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Reference:  
(Sub Account)

Date:

5/12/06

Requestor Name: Carlton Fields

Address: Post Office Drawer 190  
Tallahassee, Florida 32302

Telephone: (850) 224-1585

Contact Name: Kim Pullen, CLA (ext. 5261)

Corporation Name:

Gold Standard, Inc.

Entity Number:

P93000038329

Authorization:

Kim Pullen

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Client:

51426

Matter:

28302

Name:

Lick Denman

Office:

TPA

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Client: 51426 Matter: 28302

Name: Rick Dorman Office: TPA

**ARTICLES OF MERGER OF**  
**GOLD STANDARD ACQUISITION CORPORATION**  
**(a Florida corporation)**

**WITH AND INTO**

**GOLD STANDARD, INC.**  
**(a Florida corporation)**

06 MAY 12 AM 8:50  
FILED  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

---

Pursuant to Sections 607.1105  
of the Florida Business Corporation Act

---

Pursuant to Section 607.1105 of the Florida Statutes, these Articles of Merger provide as follows:

**ARTICLE I**  
**Surviving Corporation**

The name and state of each of the constituent corporations of the merger is as follows:

<b>Name</b>	<b>State of Organization</b>
Gold Standard Acquisition Corporation	Florida
Gold Standard, Inc.	Florida

Gold Standard, Inc., a Florida corporation, shall be the surviving entity.

**ARTICLE II**  
**Agreement and Plan of Merger**

The Agreement and Plan of Merger providing for the merger of Gold Standard Acquisition Corporation and Gold Standard, Inc. is attached hereto as Exhibit A.

**ARTICLE III**  
**Approval of the Plan**

In accordance with Florida Law, the Board of Directors of Gold Standard Acquisition Corporation approved and adopted the Agreement and Plan of Merger pursuant to an action by unanimous written consent in accordance with Section 607.0821 of the Florida Statutes, and recommended approval of the Agreement and Plan of Merger to the sole shareholder of Gold Standard Acquisition Corporation. The sole shareholder of Gold Standard Acquisition

Corporation approved the Agreement and Plan of Merger on April 14, 2006, pursuant to an action by written consent in accordance with Section 607.0704 of the Florida Statutes.

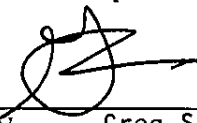
In accordance with Florida Law, on April 13, 2006, the Board of Directors of Gold Standard, Inc. approved and adopted the Agreement and Plan of Merger and voted to submit the Agreement and Plan of Merger to a vote of the shareholders of Gold Standard, Inc. with a unanimous recommendation that the Agreement and Plan of Merger be approved by its shareholders. The Agreement and Plan of Merger, having been so submitted to the shareholders of Gold Standard, Inc., was approved and adopted by the shareholders of Gold Standard, Inc. on April 27, 2006.

**ARTICLE IV**  
**Effective Time**

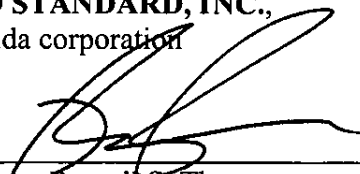
These Articles of Merger shall become effective on the date and at the time filed by the Department of State of the State of Florida.

**IN WITNESS WHEREOF**, the undersigned and authorized executive officer of Gold Standard Acquisition Corporation and the undersigned Chief Executive Officer of Gold Standard, Inc. have caused these Articles of Merger to be executed this 28<sup>th</sup> day of April, 2006.

**GOLD STANDARD ACQUISITION  
CORPORATION**  
a Florida corporation

By:   
Name: Greg Samios  
Title: Vice President

**GOLD STANDARD, INC.,**  
a Florida corporation

By:   
Name: Russell S. Thomas  
Title: Chief Executive Officer

**EXHIBIT A**

**AGREEMENT AND PLAN OF MERGER**

---

**AGREEMENT AND PLAN OF MERGER**

**BY AND AMONG**

**ELSEVIER INC.**

**AND**

**GOLD STANDARD ACQUISITION CORPORATION**

**AND**

**GOLD STANDARD, INC.**

**AND**

**THE PRINCIPAL STOCKHOLDERS OF  
GOLD STANDARD, INC.**

**DATED**

**April 17, 2006**

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## **AGREEMENT AND PLAN OF MERGER**

**THIS AGREEMENT AND PLAN OF MERGER** (with all exhibits, schedules and other attachments hereto, this "**Agreement**") is made and entered into this 17th day of April, 2006, by and among **ELSEVIER INC.** ("**Parent**"), a New York corporation; **GOLD STANDARD ACQUISITION CORPORATION** ("**Acquisition**"), a Florida corporation; **GOLD STANDARD, INC.** ("**GS**"), a Florida corporation; each of the individuals and entities listed on Schedule A-1 hereto (referred to herein individually as a "**Principal Stockholder**" and collectively as the "**Principal Stockholders**"); and those individuals listed on Schedule A-2, not in their individual capacities, but as attorneys-in-fact and agents for and on behalf of the Principal Stockholders as contemplated by this Agreement (the "**Stockholder Agents**").

### **WITNESSETH:**

**WHEREAS**, Acquisition is a wholly-owned subsidiary of Parent; and

**WHEREAS**, Schedule A-3 hereto contains a list of all of the stockholders of GS (the "**Stockholders**"), along with the number of shares of Common Stock, shares of Series A Preferred Stock, shares of Series B-1 Preferred Stock and shares of Series B-2 Preferred Stock (collectively, the "**GS Stock**"), owned by each Stockholder; and

**WHEREAS**, the Principal Stockholders own not less than 90% of the issued and outstanding shares of GS Stock; and

**WHEREAS**, the respective Boards of Directors of GS and Acquisition have determined that the merger of Acquisition with and into GS (the "**Merger**"), upon the terms and conditions set forth in this Agreement and in the Articles of Merger attached hereto as Exhibit A (the "**Articles of Merger**"), would be advisable and in the best interests of their respective corporations, and have approved the Merger, pursuant to which each share of GS Stock issued and outstanding immediately prior to the Effective Time (as defined herein) will, except as otherwise provided herein, be converted into the right to receive the Merger Consideration (as defined herein); and

**WHEREAS**, the Principal Stockholders have agreed to vote all the shares of GS Stock owned by them in favor of the Merger, this Agreement and the Articles of Merger, in accordance with all applicable laws.

**NOW, THEREFORE**, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth herein, and other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, and intending to be legally bound, Parent, GS, Acquisition and the Principal Stockholders hereby agree as follows:

## ARTICLE 1 THE MERGER

1.1 **The Merger.** At the Effective Time (as defined below) and subject to the terms and conditions contained in this Agreement and in accordance with the Florida Business Corporation Act ("FBCA"), Acquisition will merge with and into GS, the separate existence of Acquisition shall cease, and GS shall continue as the surviving corporation under the corporate name it possesses immediately prior to the Effective Time. GS, in its capacity as the corporation surviving the Merger, is hereinafter sometimes referred to as the "**Surviving Corporation.**" Acquisition and GS are sometimes referred to herein as the "**Constituent Corporations.**" The Merger shall be consummated pursuant to the terms of this Agreement and the Articles of Merger, which is incorporated hereby by reference. As a result of the Merger, all of the shares of capital stock of the Constituent Corporations shall be converted or cancelled in the manner provided in Article 2 hereof.

1.2 **Effective Time.** Subject to the provisions of this Agreement, on the Closing Date (as defined below) the Articles of Merger shall be filed with the Secretary of State of the State of Florida as provided in the Florida Business Corporation Act, as amended (the "FBCA"). The Merger shall become effective on the date and at the time as provided in the Articles of Merger (the "**Effective Time**").

1.3 **Effect of the Merger.** At the Effective Time, the effects of the Merger shall be as provided in this Agreement, the Articles of Merger and the applicable provisions of the FBCA. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time all the property, rights, privileges, powers and franchises of GS and Acquisition shall vest in the Surviving Corporation, and all debts, liabilities and duties of GS and Acquisition shall become the debts, liabilities and duties of the Surviving Corporation, except as specifically provided herein.

1.4 **Directors and Officers of the Surviving Corporation.** The directors of Acquisition immediately prior to the Effective Time shall be the directors of the Surviving Corporation until the earlier of their death, resignation or removal or until their respective successors are duly elected or appointed and qualified. The officers of Acquisition immediately prior to the Effective Time shall be the officers of the Surviving Corporation until the earlier of their death, resignation or removal or until their respective successors are duly elected or appointed and qualified.

1.5 **Articles of Incorporation; Bylaws.** The articles of incorporation of GS, as in effect immediately prior to the Effective Time, shall be the articles of incorporation of the Surviving Corporation until thereafter changed or amended as provided therein or by applicable law, provided, that Parent shall be entitled, in its sole discretion, to amend and/or restate such articles of incorporation simultaneously with the Effective Time. The bylaws of Acquisition in effect immediately prior to the Effective Time shall be the bylaws of the Surviving Corporation, until thereafter changed or amended as provided therein or by applicable law.

1.6 **Subsequent Actions.** If at any time after the Effective Time the Surviving Corporation considers or is advised that any deeds, bills of sale, instruments of conveyance,



assignments, assurances or any other actions or things are necessary or desirable to vest, perfect or confirm of record or otherwise in the Surviving Corporation its right, title or interest in, to or under any of the rights, properties or assets of either of GS or Acquisition acquired or to be acquired by the Surviving Corporation as a result of, or in connection with, the Merger or otherwise to carry out this Agreement, the officers and directors of the Surviving Corporation shall be authorized to execute and deliver, in the name and on behalf of either GS or Acquisition, all such deeds, bills of sale, instruments of conveyance, assignments and assurances and to take and do, in the name and on behalf of each of such corporations or otherwise, all such other actions and things as may be necessary or desirable to vest, perfect or confirm any and all right, title and interest in, to and under such rights, properties or assets in the Surviving Corporation or otherwise to carry out this Agreement.

**1.7 Appointment of Stockholder Agents.**

**1.7.1 Appointment.** Upon the approval of the Merger by the Stockholders in accordance with the FBCA, each of the Stockholders does hereby irrevocable appoint each of the Stockholder Agents the attorneys-in-fact and agents of such Stockholder following the Merger for purposes of execution and delivery of such documents and the taking of such action on behalf of each such Stockholder as may be necessary to consummate the transactions contemplated by this Agreement. All action taken by the Stockholder Agents shall be binding upon each of the Stockholders and Parent, Acquisition, the Exchange Agent and the Escrow Agent may rely thereon.

**1.7.2 Authority.** The Stockholder Agents shall have full power and authority from the Effective Time until all indemnification rights hereunder have been satisfied or otherwise expired to execute, deliver, and receive on the Stockholders' behalf all notices, requests, and other communications hereunder; to agree to negotiate, enter into settlements and compromises of, and comply with order of courts with respect to any indemnification claim pursuant to Article 10; to litigate, defend, enforce or take any other actions and execute the Escrow Agreement and any other documents that the Stockholder Agents deem advisable in connection with enforcing any rights or obligations or defending any claim or action under this Agreement on behalf of the Stockholders and to take such other action on their behalf in connection with this Agreement, the Closing, and the transactions contemplated hereby as such Stockholder Agents deem appropriate; provided, however, that no such waiver, amendment or modification may be made if it would decrease the amount or kind of Merger Consideration (as defined below) to be paid to the Stockholders under Article 2 hereof or increase the extent of their obligation to indemnify Parent or Acquisition under Article 10 hereof.

**1.7.3 Authorization of Actions.** Any action or decision required of the Stockholder Agents shall be authorized if a majority of the Stockholder Agents approves such action or decision. The Stockholder Agents shall not be (i) liable for any action lawfully taken or omitted to be taken by them in good faith under or in connection with this Agreement, or (ii) responsible in any manner to any of the Stockholders for any recitals, statements, representations or warranties made by GS or for any failure of GS to perform its obligations under this Agreement. The Stockholder Agents shall not be under any obligation to ascertain or to inquire as to the observance or performance of any of the

agreements contained in, or conditions of, this Agreement. Notwithstanding the foregoing, this provision shall not relieve any Stockholder Agent of any liability or responsibility that it may have under this Agreement or otherwise in its individual capacity and not as attorneys-in-fact or agents.

1.7.4 **Successor Stockholder Agents.** In the event of (i) the death or permanent disability of a Stockholder Agent, or (ii) his, her or its resignation as a Stockholder Agent, a successor Stockholder Agent shall be elected by the remaining Stockholder Agents or by a majority of the shares of GS Stock held by the Principal Stockholders. Each successor Stockholder Agent shall have all of the power, authority, rights and privileges conferred by this Agreement upon the original Stockholder Agent, and the term "Stockholder Agents" as used herein shall be deemed to include any successor Stockholder Agent.

1.7.5 **Appointment Coupled with an Interest.** The appointment by each of the Stockholders of each Stockholder Agent as attorney-in-fact and agent of the Stockholders is coupled with an interest and is irrevocable and shall not terminate or otherwise be affected by the death, disability, incompetence, bankruptcy or insolvency of any Stockholder.

## ARTICLE 2

### MERGER CONSIDERATION, ESCROW AND POST-CLOSING ADJUSTMENT

#### 2.1 **Conversion of Stock; Merger Consideration.**

2.1.1 **Conversion of GS Stock and GS Options.** At the Effective Time, by virtue of the Merger and without any action on the part of the holder thereof, the GS Stock outstanding immediately prior thereto and the options and warrants of GS outstanding immediately prior thereto shall no longer be outstanding and shall automatically be cancelled and retired and converted into the right to receive the cash payment specified in this Section 2.1.1, subject to the adjustments provided herein, and each holder of a share of GS Stock, option or warrant shall cease to have any rights with respect to such stock, option or warrant other than the right to receive with respect thereto the cash payment specified in this Section 2.1.1(a)-(e) below, subject to the adjustments provided herein, without interest, upon the surrender of the certificate or agreement representing such stock, option or warrant. The surrender of any such options or warrants shall be deemed a release of any and all rights the holder had or may have had in respect of such option or warrant. In addition, the right of any holder of any such option or warrant to receive the cash payment specified in this Section 2.1.1 shall be subject to and reduced by the amount of any required tax withholding obligation.

(a) Each share of Common Stock issued and outstanding immediately prior to the Effective Time (excluding shares held by GS as treasury stock, which shares shall be cancelled and extinguished at the Effective Time with no cash or securities or other consideration payable in respect thereof) shall at the Effective Time, by virtue of the Merger and without any action on the part of the holder

thereof, be converted into the right to receive \$10.8961 per share, without interest (the “**Common Stock Cash Consideration**”).

(b) Each share of Series A Preferred Stock issued and outstanding immediately prior to the Effective Time (excluding shares held by GS as treasury stock, which shares shall be cancelled and extinguished at the Effective Time with no cash or securities or other consideration payable in respect thereof) shall at the Effective Time, by virtue of the Merger and without any action on the part of the holder thereof (and notwithstanding the terms and provisions of GS’s Articles of Incorporation), be converted into the right to receive \$69.8138 per share, without interest (the “**Series A Preferred Stock Cash Consideration**”).

(c) Each share of Series B-1 Preferred Stock issued and outstanding immediately prior to the Effective Time (excluding shares held by GS as treasury stock, which shares shall be cancelled and extinguished at the Effective Time with no cash or securities or other consideration payable in respect thereof) shall at the Effective Time, by virtue of the Merger and without any action on the part of the holder thereof, be converted into the right to receive \$13.7361 per share, without interest (the “**Series B-1 Preferred Stock Cash Consideration**”).

(d) Each share of Series B-2 Preferred Stock issued and outstanding immediately prior to the Effective Time (excluding shares held by GS as treasury stock, which shares shall be cancelled and extinguished at the Effective Time with no cash or securities or other consideration payable in respect thereof) shall at the Effective Time, by virtue of the Merger and without any action on the part of the holder thereof, be converted into the right to \$13.7361 per share, without interest (the “**Series B-2 Preferred Stock Cash Consideration**”).

(e) Each of the options and warrants to purchase shares of GS Stock, granted under any stock option, compensation plan or arrangement or otherwise, all of which options and warrants are listed on Schedule 4.3, shall be immediately vested and cancelled at the Effective Time and, by virtue of the Merger and without any action on the part of the holder, shall be converted into the right to receive at the Effective Time or as soon as practicable thereafter in consideration for such cancellation an amount in cash as determined under the terms of exercise of such options and warrants prior to such cancellation and as set forth on Schedule 2.1.1(e), without interest (the “**Option/Warrant Consideration**”). After the Effective Time, any cancelled option shall no longer be exercisable by the holder thereof, but shall only entitle such holder to the Option/Warrant Consideration and no person shall have any right under any plan, program or other arrangement with respect to the equity securities of GS, the Surviving Corporation or any of their subsidiaries.

The Common Stock Cash Consideration, Series A Preferred Stock Cash Consideration, Series B-1 Preferred Stock Cash Consideration, Series B-2 Preferred Stock Cash Consideration and the Option/Warrant Consideration are collectively referred to herein as the “**Merger Consideration.**” Notwithstanding anything contained herein to the

contrary, in no event shall the Merger Consideration exceed Sixty-One Million and 00/100 Dollars (\$61,000,000) plus any additional payment required by Parent pursuant to Section 2.4.1(f)(ii) of this Agreement. The Merger Consideration is subject to the adjustments and withholdings provided for herein. Any Merger Consideration that is withheld pursuant to this Agreement and subsequently distributed by the Stockholder Agents to the Stockholders pursuant to Sections 2.3.1 and 2.3.2 hereto shall be distributed in the same proportion as provided in Section 2.1.1(a)-(e). The Merger Consideration has been determined and allocated to the Stockholders and option/warrant holders in accordance with Schedule 2.1.1.

2.1.2 **Conversion of Acquisition Common Stock.** Each share of common stock, par value \$0.01 per share, of Acquisition issued and outstanding immediately prior to the Effective Time, shall be converted into one (1) fully paid and non-assessable share of common stock, par value \$.01 per share, of the Surviving Corporation.

2.1.3 **Exchanging Certificates and Option and Warrant Agreements for Payment of Merger Consideration.** The procedures for exchanging outstanding shares of GS Stock, options and warrants for Merger Consideration pursuant to the Merger are as follows:

(a) **Exchange Agent.** Prior to the Effective Time, Parent and Acquisition shall designate a United States bank or trust company, which shall act as exchange agent (the "Exchange Agent") for the payment of Merger Consideration upon surrender of certificates representing GS Stock and certificates or agreements representing options or warrants, and for no other purpose. Immediately following the Effective Time, Parent shall cause the Surviving Corporation to provide to the Exchange Agent from funds contributed to or otherwise provided to the Surviving Corporation by Parent cash in immediately available funds in an amount sufficient to pay the Merger Consideration, less the amounts withheld pursuant to Section 2.3 hereof (such cash being hereinafter referred to as the "Exchange Fund"). The monies in the Exchange Fund may, as directed by the Surviving Corporation (so long as such directions do not impair the rights of holders of shares of GS Stock, options and warrants to receive the Merger Consideration (less the amounts withheld pursuant to Section 2.3) promptly upon the surrender of their shares of GS Stock and certificates or agreements representing options or warrants in accordance with this Agreement), be invested by the Exchange Agent in direct obligations of the United States of America, obligations for which the full faith and credit of the United States of America is pledged to provide for the payment of principal and interest, commercial paper rated of the highest quality by Moody's Investors Services, Inc. or Standard & Poor's Corporation, or certificates of deposit issued by a commercial bank having at least \$1,000,000,000 in assets. Any and all interest earned on funds made available to the Exchange Agent pursuant to this Agreement shall be paid to Parent. Deposit of funds with the Exchange Agent shall not relieve the Surviving Corporation of its obligations to make payments in respect of the shares of GS Stock or in respect of options or warrants pursuant to the terms of this Agreement.

