**ACQUISITION AGREEMENT**

This Acquisition Agreement (the “Agreement”) is effective [DATE],

**BETWEEN: [COMPANY NAME]** (the "Company"), a company organized and existing under the laws of the [State/Province] of [STATE/PROVINCE], with its head office located at:

[YOUR COMPLETE ADDRESS]

**AND: [PURCHASER NAME]** (the "Purchaser"), a company organized and existing under the laws of the [State/Province] of [STATE/PROVINCE], with its head office located at:

[COMPLETE ADDRESS]

RECITALS

The Company operates a business known as [SPECIFY], that engages in the business of providing [SPECIFY] under the service mark [SPECIFY] on the [SPECIFY] (as defined in the Commercial Agreement described below), and selling [DESCRIBE].

The Company desires to sell to Purchaser, and Purchaser desires to purchase from the Company, substantially all of the assets of the [SPECIFY] Business in exchange for: (i) [NUMBER] shares of the Series [SPECIFY] Preferred Stock of Purchaser (the "ACQUISITION SHARES"); and (ii) the assumption by Purchaser of certain enumerated liabilities of the [SPECIFY] Business, in each case all on the terms and conditions set forth in this Agreement. In addition, in consideration for services to be rendered by the Company to Purchaser pursuant to the Operating Agreement (as defined below) in connection with the transfer of the [SPECIFY] Business to Purchaser, Purchaser will issue to the Company [NUMBER] shares of the Series [SPECIFY] Preferred Stock of Purchaser (the "SERVICES SHARES"). The Acquisition Shares and Services Shares are collectively referred to herein as the "TRANSACTION SHARES."

The Company, in its own name or in the name of [COMPANY NAME] ("the Company VENTURES"), currently holds [NUMBER] shares of Purchaser Common Stock (the "EXISTING PURCHASER SHARES") and a warrant to purchase an additional [NUMBER] shares of Purchaser Common Stock (the "EXISTING Company WARRANT"). As part of the transactions contemplated by this Agreement and the Commercial Agreement, the Existing Company Warrant will be amended to become exercisable for shares of Purchaser Series [SPECIFY] Preferred Stock (the "WARRANT SHARES") and the expiration date with respect to exercisability of the Existing Company Warrant will be subject to the provisions of the Commercial Agreement. Purchaser shall also grant The Company the right to exchange the Existing Purchaser Shares for a similar number of common-equivalent shares of Purchaser Series [SPECIFY] Preferred Stock.

The shares of each series of Purchaser Series [SPECIFY] Preferred Stock (collectively, the "PURCHASER PREFERRED SHARES") will have the rights, preferences and privileges described in the form of the Certificate of Determination attached hereto as Exhibit [SPECIFY] (the "CERTIFICATE OF DETERMINATION"). The Purchaser Preferred Shares may not be sold or otherwise transferred by the Company or any affiliate thereof, although such shares may be converted into shares of Purchaser Common Stock pursuant to the Certificate of Determination, whereupon the shares will only be subject to any applicable transfer restrictions under state and federal securities laws..

The Transaction Shares shall be issued to The Company either (i) in a private placement pursuant to the exemption provided by Section [NUMBER of the [YOUR COUNTRY] Securities [ACT/LAW/RULE], as amended (the "[DATE] ACT") or (ii) pursuant to the exemption from registration provided by Section [SPECIFY] of the [DATE] Act under which the parties will request the [YOUR COUNTRY] Department of Corporations of the State of [STATE/PROVINCE] (the "DEPARTMENT OF CORPORATIONS") to conduct a hearing for the purpose of determining whether the proposed issuance of the Transaction Shares in connection with the transactions contemplated herein is fair, just and equitable (the "FAIRNESS HEARING") and upon such a finding, to grant a permit qualifying such issuance (the "[STATE/PROVINCE] PERMIT").

The shares of Purchaser Common Stock issuable upon conversion of the Purchaser Preferred Shares (the "CONVERSION SHARES") that are not qualified under the [STATE/PROVINCE] Permit shall have all the registration rights set forth in the Registration Rights Agreement in the form attached hereto as Exhibit [SPECIFY] (the "REGISTRATION RIGHTS AGREEMENT"), and regardless of whether the Conversion Shares are qualified under the [STATE/PROVINCE] Permit, such shares shall have the Form [SPECIFY] demand and piggyback registration rights set forth in the Registration Rights Agreement.

The Purchaser Preferred Shares held by the Company shall be subject to the voting requirements set forth in that certain Voting Trust Agreement in the form attached hereto as Exhibit [SPECIFY] (the "VOTING TRUST AGREEMENT"), the sole intent of which will be to remove any class voting rights that would otherwise accrue to the Purchaser Preferred Shares.

The parties understand that the closing of the transactions contemplated by this Agreement is subject to a number of conditions. Pending the closing of the transactions contemplated under this Agreement, the parties will enter into an Operating Agreement in the form attached hereto as Exhibit [SPECIFY] (the "OPERATING AGREEMENT"), which will be binding upon the parties hereto from the date hereof until the Closing (as defined in Section 1.4) or earlier termination of this Agreement.

In connection with this Agreement, the parties are concurrently entering into a Technology License, Distribution, Services and Co-Marketing Agreement in the form attached hereto as Exhibit [SPECIFY] (the "COMMERCIAL AGREEMENT"). The Commercial Agreement, Operating Agreement, Registration Rights Agreement and Voting Trust Agreement are referred to herein as the "ANCILLARY AGREEMENTS."

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants hereinafter set forth, Purchaser and THE COMPANY hereby agree as follows:

1. **PURCHASE AND SALE OF ASSETS**
   1. **Certain Definitions. As Used In This Agreement**
2. [SPECIFY] Assets. The "[SPECIFY] ASSETS" means those tangible and intangible assets, properties and rights that, as of the Closing Date (as defined in Section 1.4), are owned or controlled by the Company or an entity controlled by the Company, are used by the Company or an entity controlled by the Company in the operation and conduct of the [SPECIFY] Business as it is currently conducted and as it is proposed to be conducted following the date hereof and which are set forth on Schedules 1.2(a) through (e) of the [SPECIFY] Assets Letter.

As used in this Agreement, the phrase "as it is proposed to be conducted following the date hereof" shall mean the conduct of the [SPECIFY] Business as if it were to be continued in substantially the same manner in which it is currently being run by the Company, except that the party owning the [SPECIFY] Business will be Purchaser and that the volume of transactions processed by the [SPECIFY] Business will be consistent with projections provided by the Company, provided however, that the parties recognize that additional system capacity may be required to accommodate such projections, and provided further, that the parties recognize that

* 1. no warranty is being made as to whether the anticipated volume of transactions will be met,
  2. there is no guarantee that the advertising revenues will not suffer if employees directly involved with the [SPECIFY] Business do not continue their employment after the Effective Date, and
  3. the acquisition of additional system capacity is beyond the control of the Company.

1. Intellectual Property. "INTELLECTUAL PROPERTY" means and includes patents, patent applications and the right to file for patent applications (including but not limited to continuations, continuations-in-part, divisional and reissues), trademarks, logos, service marks, trade names and service names (in each case whether or not registered) and applications for and the right to file applications for registration thereof, copyrights (whether or not registered) and applications for and the right to file applications for registration thereof, moral rights, mask works and mask work registrations and applications for the right to file applications for registration thereof, trade secrets, trade dress, publicity and privacy rights, and any other intellectual property rights arising under the laws of the [COUNTRY], any State thereof, or any country or province.
   1. **Agreement to Sell and Purchase Assets**

Subject to the terms and conditions of this Agreement, and in reliance on the representations, warranties and covenants set forth in this Agreement, The Company agrees to sell, assign, transfer and convey to Purchaser at the Closing (as defined in Section 1.4), and Purchaser agrees to purchase and acquire from the Company at the Closing, all of the Company's right, title and interest in and to all of the [SPECIFY] Assets. The [SPECIFY] Assets will be sold, assigned, transferred and conveyed to Purchaser on the Closing Date, free and clear of all mortgages, pledges, liens, licenses, rights of possession, security interests, restrictions, encumbrances, charges, title retention, conditional sale or other security arrangements and all claims or agreements of any nature whatsoever, except as otherwise expressly disclosed on the the Company Exceptions Letter (as defined below). The [SPECIFY] Assets to be purchased by Purchaser under this Agreement shall consist of the following assets and properties owned or controlled by the Company on the date hereof or on the Closing Date:

