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(Rev. 03/01)
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U.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):

Cerulean Technology, Inc. 6.14.02

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

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

2. Name and address of receiving party(ies)

Name: Aether Systems, Inc.
Internal Address: Office of the General Counsel
Street Address: 11460 Cronridge Drive
City: Owings Mills State: MD Zip: 21117

- ☐ 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: August 25, 2000

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

A. Trademark Application No.(s) (7 applications)
Please see attached sheet

B. Trademark Registration No.(s) (5 registrations)
Please see attached sheet

Additional number(s) attached ☐ Yes ☒ No

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

Name: Kris R. Keeney, Esq. Digitalaw
Internal Address:
Street Address: 1015 East Main Street, 3rd Floor
City: Richmond State: VA Zip: 23219

6. Total number of applications and registrations involved: 12

7. Total fee (37 CFR 3.41).....$ 315

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

8. Deposit account number:

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

FINANCE SECTION

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.

Kris R. Keeney, Outside Counsel — Name of Person Signing
Signature
6/10/02 — Date

Total number of pages including cover sheet, attachments, and document: 4

06/19/2002 LMUELLER 00000061 76098373
01 FC:481 40.00 OP
02 FC:482 275.00 OP

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

"Navigating the Law of the Digital Economy"

Kris R. Keeney, P.C.
Attorney at Law

1015 East Main St. 3rd Fl.
Richmond, Virginia 23219
voice: 804.421.3082
mobile: 804.402.1401
fax: 804.421.3084
kriskeeney@digitalaw.com
www.digitalaw.com

June 10, 2002

BY "Express Mail - Post Office to Addressee"
Return Receipt Requested

Commissioner of Patent & Trademarks
Box Assignments
Washington, D.C. 20231

Re: Recordation of Assignment of Trademark Applications and Registrations Cerulean Technology, Inc. to Aether Systems, Inc.

Attached Sheet for Application and Registration Serial Nos.

Serial Number	Reg. Number	Word Mark
76098373		POCKETINVESTIGATOR
76098370		POCKETEMS
76097820		POCKETRESCUE
76097809		POCKETINSPECTOR
76098368		POCKETBLUE
75646032		MOBILEFUSION
75618535		MOBILEFUSION
75488841	2474585	PACKETWRITER
75453112	2310535	PACKETCLUSTER PATROL
75412397	2280672	PACKETCLUSTER
75194588	2138480	CERULEAN
75194490	2174356	

EXECUTION COPY

AGREEMENT AND PLAN OF MERGER

dated as of August 25, 2000

by and among

AETHER SYSTEMS, INC.,

CERULEAN ACQUISITION, INC.

and

CERULEAN TECHNOLOGY, INC.

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EXHIBITS

Exhibit A --	Form of Stockholders Voting Agreement
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Exhibit C --	Form of Escrow Agreement
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Exhibit E --	Form of Legal Opinion of Hale and Dorr LLP, Counsel to Cerulean
Exhibit F --	[Reserved.]
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Exhibit H --	Form of Certificate of Incorporation of Surviving Corporation
Exhibit I --	Form of By-laws of Surviving Corporation

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AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER, dated as of August 25, 2000 (the "Agreement"), by and among AETHER SYSTEMS, INC., a Delaware corporation ("Aether" or "Parent"), CERULEAN ACQUISITION, INC., a Delaware corporation and a wholly-owned direct subsidiary of Aether ("Merger Sub"), and CERULEAN TECHNOLOGY, INC., a Delaware corporation ("Cerulean" or the "Company").

WHEREAS, the Board of Directors of each of Parent, Merger Sub and the Company has approved the merger (the "Merger") of the Company with and into Merger Sub, in accordance with the General Corporation Law of the State of Delaware (the "DGCL") and subject to the conditions set forth herein, and the Company has approved and declared this Agreement advisable and in the best interests of its stockholders;

WHEREAS, to satisfy a condition to Parent and Merger Sub entering into this Agreement and incurring the obligations set forth herein, concurrently with the execution and delivery of this Agreement, Persons holding approximately 85% f the Company's voting securities have entered into a Stockholders Voting Agreement, in the form of Exhibit A, with Aether and Cerulean pursuant to which they have each agreed, among other things, to vote for the Merger and grant a proxy to officers of Aether with respect to the Merger; and

WHEREAS, for federal income tax purposes, it is intended that the Merger shall qualify as a tax-free reorganization within the meaning of Sections 368(a) of the Internal Revenue Code of 1986, as amended (the "Code").

NOW, THEREFORE, in consideration of the mutual representations, warranties and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

ARTICLE I.

DEFINITIONS

Section 1.1 Definitions. The capitalized terms used in this Agreement and not otherwise defined shall have the following meanings (unless the context otherwise requires, such capitalized terms shall include the singular and plural and the conjunctive and disjunctive forms of the terms defined):

"Acquisition Proposal" shall have the meaning set forth in Section 6.6.

"Aether Common Stock" shall mean Common Stock, par value $.01 per share, of Aether.

"Aether Disclosure Schedule" shall mean the letter dated as of the date of this Agreement from Parent and Merger Sub to the Company and attaching the schedules referred to in this Agreement.

"Aether Indemnified Party" means Aether, Merger Sub and their officers, directors, employees, stockholders, assigns, successors and affiliates as an Indemnified Party.

"Aether Option" shall mean an Option of Aether.

"Aether SEC Reports" shall have the meaning set forth in Section 5.6.

"Aether Stock Plans" shall have the meaning set forth in Section 5.3.

"Affiliate" shall mean, as to any Person, any other Person controlling, controlled by, or under common control with such Person.

"Appraisal Shares" shall have the meaning set forth in Section 3.8.

"Average Aether Stock Price" with respect to any period shall mean (i) the sum of the daily closing sales prices per share of Aether Common Stock on the Nasdaq National Market as reported in The Wall Street Journal (Eastern edition) (and confirmed by Friedman, Billings & Ramsey) for each of the Trading Days in the period divided by (ii) the number of Trading Days in the period.

"Benefit Arrangement" shall mean any benefit arrangement, obligation, or practice, whether or not legally enforceable, to provide benefits currently or in the future (other than merely as salary or under a Benefit Plan), as compensation for services rendered, to present or former directors, employees, agents, or independent contractors, including, but not limited to, employment or consulting agreements, severance agreements or pay policies, executive or incentive compensation programs or arrangements, sick leave, vacation pay, plant closing benefits, salary continuation for disability, workers' compensation, retirement, deferred compensation, bonus, stock option or purchase, tuition reimbursement or scholarship programs, employee discount programs, meals, travel, or vehicle allowances, any plans subject to Section 125 of the Code, and any plans providing benefits or payments in the event of a change of control, change in ownership or effective control, or sale of a substantial portion (including all or substantially all) of the assets of any business or portion thereof, in each case with respect to any present or former employees, directors, or agents.

"Benefit Plan" shall mean an employee benefit plan as defined in Section 3(3) of ERISA, together with plans or arrangements that would be so defined if they were not (i) otherwise exempt from ERISA by that or another section, (ii) maintained outside the United States, or (iii) individually negotiated or applicable only to one person.

"Blue Sky Laws" shall mean the securities laws of the states of the United States as currently in effect.

"Business Day" shall mean any day other than a Saturday, a Sunday or a day on which banking institutions in Baltimore, Maryland or New York City, New York are not required to be open.

"Certificate of Merger" shall have the meaning set forth in Section 2.2.

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"Certificate" shall have the meaning set forth in Section 3.3.

"Claim Notice" shall have the meaning set forth in Section 7.2.

"Claims" shall have the meaning set forth in Section 7.2.

"Closing" shall have the meaning set forth in Section 2.3.

"Closing Date" shall have the meaning set forth in Section 2.3.

"COBRA" shall have the meaning set forth in Section 4.9.

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

"Common Consideration" shall have the meaning set forth in Section 3.1(b).

"Company Benefit Arrangement" shall mean any Benefit Arrangement any Related Employer sponsors or maintains or with respect to which any Related Employer has or may have any current or future liability (whether actual, contingent, with respect to any of its assets or otherwise), in each case with respect to any present or former service providers to any Related Employer.

"Company Capital Stock" shall mean the Company Common Stock, Company Preferred Stock, and any other capital stock of Cerulean other than Company Options and Company Warrants.

"Company Common Stock" shall mean the common stock, par value $.005 per share, of the Company.

"Company Disclosure Schedule" shall mean the letter dated as of the date of this Agreement from the Company to Parent and Merger Sub and attaching the schedules referred to in this Agreement.

"Company Indemnified Party" means Cerulean, its Subsidiaries and their officers, directors, employees, stockholders, assigns, successors and affiliates as an Indemnified Party.

"Company Intellectual Property" means all Intellectual Property, other than Third Party Intellectual Property, that is being, has been, or is reasonably anticipated by Cerulean to be, used, or is currently under development for use, in the business of Cerulean or its Subsidiaries.

"Company Meeting" shall have the meaning set forth in Section 6.7.

"Company Option" shall mean an Option of the Company (excluding the Company Warrants).

"Company Plan" shall mean any Benefit Plan that any Related Employer maintains or has maintained or to which any Related Employer is obligated to make payments or has or may have any liability, in each case with respect to any present or former employees of any Related Employer.

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"Company Preferred Stock" shall be a collective reference to (i) the Series A Convertible Participating Preferred Stock, par value $.005 per share; (ii) the Series B Convertible Participating Preferred Stock, par value $.005 per share; (iii) the Series C Convertible Participating Preferred Stock, par value $.005 per share; and (iv) the Series D Convertible Participating Preferred Stock, par value $.005 per share of Cerulean, each of which is convertible into Company Common Stock.

"Company Third Party Consents" shall have the meaning set forth in Section 4.20.

"Company Stockholder Approval" shall have the meaning set forth in Section 6.7.

"Company Warrants" shall mean (i) the Imperial Warrant; (ii) the Common Stock Purchase Warrant issued April 7, 1999 to Commsys, Inc. and (iii) any warrant to purchase Company Common Stock issued to Foxstar Corporation.

"Confidential Information" shall have the meaning set forth in Section 6.5.

"Confidentiality Agreement" shall have the meaning set forth in Section 6.5.

"Consents" shall have the meaning set forth in Section 6.2.

