Form PTO-1594 Rev. 03/05)
OMB Collection 0651-0027 (exp. 6/30/2005)

DEPARTMENT OF COMMERCE
tes Patent and Trademark Office

2/21/06 RECORD TRA

02-23-2006

103183234

To the Director of the U. S. Patent and Trademar

the new address(es) below.

1. Name of conveying party(ies):
Mohomine, Inc.

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

Citizenship (see guidelines)

Additional names of conveying parties attached? ☐ Yes ☒ No

2. Name and address of receiving party(ies)

Additional names, addresses, or citizenship attached? ☐ Yes ☒ No

Name: Kofax Image Products, Inc.
Internal Address:
Street Address: 16245 Laguna Canyon Rd.
City: Irvine
State: California
Country: USA Zip: 92618

☐ Association Citizenship
☐ General Partnership Citizenship
☐ Limited Partnership Citizenship
☒ Corporation Citizenship Delaware
☐ Other Citizenship

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)

3. Nature of conveyance)/Execution Date(s) :

Execution Date(s) March 17, 2003

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

4. Application number(s) or registration number(s) and identification or description of the Trademark.

A. Trademark Application No.(s)

B. Trademark Registration No.(s)
See Attatched Sheet (1 page)

Additional sheet(s) attached? ☒ Yes ☐ No

C. Identification or Description of Trademark(s) (and Filing Date if Application or Registration Number is unknown):
See Attatched Sheet (1 page)

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

Name: William J. Brucker
Internal Address: Stetina Brunda Garred & Brucker
Street Address: 75 Enterprise, Suite 250
City: Aliso Viejo
State: CA Zip: 92656
Phone Number: (949) 855-1246
Fax Number: (949) 855-6371
Email Address: wbrucker@stetinalaw.com

6. Total number of applications and registrations involved: 6

7. Total fee (37 CFR 2.6(b)(6) & 3.41) $165.00

☐ Authorized to be charged by credit card
☐ Authorized to be charged to deposit account
☒ Enclosed

8. Payment Information:

a. Credit Card Last 4 Numbers
Expiration Date

b. Deposit Account Number

Authorized User Name

9. Signature:

Signature

2/17/06
Date

WILLIAM J. BRUCKER
Name of Person Signing

Total number of pages including cover sheet, attachments, and document: 74

Documents to be recorded (including cover sheet) should be faxed to (703) 306-5995, or mailed to:
Mail Stop Assignment Recordation Services, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450

02/22/2006 DBYRNE 00000038 2497162
01 FC:8521 40.00 DP
02 FC:8522 125.00 DP

FINANCE SECTION
2006 FEB 21 PM 4:05
OFFICE OF PUBLIC RECORDS

Attached Sheet

4. Application number(s) or registration number(s) and identification or description of the Trademark.

B. Trademark Registration No(s).

1) 2,497,162 for mark MOHOMINE (wordmark)
2) 2,467,759 for mark SOURCEBANK (wordmark)
3) 2,602,994 for mark MOHORESUME EXTRACTOR (wordmark)
4) 2,520,375 for mark MOHOPLATFORM (wordmark)
5) 2,556,916 for mark MOHOMINE (wordmark)
6) 2,672,738 for mark MOHOMINE (stylized mark)

T:\Client Documents\Kofax\000\merger recordation attatchment sheet.doc

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (the "Agreement"), is made and entered into as of March 17, 2003, by and among Kofax Image Products, Inc., a Delaware corporation ("Parent"), Mohomine Acquisition Corp., a California corporation and wholly owned Subsidiary of Parent ("Merger Sub"), and Mohomine, Inc., a California corporation (the "Company"). Certain other capitalized terms used in this Agreement are defined in Exhibit A attached hereto.

RECITALS

WHEREAS, the respective Boards of Directors of Parent, Merger Sub and the Company believe it is in the best interest of each company and their respective stockholders to consummate the business combination transaction provided for herein in which Merger Sub would merge with and into the Company with the Company as the surviving corporation (the "Merger");

WHEREAS, the respective Boards of Directors of Parent, Merger Sub and the Company have approved this Agreement and the Merger, upon the terms and subject to the conditions set forth in this Agreement in accordance with the Delaware General Corporation Law ("DGCL"), the California General Corporation Law ("CGCL") and their respective charter documents; and

WHEREAS, each of Parent, Merger Sub and the Company desire to make certain representations, warranties, covenants and agreements in connection with the Merger and also to prescribe various conditions to the consummation thereof.

AGREEMENT

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

ARTICLE 1

THE MERGER

1.1. The Merger. Upon the terms and subject to the conditions set forth in this Agreement, and in accordance with the DGCL and the CGCL, Merger Sub shall be merged with and into the Company at the Effective Time of the Merger (as defined in Section 1.3). Following the Merger, the separate corporate existence of Merger Sub shall cease, and the Company shall continue as the surviving corporation (the "Surviving Corporation") and shall succeed to and assume all the rights, properties, liabilities and obligations of Merger Sub in accordance with the CGCL.

1.2. Closing. The closing of the Merger (the "Closing") shall take place at the offices of Stradling Yocca Carlson & Rauth at 660 Newport Center Drive, Suite 1600, Newport Beach, California 92660 at the date and time on which the conditions to Closing set forth in Article 9 of this Agreement shall have been satisfied or waived by the appropriate party or at such time as the parties hereto agree. The date on which the Closing actually occurs and the transactions contemplated hereby become effective is hereinafter referred to as the "Closing Date." At the time of the Closing, Parent, Merger Sub and the Company shall deliver the certificates and other documents and instruments required to be delivered hereunder.

1.3. **Effective Time of the Merger**. At the Closing, the parties hereto shall (a) cause an agreement of merger in substantially the form of Exhibit B (the "California Agreement of Merger") to be executed and filed with the Secretary of State of the State of California, as provided in Section 1103 of the CGCL and (b) take all such other and further actions as may be required by the CGCL or other applicable Law to make the Merger effective. The Merger shall become effective as of the date and time of the filing of the California Agreement of Merger. The date and time of such effectiveness are referred to herein as the "Effective Time."

1.4. **Effects of the Merger**. Subject to the foregoing, the effects of the Merger shall be as provided in the applicable provisions of the DGCL and the CGCL.

1.5. **Articles of Incorporation and Bylaws of the Surviving Corporation**. The Articles of Incorporation of Merger Sub as in effect immediately prior to the Effective Time shall be the Articles of Incorporation of the Surviving Corporation until thereafter changed or amended as provided therein or in accordance with applicable Law. The Bylaws of Merger Sub as in effect immediately prior to the Effective Time shall be the Bylaws of the Surviving Corporation until thereafter changed or amended as provided therein or in accordance with applicable law.

1.6. **Directors and Officers**. The directors and officers of Merger Sub immediately prior to the Effective Time shall be the directors and officers of the Surviving Corporation until their successors shall have been duly elected or appointed and qualified in accordance with applicable Law or until their earlier death, resignation or removal in accordance with the Surviving Corporation's Articles of Incorporation and Bylaws.

ARTICLE 2

EFFECT OF THE MERGER ON THE CAPITAL STOCK OF COMPANY AND MERGER SUB

2.1. **Effect on Capital Stock.** At the Effective Time, by virtue of the Merger and without any action on the part of Parent, Merger Sub or the Company:

(a) **Capital Stock of Merger Sub.** Each issued and outstanding share of capital stock of Merger Sub shall by virtue of the Merger and without any action on the part of any holder thereof, be converted into one share of the Company's common stock. Such newly issued shares shall thereafter constitute all of the issued and outstanding capital stock of the Surviving Corporation.

(b) **Conversion of the Company Stock.** Subject to other provisions of this Article 2:

(i) Each share of Company Common Stock issued and outstanding immediately prior to the Effective Time (except for shares referred to in Section 2.1(b)(ix) hereof and except for Dissenting Shares) shall, by virtue of the Merger, be cancelled in accordance with applicable Laws, and shall cease to exist and no consideration shall be delivered with respect thereto.

(ii) Each share of Company Series A Preferred Stock issued and outstanding immediately prior to the Effective Time (except for shares referred to in Section 2.1(b)(ix) hereof and except for Dissenting Shares) shall, by virtue of the Merger, be converted automatically into the right to receive (A) an amount in cash equal to the Series A Per Share Closing

Consideration; and (B) a contingent cash payment, pursuant to Section 2.5, equal to the Series A Per Share Earn-Out Consideration.

(iii) Each share of Company Series B1 Preferred Stock issued and outstanding immediately prior to the Effective Time (except for shares referred to in Section 2.1(b)(ix) hereof and except for Dissenting Shares) shall, by virtue of the Merger, be converted automatically into the right to receive (A) an amount in cash equal to the Series B1 Per Share Closing Consideration; and (B) a contingent cash payment, pursuant to Section 2.5, equal to the Series B1 Per Share Earn-Out Consideration.

(iv) Each share of Company Series B2 Preferred Stock issued and outstanding immediately prior to the Effective Time (except for shares referred to in Section 2.1(b)(ix) hereof and except for Dissenting Shares) shall, by virtue of the Merger, be converted automatically into the right to receive (A) an amount in cash equal to the Series B2 Per Share Closing Consideration; and (B) a contingent cash payment, pursuant to Section 2.5, equal to the Series B2 Per Share Earn-Out Consideration.

(v) Each share of Company Series C Preferred Stock issued and outstanding immediately prior to the Effective Time (except for shares referred to in Section 2.1(b)(ix) hereof and except for Dissenting Shares) shall, by virtue of the Merger, be converted automatically into the right to receive (A) an amount in cash equal to the Series C Per Share Closing Consideration; and (B) a contingent cash payment, pursuant to Section 2.5, equal to the Series C Per Share Earn-Out Consideration.

(vi) Each share of Company Series D Preferred Stock issued and outstanding immediately prior to the Effective Time (except for shares referred to in Section 2.1(b)(ix) hereof and except for Dissenting Shares) shall, by virtue of the Merger, be converted automatically into the right to receive (A) subject to Section 2.2(f), an amount in cash equal to the Series D Per Share Closing Consideration; (B) a contingent cash payment, pursuant to Section 2.5, equal to the Series D Per Share Reimbursement Consideration; and (C) a contingent cash payment, pursuant to Section 2.5, equal to the Series D Per Share Residual Earn-Out Consideration.

(vii) The capitalization of the Company as of immediately prior to the Effective Time shall be set forth on a Merger Consideration certificate to be delivered by the Company to the Parent at Closing (the "Merger Consideration Certificate"). Parent and the Surviving Corporation shall be entitled to rely on the Merger Consideration Certificate in connection with payment of the Merger Consideration pursuant to this Section 2.2.

(viii) Each share of Company Stock issued and outstanding immediately prior to the Effective Time shall no longer be outstanding and shall automatically be canceled and retired and shall cease to exist, and each holder of a certificate representing any such shares shall cease to have any rights with respect thereto, except the right to receive, upon the surrender of any such certificates, the Merger Consideration to be issued or paid in consideration therefor upon the surrender of such certificate in accordance with Section 2.2 and 2.5, without interest.

(ix) Each share of Company Stock held by the Company as treasury stock or held by Parent, Merger Sub or any Subsidiary or parent of Parent, Merger Sub or the Company immediately prior to the Effective Time shall be canceled, retired and cease to exist, and no consideration shall be delivered with respect thereto.

2.2. **Surrender and Payment.**

(a) Within three (3) days following the Closing Date, the Surviving Corporation shall cause to be mailed to each holder of record of a certificate or certificates (the "Certificates") which immediately prior to the Closing Date represent outstanding shares of Company Stock that are to be converted into the right to receive the Merger Consideration pursuant to Section 2.1(b), (i) a letter of transmittal (which shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon receipt of the Certificates by the Parent, and shall be in such form and have such other provisions as Parent may reasonably specify) and (ii) instructions for use in effecting the surrender of the Certificates in exchange for the Merger Consideration. After the Effective Time, upon surrender of a Certificate for cancellation to the Parent or to such agent or agents as may be appointed by Parent, together with such letter of transmittal, duly completed and validly executed in accordance with the instructions thereto, the holder of such Certificate shall be entitled to receive in exchange therefor the Merger Consideration, and the Certificate so surrendered shall forthwith be cancelled. Until so surrendered, each Certificate will be deemed from and after the Effective Time, for all corporate purposes, to evidence the right to receive the Merger Consideration.

(b) If any portion of the Merger Consideration is to be paid to a Person other than the registered holder of the Shares represented by the Certificates surrendered in exchange therefor, it shall be a condition to such payment that the Certificates so surrendered shall be properly endorsed or otherwise be in proper form for transfer and that the Person requesting such payment shall pay to the Parent any transfer or other taxes required as a result of such payment to a Person other than the registered holder of such Shares or establish to the satisfaction of the Parent that such tax has been paid or is not payable.

(c) If, after the Effective Time, Certificates are presented to the Surviving Corporation, they shall be canceled and exchanged for the Merger Consideration provided for, and in accordance with the procedures set forth, in this Article 2.

(d) Notwithstanding anything to the contrary in this Section 2.2, Parent shall not be liable to any holder of Shares for any amount paid to a public official pursuant to and in accordance with the requirements of applicable abandoned property, escheat or similar Laws.

(e) If any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact, in form and substance acceptable to the Parent, by the person claiming such Certificate to be lost, stolen or destroyed, and complying with such other conditions as the Parent may reasonably impose (including the execution of an indemnification undertaking or the posting of an indemnity bond or other surety in favor of the Parent with respect to the Certificate alleged to be lost, stolen or destroyed), the Parent will deliver to such person the Merger Consideration payable in respect of each such Certificate, without interest thereon.

(f) Upon the terms and subject to the conditions of this Agreement, at the Closing, Parent shall pay the Escrow Amount, which shall be deducted from the Series D Closing Consideration, to Wells Fargo Bank, National Association, as escrow agent (the "Escrow Agent"), to be held, invested, administered, disbursed and otherwise dealt with by the Escrow Agent, as collateral security for the indemnity and other obligations of the Company as provided herein, pursuant to the terms and conditions of the Escrow Agreement, dated as of the Closing Date, in the form attached hereto as Exhibit C.

2.3. Dissenting Shares.

(a) Notwithstanding Section 2.1, Shares outstanding immediately prior to the Effective Time and held by a holder who is entitled to an appraisal of the fair market value for such shares and who does not vote in favor of or consent in writing to the Merger and who otherwise complies with the provisions of Section 1300 of the CGCL (the "Dissenting Shares") shall not be converted into the right to receive any portion of the Merger Consideration as provided in Section 2.1(b) of this Agreement, unless and until such holder fails to perfect or withdraws or otherwise loses his right to an appraisal of the fair market value of his Dissenting Shares. If, after the Effective Time, any such holder fails to perfect or withdraws or loses his right to an appraisal of the fair market value of his Dissenting Shares under the CGCL, such Dissenting Shares shall thereupon be treated as if they had been converted as of the Effective Time into the right to receive the Merger Consideration to which such holder is entitled, without interest thereon.

(b) The Company shall give Parent prompt notice of any demands received by the Company for the payment of fair market value for Shares, and Parent shall have the right to direct all negotiations and proceedings with respect to such demands. The Company shall not make any such payment without Parent's prior written consent.

2.4. Stock Options and Purchase Plans.

(a) At the Effective Time, each outstanding option to purchase shares of the Company's common stock issued pursuant to the Company's 1999 Stock Option Plan, as amended (the "Option Plan"), or issued outside the Option Plan (a "Company Option" or collectively "Company Options"), which remain unexercised immediately prior to the Effective Time shall be automatically terminated and canceled and be of no further force or effect. Prior to the Effective Time, the Company shall take all actions (including, if appropriate, amending the terms of the Option Plan) that are necessary to give effect to the transactions contemplated by this Section 2.4.

(b) The Parent, Merger Sub and the Company hereby acknowledge and agree that the Surviving Corporation shall not assume or continue any Company Options, or substitute any additional options for such Company Options.

2.5. Contingent Earn-Out Consideration After the Closing. On the terms and subject to the conditions of this Section 2.5, holders of Shares shall be entitled to receive an aggregate cash payment of up to $1,000,000 (as computed in accordance with Section 2.5(b), the "Earn-Out Consideration") in respect of such Shares following the Effective Time, if and to the extent earned as provided in this Section 2.5.

(a) **Earn-Out Consideration Amount.** If the Surviving Corporation has gross revenue for the calendar year ending December 31, 2003 greater than or equal to $1,500,000 (the "Earn-Out Revenue"), the Earn-Out Consideration shall be equal to the amount set forth opposite the corresponding Earn-Out Revenue on Exhibit D hereto.

(b) **Delivery of Earn-Out Statement.** On or prior to February 14, 2004, Parent shall deliver a statement (the "Earn-Out Statement") to David Titus (the "Shareholder Representative") setting forth the Earn-Out Revenue and identifying the aggregate Earn-Out Consideration, if any, and such reasonable detail required to support the calculation of the Earn-Out Revenue. The Earn-Out Statement shall be accompanied by a certificate from the Chief Financial

Officer of Parent certifying that the Earn-Out Revenue was calculated by Parent in good faith and in accordance with GAAP, consistent with past practices of Parent. Within ten (10) days following delivery by Parent of the Earn-Out Statement, the Shareholder Representative may deliver to Parent a written notice of any objection thereto (a "Dispute Notice"), which Dispute Notice shall contain a reasonably detailed statement of the basis of such objection. If a Dispute Notice is not delivered within such time period, the Earn-Out Statement delivered by Parent shall be deemed final and binding on all parties. If a Dispute Notice is timely delivered, then the Shareholder Representative and the Chief Financial Officer shall negotiate in good faith to resolve any disagreements. If the Shareholder Representative and the Chief Financial Officer of Parent are unable to resolve all such disagreements within thirty (30) days following delivery of the Dispute Notice, then the Shareholder Representative and the Chief Financial Officer of Parent shall choose an independent certified public accountant mutually acceptable to both parties to conduct an audit of the Earn-Out Revenue, the expense of which shall be paid by the holders of Shares by reducing the Earn-Out Consideration payable to such holders; provided, however, that if the audit reveals that Parent miscalculated or otherwise misstated the Earn-Out Revenue by an amount equal to ten percent (10%) or more of the actual Earn-Out Revenue, the expense of the audit shall be paid by Parent. The results of any such audit shall be final and binding on all parties.

(c) **Payment of Earn-Out Payments**. Parent shall deliver the aggregate Earn-Out Consideration in cash to the Shareholder Representative for distribution to the holders of Shares in accordance with Section 2.1(b) upon the later of: (i) the date that is the first anniversary of the Closing Date, (ii) the first day following resolution by the Shareholder Representative and the Chief Financial Officer of Parent of the disagreements set forth in the Dispute Notice or completion of any audit of the Earn-Out Revenue or (iii) the first day following resolution of any dispute arising in connection with any Claims or Liabilities under Section 8.1(a).

2.6. Additional Actions. If, at any time after the Effective Time, the Surviving Corporation shall consider or be advised that any deeds, bills of sale, assignments, assurances or any other actions or things are necessary or desirable to vest, perfect or confirm of record or otherwise in the Surviving Corporation its right, title or interest in, to or under any of the rights, properties or assets of Merger Sub or the Company or otherwise to carry out this Agreement, the officers and directors of the Surviving Corporation shall be authorized to execute and deliver, in the name and on behalf of Merger Sub and the Company, all such deeds, bills of sale, assignments and assurances and to take and do, in the name and on behalf of Merger Sub or the Company, all such other actions and things as may be necessary or desirable to vest, perfect or confirm any and all right, title and interest in, to and under such rights, properties or assets in the Surviving Corporation or otherwise carry out the transactions contemplated by this Agreement.