1. Contracts. All right, title and interest of the Company in the contracts, agreements, engagements, leases, advertising sales contracts and licenses, written or oral, relating to the [SPECIFY] Business that are listed on Schedule [SPECIFY] of the [SPECIFY] Assets Letter (each a "[SPECIFY] CONTRACT" and collectively, the "[SPECIFY] CONTRACTS"); provided, however, that this Agreement will not effect the sale, assignment or transfer to Purchaser of any [SPECIFY] Contracts that by their terms cannot be so sold, assigned or transferred to Purchaser without the consent of a third party unless and until such consent has been obtained; provided further, that, as to any such [SPECIFY] Contracts, The Company will take such actions and grant such rights as may be necessary such that Purchaser will have the full right and benefit under such [SPECIFY] Contracts notwithstanding such failure to sell, assign or transfer to Purchaser;
2. Intellectual Property. All right, title and interest of the Company in the Intellectual Property that is listed on Schedule [SPECIFY] to the [SPECIFY] Assets Letter (the "[SPECIFY] INTELLECTUAL PROPERTY"), provided that the [SPECIFY] Intellectual Property shall not include the electronic or other media upon which such [SPECIFY] Intellectual Property is stored;
3. Software. All right, title and interest of the Company in any computer software (in source and object code form) and related documentation that is listed on Schedule [SPECIFY] to the [SPECIFY] Assets Letter (the "[SPECIFY] SOFTWARE"), provided that the [SPECIFY] Software shall not include the electronic or other media upon which such [SPECIFY] Software is stored;
4. Web Sites. All right, title and interest of the Company in any World Wide Web sites maintained in connection with the [SPECIFY] Business, including all related URL addresses and related rights (including all agreements listed on Schedule [SPECIFY], if any, related to pointers to such Web sites), that is listed on Schedule [SPECIFY] to the [SPECIFY] Assets Letter (the "[SPECIFY] WEB SITES");
5. Tangible [SPECIFY] Assets. The tangible assets and tangible embodiments of intangible assets, including all additions or accessions thereto that occur from the date hereof until Closing, that are listed on Schedule [SPECIFY] to the [SPECIFY] Assets Letter (the "[SPECIFY] TANGIBLE ASSETS").
6. Documents. Copies of all financial records, logs, books, records, files, customer lists and histories, lists of advertisers, supplier lists and files, product component lists, engineering and design drawings, diagrams and other documentation depicting or specifying the designs and components of all the [SPECIFY] Contracts, the [SPECIFY] Intellectual Property, the [SPECIFY] Software, the [SPECIFY] Web Sites, the [SPECIFY] Accounts or the Tangible [SPECIFY] Assets, as well as any and all sales and marketing materials for the [SPECIFY] Business, provided that the documents described herein shall not be deemed to include any of the assets described in Schedules [SPECIFY];
7. Media. The electronic or other media upon which the [SPECIFY] Intellectual Property and [SPECIFY] Software that is not transmitted electronically is stored.
8. Goodwill. All the goodwill of the [SPECIFY] Business.
   1. **Asset Transfer; Passage of Title; Delivery; Power of Attorney**
   2. Title Passage. Except as otherwise provided in this Section, upon the Closing, title to all of the [SPECIFY] Assets shall pass to Purchaser; and the Company shall deliver to Purchaser possession of all of the [SPECIFY] Assets as provided in subsection 1.3(b), and shall further deliver to Purchaser a fully executed Assignment and Bill of Sale in the form attached hereto as Exhibit [SPECIFY] (the "BILL OF SALE"), as well as any other assignments, conveyances and bills of sale sufficient to convey to Purchaser good and marketable title to all the [SPECIFY] Assets, free and clear of all mortgages, pledges, liens, licenses, rights of possession, security interests, restrictions, encumbrances, charges, title retention, conditional sale or other security arrangements and all claims or agreements of any nature whatsoever, except as otherwise expressly disclosed on the Company Exceptions Letter, as well as such other instruments of conveyance as counsel for Purchaser may reasonably deem necessary or desirable (both at and after the Closing) to effect or evidence the transfers contemplated hereby;
   3. Delivery of [SPECIFY] Assets. The [SPECIFY] Assets shall be delivered by the Company to Purchaser on the Closing Date at Purchaser's facility in Mountain View, [STATE/PROVINCE] or at such other location as Purchaser shall designate. Delivery shall be effectuated by electronic transmission to the greatest extent possible.
   4. **Closing**

The consummation of the purchase and sale of the [SPECIFY] Assets and the delivery of the consideration therefore will take place at a closing to be held at the offices of Purchaser's counsel, [COMPANY NAME], [FULL ADDRESS], [STATE/PROVINCE] (the "CLOSING") on [DATE] or the earliest practicable and mutually agreeable date following the satisfaction or waiver of the conditions to closing set forth in Section 8 hereof (the "CLOSING DATE"), or at such other time or date, and at such place, or by such other means of exchanging documents, as may be agreed to by the [COMPANY NAME] hereto.

* 1. **Exchange right**

At or within [NUMBER] days following the Closing, The Company shall have the right to exchange all or a portion of the Existing Purchaser Shares for a similar number of common-equivalent Purchaser Series [SPECIFY] Preferred Shares with the rights, preferences and privileges described in the form of the Certificate of Determination attached hereto as Exhibit [SPECIFY]. Such exchange shall be effectuated by the surrender by the Company within the time period referenced above of the stock certificate(s) representing the Existing Purchaser Shares to Purchaser along with a notice requesting Purchaser to issue the appropriate number of Purchaser Series [SPECIFY] Preferred Shares to the Company, whereupon Purchaser or Purchaser's transfer agent shall cancel the certificate(s) representing the Existing Purchaser Shares and issue the certificate(s) for the Purchaser Series [SPECIFY] Preferred Shares. The date of the certificate(s) for the Purchaser Series [SPECIFY] Preferred Shares shall be the date on which Purchaser or Purchaser's transfer agent receives the certificates for the Existing Purchaser Shares that are being surrendered.

1. **PURCHASE PRICE; PAYMENTS**
   1. **Purchase price**

In consideration of the sale, transfer, conveyance and assignment of all the [SPECIFY] Assets to Purchaser at the Closing and the other consideration provided by The Company hereunder, as of the Closing:

1. Acquisition Shares. Purchaser will issue and deliver a certificate or certificate(s) representing [NUMBER] shares of Purchaser Series [SPECIFY] Preferred Stock, registered in the name of the Company (or such wholly-owned subsidiary of the Company as the Company may direct). In addition, Purchaser will issue [NUMBER] shares of Series [SPECIFY] Preferred Stock in consideration of the services to be provided by the Company, as provided for in the Operating Agreement, attached hereto as Exhibit [SPECIFY].
2. Assumption of Liabilities. Purchaser will deliver to the Company an Assumption Agreement in the form attached hereto as Exhibit [SPECIFY], under which Purchaser agrees to assume all the Assumed Liabilities (as defined in Section 3.1) and no other liabilities of the [SPECIFY] Business or of the Company.
   1. **Registration rights**

The Company shall have certain registration rights with respect to the shares of Purchaser Common Stock issuable upon conversion of the Purchaser Preferred Shares, as more fully set forth in the Registration Rights Agreement and Section 6.3 hereof.

* 1. **Sales tax**

Any sales or use tax liability that arises with respect to the transfer of the [SPECIFY] Assets from the Company to Purchaser will be borne equally by the Company and Purchaser.

1. **ASSUMPTION OF LIABILITIES AND OBLIGATIONS**
   1. **Assumed liabilities**

The following liabilities of the Company related to the [SPECIFY] Business expressly listed below in this Section 3.1 will be assumed by Purchaser (collectively, the "ASSUMED LIABILITIES"):

1. [SPECIFY] Contracts. The obligations of the Company arising from and after the Closing under those (and only those) [SPECIFY] Contracts specifically listed in Schedule 1.2(a) to the [SPECIFY] Assets Letter, provided however, that notwithstanding the foregoing, Purchaser will not assume, and the Assumed Liabilities will not include, any obligation of The Company under any such [SPECIFY] Contract that arises or is related to a breach of such [SPECIFY] Contract by the Company, to the extent such breach occurs prior to the Closing Date other than an obligation of the Company that results from a breach of a [SPECIFY] Contract by the Company during the Transition Period (as defined in the Operating Agreement) if the breach results from an action (or lack of action) taken at the direction of Purchaser or is taken to avoid a breach of the Operating Agreement; and
2. Listed Liabilities. Any liabilities expressly listed on Schedule 3.1 to the [SPECIFY] Assets Letter, to the extent clearly and unambiguously described therein.  
   1. **Liabilities and obligations not assumed**

Except as expressly set forth in Section 3.1 above, Purchaser shall not assume or become obligated in any way to pay any liabilities, debts or obligations of the Company or of the [SPECIFY] Business whatsoever, including but not limited to any liabilities or obligations now or hereafter arising from or with respect to, any current or future outstanding options to purchase the Company Common Stock, the sale or license of any products or services of the Company that occurred prior to the Closing, the termination by the Company of the employment of any current or future employees of the Company or any of its affiliates, any other claims brought against the Company arising from the Company's employment of any person, any duties or obligations under any existing or future employee benefit plans of the Company or any of its affiliates, any present or future obligations or liabilities of the Company or any of its affiliates to existing or future employees of the Company or any of its affiliates under the [YOUR COUNTRY] Consolidated Omnibus Budget Reconciliation [ACT/LAW/RULE], as amended ("COBRA"),

The [YOUR COUNTRY] Federal Worker Adjustment and Retraining [ACT/LAW/RULE] ("WARN") or any severance pay obligations of the Company or any of its affiliates or any obligations or liabilities or arising from any breach or default by the Company of any contract, agreement or commitment of the Company (including but not limited to the Contracts that occurred (or arose from facts occurring) prior to the Closing). All liabilities, debts and obligations of the Company not expressly assumed by Purchaser hereunder are hereinafter referred to as the "EXCLUDED LIABILITIES".

* 1. **No obligations to third parties**

The execution and delivery of this Agreement shall not be deemed to confer any rights upon any person or entity other than the parties hereto, or make any person or entity a third party beneficiary of this Agreement, or to obligate the parties to any person or entity other than the parties to this Agreement. Assumption by Purchaser of any liabilities or obligations of the Company under Section 3.1 shall in no way expand the rights or remedies of third parties against Purchaser as compared to the rights and remedies such parties would have against the Company if the Closing were not consummated.

1. **REPRESENTATIONS AND WARRANTIES OF PURCHASER**

Purchaser hereby represents and warrants to the Company that except as set forth on the Purchaser Disclosure Letter delivered concurrently herewith, all the following statements are true, accurate and correct:

* 1. **Organization and good standing**

Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of [STATE/PROVINCE], and has the corporate power and authority to own, operate and lease its properties and to carry on its business as now conducted and as proposed to be conducted, and is qualified as a foreign corporation in each jurisdiction in which a failure to be so qualified could reasonably be expected to have a material adverse effect on its present operations or financial condition.

