

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is made and entered into and is effective as of _____, 200_ (the "Effective Date"), by and between _____, a _____ corporation ("Seller"), and _____, a _____ corporation ("Buyer");

RECITALS:

A. Seller is the owner of a business which performs credit and background checks on persons for employers, landlords and other persons who desire information regarding such persons (collectively, the "Business").

B. Seller desires to sell to Buyer, and Buyer desires to buy from Seller, the goodwill of Seller and substantially all of the fixed and intangible assets of Seller relating to the Business, upon the terms and conditions and subject to the limitations set forth herein.

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants, and agreements of the parties hereinafter set forth, the parties hereto agree as follows:

SECTION 1

PURCHASE AND SALE OF ASSETS

1.1 **Purchase and Sale of Assets.** Upon the terms and subject to the conditions of this Agreement, Buyer agrees to purchase, accept, and acquire from Seller, and Seller agrees to sell, transfer, assign, convey, and deliver to Buyer, at the Closing (as defined herein), the goodwill of Seller and all right, title, and interest of Seller in and to the fixed and intangible assets relating primarily to the Business listed in the Schedules referred to in this Section 1.1. For the purposes of this Agreement, the term "Assets" shall mean all right and interest owned or held by Seller in the following:

(a) **Equipment.** All equipment and devices (including data processing hardware and related telecommunications equipment, media, and tools) used in the Business, as listed in Schedule 1.1(a) (the "Equipment").

(b) **Office Furniture.** All office furniture and fixtures used in the Business as listed in Schedule 1.1(b) (the "Office Furniture").

(c) **Leases.** To the extent their transfer is permitted pursuant to the terms thereof, the entire leasehold or rental interest arising under leases of (collectively, the "Leases"):

- (i) Real property, including buildings, structures, and other improvements located thereon, fixtures therein, and appurtenances thereto, and easements and other rights relative thereto;
- (ii) Equipment, including data processing hardware and associated telecommunications equipment, media, and tools;
- (iii) Office furnishings and fixtures; and
- (iv) Other personalty.

The Leases are listed in Schedule 1.1(c).

(d) **Other Contracts**. To the extent their transfer is permitted pursuant to the terms thereof, all contracts, agreements, licenses, commitments, arrangements, instruments and understandings which relate to the Business to the extent not otherwise classified as Leases, including those which involve an amount in excess of Ten Thousand Dollars (\$10,000) which are listed in Schedule 1.1(d) (the "General Contracts").

(e) **Business Records**. All business and marketing records, including accounting and operating records, asset ledgers, inventory records, budgets, personnel records, payroll records, customer lists, employment and consulting agreements, supplier lists, information and data respecting leased or owned equipment, files, correspondence and mailing lists, advertising materials and brochures, and other business records used in the Business (the "Business Records"); provided, however, that to the extent that any of the Business Records are items susceptible to duplication and are either: (i) used in connection with any of the Seller's businesses other than the Business; or (ii) are required by law to be retained by Seller, Seller may deliver photostatic copies or other reproductions from which, in the case of Business Records referred to in clause (i), information solely concerning Seller's businesses other than the Business has been deleted.

(f) **Authorizations**. To the extent their transfer is permitted pursuant to the terms thereof and applicable Law (as defined herein), all governmental approvals, authorizations, certifications, consents, variances, permissions, licenses, and permits to or from, or filings, notices, or recordings to or with, Governmental Authorities (as defined herein) as listed in Schedule 1.1(f) (collectively, the "Authorizations"), but subject, as to the assignability to Buyer, to the procurement of the Required Government Consents (listed in Schedule 4.4).

(g) **Intellectual Property**. Subject to any rights therein previously granted to third parties as listed in Schedule 1.1(g), all patents, trademarks, service marks, trade names, including, without limitation, the name "For Your Protection" and all telephone numbers used or owned by Seller in connection with the Business and copyrights (including registrations, licenses, and applications pertaining thereto), and all other intellectual property rights, trade secrets, and

other proprietary information, processes, and formulae used in the Business as listed in Schedule 1.1(g) (the "Intellectual Property").

(h) **Liquid Assets**. The security deposits and prepaid expense items, that are listed in Schedule 1.1(h) and all other products and proceeds of any Assets arising from the Business after the Closing (the "Liquid Assets").

1.2 **Intent of the Parties**. Although the Schedules to this Agreement are intended to be complete, to the extent any rights or assets of Seller primarily relate to the Business or are otherwise necessary for the ownership and use of the Assets and the conduct of the Business, but are not properly itemized or do not appear on the applicable Schedules where required, then, unless this Agreement otherwise provides directly for Buyer to provide for or obtain such rights or assets in a different way, the general language of Section 1.1 shall govern and such rights and assets shall nonetheless be deemed transferred to Buyer at the Closing. It is mutually acknowledged that the Schedules to Section 1.1 are to be prepared as of the Effective Date, and will be updated as of the Closing Date (as defined herein).

1.3 **Excluded Assets**. For the purposes of this Agreement, the term "Assets" shall not include and Seller shall not sell or assign to Buyer, and Buyer shall not purchase or accept assignment from Seller of, any right, title or interest owned by Seller in the assets identified in Schedule 1.3 (the "Excluded Assets").

SECTION 2

EXCLUDED LIABILITIES

Except for liabilities assumed which are expressly related to any of the Assets listed in Schedule 2 and which Buyer hereby assumes and will hereafter be responsible for performing, Buyer shall not assume or be responsible for any of the liabilities or obligations of Seller or with respect to the Business prior to the Closing Date, including, without limitation, the following (the "Excluded Liabilities"):

(a) **Nonenumerated Liabilities**. Any liability or obligation of Seller of any kind, known or unknown, contingent or otherwise, not resulting from any covenant, agreement, or indemnity of Buyer in this Agreement or the other agreements and instruments to be executed and delivered by Buyer in connection with Agreement.

(b) **Taxes**. Any liability or obligation of Seller for federal, state, or local income, franchise, property, sales or use or recapture taxes, assessments, and penalties, whether arising out of the transactions contemplated by this Agreement or otherwise.

(c) **Violations of Law**. Any liability or obligation resulting from violations of

any applicable laws or regulations by Seller prior to the Closing Date or infringement of third-party rights or interests.

