

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549

FORM 8-K

CURRENT REPORT  
PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934

Date of report (Date of earliest event reported): September 7, 2000

BROADCOM CORPORATION  
(Exact Name of Registrant as Specified in Charter)

California	000-23993	33-0480482
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(State or Other Jurisdiction of Incorporation)	(Commission File Number)	(IRS Employer Identification No.)

16215 Alton Parkway, Irvine, California 92618  
(Address of Principal Executive Offices) (Zip Code)

Registrant's telephone number, including area code: (949) 450-8700

Not Applicable  
-----  
(Former Name or Former Address, if Changed since Last Report)

## ITEM 2. ACQUISITION OR DISPOSITION OF ASSETS

On September 7, 2000 Broadcom Corporation (the "Company") completed the acquisition of Altima Communications, Inc. ("Altima") in accordance with the Amended and Restated Merger Agreement and Plan of Reorganization dated as of July 28, 2000 between the Company, AC Acquisition Corp. and Altima, a copy of which is attached hereto as Exhibit 2.1 and is incorporated herein by reference.

Altima is a supplier of networking integrated circuits for the small-to-medium business ("SMB") networking market. Altima's product portfolio has been designed for the value-oriented SMB customer, with emphasis on low power, small footprint and low system cost.

In connection with the acquisition, the Company issued an aggregate of 1,661,784 shares of its Class A common stock in exchange for all outstanding shares of Altima preferred and common stock and reserved 875,111 additional shares of Class A common stock for issuance upon exercise of outstanding employee stock options of Altima. The share issuances were exempt from registration pursuant to section 3(a)(10) of the Securities Act of 1933, as amended. Portions of the shares issued will be held in escrow pursuant to the terms of the acquisition agreement as well as various employee share repurchase agreements.

The merger transaction will be accounted for under the purchase method of accounting. The Company expects to record a one-time write-off for purchased in-process research and development expenses related to the acquisition in its third fiscal quarter (ending September 30). The amount of the write-off has not yet been determined. The merger is intended to constitute a tax-free reorganization under Section 368(a) of the Internal Revenue Code.

In addition to the purchase consideration, the Company reserved 2,889,667 shares of its Class A common stock for future issuance to customers upon the exercise of outstanding Altima performance-based warrants that become exercisable upon satisfaction of certain customer purchase requirements.

The Company's press release announcing the completion of the acquisition is included herein as Exhibit 99.1.

## ITEM 7. FINANCIAL STATEMENTS AND EXHIBITS

## (a) Financial statements of business acquired.

The financial information required by this item will be filed by amendment within 60 days of September 22, 2000.

## (b) Pro forma financial information.

The financial information required by this item will be filed by amendment within 60 days of September 22, 2000.

## (c) Exhibits.

2.1 Amended and Restated Merger Agreement and Plan of Reorganization by and among Broadcom Corporation, AC Acquisition Corp., and Altima Communications, Inc. dated as of July 28, 2000\*

99.1 Press Release dated September 8, 2000, of the Registrant

- - - - -  
\* Certain portions of this Exhibit have been omitted and filed separately under an application for confidential treatment.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

BROADCOM CORPORATION,  
a California corporation

September 22, 2000

By: /s/ WILLIAM J. RUEHLE

-----  
William J. Ruehle  
Vice President and  
Chief Financial Officer

/s/ SCOTT J. POTERACKI

-----  
Scott J. Poteracki  
Senior Director of Finance  
and Corporate Controller  
(Principal Accounting Officer)

## EXHIBIT INDEX

EXHIBIT NUMBER -----	DESCRIPTION -----
2.1	Amended and Restated Merger Agreement and Plan of Reorganization by and among Broadcom Corporation, AC Acquisition Corp., and Altima Communications, Inc. dated as of July 28, 2000*
99.1	Press Release dated September 8, 2000, of the Registrant

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\* Certain portions of this Exhibit have been omitted and filed separately under an application for confidential treatment.

AMENDED AND RESTATED  
MERGER AGREEMENT AND  
PLAN OF REORGANIZATION  
BY AND AMONG

BROADCOM CORPORATION,

AC ACQUISITION CORP.,

AND

ALTIMA COMMUNICATIONS, INC.

Dated as of July 28, 2000

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ALL SECTIONS MARKED WITH ONE ASTERISK (\*) REFLECT PORTIONS WHICH HAVE BEEN REDACTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION BY BROADCOM CORPORATION AS PART OF A REQUEST FOR CONFIDENTIAL TREATMENT.

AMENDED AND RESTATED  
MERGER AGREEMENT AND  
PLAN OF REORGANIZATION

This AMENDED AND RESTATED MERGER AGREEMENT AND PLAN OF REORGANIZATION is made and entered into as of July 28, 2000 (the "Amendment Date"), by and among Broadcom Corporation, a California corporation ("Parent"), AC Acquisition Corp., a California corporation and wholly-owned subsidiary of Parent ("Merger Sub"), and Altima Communications, Inc., a California corporation (the "Company"), and with respect to Section 7.2 only, Alan B. Grebene, as Shareholder Agent, and U.S. Stock Transfer Corporation, as Depository Agent. Capitalized terms used and not otherwise defined herein have the meanings set forth in Article 10.

RECITALS

A. Parent, Merger Sub and the Company and, with respect to Section 7.2 thereof only, Stewart Wu, as Shareholder Agent, and U.S. Stock Transfer Corporation, as Depository Agent, have previously entered into that certain Merger Agreement and Plan of Reorganization (the "Original Agreement") dated as of May 3, 2000 which provides, among other things, for Parent to acquire the Company pursuant to the merger of Merger Sub with and into the Company.

B. Parent, Merger Sub and the Company and, with respect to Section 7.2 thereof only, Alan B. Grebene, as Shareholder Agent, and U.S. Stock Transfer Corporation, as Depository Agent, desire to amend and restate the Original Agreement.

C. The Boards of Directors of each of Parent, Merger Sub and the Company believe it is in the best interests of Parent, Merger Sub and the Company (as applicable) and their respective shareholders that Parent acquire the Company through the merger of Merger Sub with and into the Company (the "Merger") and, in furtherance thereof, have approved the Merger, this Agreement and the transactions contemplated hereby.

D. Pursuant to the Merger, among other things, and subject to the terms and conditions of this Agreement, (i) all of the shares of capital stock of the Company which are issued and outstanding immediately prior to the Effective Time of the Merger shall be converted into the right to receive shares of Class A common stock, par value \$.0001 per share, of Parent ("Parent Common Stock") and (ii) all Company Options, Company Warrants and Company Stock Purchase Rights then outstanding (whether vested or unvested) will become exercisable for Parent Common Stock, on the terms and subject to the conditions set forth herein.

E. As an inducement to Parent and Merger Sub to enter into this Agreement, certain shareholders of the Company have concurrently herewith entered into Support Agreements with Parent in substantially the form attached hereto as Exhibit A ("Support

Agreements") pursuant to which, among other things, such shareholders have agreed to vote the shares of Company Capital Stock owned by them in favor of the Merger.

F. As a further inducement to Parent and Merger Sub to enter into this Agreement, certain employees of the Company have concurrently with the execution and delivery of the Original Agreement entered into Non-Competition Agreements substantially in the form attached hereto as Exhibit C (the "Non-Competition Agreements"), each of which shall become effective at the Effective Time.

G. Parent, Merger Sub and the Company intend that the Merger shall constitute a reorganization within the meaning of Section 368(a) of the Code, and in furtherance thereof intend that this Agreement shall be a "Plan of Reorganization" within the meaning of Sections 354(a) and 361(a) of the Code.

H. The Company, Parent and Merger Sub desire to make certain representations, warranties, covenants and agreements in connection with the Merger.

I. A portion of the shares of Parent Common Stock otherwise issuable by Parent in connection with the Merger shall be placed in escrow by Parent, the release of which amount shall be contingent upon certain events and conditions, all as set forth in Article 7 herein.

NOW, THEREFORE, in consideration of the covenants, promises, representations and warranties set forth herein, and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by the parties), intending to be legally bound hereby, the parties agree as follows:

ARTICLE 1  
THE MERGER

1.1 The Merger. At the Effective Time and subject to and upon the terms and conditions of this Agreement and the applicable provisions of the California Code, Merger Sub shall be merged with and into the Company, the separate corporate existence of Merger Sub shall cease, and the Company shall continue as the surviving corporation. The Company is sometimes referred to herein as the "Surviving Corporation."

1.2 Effective Time. Unless this Agreement is earlier terminated pursuant to Section 8.1, the closing of the Merger (the "Closing") will take place as soon as reasonably practicable following satisfaction or waiver of the conditions set forth in Article 6 at the offices of Irell & Manella LLP, 1800 Avenue of the Stars, Suite 900, Los Angeles, California, unless another place or time is agreed to by Parent and the Company; and the parties shall use their best efforts to have the Closing take place by August 31, 2000. The date upon which the Closing actually occurs is herein referred to as the "Closing Date." On the Closing Date, the parties hereto shall cause the Merger to be consummated by filing a California Agreement of Merger (or like instrument), in substantially the form attached hereto as Exhibit D (the "California Agreement of Merger"), with the Secretary of State of the State of California, in accordance with the relevant provisions of applicable law (the time of acceptance by the Secretary of State of the State of California of such filing or such

later time as may be agreed to by the parties and set forth in the Agreement of Merger being referred to herein as the "Effective Time").

1.3 Effect of the Merger on Constituent Corporations. At the Effective Time, the effect of the Merger shall be as provided in the applicable provisions of the California Code. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time, all the property, rights, privileges, powers and franchises of Merger Sub and the Company shall vest in the Surviving Corporation, and all debts, liabilities, obligations, restrictions, disabilities and duties of Merger Sub and the Company shall become the debts, liabilities, obligations, restrictions, disabilities and duties of the Surviving Corporation.

#### 1.4 Articles of Incorporation and By-Laws of Surviving Corporation.

(a) At the Effective Time, the articles of incorporation of the Company, as in effect immediately prior to the Effective Time, shall be amended and restated in their entirety in the form set forth as Annex 1 to Exhibit D to this Agreement, and, as so amended and restated, shall be the articles of incorporation of the Surviving Corporation from and after the Effective Time until thereafter amended as provided by law and such articles of incorporation and by-laws of the Surviving Corporation.

(b) The by-laws of Merger Sub, as in effect immediately prior to the Effective Time, shall be the by-laws of the Surviving Corporation until thereafter amended as provided by such by-laws, the articles of incorporation and applicable law.

1.5 Directors and Officers of Surviving Corporation. The directors of Merger Sub immediately prior to the Effective Time shall be the directors of the Surviving Corporation, each to hold office in accordance with the articles of incorporation and by-laws of the Surviving Corporation. The officers of Merger Sub immediately prior to the Effective Time shall be the officers of the Surviving Corporation, each to hold office in accordance with the by-laws of the Surviving Corporation.

1.6 Maximum Number of Shares of Parent Common Stock to be Issued; Effect on Outstanding Securities of the Company. The maximum number of shares of Parent Common Stock to be issued (including Parent Common Stock to be reserved for issuance upon exercise of any of the Company Options, Company Warrants or Company Stock Purchase Rights to be assumed by Parent as provided herein) in exchange for the acquisition by Parent of all shares of Company Capital Stock which are issued and outstanding immediately prior to the Effective Time and all vested and unvested Company Options, Company Warrants and Company Stock Purchase Rights which are then outstanding shall be the Aggregate Share Number. No adjustment shall be made in the number of shares of Parent Common Stock issued in the Merger as a result of any consideration (in any form whatsoever) received by the Company from the date hereof to the Effective Time as a result of any exercise, conversion or exchange of Company Options, Company Warrants or Company Stock Purchase Rights. On the terms and subject to the conditions of this Agreement, at the Effective Time, by virtue of the Merger and without any action on the part of Parent, Merger Sub, the Company or the holder of any shares of the Company Capital Stock or Company Options, Company Warrants or Company Stock Purchase Rights, the following shall occur:

(a) Conversion of Company Capital Stock. Each share of Company Capital Stock issued and outstanding immediately prior to the Effective Time (other than any shares of Company Capital Stock to be canceled pursuant to Section 1.6(b) and any Dissenting Shares (as provided in Section 1.7)) will be cancelled and extinguished and each share of Company Series A Preferred Stock, Company Series B Preferred Stock and Company Common Stock which is issued and outstanding immediately prior to the Effective Time shall be converted automatically into the right to receive, following the expiration or early termination of any waiting period under the HSR Act which is applicable to the holder of such share (due to the making of a filing by such holder under the HSR Act), that number of shares of Parent Common Stock equal to the Series A Exchange Ratio, the Series B Exchange Ratio or the Common Stock Exchange Ratio, as applicable (subject to Section 1.6(e)).

(b) Cancellation of Parent-Owned and Company-Owned Stock. Each share of Company Capital Stock owned by Parent or the Company or any Subsidiary of Parent or the Company immediately prior to the Effective Time shall be automatically canceled and extinguished without any conversion thereof and without any further action on the part of Parent or the Company.

(c) Company Options and Company Stock Option Plan. All unexpired and unexercised Company Options, Company Warrants and Company Stock Purchase Rights, then outstanding, whether vested or unvested, together with the Company Stock Option Plan, shall be assumed by Parent in accordance with provisions described below.

(i) At the Effective Time, each unexpired and unexercised Company Option, Company Warrant and Company Stock Purchase Right then outstanding, whether vested or unvested, shall be, in connection with the Merger, assumed by Parent, together with the Company Stock Option Plan. Each Company Option, Company Warrant and Company Stock Purchase Right so assumed by Parent under this Agreement shall continue to have, and be subject to, the same terms and conditions as were applicable to such Company Option, Company Warrant or Company Stock Purchase Right immediately prior to the Effective Time (including, but not limited to, any repurchase rights or vesting provisions), provided that (I) such Company Option, Company Warrant or Company Stock Purchase Right, as the case may be, shall be exercisable for that number of whole shares of Parent Common Stock equal to the product of the number of shares of Company Capital Stock that were issuable upon exercise of such Company Option, Company Warrant or Company Stock Purchase Right immediately prior to the Effective Time multiplied by the Exchange Ratio applicable to the series of Company Capital Stock subject to such Company Option, Company Warrant or Company Stock Purchase Right (rounded down to the nearest whole number of shares of Parent Common Stock) and (II) the per share exercise price for the shares of Parent Common Stock issuable upon exercise of such assumed Company Option, Company Warrant or Company Stock Purchase Right, as the case may be, shall be equal to the quotient determined by dividing the exercise price per share of Company Capital Stock at which such Company Option, Company Warrant or Company Stock Purchase Right was exercisable immediately prior to the Effective Time by the Exchange Ratio applicable to the series of Company Capital Stock subject to such Company Option, Company Warrant or Company Stock Purchase Right (rounded to the nearest whole cent).

(ii) It is the intention of the parties that the Company Options assumed by Parent shall qualify following the Effective Time as incentive stock options as defined in Section 422 of the Code to the same extent the Company Options qualified as incentive stock options immediately prior to the Effective Time and the provisions of this Section 1.6(c) shall be applied consistent with this intent.

(iii) Promptly following the Effective Time, Parent will issue to each holder of an unexpired and unexercised Company Option, Company Warrant or Company Stock Purchase Right an instrument evidencing the foregoing assumption of such Company Option, Company Warrant or Company Stock Purchase Right by Parent.

(iv) At the Effective Time, Parent shall assume the Company's obligations, and shall be assigned the Company's repurchase rights and purchase options, under any Restricted Stock Purchase Agreements listed on Schedule 1.6(c)(iv), true and correct copies of which have been made available by the Company to Parent. Any and all restrictions on the Company Restricted Stock issued pursuant to such agreements which do not lapse in accordance with their terms (as in effect on January 1, 2000) shall continue in full force and effect until such restrictions lapse pursuant to the terms of such agreements, and any repurchase rights or repurchase options which the Company has with respect to the Company Restricted Stock shall also continue in full force and effect.

(v) Parent will reserve sufficient shares of Parent Common Stock for issuance pursuant to this Section 1.6(c).

(d) Adjustments to Exchange Ratios. The Exchange Ratios shall be equitably adjusted to reflect fully the effect of any stock split, reverse split, stock combination, stock dividend (including any dividend or distribution of securities convertible into Parent Common Stock or Company Capital Stock), reorganization, reclassification, recapitalization or other like change with respect to Parent Common Stock or Company Capital Stock the effective date of which occurs after the date hereof and prior to the Effective Time.

(e) Fractional Shares. No fraction of a share of Parent Common Stock will be issued in the Merger, but in lieu thereof, each holder of shares of Company Capital Stock who would otherwise be entitled to a fraction of a share of Parent Common Stock (after aggregating all fractional shares of Parent Common Stock to be received by such holder) shall be entitled to receive from Parent an amount of cash (rounded to the nearest whole cent) equal to the product of (a) such fraction, multiplied by (b) the Closing Price.

(f) Capital Stock of Merger Sub. Each share of common stock of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into and exchanged for one validly issued, fully paid and nonassessable share of common stock of the Surviving Corporation. From and after the Effective Time, each share certificate of Merger Sub theretofore evidencing ownership of any such shares shall evidence ownership of such shares of capital stock of the Surviving Corporation.

### 1.7 Dissenting Shares.

(a) Notwithstanding any provision of this Agreement to the contrary, any shares of Company Capital Stock held by a holder who has demanded and perfected appraisal rights for such shares in accordance with the California Code and who, as of the Effective Time, has not effectively withdrawn or lost such appraisal rights ("Dissenting Shares") shall not be converted into or represent a right to receive Parent Common Stock pursuant to Section 1.6, but the holder thereof shall only be entitled to such rights as are granted by the California Code.

(b) Notwithstanding the provisions of Section 1.7(a) above, if any holder of shares of Company Capital Stock who demands appraisal of such shares under the California Code shall effectively withdraw or lose (through failure to perfect or otherwise) the right to appraisal, then, as of the later of (i) the Effective Time or (ii) the occurrence of such event, such holder's shares shall automatically be converted into and represent only the right to receive Parent Common Stock as provided in Section 1.6, without interest thereon, upon surrender to the Company of the certificate representing such shares in accordance with Section 1.8 of this Agreement.

(c) The Company shall give Parent (i) prompt notice of its receipt of any written demands for appraisal of any shares of Company Capital Stock, withdrawals of such demands, and any other instruments relating to the Merger served pursuant to the California Code and received by the Company and (ii) the opportunity to participate in all negotiations and proceedings with respect to demands for appraisal under the California Code. The Company shall not, except with the prior written consent of Parent or as may be required under applicable law, voluntarily make any payment with respect to any demands for appraisal of Company Capital Stock or offer to settle or settle any such demands.

### 1.8 Exchange Procedures.

(a) Parent Common Stock. On the Closing Date, Parent shall deposit with the Exchange Agent for exchange in accordance with this Article 1, the aggregate number of shares of Parent Common Stock issuable in exchange for outstanding shares of Company Capital Stock; provided, however, that, on behalf of the holders of Company Capital Stock, Parent shall deposit into an escrow account a number of shares of Parent Common Stock equal to the Escrow Amount. The portion of the Escrow Amount contributed on behalf of each holder of Company Capital Stock shall be in proportion to the aggregate number of shares of Parent Common Stock which such holder would otherwise be entitled to receive by virtue of ownership of outstanding shares of Company Capital Stock.

(b) Exchange Procedures. As soon as practicable after the Effective Time, the Surviving Corporation shall cause to be mailed to each holder of record of a certificate or certificates which immediately prior to the Effective Time represented outstanding shares of Company Capital Stock (the "Certificates") and which shares were converted into the right to receive shares of Parent Common Stock pursuant to Section 1.6, (i) a letter of transmittal in customary form (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 may reasonably specify) and (ii) instructions for use in effecting the surrender of the Certificates in exchange for certificates representing shares of Parent Common Stock and cash in lieu of fractional shares. Upon surrender of a Certificate for cancellation to the Exchange Agent or to such other agent or agents as may be appointed by Parent, together with such letter of transmittal, duly completed and validly executed in accordance with the instructions thereto, the holder of such Certificate shall be entitled to receive in exchange therefor a certificate representing the number of whole shares of Parent Common Stock (less the number of shares of Parent Common Stock to be deposited in the Escrow Fund on such holder's behalf pursuant to Article 7 hereof), to which such holder is entitled pursuant to Section 1.6 and cash in lieu of fractional shares to which such holder is entitled pursuant to Section 1.6(e), and the Certificate so surrendered shall be canceled. As soon as practicable after the Effective Time, and subject to and in accordance with the provisions of Article 7 hereof, Parent shall cause to be distributed to the Depositary Agent a certificate or certificates (in such denominations as may be requested by the Depositary Agent) representing that number of shares of Parent Common Stock equal to the Escrow Amount, which certificate shall be registered in the name of the Depositary Agent. Such shares shall be beneficially owned by the holders on whose behalf such shares were deposited in the Escrow Fund and shall be available to compensate Parent as provided in Article 7. Until surrendered, each outstanding Certificate that, prior to the Effective Time, represented shares of Company Capital Stock will be deemed from and after the Effective Time, for all corporate purposes, other than the payment of dividends, to evidence the ownership of the number of full shares of Parent Common Stock into which such shares of Company Capital Stock shall have been so converted (subject only to, if applicable, the expiration or early termination of any waiting period under the HSR Act which is applicable to the holder of such shares due to the making of a filing by such holder under the HSR Act) and cash in lieu of fractional shares.

(c) Distributions With Respect to Unexchanged Shares of Company Capital Stock. No dividends or other distributions with respect to Parent Common Stock declared or made after the Effective Time and with a record date after the Effective Time will be paid to the holder of any unsurrendered Certificate with respect to the shares of Parent Common Stock represented thereby until the holder of record of such Certificate shall surrender such Certificate. Subject to applicable law, following surrender of any such Certificate, there shall be paid to the record holder of the certificates representing whole shares of Parent Common Stock issued in exchange therefor, without interest, at the time of such surrender, the amount of dividends or other distributions with a record date after the Effective Time theretofore payable (but for the provisions of this Section 1.8(c)) with respect to such whole shares of Parent Common Stock.

(d) Transfers of Ownership. If any certificate for shares of Parent Common Stock is to be issued pursuant to the Merger in a name other than that in which the Certificate surrendered in exchange therefor is registered, it will be a condition of the issuance thereof that the Certificate so surrendered will be properly endorsed and otherwise in proper form for transfer and that the person requesting such exchange will have paid to Parent or any agent designated by it any transfer or other taxes required by reason of the issuance of a certificate for shares of Parent Common Stock in any name other than that of

the registered holder of the Certificate surrendered, or established to the satisfaction of Parent or any agent designated by it that such tax has been paid or is not payable.

1.9 No Further Ownership Rights in Company Capital Stock. All shares of Parent Common Stock issued upon the surrender for exchange of shares of Company Capital Stock in accordance with the terms hereof (including any cash in lieu of fractional shares) shall be deemed to have been issued in full satisfaction of all rights pertaining to such shares of Company Capital Stock, and there shall be no further registration of transfers on the records of the Company of shares of Company Capital Stock which were outstanding immediately prior to the Effective Time. If, after the Effective Time, Certificates are presented to the Surviving Corporation for any reason, they shall be canceled and exchanged as provided in this Article 1.

1.10 Lost, Stolen or Destroyed Certificates. In the event any certificates evidencing shares of Company Capital Stock shall have been lost, stolen or destroyed, the Exchange Agent shall issue certificates representing such shares of Parent Common Stock and cash in lieu of fractional shares in exchange for such lost, stolen or destroyed Certificates, upon the making of an affidavit of that fact by the holder thereof; provided, however, that Parent or the Exchange Agent may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed Certificates to provide an indemnity or deliver a bond in such sum as it may reasonably direct as indemnity against any claim that may be made against Parent or the Exchange Agent with respect to the Certificates alleged to have been lost, stolen or destroyed.

1.11 Exemption From Registration; California Permit. Parent and the Company intend that the shares of Parent Common Stock to be issued pursuant to Section 1.6 in connection with the Merger will be issued in a transaction exempt from registration under the Securities Act of 1933, as amended (including the rules and regulations promulgated thereunder, the "Securities Act"), by reason of Section 3(a)(10) thereof or pursuant to Section 5.1(c). by reason of Section 4(2) of the Securities Act and SEC rules and regulations promulgated thereunder. Subject to the provisions of Section 5.1(c), Parent and the Company intend that the shares of Parent Common Stock to be issued pursuant to Section 1.6 in connection with the Merger will be qualified under the California Code, pursuant to Section 25121 thereof, after a fairness hearing has been held by the Commissioner of Corporations of the State of California pursuant to the authority granted by Section 25142 of such law (the "Fairness Hearing"), and (if deemed necessary by Parent in its good faith judgment) the Fairness Hearing shall also address the assumption by Parent of all Company Options, Company Warrants and Company Stock Purchase Rights pursuant to Section 1.6 hereof. Each of Parent and the Company shall use all requisite commercially reasonable efforts (i) to file promptly following the execution and delivery of this Agreement, an application for issuance of a permit pursuant to Section 25121 of the California Code to issue such securities and (if deemed necessary by Parent in its good faith judgment) to assume such Company Options, Company Warrants and Company Stock Purchase Rights (the "California Permit") and (ii) to obtain the California Permit as promptly as practicable thereafter.

1.12 Taking of Necessary Action; Further Action. If, at any time after the Effective Time, any such further action is necessary or desirable to carry out the purposes of

this Agreement and to vest the Surviving Corporation with full right, title and possession to all assets, property, rights, privileges, powers and franchises of the Company, the officers and directors of the Surviving Corporation are fully authorized to take, and will take, all such lawful and necessary action.

ARTICLE 2  
REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company hereby represents and warrants to Parent and Merger Sub, subject to such exceptions as are specifically disclosed with respect to specific numbered and lettered sections and subsections of this Article 2 in the disclosure schedule and schedule of exceptions delivered to Parent concurrently with the execution and delivery of this Agreement (the "Company Disclosure Schedule") (a draft of which was delivered to Parent concurrently with the execution and delivery of the Original Agreement), and numbered with corresponding numbered and lettered sections and subsections, as follows (it being agreed that for purposes of the representations and warranties set forth in this Article 2, the term the "Company" shall be deemed to refer to the Company and its Subsidiary on a consolidated basis, except where the context reasonably indicates otherwise):

2.1 Organization and Qualification. The Company is a corporation duly organized, validly existing and in good standing under the laws of the state of its incorporation, and has full corporate power to conduct its business as now conducted and as currently proposed to be conducted and to own, use, license and lease its Assets and Properties. The Company is duly qualified, licensed or admitted to do business and is in good standing as a foreign corporation in each jurisdiction in which the ownership, use, licensing or leasing of its Assets and Properties, or the conduct or nature of its business, makes such qualification, licensing or admission necessary, except for such failures to be so duly qualified, licensed or admitted and in good standing that could not reasonably be expected to have a material adverse effect on the Business or Condition of the Company. Section 2.1 of the Company Disclosure Schedule sets forth each jurisdiction where the Company is so qualified, licensed or admitted to do business and separately lists each other jurisdiction in which the Company owns, uses, licenses or leases its Assets and Properties, or conducts business or has employees or engages independent contractors.

