

TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

ETAS ID: TM433137

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	RELEASE OF SECURITY INTEREST

CONVEYING PARTY DATA

Name	Formerly	Execution Date	Entity Type
Mobius Technology Ventures VI L.P.		11/14/2005	Limited Partnership: CALIFORNIA
Softbank U.S. Ventures VI L.P.		11/14/2005	Limited Partnership: CALIFORNIA
Mobius Technology Ventures Advisors Fund VI L.P.		11/14/2005	Limited Partnership: CALIFORNIA
Mobius Technology Ventures Side Fund VI L.P.		11/14/2005	Limited Partnership: CALIFORNIA
Softbank Technology Ventures V, L.P.		11/14/2005	Limited Partnership: CALIFORNIA
Softbank Technology Ventures Advisors Fund V, L.P.		11/14/2005	Limited Partnership: CALIFORNIA
Softbank Technology Ventures Entrepreneurs Fund V, L.P.		11/14/2005	Limited Partnership: CALIFORNIA
New Enterprise Associates 9, L.P.		11/14/2005	Limited Partnership: CALIFORNIA

RECEIVING PARTY DATA

Name:	Perfect Commerce, Inc.
Street Address:	1860 Embarcadero Road
City:	Palo Alto
State/Country:	CALIFORNIA
Postal Code:	94303
Entity Type:	Corporation: DELAWARE

PROPERTY NUMBERS Total: 2

Property Type	Number	Word Mark
Registration Number:	2525885	PERFECT
Registration Number:	3142454	PERFECT

CORRESPONDENCE DATA

Fax Number: 7574730395

Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.

Phone: 757.499.8800

TRADEMARK

Email: amarino@williamsmullen.com
Correspondent Name: Amy G. Marino, Esquire
Address Line 1: Williams Mullen, c/o IP Docketing
Address Line 2: 8300 Greensboro Drive, Suite 1100
Address Line 4: Tysons, VIRGINIA 22102

NAME OF SUBMITTER: Amy G. Marino - VSB 71236

SIGNATURE: /Amy G. Marino/

DATE SIGNED: 06/29/2017

Total Attachments: 75

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Execution Copy

SECURITIES PURCHASE AGREEMENT

AMONG

PERFECT COMMERCE, INC.

AND

THE INVESTORS

DATED AS OF NOVEMBER 14, 2005

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SECURITIES PURCHASE AGREEMENT

THIS SECURITIES PURCHASE AGREEMENT, dated as of November 14, 2005 (this "Agreement"), is by and among Perfect Commerce, Inc. (the "Company"), and each investor, severally and not jointly, executing a signature page hereto (each an "Investor" and collectively, the "Investors").

RECITALS:

A. The Company desires, on or prior to the Initial Closing, to authorize a new series of preferred stock of the Company, \$0.001 par value per share, designated the "Series B-1 Preferred Stock" (the "Series B Stock"), which will be convertible into shares of Class A Common Stock in accordance with the terms of the Restated Certificate of Incorporation, in the form attached hereto as Exhibit A (the "Restated Certificate of Incorporation"); and

B. The Investors desire to purchase from the Company, and the Company desires to sell to the Investors, upon the terms and subject to conditions of this Agreement, the Series B Stock.

NOW, THEREFORE, in consideration of the foregoing and of the respective covenants and undertakings hereunder and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, intending to be legally bound, the parties hereto do hereby agree as follows:

ARTICLE I DEFINITIONS

Section 1.01. Definitions. As used in this Agreement, the following terms have the meanings set forth below.

"AAA" shall have the meaning set forth in Section 9.02(b).

"Accredited Investor" shall mean any Person that is an "accredited investor" within the definition contained in Rule 501(a) of Regulation D, as presently in effect, under the Securities Act.

"Additional Closing" shall have the meaning set forth in Section 2.04 (b).

"Additional Closing Date" shall have the meaning set forth in Section 2.04(b).

"Additional Investor" shall have the meaning set forth in Section 2.02.

"Additional Series B Purchase Price" shall have the meaning set forth in Section 2.02.

"Additional Series B Shares" shall have the meaning set forth in Section 2.02.

"Additional Specified Series B Purchase Price" shall have the meaning set forth in Section 2.02.

[Signature page to Securities Purchase Agreement]

"Affiliate" shall mean (a) with respect to an individual, any member of such individual's family residing in the same household; (b) with respect to an entity: (i) any officer, director, partner, manager, or Person that owns ten percent (10%) or more of the outstanding beneficial interest of or in such entity, (ii) any Person in the immediate family of any officer, director, partner, manager or Person that owns ten percent (10%) or more of the outstanding beneficial interest of or in such entity, or (iii) any Affiliate of such entity; and (c) with respect to a Person, any Person which directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with such Person or entity; provided, however, that for purposes of the definition of "Affiliate," no investor shall be deemed an "Affiliate" of the Company.

"Agreement" shall have the meaning set forth in the preamble.

"Applicable Environmental Law" shall mean CERCLA, RCRA, the Federal Water Pollution Control Act, 33 U.S.C. §§ 1261 et seq., the Clean Air Act, 42 U.S.C. §§ 7401 et seq., any similar provisions of State or local Law in the countries and jurisdictions where the Properties of the Company are located and where the Company conducts its business and the regulations thereunder and any other local, State and/or federal Laws, whether currently in existence or hereafter enacted, that govern:

- (a) the existence, cleanup and/or remediation of contamination on property;
- (b) the protection of the environment from spilled, deposited or otherwise emplaced contamination;
- (c) the control of hazardous wastes; or
- (d) the use, generation, transport, handling, treatment, storage, disposal, removal or recovery of Hazardous Materials, including building materials.

"Articles of Incorporation" shall mean, when used with respect to a specified Person, the Articles or Certificate of Incorporation or other applicable organization document of such Person, as currently in effect.

"Balance Sheet" shall have the meaning set forth in Section 3.06.

"Basket" has the meaning set forth in Section 9.02(c) hereof.

"Board of Directors" shall mean the Board of Directors of the Company.

"Business Day" shall mean any day other than (i) a Saturday, (ii) a Sunday or (iii) any other day on which banks in the City of New York are authorized or required to close.

"Bylaws" shall mean, when used with respect to a specified Person, the Bylaws of a Person, as the same may be amended from time to time.

"Capital Stock" shall mean, with respect to any Person, any and all shares, interests, participations, rights in or other equivalents (however designated and whether voting or non-

voting) of such Person's capital stock or any form of membership, ownership or participation interests, as applicable, including partnership interests.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 6901 et seq., as amended.

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

"Common Stock" shall mean the Class A or Class B common stock, \$.001 par value per share, of the Company.

"Company" shall have the meaning set forth in the preamble.

"Company Employees Plan" shall have the meaning set forth in Section 3.14(a).

"Company Subsidiaries" and "Company Subsidiary" shall have the meaning set forth in Section 3.03.

"Continuation Coverage" shall have the meaning set forth in Section 3.14(b).

"Consents" shall mean all governmental and third party consents, Permits, approvals, Orders, authorizations, qualifications and waivers necessary to be received by a Person for the consummation of the transactions contemplated by this Agreement and the other Transaction Documents.

"Contract" shall mean any contract, agreement, mortgage, deed of trust, bond, loan, indenture, lease, license, note, franchise certificate, option, warrant, right, instrument, insurance policy, commitment or other similar document, arrangement or agreement, whether written or oral.

"Employee" shall mean any current officer, director, consultant, employee, independent contractor, agent and other Person who renders services to the Company or any Company Subsidiary.

"Employee Program" shall mean (a) any "employee benefit plan", within the meaning of Section 3(3) of ERISA, whether or not it is subject to ERISA, or (b) any other employee benefit arrangement which is (i) the portion of any employment or consulting agreement which provides employee benefits, (ii) an arrangement providing for insurance coverage or workers' compensation benefits, (iii) an incentive bonus or deferred bonus arrangement, (iv) a stock purchase or stock option arrangement, (v) a cafeteria plan under Code Section 125, (vi) a death benefit arrangement, (vii) an arrangement providing termination allowance, salary continuation, severance, retention compensation or similar benefits, (viii) a change in control agreement, (ix) an equity compensation or profit-sharing plan, (x) a deferred compensation plan, (xi) an employee relocation, a tuition reimbursement, psychiatric or other counseling, dependent care assistance, or legal assistance plan or arrangement, (xii) a fringe benefit arrangement (cash or noncash), (xiii) a holiday or vacation plan or policy, or (xiv) any other compensation policy or practice.

"Employment Agreement" shall mean the Amended and Restated Employment Agreement of [REDACTED] attached hereto as Exhibit C.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended.

"ERISA Affiliate" shall mean any entity which has ever been considered a single employer with the Company or any Company Subsidiary under Section 4001(b) of ERISA or Section 414(b), (c), (m) or (o) of the Code.

"Existing Convertible Notes" shall mean the outstanding convertible promissory notes issued by the Company granting the holder the right to convert the outstanding principal and accrued interest under such convertible promissory notes into Preferred Stock of the Company.

"Existing Note Holder" shall mean any Person holding one or more Existing Convertible Notes. Schedule 1.01 lists the names of all Existing Note Holders and the principal amounts owed by the Company to such Person under the Existing Convertible Notes.

"Financial Statements" shall have the meaning set forth in Section 3.06.

"GAAP" shall mean generally accepted accounting principles applied on a consistent basis as used in the United States of America.

"Governmental Body" shall mean any government or governmental or quasi-governmental authority including, without limitation, any federal, state, territorial, county, municipal or other governmental or quasi-governmental agency, board, branch, bureau, commission, court, arbitral body (public or private), department or other instrumentality or political unit or subdivision.

"Hazardous Materials" shall mean any substance, whether raw materials, products or wastes, which as of the date of this Agreement shall be identified as "hazardous" or "toxic" or otherwise regulated under CERCLA or RCRA or which has been or shall be determined at any time by any agency or court to be a hazardous or toxic substance under Applicable Environmental Law. The term "Hazardous Materials" shall also include, without limitation, asbestos, petroleum, and source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. §§ 3011 et seq., as amended).

"Indemnification Agreement" shall have the meaning set forth in Section 6.01(h).

"Indemnitee" shall have the meaning set forth in Section 9.01.

"Indemnitor" shall have the meaning set forth in Section 9.01.

"Initial Closing" shall have the meaning set forth in Section 2.04(a).

"Initial Closing Date" shall have the meaning set forth in Section 2.04(a).

"Initial Series B Purchase Price" shall have the meaning set forth in Section 2.01(b).

"Initial Series B Shares" shall have the meaning set forth in Section 2.01(a).

"Initial Specified Series B Purchase Price" shall have the meaning set forth in Section 2.01.

"Intellectual Property" shall mean trade names, trademarks and service marks (whether or not registered), patents and copyrights (including any registrations or pending applications for registration of any of the foregoing), trade secrets, inventions, processes, formulae, technology, technical data, information, know-how and other proprietary intellectual property, domain names, and all licenses or other rights relating to any of the foregoing used in the operations of the Company or any of the Company Subsidiaries and all good will associated with any of the foregoing.

"Investors" shall have the meaning set forth in the preamble.

"Investors' Rights Agreement" shall have the meaning set forth in Section 6.01(e).

"IRS" shall mean the Internal Revenue Service.

"Knowledge of the Company" means the actual knowledge of the following officers of the Company: [REDACTED]

"Law" shall mean any statute, ordinance, code, rule, regulation or Order enacted, adopted, promulgated, applied or followed by any Governmental Body.

"Leased Real Property" shall have the meaning set forth in Section 3.10(a).

"Legal Proceeding" shall mean any judicial, administrative or arbitral actions, suits, proceedings (public or private) or governmental proceedings.

"Liability" shall mean any debt, liability or obligation, whether known or unknown, asserted or unasserted, accrued, absolute, contingent or otherwise, whether due or to become due.

"Lien" shall mean any security agreement, financing statement (whether or not filed), mortgage, lien (statutory or otherwise), charge, pledge, hypothecation, conditional sales agreement, title retention agreement or other security interest, encumbrance, deed of trust, indenture, limitation, exception to or other title defect in or on any interest or title of any vendor, lessor, lender or other secured party to or of a Person under any conditional sale, lease, consignment, or bailment given for security purposes, trust receipt or other title retention agreement with respect to any property or asset of such Person, whether direct, indirect, accrued or contingent.

"Loss" shall have the meaning set forth in Section 9.01.

"Major Customer" shall have the meaning set forth in Section 3.21.

"Material Adverse Effect" shall mean a material adverse effect on (i) the business, assets, operations, properties, condition (financial or otherwise), or prospects, of the Company and the

Company Subsidiaries, taken as a whole, or (ii) the ability of the Company or any Company Subsidiary to perform its obligations under this Agreement or the other Transaction Documents, or (iii) the validity or enforceability of this Agreement, the other Transaction Documents or the rights or remedies of the Investors hereunder and thereunder. Notwithstanding anything contained herein to the contrary, the commencement by or against the Company or any Company Subsidiary of any case, proceeding or other action under any Law relating to bankruptcy, insolvency or reorganization or the seeking of an appointment of a receiver, trustee, custodian or other similar official for the Company or any Company Subsidiary or for all or any substantial part of the Company's or any Company Subsidiary's assets, shall be deemed a Material Adverse Effect.

"Material Contract" shall have the meaning set forth in Section 3.13(a).

"NOLs" shall have the meaning set forth in Section 3.9(l).

"Notice" shall have the meaning set forth in Section 9.02(a).

"Order" shall mean any order, injunction, judgment, decree, ruling, writ, assessment or arbitration award.

"PBGC" shall mean the Pension Benefit Guaranty Corporation.

"Permits" shall mean any approvals, authorizations, Consents, licenses, permits or certificates by or of any Governmental Body.

"Permitted Liens" shall mean (a) easements, restrictions, covenants, rights of way or minor irregularities of title currently of record against any of the Real Property, (b) zoning laws and other land use restrictions that do not impair the present or anticipated use of the property subject thereto, (c) Liens for Taxes not yet due and payable, or for Taxes being contested in good faith, (d) mechanic's, workmen's, repairmen's, warehouse, carrier's, materialmen's and other like Liens, and equipment leases with third parties entered into in the ordinary course of business, (e) other Liens which, individually or in the aggregate, do not interfere in any material respect with, and are not violated in any material respect by, the consummation of the transactions contemplated by this Agreement and the Transaction Documents and do not impair in any material respect the existing use of or the property affected by such Liens, (f) other Liens similar to clauses (a) through (e) and Liens which in the aggregate do not secure more than \$150,000 in liabilities.

"Person" shall mean any individual, corporation, partnership, firm, limited liability company, joint venture, trust, association, unincorporated organization, group, joint-stock company, Governmental Body or other entity.

"Pro Rata Offering" shall have the meaning set forth in Section 2.03.

"RCRA" shall mean the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq.

"Real Property Leases" shall have the meaning set forth in Section 3.10(a).

"Recapitalization" shall have the meaning set forth in Section 5.03.

"Reportable Event" shall mean a reportable event as defined in Section 4043 of ERISA and the regulations issued under such section, excluding, however, such events as to which the PBGC has by regulation waived the requirement of Section 4043 of ERISA that it be notified within 30 days of the occurrence of such event.

"Restated Certificate of Incorporation" shall have the meaning set forth in the Recitals.

"Retiree" shall mean (i) any retired or former employee, director or officer of the Company or any Company Subsidiary or (ii) any former independent contractor of the Company or any Company Subsidiary.

"SEC" shall mean the Securities and Exchange Commission.

"Securities Act" shall mean the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

"Series B Purchase Price" shall have the meaning set forth in Section 2.02.

"Series B Shares" shall have the meaning set forth in Section 2.02.

"Series B Stock" shall have the meaning set forth in the recitals.

"Subsidiary" shall mean, with respect to a specified Person, any corporation of which securities having the power to elect a majority of that corporation's board of directors (other than securities having that power only upon the happening of a contingency that has not occurred) are held by such Person or one or more of its Subsidiaries.

"Tax Authority" shall have the meaning set for the in Section 3.09(b).

"Tax Return" shall have the meaning set forth in Section 3.09(a).

"Taxes" shall mean all taxes, levies or other like assessments, charges or fees (including estimated taxes, charges and fees), including, without limitation, net income, gross income, corporation, advance corporation, gross receipts, premium, estimated, import, customs, duties, transfer, excise, property, sales, use, value-added, license, payroll, pay as you earn, withholding, social security and franchise or other governmental taxes or charges, imposed by any Governmental Body and any interest, penalties or additions to tax with respect thereto.