(d) **Employee Liabilities**. Any employee liabilities relating to present and past employees of the Business with respect to plans, programs, policies, commitments, and other benefit entitlements established or existing on or prior to the Closing which are not assumed by Buyer hereunder (whether or not such liabilities are accrued or payable at the Closing, and whether or not such liabilities are contingent in nature), including:

(i) Any liability or obligation for workers' compensation;

(ii) Any current or future liabilities to employees retiring on, before, or after the Closing, and their dependents;

(iii) Any current or future liabilities for benefits that may have been accrued or earned by any employees associated with the Business on or before the Closing under any pension plans relating to service prior to the Closing Date;

(iv) Any current or future liabilities for claims incurred prior to the Closing and related expenses with respect to any employees associated with the Business under any welfare or disability plans established or existing at or prior to the Closing, regardless of when filed with Buyer, Seller, or the claims administrator for any such plan;

(v) Any retrospective premium on pension, savings, thrift, or profit-sharing plan contribution relating to any employees associated with the Business incurred or accrued prior to the Closing Date, regardless of when invoiced or recorded; and

(vi) Any monetary liability for severance payments that may arise at any time in favor of any of Seller's employees under any plan, program, policy, commitment, or other benefit entitlement.

(e) **Product Liability**. Any liability or obligation for product liability or warranty claims under expired warranties or damage claims arising out of defects in or failures of any product, program, or material of Seller or the Business provided, distributed, licensed, or delivered prior to the Closing Date.

(f) **Incidents to Excluded Assets**. Any liability or obligation associated with any of the Excluded Assets.

(g) **Litigation**. Any Litigation (as defined herein) pending or threatened against Seller, the Business or the Assets.

(h) **Nontransferable Contracts and Agreements**. Any liability or obligation

associated with any contract, agreement, instrument, license or other right or obligation of Seller which is an asset of the Business but which requires the consent of some third-party to be assigned and/or transferred and with respect to which such consent of such third-party has not been obtained.

SECTION 3

PRICE AND PAYMENT

3.1 **Consideration**. The total consideration payable by Buyer to Seller for the Assets is _____ Dollars (\$_____) (the "Purchase Price").

3.2 **Payment**. The Purchase Price shall be paid on the Closing Date in the form of a cashier's check or via bank wire transfer to Seller's bank account.

SECTION 4

REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Buyer as follows:

4.1 **Organization**. Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of _____. Seller has the corporate power and authority to conduct its business as currently conducted (including the Business) and to own and lease its properties and assets (including the Assets) and, as to the conduct of the Business and the use and ownership of the Assets specifically, is duly qualified or licensed to do business and is in good standing as a foreign corporation in all states or jurisdictions which the conduct of such business requires such qualification and which the failure to be so qualified or licensed would have a Material Adverse Effect.

4.2 **Power and Authority**. Seller has the power and authority to execute, deliver, and perform this Agreement and the other agreements and instruments to be executed and delivered by it in connection with the transactions contemplated hereby and thereby, and has taken all necessary corporate action to authorize the execution and delivery of this Agreement and such other agreements and instruments and the consummation of the transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by Seller and Seller will, on or prior to the Closing Date, duly execute and deliver the documents referred to herein to which it is to be a party. Assuming the due authorization, execution and delivery of this Agreement and the documents referred to herein by the parties hereto and thereto other than Seller, this Agreement constitutes, and when executed and delivered each of such documents referred to herein will constitute the legal, valid, and binding obligations of Seller, enforceable against Seller

in accordance with their terms, except as such enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and general equitable principles.

4.3 **No Conflict**. Neither the execution and delivery by Seller of this Agreement and the other agreements and instruments to be executed and delivered by Seller in connection with the transactions contemplated hereby or thereby, nor the consummation by Seller of the transactions contemplated hereby or thereby, will violate or conflict with: (i) subject to obtaining the Required Government Consents, any federal, state, foreign or local law, statute, rule, regulation, ordinance, zoning requirement, or governmental restriction (collectively, the "Laws") or any order, judgment, or decree applicable to Seller, the Business, or the Assets; (ii) any provision of any charter, bylaw or other governing or organizational instrument of Seller; or (iii) subject to obtaining the Required Contract Consents, any mortgage, indenture, license, instrument, trust, contract, agreement, or other commitment or arrangement to which Seller is a party or by which Seller or any of the Assets is bound.

4.4 **Required Government Consents**. Except for: (i) receipt of sales tax and employment tax certificates with respect to the Assets and the employees of the Business; and (ii) the further exceptions set forth in Schedule 4.4 (collectively, the "Required Government Consents"), no approval, authorization, certification, consent, variance, permission, license, or permit to or from, or notice, filing, or recording to or with: (A) any nation or government; (B) any federal, state, county, province, city, town, municipality, local or other political subdivision thereof or thereto; (C) any court, tribunal, department, commission, board, bureau, instrumentality, agency, council, arbitrator or other entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government; or (D) any other governmental entity, agency or authority having or exercising jurisdiction over any relevant person, item or matter (each, a "Governmental Authority"), is necessary for the execution and delivery of this Agreement and the other agreements and instruments to be executed and delivered in connection with the transactions contemplated hereby or thereby by Seller or the consummation by Seller of the transactions contemplated hereby or thereby or the enforceability hereof or thereof other than those which have been obtained or made and are in full force and effect except as such enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and general equitable principles.

4.5 **Required Contract Consents**. Except as set forth in Schedule 4.5 (the "Required Contract Consents"), no approval, authorization, consent, permission, or waiver to or from, or notice, filing, or recording to or with, any person (other than the Governmental Authorities) is necessary for the execution and delivery of this Agreement and the other agreements and instruments to be executed and delivered in connection with the transactions contemplated hereby or thereby by Seller or the consummation by Seller of the transactions contemplated hereby or the enforceability hereof or thereof other than those which have been obtained or made and are in full force and effect.

4.6 **Title to Tangible Property.** Seller has and will transfer to Buyer at the Closing, good and indefeasible title to all of the tangible Assets, free and clear of all title defects, liens, restrictions, claims, charges, security interests, or other encumbrances of any nature whatsoever, including any mortgages, (except for the Leases listed in Schedule 1.1(c) and the Assumed Liabilities listed in Schedule 2) leases, chattel mortgages, conditional sales contracts, collateral security arrangements, or other title or interest retention arrangements, other than: (i) statutory liens for taxes not delinquent or that may hereafter be paid without penalty or are being contested in good faith by appropriate proceedings promptly initiated and diligently conducted; (ii) liens and encumbrances consisting of easements, zoning restrictions or other restrictions on the use of real property that do not materially affect the value of the Assets encumbered thereby or materially impair the ability to use such Assets in the Business as presently conducted; (iii) liens of landlords, mechanics, materialmen, warehousemen, carriers or other statutory liens securing obligations that are not yet due and are incurred in the ordinary course of business; (iv) liens resulting from deposits to secure payments of workmen's compensation or other social security programs or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids or contracts in the ordinary course of business; and (v) other matters which, singly or in the aggregate, will not have a Material Adverse Effect (each, a "Permitted Lien").

