

Exhibit B

Agreement and Plan of Merger and Reorganization dated as of March 18, 2009, by and among Cisco, Sub, Pure Digital and the Stockholders' Agent, including Exhibits and Schedules thereto.

AGREEMENT AND PLAN OF MERGER AND REORGANIZATION

BY AND AMONG

CISCO SYSTEMS, INC.,

PYTHON ACQUISITION CORP.,

PURE DIGITAL TECHNOLOGIES, INC.

AND

THE STOCKHOLDERS' AGENT

March 18, 2009

TABLE OF CONTENTS

	PAGE(S)
ARTICLE I THE MERGER	2
1.1 Certain Definitions	2
1.2 The Merger	10
1.3 Closing	10
1.4 Closing Deliveries	10
1.5 Effective Time	13
1.6 Effect of the Merger	13
1.7 Certificate of Incorporation and Bylaws	14
1.8 Directors and Officers	14
1.9 Effect on Company Capital Stock, Company Options, Company Warrants and New Restricted Stock Units	14
1.10 Surrender of Certificates	18
1.11 No Further Ownership Rights in the Company Capital Stock, Company Warrants or Company Options	20
1.12 Lost, Stolen or Destroyed Certificates	20
1.13 Tax Consequences	20
1.14 Withholding Rights	21
1.15 Taking of Necessary Action; Further Action	21
ARTICLE II REPRESENTATIONS AND WARRANTIES OF THE COMPANY	21
2.1 Organization, Standing and Power	21
2.2 Capital Structure	22
2.3 Authority; Noncontravention	24
2.4 Financial Statements	25
2.5 Absence of Certain Changes	27
2.6 Litigation	28
2.7 Restrictions on Business Activities	28
2.8 Compliance with Laws; Governmental Permits	28
2.9 Title to Property and Assets	29
2.10 Intellectual Property	30
2.11 Environmental Matters	36
2.12 Taxes	37
2.13 Employee Benefit Plans and Employee Matters	39

TABLE OF CONTENTS

(CONTINUED)

	PAGE(S)
2.14 Interested Party Transactions	45
2.15 Insurance	45
2.16 Books and Records.....	45
2.17 Transaction Fees.....	46
2.18 Material Contracts.....	46
2.19 Export Control Laws	49
2.20 Customers and Suppliers.....	50
2.21 Accounts Receivable.....	50
2.22 Inventory	51
2.23 Representations Complete.....	51
ARTICLE III REPRESENTATIONS AND WARRANTIES OF ACQUIROR AND SUB.....	52
3.1 Organization and Standing	52
3.2 Authority; Noncontravention	52
3.3 Acquiror Shares.....	53
3.4 SEC Documents	53
3.5 No Prior Sub Operations	53
ARTICLE IV CONDUCT PRIOR TO THE FIRST EFFECTIVE TIME	53
4.1 Conduct of Business of the Company and Subsidiaries.....	53
4.2 Restrictions on Conduct of Business of the Company and Subsidiaries.....	54
ARTICLE V ADDITIONAL AGREEMENTS	57
5.1 Information Statement; Fairness Hearing and Permit; Blue Sky Laws.....	57
5.2 Stockholder Approval and Board Recommendation.....	60
5.3 No Solicitation	61
5.4 Confidentiality; Public Disclosure	63
5.5 Regulatory Approvals	63
5.6 Reasonable Efforts	65
5.7 Third Party Consents; Notices.....	65
5.8 Litigation.....	65
5.9 Access to Information	65
5.10 Spreadsheet	66
5.11 Expenses.....	67

TABLE OF CONTENTS

(CONTINUED)

	PAGE(S)
5.12 Employees and Contractors.....	67
5.13 Assumption of Options, New Restricted Stock Units, New Company Options and Related Matters	67
5.14 Benefits Waivers	69
5.15 Form S-8.....	69
5.16 Parachute Payment Waivers.....	69
5.17 Section 280G Stockholder Approval.....	70
5.18 Termination of Benefit Plans	70
5.19 Termination of Financing Statements	70
5.20 Certain Closing Certificates and Documents	71
5.21 Corporate Matters.....	71
5.22 Tax Documents	71
5.23 Conversion of Preferred Stock	71
5.24 Indemnification of Company Directors and Officers.....	71
ARTICLE VI CONDITIONS TO THE MERGER.....	72
6.1 Conditions to Obligations of Each Party to Effect the Merger	72
6.2 Additional Conditions to Obligations of the Company	72
6.3 Additional Conditions to the Obligations of Acquiror	72
ARTICLE VII TERMINATION, AMENDMENT AND WAIVER.....	75
7.1 Termination	75
7.2 Effect of Termination	75
7.3 Amendment.....	76
7.4 Extension; Waiver	76
ARTICLE VIII ESCROW FUND AND INDEMNIFICATION.....	76
8.1 Escrow Fund.....	76
8.2 Indemnification	76
8.3 Indemnifiable Damage Threshold; Other Limitations	77
8.4 Period for Claims against Escrow Fund	78
8.5 Claims	79
8.6 Resolution of Objections to Claims	80
8.7 Stockholders' Agent.....	80

TABLE OF CONTENTS

(CONTINUED)

	PAGE(S)
8.8 Third-Party Claims.....	81
ARTICLE IX GENERAL PROVISIONS.....	82
9.1 Survival of Representations and Warranties and Covenants.....	82
9.2 Notices.....	82
9.3 Interpretation.....	83
9.4 Counterparts.....	83
9.5 Entire Agreement; Nonassignability; Parties in Interest.....	84
9.6 Assignment.....	84
9.7 Severability.....	84
9.8 Remedies Cumulative.....	84
9.9 Governing Law.....	84
9.10 Rules of Construction.....	85
9.11 WAIVER OF JURY TRIAL.....	85

<u>Schedule 1.4(b)(xiv)-1:</u>	Required Third Party Consents
<u>Schedule 1.4(b)(xiv)-2:</u>	Contracts Required to be Terminated
<u>Schedule 1.4(b)(xiv)-3:</u>	Contracts Required to be Amended
<u>Schedule 1.4(b)(xviii):</u>	Individuals Executing Equity Agreements
<u>Schedule 1.4(b)(xxiv):</u>	Individuals Executing Amendments to 2009 Options
<u>Schedule 5.7(a):</u>	Contracts Proposed to be Amended
<u>Schedule 6.3(f)-1:</u>	Individuals Executing Offer Letters as of the Agreement Date
<u>Schedule 6.3(f)-2:</u>	Individuals Executing Non-Competition Agreements as of the Agreement Date
<u>Schedule 6.3(f)-3:</u>	Individuals Executing Benefits Waivers as of the Agreement Date

EXHIBITS

Exhibit A-1	—	List of Signatories to Voting Agreement
Exhibit A-2	—	Form of Voting Agreement
Exhibit B	—	Form of Certificate of Merger
Exhibit C	—	Form of Escrow Agreement
Exhibit D	—	Matters Covered in Legal Opinion of Company Counsel
Exhibit E	—	Form of Benefits Waiver
Exhibit F	—	Form of Parachute Payment Waiver
Exhibit G	—	Form of IRS Notice
Exhibit H	—	Form of FIRPTA Notice
Exhibit I	—	Form of Amendment to 2009 Options

AGREEMENT AND PLAN OF MERGER AND REORGANIZATION

This AGREEMENT AND PLAN OF MERGER AND REORGANIZATION (this "**Agreement**") is made and entered into as of March 18, 2009 (the "**Agreement Date**"), by and among Cisco Systems, Inc., a California corporation ("**Acquiror**"), Python Acquisition Corp., a Delaware corporation and wholly-owned subsidiary of Acquiror ("**Sub**"), Pure Digital Technologies, Inc., a Delaware corporation (the "**Company**"), and the Stockholders' Agent (as defined in Section 8.7).

RECITALS

A. The Boards of Directors of the Company (the "**Company Board**"), Sub and Acquiror (or, with respect to Acquiror, a duly authorized committee of its Board of Directors) have determined that it would be advisable and in the best interests of the securityholders of their respective companies that Sub merge with and into the Company (the "**Merger**"), with the Company to survive the Merger and to become a wholly-owned subsidiary of Acquiror, all on the terms and subject to the conditions set forth in this Agreement, and, in furtherance thereof, have approved the Merger, this Agreement and the other transactions contemplated by this Agreement.

B. Pursuant to the Merger, among other things, (i) the issued and outstanding shares of capital stock of the Company shall be converted into the right to receive shares of Acquiror Common Stock (as hereinafter defined), (ii) the issued and outstanding options to purchase capital stock of the Company held by Continuing Employees (as hereinafter defined) other than Recap Options (as hereinafter defined) shall be converted into the right to receive options to purchase Acquiror Common Stock, and (iii) the issued and outstanding options to purchase capital stock of the Company held by persons who are not Continuing Employees and Recap Options shall be converted into the right to receive cash, all in the manner set forth herein.

C. The Company and Acquiror intend, by executing this Agreement, to adopt a Plan of Merger and Reorganization within the meaning of Section 354(a)(1) of the Internal Revenue Code of 1986, as amended (the "**Code**"), and to cause the Merger to qualify as a "reorganization" under the provisions of Section 368(a) of the Code.

D. The Company, Sub and Acquiror desire to make certain representations, warranties, covenants and other agreements in connection with the Merger as set forth herein.

E. Concurrently with the execution of this Agreement and as a material inducement to the willingness of Acquiror to enter into this Agreement, certain employees of the Company and its Subsidiaries identified on Schedule 6.3(f)-1 hereto are entering into employee offer letters with Acquiror (each an "**Offer Letter**") together with a Proprietary Information and Inventions Agreement, Arbitration Agreement, and Conflicts of Interest Agreement, in each case to become effective upon the Closing.

F. Concurrently with the execution of this Agreement and as a material inducement to the willingness of Acquiror to enter into this Agreement, certain employee-stockholders of the Company and its Subsidiaries identified on Schedule 6.3(f)-2 hereto are entering into non-competition agreements with Acquiror (each, a "**Non-Competition Agreement**"), in each case to become effective upon the Closing.

G. Concurrently with the execution of this Agreement and as a material inducement to the willingness of Acquiror to enter into this Agreement, certain employees of the Company and its Subsidiaries identified on Schedule 6.3(f)-3 hereto are executing and delivering Benefits Waivers (as hereinafter defined), in each case to become effective upon the Closing.

H. Concurrently with the execution of this Agreement and as a material inducement to the willingness of Acquiror to enter into this Agreement, the Company affiliate stockholders listed on Exhibit A-1 hereto are executing and delivering voting agreements (together with irrevocable proxies) in the form attached hereto as Exhibit A-2 (the "*Voting Agreement*").

I. Concurrently with the execution of this Agreement and as a material inducement to the willingness of Acquiror to enter into this Agreement, certain employees of the Company and its Subsidiaries identified on Schedule 1.4(b)(xviii) hereto are executing and delivering equity agreements with the Company for the benefit of Acquiror (the "*Equity Agreement*"), in each case to become effective upon the Closing.

NOW, THEREFORE, in consideration of the representations, warranties, covenants and other agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

ARTICLE I

THE MERGER

1.1 Certain Definitions. As used in this Agreement, the following terms shall have the meanings indicated below. Unless indicated otherwise, all mathematical calculations contemplated hereby shall be rounded to the tenth decimal place.

"*2009 Options*" means the non-statutory stock options of the Company granted on February 11, 2009 at an exercise price of \$2.15 per share.

"*Acquiror Common Stock*" means the Common Stock, par value \$0.001 per share, of Acquiror.

"*Acquiror Options*" means options to purchase shares of Acquiror Common Stock.

"*Acquiror Stock Price*" means the average of the closing sale prices of Acquiror Common Stock as quoted on the NASDAQ Global Select Market for the five consecutive trading days ending with the trading day that is one trading day prior to the Closing Date (as defined in Section 1.3).

"*Affiliate*" has the meaning set forth in Rule 144 promulgated under the Securities Act.

