the Internet and through other channels, which is presently conducted by the Banner Blue division of Mattel, except to the extent retained by Mattel pursuant to the License Agreement, the Distribution Agreement and the Fulfillment Services Agreement and except for services contemplated to be provided under the Transition Services Agreement, primarily through the use of the Licensed Assets, the Contributed Assets and the Assigned Contracts.

"Intellectual Property Assets" means Patents, Trademarks, Copyrights, Trade Secrets, and Other Intangibles.

"Internet Domain Name" means a domain name providing access to a World Wide Web site on the international network of interconnected computers commonly referred to as the Internet.

"Knowledge" means the actual knowledge of the applicable person or entity, except that the knowledge of Mattel shall not include the knowledge of the Scheduled Employees. The phrase "Knowledge of Mattel" shall be deemed to include the knowledge of Mattel's Affiliates.

"Nondisclosure Contracts" means all nondisclosure and/or confidentiality agreements entered into between Mattel and persons in connection with disclosures by Mattel relating to the Programs and the Intellectual Property Assets.

"Online" means the use of interconnected computers and computer networks for the transmission of data directly or indirectly through delivery methods now or hereafter in existence, including without limitation, on-line browsers, off-line browsers, "push" technology, electronic mail, landlines, cable, broadband distribution, satellite, wireless or otherwise.

"Securities Act" means The Securities Act of 1933, 15 U.S.C. § 77a et. seq., as amended.

SECTION 11 - MISCELLANEOUS.

SECTION 11.1 The Bulk Sales Laws and Sales and Transfer Taxes.

(a) The Bulk Sales Laws. The Company waives compliance by Mattel with the provisions of any applicable bulk sales, fraudulent conveyance or other similar law for the protection of creditors in connection with the transfer of the Contributed Assets under this Agreement, and Mattel agrees to indemnify and hold the Company harmless against any claim made against the Company by any creditor of the Company as a result of a failure to comply with any such laws.

(b) Sales and Transfer Taxes. The Company shall pay the cost of all sales and use and transfer taxes arising out of the contributions of Mattel to the Company set forth in Section 1.1 and Mattel shall reimburse the Company for fifty percent (50%) of such sales and use and transfer taxes.

SECTION 11.2 Governing Law. This Agreement and its validity, construction and performance shall be governed in all respects by the internal laws of the State of New York. Each of the parties hereto irrevocably and unconditionally consents to the exclusive jurisdiction of the state courts located in Manhattan and federal courts located in the Second

Circuit and irrevocably waives any right to a trial by jury or any objection based upon lack of personal jurisdiction or venue.

SECTION 11.3 Publicity. No party shall issue a press release relating to their entering into this Agreement without the prior written consent of the other parties.

SECTION 11.4 Confidentiality. The terms of this Agreement are confidential and shall not be disclosed to any other party without the written consent of the other parties. Each party shall (and shall take such reasonable action to ensure that its employees) preserve in strict confidence any information obtained by the other party or its employees, concerning its business or any of its Affiliates including, but not limited to, trade secrets and proprietary information, and agrees, except as expressly permitted herein, to refrain (and shall take such reasonable action to assure that its employees refrain) from disclosing any such information to any person or persons, or business organizations. Notwithstanding the foregoing, any party may disclose the terms of this Agreement to auditors, potential investors, acquirors, investment bankers, underwriters, licensors or licensees under the terms of a confidential relationship or confidentiality agreement.

SECTION 11.5 Mattel's Subsidiaries. Mattel agrees to cause all of its majority-owned subsidiaries to comply with this Agreement to the same extent as if those subsidiaries were Mattel.

SECTION 11.6 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument and shall become a binding Agreement when the counterparts have been signed by each of the parties and delivered to the other party.

SECTION 11.7 Headings. The section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

SECTION 11.8 Entire Agreement. This Agreement, including the exhibits, schedules, and other documents and instruments referred to herein, embodies the entire agreement and understanding of the parties hereto in respect of the subject matter contained herein. This Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter.

SECTION 11.9 Severability. If any one or more provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

SECTION 11.10 Modifications and Amendments. The terms and provisions of this Agreement may be modified or amended only by written agreement executed by all parties hereto.

SECTION 11.11 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of, the parties hereto and their respective successors and assigns.

SECTION 11.12 Schedules. All Schedules attached hereto are hereby incorporated in and made a part as if set forth in full herein.