4.7 **Condition of Property.** All of the tangible Assets are in good operating order, condition, and repair, ordinary wear and tear excepted, and are suitable for use in the Business as currently conducted in the ordinary course.

4.8 **Title to Intellectual Property.**

(a) **Ownership.** Seller owns, Buyer shall receive at the Closing, and the Intellectual Property includes, all patents, trademarks, service marks, trade names, and copyrights (including registrations, licenses, and applications pertaining thereto) and all other intellectual property rights, trade secrets, and other proprietary information, processes, and formulae used in the Business or otherwise necessary for the ownership and use of the Assets and the conduct of the Business. Schedule 1.1(g) sets forth all registered trademarks and service marks, all reserved trade names, all registered copyrights, and all filed patent applications and issued patents listed in Schedule 1.1(g) used in the Business or otherwise necessary for the conduct of the Business as heretofore conducted.

(b) **Personnel Agreements.** All personnel, including employees, agents, consultants, and contractors, who have contributed to or participated in the conception and development of any of the Intellectual Property on behalf of Seller either: (i) have been party to a "work-for-hire" arrangement or agreement with Seller, in accordance with applicable Laws, that has accorded Seller full, effective, exclusive, and original ownership of all tangible and intangible property thereby arising; or (ii) have executed appropriate instruments of assignment in favor of Seller as assignee that have conveyed to Seller full, effective, and exclusive ownership of all tangible and intangible property thereby arising.

(c) **Absence of Claims**. No claims have been asserted to Seller by any person or entity to the use of the Intellectual Property, and Seller does not know of any valid basis for any such claim. The use of the Intellectual Property, such as patents and trademarks, by Seller does not infringe on the rights of any person.

4.9 **Contracts--General**. The General Contracts constitute all contracts, agreements, licenses, and other commitments and arrangements to which Seller is a party and which relate to the Business and are in effect as of the Effective Date, other than the Leases addressed by Section 4.11. All such contracts are valid, binding, and enforceable against Seller and, to Seller's knowledge, the other parties thereto, in accordance with their terms and are in full force and effect, except as such enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and general equitable principles. There are no existing defaults by Seller under any such contracts and no act, event, or omission has occurred that, whether with or without notice, lapse of time, or both, would constitute a default by Seller thereunder.

4.10 **Third-Party Interests or Marketing Rights in Software Programs**. Seller has not granted, transferred, or assigned any right or interest in the Intellectual Property to any person.

4.11 **Real Property; Leases**. Seller owns no real property which relates, in any respect, to the Business. The Leases constitute all leasing or rental contracts, agreements, and other commitments and arrangements to which Seller is a party and which relate to the Business and are in effect as of the Effective Date, that are in effect for a period of twelve (12) months or longer without allowing Seller (and, following the Closing, Buyer) to terminate without penalty for any reason upon the delivery of any required action. All Leases are valid, binding, and enforceable against Seller, and to Seller's knowledge, the other parties thereto in accordance with their terms and are in full force and effect, except as such enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and general equitable principles. There are no existing defaults by Seller thereunder, and no act, event, or omission has occurred that, whether with or without notice, lapse of time, or both, would constitute a default by Seller thereunder except for such defaults as to which requisite waivers or consents have been or will, on or prior to the Closing Date, be obtained or which will not, alone or in the aggregate, have a Material Adverse Effect.

4.12 **Financial Statements**. Except as set forth in Schedule 4.12, The unaudited balance sheet, income statement and cash flow statements of Seller previously delivered to Buyer, for the years ended _____ 200_, _____, 200_, and the period ended _____, 200_, were prepared in accordance with generally accepted accounting principles ("GAAP"), consistently applied with the principles and procedures employed in prior periods by Seller (collectively, the "Financial Statements"). The Financial Statements will properly reflect all

Assets and liabilities as then in existence. The Financial Statements will fairly present the results of operation and the financial position of the Business as of the dates thereof and the periods then ended (except as otherwise noted therein) in conformity with GAAP consistently applied with the principles and procedures employed in prior periods by Seller.

4.13 **Conduct of Business.**

(a) **Ordinary Course of Business.** Since _____, 200_ (the "Financial Statement Date"), Seller has operated the Business in the ordinary course consistent with past practices.

(b) **No Material Adverse Change.** Since the Financial Statement Date, there has been no material adverse change in the Business or the Assets or in the financial condition, or operations of the Business.

(c) **Absence of Particular Events.** Since the Financial Statement Date, Seller has not: (i) suffered any damage or destruction adversely affecting the Business or involving the Assets in an amount in excess of _____ Dollars (\$_____) in any one instance; (ii) increased the compensation payable or to become payable to employees of Seller involved in the Business; (iii) incurred any liability or obligation relating to the Business other than in the ordinary course consistent with past practice; (iv) made any change in any method, practice, or principle of accounting involving the Business or the Assets; (v) paid, loaned, or advanced any material monetary amount or other asset to, or sold, transferred, or leased any asset to, any employee involved in the Business except for normal compensation involving salary and benefits; or (vi) agreed to take any action described in this Section 4.13(c).

(d) **Absence of Joint Ventures, etc.** Seller is not a party to any joint venture or other similar agreement or arrangement that involves any sharing of profits of the Business or the Assets or is similar to or competitive with the Business.

4.14 **Major Vendors and Customers.** Schedule 4.14 lists each licensor, developer, remarketer, distributor, and supplier of property or services to, and each licensee, end-user, or customer of, the Business, to whom Seller paid or billed in the aggregate _____ Dollars (\$_____) or more during the most recent fiscal year, together with, in each case, the amount paid or billed during such period. Except as set forth in Schedule 4.14, to the knowledge of Seller, there is no reason why the relationship with any such person or entity might not be continued by Buyer after its acquisition of the Business, at substantially the same level and on substantially the same terms as Seller will have experienced during the twelve (12)-month period preceding the Closing.

4.15 **Litigation.** Except as listed in Schedule 4.15, no claim, action, suit, proceeding, inquiry, hearing, arbitration, administrative proceeding, or investigation (collectively, "Litigation") is pending, or, to Seller's knowledge, threatened, against Seller, its present or former

directors or officers, affecting, involving, or relating to the Business or any of the Assets or which seeks to restrain or enjoin the execution and delivery of this Agreement or any of the documents referred to herein or the consummation of any of the transactions contemplated hereby or thereby. The best of Seller's knowledge, Seller knows of no facts that could reasonably be expected to serve as the basis for Litigation against itself (or the Buyer upon acquisition of the Business), its present or former directors or officers, affecting, involving, or relating to the Business or the Assets. There are no judgments or outstanding orders, injunctions, decrees, stipulations or awards (whether rendered by a Governmental Authority or by an arbitrator) against Seller, any of the Assets or the Business.

