08-07-2001

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(Rev. 03/01)
OMB No. 0651-0027 (exp. 5/31/2002)
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S. DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office

▼ ▼

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Sierra Digital, Inc. 07/26/01

- ☐ Individual(s)
- ☐ Association
- ☐ General Partnership
- ☐ Limited Partnership
- ☒ Corporation-State
- ☐ Other _____

Additional name(s) of conveying party(ies) attached? ☐ Yes ☒ No

2. Name and address of receiving party(ies)

Name: Active.com

Internal Address: _____

Street Address: 1020 Prospect Street

City: La Jolla State: CA Zip: 92037

- ☐ Individual(s) citizenship _____
- ☐ Association _____
- ☐ General Partnership _____
- ☐ Limited Partnership _____
- ☒ Corporation-State Delaware
- ☐ Other _____

If assignee is not domiciled in the United States, a domestic representative designation is attached: ☐ Yes ☐ No
(Designations must be a separate document from assignment)
Additional name(s) & address(es) attached? ☐ Yes ☐ No

3. Nature of conveyance:

- ☐ Assignment
- ☒ Merger
- ☐ Security Agreement
- ☐ Change of Name
- ☐ Other _____

Execution Date: September 22, 2000

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

75/833172

B. Trademark Registration No.(s)

1,694,181

Additional number(s) attached ☒ Yes ☐ No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Sharon K. Sandeen

Internal Address: _____

Street Address: 801 K Street, 23rd Fl.

City: Sacramento State: CA Zip: 95814

6. Total number of applications and registrations involved: 14

7. Total fee (37 CFR 3.41).....$ 365.00

- ☐ Enclosed
- ☒ Authorized to be charged to deposit account

8. Deposit account number:

500279

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. 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.

Duane Harlan
Name of Person Signing

Signature

7-26-01
Date

Total number of pages including cover sheet, attachments, and document: 141

Mail documents to be recorded with required cover sheet information to:
Commissioner of Patent & Trademarks, Box Assignments
Washington, D.C. 20231

08/06/2001 DBYRNE 00000272 500279 75833172
01 FC:481 40.00 CH
02 FC:482 325.00 CH

Attachment 4 to Recordation Form Cover Sheet

A. Trademark Application No. 76/108,362

B. Trademark Registration Nos.

2,041,732
2,115,058
2,302,013
2,310,318
2,327,240
2,336,104
2,360,649
2,362,856
2,369,165
2,369,166
2,383,735

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MERGER AGREEMENT AND PLAN OF REORGANIZATION

by and among

ACTIVE.COM, INC.,

ACTIVE ACQUISITION CORP.

SIERRA DIGITAL, INC.

and

DUANE HARLAN

dated September 22, 2000

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SCHEDULES AND EXHIBITS

Schedules

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Exhibits

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Exhibit B	-	Employment Agreement
Exhibit C	-	Non-Competition Agreement
Exhibit D	-	Estoppel Certificate
Exhibit E	-	Company Officer's Certificate
Exhibit F	-	Company Secretary Certificate
Exhibit G	-	Investor Representation Letter
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This MERGER AGREEMENT AND PLAN OF REORGANIZATION (together with the Exhibits and the Disclosure Schedules and the certificates and instruments delivered in connection herewith, or incorporated by reference, this "Agreement") is made and entered into as of September 22, 2000, by and among Active.com, Inc., a Delaware corporation ("Active"), Active Acquisition Corp., a Delaware corporation and a wholly-owned subsidiary of Active ("Merger Sub"), Sierra Digital, Inc., a California corporation ("Company"), and Duane Harlan, an individual and sole shareholder of the Company (the "Shareholder").

RECITALS

A. The respective Boards of Directors of each of Active, Merger Sub and Company and the Shareholder believe it is in the best interests of Active, Merger Sub and Company and their respective stockholders that Company and Merger Sub combine into a single company through the statutory merger of Company with and into Merger Sub (the "Merger").

B. The Boards of Directors of each of Active, Merger Sub and Company have approved the Merger and this Agreement and the transactions contemplated hereby.

C. Pursuant to the Merger, among other things, and subject to the terms and conditions of this Agreement, all of the issued and outstanding shares of capital stock of Company ("Company Capital Stock") shall be converted into the right to receive cash and shares of Preferred Stock of Active ("Active Preferred Stock").

D. Active, Merger Sub, Company and Shareholder intend that the Merger shall constitute a reorganization within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder (the "IRC"), and in furtherance thereof intend that this Agreement shall be a "Plan of Reorganization" within the meaning of Sections 354(a) and 361(a) of the IRC.

E. Active, Merger Sub, Company and Shareholder desire to make certain representations, warranties, covenants and agreements in connection with the Merger.

NOW, THEREFORE, in consideration of the covenants, promises, representations and warranties set forth herein, and for other good and valuable consideration, intending to be legally bound hereby, the parties agree as follows:

ARTICLE I
DEFINITIONS

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

"**Actions or Proceedings**" means any action, suit, proceeding, arbitration, Order (as defined below), inquiry, hearing, assessment with respect to fines or penalties or litigation (whether civil, criminal, administrative, investigative or informal) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental or Regulatory Authority (as defined below).

"Active Disclosure Schedule" means the disclosure schedule attached hereto, which sets forth the exceptions to the representations and warranties, contained in Article IV hereof and certain other information called for by this Agreement.

"**Active Group**" has the meaning set forth in Section 7.3.

"**Affiliate**" means, with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such Person. **"Assets and Properties"** and **"Assets or Properties"** of any Person each means all assets and properties of every kind, nature, character and description (whether real, personal or mixed, whether tangible or intangible, whether absolute, accrued, contingent, fixed or otherwise and wherever situated), including the goodwill related thereto, operated, owned or leased by such Person, including, without limitation, cash, cash equivalents, accounts and notes receivable, chattel paper, documents, instruments, general intangibles, real estate, equipment, inventory, goods and Intellectual Property.

"**Benefit Plan**" means any Plan established, arranged or maintained by the Company or any corporate group of which the Company is or was a member, existing at the Closing Date or prior thereto, to which the Company contributes or has contributed, or under which any employee, officer, director or former employee, officer or director of the Company or any beneficiary thereof is covered, is eligible for coverage or has benefit rights.

"Books and Records" of any Person means all files, documents, instruments, papers, books, computer files (including but not limited to files stored on a computer's hard drive or on floppy disks), electronic files and records in any other medium relating to the business, operations or condition of such Person.

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

"**Closing**" has the meaning set forth in Section 2.2.

"**Closing Date**" means the date upon which the Closing actually occurs.

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

"**Company**" has the meaning set forth in the first paragraph of this Agreement.

"Company Intellectual Property" means any Intellectual Property relating to the Company and its business that is owned or exclusively licensed to the Company. Company Intellectual Property shall not include any "off-the-shelf" software products.

"**Company Capital Stock**" has the meaning set forth in the recitals of this Agreement.

"Company Disclosure Schedule" means the disclosure schedule attached hereto, which sets forth the exceptions to the representations and warranties, contained in Article III hereof and certain other information called for by this Agreement.

"**Encumbrances**" means any mortgage, pledge, assessment, security interest, deed of trust, lease, lien, adverse claim, levy, charge or other encumbrance of any kind, or any conditional sale or title retention agreement or other agreement to give any of the foregoing in the future.

"**Environment**" means any surface water, ground water, drinking water supply, land surface or subsurface strata, ambient air and any indoor workplace.

"**Environmental Laws**" means all national, state, local and foreign laws, codes, regulations, common law, requirements, directives, Orders, and administrative or judicial interpretations thereof, all as in effect on the date hereof or on the Closing Date, that may be enforced by any Governmental or Regulatory Authority, relating to pollution, the protection of the Environment or the emission, discharge, disposal, release or threatened release of Materials in or into the Environment.

"**Environmental Notice**" means any written notice by any Person alleging potential liability (including, without limitation, potential liability for investigatory costs, cleanup costs, governmental costs, harm or damages to person, property, natural resources or other fines or penalties) arising out of, based on or resulting from (a) the emission, discharge, disposal, release or threatened release in or into the Environment of any Material or (b) circumstances forming the basis of any violation, or alleged violation, of any applicable Environmental Law.

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

"**Estoppel Certificate**" has the meaning set forth in Section 2.17(c).

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended.

"**Financial Statements**" means (i) the unaudited balance sheet of the Company or Active as the case may be and the related unaudited statement of income and retained earnings for the period(s) ended on December 31,1999, and (ii) the Interim Financial Statements (as defined below) for the Company.

"**GAAP**" means generally accepted accounting principles, applied in a manner consistent with the past practices of the Company.

"**Governmental or Regulatory Authority**" means any court, tribunal, arbitrator, authority, agency, commission, official or other instrumentality of the United States or other country, any state, county, city or other political subdivision.

"**Intellectual Property**" means (i) inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto, and all patents, patent applications and patent disclosures, together with all reissuances, continuations, continuations-in-part, revisions, extensions and reexaminations thereof; (ii) trademarks, service marks, trade dress, logos, trade names and corporate names, together with all translations, adaptations, derivations and combinations thereof and including all goodwill associated

therewith, and all applications, registrations and renewals in connection therewith, copyrightable works, all copyrights and all applications, registrations and renewals in connection therewith; (iii) mask works and all applications, registrations and renewals in connection therewith; (iv) trade secrets and confidential business information (including product specifications, data, know-how, formulae, compositions, processes, designs, sketches, photographs, graphs, drawings, samples, inventions and ideas, past, current and planned research and development, current and planned research and distribution methodologies and processes, customer lists, current and anticipated customer requirements, price lists, market studies, business plans), however documented; (v) proprietary computer software and programs (including object code and source code) and other proprietary rights and copies and tangible embodiments thereof (in whatever form or medium); (vi) database technologies, systems, structures and architectures (and related processes, formulae, compositions, improvements, devices, know-how, inventions, discoveries, concepts, ideas, designs, methods and information) and any other related information, however, documented; (vii) any and all information concerning the business and affairs of a Person (which includes historical financial statements, financial projections and budgets, historical and projected sales, capital spending budgets and plans, the names and backgrounds of key personnel and personnel training and techniques and materials), however documented; (viii) any and all notes, analysis, compilations, studies, summaries, and other material prepared by or for a Person containing or based, in whole or in part, on any information included in the foregoing, however documented; (ix) all industrial designs and any registrations and applications therefore; (x) all databases and data collections and all rights therein; and (xi) any similar or equivalent rights to any of the foregoing anywhere in the world. Intellectual Property does not include any "off-the-shelf" software products licensed to, or used by, the Company.

"**Interim Financial Statements**" means the unaudited balance sheet and the related unaudited statement of income and retained earnings for the Company or Active, as the case may be, in each case for the six (6) month period ended June 30, 2000.

"**Knowledge of the Shareholder and/or the Company**" or "**Known to the Shareholder and/or the Company**" means the knowledge of the Shareholder.

"**Liabilities**" means any liability, debts, obligations of any kind or nature (whether known or unknown, whether asserted, or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due), including but not limited to any liability for Taxes (as defined below).

"**Material**" means pollutants, contaminants or chemical, industrial, hazardous or toxic materials or wastes, including, without limitation, petroleum and petroleum products.

"**Material Adverse Effect**" means, for any Person, a material adverse effect whether individually or in the aggregate (a) on the business, operations, financial condition, Assets and Properties, Liabilities or prospects of such Person, or (b) on the ability of such Person to consummate the transactions contemplated hereby.

"**Next Financing Round**" means a stock (or other securities) financing consummated by Active after the date of this Agreement in which the aggregate gross proceeds to Active resulting from such financing equals or exceeds $10,000,000.

"**Next Financing Round Price**" means the price per share at which Active issues its stock (or other securities) in the Next Financing Round.

"**Non-Competition Agreement**" has the meaning set forth in Section 2.17 (b).

"**Order**" means any writ, judgment, decree, injunction or similar order of any Governmental or Regulatory Authority (in each such case whether preliminary or final).

"**Ordinary Course of Business**" means the action of a Person that is consistent with the past practices of such Person and is taken in the ordinary course of the normal day-to-day operations of such Person.

"**Permits**" means all licenses, permits, certificates of authority, authorizations, approvals, registrations and similar consents granted or issued by any Governmental or Regulatory Authority.

"**Person**" means any natural person, corporation, general partnership, limited partnership, limited liability company, proprietorship, other business organization, trust, union, association or Governmental or Regulatory Authority.

"**Plan**" means any bonus, incentive compensation, deferred compensation, pension, profit sharing, retirement, stock purchase, stock option, stock ownership, stock appreciation rights, phantom stock, leave of absence, layoff, vacation, day or dependent care, legal services, cafeteria, life, health, accident, disability, workers' compensation or other insurance, severance, separation or other employee benefit plan, practice, policy or arrangement of any kind, whether written or oral, including, but not limited to, any "employee benefit plan" within the meaning of Section 3(3) of ERISA.

"**Real Property**" has the meaning set forth in Section 3.15.

"**Securities Act**" means the Securities Act of 1933, as amended.

"**Shareholder**" has the meaning set forth in the first paragraph of this Agreement.

"**Tax**" (and, with correlative meaning, "**Taxes**," "**Taxable**" and "**Taxing**") means (i) any federal, state, local or foreign income, alternative or add-on minimum tax, gross income, gross receipts, sales, use, ad valorem, transfer, franchise, profits, license, withholding, payroll, employment, excise, severance, stamp, occupation, premium, property, environmental or windfall profit tax, custom, duty or other tax, governmental fee or other like assessment or charge of any kind whatsoever, together with any interest or any penalty, addition to tax or additional amount imposed by any Governmental or Regulatory Authority responsible for the imposition of any such tax (domestic or foreign), (ii) any Liability for payment of any amounts of the type described in (i) as a result of being a member of an affiliated, consolidated, combined, unitary or other group for any Taxable period and (iii) any Liability for the payment of any amounts of the type described in (i) or (ii) as a result of any express or implied obligation to indemnify any other person.

"**Tax Return**" means any return, report, information return, schedule or other document (including any related or supporting information) filed or required to be filed with respect to any taxing authority with respect to Taxes.

1.2 **Construction of Certain Terms and Phrases**. Unless the context of this Agreement otherwise requires, (a) words of any gender include each other gender; (b) words using the singular or plural number also include the plural or singular number, respectively; (c) the terms "hereof," "herein," "hereby" and derivative or similar words refer to this entire Agreement; (d) the terms "Article" or "Section" refer to the specified Article or Section of this Agreement; (e) the term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or"; and (f) "including" means "including without limitation." Whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Business Days are specified. All accounting terms used herein and not expressly defined herein shall have the meanings given to them under GAAP.

ARTICLE II
THE MERGER

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

2.2 **Effective Time**. Unless this Agreement is earlier terminated pursuant to Section 6.1, the closing of the Merger (the "Closing") will take place as promptly as practicable, but no later than five (5) Business Days following satisfaction or waiver of the conditions set forth in Sections 2.17 through 2.21 at the offices of Active, located at 1020 Prospect Street, Suite 250, La Jolla, California, unless another place or time is agreed to by Active and Shareholder. On the Closing Date, the parties hereto shall cause the Merger to be consummated by filing a Certificate of Merger (or like instrument), in substantially the form to be attached hereto as Exhibit H (the "Merger Certificate"), with each of the Secretary of State of the State of Delaware and the Secretary of State of the State of California, in accordance with the relevant provisions of applicable law (the time at which acceptance by both the Secretary of State of the State of Delaware and the Secretary of State of the State of California of such filing has been received by the parties, or such later time agreed to by the parties and set forth in this Agreement, being referred to herein as the "Effective Time").

2.3 **Effect of the Merger on Constituent Corporations**. At the Effective Time, the effect of the Merger shall be as provided in the applicable provisions of the Delaware Code and California Code. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time, all the property, rights, privileges, powers and franchises of Merger Sub and Company shall vest in the Surviving Corporation, and all debts, liabilities, obligations,

restrictions, disabilities and duties of Merger Sub and Company shall become the debts, liabilities, obligations, restrictions, disabilities and duties of the Surviving Corporation.

2.4 **Certificate of Incorporation and By-Laws of Surviving Corporation.**

(a) At the Effective Time, the certificate of incorporation of Merger Sub, as in effect immediately prior to the Effective Time, shall be the certificate of incorporation of the Surviving Corporation until thereafter amended as provided by law and such certificate of incorporation and by-laws of the Surviving Corporation.

(b) The by-laws of Merger Sub, as in effect immediately prior to the Effective Time, shall be the by-laws of the Surviving Corporation until thereafter amended as provided by such by-laws, the certificate of incorporation and applicable law.

2.5 **Directors and Officers of Surviving Corporation.** The directors of Merger Sub immediately prior to the Effective Time shall be the directors of the Surviving Corporation, each to hold office in accordance with the certificate of incorporation and by-laws of the Surviving Corporation. The officers of Merger Sub immediately prior to the Effective Time shall be the officers of the Surviving Corporation, each to hold office in accordance with the by-laws of the Surviving Corporation.

2.6 **Purchase Price.** The purchase price to be paid to the Shareholder for the Company Capital Stock shall consist of (i) the Aggregate Preferred Share Number (as defined below in Section 2.7), and (ii) the Cash Payment (as defined below in Section 2.8).

2.7 **Conversion of Company Capital Stock.** On the terms and subject to the conditions of this Agreement, as of the Effective Time, by virtue of the Merger and without any action on the part of Active or Merger Sub, Company or Shareholder, each share of Company Capital Stock owned by and issued to Shareholder and outstanding immediately prior to the Effective Time will be converted automatically into the right to receive by Shareholder the number of shares of Active Preferred Stock equal to the Exchange Ratio. For purposes of this Agreement, the "Exchange Ratio" shall mean the quotient obtained by dividing the total number of shares of Active Preferred Stock issued to Shareholder pursuant to this Agreement (the "Aggregate Preferred Share Number") by the total number of shares of Company Capital Stock owned by Shareholder immediately prior to the Effective Time. The Aggregate Preferred Share Number shall be equal to the lesser of (i) 2,349,624 or ii) the quotient obtained by dividing $3,125,000 by the Next Financing Round Price.

2.8 **Cash Payment.** At the Closing, Active shall pay to Shareholder Two Million Six Hundred Sixty-Six Thousand Five Hundred and Forty One Dollars ($2,666,541) reduced by any amounts paid to the Shareholder pursuant to Section 6.3 of this Agreement, in cash, by check or by wire transfer of immediately available funds. This Payment of $2,666,541 at the Closing, along with the $200,000 paid to Shareholder prior to the Closing, shall collectively constitute the "Cash Payment" of $2,866,541.

2.9 **Adjustments to Exchange Ratio.** Notwithstanding the terms of Section 2.7, the Exchange Ratio shall be equitably adjusted to reflect fully the effect of any stock split, reverse split, stock combination, stock dividend (including any dividend or distribution of

securities convertible into Active Preferred Stock or Company Capital Stock), reorganization, reclassification, recapitalization or other like change with respect to Active Preferred Stock or Company Capital Stock occurring after the date hereof and prior to the Effective Time.

2.10 **Exchange Procedures.** At the Closing, Shareholder shall tender to Active any and all certificate(s) ("Certificate(s)") representing the shares of capital stock of Company held by Shareholder, accompanied by duly executed letters of transmittal or stock powers, as required by Active. As soon as practicable after the surrender of such Certificates, Active shall deliver to the Shareholder a certificate representing the number of shares of Active Preferred Stock that Shareholder is entitled pursuant to Section 2.7. Until surrendered, the Certificate(s) will be deemed from and after the Effective Time, for all corporate purposes, other than the payment of dividends, to evidence the ownership of the number of full shares of Active Preferred Stock into which such shares of Company Capital Stock shall have been so converted.

2.11 **No Further Ownership Rights in Company Capital Stock.** All shares of Active Preferred Stock issued upon the surrender for exchange of shares of Company Capital Stock in accordance with the terms hereof shall be deemed to have been issued in full satisfaction of all rights pertaining to such shares of Company Capital Stock, and there shall be no further registration of transfers on the records of Company of shares of Company Capital Stock which were outstanding immediately prior to the Effective Time.

2.12 **Lost, Stolen or Destroyed Certificates.** In the event any Certificates shall have been lost, stolen or destroyed, Active shall issue certificates representing such shares of Active Preferred Stock in exchange for such lost, stolen or destroyed Certificates, upon the making of an affidavit of that fact by the holder thereof; provided, however, that Active may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed Certificates to provide an indemnity or deliver a bond in such sum as it may reasonably direct as indemnity against any claim that may be made against Active or the Surviving Corporation with respect to the Certificates alleged to have been lost, stolen or destroyed.

2.13 **Exemption from Registration.** The shares of Active Preferred Stock to be issued pursuant to Section 2.7 will be issued in a transaction exempt from registration under the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder (the "Securities Act"), in accordance with exemptions including, but not limited to, Section 4(2) of the Securities Act and Rule 506 of Regulation D promulgated thereunder, and the qualification requirements of any state "blue sky" laws.

2.14 **Restricted Securities.** The shares of Active Preferred Stock issued in connection with the Merger will be "restricted securities" under the Securities Act and Rule 144 promulgated thereunder and may only be sold or otherwise transferred pursuant to an effective registration statement under the Securities Act or an exemption from the registration requirements of the Securities Act. It is understood that the certificates evidencing the shares of Active Preferred Stock issued in connection with the Merger will bear, one or all of the following legends:

(a) "These securities have not been registered under the Securities Act of 1933, as amended. They may not be sold, offered for sale, pledged or hypothecated in the absence of a registration statement in effect with respect to the securities under such Act or an opinion of counsel reasonably satisfactory to the Company that such registration is not required or unless sold pursuant to Rule 144 of such Act."

(b) Any legend required by applicable state law.

2.15 **Further Action.** If, at any time after the Effective Time, any such further action is necessary or desirable to carry out the purposes of this Agreement or to vest the Surviving Corporation with full right, title and possession to all assets, property, rights, privileges, powers and franchises of Company officers and directors of the Surviving Corporation are fully authorized to take, and will take, all such lawful and necessary action.

2.16 **Investor Representation Letter.** Prior to the Closing Date, the Shareholder shall deliver to Active an Investor Representation Letter in the form of Exhibit G hereto.

2.17 **Closing Deliveries by the Company and the Shareholder.** At the Closing, the Company and the Shareholder shall have delivered or caused to be delivered to Active:

(a) Spousal consent duly executed by the spouse, if any, of the Shareholder, substantially in the form of Exhibit A attached hereto;

(b) Employment Agreement by and between Active and the Shareholder, substantially in the form of Exhibit B attached hereto (the "Employment Agreement");

(c) Non-Competition Agreement by and between Active and the Shareholder, substantially in the form of Exhibit C attached hereto (the "Non-Competition Agreement"), duly executed by the Shareholder; An Estoppel Certificate by the landlord or landlords, as the case may be, of the Real Property, substantially in the form of Exhibit D attached hereto, duly executed by such landlord(s) (the "Estoppel Certificate");

(d) A certificate of an officer of the Company substantially in the form of Exhibit E attached hereto, duly executed by each of the Company and the Shareholder;

(e) A certificate of the Secretary of the Company substantially in the form of Exhibit F attached hereto, certifying as of the Closing Date (A) a true and complete copy of the organizational documents of the Company certified as of a recent date by the Secretary of State of the State of California, (B) a true and complete copy of the resolutions of the board of directors of the Company and the resolutions of the sole shareholder of the Company, each authorizing the execution, delivery and performance of this Agreement by the Company and the consummation of the transactions contemplated hereby and (C) certificates of good standing of the Company in the state of its incorporation;

(f) Those agreements which have been signed by each of the holders of Active Preferred Stock issued in the Next Financing Round, duly executed by Shareholder.

(g) A finalized Company Disclosure Schedule accurate as of the Closing Date.

(h) Such other documents as Active may reasonably request for the purpose of facilitating the consummation of the transactions contemplated herein, so long as these documents are consistent with the terms of this Agreement.

(i) Documentation memorializing the termination of the aircraft lease between Company and Stockholder.

(j) Escrow Agreement by and between Active and the Shareholder substantial in the form of Exhibit I attached hereto (the "Escrow Agreement") duly executed by the Shareholder.

2.18 **Closing Deliveries By Active.** At the Closing, Active shall have delivered or caused to be delivered to the Shareholder:

(a) The $2,666,541 portion of the Cash Payment reduced by any amounts paid to Shareholder pursuant to Section 6.3 of this Agreement, in cash, by check or by wire transfer of immediately available funds to an account designated by the Shareholder;

(b) One or more stock certificates evidencing ownership by Shareholder of the number of shares of Active Preferred Stock as determined in Section 2.7;

(c) The Employment Agreement, duly executed by Active;

(d) The Non-Competition Agreement, duly executed by Active;

(e) The Escrow Agreement, duly executed by Active;

(f) A finalized Active Disclosure Schedule accurate as of the Closing Date;

(g) A certificate of an officer of Active substantially in the form of Exhibit E attached hereto, duly executed by an authorized officer of Active; and

(h) A certificate of the Secretary of Active substantially in the form of Exhibit F attached hereto, certifying as of the Closing Date. A certificate of the Secretary of Active substantially in the form of Exhibit F attached hereto, certifying as of the Closing Date (A) a true and complete copy of the organizational documents of Active certified as of a recent date by the Secretary of State of the State of Delaware, (B) a true and complete copy of the resolutions of the board of directors of Active authorizing the execution, delivery and performance of this Agreement by the Company and the consummation of the transactions contemplated hereby and (C) certificates of good standing of the Company in the state of its incorporation;

2.19 **Conditions to Obligations of Each Party to Effect the Merger.** The respective obligations of each party to this Agreement to effect the Merger shall be subject to the satisfaction at or prior to the Closing of the following conditions:

(a) Governmental and Regulatory Approvals. Approvals from any governmental or regulatory authority (if any) deemed appropriate or necessary by any party to this Agreement shall have been timely obtained, and any waiting period applicable to the consummation of the Merger shall have expired or been terminated.

