XIRCOM INC
Form SC TO-C
January 17, 2001

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

SCHEDULE TO

(RULE 14d-100)

TENDER OFFER STATEMENT UNDER SECTION 14(d) (1) OR 13(e) (1)
OF THE SECURITIES EXCHANGE ACT OF 1934

Xircom, Inc.

(Name of Subject Company (Issuer))

ESR Acquisition Corporation,
a direct wholly-owned subsidiary of
Intel Corporation

(Names of Filing Persons (Identifying Status
as Offeror, Issuer or Other Person))

Common Stock, par value $0.001 per share

(Title of Class of Securities)

983922105

(CUSIP Number of Class of Securities)

F. Thomas Dunlap, Jr.
Vice President, General Counsel and Secretary
Intel Corporation
2200 Mission College Blvd.
Santa Clara, California 95052-8119
(408) 765-8080

Copy to:

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(Name, Address and Telephone Numbers of Person
Authorized to Receive Notices and Communications on Behalf of Filing Persons)

CALCULATION OF FILING FEE

Transaction Valuation*	Amount of Filing Fee*

*N/A

[ ] Check the box if any part of the fee is offset as provided by Rule 0-11(a) (2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: None. Filing Party: Not applicable.

Form or Registration No.: Not applicable. Date Filed: Not applicable.

[X] Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer:

Check the appropriate boxes below to designate any transactions to which the statement relates:

[X] third-party tender offer subject to Rule 14d-1.

[ ] issuer tender offer subject to Rule 13e-4.

[ ] going-private transaction subject to Rule 13e-3.

[ ] amendment to Schedule 13D under Rule 13d-2.

Check the following box if the filing is a final amendment reporting the results of the tender offer: [ ]

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Xircom, Inc. shareholders are advised to read the tender offer statement regarding the acquisition of Xircom which will be filed by Intel Corporation and ESR Acquisition Corporation with the SEC, and the related solicitation/recommendation statement which will be filed by Xircom with the SEC. The tender offer statement (including an offer to purchase, letter of transmittal and related tender offer documents) and the solicitation/recommendation statement will contain important information which should be read carefully before any decision is made with respect to the offer. These documents will be made available to all shareholders of Xircom at no expense to them. These documents also will be available at no charge at the SEC's web site, www.sec.gov.

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This filing may contain forward-looking statements based on current expectations or beliefs, as well as a number of assumptions about future events. These statements AND all other statements that may be made in this filing that are not historical facts, are subject to factors and uncertainties that could cause actual results to differ materially from those described in the forward-looking statements. The reader is cautioned not to put undue reliance on these forward-looking statements, which are not a guarantee of future performance and are subject to a number of uncertainties and other factors, many of which are outside the control of Intel and Xircom. The forward-looking statements in this filing address a variety of subjects including, for example, the expected date of closing of the acquisition and the potential benefits of the acquisition. The following factors, among others, could cause actual results to differ materially from those described in these forward-looking statements: the risk that Xircom's businesses will not be successfully integrated with Intel's business; costs associated with the acquisition; the successful completion of the acquisition; matters arising in connection with the parties' efforts to comply with applicable regulatory requirements relating to the transaction; increased competition and technological changes in the industries in which Intel and Xircom compete; impact of events outside the United States such as the business impact of fluctuating currency rates or unrest or political

instability in a locale; finally, current negative trends in global economic conditions make it particularly difficult at present to predict product demand and other related matters. For a detailed discussion of these and other cautionary statements, please refer to Intel's filings with the Securities and Exchange Commission, including the Annual Report on Form 10-K for the year ended December 25, 1999 for Intel.

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The following is a copy of the Agreement and Plan of Merger dated as of January 15, 2001 by and among Xircom, Inc., Intel Corporation and ESR Acquisition Corporation (the "Merger Agreement"). This filing modifies, supercedes and replaces any reference to, or discussion or summary of, the Merger Agreement and the Offer contemplated thereby contained in any previously filed communications.

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AGREEMENT AND PLAN OF MERGER

DATED AS OF JANUARY 15, 2001

BY AND AMONG

XIRCOM, INC.,

INTEL CORPORATION

AND

ESR ACQUISITION CORPORATION

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AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (this "Agreement"), dated as of January 15, 2001, is by and among Xircom, Inc., a California corporation (the "Company"), Intel Corporation, a Delaware corporation ("Parent"), and ESR Acquisition Corporation, a Delaware corporation and a direct wholly-owned subsidiary of Parent ("Acquisition"). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in Section 8.8 of this Agreement.

WHEREAS, the Boards of Directors of the Company, Parent and Acquisition have each (i) determined that the Merger (as defined below) is advisable and fair and in the best interests of their respective stockholders and (ii) approved the Merger upon the terms and subject to the conditions set forth in this Agreement;

WHEREAS, in furtherance thereof, it is proposed that Acquisition shall, promptly after the public announcement hereof, commence a tender offer (the "Offer") to acquire all of the outstanding shares (the "Shares") of common stock, par value $0.001 per share, of the Company (the "Company Common Stock"), at a price of Twenty-Five Dollars ($25.00) per Share, net to the seller in cash, without interest, less any required withholding taxes (such amount, or any greater amount per share paid pursuant to the Offer, being hereinafter referred to as the "Offer Price"), in accordance with the terms and subject to the conditions provided herein;

WHEREAS, concurrently with the execution and delivery of this Agreement and as a condition and inducement to Parent's willingness to enter into this Agreement, Parent and the Company have entered into a Stock Option Agreement, dated as of the date hereof, in the form attached hereto as Exhibit A (the "Stock Option Agreement"), pursuant to which the Company has granted to Parent an option to purchase shares of Company Common Stock under certain circumstances; and

WHEREAS, concurrently with the execution and delivery of this Agreement and as a condition and inducement to Parent's willingness to enter into this Agreement, certain shareholders of the Company have entered into a Tender and Voting Agreement, dated as of the date of this Agreement, in the form attached hereto as Exhibit B (the "Voting Agreement"), pursuant to which such shareholders have agreed to tender to Acquisition all Shares beneficially owned by such shareholders and to vote, if necessary, all voting securities of the Company beneficially owned by them in favor of approval and adoption of this Agreement and the Merger.

NOW, THEREFORE, in consideration of the foregoing premises and the representations, warranties, covenants and agreements herein contained, and intending to be legally bound hereby, the Company, Parent and Acquisition hereby agree as follows:

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ARTICLE 1
THE OFFER

SECTION 1.1. The Offer.

(a) Provided that this Agreement shall not have been terminated and subject to the terms hereof, within ten (10) business days after the public announcement of the execution hereof by the parties, Acquisition shall (and

Parent shall cause Acquisition to) commence (within the meaning of Rule 14d-2 under the Securities Exchange Act of 1934, as amended (the "Exchange Act")), the Offer for all of the Shares, at the Offer Price. The obligation of Acquisition to accept for payment and to pay for any Shares tendered (and the obligation of Parent to cause Acquisition to accept for payment and to pay for any Shares tendered) shall be subject only to (i) the condition that at least a majority of Shares on a fully-diluted basis (including for purposes of such calculation all Shares issuable upon exercise of all vested Company Stock Options (as defined in Section 2.11) and unvested Company Stock Options that vest (or upon consummation of the Offer will vest) prior to the Final Date (as defined in Section 7.1), but excluding any Shares held by the Company or any of its subsidiaries) be validly tendered and not withdrawn prior to the expiration of the Offer or otherwise already be beneficially owned by Parent or Acquisition (the "Minimum Condition"), and (ii) the satisfaction or the waiver by Acquisition of the other conditions set forth in Annex A. Acquisition expressly reserves the right to waive any such condition, to increase the Offer Price or to make any other changes in the terms and conditions of the Offer; provided, however, that unless previously approved by the Company in writing, no change may be made that (i) decreases the Offer Price, (ii) changes the form of consideration to be paid in the Offer, (iii) reduces the maximum number of Shares to be purchased in the Offer, (iv) imposes conditions to the Offer in addition to those set forth in Annex A, (v) amends the conditions set forth in Annex A to broaden the scope of such conditions, (vi) amends any other term of the Offer in a manner adverse to the holders of the Shares, (vii) extends the Offer except as provided in Section 1.1(b), or (viii) amends or waives the Minimum Condition. It is agreed that the conditions set forth in Annex A are for the sole benefit of Parent and Acquisition and may be waived by Parent and Acquisition, in whole or in part, at any time and from time to time, in their sole discretion, other than the Minimum Condition, as to which prior written approval of the Company is required. The failure by Parent and Acquisition at any time to exercise any of the foregoing rights shall not be deemed a waiver of any such right, and each such right shall be deemed an ongoing right that may be asserted at any time and from time to time. The Company agrees that no Shares held by the Company or any of its subsidiaries will be tendered in the Offer.

(b) Subject to the terms and conditions hereof, the Offer shall expire at midnight, New York City time, on the date that is twenty (20) business days after the date the Offer is commenced; provided, however, that without the consent of the Company's Board of Directors (the "Company Board"), Acquisition may (i) from time to time extend the Offer, if at the scheduled expiration date of the Offer any of the conditions to the Offer shall not have been satisfied or waived, until such time as such conditions are satisfied or

waived; (ii) extend the Offer for any period required by any rule, regulation, interpretation or position of the Securities and Exchange Commission (the "SEC") or the staff thereof applicable to the Offer; (iii) if the first purchase of Shares under the Offer shall not have occurred prior to March 31, 2001, extend the Offer to the later of April 10, 2001 and the date on which all conditions to the Offer have been satisfied; or (iv) extend the Offer for any reason on one or more occasions for an aggregate period of not more than ten (10) business days beyond the latest expiration date that would otherwise be permitted under clause (i), (ii) or (iii) of this sentence if on such expiration date there shall not have been tendered at least ninety percent (90%) of the outstanding Shares. Parent and Acquisition agree that, if any one or more of the conditions to the Offer set forth on Annex A are not satisfied and none of the events set forth in paragraphs (a) through (f) of Annex A that would permit Acquisition not to accept tendered Shares for payment has occurred and is continuing at the time of

any scheduled expiration date of the Offer, then, provided, that such conditions are reasonably capable of being satisfied, Acquisition shall extend the Offer from time to time unless any such condition is no longer reasonably capable of being satisfied or any such event has occurred; provided, however, that in no event shall Acquisition be required to extend the Offer beyond March 31, 2001 (provided that if on March 31, 2001 the condition set forth in clause (ii) of the first paragraph of Annex A hereto regarding the HSR Act (as defined in Section 3.6 below) is not satisfied and none of the events set forth in paragraphs (a) through (f) of Annex A that would permit Acquisition not to accept Shares tendered for payment has occurred and is continuing, such date shall be automatically extended to May 15, 2001). Acquisition may provide a "subsequent offering period" (as contemplated by Rule 14d-11 of the Exchange Act) of not less than three business days following its acceptance of and payment for the Shares in the Offer. Subject to the terms and conditions of the Offer and this Agreement, Acquisition shall (and Parent shall cause Acquisition to) accept for payment, and pay for, all Shares validly tendered and not withdrawn pursuant to the Offer that Acquisition becomes obligated to accept for payment and pay for pursuant to the Offer, as promptly as practicable after the expiration of the Offer.