4.16 **Court Orders, Decrees, and Laws.**

(a) **Compliance With Laws.** Seller is not in violation of any applicable Laws involving, or relating to the Business or the Assets and Seller has received no notices of any allegation of any such violation. For the purposes of this Agreement, the term "Laws" shall be deemed to include federal patent, copyright, and trademark Laws, state trade secret and unfair competition Laws, and all other applicable Laws, including equal opportunity, wage and hour, and other employment matters, and antitrust and trade regulation Laws. This Section 4.16(a) does not relate to environmental matters, which are exclusively the subject of Section 4.16(c).

(b) **Adequacy of Authorizations.** The Authorizations constitute all approvals, authorizations, certifications, consents, variances, permissions, licenses, or permits to or from, or filings, notices, or recordings to or with, Governmental Authorities that are required for the ownership and use of the Assets and the conduct of the Business as currently conducted under the Laws. Seller is in compliance in all material respects with all terms and conditions of the Authorizations. All of the Authorizations are in full force and effect, and, to Seller's knowledge, no suspension or cancellation of any of them is being threatened, nor will any of the Authorizations be adversely affected in any material respect by the consummation of the transactions described in this Agreement.

(c) **Environmental Compliance.** Neither Seller, nor, to the best of Seller's knowledge, any prior owner, user, controller, or occupant, nor any tenant, subtenant, prior tenant, or prior subtenant has ever used Hazardous Materials (as defined herein) on, from, or affecting the Assets or any facility, site, area, or property owned, used, controlled, or occupied by the Business, in any manner that violates in any material respect any Law governing the use, storage, treatment, transportation, manufacture, handling, production, or disposal of Hazardous Materials. For purposes hereof, "Hazardous Materials" means any flammable materials, explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 USC § 9601 et seq.), the Hazardous Materials Transportation Act, as amended (49 USC § 1801 et seq.), the Resource Conservation and Recovery Act, as amended (42 USC § 6901 et seq.), and all applicable federal or state hazardous or toxic waste or environmental Laws. The term "material" includes asbestos, polychlorinated

biphenyls, kerosene, and fuel oil.

4.17 **Taxes.** All tax returns of every kind (including returns of real and personal property taxes, sales, use and excise taxes, intangible taxes, withholding taxes, and FICA and unemployment compensation taxes) relating to the Business that are required by Law to have been filed have been duly filed; and all taxes shown to be due on such returns have been paid in full, except to the extent that any of the same are being contested in good faith by appropriate proceedings promptly initiated and diligently pursued and with respect to which adequate reserves have been set aside on the books and records of Seller in accordance with GAAP.

4.18 **Personnel and Compensation.**

(a) **List of Personnel.** Set forth in Schedule 4.18(a) is a true and complete list of the names, current compensation levels and accrued vacation of: (i) all employees assigned to or whose duties relate primarily to the Business; and (ii) all consultants primarily involved in the Business (collectively, the "Business Employees").

(b) **Compensation, etc.** Except as set forth in Schedule 4.18(b), Seller is not subject to, and has no obligation under, any employment, consulting, or collective bargaining contracts, deferred compensation, pension (as defined in Section 3(2) of the Employee Retirement Income Security Act (ERISA), profit-sharing, bonus, stock option, stock appreciation, stock purchase, or other nonqualified benefit or compensation commitments, benefit plans, arrangements, or plans, including any welfare plans (as defined in Section 3(1) of ERISA), fringe benefit arrangements, or multi-employer plans (as defined in Section 3(37)(A) of ERISA) pertaining to the Business Employees (collectively, the "Plans"). Seller has never had any Plans.

(c) **Adequate Reserves for Welfare Plans.** Seller has never had any welfare plans (as defined in Section 3(1) of ERISA).

(d) **Compliance with Laws.** Seller is in compliance with all applicable Laws respecting employment and employment practices, terms and conditions of employment and wages and hours, and occupational safety and health pertaining to the Business and the Business Employees. There is no labor strike, dispute, slowdown, or stoppage pending or to Seller's knowledge, threatened, against Seller pertaining to the Business or the Business Employees. No certification or decertification question or organizational drive exists or has existed within the past twelve (12) months respecting the Business or the Business Employees. Seller has not experienced any organized work stoppage involving the Business Employees since at least _____, 200_. There are no charges, investigations, administrative proceedings, or formal complaints of discrimination (including discrimination based upon sex, age, marital status, race, national origin sexual preference, handicap, or veteran status) pending or, to the knowledge of Seller, threatened before the Equal Employment Opportunity Commission or any federal, state, or local agency or court against Seller pertaining to the Business or the Business Employees, and,

to the knowledge of the Seller, no basis for any such charge, investigation, administrative proceeding, or complaint exists. There have been no audits of the equal employment opportunity practices of Seller pertaining to the Business or the Business Employees.

4.19 **Insurance Policies.** Schedule 4.19(a) lists all insurance policies relating to the Business or the Assets in force as of the Effective Date (the "Insurance Policies"), naming Seller as an insured or beneficiary or as a loss-payable payee or for which Seller has paid or is obligated to pay all or part of the premiums. Other than as set forth in Schedule 4.19(b), Seller has not received notice of any pending or threatened termination or retroactive premium increase with respect thereto; and Seller is in compliance in all material respects with all conditions contained therein, the noncompliance with which could result in termination of insurance coverage or increased premiums for prior or future periods. There are no pending material claims against such insurance by Seller as to which insurers have denied liability or are defending under any reservation of rights, and, there exists no material claim under such insurance that has not been properly filed by Seller.

4.20 **Sufficiency of Rights.** Except as set forth in Schedule 4.20, the Assets constitute all of the properties, rights, and privileges necessary for the conduct of the Business by Buyer in substantially the same manner as it will have been operated by Seller during the twelve (12)-month period preceding the Closing.

4.21 **Broker's or Finder's Fees.** Seller has not authorized any person to act as broker or finder or in any other similar capacity in connection with the transactions contemplated by this Agreement and no broker, finder or financial advisor is entitled to any broker's, finder's, or financial advisor's fee or other commission in respect thereof based in any way on any agreement, arrangement or understanding with Seller.

4.22 **Related-Party Transactions.** Except as disclosed in Schedule 4.22, Seller is not a party to any written contract, agreement, license, lease, or arrangement with, or any other commitment to, directly or indirectly: (i) any officer or salaried employee of the Business in office within two (2) years of the date of execution hereof; or (ii) any corporation, trust, partnership or other entity in which any such officer or salaried employee has a material equity or participating interest; in each case, relating to or involving the Business, or the Assets. Each such contract, agreement, license, lease, arrangement, and commitment was entered into by Seller in the ordinary course of business upon terms that are fair and reasonable to the Business without regard to the status and relationship of such other parties.