* 1. **Power, authorization and validity**
     1. Purchaser has the right, power, legal capacity and authority to enter into and perform its obligations under this Agreement, and all agreements to which Purchaser is or will be a party that are required to be executed pursuant to this Agreement (the "PURCHASER ANCILLARY AGREEMENTS"). The execution, delivery and performance of this Agreement and the Purchaser Ancillary Agreements have been duly and validly approved and authorized by Purchaser's Board of Directors.
     2. No filing, authorization or approval, governmental or otherwise, is necessary to enable Purchaser to enter into, and to perform its obligations under this Agreement and the Purchaser Ancillary Agreements, except for

1. filings required under federal antitrust laws; and
2. such filings as may be required to comply with federal and state securities laws.
   * 1. This Agreement and the Purchaser Ancillary Agreements are, or when executed by Purchaser will be, valid and binding obligations of Purchaser enforceable in accordance with their respective terms, except as to the effect, if any, of
3. applicable bankruptcy and other similar laws affecting the rights of creditors generally,
4. rules of laws governing specific performance, injunctive relief and other equitable remedies and
5. the enforceability of provisions requiring indemnification in connection with the offering, issuance or sale of securities;
   * 1. Due Authorization. The Purchaser Preferred Shares, when issued and delivered by Purchaser pursuant to the terms of this Agreement, will be duly authorized, validly issued, fully paid and non-assessable and will be free and clear of all liens, encumbrances and adverse claims. Based in part on the representations made by the Company in Section 5 hereof, the Purchaser Preferred Shares and (assuming no change in applicable law and no unlawful distribution of the Purchaser Preferred Shares by the Company or other parties the shares of Purchaser Common Stock issued upon conversion of the Purchaser Preferred Shares, will be issued in full compliance with the registration and prospectus delivery requirements of the [YOUR COUNTRY] [YEAR] Act and the registration and qualification requirements of all securities laws of the States of the [COUNTRY] (collectively, [YOUR COUNTRY] "BLUE SKY LAWS”).
   1. **No violation of existing agreements**

Neither the execution and delivery of this Agreement nor any Purchaser Ancillary Agreement, nor the consummation of the transactions contemplated hereby or thereby, will conflict with, or (with or without notice or lapse of time, or both) result in a termination or material breach or violation of

1. any provision of the Articles of Incorporation of Purchaser, or the Bylaws of Purchaser, all as currently in effect,
2. in any material respect, any agreement material to Purchaser's business
3. any federal, state, local or foreign judgment, writ, decree, order, statute, rule or regulation applicable to Purchaser or its assets or properties.
   1. **Disclosure**

Purchaser has made available to the Company an investor disclosure package consisting of true and complete copies of

1. the final prospectus from the initial public offering of Purchaser's Common Stock dated [DATE], and
2. all Forms [SPECIFY] and [SPECIFY] filed by Purchaser with the [YOUR COUNTRY] Securities and Exchange Commission (the "SEC") since [DATE] and up to the date of this Agreement (collectively, the "PURCHASER DISCLOSURE PACKAGE"). The Purchaser Disclosure Package, as of the date filed with the SEC, unless subsequently amended, this Agreement, the exhibits and schedules hereto, and any certificates or documents to be delivered to the Company pursuant to this Agreement, when taken together, do not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements contained herein and therein, in light of the circumstances under which such statements were made, not misleading.  
   1. **Capitalization**

The authorized capital stock of Purchaser consists of [NUMBER] shares of Common Stock and [NUMBER] shares of Preferred Stock. [NUMBER] shares of Purchaser Common Stock were issued and outstanding and no shares of Purchaser Preferred Stock were outstanding as of [DATE]. An aggregate of [NUMBER] shares of Purchaser Common Stock are reserved and authorized for issuance pursuant to the Purchaser [YEAR] Equity Incentive Plan, an aggregate of [NUMBER] shares of Purchaser Common Stock are reserved and authorized for issuance pursuant to the Purchaser [YEAR] Equity Incentive Plan, an aggregate of [NUMBER] shares of Purchaser Common Stock are reserved and authorized for issuance pursuant to the Purchaser [YEAR] Directors Stock Option Plan, and an aggregate of [NUMBER] shares of Purchaser Common Stock are reserved and authorized for issuance pursuant to the Purchaser [YEAR] Employee Stock Purchase Plan (all such plans are referred to herein as the "STOCK PLANS").

As of [DATE], options to purchase [NUMBER] shares of Purchaser Common Stock were outstanding under the Stock Plans and no options have been issued outside of the Stock Plans. Without giving effect to the transactions contemplated hereby, warrants to purchase [NUMBER] shares of Purchaser Common Stock are outstanding. All issued and outstanding shares of Purchaser Common Stock have been duly authorized and validly issued, are fully paid and non assessable, are not subject to any right of rescission, and have been offered, issued, sold and delivered by Purchaser in compliance with all registration or qualification requirements (or applicable exemptions therefrom) of applicable federal and state securities laws.

Except as set forth in this Section 4.5, there are no options, warrants, calls, commitments, conversion privileges or preemptive or other rights or agreements outstanding to purchase any of Purchaser's authorized but unissued capital stock or any securities convertible into or exchangeable for shares of Purchaser Capital Stock or obligating Purchaser to grant, extend, or enter into any such option, warrant, call, right, commitment, conversion privilege or other right or agreement, and there is no liability for dividends accrued but unpaid. There are no voting agreements, rights of first refusal or other restrictions (other than normal restrictions on transfer under applicable federal and state securities laws applicable to any of Purchaser's outstanding securities. Purchaser is not under any obligation to register under the [YOUR COUNTRY] Securities [ACT/LAW/RULE] any securities that may be subsequently issued.

* 1. **Litigation**

There is no claim, action, suit or proceeding pending or, to Purchaser's knowledge, threatened, against Purchaser, at law, in equity, by way of arbitration or before any governmental department, commission, board or agency that might have a material adverse effect on Purchaser, nor is Purchaser aware of any reasonable basis therefore. There are no judgments, decrees, injunctions or orders of any court, governmental department, commission, agency, instrumentality or arbitrator against Purchaser.

1. **REPRESENTATIONS AND WARRANTIES OF THE COMPANY**

The Company represents and warrants to Purchaser that, except as set forth in the Company Disclosure Letter delivered concurrently with the execution hereof, all of the following statements are true, accurate and correct:

* 1. **Corporate organization**

The Company is a corporation duly organized, validly existing, and in good standing under the laws of the State of [STATE/PROVINCE]. The Company is duly qualified to transact business as a foreign corporation, and is in good standing, in all jurisdictions where the failure to be so qualified would adversely affect the [SPECIFY] Business. The Company has all necessary corporate power and authority to own and use the [SPECIFY] Assets and to operate the [SPECIFY] Business and to enter into this Agreement and all assignments or other documents that the Company is required to execute and deliver hereunder, including without limitation the Ancillary Agreements (the " the Company ANCILLARY AGREEMENTS"), and holds all permits, licenses, orders and approvals of all federal, state and local governmental or regulatory bodies necessary and required therefore. For purposes of this Section 5.1 and with respect to Section 5.2, each representation and warranty given herein and therein shall be deemed, as applicable, a separate representation and warranty of each of the Company (not including Subsidiary) and Subsidiary.

* 1. **Power and authority; no default upon transfer**

The execution, delivery and performance by the Company of this Agreement and the Company Ancillary Agreements, and the consummation of all the transactions contemplated hereby and thereby, have been duly and validly authorized by the Company by all necessary corporate action of the Company's Board of Directors and shareholders. This Agreement and the Company Ancillary Agreements, when executed and delivered by the Company, will be duly and validly executed and delivered and will be the valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as to the effect, if any, of

1. applicable bankruptcy and other similar laws affecting the rights of creditors generally,
2. rules of law governing specific performance, injunctive relief and other equitable remedies and
3. the enforceability of provisions requiring indemnification in connection with the offering, issuance or sale of securities.

Neither the execution and delivery of this Agreement or the Company Ancillary Agreements by the Company, nor the performance by the Company of its obligations under this Agreement or the Company Ancillary Agreements, will

* 1. violate the Company's Certificate of Incorporation or By-Laws,
  2. result in a material violation or breach of, or permit any third party to rescind any term or provision of, or constitute a default under, any loan, note, indenture, mortgage, deed of trust, security agreement, lease or material contract, [SPECIFY] Contract, license or other agreement to which the Company is a party or by which the Company or any of the [SPECIFY] Assets is bound or
  3. violate any [YOUR COUNTRY LAW], statute, rule or regulation or order, writ, judgment, injunction or decree of any court, administrative agency or government body applicable to the Company or the [SPECIFY] Business.
  4. **Title**

The Company has good and marketable title to all of the [SPECIFY] Assets, free and clear of all mortgages, pledges, liens, licenses, rights of possession, security interests, restrictions, encumbrances, charges, title retention, conditional sale or other security arrangements and all claims or agreements of any nature whatsoever. Title to all the [SPECIFY] Assets is freely transferable from the Company to Purchaser without obtaining the consent or approval of any person or party.

* 1. **Employees**

Included as Schedule 5.4 to the Company Disclosure Letter is a complete list of the Company's employees whose work relates directly to the [SPECIFY] Business as of the date hereof, including, with respect to each full-time employee a description of the title and responsibilities of each such employee, the current compensation payable to each such employee, the date of hire and the date and amount of last compensation adjustment and any contract, agreement, understanding or ongoing commitment of the Company to such employee, whether or not in written form, and with respect to each part-time employee a description of the title and responsibilities of each such employee.