"Transaction Documents" shall mean this Agreement, the schedules and exhibits hereto, the Restated Certificate of Incorporation, the Investors' Rights Agreement, the Voting Agreement, the Confidentiality and the Employment Agreement, and any certificate or other document delivered by or on behalf of the Company or the Investors pursuant to this Agreement or in connection with the transactions contemplated by this Agreement.

"Voting Agreement" shall have the meaning set forth in Section 5.01(g).

Section 1.02. Rules of Construction. Unless the context otherwise requires:

- (a) a term has the meaning assigned to it;
- (b) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;
- (c) "or" is not exclusive;
- (d) words in the singular include the plural, and words in the plural include the singular;
- (e) the words "include" and "including" shall be deemed to mean "include, without limitation," and "including, without limitation";
- (f) "herein," "hereof," "hereto," "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular article, section, paragraph or clause where such terms may appear;
- (g) references to sections mean references to such section in this Agreement, unless stated otherwise; and
- (h) the use of any gender shall be applicable to all genders.

ARTICLE II PURCHASE OF THE SERIES B STOCK

Section 2.01. Initial Sale of Series B Stock.

(a) Upon the terms and subject to the conditions of this Agreement, and in reliance upon the representations, warranties and covenants hereinafter set forth, the Company agrees to sell to the investors specified on Schedule 2.01, and each such investor, severally and not jointly, agrees to purchase from the Company, an aggregate of 445,396,590 shares of the Series B Stock (the "Series B Shares") for an aggregate purchase price of [REDACTED] (the "Series B Purchase Price"). The number of Series B Shares to be purchased by each investor at the Initial Closing and the portion of the aggregate purchase price to be paid by each investor at the Initial Closing in the exchange therefor, shall be as specified in Schedule 2.01 (with respect to each such investor, such investor's "Initial Specified Series B Purchase Price").

(b) By executing this Agreement, the Existing Note Holders shall be deemed to have elected to (i) convert, as of the Initial Closing, all of the outstanding principal under all of the outstanding Existing Convertible Notes into an aggregate of 155,891,776 Series B Shares (the "Bridge Series B Shares", and, together with the Series B Shares, the "Initial Series B Shares") for an aggregate purchase price of \$7,000,133 (the "Bridge Series B Price", and, together with the Series B Price, the "Initial Series B Purchase Price") which shall constitute the entire portion of the Series B Purchase Price owed hereunder by all of the Existing Note Holders, whether or not any such Existing Note Holder has executed this Agreement and (ii) release any and all liens such Existing Note Holders may have on the assets of the Company as

security for the Existing Convertible Notes. Those Investors holding Existing Convertible Notes that account for a majority of the principal amount owed by the Company to all Existing Note Holders pursuant to all of the Existing Convertible Notes shall take the necessary action to cause all of the Existing Convertible Notes to convert to Series B Stock. The Company shall not issue any stock certificates representing Series B Stock purchased by an Existing Note Holder until such time that such Existing Note Holder surrenders to the Company all outstanding original Existing Convertible Notes issued to such Existing Note Holder or, if any such Existing Convertible Notes have been lost, delivers to the Company an affidavit, or other written statement acceptable to the Company, signed by such Existing Note Holder and acknowledging the cancellation of such Existing Convertible Notes.

Section 2.02. Additional Sale of Series B Stock. Upon the terms and subject to the conditions of this Agreement, and in reliance upon the representations, warranties and covenants hereinafter set forth, the Company agrees to sell to the Additional Investors specified on Schedule 2.02 (each an "Additional Investor"), and each such Additional Investor, severally and not jointly, agrees to purchase from the Company, an aggregate of 74,603,931 additional shares of the Series B Stock (the "Additional Series B Shares", and, together with the Initial Series B Shares, the "Series B Shares") for an aggregate purchase price of \$3.35 million; provided that, such aggregate purchase price may be reduced dollar for dollar (and the number of Additional Series B Shares issued to such Additional Investors shall be correspondingly reduced) by subscriptions pursuant to Section 2.03 hereof that are actually paid on the Additional Closing Date (the "Additional Series B Purchase Price", and, together with the Initial Series B Purchase Price, the "Series B Purchase Price"). The number of Additional Series B Shares to be purchased by each Additional Investor at the Additional Closing and the portion of the aggregate purchase price to be paid by each Additional Investor at the Additional Closing in the exchange therefor, shall be as specified in Schedule 2.02 (with respect to each such Additional Investor, such Investor's "Additional Specified Series B Purchase Price").

Section 2.03. Pro Rata Offering of Series B Stock. The Investors acknowledged and agree that the Company may offer up to \$1.9 million of shares of Series B Stock (but not in excess of an aggregate of \$5 million under Section 2.02 and this Section 2.03) to certain existing stockholders of the Company (other than the Investors referred to in Section 2.01 above), pro rata based on each such stockholder's percentage ownership of the Company, during the period from the Initial Closing Date until December 15, 2005 (the "Pro Rata Offering"). If such Pro Rata Offering is not fully subscribed, the Additional Investors shall have the right to purchase their pro rata share of such unsubscribed portion. Upon the termination of such offering, Schedule 2.02 shall be appropriately amended to include the shares of Series B Stock subscribed for as Additional Series B Shares and to include the purchase price therefor in the Additional Series B Purchase Price. Any sale to any Person under this Section 2.03 shall be on the same terms and conditions as those contained herein, and such Persons, by delivery of the appropriate executed signature pages, shall become parties to this Agreement, the Voting Agreement and the Investors' Rights Agreement as an Additional Investor, and shall have the rights and obligations of any Additional Investor hereunder and thereunder. The documentation for any other such offering shall be subject to the review and reasonable approval of [REDACTED]. The Investors party to this Agreement and the Investors' Rights Agreement as of the date hereof hereby irrevocably waive any pre-emptive rights or rights of first offer they may possess now or hereafter with respect to any sales of Series B Stock made pursuant to this Section 2.03.

Section 2.04. Closings

(a) Subject to the satisfaction or waiver of the conditions set forth in this Agreement, the closing of the transactions contemplated by Section 2.01 (the "Initial Closing") shall take place on November 15, 2005 and shall be held at the law offices of Heller Ehrman LLP, 7 Times Square, New York, New York 10036, at 1:00 p.m. local time, or at such other time as may be mutually agreed upon by the Investors and the Company (the "Initial Closing Date"). The Initial Closing shall occur on the Initial Closing Date.

(b) Subject to the satisfaction or waiver of the conditions set forth in this Agreement, the closing of the transactions contemplated by Section 2.02 and Section 2.03 (the "Additional Closing", and, together with the Initial Closing, the "Closings") shall take place on or prior to December 15, 2005 and shall be held at the law offices of Heller Ehrman LLP, 7 Times Square, New York, New York 10036, at 1:00 p.m. local time (the "Additional Closing Date"). The Additional Closing shall occur on the Additional Closing Date.

(c) At each Closing: (i) the Company will deliver to the Investors certificates for the Series B Shares to be sold in accordance with the provisions of Section 2.01 or 2.02, as applicable registered in the respective names and amounts set forth in Schedule 2.01 or 2.02, as applicable, (ii) each Investor in full payment for the Series B Shares, will deliver to the Company (A) such Investor's Initial Specified Purchase Price or Additional Specified Purchase Price, as applicable, in immediately available funds, by wire transfer to such account as the Company shall specify or (B) such Investor's Existing Convertible Notes for cancellation; and (iii) each party shall take or cause to happen such other actions, and shall execute and deliver such other instruments or documents, as shall be required under Article VII or Article VIII, as applicable.

Section 2.05. Use of Proceeds. The Company shall use the proceeds received from the Investors from the sale of the Series B Stock solely to repay outstanding indebtedness and for general corporate purposes.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF THE COMPANY

For purposes of Article III, the "Company" shall mean the Company and the Company Subsidiaries together, unless otherwise specified. The Company represents and warrants to each of the Investors as follows:

Section 3.01. Organization and Good Standing. The Company is a corporation validly existing and in good standing under the Laws of the State of Delaware, and has all requisite corporate power and authority to own, lease and operate its properties, and carry on its business as presently conducted. The Company is duly qualified, registered or licensed as a foreign corporation to do business and is in good standing in each jurisdiction in which the ownership or leasing of its properties or the character of its present operations makes such qualification, registration or licensing necessary except where the failure to so qualify, register or be licensed would not have a Material Adverse Effect on the Company. A list of all jurisdictions in which the Company is qualified, registered or licensed to do business as a foreign corporation is set forth on Schedule 3.01. The Company has delivered or made available to the Investors complete

and correct copies of the Certificate of Incorporation and Bylaws of the Company, as in effect as of the date of this Agreement.

Section 3.02. Authority; Binding Effect. The Company has all requisite corporate power and authority to execute and deliver this Agreement and the other Transaction Documents and to consummate the transactions contemplated hereunder and thereunder, including the Recapitalization. All corporate action on the part of the Company, its officers, directors and stockholders necessary for the execution and delivery of this Agreement and the other Transaction Documents and the consummation by the Company of the transactions contemplated hereunder and thereunder, including the Recapitalization, has been taken or will be taken prior to the Initial Closing. This Agreement and the other Transaction Documents and have been and will be, as the case may be, duly executed and delivered by the Company and constitute valid and binding obligations of the Company, enforceable in accordance with their respective terms except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium and other Laws of general application affecting enforcement of creditors' rights generally and (ii) as limited by laws relating to the effects of general equitable principles, including the availability of specific performance, injunctive relief or other equitable remedies.

Section 3.03. Organization and Good Standing of Company Subsidiaries. Schedule 3.03 lists all Subsidiaries of the Company and their respective jurisdictions of incorporation (collectively, the "Company Subsidiaries" and each, a "Company Subsidiary." Except as set forth in Schedule 3.03, the Company owns, directly or indirectly, all the shares of outstanding Capital Stock of each Company Subsidiary. Except as set forth in Schedule 3.03, (a) there are outstanding no securities or rights convertible into or exchangeable for shares of any Capital Stock of any Company Subsidiary and (b) there are no contracts, commitments, understandings or arrangements by which any Company Subsidiary is bound to issue additional shares of its Capital Stock or options, warrants or rights to purchase or acquire any additional shares of its Capital Stock. All of the shares of Capital Stock of each of the Company Subsidiaries are duly and validly authorized, fully paid and non-assessable and, except as set forth in Schedule 3.03, are owned by the Company free and clear of any Lien with respect thereto. Except as set forth in Schedule 3.03, each Company Subsidiary is a corporation validly existing and in good standing under the Laws of its jurisdiction of organization, and has all requisite corporate power and authority and governmental authorizations to own, operate and lease its properties and to carry on its business as it is now being conducted, and is licensed or qualified to do business in each other jurisdiction in which it owns or leases properties, or conducts any business, so as to require such qualification, except where the failure to be licensed or to so qualify would not have a Material Adverse Effect on such Company Subsidiary.

Section 3.04. Capitalization.

(a) Schedule 3.04(a) sets forth (i) the authorized Capital Stock of the Company, the number of shares of each class of Capital Stock issued and outstanding and the number of shares of Common Stock reserved for issuance in connection with employee benefit and stock option plans, in each case as of the date hereof, (ii) all options, warrants, rights to subscribe to, calls, contracts, undertakings, arrangements and commitments to issue which may result in the issuance of Capital Stock of the Company, in each case setting forth the identity of the holder thereof, the exercise or similar price and the date of expiration or termination thereof

and (iii) the pro forma authorized Capital Stock of the Company, the number of shares of each class of Capital Stock issued and outstanding and the number of shares of Common Stock reserved for issuance in connection with employee benefit and stock option plans, in each case after giving effect to the transactions contemplated hereunder. All of the issued and outstanding shares of the Company's Capital Stock have been duly and validly authorized and issued and are fully paid and non-assessable and are not subject to any preemptive rights that have not been properly waived or complied with. Except as set forth in Schedule 3.04(a) or pursuant to this Agreement, the Certificate of Incorporation or the transactions contemplated hereunder, (i) no equity securities of the Company are or may be required to be issued by reason of any options, warrants, rights to subscribe to, calls or commitments of any character whatsoever, (ii) there are outstanding no securities or rights convertible into or exchangeable for shares of any Capital Stock of the Company, and (iii) there are no contracts, commitments, understandings or arrangements by which the Company is bound to issue additional shares of its Capital Stock or securities or rights convertible into or exchangeable for shares of any Capital Stock of the Company, or options, warrants or rights to purchase or acquire any additional shares of its Capital Stock. Except as set forth in Schedule 3.04(a) neither the Company nor any Company Subsidiary is subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or retire any of its Capital Stock except for the transactions contemplated hereunder. Except as set forth in Schedule 3.04(a), there are no contracts, agreements or understandings between the Company and any Person granting such Person the right to require the Company to file a registration statement under the Securities Act with respect to any securities of the Company owned by such Person or to require the Company to include such securities in any other registration statement filed by the Company under the Securities Act.

(b) The Series B Shares will have the voting powers, designations, preferences and rights, and the qualifications, limitations and restrictions thereof, set forth in the Restated Certificate of Incorporation. When paid for by, and issued to, each of the Investors, the Series B Shares that are being delivered to each such Investor at each Closing will be duly authorized, validly issued, fully paid, and non-assessable, and will be free and clear of any Liens, and except as set forth in this Agreement, the other Transaction Documents, the Laws of the State of Delaware or the Restated Certificate of Incorporation, will not be subject to any restriction on use or voting; and the shares of Common Stock issuable to each such Investor upon conversion of the Series B Shares that are being delivered to each such Investor at each Closing, when issued in accordance with the Restated Certificate of Incorporation, will be duly authorized, validly issued, fully paid, non-assessable, and free of preemptive rights and will be free and clear of any Liens and except as set forth in this Agreement, the other Transaction Documents, the Laws of the State of Delaware or the Company's Restated Certificate of Incorporation, will not be subject to any restriction on use or voting; *provided, however*, that the Series B Shares and the shares of Common Stock issuable upon conversion of the Series B Shares, as permitted hereby, may be subject to restrictions on transfer under state and/or federal securities laws as set forth herein, pursuant to the Investor Rights Agreement or as otherwise required by such laws at the time a transfer is proposed.

Section 3.05. Consents and Approvals; No Violations. Except as set forth on Schedule 3.05, neither the execution, delivery or performance by the Company of this Agreement or the other Transaction Documents nor the consummation of the contemplated transactions hereunder, including the Recapitalization, will (a) conflict with, or result in the breach of, any provision of

the Certificate of Incorporation or Bylaws of the Company or any Company Subsidiary, (b) conflict with, violate, result in the breach or termination of, or constitute a default or give rise to any right of termination or acceleration or right to increase the obligations or otherwise modify the terms thereof under any Contract, Permit or Order to which the Company is a party or by which the Company or any of the properties or assets of the Company is bound, (c) constitute a violation of any Law applicable to the Company or any Company Subsidiary, or (d) result in the creation of any Lien, other than Permitted Liens, upon the properties or assets of the Company or any Company Subsidiary, except in the case of (b), any conflict, violation, breach, termination, acceleration, modification or Lien as would not, individually or in the aggregate, have a Material Adverse Effect. Except as set forth on Schedule 3.05, other than those which have been obtained or made or the failure to obtain which would not have, or could not reasonably be expected to have, a Material Adverse Effect, no consent, waiver, approval, Order, Permit or authorization of, or declaration or filing with, or notification to, any Person or Governmental Body is required on the part of the Company or the Company Subsidiaries in connection with the execution and delivery of this Agreement or the Transaction Documents, or the compliance by the Company with any of the provisions hereof or thereof or the Recapitalization.

