

Form: Sample Representations and Warranties

Description: These are sample representations and warranties that could be made by one party to a contract.

The following are sample representations and warranties from a Company selling preferred stock to investors, and tends to be pro-investor oriented:

3.1 Representations and Warranties.

The Company hereby represents and warrants to the Purchasers that:

(a) All issued and outstanding shares have been, and as of the Closing Date will be, duly authorized, validly issued, fully paid and nonassessable, are and were, and as of the Closing Date will have been, offered, issued, sold and delivered by the Company in compliance with all applicable state and federal laws concerning the issuance of securities.

(b) There are no outstanding rights, subscriptions, calls, options, warrants, preemptive rights, conversion rights or agreements granted or issued by or binding upon the Company for the purchase or acquisition (contingent or otherwise) from the Company of any shares of its capital stock or any other securities, except in accordance with the terms of this Agreement. The Company is not subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or retire any shares of its capital stock or any security convertible into or exchangeable for any shares of its capital stock. No holder of Common Stock or Preferred Stock or any other security of the Company or any other person or entity is entitled to any preemptive right, right of first refusal or similar right as a result of the issuance of the Shares or otherwise, except as set forth therein. There is no voting trust, agreement or arrangement among any of the beneficial holders of Common Stock or Preferred Stock of the Company affecting the exercise of the voting rights of such stock.

(c) Set forth in Schedule 3.2 is a true and complete list of the names and addresses of the record holders of all of the outstanding Common Stock and Preferred Stock and of the holders of all outstanding options or other rights to purchase Common Stock, Preferred Stock, or other securities of the Company. Such list attached contains a true and complete description of the number of shares held by each such holder, the price paid per share and the form of payment therefor. With respect to each outstanding option, such list sets forth the date of grant, the number of shares subject thereto, the exercise price, and vesting schedule. Schedule 3.2 also shows the current directors and officers of the Company.

3.2 Corporate Power; Authorization. The Company has all requisite power and authority to enter into this Agreement and the other documents and agreements contemplated herein, to sell the Shares hereunder, and to carry out and perform its obligations under the terms of this Agreement and the other documents and agreements contemplated herein. All corporate action on the part of the Company and its officers, directors and stockholders necessary for the authorization, execution and delivery of this Agreement and the other documents and agreements contemplated herein, for the performance of the Company's obligations hereunder, for the consummation of the transactions contemplated herein, and for the authorization, issuance and delivery of the Shares and the Common Stock issuable upon conversion thereof has been taken or will be taken prior to the Closing. This Agreement has been duly executed and delivered by the Company and constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms. As of the Closing Date, this Agreement and

the other documents and agreements contemplated herein, will have been duly executed and delivered by the Company, and all parties thereto (other than the Purchasers), and will constitute legal, valid and binding obligations of the Company and such other parties, enforceable against each of them in accordance with their terms.

3.3 Subsidiaries. The Company does not presently own, of record or beneficially, or control, directly or indirectly, any capital stock or equity interest in any corporation, association or business entity. The Company is not, directly or indirectly, a participant in any joint venture or partnership.

3.4 Validity of Securities. The Shares, when issued, sold and delivered in accordance with the terms of this Agreement, will be duly and validly issued, fully paid and nonassessable and will be free and clear of any preemptive rights, security interests, claims, liens or encumbrances created by the Company. The Common Stock issuable upon conversion of the Shares has been, or prior to the Closing will be, duly and validly reserved and, upon issuance in accordance with the terms of this Agreement and the Amended Certificate, will be duly and validly issued, fully paid and nonassessable and will be free and clear of any preemptive rights, security interests, restrictions on transfer, claims, liens or encumbrances other than restrictions under applicable and state securities laws.

3.5 Governmental Consents.

(a) No consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, or notice to any federal, state or local governmental or public authority or agency on the part of the Company is or was required for the Company's valid execution, delivery and performance of this Agreement or the offer, sale or issuance of the Shares (and the Common Stock issuable upon conversion thereof) or the consummation of any other transaction contemplated hereby, except for the filing of the Amended Certificate in the office of the Secretary of State of Delaware, which shall be filed by the Company prior to the Closing, and, the filing of a notice under Regulation D under the Securities Act of 1933, as amended (the "Act"), and the filing of a notice of exemption pursuant to Section 25102(f) of the California Corporate Securities Law of 1968, as amended (the "California Securities Law"), both of which shall be filed by the Company immediately following the Closing. Based in part upon the truth of the representations and warranties of the Purchasers contained in Section 4 of this Agreement, the offer, sale and issuance of the Shares (and of the Common Stock issuable upon conversion thereof) in conformity with the terms of this Agreement are exempt from the registration requirements of Section 5 of the Act and from the qualification requirements of Section 25110 of the California Securities Law.

(b) The Company has obtained all consents, approvals or authorizations of, made all declarations or filings with, and given all notices to, all federal, state or local governmental or public authorities or agencies which are necessary for the continued conduct by the Company of its business as now conducted or as proposed to be conducted in which the failure to so obtain, make or give could materially adversely affect the business, earnings, prospects, properties or condition (financial or other) of the Company.

3.6 Compliance with Other Instruments and Laws. Except as described in Schedule 3.7:

(a) The Company is not (i) in violation or default of any provision of its Certificate of Incorporation or Bylaws, each as amended and in effect on the date hereof and on and as of the Closing Date; or (ii) except as to defaults which would result in liability or loss to the Company of \$10,000 or less, in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in, and is not otherwise in default under, (A) any evidence of indebtedness for any money borrowed or any other evidence of indebtedness or any instrument or agreement under or pursuant to which any evidence of indebtedness for money borrowed or other evidence of indebtedness has been issued, or (B) any other instrument, mortgage, deed of trust, loan, contract, commitment or obligation to which it is a party or by which it is bound or any of its properties is affected. The Company has not defaulted on, nor has it failed to make at the time contemplated, payment of any principal of, or premium or interest on, any indebtedness of \$10,000 or more. Neither the execution, delivery and performance of and compliance with this Agreement nor the offer, issuance and sale of the Shares (and the Common Stock issuable upon conversion thereof) does or will: (i) conflict with or violate the Certificate of Incorporation or Bylaws of the Company; (ii) conflict with or result in a breach of any of the terms, conditions or provisions of, or constitute or default under, or result in the creation of any lien on any of the properties or assets of the Company pursuant to the terms of any instrument or agreement referred to in this Section to which the Company is a party or by which it is bound; or (iii) require the consent of, or other action by, any stockholder, trustee or any creditor of, any lessor to or any investor in, the Company or any other person.

(b) The Company is in full compliance with all laws and ordinances and all governmental rules and regulations to which it is subject, the violation of which would result in liability or loss to the Company of more than \$10,000. Based in part upon the representations and warranties of the Purchasers in Section 4 hereof with respect to an exemption from the registration requirements of the Securities Act of 1933 and the qualification requirements of the California Securities Act of 1968, neither the execution, delivery or performance of this Agreement by the Company nor the offer, issuance, sale or delivery of the Shares (and the Common Stock issuable upon conversion thereof) does or will cause the Company to be in violation of any statute, law or ordinance or any judgment, decree, writ, injunction, order, award or other action of any court or governmental authority or arbitrator or any order, rule or regulation of any federal, state, county, municipal or other governmental or public authority or agency.