"*Aggregate Cashed Out Option Shares*" means the sum of (A) the aggregate number of shares of Company Common Stock issuable upon exercise of all Company Vested Options to purchase Company Common Stock held by non-Continuing Employees and all Recap Options as of immediately prior to the Effective Time plus (B) the aggregate number of shares of Company Common Stock issuable upon conversion of all shares of Company Preferred Stock issuable upon exercise of Company Vested Options to purchase Company Preferred Stock held by non-Continuing Employees and all Recap Options as of immediately prior to the Effective Time.

"*Business*" means the business of the Company and its Subsidiaries as currently conducted or as currently proposed to be conducted by the Company or any Subsidiary, where "*as currently proposed to be conducted by the Company or any Subsidiary*" means the design, development, manufacturing, reproduction, branding marketing, advertising, promotion, licensing, sale, offer for sale, importation, distribution, provision and/or use of any and all Company Products in any and every territory of the world.

"Business Day" means a day (A) other than Saturday or Sunday and (B) on which commercial banks are open for business in San Francisco, California.

"California Law" means the General Corporation Law of the State of California.

"Cash Amount Per Share" means the quotient obtained by dividing (A) the Total Merger Consideration by (B) the Fully-Diluted Company Shares.

"Cash Out Amount" means (i) with respect to a Company Vested Option or Recap Option to purchase Company Common Stock, an amount of cash, without interest, equal to the product of (A) the number of shares of Company Common Stock subject to such Company Option multiplied by (B) (the Cash Amount Per Share less the exercise price per share of such Company Option in effect immediately prior to the Effective Time), and (ii) with respect to a Company Vested Option or Recap Option to purchase Company Preferred Stock, an amount of cash, without interest, equal to the product of (A) the number of shares of Company Common Stock issuable upon conversion of the shares of Company Preferred Stock subject to such Company Option as of immediately prior to the Effective Time multiplied by (B) (the Cash Amount Per Share less the quotient obtained by dividing (x) the exercise price per share of such Company Option in effect immediately prior to the Effective Time by (y) the number of shares of Company Common Stock into which each such share of Company Preferred Stock was convertible immediately prior to the Effective Time).

"Company Capital Stock" means the capital stock of the Company.

"Company Common Stock" means the Common Stock, par value of \$0.0001 per share, of the Company.

"Company Employee Liabilities" means all Liabilities of the Company or any Subsidiary for cash bonuses, severance or other amounts payable to employees of the Company or any Subsidiary.

"Company Net Working Capital" means (A) the Company's consolidated total current assets as of immediately prior to the Effective Time (as defined by and determined in accordance with GAAP) less (B) the Company's consolidated total current liabilities as of immediately prior to the Effective Time (as defined by and determined in accordance with GAAP). For purposes of calculating the Company Net Working Capital, the Company's current assets shall include without limitation cash, accounts receivable (on a net basis), inventory (on a net basis) and deferred cost of goods sold. For purposes of calculating the Company Net Working Capital, the Company's current liabilities (1) shall include without limitation (a) deferred revenue, (b) all Company Debt (as defined in Section 2.4(d)), (c) all Liabilities for Taxes as of the Closing Date, whether or not such Liabilities for Taxes would be then due and payable (including the employer portion of employee social taxes, such as social security and Medicare taxes with respect to payments made or to be made in connection with options), and (d) shall include all Company Employee Liabilities and (2) shall not include Transaction Expenses. With respect to such Taxes, Company Employee Liabilities and Company Debt, they shall be included as current liabilities whether or not they would be treated as current liabilities under GAAP. For purposes of calculating the Company Net Working Capital and preparing the Closing Balance Sheet, a sell-through (rather than sell-in) revenue recognition policy will be applied for all relevant financial reporting periods.

"Company Net Working Capital Certificate" means a certificate executed by the Chief Financial Officer of the Company dated as of the Closing Date, certifying the amount of Company Net Working Capital (including (i) the Company's balance sheet as of the Closing Date prepared in accordance with GAAP ("**Closing Balance Sheet**"), (ii) an itemized list of each Company Debt with a description of the nature of such Company Debt and the Person to whom such Company Debt is owed,

(iii) an itemized list of each element of the Company's consolidated current assets (mapping to specific general ledger accounts), and (iv) an itemized list of each element of the Company's consolidated total current liabilities (mapping to specific general ledger accounts)).

"Company Option Plan" means each stock option plan, program or arrangement of the Company, collectively, including the 2002 Stock Plan and the 2009 Equity Incentive Plan.

"Company Optionholders" means the holders of Company Options.

"Company Options" means options to purchase shares of Company Capital Stock.

"Company Preferred Stock" means the Company Series A Stock, Company Series A-1 Stock, Company Series B Stock, Company Series C Stock, Company Series D Stock, Company Series E Stock and Company Series F Stock.

"Company Products" means all products or services produced, marketed, licensed, sold, distributed or performed by or on behalf of the Company or any Subsidiary and all products or services currently under development by the Company or any Subsidiary.

"Company Securityholders" means the Company Stockholders, the Company Optionholders, the Company Warranholders and the holders of New Restricted Stock Units and New Company Options, collectively.

"Company Series A Stock" means the Series A Preferred Stock, par value \$0.0001 per share, of the Company.

"Company Series A-1 Stock" means the Series A-1 Preferred Stock, par value \$0.0001 per share, of the Company.

"Company Series B Stock" means the Series B Preferred Stock, par value \$0.0001 per share, of the Company.

"Company Series C Stock" means the Series C Preferred Stock, par value \$0.0001 per share, of the Company.

"Company Series D Stock" means the Series D Preferred Stock, par value \$0.0001 per share, of the Company.

"Company Series E Stock" means the Series E Preferred Stock, par value \$0.0001 per share, of the Company.

"Company Series F Stock" means the Series F Preferred Stock, par value \$0.0001 per share, of the Company.

"Company Stockholders" means the holders of shares of outstanding Company Capital Stock.

"Company Vested Options" means Company Options that (i) are held by Persons who are not Continuing Employees, (ii) are issued, unexercised and outstanding as of immediately prior to the Effective Time and (iii) as of the Effective Time, are vested, or immediately prior to or at the Effective Time will be vested, under the terms of any Contract with the Company.

"Company Warrantholders" means the holders of Company Warrants.

"Company Warrants" means warrants to purchase shares of Company Capital Stock.

"Continuing Employees" means the employees of the Company as set forth on Schedule 6.3(f)-1 and the other individuals who receive offers of employment from Acquiror and who execute the documents described in Section 1.4(b)(vii) and remain employees of the Surviving Corporation or its Subsidiaries or become employees of Acquiror or any of its Subsidiaries as of the Effective Time.

"Contract" means any written or oral legally binding contract, agreement, instrument, commitment or undertaking of any nature (including leases, licenses, mortgages, notes, guarantees, sublicenses, subcontracts, letters of intent and purchase orders) as of the Agreement Date or as may hereafter be in effect.

"Delaware Law" means the General Corporation Law of the State of Delaware.

"delivered" means, with respect to any statement in Article II of this Agreement to the effect that any information, document or other material has been "delivered" to Acquiror or its representatives, that a true, correct and complete copy of such information, document or material was: (A) made available for review by Acquiror or its representatives in the virtual data room set up by Fenwick & West LLP in connection with this Agreement no later than 5:00 p.m. Pacific Time on the date one day prior to the Agreement Date; or (B) actually delivered (whether by physical or electronic delivery) to Acquiror or its representatives no later than 5:00 p.m. Pacific Time on the date one day prior to the Agreement Date.

"Dissenting Shares" shall mean any shares of Company Capital Stock that are issued and outstanding immediately prior to the Effective Time and in respect of which appraisal or dissenters' rights shall have been perfected in accordance with Delaware Law and/or California Law in connection with the Merger.

"Effective Time Holder" means a Company Stockholder as of immediately prior to the Effective Time (other than a holder solely of shares of Company Capital Stock which constitute and remain Dissenting Shares).

"Encumbrance" means, with respect to any asset, any mortgage, deed of trust, lien, pledge, charge, security interest, title retention device, conditional sale or other security arrangement, collateral assignment, claim, charge, adverse claim of title, ownership or right to use, restriction or other encumbrance of any kind in respect of such asset (including any restriction on (i) the voting of any security or the transfer of any security or other asset, (ii) the receipt of any income derived from any asset, (iii) the use of any asset, and (iv) the possession, exercise or transfer of any other attribute of ownership of any asset).

"Escrow Share Percentage" means the quotient obtained by dividing (A) the Total Escrow Shares by (B) the Total Stock Merger Consideration.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Fully-Diluted Company Shares" means the sum, without duplication, of (A) the aggregate number of shares of Company Common Stock that are issued and outstanding immediately prior to the Effective Time, (B) the aggregate number of shares of Company Common Stock that are

issuable upon conversion of shares of Company Preferred Stock that are issued and outstanding immediately prior to the Effective Time (collectively, the shares in clauses (A) and (B) being the "**Diluted Company Shares**"), (C) the aggregate number of shares of Company Common Stock that are issuable upon the exercise of Company Options and Company Warrants (other than cancelled Company Options held by non-Continuing Employees that are not Company Vested Options and New Company Options) that are issued and outstanding immediately prior to the Effective Time, whether or not then vested or exercisable, (D) the aggregate number of shares of Company Common Stock that are issuable upon the conversion of shares of Company Preferred Stock that are issuable upon the exercise of Company Options and Company Warrants (other than cancelled Company Options held by non-Continuing Employees that are not Company Vested Options) that are issued and outstanding immediately prior to the Effective Time, whether or not then vested or exercisable, and (E) other direct or indirect rights to acquire shares of the Company Capital Stock that are issued and outstanding immediately prior to the Effective Time, whether or not then vested or exercisable (other than New Restricted Stock Units) (collectively, the shares in clauses (C), (D) and (E) being the "**Diluted Company Options**").

"**GAAP**" means United States generally accepted accounting principles applied on a consistent basis.

"**GCA Software**" means generally commercially available software that is not redistributed with or used in the development or provision of Company Products (as defined in Section 2.10(a)(vi)), is licensed under a "shrink wrap" or similar standard end user license agreement, and has an individual acquisition cost of \$25,000 or less.

"**Governmental Entity**" means any supranational, national, state, municipal, local or foreign government, any court, tribunal, arbitrator, administrative agency, commission or other governmental official, authority or instrumentality, in each case whether domestic or foreign, any stock exchange or similar self-regulatory organization or any quasi-governmental or private body exercising any regulatory, Taxing or other governmental or quasi-governmental authority.

"**HSR Act**" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"**knowledge**" means, with respect to any fact, circumstance, event or other matter in question, the actual knowledge of such fact, circumstance, event or other matter after reasonable inquiry of (A) an individual, if used in reference to an individual or (B) with respect to the Company, each of the following directors and officers of the Company: Bruce Dunlevie, Jeff Jordan, Jonathan Kaplan, Thomas McGrath, Jr., David Spreng, Michael Moritz, John Ball, Ariel Braunstein, Robert C. Cartwright, Rebecca Eisenberg, Robert C. Evans, Simon Fleming-Wood, John L. Furlan, Alan Henricks, Dave McLaren, Stewart Muller, Andre Neumann-Loreck and Ray Sangster (the individuals specified in clause (B) are collectively referred to herein as the "**Entity Representatives**"). Any such individual or Entity Representative will be deemed to have actual knowledge of a particular fact, circumstance, event or other matter if (i) such fact, circumstance, event or other matter is reflected in one or more documents (whether written or electronic, including electronic mails sent to or by such individual or Entity Representative) in, or that have been in, the possession of such individual or Entity Representative, including his or her personal files, (ii) such fact, circumstance, event or other matter is reflected in one or more documents (whether written or electronic) contained in books and records of such Person that would reasonably be expected to be reviewed by an individual who has the duties and responsibilities of such individual or Entity Representative in the customary performance of such duties and responsibilities, or (iii) with respect to the above listed Entity Representatives who are officers of the Company, such knowledge could be obtained from reasonable inquiry of the persons employed by the Company charged with administrative or operational responsibility for such matters for the Company.