(c) As soon as practicable on the date the Offer is commenced, Parent and Acquisition shall file with the SEC a Tender Offer Statement on Schedule TO (together with all amendments and supplements thereto, and including all exhibits thereto, the "Schedule TO") with respect to the Offer. The Schedule TO shall contain as an exhibit or incorporate by reference the Offer to Purchase (or portions thereof) and forms of the related letter of transmittal and summary advertisement. Parent and Acquisition agree that they shall cause the Schedule TO, the Offer to Purchase and all amendments or supplements thereto (which together constitute the "Offer Documents") to comply in all material respects with the Exchange Act and the rules and regulations thereunder and other Applicable Laws. Parent and Acquisition further agree that the Offer Documents, on the date first published, sent or given to the Company's shareholders, shall not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, except that no representation or warranty is made by Parent or Acquisition with respect to information supplied by the Company or

any of its shareholders in writing specifically for inclusion or incorporation by reference in the Offer Documents. The Company agrees that the information provided by the Company in writing specifically for inclusion or incorporation by reference in the Offer Documents shall not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. Each of Parent, Acquisition and the Company agrees promptly to correct any information provided by it for use in the Offer Documents if and to the extent that such information shall have become false or misleading in any material respect, and Parent and Acquisition further agree to take all steps necessary to cause the Schedule TO as so corrected to be filed with the SEC and the other Offer Documents as so corrected to be disseminated to the Company's shareholders, in each case as and to the extent required by applicable federal securities laws. The Company and its counsel shall be given reasonable opportunity to review and comment on the Offer Documents prior to the filing thereof with the SEC. Parent and Acquisition agree to provide in writing to the Company and its counsel any comments Parent, Acquisition or their counsel may receive from the SEC or its staff with respect to the Offer Documents promptly after receipt of such comments.

(d) Parent shall provide or cause to be provided to Acquisition all of the funds necessary to purchase any of the Shares that Acquisition becomes obligated to purchase pursuant to the Offer.

SECTION 1.2. Company Actions.

(a) The Company hereby approves of and consents to the Offer and represents that the Company Board, at a meeting duly called and held, has, subject to the terms and conditions set forth herein, (i) after evaluating the Merger, unanimously determined that this Agreement and the transactions contemplated hereby, including the Offer and the Merger, taken together, are at a price and on terms that are fair to and are otherwise in the best interests of the Company and its shareholders; (ii) unanimously approved this Agreement and the transactions contemplated hereby, including the Offer, the Merger and the Stock Option Agreement, in all respects; and (iii) unanimously resolved to recommend that the shareholders of the Company accept the Offer, tender their Shares thereunder to Acquisition and approve and adopt this Agreement and the Merger. To the extent that such recommendation is not withdrawn in accordance with Section 5.2(b) hereof, the Company consents to the inclusion of such recommendation and approval in the Offer Documents. The Company also represents that the Company has received the opinion of Broadview International, LLC, financial advisor to the Company Board (the "Company Financial Advisor"), that, as of January 14, 2001, the cash consideration to be received by the shareholders of the Company pursuant to the Offer and the Merger is fair to such shareholders from a financial point of view (the "Fairness Opinion"). The Company has been authorized by the Financial Advisor to permit, subject to the prior review and consent by the Financial Advisor and its counsel (such consent not to be unreasonably withheld), the inclusion of the Fairness Opinion (or a reference thereto) in the Offer Documents, the Schedule 14D-9 and the Proxy Statement.

(b) The Company shall file with the SEC, concurrently with the filing of the Schedule TO, a Solicitation/Recommendation Statement on Schedule 14D-9 (together with all amendments and supplements thereto, and including all exhibits thereto, the "Schedule 14D-9") containing the recommendations described in Section 1.2(a) and shall cause the Schedule 14D-9 to be mailed to the shareholders of the Company, together with the Offer Documents, as soon as practicable after the commencement of the Offer. The Company agrees that it shall cause the Schedule 14D-9 to comply in all material respects with the Exchange Act and the rules and regulations thereunder and other Applicable Law. The Company further agrees that the Schedule 14D-9, on the date first published, sent or given to the Company's shareholders, shall not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, except that no representation or warranty is made by the Company with respect to information supplied by Parent or Acquisition in writing specifically for inclusion or incorporation by reference in the Schedule 14D-9. Parent and Acquisition agree that the information provided by them specifically in writing for inclusion or incorporation by reference in the Schedule 14D-9 shall not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. Each of the Company, Parent and Acquisition agrees promptly to correct any information provided by it for use in the Schedule 14D-9 if and to the extent that such information shall have become false or misleading in any material respect, and

the Company further agrees to take all steps necessary to cause the Schedule 14D-9 as so corrected to be filed with the SEC and be disseminated to the Company's shareholders, in each case as and to the extent required by applicable federal securities laws. Parent and its counsel shall be given reasonable opportunity to review and comment on the Schedule 14D-9 prior to the filing thereof with the SEC. The Company agrees to provide in writing to Parent and its counsel any comments the Company or its counsel may receive from the SEC or its staff with respect to the Schedule 14D-9 promptly after receipt of such comments.

(c) In connection with the Offer, the Company shall, or shall cause its transfer agent, promptly following a request by Parent, to furnish Parent with such information, including updated lists of the shareholders of the Company, mailing labels and updated lists of security positions, and such assistance as Parent or its agents may reasonably request in communicating the Offer to the record and beneficial holders of Shares. Subject to the requirements of Applicable Law, and except for such steps as are necessary to disseminate the Offer Documents and any other documents necessary to consummate the Merger, Parent and Acquisition and their agents shall hold in confidence the information contained in any such labels, listings and files, will use such information only in connection with the Offer and the Merger and, if this Agreement shall be terminated, will destroy, and will use their reasonable efforts to cause their agents to destroy, all copies and any extracts or summaries from such information then in their possession or control.

(d) Solely in connection with the tender and purchase of Shares pursuant to the Offer and the consummation of the Merger, the Company hereby waives any and all rights of first refusal it may have with respect to Shares owned by, or issuable to, any person, other than rights to repurchase unvested shares, if any, that may be held by persons following exercise of Company Stock Options.

SECTION 1.3. Boards of Directors and Committees; Section 14(f) of Exchange Act.

(a) Promptly upon the purchase by Acquisition of Shares pursuant to the Offer and from time to time thereafter, if the Minimum Condition has been met, and subject to the second to last sentence of this Section 1.3(a), Parent shall be entitled to designate up to such number of directors, rounded up to the next whole number, on the Company Board as will give Parent representation on the Company Board equal to the product of the number of directors on the Company Board (giving effect to any increase in the number of directors pursuant to this Section 1.3) and the percentage that the number of Shares owned by Parent, Acquisition and their affiliates bears to the total number of outstanding Shares. The Company shall use its best efforts to, upon request by Parent, promptly, at the Company's election, either increase the size of the Company Board or secure the resignation of such number of directors as is necessary to enable Parent's designees to be elected or appointed to the Company Board and to cause Parent's designees to be so elected or appointed. At such times, and subject to the second to last sentence of this Section 1.3(a), the Company shall use its best efforts to cause the individuals designated by Parent to constitute the same percentage as such individuals represent on the Company Board of (i) each committee of the Company Board (other than any committee of the Company Board established to take action under this Agreement), (ii) each Board of Directors of each subsidiary of the Company (subject to Applicable Law and except to the extent described in Section 1.3(a) of the Company Disclosure Schedule) and (iii) each committee of each such Board of Directors.

Notwithstanding the foregoing, the Company shall use its best efforts to ensure that two of the members of the Company Board as of the date hereof and who are not officers of the Company or affiliates of Parent (the "Continuing Directors") shall remain members of such Board until the Effective Time (as defined below). If a Continuing Director resigns from the Company Board, Parent, Acquisition and the Company shall permit the remaining Continuing Director or Directors to appoint the resigning Director's successor who shall be deemed to be a Continuing Director.

(b) The Company's obligation to appoint designees to the Company Board shall be subject to Section 14(f) of the Exchange Act and Rule 14f-1 promulgated thereunder. The Company shall promptly take all action required pursuant to such Section and Rule in order to fulfill its obligations under this Section 1.3 and shall include in the Schedule 14D-9 such information with respect to the Company and its officers and directors as is required under such Section and Rule in order to fulfill its obligations under this Section 1.3. Parent shall supply to the Company in writing and be solely responsible

for any information with respect to itself and its nominees, officers, directors and affiliates required by such Section and Rule.

(c) Following the date of the election or appointment of Parent's designees to the Company Board pursuant to this Section 1.3 and prior to the Effective Time, if there shall be any Continuing Directors, (i) any amendment of this Agreement or any termination of this Agreement by the Company, (ii) any extension by the Company of the time for the performance of any of the obligations or other acts of Parent or Acquisition or any waiver of any of the Company's rights hereunder or (iii) any other determination with respect to any action to be taken or not to be taken by the Company relating to this Agreement, will require the concurrence of a majority of such Continuing Directors.