* 1. **Conditions and completeness of tangible assets**

Schedule [SPECIFY] to the [SPECIFY] Assets Letter contains a complete list of all [SPECIFY] Tangible Assets, and such list sets forth all of the tangible assets required to conduct the [SPECIFY] Business as presently conducted and as it is proposed to be conducted following the date hereof. As of the Closing, all of the material [SPECIFY] Tangible Assets will be in good working condition and repair, ordinary wear and tear excepted.

* 1. **Litigation**

There is no claim, action, suit or proceeding pending or, to the Company's knowledge, threatened, against the Company (including but not limited to any claim, action, suit or proceeding relating to or affecting the [SPECIFY] Business or the [SPECIFY] Assets), at law, in equity, by way of arbitration or before any governmental department, commission, board or agency that might have a material adverse effect on the [SPECIFY] Business or the [SPECIFY] Assets, nor is the Company aware of any reasonable basis therefore. There are no judgments, decrees, injunctions or orders of any court, governmental department, commission, agency, instrumentality or arbitrator against the Company affecting the [SPECIFY] Assets or the [SPECIFY] Business.

* 1. **Contracts and commitments**

Schedule 5.7, attached to the [SPECIFY] Assets Letter, lists and describes all contracts, agreements, understandings and commitments of the Company directly related to the [SPECIFY] Business, whether written or oral (other than oral agreements to employ employees of the Company):

1. that involve the payment by any party thereto of consideration in an amount of [AMOUNT] or more;
2. under which performance may extend beyond [NUMBER] months after the Closing Date;
3. that involve the lending or borrowing of money or any guarantees by the Company or the payment of indebtedness or performance of an obligation of any third party;
4. that involve transactions not in the ordinary course of the [SPECIFY] Business;
5. that involve the lease or purchase of real estate;
6. that involve the purchase or license of any Intellectual Property related to or used in the [SPECIFY] Business; or
7. that are otherwise material to the [SPECIFY] Business or the [SPECIFY] Assets (the "MATERIAL [SPECIFY] Contracts").

The Company is not in violation, breach or default of any of the Material [SPECIFY] Contracts. The Company has delivered to Purchaser a true and correct copy of each written [SPECIFY] Contract included in the [SPECIFY] Assets and listed on Schedule [SPECIFY]. The Company has obtained, or by Closing will obtain, all written consents of third parties required to assign and transfer all Material [SPECIFY] Contracts to Purchaser without the breach or violation of any such Material [SPECIFY] Contract. The Material [SPECIFY] Contracts, together with the Commercial Agreement and this Agreement, constitute in every material respect, sufficient contractual rights to continue to operate the [SPECIFY] Business in the manner in which it has been previously conducted by the Company and as it is proposed to be conducted following the date hereof. The Company has not entered into any contracts, agreements, understandings or commitments directly related to the [SPECIFY] Business, whether written or oral, outside of the ordinary course of business since [DATE].

* 1. **Intellectual property**

Schedule [SPECIFY] of the Company Disclosure Letter sets forth all Intellectual Property used to conduct the [SPECIFY] Business as it is now being conducted by the Company, and such [SPECIFY] Intellectual Property is sufficient to conduct the [SPECIFY] Business as it is now being conducted and as it is proposed to be conducted following the date hereof, in every material respect. The Company owns, possesses, has the exclusive right to make, use, sell and license, has the right to bring actions for the infringement of, and where necessary, has made timely and proper application for protection of, all [SPECIFY] Intellectual Property rights that are used in the [SPECIFY] Business or that comprise a portion of the [SPECIFY] Assets. The Company has not granted any third party any outstanding licenses or other rights to any of the [SPECIFY] Intellectual Property and the Company is not liable, nor has it made any contract or arrangement whereby it may become liable, to any person for any royalty or other compensation for the use of any [SPECIFY] Intellectual Property.

The Company has not received notice of any claim that any [SPECIFY] Intellectual Property infringes any Intellectual Property right of any third party and there is no basis for such claim known to the Company. All employees and consultants of the Company and any other third [COMPANY NAME] who have been involved in product development for the Company have executed invention assignment agreements and all employees and consultants who have access to confidential or trade secret information concerning the Company's technology or products have executed nondisclosure agreements, each substantially similar to the form of agreement attached hereto as Schedule 5.8. To the best of the Company's knowledge, no former employee or consultant of the Company has possession of any software (in source code or object code form) that is owned by the Company and used in the [SPECIFY] Business.

* 1. **Completeness of assets**

The [SPECIFY] Assets, as described in Section 1.2 and listed on Schedules 1.2(a) through (e), constitute in every material respect, all of the assets that have been used in the operation of the [SPECIFY] Business, and that are sufficient to continue to operate the [SPECIFY] Business in the manner in which it has been conducted by the Company prior to the date hereof and as it is proposed to be conducted following the date hereof.

* 1. **Compliance with Laws**

In the operation of the [SPECIFY] Business, the Company has, to the best of the Company's knowledge, duly complied with all applicable laws, rules, regulations and orders of federal, state, local and foreign governments (including but not limited to all export control laws and regulations of the [COUNTRY] or any governmental, authority or agency of the [COUNTRY] government), except where the failure to comply would not have a materially adverse effect on the [SPECIFY] Assets or the [SPECIFY] Business, and the Company is not in default with respect to any order, judgment, writ, injunction, decree, award, rule or regulation of any court, governmental or regulatory body or arbitrator which restrains or limits the operations of the [SPECIFY] Business or the use of the [SPECIFY] Assets.

* 1. **Labor and employee relations**

There are no agreements between any union, labor organization or other collective bargaining agent in respect of any employee of the Company who is involved with the [SPECIFY] Business. The relations between the Company and the employees of the [SPECIFY] Business are generally good in that the [SPECIFY] business has not experienced excessive turnover and the employees of the [SPECIFY] Business are generally supportive of management's goals.

* 1. **Authorization for this agreement**

Except for filings required under [YOUR COUNTRY] federal antitrust [ACT/LAW/RULE], no authorization, approval, consent of, or filing with any governmental department, bureau, agency, public board, authority or other third party is required for the consummation by the Company of the transactions contemplated by this Agreement.

* 1. **Taxes**

At the Closing, and upon the date of any subsequent transfer of [SPECIFY] Assets to Purchaser in accordance with this Agreement, there will be no federal, state or local tax liens against any of the [SPECIFY] Assets to be transferred to Purchaser hereunder. The Company has paid or will pay, when due, any federal, state or local taxes attributable to periods prior to the Effective Date with respect to the [SPECIFY] Assets or the [SPECIFY] Business, which, if unpaid, may result in a lien against any of the [SPECIFY] Assets.

* 1. **Material misstatements or omissions**

No representation or warranty by the Company in this Agreement, and no document, written statement, certificate or schedule furnished or to be furnished to Purchaser by (or on behalf of) the Company pursuant thereto, when construed together with all other such representations, warranties, documents, written statements, certificates or schedules contains, or will, when furnished, contain, any untrue statement of a material fact, or omits, or will then omit to state, a material fact necessary to make any statement of facts contained herein or therein not materially misleading.

There have been no events or transactions, or information which has come to the attention of the Company which, as related directly to the [SPECIFY] Business or the [SPECIFY] Assets, could reasonably be expected to have a material adverse effect on the business, operations, affairs, prospects or condition of the [SPECIFY] Business or the [SPECIFY] Assets other than for general economic or industry conditions or trends.

* 1. **Environmental matters**

To the Company's knowledge, without any independent investigation, the facilities in which the [SPECIFY] Business operates (the "FACILITIES") are not in violation of any federal, state or local laws, ordinance or regulation relating to disposal of Hazardous Materials (as defined below) or the environmental conditions on or under such properties or facilities, including but not limited to, soil and groundwater conditions. During the time the company has owned, leased or occupied the Facilities, the Company has not used, generated, manufactured or stored on or under any part of the Facilities, or transported to or from any part of the Facilities, any Hazardous Materials in violation of CERCLA (as defined below) or any other applicable state or federal environmental [YOUR COUNTRY LAW].

THE COMPANY has no knowledge of any presence, disposals, releases or threatened releases of any Hazardous Materials on, from or under any part of the Facilities. For purposes of this Section, "HAZARDOUS MATERIALS" means any hazardous or toxic substance, material or waste that is, or becomes prior to the Closing, regulated or defined as a "hazardous substance," "pollutant", "contaminant", "toxic chemical", "hazardous material", "toxic substance" or "hazardous chemical" or similar hazardous substance under the [YOUR COUNTRY] Comprehensive Environmental Response, Compensation and Liability [ACT/LAW/RULE], as amended ("CERCLA"), or any other similar state or federal [NUMBER], statute, ordinance, rule or regulation having a scope of purpose similar to that of CERCLA.

