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**MERGER OR SHARE EXCHANGE
BANKS.COM, INC.**

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June 29, 2012

FLORIDA DEPARTMENT OF STATE
Division of CorporationsBANKS.COM, INC.
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SUITE 2200
SAN FRANCISCO, CA 94105USSUBJECT: BANKS.COM, INC.
REF: P94000027095

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SECRETARY OF STATE
TALLAHASSEE, FLORIDA

ARTICLES OF MERGER

OF

BANKS.COM, INC.
a Florida corporation

AND

REMARK FLORIDA, INC.
a Florida corporation

The following articles of merger are submitted in accordance with the Florida Business Corporation Act (the "FBCA"), pursuant to section 607.1105, Florida Statutes.

FIRST: The name and jurisdiction of the surviving corporation is Banks.com, Inc., a Florida corporation.

SECOND: The name and jurisdiction of the merging corporation is Remark Florida, Inc., a Florida corporation.

THIRD: The Agreement and Plan of Merger (the "Plan of Merger") is attached as Exhibit A.

FOURTH: The merger shall become effective upon the filing of the Articles of Merger with the Florida Department of State.

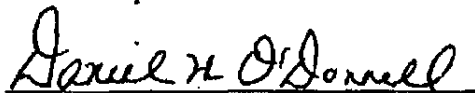
FIFTH: The Plan of Merger was adopted by the shareholders of the surviving corporation on June 27, 2012.

SIXTH: The Plan of Merger was adopted by the sole shareholder of the merging corporation on June 27, 2012.

[Signatures Appear on the Following Page.]

IN WITNESS WHEREOF, each of the parties to the merger has caused these Articles of Merger to be executed by a duly authorized officer as of this 28th day of June, 2012.

BANKS.COM. INC.,
a Florida corporation



Signature of Officer

Name: Daniel M. O'Donnell
Title: Chairman and Chief Executive Officer

REMARK FLORIDA, INC.,
a Florida corporation

Signature of Officer

Name: Bradley T. Zimmer
Title: President

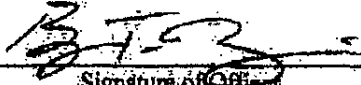
IN WITNESS WHEREOF, each of the parties to this merger has caused these Articles of Merger to be executed by a duly authorized officer as of this 28th day of June, 2012.

BANKS.COM, INC.,
a Florida corporation

Signature of Officer

Name: Daniel M. O'Donnell
Title: Chairman and Chief Executive Officer

REMARK FLORIDA, INC.,
a Florida corporation



Signature of Officer

Name: Bradley T. Zimmer
Title: President

EXHIBIT A

Plan of Merger

[See attached]

AGREEMENT AND PLAN OF MERGER

AMONG

REMARK MEDIA, INC.,

REMARK FLORIDA, INC.,

AND

BANKS.COM, INC.

Dated as of February 26, 2012

4821-5683-0318.6

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1. Form of Key Employee Agreement
2. Net Working Capital

SCHEDULES

1. Key Employees
2. Company Disclosure Schedule
3. Parent Disclosure Schedule

4821-5693-0318.5

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AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER (hereinafter referred to as this "Agreement"), dated February 26, 2012, is by and among Remark Media, Inc., a Delaware corporation ("Parent"), Remark Florida, Inc., a Florida corporation and a wholly-owned subsidiary of Parent ("Merger Sub"), and Banks.com, Inc., a Florida corporation (the "Company").

WHEREAS, pursuant to this Agreement, and upon the terms and subject to the conditions set forth herein, Merger Sub will be merged with and into the Company with the Company as the Surviving Corporation (the "Merger," and together with the other transactions contemplated by this Agreement, the "Transaction"), in accordance with the Florida Business Corporations Act (the "FBCA"), whereby each issued and outstanding share of common stock of the Company, par value \$0.001 per share (the "Company Common Stock"), not owned directly or indirectly by Parent, Merger Sub or the Company (other than Dissenting Shares) will be converted into the right to receive a portion of the Common Stock Consideration and a portion the Fractional Share Consideration, as applicable, subject to any withholding of Taxes required by applicable Law;

WHEREAS, the holder (the "Preferred Holder") of issued and outstanding shares of preferred stock of the Company, par value \$0.001 per share (the "Company Preferred Stock") shall exchange such stock in the Merger for cash and the right to receive a portion of the Common Stock Consideration;

WHEREAS, the Board of Directors of the Company (the "Company Board") has, on the terms and subject to the conditions set forth herein, (i) approved the Transactions, including the Merger, and (ii) determined, subject to the terms of this Agreement, to recommend that the Company Stockholders adopt and approve this Agreement and approve the Merger;

WHEREAS, as a condition and inducement for the parties' willingness to enter into this Agreement, each of the employees of Company listed on Schedule 1 attached hereto (each, a "Key Employee") is executing and delivering to Parent an employment agreement with Parent together with Parent's standard employee invention assignment and confidentiality agreement, in the form attached hereto as Exhibit 1, in each case at or immediately prior to the Closing (each, a "Key Employee Agreement"), which Key Employee Agreements shall be effective at the Effective Time.

WHEREAS, the Company, Parent and Merger Sub desire to make certain representations, warranties, covenants and agreements in connection with the Transaction and to prescribe certain conditions with respect to the consummation of the Transaction;

WHEREAS, the Board of Directors of Parent and Merger Sub have, on the terms and subject to the conditions set forth herein, unanimously approved and declared advisable this Agreement and the Transaction, including the Merger;

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties, covenants and agreements contained in this Agreement and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties to this Agreement agree as follows:

ARTICLE I

The Merger

1.1 The Merger.

(a) Subject to the terms and conditions of this Agreement, and in accordance with the FBCA, at the Effective Time, the Company and Merger Sub shall consummate the Merger pursuant to which

(i) Merger Sub shall be merged with and into the Company and the separate corporate existence of Merger Sub shall thereupon cease, (ii) the Company shall be the surviving corporation in the Merger and shall be governed by the FBCA and (iii) the separate corporate existence of the Company, with all its rights, privileges, immunities, powers and franchises, shall continue unaffected by the Merger. The corporation surviving the Merger is sometimes hereinafter referred to as the "Surviving Corporation." The Merger shall have the effects set forth in the FBCA.

(b) At the Effective Time and by virtue of the Merger, the articles of incorporation of the Surviving Corporation shall be amended and restated to read the same as the articles of incorporation of Merger Sub, as in effect immediately prior to the Effective Time, except that as of the Effective Time the articles of incorporation shall provide that the name of the Surviving Corporation is "Banks.com, Inc.," and as so amended shall be the amended and restated articles of incorporation of the Surviving Corporation until thereafter changed or amended as provided therein or by applicable Law. At the Effective Time, the bylaws of the Surviving Corporation shall be amended so as to read the same as the bylaws of Merger Sub, as in effect immediately prior to the Effective Time, until thereafter changed or amended as provided therein, by the certificate of incorporation of the Surviving Corporation or by applicable Law.

1.2 Effective Time. Parent, Merger Sub and the Company shall cause the articles of merger or other appropriate documents to be duly executed and filed in accordance with the FBCA (the "Articles of Merger") and at the Effective Time (or on such other date as Parent and the Company may agree) with the Secretary of State of the State of Florida, and shall make all other filings or recordings required under the FBCA. The Merger shall become effective at the time the Articles of Merger shall have been duly filed with, and accepted by, the Secretary of State of the State of Florida or such later date and time as is agreed upon by the parties and specified in the Articles of Merger, such date and time hereinafter referred to as the "Effective Time."

1.3 Closing. Subject to the provisions of Article VII, the closing of the Merger (the "Closing") will take place at 10:00 a.m., Eastern Standard Time, as promptly as possible, but in any event no later than three (3) Business Days after satisfaction or waiver of all of the conditions set forth in Article VII (the "Closing Date"), at the offices of Morris, Manning & Martin, LLP, 3343 Peachtree Road, N.E., 1600 Atlanta Financial Center, Atlanta, Georgia 30326, on the Closing Date, unless another time, date or place is agreed to in writing by Parent and the Company.

1.4 Directors and Officers of the Surviving Corporation. The directors of Merger Sub immediately prior to the Effective Time shall, from and after the Effective Time, be the directors of the Surviving Corporation, and the officers of the Merger Sub immediately prior to the Effective Time, from and after the Effective Time, shall be the officers of the Surviving Corporation, in each case until their respective successors shall have been duly elected or appointed and qualified, or until their earlier death, resignation or removal in accordance with the Surviving Corporation's certificate of incorporation and bylaws and applicable Laws.