(c) The Company is not a party to or bound by (nor is any of its properties affected by) any contract or agreement, or subject to any order, writ, injunction or decree or any action of any court or any governmental department, commission, bureau, board or other administrative agency or official, or any charter or other corporate or contractual restriction which materially adversely affects, or in the future could materially adversely affect, the business, earnings, prospects, properties or conditions (financial or other) of the Company.

3.7 Litigation. Except as set forth in Schedule 3.8, there is no action, suit, proceeding, claim or investigation in any court or by or before any other governmental or public authority or agency or any arbitrator or arbitration panel, pending or, to the best knowledge of

the Company, threatened against or affecting the Company or any of its properties that, either individually or in the aggregate, (a) could question the validity or enforceability of this Agreement and the other agreements and documents contemplated thereby or the right of the Company to enter into any of them, or to consummate the transactions contemplated hereby or thereby, or (b) could adversely affect the business, earnings, prospects, properties or condition (financial or other) of the Company, nor is the Company aware that there is any basis for the foregoing. The foregoing includes, without limitation, actions pending or threatened (or any basis therefor known to the Company) involving the prior employment of any of the Company's employees, the use in connection with the Company's business of any information or techniques allegedly proprietary to any of their former employers, or their obligations under any agreements with prior employers. The Company is not a party or subject to, and none of its assets are bound by, the provisions of any order, writ, injunction, judgment or decree of any court or government agency or instrumentality or arbitrator or arbitration panel. There is no action, suit, proceeding or investigation by the Company currently pending or which the Company intends to initiate.

3.8 Proprietary Information; Inventions; Employees and Consultants.

(a) Since its organization, the Company has taken reasonable security measures to protect the secrecy, confidentiality and value of all intellectual property and all Inventions (as defined below). Since its organization, each of the Company's officers, directors, employees, consultants, and contractors, who, either alone or in concert with others, developed, invented, discovered, derived, programmed or designed intellectual property or Inventions (as defined below), or who has knowledge of or access to information about intellectual property or Inventions, has entered into a written agreement ("Proprietary Information Agreement") with the Company which provides that (i) this intellectual property, other information and Inventions are proprietary to the Company and are not to be divulged (except as authorized by the Company), misused or misappropriated, and (ii) this intellectual property, other information and Inventions are to be disclosed by such employees, consultants, and contractors, to the Company and transferred by them to the Company, without any further consideration being given therefor by the Company, together with all of such employees', consultants' or contractors' right, title and interest in and to such intellectual property, other information and Inventions and all patents, trademarks, service marks, trade names, copyrights, licenses and rights with respect to such intellectual property, other information and Inventions; in cases where this intellectual property and Inventions may be subject to rights of a third person, the Company has secured from said third person unrestricted, perpetual, irrevocable, royalty-free (except to the extent set forth in Schedule 3.10), and exclusive license rights thereto. As used herein, "Inventions" means all inventions, developments and discoveries which during the period of an employee's, consultant's, or contractor's service to the Company he, she or it makes or conceives of, either solely or jointly with others, that relate to any subject matter with which his, her, or its work for the Company may be concerned, or relate to or are connected with the business, products, services or projects of the Company, or relate to the actual or demonstrably anticipated research or development of the Company or involve the use of the Company's funds, time, material, facilities or trade secret information.

(b) The Company is not aware that any of the Company's employees or consultants is or will be in violation of his or her Proprietary Information Agreement, and the Company shall use its best efforts to prevent any such violation. The Company is not aware that

any of the Company's officers, directors, employees, consultants or contractors are obligated under any contract (including licenses, covenants or commitments of any nature) or other agreement, or subject to any judgment, decree or order of any court or administrative agency, that would conflict with his or her obligation to use his or her best efforts to promote the interests of the Company. Neither the execution nor delivery of this Agreement and the agreements contemplated thereby, nor the carrying on of the Company's business by its officers, directors, employees, consultants and contractors, nor the conduct of its business as proposed, will conflict with or result in a breach of the terms, conditions or provisions of, or constitute a default under, any contract, covenant or instrument known to the Company under which any of such officers, directors, employees, consultants or contractors is now obligated. The Company does not believe it is or will be necessary to utilize any inventions, copyrights, or other intellectual property of any of its officers, directors, employees, consultants or contractors (or people it currently intends to hire) made or owned prior to their employment with or engagement by the Company or that it is or will be necessary to utilize any other assets or rights of any of its officers, directors, employees, consultants or contractors (or people it currently intends to hire) made or owned prior to their employment with or engagement by the Company, in violation of any limitations or restrictions to which any such officer, director, employee, consultant or contractor is a party or to which any of such assets or rights may be subject.

(c) The form(s) of Proprietary Information Agreement signed by all employees and consultants of the Company are contained in Schedule 3.9(d).

3.9 Patents and Other Intangible Assets.

(a) Schedule 3.10(a) summarizes all patents, patent applications, trademarks, copyrights and other intellectual property of the Company with a description of their scope.

(b) Except as set forth in Schedule 3.10(b), the Company (i) owns or has the right to use, free and clear of all liens, claims and restrictions, all patents, patent applications, trademarks, service marks, trade names, inventions, trade secrets, copyrights, licenses and rights with respect to the foregoing, used in or necessary for the conduct of its business as now conducted or proposed to be conducted, (ii) is not infringing upon or otherwise acting adversely to the right or claimed right of any person or entity under or with respect to any patent, trademark, service mark, trade name, invention, trade secret, copyright, license or other intellectual property or right with respect thereto, and (iii) is not obligated or under any liability whatsoever to make any payments by way of royalties, fees or otherwise to any owner or licensee of, or other claimant to, any patent, trademark, service mark, trade name, invention, trade secret, or copyright with respect to the use thereof or in connection with the conduct of its business or otherwise.

(c) Except as set forth in Schedule 3.10(c), the Company owns and has the unrestricted right to use all product rights, manufacturing rights, trade secrets, including know-how, negative know-how, formulas, patterns, compilations, programs, devices, methods, techniques, processes, inventions, designs, computer programs and technical data and all information that derives independent economic value, actual or potential, from not being generally known or known by competitors and which the Company has taken reasonable steps to

maintain in secret (all of the foregoing of which are collectively referred to herein as “intellectual property”) required for the development, manufacture, operation, and sale of all products and services sold or proposed to be sold by the Company, free and clear of any right, lien or claim of others, including without limitation former employers of its employees, consultants and contractors, and current employers of employees, consultants and contractors, where such employees, consultants or contractors are also employed or under contract with another person.

(d) Except as set forth in Schedule 3.10(d), the Company has not sold, transferred, assigned, licensed or subjected to any lien, security interest, or other encumbrance, any intellectual property, trade secret, know-how, invention, design, process, computer program or technical data, or any interest therein, necessary or useful for the development, manufacture, use, operation or sale of any product or service presently under development or manufactured, sold or rendered by the Company.