* 1. **Representations with respect to Purchaser preferred shares**

The Company hereby represents and warrants to Purchaser, with respect to the Purchaser Preferred Shares, as follows:

1. Experience. The Company has experience in evaluating and investing in private placement transactions so that the Company is capable of evaluating the merits and risks of the Company’s investment in Purchaser. The Company, by reason of the Company's business or financial experience or the business or financial experience of the Company's professional advisors who are unaffiliated with and who are not compensated by Purchaser or any affiliate or selling agent of Purchaser, directly or indirectly, has the capacity to protect the Company's own interests in connection with the purchase of the securities hereunder. The Company is an accredited investor, and intends for Purchaser to rely upon the Company’s representations when accepting the Company’s investment.
2. Investment. The Company is acquiring the Purchaser Preferred Shares for investment purposes only, for the Company's own account, not as a nominee or agent, and not with a view to, or for resale in connection with, any distributions thereof within the meaning of the [YOUR COUNTRY] [DATE] Act. The Company understands that the Purchaser Preferred Shares have not been, and will not be, registered under the [YOUR COUNTRY] [YEAR] Act and are being issued in accordance with a specific exemption from the registration provisions of the [YOUR COUNTRY] [YEAR] Act, which depends upon, among other things, the bona fide nature of the investment intent and the accuracy of the Company’s representations as expressed herein.
3. Rule [NUMBER]. The Company acknowledges that the Purchaser Preferred Shares must be held indefinitely unless subsequently registered under the [YOUR COUNTRY] [YEAR] Act or an exemption from such registration requirement is available. The Company is aware of the provisions of Rule [NUMBER] promulgated under the [YOUR COUNTRY] [YEAR] Act, which permit limited resale of securities purchased in a private placement, subject to the satisfaction of certain conditions.
4. Access to Data. The Company has met with representatives of Purchaser and thereby has had the opportunity to ask questions of, and receive answers from, said representatives concerning Purchaser and the terms and conditions of this transaction, as well as to obtain any information requested by the Company. Any questions raised by the Company or its representatives concerning the transaction have been answered to the satisfaction of the Company and its representatives. The Company’s decision to purchase the Purchaser Preferred Shares is based in part on the Company’s own evaluation of the risks and merits of the purchase and Purchaser's proposed business activities.
5. Tax Consequences. The Company has reviewed with its own tax advisors the federal, state, local and foreign tax consequences of the investment in the Purchaser Preferred Shares. The Company is relying solely on such advisors and not on any statements or representations of Purchaser or any of its agents and understands that the Company (and not Purchaser) shall be responsible for the Company's own tax liability (if any) that may arise as a result of the investment in the Purchaser Preferred Shares.
6. Transferability. The Company agrees, acknowledges and understands that, without the consent of Purchaser, the Purchaser Preferred Shares may not be sold, pledged, transferred or otherwise disposed of, provided that such restrictions shall not prevent the Company from converting the Purchaser Preferred Shares to shares of Purchaser Common Stock pursuant to the Certificate of Determination whereupon such shares may be transferred subject to applicable securities law restrictions.
7. Legends. The Company acknowledges and understands that the securities of Purchaser issued hereunder shall bear the following legends (and any other legends required under state securities laws in the opinion of legal counsel for Purchaser):
8. The Purchaser Preferred Shares shall bear the following legend:

THE SECURITIES REPRESENTED HEREBY MAY NOT BE GIFTED, TRANSFERRED, PLEDGED, RESOLD OR OTHERWISE DISPOSED OF. THE SHARES EVIDENCED BY THIS CERTIFICATE (1) ARE CONVERTIBLE INTO SHARES OF COMMON STOCK OF THE COMPANY AT THE OPTION OF THE HOLDER, OR (2) UPON CERTAIN CONSENTS OF THE HOLDERS OF THE COMPANY'S SERIES [SPECIFY] PREFERRED STOCK, ALL PURSUANT TO AND UPON THE TERMS AND CONDITIONS SPECIFIED IN THE COMPANY'S ARTICLES OF INCORPORATION. A COPY OF SUCH ARTICLES OF INCORPORATION MAY BE OBTAINED, WITHOUT CHARGE, AT THE COMPANY'S PRINCIPAL OFFICE.

1. The Purchaser Preferred Shares and the shares of Purchaser Common Stock into which such Purchaser Preferred Share may be converted shall bear the following legends:

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES [YOUR COUNTRY LAW] ACT OF [YEAR], AS AMENDED (THE "ACT"), OR UNDER THE [YOUR COUNTRY] SECURITIES LAWS OF CERTAIN STATES. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE ACT AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY MIGHT BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME. THE ISSUER OF THESE SECURITIES MAY REQUIRE AN OPINION OF COUNSEL IN FORM AND SUBSTANCE REASONABLY SATISFACTORY TO THE ISSUER TO THE EFFECT THAT ANY PROPOSED TRANSFER OR RESALE IS IN COMPLIANCE WITH THE [YOUR COUNTRY] ACT AND ANY APPLICABLE [YOUR COUNTRY] STATE SECURITIES LAWS.

* 1. **Brokerage and finder's fees**

Neither the Company nor any of its affiliates has employed any broker, finder or agent, or agreed to pay or incurred any brokerage fee, finder's fee or commission with respect to the transactions contemplated by this Agreement, or dealt with anyone purporting to act in the capacity of a broker, finder or agent with respect thereto as a result of which any claim for a fee can be asserted against Purchaser.

1. **COVENANTS OF PURCHASER**

Purchaser covenants and agrees with the Company as follows:

* 1. **Confidential information**

All copies of financial information, marketing and sales information, pricing, marketing plans, business plans, financial and business projections, manufacturing processes and procedures, formulae, methodologies, inventions, product designs, product specifications and drawings, and other confidential and/or proprietary information of the Company disclosed to Purchaser in connection with the transactions contemplated by this Agreement ("THE COMPANY CONFIDENTIAL INFORMATION") will be held in confidence and not used or disclosed by Purchaser or any of its employees, affiliates or stockholders for a period of [NUMBER] years from the Effective Date and will be promptly destroyed by Purchaser or returned to the Company, upon the Company's written request to Purchaser; provided, however that from and after the Closing, the foregoing covenant shall not be applicable to the Company Confidential Information related to the [SPECIFY] Business that is included in the [SPECIFY] Assets.

Purchaser's employees, affiliates and stockholders will not be given access to the Company Confidential Information from and after the Closing other than the Company Confidential Information related to the [SPECIFY] Business that is included in the [SPECIFY] Assets, except on a "need to know" basis. It is agreed that the Company Confidential Information will not include information that:

1. is proven to have been known to Purchaser prior to receipt of such information from the Company;
2. is disclosed by a third party having the legal right to disclose such information and who owes no obligation of confidence to the Company;
3. is now, or later becomes part of the general public knowledge or literature in the art, other than as a result of a breach of this Agreement by Purchaser; or
4. is independently developed by Purchaser without the use of the Company Confidential Information. The provisions of this Section 6.1 and of Section 7.5 supersede any existing non-disclosure agreements entered into between the parties with respect to the Company Confidential Information and Purchaser Confidential Information, provided however that existing non-disclosure agreements entered into between the parties with respect to confidential information that does not constitute the Company Confidential Information or Purchaser Confidential Information as defined herein shall not be affected by this Section 6.1 or Section 7.5.  
   1. **Compliance**

Promptly after execution of this Agreement, Purchaser shall cooperate with the Company to prepare and file such notifications as are required pursuant to the [COMPANY NAME] Pre-Merger Notification [YOUR COUNTRY] Act of [YEAR] (the "[COMPANY NAME] ACT"). Purchaser and the Company shall share the filing fees of such filings equally.

* 1. **Fairness hearing**

Purchaser shall request the Department of Corporations to conduct a Fairness Hearing and upon agreement of the Department of Corporations to do so, make all necessary filings in a timely manner and take all necessary measures as soon as practicable to facilitate the granting by the Department of Corporations of the [STATE/PROVINCE] Permit. If Purchaser is unable to obtain, for whatever reason, the [STATE/PROVINCE] Permit or if existing law is interpreted to the effect that the [STATE/PROVINCE] Permit does not provide an exemption from registration under the [YOUR COUNTRY] [YEAR] Act, Purchaser shall file a shelf registration statement on Form [SPECIFY] with respect to the shares of Purchaser Common Stock into which the Transaction Shares are convertible, in the time period and as further provided in the Registration Rights Agreement. All of the shares of Purchaser Common Stock into which the Transaction Shares are convertible shall be entitled to certain demand and piggyback registration rights as further provided in the Registration Rights Agreement.

* 1. **Satisfaction of closing conditions**

Purchaser shall use reasonable best efforts to satisfy the conditions to the Company's obligations set forth in Sections 8.1 and 8.3 prior to [DATE], provided however that Purchaser's failure to satisfy such conditions shall not be deemed a breach of this Agreement.

* 1. **Election of the Company representative to board**

Purchaser will use all reasonable efforts to have the holders of a sufficient number of the voting shares of Purchaser stock execute a voting agreement (or provide another instrument with the same effect) to ensure the election of a representative of the Company to the Board of Directors of Purchaser for so long as the Company holds at least [NUMBER] shares of Purchaser Common Stock on an as converted to Common Stock basis and as adjusted for stock splits, reclassifications, recapitalizations and similar events.

* 1. **Survival of covenants**

The covenants set forth in Section 6.2 shall survive the Closing. The covenants set forth in Section 6.1 above shall survive the termination of this Agreement for any reason.

1. **COVENANTS OF THE COMPANY**

The Company covenants and agrees with Purchaser as follows:

* 1. **Access to information**

From the date hereof to the Closing Date, the Company will afford to the representatives of Purchaser, including its counsel and auditors, during normal business hours, access to any and all of the [SPECIFY] Assets and information with respect to the [SPECIFY] Business to the end that Purchaser may have a reasonable opportunity to make such a full investigation of the [SPECIFY] Assets and of the [SPECIFY] Business in advance of the Closing Date as it shall reasonably desire, and the officers of the Company will confer with representatives of Purchaser and will furnish to Purchaser, either orally or by means of such records, documents, and memoranda as are available or reasonably capable of preparation, such information as Purchaser may reasonably request, and the Company will furnish to Purchaser's auditors all consents and authority that they may reasonably request in connection with any examination of Purchaser. In addition, the Company will afford the Purchaser's representatives, including its counsel and auditors, reasonable access to the Facilities and all [SPECIFY] Assets located at the Facilities at reasonable times.