SECTION 11.13 No Reliance on Other Information. Except for the representations and warranties contained in this Agreement and in the other documents executed and delivered in connection with the execution and delivery of this Agreement, no party or other person acting for any of them makes any other representation or warranty, express or implied, with respect to the transactions contemplated hereby, and the parties hereby disclaim any such representation or warranty, whether oral or written, whether by a party to this Agreement or any of their respective representatives or Affiliates or any other person.

SECTION 11.14 Notices. Any notice, request, demand or other communication required or permitted hereunder shall be in writing and shall be deemed to have been duly given when received if personally delivered; when transmitted, if transmitted by telecopy, electronic or digital transmission method; the day after it is sent if sent for next day delivery to a domestic address by a recognized overnight delivery service. All notices to a party will be sent to the addresses set forth below or to such other address or person as such party may designate by notice to each other party hereunder:

TO MATTEL:

Mattel Inc.
333 Continental Boulevard
El Segundo, California 90245
Attn.: General Counsel
Facsimile No.: (310) 252-2567

With a copy to:

Mattel, Inc.
1 Athenaeum Street
Cambridge, MA 02142
Attn.: President, Learning Company Division
Facsimile No.: (617) 225-0318

Fenwick & West
2 Palo Alto Square
Palo Alto, CA 94306
Attn.: John Kastelic
Facsimile No.: (650) 494-1417

TO AETN:

A&E Television Networks
235 East 45th Street
New York, New York 10017
Attn.: General Counsel
Facsimile No.: (212) 210-1408

With a copy to:

Rogers & Wells LLP
200 Park Avenue
New York, New York 10166
Attn.: Timothy E. Ladin
Facsimile No.: (212) 878-8375

TO THE INVESTOR:

GENEALOGY HOLDINGS, LLC
c/o Thomas H. Lee Co.
75 State Street, 26th Floor, Suite 2600
Boston, MA 02109
Attn.: Scott Sperling
Facsimile: (617) 227-3514

With a copy to:

Goodwin, Procter & Hoar LLP
Exchange Place, 26th Floor
Boston, MA 02109
Attn: Richard E. Floor, P.C.
H. David Henken, P.C.
Facsimile: (617) 570-8150

TO HEARST:

Hearst Communications, Inc.
959 Eighth Avenue
New York, NY 10019
Attn.: Jonathan E. Thackeray
General Counsel
Facsimile No.: (212) 649-2035

With a copy to:

Rogers & Wells LLP
200 Park Avenue
New York, NY 10166
Attn.: Steven A. Hobbs
Facsimile No.: (212) 878-8375

TO THE COMPANY:

Genealogy.com, LLC
39500 Stevenson Place
Suite 204
Fremont, CA 94539-3103
Attn.: Robert J. Armstrong
Facsimile No.: (510) 794-9152


With a copy to:

Goodwin, Procter & Hoar LLP
Exchange Place, 26th Floor
Boston, MA 02109
Attn: Richard E. Floor, P.C.
H. David Henken, P.C.
Facsimile: (617) 570-8150


Any notice given hereunder may be given on behalf of any party by his counsel or other authorized representatives.

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

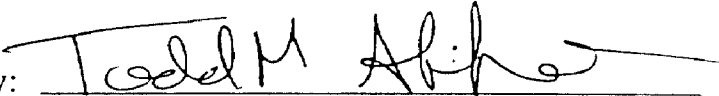
MATTEL, INC.

By: 
Name: Robert Normile
Title: Senior Vice President and General Counsel

A&E TELEVISION NETWORKS

By: 
Name: E. James Greiner
Title: Senior Vice President
Operations and Planning

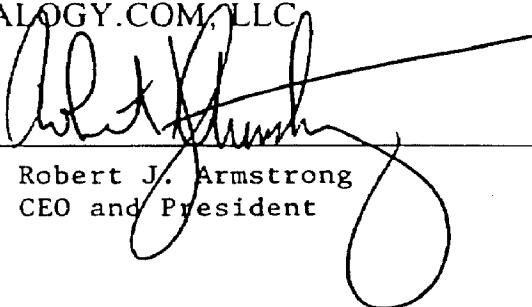
GENEALOGY HOLDINGS, LLC

By: 
Name: Todd M. Abbrecht
Title: Director, Tibbar FF, LLC, Manager

HEARST COMMUNICATIONS, INC.

By: _____
Name: _____
Title: _____

GENEALOGY.COM, LLC

By: 
Name: Robert J. Armstrong
Title: CEO and President

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

MATTEL, INC.

By: _____
Name: _____
Title: _____

A&E TELEVISION NETWORKS

By: _____
Name: _____
Title: _____

GENEALOGY HOLDINGS, LLC

By: _____
Name: _____
Title: _____

HEARST COMMUNICATIONS, INC.