“Legal Requirements” means any federal, state, foreign, local, municipal or other law, statute, constitution, principle of common law, resolution, ordinance, code, edict, decree, rule, regulation, ruling or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Entity and any orders, writs, injunctions, awards, judgments and decrees applicable to the Company or any Subsidiary or to any of their respective assets, properties or businesses.

“Liabilities” means all debts, liabilities and obligations, whether accrued or fixed, absolute or contingent, matured or unmatured, determined or determinable, asserted or unasserted, known or unknown, including without limitation those arising under any Legal Requirement and those arising under any Contract.

“License Agreements” means (A) Reseller Agreements (as such term is defined in Section 2.18(a)(i)), (B) licenses to GCA Software, (C) Contracts listed in Schedule 2.18(a)(x) of the Company Disclosure Letter (as such term is defined in Article II), and (D) Contracts listed in Schedule 2.18(a)(xi) of the Company Disclosure Letter.

“Material Adverse Effect” with respect to any entity means any change, event, violation, inaccuracy, circumstance or effect (each, an **“Effect”**) that, individually or taken together with all other Effects, and regardless of whether or not such Effect constitutes a breach of the representations or warranties made by such entity in this Agreement, is, or is reasonably likely to: (A) be or become materially adverse in relation to the condition (financial or otherwise), properties, assets (including intangible assets), liabilities, business, operations or results of operations of such entity and its subsidiaries, taken as a whole, except to the extent that any such Effect results directly from (1) changes in GAAP or any applicable Legal Requirements, (2) changes in the industry in which such entity and its subsidiaries operate that do not disproportionately affect such entity relative to other participants in such industry, (3) changes caused by hostilities, acts of terrorism or war, or any material escalation of any such hostilities, acts of terrorism or war existing on the date hereof that do not disproportionately affect such entity relative to other participants in such entity’s industry, or (4) changes in general economic conditions or the financial or securities markets generally that do not disproportionately affect such entity relative to other participants in such entity’s industry; or (B) will materially adversely affect such entity’s ability to consummate the transactions contemplated by this Agreement in accordance with its terms and applicable Legal Requirements.

“New Company Options” means Company Options granted pursuant to Section 5.12(c) under the 2009 Equity Incentive Plan of the Company.

“New Restricted Stock Units” means Restricted Stock Units of the Company granted pursuant to Section 5.12(b) under the 2009 Equity Incentive Plan of the Company.

“Option Exchange Ratio” means the quotient obtained by dividing (A) the Cash Amount Per Share by (B) the Acquiror Stock Price.

“Permitted Encumbrances” means: (A) statutory liens for Taxes that are not yet due and payable or liens for Taxes being contested in good faith by any appropriate proceedings for which adequate reserves have been established; (B) statutory liens to secure obligations to landlords, lessors or renters under leases or rental agreements; (C) deposits or pledges made in connection with, or to secure payment of, workers’ compensation, unemployment insurance or similar programs mandated by applicable Legal Requirements; (D) statutory liens in favor of carriers, warehousemen, mechanics and materialmen, to secure claims for labor, materials or supplies and other like liens; (E) liens in favor of customs and revenue authorities arising as a matter of Legal Requirements to secure payments of customs

duties in connection with the importation of goods; and (F) non-exclusive object code licenses of software by the Company or a Subsidiary in the ordinary course of its business consistent with past practice.

"Person" means any natural person, company, corporation, limited liability company, general partnership, limited partnership, trust, proprietorship, joint venture, business organization or Governmental Entity.

"Pro Rata Share" means with respect to Acquiror Common Stock, the number of Escrow Shares an Effective Time Holder is entitled to receive pursuant to Section 1.9(a)(i)(B) with respect to his, her or its Company Capital Stock (other than Dissenting Shares) and relative to the number of Escrow Shares all Effective Time Holders are entitled to receive pursuant to Section 1.9(a)(i)(B) with respect to their Company Capital Stock (other than Dissenting Shares).

"Recap Options" means all Company Options granted prior to March 4, 2005, as such Company Options have been subsequently recapitalized (split-up) and amended, that are issued, unexercised and outstanding as of immediately prior to the Effective Time. If a particular Company Option qualifies as both a Company Vested Option and a Recap Option hereunder, it shall in no event be double counted for purposes of mathematical calculations or distribution of merger consideration hereunder.

"SEC" means the Securities and Exchange Commission.

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

"Standard EULAs" means non-exclusive, object-code end user licenses to the Company's standard, unmodified software product granted in the ordinary course of business consistent with past practice on the Company's standard, unmodified forms of click-through agreements, copies of which have been delivered to Acquiror's counsel.

"Standard NDAs" means non-disclosure agreements granting a limited right to use confidential information entered into by the Company or a Subsidiary in the ordinary course of its business, consistent with past practice.

"Stock Closing Amount Per Share" means the quotient obtained by dividing (A) the difference between (1) the Total Stock Merger Consideration and (2) the Total Escrow Shares by (B) the Diluted Company Shares.

"Stock Escrow Amount Per Share" means the quotient obtained by dividing (A) the Total Escrow Shares by (B) the Diluted Company Shares.

"Subsidiary" means any corporation, association, business entity, partnership, limited liability company or other Person of which the Company, either alone or together with one or more Subsidiaries or by one or more other Subsidiaries (i) directly or indirectly owns or controls securities or other interests representing more than 50% of the voting power of such Person, or (ii) is entitled, by Contract or otherwise, to elect, appoint or designate directors constituting a majority of the members of such Person's board of directors or other governing body.

"Tax" (and, with correlative meaning, **"Taxes"** and **"Taxable"**) means (i) any net income, alternative or add-on minimum tax, gross income, estimated, gross receipts, sales, use, ad valorem, value added, transfer, franchise, fringe benefit, capital stock, profits, license, registration, withholding, payroll, social security (or equivalent), employment, unemployment, disability, excise, severance, stamp,

occupation, premium, property (real, tangible or intangible), environmental or windfall profit tax, custom duty or other tax, governmental fee or other like assessment or charge of any kind whatsoever, together with any interest or any penalty, addition to tax or additional amount (whether disputed or not) imposed by any Governmental Entity responsible for the imposition of any such tax (domestic or foreign) (each, a "**Tax Authority**"), (ii) any Liability for the payment of any amounts of the type described in clause (i) of this sentence as a result of being a member of an affiliated, consolidated, combined, unitary or aggregate group for any Taxable period, and (iii) any Liability for the payment of any amounts of the type described in clause (i) or (ii) of this sentence as a result of being a transferee of or successor to any Person or as a result of any express or implied obligation to assume such Taxes or to indemnify any other Person.

"**Tax Return**" means any return, statement, report or form (including estimated Tax returns and reports, withholding Tax returns and reports, any schedule or attachment, and information returns and reports) required to be filed with a Governmental Entity with respect to Taxes.

"**Total Merger Consideration**" means (A) \$590,000,000 less (B) the amount (if any) by which the Company Net Working Capital is less than \$10,000,000, less (C) the amount of Transaction Expenses.

"**Total Escrow Shares**" means the quotient obtained by dividing (A) the difference between (1) 10% of the Total Merger Consideration and (2) \$320,000 by (B) the Acquiror Stock Price.

"**Total Stock Merger Consideration**" means the quotient obtained by dividing (A) the difference between (1) the Total Merger Consideration and (2) the product obtained by multiplying (x) the Diluted Company Options by (y) the Cash Amount Per Share, by (B) the Acquiror Stock Price.

"**Transaction Expenses**" means all third party fees and expenses incurred by the Company in connection with the Merger and this Agreement and the transactions contemplated hereby, whether or not billed or accrued, and whether or not paid or payable at any time prior to, at or following the Closing Date (including any fees and expenses of legal counsel and accountants, the maximum amount of fees and expenses payable to financial advisors, investment bankers, finders and brokers of the Company and the Subsidiaries notwithstanding any contingencies for earnouts, escrows, etc., and any such fees incurred by Company Securityholders and/or Company employees or consultants paid for or to be paid for by the Company).

"**Transaction Expenses Certificate**" means a certificate executed by the Chief Financial Officer of the Company dated as of the Closing Date, certifying the amount of Transaction Expenses (including an itemized list of each Transaction Expense with a description of the nature of such expense and the Person to whom such expense was or is owed).

"**Unvested Company Shares**" means any Company Capital Stock that is not vested under the terms of any Contract with the Company (including any stock option agreement, or stock option exercise agreement, or restricted stock purchase agreement).

Other capitalized terms defined elsewhere in this Agreement and not defined in this Section 1.1 shall have the meanings assigned to such terms in this Agreement.

1.2 The Merger. At the Effective Time (as such term is defined in Section 1.5), on the terms and subject to the conditions set forth in this Agreement, the Certificate of Merger in substantially the form attached hereto as Exhibit B (the "**Certificate of Merger**") and the applicable provisions of Delaware Law, Sub shall merge with and into the Company, the separate corporate existence of Sub shall cease and the Company shall continue as the surviving corporation and shall become a wholly-owned

subsidiary of Acquiror. The Company, as the surviving corporation after the Merger, is hereinafter sometimes referred to as the "**Surviving Corporation.**"

1.3 Closing. Unless this Agreement is earlier terminated in accordance with Section 7.1, the closing of the transactions contemplated hereby (the "**Closing**") shall take place at a time and date to be specified by the parties after the satisfaction or waiver of each of the conditions set forth in Article VI (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the fulfillment or waiver of those conditions). The Closing shall take place at the offices of Fenwick & West LLP, Silicon Valley Center, 801 California Street, Mountain View, California, or at such other location as the parties hereto agree. The date on which the Closing occurs is herein referred to as the "**Closing Date.**"

1.4 Closing Deliveries.

(a) Acquiror Deliveries. Acquiror shall deliver to the Company, at or prior to the Closing, each of the following:

(i) a certificate, dated as of the Closing Date, executed on behalf of Acquiror by a duly authorized officer of Acquiror to the effect that each of the conditions set forth in clause (a) of Section 6.2 has been satisfied; and

(ii) an Escrow Agreement, in substantially the form attached hereto as Exhibit C (the "**Escrow Agreement**"), dated as of the Closing Date and executed by Acquiror and the Escrow Agent (as such term is defined in Section 8.1).

(b) Company Deliveries. The Company shall deliver to Acquiror, at or prior to the Closing, each of the following (unless previously delivered):

(i) a certificate, dated as of the Closing Date and executed on behalf of the Company by its Chief Executive Officer, to the effect that each of the conditions set forth in clause (a) of Section 6.3 has been satisfied;

(ii) a certificate, dated as of the Closing Date and executed on behalf of the Company by its Secretary, certifying the Company's (A) Certificate of Incorporation, (B) Bylaws, (C) board resolutions approving the Merger and adopting this Agreement and approving the 2009 Equity Incentive Plan of the Company and the issuance of New Restricted Stock Units and New Company Options, and (D) stockholder resolutions approving the Merger and adopting this Agreement and approving the 2009 Equity Incentive Plan of the Company;

(iii) (A) a written opinion from the Company's legal counsel, covering the matters set forth on Exhibit D, dated as of the Closing Date and addressed to Acquiror and in form and substance reasonably satisfactory to Acquiror and (B) a written opinion from the Company's legal counsel, dated as of the Closing Date and addressed to Acquiror in form and substance satisfactory to Acquiror;

(iv) the Escrow Agreement, dated as of the Closing Date and executed by the Stockholders' Agent (as such term is defined in Section 8.7(a));

(v) the Voting Agreement, executed by each Company Stockholder listed on Exhibit A-1;

(vi) a Non-Competition Agreement executed by each of the individuals set forth on Schedule 6.3(f)-2 hereto;

(vii) an Offer Letter as provided by Acquiror, together with an executed Proprietary Information and Inventions Agreement, Arbitration Agreement and Conflicts of Interest Agreement, in each case in substantially the form attached as an exhibit to the applicable Offer Letter, executed by each of the Continuing Employees;