ARTICLE II

Merger Consideration: Conversion of Stock

2.1 Conversion of Company Stock. At the Effective Time, by virtue of the Merger and without any action on the part of any holder thereof:

(a) Capital Stock of Merger Sub. Each share of common stock of Merger Sub, par value \$0.001 per share, issued and outstanding immediately prior to the Effective Time shall be converted into and become one (1) validly issued, fully paid and nonassessable share of common stock of the Surviving Corporation, par value \$0.001 per share, with the same rights, powers and preferences as the shares so converted and shall constitute the only outstanding share of capital stock of the Surviving Corporation.

(b) Cancellation of Parent-Owned, Merger Sub-Owned and Company-Owned Company Common Stock and Company Preferred Stock. Each issued and outstanding share of Company Common Stock or Company Preferred Stock that is owned by Parent, Merger Sub or the Company, or by any wholly-owned direct or indirect Subsidiary of Parent, Merger Sub or the Company, immediately prior to the Effective Time (collectively, the "Excluded Shares") shall automatically be canceled and shall cease to exist, and no cash, stock or other consideration shall be delivered or deliverable in exchange therefor.

(c) Conversion of Capital Stock.

(i) Company Common Stock. Each share of Company Common Stock issued and outstanding immediately prior to the Effective Time (other than Excluded Shares and Dissenting Shares) shall automatically be converted into the right to receive Parent Common Stock in an amount equal to such holder's Pro Rata Portion, if any, of the Common Stock Consideration less the Common Stock Consideration issuable pursuant to Section 2.1(c)(ii), (e) and (f), as adjusted pursuant to this Agreement, provided, however, that no fractional share of Parent Common Stock will be issued in the Merger, but in lieu thereof, each holder of shares of Company Common Stock who would otherwise be entitled to a fraction of a share of Parent Common Stock (after aggregating all fractional shares of Parent Common Stock to be received by such holder) shall be entitled to receive from Parent such holder's portion of the Fractional Share Amount (in the aggregate, all such amounts being less than or equal to the Fractional Share Cap). If the aggregate payments in lieu of fractional shares would otherwise exceed the Fractional Share Cap, the amount paid for each fractional share shall be reduced ratably such that the Fractional Share Cap is not exceeded. As of the Effective Time, all shares of Company Common Stock issued and outstanding immediately prior to the Effective Time shall no longer be outstanding and shall automatically be canceled and shall cease to exist, and each holder of a certificate (a "Certificate") or book-entry shares ("Book-Entry Shares") representing any such shares of Company Common Stock shall cease to have any rights with respect to such shares, except, in all cases, the right to receive (other than with respect to Excluded Shares and Dissenting Shares) the Common Stock Consideration and Fractional Share Consideration (if applicable), without interest, upon surrender of such Certificate or Book-Entry Shares in accordance with Section 2.3. The right of any holder of any share of Company Common Stock to receive the Common Stock Consideration or Fractional Share Consideration (if applicable) shall be subject to and reduced by the amount of any withholding that is required under applicable Law relating to Taxes.

(ii) Company Preferred Stock. All shares of Company Preferred Stock issued and outstanding immediately prior to the Effective Time shall automatically be converted into the right to receive (A) cash in the aggregate amount of Three Hundred Thousand Dollars (\$300,000.00) (the "Preferred Cash Consideration"), to be paid in accordance with Section 2.2 hereof; and (B) Parent Common Stock in an amount equal to the Preferred Stock Percentage multiplied by the Common Stock Consideration, as adjusted pursuant to this Agreement, and any accrued and unpaid dividends payable thereon shall be deemed satisfied and paid; provided, however, that no fractional share of Parent Common Stock will be issued in the Merger, but in lieu thereof, each holder of shares of Company Preferred Stock who would otherwise be entitled to a fraction of a share of Parent Common Stock (after aggregating all fractional shares of Parent Common Stock to be received by such holder) shall be entitled to receive from Parent such holder's portion of the Fractional Share Amount (in the aggregate, all such amounts being less than or equal to the Fractional Share Cap). If the aggregate payments in lieu of fractional shares would otherwise exceed the Fractional Share Cap, the amount paid for each fractional share shall be reduced ratably such that the Fractional Share Cap is not exceeded. As of the Effective Time, all shares of Company Preferred Stock issued and outstanding immediately prior to the Effective Time shall no longer be outstanding and shall automatically be canceled and shall cease to exist, and each holder of a Certificate or Book-Entry Shares representing any such shares of Company Preferred Stock shall cease to have any rights with respect to such shares, except, in all cases, the right to receive the Common Stock Consideration and Fractional Share

Consideration (if applicable), without interest, upon surrender of such Certificate or Book-Entry Shares in accordance with Section 2.3. The right of any holder of any share of Company Preferred Stock to receive the Common Stock Consideration or Fractional Share Consideration (if applicable) shall be subject to and reduced by the amount of any withholding that is required under applicable Law relating to Taxes.

(d) Company Stock Options. The Company shall take all requisite action so that at the Effective Time, Parent shall assume no Company Stock Options and each outstanding qualified or nonqualified option to purchase shares of Company Common Stock ("Company Stock Options") under any employee equity incentive plan or arrangement of the Company ("Company Equity Incentive Plans") that is unexpired, unexercised and outstanding immediately prior to the Effective Time, whether vested or unvested, shall automatically be cancelled.

(e) Warrants. At the Effective Time, by virtue of the Merger and without any action on the part of any party, the warrant for the purchase of 2,083,333 shares of Company Common Stock (the "Exchanged Warrant") shall be cancelled, exchanged for and converted into the right to receive such number of shares of Parent Common Stock as is equal to the Warrant Percentage multiplied by the Common Stock Consideration, as adjusted pursuant to this Agreement, provided, however, that no fractional share of Parent Common Stock will be issued in the Merger, but in lieu thereof, the holder of such warrant, who would otherwise be entitled to a fraction of a share of Parent Common Stock (after aggregating all fractional shares of Parent Common Stock to be received by such holder), shall be entitled to receive from Parent such holder's portion of the Fractional Share Amount (in the aggregate, all such amounts being less than or equal to the Fractional Share Cap). If the aggregate payments in lieu of fractional shares would otherwise exceed the Fractional Share Cap, the amount paid for each fractional share shall be reduced ratably such that the Fractional Share Cap is not exceeded. At the Effective Time, Parent shall assume no Company Warrants and each outstanding warrant to purchase shares of Company Common Stock (the "Company Warrants") other than the Exchanged Warrant that is unexpired, unexercised and outstanding immediately prior to the Effective Time, shall automatically be cancelled.

(f) Company Note; Other Company Securities and Company Subsidiary Securities. At the Effective Time, by virtue of the Merger and without any action on the part of any party, the Original Company Note shall be cancelled, exchanged for and converted into (A) the Company Note; and (B) the right to receive such number of shares of Parent Common Stock as is equal to the Note Percentage multiplied by the Common Stock Consideration, as adjusted pursuant to this Agreement, provided, however, that no fractional share of Parent Common Stock will be issued in the Merger, but in lieu thereof, the holder of such warrant, who would otherwise be entitled to a fraction of a share of Parent Common Stock (after aggregating all fractional shares of Parent Common Stock to be received by such holder), shall be entitled to receive from Parent such holder's portion of the Fractional Share Amount (in the aggregate, all such amounts being less than or equal to the Fractional Share Cap). If the aggregate payments in lieu of fractional shares would otherwise exceed the Fractional Share Cap, the amount paid for each fractional share shall be reduced ratably such that the Fractional Share Cap is not exceeded. Without limiting the foregoing Sections 2.1(e) through 2.1(e), at the Effective Time, Parent shall assume no other Company Securities or Company Subsidiary Securities (if any) other than the Company Note (collectively, the "Other Company Securities"), and all such Other Company Securities shall automatically be cancelled and, for the avoidance of doubt, should any Other Company Security be exercised to acquire shares of Company Common Stock prior to the Effective Time (whether or not contingent upon the Closing), such Other Company Security shall not be subject to this Section 2.1(f), but shall instead be deemed shares of Company Common Stock and governed by Section 2.1(e).