(b) No Injunctions or Regulatory Restraints; Illegality. No temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or governmental or regulatory authority or other legal or regulatory restraint or prohibition preventing the consummation of the Merger shall be in effect; nor shall there be any action taken, or any law or order enacted, entered, enforced or deemed applicable to the Merger or the other transactions contemplated by the terms of this Agreement that would prohibit the consummation of the Merger or which would permit consummation of the Merger

only if certain divestitures were made or if Active were to agree to limitations on its business activities or operations.

2.20 **Additional Conditions to Obligations of Company and Shareholder.** The obligations of Company and Shareholder to consummate the Merger and the other transactions contemplated by this Agreement shall be subject to the satisfaction at or prior to the Closing of each of the following conditions, any of which may be waived, in writing, exclusively by Company and Shareholder:

(a) Representations and Warranties. Each of the representations and warranties made by Active and Merger Sub in this Agreement shall be true and correct in all material respects (if not already qualified by materiality) and in all respects (if qualified by materiality) on and as of the Closing Date (other than representations and warranties which by their express terms are made solely as of a specified earlier date) as though such representation or warranty was made on and as of the Closing Date, and any representation or warranty made as of a specified date earlier than the Closing Date shall be true and correct in all material respects (if not already qualified by materiality) and in all respects (if qualified by materiality) on and as of such earlier date.

(b) Next Financing Round. Active shall have consummated a Next Financing Round.

(c) Performance. Active and Merger Sub shall have performed and complied with all material respects each agreement, covenant and obligation required by this Agreement to be so performed or complied with by the Active or Merger Sub on or before the Closing.

2.21 **Additional Conditions to the Obligations of Active and Merger Sub.** The obligations of Active and Merger Sub to consummate the Merger and the other transactions contemplated by this Agreement shall be subject to the satisfaction at or prior to the Closing of each of the following conditions, any of which may be waived, in writing, exclusively by Active:

(a) Representations and Warranties. Each of the representations and warranties made by Company and Shareholder in this Agreement shall be true and correct in all material respects (if not already qualified by materiality) and in all respects (if qualified by materiality) on and as of the Closing Date (other than representations and warranties which by their express terms are made solely as of a specified earlier date) as though such representation or warranty was made on and as of the Closing Date; and any representation or warranty made as of a specified date earlier than the Closing Date shall be true and correct in all material respects (if not already qualified by materiality) and in all respects (if qualified by materiality) on and as of such earlier date.

(b) Performance. Company and Shareholder shall have performed and complied in all material respects with (i) each agreement, covenant and obligation required by this Agreement to be so performed or complied with by Company and Shareholder on or before the Closing Date and (ii) Active's requests from Shareholder with respect to the cleanup of certain matters identified as set forth in a Due Diligence Issues List previously provided to Shareholder and dated as of September 22, 2000.

2.22 **Escrow Agreement.** At the Effective Time, a number of shares equal to thirty percent (30%) of the total number of shares of Active Preferred Stock into which all shares of Company Capital Stock are converted pursuant to Section 2.7 of this Agreement (collectively, the "Escrow Shares") shall be held in escrow as collateral for and the sole and exclusive remedy of the indemnification obligations of Company and Shareholder under Article VII of this Agreement and subject to the provisions of the Escrow Agreement. Within ten (10) business days after the Expiration Date (as defined in Section 7.2 hereof), the Escrow Shares, less (i) any Escrow Shares applied to Damages and (ii) any Escrow Shares subject to delivery to Active with respect to any pending but unresolved claims of Active, in either case in accordance with Article VII hereof and the Escrow Agreement, shall be released from escrow and distributed to the Shareholder. Any Escrow Shares held as a result of clause (ii) above shall be released to the Shareholder promptly upon resolution of each specific claim in accordance with Article VII hereof and the Escrow Agreement. The Escrow Shares shall constitute issued and outstanding shares of Active Preferred Stock owned by Shareholder upon the Effective Time. In the event of an "Acquisition" (as that term is defined in Active's Second Amended and Restated Certificate of Incorporation), whereby the capital stock of Active is exchanged for cash or other property of the applicable acquirer, then the cash or other property being so exchanged for the Escrow

Shares shall replace the Escrow Shares and distributed to Active or the Shareholder pursuant to the Terms of the Escrow Agreement as if such cash or their property was the Escrow Shares. All dividends paid on the Escrow Shares shall be distributed currently (i.e. with three (3) Business Days) to Shareholder, and any voting rights on such stock shall be exercisable by Shareholder or his agent. This escrow is intended to satisfy the requirements of Rev. Proc. 84-42 and shall be construed accordingly.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF SHAREHOLDER AND COMPANY

In addition to the tax representation set forth in Exhibit J, the Company and the Shareholder, jointly and severally, represent and warrant to Active as of the Closing, except as set forth on the Company Disclosure Schedule furnished to Active specifically identifying the relevant subparagraph hereof, which exceptions shall be deemed to be representations and warranties as if made hereunder, as follows:

3.1 **Organization of the Company**. The Company is a corporation duly organized, validly existing, and in good standing under the laws of the State of California. The Company is duly authorized to conduct business and is in good standing in each jurisdiction where such qualification is required except for any jurisdiction where failure to so quality would not have a Material Adverse Effect upon the Company. The Company has full power and authority, and holds all Permits and authorizations necessary to carry on its business as currently conducted and to own and use the Assets and Properties owned and used by the Company, except where the failure to have such power and authority or to hold such Permit or authorization would not have a Material Adverse Effect on the Company's business. The Company has delivered to Active correct and complete copies of its charter documents and organizational documents, each as amended to date.

3.2 **Capital Stock of the Company**. The authorized capital stock of the Company consists of Fifty Thousand (50,000) shares of common stock, no par value per share, of which One Thousand (1,000) shares are issued and outstanding as of the date hereof, and all of which shares are owned solely by the Shareholder. The Company has no authorized shares of preferred stock and no such shares of preferred stock are issued or outstanding. No shares of the Company's capital stock have been issued since the end of the period covered by the Interim Financial Statements. The Company Stock is duly authorized, validly issued, fully paid and nonassessable. Except for this Agreement, there are no outstanding subscriptions, options, warrants, calls, commitments or other rights of any kind for the purchase or acquisition of, nor any securities convertible or exchangeable for, any capital stock of the Company. The Company has never had, and does not currently have in effect, any stock option, stock compensation or stock issuance plan.

3.3 **Ownership of Shares**. The Shareholder owns beneficially and of record all the shares of Company Stock, free and clear of all Encumbrances, and has good and valid title to such shares. The delivery of the stock certificate(s) representing the Company Stock owned by the Shareholder in the manner provided in Section 2.17 will transfer to Active good and valid title thereto free and clear of all Encumbrances.

3.4 **Authority of the Shareholder**. The Shareholder has the right, power and authority to enter into this Agreement, to consummate the transactions contemplated hereby and to perform his obligations hereunder, without obtaining the approval or consent of any other Person. This Agreement has been duly and validly executed and delivered by the Shareholder and constitutes a legal, valid and binding obligation of the Shareholder, enforceable against the Shareholder in accordance with its terms except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally and (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies.

3.5 **Authority of the Company**. The Company has all necessary corporate power and corporate authority and has taken all corporate action necessary to enter into this Agreement, to consummate the transactions contemplated hereby and to perform its obligations hereunder and no other proceedings on the part of the Company are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by the Company and constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally and (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies.

3.6 **No Affiliates**. The Company does not have any subsidiaries or other Affiliates and is not a partner in any partnership or a party to a joint venture.

3.7 **No Conflicts**. The execution and delivery by the Shareholder and the Company of this Agreement does not, and the performance by the Shareholder and the Company of their respective obligations under this Agreement and the consummation of the transactions contemplated hereby will not:

(a) Conflict with or result in a violation or breach of any of the terms, conditions or provisions of the charter documents, bylaws or other organizational documents of the Company;

(b) Conflict with or result in a violation or breach of any term or provision of any law, Order, Permit, statute, rule or regulation applicable to the Shareholder or the Company or any of the businesses, Assets or Properties of the Shareholder or the Company;

(c) Result in a breach of, or default under (or give rise to right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license, agreement, lease or other similar instrument or obligation to which the Company, any of its Assets and Properties or the Company Stock may be bound, except for such breaches or defaults as set forth in Section 3.7(c) of the Company Disclosure Schedule; or

(d) Result in an imposition or creation of any Encumbrance on the business, Assets or Properties of the Company or the Company Stock.

3.8 **Consents and Governmental Approvals and Filings**. Except as set forth in Section 3.8 of the Company Disclosure Schedule, no consent, approval or action of, filing with or notice to any Governmental or Regulatory Authority or other Persons on the part of the Shareholder or the Company is required in connection with the execution, delivery and performance of this Agreement or the consummation of the transactions contemplated hereby.

3.9 **Books and Records**. The minute books and other corporate records of the Company as made available to Active contain a true and complete record, in all material respects, of all actions taken at all meetings and by all written consents in lieu of meetings of the shareholders, the boards of directors and committees of the boards of directors of the Company. The stock transfer ledgers and other similar records of the Company accurately reflect all issuances and record transfers in the capital stock of the Company. The other Books and Records of the Company are true, correct and complete.

3.10 **Financial Statements**. The Company has previously delivered to Active its Financial Statements. Such Financial Statements (i) are true, correct and complete, (ii) are in accordance with the Books and Records of the Company, and (iii) fairly present the financial condition and results of operations of the Company as of the respective dates thereof and for the periods covered thereby; provided that such Financial Statements are subject to normal year-end adjustments and lack footnotes and certain other presentation items.

3.11 **Absence of Changes**. Except for the execution and delivery of this Agreement and the transactions to take place pursuant hereto on or prior to the Closing Date, since the end of the period covered by the Company's Interim Financial Statements, there has not been any material adverse change, or any event or development which, individually or together with other such events, could reasonably be expected to result in a Material Adverse Effect on the Company and since the end of the period covered by such Interim Financial Statements, none of the Company and the Shareholder have taken any action which, if taken after the date of this Agreement, without Active's consent, would violate Section 3.28 hereof.

3.12 **No Undisclosed Liabilities**. Except as disclosed in Section 3.12 of the Company Disclosure Schedule or in its Financial Statements, there are no Liabilities, nor any basis for any claim against the Company for any such Liabilities, relating to or affecting the Company or any of its Assets and Properties, other than Liabilities incurred after the end of the period covered by the Company's Interim Financial Statements in the Ordinary Course of Business which have not had, and could not reasonably be expected to result in, individually or in the aggregate, a Material Adverse Effect on the Company.

3.13 **Tangible Personal Property**. The Company is in possession of and has good and marketable title to, or has valid leasehold interests in or valid rights under written agreements to use, all tangible personal property, equipment, plants, buildings, structures, facilities and all other Assets and Properties used in or reasonably necessary for the conduct of the Company's business, including all tangible personal property reflected on the Financial Statements and on the Interim Financial Statements and any tangible personal property acquired since that date other than property disposed of since such date in the Ordinary Course of Business. All such tangible personal property, equipment, plants, buildings, structures, facilities

and all other assets and properties are listed in Section 3.13 of the Company Disclosure Schedule and are free and clear of all Encumbrances.

3.14 **Benefit Plans; ERISA.** Section 3.14 of the Company Disclosure Schedule lists each Benefit Plan together with a brief description of the type of plan and benefit provided thereunder. The Company has no commitment, proposal, or communication to employees regarding the creation of an additional Plan or any increase in benefits under any Benefit Plan. The Company has provided to Active a copy of each Benefit Plan (including amendments) or, where substantially similar arrangements exist, a sample copy and a list of persons participating in such arrangement. Each Benefit Plan has been operated and administered in all material respects in accordance with its terms and, as of the Closing Date, to the knowledge of the Company and the Shareholder will be in full compliance, in form and operation, with all applicable laws (including but not limited to ERISA and the Code). There are no pending or, to the Knowledge of the Shareholder and the Company, anticipated or threatened claims by or on behalf of any Benefit Plan, by any employee or beneficiary covered under any such Benefit Plan, or otherwise involving any such Benefit Plan (other than routine claims for benefits).

3.15 **Real Property.** Section 3.15 of the Company Disclosure Schedule contains a complete and accurate description of each parcel of real property leased by the Company (as lessee or lessor) (the "Real Property") and all Encumbrances relating to or affecting the Real Property. The Company has a valid leasehold interest in all real property used in or relating to the conduct of the Company's business, free and clear of all Encumbrances. The Company has rights of ingress and egress with respect to the Real Property, and all buildings, structures, facilities, fixtures and other improvements thereon material for the operation of the Company's business. There is no pending or, to the Knowledge of the Shareholder or the Company, contemplated or threatened condemnation of any of the respective parcels of Real Property or any part thereof. To the knowledge of the Company and the Shareholder, none of such Real Property, buildings, structures, facilities, fixtures or other improvements, or the use thereof, contravenes or violates any building, zoning, fire protection, administrative, occupational safety and health or other applicable law, rule, or regulation except for any contravention or violation which individually or in the aggregate could not reasonably be expected to result in a Material Adverse Effect on the Company. Each lease with respect to the Real Property is a legal, valid and binding agreement of the Company subsisting in full force and effect, enforceable in accordance with its terms, and except as set forth in Section 3.15 of the Company Disclosure Schedule, there is no, and the Company has not received notice of any, default (or any condition or event which, after notice or lapse of time or both, would constitute a default) thereunder. The Company does not owe any brokerage commissions with respect to any such Real Property. The Company does not own any real property.

3.16 **Intellectual Property Rights.**

(a) Section 3.16(a) of the Company Disclosure Schedule contains a true, correct, complete and current list and summary of all of the Company Intellectual Property, including without limitation, all patent, trademark and copyright registrations or applications owned by, or filed in the name of, the Company. Except as set forth in Section 3.16(f) of the Company Disclosure Schedule, the Company owns and has good and exclusive title to each item of Company Intellectual Property free and clear of any Encumbrance.

(b) Section 3.16(b) of the Company Disclosure Schedule lists all proceedings or actions before any court, tribunal (including the United States Patent and Trademark Office ("PTO") or equivalent authority anywhere in the world) related to any Company Intellectual Property. No Company Intellectual Property or product or service of the Company is subject to any proceeding or outstanding decree, order, judgment, agreement, or stipulation restricting in any manner the use, transfer, or licensing thereof by the Company, or which may affect the validity, use or enforceability of such Company Intellectual Property.

(c) Each item of Company Intellectual Property is valid and subsisting, all necessary registration, maintenance and renewal fees in connection with such Company Intellectual Property have been made and all necessary documents and certificates in connection with the Company Intellectual Property have been filed with the relevant patent, copyright, trademark or other authorities in the United States or foreign jurisdictions, as the case may be, for the purposes of maintaining such Company Intellectual Property.

(d) To the extent that any work, invention, or material has been developed or created by the Shareholder, an Employee or a third party for the Company, the Company has a written agreement with such party with respect thereto and the Company thereby has obtained ownership of, and is the exclusive owner of, or has a valid license to use, all Intellectual Property in such work, material or invention by operation of law or by valid assignment.

(e) The Company has not transferred ownership of, or granted any license (exclusive or non-exclusive) with respect to any Company Intellectual Property to any Person.

(f) Section 3.16(f) of the Company Disclosure Schedule lists all contracts, licenses and agreements to which the Company is a party that are currently in effect (i) with respect to the Company Intellectual Property licensed or offered to any third party; or (ii) pursuant to which a third party has licensed or transferred any Company Intellectual Property to the Company. The contracts, licenses and agreements listed in Section 3.16(f) of the Company Disclosure Schedule are in full force and effect. The consummation of the transactions contemplated by this Agreement will neither violate nor result in the breach, modification, cancellation, termination or suspension of such contracts, licenses and agreements. The Company is in compliance with, and has not breached any term any of such contracts, licenses and agreements and, to the Knowledge of the Shareholder or the Company, all other parties to such contracts, licenses and agreements are in compliance with, and have not breached any term of, such contracts, licenses and agreements. Following the Closing Date, Active will be permitted to exercise all of the Company's rights under the contracts, licenses and agreements listed in Section 3.16(f) to the same extent the Company would have been able to had the transactions contemplated by this Agreement not occurred and without the payment of any additional amounts or consideration other than ongoing fees, royalties or payments which the Company would otherwise be required to pay.

(g) Section 3.16(g) lists all contracts, licenses and agreements between the Company and any Person wherein or whereby the Company has agreed to, or assumed, any obligation or duty to warrant, indemnify, hold harmless or otherwise assume or incur any obligation or liability with respect to the infringement or misappropriation by the Company or such Person of the Intellectual Property of any other Person.

(h) To the knowledge of the Company and the Shareholder, the operation of the business of the Company, as such business is currently conducted, has not, does not and will not infringe or misappropriate the Intellectual Property of any Person.

(i) The Company (including its officers, directors and, to the Knowledge of the Shareholder and the Company, employees and agents) has not received notice from any third party that the operation of the Company's business or any act, product or service of the Company: (a) infringes or misappropriates the Intellectual Property of any third party or (b) constitutes unfair competition or trade practices under the laws of any jurisdiction.

(j) To the Knowledge of the Shareholder and the Company, (i) no Person has or is infringing or misappropriating any Company Intellectual Property and (ii) there have been, and are, no claims asserted against the Company or against any customer of the Company, related to any product or service of the Company.

(k) The Company has taken reasonable steps to protect its rights in its confidential information and trade secrets or any trade secrets or confidential information of third parties provided to the Company and, without limiting the foregoing, the Company has and enforces a policy requiring each employee and contractor with access to any Company Intellectual Property to execute a proprietary information/confidentiality agreement substantially in the Company's standard form and all current and former employees and contractors of the Company have executed such an agreement ("Trade Secret Agreement"). To the Knowledge of the Shareholder and the Company, neither the Company nor any employees or consultants of the Company have caused any of the Company's trade secrets to become part of the public knowledge or literature, nor has the Company or any of the employees or consultants of the Company permitted any such trade secrets to be used, divulged or appropriated for the benefit of Persons to the material detriment of the Company.

3.17 **Litigation**. Except as set forth in Section 3.17 of the Company Disclosure Schedule, there are no Actions or Proceedings pending or, to the Knowledge of the Shareholder and the Company, threatened or anticipated against, relating to or affecting (i) the Company, its Assets and Properties or the Company's business, (ii) the Company Stock, or (iii) the transactions contemplated by this Agreement, and there is no basis for any such Action or Proceeding. To the knowledge of the Company and the Shareholder, the Company is not in default with respect to any Order, and there are no unsatisfied judgments against the Company.

3.18 **Compliance with Law**. To the knowledge of the Company and the Shareholder, the Company is in compliance with all applicable laws, statutes, Orders, ordinances and regulations, whether federal, state, local or foreign, except where the failure to comply, in each instance and in the aggregate, could not reasonably be expected to result in a Material Adverse Effect on the Company. Neither the Company nor the Shareholder has received any written notice to the effect that, or otherwise has been advised that, the Company is not in compliance with any of such laws, statutes, Orders, ordinances or regulations, where the failure to comply could reasonably be expected to result in a Material Adverse Effect on the Company.

3.19 **Contracts**.

(a) Section 3.19 of the Company Disclosure Schedule contains a true and complete list of each of the following written or oral contracts, agreements or other arrangements to which the Company is a party or by which any of its Assets and Properties is bound (and, to the extent oral, accurately describes the terms of such contracts, agreements and arrangements):

(i) All collective bargaining or similar labor agreements;

(ii) All contracts for the employment of any officer, employee or other person or entity on a full time, part time, consulting or other basis;

(iii) All loan agreements, indentures, debentures, notes or letters of credit relating to the borrowing of money or to mortgaging, pledging or otherwise placing a lien on any material asset or material group of assets of the Company;

(iv) All guarantees of any obligation;

(v) All leases or agreements under which the Company is lessee or lessor of, or holds, or operates, any property, real or personal, owned by any other party;

(vi) All commitments, contracts, sales contracts, purchase orders, mortgage agreements or groups of related agreements with the same party or any group or affiliated parties which require or may in the future require payment of any consideration of $10,000 of more by the Company;

(vii) All license agreements, distribution agreements or any other agreements involving any Company Intellectual Property;

(viii) All subscription or registration rights agreements or any other agreements related to the equity ownership of the Company;

(ix) All contracts or commitments that in any way restrict the Company or the Shareholder from carrying on its business anywhere in the world; and

(x) All other contracts and agreements that (A) involve the payment or potential payment, pursuant to the terms of any such contract or agreement, by the Company of $10,000 or more, (B) cannot be terminated within thirty (30) days after giving notice of termination without resulting in any cost or penalty to the Company, (C) are between the Company and any officer, director, shareholder or employee of the Company, or (D) may have a material affect on this Agreement, the Employment Agreements, the Non-competition Agreement, or the transactions contemplated hereby.

(b) Each contract, agreement or other arrangement disclosed in the Company Disclosure Schedule is in full force and effect and constitutes a legal, valid and binding agreement, enforceable in accordance with its terms, of each party thereto; and the Company has performed all of its required obligations under, and is not in violation or breach of or default under, any such contract, agreement or arrangement. To the Knowledge of the

Shareholder and the Company, the other parties to any such contract, agreement or arrangement are not in violation or breach of or default under any such contract, agreement or arrangement. None of the present employees, officers, directors or shareholders of the Company is a party to any oral or written contract or agreement prohibiting any of them from freely competing with other parties or engaging in the Company's business as now operated.

3.20 **Environmental Matters**. Except as set forth in Section 3.20 of the Company Disclosure Schedule, to the knowledge of the Company and the Shareholder, there are no past or present actions, activities, circumstances, conditions, events or incidents arising from the operation, ownership or use of any property currently or formerly owned, operated or used by the Company (or any entity formerly an Affiliate of the Company), including, without limitation, the release, emission, discharge or disposal of any Material into the Environment that (i) could reasonably be expected to result in the incurrence of costs under Environmental Laws or (ii) could reasonably be expected to form the basis of any Environmental Notice against or with respect to the Company or against any Person whose liability for any Environmental Notice may have been retained or assumed by or could be imputed or attributed to the Company.

3.21 **Inventory**. Except as set forth in the Section 3.21 of the Company Disclosure Schedule, the inventory of the Company is in good and merchantable condition, and suitable and usable at its carrying value in the Ordinary Course of Business for the purposes for which intended. To the knowledge of the Company and the Shareholder, there is no material adverse condition affecting the supply of materials available to the Company. Except as set forth in Section 3.21 of the Company Disclosure Schedule, all inventories used in or relating to the conduct of the Company's business are owned by the Company free and clear of any Encumbrances. To the Knowledge of the Shareholder and the Company, no supplier of the Company is in violation of any federal, state, local or foreign law, ordinance, regulation or Order, which violation has a Material Adverse Effect on such supplier's ability to produce or supply the Company with any product necessary for the operations of the Company's business.

3.22 **Accounts Receivable**. Except as set forth in Section 3.22 of the Company Disclosure Schedule, the accounts receivable and all other receivables shown on the Financial Statements and on the Interim Financial Statements (subject to reserves for non-collectibility as reflected therein), and all receivables acquired or generated by the Company since the end of the period covered by the Interim Financial Statements (subject to reserves for non-collectibility as reflected on the books and financial statements of the Company), are *bona fide* receivables and represent amounts due with respect to actual, arms-length transactions entered into in the Ordinary Course of Business of the Company and are legal, valid and binding obligations of the obligors.

3.23 **Plants, Buildings, Structures, Facilities and Equipment**. Except as set forth in Section 3.23 of the Company Disclosure Schedule, to the knowledge of the Company and the Shareholder, (a) all plants, buildings, structures, facilities and equipment used by the Company in the conduct of its business are structurally sound with no known material defects and are in good operating condition and repair (subject to normal wear and tear) so as to permit the operation of its business as presently conducted; (b) no such plant, building, structure, facility or equipment is in need of maintenance or repairs except for ordinary, routine maintenance and repairs which are not material in nature or cost; and (c) with respect to each plant, building,

structure, facility or item of equipment, the Company has not received notification that it is in violation, in any material respect, of any applicable building, zoning, subdivision, fire protection, health or other law, Order, ordinance or regulation and no such violation exists.

3.24 **Insurance**. Set forth in Section 3.24 of the Company Disclosure Schedule is a complete and accurate list of all primary, excess and umbrella policies, bonds and other forms of insurance currently owned or held by or on behalf of and/or providing insurance coverage to the Company or the Assets and Properties of the Company (or any of the Company's directors, officers, salespersons, agents or employees), including the following information for each such policy: type(s) of insurance coverage provided; name of insurer; effective dates; policy number; per occurrence and annual aggregate deductibles or self-insured retentions; per occurrence and annual aggregate limits of liability and the extent, if any, to which the limits of liability have been exhausted. All policies set forth on the Company Disclosure Schedule are in full force and effect, and with respect to such policies, all premiums currently payable or previously due have been paid, and no notice of cancellation or termination has been received with respect to any such policy. All such policies are sufficient for compliance with all requirements of law and, to the knowledge of the Company and the Shareholder, all agreements to which the Company is a party or otherwise bound, and are valid, outstanding, collectible and enforceable policies and, to the Knowledge of the Shareholder and the Company, provide adequate insurance coverage for the Company and the business and Assets and Properties of the Company and will remain in full force and effect through the respective dates set forth in the Company Disclosure Schedule. None of such policies contains a provision that would permit the termination, limitation, lapse, exclusion or change in the terms of coverage of such policy (including, without limitation, a change in the limits of liability) by reason of the consummation of the transactions contemplated by this Agreement. Complete and accurate copies of all such policies and related documentation have previously been provided to Active.