Section 3.06. Financial Statements. The Company has previously delivered or made available to the Investors copies of (i) the consolidated balance sheet of the Company and the Company Subsidiaries as of December 31, 2004 and the related consolidated income statements, changes in stockholders' equity and cash flows for the fiscal years ended December 31, 2004, and accompanied by the audit report of KPMG, LLP, independent public accountants, (ii) the unaudited consolidated balance sheet of the Company and the Company Subsidiaries as of September 30, 2005 (the "Balance Sheet") and the related unaudited consolidated income statements and cash flows for the nine (9) months then ended (collectively, the "Financial Statements"), and (iii) the draft unaudited consolidated balance sheet of the Company and the Company Subsidiaries as of October 31, 2005 and the related unaudited consolidated income statements and cash flows for the ten (10) months then ended. Except as set forth on Schedule 3.06, all of such Financial Statements are true and accurate in all material respects and fairly present in all material respects the consolidated financial position of the Company and the Company Subsidiaries as of the dates shown and the results of operations of the Company and the Company Subsidiaries for the respective fiscal periods or as of the respective dates therein set forth and have been prepared in accordance with GAAP consistently applied during the periods involved, except as otherwise set forth therein or required by changes in GAAP, in each case subject, as to unaudited Financial Statements, to changes resulting from year-end adjustments (which will not be material in amount and effect) and the absence of footnotes required by GAAP. To the Knowledge of the Company, the Company and the Company Subsidiaries have no material liabilities or obligations of any nature (absolute, accrued, contingent or otherwise) which are not reflected or reserved against in the Balance Sheet, included in the Financial Statements, except for liabilities that may have arisen in the ordinary and usual course of business and consistent with past practice and except as set forth on Schedule 3.06, which, in both cases, individually or in the aggregate are not material to the financial condition or operative results of the Company. Neither the Company nor any Company Subsidiary has entered into any off-balance sheet arrangements or transactions. During the past three years, the Company and the Company Subsidiaries have not restated any of their audited financial statements and neither the Company nor any Company Subsidiary is aware of any facts which may require such restatement.

Section 3.07. Absence of Certain Developments. Except as set forth on Schedule 3.07 or pursuant to the transactions contemplated hereunder, since December 31, 2004:

(a) there has not occurred any event, change or condition, or combination thereof, that has had, has, or could reasonably be expected to have a Material Adverse Effect;

(b) other than the transactions contemplated hereunder, there has not been any declaration, setting a record date, setting aside or authorizing the payment of, any dividend or other distribution in respect of any shares of Capital Stock or any repurchase, redemption or other acquisition by the Company, of any of the outstanding shares of Capital Stock or other equity securities of, or other ownership interest in, the Company;

(c) other than the transactions contemplated hereunder, there has not been any payment of interest or principal with respect to any debt owed to an Affiliate of the Company;

(d) neither the Company nor any Company Subsidiary has transferred, issued, sold or disposed of any shares of their Capital Stock, or granted any options, warrants, calls or other rights to purchase or otherwise acquire shares of their Capital Stock which are not reflected on the Company's current capitalization table, warrant table and stock option table set forth in Schedule 3.07(d);

(e) neither the Company nor any Company Subsidiary, except in the ordinary course of business and consistent with past practice, or as required by applicable Law has (x) awarded or paid any bonuses to any current or former Employees, or (y) entered into any Employee Program, employment, deferred compensation, severance or similar agreement (nor amended or terminated any such agreement) or agreed to increase the compensation payable or to become payable to any current or former Employees or agreed to increase the coverage or benefits available under any severance pay, deferred compensation, bonus or other incentive compensation, pension or other employee benefit plan, payment or arrangement made to, for or with such current or former Employees;

(f) neither the Company nor any Company Subsidiary has made, or agreed to, make any material acquisition of any business or assets outside the ordinary course of business and consistent with past practice;

(g) neither the Company nor any Company Subsidiary has made, or agreed to make, any loans or investments in any business of any Affiliate of the Company or any Company Subsidiary;

(h) other than in the ordinary course of business and consistent with past practices, neither the Company nor any Company Subsidiary has transferred or granted any rights under any Contracts, leases, licenses or agreements used by the Company or any Company Subsidiary in their business, or allowed any such rights to lapse or expire, which has had, has, or could result in a Material Adverse Effect;

(i) there has not been any damage, destruction or loss, whether or not covered by insurance, with respect to the property of the Company or any Company Subsidiary having a replacement cost of more than \$50,000 for any single loss or \$100,000 for all such losses;

(j) other than with respect to the issuance of additional Existing Convertible Notes, neither the Company nor any Company Subsidiary has mortgaged, pledged or subjected to any Lien (other than in the ordinary course of business and other than Permitted Liens) any of its assets, or acquired any assets or sold, assigned, transferred, conveyed, leased or otherwise disposed of any assets of the Company or any Company Subsidiary, except for assets acquired or sold, assigned, transferred, conveyed, leased or otherwise disposed of in the ordinary course of business and consistent with past practice, and except where such action would not have a Material Adverse Effect;

(k) neither the Company nor any Company Subsidiary has canceled or compromised any debt or claim or amended, canceled, terminated, relinquished, waived or released any Material Contract or right except in the ordinary course of business consistent with past practice;

(l) neither the Company nor any Company Subsidiary has entered into any Material Contract or made any binding commitment to make any capital expenditures or capital additions or betterments in any such case obligating the Company or any Company Subsidiary to pay an amount not in the ordinary course of business consistent with past practices;

(m) there has not been any default under any Material Contract or the occurrence of any event, which with notice or lapse of time or both would result in a default under any such Material Contract, except for such default or event that would not have a Material Adverse Effect;

(n) neither the Company nor any Company Subsidiary has created, incurred, assumed or guaranteed any debts, obligations or liabilities (including, without limitation, obligations in respect of capital leases), whether due or to become due, except current liabilities incurred in the ordinary course of business and consistent with past practice;

(o) neither the Company nor any Company Subsidiary has entered into any material transaction other than in the ordinary course of business consistent with past practice;

(p) neither the Company nor any Company Subsidiary has encountered any labor difficulties or labor union organizing activities which could reasonably be expected to result in a Material Adverse Effect;

(q) neither the Company nor any Company Subsidiary has made any change in the accounting principles, methods or practices followed by it (including, without limitation, its method of accounting for stock options);

(r) neither the Company nor any Company Subsidiary has encountered any disagreements, whether or not resolved, with its independent public accountants regarding any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure;

(s) neither the Company nor any Company Subsidiary has sold, assigned or transferred, or allowed any rights to lapse with respect to, any Intellectual Property material to the business of the Company;

(f) neither the Company nor any Company Subsidiary has suffered or experienced a general change in the relationship or course of dealings between the Company or any Company Subsidiary and any of their major suppliers or major customers (including, without limitation, any material reduction in purchase orders by customers) which resulted, or is likely to result, in a Material Adverse Effect;

(u) neither the Company nor any Company Subsidiary has entered into, modified, amended or terminated any Real Property Lease or any other Contract, except modifications or amendments in connection with renewals of leases or Contracts in the ordinary course of business consistent with past practice, and except where such actions would not have a Material Adverse Effect;

(v) neither the Company nor any Company Subsidiary has (x) been denied insurance coverage or (y) cancelled or terminated any insurance policy naming it as a beneficiary or a loss payable payee without obtaining comparable substitute insurance coverage, and except where such actions would not have a Material Adverse Effect;

(w) neither the Company nor any Company Subsidiary has amended its Articles of Incorporation or Bylaws except as contemplated by this Agreement;

(x) neither the Company nor any Company Subsidiary has made or changed any Tax election; and

(y) neither the Company nor any Company Subsidiary has agreed, whether in writing or otherwise, to do any of the foregoing.

Section 3.08. Litigation. There are no Legal Proceedings pending or, to the Knowledge of the Company, threatened that question the validity of this Agreement or the Transaction Documents or any action taken or to be taken by the Company or any Company Subsidiary in connection with the consummation of transactions contemplated hereunder. Except as otherwise disclosed herein or on Schedule 3.08, there are no Legal Proceedings pending or, to the Knowledge of the Company, threatened against or involving the Company or any Company Subsidiary or any of their respective properties or assets, at law or in equity. There is no outstanding or, to the Knowledge of the Company, threatened Order of any Governmental Body against the Company or any Company Subsidiary or any of their respective properties or assets.

Section 3.09. Tax Matters.

(a) Except as set forth on Schedule 3.09(a), the Company and each Company Subsidiary has timely filed or caused to be timely filed all material returns, declarations, reports (including any consolidated, combined or unitary returns), claims for refund, information returns, or other documents or statements relating to Taxes, including any schedule or attachment thereto and any amendment or supplement thereof (each, a "Tax Return") required to be filed by it under applicable federal, state, local or foreign law. All such Tax Returns were when filed, and continue to be, true, correct and complete in all material respects.

(b) All Taxes due and owing by the Company or any Company Subsidiary (whether or not shown on any Tax Return) have been timely paid. Any liability of the Company

or any Company Subsidiary for Taxes not yet due and payable, or that are being contested in good faith, has been adequately provided for on the financial statements of the Company and the Company Subsidiaries, as applicable, in accordance with GAAP. None of the Company nor any Company Subsidiary is the beneficiary of any extension of time within which to file any Tax Return. No claim has ever been made by the government, any subdivision, agency, commission or authority thereof, or any quasi-governmental body exercising tax regulatory authority (each, a "Tax Authority") of any jurisdiction in which the Company or any Company Subsidiary does not file Tax Returns or pay Taxes that it may be subject to taxation by that jurisdiction. There are no Liens for Taxes (other than Permitted Liens) upon any of the assets of the Company.

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

(d) To the Knowledge of the Company, no foreign, federal, state or local Tax audits or administrative or judicial Tax proceedings are pending with respect to the Company or any Company Subsidiary. None of the Company nor any Company Subsidiary has received from any Taxing Authority (i) any notice indicating an intent to commence any audit or other review, (ii) any request for information related to Tax matters or (iii) any notices of deficiency or proposed adjustment for any amount of Tax proposed, asserted or assessed by any authority against the Company or any Company Subsidiary. Each deficiency resulting from any audit or examination relating to Taxes of the Company or any Company Subsidiary has been timely paid. None of the Company nor any Company Subsidiary has waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency.

(e) None of the Company nor any Company Subsidiary is a party to nor is bound by any Tax sharing agreement, Tax indemnity obligation or similar agreement, arrangement or practice with respect to Taxes, whether or not in writing (including any advance pricing agreement, closing agreement or other agreement relating to Taxes with any Taxing Authority).

(f) None of the Company nor any Company Subsidiary will be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Initial Closing Date, as a result of an adjustment under Section 481 of the Code, a change in method of accounting, any intercompany transactions or any excess loss account described in Treasury Regulations promulgated pursuant to Section 1502 of the Code, the installment method of accounting, the long-term contract method of accounting, the cash method of accounting, any comparable provision of state, local or foreign Tax Law or for any other reason.

(g) (i) None of the Company nor any Company Subsidiary has made with respect to it, or any property held by it, any consent under Section 341 of the Code, (ii) no property of the Company nor any Company Subsidiary is "tax exempt use property" within the meaning of Section 168(h) of the Code, (iii) none of the Company nor any Company Subsidiary is a party to any lease made pursuant to Section 168(f)(8) of the Internal Revenue Code of 1954, as amended and in effect immediately prior to the enactment of the Tax Reform Act of 1986, (iv)

none of the Company nor any Company Subsidiary is a party to any agreement, contract, arrangement or plan that would result, separately or in the aggregate, in the payment of any "excess parachute payment" within the meaning of Section 280G of the Code.

(h) None of the Company nor any Company Subsidiary has any liability for the Taxes of any other Person (other than the Company and any Company Subsidiary) under Treasury Regulation section 1.1502-6 (or any similar provision of state, local or foreign Law), as a transferee, successor, by contract or otherwise.

(i) None of the Company nor any Company Subsidiary is a "foreign person" within the meaning of Section 1445 of the Code, and the Company has not been a "United States real property holding corporation" within the meaning of Section 897 of the Code during the applicable period specified in Section 897(c)(1)(A)(i) of the Code.

(j) The unpaid Taxes of the Company and each Company Subsidiary (i) did not, as of the most recent fiscal month end, exceed the reserve for Tax liability set forth on the face of the Balance Sheet and (ii) will not exceed that reserve as adjusted for the passage of time through the Initial Closing Date in accordance with the past custom and practice of the Company and each Company Subsidiary.

(k) None of the Company nor any Company Subsidiary was a "distributing" or "controlled" corporation within the meaning of Section 355 of the Code within the last two years, or at any time, if the distribution pursuant to Section 355 of the Code was part of a plan (or series of transactions) which included the transactions contemplated hereby.

(l) At December 31, 2004, the Company and each Company Subsidiary had net operating loss carryovers ("NOLs"), within the meaning of Section 172 of the Code, in the amount set forth on Schedule 3.9(l) hereof. Except as set forth on Schedule 3.9(l), prior to the Initial Closing Date the Company and each Company Subsidiary have not been subject to the limitations for federal income tax purposes within the meaning of Section 382 of the Code.

Section 3.10. Real Property.

(a) Schedule 3.10(a) contains a true and correct description of each parcel of real property leased by each of the Company and the Company Subsidiaries as lessee (together with all buildings, structures, facilities, fixtures and other improvements thereon, the "Leased Real Property") and lists each such lease (the "Real Property Leases").

(b) Except as disclosed in Schedule 3.10(b), each of the Company and the Company Subsidiaries has a good and indefeasible or marketable leasehold estate in the Leased Real Property that it leases, free and clear of all sublease agreements, Liens and other exceptions to title, other than Permitted Liens, and is in sole possession of each parcel of Leased Real Property that it leases.

(c) The Company and the Company Subsidiaries are in compliance with all Real Property Leases in all material respects, the Company has not received any written notice of default that remains uncured and is not obligated to undertake any material repairs or improvements to any of the Leased Real Property.

(d) Each of the Company and the Company Subsidiaries has adequate rights of ingress and egress with respect to the Leased Real Property in which it has an interest. To the knowledge of the Company, there are no condemnation or appropriation proceedings pending or threatened against the Leased Real Property.

(e) The material buildings, structures, facilities, fixtures and other improvements constituting a portion of the Leased Real Property are in good operating condition and in a state of good maintenance and repair, ordinary wear and tear excepted, and are adequate and suitable for the purposes for which they are presently being used consistent with industry standards. There are no planned or required capital improvements to Leased Real Property involving more than \$100,000 that are not already included in the rent under the applicable Real Property Lease. Neither the Company nor any Company Subsidiary has received any notice under any Real Property Lease or sublease agreement or from the holder of any mortgage or from any insurance company which has issued a policy with respect to any portion of the Leased Real Property to repair or pay for any repair related to the Leased Real Property with which such parties have not complied.

Section 3.11. Tangible Personal Property. Except as set forth on Schedule 3.11 or for property sold or otherwise disposed of in the ordinary course of business, since December 31, 2004 the Company and the Company Subsidiaries own free and clear of any Liens, all of the personal property reflected as owned by the Company and the Company Subsidiaries on the Balance Sheet, and all other items of personal property acquired by the Company since that date except where failure to so own would not result in a Material Adverse Effect. All material items of such personal property are in good operating condition, normal wear and tear excepted.

Section 3.12. Intellectual Property.

(a) Schedule 3.12(a) contains a complete and accurate schedule of all trademark and service mark applications and registrations, patent applications, patents, copyright applications and registrations, and domains owned by the Company or any of the Company Subsidiaries ("Filed Intellectual Property"). Except as disclosed on Schedule 3.12(a), neither the Company nor any of the Company Subsidiaries have any knowledge of any facts or circumstances that would render any of the Filed Intellectual Property invalid or unenforceable by any court or Governmental Entity. Except as disclosed on Schedule 3.12(a), all pending applications and existing registrations for the Filed Intellectual Property are valid, subsisting, in full force and effect, have not been assigned or encumbered and have been properly maintained by the filing of all necessary declarations and renewals.

(b) Except as disclosed on Schedule 3.12(b), (i) no royalties or other consideration are due in connection with the use and enjoyment by the Company and the Company Subsidiaries of the Intellectual Property, and (ii) the Company and the Company Subsidiaries are the sole and exclusive title owners of all items of Intellectual Property free and clear of all Liens, other than commercially available software used in the ordinary course of business. Except as disclosed on Schedule 3.12(b), each of the Company and the Company Subsidiaries has taken all actions they deem necessary in their reasonable business judgment to maintain and protect their rights in and to each item of Intellectual Property that they own. Each of the Company and the Company Subsidiaries has taken commercially reasonable steps to

protect its rights in and maintain the confidentiality of all information that at any time constituted a trade secret of the Company or the Company Subsidiaries, including without limitation, taking steps to ensure that any trade secret disclosed by the Company or the Company Subsidiaries to a third party is subject to the confidentiality undertakings set forth in the applicable non-disclosure agreement. Except as disclosed on Schedule 3.12(b), no source code of any software products of the Company or the Company Subsidiaries has been licensed or otherwise provided to another person, and all such source code has been safeguarded and protected as trade secrets of the Company.

