



Stock Purchase Agreement

Document 1330B

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STOCK PURCHASE AGREEMENT

This STOCK PURCHASE AGREEMENT (this “**Agreement**”), dated as of this ___ day of _____, 20__ is entered into by and between [NAME OF BUYER], a _____ [corporation] of [PRINCIPAL ADDRESS] (“**Buyer**”) and each of the equity holders of [NAME OF COMPANY] (collectively, the “**Stockholders**”) and [NAME OF COMPANY], a _____ [corporation] (“**Company**”), and

WHEREAS, the Board of Directors of Buyer has determined that it is advisable and in the best interests of their stockholders for Buyer to acquire the equity interests of the Company upon the terms and subject to the conditions set forth herein;

WHEREAS, each of the Stockholders has agreed, upon the terms and subject to the conditions set forth herein, to sell the equity interests in the Company owned by each of them as provided herein and

WHEREAS, pursuant to the terms of this Agreement, all equity interests of the Company shall be sold to Buyer, upon the terms and subject to the conditions set forth herein;

NOW, THEREFORE, in consideration of the foregoing premises, the mutual promises contained herein, intending to be legally bound hereby, and for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties do hereby agree as follows:

1. **Certain Definitions.**

“**Action**” shall mean any claim, action, cause of action or suit (in contract, tort or otherwise), inquiry, proceeding or investigation by or before any Governmental Authority.

“**Affiliate**” shall mean, any Person directly or indirectly controlling, controlled by or under common control with the Company (or such specified Person). For purposes of this definition, the term “**control**” including the terms “**controlling**”, “**controlled by**” and “under common control with”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities or otherwise.

“**Business**” shall mean the collective business of the Company as such business is currently conducted.

“**Business Day**” shall mean any day on which national banking institutions are customarily open for the purpose of transacting business.

“**Bylaws**” shall mean the corporate bylaws of the Company, as they may be amended, as from time to time in effect.

“**Certificate**” shall mean any outstanding certificate or other document representing an ownership interest in the Company.

“Charter” shall mean the certificate or articles of incorporation or organization or other charter documents, certificate of limited partnership or other organizational documents, including trust documents, of any Person (other than an individual), each as from time to time in effect.

“Debt” shall mean all material obligations of such Person (i) for borrowed money, (ii) evidenced by notes, bonds, debentures or similar instruments, other than operating leases and (iii) the nature of guarantees of obligations of the type described in clauses (i) and (ii) above of any other Person.

“Environmental Laws” shall mean any federal, state or local law as in effect as of the date hereof relating to (i) releases or threatened releases of Hazardous Substances; and (ii) the manufacture, handling, transport, use, treatment, storage or disposal of Hazardous Substances.

“Generally Accepted Accounting Principles” shall mean generally accepted accounting principles in the United States as in effect and applied in the preparation of Financial Statements.

“Hazardous Substance” shall mean (i) substances defined in or regulated as toxic or hazardous under the following federal statutes and their state counterparts, as well as these statutes implementing regulations in each case, as amended and as in effect as of the date hereof: the Hazardous Materials Transportation Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Clean Water Act, The Safe Drinking Water Act, the Asbestos Hazard Emergency Response Act, the Atomic Energy Act, the Toxic Substances Control Act, the Federal Insecticide, Fungicide and Rodenticide Act; (ii) petroleum and petroleum products, include crude oil and any fractions thereof; (iii) natural gas, synthetic gas and any mixtures thereof; (iv) PCBs and (v) asbestos.

“Legal Requirement” shall mean any material federal, state or local statute, ordinance, code, rule or regulation, or any material Governmental Order, or any material license, franchise, consent, approval, permit or similar right granted under any of the foregoing.

“Lien” shall mean any material mortgage, pledge, lien, security interest, attachment or encumbrance, provided, however, that the term “Lien” shall not include (i) statutory liens for Taxes; (ii) encumbrances in the nature of zoning restrictions, easements, rights or restrictions of record on the use of real property if the same do not materially detract from the value of the property encumbered thereby or materially impair the use of the property in the Business as currently conducted or proposed to be conducted; (iii) statutory or common law liens to secure landlords, lessors or renters under leases or rental agreements confined to the premises rented; (iv) deposits or pledges made in connection with, or to secure payment of, worker’s compensation, unemployment insurance, old age pension programs mandated under applicable Legal Requirements or other social security; (v) statutory or common law liens in favor of carriers, warehousemen, mechanics and materialmen, statutory or common law liens to secure claims for labor, materials or supplies and other like liens, and (vi) restrictions on transfer of securities imposed by applicable state and federal securities laws.

“Losses” shall mean any and all actual losses, damages, deficiencies, awards, assessments, amounts paid in good faith settlements, judgments, fines, penalties, costs and expenses (including, without limitation, reasonable legal costs and expenses and the costs of

investigation to the extent reasonably necessary); provided, however, that the amount of any such Losses for the purposes of indemnification hereunder shall be determined net of (i) all reserves reflected on the Balance Sheet, (ii) the sum of any amounts reasonably recoverable by the Indemnitee under insurance policies with respect to such Loss; and (iii) the present value (based on a discount factor equal to the applicable federal rate as determined under Section 1274(d)(1) of the Code) of any Tax benefit reasonably expected to be realized by the Indemnitee (or any consolidated, combined or unitary group of which the Indemnitee is also a member) arising from the incurrence or payment of such loss.

“**Material Adverse Effect**” shall mean any change in or effect on the business of the Company which has, or would have a material adverse effect on the Business, assets and financial condition of the Company taken as a whole except to the extent that any such change in or effect on the business results from the announcement or consummation of the transactions contemplated thereby.

“**Officers**” shall mean [NAMES / TITLES].

“**Ordinary Course of Business**” shall mean the ordinary course of business consistent with current custom and practice.

“**Person**” shall mean any individual, partnership, corporation, limited liability company, association, trust, joint venture, unincorporated organization or other entity other than any Governmental Authority.

“**Share**” shall mean any share of capital stock of the Company issued and outstanding immediately prior to the Closing.

2. Purchase and Sale of Equity Interests.

2.1 Stock to be Sold. Subject to the terms and conditions of this Agreement, on the Closing Date (as hereinafter defined), Buyer agrees to purchase, free and clear of any and all Liens, all of the issued and outstanding equity interests of the Company and the owners of the equity interests each agree to sell and transfer to Buyer such interests. The purchase of such equity interests by the Buyer is referred to herein as the “**Acquisition**”.

2.2 Amount of Purchase Price. In consideration of, and in exchange for, the said sale and transfer by the Stockholders to Buyer of all of the outstanding equity interests of the Company, Buyer agrees to pay an aggregate of _____ and 00/100 dollars (\$_____) (the “**Purchase Price**”) to be allocated among the Stockholders as set forth in Schedule 2.2 (in each case the “**Stockholder’s Percentage**”). [All payments herein shall be made by wire transfer of immediately available funds in accordance with written wiring instructions to be delivered to Buyer by Stockholders on or before the Closing Date.] OR [The Purchase Price shall be paid at the Closing in cash or by a cashier’s or certified check, or as otherwise agreed to by Buyer and Seller].

2.3 The Closing. Upon the terms and subject to the conditions hereinbefore and hereinafter set forth, the consummation of this Agreement and the Acquisition contemplated herein (the “**Closing**”) shall take place shall take place on at such time and place and on such

[DATE], or on such earlier date as is agreed to by the parties (the “**Closing Date**”) For financial and accounting purposes, all acts and transactions to be taken or effected at the Closing shall be deemed to have been taken simultaneously and shall be deemed effective as of 11:59 p.m. (Eastern Time) on _____ immediately preceding the Closing Date.

2.4 Instrument of Transfer. At the Closing, Stockholders shall execute and deliver to Buyer duly executed stock transfer powers with respect to the Stock held by each of the Stockholders and such other instruments of transfer, conveyance, and assignment sufficient to vest title to the Stock in Buyer.

2.5 Lost, Stolen or Destroyed Certificates. In the event any Certificates shall have been lost, stolen or destroyed, Buyer shall pay in exchange for such lost, stolen or destroyed Certificates, upon the making of an affidavit of that fact by the holder thereof and delivery of bond in such sum as it may reasonably direct as indemnity against any claim that may be made against Buyer with respect to the Certificates alleged to have been lost, stolen or destroyed, such portion of the Acquisition Consideration as may be required pursuant to Section 2.2 (Amount of Purchase Price).