3.25 **Tax Matters**.

(a) The Company has or will have filed with the appropriate federal, state, local and foreign taxing authorities all Tax Returns required to be filed on or before the Closing Date by or with respect to it, and such Tax Returns are or will be true, correct and complete in all material respects. The Company has paid in full or has made provision in the Financial Statements and the Interim Financial Statements for all taxes, which are due or claimed to be due from it by any taxing authority. The Company has not incurred any liability for Taxes other than in the ordinary course of its business since the date of the most recent Interim Financial Statement. There are no liens for Taxes upon the Assets and Properties of the Company except for statutory liens for current Taxes not yet due.

(b) The Company has not requested any extension of time within which to file any Tax Return, which Tax Return has not since been filed, or waived any statute of limitations for, or agreed to any extension of time with respect to, the assessment of Taxes. The Company has not received any notice of deficiency or assessment from any federal, state, local or foreign taxing authorities with respect to liabilities for Taxes which have not been fully paid or finally settled, and any such deficiency or assessment shown in Section 3.25(b) of the Company Disclosure Schedule is being contested in good faith through appropriate proceedings. Further, to the knowledge of the Company and the Shareholder, no state of facts exists or has existed

which would constitute grounds for the assessment of any liability for Taxes with respect to the periods prior to the Closing Date which have not been audited by any taxing authority. Neither the Company, its officers or directors nor Shareholder are aware of any information, which has caused or should cause them to believe that an audit by any Tax authority may be forthcoming. No claim has ever been made by an authority in a jurisdiction where the Company does not file Tax Returns that it is or may be subject to taxation by that jurisdiction.

(c) The Company has withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, director, creditor, shareholder, or other third party.

(d) The Company does not have any liability for the Taxes of any other Person (i) under Treasury Regulations § 1.1502-6 (or any similar provision of state, local, or foreign law), (ii) as a transferee or successor, (iii) by contract, or (iv) otherwise.

(e) The Company has not filed and will not file prior to the Closing a consent under Code § 341(f). The Company is not obligated to make any payments, and is not a party to any agreement that under certain circumstances could obligate it to make any payments that will not be deductible under Code § 162 or § 280G whether paid prior to or after the Closing. Prior to the Closing, the Company will not have experienced a change of ownership within the meaning of Code Section 382. The Company is not and has not been a United States real property holding corporation within the meaning of Code § 897(c)(2).

3.26 **Labor and Employment Relations.** To the Knowledge of the Shareholder and the Company, no officer, executive or other employees of the Company has or have any plans to terminate his, her or their employment with the Company. The Company is not a party to or bound by any collective bargaining agreement with any labor organization, group or association covering any of its employees, and to the Knowledge of the Shareholder and the Company, there are no attempts to organize any of the Company's employees by any person, unit or group seeking to act as their bargaining agent. To the knowledge of the Company and the Shareholder, the Company has complied with all applicable laws relating to the employment of labor, including provisions thereof relating to wages, hours, equal opportunity, collective bargaining, discrimination against race, color, national origin, religious creed, physical or mental disability, sex, age, ancestry, medical condition, marital status or sexual orientation, and the withholding and payment of social security and other taxes. There are no pending or, to the Knowledge of the Shareholder and the Company, threatened charges of unfair labor practices or of employment discrimination or of any other wrongful action with respect to any aspect of employment of any person employed or formerly employed by the Company. No union representation elections relating to the Company's employees have been scheduled by any Governmental or Regulatory Authority, no organizational effort is being made with respect to any of such employees, and to the Knowledge of the Shareholder and the Company, there is no investigation of the Company's employment policies or practices by any Governmental or Regulatory Authority pending or threatened. The Company is not currently, and in the past has not been, involved in labor negotiations with any unit or group seeking to become the bargaining unit for any employees of the Company. The Company has never experienced any work stoppages and to the Knowledge of the Shareholder and the Company, no work stoppage has been threatened or is planned.

3.27 **Certain Employees**. Set forth in Section 3.27 of the Company Disclosure Schedule is a list of the names of the Company's employees and consultants as of the date hereof, together with the title or job classification of each such person and the total compensation (with wages and bonuses, if any, separately detailed) paid in 1999 (if applicable) and the current rate of pay for each such person on the date of this Agreement. Except as set forth in Section 3.27 of the Company Disclosure Schedule, none of such persons has an employment agreement or understanding, whether oral or written, with the Company, which is not terminable on notice by the Company without cost or other liability to the Company.

3.28 **Absence of Certain Developments**. Since the end of the period covered by the Interim Financial Statements, except as set forth in Section 3.28 of the Company Disclosure Schedule and except in the Ordinary Course of Business, the Company has not:

(a) Issued any stock, bonds or other corporate securities or any right, options or warrants with respect thereto;

(b) Borrowed any amount, obtained any letters of credit or incurred or become subject to any Liabilities in excess of Ten Thousand Dollars ($10,000) in the aggregate;

(c) Discharged or satisfied any lien or Encumbrance or paid any obligation or Liability, other than current Liabilities paid in the Ordinary Course of Business and other than current federal income Tax liabilities;

(d) Declared or made any payment or distribution of cash or other property to shareholders with respect to its stock, or purchased or redeemed any shares of its capital stock;

(e) Mortgaged or pledged any of its Assets or Properties, or subjected them to any lien, charge or any other Encumbrance, except liens for current property Taxes not yet due and payable;

(f) Sold, leased, subleased, assigned or transferred any of its Assets or Properties, or cancelled any debts or claims;

(g) Made any changes in any employee compensation, severance or termination agreement, commitment or transaction other than routine salary increases consistent with past practice or offer employment to any individuals with an annual compensation, including salary, cash, bonuses and commissions, in excess of Fifty Thousand Dollars ($50,000);

(h) Entered into any material transaction, or modified any existing transaction (the aggregate consideration for which is in excess of Ten Thousand Dollars ($10,000);

(i) Suffered any damage, destruction or casualty loss, whether or not covered by insurance;

(j) Made any capital expenditures, additions or improvements or commitments for the same, except those made in the Ordinary Course of Business which in the aggregate do not exceed Ten Thousand Dollars ($10,000);

(k) Entered into any transaction or operated the Company's business, not in the Ordinary Course of Business;

(l) Made any change in its accounting methods or practices or ceased making accruals for taxes, obsolete inventory, vacation and other customary accruals;

(m) Ceased from reserving cash to pay taxes, principal and interest on borrowed funds, and other customary expenses and payments;

(n) Caused to be made any reevaluation of any of its Assets or Properties;

(o) Caused to be entered into any amendment or termination of any lease, customer or supplier contract or other material contract or agreement to which it is a party;

(p) Made any material change in any of its business policies, including, without limitation, advertising, distributing, marketing, pricing, purchasing, personnel, sales, returns, budget or product acquisition or sale policies;

(q) Terminated or failed to renew, or received any written threat (that was not subsequently withdrawn) to terminate or fail to renew, any contract or other agreement that is or was material to the Company's business or its financial condition;

(r) Permitted to occur or be made any other event or condition of any character which has had, or may have, a Material Adverse Effect on it;

(s) Waived any rights material to its financial or business condition;

(t) Made any illegal payment or rebates; or

(u) Entered into any agreement to do any of the foregoing.

3.29 **Necessary Property**. All of the Real Property and Assets and Properties owned or leased by the Company and the Company Intellectual Property listed in Section 3.16 of the Company Disclosure Schedule owned by or licensed to the Company constitute all of the property reasonably necessary for the conduct of the Company's business in the manner and to the extent presently conducted by the Company.

3.30 **Bank Accounts**. Section 3.30 of the Company Disclosure Schedule contains a complete and accurate list of each deposit account or asset maintained by or on behalf of the Company with any bank, brokerage house or other financial institution, specifying with respect to each the name and address of the institution, the name under which the account is maintained, the account number, and the name and title or capacity of each Person authorized to have access thereto.

3.31 **Permits**. Section 3.31 of the Company Disclosure Schedule contains a true and complete list of all Permits used in and material, individually or in the aggregate, to the Company's business. All such Permits are currently effective and valid and have been validly issued. Except as set forth in Section 3.31 of the Company Disclosure Schedule, no additional

Permits are necessary to enable the Company to conduct its business in compliance with all applicable federal, state and local laws. Neither the execution, delivery or performance of this Agreement nor the mere passage of time (except as specifically noted in Section 3.31 of the Company Disclosure Schedule) will have any effect on the continued validity or sufficiency of the Permits, nor will any additional Permits be required by virtue of the execution, delivery or performance of this Agreement to enable the Company to conduct its business as now operated. To the Knowledge of the Shareholder and the Company, there is no pending Action or Proceeding by any Governmental or Regulatory Authority which could affect the Permits or their sufficiency for the current conduct of the Company's business or of the conduct of the Company's business after the Closing. The Company has provided Active with true and complete copies of all Permits listed in Section 3.31 of the Company Disclosure Schedule.

3.32 **Brokers**. Neither the Shareholder nor the Company has retained any broker in connection with the transactions contemplated hereunder. Active has, and will have, no obligation to pay any broker's, finder's, investment banker's, financial advisor's or similar fee in connection with this Agreement or the transactions contemplated hereby by reason of any action taken by or on behalf of the Shareholder or the Company.

3.33 **Material Misstatements and Omissions**. The statements, representations and warranties of the Company and/or the Shareholder contained in this Agreement (including the exhibits and schedules hereto) and in each document, statement, certificate or exhibit furnished or to be furnished by or on behalf of the Company and the Shareholder pursuant hereto, or in connection with the transactions contemplated hereby, taken together, do not contain and will not contain any untrue statement of a material fact and do not or will not omit to state a material fact necessary to make the statements or facts contained herein or therein, in light of the circumstances made, not misleading.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF ACTIVE

In addition to the tax representations set forth in Exhibit J, Active represents and warrants to the Shareholder, except as set forth on the Active Disclosure Schedule furnished to Shareholder specifically identifying the relevant subparagraph hereof, which exceptions shall be deemed to be representations and warranties as if made hereunder, as follows:

4.1 **Organization of Active**. Active is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware. Active is duly authorized to conduct business and is in good standing under the laws of each jurisdiction where such qualification is required except for any jurisdiction where failure so to qualify would not have a Material Adverse Effect upon Active. Active has full power and authority, and holds all Permits and authorizations necessary, to carry on the business in which it is engaged and to own and use the properties owned and used by it except where the failure to have such power and authority or to hold such license, permit or authorization would not have a Material Adverse Effect on Active

4.2 **Authority of Active and Merger Sub**. Active and Merger Sub have all necessary corporate power and corporate authority and have taken all corporate actions necessary to enter into this Agreement, to consummate the transactions contemplated hereby and to perform their obligations hereunder and no other proceedings on the part of Active or Merger Sub are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Active and Merger Sub and constitutes a legal, valid and binding obligation of Active and Merger Sub enforceable against Active in accordance with its terms except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally and (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies.

4.3 **No Conflicts**. The execution and delivery by Active and Merger Sub of this Agreement does not, and the performance by Active and Merger Sub of their respective obligations under this Agreement and the consummation of the transactions contemplated hereby will not:

(a) Conflict with or result in a violation or breach of any of the terms, conditions or provisions of the charter documents, bylaws or other organizational documents of Active or Merger Sub;

(b) Conflict with or result in a violation or breach of any term or provision of any law, Order, Permit, statute, rule or regulation applicable to the Active or Merger Sub or any of the businesses, Assets or Properties of Active or Merger Sub;

(c) Result in a breach of, or default under (or give rise to right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license, agreement, lease or other similar instrument or obligation to which the Active or Merger Sub, any of their Assets and Properties or the capital stock of Active may be bound.

(d) Result in an imposition or creation of any Encumbrance on the business, Assets or Property of Active or its capital stock.

4.4 **Litigation**. Except as set forth in Section 4.4 of Active Disclosure Schedule, there are no Actions or Proceedings pending or, to the Knowledge of Active, threatened or anticipated against, relating to or affecting (i) Active, its Assets and Properties or Active's business, (ii) Active's capital stock, or (iii) the transactions contemplated by this Agreement, and there is no basis for any such Action or Proceeding. To the knowledge of the Active, Active is not in default with respect to any Order, and there are no unsatisfied judgments against Active.

4.5 **Capitalization and Voting Rights**. The authorized capital of Active consists, or will consist prior to the Closing, of:

(a) Preferred Stock. 22,273,719 shares of Active Preferred Stock, $0.001 par value, of which (i) 641,500 have been designated Series A-1 Preferred Stock, of which 641,500 are issued and outstanding; (ii) 750,000 have been designated Series A-2 Preferred

Stock, of which 750,000 are issued and outstanding; (iii) 405,882 have been designated Series A-3 Preferred Stock, of which 405,882 are issued and outstanding; (iv) 5,050,000 have been designated Series B Preferred Stock, of which 5,050,000 are issued and outstanding; (v) 2,729,012 have been designated Series C Preferred Stock, of which 2,729,012 are issued and outstanding; (vi) 6,582,814 have been designated Series D-1 Preferred Stock, of which 5,838,813 are issued and outstanding; (vii) 1,167,315 have been designated Series D-2 Preferred Stock, of which 1,167,315 are issued and outstanding; (viii) 1,082,150 have been designated Series E Preferred Stock, of which 1,082,150 are issued and outstanding; and (ix) 3,865,046 have been designated Series F Preferred Stock, of which 2,973,115 are issued and outstanding. The rights, privileges and preferences of each series of Active Preferred Stock are stated in Active's Second Amended and Restated Certificate of Incorporation.

(b) Common Stock. 50,000,000 shares of Active Common Stock, $0.001 par value, 15,446,849 of which are issued and outstanding.

Immediately prior to the Closing, except for (i) the conversion privileges of the Preferred Stock, (ii) the rights provided in the Third Amended and Restated Investors' Rights Agreement (the "Investors' Rights Agreement") and the Third Amended and Restated Stock Restriction and Co-Sale Agreement (the "Stock Restriction Agreement") by and among Active and certain of its stockholders dated April 28, 2000, and (iii) currently outstanding options, warrants or other rights to purchase 9,030,310 shares of Common Stock of Active, there are not outstanding any options, warrants, rights (including conversion or preemptive rights and rights of first refusal), or agreements for the purchase or acquisition from Active of any shares of its capital stock. Active is not a party or subject to any agreement or understanding, and there is no agreement or understanding between any persons that affects or relates to the voting or giving of written consents with respect to any security or the voting by a director of Active, except as set forth in the Third Amended and Restated Voting Agreement (the "Restated Voting Agreement") by and among Active and certain of its stockholders dated April 28, 2000.

(c) Upon Closing, all the capital stock of Active issued to its stockholders (including, without limitation, those shares issued to Shareholder) shall be duly issued, fully paid and non-assessable.

(d) The authorized capital stock of Merger Sub shall consist of one thousand (1,000) shares of common stock, $0.0001 par value, all of which are issued and outstanding and held by Active.

4.6 **Financial Statements**. Active has previously delivered to Shareholder its Financial Statements. Such Financial Statements (i) are true, correct and complete, (ii) are in accordance with Active's books and records, and (iii) fairly present the financial condition and results of operations of the Active as of the respective dates thereof and for the periods covered thereby; provided that such Financial Statements are subject to normal year-end adjustments and lack footnotes and certain other presentation items.

4.7 **Absence of Changes**. Except for the execution and delivery of this Agreement and the transactions to take place pursuant hereto on or prior to the Closing Date, since the end of the period covered by Active's Interim Financial Statements, there has not been

any material adverse change, or any event or development which, individually or together with other such events, could reasonably be expected to result in a Material Adverse Effect on Active and since the end of the period covered by the such Interim Financial Statements, Active has not taken any action which, if taken after the date of this Agreement would violate Section 4.9 hereof.

4.8 **No Undisclosed Liabilities**. Except as disclosed in Section 4.8 of the Active Disclosure Schedule or in the Active Financial Statements, there are no Liabilities, nor any basis for any claim against Active for any such Liabilities, relating to or affecting Active or any of its Assets and Properties, other than Liabilities incurred after the end of the period covered by Active's Interim Financial Statements in the Ordinary Course of Business which have not had, and could not reasonably be expected to result in, individually or in the aggregate, a Material Adverse Effect on Active.

4.9 **Absence of Certain Developments**. Since the end of the period covered by the Active Financial Statements, except as set forth in Section 4.9 of the Company Disclosure Schedule and except in the Ordinary Course of Business, Active has not:

(a) Issued any stock, bonds or other corporate securities or any right, options or warrants with respect thereto;

(b) Borrowed any amount, obtained any letters of credit or incurred or become subject to any Liabilities in excess of Ten Thousand Dollars ($10,000) in the aggregate;

(c) Discharged or satisfied any lien or Encumbrance or paid any obligation or Liability, other than current Liabilities paid in the Ordinary Course of Business and other than current federal income Tax liabilities;

(d) Declared or made any payment or distribution of cash or other property to shareholders with respect to its stock, or purchased or redeemed any shares of its capital stock;

(e) Mortgaged or pledged any of its Assets or Properties, or subjected them to any lien, charge or any other Encumbrance, except liens for current property Taxes not yet due and payable;

(f) Sold, leased, subleased, assigned or transferred any of its Assets or Properties, or cancelled any debts or claims;

(g) Made any changes in any employee compensation, severance or termination agreement, commitment or transaction other than routine salary increases consistent with past practice or offer employment to any individuals with an annual compensation, including salary, cash, bonuses and commissions, in excess of Fifty Thousand Dollars ($50,000);

(h) Entered into any material transaction, or modified any existing transaction (the aggregate consideration for which is in excess of Ten Thousand Dollars ($10,000);

(i) Suffered any damage, destruction or casualty loss, whether or not covered by insurance;

(j) Made any capital expenditures, additions or improvements or commitments for the same, except those made in the Ordinary Course of Business which in the aggregate do not exceed Ten Thousand Dollars ($10,000);

(k) Entered into any transaction or operated Active's business, not in the Ordinary Course of Business;

(l) Made any change in its accounting methods or practices or ceased making accruals for taxes, obsolete inventory, vacation and other customary accruals;

(m) Ceased from reserving cash to pay taxes, principal and interest on borrowed funds, and other customary expenses and payments;

(n) Caused to be made any reevaluation of any of its Assets or Properties;

(o) Caused to be entered into any amendment or termination of any lease, customer or supplier contract or other material contract or agreement to which it is a party;

(p) Made any material change in any of its business policies, including, without limitation, advertising, distributing, marketing, pricing, purchasing, personnel, sales, returns, budget or product acquisition or sale policies;

(q) Terminated or failed to renew, or received any written threat (that was not subsequently withdrawn) to terminate or fail to renew, any contract or other agreement that is or was material to Active's business or its financial condition;

(r) Permitted to occur or be made any other event or condition of any character which has had, or may have, a Material Adverse Effect on it;

(s) Waived any rights material to its financial or business condition;

(t) Made any illegal payment or rebates; or

(u) Entered into any agreement to do any of the foregoing.

4.10 **Material Misstatements and Omissions**. The statements, representations and warranties of Active or Merger Sub contained in this Agreement (including the exhibits and schedules hereto) and in each document, statement, certificate or exhibit furnished or to be furnished by or on behalf of Active or Merger Sub pursuant hereto, or in connection with the transactions contemplated hereby, taken together, do not contain and will not contain any untrue statement of a material fact and do not or will not omit to state a material fact necessary to make the statements or facts contained herein or therein, in light of the circumstances made, not misleading.

ARTICLE V
CONDUCT OF THE BUSINESS OF THE COMPANY PRIOR TO CLOSING; ADDITIONAL AGREEMENTS

During the period from the date hereof and continuing until the earlier of the termination of this Agreement and the Closing Date (except as otherwise provided herein), the parties hereto agree that:

5.1 **Conduct of Business of the Company**. The Shareholder shall cause the Company to carry on its business in the Ordinary Course of Business in substantially the same manner as heretofore conducted and, to the extent consistent with such business, use all commercially reasonable efforts consistent with past practice and policies to preserve intact the Company's present business organization, keep available the services of its present officers and key employees and preserve its relationships with advertisers, suppliers, users, members, and others having business dealings with it, to the end that its goodwill and ongoing businesses shall be unimpaired at the Closing Date. The Shareholder shall promptly notify Active of any event or occurrence not in the Ordinary Course of Business of the Company, and any event of which the Shareholder is aware which reasonably would be expected to have a Material Adverse Effect on the Company (even if the likelihood of such event has previously been disclosed or could result from any item set forth in the Company Disclosure Schedule). Except as expressly contemplated by this Agreement or disclosed in the Company Disclosure Schedule, the Shareholder hereby assures that, without the prior written consent of Active, the Company will not:

(a) Enter into any commitment or transaction not in the Ordinary Course of Business, or to purchase fixed assets with an aggregate purchase price exceeding Twenty Thousand Dollars ($20,000);

(b) Grant any severance or termination pay to any director, officer, employee, consultant or other Person in excess of $7,500 in the aggregate except that the Company may pay its employees up to a maximum aggregate of $30,000 in bonuses.

(c) Transfer to any Person any rights to Company Intellectual Property except in the Ordinary Course of Business;

(d) Enter into or amend any agreement pursuant to which any other Person is granted rights of any type or scope with respect to any products or services of the Company except in the Ordinary Course of Business;

(e) Commence a lawsuit other than for the routine collection of bills or for breach of this Agreement;

(f) Declare or pay any dividends on or make any other distributions (whether in cash, stock or property) in respect of any of its capital stock, or split, combine or reclassify any of its capital stock or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock, or repurchase or otherwise acquire, directly or indirectly, any shares of its capital stock or make any distribution of cash, stock or property to Shareholder, except for a cash distribution of $50,000 in the aggregate to pay for, among other things, certain tax liabilities incurred by Shareholder. In addition, Company may reimburse Shareholder $128,940 for certain taxes paid by Shareholder prior to the date of this Agreement.

(g) Issue, deliver or sell, authorize or propose the issuance, delivery or sale of, or purchase or propose the purchase of, any shares of its capital stock or securities convertible into, or subscriptions, rights, warrants or options to acquire, or other agreements or commitments of any character obligating the Company to issue any such shares or other convertible securities;

(h) Cause or permit any amendments to its Articles of Incorporation or Bylaws;

(i) Acquire or agree to acquire by merging, consolidating or entering into a joint venture arrangement with, or by purchasing a substantial portion of the assets of, or by any other manner, any business or any corporation, partnership, association or other business organization or division thereof, or otherwise acquire or agree to acquire any assets which are material, individually or in the aggregate, to the financial condition, results of operations, business or properties of the Company taken as a whole;

(j) Sell, lease, license or otherwise dispose of any of the Company's Assets or Properties, outside of the Ordinary Course of Business;

(k) Incur any indebtedness for borrowed money or guarantee any such indebtedness or issue or sell any debt securities or guarantee any debt securities of others, outside of the Ordinary Course of Business;

(l) Adopt, amend or terminate any Benefit Plan or enter into any employment contract, pay any special bonus or special remuneration to any Person, or increase the salaries or wage rates of its directors, officers, employees or consultants; provided, however, that Company may commit to pay and/or pay up to $30,000 in bonuses to employees of the Company, in addition to the Benefit Plans described in Section 3.14;

(m) Revalue any of its Assets or Properties, including without limitation, writing down the value of inventory or writing off notes or accounts receivable;

(n) Pay, discharge or satisfy in an amount in excess of Ten Thousand Dollars ($10,000) in any one case any claim, liability or obligation (absolute, accrued, asserted or unasserted, contingent or otherwise), other than the payment, discharge or satisfaction of obligations in the Ordinary Course of Business or liabilities reflected or reserved against in the Financial Statements; provided, however, that the Company may pay $45,000 for legal services rendered in connection with the drafting and negotiating of this Agreement and related agreements and schedules, and otherwise rendered in connection with the transactions contemplated herein;

(o) Make any material tax election other than in the Ordinary Course of Business and consistent with past practice, change any material tax election, adopt any material tax accounting method other than in the Ordinary Course of Business and consistent with past practice, change any material tax accounting method, file any material tax return (other than any estimated tax returns, payroll tax returns or sales tax returns) or any amendment to a material tax return, enter into any closing agreement, settle any tax claim or assessment, or consent to any extension or waiver of the limitation period, applicable to any tax claim or assessment;

(p) Engage in any activities or transactions that are outside the Ordinary Course of Business and cause the Company to incur expenses or liabilities in excess of $10,000;

(q) Fail to pay or otherwise satisfy its monetary obligations as they become due, except such as are being contested in good faith;

(r) Waive or commit to waive any rights with a value in excess of Ten Thousand Dollars ($10,000);

(s) Cancel, materially amend or renew any insurance policy other than in the Ordinary Course of Business;

(t) Enter into any commitment with respect to acquiring an interest in any corporation, association, joint venture, partnership or business entity; or

(u) Take, or agree in writing or otherwise to take, any of the actions described in Sections 5.1(a) through (t) above.

5.2 **Access to Information**. The Company shall, and the Shareholder shall cause the Company to, afford Active and its accountants, counsel and other representatives, reasonable access during normal business hours during the period prior to the Closing Date to (i) all of its Assets and Properties, Books and Records, contracts, commitments and records; and (ii) all other information concerning the business, properties and personnel of the Company.