"Contract" shall mean, with respect to any Person, any contract, contractual right, note, bond, indenture, lease, license, permit, franchise, deed of trust, mortgage, loan agreement or other document, instrument, obligation or agreement, oral or written, to which such Person or any of its Subsidiaries is a party or by which any of them or their assets or properties is bound or affected.

"Damages" shall have the meaning set forth in Section 7.1.

"DGCL" means the General Corporation Law of the State of Delaware.

"Effective Day" shall mean the day on which the Effective Time occurs.

"Effective Day Stock Value" shall mean the aggregate value of the Aether Common Stock to be issued as Preferred Stock Consideration as of the Effective Time valued at the closing sales price per share of Aether Common Stock on the Nasdaq National Market on the Effective Day as reported by the Nasdaq National Market.

"Effective Time" shall have the meaning set forth in Section 2.2.

"EPA" shall have the meaning set forth in Section 4.14.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended, and all regulations and rules issued thereunder, or any successor law.

"ERISA Affiliate" shall mean any person or entity that, together with the entity referenced, would be or was at any time treated as a single employer under Code Section 414 or ERISA Section 4001 (including any entities excluded from the definition because they are not

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subject to U.S. jurisdiction) and any general partnership of which such entity is or has been a general partner.

"Escrow Agent" shall mean Branch Bank & Trust Company.

"Escrow Agreement" shall mean the escrow agreement to be entered into by Aether, the Stockholders' Representative and the Escrow Agent, substantially in the form of Exhibit C.

"Escrow Amount" shall have the meaning set forth in Section 3.5.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

"GAAP" shall mean generally accepted accounting principles.

"Governmental Authority" shall mean any government or any agency, bureau, board, commission, court, judicial or quasi-judicial body, department, authority, official, political subdivision, tribunal or other instrumentality of any government, whether Federal, state or local, domestic or foreign.

"HSR Act" shall have the meaning set forth in Section 4.5.

"HSR Filings" shall have the meaning set forth in Section 6.3.

"Imperial Warrant" shall mean the Warrant to Purchase Stock issued May 17, 1999 to Imperial Bancorp.

"Indemnified Officers/Directors" shall have the meaning set forth in Section 6.13.

"Indemnified Party" shall have the meaning set forth in Section 7.1.

"Indemnifying Party" shall have the meaning set forth in Section 7.1.

"Intellectual Property" means (i) all patents, trademarks, trade names, service marks, trade dress, copyrights and any renewal rights therefor, mask works, schematics, technology, inventions, manufacturing processes, supplier lists, know-how (including trade secrets and other unpatented and/or unpatentable proprietary or confidential information, systems or procedures), moral rights, computer software programs or applications (in both source and object code form), and all applications, renewals and registrations for any of the foregoing; (ii) all software and firmware listings, and updated software source code, and complete system build software and instructions related to all software described herein; (iii) all documents, records and files relating to design, end user documentation, manufacturing, quality control, sales, marketing or customer support for all intellectual property described herein; (iv) all other tangible or intangible proprietary information and materials owned or held by or on behalf of the intellectual-property holder.

"IRS" shall mean the United States Internal Revenue Service or any successor agency.

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"Knowledge" shall mean, with respect to Cerulean and Aether, the actual knowledge of all directors or officers, including without limitation the Chief Executive Officer, President, Secretary, Treasurer, Chief Financial Officer, Chief Operating Officer, Chief Technology Officer, Vice President, Finance, and any other Vice President of each such party, as well as any knowledge of any fact or circumstance that would have or should have come to the attention of any such director or officer in the course of discharging his or her duties in a reasonable and prudent manner consistent with sound business practices.

"Law" shall mean any law, statute, rule, regulation, ordinance, decree or order of any Governmental Authority.

"Leases" shall have the meaning set forth in Section 4.21.

"Letter of Transmittal" shall have the meaning set forth in Section 3.4.

"Lien" shall mean any mortgage, pledge, assessment, security interest, lease, sublease, lien, adverse claim, levy, charge, option, right of others or restriction (whether on voting, sale, transfer, disposition or otherwise) or other encumbrance of any kind, whether imposed by agreement, understanding, law or equity, or any conditional sale contract, title retention contract or other contract to give or to refrain from giving any of the foregoing.

"Liquidation Preference" shall mean the liquidation amount per share of Company Preferred Stock as set forth in Article Fourth, Section 2(a) of the Company's Fourth Amended and Restated Certificate of Incorporation, as amended.

"Losses" shall have the meaning set forth in Section 6.13.

"Material Adverse Effect" shall mean, with respect to any Person, a material adverse effect on (i) the validity or enforceability of this Agreement, (ii) the ability of such Person to perform its obligations under this Agreement or (iii) the business, properties (including intangible properties), assets or liabilities, business prospects, financial condition or results of operations of the Person and its Subsidiaries, taken as a whole other than (a) changes or effects which are or result from occurrences relating to the economy in general or any Person's industry in general and (x) not specifically relating to such Person or (y) that affect such Person materially disproportionately relative to other similarly-situated participants in such Person's industry, (b) changes or effects which result from the loss of customers or delay or cancellation or cessation of orders for any Person's products directly attributable to the announcement of the parties' intention to enter into, or the execution of, this Agreement provided that such losses, delays or cancellations were not reasonably foreseeable to such Person as of the date of this Agreement, (c) liabilities incurred in connection with this Agreement or the transactions contemplated hereby, or (d) solely as a result of the decline in the market price of the shares Aether Common Stock.

"Material Contracts" shall have the meaning set forth in Section 4.20.

"Measurement Period" means the 15 Trading Days ending on the Trading Day that is the Trading Day immediately preceding the Closing Date.

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"Merger" shall have the meaning set forth in the preamble to this Agreement.

"Merger Consideration" shall have the meaning set forth in Section 3.1.

"Merger Filing" shall have the meaning set forth in Section 2.2.

"Multiemployer Plan" means any plan described in ERISA Section 3(37).

"Nasdaq" means the Nasdaq Stock Market.

"Net Exercise" shall mean the number of shares of Company Capital Stock equal to the quotient obtained by dividing (i) the value of the warrant or option on the Effective Day (which value shall be determined by subtracting (A) the aggregate exercise price for all of the shares issuable under the warrant or option from (B) the fair market value of all of the shares issuable upon exercise of the warrant or option on the date of such exercise), by (ii) the fair market value of one share of Company Capital Stock on such date. For purposes of Section 3 hereof, the fair market value of the Company Capital Stock shall mean the Common Consideration or the Preferred Consideration, as the case may be.

"Notice Period" shall have the meaning set forth in Section 7.1.

"Notices" shall have the meaning set forth in Section 10.4.

"Option" shall mean, with respect to any Person, any option, warrant, call, subscription, convertible or exchangeable security or other right, agreement, arrangement or commitment of any kind or character to which such Person or any of its Subsidiaries is a party relating to the issued or unissued capital stock of such Person or any of its Subsidiaries, or obligating such Person or any of its Subsidiaries to issue, transfer, grant or sell any shares of capital stock of, or other equity interest in, or securities convertible into or exchangeable for any capital stock or other equity interest in, such Person or any of its Subsidiaries.

"Option Exchange Ratio" shall have the meaning set forth in Section 3.2.

"Organizational Documents" shall mean (i) with respect to a corporation or association, its certificate or articles of incorporation or association and bylaws, (ii) with respect to any limited liability company, its certificate of formation, articles of organization, regulations, operating agreement and limited liability company agreement, as applicable, (iii) with respect to any limited partnership, its certificate of limited partnership and limited partnership agreement, (iv) with respect to any general partnership, its partnership agreement, and (v) all other similar organizational documents.

"Permitted Liens" shall mean (a) Liens for taxes, assessments, or similar charges, incurred in the ordinary course of business that are not yet due and payable; (b) pledges or deposits made in the ordinary course of business; (c) Liens of mechanics, materialmen, warehousemen or other like Liens securing obligations incurred in the ordinary course of business that are not yet due and payable; and (d) similar Liens and encumbrances which are incurred in the ordinary course of business and which do not in the aggregate materially detract

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from the value of such assets or properties or materially impair the use thereof in the operation of such business.

"Person" shall mean any natural person, corporation, general partnership, limited partnership, limited liability company, limited liability partnership, proprietorship, trust, union, association, court, tribunal, agency, government, department, commission, self-regulatory organization, arbitrator, board, bureau, instrumentality or other entity, enterprise, authority or business organization.

"Preferred Consideration" shall have the meaning set forth in Section 3.1(c).

"Preferred Cash Consideration" shall have the meaning set forth in Section 3.1.

"Preferred Stock Consideration" shall have the meaning set forth in Section 3.1.

"Qualified Plan" shall mean any Company Plan intended to meet the requirements of Section 401(a) of the Code, including any previously terminated plan.

"Real Property" shall have the meaning set forth in Section 4.2.

"Registration Rights Agreement" means a registration rights agreement substantially in the form of Exhibit B.

"Related Employer" means Cerulean and every ERISA Affiliate.

"Representatives" means, with respect to any Person, the officers, directors, employees, auditors and other agents and representatives of such Person.

"Requisite Regulatory Approvals" shall have the meaning set forth in Section 4.5.

"SEC" shall mean the Securities and Exchange Commission or any successor commission.

"Securities Act" shall mean the Securities Act of 1933, as amended.

"Stockholder Representative" shall mean Robert P. Badavas.

"Stockholders Voting Agreement" means a voting agreement substantially in the form of Exhibit A.

"Subsidiary" of an entity shall mean any entity (i) required by GAAP to be consolidated in the financial statements of such entity or (ii) over 50% of whose voting securities are controlled directly or indirectly by a single entity.

"Surviving Corporation" shall have the meaning set forth in Section 2.1.

"Tax" or "Taxes" shall mean (a) all Federal, state, local and foreign taxes and other assessments and governmental charges of a similar nature (whether imposed directly or through withholdings), including any interest, penalties and additions to tax applicable thereto, (b) any

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liability for payment of amounts described in clause (a) as a result of transferee liability, of being a member of an affiliated, consolidated, combined or unitary group for any period, or otherwise through operation of law, and (c) any liability for payment of amounts described in clause (a) or (b) as a result of any tax sharing, tax indemnity or allocation agreement or any other express or implied agreement to indemnify any other person for amounts described in clause (a) or (b).

"Tax Returns" shall mean all Federal, state, local and foreign returns, declarations, statements, reports, schedules, forms and information returns relating to or required to be filed with any governmental authority in connection with the determination, assessment, collection or payment of Taxes, and all amendments thereto.