2.2 Authority Relative to this Agreement. Subject only to the requisite approval of the Merger and this Agreement by the shareholders of the Company, the Company has full corporate power to execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby. The Company's Board of Directors has approved this Agreement and declared its advisability. The execution and delivery by the Company of this Agreement and the other agreements attached hereto as exhibits (the "Ancillary Agreements") to which the Company is a party and the consummation by the Company of the transactions contemplated hereby and thereby, and the performance by the Company of its obligations hereunder and thereunder, have been duly and validly authorized by all necessary action by the Board of Directors of the Company, and no other action on the part of the Board of Directors of the Company is required to authorize the execution, delivery and performance of this Agreement and the Ancillary Agreements to which the Company is a party and the consummation by the Company of the transactions contemplated hereby and thereby. This Agreement and the

Ancillary Agreements to which the Company is a party have been or will be, as applicable, duly and validly executed and delivered by the Company and, assuming the due authorization, execution and delivery hereof by Parent and Merger Sub, each constitutes or will constitute, as applicable, a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its respective terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other similar Laws relating to the enforcement of creditors' rights generally and by general principles of equity.

2.3 Capital Stock. The authorized capital stock of the Company consists only of 30,000,000 shares of Common Stock, no par value per share (the "Company Common Stock"), of which 9,634,250 shares of Common Stock are issued and outstanding as of the Amendment Date, and 11,000,000 shares of Preferred Stock, no par value per share (the "Company Preferred Stock"). The Company is in the process of increasing the authorized number of shares of Company Common Stock from 30,000,000 to 100,000,000; and Parent hereby consents to such increase. The designation and status of the Company Preferred Stock is as follows: (i) 2,000,000 shares are designated as Series A Preferred Stock (the "Series A Preferred Stock"), 1,776,333 of which are issued and outstanding as of the date hereof, and (ii) 2,457,250 shares are designated as Series B Preferred Stock (the "Series B Preferred Stock"), 1,695,503 of which are issued and outstanding as of the date hereof. All of the issued and outstanding shares of Company Common Stock and Company Preferred Stock are validly issued, fully paid and nonassessable, and have been issued in compliance with all applicable federal, state and foreign securities Laws. Except as set forth in Section 2.3 of the Company Disclosure Schedule, no shares of Company Common Stock or Company Preferred Stock are held in treasury or are authorized or reserved for issuance and no Options are outstanding. Section 2.3 of the Company Disclosure Schedule lists the name and state of residence of each holder of Company Common Stock and Company Preferred Stock provided to the Company by such holder. With respect to any Company Common Stock or Company Preferred Stock that has been issued subject to a repurchase option on the part of the Company, Section 2.3 of the Company Disclosure Schedule sets forth the holder thereof, the number and type of securities covered thereby, and the vesting schedule thereof (including a description of the circumstances under which such vesting schedule can or will be accelerated). Except as set forth in Section 2.3 of the Company Disclosure Schedule, there are no outstanding Company Options, Company Warrants or Company Stock Purchase Rights or agreements, arrangements or understandings to which the Company is a party (written or oral) to issue any Options with respect to the Company and there are no preemptive rights or agreements, arrangements or understandings to issue preemptive rights with respect to the issuance or sale of Company Capital Stock created by statute, the articles of incorporation or by-laws of the Company, or any agreement or other arrangement to which the Company is a party or to which it is bound and there are no agreements, arrangements or understandings to which the Company is a party (written or oral) pursuant to which the Company has the right to elect to satisfy any Liability by issuing Company Common Stock or Equity Equivalents. With respect to each Company Option, Company Warrant and Company Stock Purchase Right, Section 2.3 of the Company Disclosure Schedule sets forth the holder thereof, the number and type of securities issuable thereunder, and, if applicable, the exercise price therefor, the exercise period and vesting schedule thereof (including a description of the circumstances under which such vesting schedule can

or will be accelerated). All of the Company Options, Company Warrants and Company Stock Purchase Rights were issued in compliance with all applicable federal, state and foreign securities Laws. The terms of the Company Stock Option Plan and the applicable stock option agreements related to the outstanding Company Options permit the assumption or substitution of options to purchase Parent Common Stock as provided in this Agreement, without the consent or approval of the holders of such securities, Company Shareholders' Action or otherwise and without any acceleration of the exercise schedule or vesting provisions in effect for those options. True and complete copies of all agreements and instruments relating to or issued under the Company Stock Option Plan have been provided to Parent and such agreements and instruments have not been amended, modified or supplemented, and there are no agreements to amend, modify or supplement such agreements or instruments in any case from the form provided to Parent. Except for the Support Agreements, the Company is not a party or subject to any agreement or understanding, and, to the Company's knowledge, there is no agreement, arrangement or understanding between or among any Persons which affects, restricts or relates to voting, giving of written consents, dividend rights or transferability of shares with respect to the Company Capital Stock, including without limitation any voting trust agreement or proxy. Except as set forth in Section 2.3 of the Company Disclosure Schedule, no debt securities of the Company are issued and outstanding. The fair market value of the aggregate Merger consideration exceeds the amount set forth in Section 6.2 of the Company's Restated Articles of Incorporation that would otherwise permit the holders of shares of the Series B Preferred Stock to receive the special consideration set forth in such Section 6.2 and, accordingly, Section 6.2 of the Company's Restated Articles of Incorporation is inapplicable to the Merger.

2.4 No Subsidiaries. Except as set forth in Section 2.4 of the Company Disclosure Schedule, the Company has no (and prior to the Closing will have no) Subsidiaries and does not (and prior to the Closing will not) otherwise hold any equity, membership, partnership, joint venture or other ownership interest in any Person.

2.5 Directors and Officers. The name of each director and officer of the Company on the date hereof, and his or her position with the Company, are listed in Section 2.5 of the Company Disclosure Schedule.

2.6 No Conflicts. The execution and delivery by the Company of this Agreement does not, the performance by the Company of its obligations under this Agreement and the consummation of the transactions contemplated hereby do not and will not:

(a) conflict with or result in a violation or breach of any of the terms, conditions or provisions of the articles of incorporation or by-laws of the Company;

(b) subject to obtaining the consents, approvals and actions, making the filings and giving the notices disclosed in Section 2.6 of the Company Disclosure Schedule, if any, conflict with or result in a violation or breach of any Law or Order applicable to the Company or any of its Assets and Properties; or

(c) except as disclosed in Section 2.6 of the Company Disclosure Schedule and except as would not have a material adverse effect on the Business or

Condition of the Company (provided that this second exception shall not apply with respect to any of the following which affects or relates to any Company Intellectual Property), (i) conflict with or result in a violation or breach of, (ii) constitute a default (or an event that, with or without notice or lapse of time or both, would constitute a default) under, (iii) require the Company to obtain any consent, approval or action of, make any filing with or give any notice to any Person as a result or under the terms of (except for (I) the filing of the Agreement of Merger, together with the required officer's certificates; (II) such consents approvals, orders, authorizations, registrations, declarations and filings as may be required under applicable state or federal securities laws; and (III) such filings as may be required under the HSR Act), (iv) result in or give to any Person any right of termination, cancellation, acceleration or modification in or with respect to, (v) result in or give to any Person any additional rights or entitlement to increased, additional, accelerated or guaranteed payments or performance under, (vi) result in the creation or imposition of (or the obligation to create or impose) any Lien upon the Company or any of its Assets and Properties under or (vii) result in the loss of a material benefit under, any of the terms, conditions or provisions of any Contract or License to which the Company is a party or by which any of the Company's Assets and Properties is bound.

2.7 Books and Records; Organizational Documents. The minute books and stock record books and other similar records of the Company have been provided or made available to Parent or its counsel prior to the execution of this Agreement, are complete and correct in all respects and have been maintained in accordance with sound business practices. Such minute books contain a true and complete record of all actions taken at all meetings and by all written consents in lieu of meetings of the directors, shareholders and committees of the Board of Directors of the Company from the date of the Company's incorporation through the date hereof. The Company has prior to the execution of this Agreement delivered to Parent true and complete copies of its articles of incorporation and by-laws, both as amended through the date hereof. The Company is not in violation of any provisions of its articles of incorporation or bylaws.

2.8 Company Financial Statements. Section 2.8 of the Company Disclosure Schedule sets forth the Company Financials. The Company Financials delivered to Parent are correct and complete in all material respects and have been prepared in accordance with GAAP applied on a basis consistent throughout the periods indicated and consistent with each other (except as may be indicated in the notes thereto as delivered to Parent prior to the date hereof, and, in the case of the Interim Financial Statements, subject to normal year-end adjustments, which adjustments will not be material in amount or significance). The Company Financials present fairly and accurately the financial condition and operating results of the Company as of the dates and during the periods indicated therein, subject, in the case of the Interim Financial Statements, to normal year-end adjustments, which adjustments will not be material in amount or significance and except that the Interim Financial Statements may not contain footnotes. Except as set forth in Section 2.8 to the Company Disclosure Schedule, since January 1, 1997, there has been no change in any accounting policies, principles, methods or practices, including any change with respect to reserves (whether for bad debts, contingent liabilities or otherwise), of the Company.

2.9 Absence of Changes. Since March 31, 2000, except as set forth in Section 2.9 of the Company Disclosure Schedule, there has not been any material adverse change in the Business or Condition of the Company or any occurrence or event which, individually or in the aggregate could be reasonably expected to have any material adverse change in the Business or Condition of the Company. Since the beginning of its 2000 fiscal year, the Company has operated its business in accordance with its 2000 operating plan (a copy of which has been provided to and approved by Parent). In addition, without limiting the generality of the foregoing, except as expressly contemplated by this Agreement and except as disclosed in Section 2.9 of the Company Disclosure Schedule, since March 31, 2000:

(a) the Company has not entered into any Contract, commitment or transaction or incurred any Liabilities outside of the ordinary course of business, consistent with past practice;

(b) the Company has not entered into any Contract in connection with any transaction involving a Business Combination;

(c) the Company has not altered or entered into any Contract or other commitment to alter, its interest in any corporation, association, joint venture, partnership or business entity in which the Company directly or indirectly holds any interest on the date hereof;

(d) the Company has not entered into any strategic alliance, joint development or joint marketing Contract;

(e) there has not been any material amendment or other modification (or agreement to do so) or violation of the terms of, any of the Contracts set forth or described in the Company Disclosure Schedule;

(f) the Company has not entered into any transaction with any officer, director, shareholder, Affiliate or Associate of the Company, other than pursuant to any Contract in effect on the Audited Financial Statement Date and disclosed to Parent pursuant to (and so identified in) Section 2.9(f), Section 2.18(a) or Section 2.20 of the Company Disclosure Schedule or other than pursuant to any contract of employment and listed pursuant to Section 2.18(a) of the Company Disclosure Schedule;

(g) the Company has not entered into or amended in any material respect any Contract pursuant to which any other Person is granted manufacturing, marketing, distribution, licensing or similar rights of any type or scope with respect to any products of the Company or Company Intellectual Property other than as contemplated by the Company's Contracts or Licenses disclosed in the Company Disclosure Schedule;

(h) no Action or Proceeding has been commenced or, to the knowledge of the Company, threatened by or against the Company;

(i) the Company has not declared or set aside or paid any dividends on or made any other distributions (whether in cash, stock or property) in respect of any Company

Capital Stock or Equity Equivalents, or effected or approved any split, combination or reclassification of any Company Capital Stock or Equity Equivalents or issued or authorized the issuance of any other securities in respect of, in lieu of or in substitution for shares of Company Capital Stock or Equity Equivalents, or repurchased, redeemed or otherwise acquired, directly or indirectly, any shares of Company Capital Stock or Equity Equivalents, except repurchases of Company Capital Stock pursuant to agreements with Company employees, officers, directors and consultants relating to repurchases at cost upon termination of service with the Company;

(j) except for (i) the issuance of shares of Company Capital Stock upon exercise or conversion of then-outstanding Company Options, Company Warrants, Company Stock Purchase Rights or Company Preferred Stock listed in Section 2.3 of the Company Disclosure Schedule, or (ii) the issuance of options available for grant under the Company's existing Company Stock Option Plan in the ordinary course of business to (x) employees hired after the Audited Financial Statement Date on terms and in amounts consistent with past practice or (y) existing employees on terms and in amounts consistent, and otherwise in accordance, with past practice, (A) the Company has not issued, granted, delivered, sold or authorized or proposed to issue, grant, deliver or sell, or purchased or proposed to purchase, any shares of Company Capital Stock, Equity Equivalents, (B) the Company has not modified or amended the rights of any holder of any outstanding shares of Company Capital Stock or Equity Equivalents (including to reduce or alter the consideration to be paid to the Company upon the exercise of any outstanding Company Options, Company Warrants, Company Stock Purchase Rights or other Equity Equivalents), (C) there have not been any agreements, arrangements, plans or understandings with respect to any such modification or amendment; and (D) the Company has not granted any Options with an exercise price of less than the fair market value of Company Common Stock on the date the Option was granted (as determined in good faith by the Company's board of directors;

(k) there has not been any amendment to the Company's articles of incorporation or by-laws;

(l) there has not been any transfer (by way of a License or otherwise) to any Person of rights to any Company Intellectual Property;

(m) the Company has not made or agreed to make any disposition or sale of, waiver of rights to, license or lease of, or incurrence of any Lien on, any Assets and Properties of the Company, other than dispositions of inventory, or nonexclusive licenses of products to Persons to whom the Company had granted licenses of its products at the Audited Financial Statement Date, in the ordinary course of business of the Company consistent with past practice;

(n) the Company has not made or agreed to make any purchase of any Assets and Properties of any Person other than (i) acquisitions of inventory, or licenses of products, in the ordinary course of business of the Company consistent with past practice and (ii) other acquisitions in an amount not exceeding fifty thousand dollars (\$50,000) in the case of any individual item or one hundred fifty thousand dollars (\$150,000) in the aggregate;

(o) the Company has not made or agreed to make any capital expenditures or commitments for additions to property, plant or equipment of the Company constituting capital assets individually or in the aggregate in an amount exceeding \$50,000;

(p) the Company has not made or agreed to make any write-off or write-down any determination to write off or write-down, or revalue, any of the Assets and Properties of the Company, or change any reserves or liabilities associated therewith, individually or in the aggregate in an amount exceeding \$50,000;

(q) the Company has not made or agreed to make payment, discharge or satisfaction, in an amount in excess of \$25,000, in any one case, or \$50,000 in the aggregate, of any claim, Liability or obligation (whether absolute, accrued, asserted or unasserted, contingent or otherwise), other than the payment, discharge or satisfaction in the ordinary course of business of Liabilities reflected or reserved against in the Company Financial Statements;

(r) the Company has not failed to pay or otherwise satisfy any Liabilities of the Company presently due and payable, except such Liabilities of the Company which are being contested in good faith by appropriate means or procedures and which, individually or in the aggregate, are immaterial in amount;

(s) the Company has not incurred any Indebtedness or guaranteed any Indebtedness in an aggregate amount exceeding \$50,000 or issued or sold any debt securities of the Company or guaranteed any debt securities of others;

(t) the Company has not granted any severance or termination pay to any director, officer employee or consultant, except payments made pursuant to written Contracts outstanding on the date hereof, copies of which have been delivered to Parent and the terms of which are disclosed in Section 2.9(t) of the Company Disclosure Schedule;

(u) except pursuant to a Contract disclosed to Parent pursuant to Section 2.9(f) or 2.18 of the Company Disclosure Schedule, the Company has not granted or approved any increase of greater than five percent (5%) in salary, rate of commissions, rate of consulting fees or any other compensation of any current or former officer, director, shareholder, employee, independent contractor or consultant of the Company;

(v) the Company has not paid or approved the payment of any consideration of any nature whatsoever (other than salary, commissions or consulting fees and customary benefits paid to any current or former officer, director, shareholder, employee or consultant of the Company) to any current or former officer, director, shareholder, employee, independent contractor or consultant of the Company;

(w) the Company has not established or modified any (i) targets, goals, pools or similar provisions under any Plan, employment Contract or other employee compensation arrangement or independent contractor Contract or other compensation arrangement or (ii) salary ranges, increased guidelines or similar provisions in respect of any Plan, employment Contract or other employee compensation arrangement or independent contractor Contract or other compensation arrangement;

(x) the Company has not adopted, entered into, amended, modified or terminated (partially or completely) any Plan;

(y) the Company has not paid any discretionary or stay bonus;

(z) the Company has not taken or approved any action, including the acceleration of vesting of any Company Options or Company Warrants, or other rights to acquire shares of capital stock of the Company, which could jeopardize the status of the Merger as a tax-free reorganization;

(aa) the Company has not made or changed any material election in respect of Taxes, adopted or changed any accounting method in respect of Taxes, entered into any tax allocation agreement, tax sharing agreement, tax indemnity agreement or closing agreement, settled or compromised any claim or assessment in respect of Taxes, or consented to any extension or waiver of the limitation period applicable to any claim or assessment in respect of Taxes with any Taxing Authority or otherwise;

(bb) the Company has not made any change in accounting policies, principles, methods, practices or procedures (including without limitation for bad debts, contingent liabilities or otherwise, respecting capitalization or expense of research and development expenditures, depreciation or amortization rates or timing of recognition of income and expense);

(cc) other than in the ordinary course of business, the Company has not made any representation or proposal to, or engaged in substantive discussions with, any of the holders (or their representatives) of any Indebtedness, or to or with any party which has issued a letter of credit which benefits the Company;

(dd) the Company has not commenced or terminated, or made any change in, any line of business;

(ee) the Company has not failed to renew any insurance policy; no insurance policy of the Company has been cancelled or materially amended; and the Company has given all notices and presented all claims (if any) under all such policies in a timely fashion;

(ff) there has been no material amendment or non-renewal of any of the Company's Approvals, and the Company has used commercially reasonable efforts to maintain such Approvals and has observed in all material respects all Laws and Orders applicable to the conduct of the Company's business or the Company's Assets and Properties;

(gg) the Company has taken all action required to procure, maintain, renew, extend or enforce any Company Intellectual Property, including, but not limited to, submission of required documents or fees during the prosecution of patent, trademark or other applications for Registered Intellectual Property rights;

(hh) there has been no physical damage, destruction or other casualty loss (whether or not covered by insurance) affecting any of the real or personal property or equipment of the Company individually or in the aggregate in an amount exceeding \$50,000.

(ii) the Company has not repurchased, cancelled or modified the terms of any Company Capital Stock, Equity Equivalents, Company Options, Company Warrants, Company Stock Purchase Rights or other financial instrument that derives value from its convertibility into Company Capital Stock or Equity Equivalents, other than transactions entered into in the ordinary course of business and pursuant to either (i) contractual provisions or (ii) the Company Stock Option Plan, in each case as in effect at the time of execution and delivery of this Agreement;

(jj) the Company has not entered into or approved any contract, arrangement or understanding or acquiesced in respect of any arrangement or understanding, to do, engage in or cause or having the effect of any of the foregoing, including with respect to any Business Combination not otherwise restricted by the foregoing paragraphs.

2.10 No Undisclosed Liabilities. Except as reflected or reserved against in the Company Financials (including the notes thereto) or as disclosed in Section 2.10 of the Company Disclosure Schedule, there are no Liabilities of, relating to or affecting the Company or any of its Assets and Properties, other than Liabilities incurred in the ordinary course of business consistent with past practice since the Financial Statement Date and in accordance with the provisions of this Agreement which, individually and in the aggregate, are not material to the Business or Condition of the Company, and are not for tort or for breach of contract.

2.11 Taxes. Except as disclosed in Section 2.11 of the Company Disclosure Schedule:

(a) All Tax Returns required to have been filed by or with respect to the Company or any affiliated, consolidated, combined, unitary or similar group of which the Company is or was a member (a "Relevant Group") have been duly and timely filed (including any extensions), and each such Tax Return correctly and completely reflects Tax liability and all other information required to be reported thereon. All Taxes due and payable by the Company or any member of a Relevant Group, whether or not shown on any Tax Return, or claimed to be due by any Tax Authority, have been paid or accrued on the balance sheet included in the Company Financials or have otherwise been provided for as described in Section 2.11(b). All such Tax Returns are true, complete and correct in all material respects.

(b) The Company has not incurred any material liability for Taxes other than as reflected on the balance sheet included in the Interim Financial Statements through the date thereof. The unpaid Taxes of the Company (i) did not, as of the most recent fiscal month end, exceed by any material amount the reserve for liability for Income Tax (other than the reserve for deferred taxes established to reflect timing differences between book and tax income) or Other Tax set forth on the face of the Company's balance sheet included in the Interim Financial Statements and (ii) will not exceed by any material amount such

reserve as adjusted for operations and transactions in the ordinary course of business through the Closing Date, with reserves computed for this purpose in the same manner as any such reserves were computed at the Company's year end in its most recent Audited Financial Statements.

(c) The Company is not a party to any agreement extending the time within which to file any Tax Return. No claim has ever been made in writing by a Taxing Authority of any jurisdiction in which the Company or any member of any Relevant Group does not file Tax Returns that the Company or such member is or may be subject to taxation by that jurisdiction.

(d) The Company and each member of any Relevant Group has withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, creditor or independent contractor.

(e) The Company does not have knowledge of any actions by any Taxing Authority in connection with assessing additional Taxes against or in respect of it or any Relevant Group for any past period. There is no dispute or claim concerning any Tax liability of the Company either (i) threatened, claimed or raised in writing by any Taxing Authority or (ii) of which the Company is otherwise aware. There are no Liens for Taxes upon the Assets and Properties of the Company other than Liens for Taxes not yet due. Section 2.11 of the Company Disclosure Schedule indicates those Tax Returns, if any, of the Company and each member of any Relevant Group that have been audited or examined by Taxing Authorities, and indicates those Tax Returns of the Company and each member of any Relevant Group that currently are the subject of audit or examination. Solely with respect to Income Taxes, the Company has delivered to Parent complete and correct copies of all federal, state, local and foreign income Tax Returns filed by, and all Tax examination reports and statements of deficiencies assessed against or agreed to by, the Company and each member of any Relevant Group.

(f) There are no outstanding agreements or waivers extending the statutory period of limitation applicable to any Tax Returns required to be filed by, or which include or are treated as including, the Company or with respect to any Tax assessment or deficiency affecting the Company or any Relevant Group.

(g) The Company has not received any written ruling related to Taxes or entered into any agreement with a Taxing Authority relating to Taxes.

(h) The Company has no liability for the Taxes of any Person other than the Company (i) under Section 1.1502-6 of the Treasury regulations (or any similar provision of state, local or foreign Law), (ii) as a transferee or successor, (iii) by Contract or (iv) otherwise.

(i) The Company (i) has neither agreed to make nor is required to make any adjustment under Section 481 of the Code by reason of a change in accounting method and (ii) is not a "consenting corporation" within the meaning of Section 341(f)(1) of the Code.

(j) The Company is not a party to or bound by any obligations under any tax sharing, tax allocation, tax indemnity or similar agreement or arrangement.

(k) The Company is not involved in, subject to, or a party to any joint venture, partnership, Contract or other arrangement that is treated as a partnership for federal, state, local or foreign Income Tax purposes.

(l) The Company was not included and is not includible in the Tax Return of any Relevant Group with any corporation other than such a return of which the Company is the common parent corporation.

(m) The Company has not made any payments, is not obligated to make any payments, nor is a party to any Contract that under certain circumstances could require it to make or give rise to any payments that are not deductible as a result of the provisions set forth in Section 280G of the Code or the Treasury regulations thereunder or would result in an excise tax to the recipient of any such payment under Section 4999 of the Code.

(n) There is currently no limitation on the utilization of the net operating losses, built-in losses, capital losses, Tax credits or other similar items of the Company under (i) Section 382 of the Code, (ii) Section 383 of the Code, (iii) Section 384 of the Code, and (iv) Section 1502 of the Code and Treasury regulations promulgated thereunder.

(o) All material elections with respect to income Taxes affecting the Company are set forth in Section 2.11 of the Company Disclosure Schedule.

(p) The Company is not nor has it ever been a United States real property holding corporation within the meaning of Section 897(c)(1)(A)(ii) of the Code.

## 2.12 Legal Proceedings.

(a) Except as set forth in Section 2.12 of the Company Disclosure Schedule:

(i) there are no Actions or Proceedings pending or, to the knowledge of the Company, threatened against, relating to or affecting the Company or its Assets and Properties;

(ii) there are no facts or circumstances known to the Company that the Company expects to give rise to any Action or Proceeding against, relating to or, to the knowledge of the Company, directly affecting the Company; and

(iii) the Company has not received notice, and does not otherwise have knowledge of any Orders outstanding against the Company.

(b) Prior to the execution of this Agreement, the Company has delivered to Parent all responses of counsel for the Company to auditor's requests for information for the preceding three years (together with any updates provided by such counsel) regarding Actions or Proceedings pending or threatened against, relating to or affecting the Company. Section 2.12(b) of the Company Disclosure Schedule sets forth all Actions or Proceedings

relating to or affecting, or, to the knowledge of the Company, threatened against, the Company or any of its Assets and Properties during the three-year period prior to the date hereof.

2.13 Compliance with Laws and Orders. Except as disclosed in Section 2.13 of the Company Disclosure Schedule, the Company has not violated in any material respect, and is not currently in material default under, any Law or Order applicable to the Company or any of its Assets and Properties.

#### 2.14 Plans; ERISA.

(a) Existence of Plans. Except as disclosed on Section 2.14 of the Company Disclosure Schedule, (i) neither the Company, any Subsidiary nor any of their respective ERISA Affiliates maintains or sponsors (or ever maintained or sponsored), or makes or is required to make contributions to, any Plans, (ii) none of the Plans is or was a "multi-employer plan", as defined in Section 3(37) of ERISA, (iii) none of the Plans is or was a "defined benefit pension plan" within the meaning of Section 3(35) of ERISA, (iv) none of the Plans provides or provided post-retirement medical or health benefits, (v) none of the Plans is or was a "welfare benefit fund," as defined in Section 419(e) of the Code, or an organization described in Sections 501(c)(9) or 501(c)(20) of the Code, (vi) neither the Company, any Subsidiary nor any of their respective ERISA Affiliates is or was a party to any collective bargaining agreement, and (vii) neither the Company, any Subsidiary nor any of their respective ERISA Affiliate has announced or otherwise made any commitment to create or amend any Plan, except as may be required by changes in Law. Notwithstanding any statement or indication in this Agreement to the contrary, other than its obligation to provide required COBRA continuation coverage with respect to the Company's medical plan, there are no Plans (a) as to which Parent will be required to make any contributions or with respect to which Parent shall have any obligation or liability whatsoever, whether on behalf of any of the current employees of the Company or any Subsidiary or on behalf of any other person, after the Closing, or (b) which Parent, the Surviving Corporation or any Subsidiary will not be able to terminate immediately after the Closing in accordance with their terms and ERISA. With respect to each of such Plans, at the Closing there will be no unrecorded liabilities with respect to the establishment, implementation, operation, administration or termination of any such Plan, or the termination of the participation in any such Plan by the Company, any Subsidiary or any of their respective ERISA Affiliates. The Company has delivered to Parent true and complete copies of: (i) each of the Plans and any related funding agreements thereto (including insurance contracts) including all amendments, all of which are legally valid and binding and in full force and effect and there are no defaults thereunder, (ii) the currently effective Summary Plan Description pertaining to each of the Plans, (iii) all annual reports for each of the Plans (including all related schedules), (iv) the most recently filed PBGC Form 1 (if applicable), (v) the most recent Internal Revenue Service determination letter, opinion, notification or advisory letter (as the case may be) for each Plan which is intended to constitute a qualified plan under Section 401 of the Code and each amendment to each of the foregoing documents, and (vi) for each unfunded Plan, financial statements consisting of (A) the consolidated statement of assets and liabilities of such Plan as of its most recent valuation date, and (B) the statement of changes in fund balance and in financial position or

the statement of changes in net assets available for benefits under such Plan for the most recently-ended plan year, which such financial statements shall fairly present the financial condition and the results of operations of such Plan in accordance with GAAP, consistently applied, as of such dates.