ARTICLE 2
THE MERGER

SECTION 2.1. The Merger. At the Effective Time and upon the terms and subject to the conditions of this Agreement and in accordance with the California Corporations Code ("CCC") and the Delaware General Corporation Law ("DGCL"), Acquisition shall be merged with and into the Company (the "Merger"). Following the Merger, the Company shall continue as the surviving corporation (the "Surviving Corporation") and the separate corporate existence of Acquisition shall cease. Parent, as the sole shareholder of Acquisition, hereby approves the Merger and this Agreement.

SECTION 2.2. Effective Time. Subject to the terms and conditions set forth in this Agreement, on the Closing Date (as defined in Section 2.3), (a) an Agreement of Merger (the "Agreement of Merger") pursuant to Section 1103 of the CCC or a Certificate of Ownership (the "Certificate of Ownership") pursuant to Section 1110 of the CCC, as applicable, shall be duly executed in accordance with the relevant provisions of the CCC and thereafter delivered to the Secretary of State of the State of California for filing, (b) a Certificate of Merger (the "Certificate of Merger") pursuant to Section 252 of the DGCL or a Certificate of Ownership and Merger (the "Certificate of Ownership and Merger") pursuant to Section 253 of the DGCL, as applicable, shall be duly executed in accordance with the relevant provisions of the DGCL and thereafter delivered to the Secretary of State of the State of Delaware for filing and (c) the parties shall make such other filings with the Secretary of State of the State of California and the Secretary of State of Delaware as shall be necessary to

effect the Merger. The Merger shall become effective at such time as a properly executed copy of the Agreement of Merger or the Certificate of Ownership is duly filed with the Secretary of State of the State of California in accordance with the CCC and the Certificate of Merger or the Certificate of Ownership and Merger is duly filed with the Secretary of State of the State of Delaware in accordance with the DGCL, or such later time as Parent and the Company may agree upon and as may be set forth in the Agreement of Merger or the Certificate of Ownership and the Certificate of Merger or the Certificate of Ownership and Merger (the time the Merger becomes effective being referred to herein as the "Effective Time").

SECTION 2.3. Closing of the Merger. The closing of the Merger (the "Closing") will take place at a time and on a date (the "Closing Date") to be specified by the parties, which shall be no later than the second business day after satisfaction (or waiver) of the latest to occur of the conditions set forth in Article 5 of this Agreement at the offices of Weil, Gotshal & Manges LLP, 2882 Sand Hill Road, Suite 280, Menlo Park, California 94025, unless another time, date or place is agreed to in writing by the parties hereto.

SECTION 2.4. Effects of the Merger. The Merger shall have the effects set forth in Section 1107 of the CCC and Section 259 of the DGCL. Without limiting the generality of the foregoing and subject thereto, at the Effective Time, all the properties, rights, privileges, powers and franchises of the Company and Acquisition shall vest in the Surviving Corporation, and all debts, liabilities and duties of the Company and Acquisition shall become the debts, liabilities and duties of the Surviving Corporation.

SECTION 2.5. Articles of Incorporation and Bylaws. The Articles of Incorporation of the Surviving Corporation shall be amended and restated to read the same as the Articles of Incorporation of Acquisition in effect at the Effective Time until amended in accordance with Applicable Law. The bylaws of the Surviving Corporation shall be amended and restated to read the same as the bylaws of Acquisition in effect at the Effective Time until amended in accordance with Applicable Law.

SECTION 2.6. Directors. The directors of Acquisition at the Effective Time shall be the initial directors of the Surviving Corporation, each to hold office in accordance with the Articles of Incorporation and bylaws of the Surviving Corporation until such director's successor is duly elected or appointed and qualified or until such director's earlier death, resignation or removal in accordance with the Articles of Incorporation and bylaws of the Surviving Corporation.

SECTION 2.7. Officers. The officers of Acquisition at the Effective Time shall be the initial officers of the Surviving Corporation, each to hold office in accordance with the Articles of Incorporation and bylaws of the Surviving Corporation until such officer's successor is duly elected or appointed and qualified or until such officer's earlier death, resignation or removal in accordance with the Articles of Incorporation and bylaws of the Surviving Corporation.

SECTION 2.8. Conversion of Shares.

(a) At the Effective Time, each Share issued and outstanding immediately prior to the Effective Time (other than (i) Shares held in the Company's treasury and (ii) Shares held by Parent, Acquisition or any other subsidiary of Parent) shall, by virtue of the Merger and without any action on

the part of Acquisition, the Company or the holder thereof, be converted into and shall become the right to receive an amount in cash equal to the Offer Price (the "Merger Consideration").

(b) At the Effective Time, each outstanding share of the common stock of Acquisition shall be converted into one share of common stock of the Surviving Corporation.

(c) At the Effective Time, each Share held in the treasury of the Company and each Share held by Parent, Acquisition or any subsidiary of Parent, Acquisition or the Company immediately prior to the Effective Time shall, by virtue of the Merger and without any action on the part of Acquisition, the Company or the holder thereof, be canceled, retired and cease to exist, and no Merger Consideration shall be delivered with respect thereto.

SECTION 2.9. Dissenters' Rights. Notwithstanding anything in this Agreement to the contrary, Shares that are issued and outstanding immediately prior to the Effective Time and which are held by shareholders who did not vote in favor of the Merger (the "Dissenting Shares"), which shareholders comply with all of the relevant provisions of Section 1300 of the CCC (the "Dissenting Shareholders"), to the extent the provisions of Section 1300 are applicable to the conversion of the Shares in the Merger, shall not be converted into or be exchangeable for the right to receive the Merger Consideration, unless and until such holders shall have failed to perfect or shall have effectively withdrawn or lost their rights to appraisal under Section 1300 of the CCC. If any Dissenting Shareholder shall have failed to perfect or shall have effectively withdrawn or lost such right, such holder's Shares shall thereupon be converted into and become exchangeable for the right to receive from the Surviving Corporation, as of the Effective Time, the Merger Consideration without any interest thereon. The Company shall give Parent (a) prompt notice of any written demands for appraisal of any Shares, attempted withdrawals of such demands and any other instruments served pursuant to the CCC and received by the Company relating to shareholders' rights of appraisal, and (b) the opportunity to direct all negotiations and proceedings with respect to demands for appraisal under the CCC. Neither the Company nor the Surviving Corporation shall, except with the prior written consent of Parent, voluntarily make any payment with respect to, or settle or offer to settle, any such demand for payment. If any Dissenting Shareholder shall fail to perfect or shall have effectively withdrawn or lost the right to dissent, the Shares held by such Dissenting Shareholder shall thereupon be treated as though such Shares had been converted into the right to receive the Merger Consideration pursuant to this Article 2.

SECTION 2.10. Exchange of Certificates.

(a) From time to time following the Effective Time, Parent shall deliver to its transfer agent, or a depository or trust institution of recognized standing selected by Parent and Acquisition and reasonably satisfactory to the Company (the "Exchange Agent"), for the benefit of the holders of Shares for exchange in accordance with this Article 2, an amount of cash equal to the aggregate Merger Consideration then payable

pursuant to Section 2.8 (such amount of cash is hereinafter referred to as the "Exchange Fund"), in exchange for outstanding Shares.

(b) Not later than two (2) business days after the Effective Time, the Exchange Agent shall mail to each holder of record of a certificate or certificates that immediately prior to the Effective Time represented outstanding Shares (the "Certificates") and whose shares were converted into the right to receive the Merger Consideration pursuant to Section 2.8: (i) a letter of transmittal (which shall specify that delivery shall be effected and risk of loss and title to the Certificates shall pass only upon delivery of the Certificates to the Exchange Agent and shall be in such form and have such other provisions as Parent and the Company may reasonably specify) and (ii) instructions for use in effecting the surrender of the Certificates in exchange for the Merger Consideration. Upon surrender of a Certificate for cancellation to the Exchange Agent together with such letter of transmittal duly executed, the holder of such Certificate shall be entitled to receive in exchange therefor a check representing the Merger Consideration that such holder has the right to receive pursuant to the provisions of this Article 2, and the Certificate so surrendered shall forthwith be canceled. In the event of a transfer of ownership of Shares that is not registered in the transfer records of the Company, a check representing the proper amount of Merger Consideration shall be issued to a transferee if the Certificate representing such Shares is presented to the Exchange Agent accompanied by all documents required to evidence and effect such transfer and by evidence that any applicable stock transfer taxes have been paid. Until surrendered as contemplated by this Section 2.10, each Certificate shall be deemed at any time after the Effective Time to represent only the right to receive upon such surrender the Merger Consideration as contemplated by this Section 2.10.

(c) In the event that any Certificate for Shares shall have been lost, stolen or destroyed, the Exchange Agent shall issue in exchange therefor, upon the making of an affidavit of that fact by the holder thereof, the Merger Consideration as may be required pursuant to this Agreement; provided, however, that Parent or the Exchange Agent may, in its discretion, require the delivery of a suitable bond or indemnity.

(d) Any portion of the Exchange Fund that remains undistributed to the shareholders of the Company upon the expiration of one hundred eighty (180) days after the Effective Time shall be delivered to Parent upon demand and any shareholders of the Company who have not theretofore complied with this Article 2 shall thereafter look only to Parent as general creditor for payment of their claim for the Merger Consideration.

(e) Parent and the Company shall, in accordance with Applicable Law, deliver any portion of the Exchange Fund to the appropriate public officials pursuant to any applicable abandoned property, escheat or similar Applicable Law, and neither Parent nor the Company shall be liable to any holder of Shares for any such amount from the Exchange Fund so delivered.

SECTION 2.11. Stock Options.

(a) The Company shall promptly, and in any event within two days after the date hereof, establish a separate interest-bearing banking account to hold any and all proceeds received by the Company on or after the date hereof in connection with the exercise of any Company Stock Options, including same-day sales (the "Option Account"). Any proceeds received by the Company in connection with the exercise of Company Stock Options on or after the date hereof shall be

placed in the Option Account. The Company shall maintain the Option Account and shall not withdraw any funds, including any interest, from the Option Account until the earlier of (i) the termination of this Agreement pursuant to Section 7.1 and (ii) the acceptance for payment of Shares by Acquisition pursuant to the Offer (provided, however, that the Company shall have delivered to Parent immediately prior to such acceptance of Shares by Acquisition a certificate, in a form reasonably acceptable to Parent, showing (x) the Company Stock Options that shall have been exercised between and including the date hereof and the date of such acceptance of Shares by Acquisition and (y) a detailed list of the deposits into and the then current balance of the Option Account).

