

To: FL Dept of State  
Subject: 000162-130568  
Division of Corporations

From: Katie Wonsch

Tuesday, August 17, 2010 11:28 AM Page 1 of 89

<https://efile.sunbiz.org/scripts/efile.asp>

Florida Department of State  
Division of Corporations  
Electronic Filing Cover Sheet

**Note: Please print this page and use it as a cover sheet.** Type the fax audit number (shown below) on the top and bottom of all pages of the document.

((H10000184616 3)))



H100001846163ABC

**Note: DO NOT** hit the REFRESH/RELOAD button on your browser from this page. Doing so will generate another cover sheet.

To: Division of Corporations  
Fax Number : (850) 617-6380

From: Account Name : CORPDIRECT AGENTS, INC.  
Account Number : 110450000714  
Phone : (850) 222-1173  
Fax Number : (850) 224-1640

000162-130568

\*Attn: Annette Ramsey

**\*\*Enter the email address for this business entity to be used for future annual report mailings. Enter only one email address please.\*\***

Email Address: \_\_\_\_\_

**MERGER OR SHARE EXCHANGE  
WIPOWER, INC.**

Certificate of Status	0
Certified Copy	1
Page Count	89
Estimated Charge	\$78.75

FILED  
2010 AUG 17 PM 1:08  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

Electronic Filing Menu

Corporate Filing Menu

Help

H10000184616 3

**ARTICLES OF MERGER  
OF  
ROTAG ACQUISITION CORPORATION  
INTO  
WIPOWER, INC.**

Dated as of August 17, 2010

Pursuant to the provisions of Sections 607.1101 and 607.1105 of the Florida Business Corporation Act (the "*Act*"), WiPower, Inc., a Florida corporation (the "*Surviving Corporation*"), and Rotag Acquisition Corporation, a Florida corporation (the "*Merger Sub*"), approve and adopt the following Articles of Merger to effectuate a merger of the Merger Sub with and into the Surviving Corporation (the "*Merger*");

**ARTICLE I.  
PLAN OF MERGER**

The Merger Sub shall be merged with and into the Surviving Corporation pursuant to the Agreement and Plan of Merger attached hereto as Exhibit A and made a part hereof (the "*Plan of Merger*").

**ARTICLE II.  
EFFECTIVE DATE OF MERGER**

The Merger shall become effective on the date on which these Articles of Merger are filed with the Florida Department of State (the "*Effective Time*").

**ARTICLE III.  
ARTICLES OF INCORPORATION**

Pursuant to the Plan of Merger, at the Effective Time, the articles of incorporation of the Surviving Corporation shall be amended and restated in their entirety to read as the articles of incorporation of the Merger Sub as in effect immediately prior to the Effective Time, except that the name of the Surviving Corporation shall be amended to read as follows: "The name of the corporation is WiPower, Inc."; such amended and restated articles of incorporation are attached hereto as Exhibit B.

**ARTICLE IV.  
APPROVAL OF MERGER**

In accordance with the applicable provisions of the Act, including Section 607.0704 of the Act, the Plan of Merger was adopted and approved by the Board of Directors of the Surviving Corporation as of August 10, 2010, pursuant to an action by written consent and approved by the shareholders of the Surviving Corporation as of August 11, 2010, pursuant to an action by written consent.

H10000184616 3

FILED  
2010 AUG 17 PM 1:08  
SECRETARY OF STATE  
TALLAHASSEE, FLORIDA

To: FL Dept. of State  
Subject: 000162.130568

From: Katie Wonsch

Tuesday, August 17, 2010 11:28 AM Page: 3 of 89

H10000184616 3

**In accordance with the applicable provisions of the Act, including Section 607.0704 of the Act, the Plan of Merger was adopted and approved by the Board of Directors of the Merger Sub as of August 4, 2010, pursuant to an action by written consent and approved by the sole shareholder of the Merger Sub as of August 4, 2010, pursuant to an action by written consent.**

**[Signature page follows]**

To: FL Dept. of State  
Subject: 000162.130568


From: Katie Wonsch

Tuesday, August 17, 2010 11:28 AM Page: 4 of 89

H10000184616 3

**IN WITNESS WHEREOF**, these Articles of Merger have been executed in accordance with the requirements of Sections 607.1101 and 607.1105 of the Act by the parties as of the date first set forth above.

**ROTAG ACQUISITION CORPORATION, a  
Florida corporation**

By:   
Name: William E. Keitel  
Title: President & CEO

**WIPOWER, INC., a Florida corporation**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

H10000184616 3

H10000184616 3

IN WITNESS WHEREOF, these Articles of Merger have been executed in accordance with the requirements of Sections 607.1101 and 607.1105 of the Act by the parties as of the date first set forth above.

**ROTAG ACQUISITION CORPORATION, a  
Florida corporation**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**WIPOWER, INC., a Florida corporation**

By: *Rahul Kazon*  
Name: RAHUL KAZON  
Title: CEO

H10000184616 3

To: FL Dept. of State  
Subject: 000162.130568

From: Katie Wonsch

Tuesday, August 17, 2010 11:28 AM Page: 6 of 89

H10000184616 3

**EXHIBIT A**  
**AGREEMENT AND PLAN OF MERGER**

H10000184616 3

To: FL Dept. of State  
Subject: 000162.130568

From: Katie Wonsch

Tuesday, August 17, 2010 11:28 AM Page: 7 of 89

H10000184616 3

**EXECUTION VERSION**

**AGREEMENT AND PLAN OF MERGER  
BY AND AMONG  
QUALCOMM INCORPORATED,  
ROTAG ACQUISITION CORPORATION,  
WIPOWER, INC.,  
AND  
CARLOS TSENG, AS SECURITYHOLDERS' AGENT**

**AUGUST 10, 2010**

H10000184616 3

## TABLE OF CONTENTS

	<u>Page</u>
1. Definitions.....	2
2. The Merger.....	9
2.1 The Merger.....	10
2.2 Closing; Effective Time.....	10
2.3 Effect of the Merger.....	10
2.4 Articles of Incorporation; Bylaws.....	10
2.5 Directors and Officers.....	10
2.6 Effect on Capital Stock.....	10
2.7 Payment and Exchange Procedures; Escrow Amounts.....	13
2.8 No Further Ownership Rights in Target Capital Stock.....	14
2.9 Lost, Stolen or Destroyed Certificates.....	15
2.10 Taking of Necessary Action; Further Action.....	15
2.11 Working Capital Adjustment.....	15
3. Representations and Warranties of Target.....	17
3.1 Organization, Standing and Power.....	17
3.2 Authority.....	18
3.3 Governmental Authorization.....	18
3.4 Financial Statements.....	19
3.5 Capital Structure.....	19
3.6 Absence of Certain Changes.....	21
3.7 Absence of Undisclosed Liabilities.....	21
3.8 Litigation.....	21
3.9 Restrictions on Business Activities.....	22
3.10 Intellectual Property.....	22
3.11 Interested Party Transactions.....	33
3.12 Minute Books.....	33
3.13 Complete Copies of Materials.....	33
3.14 Material Contracts.....	34
3.15 Real Estate.....	34
3.16 Accounts Receivable.....	35
3.17 Customers and Suppliers.....	35
3.18 Employees and Consultants.....	35
3.19 Title to Property.....	35
3.20 Environmental Matters.....	36
3.21 Taxes.....	37
3.22 Employee Benefit Plans.....	39
3.23 Employee Matters.....	44
3.24 Insurance.....	44
3.25 Compliance With Laws.....	44
3.26 Brokers' and Finders' Fee.....	45
3.27 International Trade Matters.....	45
3.28 Representations Complete.....	45



H10000184616 3

TABLE OF CONTENTS  
(continued)

	<u>Page</u>
3.29 Disclaimer of Additional Representations or Warranties .....	45
4. Representations and Warranties of Acquiror and Merger Sub .....	46
4.1 Organization, Standing and Power .....	46
4.2 Authority .....	46
4.3 Legal Proceedings.....	46
4.4 Brokers' and Finders' Fee.....	47
5. Conduct Prior to the Effective Time .....	47
5.1 Conduct of Business of Target.....	47
5.2 No Solicitation .....	49
6. Additional Agreements .....	50
6.1 Preparation of Solicitation Statement .....	50
6.2 Approval of Stockholders .....	50
6.3 Access to Information .....	50
6.4 Confidentiality .....	51
6.5 Public Disclosure .....	51
6.6 Regulatory Approval; Further Assurances.....	51
6.7 Cancellation of Target Warrants.....	52
6.8 Cancellation of Target Options.....	52
6.9 Termination of Target Incentive Plan .....	52
6.10 Employees.....	52
6.11 Expenses .....	52
6.12 Release and Termination of Security Interests .....	52
6.13 Required Contract Consents .....	53
6.14 Termination of Agreements .....	53
6.15 Termination of University License Agreements.....	53
6.16 Target Invention Assignment and Release Agreement.....	53
6.17 Redeemed Notes .....	53
7. Conditions to the Merger .....	53
7.1 Conditions to Obligations of Each Party to Effect the Merger.....	53
7.2 Additional Conditions to the Obligations of Acquiror and Merger Sub....	54
7.3 Additional Conditions to Obligations of Target .....	57
8. Termination, Amendment and Waiver .....	58
8.1 Termination.....	58
8.2 Effect of Termination.....	58
8.3 Amendment.....	59
8.4 Extension; Waiver.....	59

H10000184616 3

TABLE OF CONTENTS  
(continued)

	<u>Page</u>
9. Indemnification.....	59
9.1 Indemnification Escrow .....	59
9.2 Indemnification .....	60
9.3 Claims Upon Indemnification Escrow; Offset of Claims .....	63
9.4 Objections to Claims.....	63
9.5 Resolution of Conflicts .....	63
9.6 Securityholders' Agent .....	64
9.7 Actions of the Securityholders' Agent.....	65
9.8 Third-Party Claims.....	65
9.9 Tax Effect of Indemnification Withholdings .....	65
9.10 Survival of Indemnification Claims.....	65
9.11 Effect of Investigation.....	65
9.12 Major Seller Escrow .....	65
9.13 Tax Matters .....	66
9.14 Remedies Exclusive .....	67
10. General Provisions .....	68
10.1 Notices .....	68
10.2 Definitions.....	69
10.3 Counterparts; Facsimile .....	69
10.4 Entire Agreement; Nonassignability; Parties in Interest.....	70
10.5 Severability .....	70
10.6 Remedies Cumulative .....	70
10.7 Governing Law .....	70
10.8 Rules of Construction .....	70
10.9 Specific Enforcement.....	71
10.10 Amendment; Waiver.....	71

H10000184616 3

#### **LIST OF EXHIBITS**

<b>Exhibit A</b>	Articles of Merger
<b>Exhibit B</b>	Option Acknowledgement Form
<b>Exhibit C</b>	Form of Letter of Transmittal
<b>Exhibit D</b>	Form of Escrow Agreement
<b>Exhibit E</b>	Note Acknowledgement Form
<b>Exhibit F</b>	Form of Opinion of Hill, Ward & Henderson, P.A.
<b>Exhibit G</b>	Form of Non-Competition and Non-Solicitation Agreement

#### **LIST OF SCHEDULES**

<b>Section 1.1</b>	List of Key Employees
<b>Section 2.6(g)</b>	Closing Payment Schedule
<b>Section 3</b>	Target Disclosure Schedule
<b>Schedule 6.13</b>	Required Contract Consents
<b>Schedule 6.14</b>	Contracts to Terminate
<b>Schedule 6.16</b>	List of Invention Assignment and Release Agreement Contractors
<b>Schedule 7.2(n)</b>	List of Non-Competition and Non-Solicitation Agreement Parties

H10000184616 3

## AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER (the "Agreement") is made and entered into as of August 10, 2010 by and among QUALCOMM Incorporated, a Delaware corporation ("Acquiror"), Rotag Acquisition Corporation, a Florida corporation ("Merger Sub") and wholly owned subsidiary of Acquiror, WiPower, Inc., a Florida corporation (formerly known as Powerpad, Inc.) ("Target"), Ryan Tseng and Ashish Gupta, solely with respect to Section 9.12 hereof, and, solely with respect to Sections 2.11 and 9 hereof, Carlos Tseng, a principal stockholder of Target ("Securityholders' Agent").

### RECITALS

A. Target, Acquiror and Merger Sub believe it is in the best interests of their respective companies and the stockholders of their respective companies that Target and Merger Sub combine into a single company through the statutory merger of Merger Sub with and into Target (the "Merger") and, in furtherance thereof, the Boards of Directors of Target and Merger Sub have approved the Merger and Acquiror has obtained all requisite approvals of the Merger;

B. In connection with the Merger, the outstanding shares of Target's capital stock at the Effective Time (the "Target Common Stock" or the "Target Capital Stock") will be converted into the right to receive the Merger Consideration upon the terms and subject to the conditions of this Agreement;

C. Acquiror will withhold a portion of the Merger Consideration payable to the Securityholders, the release of which will be contingent upon the occurrence of certain events and the satisfaction of certain conditions as set forth in Section 9;

D. Target, Acquiror and Merger Sub desire to make certain representations and warranties and other agreements in connection with the Merger;

E. Prior to delivery of this Agreement, and as a condition and inducement for the Acquiror's willingness to have entered into this Agreement, each employee of Target listed on Schedule 1.1 of this Agreement (each, a "Key Employee") has executed and delivered to Acquiror an offer letter for employment with Acquiror (which offer includes a requirement for each such Key Employee to relocate to San Diego, California) and a proprietary rights and inventions agreement with Acquiror, in each case, to become effective upon the Closing;

F. Prior to delivery of this Agreement, Acquiror and Target have entered into that certain sublicense agreement, dated as of August 5, 2010, pursuant to which Acquiror has received a sublicense under the Licensed Patents (as defined therein) to make, have made, use, sell, offer for sale and import Licensed Products (as defined therein) and to practice Licensed Processes (as defined therein) (the "Sublicense Agreement"); and

G. Prior to delivery of this Agreement, and as a condition and inducement for the Acquiror's willingness to have entered into this Agreement, Target and each of the Other Parties (as defined therein) have entered into that certain Agreement Regarding Capitalization and

H10000184616 3

Release, dated as of July 7, 2010, by and among the Target and certain Other Parties (the "Capitalization Agreement").

NOW, THEREFORE, in consideration of the covenants and representations set forth herein, and for other good and valuable consideration, the parties agree as follows:

1. **Definitions.** As used in this Agreement, the following terms shall have the following meanings:

"409A Plan" has the meaning set forth in Section 3.22(k).

"Acquiror" has the meaning set forth in the introductory paragraph.

"Acquiror Indemnified Person" and "Acquiror Indemnified Persons" have the meanings set forth in Section 9.2(a)(i).

"Acquisition Proposal" has the meaning set forth in Section 5.2(a).

"Affiliate" with respect to any Person, means any other Person directly or indirectly controlling, controlled by, or under common control with such Person provided that, for purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

"Aggregate Exercise Amount" means the amount represented by the aggregate exercise prices of all In-the-Money Target Options outstanding immediately prior to the Effective Time, which aggregate exercise price for each such In-the-Money Target Option shall be equal to the product of (i) the number of shares of Target Common Stock issuable upon exercise of such In-the-Money Target Option, multiplied by (ii) the exercise price per share for such In-the-Money Target Option, and which amounts shall have been used in computing the Target Option-Based Merger Consideration pursuant to Section 2.6(c).

"Articles of Merger" has the meaning set forth in Section 2.1.

"Business Day" means any day other than a Saturday, Sunday or a day on which banks are required or permitted to be closed in Tampa, Florida or San Diego, California.

"CFRA" has the meaning set forth in Section 3.22(h).

"Cash Adjustment Amount" has the meaning set forth in Section 2.11(b).

"Cause" means: (i) Major Seller's theft, dishonesty as to any matter relating to the business of Acquiror or any of its Affiliates, or falsification of any documents or records of Acquiror or any of its Affiliates; (ii) acts or omissions constituting gross negligence, recklessness or willful misconduct on the part of Major Seller with respect to Major Seller's obligations or otherwise relating to the business of Acquiror or any of its Affiliates, provided that such acts or

H10000184616 3

omissions remain uncured during a period of ten ( 10 ) days after written notice from Acquiror or any of its Affiliates stating that Acquiror or such Affiliate believes such acts or omissions constitute "Cause" within the meaning of this Agreement; (iii) any material breach by Major Seller of any offer letter, employment agreement, Non-Solicitation Agreement, Proprietary Rights and Non-Disclosure Agreement, or other express, written agreement by and between Major Seller and Acquiror or any of its Affiliates that is not cured during a period of thirty (30) days after written notice from Acquiror or such Affiliate stating that Acquiror or such Affiliate believes that Major Seller has committed a material breach that constitutes "Cause" within the meaning of this Agreement; or (iv) Major Seller's conviction (including any plea of guilty or nolo contendere) of any felony or any criminal act involving dishonesty or moral turpitude.

**"CERCLA"** has the meaning set forth in Section 3.20(a)(i).

**"Certificates"** has the meaning set forth in Section 2.7(c).

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

**"Closing Balance Sheet"** has the meaning set forth in Section 2.11(c).

**"Closing Certificate"** has the meaning set forth in Section 2.11(c).

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

**"Closing Payment Schedule"** has the meaning set forth in Section 2.6(g).

**"COBRA"** has the meaning set forth in Section 3.22(b).

**"Code"** shall mean the Internal Revenue Code of 1986, as amended.

**"Confidentiality Agreement"** has the meaning set forth in Section 6.4.

**"Copyrights"** has the meaning set forth in Section 3.10(a)(i).

**"Damages"** has the meaning set forth in Section 9.2(a)(i).

**"Disputed Items"** has the meaning set forth in Section 2.11(d).

**"Dissenting Shares"** has the meaning set forth in Section 2.6(f).

**"Dissenting Stockholder"** has the meaning set forth in Section 2.6(f).

**"Effective Time"** has the meaning set forth in Section 2.2.

**"Employment Period"** has the meaning set forth in Section 9.12.

**"Environmental Laws"** has the meaning set forth in Section 3.20(a)(i).

**"Escrow Agent"** means U.S. Bank, National Association.

H10000184616 3

**"Escrow Agreement"** has the meaning set forth in Section 2.7(g).

**"Escrow Termination Date"** shall mean the date which is thirty-six (36) months following the Closing Date.

**"Estimated Closing Balance Sheet"** has the meaning set forth in Section 2.11(a).

**"Estimated Closing Certificate"** has the meaning set forth in Section 2.11(a).

**"Estimated Working Capital"** means an estimate of Working Capital to be reflected in the Estimated Closing Certificate and on the Estimated Closing Balance Sheet.

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

**"ERISA Affiliate"** has the meaning set forth in Section 3.22(a).

**"Exchange Act"** has the meaning set forth in Section 3.4(b).

**"FMLA"** has the meaning set forth in Section 3.22(h).

**"Final Working Capital"** means the final Working Capital as reflected in the Closing Certificate and on the Closing Balance Sheet.

**"Florida Law"** has the meaning set forth in Section 2.1.

**"Fully Diluted Shares Outstanding"** means the sum of (i) the number of shares of Target Common Stock outstanding immediately prior to the Effective Time, plus (ii) the number of shares of Target Common Stock underlying In-the-Money Target Options outstanding immediately prior to the Effective Time.

**"GAAP"** means United States generally accepted accounting principles.

**"Good Reason"** means the termination by Major Seller of Major Seller's employment due to, and within a period of 30 days following, either (i) Acquiror's requirement that Major Seller's principal place of work relocate more than fifty (50) miles from its location as of commencement of employment with Acquiror without the prior, express written consent of Major Seller to such relocation; provided, however, a Major Seller's relocation from Florida to San Diego shall not constitute "Good Reason" within the meaning of this Agreement, or (ii) Acquiror's failure to pay, or material reduction of, Major Seller's base salary (unless reductions comparable in amount and duration are concurrently made for all other similarly situated employees of Acquiror).

**"Governmental Entity"** has the meaning set forth in Section 3.2.

**"Hazardous Materials"** has the meaning set forth in Section 3.20(a)(ii).

**"HIPAA"** has the meaning set forth in Section 3.22(b).

H10000184616 3

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

**"Indebtedness"** means (i) all indebtedness for borrowed money or the deferred purchase price of property or services (other than trade debt or payables incurred in the ordinary course of business), including without limitation reimbursement and other obligations with respect to surety bonds and letters of credit, (ii) all obligations evidenced by notes, bonds, debentures or similar instruments, and (iii) all capital lease obligations.

**"Indemnification Escrow"** shall mean an amount equal to One Million Nine Hundred Twenty Thousand Dollars (\$1,920,000).

**"Independent Accounting Firm"** means an independent accounting firm of national reputation selected by Acquiror, and reasonably acceptable to the Securityholders' Agent.

**"In-the-Money Target Options"** means such Target Options issued and outstanding immediately prior to the Effective Time with respect to which the per share exercise price is less than the Per Share Merger Consideration.

**"IP Encumbrance"** has the meaning set forth in Section 3.10(a)(ii).

**"Invention Assignment and Release Agreement"** shall have the meaning set forth in Section 6.16.

**"Issued Patents"** has the meaning set forth in Section 3.10(a)(iii).

**"Key Employee"** has the meaning set forth in Recital E.

**"Knowledge"** has the meaning set forth in Section 10.2.

**"Lease"** has the meaning set forth in Section 3.15.

**"License Termination Notice"** has the meaning set forth in Section 6.15.

**"Limitation"** has the meaning set forth in Section 9.2(b).

**"Major Seller"** means each of Ryan Tseng and Ashish Gupta.

**"Major Seller Escrow "** means, for each Major Seller, an amount equal to the product of (i) such Major Seller's pro rata Merger Consideration multiplied by (ii) .4.

**"material"** has the meaning set forth in Section 10.2.

**"Material Adverse Effect"** has the meaning set forth in Section 10.2.

**"Material Contract"** has the meaning set forth in Section 3.14(a).

**"Merger"** has the meaning set forth in Recital A.



H10000184616 3

**"Merger Consideration"** shall mean an amount in cash of \$9,600,000, plus the Aggregate Exercise Amount, and as adjusted upward (in the event that the Estimated Working Capital is greater than \$0) or downward (in the event that the Estimated Working Capital is less than \$0) to reflect the amount of the Estimated Working Capital.

**"Merger Sub"** has the meaning set forth in the introductory paragraph.

**"Note Acknowledgment Form"** has the meaning set forth in Section 2.7(h).

**"Note Consideration"** shall mean an amount in cash as required to satisfy the Redemption Price (as defined in the Capitalization Agreement).

**"Off-the-Shelf Software"** has the meaning set forth in Section 3.10(a)(iv).

**"Officer's Certificate"** has the meaning set forth in Section 9.3.

**"Out-of-the-Money Target Option"** means any Target Option issued and outstanding immediately prior to the Effective Time other than In-the-Money Target Options.

**"Option Acknowledgement Form"** has the meaning given to it in Section 2.6(c).

**"Patents"** has the meaning set forth in Section 3.10(a)(v).

**"Patent Applications"** has the meaning set forth in Section 3.10(a)(vi).

**"Payment Agent"** has the meaning set forth in Section 2.7(a).

**"Pension Plan"** has the meaning set forth in Section 3.22(d).

**"Per Share Merger Consideration"** has the meaning set forth in Section 2.6(a).

**"Person"** shall mean any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated entity or Governmental Entity.

**"Pre-Closing Tax Period"** has the meaning set forth in Section 9.13(a).

**"Proposed Business Practice"** means the development of wireless power "smartphone" retail products and licensing of related technology to consumer electronic original equipment manufacturers and private label retailers.

**"Proprietary Rights"** has the meaning set forth in Section 3.10(a)(vii).

**"Public Software"** has the meaning set forth in Section 3.10(a)(viii).

**"Public Software License"** has the meaning set forth in Section 3.10(a)(viii).

**"RCRA"** has the meaning set forth in Section 3.20(a)(i).

H10000184616 3

**"Redeemed Notes"** has the meaning ascribed to such terms in the Capitalization Agreement.

**"Release Date"** shall mean a date no later than three (3) Business Days after the Escrow Termination Date.

**"Registered Copyrights"** has the meaning set forth in Section 3.10(a)(ix).

**"Registered Trademarks"** has the meaning set forth in Section 3.10(a)(x).

**"Required Contract Consents"** has the meaning set forth in Section 3.14(b).

**"Representatives"** shall mean officers, directors, partners, trustees, executors, employees, agents, attorneys, accountants and advisors.

**"Restated Articles of Incorporation"** has the meaning set forth in Section 3.1.

**"Restated Bylaws"** has the meaning set forth in Section 3.1.

**"Returns"** has the meaning set forth in Section 3.21(b).

**"Securities Act"** shall mean the Securities Act of 1933, as amended.

**"Securityholders"** shall mean the holders of (i) Target Common Stock, (ii) In-the-Money Target Options and (iii) Redeemed Notes.