(b) Present Value of Benefits. The present value of all accrued benefits under any Plan subject to Title IV of ERISA shall not, as of the Closing Date, exceed the value of the assets of such Plans allocated to such accrued benefits, based upon the applicable provisions of the Code and ERISA, and each such Plan shall be capable of being terminated as of the Closing Date in a "standard termination" under Section 4041(b) of ERISA. With respect to each Plan that is subject to Title IV of ERISA, (i) no amount is due or owing from the Company, any Subsidiary or any of their respective ERISA Affiliates to the PGBC or to any "multi-employer Plan" as defined in Section 3(37) of ERISA on account of any withdrawal therefrom and (ii) no such Plan has been terminated other than in accordance with ERISA or at a time when the Plan was not sufficiently funded. The transactions contemplated hereunder, including without limitation the termination of any Plan at or prior to the Closing, shall not result in any such withdrawal or other liability under any applicable Laws.

(c) Penalties; Reportable Events. Neither the Company, any Subsidiary nor any of their respective ERISA Affiliates is subject to any material liability, tax or penalty whatsoever to any person or agency whomsoever as a result of engaging in a prohibited transaction under ERISA or the Code, and neither the Company, any Subsidiary nor any of their respective ERISA Affiliates has any knowledge of any circumstances which reasonably might result in any material liability, tax or penalty, including but not limited to, a penalty under Section 502 of ERISA, as a result of a breach of any duty under ERISA or under other Laws. Each Plan which is required to comply with the provisions of Sections 4980B and 4980C of the Code, or with the requirements referred to in Section 4980D of the Code, has complied in all material respects. No event has occurred which could subject any Plan to tax under Section 511 of the Code. None of the Plans subject to Title IV of ERISA has, since September 2, 1974, been completely or partially terminated nor has there been any "reportable event", as such term is defined in Section 4043(b) of ERISA, with respect to any of the Plans since the effective date of ERISA nor has any notice of intent to terminate been filed or given with respect to any such Plan. There has been no (i) withdrawal by the Company, any Subsidiary or any of their respective ERISA Affiliates that is a substantial employer from a single-employer plan which is a Plan and which has two or more contributing sponsors at least two of whom are not under common control, as referred to in Section 4063(b) of ERISA, or (ii) cessation by the Company, any Subsidiary or any of their respective ERISA Affiliates of operations at a facility causing more than 20% of Plan participants to be separated from employment, as referred to in Section 4062(f) of ERISA. Neither the Company, any Subsidiary nor any of their respective ERISA Affiliates, nor any other organization of which any of them are a successor or Parent corporation as defined in Section 4069(b) of ERISA, have engaged in any transaction described in Section 4069(a) of ERISA.

(d) Deficiencies; Qualification. None of the Plans nor any trust created thereunder has incurred any "accumulated funding deficiency" as such term is defined in

Section 412 of the Code, whether or not waived, since the effective date of said Section 412, and no condition has occurred or exists which by the passage of time could be expected to result in an accumulated funding deficiency as of the last day of the current plan year of any such Plan. Furthermore, neither the Company, ant Subsidiary nor any of their respective ERISA Affiliates has any unfunded liability under ERISA in respect of any of the Plans. Each of the Plans which is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination letter, opinion, notification or advisory letter from the Internal Revenue Service, and has in all material respects been operated in accordance with its terms and with the provisions of the Code. All of the Plans have been administered and maintained in substantial compliance with ERISA, the Code and all other applicable Laws. Notwithstanding the foregoing, no representation is made by the Company concerning the impact of the termination of the Company's 401(k) plan on such plan's continued qualification under Section 401(a) of the Code. All contributions required to be made to each of the Plans under the terms of that Plan, ERISA, the Code or any other applicable Laws have been timely made. Each Plan intended to meet the requirements for tax-favored treatment under Subchapter B of Chapter 1 of the Code is in compliance with such requirements. There are no Liens against the property of the Company, any Subsidiary or any of their respective ERISA Affiliates under Section 412(n) of the Code or Sections 302(f) or 4068 of ERISA. The Interim Financial Statements properly reflect all amounts required to be accrued as liabilities to date under each of the Plans.

(e) Parachute Payments. There is no contract, agreement or benefit arrangement covering any current or former employee or consultant of the Company or any Subsidiary which, individually or collectively, could give rise to the payment of any amount which would constitute an "excess parachute payment" (as defined in Section 280G) of the Code). Neither the execution of this Agreement nor the consummation of any of the transactions contemplated hereby (whether alone or upon the occurrence of any additional or further acts or events) will (i) result in any obligation or liability (with respect to accrued benefits or otherwise) on the part of the Company, Parent, the Surviving Corporation, or any of their respective Subsidiaries to the PBGC, to any Plan, or to any present or former employee, director, officer, shareholder, contractor or consultant of Parent, the Surviving Corporation, or any their respective Subsidiaries or any of their dependents, (ii) be a trigger event under any Plan that will result in any payment (whether of severance pay or otherwise) becoming due to any such present or former employee, officer, director, shareholder, contractor, or consultant, or any of their dependents, or (iii) accelerate the time of payment or vesting, or increase the amount, of any compensation theretofore or thereafter due or granted to any employee, officer, director, shareholder, contractor, or consultant of the Company or any Subsidiary or any of their dependents. With respect to any insurance policy which provides, or has provided, funding for benefits under any Plan, (I) there is and will be no liability of the Company, Parent or any of their respective Subsidiaries in the nature of a retroactive or retrospective rate adjustment, loss sharing arrangement, or actual or contingent liability as of the Closing Date, nor would there be any such liability if such insurance policy were terminated as of the Closing Date, and (II) no insurance company issuing any such policy is in receivership, conservatorship, bankruptcy, liquidation, or similar proceeding, and, to the knowledge of the Company, no such proceedings with respect to any insurer are imminent.

(f) COBRA. With respect to each Plan which provides health care coverage, the Company and each ERISA Affiliate have complied in all material respects with (i) the applicable health care continuation and notice provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA"), and the applicable COBRA regulations and (ii) the applicable requirements of the Health Insurance Portability and Accountability Act of 1996 and the regulations thereunder, and neither the Company nor any ERISA Affiliate has incurred any liability under Section 4980B of the Internal Revenue Code.

(g) Litigation. Other than routine claims for benefits under the Plans, there are no pending, or, to the best knowledge of the Company, threatened, Actions or Proceedings involving the Plans, or the fiduciaries, administrators, or trustees of any of the Plans or the Company, any Subsidiary or any of their respective ERISA Affiliates as the employer or sponsor under any Plan, with any of the IRS, the Department of Labor, the PBGC, any participant in or beneficiary of any Plan or any other person whomsoever. The Company knows of no reasonable basis for any such claim, lawsuit, dispute, action or controversy.

#### 2.15 Real Property.

(a) Section 2.15(a) of the Company Disclosure Schedule contains a true and correct list of (i) each parcel of real property leased, utilized and/or operated by the Company (as lessor or lessee or otherwise) (the "Leased Real Property") and (ii) all Liens relating to or affecting any parcel of real property referred to in clause (i) to which the Company is a party. The Company owns no real property other than Company owned leasehold improvements, if any, on the Leased Real Property.

(b) Subject to the terms of its respective leases, the Company has a valid and subsisting leasehold estate in and the right to quiet enjoyment of the Leased Real Properties for the full term (or the renewal period, if the lease has been renewed) of the leases relating thereto. Each lease referred to in clause (i) of paragraph (a) above is a legal, valid and binding agreement, enforceable in accordance with its terms, of the Company and of each other Person that is a party thereto, and except as set forth in Section 2.15(b) of the Company Disclosure Schedule, there is no, and the Company has not received notice of any, default (or any condition or event which, after notice or lapse of time or both, would constitute a default) thereunder. The Company does not owe brokerage commissions or finders fees with respect to any such Leased Real Property, except to the extent that the Company may renew the term of any such lease, in which case, any such commissions and fees would be in amounts that are reasonable and customary for the spaces so leased, given their intended use and terms.

(c) Except as disclosed in Section 2.15(c) of the Company Disclosure Schedule, all improvements on the Leased Real Property (i) comply with and are operated in accordance with applicable laws (including, without limitation, Environmental Laws) and all applicable Liens, Approvals, Contracts, covenants and restrictions and (ii) are in all material respects in good operating condition and in a state of good maintenance and repair, ordinary wear and tear excepted, and such improvements are in all material respects adequate and suitable for the purposes for which they are presently being used and, to the knowledge of

the Company, there are no condemnation or appropriation proceedings pending or threatened against any of such real property or the improvements thereon.

(d) True and correct copies of the documents under which the Leased Real Property is leased, subleased (to or by the Company or otherwise), utilized, and/or operated (the "Lease Documents") have been delivered to Parent. The Lease Documents are unmodified and in full force and effect, and there are no other Contracts between the Company and any third parties, or by and among any third parties, claiming an interest in the interest of the Company in the Leased Real Property or otherwise relating to the use and occupancy of the Leased Real Property.

2.16 Tangible Personal Property. The Company is in possession of and has good and marketable title to, or has valid leasehold interests in or valid rights under Contract to use, all tangible personal property used in the conduct of its business, including all tangible personal property reflected on the Company Financials and tangible personal property acquired since the Audited Financial Statement Date, other than property disposed of since such date in the ordinary course of business consistent with past practice. Except as disclosed in Section 2.16 of the Company Disclosure Schedule, all such tangible personal property is free and clear of all Liens and is adequate and suitable in all material respects for the conduct by the Company of its business as presently conducted, and is in good working order and condition in all material respects, ordinary wear and tear excepted, and its use complies in all material respects with all applicable Laws.

#### 2.17 Intellectual Property.

(a) Section 2.17(a) of the Company Disclosure Schedule lists all Company Registered Intellectual Property (including all trademarks and service marks that the Company has used with the intent of creating or benefiting from any common law rights relating to such marks) and lists any proceedings or actions pending as of the date hereof before any court or tribunal (including the PTO or equivalent authority anywhere in the world) related to any of the Company Registered Intellectual Property.

(b) The Company has all requisite right, title and interest in or valid and enforceable rights under Contracts or Licenses to use all Company Intellectual Property necessary to the conduct of its business as presently conducted. Each item of Company Intellectual Property, including all Company Registered Intellectual Property listed in Section 2.17(a) of the Company Disclosure Schedule, is owned exclusively by the Company (excluding Intellectual Property licensed to the Company under any License and is free and clear of any Liens. The Company (i) owns exclusively all trademarks, service marks and trade names used by the Company in connection with the operation or conduct of the business of the Company, including the sale of any products or technology or the provision of any services by the Company; provided, however, that the Company may use trademarks, service marks and trade names of third parties which are licensed to the Company or are in the public domain, and (ii) owns exclusively, and has good title to, all copyrighted works that are Company products or other works of authorship that the Company otherwise purports to own; provided, however, that such works may incorporate copyrighted works or works of authorship, trademarks or trade names of third parties which are licensed to the Company or are in the public domain.

(c) To the extent that any Company Intellectual Property has been developed or created by any Person other than the Company, the Company has a written agreement with such Person with respect thereto and the Company has either (i) obtained ownership of, and is the exclusive owner of, all such Intellectual Property by operation of law or by valid assignment of any such rights or (ii) has obtained a License under or to such Intellectual Property.

(d) Except pursuant to agreements described in Section 2.17(d) of the Company Disclosure Schedule, the Company has not transferred ownership of or granted any License of or other right to use or authorized the retention of any rights to use any Intellectual Property that is or was Company Intellectual Property, to any other Person.

(e) The Company Intellectual Property constitutes all the Intellectual Property used in and/or necessary to the conduct of the Company's business as it currently is conducted or as reasonably contemplated to be conducted, including, without limitation, the design, development, distribution, marketing, manufacture, use, import, license, and sale of the products, technology and services of the Company (including products, technology, or services currently under development).

(f) Section 2.17(f) of the Company Disclosure Schedule lists all Contracts and Licenses (including all inbound Licenses) to which the Company is a party with respect to any Intellectual Property. No Person other than the Company has ownership rights to improvements made by the Company in Intellectual Property which has been licensed to the Company.

(g) Section 2.17(g) of the Company Disclosure Schedule lists all Contracts, Licenses and agreements between the Company and any other Person wherein or whereby the Company has agreed to, or assumed, any obligation or duty to warrant, indemnify, reimburse, hold harmless, guaranty or otherwise assume or incur any obligation or Liability or provide a right of rescission with respect to the infringement or misappropriation by the Company or such other Person of the Intellectual Property of any Person other than the Company.

(h) The operation of the business of the Company as currently conducted or as presently proposed to be conducted, including the Company's design, development, use, import, manufacture and sale of the products, technology or services (including products, technology or services currently under development) of the Company does not infringe or misappropriate the Intellectual Property of any Person, violate the rights of any Person (including rights to privacy or publicity), or constitute unfair competition or an unfair trade practice under any Law, and the Company has not received notice from any Person claiming that such operation or any act, product, technology or service (including products, technology or services currently under development) of the Company infringes or misappropriates the Intellectual Property of any Person or constitutes unfair competition or trade practices under any Law, including notice of third party patent or other Intellectual Property rights from a potential licensor of such rights.

(i) Each item of Company Registered Intellectual Property is valid and subsisting, and all necessary registration, maintenance, renewal fees, annuity fees and taxes

in connection with such Registered Intellectual Property have been paid and all necessary documents and certificates in connection with such Company Registered Intellectual Property have been filed with the relevant patent, copyright, trademark or other authorities in the United States or foreign jurisdictions, as the case may be, for the purposes of maintaining such Registered Intellectual Property. Section 2.17(i) of the Company Disclosure Schedule lists all actions that must be taken by the Company within one hundred eighty (180) days from the date hereof, including the payment of any registration, maintenance, renewal fees, annuity fees and taxes or the filing of any documents, applications or certificates for the purposes of maintaining, perfecting or preserving or renewing any Company Registered Intellectual Property. Except as set forth in Section 2.17(i) of the Company Disclosure Schedule, the Company has registered the copyright with the U.S. Copyright Office for the latest version of each product or technology of the Company that constitutes or includes a copyrightable work. In each case in which the Company has acquired ownership of any Intellectual Property rights from any Person, the Company has obtained a valid and enforceable assignment sufficient to irrevocably transfer all rights in such Intellectual Property (including the right to seek past and future damages with respect to such Intellectual Property) to the Company and, to the maximum extent provided for by and required to protect the Company's ownership rights in and to such Intellectual Property in accordance with applicable Laws, the Company has recorded each such assignment of Registered Intellectual Property with the relevant Governmental or Regulatory Authority, including the PTO, the U.S. Copyright Office, or their respective equivalents in any relevant foreign jurisdiction, as the case may be.

(j) There are no Contracts or Licenses between the Company and any other Person with respect to Company Intellectual Property under which there is any dispute (or, to the Company's knowledge, facts that may reasonably lead to a dispute) known to the Company regarding the scope of such Contract or License, or performance under such Contract or License, including with respect to any payments to be made or received by the Company thereunder.

(k) To the knowledge of the Company, no Person is infringing or misappropriating any Company Intellectual Property.

(l) The Company has taken all commercially reasonable steps to protect the Company's rights in confidential information and trade secrets of the Company or provided by any other Person to the Company subject to a duty of confidentiality. Without limiting the generality of the foregoing, the Company has, and enforces, a policy requiring each employee, consultant and independent contractor to execute proprietary information, confidentiality and invention and copyright assignment agreements substantially in the form set forth in Section 2.17(l) of the Company Disclosure Schedule, and all current and former employees, consultants and independent contractors of the Company have executed such an agreement. Copies of all such agreements have been provided to Parent or made available to Parent for review.

(m) No Company Intellectual Property or product, technology or service of the Company is subject to any Order or Action or Proceeding that restricts, or that is reasonably expected to restrict in any manner, the use, transfer or licensing of any Company

Intellectual Property by the Company or that may affect the validity, use or enforceability of such Company Intellectual Property.

(n) No (i) product, technology, service or publication of the Company, (ii) material published or distributed by the Company or (iii) conduct or statement of Company constitutes obscene material, a defamatory statement or material, false advertising or otherwise violates any Law.

(o) The Company has taken all actions necessary and appropriate to assure that there shall be no material adverse change to its business or electronic systems or material interruptions in the delivery of the Company's products and services by reason of the advent of the year 2000, including, without limitation, that all of its products (including products currently under development) will, without interruption or manual intervention, continue to consistently, predictably and accurately record, store, process, calculate and present calendar dates falling on and after (and if applicable, spans of time including) January 1, 2000, and will consistently, predictably and accurately calculate any information dependent on or relating to such dates in the same manner, and with the same functionality, data integrity and performance, as such products record, store, process, calculate and present calendar dates on or before December 31, 1999, or calculate any information dependent on or relating to such dates. Without limiting the generality of the foregoing, (i) the Company has taken all actions necessary and appropriate to ensure that the IT systems and non-IT systems used by the Company in its internal operations will function properly beyond 1999 (and the Company has no knowledge of any material issues that have arisen in connection therewith) and (ii) the Company has made inquiries of its key third-party vendors and suppliers as to the status of their Year 2000 efforts and as a result thereof has not uncovered any problems that could materially disrupt or harm the day-to-day functioning of business and operations of the Company.

(p) Neither this Agreement nor any transactions contemplated by this Agreement will result in Parent's granting any rights or licenses with respect to the Intellectual Property of Parent to any Person pursuant to any Contract to which the Company is a party or by which any of its Assets and Properties are bound.

(q) Section 2.17(q) of the Company Disclosure Schedule sets forth a list of (x) all software which the Company has licensed from any third party which is used by the Company in its products or otherwise in its business (other than standard off-the-shelf software) and (y) a list of all "freeware" and "shareware" incorporated into any product now or heretofore shipped by the Company. The Company has all rights necessary to the use of such software, "freeware" and "shareware".

(r) The Company's products comply in all material respects with all applicable IEEE standards and with the feature specifications and performance standards set forth in the Company's product data sheets. There are no outstanding claims (or facts that may reasonably lead to a claim) for breach of warranties by the Company in connection with the foregoing. All product performance comparisons heretofore furnished by the Company to customers or Parent are accurate in all material respects as of the dates so furnished (except that, in the case of product performance comparisons made as of a specified earlier date, such comparisons shall be accurate as of such specified earlier date, and, in the case of

product performance comparisons superseded by a subsequent product performance comparison furnished to the customer before the customer's acquisition of a license on the product covered by the superseded comparison, the superseding comparison shall be accurate in all material respects and the superseded comparison shall be disregarded).

(s) The Company has taken all reasonably necessary and appropriate steps to protect and preserve ownership of Company Intellectual Property. The Company has secured valid written assignments from all consultants and employees who contributed to the creation or development of the Company Intellectual Property. In the event that the consultant is concurrently employed by the Company and a third party, the Company has taken additional steps to ensure that any Company Intellectual Property developed by such a consultant does not belong to the third party or conflict with the third party's employment agreement (such steps include, but are not limited to, ensuring that all research and development work performed by such a consultant are performed only on the Company's facilities and only using the Company's resources), except as set forth in Section 2.16(s) of the Company Disclosure Schedule.

## 2.18 Contracts.

(a) Section 2.18(a)(1) of the Company Disclosure Schedule contains a true and complete list of each of the Contracts (true and complete copies or, if none, reasonably complete and accurate written descriptions of which, together with all amendments and supplements thereto and all waivers of any terms thereof, have been made available to Parent prior to the execution of this Agreement), to which the Company is a party or by which any of its Assets and Properties is bound. Section 2.18(a)(2) of the Company Disclosure Schedule contains a true and complete list of each Contract of the Company (i) not terminable by the Company upon 30 days (or less) notice by the Company without penalty or obligation to make payments based on such termination or (ii) which provides for continuing design or other services by the Surviving Corporation after the Closing Date.

(b) Each Contract required to be disclosed in Section 2.18(a) of the Company Disclosure Schedule is in full force and effect and constitutes a legal, valid and binding agreement of the Company, enforceable in accordance with its terms, and to the knowledge of the Company, of each other party thereto; and except as disclosed in Section 2.18(b) of the Company Disclosure Schedule, to the knowledge of the Company, no other party to such Contract is, nor has received notice that it is, in violation or breach of or default under any such Contract (or with notice or lapse of time or both, would be in violation or breach of or default under any such Contract).

(c) Except as disclosed in Section 2.18(c) of the Company Disclosure Schedule, the Company is not a party to or bound by any Contract that has been or could reasonably be expected to be, individually or in the aggregate with any other similar Contracts, materially adverse to the Business or Condition of the Company or that has been or could reasonably be expected to result, individually or in the aggregate with any such other Contracts in Losses to the Company or be materially adverse to the Business or Condition of the Company.

(d) Except as disclosed in Section 2.18(d) of the Company Disclosure Schedule, the Company is not a party to or bound by any Contract that (i) automatically terminates or allows termination by the other party thereto upon consummation of the transactions contemplated by this Agreement or (ii) contains any covenant or other provision which limits the Company's ability to compete with any Person in any line of business or in any area or territory.

2.19 Insurance. Section 2.19 of the Company Disclosure Schedule contains a true and complete list (including the names and addresses of the insurers, the expiration dates thereof, the annual premiums and payment terms thereof, the period of time covered thereby and a brief description of the interests insured thereby) of all liability, property, workers' compensation, directors' and officers' liability and other insurance policies currently in effect that insure the business, operations or employees of the Company or affect or relate to the ownership, use or operation of any of the Assets and Properties of the Company and that (a) have been issued to the Company or (b) to the knowledge of the Company, have been issued to any Person (other than the Company) for the benefit of the Company. The insurance coverage provided by the policies described in clause (a) above will not terminate or lapse by reason of any of the transactions contemplated by this Agreement. Each policy listed in Section 2.19 of the Company Disclosure Schedule is valid and binding and in full force and effect, all premiums due thereunder have been paid when due and neither the Company or the Person to whom such policy has been issued has received any notice of cancellation or termination in respect of any such policy or is in default thereunder, and the Company has no knowledge of any reason or state of facts that could reasonably be expected to lead to the cancellation of such policies or a material premium increase. The insurance policies listed in Section 2.19 of the Company Disclosure Schedule, (i) in light of the business, operations and Assets and Properties of the Company are in amounts and have coverages that are reasonable and customary for Persons engaged in similar businesses and operations and having similar Assets and Properties and (ii) are in amounts and have coverages as required by any Contract to which the Company is a party or by which any of its Assets and Properties is bound. Section 2.19 of the Company Disclosure Schedule contains a list of all claims made under any insurance policies covering the Company in the last two years. The Company has not received notice that any insurer under any policy referred to in this Section is denying liability with respect to a claim thereunder or defending under a reservation of rights clause. The Company has, in the reasonable judgment of the Company, in light of its business, location, operations and Assets and Properties, maintained, at all times, without interruption, appropriate insurance, both in scope and amount of coverages.

#### 2.20 Affiliate Transactions.

(a) Except as disclosed in Section 2.9(f) or Section 2.20(a) of the Company Disclosure Schedule, (i) there are no Contracts or Liabilities between the Company, on the one hand, and (I) any current or former officer, director, shareholder, or to the Company's knowledge, any Affiliate or Associate of the Company or (II) any Person who, to the Company's knowledge, is an Associate of any such officer, director, shareholder or Affiliate, on the other hand, (ii) the Company does not provide or cause to be provided any assets, services or facilities to any such current or former officer, director, shareholder,

Affiliate or Associate, (iii) neither the Company nor any such current or former officer, director, shareholder, Affiliate or Associate provides or causes to be provided any assets, services or facilities to the Company and (iv) the Company does not beneficially own, directly or indirectly, any Investment Assets of any such current or former officer, director, shareholder, Affiliate or Associate.

(b) Except as disclosed in Section 2.20(b) of the Company Disclosure Schedule, each of the Contracts and Liabilities listed in Section 2.20(a) of the Company Disclosure Schedule were entered into or incurred, as the case may be, on terms no less favorable to the Company (in the reasonable judgment of the Company) than if such Contract or Liability was entered into or incurred on an arm's-length basis on competitive terms. Any Contract to which the Company is a party and in which any director of the Company has a financial interest in such Contract was approved by a majority of the disinterested members of the Board of Directors of the Company and/or shareholders of the Company, as the case may be, in accordance with Section 144 of Delaware Law.

#### 2.21 Employees; Labor Relations.

(a) Except as set forth in Section 2.21(a) of the Company Disclosure Schedule, the Company is not a party to any collective bargaining agreement and there is no unfair labor practice or labor arbitration proceedings pending with respect to the Company, or, to the knowledge of the Company, threatened, and there are no facts or circumstances known to the Company that could reasonably be expected to give rise to such complaint or claim. To the knowledge of the Company, there are no organizational efforts presently underway or threatened involving any employees of the Company or any of the employees performing work for the Company but provided by an outside employment agency, if any. There has been no work stoppage, strike or other concerted action by employees of the Company.

(b) All employees of the Company are employed at will, except as set forth in Section 2.21(b) of the Company Disclosure Schedule, and those employees (if any) represented by a union. Section 2.21(b) of the Company Disclosure Schedule sets forth, individually and by category, the name of each officer, employee and consultant, together with such person's position or function, annual base salary or wage and any incentive, severance or bonus arrangements with respect to such person. Except as described in Section 2.21(b) of the Company Disclosure Schedule, the completion of the transactions contemplated by this Agreement will not result in any payment or increased payment becoming due from the Company to any current or former officer, director, or employee of, or consultant to, the Company, and to the knowledge of the Company no employee of the Company has made any threat, or otherwise revealed an intent, to terminate such employee's relationship with the Company, for any reason, including because of the consummation of the transactions contemplated by this Agreement. The Company is not a party to any agreement for the provision of labor from any outside agency except as set forth in Section 2.21(b) of the Company Disclosure Schedule. To the knowledge of the Company, since December 31, 1997, there have been no claims by employees of such outside agencies, if any, with regard to employees assigned to work for the Company, and no claims by any governmental agency with regard to such employees except as set forth in Section 2.21(b) of the Company Disclosure Schedule.

(c) Since December 31, 1997, there have been no federal or state claims based on sex, sexual or other harassment, age, disability, race or other discrimination or common law claims, including claims of wrongful termination, by any employees of the Company or by any of the employees performing work for the Company but provided by an outside employment agency, and there are no facts or circumstances known to the Company that could reasonably be expected to give rise to such complaint or claim. The Company has complied with all laws related to the employment of employees and, except as set forth in Section 2.21(c) of the Company Disclosure Schedule, since December 31, 1997, the Company has not received any notice of any claim that it has not complied in any material respect with any Laws relating to the employment of employees, including without limitation, any provisions thereof relating to wages, hours, collective bargaining, the payment of Social Security and similar taxes, equal employment opportunity, employment discrimination, the WARN Act, employee safety, or that it is liable for any arrearages of wages or any taxes or penalties for failure to comply with any of the foregoing.

(d) The Company has no written policies and/or employee handbooks or manuals except as described in Section 2.21(d) of the Company Disclosure Schedule.

(e) To the knowledge of the Company, no officer, employee or consultant of the Company is obligated under any Contract or other agreement or subject to any Order or Law that would interfere with the Company's business as currently conducted. Neither the execution nor delivery of this Agreement, nor the carrying on of the Company's business as presently conducted nor any activity of such officers, employees or consultants in connection with the carrying on of the Company's business as presently conducted, will conflict with or result in a breach of the terms, conditions or provisions of, constitute a default under, or trigger a condition precedent to any rights under any Contract or other agreement under which any of such officer's, employees or consultants is now bound.