"Termination Fee" has the meaning set forth in Section 9.5.

"Third Party Intellectual Property" means all Intellectual Property owned by or on behalf of persons other than Cerulean or its Subsidiaries that is being, has been, or is reasonably anticipated by Cerulean to be, used, or is currently under development for use, in the business of Cerulean or its Subsidiaries.

"Trading Day" shall mean a day on which Aether Common Stock is traded on the Nasdaq.

"Transactions" shall mean the transactions contemplated by this Agreement in ARTICLE III.

"Written Consent" shall have the meaning set forth in Section 6.7(b).

ARTICLE II.

THE MERGER

Section 2.1 The Merger. Upon the terms and subject to the conditions of this Agreement, at the Effective Time, in accordance with the DGCL, Cerulean shall be merged with and into Merger Sub in accordance with this Agreement and the separate existence of Cerulean shall cease. Merger Sub shall be the surviving corporation in the Merger (hereinafter sometimes referred to as the "Surviving Corporation") and shall continue to be governed by Delaware law as a wholly-owned subsidiary of Parent. Upon the effectiveness of the Merger, the name of Merger Sub will be changed to "Cerulean Technology, Inc."

Section 2.2 Effective Time of the Merger. Upon the terms and subject to the conditions hereof, a certificate of merger (the "Certificate of Merger") shall be duly prepared, executed and acknowledged by the Surviving Corporation and thereafter delivered to the Secretary of State of the State of Delaware, for filing on the Closing Date (as defined in Section 2.3). The Merger shall become effective as of 4:00 p.m. Eastern Standard Time on the date the Certificate of Merger pursuant to Section 252 of the DGCL and any other documents necessary to effect the Merger in accordance with the DGCL are duly filed (the "Merger Filing") with the Secretary of State of the State of Delaware or at such subsequent date as shall be agreed by

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Aether and Cerulean and specified in the Certificate of Merger (the time the Merger becomes effective pursuant to the DGCL being referred to herein as the "Effective Time").

Section 2.3 Closing. Subject to the satisfaction or waiver of all of the conditions to closing contained in ARTICLE VIII, the closing of the Merger (the "Closing") will take place at such time and such date as specified by the parties, which shall be no later than the first Business Day after the satisfaction or waiver of the conditions to Closing contained in ARTICLE VIII, at the offices of Wilmer, Cutler & Pickering, 2445 M Street, NW, Washington, D.C. 20037, unless another date, time or place is agreed to in writing by the parties hereto. The date and time at which the Closing occurs is referred to herein as the "Closing Date."

Section 2.4 Effects of the Merger. The Merger shall have the effects set forth in the DGCL. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time, all the properties, rights, privileges, powers and franchises of Cerulean and Merger Sub shall vest in the Surviving Corporation, and all debts, liabilities and duties of Cerulean and Merger Sub shall become the debts, liabilities and duties of the Surviving Corporation.

Section 2.5 Certificate of Incorporation and Bylaws. At the Effective Time and without any further action on the part of the parties hereto, (a) the certificate of incorporation of Merger Sub shall be the certificate of incorporation of the Surviving Corporation until thereafter amended as provided by the DGCL, which shall be substantially in the form of Exhibit H hereto, and (b) the bylaws of Merger Sub, which shall be substantially in the form of Exhibit I hereto, shall be the bylaws of the Surviving Corporation until thereafter amended as provided by the DGCL.

Section 2.6 Directors and Officers of the Surviving Corporation. The directors of Merger Sub immediately prior to the Effective Time shall be the initial directors of the Surviving Corporation, each to hold office in accordance with the certificate of incorporation and the bylaws of the Surviving Corporation until their respective successors are duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the Surviving Corporation's certificate of incorporation and bylaws. The officers of the Company immediately prior to the Effective Time shall be the initial officers of the Surviving Corporation, except that David C. Reymann shall be appointed Treasurer.

ARTICLE III.

CONVERSION OF SECURITIES

Section 3.1 Conversion of Capital Stock of Merger Sub. At the Effective Time and subject to the provisions of this Article III, by virtue of the Merger and without any further action on the part of any holder thereof, the Company Capital Stock shall be converted and exchanged for the right to receive the merger consideration described below (the "Merger Consideration"):

(a) The Merger Consideration shall be allocated in the following order of priority (and shall be paid in cash and/or shares of Aether Common Stock as described in Sections 3.1(b), (c) and (d) below):

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(i) First, each share of Company Preferred Stock shall be entitled to receive the amounts set forth below, which shall represent the full amount of the Liquidation Preference with respect to such share:

(A) each share of Series A Company Preferred Stock shall receive $.50;

(B) each share of Series B Company Preferred Stock shall receive $.9783;

(C) each share of Series C Company Preferred Stock (including shares deemed outstanding upon automatic exercise of the Imperial Warrant on a net exercise basis) shall receive $1.26; and

(D) each share of Series D Company Preferred Stock shall receive $2.5792.

(ii) Second, each share of Company Capital Stock shall be entitled to an amount equal to a fraction, the numerator of which is $150,000,000 minus the amount of the adjustment, if any, to the Merger Consideration provided for in Section 10.5 hereof minus the aggregate Liquidation Preference paid pursuant to Section 3.1(a)(i) and the denominator of which is the sum of (x) the number of shares of Company Capital Stock outstanding immediately prior to the Effective Time plus (y) the number of shares of Company Capital Stock issuable upon Net Exercise of then outstanding Company Warrants plus (z) the number of shares of Company Capital Stock issuable upon Net Exercise of all then outstanding Company Options.

(b) Each share of Company Common Stock issued and outstanding as of the Effective Time (including shares deemed outstanding upon Net Exercise of then outstanding Company Warrants other than the Imperial Warrant) shall be converted into and exchanged for a right to receive the amount described in Section 3.1(a)(ii) in cash (the "Common Consideration").

(c) Each share of Company Preferred Stock issued and outstanding as of the Effective Time (including shares deemed outstanding upon Net Exercise of the Imperial Warrant, if outstanding) shall be converted into and exchanged for the right to receive the consideration described in Section 3.1(a)(i) and (ii) (the "Preferred Consideration"). The Preferred Consideration shall consist of cash (the "Preferred Cash Consideration") and a number of validly issued, fully paid and nonassessable unregistered shares of Aether Common Stock (the "Preferred Stock Consideration"), provided that Aether shall not issue Aether Common Stock to more than five Persons who are not "accredited investors" as that term is defined under Rule 501(a) of Regulation D promulgated under the Securities Act. Each holder of Company Preferred Stock will receive an amount of Preferred Cash Consideration such that the sum of the Common Consideration, and the Preferred Cash Consideration paid shall equal 50% of the Merger Consideration, and the balance of the Preferred Consideration shall be payable in the form of Preferred Stock Consideration; provided, however, that if the value of the Preferred Stock Consideration would be less than 45% of the sum of the Common Consideration plus the Preferred Consideration then the Preferred Stock Consideration shall be increased and the Preferred Cash Consideration shall be decreased so that the Preferred Stock Consideration is

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equal to at least 45% of the sum of the Common Consideration and the Preferred Consideration. The Preferred Stock Consideration shall be valued at the Average Aether Stock Price for the Measurement Period, with any resulting fractional shares being rounded downward to the nearest whole share and any fractional amount being paid in cash as further provided in Section 3.6(b) hereof. The Preferred Cash Consideration per share of Company Preferred Stock shall be allocated in the following priority: (i) first, to an amount equal to the Liquidation Preference attributable to such share and (ii) second, pro rata based on the number of shares of Company Preferred Stock.

(d) Notwithstanding anything in Section 3.1(c) to the contrary, if the Effective Day Stock Value is less than 45% of the sum of the Common Consideration, the Preferred Cash Consideration and the Effective Day Stock Value, the amount of Preferred Stock Consideration shall be increased and the amount of Preferred Cash Consideration shall be decreased by such amounts so that the Effective Day Stock Value is equal to at least 45% of the sum of the Common Consideration, the Preferred Cash Consideration and the Effective Day Stock Value.

Section 3.2 Conversion of Company Options.

(a) Subject to Section 3.3(b), at the Effective Time, each issued and outstanding Company Option shall be converted into the right to receive an Aether Option, with terms and conditions substantially similar to the Company Option, except that (i) each such Company Option will be exercisable for that number of whole shares (and no fractional shares, for which cash shall be paid based on the last sale price per share of Aether Common Stock on the Trading Day immediately preceding the date of exercise of Aether Common Stock equal to the product of the number of shares of Company Common Stock that were issuable upon the exercise of such Company Option multiplied by a fraction the numerator of which is the Common Consideration per share and the denominator of which is the Average Aether Stock Price for the Measurement Period (the "Option Exchange Ratio") and (ii) the per share exercise price for the shares of Aether Common Stock issuable upon the exercise of such Company Stock Option will be equal to the quotient determined by dividing the exercise price per share of Company Common Stock at which such Company Stock Option would have been exercisable immediately prior to the Effective Time by the Option Exchange Ratio, rounded up to the nearest whole cent; provided, however, that the foregoing conversions would be adjusted with respect to Options that qualify as incentive stock options under Section 422 of the Code to the extent necessary to comply with Section 424 of the Code; provided, further that nothing in this Section 3.2 shall authorize any increase in the exercise price of any Company Option except resulting from application of the formula set forth in subsection (ii) herein.

Section 3.3 General Conversion Mechanics.

(a) As a result of the Merger and without any action on the part of the holders thereof, at the Effective Time, all shares of Company Capital Stock shall no longer be outstanding and shall automatically be cancelled and retired and shall cease to exist, and each holder of shares of Company Capital Stock shall thereafter cease to have any rights with respect to such shares of Company Capital Stock, except (i) the right to receive, without interest, the Merger Consideration and cash for fractional shares of Aether Common Stock in accordance with Section 3.1 and Section 3.6 upon the surrender of a certificate that, immediately prior to the

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Effective Time, represented an outstanding share or shares of Company Capital Stock (a "Certificate"); or (ii) the appraisal rights described in Section 3.8.

(b) Notwithstanding anything contained in this ARTICLE III to the contrary, each share of Company Capital Stock issued and held in Cerulean's treasury or by a wholly-owned Subsidiary of the Company immediately prior to the Effective Time, and each share of Company Capital Stock or Company Option owned by Parent or Merger Sub at or immediately prior to the Effective Time, if any, shall, by virtue of the Merger, cease to be outstanding and shall be cancelled and retired and shall cease to exist without payment of any consideration therefor.