(e) Except as set forth in Schedule 3.10(e), no director, officer, employee, agent or stockholder of the Company owns or has any right in the intellectual property of the Company, or any patents, trademarks, service marks, trade names, copyrights, licenses or rights with respect to the foregoing, or any inventions, developments or discoveries used in or necessary for the conduct of the Company’s business as now conducted or as proposed to be conducted.

(f) The Company has no actual knowledge of any facts or has not received any communication alleging or stating that the Company or any employee, consultant or contractor has violated or infringed, or by conducting business as proposed, would violate or infringe, any patent, trademark, service mark, trade name, copyright, trade secret, proprietary right, process or other intellectual property of any other person or entity; the Company has no knowledge of any impediment whereby any employee, consultant or contractor who performs or is to perform services of any kind for the Company that would interfere with such person’s ability to promote the business of the Company or would conflict with the business or proposed Company business.

(g) Neither the execution nor delivery of this Agreement and the agreements contemplated thereby, nor the carrying on of the Company’s business by its employees, consultants, and contractors nor the conduct of its business as proposed, will conflict with or result in a breach of the terms, conditions or provisions of, or constitute a default under, any contract, covenant or instrument known to the Company under which any of such employees, consultants or contractors are now obligated.

(h) The Company has not granted any license to use its proprietary information or intellectual property, except as listed in Schedule 3.10(h). Except as set forth in Schedule 3.10(h), the Company has not granted to any other person or entity rights to license, market or sell its proposed products or services and the Company is not bound by any agreement that affects the Company’s exclusive right to develop, license, market or sell its products or services.

3.10 Financial Statements. The Company has delivered to the Purchasers complete and accurate copies of its unaudited balance sheet as at _____, [Date] _____ (the

“Current Balance Sheet”) and its unaudited statements of operations and statement of cash flows for the _____ month period therein specified and the audited balance sheet as at _____, [Date] _____ and _____, [Date] _____ and its audited statements of operations and statement of cash flows for the twelve month periods specified therein (all such financial statements and balance sheets being referred to herein collectively as the “Financial Statements”), certified by _____. The Financial Statements are true, complete, and correct and have been prepared in accordance with generally accepted accounting principles (subject to normal and customary year-end adjustments that are not material for any unaudited statements) applied on a consistent basis throughout the periods indicated. The Financial Statements present fairly, completely and accurately the financial condition and cash flows of the Company as of the respective dates and for the periods indicated. The Company does not have any obligation or a liability, individually or in the aggregate, in excess of \$25,000, required to be disclosed on a balance sheet prepared in accordance with generally accepted accounting principles that is not disclosed by the Financial Statements.

3.11 Absence of Certain Changes. Except as set forth in Schedule 3.12, since _____, [Date] _____ (a) the Company has not entered into any transaction which was not in the ordinary course of its business; (b) there has been no material adverse change in the business, earnings, prospects, properties or condition (financial or other) of the Company; (c) there has been no damage to, destruction of or loss of any of the properties or assets of the Company (whether or not covered by insurance) materially adversely affecting the business, earnings, prospects, properties or condition (financial or other) of the Company; (d) the Company has not declared or paid any dividend or made any distribution on its capital stock, redeemed, purchased or otherwise acquired any of its capital stock, granted any options to purchase shares of its capital stock, or issued any shares of its capital stock; (e) the Company has not received notice that there has been a cancellation of an order for its services or a loss of a customer of the Company, the cancellation or loss of which could materially adversely affect the business, earnings, prospects, properties or condition (financial or other) of the Company; (f) there has been no resignation or termination of employment of any key officer or key employee of the Company and the Company does not know of the impending resignation or termination of employment of any key officer or key employee of the Company in either case; (g) there has been no labor dispute involving the Company or any of its employees; (h) there has been no material change in the contingent obligations of the Company by way of guaranty, endorsement, indemnity, warranty or otherwise; (i) there have been no loans made by the Company to its employees, officers or directors, other than travel advances and other advances made in the ordinary course of business; (j) there has been no waiver or compromise by the Company of a valuable right or of a debt owed to it or amendment or change to any material contract or arrangement of the Company; (k) there has been no sale, assignment, or transfer of any patents, trademarks, copyrights, trade secrets other intangible assets; (l) there has been no extraordinary increase in the compensation of any of the Company’s employees, officers or directors and there has been no increase in the compensation of any such employees, officers or directors who earn compensation at an annual rate of more than \$40,000; (m) there has been no agreement or commitment by the Company to do or perform any of the acts described in this Section 3.12 or (n) there has been no other event or condition of any character which might reasonably be expected either to materially adversely affect the business, earnings, prospects, properties or

condition (financial or other) of the Company or liabilities of the Company or to impair the ability of the Company to conduct the business now being or proposed to be conducted by it.

3.12 Material Contracts and Commitments.

(a) Except as set forth in Schedule 3.13, the Company has no currently existing contract, obligation, agreement, plan, arrangement, commitment or the like (written or oral) of any material nature (the “Contracts”), including, without limitation, the following: (1) loans, notes, indentures, or instruments relating to or evidencing indebtedness for borrowed money, or mortgages, pledges, liens, security interests or other encumbrances on any of the Company’s property or any agreement or instrument evidencing any guaranty by the Company of payment or performance by any other person; (2) employment, bonus or consulting agreements, pension, profit sharing, deferred compensation, stock bonus, retirement, stock option, stock purchase, phantom stock or similar plans, including agreements evidencing rights to purchase securities of the Company and agreements among stockholders and the Company; (3) agreements with dealers, sales representatives, brokers or other distributors, jobbers, advertisers or sales agencies; (4) agreements with any labor union or collective bargaining organization or other similar labor agreements; (5) any contract or series of contracts with the same person for the furnishing or purchase of machinery, equipment, goods or services, including without limitation agreements with processors and subcontractors; (6) any indenture, agreement or other document (including private placement brochures) relating to the sale or repurchase of securities; (7) any joint venture contract or arrangement or other agreement involving a sharing of profits or expenses to which the Company is a party; (8) agreements and purchase orders with customers; (9) agreements limiting the freedom of the Company to compete in any line of business or in any geographic area or with any person; (10) agreements providing for disposition of the business, assets or shares of the Company, agreements of merger or consolidation to which the Company is a party or letters of intent with respect to the foregoing; (11) agreements involving or letters of intent with respect to the acquisition of the business, assets or shares of any other business; (12) insurance policies; (13) license agreements; and (14) powers of attorney.

(b) The Company has provided the Purchasers with either copies of or access to all of the Contracts, if any. Each of the Contracts is valid, binding and in full force and effect in all material respects and enforceable by the Company in accordance with its terms. The Company is not in default under, or otherwise in violation of the terms of, any of the Contracts in any material respect. To the best of the Company’s knowledge, no other party to any of the Contracts is in default thereunder or otherwise in violation of the material terms thereof. None of the Contracts is burdensome to the Company and all were entered into in the ordinary course of business in arms-length transactions.

3.13 Registration Rights. Except as disclosed in Schedule 3.14, the Company has not granted or agreed to grant any rights relating to the registration of its securities under applicable federal and state securities laws, including but not limited to demand or piggy-back registration rights.