2.7. Withholding Taxes; Payments to Public Officials. Parent and Merger Sub shall be entitled to deduct and withhold from any consideration payable or otherwise deliverable to holders of Shares pursuant to this Agreement such amounts as Parent and Merger Sub may be required to deduct or withhold therefrom under the Code or under any provision of state, local or foreign Tax Law; provided, however, notice of any such deduction or withholding shall be provided to holders of Shares prior to delivery of the Merger Consideration. To the extent such amounts are so deducted or withheld, such amounts shall be treated for all purposes under this Agreement as having been paid to the holders of Shares to whom such amounts would otherwise have been paid. Neither Parent nor Merger Sub shall be liable to holders of Shares for any cash amounts delivered to any public official pursuant to any applicable abandoned property, escheat or similar Law.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to Parent and Merger Sub that, except as set forth in the disclosure schedules delivered by the Company to Parent and Merger Sub (the "Company Disclosure Schedule") which have been provided to Parent prior to the date hereof:

3.1. **Corporate Existence and Power**. The Company is a corporation duly incorporated, validly existing and in good standing under the laws of the State of California, and has all corporate powers and authority and all governmental licenses, authorizations, permits, consents and approvals required to own, lease and operate its properties and to carry on its business as now conducted, except for those licenses, authorizations, permits, consents and approvals the absence of which would not, individually or in the aggregate, have a Material Adverse Effect on the Company. The Company is duly qualified to do business as a foreign corporation and is in good standing in each jurisdiction where such qualification is necessary, except for those jurisdictions where the failure to be so qualified would not, individually or in the aggregate, have a Material Adverse Effect on the Company. The Company has heretofore delivered to Parent true and complete copies of the Company's Articles of Incorporation and Bylaws as currently in effect.

3.2. **Subsidiaries**. The Company does not own, directly or indirectly, any equity or other ownership interest in any corporation, partnership, joint venture or other entity or enterprise.

3.3. **Corporate Authorization**.

(a) The execution, delivery and performance by the Company of this Agreement and the consummation of the transactions contemplated hereby are within the Company's corporate powers and have been duly authorized by all necessary corporate action of the Company in accordance with the CGCL, except for the required approval of the holders of the Company's capital stock in connection with the consummation of the Merger.

(b) The Company's Board of Directors, at a meeting duly called and held, has unanimously (i) determined that this Agreement and the transactions contemplated hereby (including the Merger) are fair to, and in the best interests of, its shareholders, and (ii) approved and adopted this Agreement and the transactions contemplated hereby (including the Merger), which approval satisfies in full any applicable requirements of the CGCL.

(c) This Agreement has been duly executed and delivered by the Company. This Agreement constitutes, and the Transaction Documents to be executed and delivered by the Company will constitute, legal, valid and binding obligations of the Company, enforceable against the Company, as applicable, in accordance with their respective terms, except to the extent that its enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors rights generally or by general equitable principles.

3.4. **Governmental Authorization**. The execution, delivery and performance by the Company of this Agreement and the consummation by the Company of the transactions contemplated hereby require no action by or in respect of, or filing with, any governmental body, agency, official or authority, other than (a) the filing of the California Agreement of Merger and other documents in accordance with the CGCL, and (b) any other filings, approvals or authorizations

which, if not obtained, would not, individually or in the aggregate, have a Material Adverse Effect on the Company or Materially impair the ability of the Company to consummate the transactions contemplated by this Agreement.

3.5. **Non-Contravention.** The execution, delivery and performance by the Company of this Agreement and the consummation by the Company of the transactions contemplated hereby do not and will not (i) contravene or conflict with the Articles of Incorporation or Bylaws of the Company, (ii) assuming compliance with the matters referred to in Section 3.4, contravene or conflict with or constitute a violation of any provision of any Law, judgment, injunction, order or decree binding upon or applicable to the Company, (iii) require the consent or other action of any Person under, constitute a Default under, or give rise to any right of termination, cancellation or acceleration of any right or obligation of the Company or to a loss of any benefit to which the Company is entitled under any provision of any Material agreement or other instrument binding upon the Company or any Material license, franchise, permit, certificate, approval or other similar authorization affecting, or relating in any way to, the assets or business of the Company, (iv) result in the creation or imposition of any Material Lien on any asset of the Company, except, in the case of clauses (ii) and (iii), for such matters as would not, individually or in the aggregate, have a Material Adverse Effect on the Company or Materially impair the ability of the Company to consummate the transactions contemplated by this Agreement.

3.6. **Compliance with Law and Other Instruments.**

(a) The Company holds all licenses, permits and authorizations necessary for the lawful conduct of its business as now being conducted pursuant to all applicable Laws of all governmental bodies, agencies and other authorities having jurisdiction over the Company or any part of its operations, except for such permits, the absence of which would not, individually or in the aggregate, have a Material Adverse Effect on the Company, and there are no violations or claimed violations by the Company, or action or proceeding pending against the Company with respect to any such license, permit or authorization or any such Law. Section 3.6 of the Company Disclosure Schedule sets forth all such required licenses, permits and authorizations.

(b) The business of the Company has been and is being conducted in compliance with all applicable Laws, except for violations or failures to so comply that would not, individually or in the aggregate, have a Material Adverse Effect on the Company. No investigation or review by any Regulatory Authority with respect to the Company is pending or, to the Knowledge of the Company, threatened in writing. The Company has not received any written communication in the past two years from a Regulatory Authority that alleges that the Company is not in compliance with any applicable Law.

3.7. **Capitalization.**

(a) The authorized capital stock of the Company consists of 33,000,000 shares of common stock and 24,000,000 shares of preferred stock. As of the date of this Agreement, there are outstanding (i) 1,968,998 shares of common stock, (ii) 769,108 shares of Series A Preferred Stock, (iii) 338,983 shares of Series B1 Preferred Stock, (iv) 742,620 shares of Series B2 Preferred Stock, (v) 879,543 shares of Series C Preferred Stock, (vi) 16,517,265 shares of Series D Preferred Stock, (vii) warrants to purchase an aggregate of 380,435 shares of the Company's Series D Preferred Stock, and 405,000 shares of the Company's Common Stock, and (vii) Company Options to purchase an aggregate of 1,344,459 shares of the Company's Common Stock. 3,600,000 shares of the

Company's common stock have been reserved for issuance pursuant to the Company's Option Plan, 405,000 shares of the Company's Common Stock have been reserved for issuance upon exercise of outstanding warrants and 380,435 shares of the Company's Series D Preferred Stock have been reserved for issuance upon exercise of outstanding warrants.

(b) All outstanding shares of Company Stock have been duly authorized and validly issued and are fully paid and nonassessable and free of preemptive rights. Except as set forth in this Section 3.7, there are no outstanding (i) shares of capital stock or other voting securities of the Company, (ii) securities of the Company convertible into or exchangeable for shares of capital stock or voting securities of the Company, or (iii) options, restricted stock, stock appreciation rights, other stock based compensation awards or other rights to acquire from the Company, or other obligation of the Company to issue, any capital stock, voting securities or securities convertible into or exchangeable for capital stock or voting securities of the Company. There are no outstanding obligations of the Company to repurchase, redeem or otherwise acquire any securities referred to in clauses (i), (ii) or (iii) above.

(c) As of the date hereof, there are no outstanding bonds, debentures, notes or other indebtedness of the Company having the right to vote (or convertible into or exercisable for Company Stock having the right to vote) on any matters on which shareholders of the Company may vote.

(d) All of the Company Stock was issued or granted in compliance with all applicable federal and state securities laws.

(e) Except as set forth in Schedule 3.7(e), to the Knowledge of the Company, there are no voting agreements or voting trusts between or among any Person or Persons relating to the Company or the Company Stock. The Company is not obligated to issue or repurchase any shares of Company Stock for any purpose and, except as set forth in this Section 3.7, no Person has entered into any Contract (whether preemptive or contractual) for the purchase, subscription or issuance of any unissued shares or other securities of the Company, whether now or in the future.

3.8. Company Financial Statements; Absence of Undisclosed Liabilities.

(a) Schedule 3.8(a) of the Company Disclosure Schedule contains the Company's audited balance sheets as of December 31, 2000 and 2001 and the related audited statements of income and cash flows for the fiscal years then ended, together with the report thereon of PricewaterhouseCoopers LLP, independent certified public accountants and the Company's unaudited balance sheet as of December 31, 2002 and the related unaudited statements of income and cash flows for the fiscal year then ended (collectively, the "Company Financial Statements"). The Company Financial Statements present fairly the financial condition, results of operations and cash flows of the Company as of the respective dates and for the respective periods referred to in such financial statements, subject to normal year-end adjustments to unaudited financial statements which would not, individually or in the aggregate, have a Material Adverse Effect on the Company.

(b) The Company Financial Statements, including the notes thereto, have been prepared in accordance with United States generally accepted accounting principles ("GAAP") applied consistently throughout the periods involved (except as disclosed therein and that unaudited financial statements do not include notes thereto and subject to normal year-end adjustments in the case of unaudited financial statements which would not, individually or in the aggregate, have a

Material Adverse Effect on the Company). No financial statements of any Person other than the Company are required to be included in the Company Financial Statements.

(c) Except as set forth in the Company Financial Statements, the Company does not have any liabilities or obligations of any nature (whether accrued, absolute, contingent or otherwise), except for liabilities and obligations incurred in the ordinary course of business and which, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect on the Company.

3.9. Absence of Certain Changes. Since December 31, 2002, the business of the Company has been conducted in the ordinary course consistent with past practice and there has not been any:

(a) event, occurrence or development of a state of circumstances or facts which would, individually or in the aggregate, have a Material Adverse Effect on the Company (other than adverse effects arising from the execution and performance of this Agreement, changes in general economic conditions or changes applicable generally to the industry) or any event, occurrence or development which would have a Material Adverse Effect on the ability of the Company to consummate the Merger;

(b) declaration, setting aside or payment of any dividend or other distribution with respect to any shares of capital stock of the Company, or any repurchase, redemption or other acquisition by the Company of any outstanding shares of capital stock or other securities of, or other ownership interests in the Company;

(c) split, combination, re-classification of any Company Stock or any amendment of any term of any outstanding security of the Company;

(d) incurrence, assumption or guarantee by the Company of any indebtedness for borrowed money other than in the ordinary course and in amounts and on terms consistent with past practices;

(e) creation or other incurrence by the Company of any Lien on any Asset other than in the ordinary course consistent with past practices;

(f) transaction or commitment made, or any contract or agreement entered into, by the Company relating to its Assets or business (including the acquisition or disposition of any Assets) or any relinquishment by the Company of any Contract or other right, in either case, Material to the Company, other than transactions and commitments in the ordinary course consistent with past practices and those contemplated by this Agreement;

(g) change in any method of accounting, method of tax accounting or accounting practice by the Company, except for any such change that is consistent with GAAP or required by reason of a concurrent change in GAAP;

(h) (i) grant of any severance or termination pay to any current or former director, officer or employee of the Company, (ii) entering into of any employment, deferred compensation or other similar agreement (or any amendment to any such existing agreement) with any current or former director, officer or employee of the Company, except as set forth herein,

(iii) increase in benefits payable under any existing severance or termination pay policies or employment agreements, (iv) increase in compensation, bonus or other benefits payable or otherwise made available to current or former directors, officers or employees of the Company (other than salary increases in the ordinary course of business for employees other than officers and directors), (v) the declaration or payment of any bonuses or year-end payments to any current or former directors, officers or employees of the Company, or (vi) establishment, adoption, or amendment (except as required by applicable Law), of any collective bargaining, bonus, profit sharing, thrift, pension, retirement, deferred compensation, compensation, stock option, restricted stock or other benefit plan or arrangement covering any current or former director, officer or employee of the Company;

(i) labor dispute, other than routine individual grievances, or, to the Knowledge of the Company, any activity or proceeding by a labor union or representative thereof to organize any employees of the Company or any lockouts, strikes, slowdowns, work stoppages or threats thereof by or with respect to such employees;

(j) tax election or any settlement of tax liability, in either case that is Material to the Company;

(k) asset acquisition or expenditure in excess of $25,000 individually or $50,000 in the aggregate;

(l) payment, prepayment or discharge of liability other than in the ordinary course of business or any failure to pay any liability when due;

(m) write-offs or write-downs of any Assets of the Company;

(n) creation, termination or amendment of, or waiver of any right by the Company under, any Material Contract of the Company other than in the ordinary course of business;

(o) damage, destruction or loss having, or reasonably expected to have, a Material Adverse Effect on the Company;

(p) event that, if taken during the period from the date of this Agreement through the Effective Time, would constitute a breach of Section 5.1 hereof; or

(q) agreement or commitment to do any of the foregoing.

3.10. Litigation. There is no action, suit, investigation, audit or proceeding pending against, or to the Knowledge of the Company threatened against or affecting, the Company, its officers or directors or any of its properties before any court or arbitrator or any governmental body, agency or official. No former shareholder, employee, officer or director of the Company has any claim pending or to the Knowledge of the Company threatened against the Company, its officers or directors or any of its properties relating to sales of Company Stock by the Company or any of the Company's current or former shareholders. The Company nor, to the Knowledge of the Company, any of its officers and directors nor any of its properties are subject to any order, writ, judgment, decree or injunction of any court or arbitrator or any governmental body, agency or official. Section 3.10 of the Company Disclosure Schedule contains a complete list of all claims above $25,000 brought against the Company, or pending, since January 1, 2000, together with a brief

statement of the nature and amount of the claim, the court and jurisdiction in which the claim was brought, the resolution (if resolved), and the availability of insurance to cover the claim. To the Knowledge of the Company, there are no facts or circumstances that could reasonably be expected to give rise to any actions set forth in this Section 3.10.

3.11. Taxes.

(a) Except as set forth in (or resulting from matters set forth in) Section 3.11 of the Company Disclosure Schedule or as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company:

(i) the Company has prepared and timely filed with the appropriate governmental agencies all franchise, income and all other Tax returns and reports required to be filed on or before the Effective Time (collectively the "Returns"), taking into account any extension of time to file granted to or obtained on behalf of the Company;

(ii) all Taxes of the Company shown on such Returns or otherwise known by the Company to be due or payable have been timely paid in full to the proper authorities, other than such Taxes as are adequately reserved for in accordance with GAAP;

(iii) all deficiencies resulting from Tax examinations of income, sales and franchise and all other Returns filed by the Company in any jurisdiction in which such Returns are required to be so filed have been paid and no claim has been made by an authority in a jurisdiction where the Company does not file Returns that it is or may be subject to taxation by that jurisdiction;

(iv) no deficiency has been asserted or assessed against the Company which has not been satisfied or otherwise resolved, and no examination of the Company is pending or, to the Knowledge of the Company, threatened for any Material amount of Tax by any taxing authority and there is no dispute or claim concerning any Tax liability of the Company either claimed by any authority in writing, or to the Knowledge of the Company, reasonably expected to be claimed;

(v) no extension of the period for assessment or collection of any Material Tax is currently in effect and no extension of time within which to file any Material Return has been requested;

(vi) all Returns filed by the Company are correct and complete in all respects or adequate reserves have been established with respect to any additional Taxes that may be due (or may become due) as a result of such Returns not being correct or complete;

(vii) to the Knowledge of the Company, no Tax liens have been filed with respect to any Taxes;

(viii) the Company has not: (A) filed a consent under Code Section 341(f) concerning collapsible corporations; (B) executed, become subject to, or entered into any closing agreement pursuant to Section 7121 of the Code or any similar or predecessor provision thereof under the Code or other Tax Law, (C) received approval to make or agreed to a change in accounting method, or (D) incurred or assumed any liability for the Taxes of any Person. The Company has disclosed on its federal income Tax Returns all positions taken therein that could give rise to a substantial understatement of federal income Tax within the meaning of Section 6662 of the Code;

(ix) no Company Asset is property that is required to be treated as being owned by any other Person pursuant to the so-called "safe harbor lease" provisions of former Section 168(f)(8) of the Code; the Company has not agreed to make, nor are they required to make, any adjustment under Section 481(a) of the Code by reason of a change in accounting method or otherwise; the transaction contemplated herein is not subject to the Tax withholding provisions of Code Section 3406, or of subchapter A of Chapter 3, of the Code or of any other provision of Law; and the Company is not a party to any joint venture, partnership, or other arrangement or contract which could be treated as a partnership for federal income Tax purposes;

(x) the Company has not entered, nor does it plan to enter into, any agreement, arrangement, plan or similar circumstance with any Person that could result in a distribution, apportionment or reallocation under Section 482 of the Code or other similar provision of the Tax Law;

(xi) the Company has not made since January 1, 2000, and will not make, any voluntary adjustment by reason of a change in its accounting methods for any pre-Merger period;

(xii) the Company has made timely payments of the Taxes required to be deducted and withheld in connection with amounts paid or owing to any employee, independent contractor, creditor, shareholder, or other third party;

(xiii) the Company is not a party to any Tax sharing or Tax matters agreement;

(xiv) to the Knowledge of the Company, the Company is not liable to suffer any recapture, clawback or withdrawal of any relief or exemption from Tax howsoever arising (including the entering into and the consummation of the Merger), and whether by virtue of any act or omission by the Company or by any other Person or Persons;

(xv) to the Knowledge of the Company, the Company is not liable to be assessed for or made accountable for any Tax for which any other Person or Persons may be liable to be assessed or made accountable whether by virtue of the entering into or the consummation of the Merger or by virtue of any act or acts done by or which may be done by or any circumstance or circumstances involving or which may involve any other Person or Persons; and

(xvi) The Company has not been a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code.

(b) The Company is not a party to any agreement, contract, or arrangement that would, as a result of the transactions contemplated hereby, result, separately or in the aggregate, in (i) the payment of any "excess parachute payments" within the meaning of Section 280G of the Code by reason of the Merger, or (ii) the payment of any form of reimbursement for any Tax incurred by any Person arising under Section 280G of the Code.

3.12. The Company Employee Benefit Plans.

(a) Section 3.12(a) of the Company Disclosure Schedule sets forth a list of all of the Company's employee benefit plans, as defined in Section 3(3) of ERISA; and

(b) Section 3.12(b) of the Company Disclosure Schedule sets forth a true and complete list of all other profit-sharing, deferred compensation (including a list of participants therein), bonus, stock option, stock purchase, stock bonus, phantom stock, vacation pay, holiday pay, severance, dependent care assistance, excess benefit, incentive compensation, salary continuation, medical, life or other insurance, employment, severance, termination, golden parachute, consulting, supplemental retirement plan or agreement, supplemental unemployment and other employee benefit plans, programs, agreements or arrangements, including all unwritten employee benefit plans, programs, agreements and arrangements, if any, maintained or contributed to by the Company for the benefit of the Company's Employees (or former employees) or independent contractors and/or their beneficiaries. The plans identified in Sections 3.12(a) and 3.12(b) are collectively referred to herein as "Benefit Plans." An arrangement will not fail to be a Benefit Plan simply because it only covers one individual, or because the Company's obligations under the plan arise by reason of its being a "successor employer" under applicable Law.

(c) The Company has delivered or made available to Parent a true and complete copy of each Benefit Plan and any related funding agreements (e.g., trust agreements or insurance contracts), including all amendments (and Section 3.12(b) of the Company Disclosure Schedule includes a description of any such amendment that is not in writing);

(d) No Benefit Plan is a "multi-employer plan," as defined in Section 3(37) of ERISA, nor is a plan described in Section 4063(a) of ERISA.