5.3 **Other Negotiations**. Unless and until this Agreement shall have been terminated pursuant to Section 6.1 hereof, the Shareholder shall assure that the Company will not, directly or indirectly, (and the Shareholder will make best efforts to assure that the Company's officers, directors, employees, affiliates and legal, accounting and financial advisors do not on the Company's behalf) take any action to solicit, initiate, seek, encourage or support any inquiry, proposal or offer from, furnish any information to, or participate in any negotiations with, any corporation, partnership, person or other entity or group (other than negotiations with Active) regarding any acquisition of the Company, any merger or consolidation with or involving the Company, or any acquisition of any portion or all of the stock or assets of the Company. The Shareholder agrees that any negotiations referred to in this Section 5.3 (other than negotiations with Active) in progress as of the date hereof will be suspended during the period referred to above and that, in no event, will the Company or the Shareholder accept or enter into an agreement with any such third party regarding matters contemplated herein during such period. The Shareholder represents and warrants that he and the Company have the legal right to terminate or suspend any such pending negotiations with third parties. The Shareholder will notify Active immediately after receipt by the Shareholder or the Company (or any of its officers, directors, employees, affiliates or advisors) of any unsolicited proposal for, or inquiry respecting, any third party acquisition transaction or any request for nonpublic information in connection with such a proposal or inquiry or for access to the Assets or Properties or Books and Records of the Company by any Person that informs the Company or the Shareholder that it is considering making, or has made, such a proposal or inquiry. Such notice to Active will be made orally and in writing and will indicate in reasonable detail the identity of the Person making the proposal or inquiry and the terms and conditions of such proposal or inquiry.

5.4 **Breach of Representations and Warranties**. In the event of and promptly after becoming aware of the occurrence or pending or threatened occurrence of any event which would cause their respective representations and warranties not to be true and correct, each party shall give detailed notice thereof to the other. The Company shall provide a final Company Disclosure Schedule to Active and Merger Sub on the Closing Date, which Company Disclosure Schedules shall modify and supplement the terms of the representations and warranties.

5.5 **Consents**. Each of Active and the Shareholder on behalf of the Company shall promptly apply for or otherwise seek, and use their best efforts to obtain, all consents, waivers and approvals required to be obtained by Active, the Company and the Shareholder for the consummation of the transactions contemplated by this Agreement. Shareholder shall make best efforts on behalf of the Company to obtain consents to assignment for any contracts (i) specifically identified on the Disclosure Schedule by contract name involving amounts in excess of $5,000 which by their terms require consent to assignment and which were entered into by the Company after January 1, 1997, and (ii) those contracts identified on the Due Diligence Issues List. For purposes of this Section, Section 2.21(b), and item 2 of the Due Diligence Issues List, the term "best efforts" shall mean the Company's sending a letter to the other party to the contract requesting consent to the assignment and one follow-up phone call to the other party.

5.6 **Public Announcements**. The parties shall make no public announcement concerning this Agreement or the matters contemplated herein, their discussions or any other memoranda, letters or agreements between the parties relating to the matters contemplated herein without the prior consent of the other party; provided, that the parties may at any time make disclosure if it is advised by independent counsel that such disclosure is required under applicable law or regulatory authority. Except as permitted by the preceding proviso, under no circumstances will the parties (or any of their respective officers, directors, employees or Affiliates) discuss or disclose the existence or terms of this Agreement with or to any third party other than such legal, accounting and financial advisors of such parties who have a need to know such information.

5.7 **Best Efforts**. Active, the Company and the Shareholder shall each use their best efforts to effectuate the transactions contemplated hereby and to fulfill and cause to be fulfilled the conditions to closing under this Agreement. Each party hereto, at the reasonable request of another party hereto, shall execute and deliver such other instruments and do and perform such other acts and things as may be necessary or desirable for effecting completely the consummation of the transactions contemplated hereby.

5.8 **Expenses**. Whether or not the transactions contemplated hereby are consummated, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby by Active will be paid by Active and by the Company and the Shareholder will be paid by the Shareholder from his personal funds except that Company shall pay up to $45,000 of the legal fees incurred by Company and Shareholder as a result of this Merger.

5.9 **FIRPTA**. The Shareholder shall, prior to the Closing Date, provide Active with a properly executed Foreign Investment and Real Property Tax Act of 1980 Notification Letter, in form and substance satisfactory to Active, which states that the shares of Company Stock do not constitute "United States real property interests" under Section 897(c) of the Code, for purposes of satisfying Active's obligations under Treasury Regulation Section 1.1445-2(c)(3). In addition, simultaneously with delivery of such Notification Letter, the Shareholder shall have provided to Active, as agent for the Company, a form of notice to the Internal Revenue Service in accordance with the requirements of Treasury Regulation Section 1.897-2(h)(2) along with written authorization for Active to deliver such notice form to the Internal Revenue Service on behalf of the Company upon the Closing.

5.10 **Ownership of Products**.

(a) The Company and Active hereby agree and acknowledge that all rights, title, and interest in and to any products, development, enhancements, creations, and the components of each of the foregoing (collectively, the "Product") developed during the Interim Period shall vest in, and be the sole and exclusive property of the party that was primarily responsible for developing the Product (the "Developing Party") immediately upon development. The party, which is not the Developing Party (the "Non-Developing Party"), shall not have any right, title, ownership, or interest of any nature in the Product. Without limiting the foregoing, the Developing Party shall own and retain any and all rights, title, ownership, and interest in and to each and any copyrights, patents, inventions, trade secrets, and other proprietary rights in the Product. Nothing in this Section is intended to, or shall, require the Developing Party to pay any fees, royalties, charges, or compensation of any nature whatsoever to the Non-Developing Party.

(b) Works Made for Hire. For purposes of this Section 5.10(b), Products provided or developed by a party hereunder during the Interim Period of in Connection herewith, including but not limited to works-in-progress, shall be defined as the "Custom Products." All works included in such Custom Products shall constitute "works made for hire" within the meaning of 17 U.S.C. §101 et seq., the ("Copyright Act"), and all right, title, and interest in and to the Custom Products shall vest in the Developing Party immediately upon development. To the extent any such Custom Products may not be the sole and exclusive property of the Developing Party and/or may not be a "work made for hire" as defined in the Copyright Act upon development, then the Non-Developing Party agrees to and hereby does sell, transfer, grant, and assign to the Developing Party and the Developing Party's successors and assigns all copyrights, patents, trade secrets, mask works, inventions, and other proprietary rights, and all right, title, and interest in and to such Custom Products upon development. The Non-Developing Party agrees not to contest the trade secret, or the confidential or proprietary status of the Custom Products or the Development Party's ownership of the Custom Products or any copyright, patents, mask works, inventions, trade secrets, and other proprietary rights therein. The

Developing Party shall have sole and exclusive ownership, control, and rights to any changes, modifications, and/or additions to the Custom Products made by the Developing Party which changes, modifications, and/or additions are deemed to be outside the scope of this Agreement. Nothing in this Section is intended to, nor shall be construed as, providing the Non-Developing Party with an ownership interest of any nature whatsoever in the Products and further, nothing in this Section is intended to, or shall, require the Developing Party to pay any fees, royalties, charges, or compensation of any nature whatsoever to the Non-Developing Party.

(c) Notwithstanding anything to the contrary contained in Sections 5.10(a) or 5.10(b), nothing in this Agreement including, but not limited to Sections 5.10(a) and 510.(b), shall cause either Company or Active/Merger Sub to transfer, convey, or assign to the other party any right, title, or interest in any Product, Asset, or other property held by the respective parties as of the date this Agreement is executed, unless and until the Closing occurs in accordance with the terms of this Agreement.

5.11 **Confidentiality.**

(a) Each party acknowledges that it will receive confidential information and trade secrets ("Confidential Information") from the other party. The confidential Information shall be deemed to include all the information one party receives from the other, except anything designated as not being confidential. Without limiting the forgoing, Confidential Information shall include any and all customer, product, marketing, financial, operation, employment, and business information, either in written or machine-readable form, tangible or intangible. Each party agrees to maintain the secrecy of the other party's Confidential Information and agrees not to use it except in performing services pursuant to the Agreement and not to disclose it to any person who does not have a need to know it to perform under this Agreement. Each party agrees to avoid and prevent, and to take such action as the other party may reasonable request to prevent, any and all disclosures of any Confidential Information which have not been specifically authorized in writing by Customer.

(b) The confidentiality obligations of Section 5.11 (a) above, shall not apply to the extent (a) a party is required by law to respond to any demand for information from a court, governmental entity or governmental agency, (b) disclosure is necessary to be made to a party's independent accountants, attorneys, auditors, and the like under obligations of confidentiality, (c) the parties may mutually agree in writing, and/or (d) information is published or otherwise available to the public other than by breach of this or any other agreement of the parties.

(c) Subject to Section 5.11(b), each party acknowledges and agrees that, in the event of its threatened or actual breach of the provisions of this Section 5.11, damages alone will be an inadequate remedy, that such breach will cause the other party great, immediate, and irreparable injury and damage, and that the other party shall therefore be entitled to injunctive and other equitable relief in addition to, and not in lieu of, any remedies it may have a law or under this Agreement.

ARTICLE VI
TERMINATION

6.1 **Termination**. This Agreement may be terminated at any time prior to the Closing Date:

(a) By mutual written agreement of Active and the Shareholder;

(b) By Active (provided Active is not in material breach of this Agreement), if there has been a breach by the Shareholder of any representation, warranty, covenant or agreement set forth in this Agreement on the part of the Shareholder which is material and which the Shareholder fail to cure within five (5) Business Days after notice thereof is given by Active (except that no cure period shall be provided for a breach by the Shareholder which by its nature cannot be cured);

(c) By the Shareholder (provided neither the Shareholder nor the Company is in material breach of this Agreement), if there has been a breach by Active of any representation, warranty, covenant or agreement set forth in this Agreement on the part of Active which is material and which Active fails to cure within five (5) Business Days after notice thereof is given by the Shareholder (except that no cure period shall be provided for a breach by Active which by its nature cannot be cured);

(d) By Active or the Shareholder, if the Closing shall not have occurred before 5:00 p.m. (Pacific Time) on or before the earlier of (a) November 15, 2000, or (b) five (5) Business Days from the Closing of the Next Round Financing; provided, that the right to terminate this Agreement under this Section 6.1(d) shall not be available to any party whose willful failure to fulfill any material obligation under this Agreement has been the cause of, or resulted in, the failure of the Closing to occur on or before such date;

(e) By Active if (A) any permanent injunction or other order of a court or other competent authority preventing the consummation of the transactions contemplated by this Agreement shall have become final and nonappealable; or (B) there shall be any final action taken, or any statute, rule, regulation or order enacted, promulgated or issued or deemed applicable to this Agreement or the transactions contemplated by it by any governmental entity which would make consummation of said transaction illegal or which would prohibit Active's ownership or operation of all or a material portion of the business of the Company, or compel Active to dispose of or hold separate all or a material portion of the business or assets of the Company or Active as a result of the consummation of the transactions contemplated by this Agreement;

(f) By Shareholder, if the rights, preferences, and privileges of the Active Preferred Stock to be issued to the Shareholder at the Closing are not equal to or better than the rights, preferences, and privileges granted to the holders of the Preferred Stock of Active in the Next Financing Round;

(g) By Active if the final Company Disclosure Schedule submitted by Company and Shareholder to Active at or prior to the Closing reveals new information which would have a material adverse effect on the business of the Company; or

(h) By Shareholder if the final Active Disclosure Schedule submitted by Active to Shareholder at or prior to Closing reveals new information which would have material adverse effect on the business of Active;

(i) By Shareholder within 15 days from the date of discovery by Shareholders of an action taken by Active or Merger Sub after the date of this Agreement that causes the Shareholder to determine in good faith that the transactions described herein would not be treated as tax-free reorganization pursuant to Sections 354(a) and 361(a) of the Code.

6.2 **Obligations of the Parties**. If either Active or the Shareholder terminates this Agreement pursuant to Section 6.1, all obligations of the parties hereunder shall terminate without any liability of any party to any other party (except for any liability of any party for breach of this Agreement); provided, that the agreements contained in Section 5.8 hereof shall survive.

6.3 **Good Faith Payment**. In the event the Closing does not occur for any reason or for no reason on or before November 15, 2000 and neither party has terminated this Agreement prior to such date, Active shall pay Shareholder One Hundred Thousand Dollars ($100,000) on or before November 22, 2000. In the event that this $100,000 is not paid in full within this 5-business day period, interest shall accrue on the unpaid portion at the rate of eight percent (8%) per year, until paid in full. Thereafter, so long as a Closing has not occurred or the Agreement has not been terminated, Active shall pay Shareholder additional One Thousand Dollar ($100,000) payment(s) on the last day of each 45-day period following November 15, 2000. Any payments made to Shareholder by Active pursuant to this Section 6.3 shall be deducted from the portion of the Cash Payment paid to Shareholder at the Closing.

ARTICLE VII
ACTIONS BY THE PARTIES AFTER THE CLOSING

7.1 **Location of Offices and Employees**. The Company's operations and its employees shall remain in Sacramento for a period of two (2) years after the Closing, and Active shall maintain at least ten (10) employees in Sacramento unless Active and Shareholder mutually agree to reduce such period of time or such number of employees. Active agrees to lease sufficient office space from the Shareholder for such employees during such two-year period. Active and the Shareholder in light of the best interests of Active shall mutually determine the location of any remaining employees. The Shareholder hereby agrees that, at the request of Active, he shall conduct a reasonable amount of travel to assist with the integration of Active's business and the Company's business. Active shall reimburse Shareholder for reasonable travel-related expenses actually incurred by such individuals as long as reasonable itemization and substantiation of such expenses are provided to Active at the time the request for reimbursement is submitted.

7.2 **Survival of Representations, Warranties, Etc**. The representations, warranties and covenants contained in or made pursuant to this Agreement or any certificate, document or instrument delivered pursuant to or in connection with this Agreement in the

transactions contemplated hereby shall survive the execution and delivery of this Agreement and the Closing hereunder notwithstanding any investigation, analysis or evaluation by Active or its assignees of the Assets and Properties, its business, operations or condition (financial or otherwise) of the Company or any other Person and thereafter the representations and warranties of the Shareholder and the Company shall continue to survive in full force and effect for a period of one (1) calendar year after the Closing Date (the "Expiration Date); provided, however, that (i) the representations and warranties contained in Section 3.1 through Section 3.5 and Section 4.1 through Section 4.3 shall continue to survive indefinitely after the Closing Date; and (ii) the representations and warranties in Section 3.25 and Exhibit J shall continue to survive after the Closing Date for a period equal to the applicable Tax statute of limitations, plus one (1) calendar year.

7.3 **Indemnification**.

(a) By the Shareholder. The Shareholder shall indemnify, defend and hold harmless Active, and its officers, directors, employees, agents, successors and assigns (collectively the "Active Group") from and against any and all costs, losses (including, without limitation, diminution in value), Liabilities, damages, lawsuits, deficiencies, claims and expenses, including without limitation, interest, penalties, costs of mitigation, lost profits and other losses resulting from any shutdown or curtailment of operations, attorneys' fees and all amounts paid in investigation, defense or settlement of any of the foregoing (collectively, the "Damages"), incurred in connection with, arising out of, resulting from or incident to (i) any breach of any covenant, representation, warranty or agreement or the inaccuracy of any representation, made by the Company or the Shareholder in or pursuant to this Agreement, or in the other documents delivered in connection with the transactions contemplated in this Agreement and (ii) Actions or Proceedings set forth in the Company Disclosure Schedule or in the other documents delivered in connection with the transactions contemplated in this Agreement.

(b) By Active. Active shall indemnify, reimburse, defend and hold harmless the Shareholder and its officers, directors, employees, agents, successors and assigns from and against any and all Damages incurred in connection with, arising out of, resulting from or incident to (i) any breach of any covenant, representation, warranty or agreement or the inaccuracy of any representation, made by Active in or pursuant to this Agreement or in the other documents delivered in connection with the transactions contemplated in this Agreement and (ii) Actions or Proceedings set forth in the Active Disclosure Schedule or in the other documents delivered in connection with the transactions contemplated in this Agreement.

(c) Defense of Claims. If any Action or Proceeding is filed or initiated against any party entitled to the benefit of indemnity hereunder, written notice thereof shall be given to the indemnifying party as promptly as practicable (and in any event within ten (10) days after the service of the citation or summons); provided, however, that the failure of any indemnified party to give timely notice shall not affect rights to indemnification hereunder except to the extent that the indemnifying party demonstrates actual damage caused by such failure. Notwithstanding the foregoing, any claim for indemnification by the indemnified party must be made on or before the Expiration Date unless such claim arises out of a breach of Section 3.1 through 3.5 or Section 4.1 through 4.3 or Exhibit J in which case such claim can be

brought at any time. After such notice, if the indemnifying party shall acknowledge in writing to the indemnified party that the indemnifying party shall be obligated under the terms of its indemnity hereunder in connection with such Action or Proceeding, then the indemnifying party shall be entitled, if it so elects, to take control of the defense and investigation of such Action or Proceeding and to employ and engage attorneys of its own choice to handle and defend the same, such attorneys to be reasonably satisfactory to the indemnified party, at the indemnifying party's cost, risk and expense (unless (i) the indemnifying party has failed to assume the defense of such Action or Proceeding or (ii) the named parties to such Action or Proceeding include both of the indemnifying party and the indemnified party, and the indemnified party and its counsel determine in good faith that there may be one or more legal defenses available to such indemnified party that are different from or additional to those available to the indemnifying party and that joint representation would be inappropriate), and to compromise or settle such Action or Proceeding, which compromise or settlement shall be made only with the written consent of the indemnified party, such consent not to be unreasonably withheld. The indemnified party may withhold such consent if such compromise or settlement would adversely affect the conduct of business or requires less than an unconditional release to be obtained. If (i) the indemnifying party fails to assume the defense of such Action or Proceeding within fifteen (15) days after receipt of notice thereof pursuant to this Section 7.2, or (ii) the named parties to such Action or Proceeding include both the indemnifying party and the indemnified party and the indemnified party and its counsel determine in good faith that there may be one or more legal defenses available to such indemnified party that are different from or additional to those available to the indemnifying party and that joint representation would be inappropriate, the indemnified party against which such Action or Proceeding has been filed or initiated will (upon delivering notice to such effect to the indemnifying party) have the right to undertake, at the indemnifying party's cost and expense, the defense, compromise or settlement of such Action or Proceeding on behalf of and for the account and risk of the indemnifying party; provided, however, that such Action or Proceeding shall not be compromised or settled without the written consent of the indemnifying party, which consent shall not be unreasonably withheld. In the event the indemnified party assumes defense of the Action or Proceeding, the indemnified party will keep the indemnifying party reasonably informed of the progress of any such defense, compromise or settlement and will consult with, when appropriate, and consider any reasonable advice from, the indemnifying party of any such defense, compromise or settlement. The indemnifying party shall be liable for any settlement of any action effected pursuant to and in accordance with this Section 7.2 and for any final judgment (subject to any right of appeal), and the indemnifying party agrees to indemnify and hold harmless the indemnified party from and against any Damages by reason of such settlement or judgment.

(d) Regardless of whether the indemnifying party or the indemnified party takes up the defense, the indemnifying party will pay reasonable costs and expenses in connection with the defense, compromise or settlement for any Action or Proceeding under this Section 7.3

(e) The indemnified party shall cooperate in all reasonable respects with the indemnifying party and such attorneys in the investigation, trial and defense of such Action or Proceeding and any appeal arising therefrom; provided, however, that the indemnified party may, at its own cost, participate in the investigation, trial and defense of such Action or Proceeding and any appeal arising therefrom. The indemnifying party shall pay all expenses due

under this Section 7.3 as such expenses become due. In the event such expenses are not so paid, the indemnified party shall be entitled to settle any Action or Proceeding under this Section 7.3 without the consent of the indemnifying party and without waiving any rights the indemnified party may have against the indemnifying party.

(f) Other Claims. A claim for indemnification for any matter not involving a third-party claim may be asserted by notice to the party from whom indemnification is sought.

(g) Limitation on Indemnification. Notwithstanding anything to the contrary contained in this Agreement, in no event shall the aggregate liability incurred by the indemnifying party under this Agreement (exclusive of fraud or intentional misrepresentation matters) exceed $937,500 unless such liability arises from a breach of Section 3.1 through 3.5 or Section 4.1 through 4.3 or Exhibit J. The indemnifying party shall have the choice to pay the indemnification payment in cash or in shares of Active Preferred Stock issued by Active in the Next Financing Round ("Indemnification Shares"), except that if the indemnifying party is Active, Active must pay the first $250,000 of an indemnification claim in cash. In the event that the indemnifying party chooses to pay with Indemnification Shares, such shares will be valued at the Next Financing Round Price unless the Next Financing Round Price is less than $1.33 in which case the Indemnification Shares shall be valued at $1.33. The total aggregate liability of Shareholder to Active for any Damages under this Article VII shall be limited to the Escrow Shares which are deposited into escrow pursuant to the terms of Section 2.22 unless such liability arises from a breach of the representations and warranties set forth in Section 3.1 through Section 3.5 or Exhibit J. Shareholder cannot pay an indemnification claim with shares of Active Preferred Stock which are subject to repurchase by Active.

(h) Liability Basket. Notwithstanding any other provision of this Agreement, in no event shall the indemnified party be entitled to any payment under these indemnification provisions unless and until the amount of all Damages suffered, in the case of Active or Merger Sub, exceeds $125,000 and, in the case of Shareholder, exceeds $50,000, calculated on a cumulative basis and not a per item basis, and then all such Damages in excess of the applicable liability basket shall be collectible hereunder.

(i) Exclusive Remedy. The indemnification provided in this Section 7 shall be the sole and exclusive remedy hereto for any and all claims arising out of or related to this Agreement or the transactions contemplated herein including, but not limited to, Damages as a result of, with respect to or arising out of, the breach of any covenant representation,warranties or agreements contained in this Agreement or the inaccuracy of any representation, warranties, or agreements contained in this Agreement, made by Active, Merger Sub, Company or the Shareholder in or pursuant to this Agreement or in the other documents delivered in connection with the transactions contemplated in this Agreement, or any Actions or Proceedings set forth in the Disclosure Schedule or in the transactions contemplated in this Agreement.

(j) Breach of Exhibit J. If a claim for indemnification arises out of a breach of the representations set forth in Exhibit J, then the indemnified party's sole means for indemnification shall be as follows: (A) in the event the indemnification claim is brought by Shareholder and such claim arises from a breach of the representation(s) set forth in Exhibit J by

Active or Merger Sub on or after the Closing, then all interest, penalties and out-of-pocket expenses actually incurred by Shareholder because of such breach shall become immediately due and payable by Active to Shareholder and Active shall make a non-interest bearing loan to Shareholder in an amount equal to the total Taxes actually incurred by Shareholder as a result of such breach which loan, shall become due and payable by Shareholder to Active within 30 days from the occurrence of a Qualified Public Offering (as that term is defined in Active's Second Amended and Restated Certificate of Incorporation, as amended), or the occurrence of a merger or acquisition of Active pursuant to which Shareholder receives cash or publicly traded stock in exchange for the shares of Active Preferred Stock issued to Shareholder in the Merger and (B) in the event the indemnification claim is brought by Active or Merger Sub and such claim arises from a breach of the representation(s) set forth in Exhibit J by Shareholder on or after the Closing, then all Taxes, interest, penalties and out-of-pocket expenses actually incurred by Active or Merger Sub because of such breach shall become immediately due and payable by Shareholder to Active and Shareholder shall pay in cash to Active the first $250,000 of such Taxes, interest, penalties and out-of-pocket expenses .

7.4 **Further Assurances.** In case at any time after the Closing any further action is necessary or desirable to carry out the purposes of this Agreement, each of the parties will take such further action (including the execution and delivery of such further instruments and documents) as the other party reasonably may request, all the sole cost and expense of the requesting party (unless the requesting party is entitled to indemnification therefore under this Article VII).

7.5 **Access to Records.** After the Closing, Shareholder shall continue to have reasonable access during normal business hours to the Books and Records of Company and to all other information concerning the business, properties, and personnel of the Company.

ARTICLE VIII
MISCELLANEOUS

8.1 **Notices**. All notices, requests and other communications hereunder must be in writing and will be deemed to have been duly given only if delivered personally against written receipt or by facsimile transmission with answer back confirmation or mailed (postage prepaid by certified or registered mail, return receipt requested) or by overnight courier to the parties at the following addresses or facsimile numbers:

If to the Shareholder, to:

Duane Harlan
P.O. Box 255275
Sacramento, CA 95865
Facsimile No: 916-484-3413

with copies to:

Downey, Brand, Seymour & Rohwer
555 Capitol Mall, 10th Floor
Sacramento, California 95814

Facsimile No.: (916) 441-4021
Attention: Jeffrey M. Koewler, Esq.

If to Active, to:

Active.com, Inc.
1020 Prospect Street
Suite 250
La Jolla, CA 92037
Facsimile No: (858) 551-7619
Attention: General Counsel

with copies to:

Brobeck, Phleger & Harrison LLP
38 Technology Drive
Suite 100
Irvine, CA 92618-5312
Facsimile No.: (949) 790-6301
Attention: Richard A. Fink, Esq.

All such notices, requests and other communications will (i) if delivered personally to the address as provided in this Section 8.1, be deemed given upon delivery, (ii) if delivered by facsimile transmission to the facsimile number as provided in this Section 8.1, be deemed given upon receipt, and (iii) if delivered by mail in the manner described above to the address as provided in this Section 8.1, be deemed given upon receipt (in each case regardless of whether such notice, request or other communication is received by any other Person to whom a copy of such notice, request or other communication is to be delivered pursuant to this Section). Any party from time to time may change its address, facsimile number or other information for the purpose of notices to that party by giving notice specifying such change to the other parties hereto.

8.2 **Entire Agreement**. This Agreement (and all Exhibits and Schedules attached hereto, and all other documents delivered in connection herewith) supersedes all prior discussions and agreements among the parties with respect to the subject matter hereof and contains the sole and entire agreement among the parties hereto with respect thereto.

8.3 **Waiver** .Any term or condition of this Agreement may be waived at any time by the party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the party waiving such term or condition. No waiver by any party hereto of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any

other term or condition of this Agreement on any future occasion. All remedies, either under this Agreement or by law or otherwise afforded, will be cumulative and not alternative.