3.14 Title to Property and Assets. The Company has good and marketable title to its properties and assets (including but not limited to its intellectual property and other

intangible assets Schedule 3.10)(except for assets and properties having aggregate value of less than \$25,000) free and clear of all mortgages, security interests, claims, liens and encumbrances, except liens for current taxes and assessments not yet due. The Company owns or leases all properties and assets necessary to the operation of its business as now conducted. With respect to the property and assets it leases, the Company has the right to, and does, enjoy peaceful and undisturbed possession under all leases under which it is leasing property. All such leases are in full force and effect, and the Company is in compliance with such leases and holds a valid leasehold interest free of all security interests, liens, claims or encumbrances. The Company's tangible properties and assets are in good condition and repair, except for hidden defects where the defects cause \$25,000 or less of damage and except for ordinary wear and tear.

3.15 Outstanding Indebtedness; Liabilities. Except as set forth in Schedule 3.16, the Company has no indebtedness for borrowed money which the Company has directly or indirectly created, incurred, assumed or guaranteed, or with respect to which the Company has otherwise become directly or indirectly liable, except as shown on the Current Balance Sheet. Except as set forth in Schedule 3.16, the Company has no liabilities or obligations, absolute or contingent, which are not shown or reflected in the Current Balance Sheet, (1) except liabilities or obligations which are less than \$25,000 in the aggregate, or (2) those incurred after the date of the Current Balance Sheet in the ordinary course of business, (3) normal contractual obligations under the Contracts set forth in Schedule 3.13.

3.16 Stockholder Agreements. There are no voting trusts or other agreements or arrangements which grant rights with respect to any shares of the Company's capital stock or which in any way affect any stockholder's ability or right to freely alienate or vote such shares.

3.17 Employee Compensation Plans. Except as set forth in Schedule 3.18, the Company is not a party to or bound by any currently effective employment contract, deferred compensation agreement, bonus plan, incentive plan, profit sharing plan, retirement agreement or other employee compensation agreement. The Company does not maintain any "employee benefit plan" (as such term is defined by the Employee Retirement Income Security Act of 1974). Counsel for the Purchasers has been provided with copies of such plans, if any, and any agreements arising therefrom to which the Company currently is a party.

3.18 Labor Union Activities. The Company is not engaged in any unfair labor practice which could adversely affect the business, earnings, prospects, properties or condition (financial or other) of the Company. There are (a) no unfair labor practice complaint pending or, to the best knowledge of the Company threatened against the Company or before the National Labor Relations Board which could adversely affect the business, earnings, prospects, properties or condition (financial or other) of the Company and no grievance or arbitration proceeding arising out of or under a collective bargaining agreement is so pending or threatened; (b) no strike, labor dispute, slow down or stoppage pending or, to the best knowledge of the Company, threatened against the Company; and (c) no union representation question existing with respect to the employees of the Company and no union organizing activities taking place with respect to the Company.

3.19 Employee Relations. To the best of the Company's knowledge, its relations with its employees are good.

3.20 Tax Returns and Audits. The Company has duly prepared and timely filed all United States income tax returns and all state and municipal tax returns required to be filed by it and has paid or made adequate provision for the payment of all taxes, assessments, fees and charges shown on such returns or on other assessments or charges received by the Company. No federal or state income or sales tax returns of the Company have been audited. No deficiency assessment or proposed adjustment of the Company's United States income tax or state or municipal taxes is pending. No extensions of the time for the assessment of deficiencies have been granted to the Company. The Company is not a party to or bound by or obligated under any tax sharing or similar agreement. There are no liens on any properties or assets of the Company imposed or arising as a result of the delinquent payment or the non-payment of any tax, assessment, fee or other governmental charge. The charges, accruals and reserves, if any, on the books of the Company in respect of federal, state and local corporate franchise and income taxes for all fiscal periods to date are adequate in accordance with generally accepted accounting principles, and the Company does not know of any additional unpaid assessments for such periods or of any basis therefor. There are no applicable taxes, fees or other governmental charges payable by the Company in connection with the execution and delivery of this Agreement or the offer, issuance, sale and delivery of the Shares (and the Common Stock issuable upon conversion thereof).

3.21 Disclosure; Business Plan.

(a) No representation, warranty or statement by the Company in this Agreement or in any written statement or certificate furnished or to be furnished to the Purchasers pursuant to this Agreement (including all exhibits and schedules hereto and any other agreements or documents delivered on the Closing or any Financial Statements referred to in Section 3.11 hereof) contains or will contain any untrue statement of a material fact or, when taken together, omits or will omit to state a material fact necessary to make the statements made herein or therein, in light of the circumstances under which they were made, not misleading; provided, that the Company represents only with respect to the Business Plan dated _____ that it constitutes the Company's current intentions and was prepared in good faith, and is not misleading in any material respect nor does it omit to state a material fact necessary to make the statements made therein not misleading. There is no fact known to the Company that has not been disclosed to the Purchasers in writing that (1) materially adversely affects or could materially adversely affect the business, earnings, prospects, properties or condition (financial or other) of the Company or (2) adversely affects or could adversely affect the ability of the Company to perform its obligations under this Agreement.

(b) The Company has provided to the Purchasers or their representative all documents requested by the Purchasers pursuant to that certain Due Diligence Checklist dated _____, [Date] _____.

3.22 Certain Transactions. Except as set forth in Schedule 3.23, the Company is not indebted, either directly or indirectly, to any of its officers, directors or holders of Common Stock or to their respective spouses, children or other family members; none of such officers, directors and holders of capital stock or any members of their families are indebted to the Company or, to the best of the Company's knowledge, have any direct or indirect ownership interest in any firm or corporation with which the Company is affiliated or with which the

Company has a business relationship, or any firm or corporation which competes with the Company. No officer, director or holder of any of the Company's capital stock or to the best of the Company's knowledge, any member of their immediate families is, directly or indirectly, interested in any existing or past contract with the Company. The Company is not a guarantor or indemnitor of any indebtedness of any other person, firm or corporation.

3.23 Environmental Laws and Regulations. Each of the Company and its subsidiaries is in compliance with all federal, state, local or foreign laws, common law, rules, codes, administrative orders or regulations relating to pollution or protection of human health, the environment (including, without limitation, ambient air, surface water, groundwater, land surface or subsurface strata) or wildlife, including without limitation, laws, common law, rules codes, administrative orders and regulations relating to the release or threatened release of chemicals, pollutants, contaminants, wastes, toxic substances, hazardous substances, petroleum or petroleum products (collectively, "Hazardous Materials") or to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials (collectively, "Environmental Laws") and there are no events or circumstances that could form the basis of an order for clean-up or remediation, or an action, suit or proceeding by any private party or governmental body or agency, against or affecting the Company or any of its subsidiaries relating to any Hazardous Materials or the violation of any Environmental Laws.

3.24 Section 83(b) Election. To the best of the Company's knowledge, all elections and notices required or desirable by Section 83(b) of the Internal Revenue Code and any analogous provisions of state tax laws have been timely filed by the stockholders of the Company.