2.6 Taking of Necessary Action; Further Action. The Buyer, the Company and each Stockholder will take all reasonable and lawful action as may be necessary or appropriate in order to effectuate the Acquisition in accordance with this Agreement as promptly as possible.

3. Warranties and Representations Relating to the Company.

Each of the Stockholders hereby jointly and severally represent and warrant to Buyer as follows:

3.1 Due Organization, Authorization and Good Standing of the Company. The Company is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization. The Company is qualified to do business and is in good standing as a foreign Person, as the case may be, in each jurisdiction in which the ownership of its properties and the nature and extent of the activities transacted by it makes such qualification necessary, except where the failure to so qualify would not have a Material Adverse Effect. The Company has full corporate power and corporate authority to carry on its business, to own and use the properties owned and used by it and to perform its obligations under this Agreement.

3.2 Capitalization. All of the issued and outstanding shares of capital stock of the Company which is duly authorized, validly issued, fully paid and non-assessable, and are held of record and beneficially as described on Schedule 3.2 hereto. There is no warrant, right, option, conversion privilege, stock purchase plan or other contractual obligation which obligates the Company to offer, issue, purchase or redeem any shares of its capital stock or other ownership interest or debt or other securities convertible into or exchangeable for capital stock or such other ownership interest (now, in the future or upon the occurrence of any contingency) or which provides for any equity appreciation or similar right.

3.3 Authority Relative to this Agreement. The Company has the requisite power and authority to enter into, execute, deliver and perform this Agreement, and to consummate all transactions contemplated thereby. The execution and delivery of this Agreement by the

Company and the consummation by the Company of the transactions contemplated hereby have been duly and validly authorized by all necessary corporate action, and no other corporate or partnership proceedings on the part of the Company are necessary to authorize this Agreement or to consummate the transactions so contemplated. This Agreement is the valid and legally binding obligation of the Company, enforceable against the Company in accordance with the terms, subject to bankruptcy, insolvency, moratorium, reorganization and similar laws of general applicability affecting the rights and remedies of creditors and to general principles of equity, regardless of whether enforcement is sought in proceedings in equity or at law.

3.4 No Violation or Approval.

(a) Except as set forth on Schedule 3.4 hereto, the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby will not result in the breach or violation of, or a default under the Charter or Bylaws of the Company, or any statute applicable to the Company or any material agreement to which the Company is a party or by which any of its properties are bound, any fiduciary duty or any order, judgment, decree, rule or regulation of any court or any Government Authority or body having jurisdiction over the Company or its properties, except where such failure would not have a Material Adverse Effect. Except as set forth on Schedule 3.4 hereto and except for filing a Premerger Notification Report under the Hart-Scott-Rodino Antitrust Improvement Act of 1976, as amended, (the “**HSR Act**”), no consent, approval, order or authorization of, or negotiation, declaration or filing with, any Governmental Authority or entity or other party is required of, and has not been obtained or made by the Company in connection with the execution and delivery of this Agreement or the consummation of any of the transaction contemplated hereby, except where such failure would not have a Material Adverse Effect.

(b) There is no Action pending against, affecting or, to the knowledge of the Stockholders Directors or Officers, threatened against the Company or any of their respective properties before any court or arbitrator or any governmental body, agent or official which in any manner challenges or seeks to prevent, enjoin, alter or materially delay any of the transactions contemplated by this Agreement or would materially adversely effect the Company’s ability to consummate the transactions contemplated hereby.

3.5 Financial Statements, Etc. The Company has furnished Buyer with copies of the following combined financial statements of the Company (the “**Financial Statements**”): (i) audited financial statements for each of the two years ending on [DATE] and [DATE], consisting of a combined balance sheet as of such dates and combined income statement and cash flows for the years ended on such dates, and (ii) unaudited financial statements for the six fiscal months ended on [DATE] (the “**Balance Sheet Date**”) consisting of a combined balance sheet as of such date (the “**Balance Sheet**”) and combined income statements for the six-month period ended on such dates, copies of which are attached as Schedule 3.5. The Financial Statements present fairly, in all material respects, the combined financial position of the Company and the combined results of their operations as of the dates and for the periods specified therein in conformity with Generally Accepted Accounting Principles; *provided, however*, that the Financial Statements and other presentation items, may be subject to normal, recurring adjustments which would be made in the course of an audit, and also will conform to Generally Accepted Accounting Principles with respect to items disclosed on Schedule 3.5 hereto.

3.6 Absence of Changes; Operations in Ordinary Course.

(a) Except as set forth on Schedule 3.6 hereto, and except as otherwise required or permitted by the terms of this Agreement, since [DATE], the Company has not incurred any liability of any nature whatsoever, whether absolute, accrued, contingent, determined, determinable or otherwise, nor has there occurred any condition, situation or set of circumstances which could reasonably result in such a liability, in each case other than (i) liabilities incurred in the Ordinary Course of Business, (ii) liabilities to the extent covered by insurance, and (iii) such liabilities as do not and will not have a Material Adverse Effect.

(b) Since [DATE], and except as set forth on Schedule 3.6 hereto, the Company has not (i) increased the compensation of any of its directors, officers, employees or affiliates other than in the Ordinary Course of Business, (ii) incurred any Debt other than in the Ordinary Course of Business, (iii) entered into or performed any contract, agreement, deed, mortgage, lease, license, other instrument, commitment, undertaking, arrangement or understanding, or other transaction, not in the Ordinary Course of Business, other than as specifically contemplated by this Agreement, or (iv) made any loan or advance of funds or assets of any kind, or forgiven any loan or advance to any Person other than in the Ordinary Course of Business.

3.7 Taxes.

(a) For the purposes of this Agreement, “**Tax**” or “**Taxes**” shall mean taxes, fees, levies, duties, tariffs, imposts, and governmental impositions or charges of any kind in the nature of (or similar to) taxes, payable to any federal, state, local or foreign taxing authority, including, without limitation, (i) income, franchise, profits, gross receipts, *ad valorem*, net worth, value added, sales, use, service, real or personal property, special assessments, capital stock, license, payroll, withholding, employment, social security, workers’ compensation, unemployment compensation, utility, severance, production, excise, stamp, occupation, premiums, windfall profits, transfer and gains taxes, and (ii) interest, penalties, additional taxes and additions to tax imposed with respect thereto; and “**Tax Returns**” shall mean returns, reports, and information statements with respect to Taxes required to be filed with the Internal Revenue Service (“**IRS**”) or any other federal, foreign, state or provincial taxing authority, domestic or foreign, including, without limitation, consolidated, combined and unitary tax returns.

(b) Except as set forth on Schedule 3.7 hereto or as set forth on the Balance Sheet, the Company has duly filed, on a timely basis all Tax Returns which it is required to file, and all material liabilities for Tax (including interest and penalties) have been paid. The Company has paid all required withholding taxes with respect to employees and independent contractors. Except as set forth on Schedule 3.7 hereto, there are in effect no waivers or extensions of the applicable statutes of limitations for tax liabilities for any period. Except as set forth on Schedule 3.7 hereto, no taxing authority has asserted either orally or in writing any adjustment that could result in an additional Tax for which the Company is or may be liable and there is no pending audit, examination, investigation, dispute, proceeding or claim for which the Company has received notice relating to any Tax for which the Company is or may be liable.

[(c) S Corporation Status. The Company has, with all requisite consent of its Stockholders, validly elected to be treated as an S Corporation under Section 1362 of the Internal

Revenue Code of 1986, as amended (the “**Code**”) since [DATE] and, where permitted, under the corresponding provisions of the applicable state and local law. Such election has never been terminated or revoked, is currently in effect, and will be in effect through such time as it is terminated as a result of the consummation of the Acquisition.]

(d) Except as set forth on Schedule 3(d) hereto, there are no agreements in writing with any taxing authority by the Company.

(e) Except as set forth on Schedule 3(e) hereto, the Company has not been nor is it included in any consolidated, affiliated, combined, unitary or other similar Tax Returns and there are no tax sharing agreements to which the Company is now or ever has been a party.

(f) Except as set forth on Schedule 3(f), the Company is not a party to any agreement, contract, arrangement or plan that would result in the payment of any “excess parachute payments” within the meaning of Code Section 280G (or any comparable provision of state, local or foreign law).