Section 3.4 Exchange of Certificates.

(a) Within ten (10) Business Days after the Effective Time, Aether shall mail to each holder of record of Company Capital Stock immediately prior to the Effective Time (excluding any Appraisal Shares) (i) a letter of transmittal (which shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon delivery of the Certificates to Parent), which shall be in customary form with such customary provisions as Aether shall reasonably specify (the "Letter of Transmittal") and (ii) instructions for use in effecting the surrender of the Certificates in exchange for the Merger Consideration.

(b) Upon surrender of a Certificate, in such form and with such endorsements, stock powers and signature guaranties as may be required by the Letter of Transmittal for cancellation to Aether or to such other agent or agents as may be appointed by Aether, together with the Letter of Transmittal, duly executed, and such other documents as Aether shall reasonably request, the holder of such Certificate shall be entitled to receive in exchange therefor promptly after the Effective Time, the Merger Consideration (in each case, less the amount of any required withholding Taxes), and the Certificate so surrendered shall forthwith be cancelled. Until surrendered as contemplated by this Section 3.4(b), each Certificate shall be deemed at any time after the Effective Time to represent only the right to receive the Merger Consideration with respect to the shares of Company Capital Stock formerly represented thereby.

(c) Aether and the Stockholder's Representative shall jointly have the right to make rules, not inconsistent with the terms of this Agreement, governing the issuance and delivery of the Merger Consideration.

(d) The shares of Aether Common Stock delivered to each holder of Company Preferred Stock have not been and will not be registered under the Securities Act and therefore may not be resold without compliance with the Securities Act. The Aether Common Stock issued to the holders of Company Preferred Stock will bear a legend to such effect.

Section 3.5 Escrow Amount.

(a) The "Escrow Amount" shall mean an aggregate of 10% of the Merger Consideration, comprising a pro rata portion of the Common Consideration and the Preferred Stock Consideration otherwise payable to the holders of Company Capital Stock (i.e., the Escrow Amount shall represent cash in the case of each holder of Company Common Stock and cash and Aether Common Stock in the case of each holder of Company Preferred Stock). A pro rata portion of the Escrow Amount shall be withheld from each person who is a stockholder of

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Cerulean (based on the amount of Merger Consideration received by such stockholder) immediately before the Effective Time and deposited by Aether at the Closing with the Escrow Agent pursuant to an Escrow Agreement in the form of Exhibit C.

(b) The adoption of this Agreement and the approval of the Merger by the Company Stockholders shall constitute approval of the Escrow Agreement and of all of the arrangements thereto, including without limitation the placement of the Escrow Amount in escrow.

Section 3.6 Dividends, Fractional Shares, Etc.

(a) Notwithstanding any other provisions of this Agreement, no dividends or other distributions declared after the Effective Time on Aether Common Stock shall be paid to the holder of any unsurrendered Certificates of Company Preferred Stock until such Certificates are surrendered for exchange as provided in this ARTICLE III. Subject to the effect of applicable laws, following the surrender of any such Certificate, there shall be paid, without interest, to the Person in whose name the certificates representing the shares of Aether Common Stock into which the shares of Company Preferred Stock formerly represented by such Certificate were converted are registered, (i) at the time of such surrender, the amount of all dividends and other distributions with a record date after the Effective Time theretofore payable with respect to such whole shares of Aether Common Stock and not paid, less the amount of any withholding Taxes which may be required thereon, and (ii) at the appropriate payment date, the amount of dividends or other distributions with a record date after the Effective Time but prior to surrender and a payment date subsequent to surrender payable with respect to such whole shares of Aether Common Stock, less the amount of any withholding Taxes which may be required thereon.

(b) All fractional shares of Aether Common Stock that a holder of shares of Company Capital Stock would otherwise be entitled to receive as a result of the Merger shall be aggregated and, if a fractional share results from such aggregation, such holder shall be entitled to receive, in lieu thereof, an amount in cash determined by multiplying (i) the fraction of a share of Aether Common Stock to which such holder would otherwise have been entitled (net any exercise price, if applicable) by (ii) the Average Aether Stock Price for the Measurement Period. No interest will be paid or will accrue on any cash paid or payable in lieu of any fractional shares of Aether Common Stock.

(c) At and after the Effective Time, there shall be no further registration of transfers of shares of Company Capital Stock. If, after the Effective Time, Certificates are presented to the Surviving Corporation, they shall be cancelled and exchanged for the Merger Consideration in accordance with the procedures set forth in this ARTICLE III.

(d) If any portion of the Merger Consideration is to be paid to a Person other than the registered holder of the shares of Company Capital Stock represented by the Certificate or Certificates surrendered in exchange therefor, it shall be a condition to such payment that the Certificate or Certificates so surrendered shall be properly endorsed or otherwise be in proper form for transfer and that the Person requesting such payment shall pay to Aether any transfer or other Taxes required as a result of such payment to a Person other than the registered holder of such Certificates or establish to the satisfaction of Aether that such Tax has been paid or is not payable.

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(e) None of Aether, Cerulean or the Surviving Corporation shall be liable to any former holder of shares of Company Capital Stock for any amount paid to a Governmental Authority pursuant to any applicable abandoned property, escheat or similar laws. Any amounts remaining unclaimed by holders of Certificates five years after the Effective Time (or such earlier date immediately prior to such time as such amounts would otherwise escheat to or become the property of any Governmental Authority) shall, to the extent permitted by applicable law, become the property of Aether free and clear of any claims or interest of any person previously entitled thereto.

(f) In the event that any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such Certificate to be lost, stolen or destroyed and, if required by Aether, the posting by such Person of a bond in a customary amount as indemnity against any claim that may be made against it with respect to such Certificate, Aether will issue in exchange for such lost, stolen or destroyed Certificate the applicable Merger Consideration, cash in lieu of fractional shares, and unpaid dividends and distributions on shares of Aether Common Stock deliverable in respect thereof pursuant to this Agreement.

(g) If at any time during the period between the date of this Agreement and the Effective Time, any change in the outstanding shares of capital stock of Aether shall occur, including by reason of any reclassification, reorganization, recapitalization, stock split or combination, exchange or readjustment of shares, or any stock dividend thereon with a record date during such period, the number of shares of Aether Common Stock constituting all or part of the Merger Consideration shall be appropriately adjusted in accordance with such change.

Section 3.7 Tax Treatment. It is intended by the parties hereto that the Merger shall constitute a reorganization within the meaning of Sections 368(a) of the Code. The parties hereto adopt this Agreement as a "plan of reorganization" within the meaning of Section 1.368-2(g) of the United States Income Tax Regulations.

Section 3.8 Appraisal Rights. Company Capital Stock which is not voted in favor of the Merger and with respect to which a demand for appraisal shall have been properly made in the manner provided by the DGCL ("Appraisal Shares") shall not be converted into the right to receive any Merger Consideration and the holders of Appraisal Shares shall be entitled only to such rights as are contemplated by the DGCL; provided, however, that if a holder of Appraisal Shares shall withdraw his, her or its demand for such payment or shall become ineligible for such payment, pursuant to the DGCL, then as of the Effective Time or the occurrence of such event of withdrawal or ineligibility, whichever later occurs, such holder's Appraisal Shares shall cease to be Appraisal Shares and shall be converted into the right to receive the applicable Merger Consideration. Cerulean shall give Aether prompt notice of any Appraisal Shares (and shall also give Aether prompt notice of any withdrawals of such demands for appraisal rights) and Aether shall have the right to direct all negotiations and proceedings with respect to any such demands. Cerulean shall not, except with the prior written consent of Aether, voluntarily make any payment with respect to, or settle or offer to settle, any such demand for appraisal rights.

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ARTICLE IV.

REPRESENTATIONS AND WARRANTIES OF CERULEAN

Each exception set forth in the Company Disclosure Schedule to the representations and warranties in this Article IV and each other matter set forth in the Company Disclosure Schedule is identified by reference to, or has been grouped under a heading referring to, a specific individual Section of this Agreement and relates only to such Section, except to the extent that one section of the Company Disclosure Schedule specifically refers to another section thereof. Except as set forth in the Company Disclosure Schedule, the Company represents and warrants to Parent and Merger Sub as follows:

Section 4.1 Organization and Qualifications; Subsidiaries. Cerulean and each Subsidiary of Cerulean is a corporation, partnership, or other legal entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization and has the corporate power and authority to own, lease and operate its properties and to carry on its business as it is now being conducted. Each of Cerulean and its Subsidiaries is duly qualified or licensed as a foreign corporation or partnership to transact business, and is in good standing, in each jurisdiction where the character of the properties owned, leased or operated by it or the nature of its business makes such qualification or licensing necessary, except where the failure to so qualify or be licensed would not have a Material Adverse Effect on Cerulean. Schedule 4.1 to the Company Disclosure Schedule lists each Subsidiary of the Company and its respective jurisdiction of incorporation.

Section 4.2 Certificate of Incorporation and Bylaws. Complete and correct copies of the articles of incorporation or charter and bylaws of Cerulean and each of its Subsidiaries, as amended to date, are included with Schedule 4.2 to the Company Disclosure Schedule. Such Organizational Documents are in full force and effect and reflect all amendments or modifications adopted as of the date hereof. Cerulean is not in violation of any provision of its Organizational Documents. No Subsidiary of Cerulean is in violation of any provision of its Organizational Documents.

Section 4.3 Capitalization.