(b) At the Effective Time, each outstanding option to purchase shares of Company Common Stock (a "Company Stock Option"), whether or not granted under the Company's 1992 Stock Option Plan, 1995 Stock Option Plan, 1997 Patent Award Stock Option Plan, Entrega Technologies, Inc. Stock Option Plan or 2000 Stock Option Plan (collectively, the "Stock Option Plans"), that is held by a person who was an employee of the Company on the date of grant, whether vested or unvested, will be assumed by Parent (collectively, the "Assumed Options"). The Company will cause each employee's agreement regarding his or her Company Stock Option to be amended, as applicable, effective immediately prior to the Effective Time, to terminate any provisions in such employee's agreement (other than provisions disclosed in Section 3.11(j) of the Company Disclosure Schedule) that accelerate vesting upon or following a change in control of the Company. All Company Stock Options that are not Assumed Options, and all warrants or other convertible securities to purchase shares of Company Common Stock, shall be canceled as of the Effective Time. Each Assumed Option shall continue to have, and be subject to, the same terms and conditions set forth in such option and, if applicable, in the relevant Stock Option Plan, immediately prior to the Effective Time, including provisions with respect to vesting (except as amended to terminate any acceleration of vesting provisions), except that (i) each Assumed Option will be exercisable for that number of whole shares of common stock, par value $0.001 per share, of Parent ("Parent Common Stock") equal to the product (rounded up to the nearest whole share) of the number of shares of Company Common Stock that were issuable upon exercise of such option immediately prior to the Effective Time multiplied by the Exchange Ratio (as defined below), and (ii) the per share exercise price under each such Assumed Option shall be adjusted by dividing the per share exercise price of each such Assumed Option by the Exchange Ratio, and rounding down to the nearest cent. In the case of any option to which Section 421 of the Internal Revenue Code of 1986, as

amended (the "Code") applies by reason of its qualification under Sections 422 through 424 of the Code, the option price, the number of shares purchasable pursuant to such option and the terms and conditions of exercise of such option shall be determined in order to comply with Section 424(a) of the Code. The duration and other terms of the Assumed Option shall be the same as the original option except that all references to the Company shall be deemed to be references to Parent. The terms of each Assumed Option shall, in accordance with its terms, be subject to further adjustment as appropriate to reflect any stock split, stock dividend, recapitalization or other similar transaction with respect to Parent Common Stock on or subsequent to the Effective Time. The "Exchange Ratio" shall be equal to the ratio obtained by dividing the Offer Price by the average (rounded to the nearest 1/10,000, or if there shall not be a nearest 1/10,000, to the next highest 1/10,000) of the volume weighted averages (rounded to the nearest 1/10,000, or if there shall not be a nearest 1/10,000, to the next highest 1/10,000) of the trading prices of the Parent Common Stock on the Nasdaq National Market ("Nasdaq") as reported by Bloomberg Financial Markets (or such other source as the parties shall agree in writing)

for each of the five consecutive trading days ending on and including the trading day immediately preceding the Effective Time.

(c) Parent shall take all corporate action necessary to reserve for issuance a sufficient number of shares of Parent Common Stock for delivery upon the exercise of the Assumed Options. Parent will use its reasonable efforts to file, no later than thirty (30) days following the Closing Date, a registration statement on Form S-8 (or any successor to Form S-8) so as to register the Parent Common Stock subject to the Assumed Options and shall use its reasonable efforts to effect such registration and to maintain the effectiveness of such registration statement (and the current status of the prospectus contained therein) for so long as such Assumed Options remain outstanding. Prior to the effectiveness of the S-8 registration statement, the Assumed Options shall not be exercisable.

(d) At or before the Effective Time, the Company shall cause to be effected, in a manner reasonably satisfactory to Parent, any amendments to the Stock Option Plans to give effect to the foregoing provisions of this Section 2.11.

SECTION 2.12. Withholding Taxes. Parent, Acquisition and the Surviving Corporation shall be entitled to deduct and withhold or cause the Exchange Agent to deduct and withhold from any amounts payable to a holder of Shares pursuant to the Offer or the Merger any withholding and stock transfer Taxes and such other amounts as are required under the Code, or any applicable provision of state, local or foreign Tax law. To the extent that amounts are so withheld such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the holder of Shares in respect of which such deduction and withholding was made.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company hereby represents and warrants to each of Parent and Acquisition, subject to the exceptions set forth in the Disclosure Schedule (the "Company Disclosure Schedule") delivered by the Company to Parent in accordance with Section 5.13 (which exceptions shall specifically identify a Section, Subsection or clause of a single Section or Subsection hereof, as applicable, to which such exception relates) that:

SECTION 3.1. Organization and Qualification; Subsidiaries; Investments.

(a) Section 3.1(a) of the Company Disclosure Schedule sets forth a true and complete list of all the Company's directly or indirectly owned subsidiaries and branch offices, together with the jurisdiction of incorporation or organization of each subsidiary and the percentage of each subsidiary's outstanding capital stock or other equity interests owned by the Company or another subsidiary of the Company. Each of the Company and its subsidiaries is duly organized, validly existing and, except as set forth in Section 3.1 of the Company Disclosure Schedule, in good standing under the laws of the jurisdiction of its incorporation or organization and has all requisite power and authority to own, lease and operate its properties and to carry on its businesses as now being conducted. The Company has heretofore delivered to Acquisition or Parent accurate and complete copies of the Articles of Incorporation and bylaws (or similar governing documents), as currently in full force and effect, of the Company and each of its subsidiaries. Section 3.1(a) of the Company Disclosure

Schedule specifically identifies each subsidiary of the Company that contains any material assets or through which the Company conducts any material operations. Except as set forth in Section 3.1(a) of the Company Disclosure Schedule, the Company has no operating subsidiaries other than those incorporated in a state of the United States.

(b) Except as set forth in Section 3.1(b) of the Company Disclosure Schedule, each of the Company and its subsidiaries is duly qualified or licensed and in good standing to do business in each jurisdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification or licensing necessary, except in such jurisdictions where the failure to be so duly qualified or licensed and in good standing would not, individually or in the aggregate, have a Material Adverse Effect on the Company. When used in connection with the Company or its subsidiaries, the term "Material Adverse Effect on the Company" means any circumstance, change in, or effect on the Company and its subsidiaries that is, or is reasonably likely in the future to be, materially adverse to:

(i) the assets, liabilities (including contingent liabilities), business, operations, condition (financial or otherwise), earnings or results of operations of the Company and its subsidiaries, taken as a whole, or

(ii) the Company's ability to consummate the Merger or any of the other transactions contemplated hereby or by any of the other agreements executed and delivered in connection herewith.

(c) Section 3.1(c) of the Company Disclosure Schedule sets forth a true and complete list of each equity investment made by the Company or any of its subsidiaries in any person other than the Company's subsidiaries ("Other Interests"). Except as described in Section 3.1(c) of the Company Disclosure Schedule, the Other Interests are owned by the Company, by one or more of the Company's subsidiaries or by the Company and one or more of its subsidiaries, in each case free and clear of all Liens (as defined below).

SECTION 3.2. Capitalization of the Company and its Subsidiaries.

(a) The authorized capital stock of the Company consists of 125,000,000 Shares, of which, as of January 12, 2001, 29,921,232 Shares were issued and outstanding, and 2,000,000 shares of preferred stock, par value $0.001 per share, none of which are outstanding. All of the outstanding Shares have been validly issued and are fully paid, nonassessable and free of preemptive rights. As of January 12, 2001, approximately 2,768,122 Shares were reserved for issuance and, as of January 12, 2001, approximately 7,760,424 were issuable upon or otherwise deliverable in connection with the exercise of outstanding Company Stock Options issued pursuant to the Company Plans. Between January 12, 2001 and the date hereof, no shares of the Company's capital stock have been issued other than pursuant to Company Stock Options already in existence on such first date, and between January 12, 2001 and the date hereof, no stock options have been granted. Except as set forth above, as of the date hereof, there are outstanding (i) no shares of capital stock or other voting securities of the Company, (ii) no securities of the Company or any of its subsidiaries convertible into or exchangeable or exercisable for shares of capital stock or other securities of the Company, (iii) no options, preemptive or other rights to acquire from the Company or any of its subsidiaries, and no obligations of the Company or any of its subsidiaries to issue, any capital stock, voting securities or securities convertible into or exchangeable or

exercisable for capital stock or other securities of the Company and (iv) no equity equivalent interests in the ownership or earnings of the Company or its subsidiaries or other similar rights (collectively "Company Securities"). Except as set forth in Section 3.2(a) of the Company Disclosure Schedule, as of the date hereof, there are no outstanding rights or obligations of the Company or any of its subsidiaries to repurchase, redeem or otherwise acquire any Company Securities. There are no shareholder agreements, voting trusts or other agreements or understandings to which the Company is a party or by which it is bound relating to the voting or registration of any shares of capital stock of the Company. The Company has not voluntarily accelerated the vesting of any Company Stock Options as a result or in contemplation of the Offer or the Merger or any other change in control of the Company.

(b) All of the outstanding capital stock of the Company's subsidiaries owned by the Company is owned, directly or indirectly, free and clear of any Lien or any

other limitation or restriction (including any restriction on the right to vote or sell the same except as may be provided as a matter of Applicable Law). Except as set forth in Section 3.2(b) of the Company Disclosure Schedule, there are no (i) securities of the Company or any of its subsidiaries convertible into or exchangeable or exercisable for, (ii) options or (iii) other rights to acquire from the Company or any of its subsidiaries any capital stock or other ownership interests in or any other securities of any subsidiary of the Company, and there exists no other contract, understanding, arrangement or obligation (whether or not contingent) providing for the issuance or sale, directly or indirectly, of any such capital stock. There are no outstanding contractual obligations of the Company or its subsidiaries to repurchase, redeem or otherwise acquire any outstanding shares of capital stock or other ownership interests in any subsidiary of the Company. For purposes of this Agreement, "Lien" means, with respect to any asset (including any security), any mortgage, lien, pledge, charge, security interest or encumbrance of any kind in respect of such asset; provided, however, that the term "Lien" shall not include (i) statutory liens for Taxes that are not yet due and payable or are being contested in good faith by appropriate proceedings and are disclosed in Section 3.14 of the Company Disclosure Schedule or that are otherwise not material, (ii) statutory or common law liens to secure obligations to landlords, lessors or renters under leases or rental agreements confined to the premises rented, (iii) deposits or pledges made in connection with, or to secure payment of, workers' compensation, unemployment insurance, old age pension or other social security programs mandated under Applicable Laws, (iv) statutory or common law liens in favor of carriers, warehousemen, mechanics and materialmen, to secure claims for labor, materials or supplies and other like liens, (v) as to real property, easements, rights of way, restrictions, encroachments and minor title defects that do not, singly or in the aggregate, materially interfere with the use of such property, and (vi) restrictions on transfer of securities imposed by Applicable Laws.