(viii) evidence satisfactory to Acquiror of (A) the resignation of each of the directors and each of the officers of the Company and of each Subsidiary in office immediately prior to the Closing as directors and/or officers, as applicable, of the Company and of each such Subsidiary, effective no later than immediately prior to the Effective Time, and (B) if requested by Acquiror, the appointment of new officers and directors of the Company and of each Subsidiary which appointments are to become effective at the Effective Time;

(ix) true, correct and complete copies of all election statements under Section 83(b) of the Code that are in the Company's possession or subject to its control with respect to any unvested securities or other property issued by the Company, any Subsidiary or any ERISA Affiliate to any of their respective employees, non-employee directors, consultants and other service providers;

(x) a Benefits Waiver, in substantially the form attached hereto as Exhibit E (the "**Benefits Waiver**"), executed by the Company and each Person required to execute such a waiver pursuant to Section 5.14 hereof;

(xi) a Parachute Payment Waiver, in substantially the form attached hereto as Exhibit F (the "**Parachute Payment Waiver**"), executed by each Person required to execute such a waiver pursuant to Section 5.16 hereof;

(xii) unless otherwise requested by Acquiror in writing no less than three Business Days prior to the Closing Date, (A) a true, correct and complete copy of resolutions adopted by the Company Board, certified by the Secretary of the Company, authorizing the termination of each or all of the Company Employee Plans (as such term is defined in Section 2.13(a)) that are "employee benefit plans" within the meaning of ERISA, including the Company's 401(k) Plan (the "**401(k) Plan**"), and (B) an amendment to the 401(k) Plan, executed by the Company, that is sufficient to assure compliance with all applicable requirements of the Code and regulations thereunder so that the Tax-qualified status of the 401(k) Plan shall be maintained at the time of its termination, with such amendment and termination to be effective on the date immediately preceding the Effective Time and contingent upon the Closing;

(xiii) a certificate from the Secretary of State of the States of Delaware, California and each other State or other jurisdiction in which the Company or any Subsidiary is qualified to do business as a foreign corporation dated within five Business Days prior to the Closing Date certifying that the Company or such Subsidiary is in good standing and any additional evidence reasonably satisfactory to Acquiror that all applicable Taxes and fees of the Company or such Subsidiary through and including the Closing Date have been paid;

(xiv) evidence satisfactory to Acquiror of (A) the novation or consent to assignment of any Person whose novation or consent to assignment, as the case may be, may be required in connection with the Merger or any other transaction contemplated by this Agreement under the contracts listed or described on Schedule 1.4(b)(xiv)-1 hereto, (B) the termination of each of the contracts of the Company listed or described on Schedule 1.4(b)(xiv)-2 hereto, (C) the amendment of each of the contracts of the Company listed or described on Schedule 1.4(b)(xiv)-3 hereto in the manner described on

such Schedule with respect to each such contract, and (D) the termination or waiver of any rights of first refusal, rights to any liquidation preference or redemption rights of any Company Stockholder, effective as of and contingent upon the Closing;

(xv) the Spreadsheet (as such term is defined in Section 5.10) completed to include all of the information specified in Section 5.10 in a form reasonably acceptable to Acquiror and a certificate executed by the Chief Executive Officer of the Company, dated as of the Closing Date, certifying that such Spreadsheet is true, correct and complete;

(xvi) the Transaction Expenses Certificate, which certificate shall be accompanied by such supporting documentation, information and calculations as are necessary for Acquiror to verify and determine the amount of Transaction Expenses;

(xvii) the Company Net Working Capital Certificate, which certificate shall be accompanied by such reasonable supporting documentation, information and calculations as are necessary for Acquiror to verify and determine the amount of Company Net Working Capital;

(xviii) an Equity Agreement, executed by the Company and the individuals listed on Schedule 1.4(b)(xviii) hereto;

(xix) copies of filed UCC-2 or UCC-3 termination statements executed by each Person holding a security interest in any assets of the Company or any Subsidiary as of the Closing Date terminating any and all such security interests and evidence reasonably satisfactory to Acquiror that all Encumbrances on assets of the Company and its Subsidiaries shall have been released prior to or shall be released simultaneously with the Closing, provided, however, that, with respect to a particular Encumbrance, the Company may instead obtain and deliver an executed payoff letter or comparable instructions from the Person for whose benefit the Encumbrance exists, setting forth a payoff amount and stating that upon payment of such amount, such Encumbrances securing the obligations set forth in the payoff letter shall be terminated;

(xx) FIRPTA documentation, including (A) a notice to the Internal Revenue Service, in accordance with the requirements of Treasury Regulation Section 1.897-2(h)(2), in substantially the form attached hereto as Exhibit G, dated as of the Closing Date and executed by the Company, together with written authorization for Acquiror to deliver such notice form to the Internal Revenue Service on behalf of the Company after the Closing, and (B) a FIRPTA Notification Letter, in substantially the form attached hereto as Exhibit H, dated as of the Closing Date and executed by the Company;

(xxi) a completed 2009 Delaware annual report for the Company;

(xxii) complete and correct copies of all executed agreements and documents relating to New Restricted Stock Units and New Company Options; and

(xxiii) (i) a true, correct and complete copy of a patent chart in Acquiror's standard form regarding all of the U.S. and foreign patents and patent applications owned or purportedly owned by the Company, and (ii) executed copies of instruments assigning to the Company all right, title and interest in all such patents and patent applications and evidencing clean chain of title to each; and

(xxiv) complete and correct copies of all amendments to the 2009 Options, in substantially the form attached hereto as Exhibit I, executed by the Company and each of the individuals listed on Schedule 1.4(b)(xxiv) hereto.

1.5 Effective Time. At the Closing, after the satisfaction or waiver of each of the conditions set forth in Article VI, Sub and the Company shall cause the Certificate of Merger to be filed with the Secretary of State of the State of Delaware, in accordance with the relevant provisions of Delaware Law (the time of acceptance by the Secretary of State of the State of Delaware of such filing or such later time as may be agreed to by Acquiror and the Company in writing (and set forth in the Certificate of Merger) being referred to herein as the "*Effective Time*").

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

1.7 Certificate of Incorporation and Bylaws. At the Effective Time, (a) the Certificate of Incorporation of the Surviving Corporation shall be amended in its entirety to read as set forth in the Certificate of Merger, until thereafter amended as provided by Delaware Law, and (b) the Bylaws of the Surviving Corporation shall be amended in their entirety to read as the Bylaws of Sub, until thereafter amended as provided by Delaware Law, the Certificate of Incorporation of the Surviving Corporation and such Bylaws.

1.8 Directors and Officers. At the Effective Time, (a) the members of the Board of Directors of Sub immediately prior to the Effective Time shall be appointed as the members of the Board of Directors of the Surviving Corporation immediately after the Effective Time until their respective successors are duly elected or appointed and qualified, and (b) the officers of Sub immediately prior to the Effective Time shall be appointed as the officers of the Surviving Corporation immediately after the Effective Time until their respective successors are duly appointed.

1.9 Effect on Company Capital Stock, Company Options, Company Warrants and New Restricted Stock Units.

(a) Company Capital Stock, Company Options and New Restricted Stock Units. On the terms and subject to the conditions set forth in this Agreement, and without any action on the part of any holder of the Company Capital Stock and/or Company Options:

(i) Company Common Stock. At the Effective Time, each share of Company Common Stock issued and outstanding immediately prior to the Effective Time (other than Dissenting Shares and shares owned by the Company) shall be automatically converted into, subject to and in accordance with Section 1.10, (A) a number of shares of Acquiror Common Stock equal to the Stock Closing Amount Per Share and (B) the right to receive upon release from escrow and subject to Article VIII a number of shares of Acquiror Common Stock equal to the Stock Escrow Amount Per Share. The number of shares of Acquiror Common Stock each Company Stockholder is entitled to receive for the shares of Company Common Stock held by such Company Stockholder shall be rounded down to the nearest whole share and computed after aggregating all shares of Company Common Stock represented by a particular stock certificate held by such Company Stockholder.

(ii) Unvested Company Shares. The shares of Acquiror Common Stock issuable pursuant to clause (i) of Section 1.9(a) in exchange for shares of Company Capital Stock that immediately prior to the Effective Time constituted Unvested Company Shares shall be subject to the same restrictions and vesting arrangements that were applicable to such Unvested Company Shares immediately prior to or at the Effective Time (including pursuant to any applicable Equity Agreements),

and no vesting acceleration shall occur by reason of the Merger or any subsequent event, such as termination of employment (unless specifically set forth in a Benefits Waiver and/or Equity Agreement). Therefore, shares of Acquiror Common Stock otherwise issuable pursuant to clause (i) of Section 1.9(a) in exchange for such Unvested Company Shares ("**Unvested Acquiror Stock**") shall not automatically be distributable by Acquiror at the Effective Time and shall instead become distributable by Acquiror on the date that such Unvested Company Shares would have become vested under the vesting schedule (including any applicable acceleration terms) in place for such shares immediately prior to or at the Effective Time, including pursuant to any applicable Equity Agreements (subject to the restrictions and other terms of such vesting schedule), less any amount of such newly vested Acquiror Common Stock which vests in escrow in accordance with Section 1.10. For administrative convenience, Acquiror may in its discretion make all such required distributions to holders of Unvested Acquiror Stock no later than the 15th day of the calendar month immediately following the calendar month in which such Unvested Acquiror Stock becomes vested, and in its discretion may make such distributions through an agent authorized by Acquiror to administer such distributions on Acquiror's behalf. All shares of Acquiror Common Stock distributable pursuant to this Section 1.9(a)(ii) shall be subject to any required withholding of Taxes and shall be distributed without interest. At the Effective Time, all outstanding rights to repurchase Unvested Company Shares that the Company may hold or similar restrictions in the Company's favor immediately prior to the Effective Time (all such rights, the "**Repurchase Rights**") shall be assigned to Acquiror in the Merger, without any action required on the part of any Person, and shall thereafter be exercisable by Acquiror upon the same terms and subject to the same conditions that were in effect immediately prior to the Effective Time, except that Repurchase Rights may be exercised by Acquiror by (x) retaining the Unvested Acquiror Stock into which such Unvested Company Shares have been converted and (y) paying to the former holder thereof the repurchase price in effect immediately prior to the Effective Time for such Unvested Company Shares that were converted into that Unvested Acquiror Stock. No Unvested Acquiror Stock, or the right thereto, may be pledged, encumbered, sold, assigned or transferred (including any transfer by operation of law), by any Person, other than Acquiror, or be taken or reached by any legal or equitable process in satisfaction of any Liability of such Person, prior to the distribution to such Person of such Unvested Acquiror Stock following the vesting thereof, in accordance with this Agreement.

(iii) Company Options Held by Continuing Employees. At the Effective Time, each Company Option (including New Company Options) held by a Continuing Employee that is unexpired, unexercised and outstanding immediately prior to the Effective Time (other than a Recap Option) shall, on the terms and subject to the conditions set forth in this Agreement, be assumed and converted by Acquiror in accordance with Section 5.13. As set forth in Section 5.13, each assumed Company Option that immediately prior to the Effective Time was not fully vested shall be subject to the same vesting arrangements that were applicable to such Company Option immediately prior to or at the Effective Time, and no vesting acceleration of these options shall occur by reason of the Merger or any subsequent event, such as termination of employment (unless specifically set forth in a Benefits Waiver and/or Equity Agreement).

(iv) Company Options Held by Persons Other than Continuing Employees and Recap Options. Acquiror will not assume any Company Options held by Persons that are not Continuing Employees or any Recap Options. At the Effective Time, each Company Vested Option to purchase Company Common Stock held by a Person that is not a Continuing Employee and each Recap Option shall, by virtue of the Merger and without the need for any further action on the part of the holder thereof, subject to and in accordance with Section 1.10, be converted into and represent the right to receive the Cash Out Amount for such Company Vested Option or Recap Option; provided, however, that the Surviving Corporation and Acquiror shall be entitled to deduct and withhold from the Cash Out Amount the amount of withholding for taxes required to be deducted and withheld as a result of the transactions contemplated hereby. The Cash Out Amount payable to each non-Continuing Employee or

holder of a Recap Option hereunder shall be rounded to the nearest cent and computed after aggregating cash amounts for all Company Vested Options or Recap Options represented by a particular grant held by such non-Continuing Employee or Recap Option holder. At the Effective Time, each Company Option that is not a Company Vested Option and that is held by a Person who is not a Continuing Employee will, by virtue of the Merger and without any further action on the part of any holder thereof, be cancelled and extinguished.