3.8 Title to Assets. The Company has good and marketable title to all of the assets reflected in the Balance Sheet as owned by them (other than assets disposed of since the Balance Sheet Date in the Ordinary Course of Business or as contemplated by this Agreement) or acquired by them since the Balance Sheet Date, free and clear of any and all Liens, except as set forth on Schedule 3.8 hereto.

3.9 Real Property. [The Company does not own any real estate]. Schedule 3.9 lists all real property leased or subleased by the Company. Each real property owned, lease or sublease listed on Schedule 3.9 hereto is legal, valid, binding and enforceable and is in full force and effect except where the illegality, invalidity, nonbinding nature, unenforceability or ineffectiveness would not have a Material Adverse Effect, and no event or condition exists which constitutes or, with the giving of notice or the passage of time or both, would constitute a material default by the Company as lessee under any such lease or sublease.

3.10 Operations in Conformity with Law, Etc. Except as set forth in Schedule 3.10 hereto, the Company has not been nor is in violation of, or in default under, any Legal Requirement, except for such violations and defaults as do not and will not have a Material Adverse Effect. Except to the extent set forth on Schedule 3.10 hereto, there are no pending or, to the knowledge of the Stockholders, Officers and Directors, threatened Actions against the Company, or the knowledge of the Stockholders, Officers and Directors, any basis therefore except where such Actions would not have a Material Adverse Effect.

3.11 Employee Matters; Benefit Plans. Except as provided in Schedule 3.11:

(a) The Company does not maintain any plan, program or arrangement that is an “employee benefit plan” within the meaning of Section 3(3) of the Employee Retirement Income Security Act (“ERISA”) or that otherwise provides for fringe benefits to any employee or former employee of the Company or any of their dependents, including without limitation benefits in the nature of medical, life or disability insurance, retirement plans, stock purchase, stock option, equity incentive compensation or equity bonus plans (together, the “**Company Plans**”);

(b) True and complete copies of the Company Plans (or written summaries where a Company Plan has not otherwise been reduced to writing), together with copies of any related trust agreements, insurance policies, administrative agreements, summary plan descriptions and the two most recently filed IRS Forms 5500 have been delivered to Buyer;

(c) The Company Plan is in compliance with applicable law, including Code Section 401(a) of the Company Plans intended to qualify under such section;

(d) The Company which would be considered as a single employer under ERISA section 4001(b)(1) has never maintained or been required to contribute to any employee benefit plan subject to Title IV of ERISA;

(e) The Company Plan does not provide for medical insurance benefits following termination of employment except as required by law or by section 601 et. Seq. of ERISA; and

(f) There are no pending or, to the knowledge of the Stockholders, Officers or Directors, threatened claims with respect to any Company Plan, except for claims for benefits in the normal course, and no Company Plan is the subject of an audit or examination by a Governmental Authority.

3.12 Labor Relations. Except as set forth in Schedule 3.12 hereto, there presently is no existing dispute or controversy between the Company and any of its employees which has had, or is reasonably likely to have, a Material Adverse Effect. The Company is in compliance in all material respects with all written employment agreements. Except as set forth on Schedule 3.12, none of the Company's employees are represented by a labor union.

3.13 Licenses, Etc. All material governmental or regulatory licenses and permits used by the Company are in full force and effect and no violations have been recorded in respect thereof. No proceeding or investigation is pending or, to the knowledge of the Stockholders, Officers or Directors, threatened which could have the effect, directly or indirectly, of revoking or limiting in any way any such license or permit, except for such failures to be in full force and effect, such violations, and such proceedings or investigations as in the aggregate do not and will not have a Material Adverse Effect.

3.14 Trademarks, Marks, Etc. Listed on Schedule 3.14 hereto are all material trademarks, service marks and copyrights owned or used by the Company. Except as set forth on Schedule 3.14, to the knowledge of the Stockholders, Officers or Directors, no other Person uses or has used, in the geographic areas in which they are used by the Company, the tradenames, trademarks, service marks or other marks, names, copyrights or proprietary rights owned or used by the Company. The Company's right to each such trademark, service mark or other mark, names, copyrights and proprietary rights is held by it free and clear of all Liens, and no claims have been asserted or, to the knowledge of the Stockholders, Officers or Directors, are threatened by any Person to prevent or in any way limit the use or exercise by the Company of any of such assets or to challenge the validity or effectiveness of the ownership thereof by the Company.

3.15 Environmental Matters. The Company is, as of the date hereof, in compliance with all Environmental Laws. There is, as of the date hereof, no Action pending or, to the

knowledge of the Stockholders, Officers or Directors, threatened against the Company in respect of (i) noncompliance by the Company with any Environmental Laws or (ii) the release or threatened release into the environment of any Hazardous Substance by the Company or (iii) the handling, storage, use, transportation or disposal of any Hazardous Substance by the Company.

3.16 Contractual Obligations. Schedule 3.16 hereto contains a true and complete list of all contracts, agreements, deeds, mortgages, leases, licenses, instruments, commitments, undertakings, arrangements or understandings, written or oral, and to which or by which the Company is a party or otherwise bound which are of the types described below (collectively “**Contractual Obligations**”):

(a) All employment agreements, consulting agreements and all outstanding offers of employment pursuant to which the compensation paid by the Company during [YEAR] was, or during [YEAR] is anticipated to be, more than [\$_____].

(b) All Contractual Obligations to sell, lease (as lessor) or otherwise dispose of any personal property or asset of the Company except in the Ordinary Course of Business;

(c) All Contractual Obligations pursuant to which the Company possesses, uses or leases (as lessee) any personal property or assets pursuant to which the Company pays, accrues expenses of, or incurs charges of at least [\$_____] per annum;

(d) All other Contractual Obligations pursuant to which the Company possess or uses any computer software, other than “off-the-shelf” personal computer software licensed pursuant to “shrink wrap” licenses;

(e) To the knowledge of Stockholders, Officers and Directors, all Contractual Obligations pursuant to which the Company provides services to a third party for an amount expected to be in excess of [\$_____] on an annualized basis as of the end of the _____ quarter [YEAR].

The Company has heretofore made available for review by Buyer a true and complete copy of each of the written Contractual Obligations and a written description of each of the oral Contractual Obligations described above and in effect on the date hereof, including without limitation, all amendments and supplements thereto and all waivers thereunder. The Company, to the knowledge of the Stockholders, Officers and Directors, is not in default under or in breach or violation of, nor has an event occurred in which (with or without notice, lapse of time or both) would constitute a default by the Company or, to the knowledge of the Stockholders, Officers and Directors, or any party under any Contractual Obligation other than defaults, breaches or violations of such Contractual Obligations as will not have a Material Adverse Effect.

3.17 Accounts Receivable. Except as set forth on Schedule 3.17 hereto, the accounts receivable reflected on the Balance Sheet, and all accounts receivable arising between the Balance Sheet Date and the date hereof, arose from bona fide transactions in the Ordinary Course of Business; except as contemplated by the relevant contract, the services or goods involved have been provided to the account obligor and, no further services or goods are required to be provided in order to complete the sales and to entitle the Company or its assignees to collect such accounts receivable. Except as set forth on Schedule 3.17 hereto, no such account has been

assigned or pledged to any other Person, and no setoff to any such account has been asserted by the account obligor in excess of reserves provided therefore.

3.18 Bank Accounts. Schedule 3.18 hereto lists all bank, money market, savings and similar accounts and safe deposit boxes of the Company, specifying the account numbers and the authorized signatories or persons having access to them.

3.19 Insurance. Schedule 3.19 hereto accurately sets forth a list of all current policies of insurance held by the Company. All such policies of insurance are in full force and effect, and no notice of cancellation has been received with respect thereto, and all premiums owed to date have been paid in full.

3.20 Brokers, Finders, Etc. Except for [BROKER NAME], the obligation of which to pay is an obligation of the Stockholders, no broker, finder or investment banker or other party is entitled to any brokerage, finder's or similar fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of any Stockholder or the Company.

3.21 Relationship with Employees and Clients. To the knowledge of the Stockholders, Officers and Directors, as of the date hereof, except as set forth on Schedule 3.21 hereto, (a) no Officer has stated an intention to sever his or her employment relations with the Company, and (b) no clients to whom the Company provides services in an amount expected to be in excess of [\$_____] on an annualized basis as of the ____ quarter of [YEAR], have stated an intention to terminate their relationship with the Company, the result of which would, in the aggregate, after taking into account new client relationships and amendments to existing client arrangements secured by the Company, have a Material Adverse Effect.