(c) The Shares constitute the only class of equity securities of the Company or its subsidiaries registered or required to be registered under the Exchange Act.

SECTION 3.3. Authority Relative to this Agreement; Recommendation.

(a) The Company has all necessary corporate power and authority to execute and deliver this Agreement and the Stock Option Agreement, to perform

its obligations under this Agreement and the Stock Option Agreement, and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the Stock Option Agreement, and the consummation of the transactions contemplated hereby and thereby, have been duly and validly authorized by the Company Board, and no other corporate proceedings on the part of the Company are necessary to authorize this Agreement or the Stock Option Agreement, or to consummate the transactions contemplated hereby or thereby, except the approval of this Agreement by the holders of a majority of the outstanding Shares. This Agreement and the Stock Option Agreement have been duly and validly executed and delivered by the Company and constitute the valid, legal and binding agreements of the Company, enforceable against the

Company in accordance with their terms, subject to any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect relating to creditors' rights generally or to general principles of equity.

(b) Without limiting the generality of the foregoing, the Company Board has unanimously (i) approved this Agreement, the Stock Option Agreement, the Offer, the Merger and the other transactions contemplated hereby and thereby, (ii) resolved to recommend approval and adoption of this Agreement, the Merger and the other transactions contemplated hereby by the Company's shareholders, and (iii) has not withdrawn or modified such approval or resolution to recommend (except as otherwise permitted in this Agreement).

SECTION 3.4. SEC Reports; Financial Statements.

(a) The Company has timely filed all required forms, reports and documents ("Company SEC Reports") with the SEC since January 1, 1997, each of which complied at the time of filing in all material respects with all applicable requirements of the Securities Act of 1933, as amended (the "Securities Act"), and the Exchange Act, each law as in effect on the dates such forms, reports and documents were filed. None of such Company SEC Reports, including any financial statements or schedules included or incorporated by reference therein, contained when filed any untrue statement of a material fact or omitted to state a material fact required to be stated or incorporated by reference therein or necessary in order to make the statements therein in light of the circumstances under which they were made not misleading. The audited consolidated financial statements of the Company included in the Company SEC Reports fairly present, in conformity with United States generally accepted accounting principles ("GAAP") applied on a consistent basis (except as indicated in the notes thereto), the consolidated financial position of the Company and its consolidated subsidiaries as of the dates thereof and their consolidated results of operations and changes in financial position for the periods then ended. Notwithstanding the foregoing, the Company shall not be deemed to be in breach of any of the representations and warranties in this Section 3.4(a) solely as a result of any changes to the Company SEC Reports that the Company is required to make in response to comments received from the SEC on the Proxy Statement; provided, however, that this sentence shall not exclude any underlying matter, effect, event, occurrence, state of facts or development which resulted in or contributed to such SEC comment or on which such SEC comment was based).

(b) The Company has heretofore made, and hereafter will make, available to Acquisition or Parent a complete and correct copy of any amendments or modifications that are required to be filed, but have not yet been filed, with the SEC to agreements, documents or other instruments that previously had

been filed by the Company with the SEC pursuant to the Exchange Act.

SECTION 3.5. Information Supplied. None of the information supplied or to be supplied by the Company in writing for inclusion or incorporation by reference in

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the 14D-9 and the proxy statement relating to the meeting of the Company's shareholders to be held in connection with the Merger (the "Proxy Statement"), will, at the date mailed to shareholders of the Company and at the time of the meeting of shareholders of the Company to be held in connection with the Merger, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. None of the information provided by the Company in writing specifically for inclusion or incorporation by reference in the Offer Documents will contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. The 14D-9 and the Proxy Statement will comply as to form in all material respects with the applicable provisions of the Exchange Act and the Securities Act and the rules and regulations thereunder. Notwithstanding the foregoing, the Company makes no representation, warranty or covenant with respect to any information supplied or required to be supplied by Parent or Acquisition that is contained in the 14D-9 or the Proxy Statement.

SECTION 3.6. Consents and Approvals; No Violations. Except for filings, permits, authorizations, consents and approvals as may be required under applicable requirements of the Securities Act, the Exchange Act, state securities or blue sky laws, the rules and regulations of Nasdaq, the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), any filings under similar merger notification laws or regulations of foreign Governmental Entities and the filing and recordation of the Agreement of Merger or the Certificate of Ownership as required by the CCC and the Certificate of Merger or the Certificate of Ownership and Merger as required by the DGCL, no material filing with or notice to and no material permit, authorization, consent or approval of any United States (federal, state or local) or foreign court or tribunal, or administrative, governmental or regulatory body, agency or authority (a "Governmental Entity") is necessary for the execution and delivery by the Company of this Agreement or the Stock Option Agreement or the consummation by the Company of the transactions contemplated hereby or thereby. Neither the execution, delivery and performance of this Agreement or the Stock Option Agreement by the Company nor the consummation by the Company of the transactions contemplated hereby or thereby will (i) conflict with or result in any breach of any provision of the respective Articles of Incorporation or bylaws (or similar governing documents) of the Company or any of its subsidiaries, (ii) except as set forth in Section 3.6 of the Company Disclosure Schedule, result in a violation or breach of or constitute (with or without due notice or lapse of time or both) a default (or give rise to any right of termination, amendment, cancellation or acceleration or Lien) under any of the terms, conditions or provisions of any material note, bond, mortgage, indenture, lease, license, contract (including any material Supply Contract), agreement or other instrument or obligation to which the Company or any of its subsidiaries is a party or by which any of them or any of their respective properties or assets are bound or (iii) except as set forth in Section 3.6 of the Company Disclosure Schedule, violate any material order, writ, injunction, decree, law, statute, rule or regulation applicable to the Company or any of its subsidiaries or any of their respective properties or assets.

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SECTION 3.7. No Default. Except as set forth in Section 3.7 of the Company Disclosure Schedule, neither the Company nor any of its subsidiaries is in breach, default or violation (and no event has occurred that with notice or the lapse of time or both would constitute a breach, default or violation) of any term, condition or provision of (i) its Articles of Incorporation or bylaws (or similar governing documents), (ii) any material note, bond, mortgage, indenture, lease, license, contract (including any Supply Contract), agreement or other instrument or obligation to which the Company or any of its subsidiaries is now a party or by which it or any of its properties or assets are bound or (iii) any material order, writ, injunction, decree, law, statute, rule or regulation applicable to the Company or any of its subsidiaries or any of its properties or assets.

SECTION 3.8. No Undisclosed Liabilities; Absence of Changes.

(a) Except as set forth in Section 3.8 of the Company Disclosure Schedule or in the Company SEC Reports filed prior to January 10, 2001, neither the Company nor any of its subsidiaries has any liabilities or obligations of any nature, whether or not accrued, contingent or otherwise, that would be required by GAAP to be reflected on a consolidated balance sheet of the Company (including the notes thereto).

(b) Without limiting the generality of the foregoing, except as set forth in Section 3.8 of the Company Disclosure Schedule or in the Company SEC Reports filed prior to January 10, 2001, since September 30, 2000 the Company and its subsidiaries have conducted their respective businesses only in, and have not engaged in any transaction other than according to, the ordinary and usual course of such businesses consistent with past practices, and there has not been any:

(i) material adverse change in the assets, liabilities (including contingent liabilities), business, operations, condition (financial or otherwise), earnings, prospects or results of operations of the Company and its subsidiaries;

(ii) material damage, destruction or other casualty loss with respect to any material asset or property owned, leased or otherwise used by the Company or any of its subsidiaries, whether or not covered by insurance;

(iii) declaration, setting aside or payment of any dividend or other distribution in respect of the capital stock of the Company or any of its subsidiaries (other than wholly-owned subsidiaries) or any repurchase, redemption or other acquisition by the Company or any of its subsidiaries of any outstanding shares of capital stock or other securities of, or other ownership interests in, the Company or any of its subsidiaries;

(iv) amendment of any term of any outstanding security of the Company or any of its subsidiaries;

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(v) incurrence, assumption or guarantee by the Company or any of its subsidiaries of any indebtedness for borrowed money;

(vi) creation or assumption by the Company or any of its subsidiaries of any Lien;

(vii) loan, advance or capital contributions made by the Company or any of its subsidiaries to, or investment in, any person other than (x) loans or advances to employees in connection with business-related travel, (y) loans made to employees consistent with past practices that are not in the aggregate in excess of Fifty Thousand Dollars ($50,000), and (z) loans, advances or capital contributions to or investments in wholly-owned subsidiaries, and in each case made in the ordinary course of business consistent with past practices;

(viii) transaction or commitment made, or any contract or agreement entered into, by the Company or any of its subsidiaries (including the acquisition (by sale, license or otherwise) or disposition (by sale, license or otherwise) of any assets) or any relinquishment by the Company or any of its subsidiaries of any contract, agreement or other right, in any such case, material to the Company and its subsidiaries, taken as a whole;

(ix) labor dispute, other than routine individual grievances, or any activity or proceeding by a labor union or representative thereof to organize any employees of the Company or any of its subsidiaries, or any lockouts, strikes, slowdowns, work stoppages or threats thereof by or with respect to such employees;

(x) exclusive license, distribution, marketing, sales or other agreement entered into or any agreement to enter into any exclusive license, distribution, marketing, sales or other agreement; or

(xi) change by the Company or any of its subsidiaries in its accounting principles, practices or methods.