(i) The authorized capital stock of the Company consists of 33,574,408 shares of Company Common Stock and 19,881,330 shares of preferred stock, par value $.005 per share (the "Company Preferred Stock"). As of the date hereof (1) 7,625,426 shares of Company Common Stock were issued and outstanding, (2) 19,659,330 shares of Company Preferred Stock were issued and outstanding, of which 6,311,088 shares are designated Series A Convertible Participating Preferred Stock, 6,133,092 shares are designated Series B Convertible Participating Preferred Stock, 5,364,968 shares are designated Series C Convertible Participating Preferred Stock, 2,072,182 shares are designated Series D Convertible Participating Preferred Stock, (3) 536,268 (as of June 30, 2000) shares of Company Common Stock were held by the Company in its treasury, (4) no shares of Company Common Stock were held by one or more of the Company's subsidiaries, (5) 3,450,537 shares of Company Common Stock were reserved for issuance pursuant to the Company's stock option plans (the "Option Plans") (of which 3,080,650 are subject to outstanding options to purchase shares of Company Common Stock ("Company

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Options")) and (6) 30,000 shares of Company Common Stock and 111,000 shares of Series C Convertible Participating Preferred Stock were reserved for issuance pursuant to exercise of the Company Warrants. Except as set forth above, at the time of execution of this Agreement, no shares of capital stock or other equity or voting securities of the Company are issued, reserved for issuance or outstanding. All outstanding shares of Company Capital Stock and other equity or voting securities of the Company (including all options, warrants and other convertible securities) are, and all shares which may be issued pursuant to the Option Plans, Company Options or any other outstanding options, warrants or other convertible securities will be, when issued, duly authorized, validly issued, fully paid and nonassessable and not subject to or issued in violation of any preemptive right, purchase option, call option, right of first refusal, preemptive right, subscription right or any similar right. There are no outstanding bonds, debentures, notes or other indebtedness or securities (other than Company Capital Stock) of the Company having the right to vote (or convertible into, or exchangeable for, securities having the right to vote) on any matters on which any stockholders of the Company may vote. All of the issued and outstanding shares of Company Capital Stock and of the capital stock of each Subsidiary of Cerulean were offered, issued, sold and delivered by Cerulean in compliance with all applicable state and federal laws concerning the issuance of securities. Further, none of such shares was issued in violation of any preemptive rights.

(ii) Except as set forth above, there are no outstanding securities, options, warrants, calls, rights, commitments or Contracts of any kind to which the Company or any of its subsidiaries is a party or by which any of them is bound obligating the Company or any of its subsidiaries to issue, deliver or sell, or cause to be issued, delivered or sold, additional shares of capital stock or other equity or voting securities (including options, warrants and other convertible securities) of the Company or of any of its subsidiaries or obligating the Company or any of its subsidiaries to issue, grant, extend or enter into any such security, option, warrant, call, right, commitment or Contract. Except as set forth in Schedule 4.3 of the Company Disclosure Schedule, there are no outstanding rights, commitments or Contracts of any kind obligating the Company or any of its Subsidiaries to repurchase, redeem or otherwise acquire any shares of capital stock or other equity or voting securities of the Company or any of its Subsidiaries or any securities of the type described in the two immediately preceding sentences. The Company has delivered or made available to Parent complete and correct copies of each of the Option Plans and all forms of Company Options, and all outstanding options to purchase capital stock of the Company were granted under the Option Plans. Schedule 4.3 of the Company Disclosure Schedule sets forth a complete and accurate list of all options to purchase shares of Company Common Stock outstanding as of the date of this Agreement and the exercise price of each such outstanding option. Except as described in Schedule 4.3 of the Company Disclosure Schedule, as of the date hereof, there are no stock-appreciation rights, stock-based performance units, "phantom" stock rights or other Contracts of any character (contingent or otherwise) to which the Company or any of its Subsidiaries is a party or by which any of them is bound pursuant to which any person is or may be entitled to (1) receive any payment or other value based on the revenues, earnings or financial performance, stock price performance or other attribute of the Company or any of its subsidiaries or assets or calculated in accordance therewith (other than ordinary course payments or commissions to sales representatives of the Company based upon revenues generated by them without augmentation as a result of the transactions contemplated hereby), or (2) cause the Company or any of its Subsidiaries to file a registration statement under the Securities Act, or which otherwise relate to the registration of any securities of the Company.

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Except as set forth in Schedule 4.3 of the Company Disclosure Schedule, there are no voting trusts, proxies, antitakeover plans or other Contracts of any character to which the Company or any of its Subsidiaries is a party or by which any of them is bound, to the Knowledge of the Company, or to which any of the Company's stockholders is a party or by which any of them is bound, in each case, with respect to the issuance, holding, acquisition, voting or disposition of any shares of capital stock of the Company or any of its subsidiaries. Except for the capital stock of its Subsidiaries or as set forth in Schedule 4.3 of the Company Disclosure Schedule, the Company does not own, directly or indirectly, any capital stock, security or other ownership or equity interest in any person.

Section 4.4 Authority Relative to This Agreement. (a) Cerulean has all necessary corporate power and authority to execute and deliver this Agreement, and, subject to the Company Stockholder Approval, to perform its obligations hereunder and to consummate the Transactions. The execution and delivery of this Agreement by Cerulean, the performance by Cerulean of its obligations hereunder and the consummation by Cerulean of the Transactions have been duly and validly approved by the Board of Directors of Cerulean, the Board of Directors of Cerulean has recommended approval of this Agreement by the stockholders of Cerulean and directed that this Agreement be submitted to the stockholders of Cerulean for their consideration, and no other corporate proceedings on the part of Cerulean are necessary to authorize this Agreement or to consummate the Transactions (other than the Company Stockholder Approval and the Merger Filing). This Agreement has been duly and validly executed and delivered by Cerulean and, assuming the due authorization, execution and delivery thereof by Aether and Merger Sub, constitutes the legal, valid and binding obligation of Cerulean, enforceable against Cerulean in accordance with its terms, except as enforceability may be limited by bankruptcy or other similar laws and general principles of equity.

(b) As of the date hereof and, except as permitted by Section 6.9, as of the Effective Time, the Board of Directors of the Company has, at a meeting duly called and held, (i) unanimously approved and declared advisable the Merger and this Agreement, (ii) determined that the transactions contemplated hereby and thereby are advisable, fair to and in the best interests of the holders of Company Capital Stock, (iii) resolved to recommend adoption of this Agreement by the stockholders of the Company and (iv) directed that this Agreement be submitted to the stockholders of the Company for their adoption. The Board of Directors has not withdrawn, rescinded or modified such approval, determination, and resolution to recommend. The affirmative vote of a majority of all outstanding shares of Company Capital Stock, two-thirds of all outstanding shares of Company Preferred Stock and of each series of Company Preferred Stock for the adoption of this Agreement are the only votes of the holders of any class or series of capital stock or other security of the Company necessary to adopt this Agreement or to approve or authorize the Merger and the other transactions contemplated hereby and thereby. As of the date hereof, the holders of the Company Capital Stock that are parties to the Stockholders Voting Agreement own (beneficially and of record) and have the right to vote, in the aggregate, 26,567,210 shares of Company Capital Stock.

Section 4.5 No Conflict; Required Filings and Consents; Certain Contracts.

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(a) The execution and delivery of this Agreement by Cerulean does not, and the performance of its obligations under this Agreement and the consummation of the Transactions by Cerulean will not,

(i) except as set forth in Schedule 4.5 to the Company Disclosure Schedule, conflict with, result in a breach of, cause a dissolution or require the consent or approval of any Person under, or violate any provision of, the Organizational Documents of Cerulean or any of its Subsidiaries,

(ii) require any consent, approval, authorization or permit of, or filing with or notification to, any Governmental Authority, except for (A) applicable requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (as amended, the "HSR Act"), including any rules and regulations promulgated thereunder, (B) the Merger Filing, (C) the Company Stockholder Approval, (D) such consents, authorizations, filings, approvals and registrations required under contracts with Governmental Authorities for the purchase or sale of the Company's product and services entered into the ordinary course of business, and (E) such other consents, authorizations, filings, approvals and registrations which if not obtained or made would not result in a Material Adverse Effect on Cerulean or Aether,

(iii) subject to the making of the filings and obtaining the approvals identified in clause (ii), conflict with or violate any Law, order, judgment, rule, regulation, ordinance, writ, injunction or decree applicable to Cerulean or any of its Subsidiaries or by which any property or asset of Cerulean or any Subsidiary is bound or affected, which conflict or violation would result in a Material Adverse Effect on Cerulean or the Surviving Corporation, or

(iv) except as set forth in Schedule 4.5 to the Company Disclosure Schedule, conflict with or result in any breach of or constitute a default (or an event which with notice or lapse of time or both would become a default) under, result in the loss by Cerulean or any of its Subsidiaries or modification in a manner materially adverse to Cerulean or any of its Subsidiaries of any right or benefit under, or give to others any right of termination, amendment, acceleration, repurchase or repayment, increased payments or cancellation of, or result in the creation of a Lien or other encumbrance on any Company Capital Stock or any material property or asset of Cerulean or any Subsidiary of Cerulean pursuant to, any Contract of Cerulean, except (A) arising under any Contract for the purchase or sale of the Company's products or services entered into in the ordinary course of business or (B), in each case, such as would not, individually or in the aggregate have a Material Adverse Effect on Cerulean. The notices, consents or approvals, filings or registrations, and expirations or terminations of waiting periods referred to in clauses (ii)(A)-(ii)(C) above are hereinafter referred to as the "Requisite Regulatory Approvals."

(b) Except as set forth in Schedule 4.5 of the Company Disclosure Schedule, there are no Contracts to which Cerulean or any Subsidiary of Cerulean is a party or by which Cerulean or any Subsidiary of Cerulean or any asset of Cerulean or any Subsidiary of Cerulean is bound, which by its terms materially limits the ability of Cerulean or any Subsidiary of Cerulean, or after consummation of the Transactions, would by its terms materially limit the ability of Aether or any of its Affiliates, to engage in any business in any area or for any period.

Section 4.6 Financial Statements

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(a) The consolidated financial statements of Cerulean and its Subsidiaries for the years ended December 31, 1998 and December 31, 1999 and for the six-month period ended June 30, 2000 (the "Financial Statements") included as Schedule 4.6(a) to the Company Disclosure Schedule hereto, were prepared in accordance with GAAP applied on a basis consistent with prior periods (except for the absence of notes and schedules in the case of the June 30, 2000 Financial Statements) and fairly present in all material respects except for necessary, normal, recurring, year-end adjustments the consolidated financial position of Cerulean and its consolidated Subsidiaries as at the dates thereof and the consolidated results of their operations and cash flows for the respective periods then ended and do not contain any material misstatements of the financial condition or results of operations of Cerulean at such dates or for the periods then ended.

