

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	MERGER		
EFFECTIVE DATE:	09/02/2009		
CONVEYING PARTY DATA			
	Name	Formerly	Execution Date
	TriAccess Technologies, Inc.		09/02/2009
			Entity Type
			CORPORATION: CALIFORNIA
RECEIVING PARTY DATA			
Name:	TriQuint Semiconductor, Inc.		
Street Address:	2300 NE Brookwood Parkway		
City:	Hillsboro		
State/Country:	OREGON		
Postal Code:	97124		
Entity Type:	CORPORATION: DELAWARE		
PROPERTY NUMBERS Total: 1			
	Property Type	Number	Word Mark
	Serial Number:	77237974	CURB TO CARPORT
CORRESPONDENCE DATA			
Fax Number:	(415)391-8269		
	<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>		
Phone:	415-659-5969		
Email:	dbjohnson@reedsmith.com		
Correspondent Name:	Doyle B. Johnson		
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Address Line 4:	San Francisco, CALIFORNIA 94105		
ATTORNEY DOCKET NUMBER:	359015.01000		
NAME OF SUBMITTER:	Doyle B. Johnson		
Signature:	/Doyle B. Johnson/		

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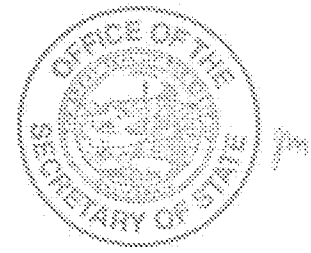
Date:

09/22/2010

Total Attachments: 94

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State of California
Secretary of State

I, DEBRA BOWEN, Secretary of State of the State of California, hereby certify:

That the attached transcript of 93 page(s) has been compared with the record on file in this office, of which it purports to be a copy, and that it is full, true and correct.



IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

SEP - 8 2009

DEBRA BOWEN
Secretary of State

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

AGREEMENT AND PLAN OF MERGER

SEP - 3 2009

This AGREEMENT AND PLAN OF MERGER (this "Agreement") is entered into this 1st day of September, 2009, by and among TriQuint Semiconductor, Inc., a Delaware Corporation ("Buyer"), TriAccess Technologies, a California corporation ("Seller"), TriTri Merger Sub, Inc., a California corporation and wholly owned subsidiary of Buyer ("Merger Sub"), Chris Day, solely in his capacity as the Seller Representative (the "Seller Representative"), and solely for purposes of Article 8, the shareholders set forth on Exhibit A hereto (the "Major Shareholders").

WHEREAS, the parties intend that Merger Sub merge with and into Seller, pursuant to the terms of this Agreement and the Corporations Code, with Seller surviving the Merger as a wholly owned subsidiary of Buyer;

WHEREAS, the Board of Directors of Seller has: (i) determined that the Merger and this Agreement are fair to and in the best interests of Seller; (ii) adopted this Agreement; and (iii) resolved to recommend that the shareholders of Seller (the "Shareholders") approve this Agreement;

WHEREAS, the Board of Directors of Merger Sub has unanimously adopted this Agreement;

WHEREAS, the Board of Directors of Buyer, and Buyer, as the sole shareholder of Merger Sub, in each case, has approved this Agreement, the Merger and the transactions contemplated hereby;

WHEREAS, concurrently with the execution and delivery of this Agreement, as a condition of and as a material inducement to the willingness of Buyer and Merger Sub to enter into this Agreement, each shareholder of Seller listed on Exhibit B hereto (the "Specified Shareholders") is executing and delivering to Buyer a voting and support agreement substantially in the form agreed to by the parties pursuant to which, subject to the terms and conditions set forth therein, such shareholder has agreed to vote all shares of Seller's capital stock owned by it in favor of adoption of this Agreement and to give Buyer an irrevocable proxy to do the same.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth in this Agreement, the parties hereto agree as follows:

ARTICLE 1
DEFINITIONS

SECTION 1.1 Definitions and Interpretive Provisions.

Terms defined in Annex A attached hereto and used herein without definition shall have the meanings given to the terms in Annex A. The interpretive provisions set forth in Annex A shall apply to this Agreement and the other Transaction Documents (as defined below).

ARTICLE 2 THE MERGER

SECTION 2.1 The Merger.

Upon the terms and subject to the conditions set forth in this Agreement and the applicable provisions of the Corporations Code, at the Effective Time (as defined in Section 2.3) Merger Sub shall be merged with and into Seller (the "Merger"). As a result of the Merger, the separate corporate existence of Merger Sub shall cease and Seller shall continue as the surviving corporation of the Merger (sometimes referred to herein as the "Surviving Corporation") and a wholly-owned subsidiary of Buyer.

SECTION 2.2 The Closing.

The closing of the Merger (the "Closing") shall take place at the offices of Perkins Coie LLP, 1120 NW Couch Street, Tenth Floor, Portland, Oregon, on September 2, 2009, or on such other date or at such other place and time as the parties may agree (the "Closing Date").

SECTION 2.3 Effective Time.

At the Closing, the parties hereto shall cause the Merger to be completed by filing an agreement of merger (the "Agreement of Merger") together with the required officers' certificates and the certificates of satisfaction from the California Franchise Tax Board for Merger Sub and Seller with the Secretary of State of the State of California, in such form as required by, and executed in accordance with the relevant provisions of, the Corporations Code and in such form as approved by Buyer and Seller prior to such filing (12:01 am on the date of such filing being the "Effective Time").

SECTION 2.4 Articles of Incorporation and Bylaws of the Surviving Corporation.

At the Effective Time, (a) the articles of incorporation of Merger Sub, as in effect immediately prior to the Effective Time, shall be amended as set forth on Exhibit C to change the name of the corporation to TriQuint TriAccess, Inc., and as so amended shall be the articles of incorporation of the Surviving Corporation, until thereafter amended in accordance with the Corporations Code and as provided in such amended articles of incorporation, and (b) the bylaws of Merger Sub, as in effect immediately prior to the Effective Time, shall be amended to change the name of the corporation to TriQuint TriAccess, Inc., and as so amended shall be the bylaws of the Surviving Corporation, until thereafter amended in accordance with the Corporations Code and as provided in the amended articles of incorporation of the Surviving Corporation and such amended bylaws.

SECTION 2.5 Effect of the Merger.

At the Effective Time, the effect of the Merger shall be as provided in the applicable provisions of the Corporations Code. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time, except as otherwise provided herein, all the rights, privileges, powers and franchises of Merger Sub and Seller shall vest in the Surviving

Corporation, and all debts, liabilities and duties of Merger Sub and Seller shall become the debts, liabilities and duties of the Surviving Corporation.

SECTION 2.6 Directors and Officers.

At the Effective Time, the directors of Merger Sub shall be the initial directors of the Surviving Corporation, each to hold office in accordance with the articles of incorporation and bylaws of the Surviving Corporation; and the officers of Merger Sub shall continue as the officers of the Surviving Corporation, in each case until their respective successors are duly elected or appointed and qualified.

SECTION 2.7 Conversion of Shares and Options.

At the Effective Time, by virtue of the Merger and without any action on the part of Buyer, Merger Sub, Seller or the Shareholders, the holders of Series B Warrants ("Series B Warrant Holders") or the holders of In the Money Options ("In the Money Option Holders," and together with the Shareholders and the Series B Warrant Holders, the "Merger Consideration Recipients"):

2.7.1 All shares of any class of capital stock of Seller held by Seller shall be canceled and no consideration shall be paid therefor.

2.7.2 Each issued and outstanding share of capital stock of Merger Sub shall be converted into one share of common stock of the Surviving Corporation, which shares of the Surviving Corporation shall constitute all of the issued and outstanding capital stock of the Surviving Corporation and shall be owned by Buyer.

2.7.3 Subject to the terms and conditions of this Agreement, including but not limited to the escrow obligations and the indemnification obligations specified in Article 8:

(a) Each share of Series A Preferred Stock ("Series A Preferred Stock") of Seller issued and outstanding immediately prior to the Effective Time (other than Dissenting Shares (as defined in Section 2.15 of this Agreement) and shares specified in Section 2.7.1 above) shall be converted into the right to receive a cash payment equal to \$0.85 per share.

(b) Each share of Series B Preferred Stock ("Series B Preferred Stock," and together with the Series A Preferred Stock, the "Seller Preferred Stock") of Seller issued and outstanding immediately prior to the Effective Time (other than Dissenting Shares (as defined in Section 2.15 of this Agreement) and shares specified in Section 2.7.1 above) shall be converted into the right to receive a cash payment equal to \$0.45 per share.

(c) Each share of common stock of Seller ("Seller Common Stock" and together with the Seller Preferred Stock, the "Seller Capital Stock") issued and outstanding immediately prior to the Effective Time (other than Dissenting Shares (as defined in Section 2.15 of this Agreement) and shares specified in Section 2.7.1 above) shall be converted into the right to receive a cash payment equal to the Per Share Price (as defined in Section 2.7.3(g) below).

(d) Each outstanding warrant or similar right to purchase Series B Preferred Stock issued by Seller and outstanding immediately prior to the Effective Time with an exercise price below \$0.45 per share (the "Series B Warrants"), shall be converted into the right to receive a cash payment equal to \$0.45 per share less the per share exercise price of each such warrant multiplied by the number of shares of Series B Preferred Stock subject to such warrant.

(e) Each outstanding option or similar right to purchase Seller Common Stock issued by Seller and outstanding immediately prior to the Effective Time with an exercise price below the Per Share Price, whether or not exercisable in accordance with its terms (each an "In the Money Option" and together the "In the Money Options") shall, at the Effective Time, be cancelled and converted into the right, subject to Section 2.10 below, to receive a cash payment equal to the Per Share Price less the per share exercise price of each such In the Money Option multiplied by the number of shares of Seller Common Stock subject to such In the Money Option. In addition, at the Effective Time, each then-outstanding option that is not an In the Money Option and that has not been exercised prior to the Effective Time shall be cancelled at the Effective Time without consideration. The amounts payable pursuant to this Section 2.7.3(e) shall be subject to any applicable withholding tax and other applicable payroll withholding.

(f) Seller shall take all necessary action, including, if necessary, entering into option and/or warrant cancellation agreements with the holders of outstanding options, warrants or similar rights to purchase Seller Capital Stock to ensure that all options, warrants or rights to purchase Seller Capital Stock that are not converted into the right to receive a portion of the Merger Consideration (as defined below) pursuant to Sections 2.7.3(d) and 2.7.3(e), shall be cancelled as of the Effective Time. Following the Effective Time, options, warrants or other convertible securities to purchase shares of Seller Capital Stock shall not represent any rights to purchase any capital stock of Buyer, Merger Sub or Seller.

(g) "Per Share Price" shall mean (a) the difference between the Merger Consideration (as defined below) and the portion of the Merger Consideration into which the issued and outstanding Series A Preferred Stock, Series B Preferred Stock and Series B Warrants have been converted pursuant to Sections 2.7.3(a), 2.7.3(b) and 2.7.3(d); divided by (b) the aggregate number of shares of Seller Common Stock outstanding immediately prior to the Effective Time (including Dissenting Shares) plus the aggregate number of shares of Seller Common Stock issuable upon exercise of the In the Money Options. The "Merger Consideration" shall be equal to the sum of:

(x) the Initial Cash Consideration (as defined below), in an amount equal to:

(i) Eight Million Five Hundred Thousand Dollars (\$8,500,000) (the "Gross Initial Cash Consideration," and together with clauses (ii) and (iii), the "Initial Cash Consideration");

(ii) minus an amount equal to the Debt of Seller as of the Closing Date (the "Closing Debt");

(iii) plus or minus, as applicable, the amount by which the Net Working Capital Amount is greater or less than Five Hundred Thirty-Two Thousand Dollars (\$532,000); the "Net Working Capital Amount" shall mean:

(A) the current assets of Seller, including without limitation the proceeds from deemed option or warrant exercises (with payments from such deemed exercises accruing to the Seller in connection with the cash-out or conversion as described in Sections 2.7.3(d) and (e) above of any option or warrant in connection with the transactions contemplated by this Agreement) and any exercise price receivable from former Series B Warrantholders who elect to exercise their warrants and convert the Series B Preferred Stock subject thereto to Common Stock conditioned upon the consummation of the Merger, with the exercise price for such exercise to be deducted from the amount otherwise to be disbursed to them out of the Initial Cash Consideration; minus (B) the current liabilities of Seller, which shall be deemed to include, without limitation, the aggregate amount of all change of control payments to employees and other employee benefits, severance or tax gross up obligations triggered by the Merger (excluding in each case normal and customary severance amounts payable as a result of termination of employment by or at the direction of Buyer), and all of Seller's costs, fees and expenses relating to the transactions contemplated by this Agreement; all as reflected on a given balance sheet as of a given date, determined in conformity with GAAP (except for deemed items set forth above).

(y) plus the Earnout (as defined in Section 2.12 below), if any.

2.7.4 Any shares of Seller Capital Stock as to which a shareholder has perfected appraisal rights under the Corporations Code shall be treated as provided in Section 2.15 of this Agreement.

SECTION 2.8 Merger Consideration Allocation.

The parties shall agree on the following, as of the Closing Date: (i) the estimated Initial Cash Consideration calculation as of the date of this Agreement, specifying the estimated amount of Closing Debt as of the Closing Date and the estimated Net Working Capital Adjustment (as defined in Section 2.11 below) as of the Closing Date; (ii) the name of each Merger Consideration Recipient; (iii) the number of shares of Seller Common Stock, Series A Preferred Stock and/or Series B Preferred Stock owned by the Merger Consideration Recipient; (iv) the number of Series B Warrants and/or In the Money Options owned by each Merger Consideration Recipient, and the exercise price of such Series B Warrants and/or In the Money Options; (v) the Initial Cash Consideration to be paid to each Merger Consideration Recipient (based on the estimated Initial Cash Consideration as of the date of this Agreement); (vi) wire transfer instructions for the account to which the Merger Consideration Recipient's portion of the Initial Cash Consideration shall be paid; and (vii) the portion of the Escrow Amount to be allocated to each Merger Consideration Recipient.

Notwithstanding the other provisions of this Article 2, in no event shall the consideration allocated among the Merger Consideration Recipients (including the amounts allocated on their behalf to the Escrow Amount) at Closing exceed the Initial Cash Consideration less the aggregate exercise price of the In the Money Options and Series B Warrants that are deemed

exercised. To the extent the provisions hereof otherwise provide for total consideration at Closing in excess of the Initial Cash Consideration less the aggregate exercise price of the In the Money Options and Series B Warrants that are deemed exercised, Buyer and Seller Representative shall agree upon an equitable reallocation of the Initial Cash Consideration which shall be binding upon all parties.

SECTION 2.9 No Further Transfers.

After the date of this Agreement, neither any Specified Shareholder nor Seller shall effect any transfers of any Seller Capital Stock outstanding prior to the date of this Agreement and Seller and the Surviving Corporation shall not purport to recognize any transfer. If, after the Effective Time, certificates formerly representing Seller Capital Stock are presented to the Surviving Corporation, they shall be canceled and exchanged in accordance with this Article 2.

SECTION 2.10 Escrow Amount.

Notwithstanding the foregoing, subject to effectiveness of the Merger, \$1,000,000 of the Initial Cash Consideration (the "Escrow Amount") otherwise payable on account of Seller Capital Stock shall be deposited into escrow (the "Escrow") with U.S. Bank National Association (the "Escrow Agent"), for the purposes of securing the indemnification obligations set forth in Article 8. The Escrow Amount shall be funded by withholding from the distributions to Merger Consideration Recipients otherwise required under Sections 2.7.3(a) through 2.7.3(e), an amount from each Merger Consideration Recipient equal to the product of the Escrow Amount and a fraction the numerator of which is the amount otherwise allocated to such Merger Consideration Recipient pursuant to Sections 2.7.3(a) through 2.7.3(e), and the denominator of which is the total amount payable to all Merger Consideration Recipients pursuant to Sections 2.7.3(a) through 2.7.3(e). The Escrow Amount shall be held and administered in accordance with an Escrow Agreement in the form agreed to by the parties (the "Escrow Agreement"). Buyer shall be treated as the owner of the Escrow Amount for income tax purposes until such time as the Escrow Amount is distributed from escrow

SECTION 2.11 Post-Closing Adjustment.

The Merger Consideration shall be subject to adjustment, if any, after the Closing Date as specified in this Section 2.11, and any adjustment made under this Section 2.11 shall be referred to as the "Net Working Capital Adjustment."

2.11.1 As soon as practicable, but in any event within 45 calendar days following the Closing Date, Buyer shall deliver to the Seller Representative an unaudited balance sheet of the Company (the "Closing Balance Sheet") and Net Working Capital Amount calculation, each as of the Closing Date.

2.11.2 Within the later of ten (10) days after the resolution of any disputes pursuant to Section 2.11.3, or 30 days after the date of receipt by the Seller Representative of the Closing Balance Sheet:

(a) if the Net Working Capital Amount exceeds the Net Working Capital Amount reflected on the Closing Balance Sheet, the Buyer shall be entitled to an

immediate payment from the Escrow Amount, in an amount equal to such excess above said Net Working Capital, as a downward adjustment to the Merger Consideration; and

(b) if the Net Working Capital Amount reflected on the Closing Balance Sheet exceeds the Net Working Capital Amount the Buyer shall pay to the Seller Representative for disbursement to the appropriate Merger Consideration Recipients, as an upward adjustment to the Merger Consideration, by wire transfer in immediately available funds to an account designated by the Seller Representative, an aggregate amount equal to such excess.

2.11.3

(a) The Seller Representative may dispute any amounts reflected on the Closing Balance Sheet to the extent that the net effect of such disputed amounts in the aggregate would be to increase the Net Working Capital Amount reflected on the Closing Balance Sheet; provided, however, that the Seller Representative shall have notified Buyer in writing of each disputed item, specifying the amount thereof in dispute and setting forth, in reasonable detail, the basis for such dispute, within 30 days of the Seller Representative's receipt of the Closing Balance Sheet. In the event of such a dispute, Buyer and the Seller Representative shall attempt to reconcile their differences. If Buyer and the Seller Representative are unable to reach a resolution within 15 days after receipt by Buyer of the Seller Representative's written notice of dispute, Buyer and the Seller Representative shall submit the items remaining in dispute for resolution to Deloitte LLP, or such other independent accounting firm of national reputation as may be mutually acceptable to the Seller Representative and Buyer (the "Independent Accounting Firm"), which shall, within 60 days of such submission, determine and report to the Seller Representative and Buyer upon such remaining disputed items, and such report shall be final, binding and conclusive on the Shareholders and Buyer. The fees and disbursements of the Independent Accounting Firm shall be allocated equally between Buyer and the Merger Consideration Recipients and the Merger Consideration Recipients' share shall be paid from the Escrow Amount.

(b) During the period of any dispute referred to in this Section 2.11.3, Buyer shall provide the Seller Representative and the Seller Representative's accountants ("Seller Representative's Accountants"), full access to the books, records and facilities of the Surviving Corporation and shall cooperate fully with the Seller Representative and Seller Representative's Accountants, in each case to the extent reasonably required by the Seller Representative and Seller Representative's Accountants in order to investigate the basis for any such dispute; provided, however, that any such investigation shall be conducted in such a manner as not to interfere unreasonably with the operation of Buyer's business.

SECTION 2.12 Earnout.

2.12.1 Buyer will pay the Seller Representative for disbursement to the appropriate Merger Consideration Recipients as additional Merger Consideration an amount (the "Earnout") in cash not to exceed in the aggregate \$5,000,000 in accordance with this Section 2.12. An Earnout may be achieved for each of the three successive 12-month

periods (each an "Earnout Year," or "Years 1, 2 and 3," respectively) beginning on January 1, 2010. If the Total Revenue (as defined below) generated by the Surviving Corporation for Year 1 equals or exceeds the Year 1 Target Revenue, the Earnout for Year 1 shall be \$1,000,000. If the Total Revenue (as defined below) generated by the Surviving Corporation for Year 2 equals or exceeds the Year 2 Target Revenue, the Earnout for Year 2 shall be \$2,000,000. If the Total Revenue (as defined below) generated by the Surviving Corporation for Year 3 equals or exceeds the Year 3 Target Revenue, the Earnout for Year 3 shall be \$2,000,000. "Target Revenue" for Year 1, Year 2 and Year 3, shall be \$8,500,000, \$17,500,000 and \$20,000,000, respectively. If the Surviving Corporation's Total Revenue in any Earnout Year is between 50% and 100% of the applicable Target Revenue for such Earnout Year, then a percentage of the applicable maximum Earnout, calculated on a straight-line basis will be paid for the Earnout Year (e.g., if 75% of the Target Revenue for Year 1 is achieved, then 50% of the maximum Earnout, or \$500,000, would be paid for Year 1). If Total Revenue does not exceed 50% of Target Revenue for an Earnout Period, no Earnout will be paid for such period. The Year 1, Year 2, and Year 3 Earnouts shall not exceed \$1,000,000, \$2,000,000 and \$2,000,000, respectively. For the purposes hereof, "Total Revenue" means net revenue from products as agreed to by the parties computed in accordance with Buyer's policies and GAAP.

