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RECORDATION FORM COVER SHEET
TRADEMARKS ONLY

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):
Astrum Software Corporation

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

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

2. Name and address of receiving party(ies)
Name: EMC Corporation
Internal Address: Legal Department
Street Address: 176 South Street
City: Hopkinton State: MA Zip: 01748

☐ Individual(s) citizenship _____
☐ Association _____
☐ General Partnership _____
☐ Limited Partnership _____
☒ Corporation-State _____
☐ 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: April 11, 2003

4. Application number(s) or registration number(s):
A. Trademark Application No.(s)
78/160,855

B. Trademark Registration No.(s)

Additional number(s) attached ☐ Yes ☒ No

5. Name and address of party to whom correspondence concerning document should be mailed:
Name: John M. Gunther, Esq.
Internal Address: Legal Department
EMC Corporation
Street Address: 176 South Street
City: Hopkinton State: MA Zip: 01748

6. Total number of applications and registrations involved: 1

7. Total fee (37 CFR 3.41).....$ 40.00
☐ Enclosed
☒ Authorized to be charged to deposit account

8. Deposit account number:
050889

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

DO NOT USE THIS SPACE

9. Statement and signature.
To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

John M. Gunther
Name of Person Signing

John M. Gunther
Signature

3-15-04
Date

Total number of pages including cover sheet, attachments, and document: 34

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

CH $40.00 050889 78160855

AGREEMENT AND PLAN OF MERGER

BY AND AMONG

EMC CORPORATION,

ENERGY MERGER CORPORATION,

ASTRUM SOFTWARE CORPORATION,

CERTAIN HOLDERS OF CAPITAL STOCK OF

ASTRUM SOFTWARE CORPORATION

AND

THE REPRESENTATIVE OF THE HOLDERS OF THE

CAPITAL STOCK OF ASTRUM SOFTWARE CORPORATION

WHO ARE PARTY TO THIS AGREEMENT

Dated as of April 11, 2003

AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER made as of April 11, 2003 (the "Agreement") by and among EMC Corporation, a Massachusetts corporation ("Parent"), Energy Merger Corporation, a Delaware corporation and a wholly-owned subsidiary of Parent ("Merger Sub"), Astrum Software Corporation, a Delaware corporation (the "Company"), certain holders of capital stock and other equity securities of the Company listed on the signature page of this Agreement (each, a "Principal Stockholder"), and the Representative (as defined below). The holders of all of the capital stock of the Company are collectively referred to as the "Company Stockholders" and the Company Stockholders together with the holders of all other equity securities of the Company (including securities exercisable for, or convertible or exchangeable into, equity securities of the Company) are collectively referred to herein as the "Company Securityholders."

WHEREAS, the Boards of Directors of Parent, Merger Sub and the Company have each determined that it is advisable and in the best interests of their respective stockholders for Merger Sub to enter into a business combination with the Company upon the terms and subject to the conditions set forth herein;

WHEREAS, in furtherance of such combination, the Boards of Directors of Parent and Merger Sub have each approved the merger of Merger Sub with and into the Company (the "Merger") in accordance with the applicable provisions of the Delaware General Corporation Law (the "DGCL") upon the terms and subject to the conditions set forth herein;

WHEREAS, the Board of Directors of the Company has approved and determined the advisability of this Agreement and the Merger and has recommended that the Company Stockholders approve this Agreement and the Merger upon the terms and subject to the conditions set forth herein;

WHEREAS, the Company Stockholders own of record and beneficially all of the issued and outstanding capital stock of the Company, consisting of 8,547,912 shares of the Company's common stock, par value $0.0001 per share ("Company Common Stock"), and 10,376,500 shares (assuming the conversion of all outstanding 15% Senior Secured Convertible Demand Promissory Notes issued by the Company (the "Notes") prior to the Effective Time (as defined below)) of the Company's Series A Convertible Preferred Stock, par value $0.0001 per share ("Company Preferred Stock," and together with the Company Common Stock, the "Company Stock"); and

WHEREAS, pursuant to the Merger, each outstanding share of Company Stock shall be converted into the right to receive the Merger Consideration (as defined below), upon the terms and subject to the conditions set forth herein.

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

1. The Merger

1.1. The Merger. At the Effective Time (as defined below), and subject to and upon the terms and conditions of this Agreement and the DGCL, Merger Sub shall be merged with and into the Company, the separate corporate existence of Merger Sub shall cease, and the Company shall continue as the surviving corporation. The Company as the surviving corporation after the Merger is hereinafter sometimes referred to as the "Surviving Corporation."

1.2. Effective Time. On or before the Closing Date, the Board of Directors of the Company shall have adopted a Certificate of Merger in the form attached hereto as Exhibit A as contemplated by the

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DGCL (the "Merger Agreement") and declared its advisability and the Board of Directors shall have received the written consent of a majority of the holders of Company Stock approving the Merger. On the Closing Date, Parent and the Company shall cause the Merger to be consummated by filing the Merger Agreement with the Secretary of State of the State of Delaware, in such form as required by, and executed in accordance with the relevant provisions of, the DGCL (the time of such filing being the "Effective Time").

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

1.4. Certificate of Incorporation, By-Laws.

(a) Certificate of Incorporation. At the Effective Time, the Certificate of Incorporation of Merger Sub, as in effect immediately prior to the Effective Time, shall be the Certificate of Incorporation of the Surviving Corporation until thereafter amended in accordance with the DGCL and such Certificate of Incorporation, except that the name of the Surviving Corporation shall be "Astrum Software Corporation."

(b) By-Laws. The by-laws of Merger Sub, as in effect immediately prior to the Effective Time, shall be the by-laws of the Surviving Corporation until thereafter amended in accordance with the DGCL and such by-laws.

1.5. Directors and Officers. 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 by-laws of the Surviving Corporation, and the officers of Merger Sub immediately prior to the Effective Time shall be the initial officers of the Surviving Corporation, in each case until their respective successors are duly elected or appointed and qualified.

1.6. Closing. Subject to the provisions of this Agreement, the closing of the Merger (the "Closing") shall take place at 10:00 a.m., Eastern Time, at the offices of EMC Corporation, 176 South Street, Hopkinton, Massachusetts on the date hereof immediately upon execution of this Agreement. The date on which the Closing shall occur is referred to herein as the "Closing Date."

1.7. Appointment of Representative. Each Principal Stockholder, by virtue of having executed this Agreement and approved this Agreement and the Merger, will be deemed to have irrevocably constituted and appointed, effective as of the Effective Time, JMI Equity Fund IV, L.P. (together with its permitted successors, the "Representative"), as such Principal Stockholder's true and lawful agent and attorney-in-fact to enter into any agreement in connection with the transactions contemplated by this Agreement including the Escrow Agreement (as defined below) and any transactions contemplated by the Escrow Agreement, to exercise all or any of the powers, authority and discretion conferred on it under any such agreement, to waive any terms and conditions of any such agreement (other than the Merger Consideration), to give and receive notices on such Principal Stockholder's behalf, and to be such Principal Stockholder's exclusive representative with respect to any matter, suit, claim, action or proceeding arising with respect to any transaction contemplated by any such agreement, including, without limitation, the defense, settlement or compromise of any claim, action or proceeding for which the Parent, the Merger Sub or any other person may be entitled to indemnification pursuant to this Agreement and the Representative agrees to act as, and to undertake the duties and responsibilities of, such agent and attorney-in-fact. This power of attorney is coupled with an interest and is irrevocable. The Representative shall not

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be liable for any action taken or not taken by it in connection with its obligations under this Agreement or the Escrow Agreement (i) with the consent of Principal Stockholders who, as of the date of this Agreement, own a majority in number of the outstanding shares of Company Preferred Stock owned by the Principal Stockholders or (ii) in the absence of its own gross negligence or willful misconduct. If the Representative shall be unable or unwilling to serve in such capacity, its successor shall be named by Principal Stockholders holding a majority of the shares of Company Preferred Stock held by the Principal Stockholders immediately prior to the Effective Time who shall serve and exercise the powers of the Representative hereunder.

2. Conversion and Exchange of Securities

2.1. Effect on Capital Stock.

(a) Conversion of Securities.

(i) Subject to the provisions hereof, at the Effective Time, by virtue of the Merger and without any action on the part of Parent, Merger Sub, the Company or the holders of any of the following securities: (A) each share of Company Preferred Stock issued and outstanding immediately prior to the Effective Time (other than any Dissenting Shares (as defined below)), shall be converted into the right to receive a portion of the aggregate Merger Consideration (as defined below) in cash, payable to the holder thereof, without interest, upon the surrender of the certificate representing such share in accordance with the terms hereof in the manner provided herein, and (B) each share of Company Common Stock issued and outstanding immediately prior to the Effective Time (other than any Dissenting Shares) shall cease to be outstanding, be canceled and retired without payment of any consideration therefor, including without limitation, any portion of the aggregate Merger Consideration, and cease to exist. The portion of the Merger Consideration payable to each Principal Stockholder in respect of the shares of Company Preferred Stock owned by such Principal Stockholder shall be as set forth in Schedule 2.1 hereto, which schedule lists the name and mailing address of each Principal Stockholder and identifies the portions of the aggregate Merger Consideration to be paid to such Principal Stockholder at Closing and to be delivered to the Escrow Agent on behalf of such Principal Stockholder in accordance with the provisions hereof, which shall be held as specified in the Escrow Agreement. The term "Merger Consideration" shall mean an aggregate amount equal to $10,062,174.

(ii) From and after the Effective Time, all such converted shares of Company Preferred Stock shall no longer be outstanding and shall be deemed to be cancelled and retired and shall cease to exist. From and after the Effective Time, each holder of a certificate representing any such shares of Company Preferred Stock shall cease to have any rights with respect thereto, except the right to receive the Merger Consideration therefor, without interest, upon the surrender of such certificate in accordance herewith, or the right, if any, to receive payment from the Surviving Corporation of the "fair market value" of such Dissenting Shares as determined in accordance with the applicable provisions of the DGCL. From and after the Effective Time, each holder of a certificate representing any shares of Company Common Stock shall cease to have any rights with respect thereto, except the right, if any, to receive payment from the Surviving Corporation of the "fair market value" of such Dissenting Shares as determined in accordance with the applicable provisions of the DGCL.

(b) Cancellation. Each share of the capital stock of the Company held in the treasury of the Company and each share of the capital stock of the Company owned by Parent, Merger Sub

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or any direct or indirect wholly owned subsidiary of the Company or Parent immediately prior to the Effective Time shall, by virtue of the Merger and without any action on the part of the holder thereof, cease to be outstanding, be canceled and retired without payment of any consideration therefor and cease to exist.

(c) Capital Stock of Merger Sub. Each share of common stock, par value $.01 per share, of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into and become one fully paid and nonassessable share of common stock, par value $.01 per share, of the Surviving Corporation.