**"Securityholders' Agent"** has the meaning set forth in the introductory paragraph.

**"Straddle Period"** has the meaning set forth in Section 9.13(b).

**"Sublicense Agreement"** has the meaning set forth in Recital F.

**"Subsidiary"** has the meaning set forth in Section 10.2.

**"Surviving Corporation"** has the meaning set forth in Section 2.1.

**"Target"** has the meaning set forth in the introductory paragraph.

**"Target Balance Sheet"** has the meaning set forth in Section 3.7.

**"Target Balance Sheet Date"** has the meaning set forth in Section 3.6.

**"Target Capital Stock"** has the meaning set forth in Recital B.

**"Target Common Stock"** has the meaning set forth in Recital B.

**"Target Disclosure Schedule"** has the meaning set forth in Section 3.

H10000184616 3

**"Target Employee Plans"** means each plan, program, policy, practice, contract, agreement or other arrangement providing for compensation, severance, termination pay, deferred compensation, performance awards, stock or stock-related options or awards, pension, retirement benefits, profit-sharing, savings, disability benefits, medical insurance, dental insurance, health insurance, life insurance, death benefit, other insurance, welfare benefits, fringe benefits or other employee benefits or remuneration of any kind, whether written, unwritten or otherwise, funded or unfunded, including each "employee benefit plan," within the meaning of Section 3(3) of ERISA.

**"Target Financial Statements"** has the meaning set forth in Section 3.4(a).

**"Target Incentive Plan"** has the meaning set forth in Section 3.5(a).

**"Target Option-Based Merger Consideration"** has the meaning set forth in Section 2.6(c).

**"Target Options"** has the meaning set forth in Section 3.5(a).

**"Target Preferred Stock"** has the meaning set forth in Section 3.5(a).

**"Target Products"** has the meaning set forth in Section 3.10(a)(xi).

**"Target Proprietary Rights"** has the meaning set forth in Section 3.10(a)(xii).

**"Target Source Code"** has the meaning set forth in Section 3.10(a)(xiii).

**"Target Warrants"** has the meaning set forth in Section 3.5(a).

**"Target's Current Facilities"** has the meaning set forth in Section 3.20(b).

**"Target's Facilities"** has the meaning set forth in Section 3.20(b).

**"Tax" and "Taxes"** have the meanings set forth in Section 3.21(a).

**"Tax Claim"** means a notice of deficiency, proposed adjustment, adjustment, assessment, audit, examination, investigation or other administrative or judicial proceeding, suit, dispute, Action, or claim for the assessment and/or collection of Taxes.

**"Tax Returns"** means any return, report, declaration, information return or other document required to be filed in connection with any Taxes, and any claims for refunds of Taxes paid, including any schedule or attachment thereto and any amendments to any of the foregoing.

**"Termination Notice"** has the meaning set forth in Section 9.12.

**"Trade Secrets"** has the meaning set forth in Section 3.10(a)(xiv).

**"Trademarks"** has the meaning set forth in Section 3.10(a)(xv).

H10000184616 3

**"Transaction Expenses"** shall mean shall mean any fee, cost, expense, payment, expenditure, liability (contingent or otherwise) or obligation (whether incurred prior to or on the date of the Agreement, between the date of the Agreement and the Effective Time or at or after the Effective Time) that: (a) relates directly or indirectly to (i) the proposed disposition of all or a portion of the business of Target, or the process of identifying, evaluating and negotiating with prospective purchasers of all or a portion of the business of Target, (ii) the investigation and review conducted by Acquiror and its Representatives, and any investigation or review conducted by other prospective purchasers of all of a portion of the business of Target, with respect to the business of Target (and the furnishing of information to Acquiror and its Representatives and such other prospective purchasers and their Representatives in connection with such investigation and review), (iii) the negotiation, preparation, review, execution, delivery or performance of the Agreement (including the Target Disclosure Schedule), or any certificate, opinion, agreement or other instrument or document delivered or to be delivered in connection with this Agreement or the transactions contemplated hereby, (iv) the preparation and submission of any filing or notice required to be made or given in connection with any of the Merger, and the obtaining of any consent required to be obtained in connection with any of such transactions, (v) the escrow agent and the administration of the escrow or (vi) the consummation of the Merger or any of the transactions contemplated by this Agreement; or (b) arises or is expected to arise, is triggered or becomes due or payable, in whole or in part, as a direct or indirect result of the consummation (whether alone or in combination with any other event or circumstance) of the Merger or any of the other transactions contemplated by this Agreement.

**"University License Agreements"** means the (i) separate Standard Exclusive License Agreement with Sublicensing Terms (Agreement No. A7786) dated as of October 16, 2008, and all amendments thereto entered into by and between Target and the University of Florida Research Foundation, Inc. and (ii) separate Standard Exclusive License Agreement with Sublicensing Terms (Agreement No. A7784) dated as of October 16, 2008, and all amendments thereto entered into by and between Target and the University of Florida Research Foundation, Inc.

**"WARN"** has the meaning set forth in Section 3.22(m).

**"Working Capital"** means the total current assets (defined as cash, cash equivalents, accounts receivable, the \$400,000 payment to be made to Target under Section 3 of the Sublicense Agreement (the **"Sublicense Payment"**) and prepaid expenses and excluding any assets associated with the Aggregate Exercise Amount), less all liabilities (including, but not limited to, all indebtedness, Transaction Expenses and the Redemption Price, Discretionary Payment and Sale Payments set forth under the Capitalization Agreement, all without duplication, of Target, as of 11:59 PM EDT on the Business Day immediately prior to the Closing Date and as determined in accordance with GAAP applied on a basis consistent with Target's past practices used in preparing the Target Financial Statements (so long as such past practices are in accordance with GAAP); provided, however, that the Sublicense Payment shall be considered a current asset and included in the calculation of Working Capital regardless of whether such treatment would be consistent or in accordance with GAAP.

2. The Merger.

H10000184616 3

2.1 The Merger. At the Effective Time and subject to and upon the terms and conditions of this Agreement, the Articles of Merger attached hereto as Exhibit A (the "Articles of Merger") and the applicable provisions of the Florida Business Corporation Act ("Florida Law"), Merger Sub shall be merged with and into Target, the separate corporate existence of Merger Sub shall cease and Target shall continue as the surviving corporation (the "Surviving Corporation").

2.2 Closing; Effective Time. Unless this Agreement is terminated pursuant to Section 8, the closing of the transactions contemplated hereby (the "Closing") shall take place as soon as practicable, but no later than five (5) Business Days, after the satisfaction or waiver of each of the conditions set forth in Section 7 hereof, or at such other time as the parties hereto agree (the "Closing Date"). The Closing shall take place at the offices of DLA Piper LLP (US), 4365 Executive Drive, Suite 1100, San Diego California 92121, or at such other location as the parties hereto agree. In connection with the Closing, the parties hereto shall cause the Merger to be consummated by filing the Articles of Merger with the Florida Department of State Division of Corporations, in accordance with the relevant provisions of Florida Law (the time of such filing being the "Effective Time").

2.3 Effect of the Merger. At the Effective Time, the effect of the Merger shall be as provided in this Agreement, the Articles of Merger and the applicable provisions of Florida Law.

2.4 Articles of Incorporation; Bylaws.

(a) At the Effective Time, the Articles of Incorporation of the Surviving Corporation shall be amended and restated in its entirety to read as the Articles of Incorporation of Merger Sub as in effect immediately prior to the Effective Time; provided, however, that Article I of the Articles of Incorporation of the Surviving Corporation shall be amended to read as follows: "The name of the corporation is WiPower, Inc."

(b) The Bylaws of Merger Sub, as in effect immediately prior to the Effective Time, shall be the Bylaws of the Surviving Corporation until thereafter amended.

2.5 Directors and Officers. At the Effective Time, the directors and officers of Merger Sub immediately prior to the Effective Time shall be the directors and officers of the Surviving Corporation, to serve until their respective successors are duly elected or appointed and qualified.

2.6 Effect on Capital Stock. At the Effective Time, by virtue of the Merger and without any action on the part of Merger Sub, Target or the holders of any of the following securities:

(a) Target Common Stock. Subject to proportional adjustment as set forth in Section 2.6(b) below, each share of Target Common Stock issued and outstanding immediately prior to the Effective Time (excluding Dissenting Shares) shall be converted into the right to receive (without interest) an amount of cash equal to the Merger Consideration, *divided by* the Fully Diluted Shares Outstanding immediately prior to the Effective Time ("Per Share Merger Consideration"), as adjusted by the Indemnification Escrow as contemplated in

H10000184616 3

Section 9.1 of the Agreement and the Major Seller Escrow as contemplated in Section 9.12 of the Agreement, and otherwise subject to the terms and conditions of this Agreement.

(b) Merger Consideration and Note Consideration Adjustment. Notwithstanding Section 2.6(a) above, the Merger Consideration otherwise payable with respect to each share of Target Capital Stock pursuant to Section 2.6(a) and with respect to each In-the-Money Target Option pursuant to Section 2.6(c), and the Note Consideration otherwise payable with respect to each Redeemed Note pursuant to Section 2.7(i), shall be increased or decreased (if at all) by an amount equal to the Cash Adjustment Amount (as determined pursuant to Section 2.11 below).

(c) Target Stock Options. In connection with the Merger and prior to the Effective Time, Target shall take all action as is necessary to cause (i) each In-the-Money Target Option outstanding immediately prior to the Effective Time to become, as of the Effective Time and in accordance with applicable law, fully vested and converted into the right to receive, upon the delivery to Target of an Option Acknowledgment Letter (as defined below) and other documentation as may be required by the Payment Agent by the holder of such In-the-Money Target Option, at the Effective Time a cash payment, as set forth on the Closing Payment Schedule and payable by Acquiror in the same manner and upon the terms and conditions of this Agreement, equal to the product of (a) the excess, if any, of the Per Share Merger Consideration over the exercise price per share of such In-the-Money Target Option and (b) the number of shares of Target Common Stock issuable upon exercise of such In-the-Money Target Option (with the aggregate amount of such payment rounded down to the nearest cent), less such amounts as are required to be withheld or deducted under any provision of federal, state, local or foreign Tax law with respect to making such payment and as adjusted by the Indemnification Escrow and (ii) each Out-of-the-Money Target Option to be cancelled and no consideration to be delivered in exchange therefor. The aggregate amount of cash payable with respect to all such In-the-Money Target Options under this Section 2.6(c) is referred to as the "Target Option-Based Merger Consideration." At the Effective Time, all In-the-Money Target Options shall no longer be outstanding and shall automatically cease to exist, and each holder of an In-the-Money Target Option shall cease to have any rights with respect thereto, except the right to receive the cash payment (if any) described in this Section 2.6(c). For the avoidance of doubt, Target shall take all action, if any, as is necessary to cause each In-the-Money Target Option to be either exempt from or compliant with Section 409A of the Code prior to receipt by the In-the-Money Target Option holder of the cash payment (if any) as described in this Section 2.6(c). The holders of all outstanding Target Options shall have executed and delivered to Acquiror waivers, in form attached hereto as Exhibit B, accepting the consideration provided by this Section 2.6(c) in lieu of any other consideration that might be claimed by any such holder, unconditionally and irrevocably waiving and releasing all right or claim that such holder might have or assert in respect of such consideration, acknowledging that such Target Options shall terminate upon and may not be exercised after the Closing Date, and agreeing to be bound by the indemnification obligations, and the Indemnification Escrow set forth in this Agreement ("Option Acknowledgment Form").

(d) Target Warrants. No Target Warrants (as defined in Section 3.5(a)) shall be assumed by Acquiror in the Merger, and Target shall cause each Target Warrant to be cancelled and extinguished as of, or prior to, the Effective Time.

H10000184616 3

(e) Capital Stock of Merger Sub. At the Effective Time, each share of common stock of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into and exchanged for one validly issued, fully paid and nonassessable share of common stock of the Surviving Corporation.

(f) Dissenters' Rights. Notwithstanding any provision of this Agreement to the contrary, any shares of Target Capital Stock held by a holder who has demanded and perfected such holder's right for appraisal of such shares in accordance with Florida Law and who, as of the Effective Time, has not effectively withdrawn or lost such right to appraisal ("Dissenting Shares"), if any, shall not be converted into the Merger Consideration but shall instead be converted into the right to receive such consideration as may be determined to be due with respect to such Dissenting Shares pursuant to Florida Law. Target shall give Acquiror prompt notice of any demand received by Target to require Target to purchase shares of Target Capital Stock, and Acquiror shall have the right to direct and participate in all negotiations and proceedings with respect to such demand. Target agrees that, except with the prior written consent of Acquiror (which will not be unreasonably withheld, conditioned or delayed), or as required under the Florida Law, it will not voluntarily make any payment with respect to, or settle or offer to settle, any such purchase demand. Each holder of Dissenting Shares ("Dissenting Stockholder") who, pursuant to the provisions of Florida Law, becomes entitled to payment of the fair value for shares of Target Capital Stock shall receive payment therefore (but only after the value therefore shall have been agreed upon or finally determined pursuant to such provisions). If, after the Effective Time, any Dissenting Shares shall lose their status as Dissenting Shares, Acquiror shall issue and deliver, upon surrender by such stockholder of a certificate or certificates representing shares of Target Capital Stock, the portion of the Merger Consideration to which such stockholder would otherwise be entitled under this Section 2.6 and the Articles of Merger less the portion of the Merger Consideration allocable to such stockholder and Major Seller, as applicable, that has been withheld as part of the Indemnification Escrow and Major Seller Escrow, as applicable, in respect of such shares of Target Capital Stock pursuant to Section 9 hereof.

(g) Closing Payment Schedule. At the Closing, Target shall deliver to Acquiror a definitive closing payment schedule (the "Closing Payment Schedule") certified by the Chief Executive Officer and Chief Financial Officer of Target (on behalf of Target and in their official capacities) and accurately setting forth: (i) the name of each stockholder of Target immediately prior to the Effective Time, (ii) the number, class and series of shares of Target Capital Stock held by each such stockholder immediately prior to the Effective Time; (iii) the name of each holder of In-the-Money Target Options and Out-of-the-Money Target Options immediately prior to the Effective Time; (iv) the number of In-the-Money Target Options held by each such holder of In-the-Money Target Options immediately prior to the Effective Time; (v) the number of Out-of-the-Money Target Options held by each such holder immediately prior to the Effective Time; (vi) the calculation of the Merger Consideration, including the Estimated Working Capital, (vii) the aggregate Merger Consideration which each such stockholder and holder of In-the-Money Target Options is eligible to receive, (viii) the amount to be contributed to the Indemnification Escrow on behalf of each Securityholder, (ix) the amount to be contributed by each Major Seller to the Major Seller Escrow, and (x) the payees of Transaction Expenses included in the calculation of the Estimated Working Capital, the respective amounts thereof and their respective payment instructions.

H10000184616 3

**2.7 Payment and Exchange Procedures: Escrow Amounts.**

(a) Payment Agent. U.S. Bank, National Association shall act as payment agent (the "Payment Agent") in the Merger.

(b) Acquiror to Provide Cash. At or before the Effective Time, Acquiror shall deliver to the Paying Agent or Target, as applicable, by wire transfer funds in an amount sufficient to permit the payment of the Merger Consideration to be paid pursuant to Section 2.6 in exchange for shares of Target Capital Stock and In-the-Money Target Options outstanding immediately prior to the Effective Time, less the portion of the Merger Consideration to be delivered to the Escrow Agent pursuant to Section 2.7(g).

(c) Exchange Procedures. At or prior to the Effective Time, the Target shall mail or otherwise deliver to each holder of record of Target Capital Stock, whose shares will be converted into the right to receive the Merger Consideration pursuant to Section 2.6, (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 receipt of the Certificates by the Payment Agent) in the form attached hereto as Exhibit C; and (ii) instructions for use in effecting the surrender of the certificate or certificates (the "Certificates") that immediately prior to the Effective Time represented outstanding shares of Target Capital Stock in exchange for the Merger Consideration. Upon surrender of a Certificate for cancellation to the Payment Agent or to such other agent or agents as may be appointed by Acquiror, together with such letter of transmittal and other documents, duly completed and validly executed in accordance with the instructions thereto, the holder of such Certificate shall be entitled to receive in exchange therefore an amount in cash equal to the portion of the Merger Consideration that such holder has the right to receive pursuant to this Section 2, less the amount of such portion of the Merger Consideration to be withheld by Acquiror as part of the Indemnification Escrow on such holder's behalf pursuant to Section 9 hereof and the Major Seller Escrow on such holder's behalf (if applicable), and the Payment Agent shall promptly pay such amount to such holder. The Certificate so surrendered shall forthwith be canceled. Until so surrendered, each outstanding Certificate that prior to the Effective Time represented shares of Target Capital Stock will be deemed from and after the Effective Time, for all corporate purposes other than the payment of dividends, to evidence the right to receive the portion of the Merger Consideration which shall be issued for such Target Capital Stock.

(d) Transfers of Ownership. At the Effective Time, the stock transfer books of Target shall be closed, and there shall be no further registration of transfers of Target Capital Stock thereafter on the records of Target.

(e) No Liability. Notwithstanding anything to the contrary in this Section 2.7, neither the Payment Agent nor any party hereto shall be liable to any Person for any amount properly paid to a public official pursuant to any applicable abandoned property, escheat or similar law.

(f) Dissenting Shares. The provisions of this Section 2.7 shall also apply to Dissenting Shares that lose their status as such, except that the obligations of Acquiror under this Section 2.7 shall commence on the date of loss of such status and the holder of such



H10000184616 3

shares shall be entitled to receive in exchange for such shares the Merger Consideration to which such holder is entitled pursuant to Section 2.6 hereof.

(g) Delivery of Indemnification Escrow and Major Seller Escrow to Escrow Agent. At the Effective Time, the Acquiror shall deposit with the Escrow Agent (i) the Indemnification Escrow to be held and released subject to and in accordance with the terms of the Escrow Agreement in substantially the form of Exhibit D hereto (the "Escrow Agreement"), and (ii) the Major Seller Escrow to be held and released subject to and in accordance with the terms of the Escrow Agreement, in each case, by wire transfer of immediately available funds in accordance with the wire instructions set forth in the Escrow Agreement.

(h) Payment of Target Transaction Expenses. At the Effective Time, the Acquiror shall pay, by wire transfer of immediately available funds, the Transaction Expenses of Target to the payees thereof in the amounts and pursuant to the payment instructions set forth on the Closing Payment Schedule.

(i) Redeemed Notes. In connection with the Merger and promptly after the Effective Time, the Acquiror shall for the account of Target, upon the delivery to the Payment Agent of a Note Acknowledgment Form (as defined below) and other documentation as may be required by the Payment Agent by the holder of each Redeemed Note, make a cash payment (as adjusted by the Indemnification Escrow) to satisfy the Redemption Price (as defined in the Capitalization Agreement), which shall be treated as Indebtedness of Target (and taken into account for purposes of calculating Working Capital), as set forth on the Closing Payment Schedule and payable by Acquiror upon the terms and conditions of this Agreement. The holders of all Redeemed Notes shall execute and deliver to Acquiror waivers, in form attached hereto as Exhibit E, accepting the consideration provided by this Section 2.7(h) in lieu of any other consideration that might be claimed by any such holder, unconditionally and irrevocably waiving and releasing all right or claim that such holder might have or assert in respect of such consideration, and agreeing to be bound by the indemnification obligations and the Indemnification Escrow set forth in this Agreement ("Note Acknowledgment Form").

(j) Sale Payments and Discretionary Payments. Promptly, and in any event within one (1) Business Day following the Effective Time, Target shall and the Acquiror shall cause Target to pay the Sale Payments and Discretionary Payments (as such terms are defined in the Capitalization Agreement) in the amounts and to the payees set forth in the Closing Payment Schedule.

2.8 No Further Ownership Rights in Target Capital Stock. The Merger Consideration delivered upon the surrender for exchange of shares of Target Capital Stock in accordance with the terms hereof shall be deemed to have been issued in full satisfaction of all rights pertaining to such shares of Target Capital Stock, and there shall be no further registration of transfers on the records of the Surviving Corporation of shares of Target Capital Stock which were outstanding immediately prior to the Effective Time. If, after the Effective Time, Certificates are presented to the Surviving Corporation for any reason, they shall be canceled and exchanged as provided in this Section 2.

H10000184616 3

2.9 Lost, Stolen or Destroyed Certificates. In the event any Certificates shall have been lost, stolen or destroyed, the Payment Agent shall issue in exchange for such lost, stolen or destroyed Certificates, upon the making of an affidavit of that fact by the holder thereof and the provision of a bond of indemnity, such Merger Consideration as may be required pursuant to Section 2.6; provided, however, that Acquiror may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed Certificates to agree to indemnify the Acquiror against any claim that may be made against Acquiror, the Payment Agent or the Surviving Corporation with respect to the Certificates alleged to have been lost, stolen or destroyed.

2.10 Taking of Necessary Action; Further Action. From the date of this Agreement until the Closing or earlier termination of this Agreement, each of Acquiror, Merger Sub and Target will take all such reasonable and lawful action as may be necessary or desirable in order to effectuate the Merger in accordance with this Agreement as promptly as possible. If, at any time after the Effective Time, any further action is necessary or desirable to carry out the purposes of this Agreement and to vest the Surviving Corporation with full right, title and possession to all assets, property, rights, privileges, powers and franchises of Target and Merger Sub, the officers and directors of Target and Merger Sub are fully authorized in the name of their respective corporations or otherwise to take, and will take, all such lawful and necessary action, so long as such action is not inconsistent with this Agreement.

2.11 Working Capital Adjustment.

(a) At least two (2) Business Days prior to the Closing Date, Target shall deliver to Acquiror (i) a certificate of the Target's Chief Executive Officer and its Chief Financial Officer (on behalf of the Company in their official capacities) (the "Estimated Closing Certificate") setting forth the Estimated Working Capital calculated in accordance with Section 2.11(b) and (ii) an estimated balance sheet of the Target as of 11:59 PM EDT on the Business Day immediately preceding the Closing Date reflecting Target's calculation of each of the components of Working Capital and the aggregate amount thereof (the "Estimated Closing Balance Sheet"), which shall have been prepared in accordance with GAAP applied on a basis consistent with the Target's past practices used in preparing the Target Financial Statements. The Estimated Closing Certificate shall be used to make a preliminary adjustment to the Merger Consideration on the Closing Date pursuant to Section 2.11(b), subject to further adjustment in accordance with Section 2.11(e).

(b) In the event that the Estimated Working Capital is a negative amount (i.e., less than \$0), the Merger Consideration shall be adjusted downward by the amount by which the Estimated Working Capital is less than \$0. In the event that the Estimated Working Capital is a positive amount (i.e., greater than \$0), the Merger Consideration shall be adjusted upward by the amount by which the Estimated Working Capital is greater than \$0. The adjustments, if any, referred to in this Section 2.11(b) are referred to herein as the "Cash Adjustment Amount".

(c) Within ninety (90) days after the Closing Date, the Acquiror shall prepare and deliver to the Securityholders' Agent a certificate setting forth, in reasonable detail, the Final Working Capital as of 11:59 PM EDT on the Business Day immediately preceding the

H10000184616 3

Closing Date (the "Closing Certificate"), together with a balance sheet of Target as of 11:59 PM EDT on the Business Day immediately preceding the Closing Date reflecting Acquiror's calculation of each of the components of Working Capital and the aggregate amount thereof (the "Closing Balance Sheet"), which shall be prepared in accordance with GAAP applied on a basis consistent with Target's past practices used in preparing the Target Financial Statements.

(d) The Securityholders' Agent shall have thirty (30) days from the date on which the Closing Certificate and the Closing Balance Sheet have been delivered to it to raise any objection(s) to the Closing Certificate or the Closing Balance Sheet, by delivery of written notice to the Acquiror setting forth such objection(s) in reasonable detail (the "Disputed Items"). In the event that the Securityholders' Agent shall not deliver any such objection(s) with respect to the Closing Certificate or the Closing Balance Sheet within such thirty-day period, then the Closing Certificate shall be deemed final for purposes of this Section 2.11. In the event that any such objection(s) are so delivered, the Closing Certificate shall be deemed not final and the Acquiror and the Securityholders' Agent shall attempt, in good faith, to resolve the Disputed Items and, if they are unable to resolve all of the Disputed Items within thirty (30) days of delivery of such notice, shall, within five (5) Business Days thereafter (or such earlier date as mutually agreed), submit the Disputed Items to the Independent Accounting Firm. Acquiror and the Securityholders' Agent shall provide to the Independent Accounting Firm all work papers and back-up materials relating to the Disputed Items requested by the Independent Accounting Firm to the extent available to Acquiror or its Representatives or the Securityholders' Agent or its Representatives. Acquiror and the Securityholders' Agent shall be afforded the opportunity to present to the Independent Accounting Firm any material related to the Disputed Items and to discuss the issues with the Independent Accounting Firm. The determination by the Independent Accounting Firm, as set forth in a notice to be delivered to Acquiror and the Securityholders' Agent within thirty (30) days after the submission of the Disputed Items to the Independent Accounting Firm, shall be final, binding and conclusive on Acquiror, the Securityholders' Agent and all Securityholders. The fees, costs and expenses of the Independent Accounting Firm shall be borne proportionately by Acquiror and the Securityholders to the extent that Acquiror's and the Securityholders' Agent's respective determinations of Working Capital differ from the Independent Accounting Firm's final determination of Working Capital (such proportional responsibility to be determined conclusively by the Independent Accounting Firm and included in its written decision). For example, if the aggregate Disputed Items submitted to the Independent Accounting Firm are \$10,000 and the Independent Accounting Firm ultimately resolves the Disputed Items by awarding Buyer \$6,000 of the \$10,000, then the costs and expenses of the Independent Accounting Firm will be allocated 60% (i.e., 6,000/10,000) to the Securityholders' (as agent on behalf of the Securityholders) and 40% (i.e., 4,000/10,000) to Acquiror. Target's Final Working Capital reflected in the Closing Certificate, as revised to reflect the resolution of any and all disputes by Acquiror and the Securityholders' Agent and/or the Independent Accounting Firm, shall be deemed to be the "Final Working Capital."