2.12.2 No later than 60 days after the expiration of the Earnout Year, Buyer will deliver to the Seller Representative a computation (the "Earnout Statement") of the portion of the Earnout, if any, attributable to such period (an "Earnout Year Payment"). Unless within 30 days after receipt of such computation, the Seller Representative tenders written notice to Buyer setting forth any and all items of disagreement relating to such computation, the computation will be conclusive and binding on the Shareholders, and as soon as practicable but in no event later than 120 days following the end of the Earnout Year, Buyer will pay to the Seller Representative the Earnout Year Payment by wire transfer to an account designated in writing by the Seller Representative, for distribution to the appropriate Merger Consideration Recipients. Buyer will have the right to withhold and set off against any portion of one or more Earnout Year Payments the amount of any Losses to which any Buyer Indemnified Party may be entitled under Article 8.

2.12.3 If the Seller Representative delivers a dispute notice within such 30-day period following receipt of the Earnout Statement, Buyer and the Seller Representative will use reasonable efforts to resolve their differences for a period of 10 days. If Buyer and the Seller Representative are unable to resolve their differences within such period, the dispute shall be resolved by the Independent Accounting Firm. Buyer and the Seller Representative will request that the Independent Accounting Firm render a determination as to the computation of the Earnout Year Payment within 60 days after their retention, and Buyer and the Seller Representative will cooperate fully with the Independent Accountants so as to facilitate a final determination as quickly and as accurately as possible. In making such resolution, the Independent Accounting Firm will consider only those issues, items or amounts in the Earnout Statement as to which the Seller Representative has disagreed in writing in the aforementioned dispute notice. The Independent Accounting Firm's final determination (the "Final Earnout Report") will be in writing and will be binding on Buyer and the Seller Representative on behalf of the Shareholders, and the fees and expenses of the Independent Accounting Firm will be paid by Buyer in the same proportion as the dollar

amount of the adjustment reflected in the Final Earnout Report bears to the total dollar amount of all disputed items, with any remainder paid out of Escrow. In the event that any amount is payable as the Earnout Year Payment under this Section 2.12.3, Buyer will pay such amount by wire transfer of immediately available funds to an account designated by the Seller Representative, for distribution to the appropriate Merger Consideration Recipients, as soon as reasonably practicable but in no event later than 10 days following the receipt of the Final Earnout Report.

2.12.4 Notwithstanding any negative impact that its decisions may have on Total Revenue for any Earnout Period, Buyer shall retain complete and absolute final authority for all operating decisions relating to the Surviving Corporation and its operations, budgets, headcount, overhead, products and services following the Closing, including, without limitation, pricing of the Surviving Corporation's products and services, which Buyer intends to maintain with a 60% or greater gross margin. In no event shall Buyer's operating decisions relating to the Surviving Corporation serve as a valid basis for an objection by the Seller Representative to an Earnout Statement provided hereunder.

2.12.5 No interest will be paid on any Earnout regardless of any delay in the payment of the Earnout, provided that this shall not limit either party's liability for acts of bad faith.

SECTION 2.13 Payment Procedures.

2.13.1 Payment Procedures.

(a) At or prior to Closing, Buyer shall deposit into an account maintained by an agent selected by Buyer and Seller (for purposes of this Section 2.13 only, the "Disbursing Agent") by wire transfer in immediately available funds, an amount equal to the Initial Cash Consideration (less the aggregate exercise price of the In the Money Options and Series B Warrants that are deemed exercised), less the aggregate exercise price receivable from former Series B Warrantholders who elect to exercise their warrants and convert the Series B Preferred Stock subject thereto to Common Stock conditioned upon the consummation of the Merger, with the exercise price for such exercise to be deducted from the amount otherwise to be disbursed to them out of the Initial Cash Consideration, less any withholding amount required with respect to payments to any Merger Consideration Recipient pursuant to applicable Tax laws, less the amount that would have been allocable to Dissenting Shares, less the Escrow Amount.

(b) At or prior to the Closing, Buyer shall instruct the Disbursing Agent to cause to be mailed or delivered to the Merger Consideration Recipients, at the addresses for such persons in the Seller's records, a letter of transmittal in the form agreed to by the parties (the "Letter of Transmittal"). The right of each Merger Consideration Recipient to receive the Merger Consideration Recipient's portion of the Merger Consideration is conditioned upon delivery by the Merger Consideration Recipient of a Letter of Transmittal validly executed in accordance with the instructions thereto and such other certificates or documents as may be required pursuant to the instructions thereto.

(c) Upon receipt from a Merger Consideration Recipient of a validly executed Letter of Transmittal, the Disbursing Agent shall transfer by check or wire transfer of immediately available funds in accordance with the Disbursing Agent Agreement, the Initial Cash Consideration, less the Merger Consideration Recipient's portion of the Escrow Amount, payable to the Merger Consideration Recipient, in accordance with the amount and wire transfer instructions agreed to by the parties.

(d) Prior to disbursement, all funds deposited with the Disbursing Agent shall be invested by the Disbursing Agent as directed by Buyer or the Surviving Corporation. Earnings on such funds shall be the sole and exclusive property of Buyer and the Surviving Corporation and shall be paid to Buyer or the Surviving Corporation as Buyer directs. No investment of the funds shall relieve Buyer or the Disbursing Agent from promptly making the payments required by this Article 2, and following any losses from any such investment, Buyer shall promptly provide additional funds to the Disbursing Agent in the amount of such losses.

(e) Any portion of the Merger Consideration (including the proceeds of any investments thereof) that remains unclaimed by the Merger Consideration Recipients six (6) months after the Effective Time shall be delivered to the Surviving Corporation. Any Merger Consideration Recipient who has not theretofore complied with this Article 2 shall thereafter look only to the Surviving Corporation for payment of such person's claim for Merger Consideration in respect thereof. Notwithstanding the foregoing, neither the Disbursing Agent nor any party hereto shall be liable to any person in respect of cash delivered to a public official in compliance with any applicable abandoned property, escheat or similar law.

2.13.2 No Further Rights in Seller Capital Stock and Options. When all cash payments have been paid in full in accordance with the terms of this Article 2, they shall be deemed to have been paid in full satisfaction of all rights pertaining to the Seller Capital Stock, Series B Warrants and/or In the Money Options.

2.13.3 Withholding Rights. Each of Buyer and the Disbursing Agent shall be entitled to deduct and withhold from the Merger Consideration such amounts as Buyer or the Disbursing Agent may be required to deduct and withhold with respect to the making of such payment, including amounts for backup withholding under the Corporations Code, any provision of federal, state, local or foreign tax law, or any other applicable law. To the extent that amounts are so withheld by Buyer or the Disbursing Agent, such withheld amounts shall be treated for all purposes of this Agreement (but without prejudice to the Shareholder's ability to accurately report that it was withheld for tax or other purposes) as having been paid to the Shareholder or other person in respect of which such deduction and withholding was made by Buyer or the Disbursing Agent.

2.13.4 Lost, Stolen or Destroyed Certificates, Warrants and Options. In the event that any certificate for Seller Capital Stock, Series B Warrants or any agreement evidencing an In the Money Option (an "Option Agreement") has been lost, stolen or destroyed, the Disbursing Agent or Buyer, as applicable, shall pay in exchange for such lost, stolen or destroyed certificate of Seller Capital Stock, Series B Warrant or outstanding

Option Agreement, upon the making of an affidavit of the fact by the holder thereof including an indemnity agreement in the form agreed to by the parties.

2.13.5 Appointment of the Seller Representative. By approval of this Agreement at the Shareholder Meeting, and pursuant to the terms of the Letter of Transmittal, the Merger Consideration Recipients shall irrevocably make, constitute and appoint the Seller Representative as their agent, attorney-in-fact and representative and authorize and empower it to fulfill the role of the Seller Representative contemplated hereunder for purposes of this Agreement and the Escrow Agreement. Buyer, Seller and Merger Sub may rely upon the acts of the Seller Representative for all purposes permitted hereunder and under the Escrow Agreement.

SECTION 2.14 The Seller Representative

2.14.1 The Seller Representative shall have full power of substitution to act in the name, place and stead of each of the Merger Consideration Recipients in all matters in connection with this Agreement and the Escrow Agreement. The Seller Representative's power shall include the following powers, without limitation: the power to act for the Merger Consideration Recipients with regard to the indemnification obligations hereunder; the power to compromise any claim on behalf of the Merger Consideration Recipients, to authorize agreement to or dispute of the adjustment to the Merger Consideration pursuant to Section 2.11 hereto, to dispute any Earnout Statement pursuant to Section 2.12, and to transact matters of litigation or arbitration in connection with this Agreement or the Escrow Agreement; the power to do or refrain from doing all such further acts and things on behalf of the Merger Consideration Recipients that the Seller Representative deems necessary or appropriate in its sole discretion, acting together, and to execute all such documents as the Seller Representative shall deem necessary or appropriate, acting together, in connection therewith; and the power to receive service of process in connection with any claims (including but not limited to Claims) hereunder.

2.14.2 If Chris Day dies or otherwise becomes incapacitated and unable to serve as Seller Representative, his successor shall be appointed by a majority in interest of the Shareholders.

2.14.3 The Seller Representative shall act for the Merger Consideration Recipients hereunder in the manner the Seller Representative believes to be in the best interest of the Merger Consideration Recipients and consistent with their obligations hereunder, but shall have no duties or obligations except as specifically set forth herein. In acting as representative of the Merger Consideration Recipients, the Seller Representative may rely upon, and shall be protected in acting or refraining from acting upon, an opinion or advice of counsel, certificate of auditors or other certificate, statement, instrument, opinion, report, notice, request, consent, order, arbitrator's award, appraisal, bond or other paper or documents reasonably believed by them to be genuine and to have been signed or presented by the proper party or parties. The Seller Representative shall not be personally liable to the Merger Consideration Recipients for any action taken, suffered or omitted by each of them in good faith and reasonably believed by each of them to be authorized or within the discretion of the rights or powers conferred upon them by this Section 2.14. The Seller

Representative may consult with counsel and any advice of such counsel shall be full and complete authorization and protection in respect to any action taken or suffered or omitted by each of them in such capacity in good faith and in accordance with such opinion of counsel. The Seller Representative may perform its duties as the Seller Representative either directly or by or through agents or attorneys, and the Seller Representative shall not be responsible to the Merger Consideration Recipients for any misconduct or negligence on the part of any agent or attorney appointed with due care by them hereunder, and shall not be liable for any action taken in the scope of the Seller Representative's authority hereunder unless such action is finally determined to have been grossly negligent or reckless. The Seller Representative may obtain reimbursement of out of pocket expenses incurred in good faith in the performance of Seller Representative's duties, out of any amounts to be paid to Shareholders from Escrow or as a result of the Earnout.

SECTION 2.15 Dissenting Shares.

Notwithstanding any provision of this Agreement to the contrary, any Seller Capital Stock issued and outstanding immediately before the Effective Time and held by a holder of Seller Capital Stock who has not voted in favor of the Merger or consented thereto in writing, or who has voted against the Merger, and who has delivered and perfected a written demand for payment of Seller Capital Stock in accordance with *Section 1300 et. seq.* of the Corporations Code, and, as of the Effective Time, has neither effectively withdrawn nor lost dissenters' rights in accordance with *Section 1300 et. seq.* of the Corporations Code ("Dissenting Shares"), shall not be converted into or represent a right to receive cash pursuant to Section 2.7 of this Agreement, but the holder shall be entitled only to the rights granted by the Corporations Code.

2.15.1 Notwithstanding the provisions of Sections 2.7.3(a) through 2.7.3(c), if any holder of Seller Capital Stock who effectively demands dissenters' rights with respect to Seller Capital Stock in accordance with the Corporations Code shall effectively withdraw or lose (through failure to perfect or otherwise) the right to payment as a dissenting shareholder, then as of the Effective Time or the occurrence of such event, whichever occurs later, (a) the holder's Seller Capital Stock shall automatically be converted into and represent only the right to receive cash as provided in Section 2.7, without interest, upon surrender of the certificate or certificates formerly representing the Seller Capital Stock or delivery of an Affidavit of Lost Certificate and (b) the holder shall be deemed to be a Merger Consideration Recipient for purposes of this Agreement and the Escrow Agreement.

2.15.2 Seller shall give Buyer (a) prompt notice of any written demands for payment of the fair value of any Seller Capital Stock, withdrawals of any demands and any other instruments served pursuant to *Section 1300 et. seq.* of the Corporations Code received by the Seller after the date of this Agreement and (b) the opportunity to direct all negotiations and proceedings with respect to demands for payment under the Corporations Code. Seller shall not voluntarily make any payment with respect to any demands for payment and shall not, except with the prior written consent of Buyer, settle or offer to settle any demands for payment.

SECTION 2.16 Subsequent Actions.

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

ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to Buyer and Merger Sub that, except as specifically set forth or clearly referenced in the Seller Disclosure Schedule provided to Buyer in a numbered paragraph that corresponds to the section for which disclosure is made:

SECTION 3.1 Organization and Good Standing.

Seller is a duly organized corporation under the laws of the State of California. Seller has all requisite corporate power and authority to own, operate and lease its properties and assets, to carry on its business as now conducted and as currently proposed to be conducted, and to enter into and perform its obligations under this Agreement and the other Transaction Documents to which Seller is a party, and to complete the transactions contemplated hereby and thereby. Seller is duly qualified and licensed as a foreign corporation to do business and is in good standing in each jurisdiction in which the character of Seller's properties occupied, owned or held under lease or the nature of the business conducted by Seller makes such qualification or licensing necessary, except where the failure to be so qualified or in good standing would not have a material adverse effect on the business, operations, assets, taken as a whole, liabilities (absolute, accrued, contingent or otherwise), taken as a whole, or condition (financial or other) or prospects of Seller (a "Seller Material Adverse Effect"). Seller has provided to Buyer copies of its Articles of Incorporation and Bylaws, with all amendments thereto, as currently in effect.

SECTION 3.2 Enforceability.

Seller has full corporate power and authority to execute, deliver and perform its obligations under this Agreement and each of the other Transaction Documents to which it is a party, subject only to obtaining Requisite Shareholder Vote. The execution, delivery and performance by Seller of this Agreement and the completion by Seller of the Merger and the other transactions contemplated hereby have been duly, validly and unanimously

authorized by the Board of Directors of Seller. The only Seller Shareholder approval or authorization required to approve this Agreement and effect the Merger is the approval of the holders of Seller Common Stock, the holders of Seller Series A Preferred Stock and the holders of Seller Series B Preferred Stock, voting together as a single class, on an as-converted basis, and each voting as a separate class, as required by the Corporations Code and Seller's Second Amended and Restated Articles of Incorporation ("Requisite Shareholder Vote").

This Agreement has been, and each of the other Transaction Documents to which Seller is a party at the Closing will have been, duly executed and delivered by Seller, and this Agreement is, and each of the other Transaction Documents to which Seller is a party will be at the Closing, a legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as to the effect, if any, of (a) applicable bankruptcy and other similar laws affecting the rights of creditors generally and (b) rules of law governing specific performance, injunctive relief and other equitable remedies.

SECTION 3.3 Capitalization.

3.3.1 Seller has authorized capital stock consisting of (a) 2,906,082 shares of Series A Preferred Stock, of which 2,906,082 shares are outstanding on the date of this Agreement, (b) 10,000,000 shares of Series B Preferred Stock, of which 7,732,596 shares are outstanding on the date of this Agreement, and 193,750 are reserved for issuance upon exercise of warrants to purchase shares of Series B Preferred Stock outstanding as set forth on Schedule 3.3.1 (c) 50,000,000 shares of Seller Common Stock, of which 4,091,805 shares are outstanding on the date of this Agreement, and (d) 2,142,500 shares are reserved for issuance pursuant to options, warrants and similar rights to purchase Seller Common Stock (of which 1,180,000 shares of Seller Common Stock are subject to outstanding options to purchase Seller Common Stock as set forth on Schedule 3.3.1). All of the outstanding shares of Seller Capital Stock are owned beneficially and of record by the Shareholders as set forth on Schedule 3.3.1. Such outstanding shares of Seller Capital Stock are duly authorized and validly issued, fully paid and nonassessable, and no shares were issued, and no options or warrants were granted, in violation of preemptive or similar rights of any shareholder or in violation of any applicable securities laws. True and correct copies of Seller's stock ownership records, showing all issuances and transfers of Seller Capital Stock and Options, since Seller's inception, have been provided to Buyer.

3.3.2 Except as specified in Section 3.3.1 or set forth on Schedule 3.3.1, there are no outstanding rights of first refusal or offer, preemptive rights, options, warrants, conversion rights or other agreements, either directly or indirectly, for the purchase or acquisition from Seller or any Shareholder of any Seller Common Stock, Seller Preferred Stock or other securities of, or equity interest in, Seller, or any securities convertible into or exchangeable for units of or other securities of, or equity interest in, Seller.

3.3.3 Seller is not a party or subject to any agreement or understanding and, to the knowledge of Seller, there is no agreement or understanding between any Persons that affects or relates to the voting or giving of written consents with respect to any securities of Seller or the voting for or by any director or shareholder of Seller. No shareholder of Seller

or any Affiliate thereof is indebted to Seller, and Seller is not indebted to any shareholder of Seller or any Affiliate thereof. Seller is not under any contractual or other obligation to register under the Securities Act, any of its presently outstanding securities or any of its securities that may hereafter be issued.

3.3.4 Seller has not granted any rights of refusal or co-sale rights covered by 3.3.3 with respect to the Seller Capital Stock. Except for the Articles of Incorporation and Bylaws, or any agreement set forth on Schedule 3.10, there is no agreement or understanding between or among Seller and the Shareholders that relate to Seller.

SECTION 3.4 Title to Shares.

Schedule 3.4 sets forth the following information regarding each holder of shares of Seller Capital Stock and/or options, warrants or other rights to purchase Seller Capital Stock: (i) the number of shares of Seller Common Stock owned by the holder; (ii) the number and Series of Seller Preferred Stock owned by the holder (the shares listed pursuant to (i) and (ii) together, the "Shareholder Shares"); (iii) all options to purchase shares of Seller Capital Stock, including the date of grant, number and type of shares subject to the option, vesting schedule and exercise price of the options; and (iv) all warrants to purchase shares of Seller Capital Stock, including the date of grant, number and type of shares subject to the warrants, vesting schedule and exercise price of the warrants (the securities listed pursuant to (i), (ii), (iii) and (iv) collectively, the "Seller Securities"). Each Merger Consideration Recipient owns the Seller Securities reflected on Schedule 3.4 as owned by the Merger Consideration Recipient beneficially and of record, and to Seller's knowledge, free and clear of all pledges, security interests, liens, charges, encumbrances, equities, claims, options, or limitations, including limitations affecting the Merger Consideration Recipient's ability to vote the Shareholder Shares. To Seller's knowledge, no Shareholder has granted any right of first refusal or offer, co-sale right, tag-along right, drag-along right, registration right or other similar right with respect to the Shareholder Shares.

SECTION 3.5 Subsidiaries and Affiliates.

Seller does not own or control, and has not in the past owned or controlled, directly or indirectly, any Person. Seller does not own, directly or indirectly, any ownership, equity, or voting interest in, any Person.

SECTION 3.6 No Approvals; No Conflicts.

The execution, delivery and performance by Seller of this Agreement and the other Transaction Documents to which Seller is a party and the completion of the transactions contemplated hereby and thereby, the completion of the Merger and the performance by Seller of its obligations pursuant to this Agreement and the other Transaction Documents to which any of them is a party, will not (a) constitute a violation (with or without the giving of notice or lapse of time, or both) of any provision of Applicable Law, (b) require any consent, approval or authorization of, or declaration, filing or registration with, any Person, except for (i) obtaining Requisite Shareholder Vote and the filing with the California Secretary of State of the Agreement of Merger, (ii) compliance with applicable securities

laws, and (iii) the filing with the California Secretary of State of all documents necessary to complete the Merger, (c) result in a default (with or without the giving of notice or lapse of time, or both) under, or modification, acceleration or termination of, or the creation in any party of the right to accelerate, terminate, modify or cancel, any Contract or other restriction, encumbrance, obligation or liability to which Seller is a party or by which it is bound or to which any assets of Seller are subject, (d) result in the creation of any Encumbrance upon any assets of Seller or, to Seller's knowledge, upon any outstanding shares or other securities of Seller, (e) conflict with or result in a breach of or constitute a default under any provision of the Articles of Incorporation or Bylaws of Seller, or (f) invalidate or adversely affect any permit, license or authorization of Seller material to the conduct of the business of Seller.

SECTION 3.7 Financial Statements; Net Liabilities.