(c) Except as disclosed on Schedule 3.12(c), to the Knowledge of the Company, the continued operation of the business of the Company and the Company Subsidiaries as presently conducted does not infringe, misappropriate or otherwise come into conflict with any intellectual property rights of any other Person. To the Knowledge of the Company, the Intellectual Property is not currently being infringed by any Person. Except as disclosed on Schedule 3.12(c) there are no Legal Proceedings pending for which written notice has been provided to the Company, or, to the Knowledge of the Company, Legal Proceedings threatened against the Company, (i) alleging that the Company's or any of the Company Subsidiaries' activities or products infringe upon, dilute, misappropriate or constitute the unauthorized use of a third party's intellectual property, or (ii) challenging the Company's or any of the Company Subsidiaries' ownership of, or right to use Intellectual Property owned or used by the Company or any of the Company Subsidiaries, or the validity or enforceability or patentability of any Intellectual Property owned by the Company or any of the Company Subsidiaries.

(d) The Company and the Company Subsidiaries have and enforces a policy requiring each employee and consultant of the Company and/or the Company Subsidiaries to execute a proprietary rights and confidentiality agreement substantially in the form set forth in Schedule 3.12(d) and all current employees and consultants of the Company and/or the Company Subsidiaries who have created or modified any of the Intellectual Property or have access to any trade secrets of the Company and/or the Company Subsidiaries have executed such an agreement assigning all of such employees' and consultants' rights in and to the Intellectual Property to the Company or the Company Subsidiaries. To the Knowledge of the Company, no former employee or consultant of the Company or its predecessors who created or modified any of the Intellectual Property failed to execute such an agreement.

(e) The Company's products do not have any bugs, errors or nonconformities to specifications other than routine bugs and errors of an amount and type consistent with industry standards and that the Company would be capable of timely correcting in the ordinary course of providing customer support without further material liability to the Company.

Section 3.13. Material Contracts.

(a) Except as set forth on Schedule 3.13(a) and for this Agreement, the Transaction Documents and the transactions contemplated thereby, neither the Company, the Company Subsidiaries nor any of their properties or assets is a party to or bound by any (i) Contract not made in the ordinary course of business, or involving a commitment or payment by the Company or the Company Subsidiaries in excess of \$150,000 in any twelve-month period

(whether or not in the ordinary course) or, in the Company's belief, otherwise individually material to the business of the Company or the Company Subsidiaries; (ii) Contract among stockholders or granting a right of first refusal or for a partnership or a joint venture or for the acquisition, sale or lease of any assets or Capital Stock of the Company, the Company Subsidiaries or any other Person or involving a sharing of profits; (iii) mortgage, pledge, conditional sales contract, security agreement, factoring agreement or other similar Contract with respect to any tangible and intangible personal property of the Company or the Company Subsidiaries (other than in connection with trade payables incurred in the ordinary course of business); (iv) loan agreement, credit agreement, promissory note, guarantee, subordination agreement, letter of credit or any other similar type of Contract in excess of \$150,000 (other than in connection with trade payables incurred in the ordinary course of business); (v) Contract with any Governmental Body other than in the ordinary course of business; (vi) Contract which contains any provision that may require payments to be made by the Company or any Company Subsidiary upon or following a "change of control" (as such term is defined by such Contract) or similar event; (vii) Contract with respect to the discharge, storage or removal of Hazardous Materials; (viii) employment or consulting agreement or any other similar type of Contract in excess of \$150,000; or (ix) material binding commitment or agreement to enter into any of the foregoing. The Company has delivered or otherwise made available to the Investors true, correct and complete copies of the Contracts listed on Schedule 3.13(a) (each a "Material Contract" and together the "Material Contracts"), together with all amendments, modifications, supplements or side letters to such Material Contracts.

(b) Each of the Material Contracts is valid and enforceable against the Company or the applicable Company Subsidiary in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar Laws affecting creditors' rights and remedies generally and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity), and there is no material default under any Material Contract by the Company, the Company Subsidiaries or, to the Knowledge of the Company, by any other party thereto, and to the Knowledge of the Company no event has occurred that with the lapse of time or the giving of notice or both would constitute a material default thereunder.

(c) No previous or current party to any Material Contract has given written notice to the Company or any Company Subsidiary of, or made a claim with respect to, any breach or default thereunder that would have a Material Adverse Effect and the Company has no knowledge of any notice of or claim with respect to any such breach or default that has not been cured or, if not cured, would have a Material Adverse Effect.

Section 3.14. Company Employee Plans.

(a) Schedule 3.14(a) sets forth an accurate, correct and complete list of every Employee Program which is maintained, administered, sponsored or contributed to by the Company or any Company Subsidiary, which covers any current or former Employee of the Company or any Company Subsidiary or with respect to which an obligation of the Company or any Company Subsidiary to make any contribution exists. Any Employee Program listed in such schedule is referred to below as a "Company Employee Plan."

(b) The Company has made available to the investors with respect to each Company Employee Plan accurate and complete copies of (i) all written documents comprising such Company Employee Plan (including amendments, individual agreements, service agreements, trusts and other funding agreements), (ii) the three most recent annual returns in the Federal Form 5500 series (including all schedules thereto) filed with respect to such Company Employee Plan, (iii) the three most recent audited financial statements and actuarial reports, if any, pertaining to such Company Employee Plan, (iv) the summary plan description currently in effect and all material modifications thereto, if any, for such Company Employee Plan, (v) any employer handbook which includes a description of such Company Employee Plan, (vi) the most recent IRS determination letter or opinion letter, if any, for such Company Employee Plan, and (vii) any other written communications to any Employees, to the extent that the provisions of such Company Employee Plan described therein differ materially from such provisions as set forth or described in the other information or materials furnished under this subsection (b).

(c) Each Company Employee Plan which is (or ever was) intended to qualify under Section 401(a) of the Code is so qualified (or, if applicable, was so qualified upon its termination). Each such Company Employee Plan has received a determination letter or opinion letter from the IRS which states that such plan is so qualified, and on which any employer which has adopted such plan may currently rely. All contributions which have been made to any such Company Employee Plan have been fully deductible under Section 404 of the Code. No event has occurred that will or could subject any such Company Employee Plan to tax under Section 511 of the Code.

(d) Each Company Employee Plan has been maintained in all material respects in accordance with its terms and with all applicable Laws, and no failure to so maintain any Company Employee Plan will result from the completion of the transactions contemplated by this Agreement (either alone or upon the occurrence of any additional or subsequent event or events). Neither the Company nor any Company Subsidiary has any unsatisfied material liability, or any unpaid material fine, penalty or tax, with respect to any Company Employee Plan or any other Employee Program. The Company is not aware of any facts or circumstances under which a material liability, or a material fine, penalty or tax, with respect to any Company Plan or any other Employee Program is reasonably likely to be imposed on the company or any Subsidiary. There has been no "prohibited transaction" (within the meaning of Section 406 of ERISA or Section 4975 of the Code), or any breach of any duty under ERISA, any other applicable Law or any agreement, with respect to any Company Employee Plan which could subject the Company or any Company Subsidiary to material liability either directly or indirectly (including, without limitation, through any obligation of indemnification or contribution) for any damages, penalties, taxes or any other loss or expense. The Company, each Company Subsidiary and each ERISA Affiliate has made full and timely payment of all contributions required to be made by it to each Company Employee Plan by the terms of such plan or under applicable Law, except that all contributions which are so required to be made by the Company, any Company Subsidiary or an ERISA Affiliate to each Company Employee Plan for any period ending prior to the Initial Closing, but which are not due by the date of the Initial Closing, shall be properly reserved or accrued in the appropriate financial statements. Except as disclosed on Schedule 2.14(d), there have been no violations of any reporting or disclosure requirements under ERISA or the Code or any other applicable Law with respect to any Company Employee Plan, including any requirement to file an annual return.

(c) No litigation or claim (other than routine claims for benefits), and no governmental administrative proceeding, audit or investigation, is pending or, to the Knowledge of the Company, any of the Company Subsidiaries or any ERISA Affiliate, threatened with respect to any Company Employee Plan.

(f) No Company Employee Plan is a defined benefit pension plan.

(g) No Employee Program which has ever been maintained, administered or contributed to by the Company or any Company Subsidiary, which has ever covered any current or former Employee of the Company or any Company Subsidiary, or to which the Company or any Company Subsidiary has ever had any obligation to make a contribution, is or ever was (i) a "multiemployer plan", as defined in Section 3(37) of ERISA, (ii) a "multiple employer plan", as described in Section 413(c) of the Code, (iii) a "multiple employer welfare arrangement", as defined in Section 3(40) of ERISA, (iv) a "voluntary employees' beneficiary association" within the meaning of Section 501(c)(9) of the Code, (v) maintained outside of the United States or (vi) subject to Section 412 of the Code or Title IV of ERISA.

(h) All health and medical benefit coverage, and all death benefit coverage, under each Company Employee Plan is provided solely through insurance, and no Company Employee Plan provides health or medical coverage, life insurance coverage, or coverage for any other welfare benefit to any Retiree, except for continuation coverage required by Section 4980B of the Code, Sections 601 to 608 of ERISA or any applicable State Law ("Continuation Coverage").

(i) No current or former Employee of the Company or any Company Subsidiary, or any other individuals, shall accrue or receive additional benefits, additional credit for service, accelerated vesting or accelerated rights to payment of any benefit under any Company Employee Plan, or become entitled to any severance, termination allowance or similar payments or to the forgiveness of any indebtedness, as a result of the execution and delivery of, or the transactions contemplated by this Agreement (either alone or upon any additional or subsequent event or events). Such execution and delivery, or the occurrence of such transactions, shall not result in any increase in the contributions required to be made to any Company Employee Plan. No payment made or contemplated under any Company Employee Plan, or by the Company or any Company Subsidiary, constituted, or would constitute, either (i) an "excess parachute payment" within the meaning of Section 280G of the Code or (ii) a payment which is not deductible by reason of Section 404 of the Code.

(j) To the Knowledge of the Company, neither the Company, nor any Company Subsidiary or any ERISA Affiliate has received services from (i) any individual whom the Company, Company Subsidiary or ERISA Affiliate has treated as an independent contractor, but who should have been treated as a common-law employee, for purposes of participating in any Company Employee Plan or (ii) any individual who is treated as a leased employee of the Company, Company Subsidiary or ERISA Affiliate under Section 414(n) of the Code, and who must be taken into account for purposes of determining whether any Company Employee Plan meets the requirements of Section 414(n)(3) of the Code which apply to such Company Employee Plan.

(k) Except for the adoption of a plan amendment which is needed to bring the plan documents into conformity with statutory changes enacted in recent years, neither the Company, any Company Subsidiary nor any ERISA Affiliate is under any obligation (express or implied) to modify any Company Employee Plan, or to establish any new Employee Program which will cover any Employee of the Company or any Company Subsidiary. The Company, a Company Subsidiary or an ERISA Affiliate has expressly reserved to itself the right to amend, modify or terminate each Company Employee Plan (and any service or funding agreement or arrangement for each Company Employee Plan), at any time without liability or penalty to itself (other than routine expenses). No Company Employee Plan requires the Company or any of the Company Subsidiaries to continue to employ or use the services of any current or former Employee. No Company Employee Plan has invested in (i) insurance or annuity contracts issued by an insurance company with rating of claims-paying ability below A++ or (ii) except for any Company Employee Plan which constitutes an "employee stock ownership plan", within the meaning of Section 4975(e)(7) of the Code (an "ESOP"), any employer securities or employer real property.

(l) No ERISA Affiliate has, or is reasonably likely to incur, any unpaid material liability, fine, penalty or tax with respect to any Employee Program for which the Company or any of the Company Subsidiaries could be liable.

Section 3.15. Labor Relations

(a) Except as set forth on Schedule 3.15(a): (i) the Company and the Company Subsidiaries have performed all material obligations under all Contracts with respect to their respective Employees and have paid or properly accrued for in the Balance Sheet, including without limitation, all wages, salaries, commissions, bonuses, severance pay, vacation pay, benefits and other direct compensation for all services performed by them to the date hereof and all amounts required to be reimbursed to such Employees, (ii) there is no pending, or to the Knowledge of the Company, any threatened, charge, complaint, allegation, application or other process against the Company or any of the Company Subsidiaries before the National Labor Relations Board or any other comparable Governmental Body, (iii) there is no labor strike, dispute, slowdown or work stoppage or other job action pending, or to the Knowledge of the Company, threatened against or otherwise affecting or involving the Company or the Company Subsidiaries and (iv) none of the Employees are covered by any collective bargaining agreements and, to the Knowledge of the Company, no effort is being made by any union to organize any of the Employees.

(b) Schedule 3.15(b) is a list of all employees earning a base salary of over \$100,000. The Company has made available to the investors copies of each written employment agreement for such employees and except as disclosed on such Schedule, to the Knowledge of the Company, none of such employees is in material breach of his or her employment agreement and none has given written notice of his or her intention to terminate employment with the Company.

Section 3.16. Compliance with Laws, Permits

(a) The Company and the Company Subsidiaries are and at all times have been in compliance with all Laws and Orders promulgated by any Governmental Body applicable to the Company and the Company Subsidiaries or to the conduct of the business or operations of the Company and the Company Subsidiaries or the use of their properties (including any leased properties) and assets, except where such noncompliance would not have a Material Adverse Effect. Neither the Company nor any Company Subsidiary has received any written notices of a violation or alleged violation of any such Law or Order by any Governmental Body, except where such noncompliance would not have a Material Adverse Effect.

(b) Except as set forth on Schedule 3.16(b) and where failure to comply would not have a Material Adverse Effect: (i) the Company and the Company Subsidiaries have all Permits necessary for the conduct of its business; (ii) such Permits have been validly issued, and the Company and the Company Subsidiaries have complied in all material respects with all conditions of such Permits applicable to it; (iii) no default or violation, or event that with the lapse of time or giving of notice or both would become a default or violation, has occurred in the due observance of any such Permit; (iv) all such Permits are in full force and effect without further consent or approval of any Person; and (v) the Company and the Company Subsidiaries have not received any notice from any source to the effect that there is lacking any such Permit required in connection with the current operations of the Company and the Company Subsidiaries. The Company's status as an exempt telecommunication company as defined in Section 34(a)(1) of the Public Utility Holding Company Act of 1934, as amended does not restrict its business activities.

Section 3.17. Environmental Protection.

(a) Each of the Company and the Company Subsidiaries is in compliance with all limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules and timetables contained in any Applicable Environmental Laws, or in any plan, Order, notice or demand letter issued, entered, promulgated or approved by a Governmental Body thereunder. Except as set forth on Schedule 3.17(a), the Company is not aware of, and neither the Company nor any Company Subsidiary has received notice of, any past, present or future events, conditions, circumstances, activities, practices, incidents, actions or plans which may interfere with or prevent continued compliance, or which may give rise to any common Law or legal liability, or otherwise form the basis of any claim, action, suit, proceedings, hearing or investigation, based on or related to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling, or the emission, discharge, release or threatened release into the environment, of any pollutant, contaminant, or hazardous or toxic material or waste or Hazardous Material at or originating from the property of the Company or any Company Subsidiary.

(b) Neither the Company or its Subsidiaries, nor any other Person acting on behalf of the Company or its Subsidiaries (solely with respect to any such other Person, with the Company's or any Subsidiary's knowledge) has (A) disposed of, transported or arranged for the disposal of any Hazardous Materials to, at or upon: (i) any location other than a site lawfully permitted to receive such Hazardous Materials or (ii) any owned or leased property occupied by the Company or its Subsidiaries and (B) there has not occurred during the period the Company or any of its Subsidiaries occupied any owned or leased property, or is presently occurring, a

release, or threatened release, of any Hazardous Materials on, into or beneath the surface of, or adjacent to, any such property, such that, under Applicable Environmental Laws (i) any such Hazardous Material would be required to be removed, cleaned-up or remediated before the property could be altered, renovated, demolished or transferred, or (ii) the owner or lessee of the property could be subjected to liability for the removal, clean-up or remediation of such Hazardous Material; and the Company has not received any written notification from any Governmental Body or other third parties relating to Hazardous Material on or affecting any property owned or leased by the Company or the Company Subsidiaries or relating to any potential or known liability under Applicable Environmental Laws arising from the ownership or leasing of any property.