3.22 Affiliated Transactions. Except as set forth in Schedule 3.22 hereto, none of the Stockholders, Directors or Officers, or to the knowledge of the Stockholders, Directors or Officers, any members of their immediate families or beneficiaries of any of the Stockholder trusts owns, directly or indirectly (whether as undisclosed principal or otherwise), individually or collectively, any interest in any corporation (other than holdings in any such corporation, the stock of which is publicly traded, which do not constitute more than five percent (5%) of the voting stock of such corporation), partnership, firm or other entity which has any agreement, arrangement or other contractual relationship with the Company.

3.23 Charter, Bylaws, Minutes and Permits. The Stockholders have heretofore delivered or caused to be delivered (or will hereinafter deliver or cause to be delivered prior to the Closing Date) to Buyer or its counsel accurate and complete copies of the Charter, Bylaws, directors' and stockholders' minutes and written consents, stock books (containing stock stubs and canceled certificates), permits, orders and other qualifications and instruments issued by all Governmental Agencies acting under applicable federal and state securities laws, or filings under applicable federal or state securities laws, together with all amendments issued and/or filed with respect to all of the foregoing for the Company. Nothing contained in any of the foregoing prevents or adversely effects the consummation of the transactions contemplated by this Agreement.

4. Warranties and Representations Relating to the Stockholders. Each of the Stockholders, severally and not jointly, represent and warrant to Buyer, but only with respect to such Stockholder and the Shares owned by such Stockholder, as follows:

4.1 Title to Shares. Such Stockholder is the record and beneficial owner of and has good and valid title to the number of Shares set forth opposite such Stockholder's name on Schedule 3.2 hereto, free and clear of any Liens. Such Stockholder does not own any Shares of the Company other than those set forth opposite such Stockholder's name listed on Schedule 3.2. The Stockholder has sole voting power and sole power to issue instructions with respect to voting, sole power of disposition, sole power of exercise or conversion and the sole powers to demand appraisal rights, in each case with respect to all of the Shares set forth beside his, her or its name listed on Schedule 3.2.

4.2 Authority Relative to this Agreement. Each Stockholder has the requisite power and authority to enter into, execute, deliver and perform this Agreement, and to consummate all transactions contemplated thereby. This Agreement has been validly executed and delivered by such Stockholder and constitutes a valid and binding agreement of such Stockholder, enforceable against such Stockholder in accordance with its terms, subject to bankruptcy, insolvency, moratorium, reorganization and similar laws of general applicability affecting the rights and remedies of creditors and to general principles of equity, regardless of whether enforcement is sought in proceedings in equity or at law.

4.3 No Violation or Approval. No filing with, and no permit, authorization, order, consent or approval of, any Governmental Authority or entity or other party is required or necessary for the execution, delivery or performance of this Agreement by such Stockholder and the consummation by such Stockholder of the transactions contemplated hereby, except for filing a Premerger Notification Report under HSR Act, and neither the execution, delivery and performance of this Agreement by such Stockholder nor the consummation by such Stockholder of the transactions contemplated hereby shall result in a breach or violation of, or a default under any applicable Charter, material agreement to which such Stockholder is a party or by which such Stockholder's properties or assets are bound, any fiduciary duty or any order, judgment, decree, rule or regulation of any court or any Governmental Authority or body having jurisdiction over any Stockholder or any statute applicable to such Stockholder.

4.4 No Liens. The Shares are now, and at all times during the term hereof, will be held by such Stockholder, or by a nominee or custodian for the benefit of such Stockholder, free and clear of all Liens, proxies, voting trusts or agreements, understandings or arrangements or any other encumbrances whatsoever, except for any encumbrances arising hereunder.

5. Warranties and Representations Relating to the Buyer. Buyer hereby represents and warrants to the Stockholders as follows:

5.1 Due Organization, Authorization and Good Standing of the Buyer. The Buyer is duly organized, validly existing and is in good standing under the laws of the [STATE].

5.2 Authority Relative to this Agreement. The Buyer has the requisite corporate power and corporate authority to execute, deliver and perform this Agreement, and consummate

all transactions contemplated hereby. The execution and delivery of this Agreement by Buyer and the consummation by the Buyer of the transactions contemplated hereby have been duly and validly authorized by all necessary corporate action, and no other corporate proceedings on the part of the Buyer are necessary to authorize this Agreement or to consummate the transaction so contemplated. This Agreement is the valid and legally binding obligation of the Buyer, enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, moratorium, reorganization and similar laws of general applicability affecting the rights and remedies of creditors and to general principles of equity, regardless of whether enforcement is sought in proceedings in equity or at law.

5.3 No Violation or Approval. Except as set forth on Schedule 5.3 hereto, the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby will not result in the breach or violation of, or a default under the Charter or Bylaws of the Buyer, or any statute applicable to the Buyer or any material agreement to which the Buyer is a party or by which any of its properties are bound, any fiduciary duty or any order, judgment, decree, rule or regulation of any court or any Government Authority or body having jurisdiction over the Buyer or its properties, except where such failure would result in any change in or effect on the business of the Buyer which as a material adverse effect on the ability of the Buyer to consummate the transactions contemplated by this Agreement. Except as set forth on Schedule 5.3 hereto and except for filing a Premerger Notification Report under the HSR Act, no consent, approval, order or authorization of, or negotiation, declaration or filing with, any Governmental Authority or entity or other party is required of, and has not been obtained or made by the Buyer in connection with the execution and delivery of this Agreement or the consummation of any of the transactions contemplated hereby, except where such failure would not result in any change in or effect on the ability of Buyer to consummate the transactions contemplated by this Agreement.

5.4 Litigation. There is no Action pending against, affecting or, to the knowledge of the Buyer, threatened against Buyer or any of its respective properties before any court or arbitrator or any governmental body, agent or official which in any manner challenges or seeks to prevent, enjoin, alter or materially delay any of the transactions contemplated by this Agreement or would materially adversely affect Buyer's ability to consummate the transactions contemplated hereby.

5.5 Financial Condition. Buyer has, as of the date hereof, and will have as of the Closing Date sufficient funds to pay the Acquisition Consideration and all contemplated fees and expenses related to the transactions contemplated by this Agreement and to provide adequate working capital for the Business.

5.6 Brokers, Finders, Etc. Except as set forth on Schedule 4.6 hereto the obligation of which to pay is an obligation of Buyer, no broker, finder or investment banker or other party is entitled to any brokerage, finder's or similar fee or commission in connection with the transactions contemplated by this Agreement based on arrangements made by or on behalf of the Buyer.

6. Covenants.

6.1 Conduct of Business by the Company Pending the Closing. From the date hereof and on and prior to the Closing, except as otherwise disclosed, permitted or required by this Agreement, the Company will conduct business only in the Ordinary Course of Business and substantially as presently operated and use reasonable efforts to maintain the value of the Business as a going concern. From the date hereof and prior to the Closing, the Company will not, without the prior written consent of the Buyer, which consent shall not be unreasonably delayed, conditioned, or withheld:

- (i) enter into any transactions otherwise than on an arms' length basis with any Affiliate of the Company (other than as contemplated by this Agreement and the transactions in the Ordinary Course of Business of the Company);
- (ii) pay any compensation other than in the Ordinary Course of Business or increase any compensation of any officer or employee other than such increases in compensation for employees as may be made in the Ordinary Course of Business;
- (iii) enter into any new contracts or agreements to incur any Debt (including without limitation, any capital lease) except in the Ordinary Course of Business;
- (iv) amend the Charter, or Bylaws of the Company;
- (v) sell, lease or otherwise dispose of any material assets (except for sales and other dispositions in the Ordinary Course of Business and as may otherwise be permitted by the terms of this Agreement);
- (vi) propose or adopt any changes to the accounting principles used by the Company material to its financial condition or business except as permitted by Generally Accepted Accounting Principles;
- (vii) make any capital expenditures in excess of [\$_____] in any month with respect to the Business or enter into any contract or commitment therefor other than in the Ordinary Course of Business;
- (viii) pay any dividends (other than the dividends which are listed on Schedule 3.2); or
- (ix) commit to do any of the foregoing.