(g) Adjustments. If, during the period between the date of this Agreement and the Effective Time, the outstanding shares of Company Common Stock shall change into a different number of shares or a different class (including by reason of any reclassification, recapitalization, stock split or

combination, exchange or readjustment of shares, or stock dividend thereon with a record date during such period), the allocation of the Common Stock Consideration shall be appropriately adjusted.

(h) Company Actions. Prior to the Effective Time, the Company shall take such actions, if any, as are necessary to give effect to the transactions contemplated by this Section 2.1.

2.2 Cash Consideration for Shares of Company Preferred Stock.

Within one (1) Business Day following the Closing, the Parent shall pay, or cause the Surviving Corporation to pay the Preferred Cash Consideration to the Preferred Holder in accordance with the wire transfer instructions provided by the Preferred Holder two days prior to Closing, provided that the Articles of Merger effecting the transactions contemplated hereby shall not be filed with the Secretary of State of Florida until the Preferred Holder shall have received a federal reference number from Parent evidencing the wire transfer of the Preferred Cash Consideration in accordance with the wire transfer instructions provided by such Preferred Holder.

2.3 Disposition of Certificates and Book-Entry Shares.

(a) Deposits to Exchange Agent and the Company. Prior to the Effective Time, Parent shall appoint a bank or trust company (reasonably acceptable to the Company) to act as Exchange Agent (the "Exchange Agent") and enter into an agreement with the Exchange Agent (the "Exchange Agent Agreement") for the payment of the Common Stock Consideration and the Fractional Share Consideration in exchange for all Certificates or Book-Entry Shares representing all shares of Company Common Stock. At the Effective Time, Parent shall deposit with the Exchange Agent, for the benefit of the holders of shares of Company Common Stock, for payment in accordance with Section 2.1, the Common Stock Consideration and the Fractional Share Consideration, (collectively, the "Payment Fund") in exchange for all Certificates or Book-Entry Shares representing all shares of Company Common Stock. The Exchange Agent shall make payments out of the Payment Fund in accordance with this Agreement and the Exchange Agent Agreement, and shall not be used for any other purpose.

(b) Stock Transfer Books. At the Effective Time, the stock transfer books of the Company shall be closed and thereafter there shall be no further registration of transfers of the Company Common Stock or Company Preferred Stock on the records of the Company. From and after the Effective Time, the holders of Certificates and Book-Entry Shares representing ownership of the Company Common Stock outstanding immediately prior to the Effective Time shall cease to have rights with respect to such Company Common Stock, except as otherwise provided for herein. On or after the Effective Time, any Certificates or Book-Entry Shares presented to the Exchange Agent or Parent for any reason (other than Certificates or Book-Entry Shares representing Excluded Shares and Dissenting Shares) shall be converted into the right to receive the Common Stock Consideration or Fractional Share Consideration, as applicable.

(c) As soon as practicable after the Effective Time (but not more than three (3) Business Days thereafter), Parent and the Surviving Corporation shall cause the Exchange Agent to mail to each holder of record of a Certificate or Certificates or Book-Entry Shares that immediately prior to the Effective Time represented outstanding shares of Company Common Stock (other than Excluded Shares and Dissenting Shares) (I) a Letter of Transmittal, in a form reasonably satisfactory to the parties hereto (a "Letter of Transmittal"), which shall specify that delivery shall be effected, and risk of loss and title to the Certificates or Book-Entry Shares shall pass to the Exchange Agent, only upon proper delivery of the Certificates or Book-Entry Shares to the Exchange Agent, and which letter shall be in such form and have such other provisions as Parent may reasonably specify and (II) instructions for use in effecting the surrender of the Certificates or Book-Entry Shares in exchange for the applicable Merger Consideration to which the holder thereof is entitled. Upon surrender of any Certificate or Book-Entry Shares for cancellation to the Exchange Agent or to such

other agent or agents reasonably satisfactory to the Company as may be appointed by Parent, together with such Letter of Transmittal, duly executed and completed in accordance with the instructions thereto, and such other documents as may reasonably be required by the Exchange Agent, the holder of such Certificate or Book-Entry Shares shall be entitled to receive in exchange therefor the amount of Parent Common Stock and cash in an amount equal to the Fractional Share Amount (if applicable) in respect of the shares of Company Common Stock previously represented by such Certificate or Book-Entry Shares pursuant to the provisions of this Article II, and the Certificate or Book-Entry Shares so surrendered shall forthwith be canceled. In the event of a transfer of ownership of Company Common Stock that is not registered in the transfer records of the Company, payment may be made to a Person other than the Person in whose name the Certificate so surrendered is registered, if such Certificate shall be properly endorsed or otherwise be in proper form for transfer (or an "agent's message" or such other evidence, if any, of transfer as the Exchange Agent may reasonably request with respect to Book-Entry Shares) and the Person requesting such payment shall pay to the Exchange Agent any transfer or other Taxes required by reason of the payment to a Person other than the registered holder of such Certificate or Book-Entry Shares or establish to the satisfaction of Parent that such Tax has been paid or is not applicable.

(d) Termination of Payment Fund. Any portion of the Payment Fund which remains undistributed for twelve (12) months after the Effective Time shall be delivered to Parent, upon demand, and any holders of shares of Company Common Stock prior to the Effective Time who have not theretofore complied with this Article II shall thereafter look only to Parent and only as general creditors thereof for payment of the Common Stock Consideration and Fractional Shares Consideration, as applicable. Notwithstanding the foregoing, Parent shall not be liable to any holder of shares of Company Common Stock for any amounts paid to a public official pursuant to applicable abandoned property, escheat or similar laws. Any amounts remaining unclaimed by holders of shares of Company Common Stock two years after the Effective Time (or such earlier date, immediately prior to such time when the amounts would otherwise escheat to or become property of any Governmental Entity) shall become, to the extent permitted by applicable Law, the property of Parent free and clear of any claims or interest of any Person previously entitled thereto.

(e) No Liability. None of Parent, Merger Sub, the Surviving Corporation, the Company or the Exchange Agent, or any employee, officer, director, agent or Affiliate thereof, shall be liable to any Person in respect of the Common Stock Consideration or Fractional Share Consideration, as applicable, from the Payment Fund delivered to a public official pursuant to any applicable abandoned property, escheat or similar Law.

(f) Lost Certificates. If any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the Person claiming such Certificate to be lost, stolen or destroyed, and, if required by Parent, the posting by such Person of a bond in such amount as the Surviving Corporation may reasonably require, as indemnity against any claim that may be made against it with respect to such Certificate, the Exchange Agent will issue in exchange for such lost, stolen or destroyed Certificate, the Merger Consideration payable in respect thereof, pursuant to this Agreement.

(h) All Merger Consideration paid upon the surrender of Certificates or transfer of Book-Entry Shares in accordance with the terms hereof shall be deemed to have been paid in full satisfaction of all rights pertaining to the shares of Company Stock and Company Preferred Stock formerly represented by such Certificate or Book-Entry Shares. After the Effective Time, there shall be no further registration of transfers of shares of Company Stock. If, after the Effective Time, Certificates or Book-Entry Shares are presented to the Surviving Corporation or the Exchange Agent, they shall be canceled and exchanged for the Merger Consideration provided for, and in accordance with, the procedures set forth in this Article II.

2.4 Withholding Rights. Notwithstanding any provisions contained herein to the contrary each of the Surviving Corporation, Parent or the Exchange Agent, as applicable, shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement to any Person such amounts as

it is required to deduct and withhold with respect to the making of such payment under the Internal Revenue Code of 1986, as amended (the "Code"), and the rules and regulations promulgated thereunder, or any provision of state, local or foreign Law relating to Taxes. To the extent that amounts are so withheld by the Surviving Corporation, Parent or the Exchange Agent, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding was made by the Surviving Corporation, Parent or the Exchange Agent.