(d) Shares of Dissenting Holders. Notwithstanding anything to the contrary contained in this Agreement, any holder of Company Stock with respect to which dissenters' rights, if any, are granted by reason of the Merger under the DGCL and who does not vote in favor of the Merger and who otherwise complies with Section 262 of the DGCL ("Dissenting Shares") shall not be entitled to receive the Merger Consideration, unless such holder fails to perfect, effectively withdraws or loses his, her or its right to dissent from the Merger under the DGCL. Such holder shall be entitled to receive only the payment provided for by Section 262 of the DGCL. If any such holder so fails to perfect, effectively withdraws or loses his or her dissenters' rights under the DGCL, his, her or its Dissenting Shares shall thereupon be deemed to have been converted, as of the Effective Time, into the right to receive the Merger Consideration pursuant hereto. The Company shall give Parent (i) prompt notice of any written demands received by the Company for appraisal or payment of the fair value of any shares, withdrawals of such demands, and any other instruments served on the Company pursuant to the DGCL and (ii) the opportunity to direct all negotiations and proceedings with respect to demands for appraisal under the DGCL. Except with the prior written consent of Parent, the Company shall not voluntarily make any payment with respect to any demands for appraisal or settle or offer to settle any such demands. Any payments relating to the Dissenting Shares shall be made solely by the Surviving Corporation and no funds or other property have been or will be provided by Merger Sub or any of Parent's other direct or indirect subsidiaries for such payment.

(e) Company Options.

(i) The Company shall use its commercially reasonable efforts to cause each outstanding option ("Company Option") to acquire shares of Company Stock, whether or not then vested or exercisable, to be cancelled and terminated as of the Closing.

(ii) The option to purchase shares of Company Preferred Stock (the "Preferred Option") outstanding immediately prior to the Effective Time held by F. Daniel Haley, whether or not then exercisable, shall be cancelled effective as of the Effective Time, and Mr. Haley shall be entitled to receive from Parent the portion of the Merger Consideration set forth in Schedule 2.1 hereto in cash in full settlement of the Company's obligations under the Preferred Option, payable to the holder thereof, without interest, upon the surrender of the instrument representing the Preferred Option in accordance with the terms hereof in the manner provided herein. The Merger Consideration payable to Mr. Haley in respect of the Preferred Option shall be as set forth in Schedule 2.1 hereto, which schedule lists Mr. Haley's mailing address and identifies the portion of the aggregate Merger Consideration to be paid to Mr. Haley at Closing and to be delivered to the Escrow Agent on behalf of Mr. Haley in accordance with the provisions hereof, which shall be held as specified in the Escrow Agreement. The amount payable pursuant to this Section 2.1(e)(i) shall be subject to all applicable withholding of taxes. The Company shall take all actions as may be necessary to effectuate the foregoing.

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(f) Escrow. At the Closing, Seven Hundred Fifty Thousand Dollars ($750,000) of the aggregate Merger Consideration (the "Escrow Funds") shall be delivered to Wilmington Trust Company (the "Escrow Agent"), as Escrow Agent under an Escrow Agreement dated as of the date hereof among Parent, the Representative, on behalf of the Principal Stockholders, and the Escrow Agent in the form attached hereto as Exhibit B (the "Escrow Agreement"), which Escrow Agreement provides Parent with recourse against the Escrow Funds with respect to the Principal Stockholders' indemnification obligations under Section 9, subject to the terms and conditions set forth therein. The Escrow Funds (or any portion thereof) shall be distributed to the Principal Stockholders, and Parent at the times, and upon the terms and conditions set forth in the Escrow Agreement.

(g) Seller Expenses, Employee Payments and Employee Bonuses.

(i) At the Closing, Parent, on behalf of the Company and the Principal Stockholders, shall pay the Seller Expenses pursuant to and in accordance with Schedule 2.1(g)(i) hereto. The term "Seller Expenses" shall mean the legal, accounting, investment banking, financial advisory, brokerage and other fees and expenses incurred by the Company or the Company Securityholders (or for which the Company may pay or reimburse others on or prior to Closing or may otherwise be obligated to pay or reimburse others or may be or may become liable) in connection with, or relating in any way to, this Agreement, the Merger or any of the transactions contemplated hereby, all of which fees and expenses are listed on Schedule 2.1(g)(i) hereto.

(ii) At the Closing, Parent, on behalf of the Company, shall pay the Employee Payments pursuant to and in accordance with Schedule 2.1(g)(ii) hereto. The term "Employee Payments" shall mean the severance, retention, bonus or other similar payments to certain employees of the Company listed on Schedule 2.1(g)(ii) hereto.

(iii) As soon as reasonably practicable after the Closing, Parent, on behalf of the Company, shall pay the Employee Bonuses pursuant to and in accordance with Schedule 2.1(g)(iii) hereto. The term "Employee Bonuses" shall mean the bonus payments accrued by the Company, which Parent is requiring be paid in recognition of past services to the Company to the persons who are employed by the Company immediately prior to the Closing and who, in the discretion of Parent, execute and deliver to Parent an appropriate release and waiver (in form and substance satisfactory to Parent), all of which payments are listed on Schedule 2.1(g)(iii) hereto.

2.2. Exchange of Certificates.

(a) Exchange Procedures. At or as soon as reasonably practicable after the Effective Time, each Principal Stockholder shall surrender to Parent one or more certificates ("Certificates") representing all of the shares of Company Stock owned by such Principal Stockholder, together with a letter of transmittal (which shall be in such form and have such other provisions not inconsistent with this Agreement as Parent may specify). Upon surrender of a Certificate representing the Company Stock for cancellation to Parent (or to such agent or agents as may be appointed by Parent), together with such letter of transmittal, duly executed, the holder of such Certificate shall be entitled to receive in exchange therefor the Merger Consideration (less any amounts delivered to the Escrow Agent in accordance herewith) for each share of Company Stock formerly represented by such Certificate, and the Certificate so surrendered shall forthwith be cancelled. Until surrendered as contemplated by this Section 2.2, each Certificate shall be deemed at any time after the Effective Time to represent only the right to receive the Merger Consideration, if any, in cash as contemplated by this Section 2.2.

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(b) Transfer Books; No Further Ownership Rights in the Shares. At the Effective Time, the stock transfer books of the Company shall be closed, and thereafter there shall be no further registration of transfers of the shares of Company Stock on the records of the Company. From and after the Effective Time, the holders of certificates evidencing ownership of the shares of Company Stock outstanding immediately prior to the Effective Time shall cease to have any rights with respect to such shares, except as otherwise provided for herein or by applicable law.

(c) No Liability. Neither the Surviving Corporation nor Parent shall be liable to any holder of a Certificate for Merger Consideration delivered to a public official pursuant to any applicable abandoned property, escheat or similar law.

(d) Withholding Rights. Parent shall be entitled to deduct and withhold from the Merger Consideration otherwise payable pursuant to this Agreement to any Company Stockholder such amounts as Parent may determine in its reasonable discretion it may be required to deduct and withhold with respect to the making of such payment under the Code, or any provision of state, local or foreign tax law. To the extent that amounts are so withheld by Parent, Parent shall deliver such withheld amounts to the appropriate taxing authority and such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Company Securityholder in respect of which such deduction and withholding was made by Parent.

(e) Lost, Stolen or Destroyed Certificates. In the event any Certificates shall have been lost, stolen or destroyed, Parent shall issue in exchange therefor, upon the making of an affidavit of that fact by the holder thereof in form satisfactory to the Parent, the Merger Consideration as provided in this Section 2; provided, however, that Parent may, in its sole discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed Certificates to deliver an agreement of indemnification in form satisfactory to Parent, as indemnity against any claim that may be made against Parent with respect to the Certificates alleged to have been lost, stolen or destroyed.

2.3. Acknowledgement of Schedule 2.1. The Company and Parent agree and acknowledge and, with respect to information regarding itself only, each Principal Stockholder agrees and acknowledges, that the information set forth on Schedule 2.1 hereto, including the portion of the Merger Consideration to be delivered to each Company Stockholder and the Escrow Agent, for the account of such Company Stockholder, respectively, is true, complete and accurate; and that the calculations done to compute such information are accurate and in accordance with the terms of this Agreement.

2.4. Transfer Taxes. Each Company Securityholder shall bear any applicable sales, filing or transfer taxes relating to the transfer of the Company Securityholder's Company Stock in connection with the Merger.

2.5. Taking of Necessary Action; Further Action. Each of Parent, Merger Sub and the Company will take all such reasonable and lawful action as may be necessary or appropriate in order to effectuate the Merger in accordance with this Agreement as promptly as possible. If, at any time after the Effective Time, any such further action is necessary or desirable to carry out the purposes of this Agreement and to vest the Surviving Corporation with full right, title and possession to all assets, property, rights, privileges, powers and franchises of the Company and Merger Sub, the officers and directors of the Company and Merger Sub immediately prior to the Effective Time are fully authorized in the name of their respective corporations or otherwise to take, and will take, all such lawful and necessary action.

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3. Representations and Warranties of the Company. The Company represents and warrants to Parent and Merger Sub as follows (except as provided in the Disclosure Schedule with specific reference to the Sections hereof to which such exception relates):

3.1. Organization and Standing. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has full corporate power and authority to conduct its business as currently conducted and as proposed to be conducted by it. The Company is duly qualified to do business as a foreign corporation and is in good standing in every jurisdiction in which the failure to so qualify would have a Material Adverse Effect. The term "Material Adverse Effect" as used herein shall mean any circumstance, change in or effect on the Company that, individually or in the aggregate with all other circumstances, changes in or effects on the Company: (a) is reasonably expected to be materially adverse to the business, capitalization, operations, assets or liabilities (including, without limitation, contingent liabilities), results of operations or the condition (financial or otherwise) of the Company, or (b) may materially impair the ability of the Company to operate or conduct the business of the Company after the Effective Time in the manner in which it is currently operated or conducted by the Company. The Company has furnished to Parent true and complete copies of its Certificate of Incorporation, as amended, and By-laws, each as amended to date and currently in effect. The Company has at all times complied with all provisions of its Certificate of Incorporation and By-laws and is not in default under, or in violation of, any such provision. Since the date of its incorporation the Company has not conducted business under any name other than Astrum Software Corporation.

3.2. Capitalization and Ownership. The authorized capital stock of the Company (immediately prior to the Closing) consists of (a) 24,200,000 shares of Company Common Stock, of which 8,547,912 shares are issued and outstanding, and (b) 11,586,488 shares of Company Preferred Stock, all of which have been designated as Series A Preferred Stock, of which 10,376,500 shares are issued and outstanding (assuming the conversion prior to the Effective Time of all outstanding Notes into shares of Company Preferred Stock). All of the issued and outstanding shares of Company Common Stock and Company Preferred Stock have been duly authorized and validly issued and are fully paid and nonassessable. All of the 15% Senior Secured Convertible Demand Promissory Notes issued by the Company have been, or will be immediately prior to the Effective Time, converted pursuant to and in accordance with their terms into shares of Series A Preferred Stock in full satisfaction of such notes. No subscription, warrant, option, convertible security or other right (contingent or otherwise) to purchase or acquire any shares of capital stock of the Company is authorized or outstanding. The Company has no obligation (whether written, oral, contingent or otherwise) to issue any subscription, warrant, option, convertible security or other such right or to issue or distribute to holders of any shares of its capital stock any evidences of indebtedness or assets of the Company. The Company has no obligation (contingent or otherwise) to purchase, redeem or otherwise acquire any shares of its capital stock or any interest therein or to pay any dividend or make any other distribution in respect thereof. There are no outstanding or authorized stock appreciation, phantom stock or similar rights with respect to the Company. All of the issued and outstanding shares of capital stock of the Company have been offered, issued and sold by the Company in compliance with applicable federal and state securities laws. The schedule of Company Stock set forth on Schedule 2.1 represents all of the authorized, issued and outstanding shares of capital stock of the Company. The Company has no Indebtedness (as defined below) other than the Indebtedness set forth in Section 3.2(b) of the Disclosure Schedule. For purposes of this Agreement, "Indebtedness" shall include all obligations (i) for borrowed money, (ii) evidenced by notes, bonds, debentures or similar instruments, (iii) for the deferred purchase price of goods or services (other than trade payables or accruals incurred in the ordinary course of business), (iv) under capital leases and (v) in the nature of guarantees of the obligations described in clauses (i) through (iv) above of any other person or entity.