Section 3.18. Transactions with Affiliates. Except: (i) as set forth on Schedule 3.18, (ii) for transactions between the Company and any wholly-owned Company Subsidiary, and (iii) for salary, bonuses and expense reimbursements in the ordinary course of business, neither the Company nor any Company Subsidiary has made any payment to, or received any payment from, or made or received any investment in, or entered into any transaction with, (A) any officer, director or to the Knowledge of the Company, any member of the immediate family of any officer or director of the Company, (B) any business affiliated with any officer, director or to the Knowledge of the Company, any member of the immediate family of any officer or director of the Company or (C) any wholly-owned Company Subsidiary or Affiliate of the Company, including without limitation, the purchase, sale, lease or exchange of property or the rendering of any service, where the amount involved is in excess of \$100,000.

Section 3.19. Loans to Officers and Directors. Schedule 3.19 sets forth all outstanding loans made by the Company or its Subsidiaries to any of their officers or directors or any of such persons' Affiliates.

Section 3.20. Insurance. Schedule 3.20 sets forth a true, correct and complete list of all material insurance policies or programs of the Company and each Company Subsidiary in effect as of the date hereof, and indicates the insurer's name, policy number, expiration date, amount of coverage, type of coverage and annual premiums, and also indicates any self-insurance program that is in effect. All such policies are in full force and effect and are underwritten by financially sound and reputable insurers. None of such policies will terminate or lapse by reason of, the consummation of any of the transactions contemplated hereunder.

Section 3.21. Customers. Schedule 3.21 lists the names and addresses of the ten (10) largest customers of the Company ("Major Customers") and the Company Subsidiaries (based on revenues) during the twelve-month period ended September 30, 2005. Except as set forth in Schedule 3.21, neither the Company nor any Company Subsidiary has received any notice, and the Company has no knowledge that any Major Customer has ceased, or will cease, to use the products or goods of the Company or any Company Subsidiary, or has substantially reduced, or will substantially reduce, the use of such products or goods.

Section 3.22. Financial Advisors. Except as set forth on Schedule 3.22, no agent, broker, investment banker, finder, financial advisor or other Person is or will be entitled to any broker's or finder's fee or any other commission or similar fee from the Company, directly or indirectly, in connection with the transactions contemplated hereunder.

Section 3.23. Absence of Certain Practices. Except as set forth on Schedule 3.23, neither the Company nor any of the Company Subsidiaries, or, to the Knowledge of the Company, any director, officer, agent, Employee or other Person acting on their behalf, has given or agreed to give any gift or similar benefit of more than nominal value to any customer, supplier, governmental employee or official or any other Person who is or may be in a position to help or hinder the Company or the Company Subsidiaries or assist the Company or the Company Subsidiaries in connection with any proposed transaction involving the Company or the Company Subsidiaries, which gift or similar benefit, induced any party to do business with the Company. Neither the Company nor any of the Company Subsidiaries, or, to the Knowledge of the Company, any director, officer, agent, Employee or other Person acting on their behalf has (i) used any corporate or other funds for unlawful contributions, payments, gifts, or entertainment, or made any unlawful expenditures relating to political activity to, or on behalf of, government officials or others or (ii) accepted or received any unlawful contributions, payments, gifts or expenditures.

Section 3.24. Governmental Inquiries. The Company has made available to the investors at their request each material inspection report, questionnaires, inquiry, demand or request for information received by the Company and the Company Subsidiaries from (and the response of the Company thereto), and each material statement, report or other document filed by the Company and the Company Subsidiaries with any foreign government or agency, the federal government or a federal administrative agencies (including but not limited to, the Department of Justice, IRS, Department of Labor, Occupational Safety and Health Administration, Department of Treasury, Federal Trade Commission, National Labor Relations Board), or any local or State taxing authority.

Section 3.25. Section 12(g) of the Exchange Act. The Company is not required to register any of its securities under Section 12 of the Securities Act of 1934, as amended, pursuant to Section 12(g) thereof. Assuming the exercise of all outstanding options, warrants and other securities convertible, exercisable or exchangeable for capital stock of the Company, the Company would have no more than 325 stockholders of record.

Section 3.26. Full Disclosure. No representation or warranty, exhibit or schedule furnished by or on behalf of the Company or any of the Company Subsidiaries in this Agreement or any other Transaction Document contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained herein or therein not misleading.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF THE INVESTORS

Each of the Investors represents and warrants, severally and not jointly, to the Company as follows:

Section 4.01. Authorization. Such Investor is duly organized and validly existing under the Laws of the state or country of its jurisdiction of incorporation or formation. Such Investor has the full power and authority to enter into this Agreement and the other Transaction Documents and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the other Transaction Documents and the

consummation by the investors of the transactions contemplated hereby and thereby have been duly and authorized by all necessary action on the part of the Investors. This Agreement and the other Transaction Documents have been and will be, as the case may be, duly executed and delivered by the Investors and constitute legal, valid and binding obligations of the Investors, enforceable in accordance with their respective terms, except as such enforceability may be subject to the effects of any applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or similar Laws affecting creditors' rights generally and subject to the effects of general equitable principles.

Section 4.02. Investment Representations. Such Investor is an Accredited Investor and is acquiring the Series B Shares allocated to such Investor for such Investor's own account, not as a nominee or agent, for investment, and not with a view to, or for sale in connection with, the distribution thereof or of any interest therein. Such Investor has adequate net worth and means of providing for its current needs and contingencies and is able to sustain a complete loss of the investment in such Series B Shares and has no need for liquidity in such investment. Such Investor, itself or through its officers, employees or agents, has sufficient knowledge and experience in financial and business matters to be capable of evaluating the merits and risks of an investment such as an investment in the Series B Shares, and such Investor, either alone or through its officers, employees or agents, has evaluated the merits and risks of the investment in such Series B Shares. Such Investor understands that the Series B Shares (and the Common Stock issuable upon conversion of any such shares) have not been registered under the Securities Act by reason of its issuance in a transaction exempt from the registration requirements of the Securities Act pursuant to the exemption provided in Section 4(2) thereof, and that the Series B Shares (and the Common Stock issuable upon conversion of any such shares) may not be sold or otherwise disposed of unless registered under the Securities Act or exempted from such registration.

Section 4.03. Investors' Acknowledgment. Each Investor has had the opportunity, directly or through its representatives, to ask questions of and receive answers from Persons acting on behalf of the Company concerning the transactions contemplated by this Agreement.

Section 4.04. Financial Advisors. No agent, broker, investment banker, finder, financial advisor or other Person is or will be entitled to any broker's or finder's fee or any other commission or similar fee from any of the Investors, directly or indirectly, in connection with any of the transactions contemplated by this Agreement or any of the Transaction Documents.

ARTICLE V ACTIONS PRIOR TO INITIAL CLOSING

Section 5.01. Conduct of Business. From the date hereof to the Initial Closing Date, the Company shall, and shall cause each Company subsidiary to conduct its business only in the ordinary course and consistent with past practice, except as otherwise required herein, and comply with applicable Laws and take any additional actions as are necessary and appropriate to consummate the transactions contemplated hereunder.

Section 5.02. Consent. Each of the parties hereto will use its best efforts and shall fully cooperate with each other party to obtain all Consents (including Consents with respect to the Recapitalization).

Section 5.03. Recapitalization. The following actions shall take place to effect a recapitalization of the Company (the "Recapitalization") immediately prior to the Initial Closing, unless otherwise noted: (i) all of the outstanding shares of Series A Preferred Stock and Series B Preferred Stock of the Company shall be converted into Common Stock of the Company, (ii) all of the outstanding shares of Series C Preferred Stock of the Company shall be converted into new Series A Preferred Stock of the Company, (iii) all of the outstanding Warrants of the Company exercisable for shares of Series C Preferred Stock shall be exercisable for new Series A Preferred Stock of the Company, (iv) all of the outstanding Warrants of the Company exercisable for shares of Series B Preferred Stock shall be exercisable for Common Stock of the Company, (v) concurrently with the Initial Closing, all of the Existing Convertible Notes shall be converted into shares of new Series B Preferred Stock of the Company, all as set forth in the pro forma capitalization table of the Company attached to the Secretary's Certificate referred to in Section 6.01(n)(viii) and (vi) any other shares of capital stock of the Company, or securities convertible into shares of capital stock of the Company, outstanding immediately prior to the date of the Initial Closing, except for outstanding shares of Common Stock of the Company and outstanding options to purchase Common Stock granted under the Company's stock option plan, shall be correspondingly recapitalized or converted.

Section 5.04. Publicity. The parties agree not to issue any announcement, press release, public statement or other information to the press or any third party with respect to this Agreement or the transactions contemplated hereunder without obtaining the prior written approval of the other parties hereto (which approval shall not be unreasonably withheld); provided, however, that nothing contained herein shall prevent any party hereto, at any time, from furnishing any required information to any Governmental Body or from issuing any announcement, press release, public statement or other information to the press or any third party with respect to this Agreement or the transactions contemplated hereunder if required by Law, rule or regulation, although, the parties agree to consult with each other as to the content of any release so required and consider in good faith the comments of the other thereon.

Section 5.05. Stock Option Pool. The Company shall have reserved an additional number of shares of Common Stock for issuance under its stock option plan, such that the total number of shares reserved for issuance equals (i) 15% of the total number of shares of Common Stock outstanding after giving effect to the purchase of \$20 million of Series B Stock at the Initial Closing, and including all outstanding options, warrants and convertible securities on a fully diluted basis plus (ii) 2,400,000.

Section 5.06. Capitalization Opinion. Engage Bryan Cave LLP to provide the opinion referred to in Section 7.04(b) below.

ARTICLE VI
CONDITIONS TO INITIAL CLOSING

Section 6.01. Conditions to Obligations of the Investors. The obligation of the investors to consummate the transactions contemplated hereby shall be subject to the fulfillment on or prior to the Initial Closing Date of the following conditions, any or all of which may be waived by the Investors, in whole or in part, to the extent permitted by applicable Law:

(a) Representations and Warranties. The representations and warranties of the Company contained herein shall be true in all material respects (except for representations and warranties that contain qualifications as to materiality, which shall be true and correct in all respects) at and as of the date hereof and on and as of the Initial Closing Date with the same effect as though made on and as of the Initial Closing Date.

(b) Performance of Obligations. The Company shall have performed or complied in all material respects with all conditions, agreements, obligations and covenants required to be performed or complied with by the Company under this Agreement and each of the other Transaction Documents (as applicable) prior to the Initial Closing.

(c) Consents. The Company shall have obtained the consents set forth in Schedule 3.05, in form and substance reasonably satisfactory to the Investors.

(d) No Governmental Order or Other Proceeding or Litigation. No Order of any Governmental Body shall be in effect that restrains or prohibits the transactions contemplated hereunder, and no suit, action or other proceeding by any Governmental Body shall have been instituted or threatened which seeks to restrain or prohibit the transactions contemplated hereunder.

(e) Investors' Rights. The Company shall have executed and delivered to the Investors a investors' rights agreement, substantially in the form attached hereto as Exhibit H (the "Investors' Rights Agreement").

(f) Employment Agreement. [REDACTED] and the Company have executed and delivered the Employment Agreement.

(g) Voting Agreement. The Company shall have executed and delivered to the Investors a voting agreement, substantially in the form attached hereto as Exhibit I (the "Voting Agreement").

(h) Indemnification Agreement. The Company shall have executed and delivered an Indemnification Agreement, substantially in the form attached hereto as Exhibit E, for the benefit of the members of the Board of Directors designated by [REDACTED] (the "Indemnification Agreement").

(i) Legal Opinion. Counsel to the Company, shall have executed and delivered to the Investors an opinion, dated as of the Initial Closing Date, substantially in the form attached hereto as Exhibit F.

(j) *Restated Certificate of Incorporation.* The Restated Certificate of Incorporation shall have been duly filed with the and shall have become effective and shall be in full force and effect in substantially the form attached hereto as Exhibit A.

(k) *Directors.* Evidence reasonably satisfactory to the Investors that the maximum size of the Board of Directors has been set at seven (7) members and that its members have been selected in accordance with the Voting Agreement.

(l) *Recapitalization.* Evidence satisfactory to the Investors that the Recapitalization has occurred.

(m) *Option Pool Increase.* The option pool increase referred to in Section 5.05 shall have occurred.

(n) *Deliveries.* At the Initial Closing the Company shall have delivered to each of the Investors:

(i) certificates representing the Series B Shares in the amounts specified in Schedule 2.01, duly registered in the name of each such Investor;

(ii) each of the Transaction Documents duly executed by the Company and delivered in the form provided for herein;

(iii) a copy of all relevant termination statements to be filed under the Uniform Commercial Code with respect to any security interest filed against the Company with respect to the Existing Convertible Notes;

(iv) (A) a copy of the Restated Certificate of Incorporation certified by the Secretary of State of the State of Delaware, and (B) certificates issued by the appropriate Governmental Bodies evidencing, as of a recent date, the good standing and Tax status of the Company and each Company Subsidiary in its jurisdiction of incorporation and in each of the jurisdictions in which it is authorized to do business.

(v) a certificate, dated the Initial Closing Date, (i) executed by (A) the Chief Executive Officer of the Company and (B) the Chief Financial Officer of the Company and (ii) which certifies to the effect that each of the conditions specified in clauses Section 6.01(a) and (b) have been satisfied as of the Initial Closing Date;

(vi) copies of the consents required by Section 6.01(c), including the consent of [REDACTED] to forbear on its loan and to amend its Warrants so that they are exercisable only for Common Stock or Series A Preferred Stock of the Company, as applicable;

(vii) the legal opinion of counsel referred to in Section 6.01(i);

(viii) a certificate, dated the Initial Closing Date, executed by the Secretary of the Company and which certifies that, (A) attached to such certificate is a true and complete copy of the Restated Certificate of Incorporation of the Company certified by the Secretary of State of the State of Delaware, and that there has been no amendment to the

Restated Certificate of Incorporation of the Company since that the date of such certification, (B) attached to such certificate is a true and complete copy of the Bylaws of the Company, as in full force and effect at the Initial Closing Date, and (C) attached to such certificate is a schedule setting forth, on a pro forma basis, the capitalization of the Company upon the closing of the transactions contemplated hereby, (D) attached to such certificate are true, complete and correct resolutions of the Board of Directors authorizing the execution, delivery and performance of this Agreement and each of the other Transaction Documents, the issuance and sale of the Series B Stock and the issuance of the shares of Common Stock issuable upon conversion of the Series B Stock, the reservation of such shares of Common Stock, the election of the director designees and the performance of the transactions contemplated by this Agreement and the other Transaction Documents and (E) attached to such certificate are true, complete and correct resolutions of the shareholders of the Company authorizing the transactions contemplated hereby; (F) that such resolutions were duly adopted, are in full force and effect and have not been rescinded or amended as of the Initial Closing Date, (G) as to the absence of proceedings or other action for dissolution, liquidation or reorganization of the Company, and (H) as to the incumbency of officers who shall have executed instruments, agreements and other documents in connection with the transactions contemplated by this Agreement and the other Transaction Documents.

(ix) a letter agreement executed by ██████████ in which the Company and ██████████ agree not to assert any claims against each other and to release all consideration held in escrow as described in Schedule 3.04(a) hereto.

(x) such other instruments and certificates, evidencing the Transactions contemplated herein, as may be reasonably requested by the Investors.

Section 6.02. *Conditions to Obligations of the Company.* The obligation of the Company to consummate the transactions contemplated hereby shall be subject to the fulfillment on or prior to the Initial Closing Date of the following conditions, any or all of which may be waived by the Company, in whole or in part, to the extent permitted by applicable Law:

(a) *Representations and Warranties.* The representations and warranties of the Investors contained herein shall be true in all material respects at and as of the date hereof and on and as of the Initial Closing Date with the same effect as though made on and as of the Initial Closing Date.

(b) *Performance of Obligations.* The Investors shall have performed or complied with all conditions, agreements, obligations and covenants required to be performed or complied with by the Investors under this Agreement and each of the other Transaction Documents (as applicable) prior to the Initial Closing.

(c) *No Governmental Order or Other Proceeding or Litigation.* No Order of any Governmental Body shall be in effect that restrains or prohibits the transactions contemplated hereby, and no suit, action or other proceeding by any Governmental Body shall have been instituted or threatened which seeks to restrain or prohibit the transactions contemplated hereby.