4.23 **Materiality Defined.** For purposes of this Agreement, the term "Material Adverse Effect" means: (i) with respect to Seller, a material adverse effect on: (A) the Assets or the business, operations, condition (financial or otherwise) or results of operations of the Business taken as a whole; or (B) either of the parties' ability to comply with or satisfy in any material respect any material covenant, condition or agreement to be complied with or satisfied by it under this Agreement; and (ii) with respect to Buyer, a material adverse effect on: (A) its

business, assets, properties, operations, condition (financial or otherwise) or results of operations taken as a whole; or (B) either of the parties' ability to comply with or satisfy in any material respect any material covenant, condition or agreement to be complied with or satisfied by it under this Agreement.

SECTION 5

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Seller as follows:

5.1 **Organization.** Buyer is a corporation validly existing and in good standing under the laws of the State of _____ with the corporate power and authority to conduct its business as currently conducted and to own and lease its properties and assets. Buyer is duly qualified or licensed to do business and is in good standing as a foreign corporation in each state in which the failure to be so qualified or licensed would have a Material Adverse Effect.

5.2 **Power and Authority.** Buyer has the power and authority to execute, deliver, and perform this Agreement and the other agreements and instruments to be executed and delivered by it in connection with the transactions contemplated hereby and thereby, and Buyer has taken all necessary corporate action to authorize the execution and delivery of this Agreement and such other agreements and instruments and the consummation of the transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by Buyer and Buyer will, on or prior to the Closing Date, duly execute and deliver the documents referred to herein to which it is to be a party. Assuming the due authorization, execution and delivery of this Agreement and the documents referred to herein by the parties hereto and thereto other than Buyer, this Agreement constitutes, and when executed and delivered each of such documents referred to herein will constitute the legal, valid, and binding obligation of Buyer, enforceable against Buyer in accordance with their terms, except as such enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and general equitable principles.

5.3 **Broker's or Finder's Fees.** Buyer has not authorized any person to act as broker, finder, or in any other similar capacity in connection with the transactions contemplated by this Agreement and no broker, finder or financial advisor is entitled to any broker's, finder's, or financial advisor's fee or other commission in respect thereof based in any way on any agreement, arrangement or understanding with Buyer.

5.4 **No Conflict.** Neither the execution and delivery by Buyer of this Agreement and the other agreements and instruments to be executed and delivered by Buyer in connection with the transactions contemplated hereby or thereby, nor the consummation by Buyer of the transactions contemplated hereby or thereby, will violate or conflict with: (i) any Law or any order, judgment, or decree applicable to Buyer; (ii) any provision of any charter, bylaw or other

governing or organizational instrument of Buyer; or (iii) any mortgage, indenture, license, instrument, trust, contract, agreement, or other commitment or arrangement to which Buyer is a party or by which Buyer is bound. No authorization, consent or approval of, or filing with, any domestic or federal court, regulatory or public body or governmental authority not already obtained or made is necessary for the consummation by Buyer of the transactions contemplated by this Agreement.

5.5 **Litigation.** No Litigation is pending, or, to Buyer's knowledge, threatened, against Buyer, or its assets or properties which seeks to restrain or enjoin the execution and delivery of this Agreement or any of the documents referred to herein or the consummation of any of the transactions contemplated hereby or thereby. There are no judgments or outstanding orders, injunctions, decrees, stipulations or awards (whether rendered by a Governmental Authority or by an arbitrator) against Buyer or any of its assets or properties.

5.6 **Capital Stock.** The authorized capital stock of Buyer consists of _____ (_____) shares of common stock, \$0.01 par value (the "Common Stock"), _____ (_____) shares of Series A Preferred Stock, \$0.01 par value, and _____ (_____) shares of Series B Preferred Stock, \$0.01 par value, and Buyer has no authority to issue any other capital stock. _____ (_____) shares of Common Stock and all of the authorized shares of Series A Preferred Stock and of Series B Preferred Stock are issued and outstanding, and such shares are duly authorized, validly issued, fully paid (except for the promissory note for the purchase of a portion of the Series B Preferred Stock) and nonassessable. All outstanding shares of Common Stock and shares of Series B Preferred Stock are owned beneficially and of record by _____, as trustee of the _____ Trust under Agreement of Trust dated September 19, 1984, and all outstanding shares of Series A Preferred Stock are owned beneficially and of record by _____, a Delaware corporation. Except that Buyer has approved the grant of stock options to purchase up to Two _____ (_____) shares of Common Stock and except with respect to the Series A Preferred Stock and the Series B Preferred Stock, Buyer has no outstanding subscription, option, warrant, call, contract, demand, commitment, convertible security or other instrument, agreement or arrangement of any character or nature whatever under which Buyer is or may be obligated to issue Common Stock or Preferred Stock.

SECTION 6

CONDITIONS TO OBLIGATIONS OF EACH OF THE PARTIES

The respective obligations of each of the parties hereto to consummate the transactions contemplated hereby shall be subject to the fulfillment at or prior to the Closing Date of the following conditions:

(a) No Law shall have been enacted or issued by any Governmental Authority and no decree, temporary restraining order, preliminary or permanent injunction or other order issued by any court of competent jurisdiction or any other Governmental Authority, and no other legal restraint or prohibition preventing the transactions contemplated by this Agreement or any of the documents referred to herein or making the consummation of any such transactions illegal shall be in effect; provided, however, that each of the parties hereto shall have used reasonable efforts to prevent the entry of any such injunction or other order or decree and to appeal as promptly as possible any injunction or other order or decree that may be entered;

(b) All Required Governmental Consents legally required for the consummation of the transactions contemplated by this Agreement and the documents referred to herein shall have been obtained and be in effect on the Closing Date;

(c) Buyer and Seller shall have each reviewed and approved the Schedules listed in this Agreement and prepared by the appropriate party as set forth herein;

(d) Buyer shall have entered into an Employment Agreement in a mutually acceptable form with each of _____ ("_____") and _____ ("_____") (collectively, the "Employment Agreements"); and

(e) Buyer shall have entered into a Consulting Agreement in a mutually acceptable form with _____ ("_____") (the "Consulting Agreement").

SECTION 7

CONDITIONS TO SELLER'S AND BUYER'S OBLIGATIONS

7.1 **Conditions to Seller's Obligations.** Each of the obligations of Seller to be performed hereunder shall be subject to the satisfaction (or waiver by Seller) at or prior to the Closing Date of each of the following conditions:

(a) Buyer shall have performed or complied with, in all material respects, all conditions, obligations, agreements and covenants contained herein which are to be performed or complied with by it on or prior to the Closing Date;

(b) The representations and warranties of Buyer contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date;

(c) Seller shall have received each of the following, dated as of the Closing Date;

(i) Resolutions of the Board of Directors of Buyer, certified by its Secretary or an Assistant Secretary, which authorize the execution, delivery and performance of this Agreement and the documents referred to herein to which it is or is to be a party; and

(ii) A certificate of incumbency certified by the Secretary or an Assistant Secretary of Buyer certifying the names of the officers of Buyer authorized to execute this Agreement and the documents referred to herein to which it is or is to be a party (including the certificates contemplated herein), together with specimen signatures of such officers; and

(d) Seller shall have received each of the documents referred to herein to which Buyer is to be a party duly executed by Buyer.