## 2.22 Environmental Matters.

(a) The Company possesses any and all Environmental Permits necessary to or required for the operation of its business. The Company will obtain, prior to the Closing, any Environmental Permits that must be obtained as of or immediately after the Closing in order for the Surviving Corporation and/or the Company to conduct the business of the Company as it was conducted prior to the Closing.

(b) The Company is in compliance with (i) all terms, conditions and provisions of its Environmental Permits; and (ii) all Environmental Laws.

(c) Neither the Company nor any predecessor of the Company nor any entity previously owned by the Company has received any notice of alleged, actual or potential responsibility for, or any inquiry regarding, (i) any Release or threatened or suspected Release of any Hazardous Material, or (ii) any violation of Environmental Law.

(d) Neither the Company nor any predecessor of the Company nor any entity previously owned by the Company has any obligation or liability with respect to any Hazardous Material, including any Release or threatened or suspected Release of any

Hazardous Material, and there have been no events, facts or circumstances which could form the basis of any such obligation or liability.

(e) No Releases of Hazardous Material(s) have occurred at, from, in, to, on, or under any Site and no Hazardous Material is present in, on, about or migrating to or from any Site.

(f) Neither the Company, nor any predecessor of the Company, nor any entity previously owned by the Company, has transported or arranged for the treatment, storage, handling, disposal or transportation of any Hazardous Material at or to any location.

(g) No Site is a current or proposed Environmental Clean-up Site.

(h) There are no Liens under or pursuant to any Environmental Law on any Site.

(i) There is no (i) underground storage tank, active or abandoned, (ii) polychlorinated biphenyl containing equipment, (iii) asbestos-containing material, (iv) radon, (v) lead-based paint or (vi) urea formaldehyde at any Site. Any underground storage tank meets all 1998 upgrade requirements.

(j) There have been no environmental investigations, studies, audits, tests, reviews or other analyses conducted with respect to any Site which have not been delivered to Parent prior to execution of this Agreement.

(k) The Company is not a party, whether as a direct signatory or as successor, assign, third party beneficiary, guarantor or otherwise, to, and is not otherwise bound by, any lease or other contract under which the Company is obligated or may be obligated by any representation, warranty, covenant, restriction, indemnification or other undertaking respecting Hazardous Materials or under which any other person is or has been released respecting Hazardous Materials.

(l) The Company and any predecessors of the Company and any entity previously owned by the Company have provided all notifications and warnings, made all reports, and kept and maintained all records required pursuant to Environmental Laws.

2.23 Substantial Customers and Suppliers. Section 2.23(a) of the Company Disclosure Schedule lists the 15 largest customers of the Company, collectively, on the basis of revenues collected or accrued for the most recent complete fiscal year. Section 2.23(b) of the Company Disclosure Schedule lists the 15 largest suppliers of the Company on the basis of cost of goods or services purchased for the most recent fiscal year. Except as disclosed in Section 2.23(c) of the Company Disclosure Schedule, no such customer or supplier has ceased or materially reduced its purchases from or sales or provision of services to the Company since June 30, 1999 or, to the knowledge of the Company, has threatened to cease or materially reduce such purchases or sales or provision of services after the date hereof. Except as disclosed in Section 2.23(d) of the Company Disclosure Schedule, to the knowledge of the Company, no such customer or supplier is threatened with bankruptcy or insolvency.

2.24 Accounts Receivable. Except as set forth in Section 2.24 of the Company Disclosure Schedule, the accounts and notes receivable of the Company reflected on the Company Financials, and all accounts and notes receivable arising subsequent to the Financial Statement Date, (a) arose from bona fide sales transactions in the ordinary course of business, consistent with past practice, and are payable on ordinary trade terms, (b) are legal, valid and binding obligations of the respective debtors enforceable in accordance with their respective terms, (c) are not subject to any valid set-off or counterclaim and (d) do not represent obligations for goods sold on consignment, on approval or on a sale-or-return basis or subject to any other repurchase or return arrangement.

2.25 Inventory. All inventory of the Company reflected on the balance sheet included in the Company Financials consisted, and all such inventory acquired since the Audited Financial Statement Date consists, of a quality and quantity usable and salable in the ordinary course of business. Except as disclosed in the notes to the Financial Statements or in Section 2.25 of the Company Disclosure Schedule, all items included in the inventory of the Company are the property of the Company free and clear of any Lien, have not been pledged as collateral, are not held by the Company on consignment from others and conform in all material respects to all standards applicable to such inventory or its use or sale imposed by Governmental or Regulatory Authorities.

2.26 Other Negotiations; Brokers; Third Party Expenses. Neither the Company nor, to the knowledge of the Company, any of its Affiliates (nor any investment banker, financial advisor, attorney, accountant or other Person retained by or acting for or on behalf of the Company or any such Affiliate) (a) has entered into any Contract that conflicts with any of the transactions contemplated by this Agreement or (b) has entered into any Contract or had any discussions with any Person regarding any transaction involving the Company which could result in Parent, the Company or any general partner, limited partner, manager, officer, director, employee, agent or Affiliate of any of them being subject to any claim for liability to said Person as a result of entering into this Agreement or consummating the transactions contemplated hereby. No broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's or similar fee or commission in connection with this Agreement and the transactions contemplated hereby based on arrangements made by or on behalf of the Company. Section 2.26 of the Company Disclosure Schedule sets forth the principal terms and conditions of any Contract with respect to, and a reasonable estimate of, all Third Party Expenses expected to be incurred by the Company in connection with the negotiation and effectuation of the terms and conditions of this Agreement and the transactions contemplated hereby.

2.27 Banks and Brokerage Accounts. Section 2.27 of the Company Disclosure Schedule sets forth (a) a true and complete list of the names and locations of all banks, trust companies, securities brokers and other financial institutions at which the Company has an account or safe deposit box or maintains a banking, custodial, trading or other similar relationship, (b) a true and complete list and description of each such account, box and relationship, indicating in each case the account number and the names of the respective officers, employees, agents or other similar representatives of the Company having signatory power with respect thereto and (c) a list of each Investment Asset, the name of the record and beneficial owner thereof, the location of the certificates, if any, therefor, the maturity

date, if any, and any stock or bond powers or other authority for transfer granted with respect thereto.

2.28 Warranty Obligations. Section 2.28 of the Company Disclosure Schedule sets forth (a) a list of all forms of written warranties, guarantees and written warranty policies of the Company in respect of any of the Company's products and services, which are currently in effect (the "Warranty Obligations"), and the duration of each such Warranty Obligation, (b) each of the Warranty Obligations which is subject to any dispute or, to the knowledge of the Company, threatened dispute and (c) the experience of the Company with respect to warranties, guarantees and warranty policies of or relating to the Company's products and services. True and correct copies of the Warranty Obligations have been delivered to Parent prior to the execution of this Agreement. Except as disclosed in Section 2.28 of the Company Disclosure Schedule, (i) there have not been any material deviations from the Warranty Obligations, and salespersons, employees and agents of the Company are not authorized to undertake obligations to any customer or other Person in excess of such Warranty Obligations and (ii) the balance sheet included in the Interim Financial Statements reflects adequate reserves for Warranty Obligations. All products manufactured, designed, licensed, leased, rented or sold by the Company (I) are and were free from material defects in construction and design and (II) satisfy any and all Contract or other specifications related thereto to the extent stated in writing in such Contracts or specifications, in each case, in all material respects.

2.29 Foreign Corrupt Practices Act. Neither the Company, nor to the knowledge of the Company, any agent, employee or other Person associated with or acting on behalf of the Company has, directly or indirectly, used any corporate funds for unlawful contributions, gifts, entertainment or other unlawful expenses relating to political activity, made any unlawful payment to foreign or domestic government officials or employees or to foreign or domestic political parties or campaigns from corporate funds, violated any provision of the Foreign Corrupt Practices Act of 1977, as amended, or made any bribe, rebate, payoff, influence payment, kickback or other similar unlawful payment.

2.30 Tax-Free Reorganization. Neither the Company nor any of its directors, officers or shareholders has taken any action which, to the Company's knowledge, could reasonably be expected to jeopardize the status of the Merger as a "reorganization" within the meaning of Section 368(a) of the Code.

#### 2.31 Financial Projections; Operating Plan.

(a) The Company has made available to Parent certain financial projections with respect to the Company's business which projections were prepared for internal use only. The Company makes no representation or warranty regarding the accuracy of such projections or as to whether such projections will be achieved, except that the Company represents and warrants that such projections were prepared in good faith and are based on assumptions believed by it to be reasonable as of the date of this Agreement.

(b) The Company has made available to Parent its 2000 Operating Plan. The Company makes no representation or warranty regarding its ability to successfully execute its 2000 Operating Plan, except that the Company represents and warrants that the

2000 Operating Plan was prepared in good faith and is based on assumptions believed by it to be reasonable as of the date of this Agreement as of the date of this Agreement.

### 2.32 Approvals.

(a) Section 2.32(a) of the Company Disclosure Schedule contains a list of all material Approvals of Governmental or Regulatory Authorities relating to the business conducted by the Company which are required to be given to or obtained by the Company from any and all Governmental or Regulatory Authorities in connection with the consummation of the transactions contemplated by this Agreement (other than the filing of the Agreement of Merger, together with the required officers' certificates, and such consents, approvals, orders, authorizations, registrations, declarations and filings as may be required under state or federal securities laws).

(b) Section 2.32(b) of the Company Disclosure Schedule contains a list of all material Approvals which are required to be given to or obtained by the Company from any and all third parties other than Governmental or Regulatory Authorities in connection with the consummation of the transactions contemplated by this Agreement.

(c) Except as set forth in Section 2.32(c)(1) of the Company Disclosure Schedule, the Company has obtained all material Approvals from Governmental or Regulatory Authorities necessary to conduct the business conducted by the Company in the manner as it is currently being conducted and since January 1, 1997, there has been no written notice received by the Company of any material violation or material non-compliance with any such Approvals. All material Approvals from Governmental or Regulatory Authorities necessary to conduct the business conducted by the Company as it is currently being conducted are set forth in Section 2.32(c)(2) of the Company Disclosure Schedule.

(d) The affirmative vote or consent of the holders of (i) a majority of the shares of Company Common Stock outstanding as of the applicable record date, voting as a separate class, (ii) a majority of the shares of Company Preferred Stock outstanding as of the applicable record date, voting together as a single class and (iii) a majority of the shares of Company Common Stock and Company Preferred Stock (with each share of Company Preferred Stock entitled to vote a number of shares equal to a whole number of shares of Company Common Stock into which such shares of Company Preferred Stock would be converted on the applicable record date), voting together as a single class, are the only votes of the holders of any of the Company Capital Stock necessary to approve this Agreement and the Merger and the transactions contemplated hereby.

(e) The shares owned by shareholders of the Company who have concurrently herewith entered into Support Agreements constitute (x) a majority of the outstanding shares of Company Common Stock, (y) a majority of the aggregate outstanding shares of Company Preferred Stock and (z) a majority of the outstanding shares of Company Common Stock and Company Preferred Stock (with each share of Company Preferred Stock entitled to vote a number of shares equal to a whole number of shares of Company Common Stock into which such shares of Company Preferred Stock would be converted on the applicable record date) combined.

2.33 Compliance. Except as set forth in Section 2.33 of the Company Disclosure Schedule, since December 31, 1997, the Company and its Affiliates, officers, directors, agents and employees have been and are in compliance with all applicable Laws and Orders of any Governmental or Regulatory Authorities applicable to the business conducted by the Company, and neither the Company nor any of its Affiliates, is aware of any claim of violation, or of any actual violation, of any such Laws and Orders by the Company.

2.34 Takeover Statutes. No Takeover Statute applicable to the Company is applicable to the Merger or the transactions contemplated hereby.

2.35 Permit Application; Information Statement. The information supplied by the Company for inclusion in the application for issuance of a California Permit pursuant to which the shares of Parent Common Stock to be issued in the Merger and (if deemed necessary by Parent in its good faith judgment) the Company Options to be assumed in the Merger will be qualified under the California Code (the "Permit Application") shall not at the time the Fairness Hearing is held pursuant to Section 25142 of the California Code or the time the qualification of such securities is effective under Section 25122 of the California Code 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. The information supplied by the Company for inclusion in the information statement to be sent to the shareholders of the Company in connection with the Company shareholders' consideration of the Merger (the "Company Shareholder Action") (such information statement as amended or supplemented is referred to herein as the "Information Statement") shall not, on the date the Information Statement is first mailed to the Company's shareholders, at the time of the Company Shareholder Action and at the Effective Time, contain any statement which, at such time, is false or misleading with respect to any material fact, or omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which they are made, not false or misleading; or omit to state any material fact necessary to correct any statement in any earlier communication with respect to the solicitation of proxies or written consents for the Company Shareholder Action which has become false or misleading. Notwithstanding the foregoing, the Company makes no representation, warranty or covenant with respect to any information supplied by Parent or Merger Sub which is contained in the Permit Application or the Information Statement.

2.36 Disclosure. No representation or warranty contained in this Agreement, and no statement contained in the Company Disclosure Schedule or in any certificate, list or other writing furnished to Parent pursuant to any provision of this Agreement (including the Company Financials and the notes thereto) contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements herein or therein, in the light of the circumstances under which they were made, not misleading.

### ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB

Parent and Merger Sub hereby represents and warrants to the Company, subject to such exceptions as are specifically disclosed with respect to specific numbered and lettered sections and subsections of this Article 3 in the disclosure schedule and schedule of

exceptions (the "Parent Disclosure Schedule") delivered herewith and dated as of the date hereof, and numbered with corresponding numbered and lettered sections and subsections, as follows:

3.1 Organization and Qualification. Each of Parent and Merger Sub is a corporation duly organized, validly existing and in good standing under the Laws of the State of California. Each of Parent and Merger Sub has all requisite corporate power to conduct its business as now conducted and as currently proposed to be conducted and to own, use and lease its Assets and Properties. Each of Parent and Merger Sub is duly qualified, licensed or admitted to do business and is in good standing in each jurisdiction in which the ownership, use, licensing or leasing of its Assets and Properties, or the conduct or nature of its business, makes such qualification, licensing or admission necessary, except for such failures to be so duly qualified, licensed or admitted and in good standing that could not reasonably be expected to have a Material Adverse Effect on Parent.

3.2 Authority Relative to this Agreement. Each of Parent and Merger Sub has full corporate power to execute and deliver this Agreement and the Ancillary Agreements to which it is a party, to perform its respective obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Parent and Merger Sub of this Agreement and the Ancillary Agreements to which it is a party and the consummation by Parent and Merger Sub of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary corporate and shareholder action by Parent and Merger Sub, and no other corporate action on the part of Parent or Merger Sub is required to authorize the execution, delivery and performance of this Agreement and the Ancillary Agreements to which it is a party and the consummation by Parent and Merger Sub of the transactions contemplated hereby and thereby. This Agreement and the Ancillary Agreements to which Parent or Merger Sub is a party have been or will be, as applicable, duly and validly executed and delivered by Parent to Merger Sub, as applicable, and, assuming the due authorization, execution and delivery hereof by the Company and/or the other parties thereto, constitutes or will constitute, as applicable, a legal, valid and binding obligation of Parent or Merger Sub, as applicable, enforceable against Parent or Merger Sub, as applicable, in accordance with its respective terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other similar Laws relating to the enforcement of creditors' rights generally and by general principles of equity.

### 3.3 Capital Stock.

(a) The authorized capital stock of Parent consists of 1,200,000,000 shares of common stock, \$0.0001 par value per share, of which 800,000,000 shares have been designated Class A Common Stock (the "Parent Class A Common Stock") and 400,000,000 have been designated Class B Common Stock (the "Parent Class B Common Stock"), and 10,000,000 shares of preferred stock, \$0.0001 par value per share (the "Parent Preferred Stock"). As of June 30, 2000, there were issued and outstanding 125,893,529 shares of Parent Class A Common Stock, 92,229,543 shares of Parent Class B Common Stock and no shares of Parent Preferred Stock. All of the issued and outstanding shares of Parent Class A Common Stock and Parent Common Stock are validly issued, fully paid and

nonassessable, and have been issued in compliance with all applicable federal, state and foreign securities Laws.

(b) The authorized capital stock of Acquisition Sub consists of 1,000 shares of common stock, without par value per share, 100 of which are issued and outstanding.

3.4 Issuance of Parent Common Stock. The shares of Parent Common Stock to be issued pursuant to the Merger, when issued, will be duly authorized, validly issued, fully paid, non-assessable and not subject to any preemptive rights and issued in compliance with applicable federal and state securities laws subject to the truth and accuracy of the representations made by the Company in Section 2.3.

3.5 SEC Documents; Parent Financial Statements. Parent has furnished or made available to the Company true and complete copies of all SEC Documents filed by it with the SEC since January 1, 1999, all in the form so filed. As of their respective filing dates, such SEC Documents filed by Parent and all SEC Documents filed after the date hereof but before the Closing complied or, if filed after the date hereof, will comply in all material respects with the requirements of the Securities Act and the Exchange Act and the rules and regulations of the SEC thereunder, as the case may be, and none of the SEC Documents contained or will contain any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances in which they were made, not misleading, except to the extent such SEC Documents have been corrected, updated or superseded by a document subsequently filed with the SEC. The financial statements of Parent, including the notes thereto, included in the SEC Documents (the "Parent Financial Statements") comply as to form in all material respects with the published rules and regulations of the SEC with respect thereto, have been prepared in accordance with GAAP consistently applied (except as may be indicated in the notes thereto or, in the case of unaudited statements, as permitted by Form 10-Q under the Exchange Act) and present fairly the consolidated financial position of Parent at the dates thereof and the consolidated results of its operations and cash flows for the periods then ended (subject, in the case of unaudited financial statements, to normal year-end adjustments), it being understood that such financial statements may be required to be restated from time to time as may be required under applicable pooling rules in connection with past, present or future acquisitions. There has been no change in Parent's accounting policies except as described in the notes to the Parent Financial Statements. Except as reflected or reserved against in the Parent Financial Statements, Parent has no material Liabilities, except for Liabilities and obligations (i) incurred in the ordinary course of business since the date of the most recent Parent Financial Statements or (ii) that would not be required to be reflected or reserved against in the balance sheet of Parent prepared in accordance with GAAP.

3.6 No Conflicts. The execution and delivery by Parent and Merger Sub of this Agreement does not, and the performance by Parent and Merger Sub of their respective obligations under this Agreement and the consummation of the transactions contemplated hereby do not and will not:

(a) conflict with or result in a violation or breach of any of the terms, conditions or provisions of the articles of incorporation or by-laws of Parent or Merger Sub;

(b) conflict with or result in a violation or breach of any Law or Order applicable to Parent, Merger Sub or their respective Assets or Properties; or

(c) except as would not have a material adverse effect on the Business or Condition of Parent, (i) conflict with or result in a violation or breach of, (ii) constitute a default (or an event that, with or without notice or lapse of time or both, would constitute a default) under, (iii) require Parent to obtain any consent, approval or action of, make any filing with or give any notice to any Person as a result of the terms of (except for (I) the filing of the Agreement of Merger, together with the required officer's certificates; (II) such consents approvals, orders, authorizations, registrations, declarations and filings as may be required under applicable state or federal securities laws; and (III) such filings as may be required under the HSR Act), (iv) result in or give to any Person any right of termination, cancellation, acceleration or modification in or with respect to, (v) result in or give to any person any additional rights or entitlement to increased, additional, accelerated or guaranteed payments or performance under, (vi) result in the creation or imposition of (or the obligation to create or impose) any Lien upon Parent or Merger Sub or any of their respective Assets or Properties, or (vii) result in the loss of a material benefit under, any of the terms, conditions or provisions of any Contract or License to which Parent or Merger Sub is a party or by which any of their respective Assets and Properties are bound.

3.7 Information to be Supplied by Parent. The information supplied by Parent or Merger Sub for inclusion in the Permit Application shall not, at the time the Fairness Hearing is held pursuant to Section 25142 of the California Code or the time the qualification of such securities is effective under Section 25122 of the California Code, 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. The information supplied by Parent or Merger Sub for inclusion in the Information Statement shall not, on the date the Information Statement is first mailed to the Company's shareholders, at the time of the Company Shareholder Action and at the Effective Time, contain any statement which, at such time, is false or misleading with respect to any material fact, or omit to state any material fact necessary in order to make the statements therein, in light of the circumstances under which it is made, not false or misleading; or omit to state any material fact necessary to correct any statement in any earlier communication with respect to the solicitation of proxies or written consents for the Company Shareholder Action which has become false or misleading. Notwithstanding the foregoing, Parent and Merger Sub make no representation, warranty or covenant with respect to any information supplied by the Company which is contained in any of the foregoing documents.

3.8 Ownership of Merger Sub; No Prior Activities. As of the date hereof and the Effective Time, except for obligations or Liabilities incurred in connection with its incorporation or organization and the transactions contemplated by this Agreement and except for this Agreement and any other agreements or arrangements contemplated by this Agreement, Merger Sub has not and will not have incurred, directly or indirectly, through any subsidiary or affiliate, any obligations or liabilities or engaged in any business activities

of any type or kind whatsoever or entered into any agreements or arrangements with any Person.

3.9 Investment Advisors. No broker, investment banker, financial advisor or other Person, is entitled to any broker's, finder's, financial advisor's or similar fee or commission in connection with this Agreement and the transactions contemplated hereby based on arrangements made by or on behalf of Parent.

3.10 Tax-Free Reorganization. Neither Parent nor any of its directors, officers or shareholders has taken any action which, to Parent's knowledge after consultation with its independent accountants, could reasonably be expected to jeopardize the status of the Merger as a "reorganization" within the meaning of Section 368(a) of the Internal Revenue Code.

3.11 Approvals. Section 3.11 of the Parent Disclosure Schedule contains a list of all material Approvals of Governmental or Regulatory Authorities which are required to be given to or obtained by the Parent from any and all Governmental or Regulatory Authorities in connection with the consummation of the transactions contemplated by this Agreement (other than the filing of the Agreement of Merger, together with the required officers' certificates, and such consents, approvals, orders, authorizations, registrations, declarations and filings as may be required under state or federal securities laws).

#### ARTICLE 4 CONDUCT PRIOR TO THE EFFECTIVE TIME

4.1 Conduct of Business of the Company. During the period from April 21, 2000 and continuing until the earlier of the termination of this Agreement and the Effective Time, the Company agrees (unless Parent shall give its prior consent in writing which consent shall not be unreasonably withheld) to carry on its business in the usual, regular and ordinary course consistent in all respects with the Company's 2000 operating plan provided to Parent prior to the date of this Agreement, to pay its Liabilities and Taxes consistent with the Company's past practices (and in any event when due), to pay or perform other obligations when due consistent with the Company's past practices (other than Liabilities, Taxes and other obligations, if any, contested in good faith through appropriate proceedings), and, to the extent consistent with such business, to use reasonable efforts and institute all policies to preserve intact its present business organization, keep available the services of its present officers and key employees and preserve its relationships with customers, suppliers, distributors, licensors, licensees, independent contractors and other Persons having business dealings with it, all with the express purpose and intent of preserving unimpaired its goodwill and ongoing businesses at the Effective Time. Except as expressly contemplated by this Agreement, the Company shall not, without the prior written consent of Parent, which consent shall not be unreasonably withheld, take, or agree in writing or otherwise to take, any of the actions described in Section 2.9 of this Agreement, or any other action that would make any of its representations or warranties contained in this Agreement untrue or incorrect in any material respect or prevent the Company from performing or cause the Company not to perform its agreements and covenants hereunder. Without limiting the generality of the foregoing, with respect to Section 2.9(j), any Options granted must have an exercise price of at least the fair market value of the Company Common Stock on the date

the Option was granted (as determined in good faith by the Company's board of directors following consultation with, and consistent with the advice provided by, each of the Company's and Parent's independent public accountants).

4.2 No Solicitation. Until the earlier of the Effective Time and the date of termination of this Agreement pursuant to the provisions of Section 8.1 hereof, the Company will not take (and since April 23, 2000 inclusive has not taken), nor will the Company (and since April 23, 2000 inclusive has not permitted) permit any of the Company's officers, directors, employees, shareholders, attorneys, investment advisors, agents, representatives, Affiliates or Associates (collectively, "Representatives") to (directly or indirectly), take any of the following actions with any Person other than Parent and its designees: (a) solicit, encourage, initiate, entertain, accept receipt of, substantively review or encourage any proposals or offers from, or participate in or conduct discussions with or engage in negotiations with, any Person relating to any offer or proposal, oral, written or otherwise, formal or informal (a "Competing Proposed Transaction"), with respect to any possible Business Combination with the Company or any of its Subsidiaries (whether such Subsidiaries are in existence on the date hereof or are hereafter organized), (b) provide information with respect to the Company to any Person, other than Parent, relating to (or which the Company believes would be used for the purpose of formulating an offer or proposal with respect to), or otherwise assist, cooperate with, facilitate or encourage any effort or attempt by any such Person with regard to, any possible Business Combination with the Company or any Subsidiary of the Company (whether such Subsidiaries are in existence on the date hereof or are hereafter organized), (c) agree to, enter into a Contract with any Person, other than Parent, providing for, or approve a Business Combination with the Company or any Subsidiary (whether such Subsidiaries are in existence on the date hereof or are hereafter organized), (d) make or authorize any statement, recommendation, solicitation or endorsement in support of any possible Business Combination with the Company or any Subsidiary (whether such Subsidiary is in existence on the date hereof or are hereafter organized) other than by Parent, or (e) authorize or permit any of the Company's Representatives to take any such action. The Company shall immediately cease and cause to be terminated any such contacts or negotiations with any Person relating to any such transaction or Business Combination. In addition to the foregoing, if the Company receives prior to the Effective Time or the termination of this Agreement any offer or proposal (formal or informal, oral, written or otherwise) relating to, or any inquiry or contact from any Person with respect to, a Competing Proposed Transaction, the Company shall immediately notify Parent thereof and provide Parent with the details thereof, including the identity of the Person or Persons making such offer or proposal, and will keep Parent fully informed on a current basis of the status and details of any such offer or proposal and of any modifications to the terms thereof; provided, however, that this provision shall not in any way be deemed to limit the obligations of the Company and its Representatives set forth in the previous sentence. Each of the Company and Parent acknowledge that this Section 4.2 was a significant inducement for Parent to enter into this Agreement and the absence of such provision would have resulted in either (i) a material reduction in the merger consideration to be paid to the shareholders of the Company or (ii) a failure to induce Parent to enter into this Agreement. This Section 4.2 shall not preclude any shareholder of the Company from making decisions with respect to voting of shares of Company Capital Stock.