(e) All costs of administering, and contributions required to be made by the Company to, each Benefit Plan under the terms of that Benefit Plan, ERISA, the Code or any other applicable Law have been timely made, and are fully deductible. All amounts properly accrued to date as liabilities of the Company under, or with respect to, each Benefit Plan (including administrative expenses and incurred but not reported claims) for the current plan year of the Benefit Plan have been recorded on the appropriate books, to the extent required by Law or GAAP.

(f) Except as set forth in Section 3.12(f) of the Company Disclosure Schedule, each Benefit Plan has been maintained and operated in accordance with, and complies currently with, in all Material respects, all applicable Laws, including but not limited to ERISA and the Code. Each Benefit Plan has been operated in all Material respects in accordance with its terms.

(g) To the Knowledge of the Company, (i) no prohibited transaction has occurred with respect to any of the Benefit Plans which is not exempt under Section 4975 of the Code and Section 406 of ERISA, and (ii) the Company has not engaged in any transaction with respect to any Benefit Plan which could subject it to either a Material civil penalty assessed pursuant to Section 409, 502(i) or 502(l) of ERISA, or a Material tax imposed pursuant to Section 4975 or 4976 of the Code.

(h) Except as set forth in Section 3.12(h) of the Company Disclosure Schedule, the Company does not maintain any plan that provides (or will provide) medical or death benefits to one or more, current or future former employees (including retirees) beyond their retirement or other termination of service, other than benefits that are required to be provided pursuant to Section 4980B of the Code or state Law continuation coverage or conversion rights.

(i) Except as set forth in Section 3.12(i) of the Company Disclosure Schedule, there are no proceedings or lawsuits, pending or, to the Knowledge of the Company, threatened, and,

to the Knowledge of the Company, are no investigations, either currently in progress or expected to be instituted in the future, relating to any Benefit Plan, by any administrative agency, whether local, state or federal or by any fiduciary, participant or beneficiary of such plan.

(j) Except as set forth in Section 3.12(j) of the Company Disclosure Schedule, none of the Benefit Plans or any other employment agreement or arrangement entered into by the Company will entitle any current or former employee to any benefits or other compensation that become payable solely as a result of the consummation of this transaction.

(k) Except as set forth in Section 3.12(k) of the Company Disclosure Schedule, to the Knowledge of the Company, no Benefit Plan has any interest in any annuity contract or other investment or insurance contract issued by an insurance company that is the subject of bankruptcy, conservatorship, rehabilitation or similar proceeding.

(l) Section 3.12(l) of the Company Disclosure Schedule lists each individual who (i) has elected to continue participating in a group health plan of the Company pursuant to an election under COBRA, or (ii) has not made an election under COBRA but who is still eligible to make such election.

3.13. Banking and Finders' Fees. There is no investment banker, broker, finder or other intermediary, which has been retained by or is authorized to act on behalf of the Company who might be entitled to any fee or commission in connection with the transactions contemplated by this Agreement.

3.14. Environmental Compliance.

(a) The Company is in compliance with all Environmental Laws and all Environmental Permits (except where non-compliance would not have a Material Adverse Effect upon the Company).

(b) The Company has not received any written notice regarding any violation of any Environmental Laws, or any Company Environmental Liabilities, including any investigatory, remedial or corrective obligations, relating to the Company or its facilities arising under Environmental Laws.

(c) Except as set forth in Section 3.14 of the Company Disclosure Schedule:

(i) The Company has not caused, or is not causing or, to the Knowledge of the Company, threatening to cause, and, to the Knowledge of the Company, no Person for whose conduct the Company may be responsible has caused or is causing or threatening to cause any disposals or releases of any Hazardous Material on or under any properties which it (A) leases, occupies or operates or (B) previously owned, leased, occupied or operated and, to the Knowledge of the Company, no such disposals or releases occurred prior to the Company having taken title to, or possession or operation of, any of such properties; and to the Knowledge of the Company no such disposals or releases are migrating or have migrated off of such properties in subsurface soils, groundwater or surface waters after the Company has taken title to, or possession or operation of any such properties and, to the Knowledge of the Company, no such disposals or releases are migrating or have migrated off of such properties in subsurface soils, groundwater or surface water prior to such time;

(ii) The Company has not, and, to the Knowledge of the Company, no Person for whose conduct the Company may be responsible has (A) arranged for the disposal or treatment of Hazardous Material at any facility owned or operated by another Person, or (B) accepted any Hazardous Material for transport to disposal or treatment facilities or other sites selected by the Company from which facilities or sites there has been a release or there is a release or threatened release of a Hazardous Material; any facility identified in Section 3.14(c)(ii)(A) was duly licensed in accordance with Law and has not been listed in connection with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) by the United States Environmental Protection Agency's Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) or National Priorities List (NPL) or any equivalent or like listing of sites under state or local Law (whether for potential releases of substances listed in CERCLA or other substances);

(iii) The Company does not have any reason to believe or suspect that, and to the Knowledge of the Company, there is no release or threatened release of, any Hazardous Material originating from a property other than those leased or operated by the Company has come to be (or may come to be) located on or under properties leased, occupied or operated by the Company;

(iv) The Company has not ever installed, used, buried or removed any surface impoundment or underground tank or vessel on properties owned, leased, occupied or operated by the Company or any of the Company Subsidiaries;

(v) The Company is and has been in compliance in all Material respects with all federal, state, local or foreign Laws, permits, approvals and authorizations relating to air, water, industrial hygiene and worker health and safety, anti-pollution, hazardous or toxic wastes, materials or substances, pollutants or contaminants, and to the Knowledge of the Company, no condition exists on any of the real property owned by or used in the business of the Company that would constitute a violation of any such Law or that constitutes or threatens to constitute a public or private nuisance; and

(vi) There has been no litigation, administrative proceedings or investigations or any other actions, claims, demands notices of potential responsibility or requests for information brought or, to the Knowledge of the Company, threatened against the Company or any settlement reached by it with any Person or Persons alleging the presence, disposal, release or threatened release of any Hazardous Material on, from or under any of such properties or as otherwise relating to potential environmental liabilities or the actual or alleged injury to human health or the environment by reason of the current conditions or operation of the Company facilities or past condition and operations or activities of the Company facilities.

3.15. Collective Bargaining Arrangements. The Company is not a party to or bound by any employee collective bargaining agreement, nor is the Company a party to or affected by or, to the Knowledge of the Company, threatened with, any dispute or controversy with a union or with respect to unionization or collective bargaining involving the employees of the Company.

3.16. Accounts Receivable; Deferred Revenue.

(a) The accounts receivable reflected in the balance sheet as of December 31, 2002 of the Company Financial Statements are owned free and clear by the Company and are based on the Company's reasonable judgment and its normal credit review procedures, business practices

and GAAP. The Company has established allowances for doubtful accounts and returns in accordance with GAAP and consistent with past collectibility results and returns. To the Knowledge of the Company, there are no facts or circumstances which may indicate that any recorded allowances are inadequate. Except as set forth in Section 3.16(a) of the Company Disclosure Schedule, all accounts receivable for customer collections and billings prior to the Closing Date have been properly recorded on the Company's books and records on a timely basis and in the month in which the Company's efforts and activities generating such income were expended.

(b) The deferred revenue reflected in the balance sheet as of December 31, 2002 of the Company Financial Statement is based on the Company's reasonable judgment and business practices, as established in accordance with GAAP consistently applied. Except as set forth in Section 3.16(b) of the Company Disclosure Schedule, all deferred revenue relating to contracts executed prior to the Closing Date has been properly recorded on the Company's books and records on a timely basis and in the month in which the Company received the cash payment.

3.17. Warranties. Section 3.17 of the Company Disclosure Schedule (i) sets forth the Company's warranty expense for each of the Company's last three (3) fiscal years ended December 31, 2002, and (ii) describes the Company's product return policy and the forms of warranties given or made by the Company with respect to products sold by the Company since January 1, 2000. To the Knowledge of the Company, there is no fact or event which has occurred at any time since January 1, 2000 which has formed or could reasonably be expected to form the basis of any claim against the Company, whether or not covered by insurance, for breach of any express or implied product warranty, other than warranty claims asserted by customers in the ordinary course of business and consistent with the past experience of the Company as set forth on Section 3.17 of the Company Disclosure Schedule.

3.18. Interests in Real Property. Section 3.18 of the Company Disclosure Schedule is the complete and correct list and brief description of all real property leased by the Company on the Closing Date. The Company does not own any real property. All real property leases to which the Company is a party are valid and in full force and effect and are valid and binding on the parties thereto, assuming enforceability as to the parties other than the Company, and the Company is not, and, to the Knowledge of the Company, no other party thereto is in Default of any Material provision thereof. All improvements and fixtures made by or at the direction of the Company on real properties leased by the Company conform in all Material respects to all applicable health, fire, safety, environmental, zoning and building laws and ordinances; and all materials, buildings, structures (or the space used by the Company in such buildings or structures) and fixtures used by the Company in the conduct of its business are in good operating condition and repair, ordinary wear and tear excepted, and are sufficient for the type and magnitude of their respective operations.

3.19. Personal Property. The Company has good and marketable title, free and clear of all title defects, security interests, pledges, options, claims, liens, encumbrances and restrictions of any nature whatsoever to all inventory and receivables and to any item of machinery, equipment, or tangible personal property reflected on the balance sheet as of December 31, 2002 of the Company Financial Statements or used in the business by the Company (regardless of whether reflected on the balance sheet as of December 31, 2002 of the Company Financial Statements). To the Knowledge of the Company, all the machinery, equipment and other tangible personal property used in the business by the Company is in good operating condition and repair, normal wear and tear excepted. At the Closing Date, the Company will possess all of the personal property wherever located required to conduct its respective business as conducted prior to the Closing.

3.20. Employees, Directors and Officers. Section 3.20 of the Company Disclosure Schedule comprises a complete and correct list of all of the present employees, officers and directors of the Company (the "Employees"), including the direct compensation (including wages, salaries and actual or anticipated bonuses) to be paid in the current fiscal year to such Persons. Except as disclosed in Section 3.20 of the Company Disclosure Schedule, no unpaid salary or bonuses, other than for the immediately preceding pay period and other than pursuant to the existing deferred compensation plans of the Company is now payable to any of such officers, directors or employees.

3.21. Patents, Intellectual Property; Software.

(a) The Company owns or possesses legally enforceable rights to use, all Intellectual Property Material to the operation of the business of the Company as currently conducted, or to products or services currently under development by the Company (collectively, "Material Intellectual Property"), and has the right to use and license or sublicense the same without Material liability to, or any requirement of consent from, any other Person or party. Such Intellectual Property constitutes all Intellectual Property necessary for the conduct of the business of the Company in the manner conducted immediately prior to the Closing. All Material Intellectual Property is either owned by the Company free and clear of all Liens or is used pursuant to a license agreement; each such license agreement is valid and enforceable and in full force and effect assuming enforceability as to the parties other than the Company; the Company is not in Material Default thereunder; and to the Knowledge of the Company, no corresponding licensor is in Material Default thereunder. None of the Company Material Intellectual Property, and to the Knowledge of the Company, none of the Third Party Technology infringes or otherwise conflicts with any Intellectual Property or other right of any Person; there is no pending or threatened (in writing) litigation, adversarial proceeding, administrative action or other challenge or claim relating to any Company Material Intellectual Property or, to the Knowledge of the Company, any Third Party Technology; there is no outstanding Order relating to any Company Material Intellectual Property or, to the Knowledge of the Company, any Third Party Technology; and to the Knowledge of the Company, there is currently no infringement by any Person of any Material Intellectual Property.

(b) The Company has the right to use, pursuant to valid licenses, all software development tools, library functions, compilers, and all other Third Party Software that are used in the operation of the Company or to create, modify, compile, operate or support any Software that is Material Intellectual Property or is incorporated into any Product, except for any deficiencies that would not have a Material Adverse Effect on the Company. Without limiting the foregoing, no open source or public library Software, including any version of Software licensed pursuant to any GNU public license, was used in the development or modification of any Software that is Material Intellectual Property or is incorporated into any Product.

(c) The Company has taken reasonable steps to protect, maintain and safeguard the Material Intellectual Property, including any Material Intellectual Property for which improper or unauthorized disclosure would impair its value or validity Materially, and has executed and required such nondisclosure agreements as are reasonably necessary to protect the confidentiality of Material Intellectual Property and made filings and registrations in connection with the foregoing reasonably required to safeguard the Material Intellectual Property, except for deficiencies that would not Materially impair the value of Material Intellectual Property.

(d) The Company is the sole and exclusive owner of all Owned Software that is required to conduct its business including, without limitation, the products and services currently

under development by the Company. Section 3.21(d)(i) of the Company Disclosure Schedule sets forth a true and complete list of all Material Owned Software owned by the Company. Section 3.21(d)(ii) of the Company Disclosure Schedule sets forth a true and complete list of all Material Third Party Software used by the Company.

(e) The Company is the sole and exclusive owner of all Owned Databases that are required to conduct its business including, without limitation, the products and services currently under development by the Company, except for any deficiencies that would not Materially impair the value of Material Intellectual Property. Section 3.21(e)(i) of the Company Disclosure Schedule sets forth a true and complete list of all Material Owned Databases of the Company. Section 3.21(e)(ii) of the Company Disclosure Schedule sets forth a true and complete list of all Material Third Party Databases used by the Company.

(f) No Material confidential or trade secret information of the Company has been provided to any Person except subject to written confidentiality agreements, except for any such disclosure which has not resulted and could not reasonably be expected to result in a Material Adverse Effect on the Company.

(g) The Company has valid copyrights in all Material copyrightable material, other than Third Party Technology, necessary for the conduct of its business as being conducted on the date hereof, whether or not registered with the U.S. copyright office, including all copyrights in the Products containing Material copyrightable material. Consummation of the transactions contemplated hereby will not alter or impair the validity of any copyrights or copyright registrations.

(h) (A) No third party (including any original equipment manufacturer or site license customer) has any right to manufacture, reproduce, distribute, sell, sublicense, market or exploit any of the Products or any adaptations, translations, or derivative works based on the Products, or any portion thereof; (B) the Company has not granted to any third party any exclusive rights of any kind with respect to any of the Products, including territorial exclusivity or exclusivity with respect to particular versions, implementations or translations of any of the Products; and (C) the Company has not granted any third party any right to market any product utilizing any Product under any "private label" arrangements pursuant to which the Company is not identified as the source of such goods. Each document or instrument identified pursuant to this Section is listed in Section 3.21 of the Company Disclosure Schedule and true and correct copies of such documents or instruments have been furnished to Parent. No third party has any right to manufacture, reproduce, distribute, sublicense, market or exploit any works or materials of which any of the Products is a derivative work.

(i) Each of the Products: (A) substantially complies with all specifications set forth therefor in any contract, agreement, advertisement or other promotional material for such products and with all other warranty requirements, other than bugs or fixes required or expected in the ordinary course of business and not otherwise Material to the Company's business; and (B) can be recreated from its associated source code and related documentation by reasonably experienced technical personnel without undue burden.

(j) The Company has furnished Parent with all end user documentation relating to the use, maintenance or operation of each of the Products, all of which is true and accurate in all Material respects.

(k) To the Knowledge of the Company, no employee of the Company is in violation of any term of any employment contract, patent disclosure agreement or any other contract or agreement relating to the relationship of any such employee with the Company or any other party because of the nature of the business conducted by, or proposed to be conducted by the Company.

(l) The Company has secured valid written assignments from all consultants and employees who contributed to the creation or development of Intellectual Property of the Company of the rights to such contributions that the Company does not own by operation of law.

(m) Section 3.21(m) of the Company Disclosure Schedule sets forth a list of all issued and pending patents, all registered copyrights and all applications therefor and all trademarks and service marks whether or not registered currently used in the business conducted by the Company, including, without limitation, products and services currently under development by the Company.

(n) Except in the normal course of prosecution: (i) the Company has not taken any action or failed to take any action that would result in the abandonment, cancellation, forfeiture, relinquishment, invalidation or unenforceability of any trademark, copyright, patent or any application for any of the foregoing, (ii) all registered trademarks and all patents owned by the Company, to the extent filed with the United States Patent and Trademark Office, have been filed and obtained in accordance with all applicable legal requirements and are currently in effect and in compliance with all applicable legal requirements (including, in the case of registered trademarks, the timely post-registration filing of affidavits of use and incontestability and renewal applications), and without limiting the generality of any of the foregoing, the Company has timely paid all filing, examination, issuance, post registration and maintenance fees, annuities and the like associated with or required with respect to any of the foregoing.

(o) No trademark or patent owned by the Company, and to the Knowledge of the Company, no trademark or patent licensed to the Company, has been or is now involved in any interference, reissue, reexamination, opposition or cancellation proceeding and, to the Company's Knowledge, no such action is or has been threatened with respect to any such trademarks or patents.

3.22. Contracts.

(a) Except as set forth in Section 3.22(a) of the Company Disclosure Schedule, the Company is not a party to any:

(i) Contract that involves performance of services or delivery of goods or materials by or to the Company of an amount or value in excess of $50,000;

(ii) Contract that was not entered into in the ordinary course of business and that involves expenditures or receipts of the Company in excess of $25,000;

(iii) lease, rental or occupancy agreement, license, installment and conditional sale agreement, and other Contract affecting the ownership of, leasing of, title to, use of, or any leasehold or other interest in, any real or personal property of an amount or value in excess of $25,000;

(iv) licensing agreement or other Contract with respect or relating to Material Intellectual Property;

(v) collective bargaining agreement and other Contract to or with any labor union or other representative of a group of employees;

(vi) joint venture, partnership, and other Contract (however named) involving a sharing of profits, losses, costs, or liabilities by the Company with any other Person;

(vii) Contract containing covenants that in any way purport to restrict in any material respect the business activity of the Company or any current or future Affiliate of the Company or limit the freedom of the Company or any current or future Affiliate of the Company to engage in any line of business or to compete with any Person anywhere in the world;

(viii) Contract providing for payments to or by any Person based on sales, purchases, or profits, other than direct payments for goods;

(ix) Contract between the Company, on the one hand, and any Affiliate of the Company, on the other hand;

(x) Contract regarding indebtedness for borrowed money (including guaranties of the obligations of others with respect thereto) or any capitalized lease obligation or similar arrangement, or under which a Lien on any tangible or intangible asset of the Company or any of their respective capital stock or equity securities is imposed;

(xi) Contract under which the Company has advanced or loaned money to any of its Employees other than advancement of expenses in the ordinary course of business;

(xii) Contract covering the employment, compensation or severance, of or otherwise relating to, any Employee;

(xiii) Contract for joint, collaborative or shared research, development or research and development;

(xiv) Contract that obligates the Company to act as a guarantor or surety, or to otherwise provide credit support for any Person, irrespective of the amount involved or type of underlying liability or obligation;

(xv) Contract that contains obligations of the Company to indemnify third parties against any type of liability, whether known, unknown, fixed, contingent or otherwise; and

(xvi) amendment, supplement and modification (whether oral or written) in respect of any of the foregoing or any Contract, agreement or commitment to enter into amend, supplement or modify any of the foregoing.

(b) The Company has allowed Parent to inspect, and to the extent requested by Parent has delivered or caused to be delivered to Parent, a true and correct copy of, each written Contract listed in Schedule 3.22(a) of the Company Disclosure Schedule, and a written summary setting forth the terms and conditions of each oral Contract referred to therein, in each case, as in effect on, and as amended through the date hereof. With respect to each such Contract: (i) the

Company is not in Material breach or Default, and no event has occurred or circumstances exist with respect to the Company which (with or without notice or lapse of time or both) could reasonably be expected to constitute a Material breach or Default of, or permit termination, modification or acceleration under, the Contract; (ii) no party has repudiated any provision of the Contract; (iii) the Contract is legally valid and binding and is enforceable in accordance with its terms against the Company and, to the Knowledge of the Company, any other parties thereto, except that (A) such enforcement may be subject to any bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer or other Laws, now or hereafter in effect, relating to or limiting creditors' rights generally and (B) the remedy of specific performance and injunctive and other forms of equitable relief, may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought; and (iv) the Company has not given to, or received from any other Person, any notice or other communication regarding any actual or alleged violation or Material breach thereof or Default thereunder. The Contracts relating to the design, sale, manufacture or provisions of the Products or services by the Company thereof have been entered into in the ordinary course of business and have been entered into without the commission of any action alone or in concert with any other Person or any consideration having been paid or promised that is or would be in violation of any Law.