3.7.1 Financial Statements. Schedule 3.7.1 contains (a) audited balance sheets, statements of income and expense, statements of cash flows and statements of shareholders' equity of Seller as of and for the fiscal years ended December 31, 2008, December 31, 2007 and December 31, 2006, and accompanying notes and (b) unaudited balance sheet of Seller as of June 30, 2009 (the "Balance Sheet") and an unaudited statement of income and expense, statement of cash flows and statement of shareholders' equity of Seller for the quarter and the six-month period ended June 30, 2009 (the "Statement Date"). All the foregoing financial statements are herein referred to as the "Financial Statements." The Financial Statements have been prepared in conformity with GAAP, and fairly present the financial position, results of operations and changes in financial position of Seller as of the dates and for the periods indicated (subject, in the case of unaudited quarterly statements, to the absence of footnotes and to normal year-end audit adjustments, none of which has been or will be, individually or in the aggregate, material to Seller). The Financial Statements have been and will be prepared from and are in accordance with the accounting records of Seller. Seller has delivered to Buyer copies of all letters from Seller's auditors to Seller's board of directors or the audit committee thereof during the 36 months preceding the execution of this Agreement, together with copies of all responses thereto.

Seller has no material liabilities or obligations of any nature (whether known or unknown and whether absolute, accrued, contingent or otherwise) that are not fully reflected or reserved against in the Balance Sheet, except liabilities or obligations incurred since the date of the Balance Sheet in the ordinary course of business and consistent with past practice (none of which include the incurrence of debt). Seller maintains and will continue to maintain until Closing standard systems of accounting established and administered in accordance with GAAP. Seller is not a guarantor, indemnitor, surety or other obligor of any indebtedness of any other Person. Schedule 3.7.1 sets forth, and Seller has provided to Buyer, a list of all promissory notes, loans, lines of credits or similar obligations pursuant to which Seller is an obligor, together with all the amounts owed by Seller under such obligations, as of the Closing Date, and all liabilities under equipment leases of Seller.

3.7.2 Projections. The financial projections set forth on Schedule 3.7.2 (the "Projections") have been prepared in good faith and are based on assumptions believed to

be reasonable, it being understood that the actual results during the period or periods covered by the Projections may differ from the projected results and such differences may be material.

SECTION 3.8 Absence of Certain Changes or Events.

Except for transactions specifically contemplated in this Agreement, since the Statement Date, neither Seller nor any of its officers, directors, managers or members in their representative capacities on behalf of Seller have:

- (a) taken any action or entered into or agreed to enter into any transaction, agreement or commitment other than in the ordinary course of business and consistent with past practice;
- (b) forgiven or canceled any indebtedness or waived any claims or rights of material value (including, without limitation, any indebtedness owing by any shareholder, officer, director, employee or affiliate of Seller);
- (c) granted or agreed to any increase in the compensation of directors, officers, employees or consultants (including any such increase pursuant to any employment agreement or bonus, pension, profit-sharing, lease payment or other plan or commitment);
- (d) suffered any change that has resulted or could be reasonably expected to result in a Seller Material Adverse Effect;
- (e) borrowed or agreed to borrow any funds, incurred or become subject to, whether directly or by way of assumption or guarantee or otherwise, any obligations or liabilities (absolute, accrued, contingent or otherwise, but excluding trade payables in amounts and on terms consistent with past practice) in excess of \$10,000 individually or \$25,000 in the aggregate, or increased, or experienced any change in any assumptions underlying or methods of calculating, any bad debt, contingency or other reserves;
- (f) paid, discharged or satisfied any material claims, liabilities or obligations (absolute, accrued, contingent or otherwise) other than the payment, discharge or satisfaction in the ordinary course of business and consistent with past practice of claims, liabilities and obligations reflected or reserved against in the Financial Statements or incurred in the ordinary course of business and consistent with past practice since the date of the Balance Sheet, or prepaid any obligation having a fixed maturity of more than 90 days from the date such obligation was issued or incurred;
- (g) permitted or allowed any of its property or assets (real, personal or mixed, tangible or intangible) to be subjected to any mortgage, pledge, lien, security interest, encumbrance, restriction or charge;
- (h) written off as uncollectible any notes or accounts receivable, or revalued any assets, including writing down the value of inventory;

(i) purchased or sold, transferred or otherwise disposed of any of its material properties or assets (real, personal or mixed, tangible or intangible), except inventory in the ordinary course of business;

(j) disposed of or permitted to lapse any rights to the use of any trademark, trade name, patent or copyright, or disposed of or disclosed to any Person without obtaining an appropriate confidentiality agreement from any such Person any trade secret, formula, process or know-how not theretofore a matter of public knowledge;

(k) except as set forth on Schedule 3.8(k), made any single capital expenditure or commitment in excess of \$10,000 for additions to property, plant, equipment or intangible capital assets or made aggregate capital expenditures in excess of \$25,000 for additions to property, plant, equipment or intangible capital assets;

(l) made any change in accounting methods or practices or internal control procedure;

(m) issued any shares of capital stock or other securities, or declared, paid or set aside for payment any dividend or other distribution in respect of its securities, or redeemed, purchased or otherwise acquired, directly or indirectly, any shares or other securities of Seller, or otherwise permitted the withdrawal by any of the holders of Seller Capital Stock of any cash or other assets (real, personal or mixed, tangible or intangible), in any form;

(n) paid, loaned or advanced any amount to, or sold, transferred or leased any properties or assets (real, personal or mixed, tangible or intangible) to any of Seller's shareholders, officers, directors or employees or any Affiliate of any of Seller's shareholders, officers, directors or employees, except compensation paid to directors, officers and employees at rates not exceeding the rates of compensation paid during the fiscal year last ended and except for advances for travel and other business-related expenses;

(o) received any communications (written or oral) from any customer of Seller which purchased \$25,000 or more of products from Seller in the year ended December 31, 2008 or December 31, 2007, that such customer intends to terminate or materially reduce its purchases from Seller; or

(p) agreed, whether in writing or otherwise, to take any action described in this Section 3.8.

SECTION 3.9 Taxes.

3.9.1 Seller has (i) properly completed and timely filed (taking into account extensions granted without penalty and, in the case of any extensions still in effect, described in Schedule 3.9.1) all Tax Returns required to be filed by it on or before the Closing Date, and (ii) paid all Taxes due and payable with respect to it (whether or not reflected on any Tax Return), or where payment is not yet due, has provided a full accrual in the Financial Statements for all Taxes due with respect to any period ending on or before

the Closing Date, whether such Taxes are disputed or not. Seller has no liability for unpaid Taxes accruing after the Statement Date other than unpaid Taxes arising in the ordinary course of business. All Taxes that Seller has been required by law to withhold or to collect for payment have been duly withheld and collected, and have been paid over to the appropriate Tax Authority in compliance with all applicable legal requirements. There is (i) no claim for Taxes that is a lien against the property of Seller or is being asserted against seller other than liens for Taxes not yet delinquent, (ii) no audit of any Tax Return of Seller is currently being conducted by a Tax Authority and (iii) no extension of the statute of limitations on the assessment or payment of any Taxes granted by Seller and currently in effect. Seller is not and will not be required to include any adjustment in taxable income for any Tax period pursuant to Section 481 or 263A of the Code or any comparable provision of state, local or foreign Tax laws as a result of transactions or events occurring, or accounting methods employed, prior to the date of this Agreement. There has not been an audit of any Tax Return filed by Seller. Seller is not a party to any agreement, contract, arrangement or Employee Benefit Plan, including, without limitation, this Agreement, that could reasonably be expected to result individually or in the aggregate in the payment of any "excess parachute payment" within the meaning of Section 280G of the Code. Seller is not a party to any Tax sharing or Tax allocation agreement and Seller does not have any liability or potential liability to another party under any such agreement. Seller has never been a member of a consolidated, combined or unitary group of which Seller was not the ultimate parent corporation. Seller is not a "United States real property holding corporation" within the meaning of Section 897 of the Code.

3.9.2 Schedule 3.9.2 lists all agreements, programs or other arrangements whereby Seller receives economic incentives, Tax abatements or other Tax or economic benefits from any Governmental Entity. The execution, delivery, and performance by the Seller of this Agreement and the Transaction Documents, and the completion of the Merger, will not result in the loss or impairment of, or give rise to any right of any Governmental Entity to terminate or alter, any of such incentives, abatements, or other benefits.

3.9.3 There is no dispute or claim concerning any Tax liability of Seller either (i) claimed or raised by any authority in writing or (ii) as to which any of the directors and officers (and employees responsible for Tax matters) of Seller have knowledge based on contact or correspondence with any agent of such authority. Schedule 3.9.3 lists all Tax Returns filed with respect to Seller for taxable periods ended on or after Seller's inception that have been audited, and indicates those Tax Returns that currently are the subject of audit. Seller has delivered to Buyer correct and complete copies of all Tax Returns, examination reports and statements of deficiencies assessed against or agreed to by Seller since Seller's inception. There is no action, suit, proceeding, investigation or audit now pending against, or with respect to, Seller in respect of any Tax assessment.

3.9.4 Seller has not made any payment or payments, is not obligated to make any payment or payments nor is a party to (or a participating employer in) any agreement or Employee Benefit Plan that could obligate Seller, the Surviving Corporation or Buyer to make any payment or payments that will not be deductible under 162 or 404 of the Code (or any similar provision of state, local or foreign law).

3.9.5 There is no deferred revenue, prepaid amount or other taxable income of Seller that will be reportable in the taxable period beginning after the Closing Date that is attributable to a transaction or event that occurred prior to the Closing.

3.9.6 Seller is not a party to any joint venture, partnership, other arrangement or Contract which could be treated as a partnership for federal income Tax purposes.

3.9.7 Seller has not engaged or participated in any listed or reportable transactions (as defined under Section 6707A(c) of the Code).

3.9.8 Seller does not owe taxes in any jurisdiction other than jurisdictions for which Tax Returns have been duly and properly filed by Seller.

3.9.9 No Shareholder holds shares of stock of Seller that are non-transferable and subject to a substantial risk of forfeiture within the meaning of Section 83 of the Code with respect to which a valid election under Section 83(b) of the Code has not been made.

3.9.10 There is no limitation on the utilization of any tax attributes of Seller under Sections 382, 383, 384 of the Code (or any comparable provisions of state, local or foreign law), other than any such limitation arising as a result of the transactions contemplated by this Agreement.

For purposes of this Agreement, the following terms have the following meanings: "Tax" (and, with correlative meaning, "Taxes" and "Taxable") means (i) any net income, alternative or add-on minimum tax, gross income, gross receipts, sales, use, ad valorem, transfer, franchise, profits, license, withholding, payroll, employment, excise, severance, stamp, occupation, premium, property, environmental or windfall profit tax, custom, duty or other tax of any nature whatsoever, together with any interest, penalty, or other additional amount imposed by any governmental entity responsible for the imposition of any such tax (domestic or foreign) ("Tax Authority"), (ii) any liability for the payment of any amounts of the type described in (i) as a result of being a member of an affiliated, consolidated, combined or unitary group for any Taxable period, and (iii) any liability for the payment of any amounts of the type described in (i) or (ii) as a result of being a transferee of or successor to any person or as a result of any express or implied obligation to indemnify any other person. "Tax Return" means any return, statement, report or form filed or required to be filed with respect to Taxes.

SECTION 3.10 Contracts.

Set forth on Schedule 3.10 are, as of the date of this Agreement, all of the following contracts entered into by Seller or by which Seller is bound (collectively, the "Material Contracts"):

- (i) any Employment Agreement;
- (ii) any collective bargaining agreement, labor union contract, trade union agreement or foreign works council contract;

- (iii) leases or subleases, either as lessee or sublessee, lessor or sublessor, of personal property, where the lease or sublease provides for an annual rate in excess of \$10,000 or has an unexpired term as of the Closing Date in excess of one year;
- (iv) leases or subleases for the Leased Real Property;
- (v) agreements with the 25 largest clients of Seller, as measured by the fees billed to such clients for the fiscal year ended June 30, 2009;
- (vi) agreements with the 10 largest suppliers of Seller, as measured by payments made to such suppliers for the fiscal year ended June 30, 2009;
- (vii) any other agreements that provide for the receipt or expenditure of more than \$500,000 in any single year, except agreements for the purchase or sale of goods or services by Seller in the ordinary course of business;
- (viii) agreements restricting in any manner Seller's right to compete with any other Person, or restricting Seller's right to provide services to or receive services from any other Person;
- (ix) contracts for the purchase or sale of substantially all of the assets of a business or capital stock, or for any merger, acquisition or disposition of a business, in each case where there are continuing obligations of Seller;
- (x) partnership or joint venture contracts or arrangements;
- (xi) agreements entered into by Seller with any Key Employee (other than Material Employment Agreements);
- (xii) agreements involving rebates, refunds, volume bonuses, discounts or other credit, individually in excess of \$25,000, in favor of any party to such agreement;
- (xiii) agreements relating to research and development (other than website development) for consideration paid or received in excess of \$10,000;
- (xiv) agreements relating to Debt, other than intercompany Debt; and
- (xv) material agreements which, following the Closing, would purport to apply to Buyer or any of its Affiliates.

Seller has made available to Buyer true and complete copies of all of the Material Contracts. With respect to the Material Contracts: (i) each such contract is valid, binding and enforceable in accordance with its terms against Seller and, to the Seller's knowledge, each other party thereto; (ii) Seller is not in material default under or in violation of any provision of any of such contracts; (iii) Seller has not received notice of alleged material nonperformance or other noncompliance with respect to its obligations under any of such contracts (which alleged nonperformance or other noncompliance is currently unresolved), nor any notice that is currently unresolved that any of such contracts may be totally or

partially terminated or suspended by any other party thereto; and (iv) to the Seller's knowledge, no other party to any such contracts is in material breach or noncompliance with its obligations under such contracts. This Section 3.10 does not include any representation or warranty as to Intellectual Property contracts which are addressed solely in Section 3.18.

SECTION 3.11 Customers and Suppliers.

Schedule 3.11 sets forth: (a) a complete and accurate list of the top fifteen customers of Seller in the twelve-month period ended June 30, 2009, showing the approximate total revenues from each such customer during the fiscal year last ended and the period ended June 30, 2009, and (b) a complete and accurate list of the top fifteen suppliers of Seller in the twelve-month period ended June 30, 2009, showing the approximate total expenses paid to each such supplier during the fiscal year last ended and the period ended June 30, 2009. Seller has not received any notice or indication from any customers or supplier listed on Schedule 3.11 that could cause it to expect any material adverse modification to its relationship with any of its customers or suppliers. Seller does not have an exclusive supply Contract or relationship with any Person, and holds all rights of whatever kind necessary to change suppliers at any time in its discretion.

SECTION 3.12 Warranties and Returns.

3.12.1 Warranties and Returns. Schedule 3.12.1 sets forth Seller's warranties currently made with respect to its business and products, and current policies with respect to returns of products in the course of Seller's conduct of the business. Claims against Seller for warranty costs (individually or in the aggregate) with respect to products and services during each of the last three fiscal years did not exceed \$50,000, and there are no outstanding or threatened claims for any such warranty costs that would exceed \$10,000 (individually or in the aggregate). During the three year period prior to the date hereof, none of the products sold by Seller has been rejected by customers in any quantities in excess of \$10,000 individually or to Seller's knowledge, has been the subject of any products liability claims or litigation or products warranty litigation against any other party. To Seller's knowledge, no product sold by Seller is currently returnable by reason of alleged overshipments, defectiveness, missed delivery dates or incorrect quantities. As used above, the term "warranty costs" shall mean costs and expenses associated with correcting, returning or replacing defective or allegedly defective products or services, whether such costs and expenses arise out of claims sounding in warranty, contract, tort or otherwise.

Within the past three fiscal years, Seller has not had any liability (and to the knowledge of Seller, there is no reasonable basis for any action, lawsuit, proceeding, hearing, investigation, charge, complaint, claim, or demand against Seller giving rise to any liability) arising out of any injury to individuals or property as a result of the ownership, possession, or use of any product manufactured, sold or delivered by Seller. No product manufactured, sold, or delivered by Seller or any component thereof, is or has been the subject of any product recall, service bulletin, or similar product corrective action of Seller or, to Seller's knowledge, any other party, in connection with any actual, alleged or potential product safety defect.

SECTION 3.13 Claims and Legal Proceedings.

There are no claims, actions, suits, arbitrations, investigations or Proceedings pending or threatened against Seller or to Seller's Knowledge involving Seller, or pending, threatened or involving any of Seller's employees, officers, managers or directors that relate to Seller or its business operations, or which questions the validity of this Agreement or the right of Seller to enter into this Agreement or to complete the transactions contemplated hereby, before or by any Governmental Entity or nongovernmental department, commission, board, bureau, agency or instrumentality, or any other Person. To Seller's Knowledge, there is no valid basis for any such claim, action, suit, arbitration, proceeding or investigation before or by any Person. There are no outstanding or unsatisfied judgments, orders, decrees or stipulations to which Seller is a party. Schedule 3.13 sets forth a written description of any disputes that have been settled or resolved by litigation or arbitration since Seller's inception.

SECTION 3.14 Labor and Employment Matters.

3.14.1 Compliance with Laws. There are no labor disputes, disciplinary actions, unfair labor practice proceedings or labor or employment arbitrations pending or threatened against Seller. Seller has complied in all material respects with all Applicable Laws relating to employment and employment practices, terms and conditions of employment, wages and hours. Seller is not engaged in any unfair labor practice and has no liability for any arrears of wages or Taxes or penalties for failure to comply with any such provisions of law.

3.14.2 Labor Disputes; Collective Bargaining. There is no labor strike, dispute, slowdown or stoppage pending or threatened against Seller, and Seller has not experienced any work stoppage, unfair labor practice or other labor difficulty since its inception. No collective bargaining agreement is binding on Seller. Seller has no knowledge of any organizational efforts presently being made or threatened by or on behalf of any labor union with respect to employees of Seller.

3.14.3 Noncompetition, Nonsolicitation and Proprietary Information. Each current and former employee, officer and consultant of Seller has executed a proprietary information and inventions assignment agreement in the form attached to Schedule 3.14.3. To the knowledge of Seller, no employee (or person performing similar functions) of Seller is in violation of any such agreement or any employment agreement, noncompetition agreement, nonsolicitation agreement, patent disclosure agreement, invention assignment agreement, proprietary information agreement or other contract or agreement relating to the relationship of such employee with Seller or any other party.

SECTION 3.15 Personnel.

Schedule 3.15 contains a written report listing (a) the names and current compensation amounts of all directors and officers of Seller; (b) the names and wage rates for nonsalaried and nonofficer salaried employees of Seller by classification; (c) the names and current compensation packages of all independent contractors and consultants of Seller; and (d) the family relationships, if any, of which the Seller is aware, among such personnel.

Seller is not in default with respect to any of its obligations referred to in clauses (a) or (b) above and has no, and will not incur any, material obligation or liability for severance or back pay owed through or by virtue of the transactions contemplated hereby. All employees of Seller are employed on an "at will" basis, and are eligible to work and are lawfully employed in the United States. No current employees of Seller reside outside of the United States, and no former employees of Seller resided outside of the United States while employed by Seller.

SECTION 3.16 Employee Arrangements and Plans.

3.16.1 Employee Benefit Plans. Schedule 3.16.1 contains a complete and accurate list and description of all Employee Benefit Plans. Seller has provided to Buyer true, correct and complete copies (or, in the case of unwritten Employee Benefit Plans, descriptions) of all Employee Benefit Plans (and all amendments thereto), along with, to the extent applicable to the particular Employee Benefit Plan, copies of the following: (i) all summary plan descriptions, summaries of modifications and employee manuals and communications filed or distributed with respect to such Employee Benefit Plan; (ii) all contracts and agreements (and any amendments thereto) relating to such Employee Benefit Plan, including, without limitation, all trust agreements, investment management agreements, annuity contracts, insurance contracts, bonds, indemnification agreements and service provider agreements; (iii) the most recent determination letter issued by the IRS with respect to such Employee Benefit Plan, if any; (iv) all written communications relating to the amendment, creation or termination of such Employee Benefit Plan, or an increase or decrease in benefits, acceleration of payments or vesting or other events that could result in liability to Seller; (v) all correspondence to or from any governmental entity or agency relating to such Employee Benefit Plan; (vi) all COBRA and HIPAA forms and notices currently in use; and (vii) all coverage and nondiscrimination tests performed with respect to such Employee Benefit Plan.

3.16.2 No Changes. Seller does not have any agreement, arrangement, commitment or obligation, whether formal or informal, whether written or unwritten and whether legally binding or not, to create, enter into or contribute to any additional employee benefit plan, fund, policy, program, contract, arrangement or payroll practice, or to modify or amend any existing Employee Benefit Plan. There has been no amendment, interpretation or other announcement or communication (written or oral) by Seller or any other Person relating to, or change in participation or coverage under, any Employee Benefit Plan that, either alone or together with other such occurrences or events (other than changes in the number of participants), could increase the expense of maintaining the Employee Benefit Plans above the level of expense incurred with respect thereto for the most recent nine months included in the Financial Statements. The terms of each Employee Benefit Plan permit Seller to amend or terminate such Employee Benefit Plan at any time and for any reason without penalty or liability or expense. None of the rights of Seller under any Employee Benefit Plan will be impaired in any way by this Agreement or completion of the transactions contemplated by this Agreement.