2.5 Appraisal Rights. Notwithstanding anything in this Agreement to the contrary, shares of Company Common Stock outstanding immediately prior to the Effective Time and held by a holder who has not voted in favor of adoption of this Agreement or consented thereto in writing and who has properly exercised appraisal rights of such shares under Section 607.1302 et seq. of the FBCA (the "Appraisal Rights", and such shares referred to collectively as the "Dissenting Shares" until such time as such holder fails to perfect or otherwise loses such holder's Appraisal Rights) shall not be converted into the right to receive the Common Stock Consideration or Fractional Share Consideration, as applicable. Such holders shall be entitled to receive such consideration as is determined to be due with respect to such Dissenting Shares in accordance with the FBCA; provided, however, that if any such holder shall fail to perfect or otherwise shall waive, withdraw or lose the right to appraisal under the Appraisal Rights, then the right of such holder to be paid such consideration as is determined to be due pursuant to Section 607.1302 et seq. of the FBCA shall cease and such Dissenting Shares shall be deemed to have been converted as of the Effective Time into, and to have become exchangeable solely for the right to receive, the applicable Common Stock Consideration or Fractional Share Consideration, without interest. The Company shall provide Parent (a) prompt written notice of any demands received by the Company for appraisal of shares of Company Stock, any withdrawal of any such demand and any other demand, notice, instrument delivered to the Company prior to the Effective Time pursuant to the FBCA that relate to such demand, and (b) Parent shall have the opportunity and right to direct all negotiations and proceedings with respect to such demands and the exercise of Appraisal Rights under applicable Law. Except with the prior written consent of Parent, or to the extent required by applicable Law, the Company shall not take any action with respect to such demands (including making any payment with respect to, or offering to settle or settling or approving any withdrawal of, any such demands).

2.6 Tax and Accounting Consequences.

The parties hereby adopt this Agreement as a "plan of reorganization" under Treasury Regulations Section 1.368-2(g) and 1.368-3(a). The parties intend for the transactions contemplated under this Agreement will qualify as a tax-free reorganization within the meaning of Sections 368(a)(1)(A) and 368(a)(2)(E) of the Code. Each party has consulted with its own tax advisors and accountants with respect to the tax and accounting consequences, respectively, of the Merger. Parent and the Company shall cooperate in causing the Merger to qualify as a tax-free reorganization under Code Section 368(a) and shall treat the Merger as such a reorganization for all Tax purposes, including the reporting of the Merger as qualifying as such a reorganization on all relevant federal, state, local and foreign Tax Returns. The parties covenant and agree that they each shall not take any action that reasonably could be expected to jeopardize the treatment of the Merger as a reorganization within the meaning of Sections 368(a)(1)(A) and 368(a)(2)(E) of the Code, and the parties shall not take any position on any Tax Return or in any proceeding relating to the Tax consequences of the Merger inconsistent with this Section 2.7. Parent and the Company each agree that in the event such party becomes aware of any such fact or circumstance that is reasonably likely to prevent the Merger from qualifying as a reorganization described in section 368(a) of the Code, it will promptly notify the other party in writing.

ARTICLE III

Representations and Warranties of the Company

The Company represents and warrants to Parent and Merger Sub that, except as disclosed in the disclosure schedule delivered at or prior to the execution hereof to Parent and Merger Sub (the "Company

Disclosure Schedule”) or in any Company SEC Report filed after January 1, 2011 and before the date of this Agreement, the following statements are true and correct.

3.1 Existence; Good Standing; Authority; Compliance with Law.

(a) The Company is a corporation duly formed, validly existing and in good standing under the laws of the State of Florida. The Company is duly qualified or licensed to do business as a foreign corporation and is in good standing under the laws of any other jurisdiction in which the character of the properties owned, leased or operated by it therein or in which the transaction of its business makes such qualification or licensing necessary, except where the failure to be so qualified or licensed would not, individually or in the aggregate, have a Company Material Adverse Effect. The Company has all requisite corporate power and authority to own, operate, lease and encumber its properties and carry on its business as now conducted, except where the failure to have such power or authority would not, individually or in the aggregate, have a Company Material Adverse Effect.

(b) Each of the entities listed in Section 3.1(b) of the Company Disclosure Schedule (each, a “Company Subsidiary”, and collectively, the “Company Subsidiaries”) is a corporation, limited liability company or other entity duly incorporated or organized, validly existing and (where applicable) in good standing under the laws of its jurisdiction of incorporation or organization. All issued and outstanding shares or other equity interests of each Company Subsidiary are duly authorized, validly issued, fully paid and nonassessable. Section 3.1(b) of the Company Disclosure Schedule sets forth the name and jurisdiction of incorporation or organization of each Company Subsidiary. Each Company Subsidiary is duly qualified or licensed to do business and is in good standing in each jurisdiction in which the ownership of its property or the conduct of its business requires such qualification or licensing, except for jurisdictions in which such failure to be so qualified, licensed or to be in good standing would not, individually or in the aggregate, have a Company Material Adverse Effect. Each Company Subsidiary has all requisite power and authority to own, operate, lease and encumber its properties and carry on its business as now conducted. The Company has no Subsidiaries other than the Company Subsidiaries.

(c) The Company and each Company Subsidiary is, and since January 1, 2009 has been, in compliance with, and to the Company’s Knowledge, is not under any investigation with respect to and has not been threatened to be charged with or given notice of any violation of, any applicable Law (other than applicable continued listing rules of NYSE Amex Equities), except for failure to comply or violations that would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. Neither the Company nor any of the Company Subsidiaries is in violation of any order of any court, governmental authority or arbitration board or tribunal, or has received any written notice that the Company or any of the Company Subsidiaries is in violation of any Law to which the Company or any Company Subsidiary or any of their respective properties or assets is subject, where such violation, alone or together with all other violations, would have a Company Material Adverse Effect. The Company and the Company Subsidiaries have obtained all licenses, permits and other authorizations and have taken all actions required by applicable Law or governmental regulations in connection with their businesses as now conducted, except where the failure to obtain any such license, permit or authorization or to take any such action, alone or together with all other such failures, would not have a Company Material Adverse Effect.

(d) The Company has previously provided or made available to Parent true and complete copies of the articles of incorporation and bylaws and the other charter documents, articles of incorporation, bylaws, organizational documents and partnership, limited liability company and joint venture agreements (and in each such case, all amendments thereto) of the Company and each of the Company Subsidiaries as in effect on the date of this Agreement.

3.2 Authorization, Takeover Laws, Validity and Effect of Agreements.

(a) The Company has all requisite corporate power and authority to execute and deliver this Agreement and, subject to obtaining the Company Stockholder Approval, to consummate the transactions

contemplated hereby and perform its obligations hereunder. Subject to obtaining the Company Stockholder Approval, The execution, delivery and performance by the Company of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on behalf of the Company. In connection with the foregoing, the Company Board has taken such actions and votes as are necessary on its part to render the provisions of any "fair price," "moratorium," "control share acquisition" or any other anti-takeover statute or similar federal or state statute inapplicable to this Agreement and the Transaction. This Agreement, assuming due and valid authorization, execution and delivery hereof by Parent and Merger Sub, constitutes a valid and legally binding obligation of the Company, enforceable against the Company in accordance with its terms, subject to applicable bankruptcy, insolvency, moratorium or other similar laws relating to creditors' rights and general principles of equity, whether considered in a proceeding at law or in equity.

(b) The Company Board, at a meeting duly called and held (i) determined that this Agreement and the Transaction are fair to and in the best interests of the Company's stockholders, (ii) approved, adopted and declared advisable this Agreement and the Transaction and (iii) resolved, subject to Section 6.5, to recommend approval and adoption of this Agreement by its stockholders (collectively, the "Company Recommendation").

(c) The affirmative vote or consent of Company Stockholders holding at least a majority of the outstanding shares of Company Stock, voting together in a single class, plus the affirmative vote or consent of holders of at least 75% of the outstanding shares of Company Preferred Stock, are the only votes of the holders of any class or series of Company Stock necessary to approve and adopt this Agreement and approve the Merger (such affirmative vote, whether at a meeting of Company Stockholders, however called, or in connection with any written consent of Company Stockholders, shall herein be referred to as the "Company Stockholder Approval").

3.3 Capitalization.

(a) The authorized capital stock of the Company consists of 125,000,000 shares of Company Common Stock and 5,000,000 shares of Company Preferred Stock, of which 3,000,000 shares of Company Preferred Stock are designated as Series C Preferred Stock. As of February 15, 2012 (i) 26,003,009 shares of Company Common Stock were issued and outstanding, (ii) 3,000,000 shares of Company Preferred Stock were issued and outstanding, (iii) 901,250 shares of Company Common Stock (subject to adjustment on the terms set forth in the Company Equity Incentive Plans) were authorized and reserved for issuance upon exercise of Company Stock Options outstanding and held by employees and members of the Company's and Company Subsidiaries' board of directors under the Company Equity Incentive Plans, 737,187 of which were vested, (iv) 2,083,333 shares of Company Common Stock were reserved for issuance upon exercise of the Company Warrants; and (v) 3,281,250 shares of Company Common Stock were reserved for conversion of the Company Convertible Notes. As of the date of this Agreement, the Company had no shares of Company Common Stock or Company Preferred Stock issued or reserved for issuance other than as described above. All such issued and outstanding shares of capital stock of the Company are, and all shares that may be issued pursuant to any Company Incentive Equity Plan or similar arrangement will be, when issued in accordance with the respective terms thereof, duly authorized, validly issued, fully paid, nonassessable and free of preemptive rights, and have been issued in compliance with all applicable U.S. securities laws (other than notice filings required in connection with securities issued in transactions exempt from registration pursuant to Regulation D or Rule 701 of the Securities Act).