7.2 **Conditions to Obligations of Buyer.** Each of the obligations of Buyer to be performed hereunder shall be subject to the satisfaction (or the waiver by Buyer) at or prior to the Closing Date of each of the following conditions:

(a) Seller shall have performed or complied with, in all material respects, all conditions, obligations, agreements and covenants contained herein which are to be performed or complied with by it on or prior to the Closing Date;

(b) The representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date; and

(c) Buyer shall have received each of the following, dated as of the Closing Date or, with respect to certificates of Governmental Authorities, dated within ten (10) Business Days prior to the Closing Date:

(i) A certificate of the Secretary of State of the State of _____ as to the existence and good standing of Seller and certificates of the appropriate Governmental Authorities of each state in which Seller is qualified or authorized to transact business as to the good standing and qualification or authorization of Seller;

(ii) Resolutions of the Board of Directors of Seller, certified by its Secretary or an Assistant Secretary, which authorize the execution, delivery and performance of this Agreement and the documents referred to herein to which it is or is to be a party;

(iii) Resolutions of the Shareholders of Seller, certified by its

Secretary or an Assistant Secretary, which authorize the execution, delivery and performance of this Agreement and the documents referred to herein to which Seller is or is to be a party;

(iv) A certificate of incumbency certified by the Secretary or an Assistant Secretary of Seller certifying the names of the officers of Seller authorized to execute this Agreement and the documents referred to herein to which it is or is to be a party (including the certificates contemplated herein), together with specimen signatures of such officers;

(v) Such other corporate certificates as Buyer may reasonably request;

(vi) A Stock Purchase Agreement among Buyer, _____ and _____ dated of even date herewith with respect to the purchase of all of the outstanding capital stock of _____, Inc., a _____ corporation;

(vii) A Noncompetition Agreement with each of _____, _____ and _____ (collectively, the "Shareholders") in a form reasonably acceptable to the parties thereto (collectively, the "Noncompetition Agreements"); and

(viii) Each of the documents referred to herein to which Seller and/or the Shareholders is to be a party duly executed and delivered by Seller and/or the Shareholders.

SECTION 8

CLOSING

8.1 **The Closing**. The closing of the purchase and sale of the Assets and the transfer and assumption of the Assumed Liabilities (the "Closing") shall take place at the offices of _____, _____, _____ 92660 at 10:00 A.M., _____ time on the Effective Date (the "Closing Date").

8.2 **Actions at the Closing**. At the Closing, Buyer and Seller shall take the following actions, in addition to such other actions as may otherwise be required under this Agreement:

- (a) **Payment of Purchase Price**. Buyer shall pay to Seller the Purchase Price.
- (b) **Copies of Consents**. Seller shall deliver to Buyer copies of all Required Contract Consents and all Required Government Consents which have been obtained by Seller.
- (c) **Conveyance Instruments**. Seller shall deliver to Buyer such warranty deeds, bills of sale, assignments, and other instruments of conveyance and transfer as Buyer may reasonably request to effect the assignment to Buyer of the Assets.

(d) **Entry Into Premises.** Seller shall give Buyer complete and unrestricted access to the facilities of the Business, and the sites subject to the Leases.

(e) **Other Documents.** Each of the parties hereto shall execute and deliver the documents and certificates referred to in Section 8 to which it is to be a party.

8.3 **Prorations.** At the Closing, taxes on or with respect to the Assets, and other items normally adjusted in connection with similar transactions, shall be prorated as of the Closing Date, with Seller liable to the extent such items relate to any time period prior to the Closing Date and Buyer liable to the extent such items relate to any time period subsequent to the Closing Date. Except as otherwise agreed by the parties hereto, the net amount of all such prorations will be settled and paid on the Closing Date; provided, however, that the payment of such amounts shall not affect the calculation of, or be deemed to be a payment towards, the Purchase Price. If the Closing shall occur before the applicable 200_ tax rate is fixed, the apportionment of taxes shall occur promptly upon receipt of such 200_ tax bill.

8.4 **Further Assurances.** At and after the Closing, without further consideration, each of the parties hereto shall take all such other action and shall procure or execute, acknowledge, and deliver all such further certificates, conveyance instruments, assumption instruments, consents, and other documents as the other party or its counsel may reasonably request: (i) to vest in Buyer, and perfect and protect Buyer's right, title, and interest in, and enjoyment of, the Assets and the Business; or (ii) to ensure more effectively the compliance of such party with its agreements and covenants under this Agreement and the other documents referred to herein.

SECTION 9

COVENANTS OF SELLER AND BUYER FOLLOWING CLOSING

9.1 **Allocation of Purchase Price.** The Purchase Price shall be allocated to the Assets as set forth in Schedule 9.1. Each of the parties hereto agrees: (i) that such allocation shall be consistent with the requirements of Section 1060 of the Code and the regulations thereunder; (ii) to complete jointly and to file separately Form 8594 with its Federal income tax return for the appropriate period consistent with such allocation for the tax year in which the Closing Date occurs; and (iii) that neither of the parties hereto shall take a position on any income, transfer or gains tax return, before any Governmental Authority charged with the collection of any such tax or in any judicial proceeding that is in any manner inconsistent with the terms of any such allocation without the consent of the other party.

9.2 **Transfer Taxes.** All sales, transfer, and similar taxes and fees (including all recording fees, if any) incurred in connection with this Agreement and the transactions contemplated hereby shall be borne by Seller and Seller shall file all necessary documentation and pay all amounts due with respect to such taxes.

9.3 **Nonsolicitation of Personnel**. For a period of five (5) years after the Closing Date, Seller shall not solicit, divert, or recruit, for its own benefit or for the benefit of any other person, any Business Employee whom Buyer has employed.

9.4 **Retention of Business Records**. To the extent the Business Records are delivered to Buyer hereunder, Buyer agrees: (i) to hold all of the Business Records existing on the Closing Date, and to not destroy or dispose of any thereof, for a period of five (5) years commencing on the Closing Date or such longer period as may be required by Law; and (ii) following the Closing Date, to afford Seller, its accountants and counsel, at Seller's sole cost and expense, upon reasonable request, during normal business hours, full and complete access to such Business Records to the extent that such access may be requested for any legitimate purpose; provided, however, that such access shall be provided in such a manner so as to not cause any unreasonable disruption of or to the personnel and operations of Buyer. Buyer shall have the same rights, and Seller the same obligations, as are set forth above in this Section 9.4 with respect to any material books and records of Seller pertaining to the Business that are retained by Seller, with the exception of tax returns relating to taxes that are not the responsibility of Buyer.