(e) At such time as the Closing Certificate shall become final in accordance with Section 2.11(d), the Estimated Working Capital shall be compared to the Final Working Capital. In the event that the Final Working Capital is less than the Estimated Working Capital, the Securityholders shall pay to the Acquiror an amount equal to such excess. Any payment to be made pursuant to this Section 2.11(e) shall be made, within five (5) Business Days from the date that the Closing Certificate is finally determined pursuant to Section 2.11(d), by

H10000184616 3

release of such amount from the Indemnification Escrow in proportion to each Securityholders' respective pro rata portion of the aggregate Merger Consideration and Note Consideration in accordance with the Closing Payment Schedule. In the event that the Final Working Capital shall be a number greater than the Estimated Working Capital, the Acquiror shall pay to each Securityholder such Securityholders' pro rata portion of such excess in accordance with the Closing Payment Schedule.

(f) Upon reasonable notice and during regular business hours, the Acquiror and Surviving Corporation shall give the Securityholders' Agent and its Representatives access to (including the right to make copies of) the books and records (including working papers) of the Surviving Corporation and its personnel reasonably requested by such persons in connection with their review and analysis of the Closing Certificate, Closing Balance Sheet, Working Capital and the resolution of the Disputed Items. The Securityholders' Agent shall reimburse the Acquiror and Surviving Corporation, as applicable, for all reasonable out-of-pocket costs and expenses incurred in providing such information and in rendering such assistance. The access to information and documents contemplated by this Section 2.11(f) shall be subject to such reasonable nondisclosure obligations as the Acquiror and Surviving Corporation, as applicable, having custody or control thereof may impose to preserve the confidentiality of information contained therein (provided that no such obligations shall prevent Securityholders' Agent and its Representatives from using such information for purposes of performing its duties in accordance with this Section 2.11).

3. Representations and Warranties of Target. Target represents and warrants to Acquiror and Merger Sub that the statements contained in this Section 3 are true and correct, except as disclosed in a document of even date herewith and delivered by Target to Acquiror on the date hereof referring to the representations and warranties in this Agreement (the "Target Disclosure Schedule"). The Target Disclosure Schedule will be arranged in paragraphs corresponding to the numbered and lettered paragraphs contained in this Section 3, and the disclosure in any such numbered and lettered Section of the Target Disclosure Schedule shall qualify only the corresponding subsection in this Section 3 (except to the extent that either (A) the disclosure in any numbered and lettered Section of the Target Disclosure Schedule is specifically cross-referenced in another numbered and lettered Section of the Target Disclosure Schedule or (B) the relevance of such disclosure to other representations and warranties is readily apparent from the actual text of such disclosures).

3.1 Organization, Standing and Power. Target is a corporation duly organized, validly existing and in active status under the laws of the state of Florida. Target has the corporate power to own its properties and to carry on its business as now being conducted and as proposed to be conducted and is duly qualified to do business and is in good standing in each jurisdiction in which the failure to be so qualified and in good standing could reasonably be expected to have a Material Adverse Effect on Target. Target has delivered to Acquiror a true and correct copy of the Second Amended and Restated Articles of Incorporation of Target (the "Restated Articles of Incorporation"), Amended and Restated Bylaws (the "Restated Bylaws") or other charter documents, as applicable, of Target, each as amended to date. Target is not in violation of any of the provisions of its Restated Articles of Incorporation or Bylaws or equivalent organizational documents. Except as set forth in Section 3.1 of the Target Disclosure Schedule, Target does not directly or indirectly own any equity or similar interest in, or any

H10000184616 3

interest convertible or exchangeable or exercisable for, any equity or similar interest in, any corporation, partnership, joint venture or other business association or entity.

**3.2 Authority.** Target has all requisite corporate power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of Target. The affirmative vote of the holders of a majority of the shares of Target Common Stock, voting together as a single class, outstanding on the record date for the vote or written consent of stockholders relating to this Agreement is the only vote of the holders of any of Target Capital Stock necessary under Florida Law or other applicable law to approve this Agreement and the transactions contemplated hereby. The Board of Directors of Target has unanimously (a) approved this Agreement and the Merger; (b) determined that in its opinion the Merger is in the best interests of the stockholders of Target and is on terms that are fair to such stockholders; and (c) recommended that the stockholders of Target approve this Agreement and the Merger. This Agreement has been duly executed and delivered by Target and constitutes the valid and binding obligation of Target enforceable against Target in accordance with its terms, except that such enforceability may be limited by bankruptcy, insolvency, moratorium or other similar laws affecting or relating to creditors' rights generally, and is subject to general principles of equity. Except as set forth in Section 3.2 of the Target Disclosure Schedule, the execution and delivery of this Agreement by Target does not, and the consummation of the transactions contemplated hereby will not, conflict with, or result in any violation of, or default under (with or without notice or lapse of time, or both), or give rise to a right of termination, cancellation or acceleration of any material obligation or loss of any material benefit under (i) any provision of the Restated Articles of Incorporation or Restated Bylaws of Target, as amended; or (ii) any mortgage, indenture, lease, contract or other agreement or instrument, permit, concession, franchise, license, judgment, order, decree, statute, law, ordinance, rule or regulation applicable to Target or any of their properties or assets, in the case of clause (ii), except for such conflicts, violations, defaults, rights of termination, cancellation or acceleration as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Target. No consent, approval, order or authorization of, or registration, declaration or filing with, any court, administrative agency or commission or other governmental authority or instrumentality ("Governmental Entity") is required by or with respect to Target in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby, except for (A) the filing of the Articles of Merger, as provided in Section 2.2; and (B) such other consents, authorizations, filings, approvals and registrations which, if not obtained or made, would not be reasonably expected to have a Material Adverse Effect on Target and could not reasonably be expected to prevent, or materially alter or delay any of the transactions contemplated by this Agreement.

**3.3 Governmental Authorization.** Target has obtained each federal, state, county, local or foreign governmental consent, license, permit, grant, or other authorization of a Governmental Entity (a) pursuant to which Target currently operates or holds any interest in any of its properties; or (b) that is required for the operation of Target's business or the holding of any such interest and all of such authorizations are in full force and effect except where the failure to obtain or have any such authorizations, or for such authorizations to be in full force and effect, would not reasonably be expected to have a Material Adverse Effect on Target.

H10000184616 3

### 3.4 Financial Statements.

(a) Target has delivered to Acquiror its unaudited financial statements for the fiscal years ended December 31, 2009, and its unaudited financial statements (balance sheet, statement of operations and statement of cash flows) on a consolidated basis as at and for the six-month period ended June 30, 2010 (collectively, the "Target Financial Statements"). The Target Financial Statements have been prepared in accordance with GAAP (except that the unaudited financial statements do not contain footnotes and are subject to normal recurring year-end audit adjustments, the effect of which will not, individually or in the aggregate, be materially adverse) applied on a consistent basis throughout the periods presented and consistent with each other. The Target Financial Statements fairly present, in all material aspects, the consolidated financial condition, operating results and cash flow of Target as of the dates, and for the periods, indicated therein, subject to normal year-end audit adjustments and the absence of footnotes in the case of the unaudited Target Financial Statements.

(b) Except as set forth in Section 3.4(b) of the Target Disclosure Schedule, Target maintains and will continue to maintain prior to the Closing a system of internal accounting controls sufficient to provide reasonable assurance that (i) transactions are executed with management's general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformance with GAAP in all material respects and to maintain accountability for assets; and (iii) access to Target's assets is permitted only in accordance with management's general or specific authorization. Target is not party to or otherwise involved in any "off-balance sheet arrangements" (as defined in Item 303 of Regulation S-K under the Securities Exchange Act of 1934, as amended (the "Exchange Act")).

### 3.5 Capital Structure.

(a) Capitalization of Target. As of the date of this Agreement, the authorized capital stock of Target consists of 10,000,000 shares of Target Common Stock, of which 1,407,746.08215 shares are issued and outstanding, and Target has no authorized nor issued and outstanding preferred stock (the "Target Preferred Stock"). All outstanding shares of Target Capital Stock are duly authorized, validly issued, fully paid and non-assessable and are free of any liens or encumbrances other than any liens or encumbrances created by or imposed upon the holders thereof, and are not subject to preemptive rights or rights of first refusal created by statute, the Restated Articles of Incorporation or Restated Bylaws of Target or any agreement to which Target is a party or by which it is bound. There are 2,250,000 shares of Target Common Stock reserved for issuance under Target's 2010 Stock Plan (the "Target Incentive Plan"), of which 1,030,528.36297 were subject to outstanding options (the "Target Options"), 1,219,471.64 shares have been reserved for future option or stock grants and no shares have been issued upon the exercise of options issued pursuant to the Target Incentive Plan. No other stock option plan or other equity based compensation plan is currently in effect, and there are no shares of Target Capital Stock reserved for issuance under any other equity based compensation plan. There are no shares of Target Common Stock reserved for issuance upon the conversion of outstanding convertible promissory notes issued by Target. There are no shares of Target Common Stock or Target Preferred Stock reserved for issuance upon the exercise of outstanding warrants (the "Target Warrants"). Target has delivered to Acquiror true and complete copies

of each Target Option, and each option agreement, if any, and warrant and warrant agreement evidencing each Target Option, if any, or Target Warrant, if any. Except for the rights created pursuant to this Agreement, the rights disclosed in the preceding sentences, and as set forth in Section 3.5(a) of the Target Disclosure Schedule, there are no other options, warrants, restricted stock awards, calls, rights, commitments or agreements of any character to which Target is a party or by which it is bound, obligating Target to issue, deliver, sell, repurchase or redeem or cause to be issued, delivered, sold, repurchased or redeemed, any shares of Target Capital Stock or obligating Target to grant, extend, accelerate the vesting of, change the price of, or otherwise amend or enter into any such option, warrant, call, right, commitment or agreement. All shares of Target Common Stock issuable upon exercise of the options described in this Section 3.5 will be, when issued pursuant to the respective terms of such options or warrants, duly authorized, validly issued, fully paid and nonassessable. Except as set forth in Section 3.5(a) of the Target Disclosure Schedule, there are no other contracts, commitments or agreements relating to voting, purchase or sale of Target Capital Stock (i) between or among Target and any of its stockholders; and (ii) to Target's Knowledge, between or among any of Target's stockholders. All shares of outstanding Target Capital Stock and rights to acquire Target Capital Stock were issued in compliance with all applicable federal and state securities laws.

(b) With respect to each Target stockholder, Section 3.5(b) of the Target Disclosure Schedule sets forth the number and type of shares of Target Capital Stock that each stockholder holds of record, and the address and state of residence of such stockholder.

(c) All of the information contained in the Closing Payment Schedule will be accurate and complete immediately prior to the Effective Time, and, except as set forth in the Closing Payment Schedule, no other holder of Target Capital Stock or options, warrants or other rights convertible into Target Capital Stock shall have any right, title or claim to any Merger Consideration. The allocation of the Merger Consideration as set forth in the Closing Payment Schedule complies and is in accordance with Target's Restated Articles of Incorporation and Florida Law.

(d) Except as set forth in Section 3.5(d) of the Target Disclosure Schedule: (i) none of the outstanding shares of Target Capital Stock are entitled or subject to any preemptive right, right of participation, right of maintenance or similar right; (ii) other than the rights created pursuant to this Agreement, none of the outstanding shares of Target Capital Stock are subject to any right of repurchase or first refusal or similar right in favor of the Target or any third party; and (iii) there are no agreements or arrangements (other than this Agreement) relating to the voting or registration of, or restricting any holder from purchasing, selling, pledging or otherwise disposing of (or granting any option or similar right with respect to), any shares of Target Capital Stock.

(e) As at the Closing, all options, warrants, or other rights to acquire shares of Target Capital Stock, if any, shall have been terminated and of no further force or effect.

(f) Section 3.5(d) of the Target Disclosure Schedule contains a complete and accurate list of all holders of Redeemed Notes (as defined in the Capitalization Agreement).

3.6 Absence of Certain Changes. From December 31, 2009 (the "Target Balance Sheet Date") until the date of this Agreement and except as set forth in Section 3.6 of the Target Disclosure Schedule, Target has conducted its business in the ordinary course consistent with past practice and there has not occurred (a) any change, event or condition (whether or not covered by insurance) that has resulted in, or would reasonably be expected to result in, a Material Adverse Effect on Target; (b) any acquisition, sale or transfer of any material asset of Target other than in the ordinary course of business and consistent with past practice; (c) any change in accounting methods or practices (including any change in depreciation or amortization policies or rates) by Target or any revaluation by Target of any of its assets; (d) any declaration, setting aside, or payment of a dividend or other distribution with respect to the shares of Target or any direct or indirect redemption, purchase or other acquisition by Target of any of its shares of capital stock; (e) any Material Contract entered into by Target, other than in the ordinary course of business and as made available to Acquiror, or any material amendment or termination of, or default under, any Material Contract to which Target is a party or by which it is bound; (f) any amendment or change to the Restated Articles of Incorporation or Restated Bylaws of Target; (g) any increase in or modification of the compensation or benefits payable or to become payable by Target to any of its directors or employees other than annual compensation increases to non-executive employees in the ordinary course of business; or (h) any negotiation or agreement by Target to do any of the things described in the preceding clauses (a) through (g) (other than negotiations with Acquiror and its representatives regarding the transactions contemplated by this Agreement). At the Effective Time, there will be no accrued but unpaid dividends on shares of Target Capital Stock.

3.7 Absence of Undisclosed Liabilities. As of the date of this Agreement, Target has no material obligations or liabilities of any nature (matured or unmatured, fixed or contingent) other than (a) those set forth or adequately provided for in the balance sheet of Target as of the Target Balance Sheet Date (the "Target Balance Sheet"); (b) those incurred in the ordinary course of business and not required to be set forth in the Target Balance Sheet under GAAP; (c) those incurred in the ordinary course of business since the Target Balance Sheet Date; and (d) those incurred in connection with the execution of this Agreement.

3.8 Litigation.

(a) There is no private or governmental action, suit, proceeding, claim, arbitration or investigation pending before any Governmental Entity, foreign or domestic, or, to the Knowledge of Target, threatened in writing against Target or any of its properties or any of its officers or directors (in their capacities as such), except for such private actions, suits, proceedings, claims or arbitrations as are not material to Target.

(b) There is no judgment, decree or order against Target or, to Target's Knowledge, any of its directors or officers (in their capacities as such), that (i) restricts in any manner the use, transfer or licensing of any Proprietary Rights in which Target has (or purports to have) any right, title or interest; (ii) could prevent, enjoin, or materially alter or delay any of the transactions contemplated by this Agreement, or (iii) that could reasonably be expected to have a Target Material Adverse Effect.



3.9 Restrictions on Business Activities. There is no agreement, judgment, injunction, order or decree binding upon Target that has or could reasonably be expected to have the effect of prohibiting or materially impairing any current business practice or Proposed Business Practice of Target, any acquisition of property by Target or the conduct of business by Target as currently conducted.

3.10 Intellectual Property.

(a) For purposes of this Agreement, the following terms shall be defined as follows:

(i) "Copyrights" shall mean all copyrights, copyrightable works (including without limitation all software, middleware and firmware), semiconductor topography, mask works and mask work rights, and applications for registration of any of the foregoing, including without limitation all rights of authorship, use, publication, publicity, reproduction, distribution, performance, transformation, moral rights and rights of ownership of copyrightable works, semiconductor topography works and mask works, and all rights to register and obtain renewals and extensions of registrations, together with all other interests accruing by reason of international copyright, semiconductor topography and mask work conventions and treaties.

(ii) "IP Encumbrance" shall mean any lien, pledge, hypothecation, charge, mortgage, security interest, encumbrance, claim, infringement, interference, option, right of first refusal, right of first negotiation, license, covenant not to assert/sue or other immunity from suit, equitable interest, preemptive right, community property interest, technology escrow, title retention or title reversion agreement, prior assignment, or any other encumbrance or restriction of any nature, whether accrued, absolute, contingent or otherwise (including without limitation any restriction on the transfer or licensing of any asset, any restriction on the receipt of any income derived from any asset, any restriction on the use of any asset and any restriction on the possession, exercise or transfer of any other attribute of ownership of any asset).

(iii) "Issued Patents" shall mean all issued patents, reissued or reexamined patents, revivals of patents, utility models, certificates of invention, registrations of patents and extensions thereof, regardless of country or formal name, issued by the United States Patent and Trademark Office and any other applicable Governmental Entity, including without limitation design patents.

(iv) "Off-the-Shelf Software" shall mean any software (other than Public Software) that is generally and widely available to the public through regular commercial distribution channels and is licensed on a non-exclusive basis on standard terms and conditions for a one-time license fee less than \$10,000 or an annual periodic license fee less than \$1,000 per license and that was obtained by Target in the ordinary course of business.

(v) "Patents" shall mean the Issued Patents and the Patent Applications.

(vi) **"Patent Applications"** shall mean all published and all unpublished non-provisional and provisional patent applications, reexamination proceedings, applications for certificates of invention and priority rights, in any country and regardless of formal name, including without limitation, substitutions, continuations, continuations-in-part, divisions, renewals, revivals, reissues, re-examinations and extensions thereof.

(vii) **"Proprietary Rights"** shall mean any and all of the following in any country: (a)(i) Issued Patents, (ii) Patent Applications, (iii) Trademarks, (iv) domain names and domain name registrations, (v) Copyrights, (vi) Trade Secrets, (vii) all other ideas, inventions, designs, manufacturing, operating and other specifications, technical data and information, and other intangible assets, intellectual properties and rights (whether or not appropriate steps have been taken to protect, under applicable law, such other intangible assets, properties or rights); or (b) any right (whether at law, equity by contract or otherwise) to use, practice or otherwise exploit any of the foregoing.

(viii) **"Public Software"** shall mean any software that is (i) distributed as free software or as open source software (e.g., Linux), or (ii) subject to any licensing or distribution model that includes as a term thereof any requirement for distribution of source code to licensees or third parties, patent license requirements on distribution, restrictions on future patent licensing terms, or other abridgement or restriction of the exercise or enforcement of any Proprietary Rights through any means, or (iii) derived from in any manner (in whole or in part), links to, relies on, is distributed with, incorporates or contains any software described in (i) or (ii) above. Public Software includes without limitation software licensed or distributed under any of the following licenses or distribution models, or licenses or distribution models similar to any of the following (each a **"Public Software License"**): (i) GNU's General Public License (GPL) or Lesser/Library GPL (LGPL); (ii) the Artistic License (e.g., PERL); (iii) the Mozilla Public License; (iv) the Netscape Public License; (v) the Sun Community Source License (SCSL); (vi) the Sun Industry Standards License (SISL); (vii) the Apache License; and (viii) any licenses that are defined as OSI (Open Source Initiative) licenses as listed on the [opensource.org](http://opensource.org) web site. Software distributed under less restrictive free or open source licensing and distribution models such as those obtained under the BSD, MIT, Boost Software License, and the Beer-Ware Public Software Licenses or any similar licenses, and any software that is a public domain dedication are also **"Public Software"**.

(ix) **"Registered Copyrights"** shall mean all Copyrights for which registrations have been obtained or applications for registration have been filed in the United States Copyright Office and any other applicable Governmental Entity.

(x) **"Registered Trademarks"** shall mean all Trademarks for which registrations have been obtained or applications for registration have been filed in the United States Patent and Trademark Office and any applicable Governmental Entity.

(xi) **"Target Product(s)"** shall mean each and all of the products of Target (including without limitation all components, parts, integrated circuits or elements thereof, chemicals, compositions, tools, kits, software, firmware, middleware, databases, interfaces, systems, devices, hardware, equipment, other tangible items designed, developed, manufactured, assembled, sold, leased, installed, repaired, licensed or otherwise

made available by Target or any services performed by Target), whether currently being distributed, currently under development, or otherwise anticipated to be distributed under any product "road map" of Target.

(xii) "Target Proprietary Rights" shall mean any Proprietary Rights owned by or purported to be owned by or licensed to Target or otherwise used in the business of Target.

(xiii) "Target Source Code" shall mean the source code of any software or program (i.e., software code in its original, human readable, un-compiled, form), or any portion, aspect or segment of any source code, owned by or licensed to Target or otherwise used by Target.

(xiv) "Trade Secrets" shall mean all product specifications, data, know-how, formulae, compositions, processes, designs, sketches, photographs, graphs, drawings, samples, inventions and ideas, research and development, manufacturing or distribution methods, processes and specifications, customer lists, current and anticipated customer requirements, price lists, market studies, business plans, computer software and programs (including both source code and object code), databases, interfaces, computer software and database technologies, systems, structures and architectures (and related processes, formulae, composition, improvements, devices, know-how, inventions, discoveries, concepts, ideas, designs, methods and information), and any other information, however documented, that is a trade secret within the meaning of the applicable trade-secret protection law.

(xv) "Trademarks" shall mean all (i) trademarks, service marks, marks, logos, insignias, designs, trade dress, other symbols, trade names and fictitious business names, (ii) applications for registration of trademarks, service marks, marks, logos, insignias, designs, trade dress, other symbols, trade names and fictitious business names, (iii) trademarks, service marks, marks, logos, insignias, designs, trade dress, other symbols, trade names and fictitious business names for which registrations have been obtained and (iv) all goodwill associated with each of the foregoing.

(b) Section 3.10(b) of the Target Disclosure Schedule is a complete and accurate list of the following with respect to Proprietary Rights of Target:

(i) Section 3.10(b)(i)(A) of the Target Disclosure Schedule lists all of the Patents owned by or purported to be owned by Target, setting forth in each case the jurisdictions in which Issued Patents have been issued and Patent Applications have been filed and a detailed description of any filings or payment of fees that are due to any Governmental Entity during the ninety (90) day period following the Closing. Section 3.10(b)(i)(B) of the Target Disclosure Schedule lists all of the Patents in which Target has any right, title or interest (including without limitation interest acquired through a license or other right to use) other than those owned by or purported to be owned by Target, setting forth in each case the jurisdictions in which the Issued Patents have been issued and Patent Applications have been filed, and the nature of the right, title or interest held by Target.

(ii) Section 3.10(b)(ii)(A) of the Target Disclosure Schedule lists all of the Registered Trademarks and domain names and domain name registrations owned by or purported to be owned by Target, setting forth in each case the jurisdictions in which Registered Trademarks and domain names and domain name registrations have been registered and trademark and domain name applications for registration have been filed and a detailed description of any filings or payment of fees that are due to any Governmental Entity during the ninety (90) day period following the Closing for such registrations and applications, and all other Trademarks owned by or purported to be owned by Target and used in connection with any Target Products or in the conduct of Target's business. Section 3.10(b)(ii)(B) of the Target Disclosure Schedule lists all of the Registered Trademarks, all other Trademarks and all domain names used in connection with any Target Products or in the conduct of Target's business in each case in which Target has any right, title or interest, other than those owned by or purported to be owned by Target (including without limitation interest acquired through a license or other right to use), setting forth each case the jurisdictions in which Registered Trademarks have been registered and trademark applications for registration have been filed, and the nature of the right, title or interest held by Target.

(iii) Section 3.10(b)(iii)(A) of the Target Disclosure Schedule lists all of the Registered Copyrights owned by or purported to be owned by Target, setting forth in each case the jurisdictions in which Copyrights have been registered and applications for copyright registration have been filed and lists all proprietary software, middleware and firmware distributed by Target. Section 3.10(b)(iii)(B) of the Target Disclosure Schedule lists all of the Registered Copyrights in which Target has any right, title or interest, other than those owned by or purported to be owned by Target and other than in Off-the-Shelf Software (including without limitation interest acquired through a license or other right to use), setting forth in each case the jurisdictions in which the Registered Copyrights have been registered and applications for Copyright registration have been filed, and the nature of the right, title or interest held by Target, provided however, such list need not include Registered Copyrights licensed to Target in an agreement which does not specifically identify the Copyrights as being Registered Copyrights.