3.23. Affiliate Transactions. There are no Material Contracts or other Material transactions between the Company and any Affiliate of the Company.

3.24. Insurance and Banking Facilities. The Company has in full force and effect all insurance and indemnity policies that are customary in coverage and amount for a company of its size and industry. Section 3.24 of the Company Disclosure Schedule comprises a complete and correct list of (i) all contracts of insurance and indemnity of or relating to the Company (except insurance related to employee benefits) in force at the date of this Agreement (including name of insurer or indemnitor, agent, annual charge, coverage and expiration date); (ii) the names and locations of all banks or depository organizations in which the Company has accounts; and (iii) the names of all Persons authorized to draw on such accounts. All premiums and other payments due with respect to all contracts of insurance or indemnity in force at the date hereof have been or will be paid, and the Company knows of no circumstance (including without limitation the consummation of the transactions contemplated by this Agreement), which has caused, or might cause, any such contract to be canceled or terminated. To the Knowledge of the Company, there are no Material claims by the Company under any insurance policies of the Company as to which coverage has been questioned, denied or disputed by the underwriters of such policies.

3.25. Powers of Attorney and Suretyships. The Company does not have any powers of attorney outstanding (other than a power of attorney issued in the ordinary course of business with respect to tax matters or to customs agents and customs brokers), and, except for obligations as an endorser of negotiable instruments incurred in the ordinary course of business, the Company does not have any obligations or liabilities (absolute or contingent) as guarantor, surety, co-signer, endorser, co-maker, indemnitor or otherwise respecting the obligation of any other Person.

3.26. Minutes and Stock Records. The Company has provided Parent with complete and correct copies of the minute books and stock records of the Company. Such items contain a complete and correct record in all Material respects of all proceedings and actions taken at all meetings of, and all actions taken by written consent by, the holders of capital stock of the Company and its Board of Directors, and all original issuances and subsequent transfers and repurchases of their respective capital stock.

3.27. **Customers; Payors.** Section 3.27 of the Company Disclosure Schedule lists (i) the top 20 customers by billings for the Company (collectively, the "Customers"), during the fiscal year ended December 31, 2002. There are no oral or written notice or other indication from any of the Customers or payors stating that such Customer or payor intends to terminate its business relationship with the Company, or Materially reduce the volume of business it does with the Company.

3.28. **Full Disclosure.** All of the representations and warranties made by the Company in this Agreement, and all statements set forth in the certificates delivered by the Company at the Closing pursuant to this Agreement, are true, correct and complete in all Material respects and do not contain any untrue statement of a Material fact or omit to state any Material fact necessary in order to make such representations, warranties or statements, in light of the circumstances under which they were made, misleading. The copies of all documents furnished by the Company pursuant to the terms of this Agreement are complete and accurate copies of the original documents.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB

Parent and Merger Sub, jointly and severally, represent and warrant to the Company that, except as set forth in Parent Disclosure Schedule:

4.1. Corporate Existence and Power. Each of Parent and Merger Sub is a corporation duly organized, validly existing and in good standing under the laws of the state of its incorporation. Each of Parent and Merger Sub has all requisite corporate powers and authority and all governmental licenses, authorizations, permits, consents and approvals required to own, lease and operate its properties and to carry on its business as now conducted, except for those licenses, authorizations, permits, consents and approvals the absence of which would not, individually or in the aggregate, have a Material Adverse Effect on Parent. Parent is duly qualified to do business as a foreign corporation and is in good standing in each jurisdiction where such qualification is necessary, except for those jurisdictions where the failure to be so qualified would not, individually or in the aggregate, have a Material Adverse Effect on Parent. Parent has heretofore delivered to the Company true and complete copies of the Certificate of Incorporation and Bylaws, as currently in effect, for each of Parent and Merger Sub.

4.2. Corporate Authorization.

(a) The execution, delivery and performance by each of Parent and Merger Sub of this Agreement and the Transaction Documents and the consummation of the transactions contemplated hereby and thereby are within the corporate powers of each of Parent and Merger Sub, and have been duly authorized by all necessary corporate action. This Agreement and the Merger have been duly authorized by all necessary corporate action of the Parent and Merger Sub in accordance with the DGCL.

(b) The board of directors of each of Parent and Merger Sub, at a meeting duly called and held, have each (i) determined that this Agreement and the Transaction Documents and the transactions contemplated hereby and thereby (including the Merger) are in the best interests of their respective stockholders, and (ii) approved and adopted this Agreement and the Transaction

Documents and the transactions contemplated hereby and thereby (including the Merger), which approval satisfies in full any applicable requirements of the DGCL.

(c) This Agreement has been duly executed and delivered by Parent and Merger Sub. This Agreement constitutes, and the Transaction Documents to be executed and delivered will constitute legal, valid and binding obligations of Parent and Merger Sub, enforceable against Parent and Merger Sub, as applicable, in accordance with their respective terms, except to the extent that its enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other Laws affecting the enforcement of creditors rights generally or by general equitable principles.

4.3. Consents and Approvals; No Violations. Assuming the truth and accuracy of the Company's representations and warranties contained in Section 3.4, except for the filing of the Agreement of Merger with the Secretary of State of the State of California, no filing with or notice to, and no permit, authorization, consent or approval of, any Governmental Entity is necessary for the execution and delivery by Parent or Merger Sub of this Agreement or the consummation by Parent or Merger Sub of the transactions contemplated hereby, except where the failure to obtain such permits, authorizations, consents or approvals or to make such filings or give such notice would not have a Material Adverse Effect on the ability of Parent or Merger Sub to consummate the Merger. Neither the execution, delivery and performance of this Agreement by Parent or Merger Sub nor the consummation by Parent or Merger Sub of the transactions contemplated hereby will (a) conflict with or result in any breach of any provision of the respective Certificate of Incorporation or Bylaws (or similar governing documents) of Parent or Merger Sub, (b) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a Default under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, lease, license, contract, agreement or other instrument or obligation to which Parent or Merger Sub is a party or by which any of them or any of their respective properties or assets may be bound or (c) violate any order, writ, injunction, decree or Law applicable to Parent or Merger Sub or any of Parent's subsidiaries or any of their respective properties or assets, except in the case of (b) or (c) for violations, breaches or Defaults which would not have a Material Adverse Effect on the ability of Parent or Merger Sub to consummate the Merger.

4.4. No Prior Activities. Except for obligations incurred in connection with its incorporation or the negotiation and consummation of this Agreement and the transactions contemplated hereby, Merger Sub has neither incurred any obligation or liability or engaged in any business or activity of any type or kind whatsoever or entered into any agreement or arrangement with any person or entity, and has no employees, liabilities or assets.

4.5. Financing. Parent, or its parent owning 100%, directly or indirectly, of Parent, has cash or cash equivalents, or has obtained financing commitments in amounts sufficient to consummate the Merger in accordance with the terms of this Agreement. Parent has no Knowledge of any facts or circumstances which would give it any reason to believe that such financing will not be available.

4.6. Banking and Finders' Fees. There is and will be no investment banker, broker, finder or other intermediary retained by or authorized to act on behalf of Parent or any of the Parent Subsidiaries who might be entitled to any fee or commission from Parent or any of the Parent Subsidiaries upon consummation of the transactions contemplated by this Agreement.

4.7. **Legal Proceedings**. No claim, action, proceeding or investigation is pending before any court, arbitrator or administrative, governmental or regulatory authority or body which seeks to delay or prevent the consummation of the transactions contemplated hereby or which would reasonably be likely to Materially and adversely affect or restrict Parent's or Merger Sub's ability to consummate the transactions contemplated hereby.

ARTICLE 5

COVENANTS OF THE COMPANY

5.1. **Conduct of the Company Business**. Except as set forth in Section 5.1 of the Company Disclosure Schedule, prior to the Closing Date, except with the prior written consent of Parent or as expressly contemplated by this Agreement, the Company shall:

(a) conduct its business in substantially the same manner as presently being conducted and refrain from entering into any transaction or Contract other than in the ordinary course of business and consistent with past practices; and not make any change in its methods of management, marketing, accounting (except as required by GAAP), or operations other than in the ordinary course of business and consistent with past practices;

(b) obtain approval from Parent prior to undertaking any Material new business opportunity outside the ordinary course of business;

(c) confer at the request of Parent with one or more designated representatives of Parent to report Material operational matters and to report the general status of ongoing business operations during normal business hours;

(d) notify Parent of any governmental complaints, investigations or hearings (or communications indicating that the same may be contemplated), adjudicatory proceedings or submissions involving any Material property or other Material Assets;

(e) not (i) grant of any severance or termination pay to any current or former director, officer or employee of the Company, (ii) enter into any employment, deferred compensation or other similar agreement (or any amendment to any such existing agreement) with any current or former director, officer or employee of the Company except as contemplated herein, (iii) increase in benefits payable under any existing severance or termination pay policies or employment agreements, (iv) increase in compensation, bonus or other benefits payable or otherwise made available to current or former directors, officers or employees of the Company (other than in the ordinary course of business salary increases for employees other than officers and directors), (v) declare or pay of any bonuses or year-end payments to any current or former directors, officers or employees of the Company, or (vi) establish, adopt, or amend (except as required by applicable Law), any collective bargaining, bonus, profit sharing, thrift, pension, retirement, deferred compensation, compensation, stock option, restricted stock or other benefit plan or arrangement covering any current or former director, officer or employee of the Company;

(f) except in the ordinary course of business and consistent with past practices, not (i) create or incur any indebtedness (or, even if in the ordinary course of business, not in excess of $50,000 in the aggregate), or (ii) release or create any Liens of any nature whatsoever except for Permitted Liens;

(g) except in the ordinary course of business and, even if in the ordinary course of business, then not in an amount to exceed $25,000 individually or $50,000 in the aggregate, not make or commit to make any capital expenditure, or enter into any lease of capital equipment as lessee or lessor;

(h) pay or discharge liabilities, when due, in the ordinary course of business and consistent with past practices, subject to good faith disputes with respect thereto;

(i) write-off or write-down any assets of the Company;

(j) not amend the Articles of Incorporation, Bylaws or other governing instruments of the Company, except as contemplated by this Agreement;

(k) not make any changes in its accounting methods or practices or revalue its Assets, except for (i) those changes required by GAAP, and (ii) changes in its tax accounting methods or practices that may be necessitated by changes in applicable Tax Laws;

(l) not issue, sell, pledge, encumber, authorize the issuance of, enter into any Contract to issue, sell, pledge, encumber, or authorize the issuance of, or otherwise permit to become outstanding, any additional shares of the Company Stock, or any stock appreciation rights, or any option, warrant, conversion, or other right to acquire any such stock, or any security convertible into any such stock, or pay or declare or agree to pay or declare any dividend or other distribution with respect to any the Company Stock, except for shares to be issued pursuant to the Company Options outstanding under the Option Plan;

(m) not make any loan or otherwise arrange for the extension of credit to any Employee or increase the aggregate amount of any loan currently outstanding to any Employee;

(n) not sell or otherwise dispose of any Material Asset or make any Material commitment relating to its Assets other than in the ordinary course of business or enter into or terminate any lease of real property other than in the ordinary course of business;

(o) not purchase or redeem, or agree to purchase or redeem, any security of the Company (including any share of Company Stock);

(p) not waive any stock repurchase rights, accelerate, amend or change the period of exercisability of options or restricted stock, except for acceleration of Company Options pursuant to any outstanding agreements under the Option Plan or as otherwise contemplated herein, reprice options granted under any employee, consultant, director, or other stock plans or authorize cash payments in exchange for any options granted under any of such plans;

(q) not transfer or license to any Person or otherwise extend, amend or modify any rights to the Intellectual Property of the Company, other than in the ordinary course of business consistent with past practice;

(r) not (i) enter into any new Material Contract, other than in the ordinary course of business consistent with past practices, or (ii) Materially modify, amend or terminate any Material Contract to which the Company is a party or waive, release, or assign any Material rights or claims thereunder, in any such case in a manner Materially adverse to Parent;

(s) not take any actions that could reasonably be expected to result in a Material Adverse Effect on the Company; or

(t) authorize any, or commit or agree to take any of, the foregoing actions.

5.2. **Shareholder Approval.** The Company will, as promptly as practicable in accordance with applicable Law and its Articles of Incorporation and Bylaws, submit this Agreement, the Merger and related matters for the consideration and approval by the Company's shareholders. In connection with soliciting shareholder approval, the Company shall prepare and distribute to holders of Shares a disclosure statement which summarizes the material terms and conditions of the Merger, and this Agreement, which disclosure statement shall include the unanimous recommendation of the Company's Board of Directors. Such approval by written consent or shareholder vote will be solicited, in compliance with applicable Laws. If approval is obtained by written consent, the Company shall give, in a timely manner (and shall provide parent true and correct copies of) all notices required to be given under Section 603 of the CGCL. The information distributed to the holders of shares shall not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein not misleading.

5.3. **Satisfaction of Conditions Precedent.** During the term of this Agreement, the Company will use its commercially reasonable best efforts to satisfy or cause to be satisfied all the conditions precedent that are set forth in Article 9, and the Company will use its commercially reasonable best efforts to cause the Merger and the other transactions contemplated by this Agreement to be consummated.

5.4. **No Other Negotiations.** As of the date of this Agreement, the Company has not entered into any agreement or understanding with, and is not engaging in any discussions with any third party concerning an Alternative Acquisition (as defined below) including, without limitation, any agreement or understanding that would require the Company to notify any third party of the terms of this Agreement. From and after the date of this Agreement until the earlier of the Effective Time or the termination of this Agreement in accordance with its terms, the Company shall not, directly or indirectly, (a) initiate, solicit, encourage, negotiate, accept or discuss any transaction or series of transactions with any Person, other than Parent and its Affiliates involving any recapitalization, restructuring, financing, merger, consolidation, sale, license or encumbrance or other business combination transaction or extraordinary corporate transaction of the Company which would or could reasonably be expected to impede, interfere with, prevent or materially delay the Merger (any such efforts by any such Person, including a firm proposal to make such an acquisition, to be referred to as an "Alternative Acquisition"), (b) provide information with respect to the Company to any Person, other than Parent and its Affiliates, relating to a possible Alternative Acquisition by any Person, other than Parent and its Affiliates, (c) enter into an agreement with any Person, other than Parent and its Affiliates, providing for a possible Alternative Acquisition, or (d) make or authorize any statement, recommendation or solicitation in support of any possible Alternative Acquisition by any Person, other than by Parent and its Affiliates.

If the Company receives any unsolicited offer, inquiry or proposal to enter into discussions or negotiations relating to an Alternative Acquisition, or that could reasonably be expected to lead to an Alternative Acquisition, or any request for nonpublic information relating to the Company, the Company shall promptly notify Parent thereof, including information as to the identity of the party making any such offer, inquiry or proposal and the specific terms of such offer, inquiry or proposal,

as the case may be, and shall keep Parent promptly informed of any developments with respect to same.

5.5. **Access.** The Company shall afford to Parent, and to the officers, employees, accountants, counsel, financial advisors and other representatives of Parent, reasonable access during normal business hours during the period prior to the Effective Time or the termination of this Agreement to all of the Company's properties, books, contracts, commitments, personnel and records and, during such period, the Company shall furnish promptly to Parent, (a) a copy of each report, schedule, registration statement and other documents filed by it during such period pursuant to the requirements of federal or state securities laws and (b) all other information concerning its business, properties and personnel as Parent or its representatives may reasonably request. Except to the extent otherwise required by Law, Parent will hold any confidential information obtained pursuant to this Section 5.5 in accordance with the Confidentiality Agreement entered into between the Parent and the Company dated February 27, 2003 (the "Confidentiality Agreement").

5.6. **Company Employees.** The Company shall use commercially reasonable efforts to cooperate with Parent to ensure that employees selected by Parent will become employees of Parent.

5.7. **Notification of Certain Matters.** The Company shall give prompt notice to Parent of (i) the occurrence or non-occurrence of any event the occurrence or non-occurrence of which would cause any the Company representation or warranty contained in this Agreement to be untrue or inaccurate at or prior to the Effective Time and (ii) any failure of the Company to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder; provided, however, that the delivery of any notice pursuant to this Section 5.7 shall not limit or otherwise affect the remedies available hereunder to Parent.

ARTICLE 6

COVENANTS OF PARENT

6.1. **Obligations of Merger Sub.** Parent shall take all action necessary to cause Merger Sub to perform its obligations under this Agreement and to consummate the Merger on the terms and conditions set forth in this Agreement.

6.2. **Company Employees.**

(a) Concurrently with the execution of this Agreement, the Parent or an Affiliate of Parent shall offer employment to such employees of the Company employed as of February 28, 2003 (individually a "Company Employee" and collectively, the "Company Employees") as the Parent shall determine in its sole discretion. Any such offer of employment shall be on such terms and conditions as the Parent and such employees shall agree and shall be conditioned on the Closing of the Merger; provided, that the terms of any such employment offer shall include a provision that Parent or its Affiliate will pay any such employee a severance payment equal to four months salary, other than Richard Glover whose severance payment shall equal six weeks salary, in the event that such employee is terminated by Parent or its Affiliate without "cause" within 12 months following the Closing Date. For purposes of this Section "cause" shall have the meaning set forth in the employment agreement between the Company and each Company Employee who becomes an employee of the Company.

(b) In the event Parent elects not to offer employment to any Company Employee, Parent agrees to pay to each such employee a severance equal to four months salary; provided that the severance payment to Richard Glover shall be limited to six weeks salary, based upon the annual salaries set forth on Exhibit E.

(c) In addition to obligations set forth above, within five (5) days following the Closing, Parent or its Affiliate shall pay to each Company Employee the bonus amount and accrued unpaid salary set forth opposite such Company Employee's name on Exhibit E attached hereto, if any.

(d) Nothing in this Section 6.2 shall be construed to impose upon Parent and its Affiliates any obligation to continue the employment of any Company Employee following the Effective Time.

(e) Parent shall provide to Company Employees who accept employment with Parent retirement and savings benefits, health and other employee benefits that are no less favorable than those provided to comparable employees of Parent and its Affiliates, except with respect to severance benefits, which shall be provided in accordance with Section 6.2(a) or as provided in employment agreements with Company Employees.

6.3. Indemnification.

(a) The Articles of Incorporation and the Bylaws of the Surviving Corporation shall contain the provisions with respect to indemnification, exculpation and advancement of expenses identical to those set forth in the Articles of Incorporation and Bylaws of the Company on the date of this Agreement, which provisions shall not be amended, repealed or otherwise modified for a period of three (3) years from the Effective Time in any manner that would adversely affect the rights thereunder of individuals who were directors, officers, employees or agents of the Company at or prior to the Effective Time, unless such modification is required by Law.