6.2 Restrictions on Transfer, Proxies and Noninterference. Each of the Stockholders shall not, directly or indirectly, except pursuant to the terms of this Agreement or the Power of Attorney and Custody Agreements to be entered into in connection herewith, copies of which have been provided or will be made available to the Buyer prior to Closing, (i) offer for sale, sell, transfer, tender, pledge, encumber, assign or otherwise dispose of, or enter into any contract, option or other arrangement or understanding with respect to or consent to the offer for sale, transfer, tender, pledge, encumbrance, assignment or other disposition of, any or all such Stockholder's Shares; (ii) grant any proxies or powers of attorney, deposit any such Stockholder's Shares into a voting trust or enter into a voting agreement with respect to any such

Stockholder's Shares; or (iii) take any action that would make any representation or warranty contained in Section 4 (Warranties and Representations of Stockholders) untrue or incorrect or have the effect of preventing or disabling such Stockholder from performing its obligations under this Agreement.

6.3 No Solicitation.

(a) So long as Buyer is in compliance with this Agreement and proceeding in good faith to close on the terms set forth herein, the Stockholders and the Company shall not, directly or indirectly, through any officer, director, employee, representative or agent of any Stockholder or the Company, (i) solicit, initiate or encourage the initiation of any inquiries or proposals regarding any merger, sale of substantial assets, sale of shares of capital stock or similar transactions involving the Company other than the Acquisition (any of the foregoing inquiries or proposals being referred to herein as an "**Acquisition Proposal**"), (ii) engage in negotiations or discussions concerning, or provide any nonpublic information to any Person relating to, any Acquisition Proposal or (iii) agree to, approve or recommend any Acquisition Proposal.

(b) The Stockholders and the Company shall immediately cease and cause to be terminated any existing discussions or negotiations with any Persons (other than the Buyer) conducted heretofore with respect to any of the foregoing. The Stockholders and the Company agree not to release any third party from the confidentiality provisions of any confidentiality agreement to which the Company is a party.

(c) The Stockholders and the Company shall ensure that the officers and directors of the Company and any investment banker or other advisor or representative retained by any Stockholder or the Company are aware of the restrictions described in this Section 6.3 (No Solicitation).

7. **Additional Agreements.**

7.1 HSR Act, Etc. As promptly as practicable after the date of the execution of this Agreement, the Stockholders and Buyer shall file notifications under and in accordance with the HSR Act. The Stockholders and the Buyer shall respond as promptly as practicable to any inquiries received by the Federal Trade Commission and the Antitrust Division of the Department of Justice for additional information or documentation and shall respond as promptly as practicable to all inquiries and requests received by any State Attorney General or other Governmental Authority (foreign or domestic) in connection with antitrust matters.

7.2 Access to Information; Confidentiality. Upon reasonable notice and subject to the restrictions contained in confidentiality agreements to which such party is subject (from which such party shall use reasonable efforts to be released), the Company shall afford to the officers, employees, accountants, counsel and other representatives of the Buyer, reasonable access, during the period prior to the Closing Date, to all its properties, books, contracts, commitments and records and, during such period, the Company shall furnish promptly to Buyer all information concerning its business, properties and personnel as Buyer may reasonably request, and the Company shall make available to Buyer and its representatives the appropriate individuals, including attorneys, accountants and other professionals for discussion of its

business, properties and personnel as Buyer may reasonably request. Buyer shall keep such information confidential in accordance with the terms of the confidentiality letter dated [DATE] (the “**Confidentiality Letter**”) between the Buyer and the Company.

7.3 Consents; Approvals. Prior to the Closing Date, the Company shall use reasonable efforts (but the Company shall have no obligation to pay any fees or incur any expenses) to secure required written consent or waivers under or with respect to the contracts listed on Schedule 7.3. If requested by the Company in connection with their attempts to obtain such consents, Buyer shall execute and deliver an agreement of assignment, assumption or attornment with respect to and/or guarantee of the obligations under such contracts.

7.4 Disclosure. From time to time, on and prior to the Closing Date, Buyer shall promptly notify the Stockholders and the Stockholders shall promptly notify Buyer upon becoming aware of any fact, occurrence or event that would cause any of the representations and warranties contained in Section 3 (Representations and Warranties of the Company), Section 4 (Representations and Warranties of the Stockholders) or Section 5 (Representations and Warranties of the Buyer) to be inaccurate or incomplete in any material respect.

7.5 Supplemental Schedules. The Stockholders and the Company may (but will not be required to) from time to time prior to the Closing Date, by notice in accordance with the Agreement, supplement or amend the Schedules hereto, including without limitation one or more supplements or amendments to correct any matter which would otherwise constitute a breach of any representation, warranty or covenant herein contained; *provided, however*, that subject to the last sentence of this Section 7.5 (Supplemental Schedules), no supplement or amendment will affect the rights or obligations of the parties to this Agreement. If a supplement or amendment of any Schedule materially and adversely affects the benefits to be obtained by Buyer under this Agreement then Buyer shall have the right to terminate this Agreement with such termination being the Buyer’s sole remedy relating to matters set forth in amendments and supplements to any Schedule. Notwithstanding any other provision hereof, such supplement or amendment of any Schedule will be effective so long as this Agreement has not been terminated as permitted to this Section 7.5 (Supplemental Schedules) to cure and correct for all purposes any breach of any representation, warranty or covenant relating to such Schedule not having read at all times as so supplemented and amended.

7.6 Indemnification and Insurance.

(a) Buyer shall cause the Company to honor and fulfill in all respects the obligations pursuant to its Charter with respect to the Company’s Officers and Directors existing at or before the Closing Date.

(b) This Section shall survive the consummation of the Acquisition, is intended to benefit the Company and its Indemnitees, shall be binding on all successors and assigns of the Buyer and shall be enforceable on all Indemnitees.

7.7 Further Action. Upon the terms and subject to the conditions hereof, the parties hereto shall use all reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all other things necessary, proper or advisable to consummate and make effective as

promptly as practicable the transactions contemplated by this Agreement, and to satisfy or cause to be satisfied all conditions precedent to its obligations under this Agreement.

7.8 Public Announcements. Buyer, the Stockholders and the Company shall consult with each other before issuing any press release with respect to the Acquisition or this Agreement and shall not issue any such press release or make any public statement without the prior consent of the other party, issue such press release or make such public statement as may upon the advice of outside counsel be required by law, after giving notice thereof to each other party to this Agreement in accordance with Section 12 (General Provisions).

8. Conditions to the Acquisition.

8.1 Conditions to Obligation of Each Party. The respective obligations of each party to effect the Acquisition shall be subject to the satisfaction at or prior to the Closing of the following conditions:

(a) *Stockholder Approval*. This Agreement and the Acquisition shall have been approved and adopted by the requisite vote of the stockholders of the Company.

(b) *HSR Act; Other Governmental Consents*. The waiting period applicable to the consummation of the Acquisition under the HSR Act shall have expired or been terminated; and all consents or other orders, if any, from any applicable Governmental Authority as required to effectuate the transfer of the shares and equity interests of the Company contemplated by this Agreement, shall have been obtained, and copies thereto shall have been delivered to Buyer; and

(c) *No Injunctions or Restraints; Illegality*. No statute, rule, regulation, executive order, decree, ruling, temporary restraining order; preliminary or permanent injunction or other order shall have been enacted, entered, promulgated, enforced or issued by any court or Governmental Authority of competent jurisdiction or shall otherwise be in effect which prohibits, restrains, enjoins or restricts the consummation of the Acquisition.

8.2 Additional Conditions and Obligations of Buyer. The obligations of Buyer to effect the Acquisition are also subject to the following conditions:

(a) *Representations and Warranties*. The representations and warranties of the Stockholders contained in this Agreement shall be true and correct in all respects at and as of the Closing Date as if made at and as of such time, except for (i) changes contemplated by this Agreement; (ii) those representations and warranties which address matters only as of a particular date (which shall have been true and correct as of such date, subject to clause (iii)); and (iii) where the failure to be true and correct shall not constitute a Material Adverse Effect, with the same force and effect as if made at and as of the Closing Date, and Buyer shall have received a certificate to such effect signed by each Stockholder and a duly authorized officer of the Company;

(b) *Agreements and Covenants*. The Stockholders and the Company shall have performed or complied in all material respects with all agreements and covenants required by this Agreement to be performed or complied with by them at or prior to the Closing Date, and Buyer shall have received a certificate to such effect signed by each Stockholder;

(c) *Section 1445 Certificates.* Each of the Stockholders shall have delivered to Buyer (i) a certificate, complying with the requirements of Treasury Regulations § 1.1445-2(b)(2), that the Stockholder is not a foreign person for federal income tax purposes and (ii) a completed IRS Form W-9;

(d) *Legal Opinion.* The Stockholders have furnished the Buyer with an opinion of [NAME OF COUNSEL], counsel to the Stockholders, dated as of the Closing Date in a form and substance reasonably satisfactory to Buyer, covering such matters with respect to the transactions contemplated hereby as is customary in transactions of this kind, and as Buyer or its counsel may reasonably request; and

(e) *Resignations.* All of the officers and directors of the Company shall have delivered to Buyer their written resignations as such officers and directors, effective no later than the Closing Date.