(c) Target is the sole and exclusive owner of and has good, valid and marketable title to, free and clear of all IP Encumbrances, except for any lien for current taxes not yet due and payable, in (i) all of the Target Proprietary Rights identified in Sections 3.10(b)(i)(A), 3.10(b)(ii)(A), 3.10(b)(iii)(A) of the Target Disclosure Schedule, (ii) except for Copyrights in Off-the-Shelf Software and Copyrights licensed to Target by third Persons, all Copyrights in software, middleware and firmware and other works of authorship used or distributed by Target, and (iii) all Trade Secrets owned by or purported to be owned by Target. Target has a valid, legally enforceable right to use, license, practice and otherwise exploit all Proprietary Rights identified in Sections 3.10(b)(i)(B), 3.10(b)(ii)(B), and 3.10(b)(iii)(B) of the Target Disclosure Schedule and all other Proprietary Rights used by Target, other than those owned by or purported to be owned by Target (including without limitation interest acquired through a license or other right to use). Target Proprietary Rights identified in Section 3.10(b) of the Target Disclosure Schedule, together with the Trade Secrets, Off-the-Shelf Software and registered and unregistered Copyrights used by Target, constitutes all Proprietary Rights used or currently proposed to be used or necessary in connection with the conduct of the business of Target as conducted on the date of this Agreement and as currently proposed to be conducted by

Target, including without limitation as necessary or appropriate to make, use, offer for sale, sell or import the Target Product(s). To the Knowledge of Target, all Proprietary Rights used by Target, other than those owned by Target (including without limitation interest acquired through a license or other right to use, but excluding any Off-the-Shelf Software) are free and clear of IP Encumbrances and Target has not received any notice that any portion of such Proprietary Rights are subject to any IP Encumbrance.

(d) Section 3.10(d) of the Target Disclosure Schedule lists all oral and written contracts, agreements, licenses and other arrangements relating to any Target Proprietary Rights or any Target Products, as follows:

(i) Section 3.10(d)(i) of the Target Disclosure Schedule lists all oral and written contracts, agreements, licenses and other arrangements pursuant to which Target granted or is required to grant to any Person any right or license to make, have made, manufacture, use, sell, offer to sell, import, export, or otherwise distribute any Target Product, with or without the right to sublicense the same.

(ii) Section 3.10(d)(ii) of the Target Disclosure Schedule lists all oral and written contracts, agreements, licenses and other arrangements pursuant to which Target granted or is required to grant to any Person any right under or license (expressly, by implication, by estoppel or otherwise) of, any covenant not to assert/sue or other immunity from suit under or any other rights to any current or future Patents, with or without the right to sublicense the same.

(iii) Section 3.10(d)(iii) of the Target Disclosure Schedule lists all oral and written contracts, agreements, licenses and other arrangements pursuant to which any Person granted or is required to grant to the Target any right under or license to, any covenant not to assert/sue or other immunity from suit under or any other rights to any current Patents, with or without the right to sublicense the same.

(iv) Section 3.10(d)(iv) of the Target Disclosure Schedule lists any agreement, contract, license or other arrangement, written or oral, (A) granting any license of, any covenant not to assert/sue or other immunity from suit under or any other rights to any current Proprietary Rights (other than Patents), with or without the right to sublicense the same granted to or granted by Target (other than non-exclusive licenses granted to Target for Off-the-Shelf Software); (B) regarding joint development of any products, Target Products or Proprietary Rights; (C) by which Target grants, granted or is required to grant any ownership right or title to any Target Proprietary Rights owned by or purported to be owned by Target or by which Target is assigned or granted an ownership interest in any Proprietary Rights other than agreements with employees and contractors that assign or grant to Target ownership of Proprietary Rights developed in the course of providing services by such employees and contractors; (D) under which Target undertakes any ongoing royalty or payment obligations with respect to any Target Proprietary Rights, (E) under which Target grants or receives an option, right of first negotiation, or right of first refusal relating to any Proprietary Rights; (F) under which any Person is granted any right to access Target Source Code or to use Target Source Code, including without limitation to create derivative works of Target Products; (G) pursuant to which Target has deposited or is required to deposit with an escrow agent or any other Person any Target Source

Code or other Target Proprietary Rights, and further describes whether the execution of this Agreement or the consummation of any of the transactions contemplated hereby could reasonably be expected to result in the release or disclosure of any Target Source Code; and (H) limiting Target's ability to transact business in any market, field or geographical area or with any Person, or that restricts the use, sale, transfer, delivery or licensing of Target Proprietary Rights (or any tangible embodiment thereof), including without limitation any covenant not to compete;

(v) Except as set forth in Section 3.10(d)(v) of the Target Disclosure Schedule, Target has no obligation to pay any royalties, license fees or other amounts or provide or pay any other consideration to any Person by reason of the ownership, use, exploitation, practice, sale or disposition of Target Proprietary Rights (or any tangible embodiment thereof) or the reproducing, making, using, selling, offering for sale, distributing or importing any Target Products;

(vi) Except as set forth in Section 3.10(d)(vi) of the Target Disclosure Schedule, Target has not entered into any written or oral contract, agreement, license or other arrangement to defend, indemnify or hold harmless any Person against any charge of infringement of any Proprietary Rights, other than indemnification provisions contained in standard sales agreements or agreements with customers or end users arising in the ordinary course of business; and copies of such indemnification provisions have been delivered to Acquiror or its counsel;

(vii) Section 3.10(d)(vii)(A) of the Target Disclosure Schedule lists (i) each Target Product (including without limitation all Target software, firmware and middleware) by name and version number that is Public Software or that is derived from in any manner (in whole or in part) or that links to, includes, forms any part of, relies on, is distributed with, incorporates or contains any Public Software, (ii) a description of each such Public Software and the Target Product, (iii) the Public Software License applicable to each such Target Product and Public Software and the terms of such Public Software License or a reference to where the Public Software License may be found (e.g., a link to a site that has the applicable Public Software License), (iv) whether such Public Software has been distributed by Target or only used internally by Target and (v) whether Target has modified any such Public Software and (v) a complete and accurate statement of how Public Software is linked or used to or within the Target Products (e.g., dynamically, statically, etc.) and with what portion of the Target Product the Public Software is linked; and such listing is complete and accurate. Except as set forth in Section 3.10(d)(vii)(B) of the Target Disclosure Schedule, no Public Software was or is used in connection with the development of any Target Product. Except as set forth in Section 3.10(d)(vii)(B) of the Target Disclosure Schedule, no Public Software has been distributed with, in whole or in part, any Target Product. Target is in compliance with all Public Software License agreements applicable to any Public Software licensed to or used by Target, including any Public Software used in connection with the development of any Target Product. None of the inventions claimed in any of the Patents in the Target Proprietary Rights are practiced by any of the software described in Section 3.10(d)(vii) of the Target Disclosure Schedule and to the Knowledge of Target none of the inventions claimed in any of the Target Patents are practiced by or infringed by any other software that is Public Software; and

(viii) Except as set forth in Section 3.10(d)(viii) of the Target Disclosure Schedule, neither Target nor, to the Knowledge of Target, any other Person is in breach of any contract, agreement, license or other arrangement described in this Section 3.10(d) and Target has not notified any Person and no Person has notified Target of any such breach.

(c) Except as set forth in Section 3.10(e) of the Target Disclosure Schedule:

(i) Target does not jointly own, license or claim any right, title or interest with any other Person of any Target Proprietary Rights. To the Knowledge of Target, no current or former officer, manager, director, stockholder, member, employee, consultant or independent contractor of Target has any right, title or interest in, to or under any Target Proprietary Rights in which Target has (or purports to have) any right, title or interest that has not been either (a) irrevocably assigned or transferred to Target or (b) licensed (with the right to grant sublicenses) to Target under an exclusive, irrevocable, worldwide, royalty free, fully paid and assignable license;

(ii) To the Knowledge of Target, no Person has challenged or threatened to challenge and no Person has asserted or threatened a claim or made a demand, nor is there any pending proceeding or threatened nor are there any facts which could give rise to any such challenge, claim, demand or proceeding, which would adversely affect (a) Target's right, title or interest in, to or under any Target Proprietary Rights, (b) any contract, agreement, license or and other arrangement under which Target claims any right, title or interest under any Target Proprietary Rights or restricts the use, manufacture, transfer, sale, delivery or licensing by Target of the Target Proprietary Rights or Target Products, or (c) the validity, enforceability or claim construction of any Patents. Target has not received any notice regarding any such challenge, claim, demand or proceeding;

(iii) Target is not subject to any proceeding or outstanding decree, order, judgment or stipulation restricting in any manner the use, transfer or licensing of any Target Proprietary Rights by Target, the use, manufacture, transfer, sale, importation or licensing of any Target Product by Target, or which might affect the validity, use or enforceability of any Target Proprietary Rights;

(iv) To the Knowledge of Target, no Target Proprietary Rights owned by or exclusively licensed to Target have been infringed or misappropriated by any Person. There is no unauthorized use, disclosure or misappropriation of Target Proprietary Rights by any Person, including without limitation any current or former officer, manager, director, stockholder, member, employee, consultant or independent contractor of Target; and

(v) All Patents, Registered Copyrights, Registered Trademarks and domain names owned by or purported to be owned by Target and all Patents, Registered Copyrights, Registered Trademarks and domain names licensed to Target (other than non-exclusive licenses to Off-the-Shelf Software) (A) have been duly filed or registered (as applicable) with the applicable Governmental Entity, and maintained, including the timely submission of all necessary filings and payment of fees in accordance with the legal and administrative requirements or the appropriate jurisdictions, (B) have not lapsed, expired or been

abandoned and (C) no opposition, cancellation, re-examination or invalidity proceedings have been commenced related thereto in any jurisdictions which such procedures are available nor does there exist any fact that could lead to any such opposition.

(f) Except as set forth in Section 3.10(f) of the Target Disclosure Schedule:

(i) all Patents in which Target has any right, title or interest have been duly filed or registered (as applicable) with the applicable Governmental Entity, and maintained, including the timely submission of all necessary filings and fees in accordance with the legal and administrative requirements of the appropriate Governmental Entity, and have not lapsed, expired or been abandoned. Target and its patent counsel have complied with their duty of candor and disclosure to the USPTO and any relevant foreign patent office with respect to all Patents and have made no misrepresentations in connection with the prosecution or maintenance of any Patent;

(ii) (A) all Patents owned by or purported to be owned by Target, all Patents for which Target had or has the right to prosecute and/or maintain the Patents or the right to review and/or comment on any Patent and/or correspondence with the applicable Governmental Entity related to the Patents and all Patents exclusively licensed to Target, in each case disclose patentable subject matter, have been prosecuted in good faith, are subsisting and in good standing and are not subject to any terminal disclaimer, (B) there are no inventorship challenges to any such Patents nor does there exist any fact that could lead to any such challenge, (C) no interference been declared or provoked relating to any such Patents nor does there exist any fact that could lead to any such interference, (D) no opposition proceedings have been commenced related to such Patents in any jurisdictions which such procedures are available nor does there exist any fact that could lead to any such opposition, (E) all Issued Patents in the Target Proprietary Rights are valid and enforceable nor does there exist any fact that could lead to a finding of invalidity or unenforceability, and (F) all maintenance and annual fees have been fully and timely paid, and all fees paid, during prosecution and after issuance of any Patent have been paid in the correct entity status amounts, with respect to Issued Patents within the Target Proprietary Rights;

(iii) There is no fact with respect to any Patent Application in which Target has any right, title or interest that would (i) preclude the issuance of an Issued Patent from such Patent Application (with valid claims no less broad in scope than the claims as currently pending in such Patent Application), (ii) render any Issued Patent issuing from such Patent Application invalid or unenforceable, or (iii) cause the claims included in such Patent Application to be narrowed; and

(iv) Target has not received any notice of any inventorship challenge, interference, invalidity or unenforceability with respect to Patents included in the Target Proprietary Rights.

(g) The conduct of Target's business as conducted prior to or on the Closing Date and as proposed to be conducted by Target on the Closing Date, including without limitation the making, using, offering for sale, selling, otherwise distributing or importing of any



Target Product does not infringe, constitute contributory infringement, inducement to infringe, misappropriation or unlawful use of Proprietary Rights of any Person, and no Person has asserted or threatened a claim, nor are there any facts which could give rise to a claim nor has Target received any notification, that the Target's business or any Target Product (or any Target Proprietary Right embodied in any Target Product) infringes, constitutes contributory infringement, inducement to infringe, misappropriation or unlawful use of Proprietary Rights of any Person. Target has not received any written notice of any of any such claim of infringement, misappropriation or unlawful use. Target has not received any unsolicited written offer to license (or any other notice of) any Person's Proprietary Rights. Except as in Section 3.10(g) of the Target Disclosure Schedule, Target has not obtained any non-infringement, freedom to operate, clearances or invalidity opinions from counsel (inside or outside counsel) regarding the business of Target or any Target Product.

(h) Target does not have any Knowledge of any information with respect to the Trademarks included in the Target Proprietary Rights that would (i) preclude the issuance of any Registered Trademarks from any trademark applications, or (ii) render any such Trademarks invalid or unenforceable. Target has taken all commercially reasonable and customary measures and precautions necessary to protect and maintain Trademarks in which Target has any right, title or interest and otherwise to maintain and protect the full value of all such Trademarks. Target does not have any Knowledge of any information with respect to any Copyrights included in the Target Proprietary Rights that would (i) preclude the issuance of any Registered Copyright from any copyright applications, or (ii) render any such Copyrights invalid or unenforceable.

(i) Target has taken all commercially reasonable and customary measures and precautions necessary to protect and maintain the confidentiality of all Trade Secrets in which Target has any right, title or interest and otherwise to maintain and protect the full value of all such Trade Secrets. Target has not disclosed any Trade Secrets in which the Target has (or purports to have) any right, title or interest (or any tangible embodiment thereof) to any Person without having the recipient thereof execute a written agreement regarding the non-disclosure and non-use thereof. All use, disclosure or appropriation of any Trade Secret not owned by Target has been pursuant to the terms of a written agreement between Target and the owner of such Trade Secret, or is otherwise lawful. Target has not received any notice from any Person that there has been an unauthorized use or disclosure of any Target Trade Secrets. No Person that has received any Trade Secrets from Target has refused to provide to Target, after Target's request therefore, a certificate of return or destruction of any documents or materials containing Target Trade Secrets. Without limiting the generality of the foregoing, except as set forth in Section 3.10(i) of the Target Disclosure Schedule:

(i) All current and former employees of Target, including without limitation those who are or were involved in, or who have contributed to, the creation or development of any Target Proprietary Rights or any Target Product have executed and delivered to Target a written agreement (containing no exceptions to or exclusions from the scope of its coverage) regarding the protection of proprietary information and the irrevocable assignment to Target of any Proprietary Rights arising from services performed by such Persons, that is substantially identical to the form of Confidential Information and Invention Assignment Agreement previously delivered by Target to Acquiror. No current or former employee is in

violation of any term of any such agreement, including without limitation any patent disclosure agreement or other employment contract or any other contract or agreement relating to the relationship of any such employee with Target;

(ii) All current and former consultants and independent contractors to Target, including without limitation those who are or were involved in, or who have contributed to, the creation or development of any Target Proprietary Rights or any Target Product have executed and delivered to Target a written agreement (containing no exceptions to or exclusions from the scope of its coverage) regarding the protection of proprietary information and the irrevocable assignment to Target of any Proprietary Rights arising from services performed by such Persons, that is substantially identical to the form of Consultant Confidential Information and Invention Assignment Agreement previously delivered by Target to Acquiror. Section 3.10(i)(ii) of the Target Disclosure Schedule sets forth a list of consultants and independent contractors used by Target in connection with the conception, reduction to practice, creation, derivation, development, or making of any Target Proprietary Rights or any tangible embodiments thereof. To the Knowledge of Target, no current or former consultant or independent contractor is in violation of any term of any such agreement, including without limitation any patent disclosure agreement or any other contract or agreement relating to the relationship of any such consultant or independent contractor with Target;

(iii) No current or former employee, officer, director, stockholder, consultant or independent contractor to Target has any right, title, claim or interest in or with respect to any Target Proprietary Rights owned by Target or exclusively licensed to Target; and

(iv) Except as disclosed as required under Section 3.10(d)(i) above, Target has not disclosed or delivered to any Person, or permitted the disclosure or delivery to any escrow agent or other Person, of any Target Source Code. To the Knowledge of Target, no event has occurred, and no circumstance or condition exists, that (with or without notice or lapse of time) will, or could reasonably be expected to, result in the disclosure or delivery to any Person of any Target Source Code.

(j) Except with respect to demonstration or trial copies, no product, system, program or software module designed, developed, distributed, licensed or otherwise made available by Target to any Person, including without limitation any Target Product, contains any "back door," "time bomb," "Trojan horse," "worm," "drop dead device," "virus" or other software routines or hardware components designed to permit unauthorized access or to disable or erase software, hardware or data without the consent of the user.

(k) Except as set forth in Section 3.10(k) of the Target Disclosure Schedule, each Target Product designed, developed, manufactured, assembled, sold, installed, repaired, licensed or otherwise made available by Target to any Person:

(i) conformed and complied with the terms and requirements of any applicable warranty, the agreement related to such Target Products and with all applicable legal requirements; and

(ii) was free of any bug, virus, design defect or other defect or deficiency at the time it was sold or otherwise made available, other than any immaterial bug or similar defect that would not adversely affect in any material respect such Target Product or other asset, product or system (or the operation or performance of either of the foregoing).

(iii) Section 3.10(k)(iii) of the Target Disclosure Schedule contains an accurate and complete copy of the most recent "bug list" with respect to each product, system, program or software module of each of the Target Products.

(l) All installation services, programming services, repair services, maintenance services, support services, training services, upgrade services and other services that have been performed by Target were performed properly and in full conformity with the terms and requirements of all applicable warranties and the agreement related to such services and with all applicable legal requirements.

(m) To the Knowledge of Target, no customer or other Person has asserted or threatened to assert any claim against Target (i) under or based upon any warranty provided by or on behalf of Target, or (ii) under or based upon any other warranty relating to any Target Product.

(n) Target is not and never has been a member or promoter of, or a contributor to or made any commitments or agreements regarding any patent pool, industry standards body, standard setting organization, industry or other trade association or similar organization, in each case that could or does require or obligate Target to grant or offer to any other Person any license or right to any Target Proprietary Rights, including without limitation any future Proprietary Rights developed, conceived, made or reduced to practice by Target or any affiliate of Target after the date of this Agreement.

(o) Except as set forth in Section 3.10(o) of the Target Disclosure Schedule, no funding, facilities or personnel of any Governmental Entity were used, directly or indirectly, to develop or create, in whole or in part, any Target Proprietary Rights or any Target Product.

(p) Except as set forth in Section 3.10(p) of the Target Disclosure Schedule, the execution, delivery or performance of this Agreement or any ancillary agreement contemplated hereby, the consummation of the transactions contemplated by this Agreement or such ancillary agreements and the satisfaction of any closing condition will not contravene, conflict with or result in any limitation on Acquiror's right, title or interest in or to any Target Proprietary Rights.

(q) Target has not posted at any time a privacy statement regarding the collection, retention, use and distribution of the personal information of individuals, including, without limitation, from visitors of any Target website, on any Target website. Target has adequate technological and procedural measures in place to protect personal information collected from individuals against loss, theft and unauthorized access or disclosure. Target does not knowingly collect information from or target children under the age of thirteen. Target does not sell, rent or otherwise make available to third parties any personal information submitted by

individuals. Other than as constrained by contractual obligations and by applicable laws and regulations, Target is not restricted in its use and/or distribution of personal information collected by Target. Target is not in breach of any contractual obligations regarding the protection of personal information or the use of personal information disclosed or otherwise made available to Target by any Person. Section 3.10(q) of the Target Disclosure Schedules lists all contracts and agreements which include obligations of Target related to the collection or use of personal information. Target does not store personal information at locations outside the country of the persons supplying such information.

(r) Except as set forth in Section 3.10(r) of the Target Disclosure Schedule, Target is not a party to any written or oral contract, agreement, license, or other arrangement and has not made any commitment to sell or deploy any Target Product. Target has not agreed to provide vendor financing with respect to the sale of any Target Products.

(s) To the Knowledge of Target, no product liability claims have been threatened, alleged or filed against Target related to any Target Product or any other product sold or distributed by Target.

(t) Target has complied with the terms and conditions governing website accessed or used by Target in connection with the conduct of Target's business.

(u) Target has implemented and maintained, consistent with commercially reasonable practices and its obligations to third Persons, security and other measures adequate to protect computers, networks, software and systems used by Target to store, process or transmit information or content from unauthorized access, use or modification.

3.11 Interested Party Transactions. Except as set forth in Section 3.11 of the Target Disclosure Schedule, Target is not indebted to any director, officer or employee of Target (except for amounts due as normal salaries and bonuses and in reimbursement of ordinary expenses), and no such Person is indebted to Target. Except as set forth in Section 3.11 of the Target Disclosure Schedule, there have been no transactions during the two-year period ending on the date hereof that would require disclosure if Target were subject to disclosure under Item 404 of Regulation S-K under the Securities Act.

3.12 Minute Books. Except as set forth in Section 3.12 of the Target Disclosure Schedule, the minute book of Target contains a materially complete and accurate summary of all meetings of directors and stockholders or actions by written consent since the time of incorporation of Target through the date of this Agreement, and reflect all transactions referred to in such minutes accurately in all material respects.

3.13 Complete Copies of Materials. To the Knowledge of Target, Target has delivered or made available true and complete copies of each material document to the extent it exists that has been requested by Acquiror or its counsel in connection with their due diligence review of Target.

### 3.14 Material Contracts.

(a) All of the Material Contracts of Target (as defined in this Section 3.14 below) are listed in Section 3.14 of the Target Disclosure Schedule and a true, correct and complete copy of each such Material Contract has been made available to Acquiror. Except as set forth in Section 3.14(a) of the Target Disclosure Schedule, with respect to each Material Contract: (i) the Material Contract is legal, valid, binding and enforceable and in full force and effect with respect to Target, and, to Target's Knowledge, is legal, valid, binding, enforceable and in full force and effect with respect to each other party thereto, in either case subject to the effect of bankruptcy, insolvency, moratorium or other similar laws affecting the enforcement of creditors' rights generally and except as the availability of equitable remedies may be limited by general principles of equity; (ii) the Material Contract will continue to be legal, valid, binding and enforceable and in full force and effect immediately following the Effective Time in accordance with its terms as in effect prior to the Effective Time, subject to the effect of bankruptcy, insolvency, moratorium or other similar laws affecting the enforcement of creditors' rights generally and except as the availability of equitable remedies may be limited by general principles of equity; and (iii) neither Target nor, to Target's Knowledge, any other party is in breach or default, and no event has occurred that with notice or lapse of time would constitute a breach or default by Target or, to Target's Knowledge, by any such other party, or permit termination, modification or acceleration, under such Material Contract. Target is not a party to any oral Material Contract. "**Material Contract**" means any contract, agreement or commitment in effect on the date of this Agreement and to which Target is a party (a) with expected receipts or expenditures in excess of \$10,000 during any calendar year; (b) required to be listed pursuant to Section 3.10(d); (c) requiring Target to indemnify any Person in any material respect; (d) granting any exclusive rights to any party; (e) evidencing indebtedness for borrowed or loaned money of \$10,000 or more, including guarantees of such indebtedness; or (f) that could reasonably be expected to have a Material Adverse Effect on Target if breached by Target in such a manner as would (I) permit any other party to cancel or terminate the same (with or without notice of passage of time); (II) provide a basis for any other party to claim money damages (either individually or in the aggregate with all other such claims under that contract) from Target; or (III) give rise to a right of acceleration of any material obligation or loss of any material benefit under such Material Contract.

(b) Except for the consents set forth in Section 3.14(b) of the Target Disclosure Schedule (the "**Required Contract Consents**"), no prior consent of any party to a Material Contract is required for the consummation by Target of the transactions contemplated hereby to be in compliance with the provisions of such Material Contract or to avoid the termination of, the loss of any right under or the incurrence of any obligation under, such Material Contract.

3.15 Real Estate. All leases for real property (each a "**Lease**" and collectively, "**Leases**") to which Target are a party are in full force and effect and are valid, binding and enforceable in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency, moratorium or other similar laws affecting or relating to creditors' rights generally; and general principles of equity, regardless of whether asserted in a proceeding in equity or at law. True and correct copies of all such Leases have been provided to Acquiror. Target has paid all rents and service charges to the extent such rents and charges are

due and payable under the Leases. Target does not own any real property. Section 3.15 of the Target Disclosure Schedule also identifies as to each Lease: (i) name of the landlord; (ii) the date and effective date; (iii) the expiration date, if any; (iv) the monthly minimum charge, if any; (v) arrearages, if any, and whether the latest payment due has been paid; (vi) any amount prepaid; (vii) the amount or description of any monetary concessions, allowances, rebates, refunds, deposits, setoffs, or escrows relating to it; (viii) any options to renew, extend, purchase, cancel or terminate; (ix) any defaults, outstanding notices of defaults of any kind or nature whatsoever, claims of defaults or similar claim; and (x) any letters of credit or other third-party credit enhancements. All Leases can be terminated on 30 days notice and Target has not made any alterations, additions, improvements or replacements within any of the properties subject to a Lease, including but not limited to the GTEC facility.