(b) **Exchange Procedures.** Promptly after the Effective Time, the Surviving Corporation shall irrevocably instruct the Exchange Agent and the Exchange Agent shall mail and/or make available to each holder of record of a certificate or certificates which immediately prior to the Effective Time represented outstanding shares of GS Stock (the “**Certificates**”) whose shares of GS Stock were converted pursuant to Section 2.1.1 into the right to receive Merger Consideration (less the amounts withheld pursuant to Section 2.3 hereof) (i) a letter of transmittal (which shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon delivery of the Certificates to the Exchange Agent, and shall be in such form and have such other provisions as Surviving Corporation may reasonably specify) and (ii) instructions for use in effecting the surrender of the Certificates in exchange for the applicable Merger Consideration. As promptly as practicable after surrender of a Certificate for cancellation to the Exchange Agent or to such other agent or agents as may be appointed by Surviving Corporation, together with such letter of transmittal, duly executed, and such other documents as may reasonably be required by the Exchange Agent, the holder of such Certificate shall be paid in exchange therefor, subject to any required withholding of taxes, the amount of cash that such holder is entitled to receive as Merger Consideration (less the amounts withheld pursuant to Section 2.3 hereof) represented by such Certificate pursuant to the provisions of this Article 2 and the Certificate so surrendered shall immediately be cancelled. Until surrendered as contemplated by this Section 2.1.3, each Certificate (other than those representing Dissenting Stock) shall be deemed at any time after the Effective Time to represent only the right to receive upon such surrender of the Certificate the amount of cash, without interest, that the holder thereof is entitled to receive as Merger Consideration with respect to the shares of GS Stock theretofore represented by such Certificate, subject to amounts withheld pursuant to Section 2.3 hereof and any required withholding of taxes. Promptly after the Effective Time, the Surviving Corporation shall irrevocably instruct the Exchange Agent and the Exchange Agent shall take similar actions to address payment of cash with respect to options and warrants taking into full account the need to withhold all applicable taxes with respect to the consideration paid in connection with such options and warrants consistent with the provisions of Section 2.1.3(f).

(c) **No Further Ownership Rights in GS Stock.** Delivery of the Merger Consideration in accordance with the terms of this Section 2.1.3 upon conversion of any shares of GS Stock and any options or warrants in the Merger shall be deemed to have paid and satisfied in full all rights pertaining to such shares of GS Stock or such options or warrants, as the case may be, and from and after the Effective Time there shall be no further registration of transfers on the stock transfer books of the Surviving Corporation of the shares of GS Stock which were outstanding immediately prior to the Effective Time and no further exercises of options or warrants. If, after the Effective Time, Certificates or option or warrant agreements or certificates are presented to the Surviving Corporation or the Exchange Agent for any reason, they shall be cancelled and exchanged as provided in this Section 2.1.3.

(d) **Termination of Exchange Fund.** Any portion of the Exchange Fund which remains undistributed to the stockholders, option holders and warrant holders of GS for 180 days after the Effective Time shall be delivered to the Surviving Corporation, upon demand of the Surviving Corporation, subject to compliance with any applicable abandoned property, escheat or similar law, and any stockholders or option holders of GS who have not previously complied with this Section 2.1.3 shall thereafter look only to Parent and the Surviving Corporation for payment of their claim for Merger Consideration, without interest; provided, however, that the Surviving Corporation shall continue to be liable for any payments required to be made thereafter under Section 2.3.1 hereof.

(e) **No Liability.** To the extent permitted by applicable law, none of Parent or the Surviving Corporation or the Exchange Agent or any of their affiliates shall be liable to any person in respect of any cash from the Exchange Fund delivered to a public official pursuant to any applicable abandoned property, escheat or similar law. If any certificate or option or warrant agreement or certificate has not been surrendered prior to five years after the Effective Time (or immediately prior to such earlier date on which Merger Consideration (less the amounts withheld or adjustments provided in Section 2.3) in respect of such certificate would otherwise escheat to or become the property of any governmental entity), any such shares, cash, dividends or distributions in respect of such certificate and any such rights in respect of such option or warrant agreement or certificate shall, to the extent permitted by applicable law, become the property of the Surviving Corporation, free and clear of all claims or interest of any person previously entitled thereto.

(f) **Withholding Rights.** The Surviving Corporation shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement to any holder of shares of GS Stock or options or warrants such amounts as it is required to deduct and withhold with respect to the making of such payment under the Code (as defined in Section 4.15.1) or any provision of state, local or foreign tax law. To the extent that amounts are so withheld by the Surviving Corporation, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the holder of the shares of GS Stock or options or warrants in respect of which such deduction and withholding was made by the Surviving Corporation. The Surviving Corporation shall provide notice of withholding to any shareholder or a holder of options or warrants to purchase Common Stock subject to withholding hereunder.

(g) **Lost Certificates and Lost Option and Warrant Agreements and Certificates.** If any certificate or any option or warrant agreement or certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming such certificate or such option or warrant agreement or certificate to be lost, stolen or destroyed and, if required by the Surviving Corporation, the posting by such person of a bond or indemnity in such reasonable amount as the Surviving Corporation may direct as indemnity against any claim that may be made against it with respect to such certificate or

such option or warrant agreement or certificate, the Exchange Agent will pay in exchange for such lost, stolen or destroyed certificate or option agreement or certificate, as the case may be, the Merger Consideration (less the amounts withheld or adjustments provided in Section 2.3) deliverable in respect thereof pursuant to this Agreement.

## 2.2 **Dissenting Stock.**

2.2.1 **Rights of Dissenting Stock.** Notwithstanding anything in this Agreement to the contrary, Dissenting Stock (as defined below) shall not be converted into the right to receive any portion of the Merger Consideration, but, instead, the holders thereof shall be entitled only to payment of the fair value of the Dissenting Stock in accordance with Section 607.1302 of the FBCA; provided, that if any holder of GS Stock who demands payment of the fair value of his, her or its GS Stock under the FBCA effectively withdraws or loses (through failure to perfect or otherwise) such holder's right to such payment, then as of the Effective Time or the occurrence of such event, whichever occurs later, such holder's Dissenting Stock shall automatically be converted and represent only the right to receive the per share pro rata portion of the Merger Consideration set forth in Section 2.1 of this Agreement (less any amounts withheld pursuant to Section 2.3 hereof) without any interest thereon, upon surrender of the certificate or certificates representing such GS Stock pursuant to Section 2.1. For the purposes of this Agreement, "Dissenting Stock" shall mean any GS Stock as to which the holder thereof is entitled to demand and has properly demanded the payment of fair value with respect to the Merger in accordance with Section 607.1302 et. seq. of the FBCA and has neither effectively withdrawn nor lost the right to such payment.

2.2.2 **Notice of Exercise of Dissenter's Rights.** GS shall promptly (but in no event later than one (1) day after receipt) notify Parent of any written demands for payment of the fair value of any GS Stock, withdrawals of such demands and any other instruments or documents received by GS in connection therewith (including all proxy cards submitted by the Stockholders and the election results related to the Stockholder Meeting). Prior to the Effective Time, GS shall give Parent the right to participate in (and, if requested, direct) any and all negotiations and proceedings with respect to demands for payment of the fair value under the FBCA; provided, that no resolution or settlement thereof shall be made without the consent of the Stockholder Agents, which shall not be unreasonably withheld. Prior to the Effective Time, GS shall not, except with the prior written consent of Parent, make any payment with respect to any such demands for payment of the fair value or settle or offer to settle any such demands.

## 2.3 **Escrow Funds.**

2.3.1 **Adjustment Escrow Fund.** GS and the Stockholders acknowledge and agree that of the Merger Consideration, Seven Hundred Fifty Thousand and 00/100 Dollars (\$750,000) (the "Adjustment Escrow Fund") shall be delivered by wire transfer of immediately available funds to Citibank, N.A. (the "Escrow Agent") to be held and administered in accordance with the terms and provisions of the Escrow Agreement attached hereto as Exhibit 2.3.1 (which shall be executed and delivered at Closing) (the

**"Escrow Agreement"**). In the event it is determined that a reduction in the Merger Consideration is required under subsections 2.4.1(f)(i) or (iii) (the amount of such reduction being herein referred to as the **"Negative Adjustment Amount"**), the Escrow Agent shall pay the amount of such Negative Adjustment Amount to Parent from the Adjustment Escrow Fund immediately upon final determination thereof, in the case of subsection 2.4.1(f)(i) less any amounts held pursuant to subsection 2.4.1(f)(iii), and in the case of subsection 2.4.1(f)(iii) as provided therein. Subject to Section 2.4.1(f)(iii), the balance remaining in the Adjustment Escrow Fund, if any, shall be distributed to the Stockholder Agents as provided in subsection 2.4.1(f); provided, however, that if the Negative Adjustment Amount exceeds the Adjustment Escrow Fund, then the Principal Stockholders shall be, severally and not jointly, liable therefor and shall immediately pay such excess amount to Parent plus accrued interest thereon at the Default Rate from the Effective Time through the date of payment in full to the Parent. If there is no Negative Adjustment Amount, the full amount on deposit in the Adjustment Escrow Fund less any amounts held under subsection 2.4.1(f)(iii) shall be immediately distributed to the Stockholder Agents. Any interest earned on the Adjustment Escrow Fund shall be apportioned between Parent and the Stockholders in the same ratio as the Adjustment Escrow Fund is apportioned. The **"Default Rate"** shall mean the annual rate equal to the prime rate as reported in The Wall Street Journal from time to time.

2.3.2 **Indemnification Escrow Fund.** GS and the Stockholders acknowledge and agree that of the Merger Consideration, Six Million One Hundred Thousand and 00/100 Dollars (\$6,100,000) (the **"Indemnification Escrow Fund"**) shall be delivered by wire transfer of immediately available funds to the Escrow Agent to be held and administered in accordance with the terms and provisions of Escrow Agreement and for purposes of being the sole and exclusive source of funds to satisfy any indemnification claims of Parent and/or Acquisition pursuant to Article 10 (except as provided in Sections 10.5 and 10.7 hereof). Pursuant to the terms and provisions of the Escrow Agreement, the Escrow Agent shall, on the first anniversary of the Closing Date, deliver to the Stockholder Agents, for disbursement to the Stockholders, an amount equal to the Indemnification Escrow Fund, plus any interest on such amount, minus (i) the amount of any payments made to any Parent Indemnified Party pursuant to a resolved claim for indemnification, (ii) the amount of any unresolved claims for indemnification and (iii) any interest on the amount described in the immediately preceding clause (ii).

2.3.3 **Payment of Transaction Expenses.** GS and the Stockholders acknowledge and agree that of the Merger Consideration, Two Million Four Hundred Sixty-Eight Thousand Four Hundred Fifty and 00/100 Dollars (\$2,468,450) shall be withheld by Parent to pay the GS Transaction Expenses listed on Schedule 2.3.3, which amount shall be promptly paid by Parent. For purposes of this Agreement, the term **"GS Transaction Expenses"** shall include all costs and expenses incurred by GS or on behalf of GS in connection with the negotiation, execution and delivery of this Agreement and the consummation of the transaction contemplated hereby, which expenses shall include, without limitation, (i) all costs and expenses incurred by any counsel or accountants retained by GS or on behalf of GS, (ii) all expenses associated with obtaining the necessary vote or approval of the Stockholders pursuant to Section 7.11 hereof or providing the notices required by Section 2.2.2 or Section 7.12 hereof, (iii) any stock or



other property transfer taxes, excise, sales or use taxes (including, without limitation, real property transfer or gain taxes) arising from the consummation of the Merger, (iv) the fees and commissions of any broker, investment bank or similar agent retained by GS in connection with the transactions contemplated hereby, and (v) the fees and expenses of GS contemplated by Section 11.4 hereof.

## **2.4 Post-Closing Adjustment of Merger Consideration.**

**2.4.1 Closing Balance Sheet Preparation.** As soon as practicable after the Closing, but in any event not later than sixty (60) days after the Closing Date, the Stockholder Agents will deliver to Parent a balance sheet of GS (together with the notes thereto), as of 11:59 p.m. Tampa time on the Closing Date (the "**Closing Balance Sheet**"), audited by Grant Thornton (the "**Independent Auditor**"). Parent's independent accountants shall have the right to observe all aspects of the audit and shall have access to all audit workpapers generated by the Independent Auditor in conducting such audit.

(a) **Basis for Preparation of Closing Balance Sheet.** The Closing Balance Sheet: (i) shall fairly represent the financial position of GS as of the Closing Date; (ii) shall be prepared in accordance with generally accepted accounting principles, consistently applied; (iii) shall include line item titles consistent with those in the balance sheet of GS at March 31, 2005, audited by the Independent Auditor (the "**2005 Audited Balance Sheet**"); and (iv) shall be prepared in accordance with the accounting policies and practices set forth in the notes to the GS Audited Financial Statements for the year ended March 31, 2005.

(b) **Computation of Closing Net Working Capital.** Based on the Closing Balance Sheet, the Independent Auditor shall compute the Closing Net Working Capital of GS in the manner provided in the following sentence of this subsection and deliver a statement of Closing Net Working Capital to Parent at the time of delivery of the Closing Balance Sheet. For purposes of this Agreement, the term "**Closing Net Working Capital**" shall mean the total current assets excluding any deferred income taxes of GS as reflected on the Closing Balance Sheet minus the total current liabilities excluding any deferred income taxes, but including any unearned revenue of GS as reflected on such Balance Sheet. For purposes of calculating the Closing Net Working Capital, all GS Transaction Expenses that remain outstanding as of the Closing Date shall be included on the Closing Balance Sheet as a current liability. Schedule 2.4.1(b) is an example of how the Closing Net Working Capital would be calculated assuming the Closing occurred on February 28, 2006.

(c) **Review by Parent.** Parent will, promptly after delivery to it of the Closing Balance Sheet and the Closing Net Working Capital statement (and all workpapers and underlying records relating thereto), review the same, and within forty-five (45) days after delivery of the Closing Balance Sheet and Closing Net Working Capital statement (and all workpapers and underlying records relating thereto) deliver a notice to the Stockholder Agents either: (i) concurring in the preparation of the Closing Balance Sheet and the Closing Net Working Capital

statement (“**Notice of Concurrence**”); or (ii) disagreeing therewith (“**Notice of Disagreement**”). If Parent shall deliver a Notice of Disagreement, it shall concurrently deliver to the Stockholder Agents a report setting forth its proposed revisions to the Closing Balance Sheet and its calculation of the Closing Net Working Capital. Failure by Parent to deliver a Notice of Disagreement and proposed revisions within the time specified shall be deemed to constitute a Notice of Concurrence.

(d) **Resolution of Disagreements.** If a Notice of Disagreement is delivered pursuant to subsection 2.4.1(c), the parties shall, during the thirty (30) days following such delivery (“**Negotiation Period**”), use commercially reasonable efforts to reach agreement as to the amount of the Closing Net Working Capital. If, during such period, the parties are unable to reach agreement, they shall promptly thereafter (but in no event later than thirty (30) days from the end of the Negotiation Period) engage a firm of independent accountants of national recognized standing reasonably satisfactory to the Stockholder Agents and Parent, to resolve the disagreement. Such independent accountants shall promptly review this Agreement, the Closing Balance Sheet and the reports accompanying the Notice of Disagreement and such other documents and workpapers and shall have access to such personnel as they reasonably deem necessary. Such independent accountants shall, as promptly as practicable, deliver to the Stockholder Agents and Parent a report setting forth a balance sheet for GS as of the Closing Date and a statement of Closing Net Working Capital both prepared in accordance with the terms of this Agreement. Such report shall be final, conclusive and binding upon the parties hereto, absent fraud or manifest error.

(e) **Expenses.** The fees and expenses of all accounting audits and reviews conducted pursuant to this Section 2.4 shall be split equally between the Parent (on the one hand) and the Stockholders, severally and not jointly (on the other). The Stockholders portion of any such fees and expenses shall be satisfied from the Adjustment Escrow Fund and, if the amount available in the Adjustment Escrow Fund is not sufficient to satisfy such fees and expenses (taking into account any other claims to be satisfied from such fund), then from the Indemnification Escrow Fund.

(f) **Post-Closing Adjustment of Merger Consideration.** Subsequent to the Closing, the Merger Consideration shall be adjusted in accordance with the following provisions:

(i) in the event the Closing Net Working Capital is less than Zero Dollars (\$0.00) (the “**Base Amount**”) the Merger Consideration shall be reduced by the amount of the negative Closing Net Working Capital (the “**Closing Net Working Capital Deficiency**”); and

(ii) in the event that the Closing Net Working Capital exceeds the Base Amount, Parent will pay to the Stockholder Agents the difference

between the Closing Net Working Capital and the Base Amount, less any amounts required to be withheld pursuant to subsection (iii) hereof and any expenses pursuant to Section 2.4.1(e).

(iii) Notwithstanding the foregoing, an amount equal to any accounts receivable reflected on the Closing Balance Sheet (and credited as an asset in computing the Closing Net Working Capital) that remain uncollected in full as of the agreement or resolution date of the Closing Net Working Capital as contemplated by Section 2.4.1 hereof shall remain in the Adjustment Escrow Fund for 180 days from the Closing Date. To the extent such receivables are not collected by the Surviving Corporation within 180 days of the Closing Date, without having to resort to collection efforts or litigation, the corresponding amount held in the Adjustment Escrow Fund shall be paid to the Parent within ten (10) business days after such 180 day period, and the balance in the Adjustment Escrow Fund, if any, shall be paid to the Stockholder Agents subject to Section 2.4.1(f)(i). If the amount available in the Adjustment Escrow Fund is not sufficient to pay to Parent an amount equal to the amount of such uncollected accounts receivable, then Parent shall be entitled to be paid such amount from the Indemnification Escrow Fund. To the extent that the Surviving Corporation, after the 180 days from the Closing Date, but in no event later than one (1) year, receives any amounts from an account debtor in payment of any uncollected accounts receivable for which the Parent was paid in accordance with this Section 2.4.1(f)(iii), such amounts shall be paid to the Stockholder Agents. The Surviving Corporation shall utilize GS' normal historical accounts receivable collection practices during the 180 days from the Closing Date to collect the accounts receivable.

(g) **Payment of Adjustment Amounts.** Parent shall pay to the Stockholder Agents for distribution to the Stockholders who have tendered their shares of GS Stock pursuant to the terms of this Agreement, the amount of any increase in the Merger Consideration determined to be due pursuant to the provisions of Section 2.4.1(f)(ii). The payment of the Negative Adjustment Amount if any, shall be made as provided in Section 2.3.1 of this Agreement. Any payment due pursuant to the provisions of subsection 2.4.1(e) shall be made within forty-five (45) days after delivery of the Closing Balance Sheet to Parent, or, if Parent furnishes a Notice of Disagreement pursuant to subsection 2.4.1(c), within fifteen (15) days after mutual agreement is reached by the parties or the delivery of the report to be delivered by the independent accountants pursuant to subsection 2.4.1(d) hereof.

### ARTICLE 3 THE CLOSING

3.1 **General.** Subject to the satisfaction or waiver in writing of all of the closing conditions pursuant to this Agreement (including those set forth in Articles 7 and 8 hereof), the

closing of the Merger as contemplated by this Agreement (the "**Closing**") shall be held at 10:00 a.m. on April 28, 2006 (such date or such other date on which the Closing actually occurs is herein referred to as the "**Closing Date**") at the offices of Trenam, Kemker, Scharf, Barkin, Frye, O'Neill & Mullis, Professional Association, Tampa, Florida. The Closing shall be deemed to have occurred when, but not before, Parent and the Stockholder Agents have actually received (which receipt may be by facsimile transmission and may be by another person acting on behalf of such party) the documents, instruments and consideration contemplated hereunder to be received by such party.

3.2 **Deliveries by the Principal Stockholders and GS.** At the Closing, the Stockholder Agents shall deliver to Parent the following:

3.2.1 **Articles of Merger.** The Articles of Merger duly executed by GS;

3.2.2 **Stock Certificates.** Stock Certificates representing one hundred percent (100%) of the issued and outstanding capital stock of GS held by the Principal Stockholders (with any required documentary transfer stamps attached), free and clear of all liens, claims charges, restrictions, equities or encumbrances of any kind, which certificates shall be duly endorsed or accompanied by duly executed stock powers in form satisfactory to Parent;

3.2.3 **Good Standing Certificate.** Parent shall have received a certificate executed by the Secretary of State of the State of Florida dated as of a recent date certifying that GS is a corporation in good standing under the laws of the State of Florida;

3.2.4 **Resignations.** Parent shall have received resignations from such directors and officers of GS, in form and substance reasonably satisfactory to Parent, effective as of the Closing, and such other documents and instruments (including, without limitation, bank signature cards and resolutions) as Parent may reasonably request in order to accomplish the transactions contemplated by this Agreement;

3.2.5 **Employment Agreements.** Parent shall have received Employment Agreements duly executed by each of the employees named on Schedule 3.2.5, each such Employment Agreement to be substantially in the form attached hereto as Exhibit 3.2.5 and reasonably acceptable to Parent;

3.2.6 **Non-Competition Agreements.** Parent shall have received Non-Competition Agreements duly executed by each of the Stockholders named on Schedule 3.2.5, each such Non-Competition Agreement to be substantially in the form attached hereto as Exhibit 3.2.5 and reasonably acceptable to Parent;

3.2.7 **Opinion of Counsel.** Parent shall have received the opinion of counsel to GS, dated the Closing Date, substantially in the form attached hereto as Exhibit 3.2.7

3.2.8 **Escrow Agreement;** Parent shall have received the Escrow Agreement, substantially in the form attached hereto as Exhibit 2.3.1, duly executed by GS and the Escrow Agent.