3.3. Subsidiaries. The Company has no subsidiaries and does not own or control, directly or indirectly, any equity or similar interest in, or any interest convertible into or exchangeable or exercisable for any equity or similar interest in, or have any commitment or obligation to invest in, purchase any

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securities or obligations of, fund, guarantee, contribute or maintain the capital of or otherwise financially support any corporation, partnership, joint venture or other business association or entity.

3.4. Securityholder Lists and Agreements. The list of the holders of Company Stock in Schedule 2.1 is a true and complete list of all of the securityholders of record of the Company, showing shares of Company Common Stock, Company Preferred Stock or other securities of the Company held by each of such securityholders as of the date of this Agreement. Except as provided in this Agreement, there are no agreements, written or oral, between the Company and any holder of its securities or others, or, to the Company's knowledge, among any holders of its securities, relating to the acquisition (including without limitation rights of first refusal, anti-dilution or pre-emptive rights), disposition, registration under the Securities Act of 1933, as amended (the "Securities Act"), or voting of the capital stock of the Company.

3.5. Authority for Agreement.

(a) The Company has all necessary corporate power and authority to execute and deliver this Agreement and each instrument required hereby to be executed and delivered at Closing and to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by the Company of this Agreement and each instrument required hereby to be executed and delivered at Closing and the consummation by the Company of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate action, and no other corporate proceedings on the part of the Company are necessary to authorize this Agreement or to consummate the transactions so contemplated (other than the Requisite Approvals, as hereinafter defined). The Board of Directors of the Company has duly determined that it is advisable and in the best interests of the Company's stockholders for the Company to enter into a business combination with Parent upon the terms and subject to the conditions of this Agreement, and has unanimously recommended that the Company's stockholders approve and adopt this Agreement and the Merger and none of such actions by the Board of Directors of the Company has been amended, rescinded or modified. This Agreement has been duly and validly executed and delivered by the Company and, assuming the due authorization, execution and delivery by Parent and Merger Sub, as applicable, constitutes a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms, subject to bankruptcy, insolvency, reorganization or similar laws of general application affecting the rights and remedies of creditors, and to general equity principles. The affirmative vote of (i) the holders of a majority of the outstanding shares of Company Stock, voting as a class on an as-converted basis, and (ii) the holders of a majority of the outstanding shares of the Company Preferred Stock, voting as a separate class (collectively, the "Requisite Approvals") are the only votes necessary to approve this Agreement and the Merger.

(b) Except as set forth in Section 3.5(b) of the Disclosure Schedule, the execution and delivery of this Agreement by the Company, the compliance with the provisions hereof by the Company, and the consummation of the transactions contemplated hereby will not (a) conflict with or violate the Certificate of Incorporation or By-Laws of the Company, (b) conflict with, result in a breach of, constitute (with or without due notice or lapse of time or both) a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify or cancel, or require any notice, consent or waiver under any contract, lease, sublease, sublicense, franchise, permit, indenture, agreement or mortgage, Security Interest (as defined below) or other interest to which the Company is a party or by which the Company is bound or to which its assets are subject, (c) result in the imposition of any Security Interest upon any assets of the Company or (d) violate any order, writ, injunction, decree, rule or regulation applicable to the Company or any of its properties or assets, except in each case, where such conflict, breach, default or other violation would not have a Material Adverse Effect. For purposes of this Agreement, "Security Interest"

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means any mortgage, security interest, encumbrance, claim, charge, or other lien (whether arising by contract or by operation of law, whether voluntary or involuntary).

3.6. Governmental Consents. No consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any governmental authority is required on the part of the Company in connection with the execution and delivery of this Agreement by the Company or the consummation of the transactions contemplated hereby to be consummated at the Closing, except filings as shall have been made prior to and shall be effective on and as of the Closing and filing and recordation of appropriate merger or other documents as required by the DGCL, all of which filings are specified in Section 3.6 of the Disclosure Schedule.

3.7. Financial Statements. Attached hereto as Section 3.7 of the Disclosure Schedule are the following financial statements (collectively, the "Financial Statements"): (i) audited balance sheets and statements of operations, changes in stockholders' equity and cash flow as of and for the fiscal year ended December 31, 2001 for the Company (collectively, the "Audited Financial Statements"), (ii) unaudited balance sheet and statements of operations and cash flow as of and for the fiscal year ended December 31, 2002, and (iii) unaudited balance sheet (the "Balance Sheet") and statements of operations and cash flow as of and for the interim period ended March 31, 2003 for the Company (the "Interim Financial Statements"). The Financial Statements have been prepared in accordance with GAAP in all material respects, consistently applied throughout the periods presented (subject, in the case of (ii) and (iii) above, to the absence of footnotes and to year-end audit adjustments), are in accordance with the books and records of the Company, and present fairly the financial condition and results of operations of the Company, as at the dates and for the periods indicated.

3.8. Absence of Changes. Since the date of the Balance Sheet, there has been no change in the business, condition (financial or otherwise), or results of operations of the Company, other than changes occurring in the ordinary course of business (which ordinary course changes have not, individually or in the aggregate, had a Material Adverse Effect) and the Company has not:

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

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

(c) incurred any indebtedness for purchase money or borrowed money in excess of $5,000 (singly or in the aggregate);

(d) mortgaged, pledged or subjected to any lien, security interest or other charge or encumbrance any of its properties or assets, tangible or intangible;

(e) acquired or disposed of any assets or properties having a value in excess of $5,000 (singly or in the aggregate);

(f) forgiven or canceled any debts or claims, or waived any rights, having a value in excess of $5,000;

(g) made any payment of any nature to any Company Securityholder other than (i) salary payable in the ordinary course of business consistent with past practices and (ii) payments referred to in Schedule 2.1(g);

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(h) adopted or amended, in any material respect, any bonus, profit-sharing, stock option, pension, retirement, deferred compensation, severance, termination or other material plan, agreement, trust, fund or arrangement for the benefit of employees, other than those related to payments referred to Schedule 2.1(g);

(i) experienced any labor trouble or adverse relations with its employees; or

(j) conducted its business, other than in the ordinary course.

3.9. Absence of Undisclosed Liabilities. Except as disclosed in Section 3.9 of the Disclosure Schedule and except for liabilities and obligations with respect to payments referred to in Schedule 2.1(g), the Company does not have any liability (whether known or unknown and whether absolute or contingent) having, in the aggregate, a value equal to or in excess of $10,000, except for (a) liabilities shown on the Balance Sheet, and (b) liabilities which have arisen since the date of the Balance Sheet in the ordinary course of business and which are similar in nature and amount to the liabilities which arose during the comparable period of time in the immediately preceding fiscal period, and (c) performance obligations under agreements, contracts and instruments that are either disclosed in the Disclosure Schedules as required by this Agreement or are not required to be disclosed in the Disclosure Schedules by this Agreement but have been entered into in the ordinary course of the Company's business consistent with past practice.

3.10. Taxes. The amount shown on the Balance Sheet as provision for taxes is sufficient in all material respects for payment of all accrued and unpaid due and payable state, county, local and foreign taxes for the period then ended and all prior periods. The Company has filed or has obtained presently effective extensions with respect to all federal, state, county, local and foreign tax returns which are required to be filed by it, such returns are true and correct and all taxes shown thereon to be due and payable have been timely paid with exceptions not material to the Company, other than those not delinquent or those for which adequate reserves have been established on the Balance Sheet. Federal tax returns of the Company have not been audited by the Internal Revenue Service and no controversy with respect to taxes of any type is pending or, to the best of the Company's knowledge, threatened. The Company has withheld or collected from each payment it has made to its employees the amount of all taxes required to be withheld or collected therefrom and has paid all such amounts to the appropriate taxing authorities when due. Except as set forth in Section 3.10 of the Disclosure Schedule, the Company has never filed (a) an election pursuant to Section 1362 of the Internal Revenue Code of 1986, as amended (the "Code"), that the Company be taxed as an S-corporation or (b) a consent pursuant to Section 341(f) of the Code relating to collapsible corporations. The Company has not received any notice of deficiency or assessment of additional taxes and is not a party to any action or proceeding by any federal, state, local or foreign governmental authority for assessment or collection of taxes, assessments or other governmental charges.

3.11. [Reserved]

3.12. Property. The Company has good title to, or a valid leasehold interest in, all of its material real and tangible properties and assets, including all properties and assets reflected in the Balance Sheet, and none of such properties or assets is subject to any mortgage, pledge, lien, security interest, lease, charge or encumbrance other than those the material terms of which are described in Section 3.12 of the Disclosure Schedule.

3.13. Contracts. Except for contracts, commitments, leases, licenses, plans and agreements listed in Section 3.13 of the Disclosure Schedule and the Plans identified in Section 3.14 of the Disclosure Schedule, the Company is not a party to, subject to or otherwise bound by, whether orally or in writing:

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(a) any agreement which requires future expenditures by the Company in excess of $10,000 or which might result in payments to the Company in excess of $10,000 or is otherwise material to the Company's business;

(b) any contract or agreement for the purchase or sale of any commodity, product, material, supplies, equipment or other personal property, other than purchase or sale orders entered into in the ordinary course of business;

(c) any employment, consulting or independent contractor agreement, employee benefit, bonus, pension, profit-sharing, stock option, stock purchase or similar plan and arrangement, whether written or oral;

(d) any distributor, manufacturer's representative, sales representative or similar agreement;

(e) (i) any agreement pursuant to which the Company licenses any intellectual property of any other Person, other than any license with respect to commonly available third party software, and (ii) any agreement, other than end-user agreements entered into in the ordinary course of the conduct the Company's business, pursuant to which the Company has granted the right to sublicense or create derivative works with respect to any intellectual property of the Company;

(f) any agreement with any person who is currently or has been at any time within the six months prior to the date hereof, an officer or director of the Company, or any "affiliate" or "associate" of such persons (as such terms are defined in the rules and regulations promulgated under the Securities Act), including without limitation any agreement or other arrangement providing for the furnishing of services by, rental of real or personal property from, or otherwise requiring payments to, any such person or entity;

(g) any agreement under which the Company is restricted from carrying on any business or other services anywhere in the world;

(h) any loan agreement, indenture, note, bond, debenture or any other document or agreement evidencing indebtedness to any person, firm, entity, partnership, association or any business organization or division thereof (each, a "Person"), any capitalized lease obligation, or any commitment to provide any of the foregoing, or any agreement of guaranty, indemnification or other similar commitment with respect to the obligations or liabilities of any other Person;

(i) any agreement for the disposition of Company assets;

(j) any agreement for the acquisition of the business or shares of another Person;

(k) any contract or agreement concerning a partnership or joint venture with one or more Persons;

(l) any hedging, futures, options or other derivative contracts; or

(m) any other agreement or contract (or group of related agreements or contracts) to the extent not otherwise disclosed in the Disclosure Schedule, the performance of which involves consideration paid by the Company in excess of $10,000 in any one year period.