3.16.3 Compliance. With respect to each Employee Benefit Plan: (a) such Employee Benefit Plan is, and at all times since inception has been, maintained,

administered and funded in all respects in accordance with its terms and in compliance with all applicable requirements of all Applicable Laws; (b) Seller and each other Person have, at all times, properly performed all of their duties and obligations (whether arising by operation of law, by contract or otherwise) under or with respect to such Employee Benefit Plan; (c) no transaction or event has occurred or is threatened or about to occur (including any of the transactions contemplated in or by this Agreement) that constitutes or could constitute a prohibited transaction under Section 406 or 407 of ERISA or under Section 4975 of the Code for which an exemption is not available; and (d) Seller has not incurred, and there exists no condition or set of circumstances in connection with which Seller, Buyer or their respective Affiliates could incur, any material liability or expense (except for routine contributions and benefit payments) under Applicable Laws, or pursuant to any indemnification or similar agreement, with respect to such Employee Benefit Plan.

3.16.4 Pension Plans and Multiple Employer Welfare Arrangements. Each Employee Benefit Plan that is intended to be qualified under Section 401(a) of the Code is so qualified and its related trust or group annuity contract is exempt from taxation under Section 501(a) of the Code. Each such Employee Benefit Plan (i) is the subject of an unrevoked favorable determination letter from the IRS with respect to such Employee Benefit Plan's qualified status under the Code, as amended through that legislation commonly referred to as "EGTRRA" and all subsequent legislation, (ii) has remaining a period of time under the Code or applicable Treasury regulations or IRS pronouncements in which to request, and make any amendments necessary to obtain, such a letter from the IRS. Nothing has occurred, or is reasonably expected by the Seller to occur, that could adversely affect the qualification or exemption of any such Employee Benefit Plan or its related trust or group annuity contract. Except as set forth on Schedule 3.16.4, Seller does not sponsor, maintain or contribute to, and has never sponsored, maintained or contributed to (or been obligated to sponsor, maintain or contribute to), (a) a "multiemployer plan," as defined in Section 3(37) or 4001(a)(3) of ERISA or Section 414(f) of the Code, (b) a multiple employer plan within the meaning of Section 4063 or 4064 of ERISA or Section 413(c) of the Code, (c) an employee benefit plan that is subject to Section 302 of ERISA, Title IV of ERISA or Section 412 of the Code, or (d) a "multiple employer welfare arrangement," as defined in Section 3(40) of ERISA.

3.16.5 Seller Contributions. All contributions, premiums and other payments due or required to be paid to (or with respect to) each Employee Benefit Plan have been timely paid, or, if not yet due, have been fully reserved for, and specifically identified in, the Financial Statements. All income and wage taxes that are required by law to be withheld from compensation or benefits derived under any Employee Benefit Plan have been properly withheld and remitted to the proper depository.

3.16.6 Group Membership. Seller is not, and has never been, a member of (i) a controlled group of corporations, within the meaning of Section 414(b) of the Code, (ii) a group of trades or businesses under common control, within the meaning of Section 414(c) of the Code, (iii) an affiliated service group, within the meaning of Section 414(m) of the Code, or (iv) any other group of Persons treated as a single employer under Section 414(o) of the Code.

3.16.7 Post-termination Benefits. Neither Seller nor any Employee Benefit Plan provides or has any obligation to provide (or contribute toward the cost of) post-employment or post-termination benefits of any kind, including, without limitation, death and medical benefits, with respect to any current or former officer, employee, agent, director or independent contractor of Seller. Seller has no liability with respect to any Employee Benefit Plan that is funded wholly or partly through an insurance policy or contract (including, without limitation, a stop-loss policy), in the nature of a retroactive rate adjustment, a loss sharing arrangement or any other actual or contingent liability arising from any event occurring on or before the Effective Time.

3.16.8 Claims and Proceedings. There are no actions, suits or claims (other than routine claims for benefits) pending or, to the knowledge of Seller or any Seller, threatened with respect to (or against the assets of) any Employee Benefit Plan, nor is there a basis for any such action, suit or claim. No Employee Benefit Plan is currently under investigation, audit or review, directly or indirectly, by the IRS, the DOL or any other governmental entity or agency, and, to the knowledge of Seller, no such action is contemplated or under consideration by the IRS, the DOL or any other governmental entity or agency.

3.16.9 Nonqualified Deferred Compensation Plans. Schedule 3.16.9 lists all "nonqualified deferred compensation plans" (within the meaning of Section 409A of the Code) sponsored, maintained, administered or funded by Seller (or to which Seller is (or was) a party or in which any of its current or former directors, employees or independent contractors participated). Each such plan has been designed and administered since January 1, 2005 in compliance with the applicable requirements of Section 409A of the Code, including the document requirements effective January 1, 2009. No such plan intended to be grandfathered from the requirements of Section 409A of the Code has been "materially modified" (within the meaning of Treasury Regulation Section 1.409A-6(a)(4)) at any time after October 3, 2004.

3.16.10 Effect of the Transaction. Neither the execution and delivery of this Agreement nor the completion of the transactions contemplated in (or by) this Agreement (either alone or together with any other transaction or event) will (i) entitle any individual to severance pay, unemployment compensation or any other payment from Seller, Buyer, any of their Affiliates or any Employee Benefit Plan, (ii) increase the amount of compensation due to any individual, (iii) result in any benefit or right becoming established or increased, or accelerate the time of payment or vesting of any benefit, under any Employee Benefit Plan, or (iv) require Seller, Buyer or any of their Affiliates to transfer or set aside any assets to fund or otherwise provide for any benefits for any individual.

3.16.11 Independent Contractors; Leased Employees. Seller has not received services from (i) any individual whom Seller treated as an independent contractor, but who should have been treated as a common-law employee by Seller for purposes of tax withholding and reporting, participating in any Employee Benefit Plan, or otherwise, or (ii) any individual who constituted a leased employee of Seller under Section 414(n) of the Code.

SECTION 3.17 Property.

3.17.1 Real Property. Seller does not own, and has never owned, any real property. Schedule 3.17.1 contains true and complete copies of all written Contracts, including leases, subleases, rental agreements, contracts of sale, tenancies or licenses, relating to all real property leased or currently being, or contemplated to be, used by Seller (the "Real Property"), including any amendments thereto, and written summaries of the terms of any oral Contracts, including leases, subleases, rental agreements, contracts of sale, tenancies or licenses to which the Real Property is subject.

3.17.2 Personal Property. Schedule 3.17.2 contains a complete and accurate list of each item of personal property (other than inventory held for sale) having a value in excess of \$10,000 that is owned, leased, rented or used by Seller (the "Personal Property"); provided that such list need not describe the Intellectual Property rights. Seller has delivered to Buyer true and complete copies of all Contracts, including leases, subleases, rental agreements, contracts of sale, tenancies or licenses to which the Personal Property is subject.

3.17.3 Property Used in the Conduct of Seller's Business. The Real Property and the Personal Property include all property used in Seller's business and all property necessary to conduct the business of Seller as now conducted and as currently proposed to be conducted (other than the Intellectual Property rights). Seller's offices and other facilities and its Personal Property used in the business are of a quality consistent with industry standards, are in good operating condition and repair, normal wear and tear excepted, are adequate for the uses to which they are being put, and comply in all material respects with all applicable safety and other laws and regulations.

3.17.4 Real Property Leases. Seller's leasehold interest in each parcel of the Real Property is free and clear of all Encumbrances. Each lease of any portion of the Real Property is valid, binding and enforceable in accordance with its terms against the parties thereto and against any other Person with an interest in such Real Property, Seller has performed in all material respects all obligations imposed on it thereunder, and neither Seller nor, to the knowledge of Seller, any other party thereto is in default thereunder, nor is there any event that with notice or lapse of time, or both, would constitute a default thereunder by Seller or, to the knowledge of Seller, by any other party. Seller has not granted any lease, sublease, tenancy or license of, or entered into any rental agreement or contract of sale with respect to, any portion of the Real Property. There are no unsatisfied capital expenditure requirements or remodeling obligations of Seller with respect to any Real Property lease other than ordinary maintenance and repair obligations. No counterparty to any Real Property lease is an Affiliate of, or has any economic interest in, Seller.

3.17.5 Personal Property Interests. Except as set forth on Schedule 3.17.5, the Personal Property is free and clear of all Encumbrances, and, other than leased Personal Property that is so noted on the list supplied pursuant to Section 3.17.2, Seller owns such Personal Property. Each lease, license, rental agreement, contract of sale or other agreement to which the Personal Property is subject is valid, binding and enforceable in accordance

with its terms against Seller and to Seller's knowledge, the other parties thereto, Seller has performed in all material respects all obligations imposed on it thereunder, and neither Seller nor, to the knowledge of Seller, any other party thereto is in default thereunder, nor is there any event that with notice or lapse of time, or both, would constitute a default by Seller or, to the knowledge of Seller, any other party thereunder. Seller has not granted any lease, sublease, tenancy or license of any portion of the Personal Property.

SECTION 3.18 Intellectual Property.

3.18.1 Schedule 3.18.1 lists all Seller Registrations, in each case enumerating specifically the applicable filing or registration number, title, jurisdiction in which filing was made or from which registration issued, date of filing or issuance, names of all current applicant(s) and registered owners(s), as applicable. All assignments of Seller Registrations to Seller have been properly executed and recorded. All Seller Registrations are valid and enforceable and all issuance, renewal, maintenance and other payments that are or have become due with respect thereto have been timely paid by or on behalf of Seller.

3.18.2 There are no inventorship challenges, opposition or nullity proceedings or interferences declared, commenced or threatened with respect to any Patent Rights included in the Seller Registrations. Seller has complied with its duty of candor and disclosure to the United States Patent and Trademark Office and any relevant foreign patent office with respect to all patent and trademark applications filed by or on behalf of Seller and has made no material misrepresentation in such applications. Seller has no knowledge of any information that would preclude Seller from having clear title to the Seller Registrations or affecting the patentability or enforceability of any Seller Registrations.

3.18.3 Each item of Seller Intellectual Property will be owned or available for Exploitation by Surviving Corporation immediately following the Closing on substantially identical terms and conditions as it was immediately prior to the Closing. Seller is the sole and exclusive owner of all Seller Owned Intellectual Property, free and clear of any Liens. All joint owners of the Seller Owned Intellectual Property are listed in Schedule 3.18.3. The Seller Intellectual Property constitutes all Intellectual Property necessary: (i) to operate Seller's business in the manner so done currently and contemplated to be done in the future by Seller; (ii) to Exploit the Customer Offerings as they are currently Exploited and contemplated to be Exploited in the future by Seller; (iii) to Exploit the Internal Systems as they are currently Exploited and contemplated to be Exploited in the future by Seller; and (iv) otherwise to conduct Seller's business in all material respects in the manner currently conducted and contemplated to be conducted in the future by Seller.

3.18.4 Seller has taken reasonable measures to protect the proprietary nature of each item of Seller Owned Intellectual Property, and to maintain in confidence all trade secrets and confidential information comprising a part thereof. Each employee of Seller and each independent contractor of Seller has executed a valid agreement to keep confidential information of Seller in confidence and not to Exploit confidential information of Seller, except to perform services for Seller. To the knowledge of Seller, there has been no disclosure of confidential information or trade secrets of Seller except pursuant to an appropriate nondisclosure agreement, confidentiality agreement or contractual provision that restricts Exploitation and disclosure of

such information. To the knowledge of Seller, there has been no: (i) unauthorized disclosure of any material third party proprietary or confidential information in the possession, custody or control of Seller; or (ii) material breach of Seller's security procedures wherein confidential information has been disclosed to a third person.

3.18.5 None of the Seller Intellectual Property or Customer Offerings or the Exploitation thereof by Seller or by any reseller, distributor, customer or user thereof, or any other activity of Seller, infringes or violates, or constitutes a misappropriation of, any Intellectual Property rights of any Person. Seller's past, current or currently contemplated Exploitation of the Internal Systems does not to Seller's knowledge infringe or violate, or constitute a misappropriation of, any Intellectual Property rights of any Person. Schedule 3.18.5 lists any complaint, claim or notice, or threat of any of the foregoing (including any notification that a license under any patent is or may be required), received by Seller alleging any such infringement, violation or misappropriation and any request or demand for indemnification or defense received by Seller from any reseller, distributor, customer, user or any other third party; and Seller has provided to Buyer copies of all such complaints, claims, notices, requests, demands or threats, as well as any legal opinions, studies, market surveys and analyses relating to any alleged or potential infringement, violation or misappropriation. Seller has no obligation to pay any Person any past, current or future royalties or fees for the Exploitation or continued Exploitation of any Intellectual Property, and no obligation to pay royalties or other fees will arise from the consummation of the transactions contemplated by this Agreement.

3.18.6 To the knowledge of Seller, no person (including, without limitation, any current or former employee or consultant of Seller) is infringing, violating or misappropriating any of the Seller Owned Intellectual Property or any Seller Licensed Intellectual Property which is exclusively licensed to Seller. Except as set forth in Schedule 3.18.6, no claim has been made by Seller against any Person alleging any infringement, violation or misappropriation of any Seller Intellectual Property. Seller has provided to Buyer copies of all correspondence, analyses, legal opinions, complaints, claims, notices or threats concerning the infringement, violation or misappropriation of any Seller Owned Intellectual Property.

3.18.7 Schedule 3.18.7 identifies each license, covenant or other agreement pursuant to which Seller has assigned, transferred, licensed, distributed or otherwise granted any right or access to any person, or covenanted not to assert any right, with respect to any past, existing or future Seller Intellectual Property. Except as set forth in Schedule 3.18.7, Seller has not granted to any Person an exclusive license with respect to any Seller Intellectual Property. Seller has not agreed to indemnify any person against any infringement, violation or misappropriation of any Intellectual Property rights with respect to any Customer Offerings or any third-party Intellectual Property rights. Seller is not a member of or party to any patent pool, industry standards body, trade association or other organization pursuant to the rules of which it is obligated to license any existing or future Intellectual Property to any person. Seller is not a party to any settlement, covenant not to sue, consent, decree, stipulation, judgment or order which permits any Person to Exploit any Seller Intellectual Property.

3.18.8 Schedule 3.18.8 identifies: (i) each item of Seller Licensed Intellectual Property and the license or agreement pursuant to which the Seller Exploits it (excluding currently-available, off the shelf software programs that are part of the Customer Offerings or

Internal Systems and are licensed to Seller pursuant to "shrink wrap," "click wrap" or similar licenses, the total fees associated with which are less than \$25,000); and (ii) each agreement, contract, assignment or other instrument pursuant to which Seller has obtained any joint or sole ownership interest in or to each item of Seller Owned Intellectual Property. No third party inventions, methods, services, materials, processes or Software are included in or required to Exploit the Customer Offerings or Internal Systems other than pursuant to the license agreements listed in Schedule 3.18.8. None of the Customer Offerings or Internal Systems includes "shareware," "freeware" or other Software or other material that was obtained by Seller from third parties other than pursuant to the license agreements listed in Schedule 3.18.8.

3.18.9 Seller has not licensed, distributed or disclosed, and knows of no distribution or disclosure by others (including its employees and contractors) of, the Seller Source Code to any person. Seller has taken all reasonable physical and electronic security measures to prevent disclosure of such Seller Source Code. No event has occurred, and no circumstance or condition exists, that (with or without notice or lapse of time, or both) will, or would reasonably be expected to, nor will the completion of the transactions contemplated hereby, result in the disclosure or release of such Seller Source Code by Seller, any escrow agent(s) or any other person to any third party.

3.18.10 Except as set forth on Schedule 3.18.8, all of the Software and Documentation comprising, incorporated in or bundled with the Customer Offerings have been designed, authored, tested and debugged by regular employees of Seller within the scope of their employment or by independent contractors of Seller who have executed valid and binding agreements expressly assigning all right, title and interest in such copyrightable materials to Seller, waiving their non-assignable rights (including moral rights) in favor of Seller and its respective permitted assigns and licensees, and have no residual claim to such materials.

3.18.11 Schedule 3.18.11 lists all Open Source Materials that Seller has utilized in any way in the Exploitation of Customer Offerings or Internal Systems and describes the manner in which such Open Source Materials have been utilized, including, without limitation, whether and how the Open Source Materials have been modified and/or distributed by Seller. Seller has not: (i) incorporated Open Source Materials into, or combined Open Source Materials with, the Customer Offerings; (ii) distributed Open Source Materials in conjunction with any other software developed or distributed by Seller; or (iii) Exploited Open Source Materials that create, or purport to create, obligations for Seller with respect to the Customer Offerings or grant, or purport to grant, to any third party, any rights or immunities under Intellectual Property rights (including, but not limited to, using any Open Source Materials that require, as a condition of Exploitation of such Open Source Materials, that other Software incorporated into, derived from or distributed with such Open Source Materials be (A) disclosed or distributed in source code form, (B) licensed for the purpose of making derivative works, or (C) redistributable at no charge or minimal charge).

3.18.12 Each employee of Seller and each independent contractor of Seller has executed a valid and binding written agreement expressly assigning to Seller all right, title and interest in any inventions and works of authorship, whether or not patentable, invented, created, developed, conceived and/or reduced to practice during the term of such employee's employment

or such independent contractor's work for Seller, and all Intellectual Property rights therein, and has waived all moral rights therein to the extent legally permissible.

3.18.13 The Customer Offerings and, to Seller's knowledge, Internal Systems are free from significant defects in design, workmanship and materials and conform in all material respects to the written Documentation and specifications therefor. The Customer Offerings and, to Seller's knowledge, Internal Systems do not contain any disabling device, virus, worm, back door, Trojan horse or other disruptive or malicious code that may or are intended to impair their intended performance or otherwise permit unauthorized access to, hamper, delete or damage any computer system, software, network or data. Seller has not received any warranty claims, contractual terminations or requests for settlement or refund due to the failure of the Customer Offerings to meet their specifications or otherwise to satisfy end user needs or for harm or damage to any third party.

3.18.14 Seller has not sought, applied for nor received any support, funding, resources or assistance from any university, college, educational institution, research center or federal, state, local or foreign governmental or quasi-governmental agency or funding source in connection with the Exploitation of the Customer Offerings or Internal Systems or any facilities or equipment used in connection therewith.

3.18.15 Neither this Agreement nor the completion of the transactions contemplated by this Agreement will result in any of the following to the extent that the following would not have occurred in the absence of this Agreement or the completion of the transactions contemplated by this Agreement: (i) Buyer granting to any third party any right to any Intellectual Property owned by or licensed to Buyer; (ii) Buyer becoming bound by or made subject to any non-compete or other restriction on the operation or scope of its businesses; or (iii) Buyer being obligated to pay any royalties or other amounts to any third party in excess of those payable by Seller prior to the Closing.

3.18.16 The Seller has entered an agreement with an ICANN-sanctioned domain name registrar for the registration and Domain Name System sponsoring and administration of the second level domain names set forth in Schedule 3.18.16 ("Domain Names"). The domain name registration agreements provide for the registration of each Domain Name listed in the Disclosure Schedules until the date indicated in Schedule 3.18.16, and to Seller's knowledge no third party other than ICANN has rights in the Domain Names superior to the Seller and no Person has made any claims against or related to Seller's Domain Names.

3.18.17 Seller has at all times complied with all applicable Law, as well as its own rules, policies, and procedures, relating to privacy, data protection, and the collection and use of personal information collected, used, or held for use by Seller in the conduct of its business. No claims have been asserted or threatened against Seller alleging a violation of any Person's privacy or personal information or data rights and the completion of the transactions contemplated hereby will not breach or otherwise cause any violation of any Applicable Law or rule, policy, or procedure related to privacy, data protection, or the collection and use of personal information collected, used, or held for use by Seller in the conduct of its business. Seller takes reasonable measures to ensure that such information is protected against unauthorized access, use, modification, or other misuse.

3.18.18 Seller has actively policed the quality of all goods and services sold, distributed or marketed under each of its Trademarks and has enforced adequate quality control measures to ensure that no Trademarks that it has licensed to others will be deemed to be abandoned.

3.18.19 A true and complete list of all Customer Offerings and Internal Systems is set forth in Schedule 3.18.19.

SECTION 3.19 Accounts Receivable.

All accounts receivable of Seller reflected in the Balance Sheet or existing at the time of Closing (the "Accounts") represent amounts due for sales actually made in the ordinary course of business and properly reflect the amounts due. The bad debt reserves and allowances reflected in the Balance Sheet are adequate and established in accordance with GAAP, applied consistently with past practice. All Accounts existing and remaining unpaid at the time of Closing will be collectible in the ordinary course of business consistent with past practice.

SECTION 3.20 Inventory.

All items in the inventory reflected in the Balance Sheet or as currently owned by Seller (a) have been valued at cost or at market, whichever is lower, on a first-in, first-out (FIFO) basis in accordance with GAAP applied consistently with past practice and (b) are of a quality and quantity usable and salable in the ordinary course of business. Seller is not aware of any adverse condition affecting the quality or supply of raw materials and other materials available to Seller that are necessary to manufacture, package or label its products or are otherwise used or proposed to be used in Seller's business.

SECTION 3.21 Bank Accounts.

Schedule 3.21 contains a complete and accurate list of the names and locations of all banks, trust companies, savings and loan associations and other financial institutions at which Seller maintains safe deposit boxes or accounts of any nature and the names of all Persons authorized to draw thereon, make withdrawals therefrom or have access thereto.

SECTION 3.22 Corporate Books and Records.