(b) Other than the Company Convertible Notes, the Company has no outstanding bonds, debentures or notes the holders of which have the right to vote (or which are convertible into or exercisable for securities having the right to vote) with the stockholders of the Company on any matter.

(c) Section 3.3(c) of the Company Disclosure Schedule sets forth a true, complete and correct list of Company Warrants and Company Stock Options, including the name of the Persons to whom such Company Stock Options, and Company Warrants have been granted, the number of shares subject to each

Company Stock Option and Company Warrant, the per share exercise price for each Company Stock Option and Company Warrant, and the portion of each Company Stock Option and Company Warrant that is currently exercisable. Except for the Company Stock Options (all of which have been issued under the Company Equity Incentive Plans), the Company Warrants, or as set forth on Section 3.3(c) of the Company Disclosure Schedule, as of the date of this Agreement, there are no existing options, warrants, calls, subscriptions, convertible securities, or other rights, agreements or commitments which obligate the Company or any Company Subsidiary to issue, transfer or sell any shares of capital stock of the Company.

(d) Section 3.3(d) of the Company Disclosure Schedule sets forth a true, complete and correct list of the unvested stock awards outstanding under the Company Equity Incentive Plans, including the name of the Person to whom such unvested stock awards have been granted and the number of shares subject thereto. Neither the Company nor any Company Subsidiary has issued any "phantom" stock, stock appreciation rights, performance units, contingent value rights or similar securities or rights that are derivative of, or provide economic benefits based, directly or indirectly, on the value or price of, any capital stock of or voting securities of the Company or any Company Subsidiary.

(e) There are no agreements or understandings to which the Company or any Company Subsidiary is a party with respect to the voting of any shares, and, to the Company's Knowledge there are no third party agreements or understandings with respect to the voting of any such shares or which restrict the transfer of any such shares.

(f) Except as set forth on Section 3.3(f) of the Company Disclosure Schedule or as specifically contemplated by this Agreement, there are no outstanding contractual obligations of the Company or any Company Subsidiary to repurchase, redeem or otherwise acquire any shares of capital stock, partnership interests or any other securities of the Company or any Company Subsidiary (other than in satisfaction of withholding tax obligations pursuant to certain awards outstanding under the Company Equity Incentive Plans in the event the grantees fail to satisfy withholding tax obligations).

3.4 Subsidiaries. Except as set forth on Section 3.4 of the Company Disclosure Schedule, all issued and outstanding shares or other equity interests of each Company Subsidiary are owned directly or indirectly by the Company free and clear of all liens, pledges, security interests, claims, or other encumbrances on title (including any restriction on the right to vote, sell or otherwise dispose of such shares or other equity interests) ("Encumbrances").

3.5 Other Interests. Section 3.5 of the Company Disclosure Schedule sets forth all interests and investments (whether equity or debt) in any Person owned directly or indirectly by the Company or any Company Subsidiary, other than investments in short-term investment securities, equity interests in Company Subsidiaries and intercompany receivables owing by and to wholly owned Company Subsidiaries or by wholly owned Company Subsidiaries to the Company.

3.6 Consents and Approvals; No Violations. Assuming receipt of the Company Stockholder Approval and adoption of this Agreement by Parent, as the sole stockholder of Merger Sub, and except for (a) filings, permits, authorizations, consents and approvals as may be required under, and other applicable requirements of, (i) the Exchange Act, the Securities Act and any other applicable federal securities, takeover, state securities or state "blue sky" laws, and (ii) compliance with any applicable requirements of OTC QB Markets or Nasdaq, (b) the filing of the Articles of Merger with the Secretary of State of Florida and appropriate documents with the relevant authorities of other states in which the Company is qualified to do business, (c) as contemplated in Section 6.3, or (d) those items set forth in Section 3.6 of the Company Disclosure Schedule, none of the execution, delivery or performance of this Agreement by the Company, the consummation by the Company of the Transaction or compliance by the Company with any of the provisions hereof will (A) conflict with or result in any breach of any provision of the organizational documents of the Company or any Company Subsidiary, (B) require any filing by the Company with, notice to, or permit, authorization, consent or approval of, any transnational, domestic or foreign federal, state or local

governmental, regulatory or administrative authority, department, court, agency or official, including any political subdivision thereof (each, a "Governmental Entity"), (C) result in a violation or breach by the Company of, or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, cancellation or acceleration) under, any of the terms, conditions or provisions of any Material Contract or any license, franchise, permit, certificate, approval or other similar authorization affecting or relating in any way to, the assets or business of the Company or any Company Subsidiary to which the Company or any Company Subsidiary is a party or by which it or any of its respective properties or assets may be bound, (D) violate any federal, state, local or foreign law (statutory, common or otherwise), constitution, treaty, convention, ordinance, code rule, regulation, injunction, judgment, decree, ruling or other similar requirement enacted, adopted, promulgated or applied by a Governmental Entity that is binding on or applicable to the Company or any Company Subsidiary or any of its properties or assets (collectively, "Law" or "Laws"), or (E) result in the creation or imposition of any Encumbrance on any asset of the Company or any Company Subsidiary, excluding from the foregoing clauses (B), (C), (D) and (E) such filings, notices, permits, authorizations, consents, approvals, violations, breaches or defaults which would not, individually or in the aggregate, (I) prevent or materially delay consummation of the Merger, (II) otherwise prevent or materially delay performance by the Company of its material obligations under this Agreement or (III) have a Company Material Adverse Effect.

3.7 SEC Reports.

(a) The Company has filed with or furnished to the SEC all reports, schedules, forms, statements, prospectuses, registration statements and other documents required to be filed or furnished by the Company since January 1, 2009 (together with any exhibits and schedules thereto or incorporated by reference therein and other information incorporated therein, an "SEC Report", and collectively, the "Company SEC Reports"), all of which were prepared in all material respects in accordance with the applicable requirements of the Exchange Act, the Securities Act and the rules and regulations promulgated thereunder (the "Securities Laws"). As of their respective dates (or, if amended prior to the date of this Agreement, as of the respective dates of such amendments), the Company SEC Reports (i) complied, and each Company SEC Report filed subsequent to the date hereof will comply, as to form in all material respects with the applicable requirements of the Securities Laws and (ii) did not, and each Company SEC Report filed subsequent to the date hereof will not, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements made therein, in the light of the circumstances under which they were made, not misleading. Except as set forth in Section 3.7 of the Company Disclosure Schedule, each of the consolidated balance sheets included in or incorporated by reference into the Company SEC Reports (including the related notes and schedules) fairly presents in all material respects the consolidated financial position of the Company and the Company Subsidiaries as of its date and each of the consolidated statements of income, retained earnings and cash flows of the Company included in or incorporated by reference into the Company SEC Reports (including any related notes and schedules) fairly presents in all material respects the results of operations, retained earnings or cash flows, as the case may be, of the Company and the Company Subsidiaries for the periods set forth therein, in each case in accordance with GAAP consistently applied during the periods involved, except as may be noted therein and except, in the case of the unaudited statements, as permitted by Form 10-Q pursuant to Sections 13 or 15(d) of the Exchange Act and for normal year-end audit adjustments which would not be material in amount or effect.

(b) Except as set forth in Section 3.7 of the Company Disclosure Schedule, the Company has established and maintains disclosure controls and procedures (as defined in Rule 13a-15 under the Exchange Act).

(c) Except as set forth in Section 3.7 of the Company Disclosure Schedule, the Company has established and maintains a system of "internal control over financial reporting" (as defined in Rule 13a-15 under the Exchange Act).