(c) Except as set forth in Section 3.8 of the Company Disclosure Schedule, since September 30, 2000, there has not been any material increase in the compensation payable or that could become payable by the Company or any of its subsidiaries to officers or employees.

SECTION 3.9. Litigation. Except as set forth in Section 3.9 of the Company Disclosure Schedule or the Company SEC reports filed on or before January 10, 2001, there is no suit, claim, action, arbitration, proceeding or investigation pending or, to the knowledge of the Company, threatened against the Company or any of its subsidiaries or any of their respective properties or assets before any Governmental Entity or brought by any person (and within the five (5) years prior to the date of this Agreement the Company and its subsidiaries have not settled or compromised any such suit, claim,

action, arbitration, proceeding or investigation, whether filed or threatened) that involves any environmental, securities or antitrust law, or otherwise is (or at the time of any such settlement or compromise, was) material, or would reasonably be expected to prevent or delay the consummation of the transactions contemplated by this Agreement beyond the Final Date). Neither the Company nor any of its subsidiaries is subject to any outstanding order, writ, injunction or decree that would reasonably be expected to be material or would reasonably be expected to prevent or delay the consummation of the transactions contemplated hereby.

SECTION 3.10. Compliance with Applicable Law. The Company and its subsidiaries hold all material permits, licenses, variances, exemptions, orders and approvals of all Governmental Entities necessary for the lawful conduct of their respective businesses (the "Company Permits"), and the Company and its subsidiaries have at all times been and currently are in material compliance with the terms of the Company Permits. The businesses of the Company and its subsidiaries have been and are being conducted in material compliance with all Applicable Laws. No investigation or review by any Governmental Entity with respect to the Company or any of its subsidiaries is pending or, to the knowledge of the Company, threatened, nor, to the knowledge of the Company, has any Governmental Entity indicated an intention to conduct the same.

SECTION 3.11. Employee Benefits.

(a) Section 3.11(a) of the Company Disclosure Schedule sets forth a complete and correct list of each employee benefit plan within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), each bonus or other incentive compensation, deferred compensation, pension, retirement, profit-sharing, thrift, savings, employee stock ownership, stock bonus, stock purchase, stock award, stock option, employment, termination, severance, salary continuation, medical, health, employee loan, educational assistance, fringe benefit (as defined for purposes of Section 132 of the Code), or other compensatory plan, agreement, policy or arrangement, and each payroll practice (collectively, "Compensation and Benefit Plans"), that the Company or any of its subsidiaries has any obligation or liability (contingent or otherwise) and that covers current or former employees, independent contractors or directors of the Company or any of its subsidiaries. There are no oral Compensation and Benefit Plans to which the Company or any of its subsidiaries is a party.

(b) The Company has provided to Parent correct and complete copies of all Compensation and Benefit Plans, all amendments thereto and, to the extent applicable to each such plan, all of the following documents: (i) the three most recent annual reports on Form 5500 filed with the Internal Revenue Service, (ii) the most recent summary plan description and each subsequent written communication that constitutes a summary of material modifications, (iii) each trust agreement, (iv) each insurance, administrative services or group annuity contract, (iv) the most recent determination letter from the Internal Revenue Service or other governmental unit regarding the qualification

of any such plan under any provision of Applicable Law, and (v) any other filings or correspondence with any governmental unit or agency during such three-year period.

(c) Except as otherwise provided in Section 3.11(c) of the Company Disclosure Schedule, each of the Company and its subsidiaries has performed in all material respects its obligations under each Compensation and Benefit Plan and each such plan (and each trust or other funding medium, if any, established in connection therewith) has at all times been established, maintained and operated in compliance in all material respects with its terms and the requirements prescribed by Applicable Law, including Part 6 of Title I of ERISA, the Health Employees Portability Act, the Code, and the Medicare Secondary Payor Provisions of Section 1826(b) of the Social Security Act.

(d) With respect to those Compensation and Benefit Plans that are intended to be qualified under Section 401(a) of the Code ("Qualified Plans"), such plans have been the subject of determination letters from the

Internal Revenue Service to the effect that such plans (and the trusts forming a part thereof) are qualified and exempt from federal income taxes under Sections 401(a) and 501(a), respectively, of the Code, and no such determination letter has been revoked nor has any event occurred since the date of its most recent determination letter or application therefor that would adversely affect its qualification.

(e) None of the Compensation and Benefit Plans is a multiemployer plan (as defined in Section 3(37) of ERISA) or is subject to Section 302 or Title IV of ERISA.

(f) Except as disclosed in Section 3.11(f) of the Company Disclosure Schedule, there are no suits, actions, disputes, claims (other than routine claims for benefits), arbitrations, or administrative or other similar proceedings pending or, to the knowledge of Company, threatened, anticipated or expected to be asserted with respect to any Compensation and Benefit Plan or any related trust or other funding medium thereunder or with respect to the Company or any of its subsidiaries, as the sponsor or fiduciary thereof or with respect to any other fiduciary thereof.

(g) No Compensation and Benefit Plan , any related trust or other funding medium thereunder, or to the knowledge of Company, any fiduciary thereof is the subject of an audit, investigation or examination by a governmental or quasi-governmental agency.

(h) Except as provided in Section 3.11(h) of the Company Disclosure Schedule or as contemplated by this Agreement, none of the Company or any of its subsidiaries has any commitment, plan or understanding to adopt, create, amend or terminate any Compensation and Benefit Plan in a manner that would result in any additional liability to Parent, Acquisition, the Company or the Surviving Corporation or any of their respective subsidiaries.

(i) All contributions required to be made under the terms of any Compensation and Benefit Plan have been timely made.

(j) Except as provided by this Agreement or in Section 3.11(j) of the Company Disclosure Schedule, the execution of, and performance of the transactions contemplated by, this Agreement will not (either alone or upon the occurrence of any additional or subsequent events) constitute an event under any Compensation and Benefit Plan or other agreement that will or may reasonably be expected to result in any payment (whether severance pay or otherwise), acceleration, vesting or increase in benefits with respect to any current or former employee, independent contractor or director of the Company or any of its subsidiaries, whether or not any such payment would be an "excess parachute payment" (within the meaning of Section 280G of the Code).

(k) All amendments and actions required to bring each of the Compensation and Benefit Plans into conformity with all of the applicable provisions of ERISA, Code and other Applicable Laws have been made or taken except to the extent that such amendments or actions are not required by law to be made or taken until a date after the Effective Time. Any amendments required to be made to a Qualified Plan that have not been made because such amendments are not required by law to be made until a date after the Effective Time are disclosed in Section 3.11(k) of the Company Disclosure Schedule.

(l) Except as set forth on Section 3.11(l) of the Company Disclosure Schedule, Parent, the Surviving Corporation and the Company or one or

more of its subsidiaries, as applicable, may terminate any Compensation and Benefit Plan or may cease contributions to any such plan without incurring any liability other than a benefit liability accrued in accordance with the terms of such plan immediately prior to such termination or ceasing of contributions.

(m) Except as provided in Section 3.11(m) of the Company Disclosure Schedule, no insurance policy nor any other contract or agreement affecting any Compensation and Benefit Plan requires or permits a retroactive increase in premiums or payments due thereunder.

(n) Section 3.11(a) of the Company Disclosure Schedule separately specifies each Compensation and Benefit Plan that the Company or any of its subsidiaries is required to maintain or contribute to by the law or applicable custom or rule of any jurisdiction outside of the United States ("Foreign Plans"). Except as set forth in Section 3.11(n) of the Company Disclosure Schedule, the accrued liabilities under each Foreign Plan are fully reflected in the applicable financial statements (as of the date of such statements) of the Company or any of its subsidiaries, are fully insured or are fully funded by a trust or other separate funding medium.

SECTION 3.12. Labor and Employment Matters. Except as set forth in Section 3.12 of the Company Disclosure Schedule:

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(a) No collective bargaining agreement exists that is binding on the Company or any of its subsidiaries, and the Company has not been apprised that any petition has been filed or proceeding instituted by an employee or group of employees of the Company, or any of its subsidiaries, with the National Labor Relations Board seeking recognition of a bargaining representative.

(b) (i) There is no labor strike, dispute, slow down or stoppage pending or, to the Company's knowledge, threatened against the Company or any of its subsidiaries; and (ii) neither the Company nor any of its subsidiaries has received any demand letters, civil rights charges, suits or drafts of suits, administrative or other claims made by any of their respective employees which are or could be material.

(c) All individuals who are performing consulting or other services for the Company or any of its subsidiaries are or were correctly classified by the Company as either "independent contractors" or "employees" as the case may be, and, at the Closing Date, will qualify for such classification.

(d) The Company has delivered to Parent a list of the name of each officer, employee and independent contractor of the Company or any of the Company's subsidiaries, together with such person's position or function, annual base salary or wages and any incentives or bonus arrangement with respect to such person. As of the date hereof, the Company has not received any information that would lead it to believe that any such person will or may cease to be engaged by the Company or such subsidiary for any reason, including because of the consummation of the transactions contemplated by this Agreement.

(e) The Company and each of its subsidiaries (and, to the Company's knowledge, each of the Company's material subcontractors) is in compliance in all material respects with all Applicable Laws respecting employment, termination of employment, employment practices, terms and conditions of employment and wages and hours.

(f) The Company and each of its subsidiaries 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.

(g) There are no pending or, to the knowledge of the Company, threatened claims or actions against the Company or any of its subsidiaries under any worker's compensation policy or long-term disability policy.

(h) Each employee of the Company or any of its subsidiaries (whether employed within or outside of the United States) possesses all applicable passports, visas or other applicable work authorizations with respect to the location at which they are

employed or with respect to which they travel on behalf of the Company or any of its subsidiaries, and has complied with all applicable immigration and similar laws.

(i) Section 3.12(i) of the Company Disclosure Schedule contains a list and description of all policies and guidelines of the Company and its subsidiaries concerning employment practices, working conditions, hours and other employment matters. Each of the Company and its subsidiaries (and to the knowledge of the Company, each of the Company's material subcontractors) is in compliance with all such policies and guidelines.

SECTION 3.13. Environmental Laws and Regulations.