(d) *Deliveries.* At the Initial Closing each Investor shall have delivered to the Company:

- (i) the Initial Specified Series B Purchase Price;
- (ii) in the case of the Existing Note Holders, the Existing Convertible Notes for cancellation;
- (iii) each of the Transaction Documents duly executed by each of the Investors and delivered in the form provided for herein; and
- (iv) such other instruments and certificates, evidencing the transactions contemplated hereby, as may be reasonably requested by the Company.

ARTICLE VII
ACTIONS PRIOR TO ADDITIONAL CLOSING;
CONDITIONS TO ADDITIONAL CLOSING; ACTIONS AFTER ADDITIONAL CLOSING

Section 7.01. *Actions prior to Additional Closing.* The Company shall, prior to the Additional Closing:

(a) pay to the Existing Note Holders cash in full payment of the interest accrued on the principal amount of the Existing Convertible Notes as of the Initial Closing Date, provided that the amount of such payment in the aggregate shall not exceed the amount paid in the aggregate by the Existing Note Holders to exercise their Warrants as of the Initial Closing Date.

(b) conduct the Pro Rata Offering; and

(c) amend the Company's option plan to (i) reserve an additional number of shares of Common Stock for issuance under its stock option plan, such that the total number of shares reserved for issuance equals (A) 15% of the total number of shares of Common Stock outstanding after giving effect to the purchase of \$3.35 million of Series B Stock at the Additional Closing, and including all outstanding options, warrants and convertible securities on a fully diluted basis plus (B) 2,400,000 and (ii) modify the accelerated vesting provisions of such plan with respect to all options granted under such plan as approved by the holders of a majority of the Series B Shares.

Section 7.02. *Conditions to Obligations of the Additional Investors.* The obligation of the Additional Investors to purchase the Additional Series B Shares at the Additional Closing shall not be subject to any conditions.

Section 7.03. *Conditions to Obligations of the Company.* The obligation of the Company to sell the Additional Series B Shares at the Additional Closing shall not be subject to any conditions.

Section 7.04. *Actions after Additional Closing.*

(a) *Stock Split.* Within thirty (30) days after the Additional Closing, the Company shall effect a reverse stock split of its outstanding shares of Common Stock on terms reasonably acceptable to the holders of a majority of the outstanding Series B Shares.

(b) *Legal Opinion.* No later than December 31, 2005, Bryan Cave LLP, counsel to the Company, shall have executed and delivered to the Investors an opinion, dated as of the Additional Closing Date, substantially in the form attached hereto as Exhibit G (the "Capitalization Opinion"). If the Capitalization Opinion is not delivered by December 31, 2005, then the holders of a majority of the Series B Shares shall have the right to retain Heller Ehrman LLP to deliver the Capitalization Opinion at the expense of the Company, and the Company shall waive any conflict and cooperate with the investigation of Heller Ehrman LLP, provided that the holders of a majority of the Series B Shares other than [REDACTED] shall have the right to retain separate counsel at their own expense to verify the Capitalization Opinion. If, based on the Capitalization Opinion, the number of fully diluted shares of capital stock of the Company outstanding as of the Initial Closing Date was greater than the number of fully diluted shares of capital stock represented to be outstanding pursuant to Section 3.04 hereof, then, in addition to any other remedies the Investors may have, at the option of the holders of a majority of the Series B Shares, an appropriate number of additional Series B Shares shall be issued to the Investors. If, based on the Capitalization Opinion, the number of fully diluted shares of capital stock of the Company outstanding as of the Initial Closing Date was fewer than the number of fully diluted shares of capital stock represented to be outstanding pursuant to Section 3.04 hereof, then, at the option of the Company, the holders of Series B Shares shall forfeit an appropriate number of shares, subject to the reasonable approval of the holders of a majority of the Series B Shares as to the appropriate number of shares to be forfeited. The Investors signatory to this Agreement hereby agree to vote in favor of and approve any amendment to the Restated Certificate of Incorporation of the Company required to effect any adjustment required by this Section 7.04(b) and approved by the holders of a majority of the Series B Shares.

(c) *Restated Certificate of Incorporation.* The Restated Certificate of Incorporation shall be amended if necessary to effectuate the reverse stock split and shall be in full force and effect in substantially the form attached hereto as Exhibit A.

(d) *Stock Option Plan.* If the amount invested by Investors at the Additional Closing exceeds \$3.35 million, the Company shall amend its option plan to reserve an additional number of shares of Common Stock for issuance under its stock option plan, such that the total number of shares reserved for issuance equals (i) 15% of the total number of shares of Common Stock outstanding after giving effect to the purchase of such amount in excess of \$3.35 million of Series B Stock at the Additional Closing, and including all outstanding options, warrants and convertible securities on a fully diluted basis plus (ii) 2,400,000.

ARTICLE VIII SURVIVAL

Section 8.01. *Survival.* The representations and warranties, and the covenants of the Company to be performed at or prior to each Closing, set forth in this Agreement or in any writing or certificate delivered in connection with this Agreement, shall survive for a period of eighteen (18) months following the execution and delivery of this Agreement and thereafter shall

be of no further force or effect, provided that the representations and warranties set forth in Sections 3.09 (Taxes), 3.14 (ERISA) and 3.17 (Environmental Protection) shall survive for the applicable period of the statute of limitations and the representations and warranties set forth in Sections 3.01 (Organization), 3.02 (Authorization) and 3.04 (Capitalization) shall survive indefinitely (or if indefinite survival is not permitted by Law, then for the maximum period permitted by applicable Law). Following the expiration of the periods set forth above with respect to any particular representation or warranty, no party hereto shall have any further liability with respect to such representation or warranty. Anything herein to the contrary notwithstanding, any claim for indemnification that is asserted by written notice, which notice specifies in reasonable detail the facts upon which such claim is made as provided in this Section 8.01, within the survival period shall survive until resolved pursuant to a final non-appealable judicial determination or otherwise.

ARTICLE IX INDEMNIFICATION

Section 9.01. Generally. Subject to the limitations and other provisions of this Article IX, the Company covenants and agrees to indemnify, defend and hold harmless the Investors and their respective Affiliates and their successors and assigns from and against (but only to the extent of) any and all Losses incurred by such persons resulting from, incurred in connection with or arising out of (but only to the extent of) (a) any breach of any representation, warranty, covenant or agreement of the Company contained herein or in any Transaction Document or any breach of any representation or warranty made in the certificates delivered to the Investors pursuant hereto and any actual or threatened action or proceeding in connection with any such breach, or (b) a claim brought by any of the Company's shareholders or any other holders of equity securities of the Company in connection with the transactions contemplated by this Agreement and the other Transaction Documents or in connection with the transactions contemplated hereby, including the Recapitalization. The liability of the Company under this Section 9.01 shall be limited to an amount equal to the Series B Purchase Price. The party or parties being indemnified are referred to herein as the "Indemnitee" and the indemnifying party is referred to herein as the "Indemnitor." The term "Loss" or any similar term shall mean any and all liabilities, damages, reduction in value, deficiencies, costs, claims, fines, judgments, amounts paid in settlement, expenses of investigation, interest, penalties, assessments, out-of-pocket expenses (including reasonable attorneys' and auditors' fees and disbursements, witness fees and court costs).

Section 9.02. Indemnification Procedure.

(a) Any party who receives notice of a potential claim that may, in the judgment of such party, result in a Loss shall use all reasonable efforts to provide the parties hereto notice thereof, provided that failure or delay or alleged delay in providing such notice shall not adversely affect such party's right to indemnification hereunder, unless and then only to the extent that such failure or delay or alleged delay has resulted in actual prejudice to the Indemnitor, including, without limitation, by the expiration of a statute of limitations. In the event that any party shall incur or suffer any Losses in respect of which indemnification may be sought by such party hereunder, the Indemnitee shall assert a claim for indemnification by written notice (a "Notice") to the Indemnitor stating the nature and basis of such claim. In the

case of Losses arising by reason of any third party claim, the Notice shall be given within thirty (30) days of the filing or other written assertion of any such claim against the Indemnitee, but the failure of the Indemnitee to give the Notice within such time period shall not relieve the Indemnitor of any liability that the Indemnitor may have to the Indemnitee, unless and then only to the extent that such failure or delay or alleged delay has resulted in actual prejudice to the Indemnitor, including, without limitation, by the expiration of a statute of limitations.

(b) In the case of third party claims for which indemnification is sought, the Indemnitor shall, if necessary, retain counsel reasonably satisfactory to the Indemnitee, and have the option (i) to conduct any proceedings or negotiations in connection therewith, (ii) to take all other steps to settle or defend any such claim (provided that the Indemnitor shall not settle any such claim without the consent of the Indemnitee which consent shall not be unreasonably withheld) and (iii) to employ counsel to contest any such claim or liability in the name of the Indemnitee or otherwise. In any event, the Indemnitee shall be entitled to participate at its own expense and by its own counsel in any proceedings relating to any third party claim. The Indemnitor shall, within ten (10) days of receipt of the Notice, notify the Indemnitee of its intention to assume the defense of such claim. If (i) the Indemnitor shall decline to assume the defense of any such claim, (ii) the Indemnitor shall fail to notify the Indemnitee within ten (10) days after receipt of the Notice of the Indemnitor's election to defend such claim or (iii) the Indemnitee shall have reasonably concluded that there may be defenses available to it which are different from or in addition to those available to the Indemnitor (in which case the Indemnitor shall not have the right to direct the defense of such action on behalf of the Indemnitee), the Indemnitee shall defend against such claim and the Indemnitee may not settle such claim without the consent of the Indemnitor, which consent shall not be unreasonably withheld. The reasonable expenses of all proceedings, contests or lawsuits in respect of such claims shall be borne and paid by the Indemnitor and the Indemnitor shall pay the Indemnitee, in immediately available funds, the amount of any Losses, as such Losses are incurred. Regardless of which party shall assume the defense or negotiation of the settlement of the claim, the parties agree to cooperate fully with one another in connection therewith. In the event that any Losses incurred by the Indemnitee do not involve payment by the Indemnitee of a third party claim, then, the Indemnitor shall, within ten (10) days after written notice from the Indemnitee specifying the amount of Losses, pay to the Indemnitee, in immediately available funds, the amount of such Losses. Any disagreement between the Indemnitor and Indemnitee relating to the amount of the Losses shall be resolved by arbitration in accordance with the rules of the American Arbitration Association (the "AAA") then pertaining in the City of New York, New York, by a single arbitrator to be mutually agreed upon by the parties or, if they are unable to so agree, by an arbitrator selected by the AAA. Anything in this Article IX to the contrary notwithstanding, the Indemnitor shall not, without the Indemnitee's prior written consent, settle or compromise any claim or consent to entry of any judgment in respect thereof which imposes any future obligation on the Indemnitee or which does not include, as an unconditional term thereof, the giving by the claimant or plaintiff to the Indemnitee, a release from all liability in respect of such claim.

(c) The indemnification provided for in Article IX shall not apply unless and until the aggregate Losses for which the Indemnitee seeks or has sought indemnification hereunder exceeds (i) a cumulative aggregate of \$500,000 for all claims made under this Agreement in the case of a claim of breach of the representations and warranties made in Sections 3.09 (Taxes) and (ii) a cumulative aggregate of \$250,000 for all claims made under this

Agreement in all other cases (the "Basket"), in which event Indemnitor shall, subject to the other limitations herein, be liable to indemnify the Indemnitee in accordance with this Article IX for all Losses; provided, however, that the Basket shall not apply to any and all Losses arising out of or related to fraud.

(d) For the avoidance of doubt, Indemnitee may pursue its remedies in connection with the transactions contemplated by this Agreement under any theory of recovery, but the limitations as set forth in this Section 9.02 shall apply regardless of the theory of recovery used by Indemnitee.

(e) The respective indemnification and rights to recover provided in this Article IX, shall be the sole and exclusive remedy for any and all damages, liabilities, losses, loss of value, claims, deficiencies, penalties, interest, expenses, fines, assessments, settlements, charges and costs, including without limitation special and consequential damages, interest, penalties, and attorney's fees and court costs arising from, out of or in any manner connected with or based on this Agreement or the transactions contemplated hereby.

(f) In calculating any amount of Losses payable pursuant to this Article IX, no amount shall be included for special or consequential damages for the party seeking indemnification.

(g) Notwithstanding anything herein to the contrary, (i) no claim may be brought against the Company under this Agreement on behalf of the Investors (or any of them) except by the holders of a majority of the Series B Shares and (ii) any Losses paid by the Company shall be allocated among the Investors pro rata based on their respective ownership of Series B Shares.

ARTICLE X FEES, EXPENSES AND COSTS

Section 10.01. Reimbursement.

(a) In the event that the transactions contemplated by this Agreement are consummated, the Company agrees to pay at each Closing and hold the Investors harmless against liability for the payment of stamp and other transfer Taxes which may be payable in respect of (i) the execution and delivery of this Agreement or (ii) the issuance of the Series B Stock and the Common Stock issuable upon the conversion of the Series B Stock.

(b) In the event that the transactions contemplated by this Agreement are consummated, the Company agrees to pay at the Initial Closing and hold [REDACTED] harmless against liability for the payment of, (i) all reasonable legal fees and expenses owed by [REDACTED] to Heller Ehman LLP, incurred in connection with this Agreement, and (ii) all other reasonable costs and expenses (including, without limitation, accounting expenses and consultants' fees) incurred by [REDACTED] in connection with this Agreement and the contemplated transactions, up to a maximum amount of \$125,000 in the aggregate for the expenses referred to in clause (i) and (ii). In addition, the Company shall be responsible for reasonable costs and expense of the Investors, other than [REDACTED] including legal fees

and expenses of Cooley Godward, LLP ("Cooley Godward"), counsel to such Investors, up to a maximum of \$25,000.

(c) In the event any party brings an action to enforce the provisions of this Agreement, the prevailing party or parties in such action will be entitled to recover from the non-prevailing party or parties all costs and expenses, including, but not limited to, attorneys' fees and disbursements, incurred by the prevailing party or parties in connection with such action.

ARTICLE XI TERMINATION

Section 11.01. Termination. This Agreement may be terminated on or any time prior to the Additional Closing:

(a) by the mutual written consent of each of the Investors and the Company;

or

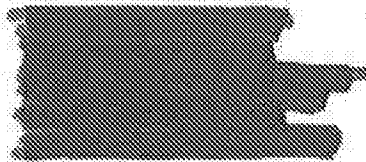
(b) by the Company or the Investors if a Governmental Body shall have issued a nonappealable final Order, decree or ruling or taken any other action having the effect of permanently restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement.

Section 11.02. Effect Of Termination. In the event of the termination of this Agreement as provided in Section 11.01, all obligations and agreements of the parties set forth in this Agreement shall forthwith become void except for the obligations set forth in Section 5.04 (Publicity). Notwithstanding the foregoing, the termination of this Agreement under Section 11.01 shall not relieve either party of any liability for breach of this Agreement prior to the date of termination.

ARTICLE XII MISCELLANEOUS

Section 12.01. Notices and Addresses. Any notice, demand, request, waiver, or other communication under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service, if personally served or sent by facsimile on the Business Day after notice is delivered to a courier or mailed by express mail, if sent by courier delivery service or express mail for next day delivery; and on the third day after mailing, if mailed to the party to whom notice is to be given, by first class mail, registered, return receipt requested, postage prepaid and addressed as follows:

If to the Company:



with a copy to:

Latham & Watkins LLP
Christopher L. Kaufman
135 Commonwealth Drive
Menlo Park, CA 94025
Phone 650.328.2606
Fax Number: 650.463.2600

If to any investor, to:

the notice address specified in Schedule 2.01 or 2.02, as applicable.

With a copy to:

Stephen M. Davis
Heller Ehrman LLP
7 Times Square
New York, NY 10036
Phone: 212.847.8798
Fax: 212.763.7600

Section 12.02. Captions. The captions in this Agreement are for convenience of reference only and shall not be given any effect in the interpretation of this Agreement.

Section 12.03. No Waiver. The failure of a party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement. Any waiver must be in writing. Any of the covenants or agreements contained in this Agreement may be waived only by the written consent of each the party to be charged.

Section 12.04. Severability. If one (1) or more provisions of this Agreement are held to be unenforceable under applicable Law, such provision(s) shall be excluded from this Agreement and the balance of this Agreement shall be interpreted as if such provision were to be excluded and shall be enforceable in accordance with its terms so long as the economic or legal substance of the transactions contemplated by this Agreement are not affected in any manner materially adverse to any party.