* 1. **Consent of third parties**

Prior to the Closing Date, the Company shall obtain the consent in writing of all persons necessary to permit the Company to assign and transfer all of the [SPECIFY] Assets (including but not limited to the [SPECIFY] Contracts) to Purchaser, free and clear of all liens, security interests, restrictions, claims and encumbrances (other than the Assumed Liabilities) and to perform its obligations under, and to conclude the transactions contemplated by, this Agreement in order that the performance hereof will not result in the termination of, or any violation, breach or default under, any [SPECIFY] Contracts or any material contracts, loans, notes, agreements, obligations, leases, permits or licenses to which the Company is a party or by which any of the Company’s property is bound. Notwithstanding the foregoing, the Company shall only be required to use all reasonable efforts to obtain the rights for Purchaser to use the [SPECIFY] licenses covering all existing service and development [SPECIFY] for the [SPECIFY], provided that the scope of such rights shall be as reasonably requested by Purchaser.

* 1. **Further assurances**

From and after the Closing Date, the Company shall promptly execute and deliver to Purchaser any and all such further assignments, licenses, endorsements and other documents as Purchaser may reasonably request for the purpose of effecting the transfer of the Company's title to the [SPECIFY] Assets to Purchaser and/or carrying out the provisions of this Agreement and the Ancillary Agreements, including, but not limited to, granting Purchaser a non-exclusive, world-wide, perpetual, transferable, irrevocable and royalty-free license to make use of any and all the Company Intellectual Property not included in the [SPECIFY] Assets to the extent necessary or desirable to allow Purchaser to fully exploit the [SPECIFY] Assets and the [SPECIFY] Business.

* 1. **Use of name**

Subject to the Company's rights (if any) under the Operating Agreement, after the Closing Date, the Company shall cease to use the trademark and trade name [SPECIFY] or any similar name, without the prior written consent of Purchaser. The Company hereby grants Purchaser the rights to use the [SPECIFY] trademark and tradename after the date hereof and until the Closing.

* 1. **Confidential information**

All copies of financial information, marketing and sales information, pricing, marketing plans, business plans, financial and business projections, manufacturing processes and procedures, formulae, methodologies, inventions, product designs, product specifications and drawings, and other confidential and/or proprietary information of Purchaser disclosed to the Company in connection with the transactions contemplated by this Agreement ("PURCHASER CONFIDENTIAL INFORMATION") will be held in confidence and not used or disclosed by the Company or any of its employees, affiliates or stockholders for a period of [NUMBER] years from the Effective Date and will be promptly destroyed by the Company or returned to Purchaser, upon Purchaser's written request to the Company.

The Company's employees, affiliates and stockholders will not be given access to Purchaser Confidential Information except on a "need to know" basis. It is agreed that Purchaser Confidential Information will not include information that:

1. is proven to have been known to the Company prior to receipt of such information from the Purchaser;
2. is disclosed by a third party having the legal right to disclose such information and who owes no obligation of confidence to the Purchaser;
3. is now, or later becomes part of the general public knowledge or literature in the art, other than as a result of a breach of this Agreement by the Company; or
4. is independently developed by the Company without the use of any Purchaser Confidential Information.
   1. **Employees**

At Purchaser's request, the Company shall cooperate with Purchaser in identifying those of the Company's employees that are currently employed in connection with the [SPECIFY] Business that Purchaser may wish to hire either as employees or consultants (including, but not limited to, [INDIVIDUAL NAMES]) and in facilitating the employment or the engagement as consultants by Purchaser, after the Closing Date, of such individuals (including any employees who become such after the Effective Date), which Purchaser elects to employ or engage as a consultant, including permitting Purchaser to interview and offer employment or consulting agreements to such employees.

The parties hereby acknowledge that Purchaser is under no obligation whatsoever to employ any current or future employees of the Company or any of its affiliates and that the Company and its affiliates alone remain responsible for all obligations and liabilities, whether arising under statute, regulation or contract, to present and future employees of the Company and its affiliates arising out of their employment (or the termination of their employment) with the Company or any of the Company's affiliates, including but not limited to any obligations and liabilities arising under or from any existing or future Employee Plans or other employee benefit plans of the Company or any of its affiliates, any present or future obligations or liabilities of the Company or any of its affiliates to existing or future employees of the Company under [YOUR COUNTRY] COBRA or WARN or any severance pay obligations of the Company or any of its affiliates.

* 1. **Compliance**

Promptly after execution of this Agreement, the Company shall cooperate with Purchaser to prepare and file such notifications as are required pursuant to the [SPECIFY] Act. Purchaser and the Company shall share the filing fees of such filings equally.

* 1. **Satisfaction of closing conditions**

The Company shall use reasonable best efforts to satisfy the conditions to Purchaser's obligations set forth in Sections 8.1 and 8.2 prior to [DATE], provided however that the Company's failure to satisfy such conditions shall not be deemed a breach of this Agreement.

* 1. **Update of Schedule 1.2(A) and 5.7**

Within [NUMBER] days of the date hereof, the Company shall deliver to Purchaser revised Schedules 1.2(a) and 5.7 that will contain all contracts, agreements, understandings and commitments of THE COMPANY directly related to the [SPECIFY] Business, whether written or oral, and all Material [SPECIFY] Contracts, that were not included on the Schedule 1.2(a) and 5.7, respectively, delivered to Purchaser and in its possession as of [DATE].

* 1. **Consents of Subsidiary**

Prior to the Closing, the Company will cause [COMPANY NAME] to execute and deliver all necessary consents and approvals necessary to effectuate the transactions contemplated hereby.

* 1. **Survival of Covenants**

Each of the covenants set forth in Sections 7.3, 7.4, 7.6 and this Section 7.11 shall survive the Closing. The covenants set forth in Section 7.5 above shall survive the termination of this Agreement for any reason. The remaining covenants of this Section 7 shall expire at the Closing or other termination of this Agreement.

1. **CONDITIONS TO CLOSING**
   1. **Condition to Purchaser’s and the Company's obligation**

The obligations of each of Purchaser and the Company hereunder shall be subject to the satisfaction and fulfillment of each of the following conditions, except as either party may expressly waive in writing (but only with respect to such party's own obligations hereunder):

1. [COMPANY NAME]. All applicable waiting periods under the [COMPANY NAME] Act shall have expired or early termination shall have been granted by both the [YOUR COUNTRY] Federal Trade Commission and the [COUNTRY] Department of Justice.
2. Certificate of Determination. The Certificate of Determination shall have been filed with and accepted by the Secretary of State of the State of [STATE/PROVINCE].
3. Ancillary Agreements. Purchaser and The Company shall have each executed and delivered the Commercial Agreement, Operating Agreement, Registration Rights Agreement and Voting Trust Agreement.
4. Commercial Agreement. The Commercial Agreement shall be in effect. The Closing shall be delayed if (i) either party has committed a material breach of its material covenants, obligations, representations or warranties under the Commercial Agreement (a "MATERIAL BREACH") and the non-breaching party has given notice of its intent to terminate the Commercial Agreement as the result of such Material Breach, until such time as the Material Breach is cured, but only if the Material Breach is cured within the cure period provided for in Section [NUMBER] of the Commercial Agreement, (ii) there is a dispute as to whether a Material Breach has occurred or whether such Material Breach has been cured, until such time as the dispute is resolved pursuant to the dispute resolution procedures set forth in Section [NUMBER] of the Commercial Agreement.
   1. **Conditions to Purchaser’s obligations**

The obligations of Purchaser hereunder shall be subject to the satisfaction and fulfillment of each of the following conditions, except as Purchaser may expressly waive the same in writing:

1. Conduct of [SPECIFY] Business. From the date hereof to the Closing Date, the Company shall have faithfully performed its obligations under the Operating Agreement in all material respects. With respect to matters not contemplated by the Operating Agreement, this Agreement, and the Ancillary Agreements, the Company shall have conducted the [SPECIFY] Business only in the ordinary course, consistent with the Company's past practices, or as may be consented to by Purchaser in writing.
2. Accuracy of Representations and Warranties on Closing Date. The representations and warranties made herein by the Company in Section 5 (as qualified by the Company Disclosure Letter) shall be true and correct in all material respects, and not misleading in any material respect, on and as of the date given, and on and as of the Closing Date with the same force and effect as though such representations and warranties were made on and as of the Closing Date, provided however, that the representations and warranties made by the Company in Section 5.10 on and as of the Closing Date shall not be deemed to be qualified by the Company Disclosure Letter, and provided further,

that it shall not be a condition to Purchaser's obligations that certain representations and warranties made herein by the Company in Section 5 (as qualified by the Company Disclosure Letter) and which are specifically identified on Exhibit [SPECIFY] shall be true and correct in all material respects, and not misleading in any material respect, on and as of the Closing Date with the same force and effect as though such representations and warranties were made on and as of the Closing Date, if the reason why such representations and warranties can not be reasserted as of the Closing Date is because Purchaser has assumed the operation of the [SPECIFY] Business after the date hereof.