By: Kenneth D. Boonfin
Name: KENNETH D. BOONFIN
Title: SVP

GENEALOGY.COM, LLC

By: _____
Name: _____
Title: _____

EXHIBITS AND SCHEDULES

Exhibit A	License Agreement
Exhibit B	Distribution Agreement
Exhibit C	Fulfillment Services Agreement
Exhibit D	Convertible Note
Exhibit E	Company LLC Agreement
Exhibit F	Transition Services Agreement

Schedule A	Scheduled Employees
Schedule 1.1(a)	Contributed Assets
Schedule 3.8	Litigation
Schedule 3.9(g)	Exclusivity of Rights
Schedule 3.9(i)	Licenses Granted on Intellectual Property Assets
Schedule 3.9(l)	Nondisclosure Contracts
Schedule 3.11	Compliance with Law
Schedule 3.13	Balance Sheet

TRADEMARK
REEL: 002270 FRAME: 0621

Schedule A
Scheduled Employees

Aherns, Jan
Ainoa, Cheryl
Anderson, Kate
Aragon, JP
Arthur, Paul
Armstrong, Rob
Au-Yeung, Ben
Auer, Johann, Jr. (John)
Ballot, Ed
Baron, Michelle
Bignami, Cheryl
Bilby, Mike
Billante, Christian
Burchfield, Paul
Byron, Alex
Cave, Gary
Corda, Courtney
Cox, Melissa
Debry, Paul
Depta, Eva Maria
Detjens, Timothy
Delaney, Kevin
Desalvo, Doreen
Silva, Linda
Fong, Alex
Garner, Anne
Gill, Jeff
Geofrion, Gigi
Graves, Lisa
Gunby, Carol
Hartzog, Cassie
Hastings, Kevin
Hollingsworth, Peter
Horowitz, Steven
Howard, Laura
Jennings, Bryan
Johnson, Tyrone
Karanja, Jedidah
Katzenelson, Hagit
Kelly, Katya
Kong, Joab
Labeaux, Claire
Llahti, David

Lang, Christina
Leavitt, Scott
Lee, Brenda
Lee, Traci
Lieber, Liz
Loesch, Chris
Lopez, Rick
Madwin, Steve
Manalang, Aldrin
Medalla, Rick
McAllen, Michael
Mclean, Mae
Mickey, Kevin
Miyar-Nguyen Claudia
Montelongo, Jaime
Mortenson, Ed
Mullin, Kim
Napitan, Susan
Nguyen, David
Nomura, Tina
Oberg, Brian
Old, Marcia
Onncel, Greg
Petrini, Bob
Pollar, Shalawn
Quigg, Gary
Rasmussen, Soren
Rash, Christine
Resendez, Jackie
Rosa, Nancy
Sanders, Mike
Satica, Robert (Drew)
Schott, Ken
Silveria, Michael
Smith, Doug
Strauss, Charles (Chuck)
Storie, Bruce
Strelow, Andria
Torres, Juan
Valenzuela, Imelda
Vanata, Mike
Vanderpan, Darrin
Wade, Derek
Wagner, Derek
Wood, Travis (Michael)
Yamamoto, Keith
Yulo, Anton
Zhou, Manhong

TRADEMARK
REEL: 002270 FRAME: 0623

Schedule 1.1(a)

Trademarks (Section 1.1(a)(iii))

1. The pending and registered trademarks listed below.
2. The common law trademarks associated with the individual product names of the Programs listed below.

Trademarks

PENDING

<u>Trademark</u>	<u>Country</u>	<u>Application Date</u>	<u>Application Number</u>
ALL IN ONE TREE	US	4/16/99	75/683,969
FAMILY ARCHIVES	US	3/23/99	75/666,075
FAMILY TREE COMPANION	US	3/20/98	75/453,626
FAMILY TREE DETECTIVE	US	Pending	Pending
GENEALOGY.COM	US	Pending	Pending
GENEALOGYLIBRARY.COM	US	Pending	Pending
INSTANT FAMILY TREE	US	Pending	Pending
INTERNETREE	US	8/31/98	75/545,754
LA GENEALOGIE PRATIQUE	Canada	Pending	Pending
LA GENEALOGIE PRATIQUE	France	Pending	Pending
WORLD FAMILY TREE	US	4/27/99	75/694,242

REGISTERED

<u>Trademark</u>	<u>Country</u>	<u>Registration Date</u>	<u>Registration Number</u>
BRODERBUND FAMILIENSTAMMBAUM	Germany	4/30/97	397,07,756
FAMILY FINDER	US	3/23/99	2,233,323
FAMILY GATHERING	US	11/18/97	2,114,672