(v) New Restricted Stock Units. At the Effective Time, each New Restricted Stock Unit held by a Continuing Employee that is unexpired, not yet settled and outstanding immediately prior to the Effective Time shall, on the terms and subject to the conditions set forth in this Agreement, be assumed and converted by Acquiror in accordance with Section 5.13. As set forth in Section 5.13, each assumed New Restricted Stock Unit that immediately prior to the Effective Time was not fully vested shall be subject to the same vesting arrangements that were applicable to such New Restricted Stock Unit immediately prior to or at the Effective Time, and no vesting acceleration shall occur by reason of the Merger or any subsequent event, such as termination of employment. Acquiror will not assume any New Restricted Stock Units held by Persons that are not Continuing Employees.

(vi) Company Warrants. No Company Warrants, whether vested or unvested, shall be assumed by Acquiror in the Merger, and at the Effective Time, each Company Warrant will, by virtue of the Merger, and without any further action on the part of any holder thereof, be cancelled and extinguished.

(vii) Total Merger Consideration. Notwithstanding anything to the contrary contained in this Agreement, in no event shall the aggregate consideration distributable by Acquiror to the Company Securityholders (including the value of the shares of Acquiror Common Stock or other consideration, if any, that will be subject to Company Options assumed by Acquiror at the Effective Time pursuant to Section 5.13, but excluding the value of New Restricted Stock Units and New Company Options) exceed the Total Merger Consideration, except to the extent that any amount in excess of the Total Merger Consideration is a result of any changes in the price of Acquiror Common Stock occurring after the calculation of the Acquiror Stock Price.

(viii) Shares of Capital Stock of Sub. Each share of capital stock of Sub that is issued and outstanding immediately prior to the Effective Time will, by virtue of the Merger and without further action on the part of the sole stockholder of Sub, be converted into and become one share of common stock of the Surviving Corporation (and the shares of the Surviving Corporation into which the shares of Sub capital stock are so converted shall be the only shares of the Surviving Corporation's capital stock that are issued and outstanding immediately after the Effective Time). Each certificate evidencing ownership of shares of Sub common stock will evidence ownership of such shares of common stock of the Surviving Corporation.

(b) Treatment of Company Capital Stock Owned by the Company. At the Effective Time, all shares of Company Capital Stock that are owned by the Company as treasury stock immediately prior to the Effective Time shall be canceled and extinguished without any conversion thereof.

(c) Adjustments. In the event of any stock split, reverse stock split, stock dividend (including any dividend or distribution of securities convertible into capital stock), reorganization, reclassification, combination, recapitalization or other like change with respect to the Company Capital Stock or Acquiror Common Stock occurring after the date hereof and prior to the Effective Time, all references in this Agreement to specified numbers of shares of any class or series affected thereby, and all calculations provided for that are based upon numbers of shares of any class or series (or trading prices therefor) affected thereby, shall be equitably adjusted to the extent necessary to provide the parties the

same economic effect as contemplated by this Agreement prior to such stock split, reverse stock split, stock dividend, reorganization, reclassification, combination, recapitalization or other like change.

(d) Appraisal Rights. Notwithstanding anything contained herein to the contrary, any Dissenting Shares shall not be converted into the right to receive the Acquiror Common Stock provided for in Section 1.9(a), but shall instead be converted into the right to receive such consideration as may be determined to be due with respect to any such Dissenting Shares pursuant to Delaware Law and/or California Law. Each holder of Dissenting Shares who, pursuant to the provisions of Delaware Law and/or California Law, becomes entitled to payment thereunder for such shares shall receive payment therefor in accordance with Delaware Law and/or California Law (but only after the value therefor shall have been agreed upon or finally determined pursuant to such provisions). If, after the Effective Time, any Dissenting Shares shall lose their status as Dissenting Shares, then any such shares shall immediately be converted into the right to receive the Acquiror Common Stock issuable pursuant to Section 1.9(a) in respect of such shares as if such shares never had been Dissenting Shares, and Acquiror shall issue and deliver to the holder thereof, at (or as promptly as reasonably practicable after) the applicable time or times specified in Section 1.10(c), following the satisfaction of the applicable conditions set forth in Section 1.10(c), the Acquiror Common Stock to which such holder would be entitled in respect thereof under this Section 1.9 as if such shares never had been Dissenting Shares. The Company shall give Acquiror (i) prompt notice of any demands for appraisal or purchase received by the Company, withdrawals of such demands, and any other instruments served pursuant to Delaware Law and/or California Law and received by the Company and (ii) the right to direct all negotiations and proceedings with respect to demands for appraisal or purchase under Delaware Law and/or California Law. The Company shall not, except with the prior written consent of Acquiror, or as otherwise required under Delaware Law and/or California Law, voluntarily make any payment or offer to make any payment with respect to, or settle or offer to settle, any claim or demand in respect of any Dissenting Shares. The issuance of consideration under this Agreement to the stockholders of the Company (other than to holders of Dissenting Shares who shall be treated as provided in this Section 1.9(d) and under Delaware Law and/or California Law) shall not be affected by the exercise or potential exercise of appraisal rights or dissenters' rights under Delaware Law and/or California Law by any other stockholder of the Company.

(e) Rights Not Transferable. The rights of the Company Securityholders as of immediately prior to the Effective Time are personal to each such securityholder and shall not be transferable for any reason otherwise than by operation of law, will or the laws of descent and distribution. Any attempted transfer of such right by any holder thereof (otherwise than as permitted by the immediately preceding sentence) shall be null and void.

(f) Fractional Shares. No fraction of a share of Acquiror Common Stock shall be issued in connection with the Merger, but in lieu thereof each holder of shares of Company Capital Stock who would otherwise be entitled to a fraction of a share of Acquiror Common Stock (after aggregating for each particular stock certificate representing Company Capital Stock all fractional shares of Acquiror Common Stock to be received by such holder) shall receive from Acquiror an amount of cash (rounded to the nearest whole cent) equal to the product of (i) such fraction and (ii) the Acquiror Stock Price.

1.10 Surrender of Certificates.

(a) Exchange Agent. Acquiror's transfer agent, Computershare Inc., shall act as exchange agent (the "*Exchange Agent*") in the Merger.

(b) Acquiror to Cause Deposit of Merger Consideration. As soon as reasonably practicable after the Closing Date (and in any event within ten Business Days thereafter), Acquiror shall make available to the Exchange Agent for exchange in accordance with this Article I, through such

reasonable procedures as Acquiror may adopt, (i) the shares of Acquiror Common Stock and cash issuable pursuant to Section 1.9(a)(i)(A) and (iv)(A) (provided Acquiror may in its discretion elect to administer the cash payments required by Section 1.9(a)(iv)(A) through its or the Company's payroll system), less the shares of Acquiror Common Stock and cash to be deposited into escrow in connection herewith pursuant to the provisions of Section 1.9(a)(i)(B) and (iv)(B), Section 1.10(c)(iii) and Article VIII and (ii) cash in an amount sufficient to permit payment of cash in lieu of any related fractional shares pursuant to Section 1.9(f); provided, however, that any shares of Unvested Acquiror Stock that are subject to vesting and/or repurchase rights or other restrictions, including without limitation under a Benefits Waiver and/or Equity Agreement, shall be withheld by Acquiror (and reflected in book entry form in the case of Unvested Acquiror Stock) for delivery following the lapse of such vesting and/or repurchase rights or other restrictions and subject to the provisions of Article VIII.

(c) Exchange Procedures.

(i) As soon as reasonably practicable after the Closing Date, the Company shall mail to each non-Continuing Employee who held Company Vested Options as of immediately prior to the Effective Time, each holder of a Recap Option as of immediately prior to the Effective Time, and each holder of record of Company Capital Stock that was issued and outstanding immediately prior to the Effective Time and that has not previously delivered its Certificates (as defined below) together with a properly completed and duly executed letter of transmittal in the form supplied by Acquiror (the "**Letter of Transmittal**"): (A) a form of Letter of Transmittal and (B) instructions for use of the Letter of Transmittal in effecting the surrender of certificates or instruments which immediately prior to the Effective Time represented issued and outstanding shares of Company Capital Stock that were converted into the right to receive shares of Acquiror Common Stock pursuant to Section 1.9(a) (the "**Certificates**") in exchange for certificates (or book entries in the case of shares of Unvested Acquiror Stock) representing such shares of Acquiror Common Stock (and cash in lieu of fractional shares), or, with respect to Company Vested Options or Recap Options, the Cash-Out Amount. The Letter of Transmittal shall specify that delivery of Certificates shall be effected, and risk of loss and title to Certificates shall pass, only upon receipt thereof by the Exchange Agent, together with a properly completed and duly executed Letter of Transmittal, duly executed on behalf of each Person effecting the surrender of such Certificates, and shall be in such form and have such other provisions as Acquiror or the Exchange Agent may reasonably specify, including that the Effective Time Holders agree to be bound by the provisions of Section 1.10(c) and Article VIII of this Agreement.

(ii) As soon as reasonably practicable after the date of delivery to the Exchange Agent (or to such other agent or agents as may be appointed by Acquiror) of a Certificate, together with a properly completed and duly executed Letter of Transmittal and any other documentation required thereby, (A) the holder of record of such Certificate shall be entitled to receive a certificate (or a book entry in the case of shares of Acquiror Unvested Stock) representing the number of whole shares of Acquiror Common Stock that such holder has the right to receive pursuant to Section 1.9(a)(i)(A) in respect of such Certificate (and a check representing any related payment in lieu of fractional shares that such holder has the right to receive pursuant to Section 1.9(f) in respect to such Certificate), and shares of Acquiror Common Stock that such holder has the right to receive pursuant to Section 1.9(a)(i)(B) will be deposited into escrow on such holder's behalf pursuant to Section 1.10(c)(iii); and (B) such Certificate shall be canceled. As soon as reasonably practicable after the date of delivery to the Exchange Agent (or to such other agent or agents as may be appointed by Acquiror) by a non-Continuing Employee who held Company Vested Options or a holder of Recap Options of a properly completed and duly executed Letter of Transmittal and any other documentation required thereby, such non-Continuing Employee or holder shall be entitled to receive the Cash Out Amount in respect of such Company Vested Options or Recap Options, as applicable.

(iii) As soon as reasonably practicable after the Closing Date (and in any event within ten Business Days thereafter), Acquiror shall cause to be deposited with the Escrow Agent the shares of Acquiror Common Stock distributable pursuant to Section 1.9(a)(i)(B). Such assets shall constitute security for the indemnification obligations of such Effective Time Holders pursuant to Article VIII, and shall be held in and distributed in accordance with the provisions of the Escrow Agreement. If an Effective Time Holder holds Unvested Company Shares as of immediately prior to the Effective Time, then (x) the shares of Acquiror Common Stock distributable pursuant to Section 1.9(a)(i)(B) shall consist of Unvested Acquiror Stock and vested Acquiror Common Stock not subject to any repurchase rights or other restrictions in the same relative proportion as the number of such Unvested Company Shares bore to the number of vested shares of Company Capital Stock not subject to any repurchase rights or other restrictions held by such Person as of immediately prior to the Effective Time and (y) thereafter with respect to each installment of Unvested Acquiror Stock that vests in accordance with Section 1.9(a)(ii), the Escrow Percentage of such installment shall vest the Unvested Acquiror Stock held in escrow.

(d) No Interest. No interest shall accumulate on any shares of Acquiror Common Stock issuable, or cash payable, in connection with the Merger.