ARTICLE 5  
ADDITIONAL AGREEMENTS

5.1 Information Statement; Permit Application.

(a) As soon as practicable after the execution of this Agreement, the Company shall prepare, with the cooperation of Parent, the Information Statement for the shareholders of the Company to approve this Agreement, the Agreement of Merger and the transactions contemplated hereby. Parent and the Company shall each use reasonable commercial efforts to cause the Information Statement to comply with applicable federal and state securities laws requirements. Each of Parent and the Company agrees to provide promptly to the other such information concerning its business and financial statements and affairs as, in the reasonable judgment of the providing party or its counsel, may be required or appropriate for inclusion in the Information Statement, or in any amendments or supplements thereto, and to cause its counsel and auditors to cooperate with the other's counsel and auditors in the preparation of the Information Statement. The Company will promptly advise Parent, and Parent will promptly advise the Company, in writing if at any time prior to the Effective Time either the Company or Parent, as applicable, shall obtain knowledge of any facts that might make it necessary or appropriate to amend or supplement the Information Statement in order to make the statements contained or incorporated by reference therein not misleading or to comply with applicable law. The Information Statement shall contain the recommendation of the Board of Directors of the Company that the Company's shareholders approve the Merger and this Agreement and the conclusion of the Board of Directors that the terms and conditions of the Merger are advisable and fair and reasonable to, and in the best interests of, the shareholders of the Company. Anything to the contrary contained herein notwithstanding, the Company shall not include in the Information Statement any information with respect to Parent or its affiliates or associates, the form and content of which information shall not have been approved by Parent prior to such inclusion.

(b) As soon as practicable after the execution of this Agreement, Parent shall prepare, with the cooperation of the Company, and file the Permit Application. Parent and the Company shall each use commercially reasonable efforts to cause the Permit Application to comply with the requirements of applicable federal and state laws. Each of Parent and the Company agrees to provide promptly to the other such information concerning its business and financial statements and affairs as, in the reasonable judgment of the providing party or its counsel, may be required or appropriate for inclusion in the Permit Application, or in any amendments or supplements thereto, and to cause its counsel and auditors to cooperate with the other's counsel and auditors in the preparation of the Permit Application. The Company will promptly advise Parent, and Parent will promptly advise the Company, in writing if at any time prior to the Effective Time either the Company or Parent, as applicable, shall obtain knowledge of any facts that might make it necessary or appropriate to amend or supplement the Permit Application in order to make the statements contained or incorporated by reference therein not misleading or to comply with applicable law. Anything to the contrary contained herein notwithstanding, Parent shall not include in the Permit Application any information with respect to the Company or its affiliates or associates, the form and content of which information shall not have been approved by the Company prior to such inclusion.

(c) In the event that the California Permit cannot be obtained in time to permit the Closing to occur on or before August 31, 2000, then, at the Company's election, unless Parent shall certify to the Company that Parent believes in good faith that the California Permit can be obtained within thirty (30) days after such date and within such thirty day period the California Permit is thereafter obtained, Parent and the Company shall use commercially reasonable efforts to effect the issuance of the shares of Parent Common Stock to be issued pursuant to Section 1.6 in a private placement pursuant to Section 4(2) of the Securities Act on terms and conditions that are reasonably satisfactory to Parent and the Company. The parties hereto acknowledge and agree that in such event: (i) as a condition to effecting such issuance as a private placement pursuant to Section 4(2) of the Securities Act, Parent shall be entitled to obtain from each shareholder of the Company a Shareholder Certificate in the form attached hereto as Exhibit F (or such other form as shall be reasonably satisfactory to Parent and the Company) (the "Shareholder Certificate") and that Parent will be relying upon the representations made by each shareholder of the Company in the applicable Shareholder Certificate in connection with the issuance of Parent Common Stock to such shareholder, (ii) at the Closing, Parent shall execute and deliver a backup registration rights agreement (the "Backup Registration Rights Agreement") granting Form S-3 registration rights with respect to the shares subject to terms, condition, limitations, blackout periods and postponement rights (as reasonably desired by Parent to accommodate other potential acquisitions and significant corporate developments) reasonably acceptable to the parties; (iii) the shares of Parent Common Stock so issued pursuant to Section 1.6 will not be registered under the Securities Act and will constitute "restricted securities" within the meaning of the Securities Act; and (iv) the certificates representing the shares of Parent Common Stock shall bear appropriate legends to identify such privately placed shares as being restricted under the Securities Act, to comply with applicable state securities laws and, if applicable, to notice the restrictions on transfer of such shares; and (v) notwithstanding anything else herein to the contrary, the Backup Registration Rights Agreement shall contain terms and conditions which are at least as favorable to the Company's shareholders as the terms and conditions contained in and otherwise applicable to the Backup Rights Registration Agreement entered into between Parent and the shareholders of HotHaus Technologies Inc., a British Columbia corporation.

5.2 Shareholder Approval. As soon as practicable following the execution and delivery of this Agreement and the issuance of the California Permit, the Company shall give written notice of this Agreement and the proposed Merger to all Company shareholders and shall use commercially reasonable efforts to take all other action necessary in accordance with the California Code and its articles of incorporation and bylaws to convene a meeting of its shareholders or secure the written consent of its shareholders with respect to the Company Shareholder Action before August 30, 2000. The Company shall submit this Agreement to its shareholders for adoption whether or not the Company's Board of Directors determines at any time subsequent to declaring its advisability that this Agreement is no longer advisable and recommends that the shareholders reject it. The Company shall consult with Parent regarding the date of any shareholder meeting with respect to the Company Shareholder Action and shall not postpone or adjourn (other than for the absence of a quorum) any such meeting, which consent shall not be unreasonably withheld. The Company shall use all commercially reasonable efforts required to solicit and obtain from shareholders of the Company proxies or written consents in favor of the Merger and this

Agreement and shall take all other action necessary or advisable to secure the vote or consent of shareholders of the Company required with respect to the Merger. The materials submitted to the shareholders of the Company in respect of the Merger shall have been subject to prior review and comment by Parent and shall include (a) information regarding the Company, the terms of the Merger and this Agreement, (b) the recommendation of the Board of Directors of the Company that the Company's shareholders approve the Merger and this Agreement and the transactions contemplated hereby and approve and execute such other documents as may be required to satisfy the applicable requirements of the Securities Act in connection with the issuance and sale of Parent Common Stock in the Merger, (c) and the conclusion of the Board of Directors of the Company that the terms and conditions of the Merger are advisable, fair and reasonable to, and in the best interests of, the shareholders of the Company and (d) such other documents as may be required to satisfy the applicable requirements of the Securities Act in connection with the issuance and sale of Parent Common Stock in the Merger.

5.3 Access to Information. Between the date of this Agreement and the earlier of the Effective Time or the termination of this Agreement, upon reasonable notice the Company shall (i) give Parent and its officers, employees, accountants, counsel, financing sources and other agents and representatives reasonable access to all buildings, offices, and other facilities and to all Books and Records of the Company, whether located on the premises of the Company or at another location; (ii) permit Parent to make such inspections as they may reasonably require; (iii) cause its officers to furnish Parent such financial, operating, technical and product data and other information with respect to the business and Assets and Properties of the Company as Parent from time to time may reasonably request, including without limitation financial statements and schedules; (iv) allow Parent the opportunity to interview such employees and other personnel and Affiliates of the Company with the Company's prior written consent, which consent shall not be unreasonably withheld or delayed; and (v) assist and cooperate with Parent in the development of integration plans for implementation by Parent and the Surviving Corporation following the Effective Time; provided, however, that no investigation pursuant to this Section 5.3 shall affect or be deemed to modify any representation or warranty made by the Company herein. Materials furnished to Parent pursuant to this Section 5.3 may be used by Parent for strategic and integration planning purposes relating to accomplishing the transactions contemplated hereby.

5.4 Confidentiality. Each of the parties hereto hereby agrees to keep the existence and terms of this Agreement (except to the extent contemplated hereby) and such information or knowledge obtained in any investigation pursuant to Section 5.3, or pursuant to the negotiation and execution of this Agreement or the effectuation of the transactions contemplated hereby, confidential; provided, however, that the foregoing shall not apply to information or knowledge which (a) a party can demonstrate was already lawfully in its possession prior to the disclosure thereof by the other party, (b) is generally known to the public and did not become so known through any violation of Law, or a confidentiality agreement or other contractual, legal or fiduciary obligation of confidentiality of the disclosing party or any other party with respect to such information, (c) became known to the public through no fault of such party, (d) is later lawfully acquired by such party without confidentiality restrictions from other sources not bound by applicable confidentiality

restrictions, (e) is required to be disclosed by order of court or Governmental or Regulatory Authority with subpoena powers (provided that such party shall have provided the other party with prior notice of such order and an opportunity to object or seek a protective order and take any other available action) or (f) which is disclosed without obligation of confidentiality in the course of any Action or Proceeding between any of the parties hereto. The parties acknowledge that Parent and the Company have previously executed a confidentiality agreement dated March 15, 1999 (as amended, the "Confidentiality Agreement"), which Confidentiality Agreement shall continue in full force and effect in accordance with its terms. Without limiting the foregoing, all information furnished to Parent and its officers, employees, accountants and counsel by the Company, and all information furnished to the Company by Parent and its officers, employees, accountants and counsel, shall be covered by the Confidentiality Agreement, and Parent and the Company shall be fully liable and responsible under the Confidentiality Agreement for any breach of the terms and conditions thereof by their respective subsidiaries, officers, employees, accountants and counsel.

5.5 Expenses. Whether or not the Merger is consummated, all fees and expenses incurred in connection with the Merger including all legal, accounting, financial advisory, consulting and all other fees and expenses of third parties ("Third Party Expenses") incurred by a party in connection with the negotiation and effectuation of the terms and conditions of this Agreement and the transactions contemplated hereby, shall be the obligation of the respective party incurring such fees and expenses. Parent shall have the right to approve Third Party Expenses to be incurred by the Company between the date hereof and the Closing, including necessary fees and expenses of legal counsel, auditors and tax advisors, which such approvals will not be unreasonably withheld (it being understood that Third Party Expenses incurred by the Company in connection with the transactions contemplated by this Agreement (whether before or after the date hereof) which do not exceed \$400,000 for legal expenses (including agreed premiums) and \$200,000 for non-legal expenses (exclusive of premiums) shall be deemed to have been approved by Parent).

5.6 Public Disclosure. Except as provided below and unless otherwise required by Law (including federal and state securities laws) or, as to Parent, by the rules and regulations of the NASD, prior to the Effective Time, no disclosure (whether or not in response to any inquiry) of the existence of any subject matter of, or the terms and conditions of, this Agreement shall be made by any party hereto unless approved by Parent and the Company prior to release; provided, however, that such approval shall not be unreasonably withheld or delayed. Notwithstanding the foregoing: (i) each of Parent and the Company shall be permitted to disclose the existence of this Agreement in confidence to its customers, suppliers and sales representatives with whom it has non-disclosure agreements that apply to such disclosure (or the other party otherwise agrees to such disclosure) and for which there is a business reason for the disclosure; and (ii) the parties shall issue a joint press release announcing this Agreement before 3:00 p.m., California time, on the first business day after the expiration of the due diligence period.

5.7 Approvals. The Company shall use commercially reasonable efforts to obtain all Approvals from Governmental or Regulatory Authorities or under any of the Contracts or other agreements as may be required in connection with the Merger (all of such

Approvals are set forth in the Company Disclosure Schedule or described in this Agreement) so as to preserve all rights of and benefits to the Company thereunder and Parent shall provide the Company with such assistance and information as is reasonably required to obtain such Approvals. Parent shall use commercially reasonable efforts to obtain all Approvals from Governmental or Regulatory Authorities (all of such Approvals are set forth in the Parent Disclosure Schedule or described in this Agreement) as may be required in connection with the Merger and the Company shall provide Parent with such assistance and information as is reasonably required to obtain such Approvals.

5.8 FIRPTA Compliance. Within thirty days prior to the Closing Date, the Company shall deliver to Parent a properly executed statement in a form prepared by Parent and reasonably acceptable to the Company for purposes of satisfying Parent's obligations under Treasury Regulation Section 1.1445-2(c)(3).

5.9 Notification of Certain Matters. The Company shall give prompt notice to Parent, and Parent shall give prompt notice to the Company, of (i) the occurrence or non-occurrence of any event, the occurrence or non-occurrence of which is likely to cause any representation or warranty of the Company, Parent or Merger Sub, respectively, contained in this Agreement to be untrue or inaccurate at or prior to the Closing Date and (ii) any failure of the Company, Parent or Merger Sub, as the case may be, to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder; provided, however, that the delivery of any notice pursuant to this Section 5.9 shall not limit or otherwise affect any remedies available to the party receiving such notice.

5.10 [Intentionally Omitted].

5.11 [Intentionally Omitted]

5.12 [Intentionally Omitted]

5.13 Additional Documents and Further Assurances. Each party hereto, at the request of the other party hereto, shall execute and deliver such other instruments and do and perform such other acts and things (including, but not limited to, all action reasonably necessary to seek and obtain any and all consents and approvals of any Government or Regulatory Authority or Person required in connection with the Merger; provided, however, that Parent shall not be obligated to consent to any divestitures or operational limitations or activities in connection therewith and no party shall be obligated to make a payment of money as a condition to obtaining any such condition or approval) as may be reasonably necessary or desirable for effecting completely the consummation of this Agreement and the transactions contemplated hereby.

5.14 Indemnification. Parent, the Company and the Surviving Corporation agree that all rights to indemnification or exculpation now existing in favor of the employees, agents, directors or officers of the Company (the "Company Indemnified Parties") as provided in its articles of incorporation or bylaws or indemnification agreements as in effect on the date of this Agreement shall continue in full force and effect for a period of not less than six years from the Closing Date, assuming the consummation of the Merger; provided, however, that, in the event any claim or claims are asserted or made within such six-year

period, all rights to indemnification in respect of any such claim or claims shall continue to disposition of any and all such claims. Any determination required to be made with respect to whether a Company Indemnified Party's conduct complies with the standards set forth in the articles of incorporation or bylaws or indemnification agreements of the Surviving Corporation or otherwise shall be made by independent counsel selected by the Surviving Corporation reasonably satisfactory to the Company Indemnified Party (whose fees and expenses shall be paid by the Surviving Corporation), which such determination shall be final and binding on the parties thereto. The Company hereby represents and warrants to Parent that no claim for indemnification has been made by any director or officer of the Company and, to the knowledge of the Company, no basis exists for any such claim for indemnification. Parent unconditionally guarantees the Surviving Company's payment and other obligations provided for in this Section 5.14.

5.15 Form S-8. Parent shall file a registration statement on Form S-8 for the shares of Parent Common Stock issuable with respect to assumed Company Options promptly (and in any event within twenty (20) Business Days) after the Effective Time to the extent the shares of Parent Common Stock issuable upon exercise of such Company Options qualify for registration on Form S-8 and Parent shall use its commercially reasonable efforts to maintain the effectiveness of such registration statement (and maintain the current status of the prospectus relating thereto) for so long as such Company Options remain outstanding.

5.16 NNM Listing of Additional Shares. Parent shall, to the extent required by the rules of the NNM, notify the NNM of the shares of Parent Common Stock to be issued, and the shares of Parent Common Stock required to be reserved for issuance, in connection with the Merger, it being understood that under current NNM and SEC rules, no additional listing application needs to be filed by Parent.

5.17 Company's Auditors. The Company will use commercially reasonable efforts to cause its management and its independent auditors to facilitate on a timely basis (i) the preparation of financial statements (including pro forma financial statements if required) as required by Parent to comply with applicable SEC regulations, (ii) the review of any Company audit or review work papers, including the examination of selected interim financial statements and data, (iii) the delivery of such representations from the Company's independent accountants as may be reasonably requested by Parent or its accountants, and (iv) the securing of a binding fee commitment (on terms similar to those in place on the date of this Agreement) with respect to consents and comfort letters requested by Parent after the Closing.

5.18 Termination of 401(k) Plans. Upon the request of Parent, the Board of Directors of the Company, and of any Subsidiary, shall adopt resolutions terminating, effective as of the day before the Closing Date, any Plan which is intended to meet the requirements of Section 401(k) of the Code, and which is sponsored, or contributed to, by the Company or any Subsidiary. At the Closing, the Company shall provide Parent (i) executed resolutions of the Board of Directors of the Company authorizing such termination and (ii) if required, an executed amendment to the 401(k) Plan in the form requested by Parent sufficient to assure compliance with all applicable requirements of the

Code and regulations thereunder so that the tax-qualified status of the 401(k) Plan will be maintained at the time of termination.

5.19 Takeover Statutes. If any Takeover Statute is or may become applicable to the transactions contemplated hereby, the Board of Directors of the Company will grant such approvals and take such actions as are necessary so that the transactions contemplated hereby may be consummated as promptly as practicable on the terms contemplated hereby and otherwise act to eliminate the effects of any Takeover Statute on any of the transactions contemplated hereby.

5.20 [Intentionally Omitted]

5.21 Treatment as Reorganization. Neither Parent nor the Company shall knowingly take any action prior to or following the Closing that would cause the merger to fail to qualify as a "reorganization" within the meaning of Section 368(a) of the Internal Revenue Code, including, but not limited to, any change in the form of the Merger pursuant to Section 5.24 or any post-Closing merger or liquidation of the Company that would cause the Merger to so fail to qualify.

5.22 Company Repurchases. The Company will exercise any rights that mature between the date hereof and the Effective Time to repurchase any outstanding shares of Company Capital Stock at the price at which such shares were issued.

5.23 Information Technology Access. In furtherance of the Company's agreement in Section 5.3 and to facilitate prompt integration following the Closing of the Company's information technology ("IT") inventory (e.g., voice and data network services and software and hardware, licenses, financial/accounting software, IT budgets, etc.) with Parent's, the Company will provide Parent and its Representatives with access to the Company's IT inventory, as well as the Company's personnel responsible for such IT inventory. Because of the substantial lead time that may be required to order and install new software and hardware to integrate the Company's IT systems with Parent's, and the importance of a smooth integration of such IT systems promptly after the Closing, the Company agrees that Parent may order, either in Parent's name or the Company's name, any new IT services, hardware and software that Parent believes will be needed at the Company's facilities in order to integrate Parent's and the Company's respective operations following the Closing. The Company will cooperate with Parent in the installation of such IT systems, hardware and software prior to and in anticipation of the Closing, including, but not limited to, providing Parent with reasonable access to and use of the Company's appropriate personnel. If necessary, at Parent's request, the Company will place IT systems, hardware and software orders in the Company's name. For clarity, it is the parties' intent not to connect any of the ordered services or systems prior to the Closing. Parent and the Company agree to cooperate with each other to minimize any potential disruption to the Company's business from the IT integration efforts; provided, however, that Parent will not have any liability to the Company for any such disruption or as may otherwise result from the IT integration efforts, except as may be directly caused by Parent's gross negligence or willful misconduct; and provided further that in no event will Parent have any liability to the Company for any indirect, incidental, consequential, special or speculative damages, including, but not limited to, damages for loss of profits or use, business interruption or loss of goodwill, irrespective

of whether such damages arise under contract, tort, statute or otherwise and whether or not the Company has given Parent advance notice of the possibility of such damages. If the Closing does not occur, other than because of the Company's breach of the Merger Agreement, Parent will reimburse the Company for its reasonable and documented out-of-pocket costs incurred by it in connection with the ordering and installation of IT services, hardware and software. If Parent is so required to reimburse the Company, Parent will own any such hardware and software and will pay for its removal from Company premises. Parent and the Company will cooperate in the removal of any such hardware or software so as to minimize any disruption to the Company's business. In addition, if the Closing does not occur, the Company will cooperate with Parent in canceling any orders for IT services, hardware or software and will otherwise act to minimize the costs which might be incurred in connection with the IT integration efforts.

5.24 Change of Merger Form. The Company agrees that in the event Parent requests at least five (5) Business Days prior to the Closing that the transactions contemplated hereby be effected through a different form of merger (limited to a forward merger qualifying under Code Section 368(a)(1)(A)) than the form presently contemplated herein, and provided that the alternative form of merger is in any event intended to qualify as a tax-free reorganization in the opinion of counsel to Parent and the Company, the Company shall cooperate with Parent in effecting the alternative form of merger and will take all reasonably necessary action towards such end, including, but not limited to the execution of any amendments to this Agreement (provided such amendments relate only to the alternative form of merger and any related matters and do not include any other substantive changes not otherwise agreed between the parties). The Company shall not be responsible for any Other Tax imposed on the Company, including, but not limited to, any sales or use or other transfer Tax, resulting from Parent's determination to change the form of the Merger.

5.25 Due Diligence. The Company acknowledges that, as of the date of this Agreement, Parent has not yet received all of the due diligence materials it has requested with respect to the Company and its operations, nor has Parent had sufficient opportunity to complete its review of the due diligence materials provided to date by the Company. The Company agrees that it will continue to promptly provide requested due diligence materials to Parent and (as contemplated by Section 5.3) provide Parent with reasonable access to its facilities, Books and Records and personnel for the purpose of permitting Parent to complete its due diligence review. Parent agrees that it will use commercially reasonable efforts to complete its due diligence review of the Company as promptly as practicable, and in no event later than the earlier of: (i) fourteen days after receipt of all material due diligence materials requested by Parent from the Company (including any supplementary materials requested by Parent as a result of its review of any of the due diligence materials provided by the Company); and (ii) 11:59 p.m. California time, on July 30, 2000.

5.26 Intellectual Property. The Company shall give Parent prompt notice that any Person shall have (i) commenced, or shall have notified the Company that it intends to commence, an Action or Proceeding or (ii) provided the Company with notice, in either case which allege(s) that any of the Intellectual Property, including the Company Intellectual Property, presently embodied, or proposed to be embodied, in the Company's products or

utilized in Company-designed or modified development tools (including standard cells) or design environments infringes or otherwise violates the intellectual property rights of such Person, is available for licensing from a potential licensor providing the notice or otherwise alleges that the Company does not otherwise own or have the right to exploit such Intellectual Property, including the Company Intellectual Property. The Company shall cooperate with Parent in making arrangements, prior to the Closing Date, satisfactory to Parent in its sole discretion to effect the assignment to the Company of all Intellectual Property created by the Company's founders, employees and consultants, including certain Intellectual Property created by the Company's founders prior to the Company's incorporation, and to obtain the cooperation of such Persons to complete all appropriate patent filings related thereto. The Company shall take commercially reasonable actions to maintain, perfect, preserve or renew the Company Registered Intellectual Property, including, without limitation, the payment of any registration, maintenance, renewal fees, annuity fees and taxes or the filing of any documents, applications or certificates related thereto, and to promptly respond and prepare to respond to all requests, related to the Company Registered Intellectual Property, received from Governmental or Regulatory Authorities. At the Closing, the Company will notify Parent of all material actions which must be taken within the 180 days following the Closing Date and which are necessary to maintain, perfect, preserve or renew the Company Registered Intellectual Property, including the payment of any registration, maintenance, renewal fees, annuity fees and taxes or the filing of any documents, applications or certificates related thereto.

5.27 Company Disclosure Schedule. Parent and Merger Sub acknowledge that the Company Disclosure Schedule delivered by the Company in connection with the execution and delivery of the Original Agreement was in draft form. The definitive Company Disclosure Schedule delivered by the Company concurrently herewith supercedes the draft Company Disclosure Schedule delivered as of the date of the Original Agreement and constitutes the "Company Disclosure Schedule" for all purposes of this Agreement.

5.28 Inclusion in Parent Plans. Parent shall, to the extent permitted by Parent's various benefit plans, promptly following the Closing include all of the Company's employees in Parent's employee benefit plans, including its medical, equity, stock option, profit sharing, retirement, 401(k), dental, or other similar welfare or retirement plans. Each such Company employee shall receive full credit for prior service rendered to the Company for purposes of eligibility and vesting in employee benefits plans maintained by Parent and for purposes of vacation, sick leave and other benefits in which the amount of an employee's benefits is dependent upon length of service and with full credit for deductibles, co-payments and out-of-pocket expenses for the current year (subject in all cases to any limitations contained in any applicable plan) and with full credit; provided, however, that no such prior service credit shall apply with respect to the vesting schedule of options or other similar incentive awards granted by Parent to such Company employees.

5.29 Certain Agreements. Schedule 5.29 sets forth those individuals and entities who have not, as of the date hereof, executed a Support Agreement Reaffirmation. The Company agrees to use commercially reasonable efforts to obtain executed copies of such an agreement from individuals and entities sufficient to satisfy the voting requirement set forth in Section 2.32(d) as soon as practicable and in any event no later than August 4, 2000.

Parent acknowledges that it has received all executed agreements required under Section 8.1(k).

5.30 Adjustment of Aggregate Share Number. The parties acknowledge that the Company intends to issue Company Options to new employees of the Company in the ordinary course of business between the Amendment Date and the Closing Date. Parent and the Company acknowledge that the Aggregate Share Number will be increased in accordance with Schedule 5.30 as necessary to directly offset the dilutive effect of grants of Company Options to Company employees newly hired between the Amendment Date and the Closing and certain other matters. The Company agrees that it will seek Parent's prior written approval of any grant of Company Options to any new employee, which consent shall not be unreasonably withheld or delayed, subject to Schedule 5.30. Notwithstanding anything in this Section 5.30 to the contrary, no adjustment to the Aggregate Share Number shall be made for any grant of Company Options by the Company which Parent has not approved in writing. In no event will the Closing be delayed, postponed or affected if there is a dispute between the Company and Parent as to whether the Aggregate Share Number is required to be increased pursuant to this section. If any such dispute cannot be resolved before the Closing, such dispute will be resolved post-Closing by Parent and the Shareholder Agent pursuant to the dispute resolution provisions of this Agreement.

5.31 Acceleration of Vesting; Designated Employee. The parties shall provide for a mechanism that provides for the following upon consummation of the Merger with respect to each employee of the Company designated by the Company prior to the Closing Date (the "Designated Employees") and each Company Option issued to such Designated Employees prior to the Closing Date (the "Designated Stock Options"): In the event that a Designated Employee is terminated by the Company or Parent without Cause within one year after the Closing Date, then the vesting of the shares of Parent Common Stock covered by the Designated Stock Options of such Designated Employee shall accelerate by one year effective as of the date of such termination. Prior to the Closing, the Company and each Designated Employee will enter into an appropriate amendment (which shall be subject to the reasonable approval of Parent) to the applicable Designated Stock Options in accordance with this Section.

#### ARTICLE 6 CONDITIONS TO THE MERGER

6.1 Conditions to Obligations of Each Party to Effect the Merger. The respective obligations of each party to this Agreement to effect the Merger shall be subject to the satisfaction at or prior to the Closing of the following conditions:

(a) Governmental and Regulatory Approvals. Approvals from any Governmental or Regulatory Authority (if any) necessary for consummation of the transactions contemplated hereby shall have been timely obtained; and any waiting period applicable to the consummation of the Merger under the HSR Act (other than with respect to the receipt of Parent Common Stock by a shareholder of the Company) shall have expired or been terminated.

(b) No Injunctions or Regulatory Restraints; Illegality. No temporary restraining order, preliminary or permanent injunction or other Order issued by any court of competent jurisdiction or Governmental or Regulatory Authority or other legal or regulatory restraint or prohibition preventing the consummation of the Merger shall be in effect; nor shall there be any action taken, or any Law or Order enacted, entered, enforced or deemed applicable to the Merger or the other transactions contemplated by the terms of this Agreement that would prohibit the consummation of the Merger or which would permit consummation of the Merger only if certain divestitures were made or if Parent were to agree to limitations on its business activities or operations.

(c) Tax Opinions. Parent and the Company shall each have received written opinions from their counsel, in form and substance reasonably satisfactory to each of them, to the effect that the Merger will constitute a reorganization within the meaning of Section 368(a) of the Code. The parties to this Agreement agree to make such reasonable written representations as requested by such counsel for the purpose of rendering such opinions.

(d) Shareholder Approval. The Merger shall have been approved by the requisite votes of the Company's shareholders in accordance with the California Code.

(e) NNM Listing. The shares of Parent Common Stock to be issued, and the shares of Parent Common Stock required to be reserved for issuance, in connection with the Merger shall be authorized for listing on the NNM.