8.3 Additional Conditions and Obligations of the Company. The obligations of Company to effect the Acquisition are also subject to the following conditions:

(a) *Representations and Warranties.* The representations and warranties of the Buyer contained in this Agreement shall be true and correct in all respects at and as of the Closing Date as if made at and as of such time, except for (i) changes contemplated by this Agreement, (ii) those representations and warranties which address matters only as of a particular date (which shall have been true and correct as of such date, subject to clause (iii)), and (iii) where the failure to be true and correct would not result in any change in or effect on the business of Buyer which has a material adverse effect on the ability of Buyer to consummate the transactions contemplated by this Agreement, with the same force and effect as if made on and as of the Closing Date, and the Stockholders shall have received a certificate to such effect signed by each a duly authorized officer of the Company;

(b) *Agreements and Covenants.* The Buyer shall have performed or complied in all material respects with all agreements and covenants required by this Agreement to be performed or complied with by them at or prior to the Closing Date, and Stockholders shall have received a certificate to such effect signed by a duly authorized officer of the Buyer;

(c) *Legal Opinion.* The Buyer shall have furnished to the Stockholders an opinion of [NAME OF COUNSEL], counsel to the Buyer, dated as of the Closing Date in a form and substance reasonably satisfactory to the Stockholders, covering such matters with respect to the transactions contemplated hereby as is customary in transactions of this kind, and as the Stockholders or its counsel may reasonably request.

9. **Certain Tax Matters.**

9.1 Tax Returns. The Stockholders and their duly appointed representatives shall have the exclusive authority to prepare and file any Tax Return. The Stockholders shall allow buyer and its duly appointed representatives the opportunity to review and comment on such Tax Returns prior to filing. Buyer shall, or shall cause the Company to, furnish income Tax information to the Stockholders with respect to the Tax Return. Buyer shall prepare or cause to be prepared all Tax Returns and shall allow the Stockholders and their duly appointed

representatives the opportunity to review and comment on such Tax Return prior to filing. Except with the prior written consent of the Stockholders which shall not be unreasonably withheld, Buyer shall take no position inconsistent with past custom and practice on any Tax Return that could result in the Stockholders being required to make a payment pursuant to Section 10 (Indemnification). Except as provided in Section 9.4 (Post-Closing Transactions), the Stockholders shall be responsible for the portion of Taxes due under such Tax Return attributable to periods up to and including the Closing Date and the Buyer shall be responsible for the portion of Taxes due under such Tax Return attributable to periods after the Closing Date. The Stockholders have final authority to approve the contents of the Tax Return reflecting Taxes for which the Stockholders are responsible under this Section (the “**Pre-Closing Returns**”), which approval shall not be unreasonably delayed, conditioned or withheld.

9.2 Contests. The Stockholders and their duly appointed representatives shall have the exclusive authority to control any audit or examination by any taxing authority, and contest, resolve and defend against any assessment for income Taxes, notice of income Tax deficiency or other adjustment of Taxes relating to any Tax Return or any Pre-Closing Return; *provided that*, to the extent that such audit could require the Buyer to pay additional taxes the Stockholders shall allow the Buyer and its duly appointed representatives to participate at the own expense in such proceeding and shall not settle such proceeding without the prior written consent of the Buyer, which shall not be unreasonably delayed, conditioned or withheld.

9.3 Refunds. The Stockholders shall be entitled to any refund of Taxes received by the Company after the Closing Date relating to periods before the Closing Date. Buyer shall pay over to Stockholders in immediately available funds each such refund within fifteen (15) days after the receipt thereof.

9.4 Post-Closing Transactions. Buyer agrees to pay Stockholders any additional Tax owed by the Stockholders (including any tax attributable to a payment hereunder) resulting from any transaction undertaken by Buyer without the consent of the Stockholders and not in the Ordinary Course of Business occurring after the Closing Date.

9.5. Tax Notices. If either party to this Agreement receives any written notice or other communication from any Governmental Authority relating to any Tax audit or other proceeding (i) relating to any Tax for which the other party thereto may be obligated to indemnify or pay under this Agreement; or (ii) which could give rise to a Tax benefit for the other party under this Agreement, such party shall promptly forward such notice or communication to the other party. Buyer and the Stockholders shall cooperate fully, as and to the extent reasonably requested by the other party, in connection with the calculation of any Taxes and with the preparation and filing of Tax Returns pursuant to this Agreement, and in connection with any proceeding with respect to Taxes affecting or relating to the Company. Such cooperation shall include retention and (upon the other party’s written request) the provision of records and information that are reasonably relevant to such presentation and filing and to any Tax proceeding relating thereto and making employees available on a mutually convenient basis to provide additional information or explanation of any material so provided. Buyer and Stockholders agree to retain all books and records with respect to Tax matters pertinent to the Company relating to any Tax period beginning prior to the Closing Date until the expiration of the statute of limitations for assessment of the applicable Taxes (and, to the extent notified by Buyer or the Stockholders, any

extension thereof), and shall not destroy or otherwise dispose of any such books and records until such expiration without first providing the other party or parties with a reasonable opportunity to review and copy the same. Buyer and the Stockholders acknowledge that any and all information obtained in connection with the preparation of any Tax Return, audit or judicial or administrative proceeding or determination pursuant to this Section is of a confidential nature and that all such information shall be used only for the purposes set forth in this Section 9.5.

[9.6 Section 338(h)(10) Election and Allocation of Purchase Price.

(a) Stockholders and Buyer shall cooperate to take or cause to be taken all actions necessary and appropriate to effect a timely property election under Section 338(h)(10) of the Code and the Regulations promulgated thereunder (and any corresponding elections under state or local tax law) (collectively, a “**338(h)(10) Election**”) with respect to the purchase and sale of the stock of the Company hereunder listed on Schedule 8.6. The Stockholders will pay any Tax attributable to the making of a 338(h)(10) Election, including any liability of the Company for Tax resulting from the application to it of Treasury Regulation § 1.338(h)(10)-1(f)(5). The Stockholders shall indemnify the Buyer and the Company against any Losses arising from the failure by the Stockholders to pay any taxes attributable to the making of the 338(h)(10) Election without reference to the monetary limitations referred to in Section 10.3 (Indemnification) hereof. The Stockholders and the Buyer shall jointly prepare IRS Form 8023-A, and such other forms and schedules as are necessary or required to make the 338(h)(10) Election, and each covenants and agrees with the other that it shall execute such forms and schedules and shall take all such other acts as are necessary to make or perfect such 338(h)(10) Election.

(b) The allocation of Total Purchase Price shall be determined by Buyer (with the consent of the Stockholders, which shall not be unreasonably withheld) based on the fair market value of the assets as of the Closing Date and shall be consistent with Treasury Regulations under Section 338(h)(10) of the Code, *provided that* (i) the amount of Total Purchase Price allocated to accounts receivable shall not in any event exceed the amount of such accounts receivable net of reserves as shown on the financial statements of the Company as of the Closing Date; and (ii) the amount of Total Purchase Price allocated to any amortizable or depreciable asset shall not in any event exceed the sum of (A) the tax basis of such asset net of accumulated depreciation as shown on the tax books of the Company as of the Closing Date plus (B) 50% of the excess, if any of the book value of such asset net accumulated depreciation as shown on the financial statements of the Company as of the Closing Date over such tax basis. “**Total Purchase Price**” shall be defined as the modified adjusted deemed sales price as defined in Treasury Regulation Section 1.338(h)(10)(1)(f). The allocation of Total Purchase Price among the assets deemed to have been acquired shall be used by the Stockholders and Purchaser for all Tax purposes in accordance with Section 338(b)(5) and the Regulations promulgated thereunder.]

[9.7 Section 1377 Election. Seller and Buyer hereby agree to elect under Internal Revenue Code Section 1377 to terminate the taxable year of the Company as of the Closing Date, and to have the rules under Internal Revenue Code Section 1377(a)(2) applied as if the [YEAR] taxable year consisted of two separate taxable years. Further, Buyer hereby agrees that it shall cause the Company to file said Section 1377 Election with the federal income tax return of the Company.]