(e) Transfers of Ownership. If any Acquiror Common Stock issuable, or cash amount payable, pursuant to Section 1.9(a) is to be issued or paid to a Person other than the Person to which the Certificate surrendered in exchange therefor is registered, it shall be a condition of the payment thereof that the Certificate so surrendered shall be properly endorsed and otherwise in proper form for transfer and that the person requesting such exchange shall have paid to Acquiror or any agent designated by it any transfer or other Taxes required by reason of the payment of cash in any name other than that of the registered holder of the Certificate surrendered, or established to the satisfaction of Acquiror or any agent designated by it that such Tax has been paid or is not payable.

(f) No Liability. Notwithstanding anything to the contrary in this Section 1.10, none of the Exchange Agent, the Surviving Corporation or any party hereto shall be liable to any person for any amount properly paid to a public official pursuant to any applicable abandoned property, escheat or similar law.

(g) Unclaimed Shares; Unclaimed Cash. Any portion of funds (including any interest earned thereon) or certificates of shares of Acquiror Common Stock (including any distributions made thereon) held by the Exchange Agent which have not been delivered to any holders of Certificates or any non-Continuing Employees, as applicable, pursuant to this Article I within six months after the Effective Time shall promptly be returned to Acquiror, and thereafter each holder of a Certificate and each non-Continuing Employee who has not theretofore complied with the exchange procedures set forth in and contemplated by Section 1.10(c) shall look only to the Surviving Corporation (subject to abandoned property, escheat and similar laws) for his, her or its claim, only as a general unsecured creditor thereof, to the Acquiror Common Stock issuable, or cash payable, pursuant to Section 1.9(a). Notwithstanding anything to the contrary contained herein, if any Certificate or other required instrument has not been surrendered prior to the date on which the merger consideration contemplated by Section 1.9 in respect of such Certificate or instrument would otherwise escheat to or become the property of any Governmental Entity, any Acquiror Common stock issuable, or amounts payable in respect of such Certificate or instrument shall, to the extent permitted by applicable law, become the property of Acquiror, free and clear of all claims or interests of any Person previously entitled thereto.

1.11 No Further Ownership Rights in the Company Capital Stock, Company Warrants or Company Options. All consideration paid or payable following the surrender for exchange of shares of Company Capital Stock, Company Vested Options and Recap Options in accordance with the terms

hereof shall be so paid or payable in full satisfaction of all rights pertaining to such shares of Company Capital Stock, Company Vested Options and Recap Options, and there shall be no further registration of transfers on the records of the Surviving Corporation of shares of Company Capital Stock which were issued and outstanding immediately prior to the Effective Time. If, after the Effective Time, any Certificate is presented to the Company or the Surviving Corporation for any reason, such Certificate shall be canceled and exchanged as provided in this Article I.

1.12 Lost, Stolen or Destroyed Certificates. In the event any Certificate shall have been lost, stolen or destroyed, the Exchange Agent shall issue in exchange for such Certificate, following the making of an affidavit of that fact by the record holder thereof, such consideration as may be required pursuant to Section 1.9 in respect of such Certificate; *provided, however,* that Acquiror or the Exchange Agent may, in its discretion and as a condition precedent to the issuance thereof, require the record holder of such Certificate to deliver a bond in such sum or execute an indemnification agreement as Acquiror or the Exchange Agent may reasonably direct as indemnity against any claim that may be made against Acquiror, the Surviving Corporation, the Exchange Agent and/or any of their respective representatives or agents with respect to such Certificate.

1.13 Tax Consequences. It is intended by the parties hereto that the Merger shall constitute a "reorganization" within the meaning of Section 368(a) of the Code. However, Acquiror makes no representations or warranties to the Company or to any holder of Company Capital Stock, Company Options, New Restricted Stock Units or Company Warrants regarding the Tax treatment of the Merger, or any of the Tax consequences to the Company or any holder of Company Capital Stock, Company Options, New Restricted Stock Units or Company Warrants of this Agreement, the Merger or any of the other transactions or agreements contemplated hereby. The Company acknowledges that the Company and the holders of Company Capital Stock, Company Options, New Restricted Stock Units and Company Warrants are relying solely on their own Tax advisors in connection with this Agreement, the Merger and the other transactions and agreements contemplated hereby.

1.14 Withholding Rights. Acquiror, the Surviving Corporation and the Exchange Agent shall be entitled to deduct and withhold from the consideration otherwise deliverable under this Agreement, and from any other payments otherwise required pursuant to this Agreement, to any holder of any shares of Company Capital Stock, any Company Options, any Company Warrants or any Certificates such amounts in cash or shares as Acquiror, the Surviving Corporation or the Exchange Agent is required to deduct and withhold with respect to any such deliveries and payments under the Code or any provision of state, local, provincial or foreign Tax law. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes of this Agreement as having been delivered and paid to such holders in respect of which such deduction and withholding was made.

1.15 Taking of Necessary Action; Further Action. If, at any time after the Effective Time, any further action is necessary or desirable to carry out the purposes of this Agreement and to vest the Surviving Corporation with full right, title and interest in, to and under, and/or possession of, all assets, property, rights, privileges, powers and franchises of the Company, the directors and officers of the Surviving Corporation are fully authorized in the name and on behalf of the Company or otherwise, to take all lawful action necessary or desirable to accomplish such purpose or acts, so long as such action is not inconsistent with this Agreement.

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Subject to the disclosures set forth in the disclosure letter of the Company delivered to Acquiror concurrently with the parties' execution of this Agreement (the "**Company Disclosure Letter**") (each of which disclosures, in order to be effective, shall clearly indicate the Section and, if applicable, the Subsection of this Article II to which it relates (unless and only to the extent the relevance to other representations and warranties is reasonably apparent from the actual text of the disclosures), and each of which disclosures shall also be deemed to be representations and warranties made by the Company to Acquiror under this Article II), the Company represents and warrants to Acquiror as follows:

2.1 Organization, Standing and Power. Each of the Company and each Subsidiary is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of organization. Each of the Company and each Subsidiary has the corporate power to own its properties and to conduct its business as now being conducted and as currently proposed by it to be conducted and is duly qualified to do business and is in good standing in each jurisdiction where the failure to be so qualified and in good standing, individually or in the aggregate with any such other failures, would reasonably be expected to be material to the Company. Neither the Company nor any Subsidiary is in violation of any of the provisions of its Certificate of Incorporation or Bylaws or equivalent organizational or governing documents. Schedule 2.1 of the Company Disclosure Letter sets forth a true, correct and complete list of each Subsidiary. The Company is the owner of all of the issued and outstanding shares of capital stock of each Subsidiary, free and clear of all Encumbrances, and all such shares are duly authorized, validly issued, fully paid and nonassessable and are not subject to any preemptive right or right of first refusal created by statute, the Certificate of Incorporation and Bylaws or other equivalent organizational or governing documents, as applicable, of such Subsidiary or any Contract to which such Subsidiary is a party or by which it is bound. There are no outstanding subscriptions, options, warrants, "put" or "call" rights, exchangeable or convertible securities or other Contracts of any character relating to the issued or unissued capital stock or other securities of any Subsidiary, or otherwise obligating the Company or any Subsidiary to issue, transfer, sell, purchase, redeem or otherwise acquire or sell any such securities. The Company does not directly or indirectly own any equity or similar interest in, or any interest convertible or exchangeable or exercisable for, any equity or similar interest in, any Person, other than the Subsidiaries listed in Schedule 2.1 of the Company Disclosure Letter.

2.2 Capital Structure.

(a) The authorized capital stock of the Company consists solely of (i) 85,000,000 shares of Company Common Stock, and (ii) 62,985,789 shares of Company Preferred Stock of which 8,345,287 shares are designated as Company Series A Stock, 15,773,518 shares are designated as Company Series B Stock, 11,841,472 shares are designated as Company Series C Stock, 4,229,573 shares are designated as Company Series D Stock, 8,098,377 shares are designated as Company Series E stock, 10,980,000 shares are designated as Company Series F Stock, and 3,717,562 shares are designated as Company Series A-1 Stock. A total of 5,013,631 shares of Company Common Stock, 8,345,287 shares of Company Series A Stock, 15,773,518 shares of Company Series B Stock, 11,773,548 shares of Company Series C Stock, 4,146,641 shares of Company Series D Stock, 8,098,377 shares of Company Series E Stock, 10,842,414 shares of Company Series F Stock and 2,184,773 shares of Company Series A-1 Stock are issued and outstanding as of the Agreement Date. The Company holds no treasury shares. As of the Agreement Date, there are no other issued and outstanding shares of capital stock or other securities of the Company and no outstanding commitments or Contracts to issue any shares of capital stock or other securities of the Company other than pursuant to the exercise of outstanding Company Options under the Company Option Plans. Schedule 2.2(a)-1 of the Company Disclosure

Letter accurately sets forth, as of the Agreement Date, the name of each Person that is the registered owner of any shares of Company Common Stock, Company Series A Stock, Company Series B Stock, Company Series C Stock, Company Series D Stock, Company Series E Stock, Company Series F Stock and Company Series A-1 Stock and the number of such shares so owned by such Person, and the number of shares of Company Common Stock that would be owned by such Person assuming conversion of all shares of Company Preferred Stock so owned by such Person giving effect to all anti-dilution and similar adjustments. The number of such shares set forth as being so owned by such Person constitutes the entire interest of such person in the issued and outstanding capital stock or voting securities of the Company. All issued and outstanding shares of Company Capital Stock are duly authorized, validly issued, fully paid and non-assessable and are free of any Encumbrances, preemptive rights, rights of first refusal or "put" or "call" rights created by statute, the Certificate of Incorporation or Bylaws of the Company or any Contract to which the Company is a party or by which the Company is bound. Schedule 2.2(a)-2 of the Company Disclosure Letter sets forth a true, correct and complete list (which Schedule 2.2(a)-2 shall be a subset of Schedule 2.2(a)-1 of the Company Disclosure Letter) of all holders of any issued and outstanding Unvested Company Shares, including the number and kind of shares of Company Capital Stock unvested as of the Agreement Date, the purchase price paid per share, the vesting schedule in effect for such Unvested Company Shares, the repurchase price payable per unvested share and the length of the repurchase period following the holder's termination of service. There is no liability for dividends accrued and unpaid by the Company. The Company is not under any obligation to register under the Securities Act any shares of Company Capital Stock or any other securities of the Company, whether currently outstanding or that may subsequently be issued.

(b) As of the Agreement Date, the Company has reserved 15,168,031 shares of Company Common Stock and 1,681,623 shares of Company Series A-1 Stock for issuance to employees, non-employee directors and consultants pursuant to the Company Option Plans, of which 11,106,514 shares of Company Common Stock are subject to outstanding and unexercised Company Options, 1,107,534 shares of Company Series A-1 Stock are subject to outstanding and unexercised Company Options and 3,071,954 shares of Company Common Stock and 384,954 shares of Company Series A-1 Stock remain available for issuance thereunder. Schedule 2.2(b)-1 of the Company Disclosure Letter sets forth, as of the Agreement Date, a true, correct and complete list of all holders of outstanding Company Options, whether or not granted under the Company Option Plans, including the number of shares of Company Common Stock and Company Series A-1 Stock subject to each such option, the date of grant, the exercise or vesting schedule (and the terms of any acceleration thereof), the exercise price per share, the Tax status of such option under Section 422 of the Code, the term of each such option and the plan from which such option was granted. In addition, Schedule 2.2(b)-2 of the Company Disclosure Letter sets forth a true, correct and complete list (which schedule shall be a subset of Schedule 2.2(b)-1 of the Company Disclosure Letter) of all holders of outstanding Company Options that are held by Persons that are not employees of the Company or any Subsidiary (including non-employee directors, consultants, advisory board members, vendors, service providers or other similar persons), including a description of the relationship between each such Person and the Company. All issued and outstanding shares of Company Capital Stock were issued in compliance with all applicable Legal Requirements and all requirements set forth in applicable Contracts.

(c) Schedule 2.2(c)-1 of the Company Disclosure Letter sets forth, as of the Agreement Date, a true, correct and complete list of all holders of outstanding Company Warrants, including the number of shares and type of Company Capital Stock subject to each such warrant, the date of grant, the exercise or vesting schedule (and the terms of any acceleration thereof), the exercise price per share and the term of each such warrant.