3.25 Other Names. The business conducted by the Company prior to the date hereof has not been conducted under any corporate, trade or fictitious name.

3.26 Minute Books. The minute books of the Company provided to the Purchasers contain all resolutions adopted by directors and stockholders since the incorporation of the Company and fairly and accurately reflect, in all material respects, all matters and transactions referred to in such minutes or written consents.

3.27 Insurance Coverage. Except as set forth in Schedule 3.30, there is in full force and effect one or more policies of insurance issued by insurers of recognized responsibility insuring the Company and its properties and business against such losses and risks, and in such amounts, as are customary in the case of corporations engaged in the same or similar business and similarly situated. The Company has not been refused any insurance coverage sought or applied for, and the Company has no reason to believe that it will be unable to renew its existing insurance coverage as and when the same shall expire upon terms at least as favorable as those presently in effect, other than possible increases in premiums that do not result from any act or omission of the company. Such insurance is summarized in Schedule 3.28.

3.28 Returns and Complaints. Except as set forth in Schedule 3.29, the Company has received no customer complaints concerning its products and/or services, nor has it had any of its products returned by a purchaser or distributor thereof, other than minor non-recurring warranty problems.

3.29 Qualified Small Business Stock. The Shares will constitute “qualified small business stock” within the meaning of Section 1202 of the Internal Revenue Code of 1986, as amended, as of the date of issuance. The Company will use its reasonable best efforts to comply with the reporting and recordkeeping requirements of Section 102 and any regulations promulgated thereunder.

3.30 No Discrimination. The Company has not and does not in any manner or form discriminate, foster discrimination or permit discrimination against any person, whether as to race, sex, religion, or other legally protected classes of persons.

3.31 Use of Proceeds. The Company shall use the proceeds from the sale of the Shares [for working capital and general corporate purposes] or [solely as follows:
_____].

3.32 Internal Accounting Controls. Each of the Company and its subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed in accordance with management’s general and specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management’s general or specific authorizations; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

3.33 “Company’s Knowledge” Defined. As used in this Section 3, the terms “to the best of the Company’s knowledge,” “to the best knowledge of the Company,” “known to the Company” or similar phrases shall mean the best knowledge of the Company, its officers and directors, after careful consideration of the matters set forth in the representation that is so qualified and a diligent review of all files, documents, agreements and other materials in such person’s possession or subject to his or her control, and shall include knowledge that should have been reasonably known to such person given such person’s position in the Company and/or access to information.

3.34 Projections. All projections and expressions of opinion or predictions relating to the future sales and financial performance of the Company previously delivered to the Purchasers by the Company or its representatives were made in good faith and prepared on a reasonable basis by the Company. The Company knows of no facts or circumstances that as of the date hereof (other than general economic conditions) would adversely affect the Company’s ability to meet its projections, other than those disclosed in Schedule 3.35.

3.35 Small Business Concern. The Company is a “small business concern” as such term is defined in the Small Business Investment Act of 1958, as amended, and in regulations of the Small Business Administration promulgated thereunder, and a “smaller concern” as such term is defined in such regulations.

3.36 Representations and Warranties in Related Documents. The representations and warranties by the Company, [the Founder,] and Messrs. [Name] and [Name],

contained in the Co-Sale Agreement, the Proprietary Information Agreements, the Employment Agreement with [Name], and in any document, certificate or instrument delivered pursuant to this Agreement or such agreements, as applicable, are true and correct and the Purchasers shall be entitled to rely on such representations and warranties as if they were made to the Purchasers in this Agreement as of the Closing Date. Each of the agreements referred to above will be in full force and effect on the Closing, and no portion thereof has been amended, modified, supplemented or waived by any party. True, correct and complete copies of such agreements will be delivered to the Purchasers on the Closing Date and such agreements will constitute the entire agreement among the parties thereto with respect to their subject matters.

The following are sample representations and warranties of a selling company in a merger Agreement, designed to be somewhat more pro-target oriented:

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF COMPANY

The Company represents and warrants to the Buyer that the statements contained in this Article II are true and correct, except as set forth in the disclosure schedule attached hereto (the “Company Disclosure Schedule”). The Company Disclosure Schedule shall be arranged in paragraphs corresponding to the numbered and lettered paragraphs contained in this Article II, and the disclosures in any paragraph of the Company Disclosure Schedule shall qualify any other paragraph in this Article II where such disclosure would be appropriate to the extent that it is clear from such disclosure that it relates to such other paragraph.

2.1 Organization, Qualification and Corporate Power. The Company is a corporation duly incorporated or formed, validly existing and in corporate and tax good standing under the laws of the state of California. The Company is duly qualified to conduct business and is in corporate and tax good standing under the laws of each jurisdiction in which the failure to be so qualified would have a Material Adverse Effect. The Company has all requisite corporate power and authority to carry on the businesses in which it is engaged and to own and use the properties owned and used by it. The Company has furnished to the Buyer true and complete copies of its Amended and Restated Articles of Incorporation and Bylaws, each as amended and as in effect on the date hereof. The Company is not in default under or in violation of any provision of its Amended and Restated Articles of Incorporation or Bylaws.

2.2 Capitalization. The authorized capital stock of the Company Capital Stock consists of:

- (a) _____ shares of Common Stock of the Company, of which _____ shares are issued and outstanding;
- (b) ____ shares of Series A Preferred Stock, of which ____ shares are outstanding;
- (c) ____ shares of Series B Preferred Stock, of which ____ shares are outstanding;
- (d) ____ shares of common stock reserved under the Company’s Stock Option plan(s), of which _____ shares have been issued;
- (e) Warrants to acquire ____ shares of Series A Preferred Stock; and
- (f) Warrants to acquire ____ shares of Series B Preferred Stock.

(g) [Continue as appropriate.]

Section 2.2 of the Company Disclosure Schedule sets forth a complete and accurate list of all Company Shareholders, indicating the number of shares of Company Capital Stock held by each Company Shareholder. All of the issued and outstanding shares of Company Capital Stock are duly authorized, validly issued, fully paid, nonassessable and free of all preemptive rights. Except as described as above, there are no outstanding or authorized options, warrants, rights, agreements or commitments to which the Company is a party or which are binding upon the Company providing for the issuance, disposition or acquisition of any of its capital stock. There are no outstanding or authorized stock appreciation, phantom stock or similar rights with respect to the Company. There are no agreements, voting trusts, proxies, or understandings with respect to the voting, or registration under the Securities Act of 1933, as amended (the "Securities Act"), of any shares of Company Capital Stock. All of the issued and outstanding shares of Company Capital Stock were issued in compliance with applicable federal and state securities laws.

2.3 Authorization of Transaction. The Company has all requisite corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder and under each of the other agreements and instruments to be executed and delivered by some or all of the parties hereto in connection with the consummation of the transactions contemplated hereby (the "Transaction Documents") to which the Company is a party. All corporate action on the part of the Company, its officers, directors and shareholders necessary for the authorization, execution and delivery of this Agreement, the Transaction Documents and the performance of all obligations of the Company hereunder and thereunder has been taken or will be taken prior to the Closing, and this Agreement constitutes, and each of the Transaction Documents to which the Company will be a party, will constitute, a valid and legally binding obligation of the Company, enforceable in accordance with its respective terms, except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other laws of general application affecting enforcement of creditors' rights generally, and (ii) as limited by laws relating to the availability of specific performance, injunctive relief, or other general equitable remedies.