(b) Since June 30, 2000, neither Cerulean nor any of its Subsidiaries has incurred any liabilities or obligations (whether absolute, accrued, fixed, contingent, liquidated, unliquidated or otherwise and whether due or to become due) of any nature, except as set forth in Schedule 4.6(b) to the Company Disclosure Schedule and except liabilities, obligations or contingencies (i) which were incurred after June 30, 2000 in the ordinary course of business consistent with past practices under any contract, commitment or agreement specifically disclosed in the Company Disclosure Schedule or not required to be disclosed thereon because of the term or amount involved or otherwise, (ii) which were incurred as a result of the Transactions contemplated by this Agreement, (iii) which were disclosed or reserved against on the balance sheet to the Financial Statements or which would not be required under GAAP to be reported on the balance sheet to the Financial Statements, or (iv) which would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on Cerulean. Cerulean and its Subsidiaries have timely filed all forms, reports and other documents material to the business of Cerulean and its Subsidiaries required to be filed prior to the date hereof with any Governmental Authority, except where the failure to so file would not have a Material Adverse Effect on Cerulean.

(c) Since December 31, 1999, there has been no change in any of the significant accounting (including Tax accounting) policies, practices or procedures of Cerulean or any Subsidiary of Cerulean, except changes to comply with changes in accounting pronouncements of the Financial Accounting Standards Board or changes in applicable laws or rules or regulations thereunder as disclosed on Schedule 4.6(c) to the Company Disclosure Schedule.

Section 4.7 Absence of Certain Changes or Events. Except as a result of this Agreement and the Transactions or as set forth in Schedule 4.7 to the Company Disclosure Schedule, since December 31, 1999, (a) each of Cerulean and its Subsidiaries has conducted its respective business only in the ordinary course consistent with past practices, and has not taken any of the actions set forth in paragraphs (a) through (l) of Section 6.4 and (b) there has not occurred or arisen any event that, individually or in the aggregate, has had or, insofar as can be reasonably foreseen, would have a Material Adverse Effect on Cerulean or any of its Subsidiaries.

Section 4.8 Conformity with Law; Relations with Governments; Litigation. Neither Cerulean nor any of its Subsidiaries is in violation of any law or regulation or any order of any Governmental Authority having jurisdiction over it which have had or would reasonably be

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expected to have a Material Adverse Effect. Neither Cerulean nor any of its Subsidiaries has offered anything of value to any governmental official, political party or candidate for government office nor has it otherwise taken any action that would cause Cerulean to be in violation of the Foreign Corrupt Practices Act of 1977, as amended, or any law of similar effect. Schedule 4.8 to the Company Disclosure Schedule lists, as of the date hereof and the Closing Date, all claims, suits, actions or proceedings pending or, to the Knowledge of each of Cerulean and its Subsidiaries, threatened or contemplated, including any investigations or reviews by any Governmental Authority pending or, to the Knowledge of each of Cerulean and its Subsidiaries, threatened or contemplated, against, relating to or affecting each of Cerulean and its Subsidiaries (collectively, the "Claims"). If adversely determined, the Claims will not, individually or in the aggregate, have a Material Adverse Effect on Cerulean or prevent or materially delay the consummation of any of the transactions contemplated by this Agreement. There is no judgment, decree, order, injunction, stipulation, award (other than an award for the purchase of products or services by a Governmental Authority) or writ of any Governmental Authority outstanding against Cerulean or any of its Subsidiaries.

Section 4.9 Employee Benefit Plans and Related Matters; ERISA.

(a) Schedule 4.9(a) to the Company Disclosure Schedule contains a complete and accurate list of all Company Plans and Company Benefit Arrangements and specifically identifies all Company Plans (if any) that are Qualified Plans.

(b) With respect, as applicable, to Benefit Plans and Benefit Arrangements:

(i) Cerulean has delivered or made available true, correct, and complete copies of the following documents with respect to all Company Plans and Company Benefit Arrangements to Aether: (A) all plan or arrangement documents, including but not limited to trust agreements, insurance policies, service agreements and formal and informal amendments to each; (B) the most recent Forms 5500 or 5500C/R and any attached financial statements and related actuarial reports, and those for the prior three years; (C) the last IRS determination letter, the last IRS determination letter that covered the qualification of the entire plan (if different), and the materials submitted to obtain those letters; (D) summary plan descriptions and summaries of material modifications, and any prospectuses that describe the Company Benefit Arrangements or Company Plans; (E) written descriptions of all non-written agreements relating to any such plan or arrangement; (F) all reports submitted within the three years preceding the date of this Agreement by third-party administrators, actuaries, investment managers, consultants, or other independent contractors (other than participant statements); (G) all notices that the IRS, Department of Labor or any other governmental agency or entity issued to the Company within the four years preceding the date of this Agreement; (H) employee manuals or handbooks containing personnel or employee relations policies; (I) the most recent quarterly listing of workers' compensation claims and a schedule of workers' compensation claims of the Company for the last three fiscal years; and (J) any other documents Aether has requested;

(ii) the Qualified Plans qualify under Section 401(a) of the Code, and nothing has occurred with respect to the operation of any Qualified Plan that could cause the imposition of any liability, lien, penalty, or tax under ERISA or the Code; each Company Plan and each Company Benefit Arrangement has been maintained in all material respects in accordance with

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its constituent documents and with all applicable provisions of domestic and foreign laws, including federal and state securities laws and any reporting and disclosure requirements; with respect to each Company Plan, no transactions prohibited by Code Section 4975 or ERISA Section 406 and no breaches of fiduciary duty described in ERISA Section 404 have occurred, and no Company Plan contains any security issued by any Related Employer;

(iii) the Related Employers have never sponsored or maintained, had any obligation to sponsor or maintain, or had any liability (whether actual or contingent, with respect to any of their assets or otherwise) with respect to any Benefit Plan subject to Section 302 of ERISA or Section 412 of the Code or Title IV of ERISA (including any Multiemployer Plan);

(iv) there are no pending claims (other than routine benefit claims) or lawsuits that have been asserted or instituted by, against, or relating to, any Company Plans or Company Benefit Arrangements, nor to the Company's Knowledge is there any basis for any such claim or lawsuit. No Company Plans or Company Benefit Arrangements are or have been under audit or examination (nor has notice been received of a potential audit or examination) by any domestic or foreign governmental agency or entity, and no matters are pending with respect to any Company Plan under the IRS's Employee Plans Compliance Resolutions System or any successor or predecessor program;

(v) [except as set forth in Schedule 4.9(b),] no Company Plan or Company Benefit Arrangement contains any provision or is subject to any law that would accelerate or vest any benefit or require severance, termination or other payments or trigger any liabilities as a result of the transactions this Agreement contemplates; no Related Employer has declared or paid any bonus or incentive compensation related to the transactions this Agreement contemplates; and no payments under any Company Plan or Company Benefit Arrangement would, individually or collectively, be nondeductible under Code Section 280G;

(vi) all reporting, disclosure, and notice requirements of ERISA and the Code have been satisfied with respect to each Company Plan and each Company Benefit Arrangement;

(vii) each Related Employer has paid all amounts it is required to pay as contributions to the Company Plans as of the date of this Agreement; all benefits accrued under any unfunded Company Plan or Company Benefit Arrangement will have been paid, accrued, or otherwise adequately reserved in accordance with GAAP as of the date of this Agreement; and all monies withheld from employee paychecks with respect to Company Plans have been transferred to the appropriate plan within the time applicable regulations specify;

(viii) to Cerulean's Knowledge, no statement, either written or oral, has been made by the Related Employers to any person with regard to any Company Plan or Company Benefit Arrangement that was not in accordance with the Company Plan or Company Benefit Arrangement and that would involve a material increase in expense or liability under such plan or arrangement;

(ix) the Related Employers have no liability (whether actual, contingent, with respect to any of its assets or otherwise) with respect to any Benefit Plan or Benefit Arrangement that is not a Company Plan or Company Benefit Arrangement or with respect to any Benefit Plan

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sponsored or maintained (or which has been or should have been sponsored or maintained) by any ERISA Affiliate; and

(x) all group health plans of the Related Employers materially comply with the requirements of Part 6 of Title I of ERISA ("COBRA"), Code Section 5000, and the Health Insurance Portability and Accountability Act; the Related Employers have no liability under or with respect to COBRA for their own actions or omissions or those of any predecessor; the Related Employers' voluntary employee beneficiary association, if any, is exempt from tax and complies with all requirements applicable to it; no employee or former employee (or beneficiary of either) of a Related Employer is entitled to receive any benefits, including, without limitation, death or medical benefits (whether or not insured) beyond retirement or other termination of employment, other than as applicable laws require.

Section 4.10 Labor and Employment Matters. With respect to employees of and service providers to the Related Employers:

(a) the Related Employers are complying and have complied in all material respects with all applicable domestic and foreign laws respecting employment and employment practices, terms and conditions of employment and wages and hours, including without limitation any such laws respecting employment discrimination, workers' compensation, family and medical leave, the Immigration Reform and Control Act, and occupational safety and health requirements, and no claims or investigations are pending or, to the Knowledge of Cerulean, threatened with respect to such laws, either by private individuals or by governmental agencies and all employees are at-will;

(b) no Related Employer is or has been engaged in any unfair labor practice, and there is not now, nor within the past three years has there been, any unfair labor practice complaint against any Related Employer pending or, to the Knowledge of Cerulean, threatened, before the National Labor Relations Board or any other comparable foreign or domestic authority or any workers' council;

(c) no labor union represents or has ever represented the Related Employers' employees and no collective bargaining agreement is or has been binding against any Related Employer. No Related Employer is currently negotiating to create such agreements. No grievance or arbitration proceeding arising out of or under collective bargaining agreements or employment relationships is pending, and no claims therefor exist or have, to the Knowledge of Cerulean, been threatened;

(d) no labor strike, lock-out, slowdown, or work stoppage is or has ever been pending or threatened against or directly affecting any Related Employer; and

(e) all persons who are or were performing services for any Related Employer and are or were classified as independent contractors do or did satisfy and have satisfied the requirements of law to be so classified, and the appropriate Related Employer has fully and accurately reported their compensation on IRS Forms 1099 when required to do so.

Section 4.11 Insurance. Schedule 4.11 to the Company Disclosure Schedule sets forth (a) an accurate list of each material insurance policy providing coverage for liability exposure

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(including policies providing property, casualty, liability and workers' compensation coverage and bond and surety arrangements) to which each of Cerulean and its Subsidiaries is currently, or has been during the past three years, a party, a named insured or otherwise the beneficiary of coverage and (b) all insurance loss runs or workers' compensation claims received for the past three policy years. With respect to each such insurance policy, to the Knowledge of each of Cerulean and its Subsidiaries: (a) the policy is legal, valid, binding, enforceable and in full force and effect; (b) there will be no breach or other violation of the policy resulting from the Transactions; and (c) each of Cerulean and its Subsidiaries is not in breach or default (including with respect to the payment of premiums or the giving of notices); and (d) no event has occurred which, with notice or the lapse of time, would constitute such a breach or default, or permit termination, modification or acceleration, under the policy.