3.2.9 **Consents and Approvals.** GS shall have obtained in writing the consents, approvals, and authorizations referred to on Schedule 4.20 of this Agreement;

3.2.10 **Certificate.** A certificate in form acceptable to Parent certifying on behalf of GS and the Principal Stockholders: (a) as to the matters set forth in Sections 8.1 through 8.8 hereof, (b) as to the officers of GS authorized to execute this Agreement and the authority of each such officer, (c) as to the resolutions duly adopted by the Board of Directors of GS and the Stockholders authorizing and approving this Agreement and the transactions contemplated hereby, and (d) the outstanding capitalization of GS as of the Closing Date;

3.2.11 **Dissenting Stock.** A certificate of the Secretary of GS certifying as to the name and address of each holder of Dissenting Stock, if any (such certificate to be delivered to Parent no less than two (2) business days prior to the Closing Date, but not more than seven (7) business days prior to the Closing Date); and

3.2.12 **Notice of Meeting; Termination of Options and Warrants.** Parent shall have received (a) a copy of the notice of the Stockholder Meeting (as defined below) and the Disclosure and Information Statement (as defined below) disseminated to the Stockholders and (b) documents and instruments, in form satisfactory to Parent, terminating the Option Plans and all outstanding options and warrants to purchase Common Stock of GS.

3.2.13 **Other Documents.** All documents and instruments required by the terms of this Agreement and such other documents and instruments as Parent or its counsel may reasonably request in order to accomplish the transactions contemplated by this Agreement.

3.3 **Deliveries by Parent.** At the Closing, Parent shall deliver to the Stockholder Agents the following:

3.3.1 **Articles of Merger.** The Articles of Merger duly executed by Acquisition;

3.3.2 **Merger Consideration.** The Merger Consideration (including the funding of the Adjustment Escrow Fund and the Indemnification Escrow Fund) as provided in Article 2 of this Agreement;

3.3.3 **Escrow Agreement;** The Stockholder Agents shall have received the Escrow Agreement, substantially in the form attached hereto as Exhibit 2.3.1, duly executed by Parent and the Escrow Agent.

3.3.4 **Good Standing Certificate.** A certificate executed by the Secretary of State of the States of Florida and New York dated as of a recent date certifying that Acquisition and Parent, respectively, is a corporation in good standing under the laws of the States of Florida and New York, respectively;

3.3.5 **Certificate.** A certificate in form acceptable to the Stockholders Agents certifying on behalf of Acquisition and Parent: (a) as to the accuracy of the representations and warranties contained in Article 5 of this Agreement at and as of the Closing, (b) that Acquisition and Parent have performed and complied with all of the terms, provisions and conditions to be performed and complied with by them at or before the Closing, (c) as to the officers of Acquisition and Parent authorized to execute this Agreement and the authority of each such officer and (d) as to the resolutions duly adopted by the Board of Directors of Acquisition and Parent authorizing and approving this Agreement and the transactions contemplated hereby; and

3.3.6 **Other Documents.** All documents and instruments required by the terms of this Agreement and such documents and instruments as the Stockholder Agents may reasonably request in order to accomplish the transactions contemplated by this Agreement.

#### **ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF GS**

GS hereby represents and warrants to Parent and Acquisition the following as of the date hereof and as of the Closing Date:

4.1 **Organization and Standing.** GS is a corporation duly organized, validly existing and in good standing under the laws of the State of Florida. GS has the corporate power and authority to own, lease or otherwise hold its properties and assets and to carry on its business as it is now being conducted.

4.2 **Authority; Validity of Agreement; Corporate Action.**

4.2.1 **Authority; Validity; Enforceability;** GS has full corporate power and authority to execute and deliver this Agreement and all other agreements and instruments executed by GS in connection herewith, to perform its obligations hereunder and thereunder, and to consummate the Merger. This Agreement has been duly executed and delivered by GS and, assuming due and valid authorization, execution and delivery thereof by the other parties hereto, this Agreement is a valid and binding obligation of GS, enforceable against GS in accordance with its terms. This Agreement has been duly and validly executed and delivered by the Principal Stockholders and constitutes a valid and binding obligation of each of the Principal Stockholders, enforceable against them in accordance with its terms.

4.2.2 **Corporate Action.** GS's execution, delivery and performance of this Agreement and GS's consummation of the transactions contemplated by this Agreement, including, but not limited to the Merger (the "**Transactions**") have been duly authorized by GS's Board of Directors in accordance with GS's Articles of Incorporation, bylaws and the FBCA. At a meeting duly called and held, the Board of Directors of GS has unanimously (a) determined that this Agreement and the Transactions contemplated hereby, including the Merger, are fair to and in the best interests of the Stockholders, (b) duly and validly approved and adopted, and has taken all corporate action required to

be taken by the Board of Directors of GS to authorize the consummation of this Agreement and the Transactions contemplated hereby, including the Merger, and (c) resolved to recommend approval and adoption of this Agreement by the Stockholders. None of the aforesaid actions taken by the Board of Directors of GS has been amended, rescinded or modified. GS has been advised that all of GS's directors and the Principal Stockholders intend to vote in favor of the approval and adoption of this Agreement at the special stockholders' meeting (the "**Stockholder Meeting**") to be held for that purpose.

4.2.3 **Stockholder Vote.** The only stockholder votes required by GS's outstanding capital stock to approve this Agreement and the Transactions contemplated hereby, including the Merger, under the Articles of Incorporation and bylaws of GS and the FBCA are the affirmative vote of (a) the holders of a majority of the outstanding GS Stock, voting together as a single class, and (b) the holders of a majority of the outstanding Series B-1 Preferred Stock and Series B-2 Preferred Stock, voting together as a single class.

#### 4.3 **Capitalization; Title to Shares.**

4.3.1 **Capitalization.** The authorized capital stock of GS consists of Sixty Million (60,000,000) shares of which Fifty Million (50,000,000) shares are Common Stock and Ten Million (10,000,000) shares are Preferred Stock. Of the shares of Preferred Stock, Fifty-Four Thousand Five Hundred Eighty (54,580) shares are designated Series A Preferred Stock, One Million Four Hundred Thousand (1,400,000) shares are designated Series B-1 Preferred Stock, and One Hundred Eighty-Three Thousand Eight Hundred Sixty-One (183,861) shares are designated Series B-2 Preferred Stock, all having a par value of \$.01 per share. As of the close of business on April 16, 2006, and as of the Effective Time, Two Million Five Hundred Fifty-Seven Thousand Five Hundred Ten (2,557,510) shares of Common Stock, Fifty-Four Thousand Five Hundred Eighty (54,580) shares of Series A Preferred Stock, One Million Fifty-Nine Thousand Six Hundred Seventy-Seven (1,059,677) shares of Series B-1 Preferred Stock and One Hundred Eighty-Three Thousand Two Hundred Twenty-Three (183,223) shares of Series B-2 Preferred Stock were issued and outstanding and no shares of GS Stock are held in treasury. All of the shares of GS Stock were duly authorized and validly issued, are fully paid and nonassessable and free of all preemptive rights (and rescission rights) except for such preemptive rights of the Preferred B-1 Stock and Preferred B-2 Stock set forth in that certain Investor Rights Agreement dated October 1, 2003. As of the close of business on April 16, 2006, and as of the Effective Time, except as set forth in Schedule 4.3, there are no outstanding or authorized options, warrants, rights, calls, convertible instruments, agreements or commitments to which GS is a party or which are binding upon GS providing for the issuance, disposition or acquisition of any of the shares of capital stock of GS. There are no outstanding or authorized stock appreciation, phantom stock or similar rights with respect to GS. Except as set forth on Schedule 4.3, GS is not a party to any agreements, voting trusts, proxies, or understandings with respect to any shares of its capital stock. All of the shares of GS Stock were issued in compliance with all applicable federal and state securities laws and GS is not subject to any claim or

liability with respect thereto. There are no declared and unpaid dividends of any kind with respect to any GS Stock.

4.3.2 **Title to Shares.** Schedule A-3 hereto contains a true, complete and correct list of all of the Stockholders of record of GS, along with the number of shares of GS Stock owned of record by each Stockholder. The Principal Stockholders together own (and have voting control of) more than 90% of the outstanding Series B-1 Preferred Stock and Series B-2 Preferred Stock and more than 90% of the GS Stock.

4.4 **No Violations.** Subject to obtaining the consents referred to in Section 4.20 of this Agreement, the execution, delivery and performance of this Agreement by GS and the Principal Stockholders and the consummation of the transactions contemplated hereby will not (i) violate GS's Articles of Incorporation or bylaws, (ii) violate any provisions of law or any order of any court or any governmental unit to which GS is subject, or by which the assets or properties of GS may be bound, (iii) (a) conflict with, result in a breach of, or constitute a material default under any indenture, mortgage, lease, agreement, or other instrument to which GS is a party or by which GS or any of the assets or properties of GS may be bound, or (b) result in the creation of any lien, charge, or encumbrance upon any of the assets or properties of GS or result in the acceleration of the maturity of any payment date of any liability of GS, or increase or adversely affect the obligations of GS thereunder or (iv) violate any term or provision of, or result in a default, give rise to any right of termination, cancellation or acceleration or cause the loss of any right or option under any material contract to which GS is a party.

4.5 **Qualification To Do Business.** GS is duly qualified to transact business as a foreign corporation and is in good standing in each of the jurisdictions set forth in Schedule 4.5, which are the only jurisdictions where such qualification is required by reason of the nature or location of the properties and assets owned, leased or operated by it or the business conducted by it. GS has previously delivered to Parent complete and correct copies of its Articles of Incorporation, as amended to date (certified by the competent authority of the state of incorporation of GS within thirty days of the date hereof), and its bylaws, as amended to date (certified by the Secretary of GS as of a recent date). Neither the Articles of Incorporation nor the bylaws or any other constituent documents of GS have been amended since the respective dates of certification thereof, nor has any action been taken for the purpose of effecting any amendment of such instruments.

4.6 **Subsidiaries.** GS has no subsidiaries other than Informed Decisions LLC (the "Subsidiary"), a single member limited liability company. GS does not own, of record or beneficially, directly or indirectly, any equity or other proprietary interest, or right to acquire any such interest, contingent or otherwise, in any other corporation, partnership, joint venture, business enterprise or other entity of any nature whatsoever other than 100% of the capital stock of the Subsidiary.

4.7 **Financial Statements.** GS has previously delivered to Parent, and set forth on Schedule 4.7 hereto is: (i) the 2005 Audited Balance Sheet of GS, together with all notes thereto (the "GS Year-End Balance Sheet"); (ii) an unaudited balance sheet of GS as of February 28, 2006 (the "GS Interim Balance Sheet"); (iii) an audited statement of income and cash flow of GS for the fiscal year ended March 31, 2005, together with the notes thereto (the "GS Year-End



**Income Statement**"); and (iv) an unaudited statement of income of GS for the eleven (11) month period ended February 28, 2006 (the "**GS Interim Income Statement**"), all of which are collectively referred to herein as the "**GS Financial Statements**." The GS Financial Statements, have been prepared in accordance with the books and records of GS and generally accepted accounting principles, consistently applied throughout the periods involved ("**GAAP**"), are true and correct in all material respects and fairly present the financial condition and results of operations of GS as of the respective dates thereof and for the respective periods covered thereby. GS has not received any advice or notification from its firm of independent certified public accountants that it has used any improper accounting practice that would have the effect of not reflecting or incorrectly reflecting, in the GS Financial Statements or GS's books and records, any properties, assets, liabilities, revenues, or expenses. The books, records, and accounts of GS maintained with respect to its business, in all material respects, fairly and reasonably reflect the transactions, assets, and liabilities of GS with respect to its business.

**4.8 Absence of Undisclosed Liabilities; Absence of Certain Changes or Events.**

**4.8.1 Absence of Undisclosed Liabilities.** Except as set forth on Schedule 4.8.1, and except for (i) obligations and liabilities incurred pursuant to contracts, agreements or understandings specifically disclosed and identified on Schedule 4.12(a) hereto (none of which results from or arises out of any breach of contract, warranty, infringement or violation of law), (ii) liabilities and obligations reflected on the face of the GS Interim Balance Sheet or (iii) liabilities and obligations incurred in the ordinary course of business consistent with past practice since February 28, 2006, all of which liabilities are properly reflected in the books and records of GS (but, except as set forth on Schedule 4.8.1, none of which liabilities incurred since February 28, 2006, individually or in the aggregate, exceeds \$50,000), GS does not have any liabilities or obligations of any nature, whether absolute, accrued, contingent or otherwise, whether known or unknown, which would be required to be set forth in a balance sheet of GS as of the date hereof prepared in accordance with GAAP applied in a manner consistent with the GS Financial Statements (and there is no basis for any present or future action, suit, proceeding, claim or demand giving rise to any such liability or obligation).

**4.8.2 Absence of Certain Changes or Events.** Since March 31, 2005, GS has carried on its business in the ordinary course and consistent with past practice. Except as set forth on Schedule 4.8.2 hereto, since March 31, 2005, GS has not:

(a) suffered any damage, destruction or loss of physical property or goods resulting in costs or expenses to GS in excess of \$50,000 whether or not covered by insurance;

(b) mortgaged, pledged or subjected to any lien, charge or other encumbrance any of its assets, tangible or intangible, except in the ordinary course of business consistent with past practice;

(c) sold or transferred any of its material assets or canceled or compromised any of its debts or waived any claims or rights of a material nature;

(d) made any change in any accounting principle or practice or in its method of applying any such principle or practice;

(e) issued any additional shares of its capital stock or granted any options, warrants or other rights to purchase, or any securities convertible into or exchangeable for, shares of its capital stock;

(f) declared or paid any dividends on or made any distributions (however characterized and whether payable in cash or additional shares of stock) in respect of any shares of its capital stock;

(g) repurchased or redeemed any shares of its capital stock;

(h) granted any general or specific increase in compensation (including, bonuses, profit sharing or deferred compensation) payable or to become payable to any of its employees, former employees, consultants, agents or any related party, except as required under existing contractual obligations of GS, or adopted any benefit plan, or increased, augmented or improved the benefits granted to or for the benefit of any employee, former employee, consultant, agent or any related party under any benefit plan or adopted, amended, merged or terminated in any respect any other benefit plan, except in the ordinary course of business consistent with past practice;

(i) made any change in the Articles of Incorporation or bylaws, or other constituent documents of GS;

(j) experienced any other occurrence, event or condition that has, or could reasonably be expected to have, a material adverse effect on the assets, business, financial condition, prospects or results of operations of GS or its subsidiaries; or

(k) entered into any agreement to do any of the foregoing.

#### 4.9 **Litigation.**

4.9.1 **Litigation.** Except as described on Schedule 4.9.1, there are no suits, actions, proceedings, arbitrations or governmental or administrative investigations or audits pending, and to the knowledge of GS, threatened against GS or its properties. There are no such suits, actions, proceedings, claims, investigations or audits pending or, to the knowledge of GS, threatened challenging the validity or propriety of, or otherwise relating to or involving, this Agreement or the transactions contemplated hereby.

4.9.2 **Orders, Writs, Etc.** There is no outstanding order, writ, injunction or decree of any court, government, governmental authority or arbitration against or affecting GS, its properties or business and to the knowledge of GS, no basis exists therefor.

#### 4.10 **Compliance With Applicable Laws.**

4.10.1 **Compliance.** GS is in compliance in all material respects with all federal, state or local laws, statutes, ordinances, licenses or regulations presently in effect, or that, to the knowledge of GS, are proposed to be adopted, that are material to its business, assets or operations. Except as set forth on Schedule 4.10.1, none of the products or services offered by or on behalf of GS requires any accreditation, licensing or certification by any federal, state or local regulatory authority. GS has and has maintained all licenses and permits required by all local, state and federal authorities and regulating bodies material to its business and the transactions contemplated by this Agreement. Without limitation to the generality of the foregoing, GS represents and warrants that (i) it is not a Covered Entity within the meaning of and, thus, not subject to, the Health Insurance Portability and Accountability Act of 1996 found at Public Law 94-191 or its implementing regulations found at 45 CFR, Parts 160, 162 and 164, as amended ("HIPAA"), (ii) GS is a Business Associate to one or more Covered Entities within the meaning of HIPAA and it is in compliance in all material respects with the terms and conditions of any and all Business Associate Agreements with such Covered Entities, (iii) it is in compliance in all material respects with all federal, state and local privacy and data protection laws and regulations (including, without limitation, the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (Pub. L. No. 108-187, codified at 15 U.S.C. § 7701 et seq. and all rules and regulations thereunder, as amended from time to time), then-current industry standards, guidelines and practices applicable to the health and pharmaceutical industries with respect to privacy and data protection including the collection, processing, storage, protection and disclosure of personal information, and any privacy policies that apply to any recipients (iv) it is not presently, nor has it been within the last three (3) years, the subject of any investigation, complaint, grievance, lawsuit or other legal or administrative proceeding pertaining to the privacy or security of personal or health information, and (v) it has in place adequate security measures in accordance with all applicable federal and state laws.

4.10.2 **Illicit or Illegal Payments.** Neither GS, nor any subsidiary, nor any director, officer, agent(s), employee or other person associated with, or acting on behalf of GS or any subsidiary, has (a) used any corporate funds for any unlawful contribution, gift, entertainment or other expense relating to political activity or (b) made any direct, or indirect, unlawful payment to any (i) federal, state, local or foreign government official or employee, (ii) any intermediary or other person under contract with any federal, state, local or foreign government, or (iii) foreign or domestic political parties from corporate funds, violated any provision of the Foreign Corrupt Practices Act of 1977, as amended, applicable Florida statutes and regulations, or any other similar federal or state laws, or (d) paid or made any bribe, rebate, payoff, influence payment, kickback, or other unlawful payment, and GS has in place policies, including a compliance program, that are designed to ensure compliance with the United States Foreign Corrupt Practices Act of 1977, as amended, all federal, state, local or foreign election laws governing political parties and all similar laws.

#### 4.11 Title to Assets and Properties.

4.11.1 **Title to Assets.** GS has good and marketable title to all of the properties, equipment and assets that GS owns, including the property and assets shown or reflected on the GS Interim Balance Sheet. Such properties and assets are not subject to any mortgage, guaranty, judgment, execution, pledge, lien, conditional sales agreement, security agreement, encumbrance or charge, and such properties and assets referred to above are all of the properties and assets used in GS's business. Except as disclosed on Schedule 4.11.1, all of GS's personal property is in good operating condition (reasonable wear and tear excepted), and is operated in conformity in all material respects with all applicable building and zoning ordinances and regulations and all other applicable laws, ordinances and regulations.

4.11.2 **Real Property.** GS does not own any interest in real property other than the leasehold interests disclosed on Schedule 4.11.2. Schedule 4.11.2(a) hereto sets forth a complete and correct list and description of all real property leased by GS (collectively, the "Leased Real Property") and a complete and correct list of all tangible personal property leases to which GS is a party and which involve annual lease payments of more than \$50,000. GS has previously delivered or made available to Parent complete and correct copies of each such lease (and any amendments thereto). Except as set forth in Schedule 4.11.2(b), (i) each such lease is in full force and effect, (ii) all lease payments due to date on any such lease have been paid and neither GS nor (to the knowledge of GS) any other party is in default under any such lease, and no event has occurred which constitutes, or with the lapse of time or the giving of notice or both would constitute, a default by GS or (to the knowledge of GS) any other party under such lease, (iii) there are no disputes or disagreements between GS and any other party with respect to any such lease, and (iv) except as set forth in Schedule 4.11.2(c), there are no subleases, licenses or other agreements (either written or oral) which grant occupancy rights in favor of any other party with respect to the Leased Real Property.