(d) Other than the New Restricted Stock Units, New Company Options and as set forth on Schedules 2.2(a), 2.2(b) and 2.2(c) of the Company Disclosure Letter, as of the Agreement Date,

no Person has any right to acquire any shares of Company Capital Stock or any options, warrants or other rights to purchase shares of Company Capital Stock or other securities of the Company, from the Company or, to the Company's knowledge, any stockholder of the Company.

(e) No bonds, debentures, notes or other indebtedness of the Company or any of its Subsidiaries (i) granting its holder the right to vote on any matters on which stockholders may vote (or which is convertible into, or exchangeable for, securities having such right) or (ii) the value of which is any way based upon or derived from capital or voting stock of the Company, is issued or outstanding as of the Agreement Date (collectively, "*Company Voting Debt*").

(f) Except for the New Restricted Stock Units and New Company Options, the Company Options described in Schedule 2.2(b) and the Company Warrants described in Schedule 2.2(c) of the Company Disclosure Letter, there are no options, warrants, calls, rights or Contracts of any character to which the Company is a party or by which it is bound obligating the Company to issue, deliver, sell, repurchase or redeem, or cause to be issued, delivered, sold, repurchased or redeemed, any shares of any Company Capital Stock, options, warrants or other rights to purchase shares of Company Capital Stock or other securities of the Company, or any Company Voting Debt, or obligating the Company to grant, extend, accelerate the vesting and/or repurchase rights of, change the price of, or otherwise amend or enter into any such option, warrant, call, right or Contract. There are no Contracts relating to voting, purchase or sale of any Company Capital Stock (i) between or among the Company and any of its securityholders, other than written contracts granting the Company the right to purchase unvested shares upon termination of employment or service and written Contracts granting the Company and/or the holders of Company Preferred Stock a right of first refusal in the event of a proposed transfer of Company Capital Stock, and (ii) to the knowledge of the Company, between or among any of the Company's securityholders. Neither the Company Option Plan nor any Contract of any character to which the Company and/or any Subsidiary is a party to or by which the Company and/or any Subsidiary is bound relating to any Company Options or Unvested Company Shares requires or otherwise provides for any accelerated vesting of any Company Options or Unvested Company Shares in connection with the Merger or any other transaction contemplated by this Agreement or upon termination of employment or service with the Company or with Acquiror or any Subsidiary, or any other event, before, upon or following the Merger or otherwise. True, correct and complete copies of each Company Option Plan, all agreements and instruments relating to or issued under each Company Option Plan (including copies of all Contracts relating to each Company Option and the shares of Company Capital Stock purchased under such option) have been delivered to Acquiror's counsel, and such plans and Contracts have not been amended, modified or supplemented since being delivered to Acquiror's counsel, and there are no agreements, understandings or commitments to amend, modify or supplement such plans or Contracts in any case from those delivered to Acquiror's counsel.

(g) The Spreadsheet will accurately set forth, as of the Closing, the name of each Person that is the registered owner of any shares of Company Capital Stock, Company Options, New Restricted Stock Units and/or Company Warrants and the number and kind of such shares so owned, or subject to Company Options, New Restricted Stock Units or Company Warrants so owned, by such Person. The number of such shares set forth as being so owned, or subject to Company Options, New Restricted Stock Units or Company Warrants so owned, by such Person will constitute the entire interest of such person in the issued and outstanding capital stock, voting securities or other securities of the Company. As of the Closing, no other Person not disclosed in the Spreadsheet will have a right to acquire any shares of Company Capital Stock and/or Company Options, New Restricted Stock Units and/or Company Warrants from the Company. In addition, the shares of Company Capital Stock, Company Options, New Restricted Stock Units and/or Company Warrants disclosed in the Spreadsheet will be, as of the Closing, free and clear of any Encumbrances created by the Certificate of Incorporation or Bylaws of the Company or any Contract to which the Company is a party or by which it is bound.

2.3 Authority; Noncontravention.

(a) Subject to approval of the Merger and adoption of this Agreement by the Company Stockholders, the Company has all requisite corporate power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, have been duly authorized by the Company Board. This Agreement has been duly executed and delivered by the Company and constitutes the valid and binding obligation of the Company enforceable against the Company in accordance with its terms, subject only to the effect, if any, of (i) applicable bankruptcy and other similar laws affecting the rights of creditors generally and (ii) rules of law governing specific performance, injunctive relief and other equitable remedies. The Company Board, by resolutions duly adopted (and not thereafter modified or rescinded) by the unanimous vote of the Company Board, has approved and adopted this Agreement and approved the Merger, determined that this Agreement and the terms and conditions of the Merger and this Agreement are advisable and in the best interests of the Company and its stockholders, and directed that the adoption of this Agreement be submitted to the Company stockholders for consideration and recommended that all of the stockholders of the Company adopt this Agreement. The affirmative votes of (i) the holders of a majority of the outstanding shares of Company Common Stock and Company Preferred Stock (voting together as a single voting class on an as-converted to Company Common Stock basis), (ii) the holders of a majority of the outstanding shares of Company Preferred Stock (voting as a separate voting class on an as-converted to Company Common Stock basis), and (iii) the holders of a majority of the outstanding shares of Company Common Stock (voting as a separate voting class) are the only votes of the holders of the Company Capital Stock necessary to adopt this Agreement and approve the Merger (collectively, the "**Company Stockholder Approval**"). The affirmative vote of the Company Stockholders listed on Exhibit A-1 pursuant to the Voting Agreements is sufficient for the Company Stockholder Approval.

(b) The execution and delivery of this Agreement by the Company does not, and the consummation of the transactions contemplated hereby will not, (i) result in the creation of any Encumbrance on any of the material properties or assets of the Company or any Subsidiary or to the knowledge of the Company, any of the shares of Company Capital Stock or (ii) conflict with, or result in any violation of or default under (with or without notice or lapse of time, or both), or give rise to a right of termination, cancellation or acceleration of any obligation or loss of any benefit under, or require any consent, approval or waiver from any Person pursuant to, (A) any provision of the Certificate of Incorporation or Bylaws or other equivalent organizational or governing documents of the Company or any Subsidiary, in each case as amended to date, (B) any Material Contract, or (C) any Legal Requirements applicable to the Company or any Subsidiary or any of their respective material properties or assets.

(c) No consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Entity is required by or with respect to the Company or any Subsidiary in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby, except for (i) the filing of the Certificate of Merger, as provided in Section 1.5, (ii) such filings and notifications as may be required to be made by the Company in connection with the Merger under the HSR Act and applicable foreign antitrust laws and the expiration or early termination of applicable waiting periods under the HSR Act and applicable foreign antitrust laws, and (iii) such other consents, authorizations, filings, approvals, notices and registrations which, if not obtained or made, would not be material to the Company or Acquiror and would not prevent, materially alter or delay any of the transactions contemplated by this Agreement.

(d) The Company, the Company Board and the Company stockholders have taken all actions such that the restrictive provisions of any "fair price," "moratorium," "control share acquisition,"

“business combination,” “interested shareholder” or other similar anti-takeover statute or regulation, and any anti-takeover provision in the governing documents of the Company or its Subsidiaries will not be applicable to any of the Company, its Subsidiaries, Acquiror, the Surviving Corporation, or to the execution, delivery of, or performance of the transactions contemplated by this Agreement or the Voting Agreements, including the consummation of the Merger or any of the other transactions contemplated hereby or thereby.

2.4 Financial Statements.

(a) The Company has delivered to Acquiror its audited consolidated financial statements for the fiscal years ended December 31, 2006 and 2007 and its unaudited consolidated financial statements for the fiscal year ended December 31, 2008 and the one-month period ended January 31, 2009 (including, in each case, balance sheets, statements of operations and statements of cash flows) (collectively, the “**Financial Statements**”), which are included as Schedule 2.4(a) of the Company Disclosure Letter. The Financial Statements (i) are derived from and in accordance with the books and records of the Company, (ii) complied as to form in all material respects with applicable accounting requirements with respect thereto as of their respective dates, (iii) have been prepared in accordance with GAAP (except that the unaudited Financial Statements do not contain footnotes) applied on a consistent basis throughout the periods indicated and consistent with each other, (iv) fairly present in all material respects the consolidated financial condition of the Company and the Subsidiaries at the dates therein indicated and the consolidated results of operations and cash flows of the Company and the Subsidiaries for the periods therein specified (subject, in the case of unaudited interim period financial statements, to normal recurring year-end audit adjustments, none of which individually or in the aggregate will be material in amount), and (v) are true, complete and correct in all material respects. Neither the Company nor any Subsidiary has any Liabilities of the nature required to be disclosed in a balance sheet prepared in accordance with GAAP other than (x) those set forth or adequately provided for in the Balance Sheet included in the Financial Statements as of December 31, 2008 (the “**Company Balance Sheet**”), (y) those incurred in the conduct of the Company’s business since December 31, 2008 (the “**Company Balance Sheet Date**”) in the ordinary course, consistent with past practice, which, individually or in the aggregate, are not material in nature or amount and do not result from any breach of Contract, tort or violation of law, and (z) those incurred by the Company in connection with the execution of this Agreement. Except for Liabilities reflected in the Financial Statements, the Company has no off balance sheet Liability of any nature to, or any financial interest in, any third party or entities, the purpose or effect of which is to defer, postpone, reduce or otherwise avoid or adjust the recording of debt expenses incurred by the Company. All reserves that are set forth in or reflected in the Company Balance Sheet have been established in accordance with GAAP consistently applied and are adequate. The Financial Statements comply in all material respects with the American Institute of Certified Public Accountants’ Statement of Position 97-2, as modified by Statement of Position 98-9.

(b) The Company has established and maintains a system of internal accounting controls sufficient to provide reasonable assurances in all material respects (i) that transactions, receipts and expenditures of the Company and its Subsidiaries are being executed and made only in accordance with appropriate authorizations of management and the Company Board, (ii) that transactions are recorded as necessary (A) to permit preparation of financial statements in conformity with GAAP and (B) to maintain accountability for assets, (iii) regarding prevention or timely detection of unauthorized acquisition, use or disposition of the assets of the Company and its Subsidiaries, and (iv) that the amount recorded for assets on the books and records of the Company is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. Neither the Company, any of its Subsidiaries nor the Company’s independent auditors, nor to the Company’s knowledge, any current or former employee, consultant or director of the Company or any of its Subsidiaries, has identified or been made aware of any fraud, whether or not material, that involves the

Company's management or other current or former employees, consultants or directors of the Company or any of its Subsidiaries who have a role in the preparation of financial statements or the internal accounting controls utilized by the Company or its Subsidiaries, or any claim or allegation regarding any of the foregoing. Neither the Company nor any of its Subsidiaries nor, to the Company's knowledge, any director, officer, employee, auditor, accountant or representative of the Company or any of its Subsidiaries has received or otherwise had or obtained knowledge of any material complaint, allegation, assertion or claim, whether written or oral, in each case, regarding deficient accounting or auditing practices, procedures, methodologies or methods of the Company or any of its Subsidiaries or their respective internal accounting controls or any material inaccuracy in the Company's financial statements. No attorney representing the Company or any of its Subsidiaries, whether or not employed by the Company or any of its Subsidiaries, has reported to the Company Board or any committee thereof or to any director or officer of the Company evidence of a material violation of securities laws, breach of fiduciary duty or similar violation by the Company, its Subsidiaries or any of their respective officers, directors, employees or agents. There are no significant deficiencies or material weaknesses in the design or operation of the Company's internal controls which could adversely affect the Company's ability to record, process, summarize and report financial data. At the Company Balance Sheet Date, there were no material loss contingencies (as such term is used in Statement of Financial Accounting Standards No. 5 ("**Statement No. 5**") issued by the Financial Accounting Standards Board in March 1975) that are not adequately provided for in the Company Balance Sheet as required by said Statement No. 5. There has been no material change in the Company accounting policies since the Company's inception, except as described in the Financial Statements.

(c) Schedule 2.4(c) of the Company Disclosure Letter sets forth the names and locations of all banks, trust companies, savings and loan associations and other financial institutions at which the Company and its Subsidiaries maintain accounts of any nature and the names of all persons authorized to draw thereon or make withdrawals therefrom.