Section 4.12 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the Transactions based on any arrangement or agreement made by or on behalf of each of Cerulean and its Subsidiaries.

Section 4.13 Taxes.

(a) Except as set forth on Schedule 4.13(a), each of Cerulean and its Subsidiaries has timely filed all Tax Returns that were required to be filed and all such Tax Returns are true, correct and complete in all respects.

(b) Each of Cerulean and its Subsidiaries has paid in full on a timely basis all Taxes owed by it, whether or not shown on any Tax Return.

(c) Except as set forth on Schedule 4.13(c), no claim has ever been made by an authority in a jurisdiction where Cerulean or any of its Subsidiaries do not file Tax Returns that it is or may be subject to taxation by that jurisdiction.

(d) The liability of Cerulean and its Subsidiaries for unpaid Taxes did not as of the dates of the Financial Statements described in Section 4.6, exceed the liability accruals for Taxes (excluding reserves for deferred Taxes) set forth on such Financial Statements. The liability of Cerulean and its Subsidiaries for unpaid Taxes as of the Effective Day will not exceed such accruals as set forth on the Financial Statements dated as of June 30, 2000.

(e) There are no ongoing audits, examinations or claims against Cerulean or any of its Subsidiaries for Taxes, and no written notice of any audit, examination, or claim for Taxes has been received.

(f) No director or officer (or employee responsible for Tax matters) of Cerulean or any of its Subsidiaries expects any Governmental Authority to assess any additional Taxes for any period for which Tax Returns have been filed.

(g) Cerulean has a taxable year ending on December 31.

(h) Each of Cerulean and its Subsidiaries currently utilizes the accrual method of accounting for income tax purposes and such method of accounting has not changed since its incorporation. Neither Cerulean nor any of its Subsidiaries has agreed to, and neither Cerulean

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nor any of its Subsidiaries is or will be required to, make any adjustments under Code section 481(a) as a result of a change in accounting methods.

(i) Each of Cerulean and its Subsidiaries has withheld and paid over to the proper Governmental Authorities all Taxes required to have been withheld and paid over, and complied with all information reporting and backup withholding requirements, including maintenance of required records with respect thereto, in connection with amounts paid to any employee, independent contractor, creditor, or other third party.

(j) Neither Cerulean nor any of its Subsidiaries has entered into any agreement extending, or having the effect of extending, the period of assessment or collection of any Taxes and no power of attorney with respect to any Taxes has been executed or filed with the IRS or any other taxing authority.

(k) Copies of filed Tax Returns of each of Cerulean and its Subsidiaries for taxable years beginning after December 31, 1996, and copies of any Tax examinations, audit reports, or notices of deficiencies of each of Cerulean and its Subsidiaries, without regard to time, have been delivered to Aether.

(l) To the Knowledge of the Company, there are (and as of immediately following the Closing there will be) no Liens on the assets of Cerulean or any of its Subsidiaries relating or attributable to Taxes (other than Permitted Liens).

(m) There is no reasonable basis for the assertion of any claim relating or attributable to Taxes which, if adversely determined, would result in any Lien (other than Permitted Liens) on the assets of Cerulean or any of it Subsidiaries.

(n) Neither Cerulean nor any of its Subsidiaries has filed any consent agreement under Section 341(f) of the Code or agreed to have Section 341(f)(2) of the Code apply to any disposition of a subsection (f) asset (as defined in Section 341(f)(4) of the Code).

(o) Neither Cerulean nor any of its Subsidiaries is, or has ever been, a party to a Tax sharing, Tax indemnity or Tax allocation agreement, and neither Cerulean nor any of its Subsidiaries has assumed the Tax liability of any other Person under contract.

(p) Neither Cerulean nor any of its Subsidiaries is, or has ever been, a "United States real property holding corporation" within the meaning of Section 897(c)(2) of the Code.

(q) Neither Cerulean nor any of its Subsidiaries has been a member of an affiliated group filing a consolidated federal income Tax Return other than a group of which Cerulean is the common parent. Neither Cerulean nor any of its Subsidiaries has any liability for the Taxes of another Person under Treas. Reg. § 1.1502-6 (or any similar provision of state, local or foreign law) as a transferee or successor, by contract or otherwise.

(r) Neither Cerulean nor any of its Subsidiaries is a party to any joint venture, partnership or other arrangement that is treated as a partnership for federal income tax purposes.

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(k) Cerulean shall have delivered to Aether Accredited Investor Questionnaires completed by each holder of Company Preferred Stock.

(l) There shall be no more than 1,371,000 shares of Company Capital Stock not voted in favor of the Merger.

ARTICLE IX.

TERMINATION, WAIVER, AMENDMENT AND CLOSING

Section 9.1 Termination. This Agreement may be terminated and abandoned at any time prior to the Effective Time, whether before or after approval of this Agreement or the Merger by the stockholders of Cerulean:

(a) by the mutual written consent of Cerulean and Aether;

(b) by Cerulean or Aether, if (i) the Effective Time shall not have occurred on or before 5:00 p.m. Washington, D.C. time on the date forty-five (45) days after the date on which the last required HSR Filing is made, (ii) any Governmental Authority, the consent of which is a condition to the obligations of Cerulean and Aether to consummate the Transactions, shall have determined not to grant its consent and all appeals of such determination shall have been taken and have been unsuccessful or (iii) any court of competent jurisdiction shall have issued an order, judgment or decree (other than a temporary restraining order) restraining, enjoining or otherwise prohibiting the Merger and such order, judgment or decree shall have become final and nonappealable; provided, however, that the right to terminate this Agreement pursuant to clause (i) shall not be available to any party whose failure to fulfill any obligation under this Agreement has been the cause of, or resulted in, the failure of the Effective Time to occur on or before such date;

(c) by Cerulean, if there has been a breach by Aether of any representation, warranty, covenant or agreement set forth in this Agreement, which breach has not been cured within ten (10) Business Days following receipt by Aether of notice of such breach from Cerulean; provided, however, that the right to terminate this Agreement pursuant to this (c) shall not be available to Cerulean if Cerulean, at such time, is in breach of any representation, warranty, covenant or agreement set forth in this Agreement;

(d) by Aether, if there has been a breach by Cerulean of any representation, warranty, covenant or agreement set forth in this Agreement, which breach has not been cured within ten (10) Business Days following receipt by Cerulean of notice of such breach from Aether; provided, however, that the right to terminate this Agreement pursuant to this (d) shall not be available to Aether if Aether, at such time, is in breach of any representation, warranty, covenant or agreement set forth in this Agreement;

(e) by the Company, if at any time prior to the Company Meeting or the effective date of the Written Consent, in connection with the exercise of the Company's rights in accordance with Section 6.7; provided, that the Company has complied in all respects with all

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provisions of Section 6.6, including payment of the Termination Fee to Parent simultaneously with termination of this Agreement;

(f) by Aether, if the Company, Board of Directors of the Company or any committee thereof, or any subsidiary of the Company shall have: (1) adopted, approved or recommended, or proposed or resolved to adopt, approve or recommend, any Acquisition Proposal other than the Merger, (2) breached its obligation to present and recommend the adoption of this Agreement and the transactions contemplated hereby by the stockholders of the Company, (3) withheld, withdrawn, terminated or modified, or proposed or resolved to withhold, withdraw, terminate or modify, in a manner adverse to Parent or Merger Sub, its recommendation or approval of the Merger, this Agreement or the transactions contemplated hereby, (4) entered, or caused the Company or any subsidiary to enter, into any Contract, letter of intent or agreement in principle of any kind relating to any Acquisition Proposal, (5) materially breached any provision of Section 6.6, or (6) resolved, proposed or announced its intention to do any of the foregoing;

(g) by Aether, if at the Company Meeting (including any adjournment or postponement thereof or pursuant to the Written Consent), the requisite vote of the stockholders of the Company to adopt and approve this Agreement shall not have been obtained; or

(h) by Aether, if any stockholder of the Company that is a party to the Stockholders Voting Agreement shall have breached or failed to perform in any material respect any representation, warranty, covenant or agreement contained therein, that, individually or in the aggregate, would reasonably be expected to materially impede the ability of the parties to consummate the Merger as contemplated herein.

Section 9.2 Effect of Termination. In the event of termination of this Agreement by Cerulean or Aether as provided in Section 9.1 hereof, this Agreement shall forthwith become void and of no further force or effect, and no party hereto (or any of its affiliates, directors, trustees, executors, officers, agents or representatives) shall have any liability or obligation hereunder, except in any such case (i) in accordance with the provisions of Section 6.5, Section 6.6(b), Section 6.9, Section 9.2, Section 9.5, Section 10.1, and Section 10.5, each of which shall survive any such termination and (ii) to the extent such termination results from the breach or inaccuracy by such party of any of its representations, warranties or covenants contained in this Agreement. Notwithstanding the foregoing, no party hereto shall be relieved from liability for any willful breach of this Agreement.

Section 9.3 Amendment or Supplement. It is understood and agreed that, from time to time prior to the Closing, Aether and Cerulean may amend or supplement the Schedules to the Aether Disclosure Schedule or the Company Disclosure Schedule, as the case may be, with respect to any matter that is required to be set forth or described in such a Schedule or that is necessary to complete or correct any information in any representation or warranty of such party contained in this Agreement; provided, that such amendment or supplement may only be made if a party did not have Knowledge of such matter prior to the date of the disclosure to be amended or supplemented, and provided further that the disclosure provided in any such amended supplemented or revised Schedule shall in no way affect or be deemed to limit a party's ability to terminate this Agreement and the Transactions prior to the Closing.

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Section 9.4 Extension of Time, Waiver, Etc. At any time prior to the Effective Time:

(a) Aether may extend the time for the performance of any of the obligations or acts of Cerulean, and Cerulean may extend the time for the performance of any of the obligations or acts of Aether or Merger Sub;

(b) Aether may waive any inaccuracies in the representations and warranties of Cerulean contained herein or in any document delivered pursuant hereto, and Cerulean may waive any inaccuracies in the representations and warranties of Aether contained herein or in any document delivered pursuant hereto; or

(c) Aether may waive compliance with any of the agreements of Cerulean contained herein, and Cerulean may waive compliance with any of the agreements of Aether or Merger Sub contained herein;

provided, however, that no failure or delay by Cerulean or Aether in exercising any right hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right hereunder.