#### 4.12 Leases, Contracts and Commitments.

4.12.1 **Contracts.** Schedule 4.12(a) sets forth a list of any contract, agreement, indenture, note, bond, loan, instrument, lease, conditional sale contract, purchase order, sales order, customer agreement, vendor agreement, distributor agreement, supplier agreement, consulting agreement, assignment agreement, license agreement, union contract, collective bargaining agreement, mortgage, license, permit, franchise, commitment or other arrangement or understanding, whether written, oral, express or implied (collectively, "Contracts") in effect as of the date hereof that involves expenditures or receipts by GS of more than \$10,000 in the aggregate, throughout the term thereof, and which provides for performance, regardless of amounts, over a period in excess of twelve months, to which GS is a party or by or to which it or its assets or properties are bound or subject, including:

- (a) Contracts with any current or former stockholder, officer, director, employee, independent contractor, consultant, agent or other representative or with any affiliate of any of the foregoing;

- (b) Contracts with any labor union or association representing any employee;
- (c) Contracts for the purchase of materials, supplies, equipment, merchandise or services in excess of \$50,000 for any one individual item;
- (d) Contracts relating to GS Intellectual Property (including the System);
- (e) Contracts with distributors, resellers, independent suppliers, contractors, vendors, manufacturers and outsourcers;
- (f) Sales agency Contracts;
- (g) Co-branding or private-labeling Contracts;
- (h) Contracts for the sale of any of GS's assets or properties or business or Contracts for the grant to any person of any preferential rights to purchase any of its assets or properties;
- (i) Partnership or joint venture Contracts;
- (j) Contracts under which any warranty, indemnity or guaranty are issued by GS (other than customary product warranties provided by GS in the ordinary course of business);
- (k) Contracts under which GS agrees to share any tax liability of or with any party;
- (l) Contracts that cannot be cancelled without liability, premium or penalty;
- (m) any oral Contracts;
- (n) Any special arrangements with the largest (in terms of revenue) 10 customers of GS, including any arrangements relating to chargebacks, allowances and payment terms;
- (o) Contracts with any person to advertise or market GS's products or services other than in the ordinary course of business;
- (p) Contracts containing covenants not to compete or otherwise engage in any line of business or with any person in any geographical area (or not to solicit or accept any business) or covenants of any other person not to compete or otherwise engage in any line of business or in any geographical area (or not to solicit or accept any business);

(q) Contracts with any employee or consultant relating to non-disclosure, confidentiality, assignment of inventions, non-solicitation or proprietary rights;

(r) Contracts relating to the acquisition of any operating business or the capital shares of any other person;

(s) Options for the purchase or sale of any asset, tangible or intangible;

(t) Contracts requiring the payment to any person of an override or similar commission or fee;

(u) any note, bond, indenture, credit facility, mortgage, security agreement or other instrument or document relating to or evidencing indebtedness for money borrowed (all of which indebtedness is prepayable currently at the option of GS without premium or penalty) or a security interest or mortgage in the assets of GS;

(v) Contracts for the payment of fees or other consideration to any officer or director of GS or to any other entity in which any of the foregoing has an interest;

(w) consulting and management Contracts and other similar agreements with any person; and

(x) Any other Contracts not made in the ordinary course of business or pursuant to the terms of which there is either a current or future obligation or right of GS to make payments or receive payments in excess (individually or, in the case of any group of similar items, in the aggregate) of \$50,000 throughout the term thereof. Schedule 4.12(a) also separately identifies and describes the status of all Contracts currently in negotiation, re-negotiation or proposed by GS as to which there exists a draft agreement, letter of intent or similar instrument and which is of a type which if entered into by GS would be required to be listed on Schedule 4.12(a) or on any other Schedule.

4.12.2 **Compliance.** GS has previously delivered or made available to Parent copies of each Contract set forth on Schedule 4.12(a) except for any oral Contracts (in which case GS has delivered copies of summaries thereof), which Contracts were complete and correct copies of each such Contract (including any amendments thereto). Except as set forth in Schedule 4.12(b), (i) each Contract to which GS is a party or by which it is bound is in full force and effect; (ii) neither GS nor (to the knowledge of GS) any other party is in material default under any such Contract, and no event has occurred which constitutes, or with the lapse of time or the giving of notice or both would constitute, a material default by GS or (to the knowledge of GS) by any other party under such Contract; (iii) GS is currently in compliance in all material respects with all applicable service level, security, privacy and warranty requirements in each Contract, (iv) to the knowledge of GS, there are no material disputes or disagreements between GS

and any other party with respect to any such Contract; (v) GS has not received or sent a notice of termination or notice of non-renewal with respect to such Contracts, and (vi) to each such Contract shall remain in full force and effect immediately following the consummation of the transactions contemplated by this Agreement without any modification in the rights or obligations of GS thereunder.

**4.13 Insurance Coverage.** GS maintains policies of fire, casualty, liability, use and occupancy and other insurance covering all of its properties and assets. Schedule 4.13 to this Agreement lists each such policy for the last three years by its identification number and indicates as to each policy the insurer and type of policy and nature of coverage. All premiums on such policies have been paid in a timely manner and all of such current policies are in full force and effect. GS does not have any self-insurance practices. During the past three years, GS has not received: (a) any notice of cancellation of any policy described in such Schedule or otherwise or any refusal of coverage thereunder; (b) any notice that any issuer of such policy has filed for protection under applicable bankruptcy laws or is otherwise in the process of liquidating or has been liquidated; or (c) any other indication that such current policies are no longer in full force or effect or that the issuer of any such current policy is no longer willing or able to perform its obligations thereunder. Such policies, with respect to their amounts and types of coverage, are adequate to insure reasonably against risks to which GS and its property and assets are normally exposed in the operation of its business. GS has not been advised of any material adverse change in GS's relationship with its insurers or in the premiums payable pursuant to such current policies.

**4.14 GS Employment Relations.**

**4.14.1 Officers, Directors and Employees.** Schedule 4.14.1 to this Agreement is a complete list of all of the officers and directors of GS and each of its subsidiaries, including those who are also employees of Gevity HR, Inc. or any of its affiliates or subsidiaries (collectively, "Gevity") specifying their office and annual rate of compensation, and a true and complete list of all of the employees of GS and each of its subsidiaries, including those who are also employees of Gevity, as of the date hereof with whom GS, its subsidiaries or Gevity has a written employment, termination, severance and/or change of control agreement, and a complete list, by category, of all full-time employees, part-time employees, and other employees of GS and each of its subsidiaries, including those who are also employees of Gevity (collectively, "Employees"), their title, position and dates of employment, whether they are employees of Gevity, their classifications as exempt or non-exempt under the Fair Labor Standards Act, whether the Employee is currently on a leave of absence and, if so, the nature of the leave and the expected return date, the annual rate of base salary and/or base wages and a description of the rate and nature of all other compensation payable or accrued and the amount of vacation, sick days, personal days and other leave rights accrued by each such person, and a complete list of all manuals and handbooks applicable to any current or former director, officer, Employee or consultant of GS and each of its subsidiaries. GS has provided Parent with copies of all standard forms of employee trade secret, non-compete, non-disclosure and invention assignment agreements applicable to the Employees, together with a list of all agreements that deviate therefrom and a description of such deviation. Except as set forth in any employment agreement, or severance plan or policy

set forth in Schedule 4.14.1, all Employees may be terminated at any time with or without cause and without any severance or other liability.

**4.14.2 Labor Relations.** As to all current and former Employees, GS and its subsidiaries and/or Gevity are and have been in compliance in all material respects with all federal and state laws respecting employment and employment practices, terms and conditions of employment and employment practices, wages and hours, occupational health and safety and are not engaged in any unfair labor or unlawful employment practice. There is no unlawful employment practice discrimination charge involving current or former Employees, GS, Gevity or any of their subsidiaries, pending, or to the knowledge of GS and/or any of its subsidiaries, threatened before the Equal Employment Opportunity Commission ("EEOC"), EEOC recognized state "referral agency" or any other governmental agency and no investigation is pending or, to the knowledge of GS and/or any of its subsidiaries, threatened by the EEOC or any governmental agency with respect to the Employees. Except with respect to ongoing disputes of a routine nature involving immaterial amounts, GS, Gevity and each of their subsidiaries have paid in full to all of the Employees all wages, salaries, commissions, bonuses, benefits, compensation and severance due and payable. There is no unfair labor practice charge or complaint by any current or former Employee against GS or its subsidiaries or Gevity, pending before the National Labor Relations Board ("NLRB"). There is no labor strike, dispute, slowdown or stoppage by an Employee actually pending or, to the knowledge of GS and/or any of its subsidiaries, threatened against or involving or affecting GS or its subsidiaries or Gevity, and no NLRB representation question exists respecting any of their respective Employees. No grievance or arbitration proceeding by any Employee is pending or, to the knowledge of GS or any of its subsidiaries, threatened against GS or any of its subsidiaries or Gevity, and no written claim therefor exists. The Employees are not represented by a labor organization or group that was either certified by any labor relations board, including the NLRB, or any other governmental body or voluntarily recognized by GS or any of its subsidiaries or Gevity as the exclusive bargaining representative of a unit of Employees and, to the knowledge of GS, no Employees are represented by any other labor union or organization. There is no collective bargaining agreement involving Employees that is binding upon GS or any of its subsidiaries or Gevity or under which GS or any of its subsidiaries or Gevity are, or could reasonably be expected to be, under any obligation. To the knowledge of GS (i) no representation, election, petition or application for certification has been filed by any Employees within the preceding five years or is pending with the NLRB or any other governmental body, and (ii) no overt union organizing campaign or other overt attempt to organize or establish a labor union, employee organization or labor organization or group involving Employees is in progress or threatened.

#### **4.15 Employee Benefit Plans.**

**4.15.1 The Plans.** Schedule 4.15.1 to this Agreement is an accurate and complete list of all: (i) employee benefit plans (hereinafter "**Employee Benefit Plans**" or "**Plans**"), within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations thereunder ("**ERISA**"); (ii) bonus, stock option, stock purchase, restricted stock, incentive, profit-sharing,



pension or retirement, deferred compensation, medical, cafeteria, life, disability, accident, accrued leave, vacation, sick pay, sick leave, supplemental retirement and unemployment benefit plans, programs, arrangements, commitments or practices (whether or not insured); and (iii) employment, consulting, termination, and severance contracts or agreements, in each case for active, retired or former employees or directors, whether or not any such plans, programs, arrangements, commitments, contracts, agreements or practices (referred to in (i), (ii) or (iii)) are in writing or are otherwise exempt from the provisions of ERISA, that have been established, maintained or contributed to (or with respect to which an obligation to contribute has been or was undertaken) and/or with respect to which any potential liability is borne by GS and/or any of its subsidiaries (including, for this purpose and for the purpose of all of the representations in this Section 4.15, any predecessors to GS and/or any of its subsidiaries to all employers that are by reason of common control treated together with GS and/or any of its subsidiaries as a single employer within the meaning of Section 414 of the Internal Revenue Code of 1986, as amended (the "Code"). GS has made true and complete copies of all Employee Benefit Plan documents available to Parent.

**4.15.2 Compliance.** With respect to each Employee Benefit Plan sponsored, or to which contributions are made, by GS and/or any of its subsidiaries: (i) each Plan which is intended to be qualified or tax exempt under the Code is so qualified or so tax exempt and has received a reasonably current favorable determination letter to that effect from the Internal Revenue Service; (ii) all applicable requirements of ERISA, the Code and the Plans have been complied with in all material respects; (iii) no event has occurred and no condition exists that would subject GS and/or any of its subsidiaries or Parent to any tax or excise tax under the Code or to a penalty under ERISA; (iv) no Plan is a multi-employer plan within the meaning of Section 3(37) of ERISA; (v) the Plans may be amended or terminated by GS or Parent on or at any time after the Closing Date without the incurring of any material liability as a result of such termination; (vi) GS's financial statement reflects all of GS's employee benefit liabilities in a manner satisfying the requirement of the Financial Accounting Standards Board; and (vii) all annual reports required to be filed under ERISA or the Code for each Plan have been made on a timely basis.

**4.15.3 No Unfunded Liabilities or ERISA Lien.** Except as listed on Schedule 4.15.3, GS does not have any unfunded liabilities pursuant to any Employee Benefit Plan that is not intended to be qualified under Section 401(a) of the Code. The assets of GS are not, and Seller does not reasonably expect them to become, subject to a lien imposed under ERISA Section 4068. None of GS, any of its subsidiaries or any entity required to be treated as a single employer with GS or any of its subsidiaries under Section 414 of the Code has incurred or could reasonably be expected to incur any material liability under Title IV of ERISA (other than for the payment of Pension Benefit Guaranty Corporation insurance premiums payable in the ordinary course) or the minimum funding requirements of Section 412 of the Code and/or Section 302 of ERISA. No Employee Benefit Plan, whether or not terminated, provides for retiree welfare benefits.

4.15.4 **Contributions.** Full payment has been made of all amounts which GS and/or any of its subsidiaries is or was required, under applicable law or under any Employee Benefit Plan or any agreement relating to any Employee Benefit Plan to which GS and/or any of its subsidiaries is or was a party, to have paid as contributions thereto as of the last day of the most recent fiscal year of such Employee Benefit Plan ended prior to the date hereof. All such contributions have been fully deducted for income tax purposes and no such deduction has been challenged or disallowed by any governmental entity, and, to the knowledge of GS and/or any of its subsidiaries, no event has occurred and no condition or circumstance has existed that could give rise to any such challenge or disallowance. Benefits under all Employee Benefit Plans are as represented and have not been increased subsequent to the date as of which documents have been provided.

4.15.5 **Prohibited Transactions.** None of GS and/or any of its subsidiaries, nor any of their respective directors, officers, employees or, to the knowledge of GS and/or any of its subsidiaries, other persons who participate in the operation of any Employee Benefit Plan or related trust or funding vehicle, has engaged in any transaction with respect to any Employee Benefit Plan or breached any applicable fiduciary responsibilities or obligations under Title I of ERISA that could subject any of them to a tax, penalty or liability for prohibited transactions under ERISA or the Code or could result in any claim being made under, by or on behalf of any such Employee Benefit Plan by any party with standing to make such Claim.

4.15.6 **No Acceleration.** Except as set forth on Schedule 4.15.6, no employee, officer or director of GS or any of its subsidiaries shall accrue or receive additional benefits, service or accelerated vesting or right to payment as a direct result of the transactions contemplated by this Agreement.

4.15.7 **Gevity.** Neither GS nor any of its subsidiaries has or may incur any liability under any employee benefit plan or arrangement maintained or sponsored by Gevity.

4.16 **Banks.** The name of each bank in which GS has an account or safety deposit box, the account and safety deposit box numbers and the names of all persons entitled to draw thereon are set forth on Schedule 4.16 to this Agreement.

4.17 **Intellectual Property.**

4.17.1 **Ownership.** Schedule 4.17.1(a) sets forth all registered trademarks and service marks, all reserved trade names, all registered copyrights, and all filed patent applications, issued patents, Internet domain names, Internet domain name applications, and all other GS Intellectual Property and separately identifies each license or other agreement (other than licenses for "off-the-shelf" software in an amount less than \$1,000, which in the aggregate do not exceed \$10,000) pursuant to which GS has the right to use GS Intellectual Property not owned exclusively by GS and utilized in connection with its business or the development activities of GS (the "**GS Licenses**"). Each GS License is a legal, valid and binding agreement of GS, and each GS License is a legal, valid and binding agreement of the other parties thereto, and GS is not aware of any termination or

change to, or receipt of proposal with respect to, any GS License as a result of the proposed Merger or otherwise. Except as is set forth on Schedule 4.17.1(b), the cancellation or expiration of any GS License would not have a material adverse effect on the assets, business, financial condition, prospects or results of operations of GS or its subsidiaries. All of the GS Intellectual Property is valid and enforceable and all of the GS Intellectual Property that is registered or for which an application is pending are in good standing, with all fees paid in full and filings made to date. GS has disclosed in Schedule 4.17.1(c) any renewals, fee payments, filing of an affidavit, or any other action that is or will be required to be taken with respect to any of the foregoing within six (6) months from the Closing Date. None of the GS Intellectual Property is subject to any territorial restrictions. Except as set forth on Schedule 4.17.1(d) with respect to the GS Licenses, GS is the sole and exclusive owner of, the entire right, title, and interest in and to the GS Intellectual Property, free and clear of any security interest, lien claim, restriction or encumbrance of any kind or nature whatsoever. In addition, any research and development in connection with the GS Intellectual Property was not the result of the work and/or contribution of any third party (including, without limitation, suppliers or subcontractors) who has, has had or may have any right, title or interest in such GS Intellectual Property.

**4.17.2 No Infringement; Absence of Claims.** The GS Intellectual Property (including the System) and all components thereof do not (and the use of any of the foregoing by Parent as they are used or currently intended to be used by GS in the operation of its business will not) infringe upon the Intellectual Property of any third parties located anywhere in the world. None of the GS Intellectual Property is or has been involved in any interference, reissue, reexamination, opposition, invalidation or cancellation action, claim or proceeding and no such action, claim or proceeding has been threatened against GS. No other claim, action, suit, proceeding or investigation with respect to the GS Intellectual Property (including the System) has ever been instituted, is pending, or to GS's knowledge, threatened, and GS does not know of any valid basis for any such claim, action, suit, proceeding or investigation.

**4.17.3 Trade Secret Protection.** The Source Code relating to the Software (other than Third-Party Software) and other Confidential Information (1) has at all times been maintained in confidence in a manner that is customary in and consistent with GS's industry and (2) has been disclosed by GS only to employees and consultants having a "need to know" the contents thereof in connection with the performance of their duties to GS. All of the GS Intellectual Property, Source Code relating to the Software (other than Third-Party Software) and other Confidential Information has been adequately protected, as appropriate by trade secret processes, non-disclosure agreements and/or by affixing proper notices on any GS Intellectual Property. GS has taken all necessary and desirable actions to secure, maintain and enforce its rights in and to the GS Intellectual Property and other Confidential Information to preserve the secrecy of such information as is customary and consistent with GS's industry. GS Intellectual Property and other Confidential Information consisting of trade secrets are not part of public knowledge or literature and have not been used, divulged or appropriated to any person or entity or to the detriment of GS.

4.17.4 **Personal Agreements.** All personnel, including members of management, employees, agents, consultants, and contractors, who have contributed to or participated in the conception and development of any GS Intellectual Property, the System (other than Third-Party Software) and other Confidential Information on behalf of GS either (1) have been party to a “work-for-hire” arrangement or agreement with GS, in accordance with applicable federal, state and foreign laws, that has accorded GS full, effective, exclusive, and original ownership of all tangible and intangible property thereby arising, or (2) have executed appropriate instruments of assignment in favor of GS as assignee that have conveyed to GS full, effective, and exclusive ownership of all tangible and intangible property thereby arising.

4.17.5 **No Third Party Infringement.** To the knowledge of GS, there exists no actual or threatened infringement or misappropriation by any third party of any GS Intellectual Property (including breach or misuse of any Confidential Information) or any event likely to constitute such an infringement or misappropriation, nor has GS acquiesced in the unauthorized infringement or misappropriation thereof by any third party.

4.17.6 **No Oral Contracts.** Except as provided in Schedule 4.17.6, GS is not a party to any oral license, sublicense or other agreement that, if reduced to written form, would be required to be disclosed in Schedule 4.12(a) or otherwise be subject to this Section 4.17.

4.17.7 **Trademarks and Copyrights.** GS expects all pending trademark applications worldwide to receive registration and, to the knowledge of GS, no third party has objected or threatened to object to registration of a GS trademark and no trademark office worldwide has put forth a substantive objection to a GS trademark application that should prevent registration of a pending trademark application. To the knowledge of GS, no third party has objected or threatened to object to registration of a GS copyright and no copyright office worldwide has put forth a substantive objection to a GS copyright application that should prevent registration of a pending copyright application. To the knowledge of GS, no third party has objected or threatened to object to registration of a GS patent and no patent office worldwide has put forth a substantive objection to a GS patent application that should prevent registration of a pending patent application.