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The Company is not in material default under any contract, commitment, lease, license or agreement having an aggregate value exceeding $10,000 (a "default" being defined for purposes hereof as an actual default or event of default or the existence of any fact or circumstance which would, upon receipt of notice or passage of time, constitute a default).

3.13A. Software License Agreement. The Primary Distribution Rights (as such term is defined in the Software License Agreement dated as of March 23, 2002 by and between the Company and Overland Data Incorporated) are no longer in effect as of the date of this Agreement.

3.14. Benefit Plans.

(a) Plans. For purposes of this Section 3.14, the term "Plan" means any employee benefit plan (as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA")), and any plan subject to Sections 125, 127, 129, 137 or 423 of the Code, currently maintained by the Company or to which the Company makes or is required to make contributions. Section 3.14 of the Disclosure Schedule includes a true and complete list of all Plans. The Company has delivered to Parent prior to the Closing true and complete copies of all Form 5500 Series annual reports for each Plan, together with all schedules, attachments, and related opinions and copies of any correspondence from or to the IRS, the Department of Labor, or other U.S. government department or agency relating to an audit or penalty assessment with respect to any Plan or relating to requested relief from any liability or penalty relating to any Plan.

(b) Compliance with Terms of Plans. There has been no violation of any term of any Plan which would have a Material Adverse Effect.

(c) Compliance with Applicable Law. To the extent applicable to the Company or its employees, each Plan and each funding vehicle related to such Plan is currently in compliance in all material respects with, and has been administered and operated since January 1, 1998 in compliance with, all applicable statutes, orders, rules and regulations. Each Plan which is intended to be a "qualified plan" as described in Section 401(a) of the Code has been determined by the IRS to so qualify, and there are no facts which might adversely affect such qualification.

(d) Multi-employer Plan. The Company does not maintain or contribute to any single employer plan (as such term is defined in Section 4001(b) of ERISA) subject to Title IV of ERISA or any "multiemployer plan" (as such term is defined in Section 3(37) of ERISA) nor has it incurred any material liability, including without limitation withdrawal liability, with respect to any such plan that remains unsatisfied.

(e) VEBAs. No Plan is funded by, associated with or related to a "voluntary employees' beneficiary association" within the meaning of Section 501(c)(9) of the Code.

(f) No Defined Benefit Plans. The Company does not contribute to and has never contributed to a Plan subject to Title IV of ERISA.

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

(h) Prohibited Transactions. With respect to all Plans and related trusts, to the extent applicable to the Company or its employees, there are no "prohibited transactions," as that term is defined in Section 406 of ERISA or Section 4975 of the Code, that has occurred which is likely to subject any Plan, related trust or party dealing with any such Plan or related trust to any tax or

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penalty on prohibited transactions imposed by Section 501(i) of ERISA or Section 4975 of the Code.

(i) No Claims against the Plans. To the extent applicable to the Company or its employees, there are no actions, suits, arbitrations or claims (other than routine claims for benefits by employees of the Company, beneficiaries or dependents of such employees arising in the normal course of operation of a Plan) pending, or to the knowledge of the Company and the Principal Stockholders, threatened, with respect to any Plan or any fiduciary or sponsor of a Plan with respect to their duties under such Plan or the assets of any trust under any such Plan.

(j) Plan Proceedings. No material litigation or administrative or other proceeding (other than routine claims for benefits) involving the Plans has occurred or, to the knowledge of the Company and the Principal Stockholders, is threatened, which has had or is expected to have a Material Adverse Effect.

(k) Health Care Continuation. The Company has complied with the health care continuation requirements of Section 601, et. seq. of ERISA with respect to employees and their spouses, former spouses and dependents.

(l) Post-Retirement Benefits. The Company has no obligations under any Plan to provide post-retirement medical benefits to any employee or any former employee of the Company, other than statutory liability for providing group health plan continuation coverage under Part 6 of Title I of ERISA and Section 4980B of the Code or applicable state law.

3.15. Intellectual Property.

(a) Section 3.15 (a) of the Disclosure Schedule sets forth, for the Intellectual Property (as defined below) owned by the Company, a complete and correct list of all U.S. and foreign trademark registrations, internet domain registrations, trademark applications, and material unregistered trademarks; copyright and mask work registrations, copyright and mask work applications, and material unregistered copyrights. The Company does not own or exclusively license any U.S. or foreign patents or patent applications. Section 3.15 (a) of the Disclosure Schedule lists all Software (as defined below) (other than commercially available software programs having an acquisition price of less than $1,000) used or distributed by the Company which are solely owned, jointly owned, licensed, leased, or have been otherwise obtained by the Company, and identifies which Software is solely owned, jointly owned, licensed, leased, or has been otherwise obtained by the Company, as the case may be.

(b) Except as set forth in Section 3.15 (b) of the Disclosure Schedule:

(i) the Company owns, or has a valid right to use, free and clear of all Security Interests (excluding any end-user agreements issued in the ordinary course of its business), all of the Intellectual Property. Each application and registration with respect to which the Company is listed in the records of the appropriate United States, state, or foreign registry as the sole current owner of record is set forth on Section 3.15 (a) of the Disclosure Schedule. The Company is the sole owner of all copyrights in copyrightable material developed or distributed by the Company;

(ii) the Intellectual Property owned by the Company and, to the Company's knowledge, any Intellectual Property used by the Company, is subsisting, in full force and effect, and has not been cancelled, expired, or abandoned, and is valid and enforceable;

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(iii) there is no pending or, to the Company's knowledge, threatened (and any at time within the three years prior to the date hereof there has not been pending any) claim, suit, arbitration or other adversarial proceeding before any court, agency, arbitral tribunal or registration authority in any jurisdiction (A) involving the Intellectual Property owned by or exclusively licensed to the Company or (B) alleging that the activities or the conduct of the Company's business infringe or will infringe upon, violate or constitute the unauthorized use of the intellectual property rights of any third party or challenging the ownership, use, validity, enforceability or registerability of any Intellectual Property by the Company. The Company is not party to any settlements, forbearances to sue, consents, decrees, stipulations, judgments, or orders or similar obligations which (x) restrict the Company's rights to use any Intellectual Property, (y) restrict the Company's business in order to accommodate a third party's intellectual property rights or (z) permit third parties to use any Intellectual Property owned or controlled by the Company;

(iv) the conduct of the Company's business as currently conducted does not infringe upon any intellectual property rights owned or controlled by any third party. The Company has taken commercially reasonable measures to protect the proprietary nature of the Intellectual Property owned by or licensed to the Company. To the Company's knowledge, no third party is misappropriating, infringing, diluting or violating any Intellectual Property owned or used by the Company and no claims, suits, arbitrations or other adversarial proceedings have been brought against any third party by the Company which remain unresolved;

(v) without limiting the generality of subsection (iv) above, since March 6, 2001, the Company has had in place and has taken commercially reasonable steps to enforce a policy of requiring each relevant employee, consultant and contractor to execute a proprietary information, confidentiality and assignment agreement substantially in the form attached to Section 3.15(b) of the Disclosure Schedule;

(vi) except under confidentiality obligations, there has been no disclosure by the Company of material confidential information or trade secrets to any Person or entity, including without limitation, to any Company Stockholder or potential investors or acquirors;

(vii) none of the Company's Software is, in whole or in part, subject to the provisions of any open source or quasi-open source license agreement; and

(viii) the Company does not owe any third party any royalties or other fees for the use of Intellectual Property.

(c) Except as set forth in Section 3.15(c) of the Disclosure Schedule, the consummation of the transactions contemplated hereby will not (i) result in any loss or impairment of the Company's ownership of or right to use any of the Intellectual Property, (ii) require the consent of any governmental entity or third party with respect to any of the Intellectual Property, nor (iii) convey or create an obligation to convey additional access to, or rights or licenses in the Software or Intellectual Property to any third party, including, without limitation, the right to access Software source code, the right to access escrowed Software, or an extension in the term of a license to any Software or Intellectual Property.

(d) For purposes of this Agreement, the following definitions shall apply:

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(i) "Intellectual Property" shall mean all registered or unregistered trademarks, service marks, trade names, internet domain names, designs, logos, slogans, and general intangibles of like nature, together with all goodwill, registrations and applications related to the foregoing (collectively, "Trademarks"); patents and industrial design registrations or applications (including any continuations, divisionals, continuations-in-part, renewals, reissues, re-examinations and applications for any of the foregoing); copyrights (including any registrations and applications for any of the foregoing); "mask works" (as defined under 17 USC § 901) and any registrations and applications for "mask works"; trade secrets (including any trade secrets embodied in technology, confidential information, know-how, proprietary processes, formulae, algorithms, models, methodologies and customer lists) (collectively, "Trade Secrets"); rights of publicity and privacy relating to the use of the names, likenesses, voices, signatures and biographical information of real persons; in each case used in or necessary for the conduct of the business of the Company, as currently conducted.

(ii) "Software" means (1) as to software products developed by the Company, any and all applicable (A) computer programs, including any and all software implementation of algorithms, models and methodologies, whether in source code or object code form, (B) databases conversions, interpreters and compilations, including any and all data and collections of data, whether machine readable or otherwise, (C) testing validation, verification and quality assurance materials, (D) descriptions, schematics, flow-charts and other work product used to design, plan organize and develop any of the foregoing, (E) software development processes, practices, methods and policies recorded in permanent form, relating to any of the foregoing, (F) performance metrics, signings, bug and feature lists, build, release and change control manifests recorded in permanent form, relating to any of the foregoing, and (G) all documentation, including user manuals, web materials, architectural and design specifications, brochures and training materials, relating to any of the foregoing, and (2) as to software products developed by third parties, (A) computer programs in object code form (B) publicly available documentation which has been provided to the Company.

3.16. Accounts Receivable. All of the accounts receivable of the Company, whether reflected in the Balance Sheet or arising since the date of the Balance Sheet, subject to the allowance for doubtful accounts set forth therein and, to the knowledge of the Company, are fully collectible in accordance with their terms in the ordinary course of business; provided, that the foregoing shall not be construed as a guarantee of such collectability.

3.17. Customers. Section 3.17 of the Disclosure Schedule sets forth the twenty (20) largest customers of the Company by dollar value from January 1, 2002 through December 31, 2002 (the "Large Customers"). The relationship of the Company with its customers are good commercial working relationships and, as of the date hereof, no Large Customer has curtailed, canceled or otherwise terminated (other than any termination due to project completion) its relationship with the Company or challenged the quality standards or cost estimates provided by the Company.

3.18. Government Funding. The Company has not applied for or received any financial assistance from any supranational, national or local authority or government agency.