2.4 Compliance with Laws and Other Instruments. The Company is not in violation or default of any provision of its Amended and Restated Articles of Incorporation or Bylaws, or, to the best of its knowledge, of any instrument, judgment, order, writ, decree, lease, license, permit, contract or other arrangement to which it is a party or by which it is bound, or, to the best of its knowledge, of any provision of any federal or state statute, rule or regulation applicable to the Company, the violation of which would have a Material Adverse Effect on the Company. The execution, delivery and performance of this Agreement, and the consummation of the transactions contemplated hereby, will not result in any such violation or default, or be in conflict with or constitute, with or without the passage of time and giving of notice, either a default under any such provision, instrument, judgment, order, writ, decree, lease, license, permit, contract or other arrangement or an event that results in the creation of any lien, charge or encumbrance upon any assets of the Company or the suspension, revocation, impairment, forfeiture, or nonrenewal of any permit, license, authorization, or approval applicable to the Company, its business or operations or any of its assets or properties, or result in the acceleration of, or create in any party the right to accelerate, terminate, modify or cancel, or require any

notice, consent or waiver under, any contract, lease, license, permit or other arrangement to which the Company is a party or by which the Company is bound or to which its assets are subject, the violation of which would have a Material Adverse Effect on the Company. For purposes of this Agreement, a “Material Adverse Effect” means, with respect to a party, any material adverse effect on the assets, business, financial condition or the results of operations of such party and its subsidiaries, if any, taken as a whole.

2.5 Subsidiaries. The Company does not have and has never had any subsidiaries or entities which it controls (as defined under federal securities laws) and does not otherwise own and has never otherwise owned any shares of stock or any interest in, or control of, directly or indirectly, any other corporation, partnership, association, joint venture or entity.

2.6 Company Financial Statements. The Company has attached hereto as Section 2.6 to the Company Disclosure Schedule the unaudited balance sheet and statements of income, changes in shareholders’ equity and cash flows for the period from the date of _____ through _____ for the Company (the “Company’s Most Recent Balance Sheet Date”). Such financial statements (collectively, the “Company Financial Statements”) have been prepared in accordance with United States generally accepted accounting principles (“GAAP”) applied on a consistent basis throughout the periods covered thereby, fairly present the financial condition, results of operations and cash flows of the Company as of the respective dates thereof and for the periods referred to therein and are consistent with the books and records of the Company; provided, however, that the Company Financial Statements are subject to normal recurring year-end adjustments and do not include footnotes.

2.7 Absence of Certain Changes. Since the Company’s Most Recent Balance Sheet Date, there has not been any material adverse change in the assets, business, financial condition or results of operations of the Company, nor has there occurred any event or development which could reasonably be foreseen to result in such a material adverse change in the future.

2.8 No Undisclosed Liabilities. The Company has no liability (whether known or unknown, whether absolute or contingent, whether liquidated or unliquidated and whether due or to become due), and there is no existing condition, situation or set of circumstances which could reasonably be expected to result in such a liability, except for (a) liabilities shown on the _____ (the “Company’s Most Recent Balance Sheet Date”) balance sheet (the “Company’s Most Recent Balance Sheet”), (b) liabilities which have arisen since the Company’s Most Recent Balance Sheet Date in the ordinary course of business, (c) contractual liabilities incurred in the Ordinary Course of Business and (d) liabilities for accounting, investment banking and legal fees incurred in connection with the Merger and the transactions contemplated thereby.

2.9 Tax Matters.

(a) The Company has filed all Tax Returns (as defined below) that it was required to file and all such Tax Returns were correct and complete in all material respects. The Company has paid all Taxes (as defined below) owed in respect of the periods covered by such

Tax Returns whether or not shown as due on such Tax Return. The unpaid Taxes of the Company for tax periods through the date of the Company's Most Recent Balance Sheet do not exceed the accruals and reserves for Taxes set forth on the Company's Most Recent Balance Sheet, and no Taxes have been or prior to the Closing will be incurred by the Company. The Company has no actual or potential liability for any Tax obligation of any taxpayer (including without limitation any affiliated group of corporations or other entities that included the Company during a prior period) other than the Company. All Taxes that the Company is or was required by law to withhold or collect have been duly withheld or collected and, to the extent required, have been paid to the proper Governmental Entity (as defined below). For purposes of this Agreement, "Taxes" means all taxes, charges, fees, levies or other similar assessments or liabilities, including without limitation income, gross receipts, ad valorem, premium, value-added, excise, real property, personal property, sales, use, transfer, withholding, employment, payroll and franchise taxes imposed by the United States of America or any state, local or foreign government, or any agency thereof, or other political subdivision of the United States or any such government, and any interest, fines, penalties, assessments or additions to tax resulting from, attributable to or incurred in connection with any tax or any contest or dispute thereof. For purposes of this Agreement, "Tax Returns" means all reports, returns, declarations, statements or other information required to be supplied to a taxing authority in connection with Taxes. For purposes of this Agreement, "Governmental Entity" means any government, municipality or political subdivision thereof, whether federal, state, local or foreign, or any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality or public body, or any court, arbitrator, administrative tribunal or public utility.

(b) The Company has not yet been obligated to file any federal income Tax Returns. The Company has never had any examination reports or statements of deficiencies assessed against it. No Tax Returns of the Company have been audited by any Governmental Entity. No examination or audit of any Tax Returns of the Company by any Governmental Entity is currently in progress or, to the knowledge of the Company, threatened or contemplated. The Company has not waived any statute of limitations with respect to taxes or agreed to an extension of time with respect to a tax assessment or deficiency.

(c) The Company is not a "consenting corporation" within the meaning of Section 341(f) of the Internal Revenue Code ("Code") and none of the assets of the Company are subject to an election under Section 341(f) of the Code. The Company has not been a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code. The Company is not a party to any Tax allocation or sharing agreement.

(d) The Company is not and has never been a member of an "affiliated group" of corporations (within the meaning of Section 1504 of the Code). The Company has not made an election under Treasury Reg. Section 1.1502-20(g). The Company is not and has not been required to make a basis reduction pursuant to Treasury Reg. Section 1.1502-20(b) or Treasury Reg. Section 1.337(d)-2T(b).

(e) As of the date of this Agreement and as of the Closing Date, the Company has not, and will not have, taken any action that could reasonably be expected to cause the Merger to fail to qualify as a reorganization within the meaning of Section 368(a) of the Code.