Seller has furnished to Buyer for its examination true and complete copies of (a) the Articles of Incorporation and Bylaws of Seller as currently in effect, including all amendments thereto, (b) the minute books of Seller, and (c) the stock transfer books of Seller. Such minutes reflect all meetings of Seller's shareholders and Board of Directors and any committees thereof since Seller's inception, and such minutes accurately reflect in all material respects the events of and actions taken at such meetings. Such stock transfer books accurately reflect all issuances and transfers of shares of capital stock of Seller since its inception.

SECTION 3.23 Insurance.

Schedule 3.23 sets forth a true and correct list of all insurance policies maintained by Seller and includes the policy number, amount of coverage and contact information for each such

policy. Seller maintains commercially reasonable levels of (a) insurance on its property (including leased premises) that insures against loss or damage by fire or other casualty and (b) insurance against liabilities, claims and risks of a nature and in such amounts as are normal and customary in Seller's industry for companies of similar size and financial condition. All insurance policies of Seller are in full force and effect, all premiums with respect thereto covering all periods up to and including the date this representation is made have been paid, and no notice of cancellation or termination has been received with respect to any such policy or binder. Such policies or binders are sufficient for compliance with all requirements of law currently applicable to Seller and of all agreements to which Seller is a party, will remain in full force and effect through the respective expiration dates of such policies or binders without the payment of additional premiums, and will not in any way be affected by, or terminate or lapse by reason of, the transactions contemplated by this Agreement. Seller has not since January 1, 2006 been refused any insurance with respect to its assets or operations, nor has its coverage been limited, by any insurance carrier to which it has applied for any such insurance or with which it has carried insurance. Schedule 3.23 sets forth all claims submitted to any insurer of Seller since January 1, 2006, and the status or resolution of such claim.

SECTION 3.24 Licenses, Permits, Authorizations, etc.

Seller has all required governmental approvals, authorizations, consents, licenses, orders, registrations and permits of all agencies, whether federal, state, local or foreign (collectively, the "Permits"). Schedule 3.24 sets forth a complete and accurate list of all Permits with expiration dates, if any. Seller is in material compliance with the terms of all Permits, and all Permits are valid and in full force and effect, and no proceeding is pending or, to Seller's Knowledge, threatened, the object of which is to revoke, limit or otherwise affect any Permit.

SECTION 3.25 Compliance With Laws.

Except as described on Schedule 3.25, Seller is in material compliance with Applicable Laws applicable to it, to its employees or to the Real Property and the Personal Property, including all such Applicable Laws relating to consumer protections, product safety, intellectual property protection, antitrust matters, currency exchange, environmental protection, equal employment opportunity, health and occupational safety, pension and employee benefit matters, securities and investor protection matters, labor and employment matters and trading-with-the-enemy matters. Seller has not received any notification of any asserted present or past unremedied failure by Seller to comply with any of such laws, rules, regulations, ordinances, decrees or orders.

SECTION 3.26 Compliance With Environmental Laws.

3.26.1 Neither Seller nor to Seller's knowledge any other Person (including, without limitation, any previous owner, lessee or sublessee) has treated, stored or disposed of any Hazardous Materials on the Real Property, or any real property previously owned, leased, subleased or used by Seller in the operation of its business, in violation of any applicable Environmental Law. Seller has not made or allowed and is not aware of any releases of any Hazardous Materials at or from any assets or properties, including the Real Property, owned, leased, subleased or used by Seller in the operation of its business during the time such assets or

properties were owned, leased, subleased or used by Seller (or, to Seller's knowledge, prior to such time), including any releases of any Hazardous Materials in violation of any Environmental Law.

3.26.2 Seller possesses all material Environmental Permits that are required for the operation of Seller's business as currently conducted. Complete copies of such Environmental Permits, if any, have been made available to Buyer. All of the material Environmental Permits are in full force and effect, and there is no actual or threatened proceeding to revoke any such Environmental Permit.

3.26.3 Seller is in material compliance with all Environmental Laws.

3.26.4 Seller has not received any written notice from any Governmental Entity regarding any actual or alleged material violation of Environmental Laws or Environmental Permits, including any investigatory, remedial, or corrective obligations relating to Seller or its facilities arising under Environmental Laws.

3.26.5 To Seller's Knowledge, no asbestos-containing materials, polychlorinated biphenyls, underground storage tank, or landfill, impoundment or other disposal area containing Hazardous Materials, is present at the properties owned or operated by Seller or their Subsidiaries that will require Cleanup.

3.26.6 All waste materials generated by Seller have been properly stored, transported, treated and disposed of in accordance with all applicable Environmental Laws.

SECTION 3.27 Absence of Questionable Payments.

Neither Seller nor to Seller's knowledge any director, officer, shareholder, agent, employee, contractor, consultant or other Person acting on behalf of Seller has used any Company funds for improper or unlawful contributions, payments, gifts or entertainment, or made any improper or unlawful expenditures including those relating to soliciting business from domestic or foreign government officials or others. Seller has reasonable financial controls to prohibit and detect such improper or unlawful contributions, payments, gifts, entertainment or expenditures. Neither Seller nor to Seller's knowledge any current director, officer, manager, agent, employee, contractor, consultant or other Person acting on behalf of Seller has accepted or received any improper or unlawful contributions, payments, gifts or expenditures. Seller has at all times complied, and is in compliance, in all respects with the Foreign Corrupt Practices Act and all U.S. and foreign laws and regulations relating to prevention of corrupt practices and similar matters. Seller has not received any notice that any transaction was improper or unlawful within the meaning of this Section 3.27.

SECTION 3.28 Insider Interests.

To Seller's knowledge, no member or officer, shareholder, director, employee, agent, contractor, consultant or other representative of Seller has any interest (other than in their capacity as a representative of Seller or as a Shareholder of Seller) (a) in any Real Property, Personal Property, Intellectual Property rights used in or directly pertaining to Seller's business, including, inventions, patents, trademarks or trade names, or (b) in any agreement, contract,

arrangement or obligation relating to Seller, its present or prospective business or its operations. There are no agreements, understandings or proposed transactions between Seller and any of its officers, directors, shareholders, Affiliates or any Affiliate thereof. Neither Seller nor, to its knowledge, its officers, directors, employees, agents, contractors, consultants or other representatives have any interest, either directly or indirectly, in any entity, including, any corporation, partnership, joint venture, proprietorship, firm, licensee, business or association (whether as an employee, officer, manager, director, shareholder, member, agent, independent contractor, security holder, creditor, consultant or otherwise), other than ownership of capital stock comprising less than 1% of any publicly held company, that presently (i) provides any services, produces and/or sells any products or product lines, or engages in any activity that is the same, similar to or competitive with any activity or business in which Seller is now engaged or proposes to engage; (ii) is a supplier, customer or creditor; or (iii) has any direct or indirect interest in any asset or property, real or personal, tangible or intangible, of Seller or any property, real or personal, tangible or intangible, that is necessary or desirable for the present or currently anticipated future conduct of Seller's business.

SECTION 3.29 Brokers or Finders.

Except as set forth on Schedule 3.29 (which sets forth all applicable compensation and reimbursements), neither Seller nor any Shareholder has incurred, and neither will incur, directly or indirectly, as a result of any action taken by or on behalf of Seller or any Shareholder, any liability for brokerage or finders' fees or agents' commissions or any similar charges in connection with the Merger, this Agreement or any transaction contemplated hereby.

SECTION 3.30 Full Disclosure.

No information furnished by Seller to Buyer or its representatives in connection with this Agreement (including, but not limited to, the Financial Statements and all information in the Seller Disclosure Schedule and the other Exhibits hereto) or the other Transaction Documents contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements so made or information so delivered not misleading.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES OF BUYER AND MERGER SUB

Buyer and Merger Sub jointly represent and warrant to Seller as follows in this Article 4:

SECTION 4.1 Organization.

Merger Sub is a corporation duly organized and validly existing under the laws of the State of California. Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Each of Buyer and Merger Sub has all requisite corporate power and authority to own, operate and lease its respective properties and assets, to carry on its respective business as now conducted and as proposed to be conducted, to enter into and perform its obligations under this Agreement and the other Transaction Documents to which Buyer or Merger Sub is a party, and to complete the transactions contemplated hereby and thereby. All of the issued and outstanding shares of capital stock of Merger Sub are held of record and beneficially by Buyer.

SECTION 4.2 Enforceability.

Buyer and Merger Sub each has full power and authority to execute, deliver and perform its obligations under this Agreement and each of the other Transaction Documents to which it is a party. All corporate action on the part of Buyer and Merger Sub and their respective officers, managers, directors and stockholders, necessary for the authorization, execution, delivery and performance of this Agreement and the other applicable Transaction Documents to which Buyer or Merger Sub is a party, the completion of the Merger and the performance of all their respective obligations under this Agreement and the other applicable Transaction Documents to which Buyer or Merger Sub is a party has been taken or will be taken prior to the Closing Date. This Agreement has been, and each of the other Transaction Documents to which Buyer is a party will have been at the Closing, duly executed and delivered by Buyer, and this Agreement is, and each of the other Transaction Documents to which Buyer is a party will be at the Closing, a legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as to the effect, if any, of (a) applicable bankruptcy and other similar laws affecting the rights of creditors generally and (b) rules of law governing specific performance, injunctive relief and other equitable remedies. This Agreement has been, and each of the other Transaction Documents to which Merger Sub is a party will have been at the Closing, duly executed and delivered by Merger Sub, and this Agreement is, and each of the other Transaction Documents to which Merger Sub is a party will be at the Closing, a legal, valid and binding obligation of Merger Sub, enforceable against Merger Sub in accordance with its terms, except as to the effect, if any, of (x) applicable bankruptcy and other similar laws affecting the rights of creditors generally, and (y) rules of law governing specific performance, injunctive relief and other equitable remedies.

SECTION 4.3 No Approvals or Notices Required; No Conflicts With Instruments.

The execution, delivery and performance of this Agreement and the other Transaction Documents by Buyer or Merger Sub, as applicable, and the completion by each of the transactions contemplated hereby and thereby will not (a) constitute a violation (with or without the giving of notice or lapse of time, or both) of any provision of Applicable Law; (b) require any consent, approval or authorization of any Person, except (i) compliance with applicable securities laws, and (ii) the filing of all documents necessary to complete the Merger with the California Secretary of State, (c) result in a default (with or without the giving of notice or lapse of time, or both) under, or acceleration or termination of, or the creation in any party of the right to accelerate, terminate, modify or cancel, any Contract or other restriction, encumbrance, obligation or liability to which Buyer or Merger Sub is a party or by which either is bound or to which any assets of Buyer or Merger Sub are subject; or (d) conflict with or result in a breach of or constitute a default under any provision of the Certificate of Incorporation of Buyer, as amended, or the Articles of Incorporation or Bylaws of Merger Sub.

SECTION 4.4 Claims and Legal Proceedings.

There is no claim, action, suit, arbitration, criminal or civil investigation or proceeding pending or involving or, to Buyer's knowledge, threatened against Buyer or Merger Sub before or by any court or governmental or nongovernmental department, commission, board, bureau, agency or instrumentality, or any other Person, that questions the validity of this Agreement or

any action taken or to be taken by Buyer pursuant to this Agreement or in connection with the transaction contemplated hereby.

SECTION 4.5 Full Disclosure.

No information furnished by Buyer or Merger Sub to Seller or its representatives in connection with this Agreement or the other Transaction Documents contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements so made or information so delivered not misleading.

SECTION 4.6 No Brokers or Finders.

Neither Buyer nor Merger Sub has incurred, nor will incur, directly or indirectly, as a result of any action taken by or on behalf of Buyer or Merger Sub, any liability for brokerage or finders' fees or agents' commissions or any similar charges in connection with this Agreement or any transaction contemplated hereby that would result in a claim against Seller or its Shareholders.

**ARTICLE 5
COVENANTS**

The parties covenant and agree as set forth in this Article 5:

SECTION 5.1 Further Action; Commercially Reasonable Efforts.

Upon the terms and subject to the conditions hereof, each of Buyer, Merger Sub and Seller shall use commercially reasonable efforts to take, or cause to be taken, all appropriate action, and to do, or cause to be done, all things necessary, proper or advisable under all Applicable Laws and regulations to complete and make effective the transactions contemplated hereby, including using commercially reasonable efforts to obtain all waivers, licenses, permits, consents, approvals, authorizations, qualifications and orders of Governmental Bodies and parties to Contracts with Seller as are necessary for the completion of the transactions contemplated hereby and to fulfill the conditions to the Merger.

SECTION 5.2 Conduct of Business.

From the date hereof to the Effective Time, unless Buyer shall otherwise agree in writing, Seller's business shall be conducted in and only in, and Seller shall not take any action except in, the ordinary course of business and in a manner consistent with past practice and in accordance with Applicable Law; and Seller shall use commercially reasonable efforts to preserve intact the business organization of Seller, to keep available the services of the current officers, directors, employees and consultants of Seller and to preserve the current relationships of Seller with, and the goodwill of, customers, suppliers and other Persons with whom Seller has significant business relations. By way of amplification and not limitation, except as otherwise contemplated by this Agreement, Seller shall not, between the date of this Agreement and the Effective Time, directly or indirectly do, or propose to do, any of the following without the prior written consent of Buyer:

- (a) amend its articles of incorporation or bylaws (or similar organizational documents);
- (b) establish, adopt, enter into, terminate, fail to renew, or amend any Employee Benefit Plan, except for normal merit and cost-of-living increases consistent with past practice in salaries or wages of employees of Seller who are not directors or officers of Seller, or pay, loan or advance any amount to, any director or employee of Seller, or forgive, cancel or defer any indebtedness or waive any claims or rights of material value (including any indebtedness owing by any shareholder, director or employee of Seller);
- (c) split, combine or reclassify any of the outstanding shares of its capital stock or otherwise change its authorized capitalization;
- (d) declare, set aside or pay any dividends payable in cash, stock or property with respect to shares of its capital stock;
- (e) issue, grant, sell, pledge, dispose of or encumber any additional shares of, or securities convertible into or exchangeable for, or options, warrants, calls, commitments or rights of any kind to acquire, any shares of, its capital stock of any class, or propose to do the same, except upon the exercise of outstanding options or warrants;
- (f) redeem, purchase or otherwise acquire any shares of its capital stock, merge into or consolidate with any other corporation or permit any other corporation to merge into or consolidate with it, liquidate or sell or dispose of any of its assets, or close any plant or business operation;
- (g) except for trade payables incurred in the ordinary course of business, incur, assume or guarantee any indebtedness, or modify or repay any existing indebtedness, or make any loans or advances, except in the ordinary course of business and consistent with past practice;
- (h) enter into any transaction, make any commitment (whether or not subject to the approval of the Board of Directors of Seller) or modify any contracts, other than transactions, commitments or modifications entered into in the ordinary course or except as otherwise contemplated or permitted by this Agreement, or take or omit to take any action which action or omission would be reasonably anticipated to have a Seller Material Adverse Effect;
- (i) transfer, lease, license, guarantee, sell, mortgage, pledge, or dispose of, any property or assets (including without limitation any intellectual property), encumber any property or assets or incur or modify any liability, other than the sale of inventory in the ordinary course of business and consistent with past practice;
- (j) authorize capital expenditures other than in the ordinary course of business and not in excess of \$5,000 in the aggregate, form any subsidiary, or make any acquisition of, or investment in, assets or stock of any other person or entity;
- (k) make any tax election, settle or compromise any income tax liability, file any amended Tax Return, or surrender any right to claim a refund of Taxes;

(l) permit any insurance policy naming it as a beneficiary or a loss payable payee to be canceled, terminated or renewed;

(m) change its method of accounting as in effect at December 31, 2008, except as required by changes in GAAP as concurred with by the Seller's independent auditors, or change its fiscal year;

(n) alter through merger, liquidation, reorganization, restructuring or any other fashion the corporate structure or ownership of Seller;

(o) pay, discharge or satisfy any material claims, liabilities or obligations (absolute, accrued, asserted or unasserted, contingent or other), other than the payment, discharge or satisfaction in the ordinary course of business and consistent with past practices of liabilities reflected or reserved against in, or contemplated by the Financial Statements or incurred in the ordinary course of business consistent with past practice;

(p) take or omit to take any action, the effect of which act or omission would reasonably be expected to render inaccurate any of the representations or warranties set forth in Article 3 herein as of the Closing Date; or

(q) authorize or enter into an agreement to do any of the actions listed in paragraphs (a) through (p) above.

SECTION 5.3 Compliance with Laws.

Seller shall comply in all material respects with all laws applicable to it or any of its material properties, assets or business and to maintain in full force and effect all Permits necessary for such business.

SECTION 5.4 Access to Information; Confidentiality.

Seller agrees to give Buyer and its representatives and agents full access to all its premises, books and records and agreements and files and to cause the officers of Seller to furnish Buyer with such financial and operating data and other information with respect to its business and properties as Buyer shall from time to time request. Any such investigations shall be conducted in such manner as not to interfere unreasonably with the operation of Seller's business. Any contact with employees, customers or suppliers of Seller will be subject to Seller's approval, which will not be unreasonably withheld. From the date hereof until the Effective Time, Seller shall provide Buyer with monthly and other financial statements of Seller as they become available internally at Seller, all of which financial statements shall fairly present the financial position and results of operations of Seller as of the dates and for the periods therein specified. No investigation pursuant to this Section 5.4 shall affect any representation or warranty in this Agreement of any party hereto or any condition to the obligations of the parties hereto. The parties shall continue to comply with and to perform their respective obligations under the Confidentiality Agreement, dated October 22, 2008, between Seller and Buyer.

SECTION 5.5 No Alternative Transactions.

From the date hereof to the Effective Time, unless this Agreement shall have been terminated in accordance with its terms, Seller shall not, directly or indirectly, through any officer, director, manager, agent or otherwise, solicit, initiate or encourage the submission of any proposal or offer from any Person relating to any acquisition or purchase of all or any material portion of the assets of, or any equity interest in, Seller or any business combination with Seller, or participate in any negotiations regarding, or furnish to any other Person any information with respect to, or otherwise cooperate or negotiate in any way with, or assist or participate in, facilitate or encourage, any effort or attempt by any other Person to do or seek any of the foregoing. Seller shall notify Buyer promptly if any such proposal or offer, or any inquiry or contact with any Person with respect thereto, is made and shall, in any such notice to Buyer, indicate in reasonable detail the identity of the Person making such proposal, offer, inquiry or contact and the terms and conditions of such proposal, offer, inquiry or contact. Seller agrees not to release any third party from, or waive any provision of, any confidentiality or standstill (e.g., agreement not to invest in or seek change of control of Seller) agreement to which Seller is a party.

SECTION 5.6 Notification of Certain Matters.

Each party shall give prompt notice to the other party of (a) the occurrence or failure to occur of any event as a result of which any representation or warranty made by such party contained in this Agreement becomes untrue or inaccurate in any material respect and (b) any material failure by such party to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder; provided, however, that the delivery of any notice pursuant to this Section 5.6 shall not limit or otherwise affect the remedies available to the parties hereunder.

SECTION 5.7 Shareholder Approval; Agreement to Vote Shares.

As soon as practicable, Seller will take all steps necessary to cause the Board of Directors to recommend approval of this Agreement and the transactions contemplated hereby to the Shareholders and to (a) duly call, give notice of, convene and hold a special meeting of the Shareholders for the purpose of voting upon the Merger, this Agreement and the transactions contemplated hereby, or (b) obtain the written consent of the Shareholders to the Merger, this Agreement and the transactions contemplated hereby. Each Specified Shareholder shall, upon execution of this Agreement, enter into a Voting and Support Agreement pursuant to which the Specified Shareholder will agree: (a) to vote or cause to be voted, or execute a written consent with respect to, his, her or its Seller Capital Stock (i) in favor of adoption and approval of the Merger Agreement and all transactions relating thereto or contemplated thereby at every meeting of the Shareholders at which such matters are considered and at every adjournment thereof and in connection with every proposal to take action by written consent with respect thereto and (ii) against any proposal by a party other than Buyer to merge or consolidate with Seller or to sell all or substantially all the assets of Seller, at every meeting of the Shareholders at which such matters are considered, at every adjournment thereof and in connection with every proposal to take action by written consent with respect thereto; and (b) from the date hereof to the Effective

Time, not to sell, assign, transfer, pledge, encumber or otherwise dispose of any of his, her or its Seller Capital Stock.

SECTION 5.8 Options.

Seller shall take all actions necessary to ensure that all outstanding Options, and all other options, warrants, rights or other equity interests (whether or not exercisable) are cancelled or exercised prior to or upon the Closing Date or will be converted pursuant to Section 2.7.3.

SECTION 5.9 Books and Records.

Upon Closing, Seller shall transmit to Buyer any books and records of Seller relating to Seller's business, including all of Seller's corporate, financial and tax records.

SECTION 5.10 Publicity.

Except as required by law, neither Buyer nor Seller will issue any press releases or otherwise make any public statements with respect to the transactions contemplated hereby without the prior written consent of the other.

SECTION 5.11 Tax Matters.

As used in this Agreement, the following terms shall have the following meanings:

"Pre-Closing Tax Period" shall mean any taxable period ending on or before the Closing Date and the portion ending on and including the Closing Date of any Straddle Period.