4.17.8 **Safety Measures.** GS has created and has safely stored back-up copies of all its Software and Documentation, and has taken all other reasonable and necessary steps to protect the GS Intellectual Property and its rights thereunder, and to its knowledge, no such rights to any such Intellectual Property have been lost or are in jeopardy of being lost through its failure to act.

4.17.9 **No Viruses, etc.** None of the Software contains, and will not when delivered, contain any computer code: (i) designed to disrupt, disable, harm, or otherwise impede in any manner, including aesthetical disruptions or distortions, the operation of any of computer systems, or any other associated software, firmware, hardware, computer system or network (sometimes referred to as “viruses” or “worms”); (ii) that would disable or impair in any way the operation of any such system based on the

elapsing of a period of time, the exceeding of an authorized number of users or copies, or the advancement to a particular date or other numeral (sometimes referred to as “time bombs,” “time locks,” or “drop dead” devices); or (iii) that would permit access to any person to cause such disablement or impairment (sometimes referred to as “traps,” “access codes,” or “trap door” devices), or any other similar harmful, malicious or hidden procedures, routines or mechanisms that would cause any such software to cease functioning or to damage or corrupt data, storage media, programs, equipment or communications, or otherwise interfere with operations.

4.17.10 **No Errors, etc.** There are no errors, omissions, issues or defects in any of GS’s products (including the System) or in the performance of any of its services.

4.17.11 **No Payment Obligations.** Except as set forth on Schedule 4.17.11, there are no outstanding royalty, commission or other executory payment agreements, arrangements or obligations with respect to any GS Intellectual Property, including the System and any GS Licenses.

4.17.12 **Date-related Functions.** With respect to all date-related data and functions, any of the Software will accept input, perform processes, and provide output in a manner that (x) is consistent with its intended use and all applicable specifications, (y) prevents ambiguous or erroneous results, and (z) does not result in any adverse effect on functionality or performance of any such Software or any other software or hardware.

4.17.13 **Funding.** No federal, state, local or other government funding or university or college facilities were used in the development of any GS Intellectual Property or any GS products, except pursuant to contracts or agreements listed in Schedule 4.17.13.

4.17.14 **Documentation.** The Documentation is complete, accurate and correct, comports with generally accepted industry standards in describing the proper procedures for installing and operating the System, and shall provide sufficient information to enable Parent personnel to install and operate the System.

4.17.15 **No Warranties.** Except as set forth in Schedule 4.17.15, GS has not made any written representations or warranties with respect to any of its products or services.

4.17.16 **Domain Names.** GS has registered all domain names (including primary and secondary domain names) that are used or proposed to be used by GS in the conduct of its business as currently conducted and/or as proposed to be conducted with all the appropriate domain name registration companies (the “Domain Names”). Schedule 4.17.16 lists all such Domain Names registered anywhere in the world. GS shall not, and shall not permit any other party to, apply for the use of, or use, throughout the world, the Domain Names, any domain name incorporating the Domain Names, or any domain name confusingly similar to the Domain Names. GS agrees to execute at any time the documents required to transfer and record the transfer of the Domain Names in any and all countries and jurisdictions. GS agree to cooperate with Parent and provide (or cause

to be provided) to Parent such reasonable assistance necessary to transition seamlessly to Parent the operation of GS's websites located at the Domain Names.

4.17.17 **Accuracy and Currency of Products.** Each Software and other product offered by GS (including each piece of data and other content contained therein) is accurate and current at the time of delivery and during such time as the applicable customer or end user is authorized to use such product. GS has developed and disclosed to Parent detailed procedures for conducting periodic testing of each such product to verify accuracy, currency, continuous availability and reliability.

4.17.18 **Open Source.** Except as specifically set forth in Schedule 4.17.18, the GS Intellectual Property (including the Software) does not include any "open source" code (as defined by the Open Source Initiative) or "Free" code (as defined by the Free Software Foundation), nor has it been created in such a way that it is compiled with or linked to any such code. To the extent that the GS Intellectual Property includes the "open source" and "Free" code identified in Schedule 4.17.18, such code is not integrated in any way into any of the GS Intellectual Property which could result in a contractual requirement for GS to make available the Source Code for any Software. Without limitation of the foregoing, the GS Intellectual Property does not include any modifications, derivatives or any other Software based on Software licensed from Genivia, Inc. (except the Software licensed from Genivia, Inc. in an unmodified form).

4.17.19 **Security.** GS has established, implemented and maintained (i) reasonable safeguards against the destruction, loss or alteration of, and unauthorized access to, all Software; and (ii) reasonable physical, network, electronic and internet security procedures, protocols, security gateways and firewalls with respect to all Software and all other GS Confidential Information, all in accordance with applicable industry standards and using state of the art resources. GS represents and warrants that there are no known or suspected weaknesses or vulnerability with respect to the security of any Software. Further, GS represents and warrants that there have been no known or suspected unauthorized use of or access to any of the Software, including any known or suspected unauthorized access to or disclosure of any PII (as defined below). All PII is stored and disseminated solely in encrypted form. GS has installed and updated all Software with patches, updates, fixes and upgrades provided to GS by its vendors that are necessary or desirable for the maintenance of security of such Software.

4.17.20 **Definitions.** For purposes of this Agreement:

(a) "Confidential Information" shall include, without limitation, any information, including, without limitation, trade secrets or proprietary information, databases, software programs, processes, patent applications, Source Code, product development and product development techniques, price lists, pricing data, medical, clinical and drug information, subscriber, advertiser, vendor, customer, physician and patient lists, pricing policies and marketing plans, operational methods, methods of doing business, technical processes, formulae, designs and design projects, inventions, research projects, policies and strategic plans, product information, manufacturing and advertising know-how,

possible acquisition information, including business and personnel acquisition plans, and other business affairs of GS, which is or are designed to be used in, or are or may be useful in connection with, GS's business, or which results from any of the research or development activities of GS, and (i) is private or confidential in that it is not generally known or available to the public, or (ii) gives GS an opportunity or the possibility of obtaining an advantage over competitors who may not know or use such information or who are not lawfully permitted to use the same.

(b) **"Documentation"** shall mean written materials (and machine-readable text subject to human-readable display or printout) in the possession or control of GS that relate to the System or elements of the System. For purposes of clarification, Documentation shall include, without limitation, any documentation used in conjunction with Source Code in the development or maintenance process, including design or development specifications, flow charts, error reports and related correspondence and memoranda and any documentation used in the development or maintenance of any of the Hardware or Software, including design or development specifications, flow charts, error reports, support call reports, bug tracking system and related correspondence and memoranda and all materials regarding keys to encryption or cryptographic elements of Software in the possession or control of GS.

(c) **"GS Intellectual Property"** shall mean all Intellectual Property used or proposed to be used by GS in the conduct of its business as currently conducted and/or as proposed to be conducted. GS Intellectual Property shall be deemed to include the Software and other aspects of the System (each as defined below).

(d) **"Hardware"** shall mean the hardware, including any operating systems software loaded thereon, that are used or intended by GS to be used in connection with GS's business.

(e) **"Intellectual Property"** shall mean any one or more of the following: trademarks (registered or unregistered), service marks, brand names, domain names, certification marks, trade dress, assumed names, trade names and other indications of origin and registrations in any jurisdiction, and applications in any jurisdiction to register the foregoing, including any extension, modification or renewal of any such registration or application; inventions, discoveries, improvements, concepts and ideas, whether reduced to practice or not and whether patented or not in any jurisdiction; computer programs, software (including object code, source code, and associated data and documentation), electronic databases (including any and all extracts or reports therefrom in any and all media) and other databases and data; mask-works; know-how and any other technology; trade secrets and confidential information and rights in any jurisdiction to limit the use or disclosure thereof by a third party; writings and other works, whether copyrighted, copyrightable or not in any jurisdiction; registrations or applications for registration of copyrights in any jurisdiction, and

any renewals or extensions thereof; any other intellectual property or proprietary rights; licenses, immunities, covenants not to sue and the like relating to any of the foregoing; and any claims or causes of action arising out of or related to any infringement, misuse or misappropriation of any of the foregoing.

(f) **"PII"** shall mean personal information of any individual including, without limitation, such individual's name, social security number, driver's license number, home address, business address, telephone, wireless and/or fax number, short message service or text message address or other wireless device address, instant messaging address, any other contact information, credit card and debit card details, other financial information, medical and health-related information, demographic information and/or other information that may identify someone as an individual or allow online or offline contact with such person.

(g) **"Software"** shall mean, collectively, all computer software and electronic data processing software, electronic databases, including any and all extracts or reports therefrom in any and all media, and other similar data, that is used or intended by GS to be used in connection with GS's business, including, without limitation, any and all Source Code and object code versions thereof and the computer programs, tools, applications, flowcharts, block diagrams, designs, technical information, inventions (whether or not patentable), improvements, know-how, trade secrets, formulae, processes, bug-fixes, modifications, enhancements, works in progress and versions identified.

(h) **"Source Code"** shall mean the human-readable (as opposed to machine-readable) form of the computer programming code for the Software, including source code listings as commented, including all necessary support or library routines, all of which shall be on media able to be read and processed on the System.

(i) **"System"** shall mean the Hardware, Software and Documentation.

(j) **"Third-Party Software"** shall mean software or technology in which any person or entity claims any right, title, or interest superior to GS, including any restrictions or obligations (including obligations to obtain consents or approvals, and restrictions that may be eliminated only by obtaining consents or approvals) applicable to the Software.

4.18 **No Interest in Properties, Competitors, Etc.** Except as described on Schedule 4.18 to this Agreement, no director or officer of GS and no Principal Stockholder owns, directly or indirectly, in whole or in part, any of the properties necessary for the business of GS as currently conducted, and no director or officer of GS and no Principal Stockholder owns, directly or indirectly, any interest in (except for the ownership of marketable securities of publicly owned corporations, representing in no case more than three percent (3%) of the outstanding shares of such class of securities) or controls or is an employee, officer, director or partner of, participant in or consultant to any corporation, association, partnership, limited



partnership, joint venture or other business organization which is a competitor, supplier, customer, landlord or tenant of GS or Parent.

#### 4.19 **Tax Matters.**

4.19.1 **Filing of Returns.** GS and each subsidiary of GS has timely filed, or has caused to be timely filed on its behalf, all Tax Returns required to be filed by GS and each subsidiary of GS through the date hereof, and will timely file any such Tax Returns required to be filed on or prior to the Closing Date, and all such Tax Returns were, or will be, true, complete and accurate in all material respects. All Taxes due with respect to the taxable periods covered by such Tax Returns, or otherwise owed, have been or will be timely paid. Taxes that are not yet payable have been fully reserved for on the books and records of GS and each subsidiary of GS.

4.19.2 **Deficiencies.** There is no Tax or Tax deficiency outstanding, proposed or assessed against GS or any subsidiary of GS.

4.19.3 **Audits.** No audit or other examination of any Tax Return of GS or any subsidiary of GS by any Tax authority is in progress, nor has GS or any subsidiary of GS been notified of any request of such an audit or other examination. No adjustment relating to any Tax Returns filed or required to be filed by GS or any subsidiary of GS has been proposed formally or informally by any Tax authority to GS or any subsidiary of GS or any representative thereto.

4.19.4 **Liens.** There are no liens for Taxes (other than for current Taxes not yet due and payable) on the assets of GS or any subsidiary of GS.

4.19.5 **Tax Agreements.** Neither GS or any subsidiary of GS is party to or bound by any written or oral tax sharing agreement, tax indemnity obligation or similar agreement, arrangement or practice with respect to Taxes including (i) any advance pricing agreement, closing agreement or other agreement relating to Taxes with any Tax authority and (ii) any liability for Taxes of any other person under Treasury Regulation Section 1.1502-6 or comparable provision of foreign, state or local law.

4.19.6 **Inclusion of Income.** Neither GS nor any subsidiary of GS shall be required to include in a taxable period ending after the Closing Date taxable income attributable to income that accrued in a prior taxable period as a result of the installment method of accounting, the long-term contract method of accounting, the cash method of accounting or Section 481 of the Code or comparable provisions of state, local or foreign tax law, or for any other reason.

4.19.7 **Extensions; Powers of Attorney.** There is no currently effective agreement or other document extending, or having the effect of extending, the period of assessment or collection of any Taxes and no power of attorney with respect to any Taxes has been executed or filed with any Tax authority by or on behalf of GS or any subsidiary of GS.

4.19.8 **Withholding Obligations.** GS and each subsidiary of GS has complied through the date hereof and will continue to comply from the date hereof to the Closing Date in all material respects with all applicable Laws relating to the payment and withholding of Taxes (including withholding of Taxes pursuant to Sections 1441, 1442, 3121 and 3402 of the Code or similar provisions under any state, local or foreign laws) and has, within the time and in the manner prescribed by Law, withheld from and paid over to the proper Tax authorities all amounts required to be so withheld and paid over under applicable Law.

4.19.9 **Section 355.** Neither GS nor any subsidiary of GS has constituted either a “distributing corporation” or a “controlled corporation” in a distribution of stock qualifying for tax-free treatment under Section 355 of the Code (i) in the two years prior to the date of this Agreement or (ii) in a distribution that could otherwise constitute part of a “plan” or “series of related transactions” (within the meaning of Section 355(e) of the Code) in conjunction with the Merger.

4.19.10 **Collapsible Corporation; FIRPTA.** Neither GS nor any subsidiary of GS has (i) filed any consent agreement under Section 341(f) of the Code or (ii) has been a United States real property holding corporation within the meaning of Section 897(i)(2) of the Code during the applicable period specified in Section 897(c)(i)(A)(ii) of the Code.

4.19.11 **Nondeductible Payments.** There is no contract, agreement, plan or arrangement to which GS or any subsidiary of GS is a party, including but not limited to the provisions of this Agreement, that individually or collectively, could give rise to a payment of any amount that would not be deductible pursuant to Sections 280G, 404 or 162(m) of the Code. There is no contract, agreement, plan or arrangement to which GS or any subsidiary of GS is a party or by which it is bound to compensate any individual for excise tax pursuant to Section 4999 of the Code.

4.19.12 **Reportable Transactions.** Neither GS nor any subsidiary of GS has participated in a “reportable transaction” or “listed transaction” as defined in Treasury Regulation Section 1.6011-4(b) or any analogous or similar state, local or foreign law.

4.19.13 **Understatement of Taxes.** GS and each subsidiary of GS has disclosed on their Federal income tax returns all positions taken thereon that could result in a substantial understatement of federal income tax within the meaning of Section 6662 of the Code.

4.19.14 **Definitions.** For purposes of this Agreement:

(a) “Taxes” includes all (i) forms of taxation imposed by a Tax authority, including, but not limited to, income, franchise, property, sales, use, excise, employment, unemployment, payroll, social security, estimated, value added, gross receipts, goods and services, business activities, intangible personal property, ad valorem, transfer, recapture, stamp, alternative minimum, withholding, custom, windfall profit tax, duty, other taxes, governmental fees or other like assessment or charges of any kind whatsoever, including any interest,

penalties and additions thereto, (ii) liability for the payment of any amounts of the type described in clause (i) as a result of being a member of an affiliated, consolidated, combined, unitary or aggregate group and (iii) liability for the payment of any amounts as a result of being a party to any tax sharing agreement or as a result of any expressed or implied obligation to indemnify any other person with respect to the payment of any amounts of the type described in clause (i) or (ii).

(b) “**Tax Return**” means any return, declaration, report, document, claim for refund, estimate, information return or other statement or information required to be filed or supplied to any Tax authority or jurisdiction with respect to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

4.20 **Approvals and Consents.** Except as provided on Schedule 4.20, no consent, approval or authorization is required to be obtained by GS in connection with the execution or delivery by them of this Agreement or the consummation by them of the transactions contemplated hereby, all of which has been or will have been timely obtained prior to Closing.

4.21 **Change of Control Payments.** Except as set forth in Schedule 4.21, neither the execution and delivery of this Agreement nor the consummation of the Merger and other transactions contemplated hereby will (i) result in any payment (including, without limitation, severance, unemployment compensation, golden parachute, bonus or otherwise) becoming due to any director, officer or employee or former employee of GS from GS, under any benefit plan or otherwise, (ii) materially increase any benefits otherwise payable under any benefit plan identified in Section 4.15 and the corresponding Schedules, (iii) result in the acceleration of the time of payment upon a subsequent termination of employment, or (iv) result in the acceleration of the time of payment of any of GS’s accounts payable, royalties or any indebtedness of GS, including any payment of the Earn-Out (as defined herein).

4.22 **Customers and Suppliers.**

4.22.1 **Largest Customers.** Schedule 4.22 lists the ten (10) largest customers of GS and its subsidiaries (in terms of revenue) for each of the two most recent fiscal years and sets forth opposite the name of each such customer the percentage of consolidated revenues attributable to such customer. Schedule 4.22 also lists any additional current customers that GS anticipates shall be among the ten (10) largest customers of GS and its subsidiaries (in terms of revenue) for the current fiscal year.

4.22.2 **Decrease in Customer or Supplier Purchasing.** Since the date of the GS Interim Balance Sheet, (i) no supplier of GS or any of its subsidiaries has indicated in writing to GS or to the knowledge of GS otherwise that it shall stop, or decrease the rate of, supplying materials, products or services to GS or any of its subsidiaries, and (ii) no customer listed on Schedule 4.22 has indicated in writing to GS or to the knowledge of GS otherwise that it shall stop, or decrease the rate of, buying materials, products or services from, or doing business with, GS or any of its subsidiaries.

#### 4.23 **Environmental Matters.**

4.23.1 **Compliance with Laws.** Except as disclosed in Schedule 4.23, neither GS nor any of its subsidiaries is in violation of, in any material respect, and to the knowledge of GS, is not subject to any liabilities (including, without limitation, obligations to cleanup, remediate or investigate any Hazardous Substances) under, any Environmental Law, and no material expenditures are or will be required in connection with the operation of the businesses of GS and its subsidiaries as presently conducted in order to comply with any such existing Environmental Law. To the knowledge of GS, none of the Leased Real Property has been designated, restricted or investigated by any governmental authority as a result of the actual or suspected presence, spillage, leakage, discharge or other emission of Hazardous Substances. The consummation of the transactions contemplated by this Agreement will not impose any obligations under applicable laws relating to environmental or safety requirements for site investigation or cleanup, or notification to or consent of any governmental agency or third party.

4.23.2 **Hazardous Substances.** Except as set forth in Schedule 4.23, (i) to the knowledge of GS, there are no Hazardous Substances in, on, under or around any of the Leased Real Property; (ii) to the knowledge of GS, there are no tanks, impoundments, vessels or other containers used for the storage of Hazardous Substances on or below the surface of the Leased Real Property; and (iii) neither GS nor any of its subsidiaries has received any written or oral governmental notice, order, inquiry, investigation, environmental audit or assessment or any encumbrance, decree, easement, covenant, restriction, servitude or proceeding concerning, or arising by reason of, the actual or suspected presence, spillage, leakage, discharge or other emission of any Hazardous Substance in, on, under, around, about or in the vicinity of, or the transportation of any Hazardous Substance at, from or to, any of the Leased Real Property, and to the knowledge of GS, there is no basis for any such notice, order, inquiry, investigation, environmental audit or assessment or any such encumbrance, decree, easement, covenant, restriction, servitude or proceeding.

4.23.3 **Definitions.** For purposes of this Section 4.23, the term “**Hazardous Substances**” shall include, without limitation, any flammable materials, explosives, radioactive materials, hazardous materials, hazardous substances, hazardous wastes, toxic substances or related materials, asbestos, petroleum, petroleum products and any hazardous material as defined by any federal, state or local environmental law, statute, ordinance, rule or regulation, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675, the Hazardous Materials Transportation Act, as amended, 49 U.S.C. §§ 5101-5127, the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6901-6992k, the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001-11050, the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2692, the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136-136y, the Clean Air Act, 42 U.S.C. §§ 7401-7642, the Clean Water Act (Federal Water Pollution Control Act), 33 U.S.C. §§ 1251-1387, the Safe Drinking Water Act, 42 U.S.C. §§ 300f-300j-26, and the Occupational Safety and Health Act, 29 U.S.C. §§ 651-678, and any analogous state laws, as any of the above may be amended from time to time and in the

regulations promulgated pursuant to each of the foregoing (including environmental statutes and laws not specifically defined herein) (individually, an “**Environmental Law**” and collectively, the “**Environmental Laws**”) or by any governmental entity.