3.16 Accounts Receivable. Subject to any reserves set forth therein, the accounts receivable shown on the Target Financial Statements are valid and genuine, have arisen solely out of bona fide sales and deliveries of goods, performance of services, and other business transactions in the ordinary course of business consistent with past practices in each case with persons other than Affiliates, are not subject to any prior assignment, lien or security interest, and are not subject to valid defenses, set-offs or counter claims. The accounts receivable are collectible in accordance with their terms at their recorded amounts, subject only to the reserve for doubtful accounts on the Target Financial Statements.

3.17 Customers and Suppliers. As of the date hereof, none of Target's top twenty (20) customers or top twenty (20) suppliers has canceled or otherwise terminated, or made any written threat to Target to cancel or otherwise terminate its relationship with Target or has at any time on or after the Target Balance Sheet Date, decreased materially its services or supplies to Target in the case of any such supplier, or its usage of the services or products of Target in the case of such customer (other than fluctuations in the ordinary course of business), and to Target's Knowledge no such supplier or customer has indicated either orally or in writing that it intends to cancel or otherwise terminate its relationship with Target or to decrease materially its services or supplies to Target or its usage of the services or products of Target (other than fluctuations in the ordinary course of business), as the case may be. Target has not knowingly breached, so as to provide a benefit to Target that was not intended by the parties, any agreement with, or engaged in any fraudulent conduct with respect to, any customer or supplier of Target.

3.18 Employees and Consultants. Section 3.18 of the Target Disclosure Schedule contains a list, as of the date of this Agreement, setting forth the names of all employees (including without limitation part-time employees and temporary employees), leased employees, independent contractors and consultants of Target, together with their respective salaries or wages, other compensation, dates of employment and current positions.

3.19 Title to Property. Target has good and marketable title to all of its properties and assets, real and personal, reflected in the Target Balance Sheet or acquired after the Target Balance Sheet Date (except properties and assets sold or otherwise disposed of since the Target Balance Sheet Date in the ordinary course of business), or with respect to leased properties and assets, valid leasehold interests therein, free and clear of all mortgages, liens, pledges, charges or encumbrances of any kind or character, except (a) the lien of current taxes or

other government charges not yet due and payable; (b) such imperfections of title, liens and easements as do not and will not materially detract from or interfere with the use of the properties subject thereto or affected thereby, or otherwise materially impair business operations involving such properties; (c) liens securing debt that is reflected on the Target Balance Sheet; and (d) such other mortgages, liens, pledges, charges or encumbrances as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on Target. As of the date hereof, the plants, property and equipment of Target that are used in the operations of Target's business are in all material respects in good operating condition and repair, subject to normal wear and tear. All properties used in the operations of Target and owned as of the Target Balance Sheet Date are reflected in the Target Balance Sheet to the extent required by GAAP.

### 3.20 Environmental Matters.

(a) The following terms shall be defined as follows:

(i) "Environmental Laws" shall mean any applicable foreign, federal, state or local governmental laws (including common laws), statutes, ordinances, codes, regulations, rules, policies, permits, licenses, certificates, approvals, judgments, decrees, orders, directives, or requirements that pertain to the protection of the environment, protection of public health and safety, or protection of worker health and safety, or that pertain to the handling, use, manufacturing, processing, storage, treatment, transportation, discharge, release, emission, disposal, re-use, recycling, or other contact or involvement with Hazardous Materials (as defined in Section 3.20(a)(ii)), including, without limitation, the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601, et seq., as amended ("CERCLA"), and the federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., as amended ("RCRA").

(ii) "Hazardous Materials" shall mean any material, chemical, compound, substance, mixture or by-product that is identified, defined, designated, listed, restricted or otherwise regulated under Environmental Laws as a "hazardous constituent," "hazardous substance," "hazardous material," "acutely hazardous material," "extremely hazardous material," "hazardous waste," "hazardous waste constituent," "acutely hazardous waste," "extremely hazardous waste," "infectious waste," "medical waste," "biomedical waste," "pollutant," "toxic pollutant," "contaminant" or any other formulation or terminology intended to classify or identify substances, constituents, materials or wastes by reason of properties that are deleterious to the environment, natural resources, worker health and safety, or public health and safety, including without limitation ignitability, corrosivity, reactivity, carcinogenicity, toxicity and reproductive toxicity. The term "Hazardous Materials" shall include without limitation any "hazardous substances" as defined, listed, designated or regulated under CERCLA, any "hazardous wastes" or "solid wastes" as defined, listed, designated or regulated under RCRA, any asbestos or asbestos-containing materials, any polychlorinated biphenyls, and any petroleum or hydrocarbon substance, fraction, distillate or by-product.

(b) Target is and has been in material compliance with all Environmental Laws relating to the properties or facilities used, leased or occupied by Target at any time (collectively, "Target's Facilities;" such properties or facilities currently used, leased or occupied by Target are defined herein as "Target's Current Facilities"), and no discharge,

emission, release, leak or spill of Hazardous Materials has occurred at any of Target's Facilities that may or will give rise to liability of Target under Environmental Laws. To Target's Knowledge, there are no Hazardous Materials (including without limitation asbestos) present in the surface waters, structures, groundwaters or soils of or beneath any of Target's Current Facilities. To Target's Knowledge, there neither are nor have been any aboveground or underground storage tanks for Hazardous Materials at Target's Current Facilities. To Target's Knowledge, no Target employee or other Person has claimed that Target is liable for alleged injury or illness resulting from an alleged exposure to a Hazardous Material. No civil, criminal or administrative action, proceeding or investigation is pending against Target, or, to Target's Knowledge, threatened against Target, with respect to Hazardous Materials or Environmental Laws; and Target is not aware of any facts or circumstances that could form the basis for assertion of a claim against Target or that could form the basis for material liability of Target, regarding Hazardous Materials or regarding material noncompliance with Environmental Laws.

### 3.21 Taxes.

(a) As used in this Agreement, the terms "Tax" and, collectively, "Taxes" mean any and all federal, state and local taxes of any country, assessments and other governmental charges, duties and impositions, including taxes based upon or measured by gross receipts, income, profits, sales, use and occupation, and value added, ad valorem, stamp transfer, franchise, withholding, payroll, recapture, employment, excise and property taxes, together with all interest, penalties and additions imposed with respect to such amounts, including any liability for taxes of a predecessor entity;

(b) Target has prepared and timely filed all returns, estimates, information statements and reports required to be filed with any taxing authority ("Returns") relating to any and all Taxes concerning or attributable to Target or its operations with respect to Taxes for any period ending on or before the Closing Date and such Returns are true and correct and have been completed in accordance with applicable law. All Taxes due and owing (whether or not shown on any Return) have been paid when due;

(c) As of the date hereof Target has, and as of the Closing Date Target will have, (i) timely withheld from its employees, independent contractors, customers, stockholders, and other Persons from whom it is required to withhold Taxes in compliance with all applicable law, and (ii) timely paid all amounts so withheld to the appropriate Governmental Entity or taxing authority;

(d) During the period of all unexpired applicable statutes of limitations, Target has not been delinquent in the payment of any Tax. There is no Tax deficiency outstanding or assessed or proposed in writing against Target that is not reflected as a liability on the Target's Financial Statements, nor has Target executed any agreements or waivers extending any statute of limitations on or extending the period for the assessment or collection of any Tax;

(e) Target does not have any liabilities for unpaid Taxes that have not been accrued for or reserved on the Target Balance Sheet, whether asserted or unasserted,



contingent or otherwise and Target has no Knowledge of any basis for the assertion of any such liability attributable to Target, its assets or operations;

(f) Target is not a party to any tax-sharing agreement or similar arrangement with any other party and Target has not assumed any obligation to pay any Tax obligations of, or with respect to any transaction relating to, any other Person;

(g) Target's Returns have never been audited by a government or taxing authority, nor is any such audit in process or pending, and Target has not been notified in writing of any request for such an audit or other examination;

(h) Target has never been a member of an affiliated group of corporations filing a consolidated federal income tax return;

(i) Target has disclosed to Acquiror (i) any Tax exemption, Tax holiday or other Tax-sparing arrangement that Target has in any jurisdiction, including the nature, amount and lengths of such Tax exemption, Tax holiday or other Tax-sparing arrangement; and (ii) any expatriate tax programs or policies affecting Target. Target is in compliance with all terms and conditions required to maintain such Tax exemption, Tax holiday or other Tax-sparing arrangement or order of any governmental entity and the consummation of the transactions contemplated hereby will not have any adverse effect on the continuing validity and effectiveness of any such Tax exemption, Tax holiday or other Tax-sparing arrangement or order;

(j) Target has made available to Acquiror copies of all Returns filed for all periods since Target's inception;

(k) Target has never been a United States Real Property Holding Corporation within the meaning of Section 897(c)(2) of the Code;

(l) Target has not 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 which 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 Closing;

(m) Target has not agreed to make, nor is required to make, any adjustment under Section 481 of the Code or corresponding provision of state, local or foreign law by reason of any change in accounting method;

(n) Target has complied with applicable information reporting and record maintenance requirements of Sections 6038, 6038A and 6038B of the Code and the regulations thereunder;

(o) Target has never been a party to any joint venture, partnership or other agreement that could be treated as a partnership for Tax purposes;

(p) There are (and immediately following the Closing there will be) no liens or encumbrances on the assets of Target relating to or attributable to Taxes, other than liens for Taxes not yet due and payable;

(q) Target has neither requested nor received any private letter ruling from the Internal Revenue Service or comparable rulings from any other government or taxing agency (domestic or foreign);

(r) No power of attorney with respect to Taxes has been granted with respect to Target;

(s) Target has not distributed any cash to any stockholder prior to the Closing Date for any reason, including as a dividend, repurchase, or redemption;

(t) Target's Tax Returns have never been subject to a Code Section 482 adjustment or corresponding provision of state, local or foreign law;

(u) No written claim has been made by a taxing authority (domestic or foreign) in a jurisdiction where Target does not file Returns to the effect that Target may be subject to Tax by that jurisdiction;

(v) Target will not be required to include any item of income in taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of any: (A) "closing agreement" as described in Section 7121 of the Code (or any corresponding or similar provision of state, local or foreign income Tax law) executed on or prior to the Closing Date; (B) intercompany transactions or any excess loss account described in Treasury Regulations under Section 1502 of the Code (or any corresponding or similar provision of state, local or foreign income Tax law); (C) installment sale or open transaction disposition made on or prior to the Closing Date; or (D) prepaid amount received on or prior to the Closing Date; and

(w) Except as a result of the transactions contemplated by the Capitalization Agreement, none of the tax attributes (including net operating loss carryforwards and general business tax credits) of Target is limited by Section 382 or 383 of the Code for any period ending prior to the Closing Date. For the sake of certainty, Target is not making any representations and warranties concerning the Target's tax attributes other than as set forth herein.

### 3.22 Employee Benefit Plans.

(a) Section 3.22(a) of the Target Disclosure Schedule contains an accurate and complete list, with respect to Target and any other Person under common control with Target or any of its subsidiaries within the meaning of Section 414(b), (c), (m) or (o) of the Code, and the regulations issued thereunder (collectively an "ERISA Affiliate") of each plan, program, policy, practice, contract, agreement or other arrangement providing for compensation, severance, termination pay, deferred compensation, performance awards, stock or stock-related options or awards, pension, retirement benefits, profit-sharing, savings, disability benefits, medical insurance, dental insurance, health insurance, life insurance, death benefit, other

insurance, welfare benefits, fringe benefits or other employee benefits or remuneration of any kind, whether written, unwritten or otherwise, funded or unfunded, including each "employee benefit plan," within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") which is or has been maintained, contributed to, or required to be contributed to, by Target, any of its subsidiaries or any ERISA Affiliate for the benefit of any current or former employee, director or consultant (collectively, the "Target Employee Plans"). Neither Target nor any of its subsidiaries has made any plan or commitment to establish any new Target Employee Plan, to modify any Target Employee Plan (except to the extent required by law or to conform any such Target Employee Plan to the requirements of any applicable law, in each case as previously disclosed to Acquiror in writing, or as required by this Agreement).

(b) Documents. Target and each of its subsidiaries has provided to Acquiror (i) correct and complete copies of all documents embodying each Target Employee Plan including all amendments thereto and all related trust documents, (ii) the three most recent annual reports (Form Series 5500 and all schedules and financial statements attached thereto), if any, required under ERISA or the Code in connection with each Target Employee Plan, (iii) if the Target Employee Plan is funded, the most recent annual and periodic accounting of Target Employee Plan assets, (iv) the most recent summary plan description together with the summary(ies) of material modifications thereto, if any, required under ERISA with respect to each Target Employee Plan, (v) all material written agreements and contracts relating to each Target Employee Plan, including administrative service agreements and group insurance contracts, (vi) each affirmative action plan, if applicable, (vii) all communications material to any employee or employees relating to any Target Employee Plan and any proposed Target Employee Plan, in each case, relating to any amendments, terminations, establishments, increases or decreases in benefits, acceleration of payments or vesting schedules or other events which would result in any liability to Target or any of its subsidiaries, (viii) all correspondence to or from any governmental agency relating to any Target Employee Plan, (ix) all model Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA") forms and related notices, (x) all policies pertaining to fiduciary liability insurance covering the fiduciaries for each Target Employee Plan, (xi) all discrimination tests for each Target Employee Plan for the three most recent plan years, (xii) all registration statements, annual reports (Form 11-K and all attachments thereto) and prospectuses prepared in connection with each Target Employee Plan, to the extent applicable, (xiii) all Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA") privacy notices and all business associate agreements to the extent required under HIPAA and (xiv) the most recent IRS determination or opinion letter issued with respect to each Target Employee Plan.

(c) Target Employee Plan Compliance. Target has performed all obligations required to be performed by it under, is not in default or violation of, and Target has no Knowledge of any default or violation by any other party to, any Target Employee Plan, and each Target Employee Plan has been established and maintained in accordance with its terms and in compliance with all applicable laws, statutes, orders, rules and regulations, including ERISA or the Code. Each Target Employee Plan intended to be qualified under Section 401(a) of the Code and each trust intended to qualify under Section 501(a) of the Code has either (i) applied for a favorable determination letter, prior to the expiration of the requisite remedial amendment period under applicable Treasury Regulations or IRS pronouncements, but has not yet received a

response; (ii) obtained a favorable determination, notification, advisory and/or opinion letter, as applicable, on which the employer is entitled to rely, as to its qualified status from the IRS; or (iii) still has a remaining period of time to apply for such a determination letter from the IRS and to make any amendments necessary to obtain a favorable determination and nothing has occurred since the date of the most recent determination that could reasonably be expected to cause any such Target Employee Plan or trust to fail to qualify under § 401(a) or 501(a) of the Code. No "prohibited transaction," within the meaning of Section 4975 of the Code or Sections 406 and 407 of ERISA, and not otherwise exempt under Section 408 of ERISA, has occurred with respect to any Target Employee Plan. There are no actions, suits or claims pending or, to the Knowledge of Target, threatened or reasonably anticipated (other than routine claims for benefits) against any Target Employee Plan or against the assets of any Target Employee Plan. Each Target Employee Plan can be amended, terminated or otherwise discontinued after the Effective Time in accordance with its terms, without liability to Acquiror, Target or any ERISA Affiliate (other than ordinary administration expenses). There are no audits, inquiries or proceedings pending or to the Knowledge of Target or any ERISA Affiliates, threatened by the IRS, DOL, or any other governmental entity with respect to any Target Employee Plan. Neither Target nor any ERISA Affiliate is subject to any fine, assessment, penalty or other Tax or liability with respect to any Target Employee Plan under Section 502(i) of ERISA or Sections 4975 through 4980 of the Code or otherwise by operation of law or contract. Target has timely made all contributions and other payments required by and due under the terms of each Target Employee Plan. Target has no Knowledge of any event that could give rise to loss of the tax-qualified or tax-exempt status of any Target Employee Plan.

(d) No Pension Plan. Neither Target nor any ERISA Affiliate has ever maintained, established, sponsored, participated in, or contributed to, any Target Employee Plan that is an "employee pension benefit plan," within the meaning of Section 3(2) of ERISA (a "Pension Plan") subject to Part 3 of Subtitle B of Title I of ERISA, Title IV of ERISA or Section 412 of the Code.

(e) No Self-Insured Target Employee Plan. Neither Target nor any ERISA Affiliate has ever maintained, established, sponsored, participated in or contributed to any self-insured "group health plan" (within the meaning of Section 5000(b)(1) of the Code) that provides benefits to employees (other than a medical flexible spending account, health reimbursement arrangement or other similar program, including any such plan pursuant to which a stop-loss policy or contract applies).

(f) Collectively Bargained, Multiemployer and Multiple-Employer Plan. At no time has Target or any ERISA Affiliate contributed to or been obligated to contribute to any multiemployer plan (as defined in Section 3(37) of ERISA). Neither Target nor any ERISA Affiliate has at any time ever maintained, established, sponsored, participated in or contributed to any multiple employer plan or to any plan described in Section 413 of the Code.

(g) No Post-Employment Obligations. No Target Employee Plan provides, or reflects or represents any liability to provide, post-termination or retiree life insurance, health or other employee welfare benefits to any Person for any reason, except as may be required by COBRA or other applicable statute, and Target has not represented, promised or contracted (whether in oral or written form) to any employee (either individually or to employees

as a group) or any other Person that such employee(s) or other Person would be provided with life insurance, health or other employee welfare benefits, except to the extent required by statute.

(h) COBRA; FMLA; CFRA; HIPAA. Target and each ERISA Affiliate has complied with COBRA, the Family Medical Leave Act of 1993, as amended ("FMLA"), the California Family Rights Act of 1993, as amended ("CFRA"), HIPAA, the Women's Health and Cancer Rights Act of 1998, the Newborns' and Mothers' Health Protection Act of 1996, and any similar provisions of state law applicable to its employees. To the extent required under HIPAA and the regulations issued thereunder, Target has performed all obligations under the medical privacy rules of HIPAA, the electronic data interchange requirements of HIPAA, and the security requirements of HIPAA. Neither Target nor any of its subsidiaries has unsatisfied obligations to any employees or qualified beneficiaries pursuant to COBRA, HIPAA or any state law governing health care coverage or extension.

(i) Effect of Transaction. Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby or any termination of employment or service in connection therewith will (i) result in any payment (including severance, golden parachute, bonus or otherwise), becoming due to any employee, (ii) result in any forgiveness of indebtedness, (iii) materially increase any benefits otherwise payable by Target or any of its subsidiaries or (iv) result in the acceleration of the time of payment or vesting of any such benefits except as required under Section 411(d)(3) of the Code.

(j) Parachute Payments. Except as set forth in Schedule 3.22(j) of the Target Disclosure Schedule, there is no agreement, plan, arrangement or other contract covering any employee, including arrangements contemplated by this Agreement, that, considered individually or considered collectively with any other such agreements, plans, arrangements or other contracts, will, or could reasonably be expected to, give rise directly or indirectly to the payment of any amount that would be characterized as a "parachute payment" within the meaning of Section 280G(b)(1) of the Code. Except as set forth in Schedule 3.22(j) of the Target Disclosure Schedule, there is no agreement, plan, arrangement or other contract by which Target is bound to compensate any employee for excise taxes paid pursuant to Section 4999 of the Code. Section 3.22(j) of the Target Disclosure Schedule lists all Persons who Target reasonably believes are "disqualified individuals" (within the meaning of Section 280G of the Code and the regulations promulgated thereunder) as determined as of the date hereof.

(k) Deferred Compensation. Except as set forth in Section 3.22(k) of the Target Disclosure Schedule, no compensation shall be includable in the gross income of any current or former employee, director or consultant of Target as a result of the operation of Section 409A of the Code with respect to any applicable arrangements or agreements in effect prior to the Effective Time. No stock options, stock appreciation rights or other equity-based awards issued or granted by Target are treated as deferred compensation arrangements subject to the requirements of Section 409A of the Code. Each "nonqualified deferred compensation plan" (as such term is defined under Section 409A(d)(1) of the Code and the guidance thereunder) existing as of the Closing under which Target makes, is obligated to make or promises to make, payments (each, a "409A Plan") complies in all material respects, in both form and operation, with the requirements of Section 409A of the Code and the guidance thereunder. No payment to

be made under any 409A Plan is, or to the Knowledge of the Target will be, subject to the penalties of Section 409A(a)(1) of the Code.

(l) Employment Matters. Target is in compliance with all applicable foreign, federal, state and local laws, rules and regulations respecting employment, employment practices, terms and conditions of employment, employee safety and health and wages and hours, and in each case, with respect to employees: (i) has withheld and reported all amounts required by law or by agreement to be withheld and reported with respect to wages, salaries and other payments to employees, (ii) is not liable for any arrears of wages, severance pay or any Taxes or any penalty for failure to comply with any of the foregoing, and (iii) is not liable for any payment to any trust or other fund governed by or maintained by or on behalf of any governmental authority, with respect to unemployment compensation benefits, social security or other benefits or obligations for employees (other than routine payments to be made in the normal course of business and consistent with past practice). There are no action, suits, claims or administrative matters pending, or to Target's Knowledge threatened, or reasonably anticipated, against Target or any of their employees relating to any employee or Target Employee Plan. There are no pending or to Target's Knowledge threatened, or reasonably anticipated, claims or actions against Target or any Target trustee under any worker's compensation policy. The services provided by each of Target's and their ERISA Affiliates' employees is terminable at the will of Target and its ERISA Affiliates and any such termination would result in no liability to Target or any ERISA Affiliate. Section 3.22(l) of the Target Disclosure Schedule lists all liabilities of Target to any employee, that result from the termination by the Acquiror or Target of such employee's employment or provision of services, a change of control of Target, or a combination thereof. Neither Target nor any ERISA Affiliate has direct or indirect liability with respect to any misclassification of any Person as an independent contractor rather than as an employee, or with respect to any employee leased from another employer.

(m) Labor. No work stoppage or labor strike against Target is pending, or, to the Knowledge of Target, threatened, or reasonably anticipated. Target has no Knowledge of any activities or proceedings of any labor union to organize any employees. There are no actions, suits, claims, labor disputes or grievances pending or, to Target's Knowledge, threatened, or reasonably anticipated relating to any labor matters involving any employee, including charges of unfair labor practices. Target has not engaged in any unfair labor practices within the meaning of the National Labor Relations Act. Target does not presently, nor has it been in the past, a party to, or bound by, any collective bargaining agreement or union contract with respect to employees and no collective bargaining agreement is being negotiated by Target. Within the past year, Target has not incurred any liability or obligation under the Worker Adjustment and Retraining Notification Act ("WARN") or any similar state or local law that remains unsatisfied, nor shall any terminations prior to the Closing Date result in unsatisfied liability or obligation under WARN or any similar state or local law.

(n) No Interference or Conflict. To the Knowledge of Target, no stockholder, director or officer, employee or consultant of Target is obligated under any contract or agreement, subject to any judgment, decree, or order of any court or administrative agency that would interfere with such Person's efforts to promote the interests of Target or that would interfere with Target's business. To the Knowledge of Target neither the execution nor delivery of this Agreement, nor the carrying on of Target's business as presently conducted or presently

proposed by Target to be conducted nor any activity of such officers, directors, employees or consultants in connection with the carrying on of Target's business as presently conducted or currently proposed to be conducted will, to the Knowledge of Target, conflict with or result in a breach of the terms, conditions, or provisions of, or constitute a default under, any contract or agreement under which any of such officers, directors, employees, or consultants is now bound.

(o) International Employee Plan. Neither Target nor any ERISA Affiliate currently or has ever had the obligation to maintain, establish, sponsor, participate in, be bound by or contribute to any Target Employee Plan that has been adopted or maintained by Target, any of its subsidiaries or any ERISA Affiliate, whether formally or informally or with respect to which Target will or may have any liability with respect to employees who perform services outside the United States.

3.23 Employee Matters. Target is in compliance with all currently applicable laws and regulations respecting terms and conditions of employment, including without limitation applicant and employee background checking, immigration laws, discrimination laws, verification of employment eligibility, employee leave laws, classification of workers as employees and independent contractors, wage and hour laws, and occupational safety and health laws. As of the date of this Agreement, there are no proceedings pending or, to Target's Knowledge, threatened, between Target, on the one hand, and any or all of its current or former employees, on the other hand, including without limitation any claims for actual or alleged harassment or discrimination based on race, national origin, age, sex, sexual orientation, religion, disability, or similar tortious conduct, breach of contract, wrongful termination, defamation, intentional or negligent infliction of emotional distress, interference with contract or interference with actual or prospective economic disadvantage. As of the date of this Agreement, there are no claims pending, or, to Target's Knowledge, threatened, against Target under any workers' compensation or long-term disability plan or policy. Target has no material unsatisfied obligations to any employees, former employees, or qualified beneficiaries pursuant to COBRA, HIPAA, or any state law governing health care coverage extension or continuation. Target is not a party to any collective bargaining agreement or other labor union contract, nor does Target know of any activities or proceedings of any labor union to organize its employees. Target has provided all employees with all wages, benefits, relocation benefits, stock options, bonuses and incentives, and all other compensation that became due and payable through the date of this Agreement.