2.10 Assets. The Company has good and defensible title to all properties, interests in properties and assets, real and personal, necessary for the conduct of its business as presently conducted and as presently proposed to be conducted, all of which are reflected in the Company's Most Recent Balance Sheet (except properties, interests in properties and assets sold or otherwise disposed of since the Company's Most Recent Balance Sheet Date in the ordinary course of business) or acquired after the Most Recent Balance Sheet Date, or with respect to leased properties and assets, valid leasehold interests in, free and clear of all mortgages, liens, pledges, charges or encumbrances of any kind or character, except the lien of current taxes not yet due and payable. The plants, property and equipment of Company that are used in the operations of its business are in good operating condition and repair subject to ordinary wear and tear and to requirements for periodic maintenance. All properties used in the operations of Company, except for those acquired after the Most Recent Balance Sheet Date, are reflected in the Company's Most Recent Balance Sheet to the extent required by GAAP. Section 2.10 of the Company Disclosure Schedule identifies all personal and real property leases. No asset of the Company (tangible or intangible) is subject to any Security Interest except as listed on Section 2.10 of the Company Disclosure Schedule. For purposes of this Agreement, "Security Interest" means any mortgage, pledge, security interest, encumbrance, charge, or other lien (whether arising by contract or by operation of law), other than (i) mechanic's, materialmen's, and similar liens, (ii) liens arising under worker's compensation, unemployment insurance, social security, retirement, and similar legislation, (iii) liens on goods in transit incurred pursuant to documentary letters of credit, and (iv) liens for Taxes not yet due and payable, in each case arising in the Ordinary Course of Business of the Company and not material to the Company. The Company does not own any real property.

2.11 Intellectual Property.

(a) To the best knowledge of the Company, the Company owns, or licenses or otherwise possesses legally enforceable rights to use, all patents, trademarks, trade names, service marks, copyrights, and any applications for such patents, trademarks, trade names, service marks, and copyrights, schematics, technology, trade secrets, know-how, computer software programs or applications, processes and other tangible or intangible proprietary information or material that are used to conduct its business as currently conducted, including without limitation the technology, information, databases, data lists, data compilations, and all proprietary rights developed or discovered or used in connection with or contained in all versions and implementations of any World Wide Web sites, free and clear of all liens, claims and encumbrances (including without limitation licensing and distribution rights) all of which are "Intellectual Property." Section 2.11 of the Company Disclosure Schedule contains an accurate and complete (i) list of all patents and patent applications and all trademarks (indicating registered and unregistered trademarks) and applications therefor, registered copyrights, trade names, service marks and Internet domain names owned or licensed by the Company, including the jurisdictions in which each such Intellectual Property right has been issued or registered or in

which any such application for such issuance or registration has been filed, (ii) list of all material written licenses, sublicenses and other agreements to which the Company is a party and pursuant to which any person is authorized to use any Intellectual Property rights of the Company, and (iii) list of all material written licenses, sublicenses and other agreements as to which the Company is a party and pursuant to which the Company is authorized to use any third party Intellectual Property (“Company Third Party Intellectual Property Rights”). The Company is not a party to any oral license, sublicense or agreement which, if reduced to written form, would be required to be listed in Section 2.11 of the Company Disclosure Schedule under the terms of this Section 2.11(a).

(b) All of the Company’s patents, copyrights, trademarks, trade names or Internet domain name registrations related to its current or currently proposed business are valid and in full force and effect and will not be altered or impaired by the consummation of the transactions contemplated hereby. The Company is not, and will not be as a result of the execution and delivery of this Agreement or the performance of the Company’s obligations under this Agreement, in breach of any license, sublicense or other agreement relating to the Company’s Intellectual Property or Company Third Party Intellectual Property Rights.

(c) Neither the Company nor, to the Company’s knowledge, any of the Company’s employees has received a claim, or is aware of a reasonable basis for a claim, of infringement or violation of any Intellectual Property right of any third party. The manufacturing, marketing, licensing or sale of the Company’s products or performance of the service offerings of the Company do not infringe or violate any Intellectual Property right of any third party; and, to the knowledge of the Company, the Intellectual Property rights of the Company are not being infringed or violated by activities, products or services of any third party.

2.12 **Contracts.** Section 2.12 of the Company Disclosure Schedule lists all material written agreements to which the Company is a party or by which it is bound, including but not limited to any of the following contracts to the extent that the payments thereunder exceed \$_____ per year:

(a) any written arrangement for the provision of products or services to customers or other third parties;

(b) any written arrangement for the purchase of raw materials, commodities, supplies, products or other personal property or for the receipt of consulting or other services;

(c) any written arrangement establishing a partnership, joint venture development, marketing or distribution arrangement;

(d) any written arrangement under which it has created, incurred, assumed, or guaranteed (or may create, incur, assume, or guarantee) indebtedness (including capitalized lease obligations) or under which it has imposed (or may impose) a Security Interest on any of its assets, tangible or intangible;

(e) any written arrangement concerning confidentiality or noncompetition (other than standard confidentiality agreements between the Company and any of its employees in the ordinary course of business and standard non-disclosure agreements with third parties incurred in the ordinary course of business;

(f) any written agreement, contract or commitment that calls for fixed and/or contingent payments or expenditures by or to the Company (including without limitation any advertising or revenue sharing arrangement).

(g) any written outstanding sales or advertising contract, commitment or proposal (including, without limitation, insertion orders, slotting agreements or other agreements under which Company has allowed third parties to advertise on or otherwise be included in Company's World Wide Web site)

(h) any written agreements, contracts or commitments with officers, employees, agents, consultants, advisors, salesmen, sales representatives, distributors or dealers that are not cancelable by Company "at will" and without liability, penalty or premium.

(i) any written employment, independent contractor or similar agreement, contract or commitment that is not terminable on thirty (30) days' notice or less without penalty, liability or premium of any type, including, without limitation, severance or termination pay.

(j) any written arrangement involving any of the Company Shareholders or their affiliates ("Affiliates"), as defined in Rule 12b-2 under the Securities Exchange Act of 1934, as amended (the "Exchange Act").

The Company is not a party to any oral contract, agreement or other arrangement which, if reduced to written form, would be required to be listed in Section 2.12 of the Company Disclosure Schedule. All of the agreements listed in the Company Disclosure Schedule to which the Company is a party are valid, binding, in full force and effect and enforceable by the Company in accordance with their respective terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and except that the availability of equitable remedies is subject to the discretion of the court before which any proceeding therefor may be brought (whether at law or in equity). To the Company's knowledge, no party to any such contract intends to cancel, withdraw, modify or amend such contract, agreement or arrangement. The Company is not in default under or in breach or violation of, nor, to the Company's knowledge, is there any valid basis for any claim of default by the Company under, or breach or violation by the Company of, any material provision of any contract listed on the Company Disclosure Schedule. To Company's knowledge, no other party is in default under or in breach or violation of, nor is there any valid basis for any claim of default by any other party under or any breach or violation by any other party of, any such contract.

2.13 Accounts Receivable. All accounts receivable of the Company, if any, reflected on the Company's Most Recent Balance Sheet are valid receivables, and, to the Company's

knowledge, are subject to no setoffs or counterclaims and are current and collectible (within 90 days after the date on which it first became due and payable), net of the applicable reserve for bad debts on the Company's Most Recent Balance Sheet. All accounts receivable reflected in the financial or accounting records of the Company that have arisen since the Company's Most Recent Balance Sheet Date are valid receivables, and to the Company's knowledge, subject to no setoffs or counterclaims and are collectible, net of a reserve for bad debts in an amount proportionate to the reserve shown on the Company's Most Recent Balance Sheet.