3.19. Insurance. Section 3.19 of the Disclosure Schedule contains a complete and correct list as of the date hereof of all insurance policies maintained by the Company. Such policies are in full force and effect, all premiums due thereon have been paid and the Company has complied in all material respects with the provisions of such policies. The Company has not received any notices from any issuer of any of their insurance policies canceling or amending any policies listed in Section 3.19 of the Disclosure

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Schedule, increasing any deductibles or retained amounts thereunder, or increasing premiums payable thereunder.

3.20. Personnel

(a) The Company has previously delivered a complete and correct list of all employees, consultants or independent contractors of the Company as of March 31, 2003, including, as of such date, their then current base salary or other compensation rate as well as any bonus paid for the fiscal year ended December 31, 2002 or any accrued and unpaid bonus scheduled for or paid or agreed to be paid for any future period.

(b) The Company has no collective bargaining agreement with employees. The Company has delivered to Parent complete and correct copies of all employment, consulting and other independent contractor agreements with employees, consultants and independent contractors of the Company disclosed on Section 3.13 of Disclosure Schedule. There is not pending or, to the knowledge of the Company, threatened any strike, labor dispute, slowdown, walkout or work stoppage involving employees of the Company and no union organizing activities are taking place or have taken place with respect to such employees.

(c) The Company is not aware of any of the Company's employees or independent contractors who might terminate his or her relationship with the Company as a result of the transactions contemplated hereby.

3.21. Litigation. Except as disclosed in Section 3.21 of the Disclosure Schedule, there is no (i) action, suit, claim, proceeding or, to the Company's knowledge, any investigation, pending or, to the Company's knowledge, threatened, against the Company, at law or in equity, or before or by any Federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, or (ii) to the Company's knowledge, governmental inquiry pending or threatened against the Company (including without limitation any inquiry as to the qualification of the Company to hold or receive any license or permit). Without limiting the foregoing, there is no and there is no basis for any action, suit, claim or proceeding by any Company Securityholder arising, directly or indirectly in connection with, as a result of or relating to the negotiation or consummation of the transactions contemplated hereby. As of the date of this Agreement, the Company is not in default with respect to any order, writ, injunction or decree known to or served upon the Company of any court or of any Federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign. There is no action or suit by the Company pending, threatened or contemplated against others.

3.22. Environmental Matters. The use and operation by the Company of all facilities and properties used in the business of the Company are and at all times have been, in compliance in all material respects with all applicable federal, state, foreign and local laws, statutes, rules, regulations and ordinances relating to environmental, human health and safety from pollution or other environmental degradation ("Environmental Law"), and no action, suit or proceeding under any Environmental Law has been filed, commenced, or, to the knowledge of the Company, threatened with or against the Company alleging any failure so to comply. The Company has received and currently has in effect all permits, approvals, licenses or other authorizations required under any Environmental Law ("Environmental Permits") required to allow it to conduct its operations and business, except where the failure to have such Environmental Permits is not reasonably expected to have a Material Adverse Effect.

3.23. Compliance with Instruments; Laws; Governmental Authorizations. The Company is not in violation of any term or provision of its Certificate of Incorporation or By-laws, each as amended to date and currently in effect or in material violation of any term or provision of any material contract, agreement

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or other instrument or of any material governmental license or permit, or in material violation of or default under any statute, law, ordinance, rule, regulation, judgment, order, decree, permit, concession, grant, franchise, license or other governmental authorization or approval that is material to and applicable to the Company or to any of its properties, products or services. All material permits, concessions, grants, franchises, licenses and other governmental authorizations and approvals necessary for the conduct of the business of the Company as currently conducted are in full force and effect and there are no proceedings pending or, to the knowledge of the Company, threatened that may result in the revocation, cancellation or suspension, or any adverse modification, of any thereof.

3.24. Banking Relationships. Section 3.24 of the Disclosure Schedule sets forth the name and location of each bank in which the Company has an account or a safe deposit box, the account numbers thereof and the names of all persons authorized to draw on or who have access to such account or safe deposit box.

3.25. Minute Books. The minute books of the Company contain complete and accurate records of all meetings and other corporate actions of its stockholders and its Board of Directors and committees thereof. The stock records of the Company are correct and complete and reflect all issuances, transfers, repurchases and cancellations of shares of capital stock of the Company.

3.26. Brokers and Finders; Existing Discussions. All negotiations relating to this Agreement and the Escrow Agreement and the transactions contemplated hereby and thereby have been carried on without the intervention of any person acting on behalf of the Company or the Company Stockholders in such manner as to give rise to any valid claim against the Company or Parent or Merger Sub for any brokerage or finder's commission, fee or similar compensation.

3.27. Change in Control Payments. Except as set forth in Section 3.27 of the Disclosure Schedule, the Company has no plans, programs or agreements to which it is a party or to which it is subject, pursuant to which payments (or acceleration of benefits) may be required upon, or may become payable directly or indirectly as a result of, a change of control of the Company.

3.28. Disclosures. Neither this Agreement, the Disclosure Schedule nor any Exhibit or Schedule thereto, contains an untrue statement of a material fact or omits a material fact necessary to make the statements contained herein or therein, in light of the circumstances under which they were made and taken as a whole, not misleading.

3A. Representations and Warranties by Principal Stockholders. Each Principal Stockholder severally represents and warrants to Parent and Merger Sub as follows:

3A.1 Authority for Agreement.

(a) Such Principal Stockholder has all necessary power and authority to execute and deliver this Agreement and to carry out his obligations hereunder. This Agreement has been duly executed and delivered by such Principal Stockholder and, assuming the due authorization, execution and delivery of this Agreement by the Company, the Parent and the Merger Sub, constitutes the valid and legally binding obligation of such Principal Stockholder, enforceable against such Principal Stockholder in accordance with its terms, subject to bankruptcy, insolvency, reorganization or similar laws of general application affecting the rights and remedies of creditors, and to general equity principles.

(b) The execution and delivery of this Agreement by such Principal Stockholder, the compliance by such Principal Stockholder with the provisions hereof and the consummation of the transactions contemplated hereby will not (a) conflict with, result in a breach of, constitute (with or

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without due notice or lapse of time or both) a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify or cancel, or require any notice, consent or waiver under any contract, lease, sublease, sublicense, franchise, permit, indenture, agreement or mortgage, Security Interest or other interest to which such Principal Stockholder is a party or by which such Principal Stockholder is bound or to which its assets are subject or (b) violate any order, writ, injunction, decree, rule or regulation applicable to such Principal Stockholder its properties or assets, except in each case, where such conflict, breach, default or other violation would not have a Material Adverse Effect.

3A.2. Ownership. Such Principal Stockholder has full right, power and authority to transfer such Principal Stockholder's Company Preferred Stock to Parent, free and clear of any liens, claims, encumbrances, charges or restrictions, and such transfer will not constitute a breach or violation of, or a default under, any agreement or instrument by which such Principal Stockholder is bound.

3B. Representations and Warranties by Representative. The Representative represents and warrants to the Parent and Merger Sub as follows:

3B.1 Authority for Agreement.

(a) The Representative has all necessary partnership power and authority to execute and deliver this Agreement and to carry out its obligations hereunder. This Agreement has been duly executed and delivered by the Representative and, assuming the due authorization, execution and delivery of this Agreement by the Company, the Parent and the Merger Sub, constitutes the valid and legally binding obligation of the Representative, enforceable against the Representative in accordance with its terms, subject to bankruptcy, insolvency, reorganization or similar laws of general application affecting the rights and remedies of creditors, and to general equity principles. The Representative has all necessary partnership power and authority to execute and deliver the Escrow Agreement and to carry out its obligations thereunder. The Escrow Agreement has been duly executed and delivered by the Representative and, assuming the due authorization, execution and delivery of the Escrow Agreement by the Parent and the Escrow Agent, constitutes the valid and legally binding obligation the Representative, enforceable against the Representative in accordance with its terms, subject to bankruptcy, insolvency, reorganization or similar laws of general application affecting the rights and remedies of creditors, and to general equity principles.

(b) The execution and delivery of this Agreement and the Escrow Agreement by the Representative, the compliance by the Representative with the provisions hereof and the provisions of the Escrow Agreement, and the consummation of the transactions contemplated hereby and thereby will not (a) conflict with, result in a breach of, constitute (with or without due notice or lapse of time or both) a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify or cancel, or require any notice, consent or waiver under any contract, lease, sublease, sublicense, franchise, permit, indenture, agreement or mortgage, Security Interest or other interest to which the Representative is a party or by which the Representative is bound or to which its assets are subject or (b) violate any order, writ, injunction, decree, rule or regulation applicable to the Representative or any of its properties or assets, except in each case, where such conflict, breach, default or other violation would not have a Material Adverse Effect.

4. Representations and Warranties by Parent and Merger Sub. Parent and Merger Sub represent and warrant to the Company and the Principal Stockholders as follows:

4.1. Corporate Status. Each of Parent and Merger Sub is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation.

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4.2. Authority for Agreement. Each of Parent and Merger Sub has all necessary corporate power and authority to execute and deliver this Agreement and to carry out its obligations hereunder and thereunder. Parent has all necessary corporate power and authority to execute and deliver the Escrow Agreement and to carry out its obligations thereunder. The execution, delivery and performance of this Agreement by each of Parent and Merger Sub and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action of each of Parent and Merger Sub. The execution, delivery and performance by Parent of the Escrow Agreement and the consummation of the transactions contemplated thereby have been duly authorized by all necessary corporate action of Parent. This Agreement has been duly and validly executed and delivered by each of Parent and Merger Sub and, assuming the due authorization, execution and delivery of this Agreement by each of the Company, the Principal Stockholders and the Representative, constitutes the valid and legally binding obligation of each of Parent and Merger Sub, enforceable against each of Parent and Merger Sub in accordance with its terms, subject to bankruptcy, insolvency, reorganization or similar laws of general application affecting the rights and remedies of creditors, and to general equity principles. The Escrow Agreement has been duly and validly executed and delivered by Parent and, assuming the due authorization, execution and delivery of the Escrow Agreement by each of the Representative and the Escrow Agent, constitutes the valid and legally binding obligation of each of Parent, enforceable against Parent in accordance with its terms, subject to bankruptcy, insolvency, reorganization or similar laws of general application affecting the rights and remedies of creditors, and to general equity principles. The execution and delivery of this Agreement by each of Parent and Merger Sub and the consummation of the transactions contemplated hereby will not conflict with, or result in any violation of, or default with respect to, or require the consent of any third party under, any provision of the Restated Articles of Organization, as amended, or the Amended and Restated By-laws of Parent or the Certificate of Incorporation or by-laws of Merger Sub, any mortgage, indenture, lease, agreement or other instrument, permit, concession, grant, franchise, license, judgment, order, decree, statute, law, ordinance, rule or regulation applicable to Parent or Merger Sub or any of their respective properties, except, in each case, where such conflict, violation or default would not have a material adverse effect on the ability of Parent or Merger Sub to consummate the transactions contemplated hereby or thereby. The execution and delivery of the Escrow Agreement by Parent and the consummation of the transactions contemplated thereby will not conflict with, or result in any violation of, or default with respect to, or require the consent of any third party under, any provision of the Restated Articles of Organization, as amended, or the Amended and Restated By-laws of Parent or any mortgage, indenture, lease, agreement or other instrument, permit, concession, grant, franchise, license, judgment, order, decree, statute, law, ordinance, rule or regulation applicable to Parent or any of its properties, except, in each case, where such conflict, violation or default would not have a material adverse effect on the ability of Parent to consummate the transactions contemplated hereby or thereby. No consent, approval, order or authorization of, or registration, declaration or filing with, any governmental authority is required in connection with the execution and delivery of this Agreement by each of Parent and Merger Sub or the consummation of the transactions contemplated hereby, except for such consents, approvals, orders, authorizations, registrations, declarations and filings the failure of which to be obtained or made would not have a material adverse effect on the ability of Parent to consummate the transactions contemplated hereby. No consent, approval, order or authorization of, or registration, declaration or filing with, any governmental authority is required in connection with the execution and delivery of the Escrow Agreement by Parent or the consummation of the transactions contemplated thereby, except for such consents, approvals, orders, authorizations, registrations, declarations and filings, the failure of which to be obtained or made would not have a material adverse effect on the ability of Parent to consummate the transactions contemplated thereby.