4.24 **State Takeover Laws.** The Board of Directors of GS has duly and validly taken or will take in a timely manner all necessary actions to exempt the transactions contemplated by this Agreement, including the Merger, from the provisions of Sections 607.0901 through 607.0903, inclusive, of the FBCA, and no other state takeover statute or similar Law applies or purports to apply to the Agreement, or the transactions contemplated hereby or thereby (collectively, “**Takeover Laws**”).

4.25 **Derivative Contracts.** GS is not a party to nor has GS agreed to enter into any swap, forward, future, option, cap, floor, or collar financial contract, or any other interest rate or foreign currency protection contract not included on its balance sheet which is a financial derivative contract (including various combinations thereof).

4.26 **Brokers and Finders.** Except as set forth on Schedule 4.26, no broker, finder or investment banker has been retained by GS or is entitled to any brokerage, finder’s or other fee or commission in connection with the transactions contemplated hereby.

4.27 **Disclosure.** No representation or warranty contained in this Article 4 or in Article 5 hereof (including, without limitation, any Schedule hereto and thereto), and no schedule, certificate or other written document or instrument delivered or to be delivered by GS or the Principal Stockholders pursuant to this Agreement or in connection with the transactions contemplated hereby, contains or will contain any untrue statement of a material fact or omits or will omit to state any material fact necessary to make the statements contained therein not misleading.

4.28 **Reliance.** The representations and warranties of GS made in Article 4 of this Agreement are made by GS with the knowledge and expectation that Parent and Acquisition are relying thereon in entering into, and performing their respective obligations under, this Agreement, and the same shall not be affected in any respect whatsoever by any investigation heretofore or hereafter conducted by or on behalf of Parent and Acquisition, whether in contemplation of this Agreement or otherwise.

For purposes hereof, unless the context otherwise requires, the term GS shall include GS and the Subsidiary.

## **ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF THE PRINCIPAL STOCKHOLDERS**

Each of the Principal Stockholders, severally and not jointly, makes the representations and warranties set forth in this Article 5, as of the date hereof and as of the Closing Date.

## 5.1 Reliance. Title to the Shares; Authority.

5.1.1 **Title to Shares.** Each Principal Stockholder represents and warrants to Parent and Acquisition that: (i) such Principal Stockholder is the beneficial and record owner of the number of issued and outstanding shares of capital stock of GS set forth opposite such Principal Stockholder's name in Schedule 5.1 hereto, free and clear of any lien, charge or encumbrance of any kind whatsoever; and (ii) except for the agreements specifically disclosed in Schedule 5.1 hereto, there are no agreements, arrangements or understandings (including, without limitation, options or rights of first refusal) to which such Principal Stockholder is a party for the purchase, sale or other disposition of such shares or any interest therein.

5.1.2 **Authority.** Each Principal Stockholder represents and warrants to Parent and Acquisition that such Principal Stockholder has all necessary legal capacity, right, power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. This Agreement constitutes the valid and binding obligation of each Principal Stockholder, enforceable against such Principal Stockholder in accordance with its terms. Neither the execution and delivery of this Agreement by the Principal Stockholders, nor the consummation of the transactions contemplated hereby, will (i) violate any of the constituent documents binding on such Principal Stockholder, (ii) violate any provisions of law or any order of any court or any governmental unit to which such Principal Stockholder is subject or by which its assets or properties may be bound, (iii) conflict with, breach, violate or constitute an event of default (or an event which with the lapse of time or the giving of notice or both would constitute an event of default) under, or give rise to, any right of termination, cancellation, modification or acceleration under, or require any consent or the giving of any notice under, any contract or instrument to which such Principal Stockholder is a party or by which such Principal Stockholder or any of such Principal Stockholder's properties or assets may be bound.

5.2 **Trusts.** With respect to the trusts listed in Schedule 5.2 hereto (each a "Trust" and collectively the "Trusts"), the trustees or other fiduciaries thereof who have signed this Agreement and any agreement or certificates in connection herewith on behalf of such Trust are the duly appointed trustees, fiduciaries or other representatives of such Trust and they have not been removed or replaced from such positions as of the date hereof. The trustees or other fiduciaries of such Trust have all the power and authority necessary to own and dispose of the GS Stock held by such Trust. No beneficiary or other remainderman of such Trust has heretofore in any way assigned, transferred or encumbered, or permitted the assignment, transfer or other encumbrance of, GS Stock (or any interest therein) held by such Trust. The execution and delivery of this Agreement and any agreement or certificates in connection herewith by such trustees or fiduciaries and the performance by such trustees or fiduciaries of their obligations hereunder have been duly and validly authorized and approved by all actions required under applicable law relating to such Trust and under the terms of the relevant Trust instruments. Such trustees and other fiduciaries have full power and authority under the terms of such applicable Trust instruments and under any document relating to or applicable to such Trust to execute and deliver this Agreement and any agreement or certificates in connection herewith on behalf of such Trust and to legally bind such Trust to perform its obligations hereunder and thereunder. Neither the execution of this Agreement or any other agreement or certificates in connection

herewith by such Trust or the consummation of the transactions contemplated hereby or thereby nor compliance by such Trust with or fulfillment of the terms and conditions hereof or thereof will violate or conflict with any provision of such applicable Trust instruments and any other document relating to such Trust.

5.3 **Brokers and Finders.** No broker, finder or investment banker has been retained by a Principal Stockholder or is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated hereby.

5.4 **Reliance.** The representations and warranties of each of the Principal Stockholders made in Article 5 of this Agreement are made by each such Principal Stockholder with the knowledge and expectation that Parent and Acquisition are relying thereon in entering into, and performing their respective obligations under, this Agreement, and the same shall not be affected in any respect whatsoever by any investigation heretofore or hereafter conducted by or on behalf of Parent and Acquisition, whether in contemplation of this Agreement or otherwise.

## ARTICLE 6 REPRESENTATIONS AND WARRANTIES OF PARENT AND ACQUISITION

Parent and Acquisition hereby jointly and severally represent and warrant the following:

6.1 **Organization and Standing.** Parent is a corporation duly organized, validly existing and in good standing under the laws of the State of New York and has the corporate power and authority to carry on its business as it is now being conducted. Acquisition is a corporation duly organized, validly existing and in active status under the laws of the State of Florida and has the corporate power and authority to carry on its business as it is now being conducted.

### 6.2 **Authority Relative to this Agreement.**

6.2.1 **Authorization.** The execution of this Agreement and the delivery of this Agreement by Parent and Acquisition have been duly authorized by Parent and Acquisition; this Agreement has been duly and validly executed by Parent and Acquisition, and no further corporate action is necessary on its part to make this Agreement valid and binding upon Parent and Acquisition and enforceable against Parent and Acquisition in accordance with the terms hereof, or to carry out the transactions contemplated hereby.

6.2.2 **No Violations.** The execution, delivery and performance of this Agreement by Parent and Acquisition will not: (1) constitute a breach or a violation of the Articles of Incorporations or by-laws of Parent or Acquisition or of any law, rule or regulation, agreement, indenture, deed of trust, mortgage loan agreement or other instrument to which Parent and/or Acquisition is a party or by which Parent and/or Acquisition is bound; (2) constitute a violation of any order, judgment or decree to which Parent and/or Acquisition is a party or by which any of the assets or properties of Parent and are bound or affected; or (3) result in the creation of any lien, charge or encumbrance

upon any of the assets or properties of Parent and/or Acquisition other than, in the case of clauses (2) and (3) above, any such breaches, violations, liens, charges, claims or encumbrances that individually or in the aggregate would not impair in any material respect the ability of the Parent to perform its obligations under this Agreement or prevent or materially impede or delay the consummation of the Merger.

6.2.3 **Consents; Approvals.** No consent, approval or authorization is required to be obtained by Parent and/or Acquisition in connection with the execution or delivery of this Agreement by Parent and Acquisition or the consummation by Parent and Acquisition of the transactions contemplated hereby except as has been or will have been timely obtained prior to Closing.

6.3 **Access to Books and Records.** Parent and Acquisition have each been given access to the books and records of GS and have had an opportunity to ask questions and receive answers regarding the business, financial condition, and other aspects of GS, including its assets and liabilities.

6.4 **Financial Wherewithal.** Parent and Acquisition have funding sources sufficient to carry out the transactions contemplated in this Agreement.

## **ARTICLE 7 CERTAIN COVENANTS AND AGREEMENTS**

7.1 **Conduct of Business of GS Pending Closing.** During the period from the date hereof to the Closing Date, GS covenants to, and the Principal Stockholders will, except as otherwise expressly provided by this Agreement or consented to in advance by Parent in writing, cause GS to:

(a) Carry on its business in the usual, regular and ordinary course consistent with past practices;

(b) Maintain all assets (other than those disposed of in the ordinary course consistent with past practices) in good repair and condition, except for ordinary wear and tear and damage by unavoidable casualty;

(c) Maintain its books of account and records in the usual, regular and ordinary manner;

(d) Use its best efforts to maintain and preserve its business organization intact, maintain its relationship with lenders, customers and suppliers and others having business relations with it, and retain its employees;

(e) Insure all property, real, personal and mixed, owned or leased by it against all ordinary and insurable risks in a manner consistent with past business practices (but in any event consistent with industry standards);



(f) Not dispose of any of its assets other than in the ordinary course of business consistent with past practices;

(g) Not permit or allow any of its property or assets (real, personal or mixed, tangible or intangible) to be subjected to any lien, claim or encumbrance;

(h) Not issue any additional shares of its capital stock or any securities convertible into, options with respect to, warrants to purchase or rights to subscribe for or otherwise acquire, any such shares, or enter into any commitments for the issuance of such shares;

(i) Not make any dividend or distribution in respect of its capital stock;

(j) Not enter into any agreement for the borrowing of money or incur or assume any indebtedness for money borrowed or guarantee any such indebtedness or other obligation or liability;

(k) Pay, discharge, settle or satisfy any claims, liabilities, or obligations (contingent or otherwise) other than in the ordinary course of business consistent with past practices or cancel or waive any claims or rights of material value;

(l) Not make any capital expenditures other than those made in the ordinary course of business and in accordance with past practices and which do not (individually) exceed \$50,000;

(m) Not enter into any contract or commitment, or series of related contracts or commitments, unless such contract or commitment, or series of related contracts or commitments (i) arises in the ordinary course of business or (ii) involves expenditures or revenues of less than \$50,000 in the aggregate and (iii) does not involve a related party;

(n) Not dispose of or permit to lapse any rights to the use of any Intellectual Property or, except in the ordinary course of business, license or sell any Intellectual Property;

(o) Not make any increases in the compensation rates of employees except to the extent consistent with past practices;

(p) Not make any change in any accounting principle or practice or in its method or applying any such principle or practice;

(q) Not change any of the banking or safe deposit arrangements described in Schedule 4.16 hereto;

(r) Not organize any subsidiary, acquire any capital stock or other equity securities of any corporation or acquire any equity or ownership interest in

any business, or seek to become or become a party to any merger, consolidation, reorganization or other business combination;

(s) Not amend its Articles of Incorporation or bylaws;

(t) Not transfer or license to any person or entity or otherwise extend, amend or modify any rights to GS intellectual property other than in the ordinary course;

(u) Not commence any lawsuit, arbitration or administrative proceeding against a third party;

(v) Not take any action that would reasonably be expected to result in (A) any representation and warranty of GS or the Principal Stockholders set forth in this Agreement becoming untrue or (B) any condition to the Merger not being satisfied; or

(w) Not make any material change in the method of accounting or accounting practice or policy or Tax reporting, except in accordance with GS's current practices or as required by GAAP or applicable law (in which case GS will promptly notify the Parent of such material change), make or rescind any election relating to Taxes, file any amended Tax Return, settle any Tax claim or assessment or consent to any waiver or extension of the limitation period applicable to any Tax claim or assessment.

7.2 **Third Party Consents.** GS shall, and the Principal Stockholders shall cause GS to, give all applicable notices to third parties and use its reasonable best efforts to obtain at the earliest practicable date, but in no event later than the Closing Date, all third-party consents listed on Schedule 4.20, and shall provide to Parent copies of each such consent promptly after it is obtained.

7.3 **Regulatory Matters; HSR.** Each of the parties shall give all notices to, make any filings with and use its reasonable best efforts to obtain any authorizations, consents and approvals of governments and governmental agencies necessary to consummate the transactions contemplated by this Agreement. Without limited the generality of the foregoing, each of the parties shall file any Notification and Report forms and related material that it may be required to file with the Federal Trade Commission and the Antitrust Division of the United States Department of Justice under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, shall use its reasonable best efforts to obtain an early termination of the applicable waiting period, and shall make any further filings pursuant thereto that may be reasonably necessary in connection therewith.

7.4 **Full Access.** GS shall afford to Parent, Parent's counsel, accountants and other representatives, reasonable access, during normal business hours to, and GS shall disclose and make reasonably available to them (with the right to make copies), all of the books and records of GS (including its subsidiaries) relating to the ownership of the properties, operations, financial condition, assets, obligation and liabilities of GS and its subsidiaries, and GS shall afford Parent,

Parent's counsel, accountants and other representatives with access to the facilities and properties of GS and its subsidiaries and to the officers and directors of GS and its subsidiaries.

7.5 **Confidentiality.** The parties agree that the Mutual Confidentiality Agreement between GS and Parent as provided on Schedule 7.5 shall be binding upon the parties as if the provisions thereof were fully set forth herein.

7.6 **Notice of Developments.** GS shall confer with the Parent on a regular and frequent basis to report on operational matters and other matters in each case as reasonably required by Parent. Each party will give prompt written notice to the other parties of (a) the occurrence, or failure to occur, of any event or existence of any condition that has caused or could cause any of its representations or warranties contained in this Agreement to be untrue or inaccurate on the Closing Date, (b) any failure on its part to perform or comply with any covenant, agreement or condition to be performed or complied with by it under this Agreement or (c) any event which would result or could reasonably be expected to result in the failure to satisfy the conditions specified in Article 8 or Article 9 hereof. No disclosure by any Party pursuant to this Section 7.6, however, shall be deemed to amend or supplement the Disclosure Schedule or to prevent or cure any misrepresentation, breach of warranty, or breach of covenant.

7.7 **Cooperation.** Parent, Acquisition, GS, the Principal Stockholders and the Stockholder Agents shall (a) cooperate with one another in determining whether any filings are required to be made or consents are required to be obtained in connection with the consummation of the transactions contemplated hereby and in making any such filings promptly and seeking to obtain timely any such consents; and (b) use all reasonable efforts to obtain the satisfaction of all the conditions to the Closing (including those in Articles 8 and 9 hereof). Parent, Acquisition, GS, the Principal Stockholders and the Stockholder Agents shall each furnish one another and to one another's counsel all such information as may be required in order to fulfill the foregoing obligations.

7.8 **Supplements to Schedules.** From time to time after the date hereof but in any event not later than the Closing Date, GS will promptly supplement or amend the Schedules hereto with respect to any matter hereafter (a) during which, if existing or occurring at the date of the Agreement, would have been required to be set forth or described in any such Schedule or (b) which is necessary to correct any information set forth in any such Schedule which has been rendered inaccurate thereby; provided, however, that no supplement or amendment to any such Schedule shall have any effect for the purpose of determining whether any breach of this Agreement existed prior to such supplement or amendment or whether the condition set forth in Section 8.1 of this Agreement has been satisfied.

7.9 **Other Transactions.** Neither GS nor any of the Principal Stockholders shall, directly or indirectly, enter into any discussions concerning, or approve or recommend to the holders of any shares of GS's capital stock, any merger, consolidation, disposition of all or substantially all of its business, properties or assets (other than pursuant to this Agreement), any tender offer, acquisition or other business combination, or proposal therefor, or furnish or cause to be furnished any information concerning the business, properties or assets of GS to any party in connection with any transaction involving the acquisition of GS or any substantial part of its

assets, or the purchase or other acquisition of any GS Stock owned by Principal Stockholders, by any person other than Parent or Acquisition.

#### **7.10 Stock Options and Warrants.**

**7.10.1 Notice to Holders; Payment.** The Board of Directors of GS (or, if appropriate, any committee administering the stock option plans of GS (the “**Option Plans**”)) shall adopt such resolutions or take such other actions (if any) as may be required to provide that (a) each holder of an option or a warrant to purchase shares of GS Stock (i) shall be given written notice in a form reasonably acceptable to Parent and in accordance with the terms of the applicable Option Plan and/or the applicable stock option or warrant agreement of the proposed Merger and the other Transactions (the “**Option/Warrant Notice**”) at least 5 days prior to the proposed Closing Date or such longer period, if any, as required by such applicable agreement (which Closing Date shall be specified in the Option/Warrant Notice), and (ii) shall (subject to any earlier termination of such option or warrant pursuant to the terms of the applicable Option Plan, the applicable stock option or warrant agreement, any action taken by GS pursuant to this Section 7.10.1 or otherwise) be permitted during the period commencing on the date of the Option/Warrant Notice and ending immediately prior to the Effective Time to exercise such option or warrant in full as to all the shares of GS Common Stock covered by such option or warrant, as the case may be, whether or not then vested and (b) each option or warrant to purchase shares of GS Common Stock outstanding immediately prior to the Effective Time shall be canceled effective immediately prior to the Effective Time with the holder thereof becoming entitled to receive the Option/Warrant Consideration. All amounts payable pursuant to this Section 7.10.1 shall be subject to any required withholding of Taxes or proof of eligibility of exemption therefrom and shall be paid (and Parent shall cause to be paid) at the Effective Time or as soon as practicable thereafter, without interest. Neither Parent, Acquisition nor the Surviving Corporation shall assume any option or warrant to purchase shares of capital stock of GS, or substitute any new stock option for any such option or warrant prior to, at or after the Effective Time.

**7.10.2 Cancellation of Options, Warrants.** The cancellation of any such option or warrant in exchange for the cash payment described herein shall terminate, and be deemed a release of, any and all rights the holder of such option or warrant, as applicable, had or may have had in respect thereof. Notwithstanding anything to the contrary contained in this Agreement, payment shall, at Parent’s request, be withheld in respect of any such option or warrant until all necessary documents with respect to such option or warrant are obtained.

**7.10.3 Termination of Option Plans.** As soon as reasonably practicable following the date of this Agreement, the Board of Directors of GS (or, if appropriate, any committee administering the Option Plans) shall take or cause to be taken such actions as are required to cause (a) the Option Plans and/or any outstanding option and warrant agreement to terminate as of the Effective Time, (b) the provisions in any other Employee Benefit Plan providing for the issuance, transfer or grant of any capital stock of GS or any interest in respect of any capital stock of GS or any right or interest based

on or linked to the value of any capital stock of GS to be deleted as of the Effective Time and (c) each holder of an option or warrant to purchase any shares of GS Stock and each participant in any Option Plan or other Employee Benefit Plan to have, immediately following the Effective Time, no right thereunder to acquire, no right or interest based on or linked to the value of, any capital stock of GS or the Surviving Corporation.

#### **7.11 Stockholder Approval.**

7.11.1 **Disclosure to Stockholders.** Promptly following the execution of this Agreement, GS shall (a) take all necessary action to prepare and distribute to all of the Stockholders the notice (the “**Stockholder Notice**”) of the Stockholder Meeting in accordance with Section 607.0705 of the FBCA and GS’s Articles of Incorporation and Bylaws, and, concurrently with the distribution of the Stockholder Notice, to distribute to all of the Stockholders a notice, in accordance with Section 607.1320 of the FBCA, advising the Stockholders that they are entitled to assert appraisal rights under Florida law (the “**Stockholder Appraisal Notice**”), and include in such Stockholder Appraisal Notice all the materials required by Section 607.1322 of the FBCA, (b) take all necessary action to prepare and distribute to the Stockholders all necessary disclosure information, including a disclosure and information statement (the “**Disclosure and Information Statement**”), for the purpose of considering and approving the adoption of this Agreement and the Merger by all Stockholders, and (c) present this Agreement and the Merger to the Stockholders and use its best efforts to solicit the approval thereof by all of the Stockholders.