2.14 Insurance. Section 2.14 of the Company Disclosure Schedule sets forth a true, correct and complete list of all insurance policies covering the assets, business, equipment, properties, operations, employees, officers and directors of the Company. There is no claim by the Company pending under any of such policies as to which coverage has been questioned, denied or disputed by the underwriters of such policies or bonds. All premiums due and payable under all such policies have been paid and the Company is otherwise in compliance in all material respects with the terms of such policies. Such policies of insurance are of the type and in amounts customarily carried by persons conducting businesses similar to those of the Company. The Company has no knowledge of any threatened termination of, or material premium increase with respect to, any of such policies.

2.15 Litigation. Section 2.15 of the Company Disclosure Schedule identifies, and contains a brief description of, (a) any unsatisfied judgment, order, decree, stipulation or injunction issued by or enforceable by a Governmental Entity, or (b) any complaint, action, suit, proceeding, or hearing or, to the Company's knowledge any investigation of or in, any Governmental Entity or before any arbitrator to which the Company or is a party or, to the knowledge of the Company, is threatened to be made a party. None of the complaints, actions, suits, proceedings, hearings, and investigations set forth in Section 2.15 of the Company Disclosure Schedule could reasonably be expected to have a Material Adverse Effect.

2.16 Employees. Section 2.16 of the Company Disclosure Schedule contains a list of all current employees of the Company, along with the position and the annual rate of compensation of each such person. Each current and former employee to the Company has entered into a confidentiality and assignment of inventions assignment agreement with the Company, a copy of each of which has previously been made available to the Buyer. To the knowledge of the Company, no key employee or group of employees has any plans to terminate employment with the Company. The Company is not a party to or bound by any collective bargaining agreement, nor has it experienced any strikes, grievances, claims of unfair labor practices or other collective bargaining disputes. The Company has no knowledge of any organizational effort made or threatened, either currently or since its inception, by or on behalf of any labor union with respect to employees of the Company.

2.17 Employee Benefits.

(a) The Company has no "Employee Benefit Plans" as defined in the Employee Retirement Income Security Act of 1974 as amended.

(b) Except as set forth in Company Disclosure Schedule 2.17, the Company has no: (i) written, and, to the Company's knowledge, oral, agreement with any director, officer or other employee of the Company and affiliates (A) the benefits of which are contingent, or the terms of which are materially altered, upon the occurrence of a transaction involving the Company or its affiliates of the nature of any of the transactions contemplated by this Agreement, (B) providing any term of employment or compensation guarantee or (C) providing severance benefits or other benefits after the termination of employment of such director, officer or employee; (ii) agreement, plan or arrangement under which any person may receive payments from the Company or its affiliates that may be subject to the tax imposed by Section 4999 of the Code or included in the determination of such person's "parachute payment" under Section 280G of the Code; and (iii) agreement or plan binding the Company or its affiliates, including without limitation any stock option plan, stock appreciation right plan, restricted stock plan, stock purchase plan, severance benefit plan, or any Company Employee Benefit Plan, any of the benefits of which will be increased, or the vesting of the benefits of which will be accelerated, by the occurrence of any of the transactions contemplated by this Agreement or the value of any of the benefits of which will be calculated on the basis of any of the transactions contemplated by this Agreement.

2.18 Permits. Section 2.18 of the Company Disclosure Schedule sets forth a list of all permits, licenses, registrations, certificates, orders or approvals from any Governmental Entity (including without limitation those issued or required under Environmental Laws and those relating to the occupancy or use of owned or leased real property) ("Permits") issued to or held by the Company that are material to the operation of its business. Such listed Permits are the only Permits that are required for the Company to conduct its business as presently conducted or as currently proposed to be conducted, except for those the absence of which could not reasonably be expected to have any Material Adverse Effect. Each such Permit is in full force and effect.

2.19 Certain Business Relationships With Affiliates. No Affiliate of the Company (a) owns any property or right, tangible or intangible, which is used in the business of the Company, (b) has any claim or cause of action against the Company, (c) owes any money to the Company, or (d) has loaned any money to the Company.

2.20 Brokers' Fees. Except as listed on Section 2.20 of the Company Disclosure Schedule, the Company has no liability or obligation to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement.

2.21 Minute Books. The minute books and other similar records of the Company Capital Stock contain true and complete records in all material respects of all actions taken at any meetings of the Company's shareholders, Board of Directors or any committee thereof and of all written consents executed in lieu of the holding of any such meeting, and all charter and bylaw documents and amendments thereto. All of these documents have been delivered to counsel for the Buyer.

2.22 Customers and Suppliers. No material licensor to or supplier of the Company has indicated to an executive officer of the Company since the Company's inception that it will stop, or decrease the rate of, licensing intellectual property or supplying materials, products or services to the Company (and no officer of the Company is aware of any such indication) and no material customer of the Company has indicated to an executive officer of the Company since the Company's inception that it will stop, or decrease the rate of, buying, leasing or licensing materials, products or services from the Company (and no executive officer of the Company is aware of any such indication).

2.23 Corporate Approvals. The Board of Directors of Company has (i) approved this Agreement and the Merger and (ii) determined that the Merger is in the best interests of the shareholders of the Company and is on terms that are fair to such shareholders. The Shareholder Consent represents the only vote of the holders of any of the shares of Company Capital Stock necessary to approve this Agreement and the transactions contemplated hereby.

2.24 Third Party Consents. No consent or approval is needed from any third party in order to effect the Merger, this Agreement or any of the transactions contemplated hereby, except for Hart-Scott-Rodino clearance and securities law related approvals or permits.

2.25 Environmental Matters. The Company is in compliance with all applicable Environmental Laws (which compliance includes the possession by the Company of all governmental permits required under applicable Environmental Laws), except where the failure to be in such compliance would not have a Material Adverse Effect on the Company. The Company has not received any written notice or other written communication from a Governmental Entity at any time since _____ that alleges that the Company is not in compliance with any Environmental Law. To the knowledge of the Company, no current or prior owner of any property leased or controlled by the Company has received any written notice or other written communication from a Governmental Entity at any time since _____, that alleges that such current or prior owner or the Company is not in compliance with any Environmental Law. (For purposes of this Section 2.25, "Environmental Law" means any legal requirement relating to pollution or protection of human health or the environment (including ambient air, surface water, ground water, land surface or subsurface strata), including any law or regulation relating to emissions, discharges or releases of chemicals, pollutants, contaminants, wastes, toxic substances, petroleum and petroleum products or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of chemicals, pollutants, contaminants, wastes, toxic substances, petroleum and petroleum products.)

2.26 Disclosure. No representation or warranty by the Company contained in this Agreement, and no statement contained in the final Company Disclosure Schedule or in the final form of any other Transaction Document delivered to or to be delivered by the Company pursuant to this Agreement, contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact necessary, in light of the circumstances under which it was or will be made, in order to make the statements herein or therein not misleading.