"Pre-Closing Taxes" shall mean (a) all liability for Taxes of Seller for Pre-Closing Tax Periods; (b) all liability resulting by reason of the several liability of Seller pursuant to Treasury Regulations § 1.1502-6 or any analogous state, local or foreign law or regulation or by reason of Seller having been a member of any consolidated, combined or unitary group on or prior to the Closing Date; (c) all liability attributable to any misrepresentation or breach of warranty made by Seller in Section 3.9 of this Agreement; (d) all liability for Taxes attributable to any failure to comply with any of the covenants or agreements of Seller or Shareholder under this Agreement; and (e) all liability of Seller for Taxes of any other person pursuant to any contractual agreement entered into on or before the Closing Date.

"Straddle Period" shall mean any taxable period that includes (but does not end on) the Closing Date.

"Straddle Tax Return" shall mean any Tax Return required to be filed by Seller covering a taxable period commencing prior to the Closing Date and ending after the Closing Date.

5.11.1 The Seller Representative shall cooperate, as and to the extent reasonably requested, in connection with the preparation of any Tax Return and any audit, investigation, litigation or other action with respect to Taxes that may be instituted after the Closing.

5.11.2 Buyer shall prepare and file, or cause to be prepared and filed, all Tax Returns required to be filed by Seller after the Closing Date, and shall cause Seller to pay the Taxes shown to be due thereon; provided, however, that Buyer may obtain reimbursement from Escrow for the portion of such Taxes that are Pre-Closing Taxes to the extent such Pre-Closing Taxes exceed the amount, if any, taken into account in the computation of Net Working Capital as finally determined pursuant to Section 2.11. All Seller Tax Returns for any Straddle Period shall be filed on the basis that the relevant taxable period ended as of the close of business on the Closing Date, unless the relevant Tax authority will not accept a Tax Return filed on that basis. The parties acknowledge and agree that any compensation deductions arising in connection with the transactions contemplated by this Agreement, including, without limitation, any deductions arising with respect to the exercise or cancellation of the Options, shall, to the maximum extent permitted by law, be allocable to the taxable period of Seller that begins on the day after the Closing Date.

5.11.3 In the case of any Straddle Period, (i) real, personal and intangible property Taxes ("Property Taxes") of Seller for the Pre-Closing Tax Period shall be equal to the amount of such property Taxes for the entire Straddle Period multiplied by a fraction, the numerator of which is the number of days during the Straddle Period that are in the Pre-Closing Tax Period and the denominator of which is the number of days in the Straddle Period; and (ii) the Taxes of Seller (other than Property Taxes) for the portion of the Straddle Period that constitutes a Pre-Closing Tax Period shall be computed as if such taxable period ended as of the close of business on the Closing Date.

5.11.4 All transfer, documentary, sales, use, stamp, registration and other such Taxes, and all conveyance fees, recording charges and other fees and charges (including any penalties and interest) incurred in connection with completion of the transactions contemplated by this Agreement (excluding, however, corporate registration and securities filing fees) shall be paid by the Shareholders when due, and the Shareholders will, at their own expense, file all necessary Tax Returns and other documentation with respect to all such Taxes, fees and charges, and, if required by applicable law, Buyer will join in the execution of any such Tax Returns and other documentation.

SECTION 5.12 Termination of Employee Benefit Plans.

Seller shall terminate each of its Employee Benefit Plans, including for the avoidance of doubt all contracts between Seller and TriNet Employer Group, Inc., effective not later than the day immediately prior to the Effective Time, unless Buyer, in its sole and absolute discretion, agrees to sponsor and maintain (or to cause one of its Affiliates to sponsor and maintain) any such Employee Benefit Plan by providing Seller with written notice of such election. Prior to the Effective Time, Seller shall provide Buyer with evidence reasonably satisfactory to Buyer that each Employee Benefit Plan with respect to which Buyer has not provided the notice specified in the immediately preceding sentence (a) has been terminated pursuant to resolutions of the Board of Directors of Seller effective not later than the day immediately prior to the Effective Time, and (ii) has adopted and executed amendments sufficient to ensure compliance with all applicable requirements of the Code. The form and substance of such resolutions and amendments shall be subject to the prior review and approval of Buyer.

ARTICLE 6
CONDITIONS PRECEDENT TO OBLIGATIONS OF BUYER AND MERGER SUB

The obligations of Buyer and Merger Sub to complete the Merger shall be subject to the satisfaction of the following conditions, any of which may be expressly waived only in a writing that is signed by Buyer and Merger Sub.

SECTION 6.1 Shareholder Approval.

This Agreement shall have been approved by the Requisite Shareholder Vote.

SECTION 6.2 Accuracy of Representations and Warranties.

The representations and warranties of Seller that are subject to materiality qualifications shall be true and correct in all respects when made and at and as of the Closing Date and the representations and warranties of Seller that are not subject to materiality qualifications shall be true and correct in all respects when made and in all material respects at and as of the Closing Date, in each case as though then made, except for representations and warranties that speak as of a specific date or time other than the Closing Date, which shall be true and correct in all respects as of such date and time. The representations and warranties in Section 3.3 shall be true and correct in all respects and as of the Closing Date.

SECTION 6.3 Performance of Agreements.

Seller shall have performed in all material respects all obligations and agreements and complied with all covenants contained in this Agreement or any other Transaction Document to be performed and complied with by it or them, respectively, at or prior to the Closing.

SECTION 6.4 Opinion of Counsel for Seller.

Buyer shall have received the opinion of MBV Law LLP, counsel for Seller, dated the Closing Date, substantially in the form agreed to buy the parties.

SECTION 6.5 Compliance Certificate.

Buyer and Merger Sub shall have received a certificate of an executive officer of Seller, dated the Closing Date, in form and substance satisfactory to Buyer and Merger Sub, certifying that the conditions to the obligations of Buyer and Merger Sub in this Article 6 have been fulfilled in all respects.

SECTION 6.6 No Material Adverse Change.

Since the date of this Agreement and through the Closing Date, there shall not have occurred any event, circumstance, change or development that has had or could have a Seller Material Adverse Effect.

SECTION 6.7 Approvals and Consents.

All transfers of permits or licenses and all approvals of or notices to public agencies, federal, state, local or foreign, the granting or delivery of which is necessary for the completion of the transactions contemplated hereby, or for the continued operation of Seller, shall have been obtained, and all waiting periods specified by law shall have passed. All consents, approvals and notices referred to in this Agreement, or required to be disclosed under any provision of this Agreement, shall have been obtained and delivered to Buyer, and such consents, approvals and notices shall be reasonably satisfactory in all respects to Buyer.

SECTION 6.8 Proceedings and Documents.

All corporate and other proceedings in connection with the transactions contemplated hereby and by the other Transaction Documents, and all documents and instruments incident to such transactions, shall have been approved as to form and legal substance by Buyer's counsel.

SECTION 6.9 FIRPTA Certificate.

Buyer shall have received from Seller a properly executed FIRPTA Certificate, substantially in the form agreed to by the parties, which states that shares of capital stock of Seller do not constitute "United States real property interests" under Section 897(c) of the Code, for purposes of satisfying Buyer's obligations under Treasury Regulation Section 1.1445-2(c)(3). In addition, simultaneously with delivery of such FIRPTA Certificate, Seller shall have provided to Buyer, as agent for Seller, a form of notice to the IRS in accordance with the requirements of Treasury Regulation Section 1.897-2(h)(2) and substantially in the form agreed to be the parties along with written authorization for Buyer to deliver such notice form to the IRS on behalf of Seller upon Closing.

SECTION 6.10 Compliance With Laws.

The completion of transactions contemplated by this Agreement and the performance by Buyer and Seller of the obligations hereunder and under the other Transaction Documents shall be legally permitted by all laws and regulations to which Buyer or Seller is subject.

SECTION 6.11 Legal Proceedings.

No order of any Governmental Entity shall be in effect that enjoins, restrains, conditions or prohibits completion of this Agreement or any other Transaction Document, and no Proceeding shall be pending or threatened that is reasonably likely to enjoin, restrain, condition or prevent completion of the transactions contemplated by this Agreement or any other Transaction Document.

SECTION 6.12 Escrow Agreement.

Seller, the Seller Representative and the Escrow Agent shall have executed and delivered the Escrow Agreement.

SECTION 6.13 Dissenting Shares.

Seller shall not have received notice from Shareholders holding in the aggregate more than 5% of the total number of Seller Capital Stock outstanding, on an as-converted basis, as of immediately prior to the Closing that the Shareholders intent to exercise appraisal rights with respect to such shares of Seller Capital Stock in accordance with Section 1300 *et. seq.* of the Corporations Code.

SECTION 6.14 Offer Letters; Noncompetition and Nonsolicitation Agreements.

Each of the Key Employees shall have remained continuously employed with Seller from the date of this Agreement through the Closing, and no action shall have been taken by any such individual to reject the Offer Letter accepted as of the date of this Agreement and effective as of the Closing Date. No action shall have been taken by any of the Key Shareholders to rescind the Noncompetition and Nonsolicitation Agreements signed by the Key Shareholders as of the date of this Agreement and effective as of the Closing Date. No action shall have been taken by any of the Non-Solicit Agreement Parties to rescind the Nonsolicitation Agreement signed by the Non-Solicit Party as of the date this Agreement and effective as of the Closing Date.

SECTION 6.15 Section 280G Matters.

Seller shall have provided evidence satisfactory to Buyer that either (a) any contract, agreement, plan or arrangement, including any transactions contemplated by this Agreement, to which Seller is a party that would be reasonably likely to give rise to the payment of any amount that would not be deductible pursuant to Section 280G of the Code shall have been approved by the Shareholders in accordance with the requirements of Section 280(G)(b)(5)(B) of the Code and the Treasury Regulations promulgated thereunder, or (b) any "disqualified individuals," within the meaning of Section 280G of the Code, shall have agreed to forfeit any payments that would otherwise be nondeductible if such approval of the Shareholders is not so obtained.

SECTION 6.16 Termination of TriNet Agreements.

Seller shall have delivered to TriNet Employer Group, Inc. a notice, in a form reasonably acceptable to Buyer, dated on or after September 1, 2009, of termination of all contracts existing between Seller and TriNet Employer Group, Inc.

SECTION 6.17 Secretary Certificate.

Seller shall have provided to Buyer a certificate of the Secretary of Seller, attaching (i) the authorization and valid resolutions approving this Agreement, the Merger and the transactions contemplated by this Agreement and adopted by the requisite vote of the Board of Directors and shareholders of Seller; (ii) the Seller's Articles of Incorporation, and (iii) the Seller's Bylaws.

**ARTICLE 7
CONDITIONS PRECEDENT TO THE OBLIGATIONS OF SELLER**

The obligations of Seller to complete the Merger shall be subject to the satisfaction of the following conditions, which may be expressly waived only in writing signed by Buyer.

SECTION 7.1 Accuracy of Representations and Warranties.

The representations and warranties of Buyer and Merger Sub that are subject to materiality qualifications shall be true and correct in all respects when made and at and as of the Closing Date and the representations and warranties of Buyer and Merger Sub that are not subject to materiality qualifications shall be true and correct in all respects when made and in all material respects at and as of the Closing Date, in each case as though then made, except for representations and warranties that speak as of a specific date or time other than the Closing Date, which shall be true and correct in all respects as of such date and time.

SECTION 7.2 Performance of Agreements.

Buyer and Merger Sub shall have performed in all material respects all obligations and agreements and complied with all covenants contained in this Agreement or any other Transaction Document to be performed and complied with by them at or prior to the Closing.

SECTION 7.3 Proceedings and Documents.

All corporate and other proceedings in connection with the transactions contemplated hereby and by the other Transaction Documents, and all documents and instruments incident to such transactions, shall have been approved as to form and legal substance by Seller's counsel.

SECTION 7.4 Compliance Certificate.

Seller shall have received a certificate of an officer of Buyer, dated the Closing Date, in form and substance reasonably satisfactory to Seller, certifying that the conditions to the obligations of Seller in this Article 7 have been fulfilled.

SECTION 7.5 Legal Proceedings.

No order of any Governmental Entity shall be in effect that enjoins, restrains, conditions or prohibits completion of this Agreement or any other Transaction Document, and no Proceeding shall be pending or threatened that would enjoin, restrain, condition or prevent the completion of this Agreement or any other Transaction Document.

SECTION 7.6 Compliance With Laws.

The completion of transactions contemplated by this Agreement and the performance by Buyer and Seller of the obligations hereunder and under the other Transaction Documents shall be legally permitted by all laws and regulations to which Buyer or Seller is subject.

SECTION 7.7 Escrow Agreement.

Buyer, Merger Sub and the Escrow Agent shall have executed and delivered the Escrow Agreement.

ARTICLE 8
SURVIVAL AND INDEMNIFICATION

SECTION 8.1 Survival.

All representations and warranties made by any party contained in this Agreement shall survive the Closing for a period of 18 months, except that the representations and warranties in Section 3.1 (Organization and Good Standing), Section 3.2 (Enforceability), Section 3.3 (Capitalization), Section 3.4 (Title to Shares), Section 3.5 (Subsidiaries and Affiliates), Section 3.6 (No Approvals; No Conflicts), Section 3.9 (Taxes) shall survive until the expiration of the applicable statute of limitations (including extensions thereof) plus thirty days. The covenants and agreements contained in this Agreement shall continue until all obligations with respect thereto shall have been performed or satisfied or have been terminated in accordance with their terms. No claim for indemnification in respect of Losses (as defined below) arising in connection with this Agreement may be made or asserted by any person, and no obligation to indemnify in respect thereof shall exist, unless written notice of such claim shall have been given as provided in this Article 8 on or prior to the last day of the survival period relating to the provision(s) of this Agreement on which such claim is based, other than claims resulting from fraud or willful misrepresentation which may be made at any time.

A party's completion of the transactions contemplated hereby after waiving any of the conditions to its obligation to close (including the condition regarding the accuracy of the other party's representations and warranties) shall not limit or otherwise affect its rights to recover under this Article 8.

SECTION 8.2 Indemnification.

8.2.1 Indemnification by the Merger Consideration Recipients.

From and after the Closing Date, the Merger Consideration Recipients shall severally, but not jointly (except as provided in Section 8.3.2), indemnify and hold Buyer and its directors, officers, employees, agents and affiliates and the Surviving Corporation and its directors, officers, employees, agents and affiliates (the "Buyer Indemnified Parties") harmless from and against, and shall reimburse the Buyer Indemnified Parties in the manner specified in this Section 8.2 for, any and all losses, damages, debts, lost profits, diminution in value, liabilities, obligations, judgments, orders, awards, writs, injunctions, decrees, fines, penalties, taxes, costs or expenses (including but not limited to any legal and accounting fees and expenses and costs of investigating or responding to alleged claims) ("Losses") arising out of or in connection with:

- (i) Seller's failure to make any Working Capital Adjustment payment due to Buyer in accordance with Article 2;
- (ii) any inaccuracy in or other breach of any representation or warranty made by Seller in this Agreement or in any other Transaction Document;
- (iii) any failure by Seller to perform or comply, in whole or in part, with any covenant or agreement in this Agreement or in any other Transaction Document; or

(iv) Pre-Closing Taxes, to the extent such Pre-Closing Taxes exceed the amount, if any, taken into account in the computation of Net Working Capital as finally determined pursuant to Section 2.11;

(v) any liability to pay holders of Dissenting Shares an amount in excess of the Merger Consideration payable to the holders of Dissenting Shares under the Agreement had they not been Dissenting Shares, and any liabilities (including, without limitation, attorneys' fees and court costs) incurred in connection with any related Proceeding; or

(vi) the accuracy of Updated Schedule 2.8.

In determining the amount of any Losses in respect of the failure of any representation or warranty to be true and correct as of any particular date (but not in determining whether any such representations and warranties failed to be true and correct as of any particular date), any materiality or dollar standard or qualification contained in such representation or warranty shall be disregarded.

8.2.2 Indemnification by Buyer

From and after the Closing Date, Buyer shall indemnify and hold the Merger Consideration Recipients (the "Seller Indemnified Parties," and together with the Buyer Indemnified Parties, the "Indemnified Parties") harmless from and against, and shall reimburse the Seller Indemnified Parties for, any and all Losses arising out of or in connection with:

(i) any inaccuracy in or other breach of any representation or warranty made by Buyer or Merger Sub in this Agreement; or

(ii) any failure by Buyer or Merger Sub to perform or comply, in whole or in part, with any covenant or agreement in this Agreement.

SECTION 8.3 Limitations on Liability.

8.3.1 No Indemnified Party shall be entitled to recover any amount in respect of claims for indemnification ("Claims") made pursuant to Section 8.2.1(ii) or Section 8.2.2(i) unless and until the aggregate amount of all Losses as to which indemnification of that Indemnified Party otherwise would be required under this Agreement exceeds \$50,000 (the "Basket Amount"), at which time the Indemnified Party shall be entitled to recover for all Losses, including the Basket Amount; provided, any Claims with respect to Section 8.2.1(ii), but only to the extent such Losses relate to the representations and warranties in Section 3.3 (Capitalization) and Section 3.9 (Taxes), or fraud or willful misconduct shall not be included in the Basket Amount and shall be payable without regard to the Basket Amount.

8.3.2 Notwithstanding the foregoing, the liability of Merger Consideration Recipients and Buyer under Section 8.2.1 and Section 8.2.2, respectively, will be subject to the following limitations:

In no event shall an Indemnitor be obligated to make any payments for Claims with respect to Section 8.2.1(ii) or Section 8.2.2(i) in an aggregate amount in excess of \$2,000,000

(the "Liability Cap"). Indemnification Claims made by any Buyer Indemnified Party shall be satisfied from the following sources, in the following order: (i) first from the Escrow established in accordance with this Agreement and the Escrow Agreement; (ii) next from an offset against any earned but unpaid Earnout Year Payment (or, at Buyer's discretion, the next Earnout Year Payment) if any, payable by Buyer in accordance with Section 2.12; and (iii) from the Major Shareholders, with each Major Shareholder's contribution in an amount equal to the product of the total amount paid and a fraction the numerator of which is the portion of the Merger Consideration received by the Major Shareholder, and the denominator of which is the total Merger Consideration received by all of the Major Shareholders (the "Major Shareholders Indemnification Obligation").

8.3.3 Notwithstanding Section 8.3.2 above, Losses arising from Merger Consideration Recipients' indemnity obligations arising from Section 8.2.1(ii), to the extent such Losses relate to the representations and warranties in Section 3.3 (Capitalization), Section 3.4 (Title to Shares) and Section 3.9 (Taxes), shall not be subject to the Liability Cap. Notwithstanding any other provision of this Article 8 to the contrary, with respect to Claims arising from Section 8.2.1(ii), to the extent such Losses relate to the representations and warranties in Section 3.4 (Title to Shares), the Merger Consideration Recipient who held the Seller Securities to which the Claim relates shall be solely responsible for all payments under the Claim.

8.3.4 Notwithstanding any other provision of this Agreement, nothing in this Agreement limits the recoverability of Losses resulting from fraud or willful misconduct, including the limitations set forth in this Article 8. The Merger Consideration Recipients jointly and severally indemnify the Buyer Indemnified Parties for Losses resulting from fraud or willful misconduct by the Seller, provided that other than with respect to Merger Consideration Recipients that are personally culpable with respect to fraud or willful misconduct by the Seller, the liability of each Merger Consideration Recipient with respect to fraud or willful misconduct by the Seller will be limited to the portion of the Merger Consideration actually received by such Merger Consideration Recipient.

SECTION 8.4 Indemnity Escrow.

Claims for indemnification for Losses may be made against the indemnity escrow at any time until the first anniversary of the Closing, provided that at the conclusion of such period, such portion of the Escrow Amount that in the reasonable and good faith judgment of Buyer may be necessary to satisfy any unresolved or unsatisfied claims for indemnification for Losses specified in any Claim Notice delivered in good faith and in accordance with the terms hereof prior to the expiration of such period shall remain in the escrow account until such claims have been finally and fully resolved and satisfied. The remainder, if any, of the Escrow Amount, shall be paid to the Seller Representative, by wire transfer of immediately available funds, for distribution to each of the Merger Consideration Recipients in accordance with the Escrow Agreement (appropriately adjusted in the event of any claim against a specific Merger Consideration Recipient for a breach of Seller's representations and warranties set forth in Section 3.4 (Title to Shares)), promptly following the expiration of the escrow period or after the satisfaction of all claims pending prior to the expiration of the escrow period, as appropriate in accordance with this Section 8.4.

SECTION 8.5 Procedure for Indemnification.

8.5.1 A Buyer Indemnified Party shall give written notice of any Claim for indemnification under this Article 8 to the Seller Representative; a Seller Indemnified Party shall give written notice of any Claim for indemnification under this Article 8 to the Buyer (such notice, the "Claim Notice" and the indemnifying parties individually an "Indemnitor" and collectively, the "Indemnitors") as promptly as practicable, but in any event (i) prior to the expiration of any survival period for such Claim as provided in Section 8.1 above and (ii) if such Claim relates to the assertion against the Indemnified Party of any claim or dispute by a third party (a "Third Party Claim"), within 30 days after the assertion of such Third Party Claim. Notwithstanding the foregoing, no delay in providing the Claim Notice in accordance with the terms hereof (other than the failure to give notice prior to the expiration of the survival period for such Claim) shall affect an Indemnified Party's rights hereunder, unless (and then only to the extent that) the Indemnitors are materially prejudiced thereby. The Claim Notice shall describe the nature of the Claim, the amount thereof if then ascertainable and the initial provision or provisions of this Agreement on which the Claim is based.