SECTION 10

CERTAIN TRANSITION MATTERS

10.1 **Hiring of Business Employees**.

(a) Buyer shall offer employment effective as of the Closing Date, with comparable duties and at the same salary and bonus level as currently in place with Seller to at least the minimum number of Business Employees so that the Seller will not be subject to any applicable plant closure notification Laws, including the WARN Act (the "Transferred Employees"). All such employees to be hired by Buyer shall be terminated by Seller as of the Closing Date and shall become new employees of Buyer as of the Closing Date. Seller shall be solely responsible for all obligations and liabilities with respect to such employees prior to the Closing Date. Seller shall, after the date hereof and prior to the Closing Date or the earlier termination of this Agreement, afford to Buyer, upon reasonable request and at the sole cost and expense of Buyer, during normal business hours, full and complete access to the Business Employees for the purpose of soliciting such Business Employees to become a Transferred Employee; provided, however, that such solicitation shall be conducted in such a manner so as to not cause any unreasonable disruption of or to the personnel and operations of Seller or the Business.

(b) Each of the Transferred Employees shall be entitled to participate in all employee benefit plans and arrangements provided by Buyer on the same basis and to the same extent as other similarly situated employees of Buyer.

10.2 **COBRA.** Seller shall be responsible for the collection of premiums and all related costs of benefits offered under the continuation of benefits provisions of the Consolidated Omnibus Budget Reconciliation Act for all former Business Employees and their dependents who have elected continuation coverage under such group health plan with respect to qualifying events occurring on or prior to the Closing Date.

SECTION 11

INDEMNITY

11.1 **Indemnification by Seller.** Seller and the Shareholders, jointly and severally, shall indemnify, defend with counsel reasonably acceptable to Buyer, and hold harmless Buyer and its successors and assigns and the directors, officers, employees, and agents of each (collectively, the "Buyer Group"), at, and at any time after, the Closing, from and against any and all demands, claims, actions, or causes of action, assessments, losses, damages, liabilities, costs, and expenses, including reasonable fees and expenses of counsel, other expenses of investigation, handling, and litigation, and settlement amounts, together with interest and penalties (collectively, a "Loss" or "Losses"), asserted against, resulting to, imposed upon, or incurred by the Buyer Group, directly or indirectly, by reason of, resulting from, or arising in connection with any of the following:

(a) **Breach of Obligation.** Any breach of any representation, warranty, covenant or agreement of Seller contained in or made pursuant to this Agreement, including the agreements and other instruments contemplated hereby.

(b) **Excluded Liabilities.** Any liabilities or obligations of any kind or nature whatsoever, whether accrued, absolute, contingent, or otherwise, known or unknown, arising out of or in connection with the conduct of the Business or the ownership or use of the Assets prior to the Closing Date.

(c) **Brokers' Fees.** Any claim to fees or costs for alleged services by a broker, agent, finder or other person claiming to act in a similar capacity at the request of Seller in connection with this Agreement or any of the documents referred to herein.

(d) **Limitation of Liability.** The aggregate liability of Seller and the Shareholders under this Section 11.1 shall not exceed the following: (i) the first Fifty Thousand Dollars (\$50,000) shall be paid to Buyer in cash; and (ii) any liability of Seller and the Shareholders under this Section in excess of _____ Dollars (\$_____) shall be paid at the option of Seller and the Shareholders: (A) in the form of cash; (B) by cancellation of vested stock options to purchase shares of the Common Stock of Buyer held by the Shareholders, on an equal basis among the Shareholders, based on the most recent stock option exercise price established by the Board of Directors of Buyer in connection with the issuance of stock options to purchase shares of the Common Stock of Buyer; provided, however, that aggregate maximum number of stock options held by the Shareholders which are subject to cancellation hereunder is

_____ (_____) options; or (C) a combination of paragraphs (A) and (B).

Notwithstanding anything to the contrary contained in this Agreement, Seller shall not be liable for any portion of any Losses resulting from a material breach by Buyer of its obligations under this Agreement or any of the documents referred to herein or from a member of the Buyer Group's gross negligence, fraud or willful misconduct.

11.2 **Indemnification by Buyer.** Buyer shall indemnify, defend with counsel reasonably acceptable to Seller, and hold harmless Seller and its successors and assigns and the directors, officers, employees, and agents of each (collectively, the "Seller Group"), at, and at any time after, the Closing, from and against any and all Losses asserted against, resulting to, imposed upon, or incurred by the Seller Group, directly or indirectly, by reason of, resulting from, or arising in connection with, any of the following:

(a) **Breach of Obligation.** Any breach of any representation, warranty, covenant or agreement of Buyer contained in or made pursuant to this Agreement, including the agreements and other instruments contemplated hereby.

(b) **Assumed Liabilities.** Any liabilities or obligations of any kind or nature whatsoever, whether accrued, absolute, contingent, or otherwise, known or unknown, arising out of or in connection with the conduct of the Business or the ownership or use of the Assets after the Closing Date, except to the extent that such Losses related to any of the Excluded Liabilities.

(c) **Broker's Fees.** Any claim to fees or costs for alleged services by a broker, agent, finder or other person claiming to act in a similar capacity at the request of Buyer in connection with this Agreement or any of the documents referred to herein.

Notwithstanding anything to the contrary contained in this Agreement, Buyer shall not be liable for any portion of any Losses resulting from a material breach by Seller of its obligations under this Agreement or any of the documents referred to herein or from a member of the Seller Group's gross negligence, fraud or willful misconduct.

11.3 **Survival of Representations, Warranties and Covenants.** All of the representations and warranties made by the parties hereto in this Agreement, the documents referred to herein or in any certificate or other instrument delivered by the parties hereto under this Agreement or any of the documents referred to herein, and the right to indemnification with respect to any breaches thereof, shall survive the execution and delivery of this Agreement and the documents referred to herein for a period of one (1) year, regardless of any investigation made by or on behalf of either party. All of the covenants and agreements made by the parties hereto in this Agreement, the documents referred to herein or in any certificate or other instrument delivered by the parties hereto under this Agreement or any of the documents referred to herein, and the right to indemnification with respect to any breaches thereof, shall survive the execution and delivery of this Agreement and the documents referred to herein for the applicable period stated herein with respect to such covenant or agreement, regardless of any investigation

made by or on behalf of either party.