3. The Domain Names are listed below. (Section 1.1(a)(x))

Domain Name

ancestryworldtree.com

bannerblue.com

culverfamily.com

bostonfamilyhistory.com

britishgenealogy.com

Domain Name

cindyslist.com
cyndis-list.com
europeangenealogy.com
familienstammbaum.com
familyexplorer.com
family-tree.com
familyalbumcreator.com
familyinfo.com
familyorigins.com
familyquest.com
familytreecreator.com
familytreedetective.com
familytreemaker.com
genealogy.com
genealogybookshop.com
genealogyclub.com
genealogydata.com
genealogylibrary.com
genealogysitefinder.com
geneology.com
geneologybookshop.com
geneologylibrary.com
genforum.com
instantfamilytree.com
lanefamily.com
uftree.com
ultimatecollector.com

Domain Name

ultimatefamilytree.com

ultimatelibrary.com

Patents (Section 1.1(a)(iv))

<u>Patent Name</u>	<u>Country</u>	<u>Status</u>	<u>App. Date</u>	<u>App. #</u>	<u>Claimant</u>	<u>Counsel</u>
Method and Apparatus for Generating an All- in-One Family Tree	U.S.	PENDING	3/22/99	09/273,606	Learning Company Properties Inc.	Arnold, White & Durkee (Hugh Kress: 713/787-1405)

Copyright Registrations (Section 1.1(a)(v))

<u>Title</u>	Registration Date	Registration Number
Genealogical Research System Version 3 (Release 3.04)	2/20/95	TX4-140-365

Tangible Assets (Section 1.1(a)(viii))

<u>PC</u>	Quantity	Value/Item	Value
Intel PIII-500	6	\$ 2,500	\$ 15,000
Intel PIII-400	3	\$ 2,000	\$ 6,000
Intel PIII-350	2	\$ 1,500	\$ 3,000
Intel PII-333	2	\$ 1,500	\$ 3,000
Intel PII-300	27	\$ 1,500	\$ 40,500
Intel PII-266	4	\$ 1,000	\$ 4,000
Intel P-200	26	\$ 1,000	\$ 26,000
Intel PP-180	1	\$ 500	\$ 500
Intel P-166	20	\$ 500	\$ 10,000
Intel P-133	9	\$ 500	\$ 4,500
Intel P-100	10	\$ 500	\$ 5,000
Intel P-90	13	\$ 100	\$ 1,300
Intel P-75	10	\$ 100	\$ 1,000
Intel 486/66	2	\$ -	\$ -

Macintosh

MAC	4	\$ 500	\$ 2,000
Power Macs	11	\$ 500	\$ 5,500

Laptops

IBM Thinkpad 770	2	\$ 2,000	\$ 4,000
Dell Inspiron 7000	2	\$ 2,000	\$ 4,000
Dell Inspiron 3500	1	\$ 2,000	\$ 2,000
Dell Inspiron 3200	2	\$ 2,000	\$ 4,000
Dell Latitude	1	\$ 2,000	\$ 2,000
Toshiba Tecra/Portege	3	\$ 500	\$ 1,500
Subtotal			\$ 144,800

Hardware - FTO

Sun E4000	1	\$ 250,000	\$ 250,000
Sun E5000	1	\$ 350,000	\$ 350,000
Sun E450	1	\$ 75,000	\$ 75,000
Sun E450	1	\$ 60,000	\$ 60,000
Sun Ultra 2	1	\$ 10,000	\$ 10,000
Sun Sparc 5	2	\$ 3,000	\$ 6,000
Sun Ultra 1	1	\$ 5,000	\$ 5,000
SGI Challenge	1	\$ 5,000	\$ 5,000
Intel Pentium II	4	\$ 2,000	\$ 8,000
Intel Pentium	5	\$ 2,000	\$ 10,000

Drives

A1000	2	\$ 25,000	\$ 50,000
M114	2	\$ 35,000	\$ 70,000

TRADEMARK
REEL: 002270 FRAME: 0630

Schedule 1.1(c)

Excluded Assets

<u>Category</u>	<u>Contacting Parties</u>	<u>Terminating</u>	<u>Amount</u>	<u>Interest</u>
Promissory Note	AGLL/TLCC Multimedia Inc.	11/25/99	\$69,741.50	6% p.a.