8.4 **Amendment**. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by or on behalf of each party hereto.

8.5 **No Third Party Beneficiary**. The terms and provisions of this Agreement are intended solely for the benefit of each party hereto and their respective successors or permitted assigns, and it is not the intention of the parties to confer third-party beneficiary rights upon any other Person other than any Person entitled to indemnity under Section 7.2.

8.6 **No Assignment; Binding Effect**. Neither this Agreement nor any right, interest or obligation hereunder may be assigned by any party hereto without the prior written consent of the other parties hereto and any attempt to do so will be void, except that any party's rights to indemnification under Article VII may be freely assigned. This Agreement is binding upon, inures to the benefit of and is enforceable by the parties hereto and their respective successors and assigns.

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

8.8 **Severability**. If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future law, and if the rights or obligations of any party hereto under this Agreement will not be materially and adversely affected thereby, (i) such provision will be fully severable, (ii) this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, (iii) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom and (iv) in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and mutually acceptable to the parties herein.

8.9 **Governing Law**. This Agreement shall be governed by and construed in accordance with the laws of the State of California applicable to contracts executed and performed in such State, without giving effect to conflicts of laws principles.

8.10 **Arbitration and Venue**. Any controversy or claim arising out of or relating to this Agreement or the making, performance or interpretation thereof shall be submitted to arbitration in San Diego, California, pursuant to the rules and procedures of the American Arbitration Association before a panel of three arbitrators. The ruling of the arbitrator shall be final, and judgment thereon may be entered in any court having jurisdiction. If any question is submitted to a court of law for resolution, then the Superior Court of the County of San Diego or the United States District Court having jurisdiction in the County of San Diego shall be the exclusive court of competent jurisdiction for the resolution of such question. Each party will bear one half of the cost of the arbitration filing and hearing fees, and the cost of the arbitrator. Each party will bear its own attorneys' fees, unless otherwise decided by the arbitrator. The parties understand and agree that the arbitration shall be instead of any civil

litigation and that the arbitrator's decision shall be final and binding to the fullest extent permitted by law and enforceable by any court having jurisdiction thereof. Each party shall be entitled to pre-hearing discovery as provided in California Code of Civil Procedure Section 1283.05.

8.11 **Consent to Jurisdiction and Forum Selection**. The parties hereto agree that all actions or proceedings arising in connection with this Agreement shall be initiated and tried exclusively in the State and Federal courts located in the County of Sacramento, State of California. The aforementioned choice of venue is intended by the parties to be mandatory and not permissive in nature, thereby precluding the possibility of litigation between the parties with respect to or arising out of this Agreement in any jurisdiction other than that specified in this Section 8.11. Each party hereby waives any right it may have to assert the doctrine of forum non conveniens or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this paragraph, and stipulates that the State and Federal courts located in the County of Sacramento, State of California shall have in personam jurisdiction and venue over each of them for the purposes of litigating any dispute, controversy or proceeding arising out of or related to this Agreement. Each party hereby authorizes and accepts service of process sufficient for personal jurisdiction in any action against it as contemplated by this Section 8.11 by registered or certified mail, return receipt requested, postage prepaid, to its address for the giving of notices as set forth in this Agreement, or in the manner set forth in Section 8.1 of this Agreement for the giving of notice. Any final judgment rendered against a party in any action or proceeding shall be conclusive as to the subject of such final judgment and may be enforced in other jurisdictions in any manner provided by law.

8.12 **Expense**. Except as otherwise provided in this Agreement, the Shareholder and Active shall pay the expenses and costs of the Shareholder and Active, respectively, incidental to the preparation of this Agreement and to the negotiation and consummation of the transactions contemplated hereby.

8.13 **Construction**. No provision of this Agreement shall be construed in favor of or against any party on the ground that such party or its counsel drafted the provision. Any remedies provided for herein are not exclusive of any other lawful remedies, which may be available to either party. This Agreement shall at all times be construed so as to carry out the purposes stated herein.

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

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the parties hereto, or by their duly authorized officer, as of the date first above written.

ACTIVE.COM, INC.
a Delaware corporation

By:_____

Name:_____

Title:_____

SIERRA DIGITAL, INC.,
a California corporation

By: _____

Name: Duane Harlan

Title: President

THE SHAREHOLDER:

_____
DUANE HARLAN

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the parties hereto, or by their duly authorized officer, as of the date first above written.

ACTIVECOM, INC.
a Delaware corporation

By: _____

Name: James M. Woodman

Title: VP Business Development

SIERRA DIGITAL, INC.,
a California corporation

By: _____

Name: _____

Title: _____

THE SHAREHOLDER:

_____
DUANE HARLAN

EXHIBIT H

CERTIFICATE OF MERGER

CERTIFICATE OF MERGER

OF

SIERRA DIGITAL, INC.

AND

ACTIVE ACQUISITION CORP.

It is hereby certified that:

1. The constituent business corporations participating in the merger herein certified are:

(i) Sierra Digital, Inc., which is incorporated under the laws of the State of California; and

(ii) Active Acquisition Corp., which is incorporated under the laws of the State of Delaware.

2. An Agreement of Merger has been approved, adopted, certified, executed, and acknowledged by each of the aforesaid constituent corporations in accordance with the provisions of subsection (c) of Section 252 of the General Corporation Law of the State of Delaware, to wit, by Sierra Digital, Inc. in accordance with the laws of the State of its incorporation and by Active Acquisition Corp. in the same manner as is provided in Section 251 of the General Corporation Law of the State of Delaware.

3. The name of the surviving corporation in the merger herein certified is Active Acquisition Corp., which will continue its existence as said surviving corporation under its present name upon the effective date of said merger pursuant to the provisions of the General Corporation Law of the State of Delaware.

4. The Certificate of Incorporation of Active Acquisition Corp. as now in force and effect, shall continue to be the Certificate of Incorporation of said surviving corporation until amended and changed pursuant to the provisions of the General Corporation Law of the State of Delaware.

5. The executed Agreement of Merger between the aforesaid constituent corporations is on file at an office of the aforesaid surviving corporation, the address of which is as follows: 1020 Prospect Street, La Jolla, California 92037

6. A copy of the aforesaid Agreement of Merger will be furnished by the aforesaid surviving corporation, on request, and without cost, to any stockholder of each of the aforesaid constituent corporations.

7. The authorized capital stock of Sierra Digital, Inc. consists of 50,000 shares of common stock without par value.

Dated: November 16, 2000

SIERRA DIGITAL, INC.

By:_____
Its:_____
[Name and title of authorized officer]

Dated: November 16, 2000

ACTIVE ACQUISITION CORP.

By:_____
Its:_____
[Name and title of authorized officer]

Dated: November 16, 2000

SCHEDULE 3.1
ORGANIZATION OF THE COMPANY

1. Although the Company regularly conducts business in the majority of U.S. States and Canada, the Company is only qualified to do business in California. The Company has not investigated whether qualification in other jurisdictions is required or whether any such qualification would trigger other obligations of the Company.

2. The Company has not investigated whether it is required to obtain any permits or authorizations in any of the locations in which the Company conducts business or whether such requirements would trigger other obligations of the Company. The Company's practice is to obtain a business license if and when a city, municipality or other jurisdiction that the Company does business with notifies the Company that a business license is required. It is likely, however, that the Company has not obtained business licenses in some cities, municipalities or other jurisdictions which require a license. The Company does not maintain a master record or listing of business licenses that it has obtained.

3. As set forth in Schedule 3.16(j), the Company shall not endeavor to become qualified to do business in the State of Alaska prior to Closing.

4. The Company received a letter from Revenue Canada, International Audit Division, Vancouver Tax Services Office, dated September 14, 1998, denying the Company's request for waiver from the 20% withholding tax requirements in connection with certain transactions involving the City of Vancouver, BC, Canada. From that time forward, the City of Vancouver has been paying 80% of the invoiced amounts on certain invoices which presumably trigger the withholding obligations of the Company. The Company is not monitoring whether the 20% withheld on certain invoices by the City of Vancouver are actually being paid by the City of Vancouver to the appropriate taxing authorities. The Company has done and is currently doing other business in Canada and the Company is not aware that any municipality or other jurisdiction is withholding or paying any taxes as may be required.

5. The Company operates in a large number of cities, municipalities or other jurisdictions and it does not know if it is in compliance with all local laws. For example, the Company has provided a compliance affidavit to the City of San Francisco, dated June 18, 1998, but has not yet made any modification to the Company's Employee Handbook to provide health plan coverage to domestic partners nor notified employees of any change of policy.

SCHEDULE 3.7(b)
NO CONFLICTS

1. See items set forth in Schedule 3.1.

2. See items set forth in Schedule 3.7(c).

SCHEDULE 3.7(c)
NO CONFLICTS

1. The Company has obtained transfer and assignment consent agreements from the following customers:

   a. Arcadia, dated October 19, 2000.

   b. Florissant, October 24, 2000.

   c. Idaho Falls, October 20, 2000.

   d. Johnson County, November 7, 2000.

   e. Newport Beach, October 19, 2000.

   f. Palomar Community College, October 18, 2000.

   g. Rutgers College, October 24, 2000.

   h. Port St. Lucie, November 8, 2000.

   i. University of California - Irvine, October 25, 2000.

   j. Los Rios: Sacramento City College, October 20, 2000.

   k. Boise, October 30, 2000.

   l. Aiken, October 17, 2000.

   m. Henrico, November 2, 2000.

2. The Company has not obtained any consents to assign any agreement other than the consents set forth in Paragraph 1 of this Schedule 3.7(c). The following is a list of agreements to which the Company is bound which require consent prior to assignment:

   a. City of Corona Agreement for Contractual Services, dated March 4, 1997, between City of Corona, a municipal corporation of the State of California ("City"), and Sierra Digital, Inc. ("Contractor").

   b. Agreement for the License of Computer Software, dated May 16, 1997, between City of Santa Monica ("City") and Sierra Digital, Inc. ("Vendor").

c. Personal/Professional Services Agreement, dated March 17, 1998, between County of Kern, a political subdivision of the State of California ("County"), and Sierra Digital, Inc. ("Consultant").

d. Milwaukee Board of School Directors Professional Services Contract, dated February 9, 2000, between Milwaukee Board of School Directors ("MPS") and Sierra Digital, Inc. ("Contractor").

e. Agreement (Contract No. C99-45), dated November 22, 1999, between City of Alhambra, a municipal corporation ("City"), and Sierra Digital, Inc. ("SD").

f. Purchase Agreement between City of Brea ("City") and Sierra Digital ("Consultant"), undated, signed by City and Consultant.

g. Subcontract Agreement regarding the City of Costa Mesa ("City"), dated March 15, 1996, between Hewlett-Packard Company ("HP") and Sierra Digital Inc. ("Subcontractor").

h. Agreement for Computer Software, dated December 29, 1997, between the City of Saline ("City") and Sierra Digital, Inc. ("Contractor").

i. Agreement for Computer Software System, dated November 21, 1995, between City of San Jose ("City") and Sierra Digital, Inc. ("Contractor").

j. RecWare Software License Agreement and Registration Form and RecWare Software Subscription Agreement between UCSF - Milberry ("Licensee") and Sierra Digital, Inc. ("SD").

k. Purchase Order, dated June 3, 1999, and Service Authorization, dated July 30, 1999 from City of Glendale ("City") to Sierra Digital Inc. ("Vendor").

l. Contract #P8046810-08, City of Seattle, Parks and Recreation Department, Recreation Business Support System, dated July 13, 1999, between City of Seattle, a municipal corporation of the State of Washington (the "City"), and Sierra Digital, Inc. As set forth in Schedule 3.16(j), the Company has received a letter from the City, dated November 7, 2000, which purports to serve as a notice of termination of the Seattle Agreements.

m. Purchase Agreement No. C000035 for Recreation Data Collection Software between City of Austin, Texas, a Texas municipal corporation ("City"), and Sierra Digital, Inc. ("Contractor"), undated, signed by City and Contractor.

n. Contract Services Form between City and Borough of Juneau, Alaska, a municipal corporation in the State of Alaska ("City"), and Sierra Digital, Inc. ("Contractor"), signed by City on June 30, 2000, signed by Contractor on July 6, 2000.

o. Agreement for Professional Services, dated July 24, 1998, between City of Boise, a municipal corporation of the State of Idaho ("City"), and Sierra Digital, Inc. ("SDI").

p. Software Services Agreement, dated June 4, 1996 and effective January 1, 1996, between City of Seattle ("City") and Sierra Digital, Inc. ("SDI"). As set forth in Schedule 3.16(j), the Company has received a letter from the City, dated November 7, 2000, which purports to serve as a notice of termination of the Seattle Agreements.

q. Music License Agreement between James L. Accardi and Sierra Digital, Inc. (Licensee), signed by Mr. Accardi on September 27, 1999.

r. Group Agreement, effective May 1, 2000 through April 30, 2001, between Kaiser Foundation Health Plan, Inc. ("Health Plan") and Sierra Digital, Inc. ("Group").

s. The Hartford Spectrum Policy, effective December 1, 1999 to December 1, 2000, between Hartford Casualty Insurance Company and Sierra Digital, Inc.

t. The Hartford Workers Compensation and Employers Liability Policy, effective July 1, 2000 to July 1, 2001, between Hartford Fire Insurance Company and Sierra Digital, Inc.

u. Standard Office Lease, dated September 20, 1995, between Duane A. Harlan ("Lessor") and Sierra Digital, Inc. ("Lessee"), as amended.

v. Advertising Contract/Insertion Order, dated January 28, 2000, between Texas Recreation and Park Society, Inc. and Sierra Digital, Inc., in the amount of $1,068.75.

w. Advertising Contract/Insertion Order, dated April 9, 1999, between Texas Recreation and Park Society, Inc. and Sierra Digital, Inc., in the amount of $1641.25.

x. Equipment Lease Agreement, dated September 1, 1998, between Pitney Bowes Credit Corporation ("PBCC") and Sierra Digital.

y. Incorporated County of Los Alamos Agreement, AGR 1571-00, between Incorporated County of Los Alamos, New Mexico ("County") and Sierra Digital,

Inc. ("Contractor"), signed by County on September 12, 2000 and signed by Contractor on September 27, 2000.

3. The Company has not obtained any consents to assign any Request for Proposal responses ("RFPs") or other bid requests. The Company has outstanding RFPs and bid requests, which require consent prior to assignment, for the following cities:

   a. Los Altos, CA.

   b. Addison, TX.

   c. Chesapeake, VA.

   d. Janesville, WI.

   e. Longmont, CO

   f. Bellevue, WA.

   g. Bidder Requirements - Technology Equipment/Software "Including" On Site Services, dated August 1, 2000, between City of El Segundo, CA and Sierra Digital, Inc.

   h. Invitation to Bid No. 00100184-MPDMS, dated August 22, 2000, between The University of Texas at Austin and Sierra Digital, Inc.

4. The Company has not yet assigned to Merger Sub its provisional patent application or any of the filings or registrations set forth in Schedule 3.16(a).

5. Certain agreements of the Company set forth in Schedule 3.19(a) are silent on the issue of assignment. Many of these agreements may be governed by the laws of jurisdictions other than California and the Company has not investigated whether these agreements are assignable.

6. Not all customers who have purchased Company products have executed a signed, written agreement with the Company. Some of these customers have simply sent a purchase order or equivalent document to the Company. These purchase orders or equivalent documents have been made available to Merger Sub and Active for inspection at the Company's headquarters. Many of these purchase orders require the Company to obtain consent prior to assignment.

7. As set forth in Schedule 3.26, when the Company merges with and into Merger Sub at the Closing, employees of the Company may have the right to refuse assignment of their employment.

8. As set forth in Schedule 3.16(f), the Company has purchased name brand computers which come with licensed software and the Company has downloaded various software from the Internet. These off-the-shelf and Internet software may require consent prior to assignment.

SCHEDULE 3.8
CONSENTS AND GOVERNMENTAL APPROVALS AND FILINGS

1. See items set forth in Schedule 3.1.

2. See items set forth in Schedule 3.7(c).

SCHEDULE 3.10
FINANCIAL STATEMENTS

1. See items set forth in Schedule 3.16(j).

2. See items set forth in Schedule 3.17.

3. See items set forth in Schedule 3.22.

4. The Company does not have audited or reviewed Financial Statements, and the Financial Statements are not prepared in accordance with GAAP. For example, the Financial Statements lack footnotes, do not include a statement of cash flows, do not provide a reserve/allowance for product returns or bad debts, generally do not reflect prepaid expenses, do not include year-end adjustments, and do not include accrued taxes, vacation and sick leave.

5. Certain insurance plans set forth in Schedule 3.24, such as the Hartford Spectrum Policy (general business liability), the Hartford Workers Compensation and Employers Liability Policy (workers' compensation insurance), and airplane insurance, pursuant to an Aircraft Use Agreement which shall be terminated as of Closing, as set forth in Schedule 3.13, are pre-paid for an annual term, yet the costs are not allocated on a monthly basis on the Company's Financial Statements. After the Closing, pre-paid airplane insurance shall not be an asset of Merger Sub.

6. The Company does not provide a reserve for "S" Corporation taxes or California sales taxes payable. Sales taxes are only collected on certain sales transactions conducted within California exclusively, and such taxes are accrued and paid on a monthly basis. Payroll taxes are accrued and paid on a semi-monthly basis.

7. Although the Company's normal practice is to bill for products as they are shipped and for services as they are rendered, the Company has billed in advance for some products and services. Some of these advance billings appear on the Financial Statements as receivables, including without limitation the Software Subscription Agreements, as set forth in Paragraph 7 of this Schedule 3.10.

8. The Company bills for all Software Subscription Agreements up to three (3) months in advance of the month in which the Software Subscription Agreement expires. Once billed, this amount appears on the Financial Statements as a receivable. Software Subscription Agreements which are not renewed are not considered for removal from the accounts receivable until they hit the ninety (90) day and over aging schedule or unless the Company is conclusively notified by the customer that it does not wish to renew its Software Subscription Agreement. Software Subscription Agreements are billed in

advance and prepaid for the next succeeding twelve (12) month period, and no pre-payment or other liability is noted on the Financial Statements.

9. The Company has, in some cases, received payments prior to the completion of work by the Company from customers who were billed in advance. For example, the Company owes up to thirty (30) days of work under the Contract #P8046810-08, City of Seattle, Parks and Recreation Department, Recreation Business Support System, dated July 13, 1999, between City of Seattle, a municipal corporation of the State of Washington (the "City"), and Sierra Digital, Inc. As set forth in Schedule 3.16(j), the Company has received a letter from the City, dated November 7, 2000, which purports to serve as a notice of termination of the Seattle Agreements.

10. The Company has made contractual commitments to its customers to deliver new software products and new capabilities to existing products that have not been developed by the Company. These capabilities include RecWare PRO Gross Pay/Profit & Loss (Vancouver, BC), Safari Touch Tone registration (Herndon, VA, and other customers), Safari (or Client/Server) League Scheduling (Seattle and other customers), and Safari Inventory Control (Austin, TX). In addition, as set forth in Schedule 3.16(j), there had been some disagreement on what had been agreed to by both parties under the Contract #P8046810-08, City of Seattle, Parks and Recreation Department, Recreation Business Support System, dated July 13, 1999, between City of Seattle, a municipal corporation of the State of Washington (the "City"), and Sierra Digital, Inc., and the Company has received a letter from the City, dated November 7, 2000, which purports to serve as a notice of termination of the Seattle Agreements.

11. The Company has received payment on the $130,000 receivable from the City of Austin, Texas in November, 2000.

12. The Company has approximately fifteen (15) credit cards, including one (1) Visa card (in the name of Duane Harlan), which is used to purchase airline tickets and make advance travel reservations, and fourteen (14) Wells Fargo Business MasterCards, which are assigned to certain Company employees who travel. The credit card balances are not generally reflected on the Company's Financial Statements, as balances may exist which have not yet been billed to the Company. As set forth in Schedule 3.11, Merger Sub proposes to continue use of these credit cards for a limited period of time following the Closing, to the extent that such continued use is permitted or valid.

13. On or about April 15, 2000, the Company made a distribution of approximately $70,000 to Duane Harlan as the sole Shareholder of the Company. Distributions made to Duane Harlan through June 30, 2000, total approximately $144,000.

14. Cyril Juanitas, Vice President, Operations, is subject to a bonus plan that specifies an annual bonus equal to 8% of annual base salary if sales in 2000 exceed sales in 1999, an

annual bonus equal to 8% of annual base salary if net profit in 2000 exceeds 1999, and an additional bonus equal to 4% of annual base salary if both objectives are met.

15. Jennice Acosta received a $10,000 bonus for the year-ended December 31, 1999, and it is anticipated that Ms. Acosta will receive a similar bonus for the year-ended December 31, 2000.

16. The Company has made a one-time payment of $5,000 to David Christie per the terms of the Employment Agreement entered into with Mr. Christie on March 7, 1999.

17. The Company is in the process of offering Chin O'Haegbu a commission plan with a potential commission of up to $3,000 per month, within 90 days of his hire date, which hire date was on or about July 12, 2000.

18. Adam Johnson has received a salary increase of a $300 per month, from $3,700 to $4,000 per month, effective November 1, 2000, for positive performance in his newly promoted position as Customer Service Supervisor.

19. Jeff Strand has received a salary increase, from $14 per hour to $3,500 per month, effective September 16, 2000, for positive performance.

20. Laura Gray has received a salary increase, from $11 per hour to $12 per hour, effective October 16, 2000, for positive performance.

21. Employees of the Company are generally eligible for a salary review one year after their start date, and some employees are eligible for an earlier review as specified in their offer letter.

22. Occasionally, pursuant to the terms of his or her offer letter, an employee is eligible to accrue vacation in excess of the limits set forth in the Employee Handbook.

SCHEDULE 3.11
ABSENCE OF CHANGES

1. Except as set forth in Paragraph 2 of this Schedule 3.11, the Company is in the process of reducing the price of licensing its RecWare PRO and RecWare Safari products.

2. As of July 13, 2000, the Company adopted and published changes to its Customer Service Plans, which include, but are not limited to, the items set forth in Paragraphs 6(g) through (i) of Schedule 3.16(f). A detailed listing of the new Customer Service Plans is published on the Company's website and has been provided to Merger Sub and Active. Three types of plans are now offered, and there are many changes, such as the imposition of new rules and requirements, a decrease in the number of allowable service calls, and a general increase in Software Subscription Agreement prices. Customers whose Software Subscription Agreement have come up for renewal have been notified of the new Customer Service Plans, but other customers have not been notified except to the extent that the new Customer Service Plans have been published on the Company's website. It is unclear whether and to what extent any customers are affected or bound by the new Customer Service Plans.

3. As set forth in Schedule 3.10, the Company has approximately fifteen (15) credit cards, which may have balances that are not reflected on the Financial Statements and that may not yet have been billed to the Company. Merger Sub, at its expense, proposes to continue use of these credit cards for a limited period of time following the Closing, until replaced by Merger Sub, to the extent that such continued use is permitted or valid.

4. As set forth in Schedule 3.24, Merger Sub may, in its sole discretion, continue the health coverage provided under the Group Agreement, effective May 1, 2000 through April 30, 2001, between Kaiser Foundation Health Plan, Inc. ("Health Plan") and Sierra Digital, Inc. ("Group"), for a limited period of time following the Closing, to the extent that such continued use is permitted or valid.

5. As set forth in Schedule 3.33, the Company has experienced a downward financial trend during the year 2000.

6. Recent history of significant purchases or expenditures include:

   a. Purchase of a new exhibit trade show booth at approximately $29,000.

   b. Purchase of a new copier at approximately $12,000.

   c. Purchase of new furniture at approximately $5,600.

   d. Purchase of a large screen exhibit display monitor at approximately $6,000.

e. Purchase of new computers at approximately $53,000.

f. Distribution to Duane Harlan in connection with obligations arising from a real estate escrow which did not complete of approximately $6,000, as set forth in Schedule 3.17.

g. Purchase of exhibit space at the 2000 NRPA convention, at a booth cost of $6,000.

6. As set forth in Schedule 3.10, the Company has made distributions of approximately $144,000 to Duane Harlan prior to June 30, 2000. Between June 30, 2000 and September 22, 2000, the Company has made approximately $16,000 in additional distributions to Duane Harlan, for a total aggregate distribution of approximately $160,000. Since September 22, 2000, the Company has made approximately $180,000 in additional distributions to Duane Harlan, as permitted under Paragraph 5.1(f) of the Merger Agreement and Plan of Reorganization ("Merger Agreement"), for a total aggregate distribution of approximately $340,000 prior to Closing. These figures do not include the Company's payment of $30,000 in employee bonuses and $45,000 in legal fees, as permitted under Paragraphs 5.1(l) and (n), respectively, of the Merger Agreement, and as set forth in Paragraphs 7 and 8, respectively, of this Schedule 3.11.

7. The Company has paid $30,000 in expenses for employee bonuses, as permitted under Paragraph 5.1(l) of the Merger Agreement.

8. The Company has paid $45,000 in legal fees rendered in connection with the Merger Agreement, as permitted under Paragraph 5.1(n) of the Merger Agreement.

9. See Schedule 3.26 for a list of individuals who have recently terminated, or are in the process of terminating, their employment with the Company.

10. See items set forth in any Schedule 3.28.

11. The Company has entered into a Settlement Offer, dated September 7, 2000, signed by both parties on September 12, 2000, in the amount of $3,000, to settle a claim, dated August 11, 2000, filed with the Labor Commissioner by a former employee as set forth in Schedule 3.17.

12. As set forth in Schedule 3.17, the Company has received an unemployment claim from a former employee whose unemployment claim was denied by the Department of Unemployment.