4.3. Brokers and Finders. All negotiations relating to this Agreement and the transactions contemplated hereby have been carried on without the intervention of any person acting on behalf of Parent or Merger Sub or any of their respective "affiliates" or "associates" (as those terms are defined in Rule 405 under the Securities Act) in such manner as to give rise to any valid claim against the Company or any Company Stockholder for any brokerage or finder's commission, fee or similar compensation.

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4.4. Ownership of Merger Sub. As of the date hereof and as of the Effective Time, except for obligations or liabilities incurred in connection with its incorporation or organization and the transactions contemplated by this Agreement and except for this Agreement and any other agreements or arrangements contemplated hereby or thereby, Merger Sub has not and will not have incurred, directly or indirectly, any obligations or liabilities or engaged in any business activities of any type or kind whatsoever or entered into any agreements or arrangements with any person.

4.5. Financing. Parent has, and at the Closing will have, sufficient funds available to consummate the transactions contemplated hereby.

5. Additional Agreements.

5.1. Employee Benefit Plans. Following the Effective Time, Parent shall cause all employees of the Company who continue employment with Parent or the Surviving Corporation ("Continuing Employees") to be eligible to participate in all employee benefit plans or arrangements of Parent in which similarly situated employees of Parent are generally able to participate. For purposes of any length of service requirements, waiting periods, vesting periods, or differential benefits based on length of service under any such plan for which a Continuing Employee may be eligible after the Effective Time, Parent shall ensure that uninterrupted service by such Continuing Employee with the Company prior to the Effective Time shall be deemed to have been service with Parent, provided such crediting of uninterrupted service does not result in a duplication of benefits.

5.2. Representative. Unless otherwise required by law, the Representative agrees that it (and its legal, financial, accounting and other representatives) shall hold in confidence all non-public information acquired in accordance with the terms of the Non-Disclosure Agreement effective as of June 19, 2002 between Parent and the Company as if the Representative were a party thereto.

5.3. Public Announcements. Unless otherwise required by law, no press release or any public disclosure, either written or oral, of the transactions contemplated hereby shall be made by the Company, any Principal Stockholder, the Representative or any officer, director, employee or affiliate thereof, without the express prior written consent of Parent. Notwithstanding anything herein to the contrary, except as reasonably necessary to comply with applicable securities laws, each party to this Agreement (and each employee, representative, or other agent of such party) may (i) consult any tax advisor regarding the U.S. federal income tax treatment or tax structure of the transaction, and (ii) disclose to any and all persons, without limitation of any kind, the U.S. federal income tax treatment and tax structure of the transaction and all materials of any kind (including opinions or other tax analyses) that are provided to the taxpayer related to such tax treatment and tax structure. For this purpose, "tax structure" is limited to any facts relevant to the U.S. federal income tax treatment of the transaction and does not include information relating to the identity of the parties.

5.4. Further Assurances. Subject to the terms and conditions of this Agreement, each of the parties agrees to use all reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate and make effective the transactions contemplated by this Agreement.

6. Conditions Precedent to the Obligations of Parent and Merger Sub. All obligations of Parent and Merger Sub under this Agreement are subject to the fulfillment to the reasonable satisfaction of Parent and Merger Sub prior to or at the Closing of each of the following conditions, any of which may be waived by Parent and Merger Sub:

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6.1. Requisite Approvals. This Agreement and the Merger shall have received the Requisite Approvals.

6.2. Secretary's Certificate. The Company shall have delivered to the Parent a certificate of the secretary of the Company or an assistant secretary of the Company, dated the Closing Date, in form and substance reasonably satisfactory to Parent as to (A) no amendments to the Certificate of Incorporation or By-laws of the Company, (B) the corporate actions (including copies of relevant votes) taken by the Company's board of directors and stockholders to authorize the transactions contemplated hereby, (C) the incumbency and signatures of the officers of the Company executing this Agreement and the other agreements, instruments and other documents executed by or on behalf of the Company pursuant to this Agreement or otherwise in connection with the transactions contemplated hereby, (D) the number of outstanding shares of Company Preferred Stock as of the Closing Date.

6.3. Certificate of Merger. The Certificate of Merger shall have been executed and delivered by the parties thereto.

6.4. FIRPTA Certificates. The Company shall, prior to the Closing Date, provide Parent with a properly executed Foreign Investment in Real Property Tax Act of 1980 ("FIRPTA") notification letter which states that shares of capital stock of the Company do not constitute "United States real property interests" under Section 897(c) of the Code, for purposes of satisfying Parent's obligations under Treasury Regulation Section 1.1445-2(c)(3). In addition, simultaneously with delivery of such FIRPTA notification letter, the Company shall provide to Parent a form of notice to the Internal Revenue Service in accordance with the requirements of Treasury Regulation Section 1.897-2(h)(2), along with written authorization for Parent to deliver such notice form to the Internal Revenue Service on behalf of the Company upon the Closing of the Merger.

6.5. Release of Security. The Company shall have provided Parent with such documents as Parent shall deem reasonably necessary in order for Parent, immediately after Closing, to terminate any existing financing statements evidencing Security Interests in any of the Company's assets securing the Company's obligations under the 15% Senior Secured Convertible Demand Promissory Notes issued by the Company.

6.6. Required Consents. The Company agrees that the consents necessary under any lease or other contract to which the Company is a party as a result of this Agreement and the transactions contemplated hereby and set forth in Schedule 6.6 hereto have been obtained by the Company in form satisfactory to Parent and Merger Sub prior to the Closing. The Company will cause the Company Stockholders to pay all premiums or other costs associated with obtaining any consents required as a result of the transactions contemplated hereby.

6.7. Key Employee Agreements. Each of the Company employees identified on Schedule 6.7 hereto shall have executed without modification Parent's Key Employee Agreement.

6.8. Escrow Agreement. The Representative and the Escrow Agent shall have executed and delivered the Escrow Agreement.

7. Conditions Precedent to Obligations of the Company, the Representative and the Principal Stockholders. All obligations of the Company, the Representative and the Principal Stockholders under this Agreement are subject to the fulfillment to the reasonable satisfaction of the Company, the Representative and the Principal Stockholders prior to or at the Closing of each of the following conditions, any of which may be waived by such parties:

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7.1. Escrow Agreement. The Representative, Parent and the Escrow Agent shall have executed and delivered the Escrow Agreement.

7.2. Certificate of Merger. The Certificate of Merger shall have been executed and delivered by Merger Sub.

7.3 Assistant Clerk's Certificate. A certificate of the Assistant Clerk of Parent and the Secretary of Merger Sub, dated the Closing Date, in form and substance reasonably satisfactory to the Company as to (A) the corporate actions taken by Parent and Merger Sub and their respective boards of directors to authorize the transactions contemplated hereby, and (B) the incumbency and signatures of the officers of Parent and Merger Sub executing this Agreement and the other agreements, instruments and other documents executed by or on behalf of Parent and Merger Sub pursuant to this Agreement or otherwise in connection with the transactions contemplated hereby.

7.4. Requisite Approvals. The Company shall have obtained the Requisite Approvals.

8. Survival of Representations and Warranties. All representations and warranties of the Company, the Principal Stockholders, the Representative and Parent and Merger Sub contained herein or in any document, certificate or other instrument required to be delivered hereunder at the Closing in connection with the transactions contemplated hereby shall survive the Closing for the period ending on the date that is twelve months after the date of this Agreement (the "Distribution Date"), except the representations and warranties set forth in (a) Section 3.15 (Intellectual Property), which shall survive until the second anniversary of the Closing, (b) the second sentence of Section 3.21 (Litigation), which shall survive until the third anniversary of the Closing, (c) Section 3.10 (Taxes), which shall survive until expiration of the applicable statutes of limitations, and (d) Section 3.2 (Capitalization and Ownership) and Section 3.A.2 (Ownership), which shall survive indefinitely. All agreements of the Company, the Principal Stockholders, the Representative and Parent and Merger Sub contained herein or in any document, certificate or other instrument required to be delivered hereunder at the Closing in connection with the transactions contemplated hereby shall survive the Closing.

9. Indemnification.

9.1. Indemnity by Principal Stockholders. The Principal Stockholders (other than Robert Infantino, F. Daniel Haley and Eric Janszen) (the "Indemnifying Principal Stockholders") jointly and severally hereby agree to indemnify, defend and hold harmless Parent, Merger Sub and their respective directors, officers and affiliates (including without limitation, following the Closing, the Surviving Corporation) (collectively, the Indemnified Parties") against and in respect of any damage (i) that results from the inaccuracy of any representation or warranty made by the Company herein and (ii) that results from any breach or non-fulfillment of any agreement or covenant of the Company, the Principal Stockholders or the Representative contained herein or in any agreement or instrument entered into in connection herewith or from any misrepresentation in or omission from any schedule or certificate required to be furnished at the Closing by the Company, the Representative or any Principal Stockholder hereunder, and any and all actions, suits and proceedings resulting from any of the foregoing (hereinafter called a "Parent Claim" or "Parent Claims"). Robert Infantino, F. Daniel Haley and Eric Janszen hereby acknowledge and agree that, even though they are not Indemnifying Principal Stockholders, the full amount of the Escrow Funds, including any amounts delivered to the Escrow Agent on behalf of such Principal Stockholders in accordance with the provisions hereof, shall be available to satisfy, and may be used to satisfy, the Indemnifying Principal Stockholders' indemnification obligations. For the avoidance of doubt, the Indemnifying Principal Stockholders' indemnification obligations shall survive the Distribution Date, in accordance with the terms hereof.

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9.2. Certification of Claims. If Parent is of the opinion that any Parent Claim has occurred or will or may occur, Parent shall so notify the Representative, and each such notice shall be in writing and shall describe with reasonable specificity the nature and amount of such asserted Parent Claim.