(a) The term "Environmental Laws" means any applicable federal, state, local or foreign law, statute, treaty, ordinance, rule, regulation, policy, permit, consent, approval, license, judgment, order, decree or injunction relating to: (a) Releases (as defined in 42 U.S.C. sec. 9601(22)) or threatened Releases of Hazardous Material (as hereinafter defined) into the environment, (b) the generation, treatment, storage, disposal, use, handling, manufacturing, transportation or shipment of Hazardous Material, (c) the health or safety of employees in the workplace, (d) protecting or restoring natural resources or (e) the environment. The term "Hazardous Material" means (1) hazardous substances (as defined in 42 U.S.C. sec. 9601(14)), including "hazardous waste" as defined in 42 U.S.C. sec. 6903, (2) petroleum, including crude oil and any fractions thereof, (3) natural gas, synthetic gas and any mixtures thereof, (4) asbestos and/or asbestos containing materials, (5) PCBs or materials containing PCBs, (6) any material regulated as a medical waste, (7) lead containing paint, (8) radioactive materials and (9) "Hazardous Substance" or "Hazardous Material" as those terms are defined in any indemnification provision in any contract, lease, or agreement to which the Company or any of its subsidiaries is a party.

(b) During the period of ownership or operation by the Company or any of its subsidiaries of any of their current or previously owned or leased properties, there have been no Releases of Hazardous Material by the Company or any of its subsidiaries in, on, under or affecting such properties or any surrounding site that would subject the Company or any of its subsidiaries to a material liability, and neither the Company nor any of its subsidiaries has disposed of any Hazardous Material in a manner that has led, or could reasonably be anticipated to lead, to a Release that would subject the Company or any of its subsidiaries to a material liability. There have been no Releases of Hazardous Material by the Company or any of its subsidiaries in, on, under or affecting their current or previously owned or leased properties or any surrounding site at times outside of such periods of ownership, operation or lease that would subject the Company or any of its subsidiaries to a material

liability. Neither the Company nor any of its subsidiaries has received any written notice of, or entered into any order, settlement or decree relating to: (a) any violation of any Environmental Laws or the institution or pendency of any suit, action, claim, proceeding or investigation by any Governmental Entity or any third party in connection with any alleged violation of Environmental Laws or (b) the response to or

remediation of Hazardous Material at or arising from any of the Company's properties or any subsidiary's properties. There have been no violations of any Environmental Laws by the Company or any subsidiary that would subject the Company or any of its subsidiaries to a material liability.

(c) There are no past or present events, conditions, circumstances, activities, practices, incidents, actions, omissions or plans that constitute a violation by the Company or any of the Company's subsidiaries (or, to the Company's knowledge, any of the Company's material subcontractors) of, or are reasonably likely to prevent or interfere with the Company's or any of the Company's subsidiaries' or, to the Company's knowledge, any of the Company's material subcontractors') future compliance with, any Environmental Laws.

(d) Section 3.13(d) of the Company Disclosure Schedule contains a list and description of all policies and guidelines of the Company and its subsidiaries concerning environmental matters. Each of the Company and its subsidiaries (and to the knowledge of the Company, each of the Company's material subcontractors) is in compliance with all such policies and guidelines.

(e) The Environmental Indemnity Agreement dated June 23, 1998, between Northrup Grumman Corporation and Conejo Spectrum Land Associates, LLC has been duly and validly assigned by Conejo Spectrum Land Associates, LLC to the Company and the Company has fully and timely complied with its obligations thereunder, including without limitation its obligations under Section 6 thereof.

SECTION 3.14. Taxes.

(a) For purposes of this Agreement: (i) the term "Tax" (including "Taxes") means (A) all federal, state, local, foreign and other net income, gross income, gross receipts, sales, use, ad valorem, transfer, franchise, profits, license, lease, service, service use, withholding, payroll, employment, excise, severance, stamp, occupation, premium, property, windfall profits, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest and any penalties, additions to tax or additional amounts with respect thereto, (B) any liability for payment of amounts described in clause (A) whether as a result of transferee liability, of being a member of an affiliated, consolidated, combined or unitary group for any period, or otherwise through operation of law, and (C) any liability for the payment of amounts described in clauses (A) or (B) as a result of any tax sharing, tax indemnity or tax allocation agreement or any other express or implied agreement to indemnify any other person; and (ii) the term "Tax Return" means any return, declaration, report, statement, information statement and other document filed or required to be filed with respect to Taxes.

(b) Except as set forth in Section 3.14(b) of the Company Disclosure Schedule, the Company and its subsidiaries have duly and timely filed all Tax Returns required to be filed; and such Tax Returns are complete and accurate and correctly reflect

the Tax liability required to be reported thereon. Such Tax Returns do not contain a disclosure statement under Section 6662 of the Code (or any predecessor provision or comparable provision of state, local or foreign law).

(c) Except as set forth in Section 3.14(c) of the Company Disclosure Schedule, the Company and its subsidiaries have paid or adequately provided in accordance with GAAP in the financial statements included in the Company SEC Reports for all Taxes (whether or not shown on any Tax Return) accrued through the date of such Company SEC Reports; all Taxes accrued by the Company and its subsidiaries following the end of the most recent period covered by the Company SEC Report have been accrued in the ordinary course of business of the Company and each such subsidiary and have been paid when due in the ordinary course of business; and no election has been made with respect to Taxes of the Company or its subsidiaries in any Tax Returns that have not been provided to Parent.

(d) Except as set forth in Section 3.14(d) of the Company Disclosure Schedule, no claim for assessment or collection of Taxes is presently being asserted against the Company or its subsidiaries and neither the Company nor any of its subsidiaries is a party to any pending action, proceeding, or investigation by any governmental taxing authority nor does the Company have knowledge of any such threatened action, proceeding or investigation which could be expected to give rise to a Tax Liability in excess of One Hundred Thousand Dollars ($100,000).

(e) Except as set forth in Section 3.14(e) of the Company Disclosure Schedule, neither the Company nor any of its subsidiaries is a party to any agreement, contract, arrangement or plan that has resulted or would result, individually or in the aggregate, (i) in the payment of compensation that is not or would not be deductible under Section 162(m) of the Code or (ii) in connection with this Agreement or any change of control of the Company or any of its subsidiaries, in the payment of any "excess parachute payments" within the meaning of Section 280G of the Code.

(f) Except as set forth in Section 3.14(f) of the Company Disclosure Schedule, neither the Company nor any of its subsidiaries is a party to or bound by any obligation under any Tax sharing, Tax allocation, Tax indemnity or similar agreement or arrangement.

(g) Except as set forth in Section 3.14(g) of the Company Disclosure Schedule, there is currently no limitation on the utilization of net operating losses, built-in losses, tax credits or other similar items of the Company or its subsidiaries under Section 382, 383, 384 or 1502 of the Code and the Treasury Regulations thereunder.

(h) Except as set forth in Section 3.14(h) of the Company Disclosure Schedule, neither the Company nor any of its subsidiaries has agreed to, or is required to make, any adjustment under Section 481 of the Code by reason of a change in accounting method.

(i) Except as set forth in Section 3.14(i) of the Company

Disclosure Schedule, the applicable statute of limitations with respect to the income Tax Returns of the Company and each of its subsidiaries has expired, and all assessments due and payable with respect to any examinations of such income Tax Returns have been fully paid.

(j) Except as disclosed in Section 3.14(j) of the Company Disclosure Schedule, neither the Company nor any subsidiary has constituted either a "distributing corporation" or a "controlled corporation" (within the meaning of Section 355(a)(1)(A) of the Code) in a distribution of stock qualifying for tax-free treatment under Section 355 of the Code since the effective date of Section 355(e) of the Code.

(k) Except as set forth in Section 3.14(k) of the Company Disclosure Schedule, no claim has been made by a taxing authority in a jurisdiction where neither the Company nor any subsidiary files state income or franchise Tax Returns that the Company or any subsidiary is or may be subject to income or franchise taxation in that jurisdiction.

(l) The Company has made available to Parent true and complete copies of (i) all Federal income Tax Returns of the Company and its subsidiaries for the preceding three taxable years and (ii) any audit report issued within the last three years (or otherwise with respect to any audit or proceeding in progress) relating to Federal income taxes of the Company or any subsidiary.

(m) Except as set forth in Section 3.14(m) of the Company Disclosure Schedule, the Company and its subsidiaries have withheld and paid all Taxes required to be withheld in connection with any amounts paid or owing to any employee, creditor, independent contractor or other third party.

(n) Except as set forth in Section 3.14(n) of the Company Disclosure Schedule, neither the Company nor any of its subsidiaries has taken any action or failed to take any action which would cause any transaction in which the Company or any of its subsidiaries was a party that was intended to be treated as a reorganization under Section 368(a) of the Code to fail to so qualify.

SECTION 3.15. Intellectual Property.

(a) Generally. Section 3.15(a) of the Company Disclosure Schedule sets forth, for the Intellectual Property owned, in whole or in part, including jointly with others, by the Company or any of its subsidiaries, a complete and accurate list of all United States and foreign (i) patents and patent applications; (ii) Trademark registrations and applications and material unregistered Trademarks; and (iii) copyright registrations and applications, indicating for each, the applicable jurisdiction, registration number (or application number) and date issued (or date filed). For purposes of this Agreement, "Intellectual Property" means: trademarks and service marks (whether registered or unregistered), trade names, designs and general intangibles of like nature, together with all

goodwill related to the foregoing (collectively, "Trademarks"); patents (including any continuations, continuations in part, renewals and applications for any of the foregoing) (collectively "Patents"); copyrights (including any registrations and applications therefor and whether registered or unregistered) (collectively "Copyrights"); computer software; databases; works of authorship; mask works; trade secrets and other confidential information, technology, know-how, proprietary processes, formulae, algorithms, models, user interfaces,

customer lists, inventions, discoveries, concepts, ideas, techniques, methods, source codes, object codes, methodologies and, with respect to all of the foregoing, related confidential data or information (collectively, "Trade Secrets").

(b) Trademarks.

(i) All Trademark registrations are in compliance in all material respects with all legal requirements (including the timely post-registration filing of affidavits of use and incontestability and renewal applications), other than any requirement that, if not satisfied, would not result in a cancellation of any such registration or otherwise materially affect the priority and enforceability of the Trademark in question.