13. As set forth in Schedule 3.22, the Company has received a notice, dated August 12, 2000, from the United States Bankruptcy Court, Southern District of Indiana, notifying the Company that one of its customers has gone bankrupt.

14. The Company has received a notice from the United States Bankruptcy Court, Central District of California, notifying the Company that one of its vendors has gone bankrupt. The Company purchased a computer projector from this vendor some time ago, and the Company knows of no other business done by the Company with this vendor.

15. The Company is phasing out its practice of allowing customers to have "dormant" accounts with the Company, as set forth in Schedule 3.33, where customers pay $50 to stay on the books and records of the Company in lieu of paying the full renewal amount or canceling their Software Subscription Agreement.

16. Except as set forth in Paragraph 17 of this Schedule 3.11, the Company is not renewing or extending the following recurring magazine advertising contracts in an effort to avoid an overlap with the advertising conducted by Merger Sub and Active:

    a. Insertion Order, dated December 9, 1999, between California Parks & Recreation and Sierra Digital, Inc., in the amount of $2,713.20 ($678.30 per insertion).

    b. Insertion Order, dated December 9, 1999, between California Parks & Recreation and Sierra Digital, Inc., in the amount of $714 ($178.50 per insertion).

    c. Advertising Contract/Insertion Order, dated January 28, 2000, between Texas Recreation and Park Society, Inc. and Sierra Digital, Inc., in the amount of $1,068.75.

    d. Advertising Contract/Insertion Order, dated April 9, 1999, between Texas Recreation and Park Society, Inc. and Sierra Digital, Inc., in the amount of $1641.25.

    e. Advertising Space Contract, dated February 18, 2000, between Naylor Publications, Inc. (Florida Recreation & Park Association Quarterly Magazine & Annual Membership Directory) and Sierra Digital, in the amount of $449.50 per insertion.

17. The Company has made a commitment to continue its advertising under Insertion Contract for Advertising Space, dated November 3, 2000, between J. P. Media, Inc. (Parks & Recreation Magazine) and Sierra Digital, Inc., in the amount of $39,600 ($3,885 per insertion).

18. As set forth in Schedule 3.16(j), there was disagreement on what had been agreed to by both parties under the Contract #P8046810-08, City of Seattle, Parks and Recreation Department, Recreation Business Support System, dated July 13, 1999, between City of Seattle, a municipal corporation of the State of Washington (the "City"), and Sierra

Digital, Inc., and the Company has received a letter from the City, dated November 7, 2000, which purports to serve as a notice of termination of the Seattle Agreements.

19. As set forth in Schedule 3.22, on September 19, 2000, the Company wrote off approximately $56,000 of its ninety (90) day and over accounts receivable, as of September 19, 2000. After September 19, 2000 and prior to the Closing, the Company has, additionally, written off approximately $8,500 of its ninety (90) day and over accounts receivable. In addition, the Company has made adjustments to its accounts receivable in connection with the implementation of its new Customer Service Plans, which has resulted in a reversal of a $71,900 receivable and an estimated re-invoice in the approximate aggregate amount of $67,000. Also, the Company has a receivable from the City of Seattle in the approximate amount of $12,000, which is likely uncollectible. As set forth in Schedule 3.16(j), the Company has received a letter from the City of Seattle, dated November 7, 2000, which purports to serve as a notice of termination of Seattle Agreements.

20. As set forth in Schedule 3.10, the Company has received payment on the $130,000 receivable from the City of Austin, Texas in November, 2000.

21. There has been an overall slowdown of payment of the Company's accounts payable invoices.

22. The Company has notified its customers of the upcoming merger of the Company with Merger Sub, and has updated its website to include information about the merger. In addition, the Company has sent documents to certain customers requesting transfer and assignment of their agreements to Merger Sub and has made follow up phone calls. A small number of these documents have been signed and returned by customers. As set forth in Schedule 3.33, the Company does not know how customers who have not signed and returned the documents shall perceive the merger. The information included on the website and the documents sent to customers have been provided to Merger Sub and Active.

23. See items set forth in Schedule 3.16(j).

SCHEDULE 3.12
NO UNDISCLOSED LIABILITIES

1. See items set forth in Schedule 3.1.

2. See items set forth in Schedule 3.10.

3. See items set forth in Schedule 3.11.

4. See items set forth in Schedule 3.16(j).

5. See items set forth in Schedule 3.17.

6. Merger Sub shall assume all existing vacation and sick leave balances, which vacation and sick leave balances, as updated, shall be provided to Merger Sub and Active as of Closing. These balances shall include, without limitation, opening balances for management personnel of three (3) weeks per employee.

7. The Company has an ongoing obligation to perform services and other obligations under the contracts identified on Schedule 3.19(a).

SCHEDULE 3.13
TANGIBLE PERSONAL PROPERTY

1. See items set forth in Schedule 3.15.

2. Aircraft Use Agreement, dated September 20, 1995, between Duane A. Harlan ("Harlan") and Sierra Digital, Inc. ("Corporation"), pursuant to which the Company leases an aircraft from Duane Harlan at a cost of $2,000 per month plus additional expenses, which include hangar rental ($400/mo), annual inspection (variable amount, normally about $6,000), and fuel (as required), aviation chart subscription ($900/yr), insurance ($5,500 year) and miscellaneous related expenses. This lease shall be terminated at Closing.

3. A list of personal property owned by the Company is attached to 1999 Tax Return, which has been provided to Merger Sub and Active. This list provides only an itemization of property which is subject to depreciation and owned by the Company as of the date of the 1999 Tax Return and does not contain a complete list of all personal property owned by the Company.

4. See Schedule 3.11 for a recent history of significant purchases, expenditures and distributions.

SCHEDULE 3.14
BENEFIT PLANS; ERISA

1. See items set forth in Schedule 3.27.

2. Kaiser Permanente medical ("HMO") and dental benefits, pursuant to the Group Agreement, effective May 1, 2000 through April 30, 2001, between Kaiser Foundation Health Plan, Inc. ("Health Plan") and Sierra Digital, Inc. ("Group"). As set forth in Schedule 3.24, Merger Sub may, in its sole discretion, continue the health coverage provided under the Group Agreement for a limited period of time following the Closing, to the extent that such continued use is permitted or valid.

3. The Hartford Workers Compensation and Employers Liability Policy, effective 7/01/00 to 7/01/01, between Hartford Fire Insurance Company and Sierra Digital, Inc.

4. The Company maintains an Employee Handbook, which has been provided to Merger Sub and Active.

5. The Company occasionally pays or reimburses for education or training of its employees.

6. The Company occasionally pays hiring bonuses to its employees.

7. The Company occasionally offers financial assistance, advances on salaries, and loans to its employees.

8. As set forth in Schedule 3.10, the Company has approximately fifteen (15) credit cards which are assigned to certain Company employees and are used for business travel purposes. As set forth in Schedule 3.11, Merger Sub proposes to continue use of these credit cards for a limited period of time following the Closing, to the extent that such continued use is permitted or valid.

9. The Company has not filed any Forms 5500 for its health plan, which has fewer than 100 participants and the benefits of which are funded through an HMO.

10. The Company has not prepared formal summary plan descriptions of its health plan but provides its employees with the disclosures provided by its HMO.

11. The Company has not maintained an ERISA Compliance Bond.

SCHEDULE 3.15
REAL PROPERTY

1. The Company leases the real property, which is owned by Duane Harlan as separate property, located at 937 Enterprise Drive, Sacramento, California pursuant to the Standard Office Lease, dated September 20, 1995, between Duane A. Harlan ("Lessor") and Sierra Digital, Inc. ("Lessee"), as amended. Amendments to the Standard Office Lease are set forth in Schedule 3.28(o).

SCHEDULE 3.16(a)
INTELLECTUAL PROPERTY RIGHTS

1. The following is a list of all Company Intellectual Property:

   a. Software Products:

      (1) RecWare PRO - Activity Registration
      (2) RecWare PRO - Facility Reservation
      (3) RecWare PRO - League Scheduling
      (4) RecWare PRO - Membership Management
      (5) RecWare PRO - Market Almanac
      (6) RecWare PRO - Credit Card Authorizer
      (7) RecWare PRO - TrakEnroll Day Camp Registration
      (8) RecWare PRO - Touch Tone Registration (obsolete)

      (9) RecWare Safari - Safari Central
      (10) RecWare Safari - Activity Registration
      (11) RecWare Safari - Facility Reservation
      (12) RecWare Safari - Membership Management
      (13) RecWare Safari - Point of Sale

      (14) RecWare OnLine - Server Engine
      (15) RecWare OnLine - Activity Display
      (16) RecWare OnLine - Internet Registration
      (17) RecWare OnLine - Facility Display
      (18) RecWare OnLine - Internet Facility Reservation
      (19) RecWare OnLine - Sports Reporting

   b. Federal Trademarks (other than making the registration filings, the Company has done nothing to secure ownership of any of the following):

      (1) APE - Registered with United States Patent and Trademark Office ("PTO")
      (2) Faxenroll - Registered with PTO
      (3) Futureville - Received Filing Receipt for Trademark Application from PTO on 10/26/99 and request by PTO for additional specimens
      (4) Recinfo - Registered with PTO
      (5) RecNet - Registered with PTO
      (6) RecWare - Registered with PTO
      (7) RecWare OnLine - Application with PTO completed on 11/15/99
      (8) RecWare PRO - Registered with PTO
      (9) RecWare Safari - Registered with PTO

(10) RecWire - Registered with PTO
(11) Scanenroll - Registered with PTO
(12) Sierra Digital - Registered with PTO
(13) Trakenroll - Registered with PTO
(14) Webenroll - Registered with PTO

c. Domain Names (other than making the registration filings, the Company has done nothing to secure ownership of any of the following):

(1) Recware.com - Registered with Network Solutions
(2) Recware.net - Registered with Network Solutions
(3) Recware.org - Registered with Network Solutions
(4) Recwire.com - Registered with Network Solutions
(5) Recwire.net - Registered with Network Solutions
(6) Recwire.org - Registered with Network Solutions
(7) Recinfo.com - Registered with Network Solutions
(8) Sierra-digital-inc.com - Registered with Network Solutions
(9) Munisports.com - Registered with Network Solutions
(10) Munisports.net - Registered with Network Solutions

d. Patents:

(1) The Company has filed a provisional patent application with the PTO to preserve the priority filing date for a Proximity Based Search System. The Company is in the process of filing its formal patent application. The provisional patent application expires on December 30, 2000.

2. As set forth in Schedule 3.16(c), periodic filings are required to maintain Federal Trademark status, and these filings may not have been made.

3. Other than filing a "RecWare" trademark registration with the State of California, the Company has not registered any of the Company Intellectual Property in any State or in Canada.

4. The domain names sierradigital.com and sierra-digital.com are registered to other companies. As set forth in Schedule 3.33, the Company is aware of other companies which use the "Sierra Digital" name or a derivative thereof.

5. The Company does not own rights to ancillary products which some Company products rely upon to provide supplemental functions. Examples of such products include Oracle Database, Microsoft SQL Server, Microsoft MSDE Database, Microsoft Agent, ProApp Point of Sale software, IC Verify (for credit card verification), TeleForm (OCR document scan), TTS 2000, and numerous programmer "3rd party libraries and controls" for its programming languages such as Visual Basic, Java, and Fox Pro.

6. The Company has previously cooperated with Marathon Systems, Inc. ("Marathon") to market RecWare cooperatively along with Marathon Point of Sale software, and these joint installations (approximately 25) exist today as both Marathon and Company customers. The Company has since developed its own Point of Sale capability for RecWare Safari, and has discontinued any cooperative relationship with Marathon. The Company's practice when recommending Marathon's products along with RecWare was to require the customer to purchase Marathon's products directly from Marathon. The Company offered its customers the ability to receive technical support for Marathon's software from the Company's technical staff, however, each customer who purchased and installed the jointly installed products chose to receive support directly from Marathon for Marathon-supplied products. The Company no longer offers to support Marathon's products.

7. The Company has acted as an intermediary with regard to TTS 2000 Tournament Scheduling software (approximate price $300) introducing its customers to third-parties who provide this software in conjunction with RFP responses and sales of RecWare products to Company's customers. The Company is obligated to provide support to its customers for TTS software.

8. As set forth in Schedule 3.16(j), the Company has discontinued or stopped offering a number of products for sale.

SCHEDULE 3.16(b)
INTELLECTUAL PROPERTY RIGHTS

1. As set forth in Schedule 3.16(a), the Company has registered or is in the process of registering certain Company Intellectual Property with the PTO.

SCHEDULE 3.16(c)
INTELLECTUAL PROPERTY RIGHTS

1. The Company has only obtained such registration of its Intellectual Property as set forth in Schedule 3.16(a). Other than a filing "RecWare" trademark registration with the State of California, the Company has not registered any of the Company Intellectual Property in any State or in Canada.

2. Periodic filings are required to maintain Federal Trademark status, and these filings may not have been made by the Company.

SCHEDULE 3.16(d)
INTELLECTUAL PROPERTY RIGHTS

1. Employees and contractors who are software developers, who are senior management employees or who otherwise have access to the Company's locked development area, as set forth in Schedule 3.16(k), are required to sign and accept the Proprietary Information and Inventions Assignment Agreement. No other employees are required to sign the Proprietary Information and Inventions Assignment Agreement. The Company has obtained from employees and contractors the following Proprietary Information and Inventions Assignment Agreements, some of which have been signed after work had been commenced or completed:

   a. Proprietary Information and Inventions Assignment Agreement with Tom Moore, dated April 14, 1999.

   b. Proprietary Information and Inventions Assignment Agreement with Gary Perez, dated February 26, 1999.

   c. Proprietary Information and Inventions Assignment Agreement with Steve Hoover, dated January 1, 1999.

   d. Proprietary Information and Inventions Assignment Agreement with David Christie, dated March 7, 1999.

   e. Proprietary Information and Inventions Assignment Agreement with John Serences, dated February 9, 1999.

   f. Proprietary Information and Inventions Assignment Agreement with Tim Ignatyev, dated January 18, 1999.

   g. Proprietary Information and Inventions Assignment Agreement with Tim Tyannikov, dated January 18, 1999.

   h. Proprietary Information and Inventions Assignment Agreement with Jennice Acosta, dated January, 1999.

   i. Proprietary Information and Inventions Assignment Agreement with Ron Gaetz, dated July 25, 2000.

   j. Proprietary Information and Inventions Assignment Agreement with Robert Konvalin, dated January, 1999.

k. Proprietary Information and Inventions Assignment Agreement with Bill Henley, dated January, 1999.

l. Proprietary Information and Inventions Assignment Agreement with Kyle Shelton, dated January, 1999.

m. Proprietary Information and Inventions Assignment Agreement with Tim Elston, dated September, 1999.

o. Proprietary Information and Inventions Assignment Agreement with Duane Harlan, dated September 21, 2000.

p. Proprietary Information and Inventions Assignment Agreement with Shelly Hoover, dated September 20, 2000.

2. Mark Konrad has not signed the Company's current standard Proprietary Information and Inventions Assignment Agreement but instead signed the Company's former standard Confidentiality and Non-Disclosure Agreement, dated August 5, 1998.

3. Contractor Agreement (containing Confidential and Proprietary Information provisions) with Troy Fulton, signed by Mr. Fulton on September 5, 1997 and signed by the Company on September 15, 1997.

4. In addition to signing the Company's current standard Proprietary Information and Inventions Assignment Agreement, Ron Gaetz also signed the Company's former standard Confidentiality and Non-Disclosure Agreement, dated August 4, 1997.

5. The Company never received any Proprietary Information and Inventions Assignment Agreement from an individual who performed "voice over" work at a cost of $250 for a marketing animation piece which was never delivered to the Company in finished form, as set forth in Schedule 3.17.

6. The Company's practice is to require its employees to sign a written acknowledgment of receipt of the Employee Handbook.

SCHEDULE 3.16(e)
INTELLECTUAL PROPERTY RIGHTS

1. The Company is in the business of licensing the software products which are set forth in Schedule 3.16(a) and has granted a significant number of licenses to customers.

SCHEDULE 3.16(f)
INTELLECTUAL PROPERTY RIGHTS

1. The Company has granted a license to the customers set forth in the Customer List, dated as of July 25, 2000, as amended on September 19, 2000, and on November 10, 2000, which has been provided to Merger Sub and Active. The Company has also granted a license to the customers set forth on the Z Files List, as discussed in Paragraph 2 of this Schedule 3.16(f). The Customer List generally sets forth only the current customers of Company, although it may include some customers that have ceased using the Company's products and it may include dormant customers, as set forth in Schedule 3.33.

2. Customers to whom the Company has granted a license but who are not operating under a Software Subscription Agreement are generally set forth in the Z Files List, dated as of March 17, 2000, as amended on September 19, 2000, and on November 10, 2000, which has been provided to Merger Sub and Active. The Z Files List includes customers who have chosen not to renew their Software Subscription Agreements with the Company for reasons which may include those set forth in Schedule 3.33. The Z Files List customers may, however, still be utilizing Company products, and any obligation arising out of any license agreement with these customers, if any, will be borne by Merger Sub after the Closing.

3. The Company's Software License Agreement generally governs usage and restriction of Company developed software products, and the Company's Software Subscription Agreement generally governs continuing software maintenance. A sample copy of both the Software License Agreement and the Software Subscription Agreement (collectively, the "Standard Agreements") has been provided to Merger Sub and Active. The majority of RecWare PRO customers operate under the provisions of the Standard Agreements. There have been frequent modifications to the venue and choice of law provisions of the Standard Agreements and occasional modifications to other provisions of the Standard Agreements, such as removal of the automatic renewal provision. Other than these modifications, there have been few modifications to the Standard Agreements. However, there is no master list of modifications made to the Standard Agreements, and the only method to determine any such modifications would be to review each individual customer file independently. All documents have been made available for inspection at the Company's headquarters.

4. A minority of RecWare PRO customers and a majority of the RecWare Safari customers have customized agreements with the Company which, in some circumstances, include or attach the Standard Agreements (as defined in Paragraph 3 of this Schedule 3.16(f)) as exhibits (the "Customized Agreements"). Examples of these Customized Agreements have been provided to Merger Sub and Active and include the following:

a. City of Corona Agreement for Contractual Services, dated March 4, 1997, between City of Corona, a municipal corporation of the State of California ("City"), and Sierra Digital, Inc. ("Contractor").

b. Agreement for the License of Computer Software, dated May 16, 1997, between City of Santa Monica ("City") and Sierra Digital, Inc. ("Vendor").

c. Personal/Professional Services Agreement, dated March 17, 1998, between County of Kern, a political subdivision of the State of California ("County"), and Sierra Digital, Inc. ("Consultant").

d. Milwaukee Board of School Directors Professional Services Contract, dated February 9, 2000, between Milwaukee Board of School Directors ("MPS") and Sierra Digital, Inc. ("Contractor").

e. Agreement (Contract No. C99-45), dated November 22, 1999, between City of Alhambra, a municipal corporation ("City"), and Sierra Digital, Inc. ("SD").

f. Purchase Agreement between City of Brea ("City") and Sierra Digital ("Consultant"), undated, signed by City and Consultant.

g. Subcontract Agreement regarding the City of Costa Mesa ("City"), dated March 15, 1996, between Hewlett-Packard Company ("HP") and Sierra Digital Inc. ("Subcontractor").

h. Agreement for Computer Software, dated December 29, 1997, between the City of Saline ("City") and Sierra Digital, Inc. ("Contractor").

i. Agreement for Computer Software System, dated November 21, 1995, between City of San Jose ("City") and Sierra Digital, Inc. ("Contractor").

j. Agreement, dated June 1, 1994, between City of San Luis Obispo ("City") and Sierra Digital ("Contractor").

k. Sandwich Community School Software Contract between Sandwich Community School and RecWare by Sierra Digital, Inc., signed by Sandwich Community School on March 31, 1998 and signed by RecWare by Sierra Digital, Inc. on April 6, 1998.

l. Contract, dated September 7, 1999, between Township of South Brunswick, a municipal corporation of the State of New Jersey ("Municipality"), and Sierra Digital, Inc. ("Contractor").

m. Purchase Agreement, effective January 11, 1996, between City of Tulsa, Oklahoma ("City") and Sierra Digital, Inc. ("Seller").

n. Purchase/License Agreement between United Services Automobile Associate, a reciprocal interinsurance exchange ("USAA"), and Sierra Digital, Inc. ("Vendor"), undated, signed by USAA and signed by Vendor on March 31, 1997.

o. RecWare Software License Agreement and Registration Form and RecWare Software Subscription Agreement between Fairfax County/McLean Community Center ("Licensee") and Sierra Digital, Inc. ("SD").

p. RecWare Software License Agreement and Registration Form and RecWare Software Subscription Agreement between San Diego Data Processing Corporation ("Licensee") and Sierra Digital, Inc. ("SD"), signed by Licensee on December 22, 1994 and signed by SD on December 11, 1994.

q. RecWare Software License Agreement and Registration Form and RecWare Software Subscription Agreement between UCSF - Milberry ("Licensee") and Sierra Digital, Inc. ("SD").

r. Purchase Agreement between City of West Valley City, Utah ("Purchaser"), and Sierra Digital, Inc. ("SDI"), signed by Purchaser on June 3, 1999 and signed by SDI on August 19, 1999.

s. RecWare Software License Agreement and Registration Form, dated November 5, 1999, including Appendix A, Terms and Conditions of Purchase and Change Order, between UCI Campus Recreation ("Licensee") and Sierra Digital, Inc. ("SD").

t. Professional Services Agreement, dated February 18, 2000, between the City of Santa Clarita ("City") and Sierra Digital, Inc. ("Consultant").

u. RecWare Software License Agreement and Registration Form and RecWare Software Subscription Agreement between Clark County, a political subdivision of the State of Nevada, ("Licensee") and Sierra Digital, Inc. ("SD"), signed by Licensee on July 6, 1999 and signed by SD on June 24, 1999.

v. Purchase Agreement between City of Fredericksburg, Virginia ("Purchaser"), and Sierra Digital, Inc. ("SDI"), signed by Purchaser on June 21, 1999.

w. Purchase Order, dated June 3, 1999, and Service Authorization, dated July 30, 1999 from City of Glendale ("City") to Sierra Digital Inc. ("Vendor").

x. Software and Software Support Agreement Number #97-30-002 between Town of Herndon ("Town") and Sierra Digital, Inc. ("Contractor"), signed by Town on March 11, 1999 and signed by SDI on March 16 1999.

y. Purchase Agreement between Santa Fe, New Mexico ("Purchaser"), and Sierra Digital, Inc. ("SDI"), signed by Purchaser on October 21, 1999 and signed by SDI on October 15, 1999.

z. Contract #P8046810-08, City of Seattle, Parks and Recreation Department, Recreation Business Support System, dated July 13, 1999, between City of Seattle, a municipal corporation of the State of Washington (the "City"), and Sierra Digital, Inc. As set forth in Schedule 3.16(j), the Company has received a letter from the City, dated November 7, 2000, which purports to serve as a notice of termination of the Seattle Agreements.

aa. Professional Services Contract, dated September 27, 1999, between City of Yuma, a municipal corporation of the State of Arizona ("City"), and Sierra Digital, Inc. ("Contractor").

bb. Purchase Agreement between City of Carson, California ("Purchaser"), and Sierra Digital, Inc. ("SDI"), signed by Purchaser on May 9, 2000.

cc. Purchase Agreement No. C000035 for Recreation Data Collection Software between City of Austin, Texas, a Texas municipal corporation ("City"), and Sierra Digital, Inc. ("Contractor"), undated, signed by City and Contractor.

dd. Contract Services Form between City and Borough of Juneau, Alaska, a municipal corporation in the State of Alaska ("City"), and Sierra Digital, Inc. ("Contractor"), signed by City on June 30, 2000, signed by Contractor on July 6, 2000.

ee. Purchase Agreement between City of Newport Beach, CA ("Purchaser"), and Sierra Digital, Inc. ("SDI"), signed by Purchaser on July 27, 2000 and signed by SDI on July 31, 2000.

ff. Purchase Agreement between L.A.R.A.P. (Livermore Area Recreation and Park District) ("Purchaser"), and Sierra Digital, Inc. ("SDI") signed by Purchaser on August 15, 2000 and signed by SDI on August 11, 2000.

gg. Purchase Agreement between City of Woodlands Recreation Center, Inc. ("Purchaser"), and Sierra Digital, Inc. ("SDI"), signed by Purchaser on April 13, 2000 and signed by SDI on April 26, 2000.

hh. Purchase Agreement between Douglas County Parks and Recreation ("Purchaser"), and Sierra Digital, Inc. ("SDI"), signed by Purchaser on June 9, 2000 and signed by SDI on June 19, 2000.

ii. Agreement for Professional Services, dated July 24, 1998, between City of Boise, a municipal corporation of the State of Idaho ("City"), and Sierra Digital, Inc. ("SDI").

jj. Software Services Agreement, dated June 4, 1996 and effective January 1, 1996, between City of Seattle ("City") and Sierra Digital, Inc. ("SDI"). As set forth in Schedule 3.16(j), the Company has received a letter from the City, dated November 7, 2000, which purports to serve as a notice of termination of the Seattle Agreements.

kk. Purchase Agreement between County of Henrico, Virginia ("Purchaser"), and Sierra Digital, Inc. ("SDI"), signed by Purchaser on November 3, 2000 and signed by SDI on October 16, 2000.

ll. Incorporated County of Los Alamos Agreement, AGR 1571-00, between Incorporated County of Los Alamos, New Mexico ("County") and Sierra Digital, Inc. ("Contractor"), signed by County on September 12, 2000 and signed by Contractor on September 27, 2000.

mm. Purchase Agreement between Lebanon, PA ("Purchaser"), and Sierra Digital, Inc. ("SDI"), signed by Purchaser on October 5, 2000 and signed by SDI on October 15, 2000.

nn. Purchase Agreement between Orange County, Florida ("Purchaser"), and Sierra Digital, Inc. ("SDI"), signed on September 22, 1999.

oo. Purchase Agreement between City of Campbell, CA ("Purchaser"), and Sierra Digital, Inc. ("SDI") signed on November 15, 2000.