8.5.2 Unless the claim described in the Claim Notice is contested by the Indemnitors by written notice to the Indemnified Party of the amount of the claim that is contested, given within thirty (30) days of the receipt of the Claim Notice (the "Dispute Notice"), the Indemnified Party may recover such undisputed amount of the claim described in the Claim Notice. If the undisputed claim is against the Shareholders, such claim may be paid out of the Escrow Amount by giving written notice of such claim and a certification that no Dispute Notice was received within said 30-day period, to the Escrow Agent. The Escrow Agent shall be entitled to rely on any such notice and distribute the Escrow Amount held in escrow to Buyer in accordance with the terms thereof.

8.5.3 The Indemnified Parties and Indemnitors shall attempt in good faith for thirty (30) days after receipt of a Dispute Notice to resolve the objections set forth therein. If the Indemnified Parties and Indemnitors shall so agree, a memorandum setting forth such agreement shall be prepared and signed by both parties and delivered to the Escrow Agent. The Escrow Agent shall be entitled to conclusively rely on any such memorandum and the Escrow Agent shall distribute the Escrow Amount from the escrow account in accordance with the terms of such memorandum.

If no such agreement can be reached during such 30-day period for good faith negotiation either the Indemnified Parties or the Indemnitors may bring suit in (and only in) the state or federal courts located in Multnomah County, Oregon to resolve the matter.

SECTION 8.6 Third-Party Claims.

In the event an Indemnified Party becomes aware of a third party claim which it reasonably believes may result in a demand against the Escrow or for other indemnification pursuant to this Article 8, the Indemnified Party shall, as soon as reasonably practicable, but in no event later than five (5) business days thereafter, notify the Indemnitor of such claim; provided, however, that no delay or deficiency on the part of the Indemnified Party in so notifying the Indemnitor will relieve the Indemnitor of any liability or obligation hereunder

except if such delay or deficiency materially prejudices or otherwise materially and adversely affects the rights of the Indemnitor with respect thereto and then, only to the extent of such material prejudice. Upon receipt of such notice, the Indemnitor shall be entitled, at such Indemnitor's expense, to participate in, to the extent that the Indemnitors wish (unless such Indemnitors also are party to such proceeding and the Indemnified Party determines in good faith that joint representation would be inappropriate), or assume the defense of such proceeding, but the Indemnitor may assume the defense if and only if the Indemnitor:

(A) acknowledges in writing to the Indemnified Party that Losses that may be assessed in connection with such Third Party Claim constitute Losses for which, subject to the limits on liability set forth in Article 8, the Indemnified Party will be indemnified pursuant to this Article 8 without contest or objection and that the Indemnitor will advance all expenses and costs of defense; and

(B) retains counsel for the defense of such Third Party Claim reasonably satisfactory to the Indemnified Party and furnishes to the Indemnified Party evidence satisfactory to the Indemnified Party that the Indemnitor has and will have sufficient financial resources to fund on a current basis the cost of such defense and paying those Losses which fall within the limits on liability set forth in this Article 8, that may arise under the claim.

The Indemnitors will not, as long as they actively, competently and diligently conduct such defense, be liable to the Indemnified Party under this Article 8 for any fees of other counsel or any other expenses with respect to the defense of such proceeding, in each case subsequently incurred by the Indemnified Party in connection with the defense of such proceeding. If the Indemnitors assume the defense of a proceeding, (A) no compromise or settlement of such claims may be effected by the Indemnitors without the Indemnified Party's consent unless (1) there is no finding or admission of any violation of legal requirements or any violation of the rights of any Person and no effect on any other claims that may be made against the Indemnified Party; and (2) the sole relief provided is monetary damages that are paid in full by the Indemnitors; and (B) the Indemnified Party will have no liability with respect to any compromise or settlement of such claims effected without its consent.

If notice is given to the Indemnitors of the commencement of any proceeding and the Indemnitors do not, within ten (10) days after the Indemnified Party's notice is given, give notice to the Indemnified Party of their election to assume the defense of such proceeding, the Indemnified Party will have the right to control such defense and the Indemnitors will be bound by any determination made in such proceeding or, with the consent of the Indemnitors (which will not be unreasonably withheld), any compromise or settlement effected by the Indemnified Party. If the Indemnified Party controls such defense, the Indemnitors agree to pay to the Indemnified Party promptly upon demand from time to time all reasonable attorneys' fees and other costs and expenses of defense.

The party not controlling the defense of any Third Party Claim (the "Noncontrolling Party") may participate therein at its own expense. However, if the Indemnitor assumes control of such defense and the Indemnified Party reasonably concludes that the Indemnitor and the Indemnified Party have conflicting interests or different defenses available with respect to such proceeding, then the reasonable fees and expenses of a single counsel to the Indemnified Party

will be considered and included as "Losses" for purposes of this Agreement. The party controlling such defense (the "Controlling Party") will reasonably advise the Noncontrolling Party of the status of such proceeding and the defense thereof, and the Controlling Party will consider in good faith recommendations made by the Noncontrolling Party. The Noncontrolling Party will furnish the Controlling Party with such information as it may have with respect to such proceeding (including copies of any summons, complaint or other pleading which may have been served on such party and any written claim, demand, invoice, billing or other document evidencing or asserting the same) and will otherwise cooperate with and assist the Controlling Party in the defense of such proceeding.

Notwithstanding the foregoing: (i) if an Indemnified Party determines in good faith that there is a reasonable probability that a proceeding may adversely affect it or its affiliates other than as a result of monetary damages for which it would be entitled to indemnification under this Agreement, the Indemnified Party may, by notice to the Indemnitors, assume the exclusive right to defend, compromise, or settle such proceeding, but the Indemnitors will not be bound by any determination of a proceeding so defended or any compromise or settlement effected without its consent (which may not be unreasonably withheld); and (ii) for any Claim involving or concerning Taxes, the Indemnified Party shall be the Controlling Party.

SECTION 8.7 Additional Major Shareholder Covenant.

Each Major Shareholder hereby covenants that from the date of Closing until the end of the final Earnout Year, such Major Shareholder shall make no payments to any employee of Buyer or the Surviving Corporation, including payments intended as an incentive to such employee toward achievement of the Earnout, without the prior, written consent of Buyer.

ARTICLE 9 TERMINATION

SECTION 9.1 Termination by Mutual Consent.

This Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time by the mutual consent of Seller and Buyer.

SECTION 9.2 Termination by Either Seller or Buyer.

This Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time:

(a) by Buyer or Seller, by written notice to the other party, if the Merger shall not have become effective on or prior to September 30, 2009 (the "End Date"), provided, however, that the right to terminate this Agreement pursuant to this Section 9.2(a) shall not be available to any party whose breach of this Agreement has been the cause of, or resulted in, the failure of the Merger to occur on or before such date;

(b) by Buyer or Seller if any court of competent jurisdiction in the United States or any state shall have issued an order, judgment, injunction or decree (other

than a temporary restraining order) restraining, enjoining or otherwise prohibiting the Merger and such order, judgment or decree shall have become final and nonappealable;

(c) by Seller, in the event of a material breach by Buyer of any representation, warranty or agreement contained herein that has not been cured or is not curable within the earlier of the End Date and ten (10) days following written notice from Seller to Buyer, or which by its nature cannot be cured within such time period; provided, however, that Seller is not then in material breach of this Agreement; or

(d) by Buyer, in the event of a material breach by Seller of any representation, warranty or agreement contained herein that has not been cured or is not curable within the earlier of the End Date and ten (10) days following written notice from Buyer or Merger Sub to Seller, or which by its nature cannot be cured within such time period; provided, however, that neither Buyer nor Merger Sub is then in material breach of this Agreement.

The party desiring to terminate this Agreement pursuant to the preceding paragraphs shall give written notice of such termination to the other party in accordance with Section 10.2 hereof, and shall set forth in reasonable detail the reason for the termination.

SECTION 9.3 Effect of Termination.

In the event of the termination of this Agreement pursuant to Section 9.1 or Section 9.2 hereof, there shall be no further obligation on the part of any party hereto, except that nothing herein shall relieve any party from liability for any willful breach hereof.

SECTION 9.4 Waiver.

At any time prior to the Effective Time, any party hereto may (a) extend the time for the performance of any obligation or other act of any other party hereto, (b) waive any inaccuracy in the representations and warranties contained herein or in any document delivered pursuant hereto, or (c) waive compliance with any agreement or condition contained herein. Any such extension or waiver shall be valid only if set forth in an instrument in writing signed by the party or parties to be bound thereby.

ARTICLE 10 MISCELLANEOUS AND GENERAL

SECTION 10.1 Expenses.

Regardless of whether the transactions contemplated by this Agreement are completed, each party shall pay its own fees and expenses incident to the negotiation, preparation and execution of this Agreement and the other Transaction Documents (including legal accounting, banking and brokerage fees and expenses).

SECTION 10.2 Notices.

Any notice, request, demand, consent or approval required under this Agreement shall be in writing given by personal delivery, confirmed facsimile transmission or overnight courier service, in each case addressed as respectively set forth below or to such other address as any party shall have previously designated by such a notice. The effective date of any notice, request or demand shall be the date of personal delivery, the date on which successful facsimile transmission is confirmed or the date actually delivered by a reputable overnight courier service, as the case may be, in each case properly addressed as provided herein and with all charges prepaid:

If to Buyer or Merger Sub:

TriQuint Semiconductor, Inc.
2300 NE Brookwood Parkway
Hillsboro, Oregon 97124
Fax: (503)615-8904
Attention: Chief Financial Officer

with a copy to:

Perkins Coie LLP
1120 NW Couch Street, Tenth Floor
Portland, Oregon 97209
Fax: (503)346-2144
Attn: Roy W. Tucker and Neil M. Nathanson

If to the Seller Representative:

Chris Day
c/o TriQuint TriAccess, Inc.
2235 Mercury Way, Suite 210
Santa Rosa, CA 95407
Fax: (707) 526-1485

If to Seller:

TriAccess Technologies
2235 Mercury Way, Suite 210
Santa Rosa, CA 95407
Fax: (707) 526-1485
Attn: Chief Financial Officer
Jim Kegerreis

With a copy to:

MBV Law, LLP
855 Front Street
San Francisco, CA 94111
Fax: (415) 433-6563
Attn: Greg L. Beattie

SECTION 10.3 Severability.

If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law, or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be completed as originally contemplated to the fullest extent possible.

SECTION 10.4 Entire Agreement; Amendments in Writing.

This Agreement and the other Transaction Documents constitute the entire agreement among the parties with respect to the subject matter hereof and thereof and supersede all prior agreements and undertakings, both written and oral, among the parties, or any of them, with respect to the subject matter hereof and thereof. No amendment, modification, waiver, termination or discharge of any provision of this Agreement or any other Transaction Document, or any consent to any departure by the parties from any provision hereof, shall in any event be effective unless the same shall be in writing and signed by the parties, and each such amendment, modification, waiver, termination or discharge shall be effective only in the specific instance and for the specific purpose for which given.

SECTION 10.5 Assignment.

This Agreement shall not be assigned by operation of law or otherwise; provided, however, that Buyer's rights and obligations may be assigned to and assumed by any corporation or other entity wholly owned (directly or through intermediate wholly owned subsidiaries) by Buyer.

SECTION 10.6 Parties in Interest.

This Agreement shall be binding upon and inure solely to the benefit of the parties hereto and their respective successors, heirs, legal representatives and permitted assigns, and nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

SECTION 10.7 Specific Performance.

The parties hereby acknowledge and agree that the failure of any party to perform its agreement and covenants hereunder, including its failure to take all actions as are necessary on its part to complete the Merger, will cause irreparable injury to the other parties, for which damages, even if available, will not be an adequate remedy. Accordingly, each party hereby consents to the issuance of injunctive relief by any court of competent jurisdiction to compel performance of such party's obligations and to the granting by any court of the remedy of specific performance of its obligations hereunder, in addition to any other rights or remedies available hereunder or at law or in equity.

SECTION 10.8 Governing Law.

This Agreement and the Transaction Documents shall be governed by, and construed in accordance with, the laws of the State of California applicable to contracts made and to be performed in California by persons domiciled in California, except for (a) matters and Transaction Documents related to employee matters, which shall be governed by, and construed in accordance with, the laws of the state where the employee is employed, and (b) Section 10.10 which shall be governed by Oregon law. Each party irrevocably consents to the exclusive jurisdiction and venue of the state and federal courts located in Portland, Oregon in connection with any action relating to this Agreement.

SECTION 10.9 Counterparts.

This Agreement may be executed and delivered (including by facsimile transmission) in one or more counterparts, and by the different parties hereto in separate counterparts, each of which when executed and delivered shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. To expedite the process of entering into this Agreement, the parties acknowledge that Transmitted Copies of this Agreement will be equivalent to original documents until such time as original documents are completely executed and delivered. "Transmitted Copies" will mean copies that are reproduced or transmitted via photocopy, facsimile or other process of complete and accurate reproduction and transmission.

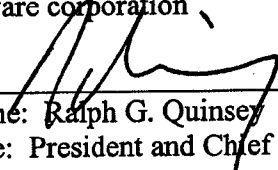
SECTION 10.10 Waiver of Jury Trial.

Each of Buyer, Seller and Merger Sub hereby irrevocably waives all right to trial by jury in any action, proceeding or counterclaim (whether based on contract, tort or otherwise) arising out of or relating to this Agreement, the transactions contemplated hereby or the actions of such parties in the negotiation, administration, performance and enforcement hereof.

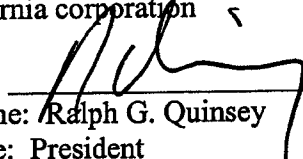
[Signature Page Follows]

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

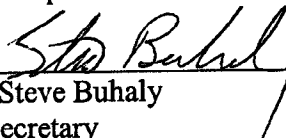
TRIQUINT SEMICONDUCTOR, INC.,
a Delaware corporation

By: 
Name: Ralph G. Quinsey
Title: President and Chief Executive Officer

TRITRI MERGER SUB, INC.,
a California corporation

By: 
Name: Ralph G. Quinsey
Title: President

TRITRI MERGER SUB, INC.,
a California corporation

By: 
Name: Steve Buhaly
Title: Secretary

TRIAACCESS TECHNOLOGIES,
a California corporation

By: _____
Name: Chris Day
Title: President

TRIAACCESS TECHNOLOGIES,
a California corporation

By: _____
Name: Jim Kegerreis
Title: Secretary

Signature Page to Agreement and Plan of Merger

67024-0008/LEGAL16739624.10

TRADEMARK
REEL: 004282 FRAME: 0955

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

TRIQUINT SEMICONDUCTOR, INC.,
a Delaware corporation

By: _____
Name: Ralph G. Quinsey
Title: President and Chief Executive Officer

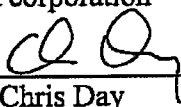
TRITRI MERGER SUB, INC.,
a California corporation

By: _____
Name: Ralph G. Quinsey
Title: President

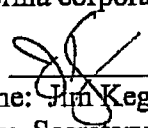
TRITRI MERGER SUB, INC.,
a California corporation

By: _____
Name: Steve Buhaly
Title: Secretary

TRIAACCESS TECHNOLOGIES,
a California corporation

By:  _____
Name: Chris Day
Title: President

TRIAACCESS TECHNOLOGIES,
a California corporation

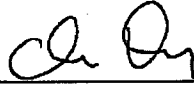
By:  _____
Name: Jim Kegerreis
Title: Secretary

Signature Page to Agreement and Plan of Merger

67024-0008/LEGAL16739624.10

TRADEMARK
REEL: 004282 FRAME: 0956

MAJOR SHAREHOLDERS (for purposes of Article 8 only):



Chris Day

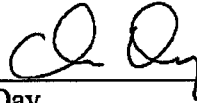
GREEN VENTURE CAPITAL, LP

By: _____
Name: Donald Green
Title: Managing Partner

GLR GROWTH FUND

By: _____
Name: Chris Luck
Title: Managing General Partner

SELLER REPRESENTATIVE:



Chris Day

Signature Page to Agreement and Plan of Merger

67024-0008/LEGAL16739624.10

TRADEMARK
REEL: 004282 FRAME: 0957

MAJOR SHAREHOLDERS (for purposes of Article 8 only):

Chris Day

GREEN VENTURE CAPITAL, LP

By: _____

Name: Donald Green

Title: Managing Partner

GLR GROWTH FUND

By: _____

Name: Chris Luck

Title: Managing General Partner

SELLER REPRESENTATIVE:

Chris Day

Signature Page to Agreement and Plan of Merger

57024-0008/LEGAL16739624.10

TRADEMARK

REEL: 004282 FRAME: 0958

**MAJOR SHAREHOLDERS (for purposes of
Article 8 only):**

Chris Day

GREEN VENTURE CAPITAL, LP

By: _____
Name: Donald Green
Title: Managing Partner

GLR GROWTH FUND

By: Chris Luck
Name: Chris Luck
Title: Managing General Partner

SELLER REPRESENTATIVE:

Chris Day

Signature Page to Agreement and Plan of Merger

67024-0008/LEGAL16739624.10

TRADEMARK
REEL: 004282 FRAME: 0959

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Agreement Regarding Additional Indemnity Provision as of the date first above written.

TRIQUINT SEMICONDUCTOR, INC.,

By *Ralph G. Quinsey*
Name: Ralph G. Quinsey
Title: President and CEO

TRITRI MERGER SUB, INC.,

By *Ralph G. Quinsey*
Name: Ralph G. Quinsey
Title: President

TRIAACCESS TECHNOLOGIES,

By _____
Name: _____
Title: _____

MAJOR SHAREHOLDERS

GREEN VENTURE CAPITAL LP

By _____
Name: _____
Title: _____

GLR GROWTH FUND

By _____
Name: _____
Title: _____

Chris Day

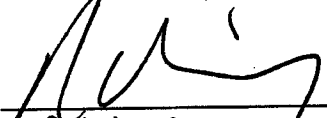
SELLER REPRESENTATIVE:

Chris Day

IN WITNESS WHEREOF, the undersigned have affixed their signatures and hereby adopt as part of this instrument the Schedules attached hereto which are incorporated by reference.

DEPOSITORS:

Triquint Semiconductor, Inc.

By: 
Name: Ralph Quinsey
Title: President and CEO

Address: 2300 NE Brookwood Parkway
Hillsboro, Oregon 972124
Fax: (503) 615-8904
Attention: Chief Financial Officer
Tax I.D.: 95-3654013

Seller Representative:

Chris Day
Address: _____

Fax: _____
Tax I.D.: _____

AGENT:

U.S. BANK NATIONAL ASSOCIATION,
as Agent

By: _____
Its: _____

Notices to the Agent shall be sent to:

U.S. Bank Corporate Trust Services 60 Livingston Avenue, EP-MN-WS3T St. Paul, MN 55107 Attn: Olaleye Fadahunsi (651) 495-3726 (651) 495-8087 (fax)	With Fax Copy to Corazon Gruenberg: (503) 275-5713 (503) 275-5738 (fax)
---	---

SIGNATURE PAGE TO ESCROW AGREEMENT

67024-0008/LEGAL16833206.4

IN WITNESS WHEREOF, this Disbursing Agent Agreement has been duly executed by the parties hereto as of the day and year first above written.

DISBURSING AGENT:

**U.S. BANK NATIONAL ASSOCIATION, a
national banking association**


By: _____

Name: _____

Title: _____

BUYER:

**TRIQUINT SEMICONDUCTOR, INC., a
Delaware corporation**

By:  _____

Name: Ralph Quinsey

Title: President and CEO

SELLER REPRESENTATIVE:

Chris Day

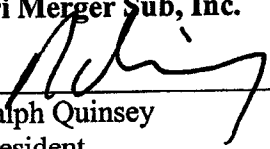
[Signature page of Disbursing Agent Agreement]

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

TriQuint Semiconductor, Inc.

By: 
Ralph Quinsey
President and Chief Executive Officer

TriTri Merger Sub, Inc.

By: 
Ralph Quinsey
President

Shareholder:

Brian Bauer

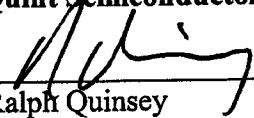
Shares of Seller Common Stock: 958,000
Shares of Series A Preferred Stock: 0
Shares of Series B Preferred Stock: 0

Address:

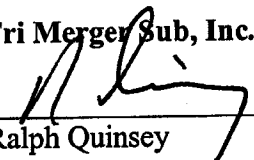
[Signature Page to Voting and Support Agreement]

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

TriQuint Semiconductor, Inc.

By: 
Ralph Quinsey
President and Chief Executive Officer

TriTri Merger Sub, Inc.