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REEL: 002270 FRAME: 0632

Schedule 1.1(d)

Assumed Liabilities

Scheduled Employees and prorated retention bonuses:

<u>Name</u>	<u>Prorated Bonus</u>
Cheryl Ainoa	\$ 15,000
Jan Ahrens	\$ 12,500
Mike Bilby	\$ 5,000
Paul Arthur	\$ 5,000
Kim Mullin	\$ 5,000
Brenda Lee	\$ 3,750
Jeff Gill	\$ 10,000
Kevin Hastings	\$ 7,500
Lisa Graves	\$ 5,000

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REEL: 002270 FRAME: 0634

Litigation and Threatened Claims

1. Simpson Copyright Claim relating to Data.

On September 15, 1999, Broderbund Software, Inc., an Affiliate of Mattel received a letter from Dennis W. Simpson in which Mr. Simpson alleged that content contained in the World Family Tree Vol. 1 program contained copyrighted information from his book entitled, "*Simpson and Allied Families*." Mr. Simpson specifically claims that Tree Numbers 5426 and 372 contain copyrighted information from his book. The information contained within both trees at issue are facts relating to the birth, death, siblings and other related information of the applicable individuals. Mattel is taking the position that such information is not subject to copyright protection and is generally available from public records. Mattel has recently learned that the information was submitted to Mattel from two other members of the extended Simpson family. *Mattel agrees that any liabilities related to this claim are Excluded Liabilities.* COB

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Schedule 3.9(g)**Exclusivity of Rights****1. Exclusive Rights**

None.

2. Royalty Agreements (License In Transactions).

Royalties are payable under the following Assigned Contracts:

<u>Third Party</u>	<u>Mattel Affiliate</u>	<u>Date</u>
GenRef	Palladium Interactive	9/17/99
MicroQuix	AAI	9/16/99
American Heritage Imaging, Inc.	Mattel	8/1/99
Massachusetts Society of Mayflower Decendants	BB	5/23/99
Kinship Publications	LCP	4/1/99
Temple University of the Commonwealth System of Higher Education, Temple University - Balch Institute	BB	1/27/99
Genforum	Mindscape	11/13/98
Family Line Publications	BB	7/21/98
Family Line Publications	BB	7/1/98
Kinship	Banner Blue	6/1/98
Nellie Braman	BB	5/1/98
Rhode Island Families Association	BB	5/1/98
Virginia Historical Society	BB	5/1/98
Genealogical Society of Pennsylvania	BB	3/1/98
National Geneological Society	BB	12/30/97
Maryland Genealogical Society	BB	11/14/97
Indiana Historical Society	BB	11/1/97
Hunterdon House	BB	8/1/97
Everton Publishers	BB	6/30/97

<u>Third Party</u>	<u>Mattel Affiliate</u>	<u>Date</u>
Family Line Publications	BB	6/20/97
Family Line Publications	BB	6/20/97
Family Line Publications	BB	6/20/97
Kinship	Banner Blue	4/20/97
Family Line Publications	BB	10/16/96
Genealogical Publishing Co.	BB	11/30/95
John T. Humphrey	BB	11/15/95
John F. Whitaker	Banner Blue	5/17/95
AGLL, Inc.	AAI	11/4/94
CamRon	AAI	10/16/94
GISI	AAI	8/5/94
CamRon	AAI	4/14/94
Kinship	AAI	1/13/94
Kinship	AAI	1/13/94
Kinship	AAI	9/28/93
Ohio Genealogical Society	AAI	4/1/91
Zedcor, Inc.	Palladium	12/10/97

Legend: BB=Broderbund

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Non-Disclosure Contracts

1. Macadamian Technologies, Inc. and Mindscape, Inc. dated May 11th, 1998.
2. Vistasoft, Inc. and Mindscape, Inc. Dated May 11th, 1998.
3. Robert Stevens and Banner Blue dated June 21st, 1996.
4. MBNA and Banner Blue dated August 27th, 1999.

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Schedule 3.11

Compliance with Law

Issues

None

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The Learning Company**Banner Blue Division****Genealogy.com, LLC Financial Proforma Balance Sheet (unaudited)**
\$MM

as of 10/1/99

Assets

Cash, Equivalents	4.5
Inventory	-
	<u>4.5</u>
Fixed Assets, net	1.7
Intangibles (copyrights, trademarks, domain names, databases goodwill and other intangible assets)	34.3
	<u>-</u>
	<u>36.0</u>
Total Assets	<u><u>40.5</u></u>

Liabilities

Payables	1.1
Notes Payable	-
	<u>1.1</u>
Capital Lease Obligations	-
Long Term Liabilities	1.9
Owner's Equity	37.5
	<u>39.4</u>
Total Liabilities	<u><u>40.5</u></u>
	0.0

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