5. The Company's Software Escrow Agreement has been executed by a small number of customers. An example of the Software Escrow Agreement and certain customized Escrow Agreements have been provided to Merger Sub and Active and include the following:

a. Software Escrow Agreement, dated November 2, 1995 between Anderson Park District ("Licensee") and Sierra Digital, Inc. ("Vendor").

b. Software Escrow Agreement, dated January 15, 1998 between City of Bettendorf (Park Board) ("Licensee") and Sierra Digital, Inc. ("Vendor").

c. RecWare Software License Agreement and Registration Form and RecWare Software Subscription Agreement between San Diego Data Processing Corporation ("Licensee") and Sierra Digital, Inc. ("SD"), signed by Licensee on December 22, 1994 and signed by SD on December 11, 1994.

6. The Company has published the following items on its website at www.recware.com. As set forth in Schedule 3.11, it is unclear whether and to what extent any customers are affected or bound by the Company's new Customer Service Plans which include, but are not limited, to the items set forth in Paragraphs 6(g) through (i) of this Schedule 3.16(f).

a. Terms of Use Agreement.

b. Trademark Information.

c. Copyright Terms.

d. Privacy Policy.

e. Equal Opportunity Policy.

f. Anti-Harassment Policy.

g. RecWare PRO Purchase Terms and Conditions

h. Service Plan General Terms and Conditions

i. RecWare PRO Refund Policy

7. License and Distribution Agreement, dated February 28, 1998, between Microsoft Corporation, a Washington corporation ("MS"), and Sierra Digital, Inc. ("Company"), pursuant to which the Company has obtained a license to use the Microsoft Agent. (i.e. "paperclip" help icons). The Company is using only the free computer software provided under the License and Distribution Agreement and has not executed any updated agreements which require fees for newer versions of the software.

8. The Company is a MSDN developer for Microsoft, which allows the Company to use certain MS products to develop Company products. The Agreement is renewed annually and the previous renewal fee was approximately $2,200.

9. Terms of Service Agreement, JPSnet and Sierra Digital, Inc. ("Member").

10. CalWeb Internet Services, Inc. Network Services Agreement, dated December 8, 1999, between CalWeb Internet Services Inc. and Sierra Digital, Inc.

11. Music License Agreement between James L. Accardi and Sierra Digital, Inc. (Licensee), signed by Mr. Accardi on September 27, 1999, executed in connection with a marketing animation piece which was never delivered to the Company in finished form, as set forth in Schedule 3.17.

12. The Company has purchased name brand computers, such as Dell, which come with licensed software, such as Windows, Word, and Excel. In addition, the Company has downloaded various software from the Internet, such as the Ultimate Bulletin Board. It is the Company's practice and policy to remain in conformance with all software license provisions, and the Company is unaware of any occurrence of any improperly licensed or improperly used software at the Company. However, the Company cannot guarantee that all off-the-shelf and Internet software in possession or use by the Company is properly licensed or that Merger Sub may continue to use this software.

13. See items set forth in Schedule 3.7(c).

14. See items set forth in Schedule 3.16(j).

15. As set forth in Schedule 3.33, the Company does not know how its customers, vendors and employees shall perceive the merger of the Company with Merger Sub and does not know what effects shall flow therefrom, and therefore cannot guarantee that Merger Sub will be permitted to exercise, without the payment of any additional amounts or consideration, all of the Company's rights to the same extent the Company would have been able to had the merger not occurred.

SCHEDULE 3.16(g)
INTELLECTUAL PROPERTY RIGHTS

1. City of Corona Agreement for Contractual Services, dated March 4, 1997, between City of Corona, a municipal corporation of the State of California ("City"), and Sierra Digital, Inc. ("Contractor").

2. Agreement for the License of Computer Software, dated May 16, 1997, between City of Santa Monica ("City") and Sierra Digital, Inc. ("Vendor").

3. Personal/Professional Services Agreement, dated March 17, 1998, between County of Kern, a political subdivision of the State of California ("County"), and Sierra Digital, Inc. ("Consultant").

4. Milwaukee Board of School Directors Professional Services Contract, dated February 9, 2000, between Milwaukee Board of School Directors ("MPS") and Sierra Digital, Inc. ("Contractor").

5. Agreement (Contract No. C99-45), dated November 22, 1999, between City of Alhambra, a municipal corporation ("City"), and Sierra Digital, Inc. ("SD").

6. Purchase Agreement between City of Brea ("City") and Sierra Digital ("Consultant"), undated, signed by City and Consultant.

7. Subcontract Agreement regarding the City of Costa Mesa ("City"), dated March 15, 1996, between Hewlett-Packard Company ("HP") and Sierra Digital Inc. ("Subcontractor").

8. Agreement for Computer Software System, dated November 21, 1995, between City of San Jose ("City") and Sierra Digital, Inc. ("Contractor").

9. Contract, dated September 7, 1999, between Township of South Brunswick, a municipal corporation of the State of New Jersey ("Municipality"), and Sierra Digital, Inc. ("Contractor").

10. Purchase/License Agreement between United Services Automobile Associate, a reciprocal interinsurance exchange ("USAA"), and Sierra Digital, Inc. ("Vendor"), undated, signed by USAA and signed by Vendor on March 31, 1997.

11. RecWare Software License Agreement and Registration Form and RecWare Software Subscription Agreement between San Diego Data Processing Corporation ("Licensee") and Sierra Digital, Inc. ("SD"), signed by Licensee on December 22, 1994 and signed by SD on December 11, 1994.

12. RecWare Software License Agreement and Registration Form and RecWare Software Subscription Agreement between UCSF - Milberry ("Licensee") and Sierra Digital, Inc. ("SD").

13. Purchase Agreement between City of West Valley City, Utah ("Purchaser"), and Sierra Digital, Inc. ("SDI"), signed by Purchaser on June 3, 1999 and signed by SDI on August 19, 1999.

14. RecWare Software License Agreement and Registration Form, dated November 5, 1999, including Appendix A, Terms and Conditions of Purchase and Change Order, between UCI Campus Recreation ("Licensee") and Sierra Digital, Inc. ("SD").

15. Professional Services Agreement, dated February 18, 2000, between the City of Santa Clarita ("City") and Sierra Digital, Inc. ("Consultant").

16. Purchase Agreement between City of Fredericksburg, Virginia ("Purchaser"), and Sierra Digital, Inc. ("SDI"), signed by Purchaser on June 21, 1999.

17. Purchase Order, dated June 3, 1999, and Service Authorization, dated July 30, 1999 from City of Glendale ("City") to Sierra Digital Inc. ("Vendor").

18. Software and Software Support Agreement Number #97-30-002 between Town of Herndon ("Town") and Sierra Digital, Inc. ("Contractor"), signed by Town on March 11, 1999 and signed by SDI on March 16 1999.

19. Purchase Agreement between Santa Fe, New Mexico ("Purchaser"), and Sierra Digital, Inc. ("SDI"), signed by Purchaser on October 21, 1999 and signed by SDI on October 15, 1999.

20. Contract #P8046810-08, City of Seattle, Parks and Recreation Department, Recreation Business Support System, dated July 13, 1999, between City of Seattle, a municipal corporation of the State of Washington (the "City"), and Sierra Digital, Inc. As set forth in Schedule 3.16(j), the Company has received a letter from the City, dated November 7, 2000, which purports to serve as a notice of termination of the Seattle Agreements.

21. Professional Services Contract, dated September 27, 1999, between City of Yuma, a municipal corporation of the State of Arizona ("City"), and Sierra Digital, Inc. ("Contractor").

22. Purchase Agreement between City of Carson, California ("Purchaser"), and Sierra Digital, Inc. ("SDI"), signed by Purchaser on May 9, 2000.

23. Purchase Agreement No. C000035 for Recreation Data Collection Software between City of Austin, Texas, a Texas municipal corporation ("City"), and Sierra Digital, Inc. ("Contractor"), undated, signed by City and Contractor.

24. Contract Services Form between City and Borough of Juneau, Alaska, a municipal corporation in the State of Alaska ("City"), and Sierra Digital, Inc. ("Contractor"), signed by City on June 30, 2000, signed by Contractor on July 6, 2000.

25. Purchase Agreement between City of Newport Beach, CA ("Purchaser"), and Sierra Digital, Inc. ("SDI"), signed by Purchaser on July 27, 2000 and signed by SDI on July 31, 2000.

26. Purchase Agreement between L.A.R.A.P. (Livermore Area Recreation and Park District) ("Purchaser"), and Sierra Digital, Inc. ("SDI") signed by Purchaser on August 15, 2000 and signed by SDI on August 11, 2000.

27. Purchase Agreement between City of Woodlands Recreation Center, Inc. ("Purchaser"), and Sierra Digital, Inc. ("SDI"), signed by Purchaser on April 13, 2000 and signed by SDI on April 26, 2000.

28. Purchase Agreement between Douglas County Parks and Recreation ("Purchaser"), and Sierra Digital, Inc. ("SDI"), signed by Purchaser on June 9, 2000 and signed by SDI on June 19, 2000.

29. Agreement for Professional Services, dated July 24, 1998, between City of Boise, a municipal corporation of the State of Idaho ("City"), and Sierra Digital, Inc. ("SDI").

30. Software Services Agreement, dated June 4, 1996 and effective January 1, 1996, between City of Seattle ("City") and Sierra Digital, Inc. ("SDI"). As set forth in Schedule 3.16(j), the Company has received a letter from the City, dated November 7, 2000, which purports to serve as a notice of termination of the Seattle Agreements.

31. Purchase Agreement between County of Henrico, Virginia ("Purchaser"), and Sierra Digital, Inc. ("SDI"), signed by Purchaser on November 3, 2000 and signed by SDI on October 16, 2000.

32. Incorporated County of Los Alamos Agreement, AGR 1571-00, between Incorporated County of Los Alamos, New Mexico ("County") and Sierra Digital, Inc. ("Contractor"), signed by County on September 12, 2000 and signed by Contractor on September 27, 2000.

33. Purchase Agreement between Lebanon, PA ("Purchaser"), and Sierra Digital, Inc. ("SDI"), signed by Purchaser on October 5, 2000 and signed by SDI on October 15, 2000.

34. Purchase Agreement between Orange County, Florida ("Purchaser"), and Sierra Digital, Inc. ("SDI"), signed on September 22, 1999.

35. Purchase Agreement between City of Campbell, CA ("Purchaser"), and Sierra Digital, Inc. ("SDI") signed on November 15, 2000.

36. Software Escrow Agreement, dated January 15, 1998 between City of Bettendorf (Park Board) ("Licensee") and Sierra Digital, Inc. ("Vendor").

37. Bidder Requirements - Technology Equipment/Software "Including" On Site Services, dated August 1, 2000, between City of El Segundo, CA and Sierra Digital, Inc.

38. Invitation to Bid No. 00100184-MPDMS, dated August 22, 2000, between The University of Texas at Austin and Sierra Digital, Inc.

39. CalWeb Internet Services, Inc. Network Services Agreement, dated December 8, 1999, between CalWeb Internet Services Inc. and Sierra Digital, Inc.

40. Terms of Service Agreement, JPSnet and Sierra Digital, Inc. ("Member").

41. Equipment Lease Agreement, dated September 1, 1998, between Pitney Bowes Credit Corporation ("PBCC") and Sierra Digital.

42. Not all customers who have purchased Company products have executed a signed, written agreement with the Company. Some of these customers have simply sent a purchase order or equivalent document to the Company. These purchase orders or equivalent documents have been made available to Merger Sub and Active for inspection at the Company's headquarters. Many of these purchase orders contain an indemnification obligation of the Company.

43. The Company may be subject to certain warranties as required by law.

SCHEDULE 3.16(j)
INTELLECTUAL PROPERTY RIGHTS

1. See items set forth in Schedule 3.1.

2. The Company periodically sends out letters to third parties alerting them of infringement or potential infringement of Company Intellectual Property. Examples include correspondence sent by the Company to another company requesting it to cease using the term "Rec Pro," and communication by the Company to a former employee requesting such former employee to cease inappropriate use of Company Intellectual Property. The Company has recently learned that another company has begun using the term "Recreation Pro," "Registration Pro" and other terms in conjunction with the word "Pro."

3. A significant number of bugs and problems exist within Company products, and many of these will not be resolved as of Closing. RecWare products undergo a significant number of changes and, as such, may contain a significant number of product bugs and flaws. For example, in August 2000, approximately 800 customers received a RecWare PRO update which the Company has since learned contains a product bug. Although not every bug is tracked, which means that there is no single perfect source which references all bugs in every Company product, the Company makes an effort to log and track bugs as they are reported or discovered. The Company logs a great majority of the bugs through a "Task Tracker" and other systems. Pursuant to Contract #P8046810-08, City of Seattle, Parks and Recreation Department, Recreation Business Support System, dated July 13, 1999, between City of Seattle, a municipal corporation of the State of Washington (the "City"), and Sierra Digital, Inc., the Company had tracked bugs through a separate system that had been created by the customer due to the large and complex nature of the installation. The Company had received correspondence from the City, wherein the City had identified what it believed to be approximately 300 product bugs or issues in connection with this installation. As set forth in Paragraph 11 of this Schedule 3.16(j), the Company has received a letter from the City, dated November 7, 2000, which purports to serve as a notice of termination of the Seattle Agreements. The items listed in various Task Tracker sheets described above are not fully updated. Each of the Task Tracker sheets described above have been made available to Merger Sub and Active.

4. The Company is in the process of working to reconstruct data for Santa Fe, New Mexico, a customer who received a Safari update which caused the deletion of historical receipt information. The Company's other Safari customers may have also received the same update, although the Company has not received any reports of any data loss from customers other than Santa Fe, New Mexico.

5. The Company has discontinued or stopped offering a number of products for sale. Examples include RecWare for DOS (all versions), RecWare for Macintosh (all versions), RecWare Touch Tone Registration, and RecWare APE (all products).

6. The Company has discontinued an older product line that it considered unsuccessful (APE). Fewer than ten (10) customers obtained this product, and they are in the process of being contacted and provided with an alternate resolution, which may include provision of free replacement products or services.

7. The Company has provided a refund of approximately $10,000 to Chandler, Arizona, a customer which purchased the RecWare Touch Tone Registration product but found that it did not work properly on their modern hardware system. RecWare Touch Tone Registration has been sold to approximately sixty (60) customers and may experience other problems as set forth in Schedule 3.33.

8. The Company offers an older version of RecWare (RecWare PRO) in the Macintosh format. Given the small percentage of Macintosh penetration in the market, the Company finds that it correspondingly has a low percentage of Macintosh accounts. The current RecWare PRO software version for Macintosh is not currently up to date with the RecWare PRO Windows version. The Company has decided to continue servicing existing Macintosh accounts using RecWare PRO, but has elected not to try to adopt its new Safari product line for the Macintosh.

9. As set forth in Schedule 3.16(f), the Company has a list of former customers (also referred to as the"Z Files" List) which sets forth the customers who have chosen not to renew their Software Subscription Agreements with the Company. The former customers may, however, still be utilizing Company products, and any obligation arising out of any license agreement with those former customers, if any, will be borne by Merger Sub after the Closing. The Z Files List has been provided to Merger Sub and Active.

10. Software and Software Support Agreement Number #97-30-002 between Town of Herndon ("Town") and Sierra Digital, Inc. ("Contractor"), signed by Town on March 11, 1999 and signed by SDI on March 16 1999, contains a provision for liquidated damages of $1,000 per month, in any event not to exceed 10,000, if certain deliveries were not met by October 2000. The Company had delivered the bulk of products required under this agreement, but was behind schedule for the October delivery. The customer was aware that the Company was behind schedule, had agreed not to hold the Company to this delivery date, and had participated in the decision for the Company to focus resources on another project for the Town that has caused the delay. As set forth in Schedule 3.28(h), the delivery timeline for Touch Tone registration was changed from October 2000 to after January 1, 2001.

11. Contract #P8046810-08, City of Seattle, Parks and Recreation Department, Recreation Business Support System, dated July 13, 1999, between City of Seattle, a municipal corporation of the State of Washington (the "City"), and Sierra Digital, Inc. (the "Contract") contained certain delivery timeline requirements on which the Company was behind schedule, and on which the Company had been attempting to develop revised

timelines with the City. In addition, the Company was obligated under the Contract to provide the City with a scheduling program which the Company had not yet developed. There had been some disagreement by both parties about what had been agreed to under the Contract. For example, the City had claimed that the Company was obligated to develop and deliver an expansive "Day Camp Registration" capability as part of RecWare Safari for the City, but the Company had communicated to the City that it was the Company's opinion that this expansive level of capability was not covered by the Company's RFP response or Contract and that the Company shall furnish only the line item functionality in the Contract or the existing RecWare PRO Trakenroll product. The Company has received a letter from the City, dated November 7, 2000, which purports to serve as a notice of termination of the Contract, and likely includes purported termination of the Software Services Agreement, dated June 4, 1996 and effective January 1, 1996, between City of Seattle ("City") and Sierra Digital, Inc. ("SDI") and any related Software Subscription Agreement (collectively, the "Seattle Agreements"), due to these and other disagreements. This letter has been provided to Merger Sub and Active. A termination of the Seattle Agreements may trigger or require the payment of a refund or damages by Merger Sub. As set forth in Schedule 3.10, the Company had received payments from the City prior to the completion of work by the Company. As set forth in Schedule 3.22, the Company has a receivable from the City in the approximate amount of $12,000, which is likely uncollectable.

12. Contract Services Form between City and Borough of Juneau, Alaska, a municipal corporation in the State of Alaska ("City"), and Sierra Digital, Inc. ("Contractor"), signed by City on June 30, 2000, signed by Contractor on July 6, 2000, was signed at a price of approximately $41,000. The Contract Services Form contains provisions which requires the Company become qualified to do business in the State of Alaska and requires the Company to keep business records for a period of six (6) years and to make these available for inspection. The Company shall not endeavor to become qualified to do business in the State of Alaska prior to Closing.

13. As set forth in Schedule 3.10, the Company has made contractual commitments to its customers to deliver new software products and new capabilities to existing products that have not yet been developed by the Company.

14. On or about July 1999, the Company sent out letters to customers alerting them that RecWare for DOS is not year 2000 compliant. Some customers may still be using this product.

15. RecWare Safari is known to have problems when operated using a Microsoft SQL 6.5 database.

SCHEDULE 3.16(k)
INTELLECTUAL PROPERTY RIGHTS

1. The Company has no trade secret procedures or mechanisms in place except as follows:

   a. See items set forth in Schedule 3.16(d).

   b. The Company maintains a locked development area where the Company's programmers are located. It is the Company's policy to limit access to the locked development area only to those individuals who have signed the Company's Proprietary Information and Inventions Agreement, as set forth in Schedule 3.16(d).

SCHEDULE 3.17
LITIGATION

1. The Company has entered into a Settlement Offer, dated September 7, 2000, signed by both parties on September 12, 2000, in the amount of $3,000, to settle a claim, dated August 11, 2000, filed with the Labor Commissioner by a former employee in the amount of $14,149.58 in unpaid wages and $276.96 per day in additional damages, not to exceed (30) thirty days. The Company hired an individual for a six (6) week period in September 1999 to produce a marketing animation piece at a cost of approximately $10,000 for use by the Company at trade shows and for demo purposes. This individual signed both an Employment Agreement and a Proprietary Information and Inventions Agreement. This individual has not performed any work in connection with any development of intellectual property that the Company markets or sells to its customers (i.e. no connection to "RecWare" products sold and marketed by the Company). The piece was originally due on October 15, 1999, and was never delivered in a finished form.

2. The Company has received an unemployment claim from a former employee whose unemployment claim was denied by the Department of Unemployment.

3. In October 1999 a disgruntled employee who had separated from the Company filed a claim with the Labor Commissioner's office. This claim was investigated and the employee claim was denied on or about February 2000.

4. The Company was audited by the IRS in 1997 for the 1995 tax year. The audit result was "no change." The Company was also audited in 1997 by the Board of Equalization for state sales tax for the 1997 tax year. This audit also did not result in any change or amount due.

5. Two (2) Company employees have been involved in two (2) separate auto accidents while on Company business:

   a. Cheviot Hills Recreation Center, Los Angeles, CA.; Amount Claimed $598.27

   b. Woodlands, TX; Amount Claimed $489.70.

SCHEDULE 3.18
COMPLIANCE WITH LAW

1. See items set forth in Schedule 3.1.

2. See items set forth in Schedule 3.14.

3. See items set forth in Schedule 3.17.

4. See items set forth in Schedule 3.19(b).

5. See items set forth in Schedule 3.25(b).

6. The Company has not investigated whether it has complied with all laws or other requirements in all of the locations in which the Company conducts business, and the Company has not investigated whether any such laws or other requirements would trigger other obligations of the Company.

SCHEDULE 3.19(a)
CONTRACTS

1. See items set forth in Schedule 3.27.

2. As set forth in Schedule 3.10, the Company has approximately fifteen (15) credit cards. As set forth in Schedule 3.11, Merger Sub proposes to continue use of these credit cards for a limited period of time following the Closing, to the extent that such continued use is permitted or valid.

3. See items set forth in Schedule 3.13.

4. As set forth in Schedule 3.10, the Company has billed in advance for some products and services, Software Subscription Agreements are billed in advance and prepaid for the next succeeding twelve (12) month period, and the Company has, in some cases, received payments prior to the completion of work by the Company from customers who were billed in advance.

5. See items set forth in Schedule 3.16(d), (f), (j).

6. See Schedule 3.11 for a list of advertising contracts.

7. See items set forth in Schedule 3.24.

8. See items set forth in Schedule 3.28(h).

9. See items set forth in Schedule 3.7(c).

10. Dell Service Contract, between Dell Marketing, L.P. and Sierra Digital, Inc.

11. Cost per Copy Agreement, dated March 31, 2000, between, Ray Morgan Company and Sierra Digital, Inc.

12. Legal Services Agreement between Heisler & Associates and Sierra Digital, Inc. signed by Heisler & Associates on December 22, 1999 and by the Company on December 29, 1999.

13. Not all customers who have purchased Company products have executed a signed, written agreement with the Company. Some of these customers have simply sent a purchase order or equivalent document to the Company. These purchase orders or equivalent documents have been made available to Merger Sub and Active for inspection at the Company's headquarters.

SCHEDULE 3.19(b)
CONTRACTS

1. See items set forth in Schedule 3.7(c).

2. See items set forth in Schedule 3.16(j).

3. Customers of the Company occasionally may not be in full compliance with the terms of their Software Subscription Agreements with the Company. For example, customers often fail to designate a "primary software user" or "system administration staff" and often miss subscription renewal payment deadlines or withhold payment due to an unresolved issue. In addition, the Company periodically provides customers with a to do list and tasks are sometimes not performed by the customer.

4. As set forth in Schedule 3.16(j), and as detailed in the letter dated October 6, 2000, including the attached implementation schedule, which has been provided to Merger Sub and Active, there had been some disagreement by both parties about what had been agreed to under the Contract #P8046810-08, City of Seattle, Parks and Recreation Department, Recreation Business Support System, dated July 13, 1999, between City of Seattle, a municipal corporation of the State of Washington (the "City"), and Sierra Digital, Inc., and the Company believes that Seattle has breached some of its obligations. As set forth in Schedule 3.16(j), the Company has received a letter from the City, dated November 7, 2000, which purports to serve as a notice of termination of the Seattle Agreements due to these and other disagreements.

5. The Company has not investigated whether it has complied with all laws or other requirements in all of the locations in which the Company conducts business, and the Company has not investigated whether any such laws or other requirements would trigger other obligations of the Company. The following are examples of contracts which require the Company to comply with local laws:

   a. Agreement for the License of Computer Software, dated May 16, 1997, between City of Santa Monica ("City") and Sierra Digital, Inc. ("Vendor").

   b. Personal/Professional Services Agreement, dated March 17, 1998, between County of Kern, a political subdivision of the State of California ("County"), and Sierra Digital, Inc. ("Consultant").

   c. Subcontract Agreement regarding the City of Costa Mesa ("City"), dated March 15, 1996, between Hewlett-Packard Company ("HP") and Sierra Digital Inc. ("Subcontractor").

d. Agreement for Computer Software, dated December 29, 1997, between the City of Saline ("City") and Sierra Digital, Inc. ("Contractor").

e. Agreement for Computer Software System, dated November 21, 1995, between City of San Jose ("City") and Sierra Digital, Inc. ("Contractor").

f. Sandwich Community School Software Contract between Sandwich Community School and RecWare by Sierra Digital, Inc., signed by Sandwich Community School on March 31, 1998 and signed by RecWare by Sierra Digital, Inc. on April 6, 1998.

g. RecWare Software License Agreement and Registration Form and RecWare Software Subscription Agreement between UCSF - Milberry ("Licensee") and Sierra Digital, Inc. ("SD").

h. RecWare Software License Agreement and Registration Form, dated November 5, 1999, including Appendix A, Terms and Conditions of Purchase and Change Order, between UCI Campus Recreation ("Licensee") and Sierra Digital, Inc. ("SD").

i. Professional Services Agreement, dated February 18, 2000, between the City of Santa Clarita ("City") and Sierra Digital, Inc. ("Consultant").

j. Purchase Order, dated June 3, 1999, and Service Authorization, dated July 30, 1999 from City of Glendale ("City") to Sierra Digital Inc. ("Vendor").

k. Contract #P8046810-08, City of Seattle, Parks and Recreation Department, Recreation Business Support System, dated July 13, 1999, between City of Seattle, a municipal corporation of the State of Washington (the "City"), and Sierra Digital, Inc. As set forth in Schedule 3.16(j), the Company has received a letter from the City, dated November 7, 2000, which purports to serve as a notice of termination of the Seattle Agreements.

l. Professional Services Contract, dated September 27, 1999, between City of Yuma, a municipal corporation of the State of Arizona ("City"), and Sierra Digital, Inc. ("Contractor").

m. Contract Services Form between City and Borough of Juneau, Alaska, a municipal corporation in the State of Alaska ("City"), and Sierra Digital, Inc. ("Contractor"), signed by City on June 30, 2000, signed by Contractor on July 6, 2000.

n. Agreement for Professional Services, dated July 24, 1998, between City of Boise, a municipal corporation of the State of Idaho ("City"), and Sierra Digital, Inc. ("SDI").

o. Incorporated County of Los Alamos Agreement, AGR 1571-00, between Incorporated County of Los Alamos, New Mexico ("County") and Sierra Digital, Inc. ("Contractor"), signed by County on September 12, 2000 and signed by Contractor on September 27, 2000.

p. Not all customers who have purchased Company products have executed a signed, written agreement with the Company. Some of these customers have simply sent a purchase order or equivalent document to the Company. These purchase orders or equivalent documents have been made available to Merger Sub and Active for inspection at the Company's headquarters. Some of these purchase orders obligate the Company to comply with all laws.