(d) There are no outstanding loans or other extensions of credit made by the Company or any of the Company Subsidiaries to any executive officer (as defined in Rule 3b-7 under the Exchange Act) or director of the Company. The Company has not, since the enactment of the Sarbanes-Oxley Act, taken any action prohibited by Section 402 of the Sarbanes-Oxley Act.

(e) Except with respect to certain continued listing requirements of NYSE Amex Equities, since January 30, 2009, the Company has complied in all material respects with the applicable listing and corporate governance rules and regulations of NYSE Amex Equities and the OTC QB Market, as applicable.

(f) Each of the principal executive officer and principal financial officer of the Company (or each former principal executive officer and principal financial officer of the Company, as applicable) have made all certifications required by Rule 13a-14 and 15d-14 under the Exchange Act and Sections 302 and 906 of the Sarbanes-Oxley Act and any related rules and regulations promulgated by the SEC, NYSE Amex Equities, and the OTC QB Market, as applicable.

3.8 Litigation. Except as otherwise provided in Schedule 3.8 of the Company Disclosure Schedule, there is no suit, claim, action, proceeding or investigation pending or, to the Company's Knowledge, threatened against the Company or any of the Company Subsidiaries, or, to the Company's Knowledge, any present officer, director or employee of the Company or any Company Subsidiary (in each case, for whom the Company or any Company Subsidiary, or any of their respective properties may be obligated) and neither the Company nor any Company Subsidiary is subject to any outstanding order, writ, judgment, injunction or decree of any Governmental Entity, which would, individually or in the aggregate, (i) prevent or materially delay the consummation of the Merger, (ii) otherwise prevent or materially delay performance by the Company of any of its material obligations under this Agreement or (iii) have a Company Material Adverse Effect.

3.9 Absence of Certain Changes. From February 28, 2011 through the date hereof, except for actions leading to the execution of this Agreement or taken pursuant hereto, and except as set forth on Section 3.9 of the Company Disclosure Schedule, the Company and the Company Subsidiaries have conducted their businesses in the ordinary course of business consistent with past practice, and there has not been:

(a) a Company Material Adverse Effect or any event, occurrence or development or state of circumstances or facts that has had or would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect;

(b) any material change in the Company's accounting principles, practices or methods except insofar as may have been required by a change in GAAP;

(c) any declaration, setting aside or payment of any dividend or other distribution (whether in cash, stock or property or any combination thereof) with respect to any shares of capital stock of the Company, or any redemption, repurchase or other acquisition by the Company or any Company Subsidiary of any Company Securities or any Company Subsidiary Securities (other than in connection with the forfeiture or exercise of equity based awards, options and restricted stock in the Company or any Subsidiary in either case, in accordance with existing agreements or terms);

(d) any amendment of any material term of any Company Security or any Company Subsidiary Security (in each case, whether by merger, consolidation or otherwise);

(e) any creation, incurrence, assumption or guarantee by the Company or any Company Subsidiary of any Indebtedness for borrowed money other than in the ordinary course of business and in amounts and on terms consistent with past practices;

(f) any cancellation of any inbound licenses, inbound sublicenses, franchises, permits or inbound agreements to which the Company or any Company Subsidiary is a party, or any written notification to the Company or any Company Subsidiary that any party to any such arrangements intends to cancel or not renew such arrangements beyond their expiration date as in effect on the date hereof, which cancellation or notification has neither had nor could reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect;

(g) any damage, destruction or other casualty loss (whether or not covered by insurance) affecting the business or assets of the Company or any Company Subsidiary that has had or could reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect;

(h) (i) with respect to any director, officer or employee of the Company or any Company Subsidiary whose annual total compensation exceeds \$50,000, (A) any grant of any new or any increase of any severance or termination pay (or any amendment to any existing severance pay or termination arrangement) or (B) any entering into of any employment, deferred compensation or other similar agreement (or any amendment to any such existing agreement), (ii) any increase in benefits payable under any existing severance or termination pay policies, except as provided for in such policies, (iii) any establishment, adoption or amendment (except as required by applicable Law) to any collective bargaining, bonus, profit-sharing, thrift, pension, retirement, deferred compensation, stock option, restricted stock or other benefit plan or arrangement or (iv) any increase in compensation, bonus or other benefits payable to any director, officer or employee of the Company or any Company Subsidiary, except for increases in the ordinary course of business consistent with past practice; or

(i) any material Tax election made or changed, any material annual tax accounting period changed, any material method of tax accounting adopted or changed, any material amended Tax Returns or claims for Tax refunds filed, any material closing agreement entered into, any material Tax claim, audit or assessment settled, or any material right to claim a Tax refund, offset or other reduction in Tax liability surrendered.

3.10 Taxes. Each of the Company and the Company Subsidiaries (a) has timely filed (or had filed on their behalf) all Tax Returns required to be filed by any of them (after giving effect to any filing extension granted by a Governmental Entity) and (b) has paid (or had paid on their behalf) all Taxes shown on such Tax Returns as required to be paid by it, except, in each case, where the failure to file such Tax Returns or pay such Taxes would not, individually or in the aggregate, have a Company Material Adverse Effect. The most recent financial statements contained in the Company SEC Reports reflect, to the Company's Knowledge, an adequate reserve for all Taxes payable by the Company and the Company Subsidiaries for all Tax accounting periods and portions thereof through the date of such financial statements in accordance with GAAP, whether or not shown as being due on any Tax Returns. True, correct and complete (in all material respects) copies of all federal, state and local Tax Returns for the Company and each Company Subsidiary with respect to the Taxable years commencing on or after January 1, 2008 have been delivered or made available to representatives of Parent. To the Company's Knowledge, no deficiencies for any Taxes have been asserted or assessed in writing against the Company or any of the Company Subsidiaries as of the date of this Agreement, and no requests for waivers of the time to assess any such Taxes are pending.

3.11 Properties.

(a) Neither the Company nor any Company Subsidiary owns any real estate. Section 3.11 of the Company Disclosure Schedule sets forth a correct and complete list of each material lease pursuant to which the Company or any Company Subsidiary is a lessee (collectively, the "Leases"). The Company has made available to Parent correct and complete copies of all Leases, including all material amendments, modifications, supplements, renewals, extensions and guarantees related thereto, as of the date hereof. Neither the Company nor any Company Subsidiary, on the one hand, nor, to the Company's Knowledge, any other

party, on the other hand, is in monetary default under any Lease, except for defaults that would not have or would not reasonably be likely to have, individually or in the aggregate, a Company Material Adverse Effect.

(b) Except as set forth in Section 3.11(b) of the Company Disclosure Schedule, the Company and the Company Subsidiaries have good title to, or valid leasehold interests in, all property and assets reflected on the Company Balance Sheet, or acquired after the Company Balance Sheet Date, except as have been disposed of since the Company Balance Sheet Date in the ordinary course of business consistent with past practice, subject to no Encumbrances.

(c) To the Company's Knowledge, the tangible personal property and assets of the Company used in the Company's business as currently conducted are free from defects and in good operating condition and repair (subject to normal wear and tear).

3.12 Environmental Matters. Except as set forth in any environmental report set forth in Section 3.12 of the Company Disclosure Schedule, neither the Company nor any Company Subsidiary has received any written notice (a) of any administrative or judicial enforcement proceeding by any Governmental Entity pending, or to the Company's Knowledge threatened, against the Company or any Company Subsidiary under any Environmental Law or (b) that it is potentially responsible under any Environmental Law for costs of response or for damages to natural resources, as those terms are defined under the Environmental Laws, at any location; and, to the Company's Knowledge, there has not been any release on the real property leased by the Company or any Company Subsidiary of Hazardous Materials that would be reasonably likely to result in a requirement under any Environmental Laws to perform a response action or result in liability under the Environmental Laws that would have a Company Material Adverse Effect. Except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, the Company and each Company Subsidiary are, and since January 1, 2009 have been, in compliance with all Environmental Laws.