Section 12.05. Exclusive Agreement; Amendment. This Agreement supersedes all prior agreements among the parties with respect to its subject matter, is intended (with the documents referred to herein) as a complete and exclusive statement of the terms of the agreement among the parties with respect thereto and cannot be changed or terminated except by a written instrument executed by the Company and the Investors agreeing to purchase at least a majority of the Series B Shares.

Section 12.06. Limitation on Assignment; Parties in Interest.

(a) No assignment of this Agreement or of any rights or obligations hereunder may be made by the Company or the Investors (by operation of Law or otherwise) without the prior written consent of the other parties hereto and any attempted assignment without the required consents shall be void.

(b) The terms, representations, warranties and covenants contained in this Agreement shall be binding upon, and shall inure to the benefit of, and be enforceable by, the Investors and their respective successors, transferees and assigns.

Section 12.07. Obligations of Investors Several. The obligations of the Investors hereunder shall be several and not joint. No Investor shall be responsible for the breach of any provision of this Agreement by any other Investor.

Section 12.08. Governing Law. This Agreement and (unless otherwise provided) all amendments hereof and waivers and consents hereunder shall be governed by the internal Laws of the State of Delaware, without regard to the conflicts of Law principles thereof which would specify the application of the Law of another jurisdiction.

Section 12.09. Jurisdiction. Each of the Investors and the Company (a) hereby irrevocably and unconditionally submits to the exclusive jurisdiction of any court of the State of Delaware or any federal court sitting in the State of Delaware for purposes of any suit, action or other proceeding arising out of this Agreement or the subject matter hereof brought by the Company, or any Investor and (b) hereby waives and agrees not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced in or by such court.

Section 12.10. Specific Performance. Each of the parties hereto acknowledges and agrees that the breach of any provision of this Agreement would cause irreparable damage to the other parties hereto and that the other parties hereto will not have an adequate remedy at Law. Therefore, the obligations of each of the parties hereto under this Agreement shall be enforceable by a decree of specific performance issued by any court of competent jurisdiction, and appropriate injunctive relief may be applied for and granted in connection therewith. Such remedies shall, however, be cumulative and not exclusive and shall be in addition to any other remedies which any party may have under this Agreement or otherwise.

Section 12.11. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be considered an original, but all of which together shall constitute the same instrument. Delivery of a facsimile version of one or more signatures to this Agreement shall be deemed adequate delivery for purposes of this Agreement.

Section 12.12. Waiver of Conflicts. Each party to this Agreement acknowledges that Cooley Godward, counsel to [REDACTED] has in the past performed services for and may now or in the future represent [REDACTED] or its affiliates in matters unrelated to the transactions contemplated by this Agreement (the "Financing"), including

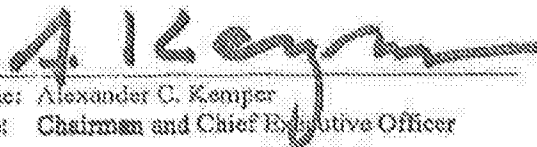
representation of [REDACTED] or its affiliates in matters of a similar nature to the Financing. The applicable rules of professional conduct require that the parties hereunder be informed of this representation and consent to it. Cooley Godward has served as counsel to [REDACTED] and has negotiated the terms of the Financing on its behalf. The Company and each Investor hereby (a) acknowledge that they have had an opportunity to ask for and have obtained information relevant to such representation, including disclosure of the reasonably foreseeable adverse consequences of such representation; (b) acknowledge that with respect to the Financing, Cooley Godward has represented solely [REDACTED] and (c) gives its informed consent to Cooley Godward's representation of [REDACTED] in the Financing.

Section 12.13. Acknowledgement Regarding Antidilution Calculation. The Investors (other than the funds affiliated with [REDACTED]) agree to (a) the number of shares of Common Stock and Series A Preferred Stock to be issued as a result of the Recapitalization, (b) the Conversion Price, as defined in the Restated Certificate of Incorporation of the Company and (c) the price per share to be paid to the holders of the Series A Preferred Stock and Series B Preferred Stock upon a liquidation under Article IV(D)(2) of the Restated Certificate of Incorporation of the Company.

[Signature Pages Follow]

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

PERFECT COMMERCE, INC.

By: 
Name: Alexander C. Kemper
Title: Chairman and Chief Executive Officer

{Signature page to Securities Purchase Agreement}

Mobius Technology Ventures Advisors Fund VI L.P.

By: D. Rex Gaskins
Name: D. Rex Gaskins
Title: Managing Director

Mobius Technology Ventures VI L.P.

By: D. Rex Gaskins
Name: D. Rex Gaskins
Title: Managing Director

Mobius Technology Ventures III
Fund VI L.P.

By: D. Rex Gaskins
Name: D. Rex Gaskins
Title: Managing Director

SOFTBANK U.S. Ventures Fund VI
L.P.

By: D. Rex Gaskins
Name: D. Rex Gaskins
Title: Managing Director

SOFTBANK Technology Ventures
V, L.P.

By: D. Rex Gaskins
Name: D. Rex Gaskins
Title: Managing Director

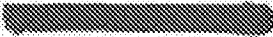
SOFTBANK Technology
Ventures Advisor Fund V, L.P.

By: D. Rex Gaskins
Name: D. Rex Gaskins
Title: Managing Director

SOFTBANK Technology Ventures
Entrepreneur Fund V, L.P.

By: D. Rex Gaskins
Name: D. Rex Gaskins
Title: Managing Director

[Signatures page to Securities Purchase Agreement]



By: _____
Name: _____
Title: _____

New Enterprise Associates 2, L.P.

By: Charles W. Newhall III
Name: Charles W. Newhall III
Title: General Partner



By: _____
Name: _____
Title: _____

{Signature page to Securities Purchase Agreement}

Trade Marks
EScout, LLC

Registration No.	Application No.	Mark and Country	Status	Registration Date	Filing Date
	75/895,773	* The Company is the Network United States	Abandoned		1/10/2000
	75/894,644	* The Network is the Company United States	Abandoned		1/10/2000
2,474,637	75/896,435	*Banker's Exchange United States	Registered	7/31/2001	1/13/2000
	75/894,643	* Independent's Exchange United States	Abandoned		1/10/2000
2,579,375	75/778,124	* From Many, One United States	Registered	6/11/2002	8/17/1999
2,589,028	75/778,170	Escout United States	Registered	7/2/2002	8/17/1999
2,445,911	75/829,328	ESCOUT.COM United States	Registered	4/24/2001	10/25/1999
	75/896,434	EScout Communities United States	Abandoned		1/13/2000
	75/896,443	EScout Advantage United States	Abandoned		1/13/2000
	75/896,444	EScout Source United States	Abandoned		1/13/2000
2,646,543	76/027,021	* Indian Head Design Consisting of profile of Indian head with feather and hand on forehead United States	Registered	11/5/2002	4/17/2000
	76/174,844	020 United States	Abandoned		12/4/2000
	76/204,033	* eScoutbiz United States	Abandoned		2/2/2001

Registration No.	Application No.	Mark and Country	Status	Registration Date	Filing Date
2,594,089	76/204,035	* Bank Vertical United States	Registered	7/16/2002	2/2/2001
2,641,339	76/322,354	* BAKEREXCHANGE United States	Registered	10/22/2002	10/9/2001
2,723,381	76/322,164	* QuikScout United States	Registered	6/10/2003	10/9/2001
2,688,312	76/369,056	* GIG United States	Registered	2/18/2003	2/11/2002
2,692,675	76/369,057	* Global Interoperability Group United States	Registered	3/4/2003	2/11/2002
2,913,563	76/424,150	* PAYSCOUT United States	Registered	12/21/04	6/24/2002
2,841,133	76/423,855	* FLEX INVOICE United States	Registered	5/1/04	6/24/2002
	1,116,053	Indian Head Design Consisting of profile of Indian head with feather and hand on forehead Canada	Abandoned		9/19/2001
	1,116,054	FROM MANY, ONE Canada			9/19/2001
	1,116,065	BANK VERTICAL DESIGN Canada	Abandoned		9/19/2001
	1,117,919	ESCOUTBIZ Canada	Abandoned		10/10/2001
	1,117,920	BANKER'S EXCHANGE Canada	Abandoned		10/10/2001
	1,131,024	ESCOUT Canada			2/13/2002

Registration No.	Application No.	Mark and Country	Status	Registration Date	Filing Date
	1,131,023	ESCOUT.COM Canada			2/13/2002

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Trade Marks
Perfect Commerce, Inc.

Registration No.	Application No.	Mark and Country	Status	Registration Date	Filing Date
2,525,885	75/867,682	*PERFECT United States	Registered	1/1/2002	12/8/1999
1764772	2000079440	*PERFECT China	Registered - Renewal Due by 5/7/2012	5/7/2002	6/6/2000
481902	J00-12332	*PERFECT Indonesia	Registered- Renewal Due by 6/8/2010	7/5/2001	6/8/2000
4456870	2000-63198	*PERFECT Japan	Registered- Renewal Due by 3/2/2011	3/2/2001	6/8/2000
	76/182,265	*PERFECT United States	Pending- Final Refusal to Statement of Use mailed 10/30/2005		12/18/2000
2,888,821	78/128,577	*PERFECT SUPPLY MANAGER United States	Registered	9/28/04	5/14/2002
	76/182,268	PERFECTINSIGHT United States	Abandoned		12/18/2000
001693118		PERFECT European Community	Abandoned		6/6/2000

Registration No.	Application No.	Mark and Country	Status	Registration Date	Filing Date
837823		PERFECT Australia	Abandoned		6/5/2000
412000016262		PERFECT Korea	Abandoned		6/7/2000
155562	89031890	*PERFECT Taiwan	Registered- Renewal Due by 1/1/2009??	1/7/2002	6/5/2000
	75/867,686	PERFECT United States	Abandoned		12/8/1999
	75/867,688	PERFECT.COM United States	Abandoned		12/8/1999
	75/748,354	IWANT United States	Abandoned		7/12/1999
	75/748,079	IWANT.COM United States	Abandoned		7/12/1999
	75/748,364	IWANTO United States	Abandoned		7/12/1999
	75/748,356	IWANTO.COM United States	Abandoned		7/12/1999
	78/628,968	*Open Supplier Network United States	Pending		5/12/2005
	78/628,957	*OSN United States	Pending		5/12/2005
	78/628,954	*Advantage Supplier Network United States	Pending		5/12/2005

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JRSME 1354329

Trademarks
Purchase Pro, Inc.

Registration No.	Application No.	Mark and Country	Status	Registration Date	Filing Date
2,418,859	75/750,941	PURCHASEPRO United States	Registered	1/9/2001	7/16/1999
2,420,829	75/752,854	PURCHASEPRO.COM United States	Registered	1/16/2001	7/16/1999
2,417,141	75/752,996	MISCELLANEOUS DESIGN United States	Registered	1/2/2001	7/16/1999
2,347,260	75/750,921	PURCHASEPRO United States	Registered	5/2/2000	7/16/1999
2,345,634	75/752,874	PURCHASEPRO.COM United States	Registered	4/25/2000	7/16/1999
2,345,631	75/752,714	MISCELLANEOUS DESIGN United States	Registered	4/25/2000	7/16/1999
	75/842,179	PRO.COM United States	Abandoned		11/4/1999
	75/823,305	## Innovations Carts and Furnishings United States	Abandoned 12/16/2002		10/14/1999
867343		## Pro Purchasing Systems Australia	Abandoned 10/01/2001		2/26/2001 (Priority 8/29/2000)
819221	819221	PURCHASEPRO Australia	Registered	12/12/2000	1/6/2000 (Priority to US 75/750,921 filed 7/16/1999) Renewal Due 1/6/2010

819222	819222	PURCHASEPRO.COM Australia	Registered	12/12/2000	1/6/2000 (Priority to US 75/752,874 filed 7/16/1999) Renewal Due 1/6/2010
819226	819226	MISCELLANEOUS DESIGN Australia	Registered	10/29/2001	1/6/2000 (Priority to US 75/752,714 filed 7/16/1999) Renewal Due 1/6/2010
819220	819220	PPRO.COM Australia	Registered	12/12/2000	1/6/2000 (Priority to US 75/842,179 filed 11/4/1999) Renewal Due 1/6/2010
0675311	0954491	PURCHASEPRO Benelux	Registered	5/2/2001	1/12/2000 (Priority to US 75/750,921 filed 7/16/1999)

0675310	0954490	PURCHASEPRO.COM Benelux	Registered	5/2/2001	1/12/2000 (Priority to US 75/752,874 filed 7/16/1999)
0675309	0954489	MISCELLANEOUS DESIGN Benelux	Registered	5/2/2001	1/12/2000 (Priority to US 75/752,714 filed 7/16/1999)
0675308	0954488	PPRO.COM Benelux	Registered	5/2/2001	1/12/2000 (Priority to US 75/842,179 filed 11/4/1999)
	0984454	## Pro Purchasing Systems Benelux	Abandoned 5/10/2001		2/23//2001 (Priority 8/29/2000)
	822.428.547	PURCHASEPRO Brazil	Abandoned		1/14/2000 (Priority 7/16/1999)
	822.362.783	PURCHASEPRO.COM Brazil	Abandoned		1/14/2000 (Priority 7/16/1999)
	822.362.775	MISCELLANEOUS DESIGN Brazil	Abandoned		1/14/2000 (Priority 7/16/1999)
	822.428.970	PPRO.COM Brazil	Abandoned		1/14/2000 Priority 11/4/1999

	823.622.622	## Pro Purchasing Systems Brazil	Abandoned 5/10/2001		2/23/2001 (Priority 8/29/2000)
TMA564,074	1,043,040	PURCHASEPRO Canada	Registered	6/27/2002	1/17/2000 (Priority to US 75/750,921 filed 7/16/1999)
TMA564,102	1,043,042	PURCHASEPRO.COM Canada	Registered	6/27/2002	1/17/2000 (Priority to US 75/752,874 filed 7/16/1999)
	1,043,041	MISCELLANEOUS DESIGN Canada	Abandoned		1/17/2000 (Priority to US 75/752,714 filed 7/16/1999)
	1,057,753	PPRO.COM Canada	Abandoned		5/4/2000 (Priority to US 75/842,179 filed 11/4/1999)
	1,094,096	## Pro Purchasing Systems Canada	Abandoned		2/26/2001 (Priority 8/27/2000)
570,469	472,215	PURCHASEPRO Chile	Registered	8/31/2000	12/27/1999 (Priority to US)

570.470	472.216	PURCHASEPRO.COM Chile	Registered	8/31/2000	75/750,921 filed 7/16/1999)
575.506	472.217	MISCELLANEOUS DESIGN Chile	Registered	12/29/2000	12/27/1999 (Priority to US 75/752,874 filed 7/16/1999)
570.471	472.218	PPRO.COM Chile	Registered	8/31/2000	12/27/1999 (Priority to US 75/842,179 filed 11/4/1999)
	519.191	## Pro Purchasing Systems Chile	Abandoned		2/28/2001 (Priority 8/29/2000)
	2001076843	## Pro Purchasing Systems China	Abandoned 5/10/2001		2/28/2001 (Priority 8/29/2000)
1559930	2000007459	PURCHASEPRO China	Registered	4/21/2001 Valid until 4/20/2011	1/17/2000 (Priority to US 75/750,921 filed 7/16/1999)

1591812	2000007461	PURCHASEPRO.COM China	Registered	6/21/2001 Valid until 6/20/2011	1/17/2000 (Priority to US 75/752,874 filed 7/16/1999)
159934	2000007462	MISCELLANEOUS DESIGN China	Registered	4/21/2001 Valid until 4/20/2011	1/17/2000 (Priority to US 75/752,714 filed 7/16/1999)
	2000007760	PRO.COM China	Abandoned		1/17/2000 (Priority to US 75/842,179 filed 11/4/1999)
001458678	001458678	PURCHASEPRO Europe	Registered	3/13/2001	1/12/2000 (Priority to US 75/750,94 filed 7/16/1999)
001458652	001458652	PURCHASEPRO.COM Europe	Registered	3/13/2001	1/12/2000 (Priority to US 75/752,874 filed 7/16/1999)
001458389	001458389	MISCELLANEOUS DESIGN (PP Design) Europe	Registered	5/14/2001	1/12/2000 (Priority to US)