(b) After the Effective Time and for a period of three (3) years thereafter, Parent and the Surviving Corporation shall, to the fullest extent permitted under applicable Law or under the Surviving Corporation's Articles of Incorporation or Bylaws, indemnify and hold harmless, each present and former director and officer of the Company (collectively, the "Indemnified Parties") against any costs or expenses (including attorneys' fees), judgments, fines, losses, claims, damages, liabilities and amounts paid in settlement in connection with any claim, action, suit, proceeding or investigation, whether civil, criminal, administrative, arbitral or investigative, arising out of or pertaining to any action or omission occurring prior to the Effective Time, or arising out of or pertaining to the transactions contemplated by this Agreement. In the event of any such claim, action, suit, proceeding or investigation (whether arising before or after the Effective Time), (i) any counsel retained by the Indemnified Parties to defend them with respect to any such claim, action, suit, proceeding or investigation for any period after the Effective Time shall be reasonably satisfactory to Parent, (ii) after the Effective Time, Parent or the Surviving Corporation shall pay the reasonable fees and expenses of such counsel, promptly after statements therefor are received and (iii) the Surviving Corporation and Parent will cooperate in the defense of any such matter; provided, however, that neither the Surviving Corporation nor Parent shall be liable for any settlement effected without its written consent (which consent shall not be unreasonably withheld); and provided further, that, in the event that any claim or claims for indemnification are asserted or made within such three-year period, all rights to indemnification in respect of any such claim or claims shall continue until

the disposition of any and all such claims. The Indemnified Parties as a group may retain only one law firm to represent them with respect to any single action unless there is, under applicable standards of professional conduct, a conflict on any significant issue between the positions of any two (2) or more Indemnified Parties.

(c) For a period of three (3) years after the Effective Time, Parent shall, or shall cause the Surviving Corporation to, maintain in effect, if available, directors and officers liability tail insurance covering those Persons who are currently covered by the Company's directors and officers liability insurance policy on the same terms as Company's policy in effect prior to the Closing; provided, however, Parent may substitute coverage under Parent's own directors and officers liability insurance policy so long as the terms are substantially similar to the Company's policy in effect prior to the Closing; provided, however, that in no event shall Parent or the Surviving Corporation be required to expend an amount in excess of one hundred fifty percent (150%) of the annual premium currently paid by the Company for directors and officers liability insurance, and provided further, if the premium for such coverage exceeds such amount Parent or the Surviving Corporation shall be obligated to obtain a policy with the greatest coverage available for a cost not to exceed such amount.

(d) After the Effective Time and for a period of three (3) years after the Effective Time, the Surviving Corporation will fulfill and honor in all respects the obligations of the Company pursuant to indemnification agreements with the Company's officers, directors and key employees in existence at the Effective Time. Such indemnification agreements have been made available to Parent.

(e) The provisions of this Section 6.3 are intended to be in addition to the rights otherwise available to the current officers and directors of the Company by law, charter, statute, bylaws or agreement, and shall operate for the benefit of, and shall be enforceable by, each of the Indemnified Parties. The obligations of Parent and the Surviving Corporation under this Section 6.3 shall not be terminated, modified or impaired in such a manner as to adversely affect any Indemnified Party to whom this Section 6.3 applies without the consent of such affected Indemnified Party (it being expressly agreed that the Indemnified Party to whom this Section 6.3 applies shall be an express third party beneficiary of this Section 6.3).

6.4. Notification of Certain Matters. Parent shall give prompt notice to the Company of (i) the occurrence or non-occurrence of any event the occurrence or non-occurrence of which would cause any Parent representation or warranty contained in this Agreement to be untrue or inaccurate at or prior to the Effective Time and (ii) any failure of Parent to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder; provided, however, that the delivery of any notice pursuant to this Section 6.4 shall not limit or otherwise affect the remedies available hereunder to the Company.

6.5. Satisfaction of Conditions Precedent. During the term of this Agreement, Parent will use its commercially reasonable best efforts to satisfy or cause to be satisfied all the conditions precedent that are set forth in Article 9, and Parent will use its commercially reasonable best efforts to cause the Merger and the other transactions contemplated by this Agreement to be consummated.

6.6. Post-Closing Operations. Following the Effective Time, Parent and Surviving Corporation shall not take any action, or omit or fail to take any action that shall diminish the Surviving Corporation's ability to achieve the maximum Earn-Out Revenue, or take any action, or omit or fail to take any action that shall be detrimental to the Company's shareholders entitled to

receive the Earn-Out Consideration, if any; provided that nothing shall prevent the Surviving Corporation or Parent from exercising its business judgement with respect to the Surviving Corporation and in accordance with the exercise of such business judgement in good faith, the Surviving Corporation or Parent may take any such actions that they believe are in the best interests of their respective shareholders, provided that the sole purpose of such action is not to intentionally or recklessly reduce the amount of the Earn-Out Consideration.

ARTICLE 7

COVENANTS OF PARENT AND THE COMPANY

7.1. Notices of Certain Events. The Company and Parent shall promptly notify the other party of:

(a) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement;

(b) any notice or other communication from any governmental or regulatory agency in connection with the transactions contemplated by this Agreement; and

(c) any actions, suits, claims, investigations or proceedings commenced or, to its knowledge, threatened against, relating to or involving or otherwise affecting such party that, if pending on the date of this Agreement, would have been required to be disclosed pursuant to Articles 3 or 4 or that relate to the consummation of the transactions contemplated by this Agreement or any other development causing a breach of any representation or warranty made by a party hereunder. Delivery of notice pursuant to this Section 7.1 shall not limit or otherwise affect remedies available to either party hereunder.

7.2. Public Announcements. Parent and the Company shall consult with each other before issuing any press release or other public statement with respect to this Agreement or the transactions contemplated herein, and except as may be required by applicable Law or the requirements of the London Stock Exchange as advised by counsel, will not issue any such press release or make any such public statement with respect to this Agreement, the Merger or any other transactions contemplated by this Agreement without the prior written consent of the other party.

7.3. Transfer Taxes. Parent and the Company shall cooperate in the preparation, execution and filing of all returns, questionnaires, applications or other documents regarding any real property transfer or gains, sales, use, transfer, value added, stock transfer and stamp taxes, any transfer, recording, registration and other fees, and any similar taxes which become payable in connection with the transactions contemplated hereby that are required or permitted to be filed on or before the Effective Time. Parent, Merger Sub and the Company agree that the Company (prior to the Merger) and the Surviving Corporation (following the Merger) will pay any real property, transfer or gains tax, stamp tax, stock transfer tax, or other similar tax imposed on the Merger or the surrender of the Shares pursuant to the Merger (collectively, "Transfer Taxes"), excluding any Transfer Taxes as may result from the transfer of beneficial interests in the Shares other than as a result of the Merger, and any penalties or interest with respect to the Transfer Taxes. The Company agrees to cooperate with Parent in the filing of any returns with respect to the Transfer Taxes.

7.4. **Reasonable Efforts.** The parties further agree to use commercially reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other parties in doing, all things necessary, proper or advisable to consummate and make effective, in the most expeditious manner practicable, the Merger and the other transactions contemplated by this Agreement, including (A) the obtaining of all other necessary actions or nonactions, waivers, consents, licenses, permits, authorizations, orders and approvals from governmental authorities and the making of all other necessary registrations and filings, (B) the obtaining of all consents, approvals or waivers from third parties related to or required in connection with the Merger that are necessary to consummate the Merger and the transactions contemplated by this Agreement or required to prevent a Material Adverse Effect on the Company from occurring prior to or after the Effective Time, (C) the satisfaction of all conditions precedent to the parties' obligations hereunder, and (D) the execution and delivery of any additional instruments necessary to consummate the transactions contemplated by, and to fully carry out the purposes of, this Agreement. Notwithstanding the foregoing or any other provision of this Agreement, nothing in this Section 7.4 shall limit a party's right to terminate this Agreement pursuant to Section 10.1, so long as such party has up to then complied with its obligations under this Section 7.4.

7.5. **Fees and Expenses.** All fees and expenses incurred by the Company in connection with this Agreement and the transactions contemplated hereby shall be paid by the Company, whether or not the Merger is consummated; provided that, in the event the Merger is consummated, in no event shall the fees and expenses paid by the Company exceed $65,000, and any fees and expenses in excess of such amount shall be paid by the holders of Shares by reducing the Escrow Amount by the amount of such excess. All fees and expenses incurred by the Parent and Merger Sub in connection with this Agreement and the transactions contemplated hereby shall be paid by the Parent. Fees and expenses incurred by any party in connection with the transactions contemplated by this Agreement shall include, without limitation, fees and expenses incurred for legal, financial, accounting and other advisors.

ARTICLE 8

INDEMNIFICATION

8.1. Indemnification of Parent and Merger Sub.

(a) Subject to the limitations contained in this Article 8, the Company shall defend, indemnify and hold harmless Parent and Merger Sub and their respective officers, directors, stockholders, employees and agents from and against any and all losses, claims, judgments, liabilities, demands, charges, suits, penalties, costs or expenses, including court costs and reasonable attorneys' fees, in each case net of insurance proceeds and tax benefits (to the extent quantifiable), ("Claims and Liabilities") with respect to or arising from (i) the breach of any warranty or any inaccuracy of any representation made by the Company in this Agreement, or (ii) the breach of any covenant or agreement made by the Company in this Agreement.

(b) In addition the obligations set forth in Section 8.1(a) above, the Company shall defend, indemnify and hold harmless Parent and Merger Sub and their respective officers, directors, stockholders, employees and agents against any and all Claims and Liabilities with respect to or arising from any claims for any right to receive Merger Consideration made by any Person who is not a holder of Company Stock at the Effective Time or is a holder of Company Stock and

claiming a right to Merger Consideration inconsistent with the Merger Consideration Certificate, including, without limitation, holders of Dissenting Shares.

8.2. Indemnification of the Company. Parent shall defend, indemnify and hold harmless the Company, and its officers, directors, shareholders, employees and agents from and against any and all Claims and Liabilities with respect to or arising from (i) breach of any warranty or any inaccuracy of any representation made by Parent or Merger Sub, or (ii) breach of any covenant or agreement made by Parent or Merger Sub in this Agreement.

8.3. Limitation on Liability. Notwithstanding anything to the contrary, (i) under Sections 8.1 and 8.2, neither party will be liable to indemnify the other party for any Claims or Liabilities until the total amount of all such Claims or Liabilities exceeds $50,000; *provided, however*, that if the amount of such Claims or Liabilities exceeds $50,000, then the obligations of the indemnifying party to the indemnified party will include payment of the entire amount of all Claims or Liabilities; and (ii) the Company's aggregate liability under Section 8.1(a) and Parent's and Merger Sub's aggregate liability under Section 8.2 (other than with respect to any fraud, intentional misrepresentation or willful breach) shall be limited solely and exclusively to the amount of the Escrow Amount and the Earn-Out Consideration. Any indemnification payments required to be made by the Company to either the Parent or the Merger Sub pursuant to Section 8.1 shall be deducted first from the Escrow Amount, and, if the aggregate amount of such payments exceeds the Escrow Amount, then deducted from the Earn-Out Consideration.

8.4. Claims Procedure. Promptly after the receipt by any indemnified party (the "Indemnitee") of notice of the commencement of any action or proceeding against such Indemnitee, such Indemnitee shall, if a claim with respect thereto is or may be made against any indemnifying party (the "Indemnifying Party") pursuant to this Article 8, give such Indemnifying Party written notice of the commencement of such action or proceeding and give such Indemnifying Party a copy of such claim and/or process and all legal pleadings in connection therewith. The failure to give such notice shall not relieve any Indemnifying Party of any of its indemnification obligations contained in this Article 8, except where, and solely to the extent that, such failure actually and Materially prejudices the rights of such Indemnifying Party. Such Indemnifying Party shall have, upon request within thirty (30) days after receipt of such notice, but not in any event after the settlement or compromise of such claim, the right to defend, at its own expense and by its own counsel reasonably acceptable to the Indemnitee, any such matter involving the asserted liability of the Indemnitee; provided, however, that if the Indemnitee determines that there is a reasonable probability that a claim may Materially and adversely affect it, other than solely as a result of money payments required to be reimbursed in full by such Indemnifying Party under this Article 8 or if a conflict of interest exists between Indemnitee and the Indemnifying Party, the Indemnitee shall have the right to defend, compromise or settle such claim or suit; and, provided, further, that such settlement or compromise shall not, unless consented to in writing by such Indemnifying Party, which shall not be unreasonably withheld, be conclusive as to the liability of such Indemnifying Party to the Indemnitee. In any event, the Indemnitee, such Indemnifying Party and its counsel shall cooperate in the defense against, or compromise of, any such asserted liability, and in cases where the Indemnifying Party shall have assumed the defense, the Indemnitee shall have the right to participate in the defense of such asserted liability at the Indemnitee's own expense. In the event that such Indemnifying Party shall decline to participate in or assume the defense of such action, prior to paying or settling any claim against which such Indemnifying Party is, or may be, obligated under this Article 8 to indemnify an Indemnitee, the Indemnitee shall first supply such Indemnifying Party with a copy of a final court judgment or decree holding the Indemnitee liable on such claim or,

failing such judgment or decree, the terms and conditions of the settlement or compromise of such claim. An Indemnitee's failure to supply such final court judgment or decree or the terms and conditions of a settlement or compromise to such Indemnifying Party shall not relieve such Indemnifying Party of any of its indemnification obligations contained in this Article 8, except where, and solely to the extent that, such failure actually and Materially prejudices the rights of such Indemnifying Party. If the Indemnifying Party is defending the claim as set forth above, the Indemnifying Party shall have the right to settle the claim only with the consent of the Indemnitee; provided, however, that if the Indemnitee shall fail to consent to the settlement of such a claim by the Indemnifying Party, which settlement (i) the claimant has indicated it will accept, and (ii) includes an unconditional release of the Indemnitee and its Affiliates by the claimant and imposes no Material restrictions on the future activities of the Indemnitee and its affiliates, the Indemnifying Party shall have no liability with respect to any payment required to be made to such claimant in respect of such claim in excess of the proposed amount of settlement. If the Indemnitee is defending the claim as set forth above, the Indemnitee shall have the right to settle or compromise any claim against it after consultation with, but without the prior approval of, any Indemnifying Party, provided, however, that such settlement or compromise shall not, unless consented to in writing by such Indemnifying Party, which shall not be unreasonably withheld, be conclusive as to the liability of such Indemnifying Party to the Indemnitee.

8.5. Exclusive Remedy. Each of the parties hereto acknowledges and agrees that, from and after the Closing Date, its sole and exclusive monetary remedy with respect to any and all claims relating to the subject matter of this Agreement shall be pursuant to the indemnification provisions set forth in this Article 8, except that nothing in this Agreement shall be deemed to constitute a waiver of any injunctive or other equitable remedies or any tort claims of, or causes of action arising from, intentionally fraudulent misrepresentation, willful breach or deceit. Except with respect to any intentionally fraudulent misrepresentation, willful breach or deceit on the part of the Company, Parent's and Merger Sub's sole and exclusive remedy to satisfy any Claims and Liabilities for which they are entitled to indemnification under Section 8.1 shall be to reduce the Escrow Amount and Earn Out Consideration payable by the amount of such Claims and Liabilities.

ARTICLE 9

CONDITIONS TO MERGER

9.1. Condition to Obligation of Each Party to Effect the Merger. The respective obligations of Parent, Merger Sub and the Company to consummate the transactions contemplated herein are subject to the satisfaction or waiver in writing at or prior to the Effective Time of the following conditions.

(a) **No Injunctions.** No temporary restraining order, preliminary or permanent injunction issued by any court of competent jurisdiction preventing the consummation of the transactions contemplated herein shall be in effect; provided, however, that each party shall have used its reasonable best efforts to prevent the entry of such orders or injunctions and to appeal as promptly as possible any such orders or injunctions and to appeal as promptly as possible any such orders or injunctions that may be entered.

(b) **Company Shareholder Approval.** This Agreement and the Merger shall have been approved and adopted by the requisite vote of the Company's shareholders in accordance with the Company's Articles of Incorporation and the CGCL.

9.2. Additional Conditions to Obligations of Parent and Merger Sub. The obligations of Parent and the Merger Sub to consummate the transactions contemplated herein are also subject to the satisfaction or waiver in writing at or prior to the Effective Time of the following conditions.

(a) Representations and Warranties. Each of the representations and warranties of the Company in this Agreement and in any certificate or other written document delivered to Parent pursuant hereto that is expressly qualified by a reference to materiality shall be true in all respects as so qualified, and each of the representations and warranties of the Company in this Agreement and in any certificate or other written document delivered to Parent pursuant hereto that is not so qualified shall be true and correct in all Material respects, on and as of the Effective Time as though such representation or warranty had been made on and as of such time (except that those representations and warranties which address matters only as of a particular date shall remain true and correct as of such date), and Parent and Merger Sub shall have received a certificate to such effect signed by the President and the Chief Executive Officer of the Company.

(b) Agreements and Covenants. The Company shall have Materially performed or complied with all agreements and covenants required by this Agreement to be performed or complied with by them on or prior to the Effective Time, and Parent shall have received a certificate to such effect signed by the President and Chief Executive Officer of the Company.

(c) Certificate of Secretary. The Company shall have delivered to Parent a certificate executed by the Secretary of the Company certifying: (i) resolutions duly adopted by the Board of Directors and shareholders of the Company authorizing this Agreement and the Merger; (ii) the Articles of Incorporation and Bylaws of the Company as in effect immediately prior to the Effective Time, including all amendments thereto; (iii) the Merger Consideration Certificate; and (iv) the incumbency of the officers of the Company executing this Agreement and all agreements and documents contemplated hereby.

(d) Consents Obtained. All consents, waivers, approvals, authorizations or orders required to be obtained, and all filings required to be made, by the Company for the authorization, execution and delivery of this Agreement and the consummation by it of the transactions contemplated hereby shall have been obtained and made by the Company including, without limitation, those set forth on Schedule 9.2(d), except for such consents, waivers, approvals, authorizations and orders, which if not listed in Schedule 9.2(d) and not obtained, and such filings, which if not listed in Schedule 9.2(d) and not made, would not be reasonably likely to have a Material Adverse Effect on the Company or the Surviving Corporation.

(e) Absence of Material Adverse Effect. Since the date of the this Agreement, there shall not have been any Material Adverse Effect on the Company that has not been cured as of the Final Date.

(f) Employment Agreements. The Company shall have entered into employment agreements, in the form approved by Parent, with certain Company Employees set forth on Schedule 9.2(f) attached hereto.

(g) Opinion of Counsel. Parent shall have received the opinion of the Company's legal counsel, dated as of the Closing Date, in the form attached hereto as Exhibit F.

(h) **Resignation of Officers and Directors**. Parent shall have received letters of resignation from each of the officers and directors of the Company immediately prior to the Effective Time, which resignations in each case shall be effective as of the Effective Time.

(i) **Termination of Employee Benefit Plans**. If the Company maintains or sponsors any Benefit Plans, the Company's Board of Directors shall have adopted a resolution terminating each such Benefit Plan contingent upon the Closing and effective at least one calendar day prior to the Effective Time.

(j) **Escrow Agreement**. The Company and Shareholder Representative shall have entered into the Escrow Agreement which shall be in full force and effect as of the Closing.

9.3. Additional Conditions to Obligations of the Company. The obligations of the Company to consummate the transactions contemplated herein are also subject to the satisfaction or waiver in writing at or prior to the Effective Time of the following conditions.

(a) **Representations and Warranties**. Each of the representations and warranties of Parent and Merger Sub in this Agreement and in any certificate or other written document delivered to the Company pursuant hereto that is expressly qualified by a reference to materiality shall be true in all respects as so qualified, and each of the representations and warranties of Parent and Merger Sub in this Agreement and in any certificate or other written document delivered to the Company that is not so qualified shall be true and correct in all material respects, on and as of the Effective Time as though such representation or warranty had been made on and as of such time (except that those representations and warranties which address matters only as of a particular date shall remain true and correct as of such date), and the Company shall have received a certificate to such effect signed by the President and the Chief Executive Officer of Parent.