9.8 Tax Sharing Agreements. Any and all tax sharing and like agreements, whether or not written, that include the Company, shall be terminated as of the day before the Closing Date, and after the Closing, the Company shall not be bound thereby or have any liability thereunder.

9.9 Transfer Taxes. The Stockholders shall be liable for, and shall pay when due, any transfer, gains, documentary, sales, use, registration, stamp, value added or similar Taxes, payable by reason of the transactions contemplated by this Agreement or attributable to the sale, transfer or delivery of the shares of equity interests of the Company, and the Stockholders shall, at their own expense, file all necessary Tax Returns and other documentation with respect to such Taxes.

10. Indemnification.

10.1 Indemnification. Subject to the terms of this Section 10 (Indemnification), each of the Stockholders (each in its capacity as an indemnifying party, an “**Indemnifying Party**”), for himself, herself or itself only and not jointly in the case of the indemnification provided in Section 10.1(a)(i) below, and jointly and severally in the case of the indemnification provided in Section 10.1(a)(ii) through 10.1(a)(vi) below, agrees to indemnify Buyer (in its capacity as an indemnified party, an “**Indemnitee**”) and hold the Buyer harmless, and the Buyer (in its capacity as indemnifying party, an “**Indemnifying Party**”) agrees to indemnify each of the Stockholders (each in its capacity as indemnified party, an “**Indemnitee**”) and hold each of the Stockholders harmless, from, against, and in respect of any and all Losses arising from and related to any of the following:

(a) *The Company.* In the case of each Stockholder as an Indemnifying Party (i) any breach of any representation or warranty made by such Stockholder in Section 4 (Representations and Warranties of Stockholders) of this Agreement; (ii) any breach of any representation or warranty made by the Stockholders in Section 3 (Representations and Warranties of Company).

(b) *The Buyer.* In the case of the Buyer as an Indemnifying Party (i) any breach of any representation or warranty made by Buyer in this Agreement; or (ii) any breach or violation of any covenant or agreement made by Buyer in this Agreement.

10.2 Time Limitation on Indemnification. No claim may be made or suit instituted under any provision of this Section 10 (Indemnification) after the Release Date, except for Reserved Claims. The term “**Reserved Claims**” shall refer to all claims for Losses resulting from (a) the breach of any representation or warranty contained in Section 3.8 (Representations and Warranties of Company), Section 4 (Representations and Warranty of Stockholders) or Sections 5.2 or 5.5 (Representations and Warranties of Buyer) or (b) claims arising under Section 10.1(a)(iii), 10.1(b)(ii), 10.1(a)(iv), 10.1(a)(v) or 10.1(a)(vi). No claim may be made or suit instituted in respect of any Reserved Claim after the statute of limitations applicable to the underlying matter in question shall have expired (determined without regard to any extensions thereof).

10.3 Monetary Limitations on Indemnification.

(a) Except with respect to Reserved Claims, (x) no Indemnifying Party shall have any obligation to indemnify under this Section 10 (Indemnification) unless the aggregate cumulative total of all such Losses incurred by the Indemnitee exceeds ½% of the Acquisition Consideration whereupon the Indemnitee shall be entitled to indemnification for such Losses but only to the extent that the aggregate cumulative total of such Losses (including Losses in respect to Reserved Claims) exceeds ½% of Acquisition Consideration. With respect to Reserved Claims, (x) no Indemnifying Party shall have any obligation to indemnify under this Section unless the aggregate cumulative total of all such Losses incurred by the Indemnitee for a breach of a representation or warranty contained in Section 3.8 (Representations and Warranty of Company) or Section 4.3 (Representations and Warranty of Stockholders) exceeds one-quarter percent of the Acquisition Consideration whereupon the Indemnitee shall be entitled to indemnification for such Losses but only to the extent that the aggregate cumulative total of such Losses exceeds one-quarter percent of Acquisition Consideration (it being understood that such deductible amount shall not be applicable to Losses incurred by the Indemnitee for a breach of a representation or warranty contained in Sections 4.1, 4.2, 4.4 (Representations and Warranty of Stockholders), Sections 5.2 and 5.5 (Representations and Warranty of Buyer) and Losses arising under Section 10(a)(iii) and 10(b)(ii) (Indemnification)); and (y) the total maximum aggregate indemnification (including those Losses which are not in respect of Reserved Claims) shall not exceed 10% of the Acquisition Consideration.

(b) With respect to Litigation Claims, Buyer shall be indemnified for any and all Losses incurred by such Indemnitee resulting from any Litigation Claim, *provided, however*, that the Stockholders shall be liable in respect of Losses related to Litigation Claims only in the aggregate of such Losses exceeds _____ Dollars (\$_____) in which case the Stockholders shall be liable for all Losses in excess of such amount. For purposes of calculating the Losses related to the Litigation Claims referred to in the prior sentence, reasonable costs paid by Buyer in connection with its investigation of Litigation Claims shall be included as costs and expenses and “**Litigation Claims**” shall mean all claims for Losses incurred by an Indemnitee or the Company resulting from any pending or threatened litigation, administrative claims or union matters identified in Schedule 3.11.

10.4 Third Party Claims, Etc. Promptly after (a) becoming aware of any fact, occurrence or event which may give rise to a claim for indemnification under this Section 10 (Indemnification); or (b) the receipt by an Indemnitee of notice of the commencement of any action or other claim against such Indemnitee by a third party, such Indemnitee shall, if a claim with respect thereto is or may be made against any Indemnifying Party pursuant to this Section 10 (Indemnification), give such Indemnifying Party written notice of the nature and basis of such claim. Prior to the 30th day after receipt by the Indemnifying Party of a notice from the Indemnitee with respect to the commencement of an action or other claim by a third party, the Indemnitee will defend against such claim (provided that the Indemnitee shall not settle such claim). The Indemnifying Parties shall have the right to defend such claim, at the Indemnifying Party’s expense and with counsel of their choice reasonably satisfactory to the Indemnitee, *provided, that*, the Indemnifying Party so notifies the Indemnitee within thirty (30) days after receipt of such notice. In the event the Indemnifying Party does not assume defense of such claim and so provided, (x) the Indemnitee shall defend against such claim (provided that the Indemnitee shall not settle such claim unless such judgment or settlement contains an unconditional term providing for a release to be given by the claimant in question or plaintiff to the

Indemnifying Party of and from all liability in respect to such claim); and (y) the Indemnifying Party will remain responsible for any Losses the Indemnitee may suffer as a result of such claim to the extent provided by this Section. Regardless of which party shall assume the defense of a claim, each party shall provide to the other party upon request all information and documentation reasonably necessary to support and verify any Losses which give rise to such claim for indemnification and shall provide reasonable access to all books, records and employees in their possession or under its control which would have a bearing on such claim. Notwithstanding the foregoing, all proceedings relating to Taxes shall be governed by Section 9 (Taxes).

10.5 Certain Other Indemnity Matters.

(a) From and after the Closing Date, the Buyer's sole and exclusive remedy with respect to any and all claims relating to the subject matter of this Agreement shall be pursuant to the indemnification provisions set forth in this Section. In furtherance of the foregoing, the Buyer hereby waives, to the fullest extent permitted under applicable law, and agrees not to assert in any action or proceeding of any kind, any and all rights, claims and causes of action it may now or hereafter have against any Stockholder other than claims for indemnification asserted as permitted by and in accordance with the provisions set forth in this Section (including without limitation, any such rights, claims or causes of action arising under or based upon common law or other Legal Requirements).

(b) No party shall in any event be liable under this Section 10 (Indemnification), and no claim for indemnification may in any event be asserted under this Section, for any loss of profits or earnings or consequential damages by reason of a breach of any representation or warranty.

(c) Notwithstanding anything to the contrary contained in this Agreement (i) no claim for indemnification may be asserted by Buyer against any Stockholder under this Section if any fact, event or circumstance giving rise to such claim was discovered by or known to Buyer on or before Closing Date; and (ii) no claim for indemnification may be asserted by any Stockholder against the Buyer under this Section with respect to any matter discovered or known to any Stockholder on or before the Closing.

(d) Upon making any payment to an Indemnitee for any indemnification claim pursuant to this Section, the Indemnifying Party shall be subrogated, to the extent of such payment, to any rights which the Indemnitee may have against other Persons with respect to the subject matter underlying such indemnification claim.