Section 9.5 Termination Fee.

(a) If this Agreement is terminated pursuant to Section 9.1(e), Section 9.1(f), Section 9.1(g), or Section 9.1(h), then Cerulean shall pay to Aether by wire transfer of immediately available funds no later than two days following termination of this Agreement (or, in the case of a termination pursuant to Section 9.1(e), simultaneously with, and as a condition to the effectiveness of, such termination) a termination fee equal to $8,000,000 (the "Termination Fee").

(b) The agreement contained in this Section 9.5 is an integral part of the Transactions and constitutes liquidated damages in the event of the occurrence of the circumstances specified in Section 9.5(a) above and not a penalty.

ARTICLE X.

MISCELLANEOUS

Section 10.1 Governing Law.

(a) This Agreement and the legal relations among the parties hereto shall be governed by and construed and enforced in accordance with the laws of the State of Delaware without regard to its principles of conflicts of law.

(b) Each party to this Agreement shall have the right to enforce specifically the terms and provisions of this Agreement in any court of the United States located in the State of Delaware or in Delaware state court, this being in addition to any other remedy to which they are entitled at law or in equity or under this Agreement. In addition, each of the parties hereto (i) consents to submit such party to the personal jurisdiction of any Federal court located in the State

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of Delaware or any Delaware state court in the event any dispute arises out of this Agreement or any of the transactions contemplated hereby, (ii) agrees that such party will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court and (iii) agrees that such party will not bring any action relating to this Agreement or any of the transactions contemplated hereby in any court other than a court of the United States located in the State of Delaware or a Delaware state court. It is further agreed that any breaching or defaulting party hereunder shall pay to the other parties hereto such out of pocket costs and expenses, including legal and accounting fees, as are reasonably incurred in pursuit of such parties' remedies hereunder.

Section 10.2 Entire Agreement. This Agreement, including the exhibits and schedules attached hereto, and the Confidentiality Agreement constitutes the entire agreement among the parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, letters of intent, negotiations and discussions, whether oral or written, of the parties, including without limitation any discussions, commitments or agreements between the parties concerning Cerulean equity issuances or debt financings, and there are no warranties, representations or other agreements, express or implied, made to any party by any other party in connection with the subject matter hereof except as specifically set forth herein or in the documents delivered pursuant hereto or in connection herewith.

Section 10.3 Modification; Waiver. No supplement, modification, extension, waiver or termination of this Agreement shall be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

Section 10.4 Notices. All notices, consents, requests, reports, demands or other communications hereunder (collectively, "Notices") shall be in writing and may be given personally, by registered mail, fax or by Federal Express (or other reputable overnight delivery service):

if to Aether or Merger Sub, to it at:

Aether Systems, Inc.
11460 Cronridge Drive
Owings Mills, MD 21117
Attention: Chief Financial Officer
Tel: (410) 654-6400
Fax: (410)

with a copy to:

Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, D.C. 20037
Attention: Mark Dewire, Esq.

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Tel: (202) 663-6000
Fax: (202) 663-6363

if to Cerulean, to it at:

Cerulean Technology, Inc.
300 Nickerson Road
Marlborough, MA 01752
Attention: Robert P. Badavas
Tel: (508) 460-4000
Fax: (508) 460-4099

with a copy to:

Hale and Dorr
60 State Street
Boston, MA 02109
Attention: Peter B. Tarr, Esq.
Tel: (617) 526-6000
Fax: (617) 526-5000

or to such other address or such other person as the addressee party shall have last designated by notice to the other party. All Notices shall be deemed to have been given (i) when delivered personally, (ii) three (3) days after being sent by registered mail with proper postage prepaid, (iii) upon transmission by fax and receipt of confirmation of such transmission by the sender's fax machine, or (iv) one day after being sent by Federal Express (or other reputable overnight delivery service) with proper postage prepaid.

Section 10.5 Expenses. Immediately following Closing, Aether shall be responsible for its fees, costs and expenses incurred in connection with the negotiation of the proposed Transaction (including, under the HSR Act) and the Company shall be responsible for up to $500,000 in reasonable fees, costs and expenses incurred by the Company in connection with the negotiation of the proposed Transaction, including but not limited to, commissions or fees of any broker or finder referred by them and any reasonable attorney's fees (at reasonable hourly rates) incurred by them in connection with the proposed Transaction. Any fees, costs and expenses in excess of the $500,000 set forth in the preceding sentence shall be deducted from the Purchase Price. At Closing, the Company shall deliver to Purchaser a complete statement and listing of all fees, expenses and disbursements incurred or to be incurred (including an estimate of unbilled amounts, whether or not incurred) in connection with the subject matter of this Agreement for purposes of establishing the amount, if any, to be deducted from the Purchase Price.

Section 10.6 Assignment. No party hereto shall have the right, power or authority to assign or pledge this Agreement or any portion of this Agreement, or to delegate any duties or obligations arising under this Agreement, voluntarily, involuntarily, or by operation of law, without the prior written consent of the other parties hereto.

Section 10.7 Survival of Representations, Warranties and Covenants. All representations, warranties and covenants made by Cerulean in or pursuant to this Agreement or

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in any document delivered pursuant hereto shall be deemed to have been made on the date of this Agreement (except as otherwise provided herein) and, if a Closing occurs, as of the Closing Date and Effective Time, subject to the provisions of Section 9.3. The representations and warranties of Aether and Cerulean will survive the Closing and will remain in effect until, and will expire upon, the first anniversary of the Closing Date and the covenants of Aether and Cerulean will survive the Closing and will remain in effect in accordance with the terms therein; provided, however, in no event shall such covenants survive beyond the first anniversary of the Closing Date.

Section 10.8 Severability. Any provision or part of this Agreement which is invalid or unenforceable in any situation in any jurisdiction shall, as to such situation and such jurisdiction, be ineffective only to the extent of such invalidity and shall not affect the enforceability of the remaining provisions hereof or the validity or enforceability of any such provision in any other situation or in any other jurisdiction.

Section 10.9 Successors and Assigns; Third Parties. Subject to and without waiver of the provisions of Section 10.6, all of the rights, duties, benefits, liabilities and obligations of the parties shall inure to the benefit of, and be binding upon, their respective successors, assigns, heirs and legal representatives. Except as specifically set forth in Section 3.1, Section 3.2, Section 3.4, Section 3.5, Section 6.12, Section 6.13, Section 6.14 and ARTICLE VII, nothing herein expressed or implied is intended or shall be construed to confer upon or give to any person or entity, other than the parties hereto and their successors or permitted assigns, any rights or remedies under or by reason of this Agreement.

Section 10.10 Counterparts. This Agreement may be executed in as many counterparts as may be deemed necessary and convenient, and by the different parties hereto on separate counterparts each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same instrument.

Section 10.11 Interpretation; References. Any use of masculine, feminine or neuter pronouns herein shall not be limiting, but shall be construed as referring to persons of any gender, as the context may require. Any use of the singular or plural form herein shall not be limiting, but shall be construed as referring to either the plural or singular, as the context may require. References to a "Schedule" or an "Exhibit" are, unless otherwise specified, to a Schedule attached to the Company Disclosure Schedule or an Exhibit attached to this Agreement, and references to an "Article" or a "Section" are, unless otherwise specified, to an Article or a Section of this Agreement. The Article and Section headings of this Agreement are for convenience of reference only and shall not be deemed to modify, explain, restrict, alter or affect the meaning or interpretation of any provision hereof.

Section 10.12 Dispute Resolution and Jurisdiction.

(a) Each party to this Agreement shall appoint a Representative to coordinate with the other party the implementation of this Agreement. If any dispute arises with respect to either party's performance hereunder, the Representatives shall meet to attempt to resolve such dispute, either in person or by telephone, within two (2) Business Days after the written request of either Representative. If the Representatives are unable to resolve such dispute, the chief executive

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officer of Cerulean and the chief financial officer of Aether shall meet, either in person or by telephone, within ten (10) Business Days after either Representative provides written notice that the Representatives have been unable to resolve such dispute. If such officers are unable to resolve such dispute, either party may submit such dispute to an independent nationally-recognized accounting firm, if such dispute is solely of a financial nature.

Section 10.13 Exhibits, Schedules and Company Disclosure Schedule. All exhibits and schedules attached hereto and the Company Disclosure Schedule are hereby incorporated by reference as though set out in full herein.

Section 10.14 Attorneys' Fees. In the event that any party hereto brings an action or proceeding against the other party to enforce or interpret any of the covenants, conditions, agreements or provisions of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover all costs and expenses of such action or proceeding, including, without limitation, reasonable attorneys' fees, charges, disbursements and the fees and costs of expert witnesses.

Section 10.15 WAIVER OF JURY TRIAL. **EACH PARTY TO THIS AGREEMENT WAIVES ITS RESPECTIVE RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF THIS AGREEMENT OR ANY DEALINGS BETWEEN ANY OF THE PARTIES HERETO RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT OR TO ANY OTHER DOCUMENT OR AGREEMENT RELATING TO THE TRANSACTIONS.**

Section 10.16 Further Assurances. Each of the parties shall, without further consideration, use reasonable efforts to execute and deliver such additional documents and take such other action as the other parties, or any of them, may reasonably request to carry out the intent of this Agreement and the Transactions.

Section 10.17 Negotiation of Agreement. Each of the parties acknowledges that it has been represented by independent counsel of its choice throughout all negotiations that have preceded the execution of this Agreement and that it has executed the same with consent and upon the advice of said independent counsel. Each party and its counsel cooperated in the drafting and preparation of this Agreement and the documents referred to herein, and any and all drafts relating thereto shall be deemed the work product of the parties and may not be construed against any party by reason of its preparation. Accordingly, any rule of law or any legal decision that would require interpretation of any ambiguities in this Agreement against the party that drafted it is of no application and is hereby expressly waived. The provisions of this Agreement

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shall be interpreted in a reasonable manner to effect the intentions of the parties and this Agreement.

(signature page follows)

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement and Plan of Merger to be duly executed and delivered as of the date first above written.

AETHER SYSTEMS, INC.

By: _____
Name:
Title:

CERULEAN ACQUISITION, INC.

By: _____
Name:
Title:

CERULEAN TECHNOLOGY, INC.

By: _____
Name:
Title:

RECORDED: 06/14/2002
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