(b) **Agreements and Covenants**. Parent and Merger Sub shall have performed or complied with all agreements and covenants required by this Agreement to be performed or complied with by them on or prior to the Closing and the Company shall have received a certificate to such effect signed by the President and the Chief Executive Officer of Parent.

(c) **Escrow Agreement**. Parent shall have entered into the Escrow Agreement, which shall be in full force and effect as of the Closing.

ARTICLE 10

TERMINATION

10.1. Termination. This Agreement may be terminated at any time prior to the Effective Time, whether before or after approval of the Merger by the shareholders of the Company:

(a) by mutual written agreement duly authorized by the Boards of Directors of the Company and Parent;

(b) by either party, if the other party has breached any representation, warranty, covenant or agreement of such other party set forth in this Agreement and such breach has resulted or can reasonably be expected to result in the failure to satisfy the conditions set forth in Section 9.2(a) and 9.2(b), in the case of the Company, or in Section 9.3(a) and 9.3(b), in the case of Parent or

Merger Sub; *provided, however*, that, if such breach is reasonably capable of being cured by the breaching party prior to the Final Date and the breaching party is continuing to exercise its reasonable efforts to cure such breach, then the other party may not terminate this Agreement under this Section 10.1(b) on account of such breach until the 30th calendar day from the date on which the breaching party received a written notice of such breach from the other party or the Final Date, whichever is earlier.

(c) by either party if the required approval of the shareholders of the Company shall not have been obtained prior to the Final Date;

(d) by either party, if the Effective Time has not occurred on or before the Final Date (as defined below), other than as a result of a breach of this Agreement by the terminating party; or

(e) by either party, if a permanent injunction or other order by any Federal or state court which would make illegal or otherwise restrain or prohibit the consummation of the Merger shall have been issued and shall have become final and nonappealable.

As used herein, the "Final Date" shall be April 20, 2003.

10.2. Notice of Termination. Any termination of this Agreement under Section 10.1 above will be effective by the delivery of written notice of the terminating party to the other party hereto.

10.3. Effect of Termination. In the case of any termination of this Agreement as provided in this Section 10, this Agreement shall be of no further force and effect (except as provided in Section 10.4) and nothing herein shall relieve any party from liability for any breach of this Agreement. No termination of this Agreement shall affect the obligations contained in the Confidentiality Agreement which shall survive termination of this Agreement in accordance with its terms.

10.4. Company Breakup Fee. Upon the occurrence of any of the following events, the Company shall immediately pay to Parent (by wire transfer or cashiers check) a breakup fee in the amount of all the reasonably documented costs, fees and expenses actually incurred by Parent, up to a maximum amount of $50,000, in connection with the transactions contemplated by this Agreement including, without limitation, fees of legal counsel, commercial banks, investment banking firms, accountants, and other experts and consultants (the "Company Breakup Fee"): (a) the Merger shall be submitted to a vote of the Company shareholders as required hereunder, and the shareholders of the Company shall have failed to approve the Merger by a requisite vote required for such approval; or (b) this Agreement is terminated by Parent pursuant to Section 10.1(b) above; *provided, however,* that the Company shall not be obligated to pay any amount of the Company Breakup Fee if Parent or Merger Sub have breached any of their representations, warranties, covenants or obligations under this Agreement. Payment of the foregoing fees shall not be in lieu of damages incurred in the event of breach of this Agreement.

10.5. Parent Breakup Fee. If this Agreement is terminated by the Company pursuant to Section 10.1(b) above, Parent shall immediately pay to the Company (by wire transfer or cashiers check) a breakup fee in the amount of all the reasonably documented costs, fees and expenses actually incurred by the Company, up to a maximum amount of $50,000, in connection with the

transactions contemplated by this Agreement including, without limitation, fees of legal counsel, commercial banks, investment banking firms, accountants, and other experts and consultants (the "Parent Breakup Fee"); *provided, however,* that Parent shall not be obligated to pay any amount of the Parent Breakup Fee if the Company has breached any of its representations, warranties, covenants or obligations under this Agreement. Payment of the foregoing fees shall not be in lieu of damages incurred in the event of breach of this Agreement.

ARTICLE 11

SURVIVAL OF REPRESENTATIONS, WARRANTIES AND COVENANTS

All representations, warranties and covenants of the parties contained in this Agreement will remain operative and in full force and effect, regardless of any investigation made by or on behalf of the parties to this Agreement, until the date that is the first anniversary of the Closing Date, whereupon such representations, warranties and covenants will expire (except for covenants that by their terms survive for a longer period).

ARTICLE 12

GENERAL PROVISIONS

12.1. Notices. All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified; (b) when sent by confirmed facsimile if sent during normal business hours of the recipient, if not, then on the next business day; (c) five days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (d) two days after deposit with a nationally recognized overnight courier, specifying two day delivery, with written verification of receipt. All communications shall be sent to the parties at the following addresses or facsimile numbers specified below (or at such other address or facsimile number for a party as shall be designated by ten days advance written notice to the other parties hereto):

(a) If to Parent or Merger Sub:

Kofax Image Products, Inc.
16245 Laguna Canyon Road
Irvine, California 92618-3603
Attn: Michael F. Giove
Ph: (949) 727-1733
Fax: (949) 727-3511

with a copy to (which shall not constitute notice):

Stradling Yocca Carlson & Rauth
660 Newport Center Drive, Suite 1600
Newport Beach, California 92660
Attn: K.C. Schaaf, Esq.
Ph: (949) 725-4155
Fax: (949) 725-4100

If to the Company:

Mohomine, Inc.
5120 Shoreham Place, Suite 200
San Diego, California 92122
Attn: Neil R. Senturia
Ph: (858) 362-3001
Fax: (858) 362-3099

with a copy to (which shall not constitute notice):

Cooley Godward
4401 Eastgate Mall
San Diego, CA 92121-1909
Attn: Jeremy Glasser
Ph: (858) 550-6032
Fax: (858) 550-6420

12.2. Amendment. To the extent permitted by Law, this Agreement may be amended by a subsequent writing signed by each of the parties upon the approval of the Boards of Directors of each of the parties, whether before or after any shareholder approval of the issuance of the Merger Consideration has been obtained; provided, that after any such approval by the holders of Shares, there shall be made no amendment that pursuant to the CGCL requires further approval by such shareholders without the further approval of such shareholders.

12.3. Waiver. At any time prior to the Closing, any party hereto may with respect to any other party hereto (a) extend the time for performance of any of the obligations or other acts, (b) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto, or (c) waive compliance with any of the agreements or conditions contained herein. Any such extension or waiver shall be valid if set forth in an instrument in writing signed by the party or parties to be bound thereby.

12.4. Failure or Indulgence Not Waiver; Remedies Cumulative. No failure or delay on the part of any party hereto in the exercise of any right hereunder shall impair such right or be construed to be a waiver of, or acquiescence in, any breach of any representation, warranty or agreement herein, nor shall any single or partial exercise of any such right preclude other or further exercise thereof or of any other rights. Except as otherwise provided hereunder, all rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available.

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

12.6. Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of Law, or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the

original intent of the parties as closely as possible, in a mutually acceptable manner, to the end that transactions contemplated hereby are fulfilled to the extent possible.

12.7. Entire Agreement. This Agreement (including the Company Disclosure Schedule and the Parent Disclosure Schedule together with the Transaction Documents and the exhibits and schedules attached hereto and thereto and the certificates referenced herein) and the Confidentiality Agreement constitute the entire agreement and supersedes all prior agreements and undertakings both oral and written, among the parties, or any of them, with respect to the subject matter hereof and, except as otherwise expressly provided herein.

12.8. Assignment. No party may assign this Agreement or assign its respective rights or delegate their duties (by operation of Law or otherwise), without the prior written consent of the other party. This Agreement will be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

12.9. Parties In Interest. Except as contemplated in Section 6.3 with respect to the directors and officers of the Company, this Agreement shall be binding upon and inure solely to the benefit of each party hereto, and nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement, including, without limitation, by way of subrogation.

12.10. Governing Law. This Agreement will be governed by, and construed and enforced in accordance with the laws of the State of Delaware as applied to contracts that are executed and performed in Delaware, without regard to the principles of conflicts of law thereof. Each party hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in Orange County, California (if the claim or action is initiated by Company), or San Diego, California (if the claim or action is initiated by Parent or Merger Sub) for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of any such court, that such suit, action or proceeding is improper. Each party hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof to such party at the address in effect for notices to it under this Agreement and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any manner permitted by law.

12.11. Counterparts. This Agreement may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. This Agreement shall become effective when counterparts have been signed by each of the parties and delivered by facsimile or other means to the other party. Any party who delivers a signature page via facsimile agrees to later deliver an original counterpart to all other parties.

12.12. Attorneys Fees. If any action or proceeding relating to this Agreement, or the enforcement of any provision of this Agreement is brought by a party hereto against any party hereto, the prevailing party shall be entitled to recover reasonable attorneys' fees, costs and disbursements (in addition to any other relief to which the prevailing party may be entitled).

12.13. Gender. For purposes of this Agreement, references to the masculine gender shall include feminine and neuter genders and entities.

[*Remainder of Page Intentionally Left Blank; Signature Page to Follow*]

IN WITNESS WHEREOF, the parties have caused this Agreement and Plan of Merger to be executed as of the date first written above by their respective officers thereunto duly authorized.

KOFAX IMAGE PRODUCTS, INC., a Delaware corporation

By: Michael F. Giove

Name: MICHAEL F. GIOVE

Title: VICE PRESIDENT

MOHOMINE ACQUISITION CORP., a California corporation

By: Michael F. Giove

Name: MICHAEL F. GIOVE

Title: VICE PRESIDENT

MOHOMINE, INC., a California corporation

By: _____

Name: _____

Title: _____

[SIGNATURE PAGE TO AGREEMENT AND PLAN OF MERGER]

IN WITNESS WHEREOF, the parties have caused this Agreement and Plan of Merger to be executed as of the date first written above by their respective officers thereunto duly authorized.

KOFAX IMAGE PRODUCTS, INC., a Delaware corporation

By: _____

Name: _____

Title: _____

MOHOMINE ACQUISITION CORP., a California corporation

By: _____

Name: _____

Title: _____

MOHOMINE, INC., a California corporation

By: _____

Name: NEIL R. SENTURIA

Title: EXECUTIVE CHAIRMAN

[SIGNATURE PAGE TO AGREEMENT AND PLAN OF MERGER]

EXHIBIT A

CERTAIN DEFINITIONS

The following terms, as used in the Purchase Agreement, have the following meanings:

"Adjusted Earn-Out Consideration" shall mean an amount equal to (i) the Earn-Out Consideration minus (ii) the Series D Earn-Out Reimbursement Amount, if any.

"Affiliate" shall mean with respect to any Person, any individual, corporation, partnership, firm, joint venture, limited liability company, association, joint-stock company, trust, unincorporated organization or Governmental Entity, or other Person directly or indirectly controlling, controlled by or under common control with such Person, including all officers and directors of such Person.

"Alternative Acquisition" shall have the meaning as set forth in Section 5.4 of the Agreement.

"Agreement" shall have the meaning as set forth in the Preamble.

"Assets" of a Person shall mean all of the assets, properties, businesses and rights of such Person of every kind, nature, character and description, whether real, personal or mixed, tangible or intangible, accrued or contingent, or otherwise relating to or utilized in such Person's business, directly or indirectly, in whole or in part, whether or not carried on the books and records of such Person, and whether or not owned in the name of such Person or any Affiliate of such Person and wherever located.

"Benefit Plans" shall have the meaning as set forth in Section 3.12(b) of the Agreement.

"California Agreement of Merger" shall have the meaning as set forth in Section 1.3 of the Agreement.

"Claims and Liabilities" shall have the meaning as set forth in Section 8.1(a) of the Agreement.

"Closing" shall have the meaning as set forth in Section 1.2 of the Agreement.

"Closing Date" shall have the meaning as set forth in Section 1.2 of the Agreement.

"COBRA" means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

"Code" means the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder.

"Company" shall have the meaning as set forth in the Preamble.

"Company Breakup Fee" shall have the meaning as set forth in Section 10.4 of the Agreement.

"Company Disclosure Schedule" shall mean the written disclosure schedule pursuant to Article 3 of the Agreement delivered on or prior to the date hereof by the Company to Parent that is arranged in the numbered and lettered paragraphs corresponding to the numbered and lettered paragraphs contained in the Agreement.

"Company Employees" shall have the meaning as set forth in Section 6.2(a) of the Agreement.

"Company Environmental Liabilities" mean any and all liabilities of or relating to the Company, whether contingent or fixed, actual or potential, known or unknown, which (i) arise under or relate to matters covered by Environmental Laws and (ii) relate to actions occurring or conditions existing on or prior to the Closing Date.

"Company Financial Statements" shall have the meaning as set forth in Section 3.8(a) of the Agreement.

"Company Intellectual Property" means all Material Intellectual Property other than Material Intellectual Property that is the subject of Third Party Licenses.

"Company Option" or "Company Options" shall have the meaning as set forth in Section 2.4(a) of the Agreement.

"Company Stock" shall mean the Common Stock, Series A Preferred Stock, Series B1 Preferred Stock, Series B2 Preferred Stock, Series C Preferred Stock and Series D Preferred Stock of the Company.

"Confidentiality Agreement" shall have the meaning as set forth in Section 5.5 of the Agreement.

"Contract" means any written or oral agreement, arrangement, commitment, contract, indenture, instrument, lease, obligation, plan, restriction, understanding or undertaking of any kind or character, or other document to which any Person is a party or by which such Person is bound or affecting such Person's capital stock, Assets or business.

"Databases" means and includes all compilations of data and all related documentation and written narratives of all procedures used in connection with the collection, processing and distribution of data contained therein, together with information that describes the attributes of certain data and such data's relationship to other data, including, without limitation, (A) whether the data must be numerical, alphabetic, or alphanumeric, (B) range or type limitations of the data, (C) one-to-one, one-to-many, or many-to-many relationships with other data, (D) file layouts, and (E) data formats.

"Default" shall mean (i) any breach or violation of or default under any Contract, Order or Permit, (ii) any occurrence of any event that with the passage of time or the giving of notice or both would constitute a breach or violation of or default under any Contract, Order or Permit, or (iii) any occurrence of any event that with or without the passage of time or the giving of notice would give rise to a right to terminate or revoke, change the current terms of, or renegotiate, or to accelerate, increase, or impose any Liability under, any Contract, Order or Permit.

"DGCL" shall have the meaning as set forth in the Recitals of the Agreement.

"Dissenting Shares" shall have the meaning as set forth in Section 2.3 of the Agreement.

"Earn-Out Consideration" shall have the meaning as set forth in Section 2.5 of the Agreement.

"Earn-Out Revenue" shall have the meaning as set forth in Section 2.5(a) of the Agreement.

"Earn-Out Statement" shall have the meaning as set forth in Section 2.5(b) of the Agreement.

"Effective Time" shall have the meaning as set forth in Section 1.3 of the Agreement.

"Employees" shall have the meaning as set forth in Section 3.20 of the Agreement.

"Environmental Laws" mean any and all federal, state, local and foreign statutes, laws, judicial decisions, regulations, ordinances, rules, judgments, orders, decrees, codes, plans, injunctions, permits, concessions, grants, franchises, licenses, agreements and governmental restrictions, relating to human health, the environment or to emissions, discharges or releases of pollutants, contaminants or other Hazardous Material or wastes into the environment, including without limitation ambient air, surface water, ground water or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants or other Hazardous Material or wastes or the clean-up or other remediation thereof.

"Environmental Permits" means, with respect to any Person, all permits, licenses, franchises, certificates, approvals and other similar authorizations of governmental authorities relating to or required by Environmental Laws and affecting, or relating in any way to, the business of such Person as currently conducted.

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

"Escrow Amount" means $320,000, including interest therefrom, subject to reduction pursuant to Section 7.5.

"Final Date" shall have the meaning as set forth in Section 10.1 of the Agreement.

"GAAP" shall have the meaning as set forth in Section 3.8(b) of the Agreement.

"Governmental Entity" shall mean any government or any agency, bureau, board, directorate, commission, court, department, official, political subdivision, tribunal, or other instrumentality of any government, whether federal, state or local, domestic or foreign.

"Hazardous Material" means any toxic, radioactive, corrosive or otherwise hazardous substance, including petroleum, its derivatives, by-products and other hydrocarbons, or any substance having any constituent elements displaying any of the foregoing characteristics, which in any event is regulated under any Environmental Law.

"Indemnified Party" shall have the meaning as set forth in Section 6.3(b) of the Agreement.

"Indemnifying Party" shall have the meaning as set forth in Section 8.4 of the Agreement.

"Indemnitee" shall have the meaning as set forth in Section 8.4 of the Agreement.

"Intellectual Property" shall mean all rights, privileges and priorities provided under applicable Law relating to intellectual property, whether registered or unregistered, including without limitation all (i) (a) inventions, discoveries, processes, formulae, designs, methods, techniques, procedures, concepts, developments, technology, mask works, new and useful improvements thereof and know-how relating thereto, whether or not patented or eligible for patent protection; (b) copyrights and copyrightable works, including computer applications, programs, Products, Software, databases and related items; (c) trademarks, service marks, trade names, brand names, product names, corporate names, logos and trade dress, the goodwill of any business symbolized thereby, and all common-law rights relating thereto; and (d) trade secrets, proprietary data and other confidential information; and (ii) all registrations, applications, recordings, and licenses or other similar agreements related to the foregoing.

"Knowledge" means the actual knowledge of the Executive Chairman, Chief Executive Officer, Chief Financial Officer, Chief Technology Officer and controller of a party, and knowledge that a reasonable person in such capacity should have after due inquiry.

"Law" shall mean any code, law, ordinance, regulation, reporting or licensing requirement, rule, or statute applicable to a Person or its Assets, liabilities or business, including those promulgated, interpreted or enforced by any Regulatory Authority.

"Lien" means, with respect to any Asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect to such Asset.

"Material" and "Materially" for purposes of this Agreement shall be determined in light of the facts and circumstances of the matter in question; provided that any specific monetary amount stated in this Agreement shall determine materiality in that instance.

"Material Adverse Effect" means, with respect to any Person, a Material adverse effect on the condition (financial or otherwise), business, Assets, liabilities or the operating results of such Person and its Subsidiaries taken as a whole.

"Material Intellectual Property" shall have the meaning as set forth in Section 3.21(a) of the Agreement.

"Merger" shall have the meaning as set forth in the Recitals.

"Merger Consideration" shall consist of (i) the Series A Closing Consideration, (ii) the Series B1 Closing Consideration, (iii) the Series B2 Closing Consideration, (iv) the Series C Closing Consideration, (v) the Series D Closing Consideration and (vi) the Earn-Out Consideration.

"Merger Consideration Certificate" shall have the meaning as set forth in Section 2.1(b)(vii) of the Agreement.

"Merger Sub" shall have the meaning as set forth in the Preamble.

"NASD" means National Association of Securities Dealers, Inc.

"Order" shall mean any administrative decision or award, decree, injunction, judgment, order, quasi-judicial decision or award, ruling, or writ of any federal, state, local or foreign or other court, arbitrator, mediator, tribunal, administrative agency or Regulatory Authority.

"Option Plan" shall have the meaning as set forth in Section 2.4(a) of the Agreement.

"Owned Databases" means all Databases other than Third Party Databases.

"Owned Software" means all Software other than Third Party Software.