3.24 Insurance. Target has policies of insurance and bonds of the type and in amounts customarily carried by persons conducting businesses or owning assets similar to those of Target. As of the date of this Agreement, there is no material claim pending under any of such policies or bonds as to which coverage has been questioned, denied or disputed by the underwriters of such policies or bonds. All premiums due and payable under all such policies and bonds have been paid and Target are otherwise in compliance with the terms of such policies and bonds. As of the date of this Agreement, Target has no Knowledge of any threatened termination of, or material premium increase with respect to, any of such policies.

3.25 Compliance With Laws. Except for laws relating to Taxes and ERISA, which shall be governed exclusively by Sections 3.21 and 3.22, respectively, Target has complied with, is not in violation of and has not received any written notices of violation with

respect to, any federal state, local or foreign statute, law or regulation with respect to the conduct of its business, or the ownership or operation of its business.

3.26 Brokers' and Finders' Fee. No broker, finder or investment banker engaged or retained by Target or any of the Securityholders is entitled to brokerage or finders' fees or agents' commissions or investment bankers' fees or any similar charges in connection with the Merger, this Agreement or any transaction contemplated hereby.

3.27 International Trade Matters. Target is, and at all times has been, in compliance with and have not been and are not in material violation of any International Trade Law (defined below), including but not limited to, all laws and regulations related to the import and export of commodities, software, and technology from and into the United States, and the payment of required duties and tariffs in connection with same. Target has no basis to expect, nor has it or any other Person for whose conduct they are or may be held to be responsible received, any actual or threatened order, notice, or other communication from any governmental body of any actual or potential violation or failure to comply with any International Trade Law. "International Trade Law" shall mean U.S. statutes, laws and regulations applicable to international transactions, including, but not limited to, the Export Administration Act, the Export Administration Regulations, the Foreign Corrupt Practices Act, the Arms Export Control Act, the International Traffic in Arms Regulations, the International Emergency Economic Powers Act, the Trading with the Enemy Act, the U.S. Customs laws and regulations, the Foreign Asset Control Regulations, and any regulations or orders issued thereunder.

3.28 Representations Complete. None of the representations or warranties made by Target herein or in any Schedule or Exhibit hereto, including the Target Disclosure Schedule, or certificate furnished by Target pursuant to this Agreement, when all such documents are read together in their entirety, contain any untrue statement of a material fact, or omits to state any material fact necessary in order to make the statements contained herein or therein, in the light of the circumstances under which made, not misleading.

3.29 Disclaimer of Additional Representations or Warranties. EXCEPT AS SPECIFICALLY SET FORTH IN THIS SECTION 3 OR IN ANY AGREEMENT, DOCUMENT OR CERTIFICATE ENTERED INTO IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, NONE OF THE TARGET NOR ITS DIRECTORS, OFFICERS, SECURITYHOLDERS, AFFILIATES, EMPLOYEES, CONSULTANTS OR REPRESENTATIVES MAKES OR HAS MADE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, TO ACQUIROR OR MERGER SUB OR ANY OF THEIR RESPECTIVE AFFILIATES OR REPRESENTATIVES. ANY REPRESENTATIONS AND WARRANTIES NOT SPECIFICALLY SET FORTH IN THIS SECTION 3 OR IN ANY AGREEMENT ENTERED INTO BY THE COMPANY IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, WHETHER EXPRESS OR IMPLIED (INCLUDING ANY IMPLIED OR EXPRESS WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE), ARE DISCLAIMED BY TARGET. FOR AVOIDANCE OF DOUBT AND WITHOUT LIMITING THE FOREGOING, NO REPRESENTATION OR WARRANTY IS MADE WITH RESPECT TO ANY FINANCIAL PROJECTIONS.



4. Representations and Warranties of Acquiror and Merger Sub. Acquiror and Merger Sub represent and warrant to Target that the statements contained in this Section 4 are true and correct in all respects.

4.1 Organization, Standing and Power. Acquiror is a corporation duly organized, validly existing and in good standing under the laws of the state of Delaware. Merger Sub is a corporation duly organized, validly existing and in good standing under the laws of the state of Florida. Each of Acquiror and Merger Sub has the corporate power to own its properties and to carry on its business as now being conducted and as proposed to be conducted and is duly qualified to do business and is in good standing in each jurisdiction in which the failure to be so qualified and in good standing could reasonably be expected to have a Material Adverse Effect on Acquiror.

4.2 Authority. Acquiror and Merger Sub have all requisite corporate power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been, or will have been by the Closing, duly authorized by all necessary corporate action on the part of Acquiror and Merger Sub. This Agreement has been duly executed and delivered by Acquiror and Merger Sub and constitutes the valid and binding obligations of Acquiror and Merger Sub enforceable against Acquiror and Merger Sub in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting or relating to creditors' rights generally, and subject to general principles of equity. The execution and delivery of this Agreement by each of Acquiror and Merger Sub does not, and the consummation of the transactions contemplated hereby will not, conflict with, or result in any violation of, or default under (with or without notice or lapse of time, or both), or give rise to a right of termination, cancellation or acceleration of any material obligation or loss of any material benefit under (i) any provision of the Acquiror's or the Merger Sub's Certificate of Incorporation or Bylaws, each as amended and in effect on the date hereof and on the Closing; or (ii) any mortgage, indenture, lease, contract or other agreement or instrument, permit, concession, franchise, license, judgment, order, decree, statute, law, ordinance, rule or regulation applicable to Acquiror or Merger Sub or any of their properties or assets, in the case of clause (ii), except for such conflicts, violations, defaults, rights of termination, cancellation or acceleration, individually or in the aggregate, which will not and could not reasonably be expected to prevent, or materially alter, impair or delay any of the transactions contemplated by this Agreement. No consent, approval, order or authorization of or registration, declaration or filing with any Governmental Entity is required by or with respect to Acquiror or any of its Subsidiaries in connection with the execution and delivery of this Agreement by Acquiror and Merger Sub or the consummation by Acquiror and Merger Sub of the transactions contemplated hereby, except for (a) the filing of the Articles of Merger and (b) such other consents, authorizations, filings, approvals and registrations which, if not obtained or made, could not reasonably be expected to have a Material Adverse Effect on Acquiror and will not and could not reasonably be expected to prevent, materially alter, impair or delay any of the transactions contemplated by this Agreement.

4.3 Legal Proceedings. There is no private or governmental action, suit, proceeding, claim, arbitration or investigation pending before any Governmental Entity, foreign or domestic, or, to the knowledge of Acquiror or Merger Sub, threatened against any Acquiror or

Merger Sib which challenges the validity or enforceability of this Agreement or seeks to enjoin or prohibit consummation of the transactions contemplated hereby. Neither the Acquiror, Merger Sub nor any of their Affiliates are subject to any judgment, decree, injunction or order of any Governmental Entity which will or could reasonably be expected to prevent, or materially alter, impair or delay any of the transactions contemplated by this Agreement.

4.4 Brokers' and Finders' Fee. No broker, finder or investment banker engaged or retained by Acquiror, Merger Sub or any of their respective Affiliates is entitled to brokerage or finders' fees or agents' commissions or investment bankers' fees or any similar charges in connection with the Merger, this Agreement or any transaction contemplated hereby.

5. Conduct Prior to the Effective Time.

5.1 Conduct of Business of Target. During the period from the date of this Agreement and continuing until the earlier of the termination of this Agreement or the Effective Time, Target agrees (except to the extent expressly contemplated by this Agreement, as consented to in writing by Acquiror, or as required by law): (a) to carry on its business in the usual regular and ordinary course in substantially the same manner as heretofore conducted; (b) to pay its debts and Taxes when due subject (i) to good faith disputes over such debts or Taxes; and (ii) to Acquiror's consent to the filing of material Tax Returns, if applicable; (c) to pay or perform other material obligations when due, subject to good faith disputes; and (d) to use all reasonable efforts to preserve intact its present business organizations, keep available the services of its present officers and Key Employees and preserve its relationships with customers, suppliers, distributors, licensors, licensees, and others having business dealings with it, to the end that its goodwill and ongoing businesses shall be unimpaired at the Effective Time. Target agrees to promptly notify Acquiror of (a) any material event or occurrence not in the ordinary course of Target's business, and of any event which could reasonably be expected to have a Material Adverse Effect on Target; and (b) any change in its capitalization as set forth in Section 3.5. Without limiting the foregoing, except as expressly contemplated by this Agreement or the Target Disclosure Schedule or as required by law or contract, Target shall not do, cause or permit any of the following, without the prior written consent of Acquiror:

(a) Charter Documents. Cause or permit any amendments to its Restated Articles of Incorporation or Restated Bylaws;

(b) Dividends; Changes in Capital Stock. Except as contemplated by the Capitalization Agreement, declare or pay any dividends on or make any other distributions (whether in cash, stock or property) in respect of any of its capital stock, or split, combine or reclassify any of its capital stock or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock, or repurchase or otherwise acquire, directly or indirectly, any shares of its capital stock except from former employees, directors and consultants in accordance with agreements providing for the repurchase of shares in connection with any termination of service to it;

(c) Stock Option Plans, Etc. Except as contemplated by this Agreement or the Capitalization Agreement, accelerate, amend or change the period of exercisability or vesting of options or other rights granted under its stock plans or authorize cash

payments in exchange for any options or other rights granted under any of such plans or adopt any form of equity based compensation plan.

(d) Issuance of Securities. Except as contemplated by the Capitalization Agreement, issue, deliver or sell or authorize or propose the issuance, delivery or sale of, or purchase or propose the purchase of, any shares of its capital stock or securities convertible into, or subscriptions, rights, warrants or options to acquire, or other agreements or commitments of any character obligating it to issue any such shares or other convertible securities other than the issuance of shares of Target Common Stock pursuant to the exercise of stock options and other rights therefore outstanding as of the date of this Agreement.

(e) Intellectual Property. Enter into or amend any agreements pursuant to which Target transfers to any Person or entity any rights to its Proprietary Rights or any other party is granted rights of any type or scope with respect to any of Target's proposed products or Proprietary Rights, other than in the ordinary course of business consistent with past practice;

(f) Dispositions. Sell, lease, license or otherwise dispose of or encumber any of its properties or assets that are material, individually or in the aggregate, to its business, taken as a whole, other than in the ordinary course of business consistent with past practice;

(g) Indebtedness. Incur any indebtedness for borrowed money, or guarantee any such indebtedness, or issue or sell any debt securities or guaranty any debt securities of others in excess of \$25,000 in the aggregate (but not including trade payables incurred in the ordinary course of business);

(h) Agreements. Enter into, terminate or amend, in a manner that will adversely affect the business of Target, (i) any agreement involving the obligation to pay or the right to receive \$10,000 or more in any calendar year, (ii) any agreement relating to the license, transfer or other disposition or acquisition of Proprietary Rights or rights to market or sell Target Products or (iii) any other agreement material to the business or prospects of Target or that is or would be a Material Contract;

(i) Payment of Obligations. Pay, discharge or satisfy, in an amount in excess of \$10,000 in the aggregate, any claims, liabilities or obligations (absolute, accrued, asserted or unasserted, contingent or otherwise) arising other than in the ordinary course of business, other than the payment, discharge or satisfaction of liabilities reflected or reserved against in the Target Financial Statements;

(j) Capital Expenditures. Make any capital expenditures, capital additions or capital improvements, in excess of \$10,000 in the aggregate;

(k) Insurance. Materially reduce the amount of any insurance coverage provided by existing insurance policies;

(l) Termination or Waiver. Terminate or waive any right of substantial value, other than in the ordinary course of business;

(m) Employee Benefit Plans; New Hires; Pay Increases. Amend any Target Employee Plan or adopt any plan that would constitute a Target Employee Plan except in order to comply with applicable laws or regulations, or hire any new employee, pay any discretionary bonus, special remuneration or special noncash benefit (except payments and benefits made pursuant to written agreements outstanding on the date hereof and listed in Section 3.22 of the Target Disclosure Schedule), or increase the benefits, salaries or wage rates of its employees, other than in the ordinary course of business consistent with past practice;

(n) Severance Arrangements. Grant or pay any severance or termination pay or benefits (i) to any director or officer or (ii) except for payments made pursuant to written agreements outstanding on the date hereof and disclosed on the Target Disclosure Schedule, to any other employee;

(o) Lawsuits. Commence a lawsuit other than (i) for the routine collection of bills, (ii) in such cases where Target in good faith determines that failure to commence suit would result in the material impairment of a valuable aspect of Target's business, provided that it consults with Acquiror prior to the filing of such a suit or (iii) for a breach of this Agreement;

(p) Acquisitions. Acquire or agree to acquire by merging with, or by purchasing a substantial portion of the stock or assets of, or by any other manner, any business or any corporation, partnership, association or other business organization or division thereof or otherwise acquire or agree to acquire any assets that are material individually or in the aggregate, to its business, taken as a whole;

(q) Taxes. Other than in the ordinary course of business, make or change any material election in respect of Taxes, adopt or change any accounting method in respect of Taxes, file any material tax Return or any amendment to a material tax Return, enter into any closing agreement, settle any material claim or assessment in respect of Taxes, or consent to any extension or waiver of the limitation period applicable to any material claim or assessment in respect of Taxes;

(r) Revaluation. Revalue any of its assets, including without limitation writing down the value of inventory or writing off notes or accounts receivable other than in the ordinary course of business or as required by changes in GAAP; or

(s) Other. Take or agree in writing or otherwise to take, any of the actions described in Sections 5.1(a) through (r) above, or any action that would cause a material breach of its representations or warranties contained in this Agreement or prevent it from materially performing or cause it not to materially perform its covenants hereunder.

## 5.2 No Solicitation.

(a) From and after the date of this Agreement until the Effective Time, Target shall not, directly or indirectly through any officer, director, employee, representative or agent of Target or otherwise: (i) solicit, initiate, or encourage any inquiries or proposals that constitute, or could reasonably be expected to lead to, a proposal or offer for a merger, consolidation, share exchange, business combination, sale of all or substantially all assets, sale of

shares of capital stock or similar transactions involving Target other than the transactions contemplated by this Agreement (any of the foregoing inquiries or proposals an "Acquisition Proposal"); (ii) engage or participate in negotiations or discussions concerning, or provide any non-public information to any Person or entity relating to, any Acquisition Proposal; or (iii) agree to, enter into, accept, approve or recommend any Acquisition Proposal. Target represents and warrants that it has the legal right to terminate any pending discussions or negotiations relating to an Acquisition Proposal without payment of any fee or other penalty.

(b) Target shall notify Acquiror immediately (and no later than twenty-four (24) hours) after receipt by Target (or its advisors) of any Acquisition Proposal or any request for nonpublic information in connection with an Acquisition Proposal or for access to the properties, books or records of Target by any Person or entity that informs Target that it is considering making, or has made, an Acquisition Proposal. Such notice shall be made orally and in writing and shall indicate in reasonable detail the identity of the offeror and the terms and conditions of such proposal, inquiry or contact.

## 6. Additional Agreements.

### 6.1 Preparation of Solicitation Statement.

(a) No later than one (1) day after the execution of this Agreement, Target shall complete the preparation of, with the cooperation of Acquiror, and deliver a solicitation statement for the solicitation of approval of the stockholders of Target describing this Agreement, the Articles of Merger and the transactions contemplated hereby and thereby. The solicitation statement shall contain the unanimous recommendation of the Board of Directors of Target that the stockholders of Target approve the Merger and this Agreement and the unanimous conclusion of the Board of Directors of Target that the terms and conditions of the Merger are fair and reasonable to the stockholders of Target. Anything to the contrary contained herein notwithstanding, Target shall not include in the solicitation statement any information with respect to Acquiror, the form and content of which information shall not have been approved by Acquiror prior to such inclusion.

6.2 Approval of Stockholders. Target shall promptly after the date hereof take all action necessary in accordance with the Florida Law, other applicable law and its Restated Articles of Incorporation and Bylaws to obtain the written consent of the stockholders of Target approving the Merger as soon as practicable. Subject to Section 6.1, Target shall use its efforts to solicit from stockholders of Target written consents in favor of the Merger and shall take all other action necessary or advisable to secure the vote or consent of stockholders required to effect the Merger.

### 6.3 Access to Information.

(a) Target shall afford Acquiror and its accountants, counsel and other representatives, reasonable access during the period prior to the Effective Time to (i) all of Target's properties, personnel, books, contracts, commitments and records and (ii) all other information concerning the business, properties and personnel of Target as Acquiror may reasonably request.

(b) Subject to compliance with applicable law, from the date hereof until the Effective Time, each of Acquiror and Target shall confer on a regular and frequent basis with one or more representatives of the other party to report operational matters of materiality and the general status of ongoing operations.

(c) No information or Knowledge obtained in any investigation pursuant to this Section 6.3 or otherwise shall affect or be deemed to modify any representation or warranty contained herein or the conditions to the obligations of the parties to consummate the Merger.

6.4 Confidentiality. The parties acknowledge that Acquiror (or one of its Affiliates) and Target have previously executed a nondisclosure agreement dated as of May 11, 2009 (the "**Confidentiality Agreement**"), which Confidentiality Agreement is hereby incorporated herein by reference and shall continue in full force and effect in accordance with its terms, as if such Confidentiality Agreement were entered into directly by each of the parties hereto.

6.5 Public Disclosure. Unless otherwise permitted by this Agreement, Acquiror and Target shall consult with each other before issuing any press release or otherwise making any public statement or making any other public (or non-confidential) disclosure (whether or not in response to an inquiry) regarding the terms of this Agreement and the transactions contemplated hereby, and neither shall issue any such press release or make any such statement or disclosure without the prior approval of the other (which approval shall not be unreasonably withheld), except as may be required by law or by obligations pursuant to any listing agreement with any national securities exchange.

6.6 Regulatory Approval; Further Assurances.

(a) Each party shall use all reasonable efforts to file, as promptly as practicable after the date of this Agreement, all notices, reports and other documents required to be filed by such party with any Governmental Entity with respect to the Merger and the other transactions contemplated by this Agreement, and to submit promptly any additional information requested by any such Governmental Entity. Each of Target and Acquiror shall (i) give the other party prompt notice of the commencement of any legal proceeding by or before any Governmental Entity with respect to the Merger or any of the other transactions contemplated by this Agreement, (ii) keep the other party informed as to the status of any such legal proceeding and (iii) promptly inform the other party of any communication to or from the Federal Trade Commission, the Department of Justice or any other Governmental Entity regarding the Merger.

(b) Subject to Section 6.6(c), Acquiror and Target shall use all reasonable efforts to take, or cause to be taken, all actions necessary to effectuate the Merger and make effective the other transactions contemplated by this Agreement. Without limiting the generality of the foregoing, but subject to Section 6.6(c), each party to this Agreement shall: (i) make any filings and give any notices required to be made and given by such party in connection with the Merger and the other transactions contemplated by this Agreement; (ii) use all reasonable efforts to obtain any consent required to be obtained (pursuant to any applicable legal requirement or contract, or otherwise) by such party in connection with the Merger or any

of the other transactions contemplated by this Agreement; and (iii) use all reasonable efforts to lift any restraint, injunction or other legal bar to the Merger. Each party shall promptly deliver to the other a copy of each such filing made, each such notice given and each such consent obtained by such party during the period prior to the Effective Time. Each party, at the reasonable request of the other party, shall execute and deliver such other instruments and do and perform such other acts and things as may be necessary or desirable for effecting completely the consummation of this Agreement and the transactions contemplated hereby.

(c) Notwithstanding anything to the contrary contained in this Agreement, Acquiror shall not have any obligation under this Agreement to: (i) dispose or transfer or cause any of its Subsidiaries to dispose of or transfer any assets, or to commit to cause Target to dispose of any assets; (ii) discontinue or cause any of its Subsidiaries to discontinue offering any product or service, or commit to cause Target to discontinue offering any product or service; (iii) license or otherwise make available, or cause any of its Subsidiaries to license or otherwise make available, to any Person, any technology, software or other Proprietary Rights, or commit to cause Target to license or otherwise make available to any Person any technology, software or other Proprietary Rights; (iv) hold separate or cause any of its Subsidiaries to hold separate any assets or operations (either before or after the Closing Date), or commit to cause Target to hold separate any assets or operations; or (v) make or cause any of its Subsidiaries to make any commitment (to any Governmental Entity or otherwise) regarding its future operations or the future operations of Target.

6.7 Cancellation of Target Warrants. No Target Warrants, whether vested or unvested, shall be assumed by Acquiror in the Merger. Target shall obtain, prior to the Closing Date, a binding written agreement, acceptable to Acquiror, from each holder of Target Warrants, if any, whereby such holder agrees that if the Target Warrants held by such holder have not been exercised prior to the Closing Date, then such Target Warrants shall terminate upon and may not be exercised on or after the Closing Date.

6.8 Cancellation of Target Options. No Target Options, whether vested or unvested, shall be assumed by Acquiror in the Merger. Target shall obtain, prior to the Closing Date, an executed Option Acknowledgment Form from each holder of Target Options.

6.9 Termination of Target Incentive Plan. Target shall cause the Target Incentive Plan to be terminated effective prior to or as of the Effective Time.

6.10 Employees. Target will use commercially reasonable efforts in consultation with Acquiror to retain the Key Employees through the Effective Time and following the Merger.

6.11 Expenses. Whether or not the Merger is consummated, all Transaction Expenses and any other costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such expense.

6.12 Release and Termination of Security Interests. Target shall use its commercially reasonable efforts to seek and obtain the release, effective as of or prior to the Effective Time, of any and all outstanding security interests in any of Target's assets and to

terminate all UCC financing statements which have been filed with respect to such security interests.

6.13 Required Contract Consents. To the extent requested by Acquiror, Target shall use its commercially reasonable efforts to obtain all Required Contract Consents that are identified on Schedule 6.13 of this Agreement and to deliver such consents to Acquiror.

6.14 Termination of Agreements. To the extent requested by Acquiror, Target shall use commercially reasonable efforts to cause the Target contracts identified on Schedule 6.14 of this Agreement to be terminated effective prior to or as of the Effective Time.

6.15 Termination of University License Agreements. Target shall have provided a written notice of termination of the University License Agreements to the University of Florida ("**License Termination Notice**") providing for the termination of the University License Agreements prior to Closing.

6.16 Target Invention Assignment and Release Agreement. Target shall enter into an Invention Assignment and Release Agreement (the "**Invention Assignment and Release Agreement**") with each of the employees and consultants of Target listed in Schedule 6.16 of this Agreement.

6.17 Redeemed Notes. Target shall obtain, prior to the Closing Date, an executed Note Acknowledgment Form from each holder of Redeemed Notes.

## 7. Conditions to the Merger.

7.1 Conditions to Obligations of Each Party to Effect the Merger. The respective obligations of each party to this Agreement to consummate and effect this Agreement and the transactions contemplated hereby shall be subject to the satisfaction at or prior to the Effective Time of each of the following conditions, any of which may be waived, in writing, by agreement of all the parties hereto:

(a) Stockholder Approval. This Agreement and the Merger shall be approved by the stockholders of Target by the requisite vote under Florida Law, other applicable law and the Restated Articles of Incorporation.

(b) No Injunctions or Restraints; Illegality. No temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or other legal or regulatory restraint or prohibition preventing the consummation of the Merger shall be and remain in effect, nor shall any proceeding brought by an administrative agency or commission or other governmental authority or instrumentality, domestic or foreign, seeking any of the foregoing be pending, which could reasonably be expected to have a Material Adverse Effect on Acquiror, either individually or combined with the Surviving Corporation, after the Effective Time, nor shall there be any action taken, or any statute, rule, regulation or order enacted, entered, enforced or deemed applicable to the Merger, which makes the consummation of the Merger illegal.



(c) Governmental Approval. Acquiror, Merger Sub and Target shall have timely obtained from each Governmental Entity all approvals, waivers and consents, necessary for consummation of or in connection with the Merger and the several transactions contemplated hereby, including such approvals, waivers and consents as may be required under the Securities Act, under state blue sky laws and under HSR, other than filings and approvals relating to the Merger or affecting Acquiror's ownership of Target or any of its properties if failure to obtain such approval, waiver or consent could not reasonably be expected to have a Material Adverse Effect on Acquiror after the Effective Time.

(d) 280G Payments. With respect to any payments of cash, stock or otherwise that Acquiror may determine constitutes a "parachute payment" pursuant to Section 280G of the Code, the stockholders of Target shall have (i) approved pursuant to a method provided for in the regulations promulgated under Section 280G of the Code any such "parachute payments" or (ii) shall have voted upon and disapproved such parachute payments, and, as a consequence, such "parachute payments" shall not be made or provided for in any manner.