(f) Legal Proceedings. No Governmental or Regulatory Authority shall have notified either party to this Agreement that such Governmental or Regulatory Authority intends to commence proceedings to restrain or prohibit the transactions contemplated hereby or force rescission, unless such Governmental or Regulatory Authority shall have withdrawn such notice and abandoned any such proceedings prior to the time which otherwise would have been the Closing Date.

(g) Fairness Hearing and California Permit; Private Placement Alternative. The fairness hearing shall have been held by the Commissioner of Corporations of the State of California and the California Permit shall have been issued by the State of California. In the alternative in accordance with and as permitted by Section 5.1(c), Parent shall have executed and delivered to the Company the Backup Registration Rights Agreement (and such Backup Registration Rights Agreement shall be in full force and effect), and the parties shall be reasonably satisfied that the shares of Parent Common Stock to be issued in connection with the Merger pursuant to Section 1.6(a) are issuable without registration pursuant to Section 4(2) of the Securities Act.

6.2 Additional Conditions to Obligations of the Company. The obligations of the Company to consummate the Merger and the other transactions contemplated by this Agreement shall be subject to the satisfaction at or prior to the Closing of each of the following conditions, any of which may be waived, in writing, exclusively by the Company:

(a) Representations and Warranties. The representations and warranties of Parent and Merger Sub contained in this Agreement shall be accurate in all respects as of

the date of this Agreement and shall be true and correct in all respects as of the Closing Date as if made on and as of the Closing Date (other than representations and warranties which by their express terms are made solely as of a specified earlier date, which shall be true and correct as of such specified earlier date), except that any inaccuracies in such representations and warranties will be disregarded if the circumstances giving rise to all such inaccuracies (considered collectively) do not constitute, and would not reasonably be expected to have, a material adverse change on the Business or Condition of Parent; provided, however, that, for purposes of determining the accuracy of such representations and warranties, all "material adverse change in the Business or Condition of Parent" qualifications and other materiality qualifications contained in such representations and warranties shall be disregarded.

(b) Performance. Parent and Merger Sub shall have performed and complied with in all material respects each agreement, covenant and obligation required by this Agreement to be so performed or complied with by the Parent or Merger Sub at or before the Closing.

(c) Officers' Certificates. Parent and Merger Sub shall have delivered to the Company certificates, dated the Closing Date and executed by their respective President and Chief Executive Officer, substantially in the form set forth in Exhibit G-1 hereto, and certificates, dated the Closing Date and executed by the Secretary of Parent and Merger Sub, substantially in the form set forth in Exhibit G-2 hereto.

(d) Legal Opinion. The Company shall have received a legal opinion from Irell & Manella LLP, counsel to Parent, as to the matters set forth in Exhibit H.

6.3 Additional Conditions to the Obligations of Parent and Merger Sub. The obligations of Parent and Merger Sub to consummate the Merger and the other transactions contemplated by this Agreement shall be subject to the satisfaction at or prior to the Closing of each of the following conditions, any of which may be waived, in writing, exclusively by Parent:

(a) Representations and Warranties. The representations and warranties of the Company contained in this Agreement shall be accurate in all respects as of the date of this Agreement and shall be accurate in all respects as of the Closing Date as if made on and as of the Closing Date (other than representations and warranties which by their express terms are made solely as of a specified earlier date, which shall be true and correct as of such specified earlier date), except that any inaccuracies in such representations and warranties will be disregarded if the circumstances giving rise to all such inaccuracies (considered collectively) do not constitute, and would not reasonably be expected to have, a material adverse change on the Business or Condition of the Company; provided, however, that, for purposes of determining the accuracy of such representations and warranties, all "material adverse change in the Business or Condition of the Company" qualifications and other materiality qualifications contained in such representations and warranties shall be disregarded.

(b) Performance. The Company shall have performed and complied with in all material respects each agreement, covenant and obligation required by this Agreement to be so performed or complied with by the Company on or before the Closing Date.

(c) Officers' Certificates. The Company shall have delivered to Parent a certificate, dated the Closing Date and executed by the President and Chief Executive Officer of the Company, substantially in the form set forth in Exhibit I-1 hereto, and a certificate, dated the Closing Date and executed by the Secretary of the Company, substantially in the form set forth in Exhibit I-2 hereto.

(d) Third Party Consents. Parent shall have been furnished with evidence satisfactory to it that the Company has obtained the consents, approvals and waivers listed in Section 2.6 of the Disclosure Schedule (except for such consents, approvals and waivers the failure of which to receive could not reasonably be expected to have a material adverse effect on the Company).

(e) Legal Opinion. Parent shall have received a legal opinion from Oppenheimer, Wolff & Donnelly LLP, legal counsel to the Company, as to the matters set forth in Exhibit J.

(f) Non-Competition Agreements. Each of the persons listed on Schedule 6.3(f) shall have executed and delivered to Parent a Non-Competition Agreement and all of the Non-Competition Agreements shall be in full force and effect.

(g) Limitation on Dissent. Holders of no more than three percent (3.0%) of the outstanding shares of Company Capital Stock shall have exercised, nor shall they have any continued right to exercise, appraisal, dissenters' or similar rights under applicable law with respect to their shares by virtue of the Merger.

(h) No Bankruptcy. There shall not have been a Bankruptcy Event.

(i) FIRPTA Compliance. The executed statement described in Section 5.8 for purposes of satisfying Parent's obligations under Treasury Regulation Section 1.1445-2(c)(3) previously delivered by the Company to Parent shall continue to be in full force and effect.

(j) No Material Adverse Change. There shall have occurred no material adverse change in the Business or Condition of the Company since April 21, 2000.

(k) Company Intellectual Property. Other than as disclosed in the Company Disclosure Schedule, no Person (other than Level One Communications or its Affiliates) shall have (i) commenced, or shall have notified either party to this Agreement that it intends to commence, an Action or Proceeding or (ii) provided the Company with notice, in either case which allege(s) that any of the Intellectual Property, including the Company Intellectual Property, presently embodied, or proposed to be embodied, in the Company's products or utilized in Company-designed or modified development tools (including standard cells) or design environments infringes or otherwise violates the intellectual property rights of such Person, is available for licensing from a potential licensor providing the notice or otherwise alleges that the Company does not otherwise own or have the right to exploit such Intellectual Property, including the Company Intellectual Property, unless such Person shall have withdrawn such notice and abandoned any such Action or Proceeding prior to the time which otherwise would have been the Closing Date.

(l) Termination of Pension Plan. If requested by Parent in writing at least ten (10) business days prior to Closing, the Company shall, immediately prior to the Closing Date, have terminated the Company 401(k) Plan and no further contributions shall have been made to the 401(k) Plan. The Company shall have provided to Parent (i) executed resolutions of the Board of Directors of the Company authorizing the termination and (ii) an executed amendment to the 401(k) Plan sufficient to assure compliance with all applicable requirements of the Internal Revenue Code and regulations thereunder so that the tax-qualified status of the 401(k) Plan will be maintained at the time of termination.

(m) Employees. The employees of the Company set forth on Schedule 6.3(m) shall continue to be employed by the Company at the Closing (and shall not have given any notice or other indication that they are not willing to be employed by Parent or a Subsidiary of Parent (as Parent shall designate), following the Merger. At least ninety percent (90%) of the other engineering and research and development employees of the Company employed as of the date of this Agreement shall continue to be employed by the Company at the Closing and shall not have given any notice or other indication, that they are not willing to be employed by Parent or a Subsidiary of Parent (as Parent shall designate) following the Merger. Any one (but not more than one) Company employee who ceases to be employed by the Company as a result of death or bona fide permanent disability will be excluded from the numerator and the denominator in calculating such percentage.

(n) Assignment of Intellectual Property. Arrangements satisfactory to Parent in its sole discretion shall have been made to effect the assignment to the Company of all Intellectual Property created by the Company's founders, employees and consultants, including certain Intellectual Property created by the Company's founders prior to the Company's incorporation, and to obtain the cooperation of such Persons to complete all appropriate U.S. and foreign patent filings related thereto.

(o) Repurchase Agreement. Stewart Wu shall have executed and delivered to Parent a Stock Repurchase Agreement in substantially the form attached hereto as Exhibit L (or Parent and Stewart Wu shall have executed a similar agreement with such changes thereto as have been agreed upon by both parties in each party's sole and absolute discretion), and such Stock Repurchase Agreement shall be in full force and effect.

(p) Intentional Material Misrepresentation: The Company shall not have committed any material fraud in connection with this Agreement, made any intentional material misrepresentation to Parent constituting fraud, or committed any other intentional material breach of this Agreement.

ARTICLE 7  
SURVIVAL OF REPRESENTATIONS, WARRANTIES, COVENANTS AND  
AGREEMENTS; ESCROW PROVISIONS

7.1 Survival of Representations, Warranties, Covenants and Agreements. Notwithstanding any right of Parent, Merger Sub or the Company (whether or not exercised) to investigate the affairs of Parent, Merger Sub or the Company (whether pursuant to Section 5.3 or otherwise) or a waiver by Parent or the Company of any condition to Closing

set forth in Article 6, each party shall have the right to rely fully upon the representations, warranties, covenants and agreements of the other party contained in this Agreement or in any instrument delivered pursuant to this Agreement. Except for (i) the covenant contained in Section 5.14 (which shall survive for the period set forth therein) and (ii) Article 7 (which shall survive until termination of the escrow created thereby and the satisfaction of any other obligations described therein), (x) all of the representations and warranties of the Company in this Agreement relating to the IP Claims shall survive until the IP Expiration Date and (y) all of the other representations, warranties, covenants and agreements of the Company and Parent and Merger Sub contained in this Agreement or in any instrument delivered pursuant to this Agreement shall survive the Merger and continue until the first anniversary of the Closing Date (the "General Expiration Date").

#### 7.2 Escrow Provisions.

(a) Establishment of the Escrow Fund. As soon as practicable after the Effective Time, the Escrow Amount, without any act of any shareholder, will be deposited with the Depository Agent (plus a proportionate share of any additional shares of Parent Common Stock as may be issued upon any stock splits, stock dividends or recapitalizations effected by Parent following the Effective Time), such deposit to constitute the "Escrow Fund" to be governed by the terms set forth herein. The portion of the Escrow Amount contributed on behalf of each shareholder of the Company shall be in proportion to the aggregate number of shares of Parent Common Stock which such holder would otherwise be entitled under Section 1.6(a). Notwithstanding the references in this Agreement to the "escrow" and the Escrow Fund, the parties acknowledge and agree that the Depository Agent is acting as a depository and not as an escrow agent pursuant to this Article 7.

(b) Recourse to the Escrow Fund. Subject to the terms and conditions hereof, the IP Escrow Amount shall be available to compensate Parent and its officers, directors, employees, agents, Affiliates and Associates (the "Parent Indemnitees") for any and all payments and disbursements made by any of the Parent Indemnitees (including attorneys' fees and other expenses of litigation, and amounts paid in settlement), directly or indirectly, as a result of IP Claims ("IP Losses"). The term "IP Losses" shall not include any expenses of litigation which relate to any of the IP Claims and which are incurred prior to the Closing Date and, notwithstanding anything to the contrary contained in this Agreement, no Officer's Certificate may be submitted to the Depository Agent for any expenses of litigation which relate to any of the IP Claims and which are incurred prior to the Closing Date. Subject to the terms and conditions hereof, the General Escrow Amount shall be available to compensate the Parent Indemnitees for any and all Losses (whether or not involving a Third Party Claim), including IP Losses, incurred or sustained by any of the Parent Indemnitees, directly or indirectly, either as a result of (i) any inaccuracy or breach of any representation, warranty, covenant or agreement of the Company contained herein or in any instrument delivered pursuant to this Agreement or (ii) any IP Claim. Notwithstanding the foregoing, Parent may not make any claims against the Escrow Fund unless the aggregate Losses incurred or sustained exceed \$300,000 (at which such time claims may be made for all Losses incurred or sustained).

(i) Basic Amount Recoverable: The amount of payments and disbursements recoverable from the Escrow Fund with respect to any IP Losses shall be

determined on the following basis: (x) in the case of litigation expenses incurred after the Closing Date with respect to the IP Claims (including expenses in connection with threatened litigation), the actual amount of such litigation expenses which are paid; (y) in the case of any payments made to third parties in settlement of any IP Claims (including, but not limited to, any lump-sum payment, prepaid license, technology acquisition costs or periodic royalties), the actual amount of such payments which are made; and (z) in the case of any judgments with respect to the IP Claims, the actual amount of such judgments which are paid to third parties. It is agreed that any Losses that Parent or the other Parent Indemnities may incur with respect to the IP Claims will be offset by: (1) any payments that Parent or the Company receives from Accton Technology Corporation ("Accton") that are specifically identified by Accton as being made toward the legal fees or damages incurred by Parent or the Company in connection with the IP Claims; or (2) the amount of any royalties otherwise due from the Company to Accton that are withheld from payment to Accton (with Accton's concurrence) in lieu of a payment from Accton towards such legal fees or damages.

(ii) Treatment of Bundled Claims: In the event of payments and disbursements relating both to the IP Claims and to other claims, then only that portion of the payments and disbursements which is reasonably allocable to the IP Claim shall be recoverable from the Escrow Fund as IP Losses, and the remainder of such payments and disbursements shall not be recoverable from the Escrow Fund unless an independent basis for recovery of such amounts from the Escrow Fund exists (that is, unless such payments and disbursements would otherwise constitute Losses for which Parent would be entitled to indemnification pursuant to this Article 7).

(iii) Treatment of Bundled Products: In the event that any payments and disbursements relate to products of Parent incorporating Company Intellectual Property, then no such payments and disbursements shall be recoverable from the Escrow Fund.

Parent, Merger Sub and the Company each acknowledge that such Losses, if any, would relate to unresolved contingencies existing at the Effective Time, which if resolved at the Effective Time would have led to a reduction in the aggregate Merger consideration to be paid to the shareholders of the Company. The shareholders of the Company shall not have any liability under this Agreement of any sort whatsoever in excess of the Escrow Fund, except in the event of fraud or willful misconduct (i.e., an intentional breach of a representation, warranty, covenant or agreement, but excluding a negligent or reckless breach) by the Company of any of its representations, warranties, agreements or covenants contained herein or in any other instrument or document required to be delivered pursuant to this Agreement in connection herewith. In the event of such a fraudulent breach, Parent shall have all remedies available at law or in equity (including for tort) with respect to such breach; provided, however, that, notwithstanding anything to the contrary contained in this Agreement, in no event shall any shareholder of the Company have any liability in excess of the Merger consideration received by such shareholder in connection with the Merger or the proceeds, if any, received by such shareholder in connection with the disposition of such Merger consideration.

(c) Escrow Period; Distribution of Escrow Fund upon Termination of Escrow Period. Subject to the following requirements, the Escrow Fund shall be in

existence immediately following the Effective Time and shall terminate at 5:00 p.m., Pacific Time, on the General Expiration Date (with respect to the General Escrow Amount) and on the IP Expiration Date (with respect to the IP Escrow Amount) (the period of time from the Effective Time through and including the applicable expiration date is referred to herein as the "Escrow Period"); and all shares of Parent Common Stock remaining in the Escrow Fund shall be distributed as set forth below in this Section 7.2(c); provided, however, that the applicable Escrow Period shall not terminate with respect to such amount (or some portion thereof) that is necessary in the reasonable judgment of Parent, subject to the objection of the Shareholder Agent and the subsequent arbitration of the matter in the manner as provided in Section 7.2(g) hereof, to satisfy any unsatisfied claims under this Section 7.2 concerning facts and circumstances existing prior to the termination of such applicable Escrow Period which claims are specified in any Officer's Certificate delivered to the Depositary Agent prior to termination of such applicable Escrow Period. As soon as all such claims, if any, have been resolved, the Depositary Agent shall deliver to the shareholders of the Company the remaining portion of the Escrow Fund not required to satisfy such claims. Deliveries of shares of Parent Common Stock remaining in the Escrow Fund to the shareholders of the Company pursuant to this Section 7.2(c) shall be made ratably in proportion to their respective contributions to the Escrow Fund. Each shareholder of the Company who would otherwise be entitled to a fraction of a share of Parent Common Stock (after aggregating all fractional shares of Parent Common Stock to be received by such holder) shall be entitled to receive from Parent an amount of cash (rounded to the nearest whole cent) equal to the product of (a) such fraction, multiplied by (b) the Closing Price. Parent shall use its commercially reasonable efforts to have such shares delivered as promptly as practicable after such resolution. Parent may at any time prior to the first release of any portion of the General Escrow Amount to the Company shareholders determine whether a claim which it may make against either the General Escrow Amount or the IP Escrow Amount shall be settled from the General Escrow Amount or the IP Escrow Amount and, if previously settled from one of the escrow amounts, may prior to such release cause a reallocation between the escrow amounts to reflect such determination. For purpose of clarity, at the expiration of the Escrow Period relating to the General Escrow Amount, only such remaining portion of the Escrow Fund which relates to the General Escrow Amount shall be available for distribution to the Company's shareholders, while the portion of the Escrow Fund which relates to the IP Escrow Amount shall remain in the escrow.

(d) Protection of Escrow Fund.

(i) The Depositary Agent shall hold and safeguard the Escrow Fund during the Escrow Period, shall treat such fund as a trust fund in accordance with the terms of this Agreement and not as the property of Parent and shall hold and dispose of the Escrow Fund only in accordance with the terms hereof.

(ii) Any shares of Parent Common Stock or other Equity Equivalents securities issued or distributed by Parent ("New Shares") in respect of Parent Common Stock in the Escrow Fund which have not been released from the Escrow Fund shall be added to the Escrow Fund. New Shares issued in respect of shares of Parent Common Stock which have been released from the Escrow Fund shall not be added to the Escrow Fund but shall be distributed to the record holders thereof. Cash dividends on

Parent Common Stock shall not be added to the Escrow Fund but shall be distributed to the record holders of the Parent Common Stock on the record date set for any such dividend.

(iii) Each shareholder shall have voting rights with respect to the shares of Parent Common Stock contributed to the Escrow Fund by such shareholder (and on any voting securities added to the Escrow Fund in respect of such shares of Parent Common Stock).

(e) Claims Upon Escrow Fund.

(i) Upon receipt by the Depository Agent at any time on or before the last day of the Escrow Period of a certificate signed by any officer of Parent (an "Officer's Certificate"): (A) stating that Parent (or another Parent Indemnitee) has paid or properly accrued or reasonably anticipates that it will have to pay or accrue Losses, directly or indirectly, as a result of any inaccuracy or breach of any representation, warranty, covenant or agreement of the Company contained herein or in any instrument delivered pursuant to this Agreement, (B) specifying in reasonable detail the individual items of Losses included in the amount so stated, the date each such item was paid or properly accrued, or the basis for such anticipated liability, and the nature of the misrepresentation, breach of warranty, agreement or covenant to which such item is related, the Depository Agent shall, subject to the provisions of Section 7.2(f) hereof, deliver to Parent out of the Escrow Fund, as promptly as practicable, shares of Parent Common Stock held in the Escrow Fund in an amount equal to such Losses, and (C) subject to Parent's rights under Section 7.2(c), specifying whether such Losses should be settled against the General Escrow Amount or the IP Escrow Amount. Where the basis for a claim upon the Escrow Fund by Parent is that Parent reasonably anticipates that it will pay or accrue a Loss, no payment will be made from the Escrow Fund for such Loss unless and until such Loss is actually paid or accrued.

(ii) For the purposes of determining the number of shares of Parent Common Stock to be delivered to Parent out of the Escrow Fund pursuant to Section 7.2(e)(i), the shares of Parent Common Stock shall be valued at the Closing Price.

(f) Objections to Claims. At the time of delivery of any Officer's Certificate to the Depository Agent, a duplicate copy of such certificate shall be delivered to the Shareholder Agent and for a period of thirty (30) days after such delivery, the Depository Agent shall make no delivery to Parent of any Escrow Amounts pursuant to Section 7.2(e) hereof unless the Depository Agent shall have received written authorization from the Shareholder Agent to make such delivery. After the expiration of such 30 day period, the Depository Agent shall make delivery of shares of Parent Common Stock from the Escrow Fund in accordance with Section 7.2(e) hereof, provided that no such payment or delivery may be made if the Shareholder Agent shall object in a written statement to the claim made in the Officer's Certificate, and such statement shall have been delivered to the Depository Agent prior to the expiration of such 30 day period.

## (g) Resolution of Conflicts; Arbitration.

(i) In case the Shareholder Agent shall object in writing to any claim or claims made in any Officer's Certificate, the Shareholder Agent and Parent shall attempt in good faith to agree upon the rights of the respective parties with respect to each of such claims. If the Shareholder Agent and Parent should so agree, a memorandum setting forth such agreement shall be prepared and signed by both parties and shall be furnished to the Depositary Agent. The Depositary Agent shall be entitled to rely on any such memorandum and distribute shares of Parent Common Stock from the Escrow Fund in accordance with the terms thereof.

(ii) If no such agreement can be reached after good faith negotiation, either Parent or the Shareholder Agent may demand arbitration of the dispute unless the amount of the damage or loss is at issue in a pending Action or Proceeding involving a Third Party Claim, in which event arbitration shall not be commenced until such amount is ascertained or both parties agree to arbitration; and in either event the matter shall be settled by arbitration conducted by three (3) arbitrators, one (1) selected by Parent and one (1) selected by the Shareholder Agent, and the two (2) arbitrators selected by Parent and the Shareholder Agent shall select a third arbitrator. The arbitrators shall set a limited time period and establish procedures designed to reduce the cost and time for discovery of information relating to any dispute while allowing the parties an opportunity, adequate as determined in the sole judgment of the arbitrators, to discover relevant information from the opposing parties about the subject matter of the dispute. The arbitrators shall rule upon motions to compel, limit or allow discovery as they shall deem appropriate given the nature and extent of the disputed claim. The arbitrators shall also have the authority to impose sanctions, including attorneys' fees and other costs incurred by the parties, to the same extent as a court of law or equity, should the arbitrators determine that discovery was sought without substantial justification or that discovery was refused or objected to by a party without substantial justification. The decision of a majority of the three (3) arbitrators as to the validity and amount of any claim in such Officer's Certificate shall be binding and conclusive upon the parties to this Agreement, and notwithstanding anything in Section 7.2(f) hereof, the Depositary Agent shall be entitled to act in accordance with such decision and make or withhold payments out of the Escrow Fund in accordance therewith. Such decision shall be written and shall be supported by written findings of fact and conclusions regarding the dispute which shall set forth the award, judgment, decree or order awarded by the arbitrators.

(iii) Judgment upon any award rendered by the arbitrators may be entered in any court having competent jurisdiction. Any such arbitration shall be held in the city and county of Los Angeles, California under the commercial rules of arbitration then in effect of the American Arbitration Association. For purposes of this Section 7.2(g), in any arbitration hereunder in which any claim or the amount thereof stated in the Officer's Certificate is at issue, Parent shall be deemed to be the Non-Prevailing Party in the event that the arbitrators award Parent less than the sum of one-half (1/2) of the disputed amount of any Losses plus any amounts not in dispute; otherwise, the shareholders of the Company as represented by the Shareholder Agent shall be deemed to be the Non-Prevailing Party. The Non-Prevailing Party to an arbitration shall pay its own expenses, the fees of each

arbitrator, the administrative costs of the arbitration and the expenses, including without limitation, reasonable attorneys' fees and costs, incurred by the other party to the arbitration.

(h) Shareholder Agent of the Shareholders; Power of Attorney.

(i) In the event that the Merger is approved by the shareholders of the Company, effective upon such vote, and without further act of any shareholder, Alan B. Grebene shall be appointed as agent and attorney-in-fact (the "Shareholder Agent") for each shareholder of the Company (except such shareholders, if any, as shall have perfected their appraisal or dissenters' rights under the California Code), for and on behalf of shareholders of the Company, to give and receive notices and communications, to authorize delivery to Parent of shares of Parent Common Stock from the Escrow Fund in satisfaction of claims by Parent, to object to such deliveries, to agree to, negotiate, enter into settlements and compromises of, and demand arbitration and comply with orders of courts and awards of arbitrators with respect to such claims, and to take all actions necessary or appropriate in the judgment of the Shareholder Agent for the accomplishment of the foregoing. Such agency may be changed by the shareholders of the Company from time to time upon not less than thirty (30) days prior written notice to Parent; provided, however, that the Shareholder Agent may not be removed unless holders of a two-thirds interest in the Escrow Fund agree to such removal and to the identity of the substituted Shareholder Agent. Any vacancy in the position of Shareholder Agent may be filled by approval of the holders of a majority in interest of the Escrow Fund. No bond shall be required of the Shareholder Agent, and the Shareholder Agent shall not receive compensation for his services. Notices or communications to or from the Shareholder Agent shall constitute notice to or from each of the shareholders of the Company.

(ii) The Shareholder Agent shall not be liable for any act done or omitted hereunder as Shareholder Agent while acting in good faith and in the exercise of reasonable judgment.

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

(i) Actions of the Shareholder Agent. A decision, act, consent or instruction of the Shareholder Agent shall constitute a decision of all the shareholders for whom a portion of the Escrow Amount otherwise issuable to them are deposited in the Escrow Fund and shall be final, binding and conclusive upon each of such shareholders, and the Depositary Agent and Parent may rely upon any such decision, act, consent or instruction of the Shareholder Agent as being the decision, act, consent or instruction of every such shareholder of the Company. The Depositary Agent and Parent are hereby relieved from any liability to any person for any acts done by them in accordance with such decision, act, consent or instruction of the Shareholder Agent.

(j) Third-Party Claims. In the event Parent becomes aware of a third-party claim (a "Third Party Claim") which Parent reasonably expects may result in a demand against the Escrow Fund, Parent shall notify the Shareholder Agent of such claim, and the Shareholder Agent, as representative for the shareholders of the Company, shall be entitled, at their expense, to participate in any defense of such claim. Parent shall have the right in its sole discretion to settle any Third Party Claim; provided, however, that if Parent settles any Third Party Claim without the Shareholder Agent's consent (which consent shall not be unreasonably withheld or delayed), Parent may not make a claim against the Escrow Fund with respect to the amount of Losses incurred by Parent in such settlement. In the event that the Shareholder Agent has consented to any such settlement, the Shareholder Agent shall have no power or authority to object under any provision of this Article 7 to the amount of any claim by Parent against the Escrow Fund with respect to the amount of Losses incurred by Parent in such settlement (but such consent, by itself, shall not constitute agreement that Parent is entitled to indemnification hereunder for such Losses).

(k) Indemnification for Shareholder Agent. The Company's shareholders shall, severally and not jointly, on a pro rata basis based on their proportionate ownership interests in the Company, indemnify, defend and hold the Shareholder Agent harmless from and against any loss, damage, tax, liability and expense that may be incurred by the Shareholder Agent arising out of or in connection with the acceptance or administration of the Shareholder Agent's duties, except as caused by the Shareholder Agent's gross negligence or willful misconduct, including the legal costs and expenses of defending such Shareholder Agent against any claim or liability in connection with the performance of the Shareholder Agent's duties. The Shareholder Agent shall be entitled, but not limited, to such indemnification from the Escrow Fund prior to any distribution thereof to the Company's shareholders, but after any distributions therefrom to Parent.

(l) Depositary Agent's Duties.