9.3. Termination of Rights Hereunder. Notwithstanding any other provision hereof, no Parent Claim may be made or lawsuit instituted under the provisions of this Section 9 or in any way arising in connection with this Agreement or any representation or warranty hereunder after the Distribution Date other than: (a) Extended Claims (as defined below) which may be made or for which a lawsuit may be instituted under this Section 9 after the Distribution Date within the applicable periods set forth below; and (b) Reserved Claims (as defined below) for which a lawsuit may be instituted under this Section 9 after the Distribution Date. Notwithstanding the foregoing, with respect to all claims based on fraud or intentional misrepresentation, claims may be made or suits instituted at any time. An "Extended Claim" shall mean any Parent Claim that results from the inaccuracy of any representation or warranty made by the Company in (a) Section 3.15 (Intellectual Property) (in which case such Extended Claim may be made or lawsuit initiated under the provisions of this Section 9 until the second anniversary of the Closing), (b) the second sentence of Section 3.21 (Litigation) (in which case such Extended Claim may be made or lawsuit initiated under the provisions of this Section 9 until the third anniversary of the Closing), (c) Section 3.10 (Taxes) (in which case such Extended Claim may be made or lawsuit initiated under the provisions of this Section 9 until the expiration of the applicable statutes of limitations), (c), and (d) Section 3.2 (Capitalization and Ownership) and Section 3.A.2 (Ownership) (in which case such Extended Claim may be made or lawsuit initiated under the provisions of this Section 9 at any time). A "Reserved Claim" shall mean any Parent Claim which has been made, in accordance with this Section 9, within the applicable periods set forth above.

9.4. Third Party Actions. In the event any claim is made, suit is brought or tax audit or other proceeding is instituted against Parent, Merger Sub or the Company, or any of their respective directors, officers or affiliates which involves or appears reasonably likely to involve a Parent Claim for which indemnification may be sought against Indemnifying Principal Stockholders hereunder, Parent will, promptly after receipt of notice of any such claim, suit or proceeding, notify the Representative of the commencement thereof. The failure to so notify the Representative of the commencement of any such claim, suit or proceeding will relieve the Indemnifying Principal Stockholders from liability in connection therewith only to the extent that such failure adversely affects the ability of the Indemnifying Principal Stockholders to defend their interests in such claim, action or proceeding. The Indemnifying Principal Stockholders (at their expense) shall have the right and shall be given the opportunity to assume and control the defense of such claim, suit or proceeding with counsel of their choice reasonably satisfactory to Parent, provided that Parent and its counsel (at Parent's expense) may participate in (but not control the conduct of) all matters pertaining to the defense or settlement of such claim, suit or proceeding. Whether or not the Indemnifying Principal Stockholders elect to assume such defense, the Indemnified Parties shall not, except at their own cost, make any settlement with respect to any such claim, suit or proceeding without the prior written consent of the Representative. The Indemnified Parties' consent to the settlement of any such claim, suit or proceeding by the Indemnifying Principal Stockholders shall be required and shall not be unreasonably withheld or delayed, but such consent shall not be required if (or to the extent that) such settlement only requires the payment by the Indemnifying Principal Stockholders of a monetary amount and includes a full release of claims against the Parent and does not include a statement as to or admission of fault, culpability or failure to act by or on behalf of the Parent.

9.5. Definition of Damages. For purposes of this Section 9, the term "damages" shall mean the amount of any loss, claim, damage, judgment, cost or expense (including reasonable attorneys', consultants' and experts' fees and expenses) actually incurred by the Indemnified Parties, less the sum of any amount recovered under any insurance policy carried by the party or parties seeking indemnification. In the event that an indemnified party hereunder pays a claim covered by the indemnified party's insurance as to which recovery is sought and obtained and for which it is entitled to indemnification by the other

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party hereunder, such indemnified party shall pay such claim and the indemnifying party shall reimburse the indemnified party the full amount of such claim (less the amount of any insurance proceeds previously recovered by the indemnified party with respect to such claim). In the event the indemnifying party pays a claim and the indemnified party subsequently receives insurance proceeds with respect to such claim, the indemnified party shall pay the indemnifying party such insurance proceeds up to the amount actually paid by the indemnifying party. The indemnified party shall seek recovery under any insurance policy if coverage exists.

9.6. Limitations. Notwithstanding anything to the contrary in this Agreement, the obligations and liabilities of the Principal Stockholders under this Agreement shall be subject to the following limitations:

(a) The maximum aggregate liability of the Principal Stockholders under this Agreement (i) shall not exceed $1,100,000 with respect to all Parent Claims and (ii) shall not exceed $750,000 with respect to all Parent Claims other than Parent Claims that result from the inaccuracy of any representation or warranty made by the Company in the second sentence of Section 3.21 (Litigation).

(b) The obligations and liabilities of the Indemnifying Principal Stockholders for indemnification under this Agreement shall be satisfied first by payment of the Escrow Funds under the Escrow Agreement (including any amounts delivered to the Escrow Agent on behalf of the Principal Stockholders who are not Indemnifying Principal Stockholders in accordance with the provisions hereof) and, only after no Escrow Funds remain available under the Escrow Agreement, by payment by the Indemnifying Principal Stockholders.

(c) The Indemnifying Principal Stockholders shall not be liable for indemnification under this Section 9 unless and until the aggregate amount of all Parent Claims exceed $10,000; provided, however, that once the aggregate amount of Parent Claims exceeds such amount, the Indemnified Parties shall be entitled to indemnification for the full amount of all Parent Claims, including the $10,000 threshold.

(d) No indemnification liability under this Agreement shall attach to any party in respect of any claim:

(i) to the extent that provision or reserve in respect of the matter or thing giving rise to such claim has been provided for in the Financial Statements; or

(ii) to the extent that such claim relates to any damages for which any indemnified party is insured and actually recovers thereunder, but only to the extent of the net insurance proceeds actually recovered.

9.7 Exclusive Remedies. Except for remedies that cannot be waived as a matter of law, the remedies set forth in this Section 9 shall be the sole and exclusive remedies of the parties to this Agreement, under this Agreement from and after the Closing with respect to any misrepresentation or breach of warranty, or any breach of or failure to perform any covenant to be performed prior to the Closing by any party under this Agreement.

10. Representative.

10.1. Powers of the Representative. The Representative shall have and may exercise all of the powers conferred upon him pursuant to this Agreement and the Escrow Agreement, including, without limitation:

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(a) The power to execute the Escrow Agreement as Representative;

(b) The power to give or receive any notice or instruction permitted or required under this Agreement or the Escrow Agreement to be given or received by any Company Stockholder, and each of them (other than notice for service of process relating to any litigation before a court or other tribunal of competent jurisdiction, which notices must be given to each Company Stockholder individually, as applicable), and to take any and all action for and on behalf of the Company Stockholders, and each of them, under this Agreement or the Escrow Agreement;

(c) The power (subject to the provisions of Section 10.2 hereof) to contest, negotiate, defend, compromise or settle any claims, actions, proceedings or demands for which Parent may be entitled to indemnification through counsel selected by the Representative and solely at the cost, risk and expense of the Indemnifying Principal Stockholders, authorize payment to Parent of the Escrow Funds, or any portion thereof, in satisfaction of claims, agree to, negotiate, enter into settlements and compromises of, and demand arbitration and comply with orders of courts and awards of arbitrators with respect to such claims, resolve any claims, take any actions in connection with the resolution of any dispute relating hereto or to the transactions contemplated hereby by arbitration, settlement, or otherwise, and take or forego any or all actions permitted or required of the Principal Stockholders or necessary in the judgment of the Representative for the accomplishment of the foregoing and all of the other terms, conditions and limitations of this Agreement and the Escrow Agreement; and

(d) The power to take any actions in regard to such other matters as are reasonably necessary for the consummation of the transactions contemplated hereby.

10.2. Claims by Parent.

(a) Upon receipt of any Parent Claim, the Representative shall give prompt notice of the amount and details thereof (to the extent of the information in his possession) to the Indemnifying Principal Stockholders.

(b) As soon as possible thereafter, the Representative shall notify the Indemnifying Principal Stockholders of the proposed action which the Representative recommends shall be taken in response to such claim, and shall include a form of consent to such action to be signed and returned by the other Indemnifying Principal Stockholders to the Representative.

(c) Prior to the settlement of any claims, or the release of any portion of the Escrow Funds to Parent other than as a result of a final arbitration award or court order, the proposed settlement must receive the written approval of Indemnifying Principal Stockholders holding a majority interest in the Escrow Funds originally delivered to the Escrow Agent pursuant to this Agreement (the "Requisite Majority") evidenced by a writing executed by such Requisite Majority of the Indemnifying Principal Stockholders. In the event that the Representative shall be unable for any reason to obtain the written approval of the Requisite Majority of the Indemnifying Principal Stockholders with respect to any question, either because of shortness of time, disagreement among the Indemnifying Principal Stockholders, or for any other reason, the Representative shall have the discretion to take such action as he shall determine to be in the best interest of the Indemnifying Principal Stockholders, including, without limitation, authorizing the distribution to Parent of any portion of the Escrow Funds, provided, that all Indemnifying Principal Stockholders are treated in substantially the same manner. In circumstances when the Representative shall be able to and shall have obtained the written approval of the Requisite Majority of the Indemnifying Principal Stockholders, the Representative shall only take such actions with respect to the Escrow

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Funds as shall be consistent with the consent or approval received from such Requisite Majority of the Indemnifying Principal Stockholders and provided, further, that Parent and the Company shall have no liability to any Indemnifying Principal Stockholder in such event.

10.3. Notices. Any notice given to the Representative will constitute notice to each and all of the Principal Stockholders at the time notice is given to the Representative. Any action taken by, or notice or instruction received from, the Representative will be deemed to be action by, or notice or instruction from, each and all of the Principal Stockholders. Parent may, and the Escrow Agent will, disregard any notice or instruction received from any of the Principal Stockholders.

10.4. Agreement of the Representative. The Representative hereby agrees to do such acts, and execute further documents, as shall be necessary to carry out the provisions of this Agreement and the Escrow Agreement.

10.5. Compensation of Representative. The Representative shall serve as such without compensation; provided, however, that each Indemnifying Principal Stockholder agrees to reimburse the Representative for such Indemnifying Principal Stockholder's proportionate share of all reasonable out-of-pocket expenses incurred by the Representative in the performance of his duties hereunder. Each Indemnifying Principal Stockholder agrees that such Indemnifying Principal Stockholder's proportionate share of such reasonable out-of-pocket expenses may be deducted by the Representative from amounts distributed to the Representative out of the Escrow Funds, on behalf of the Principal Stockholders, prior to delivery of such Escrow Funds to the Principal Stockholders.

10.6. Reliance on Representative. Parent, Merger Sub and their respective affiliates (including, after the Closing, the Company) shall be entitled to rely on the appointment of JMI Equity Fund IV, L.P., as Representative, and treat such Representative as the duly appointed attorney-in-fact of each Principal Stockholder and as having the duties, power, and authority provided for in Sections 1.7, 9 and 10. No resignation of the Representative shall become effective unless at least thirty (30) days prior written notice of the replacement or resignation of such Representative shall be provided to Parent. Parent and all parties hereunder shall be entitled to rely at any time after receipt of any such notice on the most recent notice so received. In case of the resignation, death or disability of the Representative, the remaining Indemnifying Principal Stockholders shall appoint one of the remaining Indemnifying Principal Stockholders as successor Representative.