7.2 Additional Conditions to the Obligations of Acquiror and Merger Sub. The obligations of Acquiror and Merger Sub to consummate and effect this Agreement and the transactions contemplated hereby shall be subject to the satisfaction at or prior to the Effective Time of each of the following conditions, any of which may be waived, in writing, by Acquiror:

(a) Representations, Warranties and Covenants. The representations and warranties of Target in this Agreement shall be true and correct in all material respects, without regard to any qualification as to materiality contained in such representation or warranty, on and as of the date of this Agreement and on and as of the Closing as though such representations and warranties were made on and as of such time (except for such representations and warranties that speak specifically as of the date hereof or as of another date, which shall be true and correct as of such date).

(b) Performance of Obligations. Target shall have performed and complied in all material respects with all covenants, obligations and conditions of this Agreement required to be performed and complied with by it as of the Closing.

(c) Certificate of Officers. Acquiror and Merger Sub shall have received a certificate executed on behalf of Target, by the Chief Executive Officer and Chief Financial Officer of Target (on behalf of the Target and in their official capacities) certifying that the conditions set forth in Sections 7.2(a) and 7.2(b) have been satisfied.

(d) Secretary's Certificate. Acquiror and Merger Sub shall have received from Target's Secretary, a certificate having attached thereto (i) the Restated Articles of Incorporation as in effect immediately prior to the Effective Time, (ii) the Restated Bylaws as in effect immediately prior to the Effective Time, (iii) resolutions approved by Target's Board of Directors authorizing the transactions contemplated hereby, (iv) the executed written consents of Target's stockholders approving the Merger or minutes of a meeting of stockholders reflecting such approval and (v) certificates of active status issued by the Florida Department of State, Division of Corporations and a certificate of good standing for each other state where Target is

qualified to do business, dated as of a date no more than seven (7) days prior to the Effective Date.

(e) Third Party Consents. All consents and approvals identified on Section 6.13 of this Agreement shall have been obtained and in full force and effect, and a copy of each such consent or approval shall have been provided to Acquiror at or prior to the Closing.

(f) No Governmental Litigation. There shall not be pending or threatened any legal proceeding in which a Governmental Entity is or is threatened to become a party or is otherwise involved, and neither Acquiror nor Target shall have received any communication from any Governmental Entity in which such Governmental Entity indicates the probability of commencing any legal proceeding or taking any other action: (i) challenging or seeking to restrain or prohibit the consummation of the Merger; (ii) relating to the Merger and seeking to obtain from Acquiror or any of its Subsidiaries, or from Target, any damages or other relief that would be material to Acquiror; (iii) seeking to prohibit or limit in any material respect Acquiror's ability to vote, receive dividends with respect to or otherwise exercise ownership rights with respect to the stock of Target; or (iv) that would materially and adversely affect the right of Acquiror or Target to own the assets or operate the business of Target.

(g) No Other Litigation. There shall not be pending any legal proceeding: (i) challenging or seeking to restrain or prohibit the consummation of the Merger or any of the other transactions contemplated by this Agreement; (ii) relating to the Merger and seeking to obtain from Acquiror or any of its Subsidiaries, or from Target, any damages or other relief that would be material to Acquiror; (iii) seeking to prohibit or limit in any material respect Acquiror's ability to vote, receive dividends with respect to or otherwise exercise ownership rights with respect to any of Target Capital Stock; or (iv) which would affect adversely the right of Acquiror or Target to own the assets or operate the business of Target.

(h) Working Capital. Target shall have delivered to Acquiror the Estimated Closing Certificate and the Estimated Closing Balance Sheet.

(i) Employees. As of the Closing, there shall be sufficient Target employees, in Acquiror's reasonable good faith determination, to permit Acquiror to continue to operate the business of Target in the ordinary course of business following the Closing. In addition, the Key Employees shall have remained continuously employed with Target from the date of this Agreement through the Closing, shall have entered into offer letters or employment agreements with Acquiror in substantially the form(s) provided by Acquiror to such Key Employees on or prior to the date hereof, and no action shall have been taken by any such individual to rescind any such agreement.

(j) No Material Adverse Change. Since the date of this Agreement, there shall not have occurred any change in the financial condition, properties, assets (including intangible assets), liabilities, business, operations, results of operations or prospects of Target, taken as a whole, that, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect on Target.

(k) Dissenters' Rights. Not more than three percent (3%) of the Target Capital Stock outstanding immediately prior to the Effective Time shall be eligible as Dissenting Shares.

(l) Opinion. Hill, Ward & Henderson, P.A., counsel for Target, shall have delivered to Acquiror an opinion, dated as of the Closing Date, in substantially the form attached hereto as **Exhibit F**.

(m) Termination of Agreements. The Agreements listed in Schedule 6.14 of this Agreement shall have been terminated and of no further force and effect.

(n) Non-Competition and Non-Solicitation Agreements. The employees of Target listed in Schedule 7.2(n) of this Agreement shall have entered into the Non-Competition and Non-Solicitation Agreements in the form attached hereto as **Exhibit G** (the "Non-Solicitation Agreement").

(o) Termination of 401(k) Plan. Effective as of the day immediately preceding the Closing Date, Target and any ERISA Affiliate, shall have terminated any and all Target Employee Plans intended to include a Code Section 401(k) arrangement (each a "**401(k) Plan**") (unless Acquiror shall have provided written notice to the Target that such 401(k) Plans shall not be terminated). Unless Acquiror provides such written notice to Target, Target shall have provided Acquiror with evidence that such 401(k) Plans have been terminated (effective as of the day immediately preceding the Closing Date) pursuant to resolutions of the Board of Directors of Target. The form and substance of such resolutions shall be subject to review and approval of Acquiror. Target also shall take such other actions in furtherance of terminating such 401(k) Plans as Acquiror may reasonably require. In the event that termination of a 401(k) Plan would reasonably be anticipated to trigger liquidation charges, surrender charges or other fees then Target shall take such actions as are necessary to reasonably estimate the amount of such charges and/or fees and provide such estimate in writing to Acquiror no later than fifteen (15) calendar days prior to the Closing Date.

(p) Termination of University License Agreements. Target shall have delivered to Acquiror (i) the License Termination Notice and (ii) an acknowledgement by the University of Florida that the University License Agreements has been terminated in accordance with the License Termination Notice.

(q) Sublicense Agreement. The Sublicense Agreement shall have remained in full force and effect, and shall survive any termination of this Agreement or the Closing, in accordance with its terms.

(r) Target Invention Assignment and Release Agreement. Target shall have delivered to Acquiror the Invention Assignment and Release Agreement for each of the consultants lists in Section 6.16 of the Target Disclosure Schedule.

(s) FIRPTA Documents. Target shall have delivered to Acquiror (i) a statement (in such form as may be reasonably requested by counsel to Acquiror) conforming to the requirements of Section 1.897-2(h)(1)(i) of the United States Treasury Regulations, and (ii)

the notification to the Internal Revenue Service required under Section 1.897-2(h)(2) of the United States Treasury Regulations.

(t) Closing Payment Schedule. Acquiror shall have received the Closing Payment Schedule, accompanied by detailed supporting documentation reasonably satisfactory to Acquiror (including written confirmations, in a form satisfactory to Acquiror) from those Representatives of Target identified by Acquiror as to all amounts paid, owed and to be owed by Target with respect to services performed by them through the Closing Date (or following the Closing Date with respect to the transactions contemplated hereby).

(u) Resignation Letters. Target shall have delivered to Acquiror written resignations of all officers and directors of Target effective as of the Effective Time.

(v) Release and Termination of Security Interests. Target's assets shall have been released or shall, simultaneously with the Closing be released from all security interests thereon and Target shall have taken all steps necessary to terminate all UCC financing statements which have been filed with respect to such security interests.

(w) Target Options and Warrants. All Target Options and Target Warrants shall have been terminated.

(x) Capitalization Agreement. The Capitalization Agreement shall have remained in full force and effect, and shall survive any termination of this Agreement or the Closing, in accordance with its terms.

(y) Redeemed Notes. All original Redeemed Notes (as defined in the Capitalization Agreement) shall have been delivered to Target.

(z) Escrow Agreement. Target shall have delivered to Acquiror the Escrow Agreement, duly executed by Target, the Securityholders' Agent and the Major Sellers.

7.3 Additional Conditions to Obligations of Target. The obligations of Target to consummate and effect this Agreement and the transactions contemplated hereby shall be subject to the satisfaction at or prior to the Effective Time of each of the following conditions, any of which may be waived, in writing, by Target:

(a) Representations, Warranties and Covenants. The representations and warranties of Acquiror and Merger Sub in this Agreement shall be true and correct in all material respects without regard to any qualification as to materiality contained in such representation or warranty on and as of the date of this Agreement and on and as of the Closing Date as though such representations and warranties were made on and as of such time (except for such representations and warranties that speak specifically as of the date hereof or as of another date, which shall be true and correct as of such date).

(b) Performance of Obligations. Acquiror and Merger Sub shall have performed and complied in all material respects with all covenants, obligations and conditions of this Agreement required to be performed and complied with by them as of the Closing.

(c) Certificate of Officers. Target and the Securityholders' Agent shall have received a certificate executed on behalf of Acquiror and Merger Sub by an executive officer of Acquiror and Merger Sub, respectively, certifying that the conditions set forth in Sections 7.3(a) and 7.3(b) have been satisfied.

(d) Escrow Agreement. Acquiror shall have delivered to Target and the Securityholders' Agent the Escrow Agreement, duly executed by Acquiror and the Escrow Agent.

## 8. Termination, Amendment and Waiver.

8.1 Termination. This Agreement may be terminated at any time prior to the Effective Time (with respect to Section 8.1(b) through Section 8.1(d), by written notice by the terminating party to the other party):

(a) by the mutual written consent of Acquiror and Target;

(b) by either Acquiror or Target if the Merger shall not have been consummated by August 31, 2010; provided, however, that the right to terminate this Agreement under this Section 8.1(b) shall not be available to any party whose failure to fulfill any obligation under this Agreement has been the cause of or resulted in the failure of the Merger to occur on or before such date;

(c) by either Acquiror or Target if a court of competent jurisdiction or other Governmental Entity shall have issued a nonappealable final order, decree or ruling or taken any other action, in each case having the effect of permanently restraining, enjoining or otherwise prohibiting the Merger, unless the party relying on such order, decree or ruling or other action has not complied in all material respects with its obligations under this Agreement;

(d) by Acquiror or Target, if there has been a breach of any representation, warranty, covenant or agreement on the part of the other party set forth in this Agreement, which breach (i) causes the conditions set forth in Section 7.1 or 7.2 (in the case of termination by Acquiror) or Section 7.1 or 7.3 (in the case of termination by Target) not to be satisfied and (ii) shall not have been cured within ten (10) Business Days following receipt by the breaching party of written notice of such breach from the other party; or

(e) by Acquiror, if the condition set forth in Section 7.1(a) shall not have been satisfied by 5:00 p.m. Pacific time on the second Business Day following the date of this Agreement.

8.2 Effect of Termination. In the event of termination of this Agreement as provided in Section 8.1, there shall be no liability or obligation on the part of Acquiror, Merger Sub or Target or their respective officers, directors, or stockholders, except to the extent that such termination results from the willful breach by a party of any of its representations, warranties or covenants set forth in this Agreement; provided, however, that the provisions of Sections 6.4, 6.5, 6.11, and 10 shall remain in full force and effect and survive any termination of this Agreement.

8.3 Amendment. Subject to the provisions of applicable legal requirements, prior to the Effective Time, the parties hereto may amend this Agreement only by authorized action at any time before or after the adoption of this Agreement by the stockholders of the Target pursuant to an instrument in writing signed on behalf of each of the parties hereto (provided that after such adoption of this Agreement by the stockholders of the Target, no amendment shall be made which by law requires further approval by such stockholders without such further stockholder approval). To the extent permitted by applicable legal requirements, from and after the Effective Time, Acquiror and the Securityholders' Agent may cause this Agreement to be amended only by execution of an instrument in writing signed on behalf of Acquiror and the Securityholders' Agent.

8.4 Extension; Waiver. At any time prior to the Effective Time, the parties hereto, by action taken or authorized by their respective Boards of Directors, may, to the extent legally allowed: (a) extend the time for the performance of any of the obligations or other acts of the other parties hereto; (b) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant hereto; and (c) waive compliance with any of the agreements or conditions contained herein. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in a written instrument signed on behalf of such party.

9. Indemnification.

9.1 Indemnification Escrow.

(a) At Closing, the Indemnification Escrow will be delivered to the Escrow Agent to be held and released in accordance with the Escrow Agreement, as security of the indemnification obligations of the Securityholders under Section 9.2 hereof. The Escrow Agreement will provide, among other things, that any portion of the Indemnification Escrow not previously released to Acquiror, or to be retained by Escrow Agent, as a result of an indemnification claim by Acquiror shall be released to Securityholders of Target on the Release Date in accordance with the terms of the Escrow Agreement; provided, however, that a portion of the Indemnification Escrow, which is necessary to satisfy any unsatisfied claims, shall be retained by the Escrow Agent in accordance with the terms of the Escrow Agreement until such claims have been resolved. In the event of any conflict between this Agreement and the Escrow Agreement, the Escrow Agreement will govern and control.

(b) On the Release Date, the Escrow Agent shall release to the Securityholders of Target their pro rata portion of the Indemnification Escrow, less with respect to each such Securityholders the amount of the Indemnification Escrow with a value (as determined pursuant to Section 9.3) equal to the sum of (i) such Securityholder's pro rata portion of the Indemnification Escrow previously released to Acquiror, or withheld by Escrow Agent in accordance with Section 9.3 and/or Section 2.11(e) and (ii) such Securityholder's pro rata portion of the portion of the Indemnification Escrow held by the Escrow Agent in accordance with Section 9.1(a) with respect to any pending but unresolved indemnification claims of Acquiror. Any portion of the Indemnification Escrow held as a result of clause (ii) shall be released to the Securityholders of Target or released to Acquiror (as appropriate) promptly upon resolution of each specific indemnification claim involved. The cash held as part of the

Indemnification Escrow shall be released to the respective Securityholders of Target in proportion to their respective pro rata portion of the aggregate Merger Consideration and the Note Consideration.

## 9.2 Indemnification.

(a) Survival of Representations and Warranties. All representations, warranties, covenants and agreements made by Target herein, or in any certificate, schedule or exhibit delivered pursuant hereto, shall survive the execution and delivery of this Agreement and the Closing and shall survive until the Escrow Termination Date; provided, that any claims for indemnification involving fraud or knowing and intentional breach of the representations and warranties set forth in Section 3 shall survive indefinitely. Notwithstanding the foregoing, if Acquiror asserts a claim for the breach of any representation or warranty prior to the termination of such survival period, such representation or warranty shall survive, solely as it relates to such claim, until such claim is resolved.

(i) From and after the Closing, subject to the limitations set forth in this Section 9, the Securityholders shall severally, and not jointly, indemnify and hold harmless Acquiror and the Surviving Corporation and their respective officers, directors, agents, Affiliates, attorneys, representatives and employees, and each Person, if any, who controls or may control Acquiror or the Surviving Corporation within the meaning of the Securities Act (individually an “**Acquiror Indemnified Person**” and collectively the “**Acquiror Indemnified Persons**”) from and against any and all losses, costs, damages, diminution in value, liabilities, Taxes and expenses, including, without limitation, costs and expenses arising from claims, demands, actions, causes of action, including, without limitation, reasonable legal fees (collectively, “**Damages**”), resulting from or arising out of:

(A) any misrepresentation or breach or nonfulfillment of, or default in connection with, any of the representations and warranties given or made by Target in this Agreement (provided that the Securityholders shall not be liable for Taxes arising from a breach of representations or warranties set forth in Section 3.21 to the extent such Taxes have been accrued on the Closing Balance Sheet), the Target Disclosure Schedule or any exhibit or schedule to this Agreement or in any certificate or document furnished pursuant hereto by Target to Acquiror;

(B) any non-fulfillment or breach of any covenant or agreement made by Target in this Agreement;

(C) any amounts paid as fair value to a Dissenting Stockholder in respect of his, her or its Dissenting Shares in accordance with Florida Law that exceeds the aggregate Merger Consideration to which such Dissenting Stockholder would be entitled to hereunder and Acquiror’s and the Surviving Corporation’s reasonable legal fees and expenses with respect to the defense and, if applicable, settlement thereof;

(D) defending any third party claim alleging the occurrence of facts or circumstances that, if true, would entitle an Acquiror Indemnified Person to indemnification hereunder;

(E) any downward adjustment to the Final Working Capital as compared to the Estimated Working Capital, as set forth in Section 2.11(e);

(F) any non-fulfillment or failure to comply with any employment laws, employment practices, terms and conditions of employment, employee safety and health matters, and wages and hours laws;

(G) the imposition of any tax, interest, penalty or income inclusion on the Target as a result of any Target Employee Plan, payment or any other arrangement failing to satisfy the requirements of sections 409A(a)(2) through 409A(a)(4) of the Code and the applicable guidance promulgated thereunder;

(H) any non-fulfillment or failure to comply by Target with any privacy laws, laws related to the posting of privacy statements regarding the collection, retention, use and distribution of personal information of individuals, including, without limitation, from visitors of any Target website on any Target website, the posting of consumer notices and policies, including without limitation the posting of privacy policies, associated with collecting or personal information; or

(I) any non-fulfillment, failure to comply with or any breach of any term or condition by Target of the Gill License Agreement (as such term is defined in the Target Disclosure Schedule).

Notwithstanding anything in this Agreement to the contrary, for the purposes of the determination of Damages pursuant to Section 9, the representations and warranties of Target in this Agreement that are qualified by materiality or Material Adverse Effect shall be deemed to be made without such materiality or Material Adverse Effect qualifiers.

(ii) Nothing in this Agreement shall limit the liability in amount or otherwise of Target with respect to fraud, criminal activity or intentional breach of any covenant contained in this Agreement.

(b) Threshold for Claims. No claim for Damages shall be made under Section 9 unless the aggregate of Damages exceeds \$95,000 for which claims are made hereunder by the Acquiror Indemnified Persons, in which case the Acquiror Indemnified Person shall be entitled to seek compensation for all Damages without regard to the limitation set forth in this Section 9.2(b) (the "Limitation"); provided, however, that the Limitation shall not apply with respect to any Damages arising from, or directly or indirectly related to (i) any inaccuracy in the Closing Payment Schedule (including, but not limited to, with respect to the amount of Indebtedness or Transaction Expenses of Target), (ii) Section 9.2(a)(i)(C), (E), (F) or (G), or (iii) fraud or knowing and intentional breach of the representations and warranties in Section 3.

(c) Cap on Indemnification. The aggregate amount to be paid by the Securityholders for claims for Damages made under Section 9 shall not exceed the Indemnification Escrow (the "Cap"); provided, however, that the Cap shall not apply to any Damages based upon, resulting from or arising out of, or directly or indirectly related to (i) any claims for indemnification involving fraud or knowing and intentional breach of the



representations and warranties in Section 3, (ii) any claims related to or arising out of Section 2.11 or Section 9.2(a)(i)(c), or (iii) any inaccuracy in the Closing Payment Schedule.

(d) Pro Rata Liability of Stockholders; Maximum Liability of Securityholders. Except in the case of fraud or knowing and intentional breach of the representations and warranties set forth in Section 3 (which shall be governed by Section 9.2(f)) and subject to the other limitations set forth herein (including, without limitation, Section 9.2(e)), if any Acquiror Indemnified Party is entitled to seek Damages directly from any Securityholder, such Securityholder's liability shall be limited to his, her or its pro rata share of such Damages (such pro rata amount determined based on such Securityholder's share of the aggregate Merger Consideration and Note Consideration relative to all other Securityholders). Additionally, except with respect to fraud and knowing and intentional breaches of the representations and warranties set forth in Section 3, in no event shall the aggregate amount to be paid by any Securityholder to an Acquiror Indemnified Person for claims for Damages exceed the amount of the aggregate Merger Consideration and Note Consideration actually received by such Securityholder. Notwithstanding anything to the contrary contained herein, in the event that there are Dissenting Stockholders, the pro rata share of liability for Damages for the other Securityholders shall be automatically adjusted to cover the portion of Damages that such Dissenting Stockholders would have been liable for had they not constituted Dissenting Stockholders.

(e) Recourse Against the Indemnification Escrow. Except for indemnification claims that are not subject to the Cap, no Acquiror Indemnified Person may bring any claim for indemnification directly against any Securityholder, it being the intent of the parties that all claims subject to the Cap shall be satisfied, if at all, solely from and to the extent of the Indemnification Escrow. Additionally, any and all indemnification claims (regardless of whether they are subject to the Cap) shall first be satisfied out of the Indemnification Escrow, and no Acquiror Indemnified Person shall seek payment of Damages directly from any Securityholder until the Indemnification Escrow has been depleted or released in full.

(f) Damages Related to Fraud or Knowing and Intentional Breach. Notwithstanding anything herein to the contrary, in the event any Acquiror Indemnified Person is entitled to seek indemnification for Damages relating to, resulting from or arising out of fraud or a knowing and intentional breach of the representations and warranties in Section 3 and the then remaining Indemnification Escrow is not sufficient to pay all such Damages, the Acquiror Indemnified Person's sole recourse in excess of such Indemnification Escrow shall be to seek indemnification directly from the Securityholder or Securityholders of Target who committed such fraud or who caused such knowing and intentional breach, and no other Securityholder shall have any liability to such Acquiror Indemnified Person with respect to the amounts in excess of the then remaining Indemnification Escrow.

(g) Calculation of Damages. In calculating the Limitation and the Cap and the amounts otherwise payable to an Acquiror Indemnified Person, the amount of any indemnified Damages shall be computed net of payments recovered by the Acquiror Indemnified Person under any insurance policy with respect to such Damages. In the event of an insurance recovery relating to an indemnification payment that is received by Acquiror after funds have been released to the Acquiror Indemnified Person from the Indemnified Escrow under this Agreement that did not take into account such insurance recovery, the Acquiror Indemnified

Person shall promptly return to the Indemnified Escrow (if the Release Date has not passed) or pay the Securityholders' Agent for the benefit of all Securityholders an amount equal to the lesser of such insurance recovery and the amount of the related indemnification payment (and the Securityholders' Agent shall in turn distribute such amount to the Securityholders in accordance with their pro rata share of the aggregate Merger Consideration and Note Consideration (as set forth on the Closing Payment Schedule)). Acquiror shall use commercially reasonable efforts to mitigate the amount of Damages for which it may be entitled to indemnification hereunder.

9.3 Claims Upon Indemnification Escrow; Offset of Claims. Upon receipt by the Securityholders' Agent and the Escrow Agent on or before the Release Date of a certificate signed by any officer of Acquiror (an "Officer's Certificate") stating that Damages exist with respect to the indemnification obligations of the Securityholders set forth in Section 9.2, and specifying in reasonable detail the individual items of such Damages included in the amount so stated, the date each such item was paid, or properly accrued or arose, and the nature of the misrepresentation, breach of warranty, covenant or claim to which such item is related, Acquiror shall, subject to the provisions of this Section 9, be entitled to a portion of the cash held in the Indemnification Escrow equal to such Damages.

9.4 Objections to Claims.

(a) For a period of thirty (30) days from and after delivery of any Officer's Certificate to the Securityholders' Agent (which period may be extended as provided herein or in the Escrow Agreement), the Escrow Agent shall not release the portion of the Indemnification Escrow equal to the amount of Damages set forth in the Officer's Certificate unless Acquiror and the Escrow Agent shall have received written authorization from the Securityholders' Agent for Acquiror to receive such portion of the Indemnification Escrow. After the expiration of such thirty (30) day period, Acquiror shall be entitled to demand and receive a portion of the Indemnification Escrow in an amount equal to such Damages as set forth in the Officer's Certificate and the Securityholders of Target shall no longer be entitled to receive such amount hereunder, provided that no such payment or release shall be made or portion received if the Securityholders' Agent shall object in a written statement to the claim made in the Officer's Certificate, and such statement shall have been delivered to Acquiror and the Escrow Agent prior to the expiration of such thirty (30) day period.

(b) In case the Securityholders' Agent shall so object in writing to any claim or claims by Acquiror made in any Officer's Certificate, Acquiror shall have thirty (30) days to respond in a written statement to the objection of the Securityholders' Agent. If after such thirty (30) day period there remains a dispute as to any claims, the Securityholders' Agent and Acquiror shall attempt in good faith for thirty (30) days to agree upon the rights of the respective parties with respect to each of such claims. If the Securityholders' Agent and Acquiror should so agree, a memorandum setting forth such agreement shall be prepared and signed by Acquiror and the Securityholders' Agent and delivered to the Escrow Agent authorizing the Escrow Agent to release the applicable amount to Acquiror.

9.5 Resolution of Conflicts. If no agreement can be reached after good faith negotiation between the parties pursuant to Section 9.4, either Acquiror or the Securityholders' Agent may initiate formal legal action with the applicable court in San Diego County, California

to resolve such dispute. The decision of the court as to the validity and amount of any claim in such Officer's Certificate shall be binding and conclusive upon the parties to this Agreement, and notwithstanding anything in Section 9 hereof, the parties shall be entitled to act in accordance with such decision and Acquiror shall be entitled to receive cash out of the Indemnification Escrow in accordance therewith and such amount shall no longer be payable to the stockholders of Target.