(i) Limitation on Duties of Depositary Agent. The Depositary Agent shall be obligated only for the performance of such duties as are specifically set forth herein, and as set forth in any additional written escrow instructions which the Depositary Agent may receive after the date of this Agreement which are signed by an officer of Parent and the Shareholder Agent, and may rely and shall be protected in relying or refraining from acting on any instrument reasonably believed to be genuine and to have been signed or presented by the proper party or parties. The Depositary Agent shall not be liable for any act done or omitted hereunder as Depositary Agent while acting in good faith and in the exercise of reasonable judgment, and any act done or omitted pursuant to the advice of counsel shall be conclusive evidence of such good faith.

(ii) Compliance with Orders. The Depositary Agent is hereby expressly authorized to comply with and obey Orders of any court of law or Governmental or Regulatory Authority, notwithstanding any notices, warnings or other communications from any party or any other person to the contrary. In case the Depositary Agent obeys or complies with any such Order, the Depositary Agent shall not be liable to any of the parties hereto or to any other person by reason of such compliance, notwithstanding any such Order being subsequently reversed, modified, annulled, set aside, vacated or found to have been entered without jurisdiction or proper authority.

(iii) Limitations on Liability of Depositary Agent. The Depositary Agent shall not be liable in any respect on account of (a) the identity, authority or rights of the parties executing or delivering or purporting to execute or deliver this Agreement or any documents or papers deposited or called for hereunder; or (b) the expiration of any rights under any statute of limitations with respect to this Agreement or any documents deposited with the Depositary Agent.

(iv) Good Faith of Depositary Agent. In performing any duties under the Agreement, the Depositary Agent shall not be liable to any party for damages, losses, or expenses, except for gross negligence or willful misconduct on the part of the Depositary Agent. The Depositary Agent shall not incur any such liability for (a) any act or failure to act made or omitted in good faith, or (b) any action taken or omitted in reliance upon any instrument, including any written statement or affidavit provided for in this Agreement that the Depositary Agent shall in good faith believe to be genuine, nor will the Depositary Agent be liable or responsible for forgeries, fraud, impersonations or determining the scope of any representative authority. In addition, the Depositary Agent may consult with legal counsel in connection with the Depositary Agent's duties under this Agreement and shall be fully protected in any act taken, suffered, or permitted by him/her in good faith in accordance with the advice of counsel. The Depositary Agent is not responsible for determining and verifying the authority of any person acting or purporting to act on behalf of any party to this Agreement.

(v) Non-responsibility of Depositary Agent. If any controversy arises between the parties to this Agreement, or with any other party, concerning the subject matter of this Agreement, its terms or conditions, the Depositary Agent will not be required to determine the controversy or to take any action regarding it. The Depositary Agent may hold all documents and shares of Parent Common Stock and may wait for settlement of any such controversy by final appropriate legal proceedings or other means as, in the Depositary Agent's discretion, the Depositary Agent may be required, despite what may be set forth elsewhere in this Agreement. In such event, the Depositary Agent will not be liable for any damages. Furthermore, the Depositary Agent may at its option, file an action of interpleader requiring the parties to answer and litigate any claims and rights among themselves. The Depositary Agent is authorized to deposit with the clerk of the court all documents and shares of Parent Common Stock held in escrow, except all costs, expenses, charges and reasonable attorney fees incurred by the Depositary Agent due to the interpleader action and which the parties jointly and severally agree to pay. Upon initiating such action, the Depositary Agent shall be fully released and discharged of and from all obligations and liability imposed by the terms of this Agreement.

(vi) Indemnification of Depositary Agent. Parent and its successors and assigns agrees to indemnify and hold the Depositary Agent harmless against any and all Losses incurred by the Depositary Agent in connection with the performance of the Depositary Agent's duties under this Agreement, including but not limited to any litigation arising from this Agreement or involving its subject matter.

(vii) Resignation of Depositary Agent. The Depositary Agent may resign at any time upon giving at least 30 days written notice to the parties; provided, however, that no such resignation shall become effective until the appointment of a

successor depositary agent which shall be accomplished as follows: the parties shall use their best efforts to mutually agree on a successor depositary agent within thirty (30) days after receiving such notice. If the parties fail to agree upon a successor depositary agent within such time, the Depositary Agent shall have the right to appoint a successor depositary agent authorized to do business in the State of California. The successor depositary agent shall execute and deliver an instrument accepting such appointment and it shall, without further acts, be vested with all the estates, properties, rights, powers, and duties of the predecessor depositary agent as if originally named as Depositary Agent. The Depositary Agent shall be discharged from any further duties and liability under this Agreement.

(m) Fees. All fees of the Depositary Agent for performance of its duties hereunder shall be paid by Parent in accordance with the fee schedule that will be attached to this Agreement prior to the Closing as Exhibit K. In the event that the conditions of this Agreement are not promptly fulfilled, or if the Depositary Agent renders any service not provided for in this Agreement, or if the parties request a substantial modification of its terms, or if any controversy arises, or if the Depositary Agent is made a party to, or intervenes in, any Action or Proceeding pertaining to this escrow or its subject matter, the Depositary Agent shall be reasonably compensated for such extraordinary services and reimbursed for all costs, attorney's fees, and expenses occasioned by such default, delay, controversy or Action or Proceeding. Parent agrees to pay these sums upon demand.

#### ARTICLE 8 TERMINATION, AMENDMENT AND WAIVER

8.1 Termination. Except as provided in Section 8.2 below, this Agreement may be terminated and the Merger abandoned at any time prior to the Effective Time:

(a) by mutual agreement of the Company, Parent and Merger Sub;

(b) by Parent, Merger Sub or the Company if: (i) the Effective Time has not occurred before 5:00 p.m., California time, on August 31, 2000 (the "Outside Date"); provided, however, that the right to terminate this Agreement under this Section 8.1(b)(i) shall not be available to any party whose willful failure to fulfill any obligation hereunder has been the cause of, or resulted in, the failure of the Effective Time to occur on or before such date; provided, further, that the Outside Date may be extended by either party by written notice to the other delivered on or before the previously scheduled Outside Date to (y) September 30, 2000, unless both the conditions set forth in Section 6.1(g) of this Agreement have been satisfied by 11:59 p.m., California time, on August 25, 2000, and the Company has obtained the approval of the Merger from the holders of at least 90% of the outstanding shares of Company Capital Stock (such percentage being calculated on an as-converted basis) by August 30, 2000, provided that (if so extended) the Outside Date shall automatically be amended to be the later of (1) such date that is five (5) business days after the satisfaction of the conditions set forth in Section 6.1(g) of this Agreement if such satisfaction occurs at any time between 12:00 a.m., California time, on August 26, 2000 and 11:59 p.m., California time, on September 24, 2000, and (2) the date one business day following the first day on which the Company has obtained the approval of the Merger from the holders of 90% of the outstanding shares of Company Capital Stock (such percentage being calculated on an as-converted basis), or (z) December 31, 2000 if the condition set

forth in Section 6.1(a) of this Agreement requiring the expiration or termination of any waiting period applicable to the consummation of the Merger under the HSR Act (other than with respect to the receipt of Parent Common Stock by a shareholder of the Company) (the "HSR Condition") has not been satisfied by 11:59 p.m., California time, on August 25, 2000, provided that (if so extended) the Outside Date shall automatically be amended to be such date that is five (5) days after the satisfaction of the HSR Condition if such satisfaction occurs at any time between 12:00 a.m., California time, on August 26, 2000 and 11:59 p.m., California time, on December 25, 2000; (ii) there shall be a final nonappealable order of a federal or state court in effect preventing consummation of the Merger; or (iii) there shall be any statute, rule, regulation or order enacted, promulgated or issued or deemed applicable to the Merger by any Governmental or Regulatory Authority that would make consummation of the Merger illegal.

(c) by Parent and Merger Sub if there shall be any action taken, or any Law or Order enacted, promulgated or issued or deemed applicable to the Merger, by any Governmental or Regulatory Authority, which would: (i) prohibit Parent's or Merger Sub's ownership or operation of all or any portion of the business of the Company or (ii) compel Parent or Merger Sub to dispose of or hold separate all or any portion of the Assets and Properties of the Company as a result of the Merger;

(d) by Parent if it is not in material breach of its representations, warranties, covenants and agreements under this Agreement and there has been a breach of any representation, warranty, covenant or agreement contained in this Agreement on the part of the Company and (i) the Company is not using its reasonable efforts to cure such breach, or has not cured such breach within thirty (30) days, after notice of such breach to the Company (provided, however, that, no cure period shall be required for a breach which by its nature cannot be cured) and (ii) as a result of such breach any of the conditions set forth in Section 6.1 or Section 6.3, as the case may be, would not then be satisfied;

(e) by the Company if it is not in material breach of its representations, warranties, covenants and agreements under this Agreement and there has been a breach of any representation, warranty, covenant or agreement contained in this Agreement on the part of Parent or Merger Sub and (i) Parent is not using its reasonable efforts to cure such breach, or has not cured such breach within thirty (30) days, after notice of such breach to Parent (provided, however, that no cure period shall be required for a breach which by its nature cannot be cured), and (ii) as a result of such breach any of the conditions set forth in Section 6.1 or Section 6.2, as the case may be, would not then be satisfied;

(f) by Parent if, if at any time after five (5) days following the Company Shareholder Action, holders of more than 3.0% of the outstanding shares of Company Capital Stock shall have exercised, or have any continued right to exercise, appraisal, dissenters' or similar rights under applicable law with respect to their shares by virtue of the Merger;

(g) by Parent, if the Merger shall not have been approved by the requisite votes of the Company's shareholders in accordance with the California Code;

(h) By Parent, if the individuals listed on Schedule 6.3(m) cease to be employed by the Company, provided, however, that Parent may exercise this termination right with respect to a particular individual named in Schedule 6.3(m) only if Parent gives the Company written notice of termination of the Agreement within thirty days after receipt of written notice from the Company that such individual has ceased to be employed by the Company;

(i) By Parent, if, at any time, less than ninety percent (90%) of the Company's engineering and research and development employees of the Company (exclusive of those listed on Schedule 6.3(m)) employed as of April 21, 2000 shall cease to be employed by the Company at the Closing or if ten percent (10%) or more of such employees shall have given any notice or other indication that they are not willing to be employed by Parent or a Subsidiary of Parent (as Parent shall designate) following the Merger (other than as expressly permitted by the terms of Section 6.3(m));

(j) By Parent, if Parent is not satisfied in its sole discretion with the results of its due diligence investigation of the Company; provided, however, that Parent may exercise this termination right only by delivery to the Company of written notice thereof before 11:59 p.m., California time, on July 30, 2000; or

(k) By Parent, if any of the individuals and entities set forth on Schedule 5.29 have not executed and delivered to Parent a Support Agreement, Company Affiliate Agreement and/or Noncompetition Agreement, as applicable, by May 19, 2000.

(l) By Parent, unless individuals and entities who previously delivered a Support Agreement to Parent and who represent sufficient shares to satisfy the voting requirement set forth on Section 2.32(d) have executed and delivered to Parent by August 4, 2000 a Support Agreement Reaffirmation in the form attached hereto as Exhibit B.

8.2 Effect of Termination. In the event of a valid termination of this Agreement as provided in Section 8.1, this Agreement shall forthwith become void and there shall be no liability or obligation on the part of Parent or the Company, or their respective officers, directors or shareholders or Affiliates or Associates; provided, however, that each party shall remain liable for any breaches of this Agreement prior to its termination; and provided further that, the provisions of Sections 5.4, 5.5, 9.1, 9.2, 9.4, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 9.11, 9.12 and 9.13, Article 8 and the applicable definitions set forth in Article 10 of this Agreement shall remain in full force and effect and survive any termination of this Agreement.

8.3 Amendment. Except as is otherwise required by applicable law after the shareholders of the Company approve the Merger and this Agreement, this Agreement may be amended by the parties hereto at any time by execution of an instrument in writing signed on behalf of each of the parties hereto.

8.4 Extension; Waiver. At any time prior to the Effective Time, Parent, Merger Sub and the Company may, to the extent legally allowed, (i) extend the time for the performance of any of the obligations of the other party hereto, (ii) waive any inaccuracies in the representations and warranties made to such party contained herein or in any

document delivered pursuant hereto, and (iii) waive compliance with any of the agreements, covenants or conditions for the benefit of such party contained herein. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party.

8.5 Termination Fee; Limited Remedy.

(a) If Parent terminates this Agreement pursuant to Section 8.1(j) hereof, then Parent shall promptly reimburse the Company for the business and out-of-pocket expenses incurred by the Company in connection with this Agreement and the transactions contemplated thereby, which the parties estimate in good faith to be approximately \$1,000,000.00.

(b) \*

(c) \*

(d) \*

ARTICLE 9  
MISCELLANEOUS PROVISIONS

9.1 Notices. All notices, requests and other communications hereunder must be in writing and will be deemed to have been duly given only if delivered personally against written receipt or by facsimile transmission against facsimile confirmation or mailed by prepaid first class certified mail, return receipt requested, or mailed by overnight courier prepaid, to the parties at the following addresses or facsimile numbers:

If to Parent or to Merger Sub to:

Broadcom Corporation  
16215 Alton Parkway  
P.O. Box 57013  
Irvine, California 92619-7013  
Facsimile No.: (949) 450-8715  
Attn: President and Chief Executive Officer and  
Attn: General Counsel

with a copy to:

Irell & Manella LLP  
1800 Avenue of the Stars, Suite 900  
Los Angeles, California 90067  
Facsimile No.: (310) 203-7199  
Attn: Andrew W. Gross, Esq.

If to the Company to:

Altima Communications, Inc.  
2055 Gateway Place, Suite 700  
San Jose, California 95110  
Facsimile No.: (408) 453-3701  
Attn: President and Chief Executive Officer

with a copy to:

Oppenheimer, Wolff & Donnelly LLP  
3373 Hillview Avenue, Suite 200  
Palo Alto, California 94304  
Facsimile No.: (650) 320-4100  
Attn: Steven R. Foletta, Esq.

All such notices, requests and other communications will (i) if delivered personally to the address as provided in this Section 9.1, be deemed given upon delivery, (ii) if delivered by facsimile transmission to the facsimile number as provided for in this Section 9.1, be deemed given upon facsimile confirmation, (iii) if delivered by mail in the manner described above to the address as provided for in this Section 9.1, be deemed given on the earlier of the third Business Day following mailing or upon receipt and (iv) if delivered by overnight courier to the address as provided in this Section 9.1, be deemed given on the earlier of the first Business Day following the date sent by such overnight courier or upon receipt (in each case regardless of whether such notice, request or other communication is received by any other Person to whom a copy of such notice is to be delivered pursuant to this Section 9.1). Any party from time to time may change its address, facsimile number or other information for the purpose of notices to that party by giving notice specifying such change to the other party hereto.

9.2 Entire Agreement. This Agreement and the Exhibits and Schedules hereto, including the Company Disclosure Schedule and the Parent Disclosure Schedule, constitute the entire Agreement among the parties with respect to the subject matter hereof and supersede all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof, except for the Confidentiality Agreement, which shall continue in full force and effect and shall survive any termination of this Agreement or the Closing in accordance with its terms.

9.3 Further Assurances; Post-Closing Cooperation. At any time or from time to time after the Closing, the parties shall execute and deliver to the other party such other documents and instruments, provide such materials and information and take such other actions as the other party may reasonably request to consummate the transactions contemplated by this Agreement and otherwise to cause the other party to fulfill its obligations under this Agreement and the transactions contemplated hereby. Each party agrees to use commercially reasonable efforts to cause the conditions to its obligations to consummate the Merger to be satisfied. As used in this Agreement, it is understood that the term "commercially reasonable efforts" shall not obligate any party to pay to any third party any sums that such third party would not otherwise be entitled to receive (unless the other party hereto agrees to be such responsible for such payment).

9.4 Waiver. Any term or condition of this Agreement may be waived at any time by the party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the party waiving such term or condition. No waiver by any party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion. All remedies, either under this Agreement or by Law or otherwise afforded, will be cumulative and not alternative.

9.5 Third Party Beneficiaries. The terms and provisions of this Agreement are intended solely for the benefit of each party hereto and their respective successors or permitted assigns, and it is not the intention of the parties to confer third-party beneficiary rights, and this Agreement does not confer any such rights, upon any other Person other than any Person entitled to indemnity under Section 5.14 or Article 7.

9.6 No Assignment; Binding Effect. Neither this Agreement nor any right, interest or obligation hereunder may be assigned (by operation of law or otherwise) by any party without the prior written consent of the other party and any attempt to do so will be void. Subject to the preceding sentence, this Agreement is binding upon, inures to the benefit of and is enforceable by the parties hereto and their respective successors and assigns.

9.7 Headings. The headings and table of contents used in this Agreement have been inserted for convenience of reference only and do not define or limit the provisions hereof.

9.8 Invalid Provisions. If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future Law, and if the rights or obligations of

any party hereto under this Agreement will not be materially and adversely affected thereby, (a) such provision will be fully severable, (b) this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, (c) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom and (d) in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

9.9 Governing Law. This Agreement shall be governed by and construed in accordance with the domestic laws of the State of California, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of California or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of California.

9.10 WAIVER OF TRIAL BY JURY. IN ANY ACTION OR PROCEEDING ARISING HEREFROM, THE PARTIES HERETO CONSENT TO TRIAL WITHOUT A JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ANY PARTY HERETO AGAINST THE OTHER OR THEIR SUCCESSORS IN RESPECT OF ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION OR PROCEEDING.

9.11 Construction. The parties hereto agree that this Agreement is the product of negotiation between sophisticated parties and individuals, all of whom were represented by counsel, and each of whom had an opportunity to participate in and did participate in, the drafting of each provision hereof. Accordingly, ambiguities in this Agreement, if any, shall not be construed strictly or in favor of or against any party hereto but rather shall be given a fair and reasonable construction without regard to the rule of contra preferentum.

9.12 Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

9.13 Specific Performance. The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. Except where this Agreement specifically provides for arbitration, it is agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in any court of the United States or any state having jurisdiction, this being in addition to any other remedy to which they are entitled at law or in equity.

ARTICLE 10  
DEFINITIONS

10.1 Definitions.

(a) As used in this Agreement, the following defined terms shall have the meanings indicated below:

"Actions or Proceedings" means any action, suit, complaint, petition, investigation, proceeding, arbitration, litigation or Governmental or Regulatory Authority investigation, audit or other proceeding, whether civil or criminal, in law or in equity, or before any arbitrator or Governmental Regulatory Authority.

"Affiliate" means, as applied to any Person, (a) any other Person directly or indirectly controlling, controlled by or under common control with, that Person, (b) any other Person that owns or controls (i) ten percent (10%) or more of any class of equity securities of that Person or any of its Affiliates or (ii) ten percent (10%) or more of any class of equity securities (including any equity securities issuable upon the exercise of any option or convertible security) of that Person or any of its Affiliates, or (c) any director, partner, officer, manager, agent, employee or relative of such Person. For the purposes of this definition, "control" (including with correlative meanings, the terms "controlling", "controlled by", and "under common control with") as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that Person, whether through ownership of voting securities or by contract or otherwise.

"Aggregate Common Number" means the aggregate number of shares of Company Common Stock outstanding immediately prior to the Effective Time (including all shares of Company Common Stock issued or issuable upon conversion of all shares of Company Preferred Stock which participate with the Company Common Stock in the Merger and upon exercise, conversion or exchange of all unvested and vested Company Options, Company Warrants and Company Stock Purchase Rights which are not exercised, converted, exchanged or expired as of the Effective Time).

"Aggregate Share Number" means 5,415,192 shares of Parent Common Stock, as (i) appropriately adjusted to reflect the effect of any stock split, stock dividend, stock combination, reorganization, reclassification or similar change occurring after the date of this Agreement and prior to the Effective Time and (ii) adjusted pursuant to Section 5.30.

"Agreement" means this Merger Agreement and Plan of Reorganization, including (unless the context otherwise requires) the Exhibits and the Disclosure Schedules and the certificates and instruments delivered in connection herewith, or incorporated by reference, as the same may be amended or supplemented from time to time in accordance with the terms hereof.

"Agreement of Merger" has the meaning ascribed to it in Section 1.2.

"Ancillary Agreements" has the meaning ascribed to it in Section 2.2.

"Approval" means any approval, authorization, consent, permit, qualification or registration, or any waiver of any of the foregoing, required to be obtained from or made with, or any notice, statement or other communication required to be filed with or delivered to, any Governmental or Regulatory Authority or any other Person.

"Assets and Properties" of any Person means all assets and properties of every kind, nature, character and description (whether real, personal or mixed, whether tangible or intangible, whether absolute, accrued, contingent, fixed or otherwise and wherever situated), including the goodwill related thereto, operated, owned, licensed or leased by such Person, including cash, cash equivalents, Investment Assets, accounts and notes receivable, chattel paper, documents, instruments, general intangibles, real estate, equipment, inventory, goods and Intellectual Property.

"Associate" means, with respect to any Person, any corporation or other business organization of which such Person is an officer or partner or is the beneficial owner, directly or indirectly, of ten percent (10%) or more of any class of equity securities, any trust or estate in which such Person has a substantial beneficial interest or as to which such Person serves as a trustee or in a similar capacity and any relative or spouse of such Person, or any relative of such spouse, who has the same home as such Person.

"Audited Financial Statement Date" means June 30, 1999.

"Audited Financial Statements" means the audited consolidated balance sheets of the Company as of each of the fiscal years ended December 31, 1997 through December 31, 1999, respectively, and the related audited consolidated statements of operations, shareholders' equity and cash flows for each of the fiscal years then ended, in each case, including the notes thereto.

"Backup Registration Rights Agreement" has the meaning ascribed to it in Section 5.1(c).

"Bankruptcy Event" means that the Company shall have, pursuant to or within the meaning of any Bankruptcy Law, (i) commenced a voluntary case, (ii) had an involuntary case instituted against it which has not been dismissed within sixty (60) days, (iii) consented to the appointment of a custodian of or for all or substantially all of its assets, (iv) made a general assignment for the benefit of creditors, or (v) admitted in writing its inability to pay its debts generally as they become due.

"Bankruptcy Law" means Title 11, U.S. Code or any similar foreign or U.S. federal or state law for the relief of creditors.

"Books and Records" means all files, documents, instruments, papers, books and records relating to the Business or Condition of the Company, including financial statements, internal reports, Tax Returns and related work papers and letters from accountants, budgets, pricing guidelines, ledgers, journals, deeds, title policies, minute books, stock certificates and books, stock transfer ledgers, Contracts, Licenses, customer lists, computer files and programs (including data processing files and records), retrieval programs, operating data and plans and environmental studies and plans.

"Business Combination" means, with respect to any Person, (i) any merger, consolidation or other business combination to which such Person is a party, (ii) any sale, dividend, split or other disposition of any capital stock or other equity interests of such Person (except for issuances of common stock upon conversion of preferred stock outstanding on the date hereof or the exercise of options or warrants outstanding on the date hereof or issued in accordance with the covenants of this Agreement), (iii) any tender offer (including a self tender), exchange offer, recapitalization, restructuring, liquidation, dissolution or similar or extraordinary transaction, (iv) any sale, dividend or other disposition of all or a material or significant portion of the Assets and Properties of such Person (including by way of exclusive license or joint venture formation) or (v) the entering into of any agreement or understanding, the granting of any rights or options, or the acquiescence of such Person, with respect to any of the foregoing.

"Business Day" means a day other than Saturday, Sunday or any day on which banks located in the State of California are authorized or obligated to close.

"Business or Condition of Parent" means the business, condition (financial or otherwise), results of operations, prospects or Assets and Properties of the Parent and its Subsidiaries, in the aggregate.

"Business or Condition of the Company" means the business, condition (financial or otherwise), results of operations, prospects or Assets and Properties of the Company.

"California Code" means the California Corporations Code and all amendments and additions thereto.

"California Permit" has the meaning ascribed to it in Section 1.11.

"Cause" shall mean (i) dishonesty, fraud, misrepresentation, embezzlement or other act of dishonesty with respect to the Surviving Corporation or Parent, (ii) any unlawful or criminal activity of a serious nature (including any such activity involving moral turpitude), (iii) any material breach of duty or neglect of duty (after written notice thereof and, if curable, a reasonable opportunity to remedy such failure), or (iv) any material breach of any employment, service, confidentiality or non-compete agreement or policy of the Surviving Corporation or Parent (after written notice thereof and, if curable, a reasonable opportunity to remedy such failure).

"Certificates" has the meaning ascribed to it in Section 1.8(b).

"Closing" means the closing of the transactions contemplated by Section 1.2.

"Closing Date" has the meaning ascribed to it in Section 1.2.

"Closing Price" means the average closing sales price of Parent Common Stock as traded on the NNM and reported by the Wall Street Journal, for the thirty (30) consecutive market trading days commencing on the thirty second market trading day prior

to the Closing Date and ending on (inclusive) the third market trading day prior to the Closing Date.

"COBRA" has the meaning ascribed to it in Section 2.14(f).

"Code" means the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder.

"Common Stock Exchange Ratio" means the quotient obtained by dividing (x) the Aggregate Share Number by (y) the Aggregate Common Number.

"Company" has the meaning ascribed to it in the forepart of this Agreement.

"Company Capital Stock" means the Company Common Stock and the Company Preferred Stock.

"Company Common Stock" has the meaning ascribed to it in Section 2.3.

"Company Disclosure Schedule" means the schedules delivered to Parent by or on behalf of the Company, containing all lists, descriptions, exceptions and other information and materials as are required to be included therein in connection with the representations and warranties made by the Company in Article 2 of this Agreement or otherwise.

"Company Financials" means the Audited Financial Statements and the Interim Financial Statements.

"Company Indemnified Party" has the meaning ascribed to it in Section 5.14.

"Company Intellectual Property" shall mean any Intellectual Property that (a) is owned by; (b) is licensed to; (c) was developed or created by or for the Company or (d) is used in or necessary for the conduct of the business of the Company as presently or heretofore conducted or as proposed to be conducted in the Company's 2000 Operating Plan, including any Intellectual Property created by any of the Company's founders, employees or consultants and including any Intellectual Property created by any of the Company's founders prior to the creation of the Company.

"Company Option(s)" means any Option to purchase Company Capital Stock, excluding the Company Preferred Stock and the Company Warrants.

"Company Preferred Stock" has the meaning ascribed to it in Section 2.3.

"Company Registered Intellectual Property" means all Registered Intellectual Property owned by, filed in the name of, assigned to or applied for by, the Company.

"Company Restricted Stock" means shares of Company Capital Stock purchased pursuant to an exercise of a Company Stock Purchase Right which are subject to a repurchase option by the Company.

"Company Series A Preferred Stock" has the meaning set forth in

2.3.

"Company Series B Preferred Stock" has the meaning set forth in

2.3.

"Company Stock Option Plan" means the Company's 1997 Stock

Option Plan.

"Company Stock Purchase Right" means a right to purchase Company Restricted Stock granted by the Company.

"Company Shareholders Action" has the meaning ascribed to it in

Section 2.35.

"Company Warrants" means all of the warrants to purchase Company Capital Stock listed on Section 2.3 of the Disclosure Schedule.

"Competing Proposed Transaction" has the meaning ascribed to it

in Section 4.2.