"Parent" shall have the meaning as set forth in the Preamble.

"Parent Disclosure Schedule" shall mean the written disclosure schedule pursuant to Article 4 of the Agreement delivered on or prior to the date hereof by Parent to the Company that is arranged in paragraphs corresponding to the numbered and lettered paragraphs corresponding to the numbered and lettered paragraphs contained in the Agreement.

"Person" means an individual, a corporation, a partnership, an association, a trust, a limited liability company or any other entity or organization, including a government or political subdivision or any agency or instrumentality thereof.

"Permit" shall mean any federal, state, local, or foreign governmental approval, authorization, certificate, consent, easement, filing, franchise, letter of good standing, license, notice, permit, qualification, registration or right of or from any Governmental Entity (or any extension, modification, amendment or waiver of any of these) to which any Person is a party or that is or may be binding upon or inure to the benefit of any Person or its securities, Assets or business, or any notice, statement, filing or other communication to be filed with or delivered to any Governmental Entity.

"Permitted Liens" shall mean (a) Liens for taxes and assessments or governmental charges or levies not at the time due or in respect of which the validity thereof shall currently be contested in good faith by appropriate proceedings; (b) Liens in respect of pledges or deposits under workers' compensation laws or similar legislation, carriers', warehousemen's, mechanics', laborers' and materialmen's and similar Liens, if the obligations secured by such Liens are not then delinquent or are being contested in good faith by appropriate proceedings; (c) Liens incidental to the conduct of the business of the Company which were not incurred in connection with the borrowing of money or the obtaining of advances or credits and which do not in the aggregate Materially detract from the value of its property or Materially impair the use thereof in the operation of its business and (d) Liens securing obligations that are individually not in excess of $25,000.

"Products" means the Software products created, developed or owned by the Company and all related products, including any Intellectual Property related thereto.

"Regulatory Authorities" shall mean, collectively, the Federal Trade Commission, the United States Department of Justice, and all foreign, federal, state and local regulatory agencies and other Governmental Entities or bodies having jurisdiction over the parties and their respective Assets, employees, businesses and/or Subsidiaries, including the NASD and the Securities and Exchange Commission.

"Residual Earn-Out Consideration" shall mean an amount equal to (i) the Adjusted Earn-Out Consideration minus (ii) $451,699; but if less than zero, then such amount shall equal zero.

"Returns" shall have the meaning as set forth in Section 3.11(a)(i) of the Agreement.

"Series A Closing Consideration" means $38,455.40.

"Series A Per Share Closing Consideration" means the fraction: (i) having a numerator equal to the Series A Closing Consideration, and (ii) having a denominator equal to the total issued and outstanding shares of Company Series A Preferred Stock immediately prior to the Effective Time.

"Series A Per Share Earn-Out Consideration" means an amount equal to: (i) the Adjusted Earn-Out Consideration multiplied by 17.03%, up to a maximum total of $76,910.80, divided by (ii) the total issued and outstanding shares of Company Series A Preferred Stock immediately prior to the Effective Time.

"Series B1 Closing Consideration" means $49,999.95.

"Series B1 Per Share Closing Consideration" means the fraction: (i) having a numerator equal to the Series B1 Closing Consideration, and (ii) having a denominator equal to the total issued and outstanding shares of Company Series B1 Preferred Stock immediately prior to the Effective Time.

"Series B1 Per Share Earn-Out Consideration" means an amount equal to: (i) the Adjusted Earn-Out Consideration multiplied by 22.13%, up to a maximum total of $99,999.90, divided by (ii) the total issued and outstanding shares of Company Series B1 Preferred Stock immediately prior to the Effective Time..

"Series B2 Closing Consideration" means $70,548.90.

"Series B2 Per Share Closing Consideration" means the fraction: (i) having a numerator equal to the Series B2 Closing Consideration, and (ii) having a denominator equal to the total issued and outstanding shares of Company Series B2 Preferred Stock immediately prior to the Effective Time.

"Series B2 Per Share Earn-Out Consideration" means an amount equal to: (i) the Adjusted Earn-Out Consideration multiplied by 31.24%, up to a maximum total of $141,097.80, divided by (ii) the total issued and outstanding shares of Company Series B2 Preferred Stock immediately prior to the Effective Time.

"Series C Closing Consideration" means $66,845.25.

"Series C Per Share Closing Consideration" means the fraction: (i) having a numerator equal to the Series C Closing Consideration, and (ii) having a denominator equal to the total issued and outstanding shares of Company Series C Preferred Stock immediately prior to the Effective Time.

"Series C Per Share Earn-Out Consideration" means an amount equal to: (i) the Adjusted Earn-Out Consideration multiplied by 29.6%, up to a maximum total of $133,690.50, divided by (ii) the total issued and outstanding shares of Company Series C Preferred Stock immediately prior to the Effective Time.

"Series D Closing Consideration" means $6,174,150.50.

"Series D Earn-Out Reimbursement Amount" shall mean an amount equal to (i) $320,000, including interest therefrom, minus (ii) the aggregate amount of cash actually returned to the holders of shares of Series D Preferred Stock pursuant to the Escrow Agreement.

"Series D Per Share Closing Consideration" means the fraction: (i) having a numerator equal to the Series D Closing Consideration, and (ii) having a denominator equal to the total issued and outstanding shares of Company Series D Preferred Stock immediately prior to the Effective Time.

"Series D Per Share Residual Earn-Out Consideration" means the fraction: (i) having a numerator equal to the Residual Earn-Out Consideration and (ii) having a denominator equal to the total issued and outstanding shares of Company Series D Preferred Stock immediately prior to the Effective Time.

"Series D Per Share Reimbursement Consideration" means the fraction: (i) having a numerator equal to the Series D Earn-Out Reimbursement Amount, and (ii) having a denominator equal to the total issued and outstanding shares of Company Series D Preferred Stock immediately prior to the Effective Time.

"Shares" shall mean the issued and outstanding shares of Company Stock immediately prior to the Effective Time, other than (i) shares of Company Stock held by the Company; (ii) shares of Company Stock held by Parent, Merger Sub or any other Subsidiary or parent of Parent or Merger Sub, if any, and (iii) Dissenting Shares.

"Shareholder Representative" shall have the meaning as set forth in Section 2.5(b) of the Agreement.

"Software" means and includes all computer programs, whether in source code, object code or other form (including without limitation any embedded in or otherwise constituting part of a computer hardware device), algorithms, edit controls, methodologies, applications, flow charts and any and all systems documentation (including, but not limited to, data entry and data processing procedures, report generation and quality control procedures), logic and designs for all programs, and file layouts and written narratives of all procedures used in the coding or maintenance of the foregoing.

"Subsidiary" means, with respect to any Person, (i) any corporation, association or other business entity of which more than 50% of the total voting power of shares of capital stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person (or a combination thereof) and (ii) any partnership (a) the sole general partner or managing general partner of which is such Person or a Subsidiary of such Person or (b) the only general partners of which are such Person or one or more Subsidiaries of such Person (or any combination thereof).

"Surviving Corporation" shall have the meaning as set forth in Section 1.1 of the Agreement.

"Tax" or "Taxes" shall mean all United States federal, state, provincial, local or foreign taxes and any other applicable duties, levies, fees, charges and assessments that are in the nature of a tax,

including income, gross receipts, property, sales, use, license, excise, franchise, ad valorem, value-added, transfer, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Section 59A of the Code), customs, capital stock, real property, personal property, alternative or add-on minimum, estimated, social security payments, and health taxes and any deductibles relating to wages, salaries and benefits and payments to subcontractors, together with all interest, penalties and additions imposed with respect to such amounts.

"Third Party Databases" means Databases licensed or leased to the Company or any of its Subsidiaries by third parties.

"Third Party Licenses" means all licenses and other agreements with third parties relating to any Intellectual Property or products that the Company is licensed or otherwise authorized by such third parties to use, market, distribute or incorporate into products marketed and distributed by the Company.

"Third Party Technology" means all Intellectual Property and products owned by third parties and licensed pursuant to Third Party Licenses.

"Third Party Software" means Software licensed or leased to the Company or its Subsidiaries by third parties, including commonly available "shrink wrap" software copyrighted by third parties.

"Transaction Documents" means the Agreement, the Confidentiality Agreement and any other document executed and delivered pursuant hereto together with any exhibits or schedules to such documents.

"Transfer Taxes" shall have the meaning as set forth in Section 7.3 of this Agreement.

EXHIBIT B

CALIFORNIA AGREEMENT OF MERGER

EXHIBIT B

FORM OF AGREEMENT OF MERGER OF MOHOMINE ACQUISITION CORP. AND MOHOMINE, INC.

[To be revised to conform to certain provisions of the Agreement and Plan of Merger, including, without limitation the descriptions of Merger Consideration.]

This Agreement of Merger, dated as of the __ day of March, 2003 ("Merger Agreement"), by and between Mohomine Acquisition Corp., a California corporation ("Merger Sub") and wholly-owned subsidiary of Kofax Image Products, Inc., a Delaware corporation ("Parent"), and Mohomine, Inc. a California corporation (the "Company").

RECITALS

A. Merger Sub and the Company have entered into an Agreement and Plan, dated as of March __, 2003 Merger (the "Agreement and Plan of Merger"), providing for the merger of Merger Sub with and into the Company (the "Merger").

B. The Board of Directors of Parent, the Company and Merger Sub and the shareholders of the Company have approved the Merger.

AGREEMENT

The parties hereto agree as follows:

1. Effective Time. The Merger shall become effective at such time (the "Effective Time") as this Merger Agreement and the officers' certificates of the Company and Merger Sub are filed with the Secretary of State of the State of California pursuant to Section 1103 of the CGCL.

2. Effect of the Merger. At the Effective Time, Merger Sub shall be merged with and into the Company, the separate existence of Merger Sub shall cease and the Company shall continue as the surviving corporation of the Merger (the "Surviving Corporation"). At the Effective Time, all the property, rights, privileges, and powers 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.

3. Articles of Incorporation. The Articles of Incorporation of Merger Sub in effect immediately prior to the Effective Time shall be the Articles of Incorporation of the Surviving Corporation until thereafter changed or amended as provided therein or in accordance with applicable

law. The Bylaws of Merger Sub in effect immediately prior to the Effective Time shall be the Bylaws of the Surviving Corporation until thereafter changed or amended as provided therein or in accordance with applicable law.

4. Directors and Officers. The directors and officers of the Merger Sub immediately prior to the Effective Time shall be the directors and officers of the Surviving Corporation.

5. Effect on Capital Stock. By virtue of the Merger and without any action on the part of Merger Sub, the Company or their respective shareholders, the following shall occur at the Effective Time:

5.1 Conversion of the Company Stock. All of the issued and outstanding shares of Common Stock and Preferred stock of the Corporation (collectively, the "Company Stock") issued and outstanding immediately prior to the Effective Time (other than shares, if any, held by persons who have not voted such shares for approval of the Merger and with respect to which such persons shall become entitled to exercise dissenters' rights in accordance with the CGCL ("Dissenting Shares")) shall be converted into the right to receive the Merger Consideration (as described below). All shares of Company Stock, when so converted, shall no longer be outstanding and shall automatically be cancelled and retired and shall cease to exist, and each holder of a certificate representing any such shares of Company Stock shall cease to have any rights with respect thereto, except the contingent right to receive the Merger Consideration therefor upon the surrender of such certificate.

The term "Merger Consideration" shall mean an initial cash payment of an aggregate of $6,400,000 ($320,000 of which shall be subject to escrow) and a contingent cash payment of up to an aggregate of $1,000,000, the exact sum of which shall be based upon the achievement of certain gross revenue milestones.

5.2 Cancellation of the Company Stock Owned by Parent or the Company. At the Effective Time, all shares of Company Stock that are owned by the Company as treasure stock, each share of Company Stock owned by Parent, or any wholly owned subsidiary of Parent, immediately prior to the Effective Time shall be cancelled and extinguished without any consideration thereof and no consideration shall be delivered or deliverable in exchange therefore hereunder or otherwise.

5.3 Company Options and Warrants.

(a) Company Options. At the Effective Time, all then outstanding options, whether vested or unvested, to purchase shares of Company Stock pursuant to the Company's 1999 Stock Option Plan, as amended (the "Company Options"), that remain unexercised immediately prior to the Effective Time shall be automatically terminated and canceled. None of the Company Options shall be assumed by Parent.

(b) Company Warrants. At the Effective Time, all outstanding warrants to purchase shares of Company Stock (the "Company Warrants") shall automatically terminate in

accordance with the terms thereof and shall cease to exist by virtue of the Merger and without any action on the part of the holder thereof and any holder thereof shall no longer have any rights with respect to such Company Warrants.

6. Capital Stock of Merger Sub. At the Effective Time, each share of Common Stock of Merger Sub ("Merger Sub Common Stock") issued and outstanding immediately prior to the Effective Time shall be converted into and exchanged for one validly issued, fully paid and nonassessable share of Common Stock of the Surviving Corporation.

7. Dissenters' Rights. Any Dissenting Shares shall not be converted into the right to receive any portion of the Merger Consideration, unless and until the holder of any such Dissenting Shares fails to perfect or withdraws or otherwise loses his right to an appraisal of the fair market value of his Dissenting Shares. If, after the Effective Time, any such holder fails to perfect or withdraws or loses his right to an appraisal of the fair market value of his Dissenting Shares under the CGCL, such Dissenting Shares shall thereupon be treated as if they had been converted as of the Effective Time into the right to receive the Merger Consideration to which such holder is entitled, without interest thereon.

The Company shall give Parent prompt notice of any demands received by the Company for the payment of fair market value for Dissenting Shares, and Parent shall have the right to direct all negotiations and proceedings with respect to such demands. The Company shall not make any such payment without Parent's prior written consent.

8. General Provisions.

8.1 Amendment. This Merger Agreement may be amended by the parties hereto any time before or after approval hereof by the shareholders of the Company, but, after such approval, no amendment shall be made which by law requires the further approval of such shareholders without obtaining such approval. This Merger Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto.

8.2 Severability. If one or more provisions of this Merger Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith, in order to maintain the economic position enjoyed by each party as close as possible to that under the provision rendered unenforceable. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provisions shall be excluded from this Merger Agreement, (ii) the balance of the Merger Agreement shall be interpreted as if such provision was so excluded and (iii) the balance of the Merger Agreement shall be enforceable in accordance with its terms.

8.3 Counterparts. This Merger Agreement may be signed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one agreement.

8.4 Gender. For purposes of this Merger Agreement, references to the

masculine gender shall include feminine and neuter genders and entities.

IN WITNESS WHEREOF, the parties have executed this Merger Agreement as of the date first written above.

MOHOMINE ACQUISITION CORP., a California corporation

_____
Signature

_____
Print Name and Title of Signatory

_____
Signature

_____
Print Name and Title of Signatory

MOHOMINE, INC., a California corporation

_____
Signature

_____
Print Name and Title of Signatory

_____
Signature

_____
Print Name and Title of Signatory

EXHIBIT C

ESCROW AGREEMENT

EXHIBIT C

ESCROW AGREEMENT

This ESCROW AGREEMENT, dated _____, by and among Kofax Image Products, Inc., a Delaware corporation ("Purchaser"), and David Titus ("Shareholder Representative"), and Wells Fargo Bank, National Association, a national banking association principally located in Los Angeles, California ("Escrow Agent").

RECITALS

Purchaser and Mohomine, Inc. (the "Company") are parties to an Agreement and Plan of Merger, dated March 17, 2003 (the "Merger Agreement"), pursuant to which, among other things, Merger Sub agreed to merge with and into the Company with the Company being the surviving company to such merger, on and subject to the terms and conditions contained therein.

Section 8.1 of the Merger Agreement provides that the Company will indemnify Purchaser, subject to the limitations contained in Section 8.3 of the Merger Agreement, against certain Claims and Liabilities, all as described in the Merger Agreement.

Pursuant to Section 2.2(f) of the Merger Agreement, the amount of Three Hundred Twenty Thousand Dollars ($320,000) is to be deposited into the escrow created by this Escrow Agreement, which, together with any interest accrued thereon in accordance with the provisions of Section 6 hereof, shall be referred to as the "Escrow Funds" and shall be a fund against which Claims and Liabilities by Purchaser pursuant to Section 8.1 of the Merger Agreement shall be made.

As an inducement to Shareholder Representative to enter into this Escrow Agreement, the shareholders of the Company have agreed pursuant to the written consent of such shareholders approving the Merger Agreement and related transactions, dated March ___, 2003, to indemnify and hold harmless Shareholder Representative from and against, any and all loss, liability, cost, damage and expense, including, without limitation, reasonable counsel fees, which Shareholder Representative may suffer or incur by reason of any action, claim or proceeding brought against Shareholder Representative arising out of or relating in any way to this Escrow Agreement or any transaction to which this Escrow Agreement relates unless such action, claim or proceeding is the result of fraud, willful misconduct or gross negligence of Shareholder Representative.

This Escrow Agreement, together with the Merger Agreement, shall govern the terms upon which Escrow Agent may distribute the Escrow Funds to Purchaser and Shareholder Representative. Terms not otherwise defined in this Escrow Agreement shall have the meanings given to them in the Merger Agreement. Notwithstanding the use of defined terms from the Merger Agreement, the parties hereby acknowledge that Escrow Agent is not a party to, and, therefore, is not bound by the Merger Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the premises set forth above and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Appointment of Escrow Agent. Escrow Agent is hereby appointed escrow agent in accordance with the instructions set forth herein.

2. Claim Certificates. Purchaser, from time to time on or prior to _____, 2004 [insert date that is the first anniversary of the Closing Date] (the "Escrow Term"), may make a good faith claim to some or all of the Escrow Funds (a "Claim") for payment of any Claims and Liabilities by delivering to Escrow Agent a certificate (a "Claim Certificate") signed by the president, chief executive officer or chief financial officer of Purchaser stating:

(a) that Purchaser is entitled to be indemnified under Section 8.1 of the Merger Agreement, or reasonably expects to have a Claim for such indemnification;

(b) the reasons therefor, set forth in reasonable detail;

(c) the amount of the Claim by Purchaser (where the amount of the Claim is not a liquidated sum, it shall be the amount reasonably estimated by Purchaser) with supporting documentation and calculations, as applicable; and

(d) that Purchaser has delivered a copy of such Claim Certificate to Shareholder Representative and the date on which such copy was delivered in accordance with Section 7 of the Escrow Agreement.

Purchaser's submission of a Claim Certificate to Escrow Agent shall constitute a representation and warranty by Purchaser that Purchaser has concurrently submitted a copy of the Claim Certificate to Shareholder Representative, and Escrow Agent shall be entitled to rely conclusively on such representation and warranty, and shall have no duty or obligation to ascertain independently whether Shareholder Representative has received the Claim Certificate.

3. Disputed Claims. Shareholder Representative may dispute or object to any Claim, in whole or in part (a "Disputed Claim"), by delivering to Escrow Agent a notice (an "Objection Notice") within twenty days of receipt of the Claim Certificate (the "Claim Notice Period") stating:

(a) that Shareholder Representative disputes or objects to such Claim;

(b) the reasons for such objections or dispute, set forth in reasonable detail;

(c) that Shareholder Representative has delivered a copy of said Objection Notice to Purchaser and the date on which such copy was delivered in accordance with Section 7 of the Escrow Agreement; and

(d) the portion of the Claim set forth in the Claim Certificate, if any, which is not disputed or objected to.

Shareholder Representative's submission of a Objection Notice to Escrow Agent shall constitute a representation and warranty by Shareholder Representative that Shareholder Representative has concurrently submitted a copy of the Objection Notice to Purchaser, and Escrow Agent shall be entitled to rely conclusively on such representation and warranty, and shall have no duty or obligation to ascertain independently whether Purchaser has received the Objection Notice.