7.11.2 **Form of Disclosure and Information Statement.** The Disclosure and Information Statement transmitted to Stockholders in connection with the approval of this Agreement and the Merger shall (i) comply with all applicable state and federal laws, (ii) be in form and substance reasonably satisfactory to Parent and its counsel and (iii) not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

7.12 **Notice to Dissenters.** On the Closing Date or within 10 days thereafter (but in no event prior to the Effective Time), the Surviving Corporation shall deliver to each holder of Dissenting Stock the notice required by Section 607.1322 of the FBCA.

7.13 **State Takeover Laws.** GS shall take all action necessary to exempt the transactions contemplated by this Agreement from, or if necessary challenge the validity or applicability of, any applicable Takeover Laws.

7.14 **Voting; Waiver of Appraisal Rights.** At the Stockholder Meeting or at any adjournment or postponement thereof, or in any other circumstances upon which a vote, consent, adoption or other approval (including by written consent solicitation) with respect to this Agreement, including the Merger or any other Transactions contemplated hereby, each Principal Stockholder shall vote (or cause to be voted) all of the shares of GS Stock held by such Principal Stockholder (owned of record or beneficially) in favor of the adoption of this Agreement and the approval of the terms thereof and of the Merger and each of the other Transactions. No Principal

Stockholder shall commit or agree to take any action inconsistent with the Merger and the Transactions. Each Principal Stockholder hereby irrevocably waives any appraisal rights that such Principal Stockholder has with respect to any and all shares of GS Stock owned (of record or beneficially) by such Principal Stockholder in connection with the Merger.

## **ARTICLE 8**

### **CONDITIONS PRECEDENT TO THE OBLIGATIONS OF PARENT AND ACQUISITION**

The obligations of Parent and Acquisition under this Agreement are subject to the satisfaction, at or prior to the Closing, of each of the following conditions (the fulfillment of any of which may be waived in writing by Parent):

8.1 **Accuracy of Representations and Warranties.** The representations and warranties of GS and the Principal Stockholders contained in this Agreement that are qualified by materiality shall be true and correct and such representations and warranties that are not qualified by materiality shall be true and correct in all material respects at and as of the Closing Date.

8.2 **Compliance.** Each of the Principal Stockholders and GS shall have performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement to be performed and complied with by each of them at or prior to the Closing.

8.3 **No Litigation.** There shall not be pending or threatened any suit, action or proceeding by any governmental entity or third party, and there shall be no legal restraint that has the effect of, (i) challenging the acquisition by Parent or Acquisition of any GS Stock, seeking to restrain or prohibit the consummation of the Merger or any other transaction or seeking to obtain from GS, Parent or Acquisition any damages, (ii) seeking to prohibit or limit the ownership or operation by GS or Parent and its subsidiaries of any material portion of the business or assets of GS, or Parent and its subsidiaries, taken as a whole, or to compel GS or Parent and its subsidiaries to dispose of or hold separate any material portion of the business or assets of GS, or Parent and its subsidiaries, taken as a whole, as a result of the Merger or any other transaction, (iii) seeking to prohibit Parent or any of its subsidiaries from effectively controlling in any material respect the business or operations of GS or (iv) imposing material limitations on the ability of Parent or any of its affiliates to acquire or hold, or exercise full rights of ownership of, any shares of GS Stock (or shares of common stock of the Surviving Corporation).

8.4 **Material Adverse Change.** Since the date of this Agreement, there shall not have been any state of facts, change, development, effect, event, condition or occurrence that, individually or in the aggregate, constitutes, has had or would reasonably be expected to have a material adverse effect on the assets, business, financial condition, property, results of operations or prospects of GS or its subsidiaries.

8.5 **Consents.** Parent shall have received evidence, in form and substance reasonably satisfactory to it, that GS shall have obtained or shall have in full force and effect all consents of

all governmental entities and third parties required in connection with this Agreement and the transactions contemplated hereby.

8.6 **No Injunctions.** No court or governmental entity shall have enacted, issued, promulgated, enforced or entered any order, executive order, stay, decree, judgment or injunction or statute, rule, regulation which is in effect (whether temporary, preliminary or permanent) and which prevents or prohibits the consummation of the transactions contemplated by the Agreement.

8.7 **HSR Act.** Any applicable waiting periods, together with any extensions thereof, under the HSR Act and the antitrust or competition laws of any other applicable jurisdiction shall have expired or been terminated.

8.8 **Dissenters' Stock.** Immediately prior to and at the Effective Time, the aggregate number of shares of GS Stock held by holders of Dissenting Stock, if any, shall not equal or exceed five percent (5%) of the outstanding shares of Common Stock.

8.9 **Employment Agreements.** GS shall have entered into employment agreements as provided in Section 3.2.5 hereof.

8.10 **Non-Competition Agreements.** Parent shall have received Non-Competition Agreements, substantially in the form attached hereto as Exhibit 3.2.6, as provided in Section 3.2.6 hereof.

## ARTICLE 9 CONDITIONS PRECEDENT TO THE OBLIGATIONS OF THE STOCKHOLDERS

The obligations of the Principal Stockholders and GS under this Agreement are subject to the satisfaction, at or prior to the Closing, of each of the following conditions (the fulfillment of any one of which may be waived in writing by the Stockholder Agents):

9.1 **Accuracy of Representations and Warranties.** The representations and warranties of Parent and Acquisition contained in this Agreement shall not only have been true and complete in all material respects on the date of this Agreement and when made but shall also be true and complete in all material respects as though again made on the Closing Date, except to the extent that they are incorrect as of the Closing Date by reason of events occurring after the date of this Agreement in compliance with the terms hereof.

9.2 **Compliance.** Parent and Acquisition shall have performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement to be performed and complied with by Parent and Acquisition at or prior to the Closing.

9.3 **Litigation.** There shall not be pending or threatened any suit, action or proceeding by any governmental entity or third party, and there shall be no legal restraint that has the effect of, challenging the acquisition by Parent or Acquisition of any GS Stock, seeking

to restrain or prohibit the consummation of the Merger or any other transaction or seeking to obtain from GS or the Principal Stockholders any damages.

9.4 **No Injunctions.** No court or governmental entity shall have enacted, issued, promulgated, enforced or entered any order, executive order, stay, decree, judgment or injunction or statute, rule, regulation which is in effect (whether temporary, preliminary or permanent) and which prevents or prohibits the consummation of the transactions contemplated by the Agreement.

9.5 **HSR Act.** Any applicable waiting periods, together with any extensions thereof, under the HSR Act and the antitrust or competition laws of any other applicable jurisdiction shall have expired or been terminated.

## **ARTICLE 10 INDEMNIFICATION**

### **10.1 General**

10.1.1 **Survival.** All representations, warranties, covenants, indemnities and agreements included in or provided by this Agreement shall survive the Closing Date and shall remain in force and effect regardless of any investigation made by or on behalf of Parent, Acquisition or any other party hereto or any person controlling such party or any of their representatives whether prior to or after the execution of this Agreement. The representations and warranties of GS and the Principal Stockholders and Parent and Acquisition contained in this Agreement shall survive the Closing for a period of one (1) year from the Closing Date, except that: (a) the representations and warranties of GS in Sections 4.3.2, 4.10.2 and 4.19, (b) the representations and warranties of the Principal Stockholders in Section 5.1.1 and (c) a claim of a breach of a representation or warranty due to fraud, intentional misrepresentation or willful misconduct, shall survive the Closing Date until sixty (60) days after the expiration of the applicable statute of limitations, including any extensions or waivers thereof. Notwithstanding the foregoing, the termination of the representations and warranties provided herein shall not affect any claim made in writing and received prior to the expiration of the applicable survival period as provided herein. The covenants and agreements of the parties hereto shall survive the Closing Date without any contractual limitation on the period of survival (other than those covenants and agreements that are expressly required to remain in full force and effect for a specified period of time).

10.1.2 **By Parent and Acquisition.** Parent and Acquisition agree, jointly and severally, to indemnify and hold harmless the Principal Stockholders in respect of any and all losses, damages, liabilities, deficiencies, claims, interests, awards, judgments, settlements, penalties, costs and expenses (including reasonable attorneys' fees, costs and other out-of-pocket expenses incurred in investigating, preparing or defending the foregoing) (hereinafter, collectively, "**Losses**") which may be incurred by any such party arising out of: any breach by Parent and/or Acquisition of their representations, warranties, covenants or agreements made in this Agreement.



10.1.3 **By Stockholders.** Prior to the Closing Date, GS and the Principal Stockholders, severally and not jointly, and after the Closing Date, each of the Stockholders, severally and not jointly, agree to indemnify, defend, save and hold harmless Parent and Acquisition and each of their affiliates, stockholders (direct and indirect), directors, officers, employees, representatives and agents and the respective successors and assigns of each of the foregoing (the “**Parent Indemnified Parties**”) from and against any and all Losses which may be incurred by any such party arising out of or resulting from:

(a) any breach of any of the representations, warranties, covenants or agreements made by GS or the Principal Stockholders in this Agreement; or any ancillary agreements contemplated hereby;

(b) any acts or omissions of any Stockholder Agents; and

(c) any payment of the \$550,000 earn-out (as defined therein) under that certain Asset Purchase Agreement, effective as of August 1, 2005, by and between Pharmaconomics, Inc., a Florida corporation, and GS (the “**Earn-Out**”), including the \$125,000 receivable related thereto, and any matters arising out of or relating thereto.

10.1.4 **By Principal Stockholders.** Each of the Principal Stockholders, severally and not jointly, agrees to indemnify, defend, save and hold harmless the Parent Indemnified Parties from and against (x) such Principal Stockholder’s Allocable Portion of any and all Losses which may be incurred by such party arising out of or resulting from any breach any of the representations and warranties made by GS in Sections 4.3.2, 4.10.2 or 4.19 of this Agreement or from any fraud, intentional misrepresentation or willful misconduct relating to the transactions contemplated hereby by GS or any Stockholder, and (y) any and all Losses which may be incurred by such party arising out of or resulting from any breach any of the representations and warranties made by or such Principal Stockholder in Section 5.1.1 of this Agreement. “**Allocable Portion**” shall be defined as amount of Merger Consideration received by such Principal Stockholder divided by the total Merger Consideration received by all Principal Stockholders. Notwithstanding the foregoing, claims for Losses to which any Parent Indemnified Party is entitled under this Agreement shall first be made against the Indemnification Escrow Fund in accordance with the terms of the Escrow Agreement; provided, however, that if the aggregate amount of all claims for Losses exceeds the amount of the Indemnification Escrow Fund, the Parent Indemnified Parties shall be entitled to indemnification from the Principal Stockholders, severally and not jointly, for the amount by which the Losses exceeds the amount of the Indemnification Escrow Fund.

10.1.5 **Losses.** For purposes of this Article 10, Losses incurred or suffered by a party arising out of any breach of any representation, warranty, covenant or agreement shall be determined without deduction on account of any materiality qualification contained therein.

10.2 **Claims for Indemnification.** Whenever any claim shall arise for indemnification under this Article 10, the party seeking indemnification (the "**Indemnified Party**") shall notify the party or parties (as the case may be) against whom indemnification is sought (whether one party or more, the "**Indemnifying Party**") in writing of the facts constituting the basis for such claim ("**Notice of Claim**"). Such notice shall state generally the basis for such indemnification right and the amount or an estimate of the amount of the liability arising therefrom. The right to indemnification hereunder and the amount or the estimated amount thereof, as set forth in such notice, shall not be deemed agreed to by the Indemnifying Party, unless the Indemnified Party is notified in writing that the Indemnifying Party does not dispute the right to indemnification as set forth or estimated in such notice. The failure of any Indemnified Party to give timely notice hereunder shall not affect rights to indemnification hereunder, except to the extent the Indemnifying Party clearly demonstrates that such Indemnifying Party was actually and materially prejudiced by such failure.

10.3 **Right to Defend; Third-Party Claims, Etc.** If the facts giving rise to any indemnification right shall involve any actual or threatened claim or demand by any third party ("**Third-Party Claimant**") against the Indemnified Party (other than a claim under Section 10.6.1 hereof) or any possible claim by the Indemnified Party against any third party, such claim by or against a third party shall be referred to as a "**Third-Party Claim.**" Failure of any Indemnified Party to give timely notice hereunder shall not affect rights to indemnification hereunder, except to the extent the Indemnifying Party clearly demonstrates that such Indemnifying Party was actually and materially prejudiced by such failure. If (a) the Indemnifying Party gives the Indemnified Party an agreement in writing agreeing to indemnify the Indemnified Party and hold the Indemnified Party harmless from all cost and liability arising from any Third-Party Claim, (b) the Indemnifying Party provides the Indemnified Party with evidence reasonably acceptable to the Indemnified Party that the Indemnifying Party will have the financial resources to defend against the Third-Party Claim and fulfill its indemnification obligations hereunder and (c) the Third-Party Claim involves only money damages and does not seek an injunction or other equitable remedy, the Indemnifying Party may, at its own cost, risk and expense, (i) take control of the defense and investigation of such Third-Party Claim (provided the Indemnifying Party conducts the defense of the Third-Party Claim actively and diligently), (ii) employ and engage attorneys of its own choice (provided that such attorneys are reasonably acceptable to Parent) to handle and defend the same, unless the named parties to such action or proceeding include both one or more Indemnifying Parties and an Indemnified Party, and the Indemnified Party has been advised by counsel that there may be one or more legal defenses available to such Indemnified Party that are different from or additional to those available to an applicable Indemnifying Party, in which event such Indemnified Party shall be entitled, at the Indemnifying Parties' cost, risk and expense, to separate counsel of its own choosing, and (iii) to compromise or settle such claim, which compromise or settlement shall be made only with the written consent of the Indemnified Party, such consent not to be unreasonably withheld. If any Indemnifying Party elects to assume the defense of a Third Party Claim, the Indemnified Party shall cooperate in all reasonable respects in the investigation, trial and defense of such Third Party Claim and any appeal arising therefrom; provided, however, that the Indemnified Party may, at its own cost, participate in the investigation, trial and defense of such lawsuit or action and any appeal arising therefrom. The parties shall cooperate with each other in any notifications to insurers. If the Indemnifying Party fails to assume the defense of such claim pursuant to the terms hereof within fifteen (15) calendar days after receipt of the

notice, the Indemnified Party against which such claim has been asserted will have the right to undertake, at the Indemnifying Parties' cost, risk and expense, the defense, compromise or settlement of such Third Party Claim on behalf of and for the account and risk of the Indemnifying Parties; provided, however, that such claim shall not be compromised or settled without the written consent of the Indemnifying Party, which consent shall not be unreasonably withheld. If the Indemnified Party assumes the defense of the claim, the Indemnified Party will keep the Indemnifying Party reasonably informed of the progress of any such defense, compromise or settlement. The Indemnifying Parties shall be liable for any settlement of any Third Party Claim effected pursuant to and in accordance with this Section 10.3, and if the Indemnifying Party is the Principal Stockholders, each Principal Stockholder, severally and not jointly, agrees to indemnify and hold harmless each Parent Indemnified Party from and against any Losses by reason of such settlement or judgment.

10.4 **Cooperation.** The parties to this Agreement shall execute such powers of attorney as may be necessary or appropriate to permit participation of counsel selected by any party hereto and, as may reasonably be related to any such claim or action, shall provide access to the counsel, accountants and other representatives of each party during normal business hours to all relevant properties, personnel, books, tax records, contracts, commitments and all other relevant business records of such other party and will furnish to such other party copies of all such documents as may reasonably be requested (certified, if requested).

10.5 **Limitations on Indemnity.**

10.5.1 **Threshold; Insurance.** No Indemnified Party shall seek, or be entitled to, indemnification from any of the Indemnifying Parties pursuant to Section 10.1:

(a) to the extent the aggregate claims for Losses of the Indemnified Parties are less than Three Hundred Thousand and 00/100 dollars (\$300,000) (the "**Threshold**"); provided, that if the aggregate of all claims for Losses equals or exceeds the Threshold, then the Indemnified Party shall be entitled to recover for all of such Losses relating back to the first dollar. If any Indemnified Party is seeking, or is entitled to seek, indemnification from any of the Indemnifying Parties for Losses due to the breach or violation of the representations and warranties contained in Sections 4.3.2, 4.19 or 5.1.1, fraud, intentional misrepresentation or willful misconduct or the matters arising out of Section 10.1.3(c), then the limitations in this Section 10.5.1 relating to the Threshold shall not be applicable; or

(b) to the extent the subject matter of the claim is covered by insurance, and such insurance proceeds have been actually received by the Indemnified Party (net of any costs and expenses incurred in obtaining such insurance proceeds). If the Indemnifying Parties pay the Indemnified Parties for a claim and subsequently insurance proceeds in respect of such claim are collected by the Indemnified Parties, then the Indemnified Parties promptly shall remit the insurance proceeds (net of any costs and expenses incurred in obtaining such insurance proceeds) to the Indemnifying Party. In the event that the subject

matter of a claim is covered by insurance, the Indemnified Party shall use commercially reasonable efforts to collect such insurance proceeds.

10.5.2 **Indemnification Escrow Fund, Aggregate Liability.** Notwithstanding anything to the contrary contained in this Agreement,

(a) Except for claims brought under Section 10.1.4, Losses which may be incurred by any Parent Indemnified Party shall be payable solely and exclusively through the Indemnification Escrow Fund; and

(b) The aggregate liability of any Stockholder for indemnification of Losses under this Agreement shall not exceed the Merger Consideration actually received by any such Stockholder (including for such purposes such Stockholder's pro rata share of the Indemnification Escrow Fund and Adjustment Escrow Fund).

10.6 **Payment of Damages.** The Indemnified Party shall be paid in cash from the Indemnification Escrow Fund (or in the event of Losses with respect to claims brought under Section 10.1.4, in cash by the Principal Stockholders) in the amount to which the Indemnified Party may become entitled by reason of the provisions of this Article 10, within five (5) days after such amount is determined either by mutual agreement of the parties or on the date on which both such amount and the Indemnified Party's obligation to pay such amount have been determined by a final judgment of a court or administrative body having jurisdiction over such proceeding.

10.6.1 **Procedure for Defense and Payment of Tax Claims.**

(a) Notwithstanding anything in this Agreement to the contrary, the Principal Stockholders shall, severally and not jointly, indemnify, defend and hold harmless the Parent, Acquisition, GS and each subsidiary of GS, and, if applicable, their respective directors, officers, shareholders, partners, attorneys, accountants, agents and employees (collectively, the "**Purchaser Group**") and the Purchaser Group's successors and assigns at any time after the Closing, from and against any damages asserted against, resulting to, imposed upon or incurred by any member of the Purchaser Group, directly or indirectly, by reason of or resulting from (i) any Taxes (other than Taxes reflected or accrued for on the Closing Balance Sheet) of GS or any subsidiary of GS for any Pre-Closing Period (as hereinafter defined); (ii) any Taxes of GS or any subsidiary of GS attributable to the portion of a Straddle Period relating to a Pre-Closing Period; (iii) a breach of any representation or warranty contained in or made pursuant to Section 4.19 hereof; (iv) any Transfer Taxes for which the Principal Stockholders are responsible pursuant to Section 10.6.1(i) hereof; and (v) any Taxes imposed on any person as a result of a breach of any covenant of the Principal Stockholders contained in this Section 10.6.1.

(b) GS shall, to the extent permitted by applicable law, elect, or cause to be elected, with the relevant Tax authority to close any Tax period of GS and

the subsidiaries of GS as of and including the Closing Date. If applicable Law does not permit such election to be made, then, in the case of any Taxes (other than Transfer Taxes) attributable to a Straddle Period (as hereinafter defined) and (i) based upon or related to income, capital or receipts or (ii) imposed in connection with any sale, transfer, or assignment or any deemed sale, transfer or assignment of property (real or personal, tangible or intangible), the portion of such Taxes which relates to a Pre-Closing Period shall equal the amount that would be payable if such taxable period ended on and included the Closing Date. For purposes of the preceding sentence, any exemption, deduction, credit or other item that is calculated on an annual basis shall be allocated to the portion of the Straddle Period ending on the Closing Date on a pro rata basis determined by multiplying the total amount of such item allocable to the Straddle Period times the Straddle Period Fraction (as hereinafter defined). In the case of any other Taxes (other than Transfer Taxes) attributable to a Straddle Period and imposed on a periodic basis with respect to GS and any subsidiary of GS or otherwise measured by the level of any item, the portion of any such Taxes which relates to a Pre-Closing Period shall equal the amount of such Taxes for the Straddle Period multiplied by a fraction the numerator of which is the number of days in the portion of the Straddle Period ending on and including the Closing Date and the denominator of which is the number of days in the entire Straddle Period (the "**Straddle Period Fraction**").