						75/752,714 filed 7/16/1999)
					Abandoned	1/12/2000 (Priority to US 75/842,179 filed 11/4/1999)
00/3001485	001458611	PPRO.COM Europe				
00/3001485	00/3001485	PURCHASEPRO France		Registered	1/14/2000	1/14/2000 (Priority to US 75/750,921 filed 7/16/1999)
00/3001488	00/3001488	PURCHASEPRO.COM France		Registered	1/14/2000	1/14/2000 (Priority 7/16/1999)
00/3001482	00/3001482	MISCELLANEOUS DESIGN (PP Logo) France		Registered	1/14/2000	1/14/2000 (Priority 7/16/1999)
00/3001487	00/3001487	PPRO.COM France		Registered	1/14/2000	1/14/2000 (Priority 11/4/1999)
	01/3085775	## Pro Purchasing Systems France		Abandoned		2/28/2001 (Priority 8/29/2000)
	301 12 944.4/35	## Pro Purchasing Systems Germany		Abandoned		2/26/2001 (Priority 8/29/2000)
	300 02 471.1/35	PURCHASEPRO Germany		Unknown		

300 02 473	300 02 473.8/35	PURCHASEPRO.COM Germany	Registered	12/5/2001	1/14/2000 (Priority 7/16/1999)
300 02 474	300 02 474.6/35	MISCELLANEOUS DESIGN Germany	Registered	10/15/2001	1/14/2000 (Priority 7/16/1999)
300 02 475	300 02 475.4/35	PPRO.COM Germany	Registered	9/28/2001	1/14/2000 (Priority 11/4/1999)
B110/2002	2000 00151	PURCHASEPRO Hong Kong	Registered	1/7/2002	1/5/2000 (Priority 7/16/1999) Renewal Due 7/16/2006
B111/2002	2000 00153	PURCHASEPRO.COM Hong Kong	Registered	1/7/2002	1/5/2000 (Priority 7/16/1999) Renewal Due 7/16/2006
	2001 03063	## Pro Purchasing Systems Hong Kong	Abandoned 5/10/2001		2/23/2001 (Priority 8/29/2000)
	2000 00154	MISCELLANEOUS DESIGN Hong Kong	Abandoned		1/5/2000 (Priority 7/16/1999)
	2000 00152	PPRO.COM Hong Kong	Abandoned		1/5/2000 (Priority to US 75/842,179 filed 11/4/1999)

4516067	UD2000 CO00019	PURCHASEPRO Italy	Unknown		1/14/2000 (Priority 7/16/1999)
	UD2000 CO00018	PURCHASEPRO.COM Italy	Unknown		1/14/2000 (Priority 7/16/1999)
	UD2000 CO00017	MISCELLANEOUS DESIGN Italy	Unknown		1/14/2000 (Priority 7/16/1999)
	UD2000 CO00222	P.PRO.COM Italy	Unknown		5/5/2000 (Priority 11/4/1999)
	UD 2001 C000067	## Pro Purchasing Systems Italy	Abandoned 5/10/2001		2/28/2001 (Priority 8/29/2000)
4516068	120252/1999	PURCHASEPRO Japan	Registered	10/19/2001	12/27/1999 (Priority 7/16/1999) Renewal Due 4/20/2011
4516068	120253/1999	PURCHASEPRO.COM Japan	Registered	10/19/2001	12/27/1999 (Priority 7/16/1999) Renewal Due 4/20/2011
4516069	120254/1999	MISCELLANEOUS DESIGN Japan	Registered	10/19/2001	12/27/1999 (Priority 7/16/1999) Renewal

4516070	120255/1999	PPRO.COM Japan	Registered	10/19/2001	4/20/2011 12/27/1999 (Priority 11/4/1999) Renewal Due 4/20/2011 2/26/2001 (Priority 8/29/2000) 2/26/2001 (Priority 8/29/2000)
	16372/2001	## Pro Purchasing Systems Japan	Abandoned		
	23310	## Pro Purchasing Systems Mexico	Abandoned		
688140	405844	PURCHASEPRO Mexico	Registered	2/28/2001	1/10/2000 (Priority 7/16/1999)
688141	405845	PURCHASEPRO.COM Mexico	Registered	2/28/2001	1/10/2000 (Priority 7/16/1999)
652306	405842	MISCELLANEOUS DESIGN Mexico	Registered	4/28/2000	1/10/2000 (Priority 7/16/1999)
	405843	PPRO.COM Mexico	Abandoned		1/10/2000 (Priority 11/4/1999)
606059	606059	PURCHASEPRO New Zealand	Registered	4/5/2001	1/5/2000 (Priority 7/16/1999) Renewal Due 7/16/2006
606060	606060	PURCHASEPRO.COM New Zealand	Registered	7/16/1999	1/5/2000 (Priority)

606061	606061	MISCELLANEOUS DESIGN New Zealand	Registered	9/6/2001	7/16/1999) Renewal Due 7/16/2006
606062	606062	PRO.COM New Zealand	Registered	9/6/2001	1/5/2000 (Priority 7/16/1999) Renewal Due 7/16/2006
	632976	## Pro Purchasing Systems New Zealand	Abandoned 5/10/2001		1/5/2000 (Priority 11/4/1999) Renewal Due 11/4/2006
	4-2001- 0001358	## Pro Purchasing System Philippines	Abandoned 5/10/2001		2/26/2001 (Priority 8/29/2000)
	4-2000- 000055	PURCHASEPRO Philippines	Abandoned		2/26/2001 (Priority 8/29/2000)
	4-1999- 000959	PURCHASEPRO.COM Philippines	Abandoned		1/5/2000 (Priority 7/16/1999)
	4-1999- 000960	MISCELLANEOUS DESIGN Philippines	Abandoned		12/27/1999 (Priority 7/16/1999)

						7/16/1999)
4-2000-000056	PPRO.COM Philippines		Abandoned			1/5/2000 (Priority 11/4/1999)
T99/15591Z	PURCHASEPRO Singapore		Proceeding to Publication; Fees Paid			12/29/1999 (Priority filed to US 75/750,921 filed 7/16/1999)
T99/15590A	PURCHASEPRO.COM Singapore		Abandoned			12/29/1999 (Priority filed to US 75/752,874 filed 7/16/1999)
T99/15589H	MISCELLANEOUS DESIGN Singapore		Abandoned			12/29/1999 (Priority to US 75/752,714 filed 7/16/1999)
T01/02621J	## Pro Purchasing Systems Singapore		Abandoned 5/10/2001			2/27/2001 (Priority 8/29/2000)
T99/15592H	PPRO.COM Singapore		Abandoned			12/29/1999 (Priority to US 75/842,179 filed 11/4/1999)
2219231	PURCHASEPRO		Registered		1/13/2000	1/13/2000

2219235	2219235	United Kingdom	PURCHASEPRO.COM United Kingdom	Registered	1/13/2000	(Priority to US 75/750,921 filed 7/16/1999) Renewal Due 1/13/2010
2219192	2219192	United Kingdom	MISCELLANEOUS DESIGN United Kingdom	Registered	1/13/2000	(Priority to US 75/752,874 filed 7/16/1999) Renewal Due 1/13/2010
2219191	2219191	United Kingdom	PPRO.COM United Kingdom	Abandoned		(Priority to US 75/842,179 filed 11/4/1999)
2262654	2262654	## Pro Purchasing Systems		Abandoned		2/28/2001

		United Kingdom			(Priority 8/29/2000)
	78/012,886	E-MARKEITPRO United States	Abandoned 11/17/2002		6/15/2000
2,674,021	76/222,877	* WHERE BUSINESS TAKES OFF United States	Registered	1/14/2003	3/10/2001
	002369700	WHERE BUSINESS TAKES OFF European Community	Abandoned		9/10/2001 (Priority to US 76/222,877 filed 3/10/2001)
	2280253	WHERE BUSINESS TAKES OFF United Kingdom	Abandoned		9/10/2001 (Priority to US 76/222,877 filed 3/10/2001)
2,569,821	76/229,283	PURCHASEPRO United States	Registered	5/14/2002	3/23/2001
	76/264,883	PURCHASEPRO & DESIGN United States	Abandoned		5/31/2001
	002488674	PURCHASEPRO & DESIGN European Community	Abandoned		11/29/2001 (Priority to US 76/264,883 filed 5/31/2001)
	115955/21 (2001/24954)	PURCHASEPRO & DESIGN Turkey	Abandoned		11/30/2001 (Priority to US 76/264,883)

					filed 5/31/2001)
2287087		PURCHASEPRO & DESIGN United Kingdom	Abandoned		11/30/2001 (Priority to US 76/264,883 filed 5/31/2001)
76/264,881		MISCELLANEOUS DESIGN United States	Abandoned/ Statement of Use not filed		5/31/2001
002482719		MISCELLANEOUS DESIGN European Community	Abandoned		11/29/2001 (Priority to US 76/264,881 filed 5/31/2001)
002108900		## Pro Purchasing Systems European Community	Abandoned 5/10/2001		2/28/2001 (Priority 8/29/2000)
115956/21 (2001/24955)		MISCELLANEOUS DESIGN Turkey	Abandoned		11/30/2001 (Priority to US 76/264,881 filed 5/30/2001)
002287048		MISCELLANEOUS DESIGN United Kingdom	Abandoned		11/30/2001 (Priority to US 76/264,881 filed 5/31/2001)

76/263,989	PURCHASEPRO ONECONNECT United States	Abandoned/ Statement of Use not Filed	5/30/2001
002483204	PURCHASEPRO ONECONNECT European Community	Abandoned	11/29/2001 (Priority to US 76/263,989 filed 5/30/2001)
115954/21 (2001/24953)	PURCHASEPRO ONECONNECT Turkey	Abandoned	9/30/2001 (Priority to US 76/263,989 filed 5/30/2001)
2287091	PURCHASEPRO ONECONNECT United Kingdom	Abandoned	11/30/2001 (Priority to US 76/263,989 filed 5/30/2001)
75/822,834	## Pro Purchasing Systems United States	Abandoned	10/14/1999
2,684,857	## Pro Purchasing Systems (Service Mark) United States	Registered	2/14/2003 8/29/2000 Amended 8/23/2002
2,051,115	\$\$ Purchasing Pro	Registered	4/8/1997
2,589,476	Pantellos United States	Registered	7/2/2002
2600541	Starburst Design United States	Registered	7/30/2002
TMA 579,077	Pantellos Canada	Registered	4/7/2003

7MA 590,835	Starburst Design Canada	Registered	9/25/2003	
1955699	Fantellos European Union	Registered	2/14/2002	
2257061	Starburst Design European Union	Registered	3/11/2003	

Hospitality Purchasing Systems, Inc.
 \$\$ Acquired by Assignment

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PATENTS
eScout, LLC

Patent No.	Pending Application No.	Title	Status	Issue Date	Filing Date
	69/467,519	* Method for Integration and Reconciliation of Electronic Documents	Abandoned		3/25/2002
	10/395,647	* Method for Integration and Reconciliation of Electronic Documents	Pending		3/24/2003
	PCT/US03/09006	* Method for Integration and Reconciliation of Electronic Documents	Inactive		3/24/2003

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JRSME 1987587

Patents
Perfect Commerce Operations, Inc.

Patent No.	Application No.	Title	Status	Issue Date	Filing Date
	09/540,923	Method, System and Business Model for a Buyer's Auction with Near Perfect Information Using the Internet	Pending		7/9/1999
	PCT/US01/15194	Method, System and Business Model for a Buyer's Auction with Near Perfect Information Using the Internet	Inactive		6/2/2000
	Israel 147168	Method, System and Business Model for a Buyer's Auction with Near Perfect Information Using the Internet	Unknown		6/2/2000
	South Korea	Method, System and Business Model for a Buyer's Auction with Near Perfect Information Using the Internet	Unknown		6/2/2000
	Europe 00941218.0	Method, System and Business Model for a Buyer's Auction with Near Perfect Information Using the Internet	Withdrawn 9/30/2002		6/2/2000
	Canada 2,377,481	Method, System and Business Model for a Buyer's Auction with Near Perfect Information Using the Internet	Unknown		6/2/2000
	Japan 2001-510,066	Method, System and Business Model for a Buyer's Auction with Near Perfect Information Using the Internet	Unknown		6/2/2000
	09/532,663	Marketplaces Involving Business Rules for Partially Automated Generation of Quotes	Abandoned		3/21/2000
	PCT/US01/09024	Marketplaces Involving Business Rules for Partially Automated Generation of Quotes	Inactive		3/20/2001
	Europe 01918887.9	Marketplaces Involving Business Rules for Partially Automated Generation of Quotes	Abandoned		3/20/2001
	09/497,887	Multidimensional and Reverse E-Commerce Auctions	Abandoned		2/4/2000
	PCT/US01/03909	Multidimensional and Reverse E-Commerce Auctions	Inactive		2/4/2001
	Europe 01907062.2	Multidimensional and Reverse E-Commerce Auctions	Abandoned		2/4/2001
	09/498,023	System for Multi-Dimensional E-Commerce Auctions	Abandoned		2/4/2000
	PCT/US01/03743	System for Multi-Dimensional E-Commerce Auctions	Inactive		2/4/2001
	Europe 01906998.8	System for Multi-Dimensional E-Commerce Auctions	Withdrawn		

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PATENTS
Purchase Pro, Inc.

Patent No.	Application No.	Title	Status	Issue Date	Filing Date	Action Required
US 6,014,644	US 08/755,224	Centrally Coordinated Communications System with Multiple Broadcast Data Objects and Response Tracking	Expired	1/11/2000	11/22/1996	
Pending	US 09/690,516	Methods and Systems for Conditionally Facilitating Electronic Payment	Failure to pay maintenance fees		10/17/2000	
	US 09/388,747	Electronic Commerce Communication Systems with Multiple User-Defined Marketplaces Controlled Pricing and Automated Purchasing	Pending (Unknown)		9/2/1999	
	PCT/US00/18943	Electronic Commerce Communication Systems with Multiple User-Defined Marketplaces Controlled Pricing and Automated Purchasing	Abandoned 2/22/2003		7/12/2000	
	59300/00	Electronic Commerce Communication Systems with Multiple User-Defined Marketplaces Controlled Pricing and Automated Purchasing	Inactive		7/12/2000	
	Australia From PCT/US00/18943	Electronic Commerce Communication Systems with Multiple User-Defined Marketplaces Controlled Pricing and Automated Purchasing	Lapsed		7/12/2000	
	298294\$	Electronic Commerce Communication Systems with Multiple User-Defined Marketplaces Controlled Pricing and Automated Purchasing	Abandoned		2/26/2002	
	Canada From PCT/US00/18943	Electronic Commerce Communication Systems with Multiple User-Defined Marketplaces Controlled Pricing and Automated Purchasing	Abandoned		2/26/2002	
	00945337.4	Electronic Commerce Communication Systems with Multiple User-Defined Marketplaces Controlled Pricing and Automated Purchasing	Withdrawn		7/12/2000	
	EPO From PCT/US00/18943	Electronic Commerce Communication Systems with Multiple User-Defined Marketplaces Controlled Pricing and Automated Purchasing	Failure to pay renewal fee		7/12/2000	

Parent No.	Application No.	Title	Status	Issue Date	Filing Date	Action Required
	268201169-0 Singapore From PCT/US80/18943 60/179,695	Electronic Commerce Communication Systems with Multiple User-Defined Marketplaces Controlled Pricing and Automated Purchasing ++ Computer Driven Real-Time Materials Auction System	Out of force		3/1/2002	Restatement Possible by 2 December 2005
	60/210,855	++ Technique for Effectively Conducting Transactions Between Buyers and Suppliers	Abandoned		2/1/2000	
	09/878,037	++ System and Method for Effective Transaction Between Buyers and Suppliers	Abandoned		6/9/2001	
			Abandoned		6/8/2001	

→ Assigned to Material Net

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SCHEDULE 3.12(a)
FILED INTELLECTUAL PROPERTY

See following pages.

Liens

See Schedule 3.01 and 3.03 for detail on the liens and rights of foreclosure held by Lighthouse Capital Partners, Commerce One, LLC, and the existing investors holding convertible promissory notes.

Patents, trademarks, service marks, copyrights and other intangible assets owned or used by the Company (including U.S. or foreign applications, registrations and assignments).

The Company is actively pursuing two U.S. patent applications: (i) Method, System and Business Model for a Buyer's Auction with Near Perfect Information Using the Internet (number 09/350,983) and (ii) Methods and Systems for Conditionally Facilitating Electronic Payment (number US 09/690,516). 