(d) Schedule 2.4(d) of the Company Disclosure Letter accurately lists all indebtedness of Company and its Subsidiaries for money borrowed, whether short-term or long-term ("**Debt**"), including, for each item of Debt, the agreement governing the Debt and the interest rate, maturity date and any assets or properties securing such Debt. All Debt may be prepaid at the Closing without penalty under the terms of the Contracts governing such Debt.

(e) Wind down costs associated with Company's one time use camera business (including without limitation inventory write offs) will not exceed \$300,000 in the aggregate.

2.5 Absence of Certain Changes. From the Company Balance Sheet Date until the Agreement Date, each of the Company and each Subsidiary has conducted its business only in the ordinary course consistent with past practice and (a) there has not occurred a Material Adverse Effect on the Company, (b) neither the Company nor any Subsidiary has made or entered into any Contract or letter of intent with respect to any acquisition, sale or transfer of any asset of the Company or any Subsidiary (other than the sale or nonexclusive, object code license of Company Products (as defined in Section 2.10(a)(vi)) to its customers in the ordinary course of its business consistent with its past practice), (c) except as required by GAAP, there has not occurred any change in accounting methods or practices (including any change in depreciation or amortization policies or rates or revenue recognition policies) by the Company or any Subsidiary or any revaluation by the Company of any of its or any Subsidiary's assets, (d) there has not occurred any declaration, setting aside, or payment of a dividend or other distribution with respect to any securities of the Company, or any direct or indirect redemption, purchase or other acquisition by the Company of any of its securities (other than repurchases of Unvested Company Shares in accordance with Contracts governing such shares), or any change in any rights, preferences, privileges or restrictions of any of its outstanding securities, (e) neither the Company nor any

Subsidiary has entered into, amended or terminated any Material Contract (as hereinafter defined), and there has not occurred any default under any Material Contract to which the Company or any Subsidiary is a party or by which it is, or any of its assets and properties are, bound, (f) there has not occurred any amendment or change to the Certificate of Incorporation or Bylaws or other equivalent organizational or governing documents of the Company or any Subsidiary, (g) there has not occurred any increase in or modification of the compensation or benefits payable or to become payable by the Company or any Subsidiary to any of its directors, officers, employees or consultants (other than increases in the base salaries of employees who are not officers in an amount that does not exceed 10% of such base salaries), any material modification of any "nonqualified deferred compensation plan" within the meaning of Section 409A of the Code and the regulations thereunder, or any new loans or extension of existing loans to any such Persons (other than routine expense advances to employees of the Company or any Subsidiary consistent with past practice), and neither the Company nor any Subsidiary has entered into any Contract to grant or provide (nor has granted any) severance, acceleration of vesting or other similar benefits to any such Persons, (h) there has not occurred the execution of any employment agreements or service Contracts or the extension of the term of any existing employment agreement or service Contract with any Person in the employ or service of the Company or any Subsidiary, (i) there has not occurred any change in title, office or position, or material reduction in the responsibilities of, or change in identity with respect to the management, supervisory or other key personnel of the Company or any Subsidiary, any termination of employment of any such employees, or any labor dispute or claim of unfair labor practices involving the Company or any Subsidiary, (j) neither the Company nor any Subsidiary has incurred, created or assumed any Encumbrance (other than a Permitted Encumbrance) on any of its assets or properties, any Liability for borrowed money or any Liability as guaranty or surety with respect to the obligations of any other Person, (k) neither the Company nor any Subsidiary has paid or discharged any Encumbrance or Liability which was not shown on the Company Balance Sheet or incurred in the ordinary course of business consistent with past practice since the Company Balance Sheet Date, (l) neither the Company nor any Subsidiary has incurred any Liability to its directors, officers or stockholders (other than Liabilities to pay compensation or benefits in connection with services rendered in the ordinary course of business, consistent with past practice), (m) neither the Company nor any Subsidiary has made any deferral of the payment of any accounts payable other than in the ordinary course of business, consistent with past practice, or in an amount in excess of \$50,000 in the aggregate, or given any discount, accommodation or other concession other than in the ordinary course of business, consistent with past practice, in order to accelerate or induce the collection of any receivable, (n) neither the Company nor any Subsidiary has made any material change in the manner in which it extends discounts, credits or warranties to customers or otherwise deals with its customers, (o) there has been no material damage, destruction or loss, whether or not covered by insurance, affecting the assets, properties or business of the Company or any Subsidiary, (p) neither the Company nor any Subsidiary has sold, disposed of, transferred or licensed to any Person any rights to any Company IP Rights (as defined in Section 2.10(a)(ii)) (other than the sale or nonexclusive, object code license of Company Products (as defined in Section 2.10(a)(vi)) to its customers in the ordinary course of business consistent with past practice), or has acquired or licensed from any Person any Intellectual Property (as defined in Section 2.10(a)(i)), other than GCA Software, or sold, disposed of, transferred or provided a copy of any Company Source Code (as defined in Section 2.10(a)(vii)) to any Person and (q) there has not occurred any announcement of, any negotiation by or any entry into any Contract by the Company or any Subsidiary to do any of the things described in the preceding clauses (a) through (p) (other than negotiations and agreements with Acquiror and its representatives regarding the transactions contemplated by this Agreement).

2.6 Litigation. There is no private or governmental action, suit, proceeding, claim, mediation, arbitration or investigation pending before any Governmental Entity, or, to the knowledge of the Company, threatened against the Company or any Subsidiary or any of their respective assets or properties or any of their respective directors, officers or employees (in their capacities as such or relating

to their employment, services or relationship with the Company or any of its Subsidiaries), nor, to the knowledge of the Company, is there any reasonable basis for any such action, suit, proceeding, claim, mediation, arbitration or investigation. There is no judgment, decree, injunction or order against the Company or any Subsidiary, any of their respective assets or properties, or, to the knowledge of the Company, any of their respective directors, officers or employees (in their capacities as such or relating to their employment, services or relationship with the Company or any of its Subsidiaries). To the knowledge of the Company, there is no reasonable basis for any Person to assert a claim against the Company or any Subsidiary based upon the Company entering into this Agreement or any of the other transactions or agreements contemplated hereby. Neither the Company nor any Subsidiary has any action, suit, proceeding, claim, mediation, arbitration or investigation pending against any other Person.

2.7 Restrictions on Business Activities. There is no Contract, judgment, injunction, order or decree binding upon the Company or any Subsidiary which has or would reasonably be expected to have, whether before or after consummation of the Merger, the effect of prohibiting or impairing in any material respect any current or presently proposed business practice of the Company or any Subsidiary, any acquisition of property by the Company or any Subsidiary or the conduct of the Business.

2.8 Compliance with Laws; Governmental Permits.

(a) Each of the Company and each Subsidiary has complied in all material respects with, is not in material violation of, and has not received any notices of violation with respect to, any Legal Requirement with respect to the conduct of its business, or the ownership or operation of its business. Neither the Company nor any of its Subsidiaries, nor any director, officer, Affiliate or employee thereof (in their capacities as such or relating to their employment, services or relationship with the Company or any of its Subsidiaries), has given, offered, paid, promised to pay or authorized payment of any money, any gift or anything of value, with the purpose of influencing any act or decision of the recipient in his or her official capacity or inducing the recipient to use his or her influence to affect an act or decision of a government official or employee, to any (i) governmental official or employee, (ii) political party or candidate thereof, or (iii) Person while knowing that all or a portion of such money or thing of value would be given or offered to a governmental official or employee or political party or candidate thereof.

(b) Each of the Company and each Subsidiary has obtained each federal, state, county, local or foreign governmental consent, license, permit, grant, or other authorization of a Governmental Entity (i) pursuant to which the Company or any Subsidiary currently operates or holds any interest in any of its assets or properties or (ii) that is required for the operation of the Company's or any Subsidiary's business or the holding of any such interest (all of the foregoing consents, licenses, permits, grants, and other authorizations, collectively, the "**Company Authorizations**"), and all of the Company Authorizations are in full force and effect, except for those the failure of which to be in full force and effect would not be material to the Company. Neither the Company nor any Subsidiary has received any notice or other communication from any Governmental Entity regarding (i) any actual or possible violation of law or any Company Authorization or any failure to comply with any term or requirement of any Company Authorization or (ii) any actual or possible revocation, withdrawal, suspension, cancellation, termination or modification of any Company Authorization. None of the Company Authorizations will be terminated or impaired, or will become terminable, in whole or in part, as a result of the consummation of the transactions contemplated by this Agreement.

2.9 Title to Property and Assets. Each of the Company and each Subsidiary has good and valid title to all of their respective properties, and interests in properties and assets, real and personal, reflected on the Company Balance Sheet or acquired after the Company Balance Sheet Date (except properties and assets, or interests in properties and assets, sold or otherwise disposed of since the

Company Balance Sheet Date in the ordinary course of business consistent with past practice), or, with respect to leased properties and assets, valid leasehold interests in such properties and assets which afford the Company valid leasehold possession of the properties and assets that are the subject of such leases, in each case, free and clear of all Encumbrances, except (i) Permitted Encumbrances incurred in the ordinary course of business consistent with past practice for obligations not past due, (ii) such imperfections of title and non-monetary Encumbrances as do not and will not detract from or interfere with the use of the properties subject thereto or affected thereby, or otherwise impair business operations involving such properties, and (iii) liens securing indebtedness that is reflected on the Company Balance Sheet. The plant, property and equipment, taken as a whole, of each of the Company and each Subsidiary that are used in the operations of their respective businesses are (i) in good operating condition and repair, subject to normal wear and tear and (ii) not obsolete or in need of renewal or replacement, except for renewal or replacement in the ordinary course of business, consistent with past practice. All properties used in the operations of the Company or any Subsidiary are reflected on the Company Balance Sheet to the extent required under GAAP to be so reflected. Schedule 2.9 of the Company Disclosure Letter identifies each parcel of real property leased by the Company or any Subsidiary. The Company and its Subsidiaries have adequate rights of ingress and egress into any real property used in the operation of their respective businesses. The Company has heretofore delivered to Acquiror's counsel true, correct and complete copies of all leases, subleases and other agreements under which the Company and/or any Subsidiary uses or occupies or has the right to use or occupy, now or in the future, any real property or facility, including all modifications, amendments and supplements thereto. Neither the Company nor any Subsidiary currently owns any real property. "Assets" as used in this Section 2.9 shall not include Company IP Rights (as defined in Section 2.10(a)(ii)).

2.10 Intellectual Property.

(a) As used in this Agreement, the following terms shall have the meanings indicated below:

(i) "**Intellectual Property**" means any and all industrial and intellectual property rights and all rights associated therewith, throughout the world, including all patents and applications therefor and all reissues, divisions, renewals, extensions, provisionals, continuations and continuations-in-part thereof, all inventions (whether patentable or not), invention disclosures, improvements, trade secrets, proprietary information, know how, technology, technical data, proprietary processes and formulae, algorithms, specifications, customer lists and supplier lists, all industrial designs and any registrations and applications therefor, all trade names, logos, trade dress, trademarks and service marks, trademark and service mark registrations, trademark and service mark applications, and any and all goodwill associated with and symbolized by the foregoing items, Internet domain name registrations, Internet and World Wide Web URLs or addresses, all copyrights, copyright registrations and applications therefor, and all other rights corresponding thereto, all mask works, mask work registrations and applications therefor, and any equivalent or similar rights in semiconductor masks, layouts, architectures or topology, all computer software, including all source code, object code, firmware, development tools, files, records and data, all schematics, netlists, test methodologies, test vectors, emulation and simulation tools and reports, hardware development tools, and all rights in prototypes, breadboards and other devices, all databases and data collections and all rights therein, all moral and economic rights of authors and inventors, however denominated, and any similar or equivalent rights to any of the foregoing, and all tangible embodiments of the foregoing.

(ii) "**Company IP Rights**" means (A) any and all Intellectual Property used in the conduct of the Business; and (B) any and all Company-Owned IP Rights.