6. As set forth in Schedule 3.11, it is unclear whether and to what extent any customers are affected or bound by the Company's new Customer Service Plans.

SCHEDULE 3.22
ACCOUNTS RECEIVABLE

1. The Financial Statements do not provide a reserve/allowance for bad debts and some of the accounts receivables reflected on the Financial Statements for the period ended June 30, 2000 are uncollectible even after making provision for the write-off described in Paragraph 7 of this Schedule 3.22.

2. As set forth in Schedule 3.10, the Company has billed in advance for some products and services, Software Subscription Agreements are billed in advance and prepaid for the next succeeding twelve (12) month period, and the Company has, in some cases, received payments prior to the completion of work by the Company from customers who were billed in advance.

3. As set forth in Schedule 3.11, the Company adopted and published changes to its Customer Service Plans, and it is unclear whether and to what extent any customers are affected or bound by the new Customer Service Plans. As set forth in Paragraph 7 of this Schedule 3.22, the Company has made adjustments to its accounts receivable in connection with the implementation of its Customer Service Plans. As set forth in Schedule 3.10, the Company has billed in advance for some products and services. Due to the changes made to the Customer Services Plans, there may be a higher rate of uncollectability of renewal fees for Software Subscription Agreements.

4. As set forth in Schedule 3.10, the Company has made contractual commitments to its customers to deliver capabilities that have not yet been developed by the Company.

5. As set forth in Schedule 3.10, the Company has received payment on the $130,000 receivable from the City of Austin, Texas in November, 2000.

6. The Company has received a notice, dated August 12, 2000, from the United States Bankruptcy Court, Southern District of Indiana, notifying the Company that one of its customers has gone bankrupt. The Company has a receivable in the amount of $6,495 which is owed from this customer.

7. On September 19, 2000, the Company wrote off approximately $56,000 of its ninety (90) day and over accounts receivable, as set forth in a list which has been provided to Merger Sub and Active. After September 19, 2000 and prior to the Closing, the Company has, additionally, written off approximately $8,500 of its ninety (90) day and over accounts receivable. In addition, the Company has made adjustments to its accounts receivable in connection with the implementation of its new Customer Service Plans, as set forth in Schedule 3.11. Under the new Customer Service Plans, approximately forty (40) of the customers who were invoiced for a "Standard Plan" Software Subscription Agreement, thereby generating an aggregate receivable of approximately $71,900, have requested that

they be re-invoiced under the more inexpensive "Economy Plan." The Company has therefore reversed the $71,900 receivable and estimates that the replacement invoices shall generate an aggregate receivable of approximately $67,000. In addition, as set forth in Schedule 3.16(j), the Company has received a letter from the City, dated November 7, 2000, which purports to serve as a notice of termination of the Seattle Agreements. The Company has a receivable from the City in the approximate amount of $12,000, which is likely uncollectible.

SCHEDULE 3.23
PLANTS, BUILDINGS, STRUCTURES, FACILITIES AND EQUIPMENT

1. As set forth in Schedule 3.17, two (2) Company employees have been involved in two (2) separate auto accidents while on Company business.

SCHEDULE 3.24
INSURANCE

1. The following is a list of all forms of insurance currently held by the Company, each of which may not assigned without prior consent. As set forth in Schedule 3.7(c), the Company has not obtained any consents to assign any agreement.

   a. Group Agreement (medical and dental insurance), Purchaser ID# 42537, Contract ID# 1.18, EOC # 4, effective May 1, 2000 through April 30, 2001, between Kaiser Foundation Health Plan, Inc. ("Health Plan") and Sierra Digital, Inc. ("Group").

   b. The Hartford Spectrum Policy (general business liability insurance), Policy No. 57 SBA ER0083 DX, effective December 1, 1999 to December 1, 2000, between Hartford Casualty Insurance Company and Sierra Digital, Inc.

   c. The Hartford Workers Compensation and Employers Liability Policy (workers' compensation insurance), Policy No. 57 WEC CY2559 DX, effective July 1, 2000 to July 1, 2001, between Hartford Fire Insurance Company and Sierra Digital, Inc.

   The Company has provided to Merger Sub and Active the declarations which list the type of insurance coverage provided, the per occurrence deductible/limits of liability and annual aggregate deductibles/limits of liability for each of the above listed insurance policies.

2. Merger Sub, at its expense, may, in its sole discretion, continue the health coverage provided under the Group Agreement, effective May 1, 2000 through April 30, 2001, between Kaiser Foundation Health Plan, Inc. ("Health Plan") and Sierra Digital, Inc. ("Group"), for a limited period of time following the Closing, and possibly through the end of the year, until replaced by health coverage provided by Merger Sub, to the extent that such continued use is permitted or valid.

3. As set forth in Schedule 3.10, certain insurance plans are prepaid for an annual term, including airplane insurance pursuant to the terms of the Aircraft Use Agreement, as set forth in Schedule 3.13, which shall be terminated as of Closing.

4. Certain agreements set forth in Schedule 3.16(f) require the Company to name the customer as an additional insured on the Company's insurance policies. In addition, certain agreements set forth in Schedule 3.16(f) require the Company to obtain errors and omissions ("E&O") insurance. The Company generally negotiates the E&O insurance requirement out of the agreement, but this may not have occurred in all instances. In addition, not all customers who have purchased Company products have executed a signed, written agreement with the Company. Some of these customers have simply sent a purchase order or equivalent document to the Company. These purchase orders or

equivalent documents have been made available to Merger Sub and Active for inspection at the Company's headquarters. Some of these purchase orders require the Company to list the customer as an additional insured on the Company's insurance policies.

5. See items set forth in Schedule 3.14.

SCHEDULE 3.25(a)
TAX MATTERS

1. See items set forth in Schedule 3.1.

2. As set forth in Schedule 3.10, the Company does not provide a reserve for "S" Corporation taxes or California sales taxes payable. Sales taxes are accrued and paid on a monthly basis and payroll taxes are accrued and paid on a semi-monthly basis.

SCHEDULE 3.25(b)
TAX MATTERS

1. See items set forth in Schedule 3.1

2. As set forth in Schedule 3.17, the Company was audited by the IRS in 1997 for the 1995 tax year and by the Board of Equalization in 1997 for the 1997 tax year, and audits did not result in any change or amount due.

3. The Company has not investigated whether its conduct of business in any locations in which the Company does business would trigger a tax obligation of the Company. For example, the Company has signed a contract with Los Alamos, New Mexico that requires the Company to collect and pay New Mexico Gross Receipts Tax. There may be instances where the Company is doing business with a city, municipality or other jurisdiction which may trigger a tax obligation of the Company.

SCHEDULE 3.26
LABOR AND EMPLOYMENT RELATIONS

1. The following is a list of individuals who have recently terminated their employment with Company:

   a. Peter Mathes, technical support (terminated by the Company).

   b. Toni Romano, administrative assistant (terminated by the Company).

   c. Mark Konrad, marketing executive (terminated by mutual agreement).

   d. John Fox, accounting (resigned).

   e. William Major, customer service (resigned).

   f. Gary Perez, customer service (resigned).

   g. Keith Arnett, customer service (resigned).

   h. Zina Hoye Pettit, customer service (terminated as set forth in Schedule 3.28(g)).

2. Terri Toro, a clerical employee had resigned, but later requested to work at the Company on a temporary part-time basis, to which the Company has agreed.

3. One Company employee, a programmer, was placed on a sixty (60) day probationary period.

4. When title to the Company is transferred to Merger Sub at the Closing, it may give rise to certain Company employees being asked or required to accept assignment of their Employment Agreement, as set forth in Schedule 3.27, which contains a provision that the Company may assign the Employment Agreement to its successor in the event of a merger of the Company. However, such employees may nevertheless have the right to refuse such assignment, and the Company cannot guarantee the acceptance of any such assignment.

5. At Closing, the Company will cease operations and all employees not subject to an Employment Agreement, as set forth in Schedule 3.27, shall no longer be employed by the Company. There is no guarantee that any employees asked to become employees of Merger Sub will agree to accept employment with Merger Sub.

6. See items set forth in Schedule 3.14.

7. See items set forth in Schedule 3.17.

SCHEDULE 3.27
CERTAIN EMPLOYEES

1. A list of all employees, including job descriptions, current rate of compensation for each such employee and all accrued bonuses, vacation and sick pay for each such employee has been provided to Merger Sub and Active as of the Closing.

2. The following is a list of Employment Agreements with current employees:

   a. Employment Agreement with Steve Hoover, dated July 20, 1999 (part time).

   b. Employment Agreement with Cyril Juanitas, signed by Mr. Juanitas on December 15, 1999 (full time).

   c. Employment Agreement with Jennice Acosta, undated (full time).

   d. Employment Agreement with John Serences, dated February 9, 1999 (part time).

   e. Employment Agreement with Ron Gaetz, dated February 15, 1999 (full time).

   f. Employment Agreement with Tim Tyannikov, dated March 1, 2000 (full time).

   g. At-Will Employment Agreement with Zina Hoye Pettit, dated July 25, 2000 (full time; 90 day employment arrangement). As set forth in Schedule 3.28(g), the Company has terminated this agreement.

   h. As set forth in Schedule 3.28(g) an Employment Agreement with David Christie, dated March 7, 1999 has been extended for a one year term from September 16, 2000 to September 30, 2001 (full time).

3. The Company generally provides offer letters to its new employees.

4. The Company has provided each of its employees with a copy of the Employee Handbook.

5. As set forth in Schedule 3.28(g), the Company has recently hired Chin O'Haegbu.

6. As set forth in Schedule 3.10,Cyril Juanitas is subject to a bonus plan that specifies an annual bonus equal to 8% of annual base salary if sales in 2000 exceed sales in 1999, an annual bonus equal to 8% of annual base salary if net profit in 2000 exceeds 1999, and an additional bonus equal to 4% of annual base salary if both objectives are met.

7. As set forth in Schedule 3.10, Jennice Acosta received a $10,000 bonus for the year-ended December 31, 1999, and it is anticipated that Ms. Acosta will receive a similar bonus for the year-ended December 31, 2000.

8. As set forth in Schedule 3.10, the Company has made a one-time payment of $5,000 to David Christie.

9. As set forth in Schedule 3.10, the Company is required to offer Chin O'Haegbu a commission plan with a potential commission of up to $3,000 per month.

10. As set forth in Schedule 3.10, Adam Johnson has received a salary increase from $3,700 to $4,000 per month.

11. As set forth in Schedule 3.10, Jeff Strand has received a salary increase, from $14 per hour to $3,500 per month.

12. As set forth in Schedule 3.10, Laura Gray has received a salary increase, from $11 per hour to $12 per hour.

13. As set forth in Schedule 3.10, occasionally, pursuant to the terms of his or her offer letter, an employee is eligible to accrue vacation in excess of the limits set forth in the Employee Handbook.

14. As set forth in Schedule 3.12, Merger Sub shall assume all existing vacation and sick leave balances, which include, without limitation, opening balances for management personnel of three (3) weeks per employee.

SCHEDULE 3.28(b)
ABSENCE OF CERTAIN DEVELOPMENTS

1. As set forth in Schedule 3.10, the Company has approximately fifteen (15) credit cards. As set forth in Schedule 3.11, Merger Sub proposes to continue use of these credit cards for a limited period of time following the Closing, to the extent that such continued use is permitted or valid.

2. See items set forth in Schedule 3.17.

SCHEDULE 3.28(c)
ABSENCE OF CERTAIN DEVELOPMENTS

1. As set forth in Schedule 3.11, the Company has entered into a Settlement Offer, dated September 7, 2000, signed by both parties on September 12, 2000, in the amount of $3,000, to settle a claim, dated August 11, 2000, filed with the Labor Commissioner by a former employee as set forth in Schedule 3.17.

SCHEDULE 3.28(d)
ABSENCE OF CERTAIN DEVELOPMENTS

1. As set forth in Schedule 3.11, the Company has made distributions to Duane Harlan which have totaled approximately $340,000 in the year 2000 prior to Closing. These figures do not include the Company's payment of $30,000 in employee bonuses and $45,000 in legal fees, as permitted under Paragraphs 5.1(l) and (n), respectively, of the Merger Agreement, and as set forth in Paragraphs 7 and 8, respectively, of Schedule 3.11.

SCHEDULE 3.28(f)
ABSENCE OF CERTAIN DEVELOPMENTS

1. As set forth in Schedule 3.22, on September 19, 2000, the Company wrote off approximately $56,000 of its ninety (90) day and over accounts receivable, as of September 19, 2000. After September 19, 2000 and prior to the Closing, the Company has, additionally, written off approximately $8,500 of its ninety (90) day and over accounts receivable. In addition, the Company has made adjustments to its accounts receivable in connection with the implementation of its new Customer Service Plans, which has resulted in a reversal of a $71,900 receivable and an estimated re-invoice in the approximate aggregate amount of $67,000. Also, the Company has a receivable from the City of Seattle in the approximate amount of $12,000, which is likely uncollectible. As set forth in Schedule 3.16(j), the Company has received a letter from the City of Seattle, dated November 7, 2000, which purports to serve as a notice of termination of Seattle Agreements.

SCHEDULE 3.28(g)
ABSENCE OF CERTAIN DEVELOPMENTS

1. The Company recently hired Chin O'Haegbu as an Outside Sales Executive on or about July 12, 2000, with a beginning base pay of $40,000 per year and a potential commission up to $3,000 per month, within 90 days of his hire date, as set forth in Schedule 3.10.

2. The Employment Agreement with David Christie, dated March 7, 1999 has been extended for a one year term from September 16, 2000 to September 30, 2001 (full time), with a new salary of $140,000 per year.

3. At-Will Employment Agreement with Zina Hoye Pettit, dated July 25, 2000, was entered into by the Company, which established a 90 day employment arrangement with Ms. Pettit, terminable at will. The Company terminated this At-Will Employment Agreement as of August 4, 2000.

4. The Company has placed advertisements and has made other efforts in connection with hiring additional personnel, including several customer service personnel positions and efforts to fill an accounting and quality assurance position with the Company.

5. As set forth in Schedule 3.10, Cyril Juanitas is subject to a bonus plan that specifies an annual bonus equal to 8% of annual base salary if sales in 2000 exceed sales in 1999, an annual bonus equal to 8% of annual base salary if net profit in 2000 exceeds 1999, and an additional bonus equal to 4% of annual base salary if both objectives are met.

6. As set forth in Schedule 3.10, Jennice Acosta received a $10,000 bonus for the year-ended December 31, 1999, and it is anticipated that Ms. Acosta will receive a similar bonus for the year-ended December 31, 2000.

7. As set forth in Schedule 3.10, the Company has made a one-time payment of $5,000 to David Christie.

8. As set forth in Schedule 3.10, the Company is required to offer Chin O'Haegbu a commission plan with a potential commission of up to $3,000 per month.

9. As set forth in Schedule 3.10, Adam Johnson has received a salary increase from $3,700 to $4,000 per month.

10. As set forth in Schedule 3.10, Jeff Strand has received a salary increase, from $14 per hour to $3,500 per month.

11. As set forth in Schedule 3.10, Laura Gray has received a salary increase, from $11 per hour to $12 per hour.

12. As set forth in Schedule 3.10, occasionally, pursuant to the terms of his or her offer letter, an employee is eligible to accrue vacation in excess of the limits set forth in the Employee Handbook.

SCHEDULE 3.28(h)
ABSENCE OF CERTAIN DEVELOPMENTS

1. Software and Software Support Agreement Number #97-30-002 between Town of Herndon ("Town") and Sierra Digital, Inc. ("Contractor"), signed by Town on March 11, 1999 and signed by SDI on March 16 1999, was modified to change the delivery timeline for Touch Tone registration from October 2000 to after January 1, 2000, as to be agreed upon by the Town and the Company, as set forth in Schedule 3.16(j).

2. Professional Services Agreement, dated February 18, 2000, between the City of Santa Clarita ("City") and Sierra Digital, Inc. ("Consultant"), was amended on September 5, 2000 to substitute RecWare OnLine for RecWare APE.

3. As set forth in Schedule 3.16(j), the Company has received a letter from the City, dated November 7, 2000, which purports to serve as a notice of termination of the Seattle Agreements.

SCHEDULE 3.28(j)
ABSENCE OF CERTAIN DEVELOPMENTS

1. See Schedule 3.11 for the Company's recent history of significant purchases or expenditures.

SCHEDULE 3.28(k)
ABSENCE OF CERTAIN DEVELOPMENTS

1. See items set forth in Schedule 3.11.

2. See items set forth in any Schedule 3.28.

SCHEDULE 3.28(l)
ABSENCE OF CERTAIN DEVELOPMENTS

1. As set forth in Schedule 3.10, the Company has received payment on the $130,000 receivable from the City of Austin, Texas in November, 2000.

2. As set forth in Schedule 3.22, on September 19, 2000, the Company wrote off approximately $56,000 of its ninety (90) day and over accounts receivable, as of September 19, 2000. After September 19, 2000 and prior to the Closing, the Company has, additionally, written off approximately $8,500 of its ninety (90) day and over accounts receivable. In addition, the Company has made adjustments to its accounts receivable in connection with the implementation of its new Customer Service Plans, which has resulted in a reversal of a $71,900 receivable and an estimated re-invoice in the approximate aggregate amount of $67,000. Also, the Company has a receivable from the City of Seattle in the approximate amount of $12,000, which is likely uncollectible. As set forth in Schedule 3.16(j), the Company has received a letter from the City of Seattle, dated November 7, 2000, which purports to serve as a notice of termination of Seattle Agreements.

3. As set forth in Schedule 3.11, there has been an overall slowdown of payment of the Company's accounts payable invoices.

SCHEDULE 3.28(n)
ABSENCE OF CERTAIN DEVELOPMENTS

1. As set forth in Schedule 3.11, the Company is in the process of reducing the price of licensing its RecWare PRO and RecWare Safari products.

2. As set forth in Schedule 3.11, the Company adopted and published changes to its Customer Service Plans, and it is unclear whether and to what extent any customers are affected or bound by the new Customer Service Plans.

SCHEDULE 3.28(o)
ABSENCE OF CERTAIN DEVELOPMENTS

1. As set forth in Schedule 3.11, the Company adopted and published changes to its Customer Service Plans, and it is unclear whether and to what extent any customers are affected or bound by the new Customer Service Plans.

2. As set forth in Schedule 3.11, the Company is phasing out its practice of allowing customers to have "dormant" accounts with the Company.

3. Standard Office Lease, dated September 20, 1995, between Duane A. Harlan ("Lessor") and Sierra Digital, Inc. ("Lessee"), as amended, provides for an increase of rent from $3,500 to $4,800 per month, an extension of the lease through August 30, 2002, and, beginning on September 1, 2000, a 6% annual rental increase as follows: (1) as of September 1, 2000, the rental payment is to be increased to $5,088 per month; (2) as of September 1, 2001, the rental payment is to be increased to $5,393 per month.

4. As set forth in Schedule 3.11, the Company is attempting to cancel certain advertising contracts.

5. As set forth in Schedule 3.16(j), the Company has received a letter from the City, dated November 7, 2000, which purports to serve as a notice of termination of the Seattle Agreements.

SCHEDULE 3.28(p)
ABSENCE OF CERTAIN DEVELOPMENTS

1. As set forth in Schedule 3.11, the Company is in the process of reducing the price of licensing its RecWare PRO and RecWare Safari products.

2. As set forth in Schedule 3.11, the Company adopted and published changes to its Customer Service Plans, and it is unclear whether and to what extent any customers are affected or bound by the new Customer Service Plans.

3. As set forth in Schedule 3.11, the Company is attempting to cancel certain advertising contracts.

4. See items set forth in Schedule 3.26.

5. See items set forth in Schedule 3.28(g).

SCHEDULE 3.28(q)
ABSENCE OF CERTAIN DEVELOPMENTS

1. In the ordinary course of business, there are customers who choose not to renew their Software Subscription Agreements with the Company.

2. As set forth in Schedule 3.11, the Company is attempting to cancel certain advertising contracts.

3. See items set forth in Schedule 3.26.

SCHEDULE 3.28(r)
ABSENCE OF CERTAIN DEVELOPMENTS

1. See items set forth in Schedule 3.11 or any Schedule 3.28.

SCHEDULE 3.28(s)
ABSENCE OF CERTAIN DEVELOPMENTS

1. As set forth in Section 3.19(b), customers of the Company occasionally may not be in full compliance with the terms of their Software Subscription Agreement with the Company. The Company may have waived its right to require that those customers fully comply with the terms of their Software Subscription Agreements.

SCHEDULE 3.28(u)
ABSENCE OF CERTAIN DEVELOPMENTS

1. None other than items already disclosed in Schedule 3.11 or any Schedule 3.28.

SCHEDULE 3.30
BANK ACCOUNTS

	NAME/ADDRESS OF INSTITUTION	NAME ON THE ACCOUNT	ACCOUNT NUMBER	AUTHORIZED SIGNATORY/ TITLE
1.	Wells Fargo Bank Campus Commons Branch 1 Park Center Dr. Sacramento, CA	Sierra Digital, Inc.	0348058876	Duane A. Harlan, President, Secretary and Treasurer
2.	Wells Fargo Bank Campus Commons Branch 1 Park Center Dr. Sacramento, CA	Sierra Digital, Inc.	0348058454	Duane A. Harlan, President, Secretary and Treasurer

SCHEDULE 3.31
PERMITS

1. See items set forth in Schedule 3.1.

SCHEDULE 3.33
MATERIAL MISSTATEMENTS AND OMISSIONS

1. The Company is transitioning from the old RecWare PRO to the new RecWare Safari product line and is not certain what the customer response will be to this transition. This transition from the old to new product line has contributed to the Company's downward financial trend during the year 2000. The Company's cash on hand has been reduced, partly due to the transition of the Company's product line and partly as a result of certain non-recurring expenditures, as set forth in Schedule 3.11.

2. As set forth in Schedule 3.11, the Company is in the process of reducing the price of licensing its RecWare PRO and RecWare Safari products.

3. As set forth in Schedule 3.11, the Company adopted and published changes to its Customer Service Plans, and it is unclear whether and to what extent any customers are affected or bound by the new Customer Service Plans.

4. The RecWare Touch Tone Registration product is an elderly and fragile product with which customers have experienced numerous problems. For example, as set forth in Schedule 3.16(j), the Company has provided a refund of approximately $10,000 to Chandler, Arizona, a customer which purchased the RecWare Touch Tone Registration product but found that it did not work properly on their modern hardware system. RecWare Touch Tone Registration has been sold to approximately sixty (60) customers and may experience other problems in the future. The Company is in the process of developing a new Touch Tone product to replace this product but which is compatible with RecWare Safari but not compatible with RecWare PRO products.

5. Certain customers have been dissatisfied with the past products or services of the Company. Some of these customers have discontinued using Company products, and the Company has lost a certain number of new orders due to having a reputation for poor customer service.

6. Some customers request to go into a "dormant" status, where customers pay $50 to stay on the books and records of the Company in lieu of paying the full Software Subscription Agreement renewal amount or canceling their Software Subscription Agreement. Dormant status suspends a customer's Software Subscription Agreement with the Company but enables them to reactivate it in the future. As set forth in Schedule 3.11, the Company is in the process of phasing out this practice of allowing customers to have "dormant" accounts with the Company.

7. The Company faces significant competition in the market place from Escom Software, Ltd., Vermont Systems, Inc., and other similar entities. The Company loses a certain number of accounts to these competitors.

8. The Company is aware of other companies which use the "Sierra Digital" name or a derivative thereof.

9. Occasionally, the Company will receive requests from certain customers to provide enhanced software capabilities for its RecWare products. The Company sometimes provides this service for a fee. This service is generally requested via a purchase order, and payments are invoiced by the Company. The Company generally passes the majority of the enhancements made to RecWare products along to its other customers.

10. The Company is an authorized reseller of a small number of miscellaneous hardware products, although the current level of activity is very low as the Company discourages its customers from purchasing hardware products except directly from the supplier. The Company is not subject to any minimum quotas for purchase nor is obligated to purchase any items.

11. The Company has recently installed RecWare OnLine Internet Registration in Henderson, NV and Alpharetta, GA. The Company has made efforts to ensure the security of customer data that is now accessible on the Internet, but it is uncertain whether the data is truly secure or if it is susceptible to hackers or other data related attacks.

12. The Company does not know how its customers, vendors and employees shall perceive the merger of the Company with Merger Sub and does not know what effects shall flow therefrom.