"Confidentiality Agreement" has the meaning ascribed to it in

Section 5.4

"Contract" means any material contract, agreement or other business arrangement (whether oral or written) including:

(A) any distributor, sales, advertising, agency or manufacturer's representative contract;

(B) any continuing contract for the purchase of materials, supplies, equipment or services involving in the case of any such contract more than fifty thousand dollars (\$50,000) over the life of the contract;

(C) any material contract that expires or may be renewed at the option of any person other than the Company so as to expire more than one year after the date of this Agreement;

(D) any trust indenture, mortgage, promissory note, loan agreement or other contract for the borrowing of money, any currency exchange, commodities or other hedging arrangement or any leasing transaction of the type required to be capitalized in accordance with generally accepted accounting principles;

(E) any contract for capital expenditures in excess of fifty thousand dollars (\$50,000) in the aggregate;

(F) any contract limiting the freedom of the Company to engage in any line of business or to compete with any other Person or any confidentiality, secrecy or non-disclosure contract;

(G) any contract pursuant to which the Company is a lessor of any machinery, equipment, motor vehicles, office furniture, fixtures or other personal property;

(H) any contract for more than \$50,000 (either individually or in the aggregate) with any person with whom the Company does not deal at arm's length;

(I) any material contract that is not terminable by the Company upon 30 days (or less) notice by the Company without penalty or obligation to make payments based on such termination; or

(J) any agreement of guarantee, support, indemnification, assumption or endorsement of, or any similar commitment with respect to, the obligations, liabilities (whether accrued, absolute, contingent or otherwise) or indebtedness of any other Person.

"Depository Agent" means U.S. Stock Transfer Corporation (or other institution acceptable to Parent and the Shareholder Agent).

"Disclosure Schedules" means the Company Disclosure Schedule and the Parent Disclosure Schedule.

"Dissenting Shares" has the meaning ascribed to it in Section 1.7(a).

"Effective Time" has the meaning ascribed to it in Section 1.2.

"Environment" means air, surface water, ground water, or land, including land surface or subsurface, and any receptors such as persons, wildlife, fish, biota or other natural resources.

"Environmental Clean-up Site" means any location which is listed or proposed for listing on the National Priorities List, the Comprehensive Environmental Response, Compensation and Liability Information System, or on any similar state list of sites relating to investigation or cleanup, or which is the subject of any pending or threatened action, suit, proceeding, or investigation related to or arising from any location at which there has been a Release or threatened or suspected Release of a Hazardous Material.

"Environmental Law" means any federal, state, local or foreign environmental, health and safety or other Law relating to of Hazardous Materials, including without limitation the Comprehensive, Environmental Response Compensation and Liability Act, the Clean Air Act, the Federal Water Pollution Control Act, the Solid Waste Disposal Act, the Federal Insecticide, Fungicide and Rodenticide Act, and the California Safe Drinking Water and Toxic Enforcement Act.

"Environmental Permit" means any permit, license, approval, consent or authorization required under or in connection with any Environmental Law and includes without limitation any and all orders, consent orders or binding agreements issued by or entered into with a Governmental or Regulatory Authority.

"Equity Equivalents" means securities (including Options to purchase any shares of Company Capital Stock) which, by their terms, are or may be exercisable, convertible or exchangeable for or into common stock, preferred stock or other securities at the election of the holder thereof.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder.

"ERISA Affiliate" has the meaning ascribed to in the definition of Plan in this Section 10.

"Escrow Amount" means (i) the General Escrow Amount plus (ii) the IP Escrow Amount. The shares deposited with the Depositary Agent shall, to the extent possible, be shares that are not subject to any repurchase rights.

"Escrow Fund" has the meaning ascribed to it in Section 7.2(a).

"Escrow Period" has the meaning ascribed to it in Section 7.2(c).

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC thereunder.

"Exchange Agent" means U.S. Stock Transfer Corporation.

"Expiration Date" has the meaning ascribed to it in Section 7.1.

"Financial Statement Date" means March 31, 2000.

"GAAP" means generally accepted accounting principles in the United States, as in effect from time to time.

"General Escrow Amount" means the number of shares of Parent Common Stock obtained by multiplying (x) the aggregate number of shares of Parent Common Stock issuable by Parent at the Effective Time to holders of Company Capital Stock in accordance with Section 1.6(a) by (y) 0.10.

"General Expiration Date" has the meaning ascribed to it in Section 7.1.

"Governmental or Regulatory Authority" means any court, tribunal, arbitrator, authority, agency, bureau, board, commission, department, official or other instrumentality of the United States, any foreign country or any domestic or foreign state, county, city or other political subdivision, and shall include any stock exchange, quotation service and the National Association of Securities Dealers.

"Hazardous Material" means (a) any chemical, material, substance or waste including, containing or constituting petroleum or petroleum products, solvents (including chlorinated solvents), nuclear or radioactive materials, asbestos in any form that is or could become friable, radon, lead-based paint, urea formaldehyde foam insulation or polychlorinated biphenyls, (b) any chemicals, materials, substances or wastes which are now

defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants" or words of similar import under any Environmental Law; or (c) any other chemical, material, substance or waste which is regulated by any Governmental or Regulatory Authority or which could constitute a nuisance.

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

"Income Tax" means (i) any income, alternative or add-on minimum tax, gross income, gross receipts, franchise, profits, including estimated taxes relating to any of the foregoing, or other similar tax or other like assessment or charge of similar kind whatsoever, excluding any Other Tax, together with any interest and any penalty, addition to tax or additional amount imposed by any Taxing Authority responsible for the imposition of any such Tax (domestic or foreign); or (ii) any liability of a Person for the payment of any taxes, interest, penalty, addition to tax or like additional amount resulting from the application of Treas. Reg. Section 1.1502-6 or comparable provisions of any Taxing Authority in respect of a Tax Return of a Relevant Group or any Contract.

"Indebtedness" of any Person means all obligations of such Person (a) for borrowed money, (b) evidenced by notes, bonds, debentures or similar instruments, (c) for the deferred purchase price of goods or services (other than trade payables or accruals incurred in the ordinary course of business), (d) under capital leases and (e) in the nature of guarantees of the obligations described in clauses (a) through (d) above of any other Person.

"Information Statement" has the meaning ascribed to it in Section 2.36.

"Intellectual Property" means all trademarks and trademark rights, trade names and trade name rights, service marks and service mark rights, service names and service name rights, patents and patent rights, utility models and utility model rights, copyrights, mask work rights, brand names, trade dress, product designs, product packaging, business and product names, logos, slogans, rights of publicity, trade secrets, inventions (whether patentable or not), invention disclosures, improvements, processes, formulae, industrial models, processes, designs, specifications, technology, methodologies, computer software (including all source code and object code), firmware, development tools, flow charts, annotations, all Web addresses, sites and domain names, all data bases and data collections and all rights therein, any other confidential and proprietary right or information, whether or not subject to statutory registration, and all related technical information, manufacturing, engineering and technical drawings, know-how and all pending applications for and registrations of patents, utility models, trademarks, service marks and copyrights, and the right to sue for past infringement, if any, in connection with any of the foregoing, and all documents, disks, records, files and other media on which any of the foregoing is stored.

"Interim Financial Statements" means the unaudited balance sheet of the Company as of March 31, 2000, and the related unaudited statement of operations and statement of cash flows for the nine-month period ended on such date.

"Investment Assets" means all debentures, notes and other evidences of Indebtedness, stocks, securities (including rights to purchase and securities convertible into or exchangeable for other securities), interests in joint ventures and general and limited partnerships, mortgage loans and other investment or portfolio assets owned of record or beneficially by the Company.

"IP Claims" means all demands, requests for payment and claims raised in or by (i) Level One Communications, Inc. vs. Altima Communications, Inc., U.S. District Court - Eastern District of California - Case No. CIV S-99-2488 GEB GGH (and any related Actions or Proceedings that may be filed), (ii) In re Certain Integrated Repeaters & Products Containing Same, ITC Investigation No. 337-TA-430 (and any related Actions or Proceedings that may be filed), (iii) that certain "cease and desist" letter dated November 15, 1999 from Level One Communications, Inc., (iv) any other similar or derivative letters and claims required to be but which are not disclosed in the Company Disclosure Schedule, and (v) Level One Communications, Inc. or any of its Affiliates with respect to any Company Intellectual Property or relating to U.S. Patent Nos. 5,894,410, 5,608,341, or 5,726,860. The term "IP Claims" shall include claims and demands whether raised by the original parties to the foregoing litigation and letters or any of their respective successors and assigns, and shall include claims in whatever manner raised, whether by claim, cross-claim, amended claim or cross-claim or otherwise. Notwithstanding anything else to the contrary, the term "IP Claims" only includes demands, requests for payment, and claims to the extent that such demands, request for payment, and claims relate to: (1) activities of or products sold by the Company prior to the Closing Date; or (2) the incorporation of Company Intellectual Property in the products of the Company sold after the Closing Date as planned by the Company prior to beginning merger discussions with Parent.

"IP Escrow Amount" means (i) the number of shares of Parent Common Stock obtained by multiplying (x) the aggregate number of shares of Parent Common Stock issuable by Parent at the Effective Time to holders of Company Capital Stock in accordance with Section 1.6(a) by (y) 0.05.

"IP Expiration Date" means the second anniversary of the Closing Date.

"IP Losses" has the meaning ascribed to it in Section 7.2(b).

"IRS" means the United States Internal Revenue Service or any successor entity.

"IT" has the meaning ascribed to it in Section 5.23.

"Law" or "Laws" means any law, statute, order, decree, consent decree, judgment, rule, regulation, ordinance or other pronouncement having the effect of law whether in the United States, any foreign country, or any domestic or foreign state, county, city or other political subdivision or of any Governmental or Regulatory Authority.

"Leased Real Property(ies)" has the meaning ascribed to it in Section 2.15(a).

"Liabilities" means all Indebtedness, obligations and other liabilities of a Person, whether absolute, accrued, contingent (or based upon any contingency), known or unknown, fixed or otherwise, or whether due or to become due.

"License" means any Contract that grants a Person the right to use or otherwise enjoy the benefits of any Intellectual Property (including without limitation any covenants not to sue with respect to any Intellectual Property).

"Liens" means any mortgage, pledge, assessment, security interest, lease, lien, easement, license, covenant, condition, restriction, adverse claim, levy, charge, option, equity, adverse claim or restriction or other encumbrance of any kind, or any conditional sale Contract, title retention Contract or other Contract to give any of the foregoing, except for any restrictions on transfer generally arising under any applicable federal or state securities law.

"Liquidation Share Number" means the quotient obtained by dividing (i) the Aggregate Liquidation Preference by (ii) the Closing Price.

"Loss(es)" means any and all damages, fines, fees, Taxes, penalties, deficiencies, losses (including lost profits or diminution in value) and expenses, including interest, reasonable expenses of investigation, court costs, reasonable fees and expenses of attorneys, accountants and other experts or other expenses of litigation or other proceedings or of any claim, default or assessment (such fees and expenses to include all fees and expenses, including fees and expenses of attorneys, incurred in connection with (i) the investigation or defense of any Third Party Claims or (ii) asserting or disputing any rights under this Agreement against any party hereto or otherwise), net of any insurance proceeds actually received (without any adverse effect on the premiums paid for such insurance) or proceeds received by virtue of third party indemnification. The term "Losses" shall not include any expenses of litigation which relate to any of the IP Claims and which are incurred prior to the Closing Date.

"Merger" has the meaning ascribed to it in Recital A to this Agreement.

"NASD" means the National Association of Securities Dealers, Inc.

"New Shares" has the meaning ascribed to it in Section 7.2(d)(ii).

"NNM" means the distinct tier of The Nasdaq Stock Market referred to as the Nasdaq National Market.

"Non-Competition Agreement" has the meaning ascribed to it in Recital E

"Officer's Certificate" has the meaning ascribed to it in Section 7.2(e)(i).

"Option" with respect to any Person means any security, right, subscription, warrant, option, "phantom" stock right or other Contract (other than the Company Series A Preferred Stock and the Company Series B Preferred Stock) that gives the right to (i) purchase or otherwise receive or be issued any shares of capital stock or other equity interests of such Person or any security of any kind convertible into or exchangeable or

exercisable for any shares of capital stock or other equity interests of such Person or (ii) receive any benefits or rights similar to any rights enjoyed by or accruing to the holder of shares of capital stock or other equity interests of such Person, including any rights to participate in the equity, income or election of directors or officers of such Person.

"Order" means any writ, judgment, decree, injunction or similar order of any Governmental or Regulatory Authority (in each such case whether preliminary or final).

"Other Tax" means any sales, use, ad valorem, business license, withholding, payroll, employment, excise, stamp, transfer, recording, occupation, premium, property, value added, custom duty, severance, windfall profit or license tax, governmental fee or other similar assessment or charge, together with any interest and any penalty, addition to tax or additional amount imposed by any Taxing Authority responsible for the imposition of any such tax (domestic or foreign).

"Parent" has the meaning ascribed to it in the forepart of this Agreement.

"Parent Common Equity" means the Parent Common Stock and the Class B Common Stock of Parent.

"Parent Common Stock" has the meaning ascribed to it in Recital B to this Agreement.

"Parent Disclosure Schedule" has the meaning ascribed to it in the forepart of Article 3.

"Parent Financial Statements" has the meaning ascribed to it in Section 3.4.

"Parent Indemnitees" has the meaning ascribed to it in Section 7.2(b).

"PBGC" means the Pension Benefit Guaranty Corporation established under ERISA.

"Permit" means any license, permit, franchise or authorization.

"Permit Application" has the meaning ascribed to it in Section 2.35.

"Person" means any natural person, corporation, general partnership, limited partnership, limited liability company or partnership, proprietorship, other business organization, trust, union, association or Governmental or Regulatory Authority.

"Plan" mean (i) each of the "employee benefit plans" (as such term is defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), of which any of the Company, any Subsidiary, or any member of the same controlled group of businesses as the Company or any Subsidiary within the meaning of Section 4001(a)(14) of ERISA (an "ERISA Affiliate") is or ever was a sponsor or participating employer or as to which the Company or any Subsidiary or any of their ERISA Affiliates makes contributions or is required to make contributions, and (ii) any similar employment, severance or other arrangement or policy of any of the Company any

Subsidiary or any of their ERISA Affiliates (whether written or oral) providing for health, life, vision or dental insurance coverage (including self-insured arrangements), workers' compensation, disability benefits, supplemental unemployment benefits, vacation benefits or retirement benefits, fringe benefits, or for profit sharing, deferred compensation, bonuses, stock options, stock appreciation or other forms of incentive compensation or post-retirement insurance, compensation or benefits.

"PTO" means the United States Patent and Trademark Office.

"Registered Intellectual Property" shall mean all United States, international and foreign: (i) patents and patent applications (including provisional applications); (ii) registered trademarks and servicemarks, applications to register trademarks and servicemarks, intent-to-use applications, other registrations or applications to trademarks or servicemarks, or trademarks or servicemarks in which common law rights are owned or otherwise controlled; (iii) registered copyrights and applications for copyright registration; (iv) any mask work registrations and applications to register mask works; and (v) any other Intellectual Property that is the subject of an application, certificate, filing, registration or other document issued by, filed with, or recorded by, any state, government or other public legal authority.

"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of a Hazardous Material into the Environment.

"Relevant Group" has the meaning ascribed to it in Section 2.11(a).

"Representatives" has the meaning ascribed to it in Section 4.2.

"Restricted Stock Purchase Agreement" means a Restricted Stock Purchase Agreement as may be entered into by the Company prior to the date of this Agreement pursuant to which the Company has sold Company Restricted Stock or issued Company Stock Purchase Rights.

"SEC" means the Securities and Exchange Commission or any successor entity.

"SEC Documents" means, with respect to any Person, each report, schedule, form, statement or other document filed or required to be filed with the SEC by such Person pursuant to Section 13(a) of the Exchange Act.

"Securities Act" has the meaning ascribed to it in Section 1.11.

"Series A Exchange Ratio" means the product obtained by multiplying (i) the Common Stock Exchange Ratio by (ii) the number of shares of Company Common Stock into which the Series A Preferred Stock is convertible at the time of determination (six, as of May 3, 2000).

"Series B Exchange Ratio" means the product obtained by multiplying (i) the Common Stock Exchange Ratio by (ii) the number of shares of Company Common Stock

into which the Series B Preferred Stock is convertible at the time of determination (two, as of May 3, 2000).

"Site" means any of the real properties currently or previously owned, leased, occupied, used or operated by the Company, any predecessors of the Company, or any entities previously owned by the Company, including all soil, subsoil, surface waters and groundwater.

"Shareholder Agent" has the meaning ascribed to it in Section 7.2(h)(i).

"Shareholder Certificate" has the meaning ascribed to it in Section 5.1(c)

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"Subsidiary" means any Person in which the Company or Parent, as the context requires, directly or indirectly through Subsidiaries or otherwise, beneficially owns at least 50% of either the equity interest in, or the voting control of, such Person, whether or not existing on the date hereof.

"Support Agreement" has the meaning ascribed to it in Recital D to this Agreement.

"Surviving Corporation" has the meaning ascribed to it in Section 1.1.

"Takeover Statute" means a "fair price," "moratorium," "control share acquisition" or other similar antitakeover statute or regulation enacted under state or federal laws in the United States, including without limitation Section 203 of the Delaware Law.

"Tax" or "Taxes" means Income Taxes and/or Other Taxes, as the context requires.

"Tax Laws" means the Code, federal, state, county, local or foreign laws relating to Taxes and any regulations or official administrative pronouncements released thereunder.

"Tax Returns" means any return, report, information return, schedule, certificate, statement or other document (including any related or supporting information) filed or required to be filed with, or, where none is required to be filed with a Taxing Authority, the statement or other document issued by, a Taxing Authority in connection with any Tax.

"Taxing Authority" means any governmental agency, board, bureau, body, department or authority of any United States federal, state or local jurisdiction or any foreign jurisdiction, having or purporting to exercise jurisdiction with respect to any Tax.

\*

"Third Party Claim" has the meaning ascribed to it in Section 7.2(j).

"Third Party Expenses" has the meaning ascribed to it in Section

5.5.

"Warranty Obligations" has the meaning ascribed to it in Section

2.28.

(b) Unless the context of this Agreement otherwise requires, (i) words of any gender include each other gender, (ii) words using the singular or plural number also include the plural or singular number, respectively, (iii) the terms "hereof," "herein," "hereby" and derivative or similar words refer to this entire Agreement as a whole and not to any particular Article, Section or other subdivision, (iv) the terms "Article" or "Section" or other subdivision refer to the specified Article, Section or other subdivision of the body of this Agreement, (v) the phrases "ordinary course of business" and "ordinary course of business consistent with past practice" refer to the business and practice of the Company, (vi) the words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation," and (vii) when a reference is made in this Agreement to Exhibits, such reference shall be to an Exhibit to this Agreement unless otherwise indicated. All accounting terms used herein and not expressly defined herein shall have the meanings given to them under GAAP. The term "party" or "parties" when used herein refer to Parent, on the one hand, and the Company, on the other.

(c) When used herein, the phrase "to the knowledge of" any Person, "to the best knowledge of" any Person, "known to" any Person or any similar phrase, means (i) with respect to any Person who is an individual, the actual knowledge of such Person, (ii) with respect to any other Person, the actual knowledge of the directors and officers of such Person and other individuals that have a similar position or have similar powers and duties as the officers and directors of such Person, and (iii) in the case of each of (i) and (ii), the knowledge of facts that such individuals should have after due inquiry. For this purpose, "due inquiry" means inquiry of and consultation with (x) the directors and officers of such Person and other individuals that have a similar position or have similar powers and duties as the officers and directors of such Person, and the advisors, including legal counsel and outside auditors, who in each case are the principal persons responsible for such matters as of the date hereof and (y) the shareholders owning more than 10% of the equity interests, by vote or value, of such Person.

(d) All references herein to the "date hereof" and the "date of this Agreement" (or any similar phrase) shall mean May 3, 2000, the date of the Original Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Parent, Merger Sub and the Company, and with respect to Section 7.2 only, the Shareholder Agent and the Depositary Agent, have caused this Agreement to be signed by their duly authorized representatives, all as of the date first written above.

ALTIMA COMMUNICATIONS, INC.

BROADCOM CORPORATION

By: /s/ STEWART WU

By: /s/ HENRY T. NICHOLAS III

-----  
Stewart Wu  
President and Chief Executive Officer

-----  
Henry T. Nicholas III, Ph.D.  
President and Chief Executive  
Officer

AC ACQUISITION CORP.

SHAREHOLDER AGENT

By:/s/ HENRY T. NICHOLAS III

/s/ ALAN B. GREBEN

-----  
Henry T. Nicholas III, Ph.D.  
President and Chief Executive Officer

-----  
Alan B. Grebene

U.S. STOCK TRANSFER CORPORATION,  
AS DEPOSITARY AGENT

By: /s/ RICHARD BROWN

-----  
Richard Brown  
Vice President

Stewart Wu hereby consents to be replaced as Shareholder Agent hereunder by Alan B. Grebene.

/s/ STEWART WU

-----  
Stewart Wu

AMENDED AND RESTATED  
MERCER AGREEMENT AND  
PLAN OF REORGANIZATION  
BY AND AMONG  
BROADCOM CORPORATION,  
AC ACQUISITION CORP.,  
AND  
ALTIMA COMMUNICATIONS, INC.

Dated as of July 28, 2000

Exhibit A: Support Agreement  
Exhibit B: Intentionally Omitted  
Exhibit C: Non-Competition Agreement  
Exhibit D: Agreement of Merger  
Exhibit E: Intentionally Omitted  
Exhibit F: Shareholder Certificate  
Exhibit G-1: Parent and Merger Sub Officer's Certificates  
Exhibit G-2: Parent and Merger Sub Secretary's Certificates  
Exhibit H: Parent and Merger Sub Counsel Legal Opinion  
Exhibit I-1: Company Officer's Certificate  
Exhibit I-2: Company Secretary's Certificate  
Exhibit J: Opinion of Company Counsel  
Exhibit K: Depositary Agent Fee Schedule  
Exhibit L: Stock Repurchase Agreement

Broadcom Corporation agrees to furnish supplementally a copy of any of the foregoing exhibits to the SEC upon request.

## NEWS RELEASE

## BROADCOM BUSINESS MEDIA CONTACTS

Bill Blanning or Eileen Algaze  
Corporate Communications Dept.  
949-450-8700  
blanning@broadcom.com  
ealgaze@broadcom.com

## BROADCOM FINANCIAL ANALYST CONTACT

William Ruehle  
Vice President and  
Chief Financial Officer  
949-450-8700  
billr@broadcom.com

## BROADCOM COMPLETES ACQUISITION OF ALTIMA COMMUNICATIONS

IRVINE, Calif. - September 8, 2000 - Broadcom Corporation (Nasdaq: BRCM), the leading provider of integrated circuits enabling high speed broadband communications, today announced that it has completed the acquisition of Altima Communications, Inc.

Altima is a leading supplier of networking integrated circuits (ICs) for the small-to-medium business (SMB) networking market. Altima's product portfolio has been designed and optimized for the value-oriented SMB customer, with emphasis on low power, small footprint, and low system cost.

Broadcom plans to operate Altima as a wholly-owned subsidiary and to retain the Altima(TM) name for the SMB product line.

In connection with the acquisition, Broadcom issued an aggregate of 1,661,784 shares of its Class A Common Stock in exchange for all outstanding shares of Altima Preferred and Common Stock and reserved 875,111 additional shares of Class A Common Stock for issuance upon exercise of outstanding employee stock options of Altima. The share issuances were exempt from registration pursuant to section 3(a)(10) of the Securities Act of 1933, as amended. Portions of the shares issued will be held in escrow pursuant to the terms of the acquisition agreement as well as various employee share repurchase agreements.

The merger transaction will be accounted for under the purchase method of accounting. Broadcom expects to record a one-time write-off for purchased in-process research and development expenses related to the acquisition in its third fiscal quarter (ending September 30).

In addition to the purchase consideration, Broadcom reserved 2,889,667 shares of its Class A Common Stock for future issuance to customers upon the exercise of outstanding Altima performance-based warrants that become exercisable upon satisfaction of certain customer purchase requirements.

#### ABOUT BROADCOM

Broadcom Corporation is the leading provider of highly integrated silicon solutions that enable broadband digital transmission of voice, video, and data. Using proprietary technologies and advanced design methodologies, the company designs, develops and supplies integrated circuits for a number of the most significant broadband communications markets, including the markets for cable set-top boxes, cable modems, high-speed local, metropolitan and wide area networks, home networking, Voice over Internet Protocol (VoIP), residential broadband gateways, direct broadcast satellite and terrestrial digital broadcast, optical networking, digital subscriber lines (xDSL) and wireless communications. Broadcom is headquartered in Irvine, Calif., and may be contacted at 949-450-8700 or at [www.broadcom.com](http://www.broadcom.com).

#### SAFE HARBOR STATEMENT UNDER THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995:

This release may contain forward-looking statements based on our current expectations, estimates and projections about our industry, management's beliefs, and certain assumptions made by us. Words such as "anticipates," "expects," "intends," "plans," "believes," "seeks," "estimates," "may," "will" and variations of these words or similar expressions are intended to identify forward-looking statements. In addition, any statements that refer to expectations, projections or other characterizations of future events or circumstances, including any underlying assumptions, are forward-looking statements. These statements are not guarantees of future performance and are subject to certain risks, uncertainties and assumptions that are difficult to predict. Therefore, our actual results could differ materially and adversely from those expressed in any forward-looking statements as a result of various factors.

Important factors that may cause such a difference for Broadcom in connection with the acquisition of Altima Communications include, but are not limited to, the risks inherent in acquisitions of technologies and businesses, including the timing and successful completion of technology and product development through volume production, integration issues, costs and unanticipated expenditures, changing relationships with customers, suppliers and strategic partners, potential contractual, intellectual property or employment issues, accounting treatment and charges, and the risks that the acquisition cannot be completed successfully or that anticipated benefits are not realized; the rate at which our present and future customers and end-users adopt Broadcom's technologies and products in the markets for Ethernet networking products; delays in the adoption and acceptance of industry standards in the foregoing markets; the timing of customer-industry qualification and certification of our products and the risks of non-qualification or non-certification; the timing, rescheduling or cancellation of significant customer orders; the loss of a key customer; the volume of our product sales and pricing concessions on volume sales; silicon

wafer pricing and the availability of foundry and assembly capacity and raw materials; the qualification, availability and pricing of competing products and technologies and the resulting effects on sales and pricing of our products; intellectual property disputes and customer indemnification claims; fluctuations in the manufacturing yields of our third party semiconductor foundries and other problems or delays in the fabrication, assembly, testing or delivery of our products; our ability to specify, develop or acquire, complete, introduce, market and transition to volume production new products and technologies in a timely manner; the effects of new and emerging technologies; the effectiveness of our product cost reduction efforts; the risks of producing products with new suppliers and at new fabrication and assembly facilities; problems or delays that we may face in shifting our products to smaller geometry process technologies and in achieving higher levels of design integration; the risks and uncertainties associated with our international operations; our ability to retain and hire key executives, technical personnel and other employees in the numbers, with the capabilities, and at the compensation levels needed to implement our business and product plans; changes in our product or customer mix; the quality of our products and any remediation costs; the effects of natural disasters and other events beyond our control; the level of orders received that can be shipped in a fiscal quarter; potential business disruptions, claims, expenses and other difficulties resulting from "Year 2000" problems in computer-based systems used by us, our suppliers or our customers; general economic conditions and specific conditions in the markets we address; and other factors.

Our Annual Report on Form 10-K, recent Quarterly Reports on Form 10-Q, recent Current Reports on Forms 8-K and 8-K/A, and other Securities and Exchange Commission filings discuss some of the important risk factors that may affect our business, results of operations and financial condition. We undertake no obligation to revise or update publicly any forward-looking statements for any reason.

Broadcom(R), Altima and the pulse logo are trademarks of Broadcom Corporation and/or its subsidiaries in the United States and certain other countries. All other trademarks mentioned are the property of their respective owner.