By: 
Ralph Quinsey
President

Shareholder:

Chris Day

Shares of Seller Common Stock: 1,596,667
Shares of Series A Preferred Stock: 0
Shares of Series B Preferred Stock: 77,888

Address:

[Signature Page to Voting and Support Agreement]

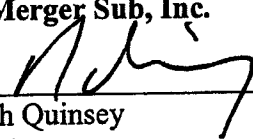
67024-0008/LEGAL16873989.1

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

TriQuint Semiconductor, Inc.

By: 
Ralph Quinsey
President and Chief Executive Officer

TriTri Merger Sub, Inc.

By: 
Ralph Quinsey
President

Shareholder:

GLR Growth Fund

By: _____
Name:
Title:

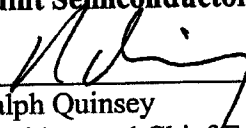
Shares of Seller Common Stock: 0
Shares of Series A Preferred Stock: 897,014
Shares of Series B Preferred Stock: 5,748,087

Address:

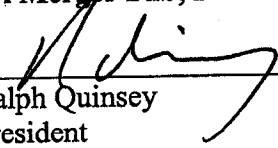
[Signature Page to Voting and Support Agreement]

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

TriQuint Semiconductor, Inc.

By: 
Ralph Quinsey
President and Chief Executive Officer

TriTri Merger Sub, Inc.

By: 
Ralph Quinsey
President

Shareholder:

Green Venture Capital L.P.

By: _____
Name:
Title:

Shares of Seller Common Stock: 0
Shares of Series A Preferred Stock: 0
Shares of Series B Preferred Stock: 1,789,611

Address:

[Signature Page to Voting and Support Agreement]

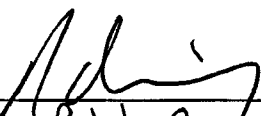
67024-0008/LEGAL16874047.1

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

SHAREHOLDER:

Brian Bauer

TriQuint Semiconductor, Inc.

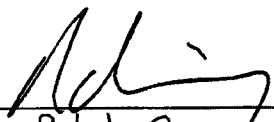
By: 
Name: Ralph Quinsey
Title: President and CEO

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

SHAREHOLDER:

Chris Day

TriQuint Semiconductor, Inc.

By: 
Name: Ralph Quinsky
Title: President and CEO

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

SHAREHOLDER:

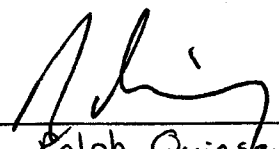
Donald Green

TriQuint Semiconductor, Inc.

By: _____

Name: _____

Title: _____

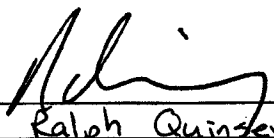

Ralph Quinsley
President and CEO

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

SHAREHOLDER:

Chris Luck

TriQuint Semiconductor, Inc.

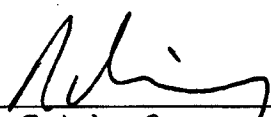
By: 
Name: Ralph Quinsey
Title: President and CEO

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

SHAREHOLDER:

Daniel Needham

TriQuint Semiconductor, Inc.

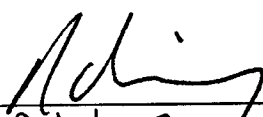
By: 
Name: Ralph Quinsey
Title: President and CEO

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

SHAREHOLDER:

Eric Rossin

TriQuint Semiconductor, Inc.

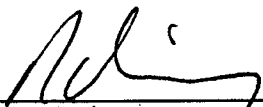
By: 
Name: Ralph Quinsey
Title: President and CEO

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

SHAREHOLDER:

Jim Kegerreis

TriQuint Semiconductor, Inc.

By: 
Name: Ralph Quinsey
Title: President and CEO

ANNEX A

DEFINITIONS AND RULES OF CONSTRUCTION

I. Definitions

For purposes of the Stock Purchase Agreement to which this Annex A is attached, the following terms have the meanings specified:

"Accounts" has the meaning set forth in Section 3.19.

"Affiliate" when used in reference to a specified Person, means any Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with the specified Person.

"Applicable Laws" means any and all laws, ordinances, constitutions, regulations, statutes, treaties, rules, codes, licenses, certificates, franchises, permits, requirements and injunctions adopted, enacted, implemented, promulgated, issued, entered or deemed applicable by or under the authority of any Governmental Entity having jurisdiction over a specified Person or any of such Person's properties or assets.

"Balance Sheet" has the meaning set forth in Section 3.7.1.

"Buyer Indemnified Parties" has the meaning set forth in Section 8.2.1.

"Claim Notice" has the meaning set forth in Section 8.5.1.

"Claims" has the meaning set forth in Section 8.3.1.

"Cleanup" means all material actions required under applicable Environmental Laws to clean up, remove, treat or remediate Hazardous Materials.

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

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

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

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

"Contract" means any agreement, lease, license, contract, obligation, promise, commitment, arrangement, understanding or undertaking, instrument, document (whether written or oral and whether express or implied) of any type, nature or description that is legally binding.

"Corporations Code" means the Corporation Code of the State of California, as amended.

"Customer Offerings" means:

(a) the products (including Software and Documentation) that Seller: (i) currently develops, manufactures, markets, distributes, makes available, sells or licenses to third parties; (ii) has developed, manufactured, marketed, distributed, made available, sold or licensed to third parties within the previous six years; or (iii) currently plans to develop, manufacture, market, distribute, make available, sell or license to third parties in the future; and

(b) the services that Seller: (i) currently provides or makes available to third parties, or (ii) has provided or made available to third parties within the previous six years, or (iii) currently plans to provide or make available to third parties in the future.

"Debt" means (a) all indebtedness of Seller for the repayment of borrowed money, whether or not represented by bonds, debentures, notes or similar instruments, and all accrued and unpaid interest, prepayment premiums or penalties (including any legal or other expenses required to be paid to lenders pursuant to the terms of such indebtedness in connection with a prepayment thereof), bank overdrafts and bank fees owing on any such indebtedness, (b) all obligations of Seller in respect of banker's acceptances or letters of credit, (c) all obligations of Seller as lessee under leases that have been recorded as capital leases in accordance with U.S. Generally Accepted Accounting Principals ("GAAP"), (d) any obligation of Seller under any interest rate, currency or commodity derivatives or hedging transactions (valued at the termination value thereof) and (e) obligations in the nature of guarantees by Seller of indebtedness or obligations of the type described in clauses (a) through (d) above of any other Person, and all indebtedness or obligations of the types referred to in clauses (a) through (d) above of any other Person secured by any Encumbrance on any assets of Seller

"Documentation" means printed, visual or electronic materials, reports, white papers, documentation, specifications, designs, flow charts, code listings, instructions, user manuals, frequently asked questions, release notes, recall notices, error logs, diagnostic reports, marketing materials, packaging, labeling, service manuals and other information describing the use, operation, installation, configuration, features, functionality, pricing, marketing or correction of a product, whether or not provided to the end user.

"DOL" means the United States Department of Labor.

"Domain Names" has the meaning set forth in Section 3.18.16.

"Employee Benefit Plan" means any retirement, pension, profit sharing, deferred compensation, stock bonus, savings, bonus, incentive, cafeteria, medical, dental, vision, hospitalization, life insurance, accidental death and dismemberment, medical expense reimbursement, dependent care assistance, tuition reimbursement, disability, sick pay, holiday, vacation, severance, change of control, stock purchase, stock option, stock appreciation rights, fringe benefit or other employee benefit plan, fund, policy, program, contract, arrangement or

payroll practice (including, without limitation, any "employee benefit plan," as defined in Section 3(3) of ERISA) or any employment, consulting or personal services contract, whether written or oral, qualified or nonqualified, or funded or unfunded, (i) sponsored, maintained or contributed to by Seller or to which Seller is a party, (ii) covering or benefiting any current or former officer, employee, agent, director or independent contractor of Seller (or any dependent or beneficiary of any such individual), or (iii) with respect to which Seller has (or could have) any obligation or liability.

"Employment Agreement" means a contract, offer letter (other than "at will" offer letters that do not provide for any severance or termination benefits) or agreement of Seller, with or addressed to any director, officer, employee, contractor or consultant of Seller under which Seller has any actual or contingent liability or obligation to provide compensation and/or benefits in consideration for past, present or future services.

"Encumbrance" means any claim, lien, pledge, charge, security interest, encumbrance, mortgage, lease, license, equitable interest, option, right of first refusal or preemptive right, condition, or other restriction of any kind, including any restriction on use, voting (in the case of any security), transfer, receipt of income, or exercise of any other attribute of ownership of any kind whatsoever.

"Environmental Law(s)" means all federal, state and local statutes, regulations and policies having the force of law, whether foreign or domestic, and all court orders, decrees and arbitration awards, and the common law, relating to pollution or protection of the environment or natural resources, including, those related to the use, handling, transport, treatment or disposal, release or discharge of Hazardous Materials.

"Environmental Permits" means all material environmental, health and safety Permits required under or issued pursuant to any applicable Environmental Law.

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

"Escrow Agent" has the meaning set forth in Section 2.10.

"Escrow Agreement" means the escrow agreement to be entered into among the Seller Representative, Buyer, Merger Sub and Escrow Agent in the form agreed to by the parties.

"Exploit" shall mean develop, design, test, modify, make, use, sell, have made, used and sold, import, reproduce, market, distribute, commercialize, support, maintain, correct and create derivative works of.

"Financial Statements" has the meaning set forth in Section 3.7.1.

"GAAP" means generally accepted accounting principles in the United States.

"Governmental Entity" means (a) any nation, state, county, city, town, village, district or other jurisdiction of any nature; (b) federal, state, local, municipal, foreign or other government;

(c) governmental or quasi-governmental authority of any nature (including any governmental agency, branch, board, commission, department, instrumentality, office or other entity, and any court or other tribunal); (d) multi-national organization or body; and/or (e) body exercising, or entitled or purporting to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power of any nature.

"Hazardous Materials" means: (a) any petroleum products, by-products or breakdown products, radioactive materials, friable asbestos-containing materials and polychlorinated biphenyls; (b) all chemical, material or substance defined or regulated as toxic or hazardous or as a pollutant or contaminant or waste under any applicable Environmental Law; (c) any radioactive substances, elements or compounds; or (d) any biological pathogens, viruses or harmful biological substances.

"HIPAA" means the Health Insurance, Portability and Accountability Act of 1997, as amended.

"Intellectual Property" means the following subsisting throughout the world:

- (a) Patent Rights;
- (b) Trademarks and all goodwill in the Trademarks;
- (c) copyrights, designs, data and database rights and registrations and applications for registration thereof, including moral rights of authors;
- (d) mask works and registrations and applications for registration thereof and any other rights in semiconductor topologies under the laws of any jurisdiction;
- (e) inventions, invention disclosures, statutory invention registrations, trade secrets and confidential business information, know-how, manufacturing and product processes and techniques, research and development information, financial, marketing and business data, pricing and cost information, business and marketing plans and customer and supplier lists and information, whether patentable or nonpatentable, whether copyrightable or noncopyrightable and whether or not reduced to practice; and
- (f) other proprietary rights relating to any of the foregoing (including remedies against infringement thereof and rights of protection of interest therein under the laws of all jurisdictions).

"Internal Systems" shall mean the Software and Documentation and the computer, communications and network systems (both desktop and enterprise-wide), laboratory equipment, reagents, materials and test, calibration and measurement apparatus used by Seller in its respective business or operations or to develop, manufacture, fabricate, assemble, provide, distribute, support, maintain or test the Customer Offerings, whether located on the premises of the Seller or hosted at a third-party site.

"Key Employee" means any employee listed on Schedule A hereto.

"Key Shareholder" means any Shareholder listed on Schedule B hereto.

"Knowledge" means with respect to Seller, the knowledge of its directors and officers, after reasonable inquiry.

"Leased Real Property" means all real property, land, buildings, improvements and structures leased, subleased, licensed or otherwise occupied (whether as tenant, subtenant or pursuant to other occupancy arrangements) by Seller, including any properties where leases or subleases thereon are otherwise guaranteed by Seller.

"Open Source Materials" shall mean all Software, Documentation or other material that is distributed as "free software," "open source software" or under a similar licensing or distribution model, including, but not limited to, the GNU General Public License (GPL), GNU Lesser General Public License (LGPL), Mozilla Public License (MPL), or any other license described by the Open Source Initiative as set forth on www.opensource.org.

"Patent Rights" means all patents, patent applications, utility models, design registrations and certificates of invention and other governmental grants for the protection of inventions or industrial designs (including all related continuations, continuations-in-part, divisionals, reissues and reexaminations).

"Permits" has the meaning set forth in [Section 3.24](#).

"Person" means any individual, corporation (including any non-profit corporation), general or limited liability partnership, limited liability company, joint venture, estate, trust, association, organization, or other entity or Governmental Entity.

"Personal Property" has the meaning set forth in [Section 3.17.2](#).

"Proceeding" means any suit, litigation, arbitration, hearing, audit, investigation or other action (whether civil, criminal, administrative or investigative) commenced, brought, conducted, or heard by or before, or otherwise involving, any Governmental Entity or arbitrator.

"Real Property" has the meaning set forth in [Section 3.17.1](#).

"Securities Act" means The Securities Act of 1933, as amended.

"Seller Disclosure Schedule" means the Disclosure Schedule of the Seller provided to Buyer.

"Seller Intellectual Property" means the Seller Owned Intellectual Property and the Seller Licensed Intellectual Property.

"Seller Licensed Intellectual Property" means all Intellectual Property that is licensed to Seller by any third party.

"Seller Owned Intellectual Property" means all Intellectual Property owned or purported to be owned by Seller, in whole or in part.

"Seller Registrations" means Intellectual Property Registrations that are registered or filed in the name of Seller, alone or jointly with others.

"Seller Representative" has the meaning set forth in the preamble.

"Seller Source Code" means the source code for any Software included in the Customer Offerings or Internal Systems or other confidential information constituting, embodied in or pertaining to such Software.

"Software" means computer software code, applications, utilities, development tools, diagnostics, databases and embedded systems, whether in source code, interpreted code or object code form.

"Third Party Claim" has the meaning set forth in Section 8.5.1.

"Trademarks" means all registered trademarks and service marks, logos, Internet domain names, corporate names and doing business designations and all registrations and applications for registration of the foregoing, common law trademarks and service marks and trade dress.

II. Interpretation Provisions

(a) The words "hereto," "hereof," "herein" and "hereunder" and words of similar import when used in the Agreement refer to such Agreement as a whole and not to any particular provision of such Agreement, and article, section, schedule and exhibit references are to such Agreement unless otherwise specified. The meaning of defined terms shall be equally applicable to the singular and plural forms of the defined terms. The term "or" is disjunctive but not necessarily exclusive. The terms "include" and "including" are not limiting and mean "including without limitation."

(b) References to agreements and other documents shall be deemed to include all subsequent amendments and other modifications thereto.

(c) References to statutes shall include all regulations promulgated thereunder and references to statutes or regulations shall be construed as including all statutory and regulatory provisions consolidating, amending or replacing the statute or regulation.

(d) The captions and headings of the Agreement are for convenience of reference only and shall not affect the construction of such Agreement.

(e) The language used in the Agreement shall be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction shall be applied against any party.

(f) The annexes, schedules and exhibits to the Agreement to which this Annex is attached are a material part hereof and shall be treated as if fully incorporated into the body of such Agreement.

Index of Other Defined Terms

In addition to those terms defined in this Annex A, the following terms will have the respective meanings given to the terms in the sections indicated below:

<u>Defined Term</u>	<u>Section</u>
Agreement	Preamble
Accounts	3.19
Agreement of Merger	2.3
Balance Sheet	3.7.1
Basket Amount	8.3.1
Buyer	Preamble
Buyer Indemnified Parties	8.2.1
Claims	8.3.1
Closing	2.2
Closing Balance Sheet	2.11.1
Closing Date	2.2
Closing Debt	2.7.3(g)
Controlling Party	8.6
Disbursing Agent	2.13.1(a)
Dispute Notice	8.5.2
Dissenting Shares	2.15
Domain Names	3.18.16
Earnout	2.12.1
Earnout Statement	2.12.2
Earnout Year	2.12.1
Earnout Year Payment	2.12.2
Effective Time	2.3
End Date	9.2(a)
Escrow	2.10
Escrow Agent	2.10
Escrow Agreement	2.10
Escrow Amount	2.10
Final Earnout Report	2.12.3
Financial Statements	3.7.1
Gross Initial Cash Consideration	2.7.3(g)
In the Money Option	2.7.3(e)
In the Money Option Holders	2.7
Indemnified Parties	8.2.2
Indemnitor	8.5.1
Independent Accounting Firm	2.11.3(a)
Initial Cash Consideration	2.7.3(g)
Key Employee	Recitals
Key Shareholder	Recitals
Liability Cap	8.3.2
Losses	8.2.1

<u>Defined Term</u>	<u>Section</u>
Major Shareholders	Preamble
Major Shareholders Indemnification Obligation	8.3.2
Material Contracts	3.10
Merger	2.1
Merger Consideration	2.7.3(g)
Merger Consideration Recipients	2.7
Merger Sub	Preamble
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Specified Shareholders	Exhibit B
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EXHIBIT A
MAJOR SHAREHOLDERS

Green Venture Capital, L.P.

GLR Growth Fund

Chris Day

Exhibit A

67024-0008/LEGAL16739624.9

TRADEMARK
REEL: 004282 FRAME: 0984

EXHIBIT B
SPECIFIED SHAREHOLDERS

Green Venture Capital, L.P.

GLR Growth Fund

Chris Day

Brian Bauer

Exhibit B-1

67024-0008/LEGAL16739624.9

TRADEMARK
REEL: 004282 FRAME: 0985

EXHIBIT C
ARTICLES OF INCORPORATION
OF SURVIVING CORPORATION

Exhibit C

67024-0008/LEGAL16739624.10

TRADEMARK
REEL: 004282 FRAME: 0986

**AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
TRIQUINT TRIACCESS, INC.**

ARTICLE 1. NAME

The name of this corporation is TriQuint TriAccess, Inc.

ARTICLE 2. PURPOSES

The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

ARTICLE 3. SHARES

This corporation is authorized to issue only one class of shares of stock; and the total number of shares which this corporation is authorized to issue is Ten Thousand (10,000) shares of common stock, par value One Cent (\$0.01) per share.

ARTICLE 4. LIMITATION OF DIRECTOR LIABILITY

The liability of the Directors of this corporation for monetary damages shall be eliminated to the fullest extent permissible under California law.

ARTICLE 5. INDEMNIFICATION

This corporation is authorized to provide indemnification of agents (as defined in Section 317 of the General Corporation Law of California), whether by bylaw, agreement, or otherwise, in excess of the indemnification otherwise permitted in Section 317 of the General Corporation Law of California, subject only to the applicable limits set forth in Section 204 of the General Corporation Law of California with respect to actions for breach of duty to this corporation and its shareholders.

CERTIFICATE OF APPROVAL

OF

AGREEMENT OF MERGER

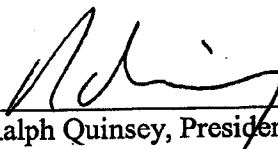
Ralph Quinsey and Steve Buhaly certify that:

1. They are the President and the Secretary, respectively, of TriTri Merger Sub, Inc., a California corporation.
2. The Agreement and Plan of Merger (the "Agreement of Merger") in the form attached was duly approved by the board of directors and shareholders of the corporation.
3. There is a single class of shares of the corporation entitled to vote: 10,000 shares of Common Stock. The number of shares voted in favor of the Agreement of Merger equaled or exceeded the vote required. The number of shares of Common Stock required to approve the Agreement of Merger was more than fifty percent (50%).

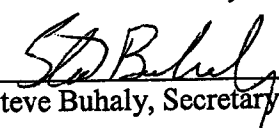
[Signature Page Follows]

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

DATE: September 2, 2009



Ralph Quinsey, President



Steve Buhaly, Secretary

[Signature Page to Certificate of Approval of Merger]

CERTIFICATE OF APPROVAL
OF
AGREEMENT OF MERGER

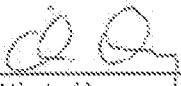
Chris Day and Jim Kegerreis certify that:


1. They are the President and the Secretary, respectively, of TriAccess Technologies, a California corporation.
2. The Agreement and Plan of Merger (the "Agreement of Merger") in the form attached was duly approved by the board of directors and shareholders of the corporation.
3. There are three classes of shares of the corporation entitled to vote: 4,091,805 shares of Common Stock, 2,906,802 shares of Series A Preferred Stock and 7,732,596 shares Series B Preferred Stock. The number of shares voted in favor of the Agreement of Merger equaled or exceeded the vote required. The number of shares of Common Stock required to approve the Agreement of Merger was more than fifty percent (50%). The number of shares of Series A Preferred Stock required to approve the Agreement of Merger was more than fifty percent (50%). The number of shares of Series B Preferred Stock required to approve the Merger Agreement was more than fifty percent (50%).

[Signature Page Follows]

We further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of our own knowledge.

DATE: September 2, 2009

By: 
Name: Chris Day
Title: President

By: 
Name: Jill Kegsreals
Title: Secretary

[Signature Page to Certificate of Approval of Merger]