#### 9.6 Securityholders' Agent.

(a) The Securityholders' Agent shall be constituted and appointed as agent and attorney-in-fact for and on behalf of the Securityholders and shall have full power authority to represent, to give and receive notices and communications, to authorize Acquiror to receive the payment of cash out of the Indemnification Escrow in satisfaction of claims by Acquiror, to object to such deliveries, to agree to, negotiate, enter into settlements and compromises of, and demand arbitration and comply with orders of courts and awards of arbitrators with respect to such claims, to act on such Securityholders behalf with respect to the matters set forth in Section 2.11 hereof, in accordance with the terms and provisions of Section 2.11, including giving and receiving all notices and communications to be given or received with respect to the matters set forth in Section 2.11 and to take all actions necessary or appropriate in the judgment of the Securityholders' Agent for the interpretation of this Agreement and accomplishment of the foregoing. Such agency may be changed by the holders of a majority in interest of the Indemnification Escrow funds from time to time upon not less than 10 days' prior written notice to Acquiror. No bond shall be required of the Securityholders' Agent, and the Securityholders' Agent shall receive no compensation for his services. Notices or communications to or from the Securityholders' Agent shall constitute notice to or from each of the Securityholders.

(b) The Securityholders' Agent shall not be liable for any act done or omitted hereunder as Securityholders' Agent while acting in good faith, except for acts or omissions constituting gross negligence. Any act done or omitted pursuant to the advice of counsel shall be conclusive evidence of such good faith. The Securityholders shall severally indemnify and hold the Securityholders' Agent harmless against any loss, liability or expense incurred without gross negligence or bad faith on the part of the Securityholders' Agent and arising out of or in connection with the acceptance or administration of his duties hereunder.

(c) The Securityholders' Agent shall have reasonable access to information about Target and the reasonable assistance of Target's officers and employees for purposes of performing its duties and exercising its rights hereunder, provided that the Securityholders' Agent shall treat confidentially and not disclose any nonpublic information from or about Target to anyone (except on a need to know basis to individuals who agree to treat such information confidentially).

(d) Acquiror acknowledges that the Securityholders' Agent may have a conflict of interest with respect to its duties as Securityholders' Agent, and in such regard the Securityholders' Agent has informed Acquiror that it will act in the best interests of the Securityholders.

9.7 Actions of the Securityholders' Agent. A decision, act, consent or instruction of the Securityholders' Agent shall constitute a decision of all Securityholders for whom the Merger Consideration otherwise payable to them is set aside and held by Acquiror as part of the Indemnification Escrow and/or payable to Acquiror with respect to the matters set forth in Section 2.11 hereof and shall be final, binding and conclusive upon each such Securityholder, and Acquiror may rely upon any decision, act, consent or instruction of the Securityholders' Agent as being the decision, act, consent or instruction of each and every such Target stockholder. The Acquiror is hereby relieved from any liability to any Person for any acts done by them in accordance with such decision, act, consent or instruction of the Securityholders' Agent.

9.8 Third-Party Claims. In the event Acquiror becomes aware of a third-party claim which Acquiror believes may result in a demand against the Indemnification Escrow, Acquiror shall notify the Securityholders' Agent of such claim, and the Securityholders' Agent shall be entitled, at its expense, to participate in any defense of such claim with the consent of Acquiror which shall not be unreasonably withheld. Acquiror shall have the right in its sole discretion to settle any such claim. In the event that the Securityholders' Agent has consented to any such settlement, the Securityholders' Agent shall have no power or authority to object under Section 9.4 or any other provision of this Section 9 to the amount of any claim by Acquiror against the Indemnification Escrow for indemnity with respect to such settlement.

9.9 Tax Effect of Indemnification Withholdings. All amounts retained by Acquiror from the Indemnification Escrow pursuant to this Agreement shall be treated for all Tax purposes as adjustments to the aggregate Merger Consideration or Note Consideration, as applicable.

9.10 Survival of Indemnification Claims. The indemnification obligations set forth in this Section 9 shall survive the Closing.

9.11 Effect of Investigation. The right to indemnification, payment of Damages or for other remedies based on any representation, warranty, covenant or obligation of the Target and/or Securityholders of Target contained in or made pursuant to this Agreement shall not be affected by any investigation conducted with respect to, or any Knowledge acquired (or capable of being acquired) at anytime, whether before or after the execution and delivery of this Agreement or the date the Closing occurs, with respect to the accuracy or inaccuracy of or compliance with, any such representation, warranty, covenant or obligation. The waiver of any condition to the obligation of Acquiror to consummate the Merger, where such condition is based on the accuracy of any representation or warranty, or on the performance of or compliance with any covenant or obligation, shall not affect the right to indemnification, payment of Damages, or other remedy based on such representation, warranty, covenant or obligation.

9.12 Major Seller Escrow. At Closing, the Major Seller Escrow will be delivered by Acquiror to the Escrow Agent to be held and released in accordance with the terms of the Escrow Agreement, as security for the continued employment of the Major Sellers. The Escrow Agreement will provide, among other things, that (a) at any time during the twenty-four (24) month period following the Closing Date (the "**Employment Period**"), the Acquiror may deliver written notice to the Escrow Agent and any Major Seller requesting the release to

Acquiror of such Major Seller's portion of the remaining Major Seller Escrow stating that (i) such Major Seller has terminated such Major Seller's employment with Acquiror without Good Reason or (ii) Acquiror has terminated such Major Seller's employment with Acquiror for Cause (the "**Termination Notice**"), (b) for a period of thirty (30) days after the delivery of any Termination Notice to the Escrow Agent and any Major Seller, no portion of the Major Seller Escrow with respect to such Major Seller shall be released to Acquiror unless the Escrow Agent shall have received written notice from such Major Seller agreeing to such release, (c) after the expiration of such thirty (30) day period, such Major Seller's portion of the remaining Major Seller Escrow shall be released by the Escrow Agent to Acquiror, provided, that no such release shall be made if such Major Seller shall deliver to Acquiror and the Escrow Agent prior to the expiration of such thirty (30) day period a written objection to the statement made in the Termination Notice, (d) in case the Major Seller shall so object in writing to any claim or claims by Acquiror made in any Termination Notice, Acquiror shall have thirty (30) days to respond in a written statement to the objection of the Major Seller, (e) if after such thirty (30) day period there remains a dispute as to any claims, the Major Seller and Acquiror shall attempt in good faith for thirty (30) days to agree upon the rights of the respective parties with respect to each of such claims, and if the Major Seller and Acquiror should so agree, a memorandum setting forth such agreement shall be prepared and signed by Acquiror and the Major Seller and delivered to the Escrow Agent authorizing the Escrow Agent to release the applicable amount to Acquiror, (f) if no agreement can be reached after good faith negotiation between the parties pursuant to this Section 9.12, either Acquiror or the Major Seller may initiate formal legal action with the applicable court in San Diego County, California to resolve such dispute and that the decision of the court as to the validity and amount of any claim in such Termination Notice shall be binding and conclusive upon the parties to this Agreement, and notwithstanding anything in Section 9 hereof, the parties shall be entitled to act in accordance with such decision and Acquiror shall be entitled to receive cash out of the Major Seller Escrow in accordance therewith. Notwithstanding anything set forth in the Escrow Agreement or in this Agreement, (i) upon the first anniversary of the Closing Date, if not the subject of an earlier delivered Termination Notice, the Escrow Agent shall release to each Major Seller thirty seven and one half percent (37.5%) of such Major Seller's portion of the Major Seller Escrow, as set forth on the Closing Payment Schedule and (ii) upon the expiration of the Employment Period, if not the subject of an earlier delivered Termination Notice, then the Escrow Agent shall release to such Major Seller the remainder of such Major Seller's portion of the Major Seller Escrow, as set forth on the Closing Payment Schedule.

#### 9.13 Tax Matters.

(a) Tax Payment. In addition to the indemnification obligations set forth in Section 9.2 above (but not in duplication of them), the Securityholders of Target shall, severally and not jointly, be responsible for payment to the Acquiror of the amount of Taxes (or the non-payment thereof) of the Target for all taxable periods ending on or before the Closing Date and the portion through the end of the Closing Date for any taxable period that includes (but does not end on) the Closing Date ("**Pre-Closing Tax Period**"), (b) all Taxes of any member of an affiliated, consolidated, combined or unitary group of which the Target (or any predecessor of the Target) is or was a member on or prior to the Closing Date, including pursuant to Treasury Regulation §1.1502-6 or any analogous or similar state, local, or non-U.S. law or regulation, and (c) any and all Taxes of any Person (other than the Target) imposed on the Target

as a transferee or successor, which Taxes relate to an event or transaction occurring before the Closing; provided, however, that in the case of clauses (a), (b), and (c) above, Securityholders of Target shall be liable only to the extent that such Taxes exceed the amount, if any, reserved for such Taxes on the Closing Balance Sheet. The Securityholders of Target shall reimburse Acquiror for any Taxes that are the responsibility of Securityholders of Target within fifteen (15) business days after notice of payment of such Taxes required to be paid by the Target. The Limitation and Cap shall not apply with respect to any Damages arising from the matters set forth in this Section 9.13. Notwithstanding the foregoing, the Securityholders of Target shall have no liability or obligation under this Agreement with respect to any Taxes collected or withheld by the Target (including, without limitation, all sales and use taxes and all withholding or employment taxes) with respect to events occurring through the Closing Date, the proceeds of which are held by the Target on the Closing Date.

(b) Straddle Period. In the case of any taxable period that includes (but does not end on) the Closing Date (a "**Straddle Period**"), the amount of any Taxes based on or measured by income or receipts of the Target for the Pre-Closing Tax Period shall be determined based on an interim closing of the books as of the close of business on the Closing Date and the amount of other Taxes of the Target for a Straddle Period that relates to the Pre-Closing Tax Period shall be deemed to be the amount of such Tax for the entire taxable period multiplied by a fraction the numerator of which is the number of days in the taxable period ending on the Closing Date and the denominator of which is the number of days in such Straddle Period.

(c) Tax Returns. The Acquiror shall prepare or cause to be prepared and file or cause to be filed all Tax Returns for the Target that are filed after the Closing Date. All such Tax Returns that relate to or include the Pre-Closing Tax Period shall be prepared in a manner consistent with applicable law. The Acquiror shall permit the Securityholders' Agent to review and comment on each Tax Return relating to or including a Pre-Closing Tax Period prior to filing and shall make such revisions to such Tax Returns as are reasonably requested.

(d) Tax Payment Notification. If a Tax Claim shall be delivered or sent to or commenced or initiated against by any Governmental Entity with respect to Taxes or Tax Returns of the Target for which any of the Securityholders may be liable or for which Acquiror may be entitled to submit a claim against the Indemnification Escrow, the Acquiror shall promptly notify the Securityholders' Agent in writing of the Tax Claim and shall include a copy of the relevant Tax Claim notice and other related information.

(e) Limitation on Actions Affecting Pre-Closing Tax Periods. Except as required by applicable law, on and after the Closing Date, none of the Acquiror, the Surviving Corporation or any of their Affiliates may (a) make or change any Tax election with respect to the Company applicable to a Pre-Closing Tax Period, (b) amend, file or otherwise modify any Tax Return relating to any Pre-Closing Tax Period, or (c) take any other action that relates to or is attributable to, or that affects, any Pre-Closing Tax Period, in any case which would result in an increased Tax liability for the Company for which the Securityholders are responsible or liable.

9.14 Remedies Exclusive. AFTER THE CLOSING, THE REMEDIES PROVIDED IN THIS SECTION 9 ARE AND SHALL BE THE SOLE AND EXCLUSIVE

REMEDIES OF THE PARTIES HERETO AND THEIR HEIRS, SUCCESSORS AND ASSIGNS (INCLUDING, WITHOUT LIMITATION, ALL ACQUIROR INDEMNIFIED PERSONS) WITH RESPECT TO THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT AND ALL MATTERS, TRANSACTIONS AND CIRCUMSTANCES RELATING HERETO, EXCEPT IN THE CASE OF FRAUD OR KNOWING AND INTENTIONAL BREACH OF THE REPRESENTATIONS AND WARRANTIES IN SECTION 3, IN WHICH CASE THE DEFRAUDED PARTY OR THE PARTY SUBJECT TO SUCH KNOWING AND INTENTIONAL BREACH SHALL HAVE ALL RIGHTS AND REMEDIES AVAILABLE UNDER THIS AGREEMENT AND AVAILABLE UNDER THE LAW AGAINST THE PARTY THAT COMMITTED SUCH FRAUD OR SUCH KNOWING AND INTENTIONAL BREACH. THE PROVISIONS OF THIS SECTION 9 (INCLUDING, WITHOUT LIMITATION, THIS SECTION 9.14) CONSTITUTE AN INTEGRAL PART OF THE CONSIDERATION GIVEN PURSUANT TO THIS AGREEMENT AND WERE SPECIFICALLY BARGAINED FOR AND REFLECTED IN THE TOTAL AMOUNT OF THE CONSIDERATION PAYABLE AT CLOSING TO THE SECURITYHOLDERS.

10. General Provisions.

10.1 Notices. All notices and other communications hereunder shall be in writing and shall be deemed duly delivered: (i) upon receipt if delivered personally; (ii) five (5) Business Days after being mailed by registered or certified mail, postage prepaid, return receipt requested; (iii) one (1) business day after it is sent by commercial overnight courier service prior to such service's deadline for next Business Day delivery to the recipient (with all charges prepaid); or (iv) upon transmission if sent via facsimile with confirmation of receipt to the parties at the following address (or at such other address for a party as shall be specified upon like notice:

(a) if to Acquiror or Merger Sub, to:

QUALCOMM Incorporated  
5775 Morehouse Drive  
San Diego, California 92121  
Attention: General Counsel  
Fax: (858) 658-2503

with a copy to:

DLA Piper LLP (US)  
4365 Executive Drive, Suite 1100  
San Diego, CA 92121  
Attention: David R. Young  
Fax: (858) 638-6821  
Tel: (858) 638-5121

(b) if to Target or Securityholders' Agent, to:

WiPower, Inc.  
370 Centerpointe Circle, Suite 1196  
Altamonte Springs, FL 32701  
Attention: Carlos Tseng  
Fax: (352) 873-7892  
Tel: (978) 549-5013  
with a copy to:

Hill, Ward & Henderson, P.A.  
101 E. Kennedy Boulevard  
37<sup>th</sup> Floor  
Tampa, Florida 33602  
Attention: David S. Felman  
Fax: (813) 221-2900  
Tel: (813) 227-8483

10.2 Definitions. In this Agreement any reference to any event, change, condition or effect being "**material**" with respect to any entity or group of entities means any material event, change, condition or effect related to the financial condition, properties, assets (including intangible assets), liabilities, business, operations or results of operations of such entity or group of entities. In this Agreement any reference to a "**Material Adverse Effect**" with respect to any entity or group of entities means any event, change or effect that is materially adverse to the financial condition, properties, assets, liabilities, business, operations, results of operations or prospects of such entity and its subsidiaries, taken as a whole; provided, that in no event shall any of the following be taken into account in the determination of whether a Material Adverse Effect has occurred: (a) any change in any applicable laws, rules or regulations or GAAP; (b) any change resulting from conditions affecting any of the industries in which the Target operates or from changes in general business, financial, banking or economic conditions or debt, currency or capital markets (whether in the United States or any other country or in any international market), but only to the extent that such changes or conditions do not have a disproportionate adverse effect on the Target as compared to the other businesses in the industries in which it operates; or (c) acts of God, national or international political conditions. In this Agreement any reference to a party's "**Knowledge**" means such party's actual Knowledge after reasonable and diligent inquiry of officers, directors and other employees of such party reasonably believed to have Knowledge of such matters; provided, however, that a party shall be deemed to have actual "**Knowledge**" of a fact or matter if in exercising reasonable care an officer, director or other employee of such party would be expected to discover or become aware of that fact or matter in the course of carrying out his or her duties and responsibilities on behalf of such party. In this Agreement, an entity shall be deemed to be a "**Subsidiary**" of a party if such party directly or indirectly owns, beneficially or of record, at least 50% of the outstanding equity or financial interests of such entity.

10.3 Counterparts; Facsimile. This Agreement may be executed in one or more counterpart signature pages, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same



agreement, which shall be binding upon all of the parties hereto notwithstanding the fact that all parties are not signatory to the same counterpart. The exchange of copies of this Agreement and of signature pages by facsimile transmission, by electronic mail in "portable document format" (".pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing an original signature.

10.4 Entire Agreement; Nonassignability; Parties in Interest. This Agreement and the documents and instruments and other agreements specifically referred to herein or delivered pursuant hereto, including the exhibits and schedules hereto, including the Target Disclosure Schedule: (a) together constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof except for the Confidentiality Agreement, which shall continue in full force and effect, and shall survive any termination of this Agreement or the Closing, in accordance with its terms; and (b) are not intended to confer upon any other Person any rights or remedies hereunder and shall not be assigned by operation of law or otherwise without the written consent of the other party.

10.5 Severability. In the event that any provision of this Agreement or the application thereof becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement will continue in full force and effect and the application of such provision to other persons or circumstances will be interpreted so as reasonably to effect the intent of the parties hereto. The parties further agree to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the economic, business and other purposes of such void or unenforceable provision.

10.6 Remedies Cumulative. Except as otherwise provided herein, any and all remedies herein expressly conferred upon a party will be deemed cumulative with and not exclusive of any other remedy conferred hereby, or by law or equity upon such party, and the exercise by a party of any one remedy will not preclude the exercise of any other remedy.

10.7 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of California applicable to parties residing in California, without regard applicable principles of conflicts of law; provided, however, that the Merger and any other corporate matters specifically subject to Florida Law shall be governed by and construed in accordance with Florida Law. Each of the parties hereto irrevocably consents to the exclusive jurisdiction of any court located within San Diego County, in connection with any matter based upon or arising out of this Agreement or the matters contemplated hereby and it agrees that process may be served upon it in any manner authorized by the laws of the State of California for such persons and waives and covenants not to assert or plead any objection which it might otherwise have to such jurisdiction and such process.

10.8 Rules of Construction. The parties hereto agree that they have been represented by counsel during the negotiation, preparation and execution of this Agreement and, therefore, waive the application of any law, regulation, holding or rule of construction providing

that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.


10.9 Specific Enforcement. Target acknowledges and agrees that Acquiror would be irreparably harmed and Acquiror would not have any adequate remedy at law in the event that any of the provisions of this Agreement were not performed by Target in accordance with their specific terms or were otherwise breached. Accordingly Target agrees that Acquiror shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, this being in addition to any other remedy to which Acquiror is entitled at law or in equity.

10.10 Amendment; Waiver. Any amendment or waiver of any of the terms or conditions of this Agreement must be in writing and must be duly executed by or on behalf of the party to be charged with such waiver. The failure of a party to exercise any of its rights hereunder or to insist upon strict adherence to any term or condition hereof on any one occasion shall not be construed as a waiver or deprive that party of the right thereafter to insist upon strict adherence to the terms and conditions of this Agreement at a later date. Further, no waiver of any of the terms and conditions of this Agreement shall be deemed to or shall constitute a waiver of any other term of condition hereof (whether or not similar).

*[The remainder of this page is intentionally left blank.]*

IN WITNESS WHEREOF, Target, Merger Sub, Acquiror, Ryan Tseng, Ashish Gupta and Securityholders' Agent have caused this Agreement to be executed and delivered by each of them or their respective officers thereunto duly authorized, all as of the date first written above.

QUALCOMM INCORPORATED

By:   
William E. Keitel  
Executive Vice President and Chief Financial Officer

ROTAG ACQUISITION CORPORATION

By:   
William E. Keitel  
President and Chief Financial Officer

WIPOWER, INC.

By: \_\_\_\_\_  
Rahul Razdan, Chief Executive Officer

SECURITYHOLDERS' AGENT

\_\_\_\_\_  
Carlos Tseng

\_\_\_\_\_  
Ryan Tseng

\_\_\_\_\_  
Ashish Gupta

[SIGNATURE PAGE TO AGREEMENT AND PLAN OF MERGER]

IN WITNESS WHEREOF, Target, Merger Sub, Acquiror, Ryan Tseng, Ashish Gupta and Securityholders' Agent have caused this Agreement to be executed and delivered by each of them or their respective officers thereunto duly authorized, all as of the date first written above.

QUALCOMM INCORPORATED

By: \_\_\_\_\_  
William E. Keitel  
Executive Vice President and Chief Financial  
Officer

ROTAG ACQUISITION CORPORATION

By: \_\_\_\_\_  
William E. Keitel  
President and Chief Financial Officer

WIPOWER, INC.

By: *[Signature]* *Aug 10, 2010*  
Rahul Razdan, Chief Executive Officer

SECURITYHOLDERS' AGENT

\_\_\_\_\_  
Carlos Tseng

\_\_\_\_\_  
Ryan Tseng

\_\_\_\_\_  
Ashish Gupta

IN WITNESS WHEREOF, Target, Merger Sub, Acquirer, Ryan Tseng, Ashish Gupta and Securityholders' Agent have caused this Agreement to be executed and delivered by each of them or their respective officers thereunto duly authorized, all as of the date first written above.

QUALCOMM INCORPORATED

By: \_\_\_\_\_  
William E. Keitel  
Executive Vice President and Chief Financial  
Officer


ROTAC ACQUISITION CORPORATION

By: \_\_\_\_\_  
William E. Keitel  
President and Chief Financial Officer

WIPOWER, INC.

By: \_\_\_\_\_  
Rahul Razdan, Chief Executive Officer

SECURITYHOLDERS' AGENT

  
\_\_\_\_\_  
Carlos Tseng

\_\_\_\_\_  
Ryan Tseng

\_\_\_\_\_  
Ashish Gupta

IN WITNESS WHEREOF, Target, Merger Sub, Acquiror, Ryan Tseng, Ashish Gupta and Securityholders' Agent have caused this Agreement to be executed and delivered by each of them or their respective officers thereunto duly authorized, all as of the date first written above.

QUALCOMM INCORPORATED

By: \_\_\_\_\_  
William B. Keitel  
Executive Vice President and Chief Financial  
Officer

ROTAG ACQUISITION CORPORATION

By: \_\_\_\_\_  
William B. Keitel  
President and Chief Financial Officer

WIPOWER, INC.

By: \_\_\_\_\_  
Rahul Razdan, Chief Executive Officer

SECURITYHOLDERS' AGENT

\_\_\_\_\_  
Carlos Tseng

  
\_\_\_\_\_  
Ryan Tseng

8/10/2010

  
\_\_\_\_\_  
Ashish Gupta

8/10/2010

[SIGNATURE PAGE TO AGREEMENT AND PLAN OF MERGER]

H10000184616 3

**EXHIBIT B**

**AMENDED AND RESTATED ARTICLES OF INCORPORATION**

H10000184616 3

**AMENDED AND RESTATED ARTICLES OF INCORPORATION  
OF  
WIPOWER, INC.**

In compliance with Chapter 607 and/or Chapter 621, F.S. (Profit)

**ARTICLE I:**  
**NAME**

The name of the corporation shall be:

WiPower, Inc.

**ARTICLE II:**  
**PRINCIPAL OFFICE**

The principal street address and mailing address, if different is:

5775 Morehouse Drive, San Diego, CA 92121

**ARTICLE III:**  
**PURPOSE**

The purpose for which the corporation is organized is:

Any and all lawful purpose.

**ARTICLE IV:**  
**SHARES**

The corporation is authorized to issue one class of stock, to be designated "Common Stock," with a par value of \$0.001 per share. The total number of shares of Common Stock that the corporation shall have authority to issue is One Thousand (1,000).

**ARTICLE V:**  
**REGISTERED AGENT**

The name and Florida street address (P.O. Box NOT acceptable) of the registered agent is:

National Corporate Research Ltd., Inc.  
515 East Park Avenue  
Tallahassee, FL 32301



**ARTICLE VI:**  
**BOARD OF DIRECTORS**

The business and affairs of the corporation shall be managed by or under the direction of the Board of Directors. In addition to the powers and authority expressly conferred upon them by statute or by this Articles of Incorporation or the Bylaws of the corporation, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the corporation. Election of directors need not be by written ballot, unless the Bylaws so provide. The Board of Directors is authorized to make, adopt, amend, alter or repeal the Bylaws of the corporation. The stockholders shall also have power to make, adopt, amend, alter or repeal the Bylaws of the corporation.

**ARTICLE VII:**  
**INDEMNIFICATION**

To the fullest extent permitted by the Florida Business Corporation Act, as the same exists or may hereafter be amended, a director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. Any repeal or modification of the foregoing provisions of this Article VII by the stockholders of the corporation shall not adversely affect any right or protection of a director of the corporation existing at the time of, or increase the liability of any director of the corporation with respect to any acts or omissions occurring prior to, such repeal or modification.

**REGISTERED AGENT CERTIFICATE**

Having been named to accept service of process for the above stated corporation, I hereby accept appointment as its agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relating to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent.

  
8/17/2010  
Kevin Roberts, Assistant Secretary