(c) Except as provided in Section 10.6.1(d), with respect to any Tax claim which might result in an indemnity payment for a Pre-Closing Period pursuant to this Section 10.6.1 (other than a claim relating to Taxes for a Straddle Period), the Tax Indemnifying Party shall control all proceedings taken in connection with such Tax claim and, without limiting the foregoing, may, after consultation with the Tax Indemnified Party, at its sole expense, pursue or forego any and all administrative appeals, proceedings, hearings and conferences with any Tax authority with respect thereto, and may either pay the Tax claimed and sue for a refund where applicable law permits such refund suits or contest such Tax claim. The Tax Indemnified Party shall not settle or otherwise compromise any Tax claim referred to in the preceding sentence without the prior written consent of the Tax Indemnifying Party, which consent shall not unreasonably be withheld or delayed. In connection with any proceeding taken in connection with such Tax claim, (i) the Tax Indemnifying Party shall keep the Tax Indemnified Party informed of all material developments and events relating to such Tax claim, (ii) the Tax Indemnified Party shall have the right to participate in any such proceedings at its own cost and expense and (iii) if settlement or compromise of such Tax claim could result in a material increase in Tax liability for which the Tax Indemnified Party may be liable, the Tax Indemnifying Party shall not settle such Tax claim without the consent of the Tax Indemnified Party, which consent shall not be unreasonably withheld or delayed.

(d) With respect to any Tax claim which might result in an indemnity payment pursuant to this Section 10.6.1 (including but not limited to any Tax claim relating to a Straddle Period) and that arises in the course of an audit of a

Tax Return filed by Purchaser Group, the Parent shall control all proceedings taken in connection with such Tax claim and, without limiting the foregoing, may, after consultation with the Tax Indemnifying Party, at its sole expense, pursue or forego any and all administrative appeals, proceedings, hearings and conferences with any Tax authority with respect thereto, and may either pay the Tax claimed and sue for a refund where applicable law permits, or contest such Tax claim. Parent shall not settle such Tax claim without the prior written consent of the Tax Indemnifying Party, which consent shall not unreasonably be withheld or delayed. Parent shall keep the Tax Indemnifying Party apprised of the disposition of such Tax claim and shall consider any suggestions made by such party as to the resolution or settlement of such Tax claim. The obligation of a Tax Indemnifying Party to indemnify pursuant to this Section 10.6.1 shall not be affected unless such party can show that its rights have been materially prejudiced.

(e) For income Tax purposes, the Principal Stockholders and Parent agree to treat all indemnification payments made pursuant to this Article 10 as adjustments to the Merger Consideration, except to the extent the Laws of a particular jurisdiction clearly provide otherwise.

(f) As used herein, (i) **"Pre-Closing Period"** means all Tax periods ending on or before the Closing Date and the portion of any Straddle Period ending on (and including) the Closing Date; and (ii) **"Straddle Period"** means all Tax Periods beginning on or before and ending after the Closing Date.

(g) The Principal Stockholders and the Purchaser Group shall cooperate (and shall cause each of their affiliates to cooperate) fully at such time and to the extent reasonably requested by the other party, in connection with the preparation and filing of any Tax Returns or the conduct of any audit, dispute, proceeding, suit or action concerning any Tax. Such cooperation shall include, without limitation, (i) the retention and (upon the other party's request) the provision of records, documentation and other information in such party's possession which are reasonably relevant to the preparation of any Tax Return until the expiration of the applicable statutes of limitation (giving effect to any extension, waiver, or mitigation thereof); (ii) the provision of additional information in such party's possession and explanation of any material provided hereunder; (iii) the execution of any document that may be necessary or reasonably helpful in connection with the filing of any Tax Return or in connection with any audit, dispute, proceeding, suit or action respecting any Tax; and (iv) the use of the parties' commercially reasonable efforts to obtain any documentation from a Tax authority or a third party that may be necessary or helpful in connection with the foregoing.

(h) GS shall prepare and file, or cause to be prepared and filed, at the Principal Stockholders' cost and expense, all Tax Returns of GS and each subsidiary of GS that are required to be filed for any Pre-Closing Period and shall pay, or cause to be paid, on or before the applicable due dates all Taxes shown to be due and payable on such Tax Returns and all other Taxes which become due

and payable prior to the Closing Date. The Principal Stockholders will ensure that Parent will have a reasonable opportunity to review each such Tax return at least ten (10) days prior to the final due date. Parent shall prepare and file all other Tax Returns of GS and each subsidiary of GS, including Tax Returns, if any, for Straddle Periods. Income Tax Returns relating to Straddle Periods that are prepared by Parent shall be prepared and filed in a manner consistent with past practice except (i) as otherwise required by a change in applicable law, or (ii) as consented to by the Principal Stockholders, which consent shall not be unreasonably withheld or delayed. Income Tax Returns relating to Straddle Periods that are prepared by Parent shall be provided to the Principal Stockholders for review and comment as soon as possible prior to the final due date for the filing thereof and in any event at least ten (10) days prior to such final due date. The Principal Stockholders shall be liable for and shall pay any Taxes for which the Principal Stockholders have agreed to indemnify Parent pursuant to this Section 10.6.1 hereof and as reflected in any Tax Return which has been reviewed and consented to by the Principal Stockholders. The Principal Stockholders shall pay to Parent the amount of their share of such Taxes within five (5) days prior to the due date for such payments (giving effect to any extensions thereof).

(i) All Transfer Taxes, if any, arising out of the purchase and sale of the GS Stock as contemplated under this Agreement shall be paid by the Principal Stockholders. Parent shall prepare and file, or cause to be prepared and filed, all Tax Returns and other documentation required with respect to such Tax Returns and, if required by applicable Law, and the Principal Stockholders shall join in the execution of any such Tax Returns and other documentation as reasonably requested by Parent. As used in this Section 10.6, the term “**Transfer Taxes**” shall mean all sales, use, value added, transfer, transfer gains, stamp, conveyance, filing, recording and similar taxes incurred in connection with any of the transactions contemplated by this Agreement. For the avoidance of doubt, Transfer Taxes shall not include any income Taxes.

10.7 **Remedies Limitation.** After the Closing Date, the right of indemnification under this Article 10 shall be the sole and exclusive remedy available to any party for any claim arising under this Agreement or arising out of the transactions contemplated by this Agreement in connection with any breach of any representation or warranty, provided, however, that this exclusive remedy does not preclude a party from bringing an action for specific performance or other equitable remedy to require a party to perform its obligations under this Agreement. Each party expressly waives any rights it may have to make a claim against the other pursuant to any constitutional, statutory, or common law authorities. The provisions of this Section 10.7 shall not apply to claims arising out of or relating to fraud or any intentional misrepresentation or willful misconduct.

## **ARTICLE 11**

### **GENERAL**

11.1 **Brokers.** GS has engaged The Jordan Edmiston Group, Inc. (“JEGI”) in connection with the transactions contemplated hereby. The Stockholders, severally and not

jointly, covenant and agree that any fee, commission or other amount payable to JEGI in connection with such engagement shall be paid by the Stockholders. Other than the foregoing, each of GS, the Principal Stockholders and Parent hereby represents and warrants, each to the others, that it has not utilized the services of any finder, broker or agent(s) in connection with the transactions contemplated hereby, and each agrees (in the case of the Principal Stockholders, severally and not jointly, to indemnify the other parties to this Agreement against and hold them harmless from any and all liabilities to any person, firm or corporation, claiming any broker's or finder's fee or commission of any kind on account of services rendered on behalf of such party in connection with the transactions contemplated by this Agreement.

**11.2 Termination of Agreement.** The parties may terminate this Agreement prior to the Closing, as provided below:

**11.2.1 Mutual Consent.** By mutual written consent;

**11.2.2 Material Breach.** By either Parent or the Stockholder Agents if a material Breach of any provision of this Agreement has been committed by the other party and such Breach has not been waived and has not been cured within 20 days after written notice thereof to the breaching party or parties. For purposes of this Section 11.2.2, a "**Breach**" of a representation, warranty, covenant, obligation, or other provision of this Agreement or any instrument delivered pursuant to this Agreement will be deemed to have occurred if there is or has been any material inaccuracy in or material breach of, or any material failure to perform or comply with, such representation, warranty, covenant, obligation, or other provision, provided, however, that the right to terminate shall not be available to any party who is otherwise in material breach of this Agreement;

**11.2.3 Failure to Satisfy Closing Condition.** (i) By Parent if any of the conditions in Article 8 has not been satisfied as of the Closing Date or if satisfaction of such a condition is or becomes impossible (other than through the failure of Parent or Acquisition to comply with its obligations under this Agreement) and Parent has not waived such condition on or before the Closing Date; or (ii) by the Stockholder Agents, if any of the conditions in Article 9 has not been satisfied as of the Closing Date or if satisfaction of such a condition is or becomes impossible (other than through the failure of the Principal Stockholders or GS to comply with their obligations under this Agreement) and the Stockholder Agents have not waived such condition on or before the Closing Date; or

**11.2.4 Failure to Close.** By either Parent or the Stockholder Agents if the Closing has not occurred (other than through the failure of any party seeking to terminate this Agreement to comply fully with its obligations under this Agreement) on or before April 28, 2006 or such later date upon which the parties may agree.

**11.2.5 Effect of Termination.** Each party's right of termination under Section 11.2 is in addition to any other rights it may have under this Agreement or otherwise, and the exercise of a right of termination will not be an election of remedies. If this Agreement is terminated pursuant to Section 11.2, all further obligations of the parties under this Agreement will terminate, except that the obligations in Sections 11.4, 11.5



and 11.6 will survive; provided, however, that if this Agreement is terminated by a party because of the Breach of the Agreement by the other party or because one or more of the conditions to the terminating party's obligations under this Agreement is not satisfied as a result of the other party's failure to comply with its obligations under this Agreement, the terminating party's right to pursue all legal remedies will survive such termination unimpaired.

11.3 **Waivers.** No action taken pursuant to this Agreement, including any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action of compliance with any representation, warranty, covenant or agreement contained in this Agreement. The waiver by any party to this Agreement of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

11.4 **Expenses; Hart-Scott-Rodino.** Except as otherwise expressly provided herein, each of the parties to this Agreement shall pay its own expenses in connection with this Agreement and the transactions contemplated hereby, including the fees and expenses of its counsel and its certified public accountants and other experts. Expenses of the Principal Stockholders incurred in connection with the execution of this Agreement and the consummation of the transactions contemplated hereby are to be liabilities borne by the Principal Stockholders individually and will not be paid by GS or assumed by Parent pursuant to this Agreement. Parent and GS shall each pay one-half of the filing fees required under the Hart-Scott-Rodino Act.

11.5 **Press Releases.** Prior to the Closing Date, except as required by law, no statement or public disclosure concerning the transactions contemplated by this Agreement shall be made or released to any medium of public communication, except with the prior approval of both Parent and GS (which consent will not be unreasonably withheld). This provision shall not apply, however, to any announcement or written statement required to be made by law or the regulations of any federal, state or foreign governmental agency or any stock exchange, except that the party required to make such announcement shall, whenever practicable, consult with the other party concerning the timing and content of such announcement before such announcement is made.

11.6 **No Third Party Beneficiaries.** Subject to Sections 10.1.2 and 10.1.3 hereof, nothing herein, express or implied, is intended or shall be construed to confer upon or give to any person, firm, corporation or legal entity, other than the parties hereto (and in the case of Article 2 the Stockholders), any rights, remedies or other benefits under or by reason of this Agreement.

11.7 **Notices.** Any notice, request, demand and other communication which is required or which may be given under this Agreement shall be in writing and shall be deemed to have been duly given if personally delivered, or if actually received by postage prepaid first class mail, private carrier, telegram or telephone facsimile transmission, to:

If to Parent: Elsevier Inc.  
360 Park Avenue South  
New York, NY 10010-1710  
Attn: Maureen McArdle, Esq.  
Deputy General Counsel  
Fax: (212) 462-1941

with a copy to: Brown Raysman Millstein Felder & Steiner LLP  
900 Third Avenue  
New York, NY 10022  
Attn: Jonathan J. Russo, Esq.  
Fax: (212) 895-2900

If to GS prior to  
the Closing Date: Gold Standard, Inc.  
Attn: Russ Thomas  
320 West Kennedy Boulevard, Suite 400  
Tampa, FL 33606  
Fax: (813) 259-1585

with a copy to: Nelson T. Castellano, Esquire  
Trenam, Kemker, et al.  
P.O. Box 1102  
Tampa, FL 33601  
Fax: (813) 229-6553

If to GS after the  
Closing Date: Gold Standard, Inc.  
Attn: Russ Thomas  
320 West Kennedy Boulevard, Suite 400  
Tampa, FL 33606  
Fax: (813) 259-1585

with copies to: Elsevier Inc.  
360 Park Avenue South  
New York, NY 10010-1710  
Attn: Maureen McArdle, Esq.  
Deputy General Counsel  
Fax: (212) 462-1941

and to: Brown Raysman Millstein Felder & Steiner LLP  
900 Third Avenue  
New York, NY 10022  
Attn: Jonathan J. Russo, Esq.  
Fax: (212) 895-2900

If to the Stockholder  
Agents:

Jim Wilder  
Housatonic Partners  
111 Huntington Avenue, Suite 2850  
Boston, MA 02199-7610

Linda McGurn  
101 SE 2nd Place, Suite 202  
Gainesville, FL 32601

Jim Lowy  
P.O. Box 10614  
Tampa, FL 33679

with a copy to:

Nelson T. Castellano, Esquire  
Trenam, Kemker, et al.  
P.O. Box 1102  
Tampa, FL 33601  
Fax: (813) 229-6553

or, as to any party, to such other address as such party shall have specified by notice in writing to the other parties.

11.8 **Entire Agreement; Amendment.** This Agreement (including the Schedules and Exhibits hereto and the agreements executed and delivered herewith) constitutes the entire agreement, and supersedes all prior agreements and understandings, oral and written, among the parties to this Agreement with respect to the subject matter hereof. This Agreement may be amended only by written agreement executed by all of the parties hereto.

11.9 **Severability.** Any provision of this Agreement which is determined by a court of competent jurisdiction to be prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or non-authorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction. In any such case, such determination shall not affect any other provision of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect. If any provision or term of this Agreement is susceptible to two or more constructions or interpretations, one or more of which would render the provision or term void or unenforceable, the parties agree that a construction or interpretation which renders the term or provision valid shall be favored.

11.10 **Assignability.** This Agreement shall not be assignable by any of the parties to this Agreement without the prior written consent of all other parties to this Agreement. Notwithstanding the foregoing, Parent or Acquisition may assign, without further consent of GS or the Principal Stockholders, their respective rights and obligations hereunder (provided that Parent remains liable for all payment obligations by Parent or Acquisition hereunder), in whole or in part, to any directly or indirectly wholly-owned subsidiary of Reed Elsevier Group plc, and all representations, warranties, covenants and agreements made or given by GS and the Principal Stockholders hereunder shall inure to the benefit of such assignee.

11.11 **Further Assurances.** Each party to this Agreement will execute and deliver, or cause to be executed and delivered, such additional or further transfers, assignments, endorsements or other instruments as any other party or its counsel may reasonably request for the purpose of carrying out the transactions contemplated by this Agreement.

11.12 **Counterparts.** This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

11.13 **Section and Other Headings.** The section and other headings contained in this Agreement are for purposes of reference only and shall not affect the meaning or interpretation of this Agreement.

11.14 **Governing Law.** This Agreement, and the respective rights, duties and obligations of the parties hereunder, shall be governed by and construed in accordance with the laws of the State of New York, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof; provided, however, that matters relating to the corporate attributes of GS and Acquisition, the respective rights and duties of the directors, officers and Stockholders, in such capacities, of GS and Acquisition, the procedures for consummating the Merger, the corporate authority and capacity of GS and Acquisition, the effects of the Merger and dissenters' rights shall all be governed by, and construed in accordance with, the FBCA, without regard to conflict of laws principles thereunder. Each of the parties hereby (i) irrevocably consents and agrees that any legal or equitable action or proceeding arising under or in connection with this Agreement shall be brought exclusively in any Federal or state court within the County of New York, State of New York, (ii) by execution and delivery of this Agreement, irrevocably submits to and accepts, with respect to any such action or proceeding, for itself and in respect of its properties and assets, generally and unconditionally, the jurisdiction of the aforesaid courts, and irrevocably waives any and all rights it may have to object to such jurisdiction under the Constitution or laws of the State of New York or the Constitution of the United States or otherwise, and (iii) irrevocably consents that service of process upon it in any such action or proceeding shall be valid and effective against it if made in the manner provided in Section 11.7 for delivery of notices hereunder.

11.15 **Knowledge.** For all purposes of this Agreement, whenever a representation or warranty is limited to the "knowledge of GS," or by similar language, that limitation shall mean the knowledge of any of the executive officers of GS listed on Schedule 11.15, in each case after due inquiry.

[Remainder of page intentionally left blank]

**IN WITNESS WHEREOF**, this Agreement has been signed by each of the individual parties hereto and signed by an officer thereunto duly authorized, all as of the date first above written.

**PARENT:**

**ELSEVIER INC.,**  
a New York corporation

By: */s/ Brian Nairn*  
Brian Nairn  
President

**ACQUISITION:**

**GOLD STANDARD ACQUISITION  
CORPORATION**, a Florida corporation

By: */s/ Brian Nairn*  
Brian Nairn  
President

**GS:**

**GOLD STANDARD, INC.,**  
a Florida corporation

By: */s/ Russell Thomas*  
Russell Thomas  
Chief Executive Officer

**PRINCIPAL STOCKHOLDERS:**

Housatonic Micro Fund SBIC, L.P.

By: Housatonic Micro Partners SBIC, LLC,  
its sole general partner

By: */s/ Barry D. Reynolds*  
Barry D. Reynolds,  
its Managing Manager

McGurn Investment Trust

By: /s/ *Kenneth R. McGrun*  
Kenneth R. McGurn, Trustee

By: /s/ *Linda C. McGurn*  
Linda C. McGurn, Trustee

/s/ *Sherman Lowy*  
Name: Sherman Lowy

/s/ *Jon Seymour*  
Name: Jon Seymour

/s/ *James Lowy*  
Name James Lowy

/s/ *Ann Udis*  
Name: Ann Udis

/s/ *Linda Lowy*  
Name: Linda Lowy

/s/ *Steven Lowy*  
Name Steven Lowy

/s/ *Gary Udis*  
Name: Gary Udis

/s/ *Russell Thomas*  
Name: Russell Thomas

/s/ *Jeffrey Seymour*  
Name Jeffrey Seymour

*/s/ Marianne Messer*  
Name: Marianne Messer

Sun Circle, Inc.

By: */s/ Kenneth R. McGurn*  
Kenneth R. McGurn  
President

*/s/ Tim Garren*  
Name Tim Garren

*/s/ Thomas Donia*  
Name: Thomas Donia

*/s/ Wuhong Li*  
Name: Wuhong Li

*/s/ Sharron Seymour*  
Name Sharron Seymour

*/s/ David Medvedeff*  
Name: David Medvedeff

*/s/ Leah Smith*  
Name: Leah Smith

Jacqueline Lowy Trust, U/A DTD 11-7-00

By: */s/ Sherman J. Lowy*  
Sherman J. Lowy, Trustee

Sherman J. Lowy Trust, U/A DTD 11-7-00

By: */s/ Jacqueline Lowy*  
Jacqueline Lowy, Trustee

Irrevocable Trust of Sherman J. Lowy U/A DTD  
July 19, 1989

By: */s/ Ann Udis*  
Ann Udis, Trustee

By: */s/ Linda Lowy*  
Linda Lowy, Trustee

By: */s/ Steven Lowy*  
Steven Lowy, Trustee

By: */s/ James Lowy*  
James Lowy, Trustee

**STOCKHOLDER AGENTS:**

*/s/ Jim Wilder*  
Name: Jim Wilder

*/s/ Jim Lowy*  
Name: Jim Lowy

*/s/ Linda McGurn*  
Name: Linda McGurn