1. Compliance. As of the Closing Date, the Company shall have complied in all material respects with, and shall have fully performed, in all material respects, all conditions, covenants and obligations of this Agreement imposed on the Company and required to be performed or complied with by the Company at, or prior to, the Closing Date.
2. Officer's Certificate. The Company shall deliver a certificate signed by a duly authorized officer of the Company certifying that the conditions set forth in Section 8.2(a), (b) and (c) have been fully complied with.
3. Delivery of [SPECIFY] Assets. The Company shall have delivered, and Purchaser shall have received, the [SPECIFY] Assets.
4. Opinion of Company's Counsel. Purchaser shall have received an opinion of [COMPANY NAME], counsel for the Company, dated the Closing Date and containing the customary provisions for a transaction of the type contemplated herein.
5. The Company's Consents Obtained. All consents required to be obtained by the Company pursuant to Section 7.2 shall have been obtained.
6. Certificate of Corporate Proceedings. The Company shall deliver a certified copy of the resolutions of the Board of Directors of the Company authorizing the execution and delivery by the Company of this Agreement, and all related agreements, and the consummation of the transactions contemplated hereby and thereby;
7. Further Documents. The Company shall deliver such further certificates and documents, including any specific assignments and other instruments of conveyance as Purchaser and/or Purchaser's counsel may reasonably request.
8. Bill of Sale. The Company shall have executed and delivered the Bill of Sale.  
   1. **Conditions to the Company's obligations**

The obligations of the Company hereunder shall be subject to the satisfaction and fulfillment of each of the following conditions, except as the Company may expressly waive the same in writing:

1. Accuracy of Representations and Warranties on Closing Date. The representations and warranties made herein by Purchaser in Section 4 hereof (as qualified by the Purchaser's Disclosure Letter) shall be true and correct in all material respects, and not misleading in any material respect, on and as of the date given, and on and as of the Closing Date with the same force and effect as though such representations and warranties were made on and as of the Closing Date.
2. Compliance. As of the Closing Date, Purchaser shall have complied in all material respects with, and shall have fully performed, the terms, conditions, covenants and obligations of this Agreement imposed thereon to be performed or complied with by Purchaser at, or prior to, the Closing Date.
3. Officer's Certificate. Purchaser shall deliver a certificate signed by a duly authorized officer of Purchaser certifying that the conditions set forth in Section 8.3(a) and (b) have been fully complied with.
4. Opinion of Purchaser's Counsel. The Company shall have received an opinion of [COMPANY NAME], counsel for Purchaser, dated the Closing Date and containing the customary provisions for a transaction of the type contemplated herein.
5. Assumption of Liabilities. Purchaser shall have executed and delivered the Assumption of Liabilities in the form of Exhibit [SPECIFY] with respect to the Assumed Liabilities.
6. Certificate of Corporate Proceedings. Purchaser shall deliver a certified copy of the resolutions of the Board of Directors of Purchaser authorizing the execution and delivery by Purchaser of this Agreement, and all related agreements, and the consummation of the transactions contemplated hereby and thereby.
7. Further Documents. Purchaser shall deliver such further certificates and documents as the Company and/or the Company's counsel may reasonably request.
8. The Company Board Representation. A voting agreement (or other instrument with the same effect) shall have been executed by the holders of a sufficient number of shares of Purchaser stock to ensure the election of a representative of the Company to the Board of Directors of Purchaser for so long as The Company holds at least 1,315,165 shares of Purchaser Common Stock on an as converted to Common Stock basis and as adjusted for stock splits, reclassifications, recapitalizations and similar events.
9. **INDEMNIFICATION**
   1. **Survival of warranties**

All representations and warranties made by the Company or Purchaser herein, or in any certificate, schedule or exhibit delivered pursuant hereto, shall survive the Closing for a period of [NUMBER] year after [DATE]; provided however, that the representations and warranties made by the Company in Sections 5.7, 5.8 and 5.9 shall survive the Closing for a period of [NUMBER] years after [DATE] and provided further that representations, warranties and covenants involving intentional fraud or willful misconduct shall survive the Closing until the applicable statute of limitations has expired.

* 1. **Indemnified losses**

For the purpose of this Section 9.2 and when used elsewhere in this agreement, "LOSS" shall mean and include any and all liability, loss, damage, claim, expense, cost, fine, fee, penalty, obligation or injury including, without limitation, those resulting from any and all actions, suits, proceedings, demands, assessments, judgments, award or arbitration, together with reasonable costs and expenses including the reasonable attorneys' fees and other legal costs and expenses relating thereto; provided, however, that Loss shall not include punitive or exemplary damages.

* 1. **Indemnification by the Company**

Subject to the provisions and limitations set forth in this Section 9, the Company agrees to defend, indemnify and hold harmless Purchaser, any parent, subsidiary or affiliate of Purchaser and any director, officer, employee, stockholder, agent or attorney of Purchaser or of any parent, subsidiary or affiliate of Purchaser (collectively, the "PURCHASER INDEMNITEES") from and against any Loss which arises out of or results from:

1. any breach of any covenant, or the inaccuracy or untruth of any representation or warranty of The Company made herein;
2. taxes, assessments and other governmental charges of any kind or nature whatsoever, including without limitation any sales or use tax applicable to the transfer of the [SPECIFY] Assets payable by the Company pursuant to Section 2.3, any withholding, social security or unemployment levies, arising out of, or payable with respect to, the [SPECIFY] Business through the Closing Date, except for such liabilities as are specifically and expressly assumed by Purchaser in Section 3.1 hereof;
3. liability for noncompliance with any bulk sales, bulk transfer or similar laws applicable to the transactions contemplated by this Agreement or any claims asserting that any transactions contemplated by this Agreement constitute a fraudulent conveyance or similar claim;
4. any Excluded Liability and any other demand, claim, debt, suit, cause of action, arbitration or other proceeding (including, but not limited to, a warranty claim, a strict product liability claim or any other claim) that is made or asserted by any third party that relates to any product or service that was sold, licensed or otherwise provided by the Company to any customer;
5. any demand, claim, debt, suit, cause of action or proceeding made or asserted by any employee or independent contractor or any former employee or independent contractor of the Company, that relates in any manner to any termination by the Company of its employment or the services of such employee or independent contractor or any other matter relating to the Company's employment of such employee or independent contractor.
   1. **Indemnification by Purchaser**

Subject to the provisions and limitations set forth in this Section 9, Purchaser agrees to defend, indemnify and hold harmless the Company, any parent, subsidiary or affiliate of the Company and any director, officer, employee, stockholder, agent or attorney of the Company or of any parent, subsidiary or affiliate of the Company (collectively, the "the Company INDEMNITEES") from and against and in respect of any Loss which arises out of or results from:

1. any breach by Purchaser of any covenant, or the inaccuracy or untruth of any representation or warranty of Purchaser made herein;
2. the failure of Purchaser to timely pay or perform any of the Assumed Liabilities;
3. the failure of Purchaser to timely pay any sales or use tax applicable to the transfer of the [SPECIFY] Assets payable by Purchaser pursuant to Section 2.3, provided however, that nothing in this Section 9.4 shall impose on Purchaser any duty to indemnify the Company for any Excluded Liabilities.
   1. **Minimum and maximum damages**
4. The indemnification provided for subsections 9.3 and 9.4 shall not apply unless and until aggregate Losses for which one or more indemnified party seeks indemnification under this section, exclusive of legal fees, exceeds [AMOUNT] (the "BASKET") and then only to the extent that aggregate Losses exceed the Basket. Purchaser and the Company will each use its best efforts to obtain recoveries under all applicable insurance policies for all Losses.
5. The maximum damages for which Purchaser is indemnified pursuant to Section 9.3 (i) for Losses suffered as the result of breaches of the representations and warranties contained in Sections 5.7, 5.8 and 5.9 shall be equal to (A) the average of the Purchaser closing price on the [SPECIFY] National Market System for the [NUMBER] day period ending on the date hereof (the "PURCHASER AVERAGE PRICE"), multiplied by (B) the number of Transaction Shares (such product is referred to as the "TRANSACTION VALUE"); (ii) shall be unlimited with respect to Losses suffered as the result of intentional fraud or willful misconduct, and (iii) shall be [PERCENTAGE %] of the Transaction Value with respect to all other Losses.
6. The maximum damages for which the Company is indemnified pursuant to Section 9.4 shall be equal to the Transaction Value, except with respect to Losses suffered as the result of intentional fraud or willful misconduct for which such indemnification shall be unlimited.
   1. **Procedures for indemnification**

If any action, suit or proceeding shall be commenced against, or any claim or demand be asserted against, the Company or Purchaser, as the case may be, in respect of which the Company or Purchaser is entitled to demand indemnification under Section 9 of this Agreement, then as a condition precedent thereto, the party seeking indemnification ("INDEMNITEE") shall promptly notify the other party ("INDEMNITOR") in writing to that effect, and with reasonable particularity and with reference to the applicable provision(s) of this Agreement.

The Indemnitor shall have the right to assume the entire control of the defense, compromise or settlement of such action, suit, proceeding or claim and including the selection of counsel, subject to the right of the Indemnitee to participate (at its expense and with counsel of its choice) in the defense, compromise or settlement of such action, suit, proceeding, claim or demand, and in connection therewith, the Indemnitee shall cooperate fully in all respects with the Indemnitor in any such defense, compromise or settlement.

The Indemnitor will not compromise or settle any such action, suit, proceeding, claim or demand without the prior written consent of the Indemnitee, which consent will not be unreasonably withheld or delayed. So long as the Indemnitor is defending in good faith any such action, suit, proceeding, claim or demand asserted by a third party against the Indemnitee, the Indemnitee shall not settle or compromise such action, suit, proceeding, claim or demand without the prior written consent of the Indemnitor, which consent will not be unreasonably withheld or delayed. The Indemnitee shall make available to the Indemnitor or its agents all records and other materials in the Indemnitee's possession reasonably required for contesting any third party claim or demand.

If the Indemnitor shall fail to promptly and adequately defend any such action, suit, proceeding, claim or demand, then the Indemnitee may defend, through counsel of its own choosing, such action, suit, proceeding, claim or demand and (so long as Indemnitee gives the Indemnitor at least [NUMBER] days' notice of the terms of the proposed settlement thereof and permits the Indemnitor to then undertake the defense thereof if Indemnitor objects to the proposed settlement) to settle such action, suit, proceeding, claim or demand and to recover from the Indemnitor the amount of such Losses.