(e) The Stockholders shall have no liability under any provision of this Agreement for any Losses to the extent that such Losses relate solely to actions taken or not taken by Buyer after the Closing. After the Closing, the Buyer shall, and shall cause the Company to, take all reasonable steps to mitigate all Losses upon and after becoming aware of any event which could reasonably be expected to give rise to any Losses with respect to which indemnification may be requested hereunder.

11. Termination.

Section 11.1 Termination. This Agreement may be terminated at any time prior to the Closing Date, notwithstanding approval thereof by the Stockholders:

(a) by mutual written consent authorized by the Board of Directors of Buyer and by the Stockholders; or

(b) by either Buyer or the Stockholders if the Acquisition shall not have been consummated by [DATE] (provided that the right to terminate this Agreement under this Section shall not be available to a party whose failure to fulfill any obligation under this Agreement has been the cause of or resulted in the failure of the Acquisition to occur on or before such date); or

(c) by either Buyer or the Stockholders if a court of competent jurisdiction or governmental, regulatory or administrative agency or commission shall have issued a nonappealable final order, decree or ruling or taken any other action having the effect of permanently restraining, enjoining or otherwise prohibiting the Acquisition.

11.2 Effect of Termination. In the event of a termination of this Agreement pursuant to this Section, this Agreement shall forthwith become void and there shall be no liability on the part of any party hereto or any of its affiliates, directors, officers or stockholders except (i) as set forth in Section 11.3 below, and (ii) nothing herein shall relieve any party from liability for any breach hereof occurring prior to termination. The Confidentiality Letter shall survive termination of this Agreement as set forth therein.

11.3 Fees and Expenses. All fees and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such expenses, whether or not the Acquisition is consummated.

12. General.

12.1 Governing Law; Consent to Jurisdiction. Each of the parties hereto:

(a) consents to submit itself to personal jurisdiction of (i) the United States District Court for the District of [_____] in the event any dispute arises out of this Agreement or any of the transactions contemplated by this Agreement to the extent such court would have subject matter jurisdiction with respect to such dispute and (ii) the courts of [STATE] otherwise;

(b) agrees that it will not attempt to deny or defeat such personal jurisdiction or venue by motion or other request for leave from any such court;

(c) agrees that it will not bring any action relating to this Agreement or any of the transactions contemplated by this Agreement in any court other than such courts;

(d) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or substantially in similar form of mail), postage prepaid, to a party at its address set forth in Section 12.3 (Notices) or at such other address of which a party shall have been notified pursuant thereto; and

(e) agrees that nothing contained herein shall affect the right to effect service of process in any other manner permitted by law.

12.2 Assignment; Guarantee of Obligations. This Agreement shall not be assigned by operation of law or otherwise, except that Buyer may assign all or any of its rights hereunder to any Person directly or indirectly controlling, controlled by or under common control with Buyer provided that no such assignment shall relieve the assigning party of its obligations hereunder.

12.3 Notices. All notices and other communications required or permitted hereunder will be in writing and will be delivered by hand or sent by overnight courier, fax or e-mail to:

if to Company or to the Stockholders:

fax: _____

e-mail: _____

Attention: _____

with a copy to:

fax: _____

e-mail: _____

Attention: _____

if to the Buyer:

fax: _____

e-mail: _____

Attention: _____

[with a copy to:

fax: _____

e-mail: _____

Attention: _____]

Each party may furnish an address substituting for the address given above by giving notice to the other party in the manner prescribed by this Section 12.3. All notices and other communications will be deemed to have been given upon actual receipt by (or tender to and rejection by) the intended recipient or any other person at the specified address of the intended recipient.

12.4 Severability. In the event that any provision of this Agreement is held to be unenforceable by any rule of law, or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties so closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the fullest extent possible.

12.5 Construction. The titles of the sections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement. Unless the context of this Agreement clearly requires otherwise: (a) references to the plural include the singular, the singular the plural, and the part the whole, (b) references to one gender include all genders, (c) “or” has the inclusive meaning frequently identified with the phrase “and/or,” (d) “including” has the inclusive meaning frequently identified with the phrase “including but not limited to” or “including without limitation,” and (e) references to “hereunder,” “herein” or “hereof” relate to this Agreement as a whole. Any reference in this Agreement to any statute, rule, regulation or agreement, including this Agreement, shall be deemed to include such statute, rule, regulation or agreement as it may be modified, varied, amended or supplemented from time to time.

12.6 Investigation; No Additional Requirements. The Stockholders have not made and are not making any representation, warranty, covenant or agreement, express or implied, with respect to the matters contained in this Agreement other than the explicit representations, warranties, covenants and agreements set forth herein. Buyer acknowledges and agrees that it (a) has made its own inquiry and investigation into, and based thereon has formed an independent judgment concerning, the Business and the Company, (ii) has been furnished with or given adequate access to such information about the Business and the Company as it has requested; and (iii) will not assert, except pursuant to Section 10 (Indemnification) any claim against the Stockholders or any of their respective partners, directors, officers, agents, employees, stockholders, consultants, investment bankers, representatives, controlling persons or an Affiliate of any of the foregoing, or hold the Stockholders or any such persons liable for any inaccuracies, misstatements or omissions with respect to information furnished by the Company or such persons concern the Business or the Company.

12.7 Entire Agreement. This Agreement embodies the entire agreement and understanding among the parties hereto with respect to the subject matter of this Agreement and supersedes all prior or contemporaneous agreements, undertakings and understandings (other than the Confidentiality Letter), both written and oral, among the parties, or any of them, with respect to the subject matter hereof.

12.8 Amendment and Waiver. This Agreement may be amended only by a written agreement executed by the parties hereto. No provision of this Agreement may be waived except by a written document executed by the party entitled to the benefits of the provision. No waiver of a provision will be deemed to be or will constitute a waiver of any other provision of this Agreement. A waiver will be effective only in the specific instance and for the purpose for which it was given, and will not constitute a continuing waiver.

12.9 Parties in Interest. This Agreement shall be binding upon and inure solely to the benefit of each party hereto, and nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person any right, benefit or remedy of any nature whatsoever under or by reasons of this Agreement, including, without limitation, by way of subrogation, other than Section 7.6 (Indemnification and Insurance) (which is intended to be for the benefit of the Indemnitees described therein and may be enforced by such Indemnitees).

12.10 Failure or Indulgence Not Waiver; Remedies Cumulative. No failure or delay on the part of any party hereto in the exercise of any right hereunder shall impair such right to be construed to be a waiver of, or acquiescence in, any breach of any representation, warranty or agreement herein, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or of any other right. All rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available.

12.11 Negotiation of Agreement. Each of the parties acknowledges that it has been represented by independent counsel of its choice throughout the negotiations that have preceded the execution of this Agreement and that it has executed the same with consent and upon the advice of said independent counsel. Each party and its counsel cooperated in the drafting and preparation of this Agreement and the documents referred to herein, and any and all drafts relating thereto shall be deemed the work product of the parties and may not be construed against any party by reason of its preparation. Accordingly, any rule of law or any legal decision that would require interpretation of any ambiguities in this Agreement against the party that drafted it is of no application and is hereby expressly waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the intentions of the parties and this Agreement.

12.12 Counterparts. This Agreement may be executed in any number of counterparts, and by the different parties hereto in separate counterparts, each of which when executed shall be deemed to be an original, but all of which together shall constitute one and the same agreement.

[The remainder of this page has been intentionally left blank.]

IN WITNESS WHEREOF, the Buyer, each of the Stockholders and the Company have caused this Agreement to be executed as of the date first above written.

BUYER:

[NAME OF BUYER]

By: _____

Its:

SELLER:

[NAME OF SELLER]

By: _____

Its:

STOCKHOLDERS:

[Name]

[Name]

[Name]

[Name]

NOTES TO DISCLOSURE SCHEDULES

These Schedules are being furnished in connection with the Purchase Agreement dated as of [DATE] (the “**Agreement**”) by and among the Buyer referred to therein, the Company referred to therein and the Stockholders referred to therein. Capitalized terms used and not otherwise defined herein have the meanings assigned to such terms contained in the Agreement. The inclusion of any information in the Schedules shall be deemed not to be an admission, acknowledgement or evidence that such information is required to be listed in the Schedules or is material to any party or outside the Ordinary Course of Business.