3.13 Employee Benefit Plans.

(a) Section 3.13(a) of the Company Disclosure Schedule sets forth a list of every employee benefit plan, within the meaning of ERISA Section 3(3), each loan to an employee and each plan or arrangement providing for insurance coverage (including any self-insured arrangements that are clearly identified as such, and any stop-loss insurance policies issued in connection with such self-insured arrangements), workers' compensation benefits, vacation and/or paid time off benefits, severance benefits, retention, disability benefits, death benefits, hospitalization benefits, medical benefits, dental benefits, vision care benefits, relocation benefits, cafeteria benefits, child-dependent care benefits, sabbatical, retirement benefits, non-qualified deferred compensation, pension, profit-sharing, stock bonus, bonuses, sales commission, stock options, stock purchase, phantom stock, stock appreciation or other forms of incentive compensation or post-retirement insurance, compensation or benefits for employees, consultants or directors that is currently in effect or which has been in effect at any time during or after 2003, and which is sponsored, maintained or contributed to by the Company or any ERISA Affiliate or which covers any current or former employee, consultant or director of the Company or any ERISA Affiliate (such plan, programs and arrangements, herein denominated the "Employee Programs"). With respect to each Employee Program that is intended to qualify under Section 401(a) of the Code, the Company or an ERISA Affiliate (i) has received a favorable advisory, determination, notification or opinion letter, as applicable, from the IRS that such Employee Program satisfied the requirements of all applicable Laws (a copy of which letter(s) have been delivered to Parent), and to the Company Knowledge, no event has occurred and no condition exists that would reasonably be expected to result in the loss of tax-qualified status of such Employee Program, (ii) has applied timely to the IRS for such letter or has a remaining period of time to apply for such letter, or (iii) relies on a favorable IRS opinion letter or advisory letter issued to the master and prototype or volume submitter plan sponsor of such Employee Program in accordance with IRS guidance for reliance on such opinion or advisory letters.

(b) With respect to each Employee Program, the Company has made available to Parent (if applicable to such Employee Program): (i) all material documents embodying or governing such Employee Program, and any funding medium for the Employee Program (including, without limitation, plan documents, adoption agreements, and amendments and restatements thereto executed since the inception of such Employee Program and any resolutions thereto executed in connection with such documents, trust agreements, financial statements, vendor contracts, employee booklets, and other authorizing documents, and any material employee communications relating thereto); (ii) the most recent IRS determination letter with respect to such Employee Program under Code Section 401(a); (iii) the most recently filed IRS Forms 5500 (including all attachments, schedules, financial statements and accountant' opinions attached thereto); (iv) the summary plan description for such Employee Program (or other descriptions of such Employee Program provided to employees) and all modifications thereto; and (v) any insurance policy related to such Employee Program.

(c) Each Employee Program has been administered, in all material respects, in accordance with the requirements of applicable Law, including, without limitation, ERISA and the Code, and is being administered and operated, in all material respects, in accordance with its terms. No Employee Program (i) is or has ever been subject to Title IV of ERISA or is or has ever been a multiemployer plan, within the meaning of ERISA Section 3(37), (ii) is or has ever been a multiple employer plan within the meaning of ERISA Section 413(c), (iii) is or has ever been a multiple employer welfare arrangement within the meaning of ERISA Section 3(40), or (iv) is or has ever been a funded welfare plan within the meaning of Section 419 of the Code, or is or has ever been funded through a voluntary employees' beneficiary association (within the meaning of Section 501(c)(9) of the Code) or a supplemental unemployment benefit plan (within the meaning of Section 501(c)(17) of the Code). Each Employee Program can be amended, terminated or otherwise discontinued at any time prior to the Effective Time in accordance with its terms, without liability to Parent and/or the Merger Sub (other than ordinary administrative expenses typically incurred in a termination event). No Employee Program will be subject to any surrender fees or services fees upon termination other than the normal and reasonable administrative fees associated with the termination of such type of Employee Program.

(d) Full payment has been made, or otherwise properly accrued on the books and records of the Company and any ERISA Affiliate, of all amounts that the Company and any ERISA Affiliate are required under the terms of the Employee Programs to have paid as contributions to such Employee Programs on or prior to the date hereof (excluding any amounts not yet due) and the contribution requirements, on a prorated basis, for the current year have been made or otherwise properly accrued on the books and records of the Company through the Effective Time.

(e) Neither the Company, an ERISA Affiliate or any Person appointed or otherwise designated to act on behalf of the Company, or an ERISA Affiliate, has engaged in any transactions in connection with any Employee Program that is reasonably expected to result in the imposition of a material penalty pursuant to Section 502(i) of ERISA, material damages pursuant to Section 409 of ERISA or a material Tax pursuant to Section 4975(a) of the Code. No Employee Program has engaged in any non-exempt prohibited transaction within the meaning of Section 406 of ERISA or Section 4975 of the Code.

(f) No liability, action, litigation or material claim has been made, commenced or, to the Company's Knowledge, threatened with respect to any Employee Program (other than for benefits payable in the ordinary course of business and proceedings with respect to qualified domestic relations orders). No suit, administrative proceeding, action or other litigation has been brought, or to the Company's Knowledge, has been threatened, against or with respect to any Employee Program, including any audit or inquiry by the IRS or United States Department of Labor.

(g) Except as set forth in Section 3.13(a) of the Company Disclosure Schedule, no Employee Program provides for medical benefits (other than under Section 4980B of the Code or pursuant to state health continuation laws) to any current or future retiree or former employee.

(h) To the Company's Knowledge, contributions due from the Company or any ERISA Affiliate with respect to any of the Employee Programs have been timely made under the terms of the applicable Employee Program, ERISA, the Code and any other applicable Law, or there is a period of time remaining for such contributions to be timely made.

(i) There has been no termination or partial termination of any Employee Program within the meaning of Section 411(d)(3) of the Code (other than as contemplated elsewhere under this Agreement).

(j) There is no Employee Program that would subject any individual to taxation under Section 409A of the Code. Any Employee Program that is subject to the requirements of Section 409A of the Code meets such requirements in both form and operation.

(k) Except as set forth in Section 3.13(k) of the Company Disclosure Schedule, the execution and delivery of this Agreement and the consummation of the Transaction (alone or in conjunction with any other event) will not (i) constitute a stated triggering event under any Employee Program that will result in any payment (whether of severance pay or otherwise) becoming due from the Company or any ERISA Affiliate to any current or former officer, employee, director or consultant (or dependents of such Persons), (ii) accelerate the time of payment or vesting, or increase the amount of compensation due to any current or former officer, employee, director or consultant (or dependents of such Persons) of the Company or any ERISA Affiliate, (iii) require the Company or any ERISA Affiliate to make a larger contribution to, or pay greater benefits or provide other rights under, any Employee Program than it would otherwise would, or (iv) create or give rise to any additional vested rights or service credits under any Employee Program.

(l) No payment to any individual with respect to the transaction contemplated by this Agreement would result in an excise tax being imposed under Section 4999 of the Code, and no payment made by the Company or any ERISA Affiliate to any employee or other provider of services would not be deductible by reason of Section 280G of the Code.

(m) Neither the Company nor any ERISA Affiliate has agreed or committed to institute any plan, program, arrangement or agreement for the benefit of employees or former employees of the Company other than the Employee Programs, or to make any amendments to any of the Employee Programs. The Company or an ERISA Affiliate has reserved all rights necessary to amend or terminate each of the Employee Programs without the consent of any other Person.

(n) Neither the Company nor any ERISA Affiliate of the Company is subject to any tax under Chapter 43 of the Code for any period prior to the Effective Time.

(o) With respect to each International Employee Program: (i) each International Employee Program is in compliance with the applicable provisions of the Laws regarding employee benefits, mandatory contributions and retirement plans of each jurisdiction in which each such International Employee Program is maintained, to the extent those Laws are applicable to such International Employee Program; (ii) each International Employee Program has been administered, at all times and in all material respects, in accordance with its terms; (iii) to the Company's Knowledge, there are no pending investigations by any Governmental Entity involving any International Employee Program, and there are no pending claims (except for claims for benefits payable in the normal operation of the International Employee Programs), suits or proceedings against any International Employee Program or asserting any rights or claims to benefits under any International Employee Program; and (iv) the Transaction will not, by itself or in conjunction with any other agreements, events or occurrences, create or otherwise result in any liability, accelerated payment or any enhanced benefits with respect to any International Employee Program.

3.14 Labor and Employment Matters.

(a) The Company and each Company Subsidiary has materially complied with all applicable Laws relating to labor and employment, including those relating to wages, hours, collective bargaining, unemployment compensation, worker's compensation, equal employment opportunity, age and disability discrimination, immigration control, employee classification, information privacy and security, payment and withholding of taxes and continuation coverage with respect to group health plans. Since July 1, 2011, there has not been, and as of the date of this Agreement there is not pending or, to the Company's Knowledge, threatened, any work stoppage or labor strike against the Company or any of the Company Subsidiaries by employees.