* 1. **Period for making claims**

A claim or claims for indemnification under this Section 9 must be brought, if at all, at any time within [NUMBER] year after [DATE], provided however, that any claim or claims for indemnification for breaches of the representations and warranties made by the Company in Sections 5.7, 5.8 and 5.9 may be brought at any time within [NUMBER] years after [DATE], and any claim or claims for indemnification resulting from breaches of the representations, warranties and covenants made herein involving intentional fraud or willful misconduct may be brought at any time until the applicable statute of limitations (including extensions) has expired.

* 1. **Indemnification payments**

1. Payments made by the Company to Purchaser in satisfaction of its indemnification obligations under this Section 9 shall, at the option of the Company, be made either (a) in cash or (b) in shares of Purchaser Common Stock, with each share valued at the Purchaser Average Price.
2. Payments made by Purchaser to the Company in satisfaction of its indemnification obligations under this Section 9 shall, at the option of Purchaser, be made either (a) in cash or (b) by adjusting the Conversion Price, as defined in the Certificate of Determination, so that upon conversion of the Purchaser Preferred Shares into shares of Purchaser Common Stock, The Company will receive an additional number of shares of Purchaser Common Stock, with each share valued at the Purchaser Average Price, that have a value equal to the amount of the indemnification payments due to the Company from Purchaser.
   1. **Sole remedy**

Except with respect to the covenants contained in Sections 6.1, 7.3 and 7.5, for which injunctive relief shall be available, the indemnification provided for in this Section 9 shall be the sole remedy with respect to any claims arising under this Agreement.

1. **TERMINATION OF AGREEMENT**
   1. **Prior to closing**
2. This Agreement may be terminated at any time prior to the Closing by the mutual written consent of each of the parties hereto.
3. Unless otherwise agreed by the parties hereto, this Agreement will be terminated if the Closing shall not have occurred on or before [DATE].  
   1. **At the closing**

At the Closing, this Agreement may be terminated and abandoned:

1. By Purchaser if any of the conditions precedent to Purchaser's obligations set forth in Section 8.1 or 8.2 above have not been fulfilled or waived at and as of the Closing; or
2. By the Company if any of the conditions precedent to the Company's obligations set forth in Section 8.1 or 8.3 above have not been fulfilled or waived at and as of the Closing.
3. Any termination of this Agreement under this Section 10.2 will be effective by the delivery of notice of the terminating party to the other party hereto.
4. **AMENDMENT OF [SPECIFY] PROVISIONS**

Effective upon the Closing, Section [SPECIFY] of the Series [SPECIFY] Preferred Stock Purchase Agreement (the "PURCHASE AGREEMENT") shall be amended as follows:

* 1. **[SPECIFY] percentage**

The first sentence of Section [NUMBER] of the Purchase Agreement shall be amended in its entirety as follows:

Without the written consent of the Company, [COMPANY NAME], [COMPANY NAME], and their respective affiliates (collectively, the "[SPECIFY] Investors"), each agrees not to acquire any additional shares of the Company's Voting Securities (as defined below) in the open market or otherwise if and to the extent such acquisition results in

1. [COMPANY NAME] and its affiliates holding greater than [PERCENTAGE %] of the total Voting Securities or
2. [COMPANY NAME] and its affiliates holding greater than [PERCENTAGE %] of the total Voting Securities. Each such percentage limitation is referred to in this Section [NUMBER] as the "[SPECIFY] Percentage."
   1. **Control Transaction**

The first sentence of Section [SPECIFY] of the Purchase Agreement shall be amended in its entirety as follows:

To the extent not prohibited by a nondisclosure agreement, the Company shall promptly notify each [SPECIFY] Investor in the event that the Company enters into any bona fide discussions with any third party, which the Company reasonably believes will result in a Control Transaction (as defined below). Notwithstanding the foregoing, the Company will provide notice to each [SPECIFY] Investor at least [NUMBER] calendar days prior to entering into a binding definitive agreement with respect to a Control Transaction, and will further notify each [SPECIFY] Investor after such discussions terminate.

* 1. **Third party offer**

Section [SPECIFY] of the Purchase Agreement shall be amended in its entirety as follows:

Each [SPECIFY] Investor's obligations shall terminate upon the making of a bona fide offer by any third party or group, of an intention to acquire Voting Securities of the Company which, if successful, would not be covered under [SPECIFY] above and would result in such party or group owning or having the right to acquire beneficial ownership of more than [PERCENTAGE %] of the Company's Voting Securities.

* 1. **Definition of voting securities**

The definition of "Voting Securities" set forth in Section [NUMBER] of the Purchase Agreement shall be amended in its entirety as follows:

"Voting Securities" shall mean the shares of Common Stock and Preferred Stock of the Company and in addition, any other securities of the Company convertible into or exerciseable for Common Stock which have a conversion or exercise price less than the market price of the Company's Common Stock at the time any additional share of Common Stock or other Company securities are acquired, but shall not include options exerciseable for Common Stock held by employees of the Company.

Except as expressly amended hereby, all other terms and conditions of the Purchase Agreement shall remain in full force and effect.

1. **MISCELLANEOUS**
   1. **Expenses**

Each of the parties hereto shall bear its own expenses (including without limitation attorneys' fees) in connection with the negotiation and consummation of the transactions contemplated hereby.

* 1. **Notices**

Any notice required or permitted to be given under this Agreement shall be in writing and shall be personally or sent by certified or registered [COUNTRY] mail, postage prepaid, or sent by nationally recognized overnight express courier and addressed as follows:

(a) if to Purchaser, at:  
[COMPANY NAME]

[FULL ADDRESS], [STATE/PROVINCE]

Attention: President

Facsimile: [FAX NUMBER]

With a copy to:

[COMPANY NAME]

[FULL ADDRESS], [STATE/PROVINCE]

Attention: [INDIVIDUAL NAME]

Facsimile: [FAX NUMBER]

b) If to THE COMPANY: [COMPANY NAME]

[FULL ADDRESS], [STATE/PROVINCE]

Attention: General Counsel

Facsimile: [FAX NUMBER]

With a copy to:  
[COMPANY NAME]

[FULL ADDRESS], [STATE/PROVINCE]

Attention: [INDIVIDUAL NAME]

Facsimile; [FAX NUMBER]

* 1. **Entire agreement; Captions**

This Agreement, the Schedules hereto (which are incorporated herein by reference) and the agreements to be executed and delivered in connection herewith, together constitute the entire agreement and understanding between the parties and there are no agreements or commitments with respect to the transactions contemplated herein except as set forth in this Agreement. This Agreement supersedes any prior offer, agreement or understanding between the parties with respect to the transactions contemplated hereby. The captions in this Agreement are for convenience only and shall not be considered a part of or affect the construction or interpretation of any provision of this Agreement.

* 1. **Amendment; Waiver**

Any term or provision of this Agreement may be amended only by a writing signed by the Company and Purchaser. The observance of any term or provision of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only by a writing signed by the party to be bound by such waiver. No waiver by a party of any breach of this Agreement will be deemed to constitute a waiver of any other breach or any succeeding breach.

* 1. **No third party beneficiaries**

Nothing expressed or implied in this Agreement is intended, or shall be construed, to confer upon or to give any person, firm or corporation, other than the parties hereto, any rights or remedies under or by reason of this Agreement.

* 1. **Execution in counterparts**

For the convenience of the parties, this Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

* 1. **Assignment**

These rights and obligations of the parties to this Agreement may not be delegated or assigned by any party hereto without the prior written consent of the other party and any such attempted delegation or assignment shall be void.

* 1. **Benefit and burden**

This Agreement shall be binding upon, shall inure to the benefit of, and be enforceable by and against, the parties hereto and their respective successors and permitted assigns.

* 1. **Governing Law**

This Agreement shall be governed by and construed in accordance with the internal laws of the State of [STATE/PROVINCE] (excluding application of any choice of law doctrines that would make applicable the law of any other state or jurisdiction) and, where appropriate, applicable federal law.

* 1. **Severability**

If any provision of this Agreement is for any reason and to any extent deemed to be invalid or unenforceable, then such provision shall not be voided but rather shall be enforced to the maximum extent then permissible under then applicable law and so as to reasonably effect the intent of the parties hereto, and the remainder of this Agreement will remain in full force and effect.

* 1. **Attorneys' fees**

Should a suit or arbitration be brought to enforce or interpret any provision of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees to be fixed in amount by the Court or the Arbitrator(s) (including without limitation costs, expenses and fees on any appeal). The prevailing party will be entitled to recover its costs of suit or arbitration, as applicable, regardless of whether such suit or arbitration proceeds to a final judgment or award.

* 1. **Sections and exhibits**

Except as otherwise indicated, all references in this Agreement to "Section(s)" and "Exhibit(s)" are intended to refer to Section(s) to this Agreement and Exhibit(s) to this Agreement, respectively.

* 1. **Dispute resolution**

All disputes arising under this Agreement shall be resolved pursuant to the dispute resolution procedures set forth in the Commercial Agreement.

* 1. **Construction of agreement**

This Agreement has been negotiated by the respective parties hereto and their attorneys and the language hereof will not be construed for or against either party.

* 1. **Public announcement**

Upon execution of the Agreement by both parties, and until the Closing, all press releases and other public and private communications shall be made by the parties only with the mutual written consent of the Company and Purchaser, except that each party may make such disclosures as are required by applicable law, provided, however, that a copy of such disclosure shall first be submitted to the other party within a reasonable time period prior to the dissemination thereof.

IN WITNESS WHEREOF, the Purchaser and the Company executed and delivered this Agreement by their duly authorized representatives as of the Effective Date.

COMPANY PURCHASER

Authorized Signature Authorized Signature

Print Name and Title Print Name and Title