(ii) No registered Trademark has been or is now involved in any opposition or cancellation proceeding in the United States Patent and Trademark Office. To the Company's knowledge, no such action has been threatened.

(iii) To the knowledge of the Company, there has been no prior registration or use of any material Trademark by any third party that confer upon said third party superior rights in any such Trademark.

(iv) All material Trademarks have been in continuous use by the Company or its subsidiaries in the form appearing in, and in connection with the goods and services listed in, their respective registration certificates or renewal certificates, as the case may be.

(v) The Company and its subsidiaries have adequately policed the Trademarks against third party infringement.

(c) Patents.

(i) All Patents are in compliance with all legal requirements (including payment of filing, examination, and maintenance fees and proofs of working or use), other than any requirement that, if not satisfied, would not result in a revocation or otherwise materially affect the enforceability of such Patent.

(ii) No Patent has been or is now involved in any interference, reissue, reexamination or opposing proceeding in the United States Patent and Trademark Office. To the Company's knowledge, no such action has been threatened.

(iii) There is no patent or, to the Company's knowledge, patent application of any person that conflicts with any Patent or invalidates any claim the Company, or any of the Company's subsidiaries, has in any Patent.

(d) Trade Secrets.

(i) The Company and each of its subsidiaries has taken all reasonable steps to protect their respective rights in confidential information and Trade Secrets. The Company and its subsidiaries have taken all necessary steps to protect their respective rights in the confidential information and Trade Secrets of third parties in accordance with the terms of any agreements relating to such third party confidential information or Trade Secrets to which the Company or any of its subsidiaries is a party.

(ii) Without limiting the generality of Section 3.15(d)(i), the Company and each subsidiary enforces a policy of requiring each relevant employee, consultant and contractor to execute proprietary information, confidentiality and assignment agreements substantially in the Company's standard forms that (A) assign to the Company all rights to any Intellectual Property rights relating to the Company's business that are developed by the employee, consultant or contractor, as applicable, in the course of his or her activities for the Company or are developed during working hours or using Company resources, (B) contain provisions designed to prevent unauthorized disclosure of the Company's confidential information and Trade Secrets, and (C) otherwise appropriately protect the Intellectual Property of the Company and its subsidiaries, and, except under confidentiality obligations, there has been no disclosure by the Company or any subsidiary of material confidential information or Trade Secrets. All employees of the Company and its subsidiaries have signed invention assignment and secrecy agreements substantially in one of the forms attached to Section 3.15(d)(ii) of the Company Disclosure Schedule. All assignments that relate to specified scheduled patent or copyright assignments and which are required to be so filed in order to be valid or effective against third parties have been duly executed and filed with the United States Patent and Trademark Office or the United States Copyright Office, as applicable.

(e) License Agreements. Section 3.15(e)(1) of the Company Disclosure Schedule sets forth a complete and accurate list of all license agreements granting to the Company or any of its subsidiaries any right to use or practice any rights under any Intellectual Property other than software commercially available on reasonable terms to any person for a license fee of no more than One Hundred Thousand Dollars ($100,000) or otherwise material to the Company (collectively, the "Inbound License Agreements"), indicating for each the title and the parties thereto. Section 3.15(e)(2) of the Company Disclosure Schedule sets forth a complete and accurate list of all license agreements under which the Company or any of its subsidiaries licenses software or grants other rights in to use or practice any rights under any Intellectual Property (collectively, the "Outbound License Agreements"), indicating for each the title and the parties thereto. There is no outstanding or, to the Company's knowledge, threatened dispute or

disagreement with respect to any Inbound License Agreement or any Outbound License Agreement.

(f) Ownership; Sufficiency of Intellectual Property Assets. Except as set forth in Section 3.15(f) of the Company Disclosure Schedule, the Company or one of its subsidiaries owns or possesses adequate licenses or other rights to use, free and clear of Liens, orders and arbitration awards, all of the Intellectual Property material to its business. The Intellectual Property identified in Section 3.15(a) of the Company Disclosure Schedule, together with the Company's and its subsidiaries' unregistered copyrights and Trade Secrets and the Company's and such subsidiaries' rights under the licenses granted to the Company or any of its subsidiaries under the Inbound License Agreements, constitute all the Intellectual Property rights used in the operation of the Company's and its subsidiaries' businesses as they are currently conducted and are all the Intellectual Property rights necessary to operate such businesses after the Effective Time in substantially the same manner as such businesses have been operated by the Company prior thereto.

(g) Protection of IP. The Company has taken all reasonable steps to protect the Intellectual Property of the Company and its subsidiaries.

(h) No Infringement by the Company. Except as set forth on Schedule 3.15(h) of the Company Disclosure Schedule, the products used, manufactured, marketed, sold or licensed by the Company and its subsidiaries, and all Intellectual Property used in the conduct of the Company's and its subsidiaries' businesses as currently conducted, do not, and with respect to any Trademark or Patent application, to the knowledge of the Company, do not, infringe upon, violate or constitute the unauthorized use of any valid and enforceable rights owned or controlled by any third party, including any Intellectual Property of any third party.

(i) No Pending or Threatened Infringement Claims. Except as set forth in Section 3.15(i) of the Company Disclosure Schedule, no litigation is now or, within the three (3) years prior to the date of this Agreement, was pending, and no notice or other CLAIM has been received by the Company or its subsidiaries, (A) alleging that the Company any of its subsidiaries has engaged in any activity or conduct that infringes upon, violates or constitutes the unauthorized use of the Intellectual Property rights of any third party or (B) challenging the ownership, use, validity or enforceability of any Intellectual Property owned or exclusively licensed by or to the Company. Except as specifically disclosed in one or more Sections of the Company Disclosure Schedule pursuant to this Section 3.15, no Intellectual Property (a) that is owned by the Company or any of its subsidiaries or the subject of an Inbound License Agreement, is subject to any outstanding order, judgment, decree, stipulation or agreement restricting the use thereof by the Company or any such subsidiary, or (b) that is the subject of an Outbound License Agreement, is subject to any outstanding order, judgment, decree, stipulation or agreement restricting the sale, transfer, assignment or licensing thereof by the Company or any of its subsidiaries to any person.

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(j) No Infringement by Third Parties. Except as set forth in Section 3.15(j) of the Company Disclosure Schedule, to the knowledge of the Company, no third party is misappropriating, infringing, diluting or violating any Intellectual Property owned or exclusively licensed by the Company or any of its subsidiaries, and no such claims have been brought against any third party by the Company or any of its subsidiaries.

(k) Assignment; Change of Control. Except as set forth in Section 3.15(k) of the Company Disclosure Schedule, the execution, delivery and performance by the Company of this Agreement, and the consummation of the transactions contemplated hereby, will not result in the loss or impairment of, or give rise to any right of any third party to terminate, any of the Company's or any of its subsidiaries' rights to own any of its Intellectual Property or their respective rights under any Inbound License Agreement or Outbound License Agreement, nor require the consent of any Governmental Authority or third party in respect of any such Intellectual Property.

(l) Software. The Software owned or purported to be owned by the Company or any of its subsidiaries, was either (i) developed within the scope of their employment by employees of the Company or any of its subsidiaries who have assigned to the Company all rights to such software; (ii) developed by independent contractors who have assigned their rights to the Company or any of its subsidiaries pursuant to written agreements; or (iii) otherwise acquired by the Company or a subsidiary from a third party. Except as set forth in Section 3.15(l) of the Company Disclosure Schedule, the Software does not contain any programming code, documentation or other materials or development environments that embody Intellectual Property rights of any person other than the Company or

any of its subsidiaries, except for such materials or development environments obtained by the Company or any of its subsidiaries from other persons who make such materials or development environments generally available to all interested purchasers or end-users on standard commercial terms. For purposes of this Section 3.15(l), "Software" means any and all (i) computer programs, including any and all software implementations of algorithms, models and methodologies, whether in source code or object code, (ii) testing, validation, verification and quality assurance materials, (iii) databases, conversion, interpreters and compilations, including any and all data and collections of data, whether machine readable or otherwise, (iv) descriptions, schematics, flow-charts and other work product used to design, plan, organize and develop any of the foregoing, (v) software development processes, practices, methods and policies recorded in permanent form, relating to any of the foregoing, (vi) performance metrics, sightings, bug and feature lists, build, release and change control manifests recorded in permanent form, relating to any of the foregoing, and (vii) all documentation, including user manuals, web materials, and architectural and design specifications and training materials, relating to any of the foregoing. Except as set forth in Section 3.15(l) of the Company Disclosure Schedule, the Company represents and warrants that none of its Software is, in whole or in part, subject to the provisions of any open source or quasi-open source license agreement.

(m) Performance of Existing Software Products. The Company's and its subsidiaries' existing and currently manufactured and marketed Software products listed and described on Section 3.15(m) of the Company Disclosure Schedule perform, free of bugs, viruses or programming errors, the functions described in any specifications or end user documentation or other information provided to customers of the Company or its subsidiaries on which such customers relied when licensing or otherwise acquiring such products.

(n) Documentation. The Company and its subsidiaries have taken all actions required to document the Software and its operation, such that the materials comprising the Software, including the source code and documentation, have been written in a clear and professional manner so that they may be understood, modified and maintained in an efficient manner by reasonably competent programmers.

(o) Supply Contracts. Section 3.15(o) of the Company Disclosure Schedule sets forth a complete and correct description of each and every (i) manufacturing or fabricating agreement, understanding or commitment, and (ii) purchase, supply or service agreement, understanding or commitment, used by or in connection with the Company's business, in whole or in part, whether written or oral and which has a cost to the Company of One Hundred Thousand Dollars ($100,000) or greater annually or is otherwise material to the Company ("Supply Contracts"). The Company has delivered to Parent a correct and complete copy of each written Supply Contract and has provided a written summary of each oral Supply Contract. There are no fees, penalties, price uplifts, shortfall payments, bill backs or other amounts outstanding under such Supply Contracts. The quantities available for purchase under each such written Supply Contract are as stated on the face of such Supply Contract. Each manufacturing or service site that requires qualification under the terms of a Supply Contract is qualified, and no unresolved differences with respect to product or process specifications remains outstanding. All manufacturing or service terms and conditions are as they appear to be on the face of the Supply Contr