(b) Neither the Company nor any Company Subsidiary is a party to, or bound by, any collective bargaining agreement, contract or other agreement or understanding with a labor union or labor union organization, nor are there any negotiations or discussions currently pending or occurring between the Company, or any of the Company Subsidiaries, and any union or employee association regarding any collective bargaining agreement or any other work rules or policies. There is no unfair labor practice or labor arbitration proceeding pending or, to the Company's Knowledge, threatened against the Company or any of the Company Subsidiaries relating to their business. To the Company's Knowledge, there are no organizational efforts with respect to the formation of a collective bargaining unit presently being made or threatened involving employees of the Company or any of the Company Subsidiaries.

(c) There are no proceedings pending or, to the Company's Knowledge, threatened against the Company or any of the Company Subsidiaries in any forum by or on behalf of any present or former employee of the Company or any of the Company Subsidiaries, any applicant for employment or classes of the foregoing alleging breach of any express or implied employment contract, violation of any Law governing employment or the termination thereof, or any other discriminatory, wrongful or tortious conduct on the part of the Company or any of the Company Subsidiaries in connection with the employment relationship.

(d) Except as set forth in Section 3.14(d) of the Company Disclosure Schedule, as of the date of this Agreement the Company has paid in full to all employees, contractors and consultants all wages, salaries, commissions, bonuses, benefits and other compensation due to or on behalf of such employees, contractors and consultants. The Company is not liable for any payment to any trust or other fund or to any Governmental Entity 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 consistently with past practice).

(e) To the Company's knowledge, all employees of the Company are legally permitted to be employed by the Company in the jurisdiction in which such employee is employed in their current job capacities for the maximum period allowed under applicable Law. All independent contractors providing services to the Company have been properly classified as independent contractors for purposes of federal and applicable state tax Laws, Laws applicable to employee benefits and all other applicable Law.

3.15 No Brokers.

Except as set forth in Section 3.15 of the Company Disclosure Schedule, neither the Company nor any of the Company Subsidiaries has entered into any contract, arrangement or understanding with any Person or firm which may result in the obligation of such entity or Parent or Merger Sub to pay any finder's fees, brokerage or agent's commissions or other like payments in connection with the negotiations leading to this Agreement or consummation of the Merger.

3.16 Operations.

To the Knowledge of the Company, no attacks or unauthorized access to the Company's systems by hackers have inflated the number of page views or unique visitor sessions on the Company websites. Neither

the Company nor any of its Subsidiaries has taken, and to the Knowledge of the Company, no third party has taken, any steps to artificially inflate the number of page views and unique visitors for the Company websites.

3.17 Material Contracts.

(a) Section 3.17(a) of the Company Disclosure Schedule lists each Contract to which the Company or any Company Subsidiary is a party to or bound by, including:

(i) any employment agreement (A) not terminable at will or upon 30 days prior notice or (B) with an employee of the Company or any Company Subsidiary who performs services primarily outside of the United States; any severance agreement with any employee; or any non-compete agreement with or binding upon any employee;

(ii) any indenture, mortgage, note, installment obligation, agreement or other instrument relating to Indebtedness, in each case involving an aggregate principal amount of more than \$10,000;

(iii) any Contract to sell an asset or assets valued at \$10,000 or more individually or \$25,000 or more in the aggregate, other than such Contracts entered into in the ordinary course of business consistent with past practice;

(iv) any partnership agreement or joint venture agreement;

(v) any Contract (other than a customer Contract) that (A) has a remaining term, as of the date of this Agreement, of over one year in length, provides for annual payments to or from the Company or any of the Company Subsidiaries of \$10,000 or more and is not terminable within one year without an early termination fee; (B) provides for aggregate payments after the date hereof to or from the Company or any of the Company Subsidiaries of \$25,000 or more over the remaining term thereof; or (C) was not entered into in the ordinary course of business consistent with past practice;

(vi) any Contract relating to the assumption or guaranty of any Indebtedness or imposing an Encumbrance on any of the assets of the Company or any of the Company Subsidiaries;

(vii) any Contract containing covenants of the Company or any of the Company Subsidiaries (A) not to compete in any line of business or with any Person or in any geographical area or not to solicit or hire any person with respect to employment, or (B) to provide any "most favored nation" or similar provisions to any customers or potential customers or any class of customers (that is, required to give pricing to such customers or potential customers or classes of customers that is at least as good or more favorable to that offered to others for similar goods and/or services);

(viii) any Contract providing for the acquisition (by merger, purchase of stock or assets or otherwise) by the Company or any of the Company Subsidiaries of any operating business or all or substantially all of the assets or the capital stock of any other Person;

(ix) any Contract with any labor union or other representative of employees of the Company or any of the Company Subsidiaries;

(x) any Contract relating to any Person's rights to any Intellectual Property of the Company or any of the Company Subsidiaries (other than Contracts entered into in the ordinary course of business for commercially available "off the shelf" software licenses) and any Contract relating to the Company's or any of the Company Subsidiaries' licensing or acquisition of any Intellectual Property from any other Person;

(xi) any Contract providing for indemnification by the Company or any of the Company Subsidiaries of any Person, which indemnification obligation has a duration of more than one year;

(xii) any Contract that includes potential liability by the Company or any Company Subsidiary to any Person for other than (A) direct and actual damages not to exceed twelve months' fees paid under that Contract, or (B) any damages other than direct and actual damages, including, without limitation, consequential, punitive, special or indirect damages, or damages otherwise based on loss of profit, business interruption or diminution of value; or

(xiii) any customer Contract pursuant to which such customer is to pay the Company or any Company Subsidiary in excess of \$25,000 in any consecutive twelve month period.

The Contracts listed on Section 3.17 of the Company Disclosure Schedule are referred to herein as the "Material Contracts." The Company has made available to Parent true, correct and complete copies of all Material Contracts. Neither the Company nor any of the Company Subsidiaries has received any notice, and to the Company's Knowledge is not aware, that any Person intends to terminate or default under any Material Contract before the end of its stated term. Without limiting the generality of the foregoing, the Company and each of the Company Subsidiaries is and has at all times during the term of the relevant Contract been in compliance in all material respects with all service levels and other performance obligations set forth in any Contract to which it is a party. Except as disclosed in Section 3.17 of the Company Disclosure Schedule, neither the Company nor any of the Company Subsidiaries is party to any Contract with any Governmental Entity. Neither the Company nor any of the Company Subsidiaries is a party to any oral agreement that is or would reasonably be expected to be material to its relationship with any customer, vendor or employee of the business of the Company, or the performance or non-performance of which would reasonably be expected to have a Company Material Adverse Effect.

(b) Neither the Company nor any Company Subsidiary is in violation of or in default under any Material Contract to which it is a party or by which it or any of its properties or assets is bound (nor, to the Company's Knowledge, is any other party to a Material Contract in violation or in default thereunder), except for violations or defaults that would not, individually or in the aggregate, have a Company Material Adverse Effect, nor will the consummation of the Merger result in any third party having any right to terminate, amend, accelerate, cancel or deprive the Company of a benefit under any Material Contract, except for such rights that, if exercised, would not, individually or in the aggregate have a Company Material Adverse Effect. Except for breaches, violations or defaults that would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, each of the Material Contracts is valid and in full force and effect.

3.18 Insurance. The Company maintains insurance coverage with reputable insurers, or maintains self-insurance practices, in such amounts and covering such risks as are in accordance with normal industry practice for companies engaged in businesses similar to that of the Company and the Company Subsidiaries (taking into account the cost and availability of such insurance), except to the extent the failure to maintain such insurance would not have a Company Material Adverse Effect. There is no claim by the Company or any Company Subsidiary pending under any such policies which (a) has been denied or disputed by the insurer or (b) if not paid would have, individually or in the aggregate, a Company Material Adverse Effect. All such insurance policies are in full force and effect, all premiums due and payable thereon have been paid, and no written notice of cancellation or termination has been received by the Company with respect to any such policy which has not been replaced on substantially similar terms prior to the date of such cancellation.

3.19 Proxy Statement; Company Information. The information relating to the Company and the Company Subsidiaries to be contained in the Proxy Statement (or any amendment or supplement thereto) and any other documents filed with the SEC in connection herewith, will not, on the date the Joint Proxy Statement/Prospectus is first mailed to holders of the Company Common Stock and Company Preferred Stock, contain any untrue statement of any material fact, or omit to state any material fact required to be stated therein