4. Payment of Claims.

4.1 Escrow Agent shall pay the amount of the Claim set forth in a Claim Certificate to Purchaser out of the Escrow Funds upon expiration of the Claim Notice Period for such Claim Certificate, unless Shareholder Representative delivers an Objection Notice to Escrow Agent during the Claim Notice Period.

4.2 If the Escrow Funds are not sufficient to pay in full any amounts payable to Purchaser under the preceding Section 4.1, Escrow Agent shall pay to Purchaser such Escrow Funds as are available.

5. Distribution of Escrow Funds. Escrow Agent shall not make any distribution of Escrow Funds with respect to any Claim made by Purchaser hereunder until:

(a) the expiration of the applicable Claim Notice Period;

(b) Purchaser and Shareholder Representative settle a Disputed Claim in a written settlement agreement executed by Purchaser and Shareholder Representative and delivered to Escrow Agent (a "Settlement Agreement"); or

(c) there is a Final Decision with respect to a Disputed Claim. "Final Decision" means a decision, order, judgment or decree of an arbitrator or court having jurisdiction which is either not subject to appeal or as to which notice of appeal has not been timely filed or served.

6. Investment of Escrow Funds. The Escrow Funds shall be credited by Escrow Agent and recorded in an escrow account. Escrow Agent shall be permitted, and is hereby authorized to deposit, transfer, hold and invest all funds received in this escrow, including principal and interest, in the Wells Fargo Funds - _____, a money market fund available through Escrow Agent, during the period of this escrow or in accordance with such instructions and directions as may from time to time be provided to Escrow Agent in writing and signed by Purchaser and Shareholder Representative. Any interest received by Escrow Agent with respect to the Escrow Funds, including reinvested interest shall become part of the Escrow Funds, provided, however, that such interest shall be for the sole and exclusive benefit of Purchaser to the extent that such interest is earned or accrued with respect to any amount which (a) represents a Claim that is not disputed by Shareholder Representative pursuant to Section 3 or that is payable to Purchaser pursuant to a Settlement Agreement (calculated from the date specified in the applicable Claim Certificate as the date on which the claim set forth therein arose) or (b) represents a Claim by Purchaser sustained by a Final Decision (calculated from the date specified in such Final Decision).

7. Notices. All notices (including Objection Notices), certificates (including Claim Certificates), payment, and distributions required or permitted to be given or delivered hereunder shall be deemed to have been properly given or delivered to the following addresses, if delivered in person, or, if mailed, on the second business day following the date when mailed by registered or certified mail, postage prepaid and addresses as follows:

If to Purchaser:

Kofax Image Products, Inc.
16245 Laguna Canyon Road
Irvine, California 92618-3603
Attn: Michael F. Giove
Ph: (949) 727-1733
Fax: (949) 727-3511

with a copy to (which shall not constitute notice):

Stradling Yocca Carlson & Rauth
660 Newport Center Drive, Suite 1600
Newport Beach, California 92660
Attn: K.C. Schaaf, Esq.
Ph: (949) 725-4155
Fax: (949) 725-4100

If to Shareholder Representative:

David Titus
Windward Ventures, L.P.
550 West C Street, Suite 2030
San Diego, CA 92101
Ph: (619) 234-6800
Fax: (619) 234-6886

If to Escrow Agent:

Wells Fargo Bank, N.A.
Corporate Trust Department
707 Wilshire Boulevard, 17th Floor
Los Angeles, California 90017
Attn: Kimberly A. Vann
Ph: (213) 614-3352
Fax: (213)-614-3355

or to such other address as a party shall designate by written notice to all other parties to the Escrow Agreement.

8. Reliance. Escrow Agent may act upon any instrument or other writing believed by it in reasonable good faith to be genuine and to be signed or presented by the proper person or persons.

9. Termination of Escrow. Upon the expiration of the Escrow Term, all of the Escrow Funds held by Escrow Agent pursuant to the terms of this Escrow Agreement, less a reasonable reserve to cover Disputed Claims (and interest thereon), shall be paid by Escrow Agent to Shareholder Representative or its successors or assigns for distribution as set forth in the Merger Agreement. Upon settlement of all Disputed Claims, this escrow shall terminate, and all remaining Escrow Funds held by Escrow Agent shall be paid by Escrow Agent to Shareholder Representative or its successors or assigns for distribution as set forth in the Merger Agreement.

10. Fees and Expenses. Escrow Agent shall be entitled to compensation for its services as stated in the fee schedule attached hereto as Exhibit A, which compensation shall be paid by Purchaser. The fee agreed upon for the services rendered hereunder is intended as full compensation for Escrow Agent's services as contemplated by this Escrow Agreement; provided, however, that in the event that the conditions for the disbursement of funds under this Escrow Agreement are not fulfilled, or Escrow Agent renders any material service not contemplated in this Escrow Agreement or there is any assignment of interest in the subject matter of this Escrow Agreement, or any material modification hereof, or if any material controversy arises hereunder, or Escrow Agent is made a party to any litigation pertaining to this Escrow Agreement, or the subject matter hereof, then Escrow Agent shall be reasonably compensated for such extraordinary services and reimbursed for all costs and expenses, including reasonable attorney's fees, occasioned by any delay, controversy, litigation or event, and the same shall be recoverable first from the Escrow Funds, and thereafter from Purchaser.

11. Indemnification of Escrow Agent. Purchaser and Shareholder Representative both jointly and severally hereby indemnify and hold harmless Escrow Agent from and against, any and all loss, liability, cost, damage and expense, including, without limitation, reasonable counsel fees, which Escrow Agent may suffer or incur by reason of any action, claim or proceeding brought against Escrow Agent arising out of or relating in any way to this Escrow Agreement or any transaction to which this Escrow Agreement relates unless such action, claim or proceeding is the result of fraud, willful misconduct or gross negligence of Escrow Agent. The Escrow Agent may consult counsel in respect of any question arising under this Escrow Agreement and the Escrow Agent shall not be liable for any actions taken or omitted in good faith upon advise of such counsel.

12. Acceptance of Appointment. Wells Fargo Bank, National Association hereby agrees to act as Escrow Agent under this Escrow Agreement. Escrow Agent shall have no duty to enforce any provision hereof requiring performance by any other party hereunder.

13. Counterparts. This Escrow Agreement may be executed in two or more counterparts, all of which taken together shall constitute one instrument.

14. Resignation. Escrow Agent may resign at any time as escrow agent upon (i) 30 days' prior written notice to Purchaser and Shareholder Representative and (ii) appointment of a replacement escrow agent by Purchaser and Shareholder Representative. If Purchaser and Shareholder Representative cannot agree on a replacement escrow agent within 30 days after receipt of the notice of resignation by Escrow Agent, then Escrow Agent may apply to a judge of the State of California at the expense of Purchaser and Shareholder Representative, severally but not jointly, on such notice as the Court directs for the appointment of a new escrow agent, and Escrow Agent shall be reimbursed for the reasonable expenses of such application pursuant to Section 10. The resigning Escrow Agent will forthwith deliver custody of the Escrow Funds to the replacement escrow agent. After the resignation of Escrow Agent, the duties and liabilities of the resigning Escrow Agent under this Escrow Agreement shall immediately cease and terminate, except with respect to liabilities of Escrow Agent as a result of its fraud, willful misconduct, or gross negligence, or the failure to comply with its obligations under this Escrow Agreement prior to the date of acceptance by such replacement escrow agent and delivery of the Escrow Funds to it, and liabilities which relate thereto and such replacement escrow agent shall assume all powers, rights, and obligations of Escrow Agent thereafter arising under this Escrow Agreement without any further action by the parties hereto.

15. Governing Law. This Escrow Agreement shall be construed, performed, and enforced in accordance with, and governed by, the internal laws of the State of California, without giving effect to the principles of conflict of laws thereof. Each party hereby consents to the personal jurisdiction and venue of any United States District Court for the District of California located in Los Angeles, County California.

16. Amendments. This Escrow Agreement may be amended to modified, and any of the terms, covenants, representations, warranties, or conditions hereof may be waived, only by a written instrument executed by the parties hereto, or in the case of a waiver, by the party waiving compliance. Any waiver by any party of any condition, or of the breach of any provision, term, covenant, representation, or warranty contained in the Escrow Agreement, in any one or more instances, shall not be deemed to be nor construed as further or continuing waiver of any such conditions, or of the breach of any other provision, term, covenant, representation, or warranty of this Escrow Agreement.

17. Section Headings. The section headings in this Escrow Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Escrow Agreement.

18. Severability. In the event that any part of this Escrow Agreement is declared by any court or other judicial or administrative body to be null, void, or unenforceable, said provision shall survive to the extent it is not so declared, and all of the other provisions of this Escrow Agreement shall remain in full force and effect.

19. Tax Related Terms:

Tax Reporting Parties agree that, for tax reporting purposes, all interest or other taxable income earned from the investment of the Escrow Funds in any tax year shall be taxable to any person or entity to whom Escrow Funds are distributed during the tax year pursuant to the terms of this Escrow Agreement based upon such person's or entity's pro rata share of all Escrow Funds distributed in such tax year.

Certification of Tax Identification Number The parties hereto shall, within 30 days after the date hereof, provide Escrow Agent with certified tax identification numbers by furnishing appropriate forms W-9 or W-8 and other forms and documents that Escrow Agent may reasonably request. The parties understand that if such tax reporting documentation is not so certified to Escrow Agent, Escrow Agent may be required by the Internal Revenue Code of 1986, as amended, to withhold a portion of any interest or other income earned on the investment of monies or other property held by Escrow Agent pursuant to this Escrow Agreement.

Tax Allocation To the extent that Escrow Agent becomes liable for the payment of any taxes in respect of income derived from the investment of funds held or payments made hereunder, Escrow Agent shall satisfy such liability to the extent possible from the Escrow Funds. The parties agree to indemnify and hold Escrow Agent harmless from and against any taxes, additions for late payment, interest, penalties and other expenses that may be assessed against Escrow Agent on or with respect to any payment or other activities under this Escrow Agreement unless any such tax, addition for late payment, interest, penalties and other expenses shall arise out of or be caused by the actions of, or failure to act by, Escrow Agent.

[Remainder of Page Intentionally Left Blank; Signature Page to Follow]

In witness whereof, the parties hereto have caused this Escrow Agreement to be signed the day and year first above written.

KOFAX IMAGE PRODUCTS, INC.

By _____

Its _____

SHAREHOLDER REPRESENTATIVE

By _____

Its _____

ESCROW AGENT
WELLS FARGO BANK,
NATIONAL ASSOCIATION

By _____

Its _____

EXHIBIT A

Wells Fargo Bank
Corporate Trust Services
707 Wilshire Blvd., 17th Floor
Los Angeles, CA 90017
Tel: (213) 614-3351
Fax: (213) 614-3355

SCHEDULE OF FEES
to act as ESCROW AGENT for
Kofax Image Products Cash Escrow Account

Acceptance Fee: **Waived**

Initial Fees as they relate to Wells Fargo Bank acting in the capacity of Escrow Agent – includes creation and examination of the Escrow Agreement; acceptance of the Escrow appointment; setting up of Escrow Account(s) and accounting records; and coordination of receipt of funds for deposit to the Escrow Account.

Acceptance Fee payable at time of Escrow Agreement execution.

Escrow Agent Administration Fee: **$1,500.00**

For ordinary administration services by Escrow Agent – includes daily routine account management; investment transactions; cash transaction processing (including wires and check processing); monitoring claim notices pursuant to the agreement; disbursement of the funds in accordance with the agreement; and mailing of trust account statements to all applicable parties. **Tax reporting is included for up to Two (2) entities.**

Payable in advance, with the first installment due at the time of Escrow Agreement execution. Fee will not be prorated in case of early termination.

Wells Fargo's bid is based on the following assumptions:

- Number of escrow funds/accounts to be established: One (1)
- Number of Deposits to Escrow Account: Not more than Five (5)
- Number of Withdrawals from Escrow Fund: Not more than Five (5)
- Term of Escrow: Not more than One (1) year
- **ALL FUNDS WILL BE INVESTED IN ONE OF SEVERAL WELLS FARGO MONEY MARKET FUNDS**
- **ALL FUNDS WILL BE RECEIVED FROM OR DISTRIBUTED TO A DOMESTIC ENTITY**

Out-of Pocket Expenses: **At Cost**

We only charge for out-of-pocket expenses in response to specific tasks assigned by the client. Therefore, we cannot anticipate what specific out-of-pocket items will be needed or what corresponding expenses will be incurred. Possible expenses would be, but are not limited to, express mail and messenger charges, travel expenses to attend closing or other meetings. There are no charges for indirect out-of- pocket expenses.

Submitted by: John T. Deleray - 3/12/2003
Vice President/Business Development
Wells Fargo Bank
(213) 614-3351

EXHIBIT D

EARN-OUT SCHEDULE

Aggregate Earn-Out Consideration	Earn-Out Revenue
$100,000	$1,500,000 to $1,599,999
$175,000	$1,600,000 to $1,699,999
$250,000	$1,700,000 to $1,799,999
$325,000	$1,800,000 to $1,899,999
$400,000	$1,900,000 to $1,999,999
$475,000	$2,000,000 to $2,099,999
$550,000	$2,100,000 to $2,199,999
$625,000	$2,200,000 to $2,299,999
$700,000	$2,300,000 to $2,399,999
$775,000	$2,400,000 to $2,499,999
$850,000	$2,500,000 to $2,599,999
$925,000	$2,600,000 to $2,699,999
$1,000,000	$2,700,000 or greater

EXHIBIT E

ACCRUED SALARIES

NAME	BONUS 2002*
Sameer Samat	$ 71,000.00
Rahul Anand	$ 15,500.00
Chris Harris	$ 49,000.00
Maurice Schmidtler	$ 5,000.00
Sean Brady	$ 49,000.00
Andris Hodosy	$ 2,500.00
Sheila Connor	$ 2,000.00
Nicole Dreis Rockstead	$ 4,500.00
Neil Senturia	$ 56,000.00
Richard Glover	$ 15,500.00
Dan Nore	$ 2,000.00

*These numbers include all deferred or accrued back salaries for the year 2002. They do not include deferred or accrued salary beginning January 1, 2003.

2003 BASE SALARIES

NAME	BASE SALARY 2003
Sameer Samat	$ 135,000.00
Rahul Anand	$ 130,000.00
Chris Harris	$ 105,000.00
Maurice Schmidtler	$ 120,000.00
Sean Brady	$ 95,000.00
Andris Hodosy	$ 45,000.00
Sheila Connor**	$ 39,000.00
Nicole Dreis Rockstead	$ 60,000.00
Neil Senturia	$ 120,000.00
Richard Glover	$ 165,000.00
Dan Nore	$ 100,000.00
Taduri Rao	$ 65,000.00
Tristan Juricek	$ 75,000.00
Josh Dammeier	$ 85,000.00

** Reflects 50% time.

EXHIBIT F

LEGAL OPINION

EXHIBIT F

FORM OF LEGAL OPINION OF COOLEY GODWARD

1. The Company is a corporation duly incorporated, validly existing and in good standing under the laws of the State of California. To our knowledge, the Company is not required to be qualified to do business as a foreign corporation in any other state, except to the extent that the failure to be so qualified would not have a material adverse effect on the Company.

2. The Company has the corporate power and authority to own its properties and assets, to carry on its business as presently conducted, and to enter into the Agreement and California Agreement of Merger (the "Transaction Documents").

3. Each Transaction Document has been duly authorized by all necessary corporate action on the part of the Company and its directors, and has been duly executed and delivered by the Company.

4. Each Transaction Document is a valid and binding obligation of the Company enforceable against it in accordance with its terms, except as the enforceability thereof may be subject to or limited by (a) bankruptcy, insolvency, reorganization, arrangement, moratorium, or other similar laws relating to or affecting the rights of creditors, and (b) general equitable principles, regardless of whether the issue of enforceability is considered in a proceeding in equity or at law.

5. The execution and delivery of each Transaction Document and the performance by the Company of its terms will not breach or result in a violation of the Company's Articles of Incorporation or Bylaws, or any judgment, order or decree of any domestic court or arbitrator, known to us, to which the Company is a party or is subject.

6. Except for the filing of the California Agreement of Merger and related officer certificates to be filed with the California Secretary of State, no consent, approval or authorization of, or designation, declaration or filing with, any governmental authority is required to be obtained by the Company in order to consummate the Merger, other than such consents, approvals, authorizations, designations, declarations or filings as have been made or obtained on or before the date hereof or which are not required to be made or obtained until after the date hereof.

7. Except as disclosed in the Agreement or the exhibits and schedules delivered in connection therewith, to the best of our knowledge, there is no action, suit or proceeding pending against the Company or its properties in any court or before any governmental authority or agency, or arbitration board or tribunal, which seeks to restrain, enjoin, prevent the consummation of or otherwise challenge the Agreement or any of the transaction contemplated thereby.

FORM OF LEGAL OPINION OF MARK LEE, P.C.

1. The Company is a corporation duly incorporated under the laws of the State of California.

2. The authorized capital stock of the Company consists of 33,000,000 shares of common stock and 24,000,000 shares of preferred stock. As of the date hereof, there were outstanding (i) 1,968,998 shares of common stock, (ii) 769,108 shares of Series A Preferred Stock, (iii) 338,983 shares of Series B1 Preferred Stock, (iv) 742,620 shares of Series B2 Preferred Stock, (v) 879,543 shares of Series C Preferred Stock, and (vi) 16,517,265 shares of Series D Preferred Stock. Except for options to purchase an aggregate of 1,344,459 shares of the Company's common stock and warrants to purchase 380,435 shares of Series D Preferred Stock and 405,000 shares of the Company's common stock, there are no outstanding subscriptions, warrants, options, calls, claims, commitments, convertible securities or other agreements or arrangements under which the Company is or may be obligated to issue shares of its capital stock. All outstanding shares of Company Stock have been duly authorized and validly issued and are fully paid and nonassessable and free of preemptive rights.

3. The execution and delivery of each Transaction Document and the performance by the Company of its terms will not constitute a material breach of the terms, conditions or provisions of, or constitute a default under, any material contract, undertaking, indenture or other agreement or instrument identified in Schedule 3.22(a) of the Agreement.

ATTORNEY DOCKET NO: KOFAX-000
REGISTRATION NO.(S): 1) 2,497,162; 2) 2,467,759; 3) 2,602,994; 4) 2,520,375; 5) 2,556,916; and 6) 2,672,738
MARKS: 1) Mohomine; 2) Sourcebank; 3) Mohoresume Extractor; 4) Mohoplatform; 5) Mohomine; and 6) Mohomine

Certificate of Mailing

☑ I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

Mail Stop Assignment Recordation Services
Director of the USPTO
P.O. Box 1450
Alexandria, VA 22313-1450

on February 17, 2006

(Signature)

Tammy Moll
(Typed name of person signing certificate)

Note: Each paper must have its own certificate of mailing, or this certificate must identify each submitted paper.

1. Certificate of Mailing (1 page);
2. Trademark Recordation Form Cover Sheet (1 page);
3. Attached Sheet (1 page);
4. Agreement and Planning of Merger (72 pages);
5. Filing Fee Check of $165.00; and
6. Self-Addressed Return Postcard.

X The Director is hereby authorized to charge any deficiency in the payment of the required fee(s) to Account No.: 19-4330.

AGREEMENT AND PLAN OF MERGER

by and among

Kofax Image Products, Inc.

Mohomine Acquisition Corp.,

and

Mohomine, Inc.

dated as of March 17, 2003

DOCSOC\952734v8\12522.0003