11. Miscellaneous.

11.1. Expenses. Except as otherwise set forth herein, each of the parties hereto shall assume and bear all expenses, costs and fees incurred or assumed by such party in the preparation and execution of this Agreement and compliance herewith, whether or not the transactions herein provided for shall be consummated; and Parent, on the one hand, and the Company and the Principal Stockholders, on the other hand, shall indemnify and hold each other harmless from and against any and all liabilities and claims in respect of any such expenses, costs or fees not the responsibility of or assumed by the other party.

11.2. Notices. All notices, requests, demands, consents and communications necessary or required under this Agreement shall be delivered by hand or sent by registered or certified mail, return receipt requested, or by overnight prepaid courier, or by facsimile (receipt confirmed) to:

if to Parent or
Merger Sub: EMC Corporation
176 South Street
Hopkinton, MA 01748
Attention: Vice President, Corporate Development

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	Facsimile: (508) 435-8900
with a copy to:	EMC Corporation 176 South Street Hopkinton, MA 01748 Attention: Office of the General Counsel Facsimile: (508) 497-6915
if to the Principal Stockholders:	At their respective names and addresses set forth in Schedule 2.1 hereto.
with a copy to:	Testa, Hurwitz & Thibeault, LLP 125 High Street Boston, MA 02110 Attention: Mark H. Burnett Facsimile: (617) 248-7100
if to the Representative:	JMI Equity Fund IV, L.P. 1119 St. Paul Street Baltimore, Maryland 21202 Attention: Robert F. Smith Facsimile: (410) 385-2641
with a copy to:	Testa, Hurwitz & Thibeault, LLP 125 High Street Boston, MA 02110 Attention: Mark H. Burnett Facsimile: (617) 248-7100

All such notices, requests, demands, consents and other communications shall be deemed to have been duly given or sent three (3) days following the date on which mailed, or one (1) day following the date mailed if sent by overnight courier, or on the date on which delivered by hand or by facsimile transmission (receipt confirmed), as the case may be, and addressed as aforesaid. Any notice to be given to any Company Stockholder hereunder shall be given to the Representative or, if for any reason there ceases to be a Representative, to each Company Stockholder.

11.3. Successors and Assigns. All covenants and agreements set forth in this Agreement and made by or on behalf of any of the parties hereto shall bind and inure to the benefit of the successors, heirs and assigns of such party, whether or not so expressed. None of the parties may assign or transfer any of their respective rights or obligations under this Agreement without the consent in writing of the other parties hereto.

11.4. Descriptive Headings. The headings of the sections and paragraphs of this Agreement have been inserted for convenience of reference only and shall not be deemed to be part of this Agreement.

11.5. Counterparts. This Agreement may be executed (including by facsimile transmission) in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which together shall constitute one and the same instrument.

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11.6. Severability. In the event that any one or more of the provisions contained herein is held invalid, illegal or unenforceable in any respect for any reason in any jurisdiction, the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions hereof shall not be in any way impaired or affected, it being intended that each of parties' rights and privileges shall be enforceable to the fullest extent permitted by law, and any such invalidity, illegality and unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

11.7. Course of Dealing. No course of dealing and no delay on the part of any party hereto in exercising any right, power or remedy conferred by this Agreement shall operate as a waiver thereof or otherwise prejudice such party's rights, powers and remedies. The failure of any of the parties to this Agreement to require the performance of a term or obligation under this Agreement or the waiver by any of the parties to this Agreement of any breach hereunder shall not prevent subsequent enforcement of such term or obligation or be deemed a waiver of any subsequent breach hereunder. No single or partial exercise of any right, power or remedy conferred by this Agreement shall preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

11.8. Third Parties. Except as specifically set forth or referred to herein, nothing herein expressed or implied is intended or shall be construed to confer upon or give to any Person any rights or remedies under or by reason of this Agreement or any other certificate, document, instrument or agreement executed in connection herewith nor be relied upon other than the parties hereto and their permitted successors or assigns.

11.9. Variations in Pronouns. All pronouns and any variations thereof refer to the masculine, feminine or neuter, singular or plural, as the identity of the Person or Persons may require.

11.10. Definition of Knowledge. For purposes of this Agreement, the term "knowledge" or "best knowledge" (or any similar terminology) of the Company shall be deemed to refer to the knowledge, based upon a duty of due investigation applicable to F. Daniel Haley, Robert Infantino, Brian Casey and Lee Muise.

11.11. Governing Law. This Agreement, including the validity hereof and the rights and obligations of the parties hereunder, shall be construed in accordance with and governed by the laws of The Commonwealth of Massachusetts applicable to contracts made and to be performed entirely in such Commonwealth (without giving effect to the conflicts of laws provisions thereof). Each of the parties hereto agrees that any action or proceeding brought to enforce the rights or obligations of any party hereto under this Agreement will be commenced and maintained in any court of competent jurisdiction located in The Commonwealth of Massachusetts and hereby consent to the jurisdiction and venue of such tribunal. Each of the parties hereto further agrees that process may be served upon it by certified mail, return receipt requested, addressed as provided in Section 11.2 hereof, and consents to the exercise of jurisdiction of the courts of The Commonwealth of Massachusetts over it and its properties with respect to any action, suit or proceeding arising out of or in connection with this Agreement or the transactions contemplated hereby or the enforcement of any rights under this Agreement.

11.12. Entire Agreement. This Agreement, including the Schedules and Exhibits and the other agreements referred to herein, is complete, and all promises, representations, understandings, warranties and agreements with reference to the subject matter hereof, and all inducements to the making of this Agreement relied upon by all the parties hereto, have been expressed herein or in such Schedules, Exhibits or other agreements.

11.13. Amendment. Prior to or at the Effective Time, this Agreement may not be amended except by an instrument in writing signed on behalf of each of Parent, the Company, the Representative and the Principal Stockholders entitled to receive at least a majority of the Merger Consideration. From

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and after the Effective Time, this Agreement may not be amended except by an instrument in writing signed on behalf of each of Parent, the Representative and the Principal Stockholders entitled to receive at least a majority of the Merger Consideration. Any written amendment, modification or waiver executed in accordance herewith shall be binding upon Parent, the Company, the Principal Stockholders, the Representative and each of the Company Securityholders.

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

EMC CORPORATION

By: _____
Michael Cody
Vice President, Corporate Development

ENERGY MERGER CORPORATION

By: _____
Paul T. Dacier
President

ASTRUM SOFTWARE CORPORATION

By: _____
Name:
Title:

REPRESENTATIVE:

JMI EQUITY FUND IV, L.P.
By: JMI Associates IV, L.L.C.
its General Partner

By: _____
Bradford D. Woloson
Managing Member

PRINCIPAL STOCKHOLDERS:

_____
F. Daniel Haley

_____
Robert A. Infantino

TRADEMARK
REEL: 002813 FRAME: 0538

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

EMC CORPORATION

By: _____
Name:
Title:

ENERGY MERGER CORPORATION

By: _____
Name:
Title:

ASTRUM SOFTWARE CORPORATION

By: _____
Name: F. Daniel Haley
Title: CEO

REPRESENTATIVE

JMI EQUITY FUND IV, L.P.
By: JMI Associates IV, L.L.C.
its General Partner

By: _____
Bradford D. Woloson
Managing Member

PRINCIPAL STOCKHOLDERS:

_____
F. Daniel Haley

_____
Robert A. Infantino

TRADEMARK
REEL: 002813 FRAME: 0539

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

EMC CORPORATION

By: _____
Name:
Title:

ENERGY MERGER CORPORATION

By: _____
Name:
Title:

ASTRUM SOFTWARE CORPORATION

By: _____
Name:
Title:

REPRESENTATIVE

JMI EQUITY FUND IV, L.P.
By: JMI Associates IV, L.L.C.
its General Partner

By: _____
Bradford D. Woloson
Managing Member

PRINCIPAL STOCKHOLDERS:

_____
F. Daniel Haley

_____
Robert A. Infantino

TRADEMARK
REEL: 002813 FRAME: 0540

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

EMC CORPORATION

By: _____
Name:
Title:

ENERGY MERGER CORPORATION

By: _____
Name:
Title:

ASTRUM SOFTWARE CORPORATION

By: _____
Name:
Title:

REPRESENTATIVE

JMI EQUITY FUND IV, L.P.
By: JMI Associates IV, L.L.C.
its General Partner

By: _____
Bradford D. Woloson
Managing Member

PRINCIPAL STOCKHOLDERS:

_____
F. Daniel Haley

_____
Robert A. Infantino

TRADEMARK
REEL: 002813 FRAME: 0541

JMI EQUITY FUND IV, L.P.
By: JMI Associates IV, L.L.C.
its General Partner

By: _____
Bradford D. Woloson
Managing Member

JMI EQUITY FUND IV (AI), L.P.
By: JMI Associates IV, L.L.C.
its General Partner

By: _____
Bradford D. Woloson
Managing Member

JMI EURO EQUITY FUND IV, L.P.
By: JMI Associates IV, L.L.C.
its General Partner

By: _____
Bradford D. Woloson
Managing Member

JMI EQUITY SIDE FUND IV, L.P.
By: JMI Side Associates, L.L.C.

By: _____
Bradford D. Woloson
Vice President

IRONSIDE VENTURES, L.P.
By: Ironside Management LLC
its General Partner

By: _____
Name:
Managing Director

TRADEMARK
REEL: 002813 FRAME: 0542

JMI EQUITY FUND IV, L.P.
By: JMI Associates IV, L.L.C.
its General Partner

By: _____
Bradford D. Woloson
Managing Member

JMI EQUITY FUND IV (AI), L.P.
By: JMI Associates IV, L.L.C.
its General Partner

By: _____
Bradford D. Woloson
Managing Member

JMI EURO EQUITY FUND IV, L.P.
By: JMI Associates IV, L.L.C.
its General Partner

By: _____
Bradford D. Woloson
Managing Member

JMI EQUITY SIDE FUND IV, L.P.
By: JMI Side Associates, L.L.C.

By: _____
Bradford D. Woloson
Vice President

IRONSIDE VENTURES, L.P.
By: Ironside Management LLC
its General Partner

By: _____
Name: David Z. Alpert
Managing Director

TRADEMARK
REEL: 002813 FRAME: 0543

MORGAN KEEGAN EARLY
STAGE FUND, L.P.
By: Merchant Bankers, Inc.
its General Partner

By: _____
Name: Kimble L. Jenkins
Title: Vice President

MORGAN KEEGAN EMPLOYEE
INVESTMENT FUND, L.P.
By: Merchant Bankers, Inc.
its General Partner

By: _____
Name: Kimble L. Jenkins
Title: Vice President

_____
Eric Janszen

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TRADEMARK
REEL: 002813 FRAME: 0544

MORGAN KEEGAN EARLY
STAGE FUND, L.P.
By: Merchant Bankers, Inc.
its General Partner

By: _____
Name:
Title:

MORGAN KEEGAN EMPLOYEE
INVESTMENT FUND, L.P.
By: Merchant Bankers, Inc.
its General Partner

By: _____
Name:
Title:

_____
Eric Janszen SSN 021-48-8905

RECORDED: 03/15/2004

TRADEMARK
REEL: 002813 FRAME: 0545