SECTION 12

CONFIDENTIALITY

Buyer and Seller have previously entered into those certain Nondisclosure Agreements dated as of _____, 200_, and _____, 200_, regarding the parties confidential information (the "Non-Disclosure Agreement"). The Non-Disclosure Agreements shall remain in full force and effect until the Closing and thereafter.

SECTION 13

MISCELLANEOUS

13.1 **Entire Agreement; Amendment.** This Agreement (including the Schedules), the documents referred to herein, and the other certificates, agreements, and other instruments to be executed and delivered by the parties in connection with the transactions contemplated hereby, constitute all of the promises, agreements, conditions, understandings, warranties and representations between the parties hereto with respect to the transactions contemplated hereby and thereby, and supersede all prior agreements, arrangements and understandings between the parties hereto, whether written, oral or otherwise. There are no promises, agreements, conditions, understandings, warranties or representations, oral or written, express or implied, between the parties hereto concerning the subject matter hereof or thereof except as set forth herein and therein. No amendment, modification, or alteration of the terms or provisions of this Agreement shall be binding unless the same shall be in writing and duly executed by the parties hereto.

13.2 **Parties Bound by Agreement; Successors and Assigns.** The terms, conditions, and obligations of this Agreement shall inure to the benefit of and be binding upon the parties hereto and the respective successors and permitted assigns thereof. Without the prior written consent of the other party, neither party hereto may assign or transfer all or any portion of its rights, duties and obligations hereunder and any attempt to do so without such consent shall be null and void; provided, however, that no assignment by either of the parties hereto of any of its rights, interests or obligations hereunder shall relieve such party of its obligations under this Agreement.

13.3 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original and all of which shall constitute the same Agreement.

13.4 **Headings.** The headings of the Sections and paragraphs of this Agreement are

inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction hereof.

13.5 **Waiver.** No waiver of any provision of this Agreement shall be valid unless in writing and signed by the party against whom that waiver is sought to be enforced. No failure or delay on the part of either of the parties hereto in exercising any right, power or privilege hereunder, and no course of dealing between the parties hereto, shall operate as a waiver of any right, power or privilege hereunder.

13.6 **Expenses.** Seller and Buyer shall each pay all costs and expenses incurred by it or on its behalf in connection with this Agreement and the transactions contemplated hereby, including fees and expenses of its own financial consultants, accountants, and counsel.

13.7 **Notices.** Any notice, request, instruction, or other communication to be given hereunder by any party hereto to any other party hereto shall be in writing and delivered personally or sent by facsimile, overnight commercial courier or registered or certified mail, postage prepaid, if to Seller to:

If to Seller to: _____

Attention: President
Fax No.: _____

with a copy to: _____, Esq.

Fax No.: _____

If to Buyer to: _____

Fax No.: _____

or at such other address for a party as shall be specified by like notice. Notices shall be deemed given upon the earliest of: (i) receipt; (ii) conformed facsimile transmission; (iii) one (1) day after delivery to an overnight commercial courier; or (iv) three (3) days after deposit in U.S. mail.

13.8 **Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of _____ without giving effect to the principles of conflicts of law thereof.

13.9 **Public Announcements.** Seller and Buyer shall consult with each other before issuing any press releases or otherwise making any public statements with respect to this Agreement and the transactions contemplated hereby. Neither Seller nor Buyer shall issue any such press release or make any public statement without the agreement of the other party, except as may be required by Law.

13.10 **Third-Party Beneficiaries.** With the exception of: (i) the parties to this Agreement; and (ii) the Buyer Group and the Seller Group with respect to the matters inuring to their benefit under Section 11, there shall exist no right of any person to claim a beneficial interest in this Agreement or any rights occurring by virtue of this Agreement.

13.11 **Severability.** Should any clause, sentence, paragraph, subsection, Section or Article of this Agreement be judicially declared to be invalid, unenforceable or void, such decision will not have the effect of invalidating or voiding the remainder of this Agreement, and the parties hereto agree that the part or parts of this Agreement so held to be invalid, unenforceable or void will be deemed to have been stricken and effectiveness as if such stricken part or parts had never been included herein.

13.12 **Remedies.** The parties hereto agree that the covenants and obligations contained in this Agreement and the documents referred to herein relate to special, unique and extraordinary matters and that a violation of any of the terms hereof or thereof would cause irreparable injury in an amount which would be impossible to estimate or determine and for which any remedy at law would be inadequate. As such, the parties hereto agree that if either of the parties hereto fails or refuses to fulfill any of its obligations under this Agreement or any of the documents referred to herein or to make any payment or deliver any instrument required hereunder or thereunder, then the other party shall have the remedy of specific performance, which remedy shall be cumulative and nonexclusive and shall be in addition to any other rights and remedies otherwise available under any other contract or at law or in equity and to which such party might be entitled.

13.13 **Arbitration.** In the event of any dispute or controversy arising out of, or relating to, this Agreement, the parties hereto agree to submit such dispute or controversy to arbitration in accordance with the California Code of Civil Procedure Sections 1280 *et seq.* The sole arbitrator shall be selected from the list (the "List") of arbitrators supplied by the J.A.M.S./ENDISPUTE, Orange County, California office, or any successor entity, or if it no longer exists, from a List supplied by the American Arbitration Association ("JAMS") following written request by any party hereto. If the parties hereto after notification of the other party(ies) to such dispute cannot agree upon an arbitrator within thirty (30) days following receipt of the List by all parties to such arbitration, then either party may request, in writing, that JAMS appoint an arbitrator within ten (10) days following receipt of such request (the "Arbitrator"). The arbitration shall take place in Orange County, California, at a place and time mutually agreeable to the parties or if no such agreement is reached within ten (10) days following notice from the Arbitrator, at a place and time determined by the Arbitrator. The parties hereto agree that all actions or proceedings arising in connection with this Agreement shall be arbitrated exclusively in Orange County, California.

The aforementioned choice of venue is intended by the parties to be mandatory and not permissive in nature, thereby precluding the possibility of litigation between the parties with respect to or arising out of this Agreement in any jurisdiction other than that specified in this Section. Each party hereby waives any right it may have to assert the doctrine of forum non conveniens or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this Section, and stipulates that the Arbitrator shall have in personam jurisdiction and venue over each of them for the purpose of litigating any dispute, controversy, or proceeding arising out of or related to this Agreement. Each party hereby authorizes and accepts service of process sufficient for personal jurisdiction in any action against it as contemplated by this Section by registered or certified mail, return receipt requested, postage prepaid, to its address for the giving of notices as set forth in this Agreement. The decision of the Arbitrator shall be final and binding on all the parties to the arbitration and may be enforced by a court of competent jurisdiction. In addition to his attorneys' fees as provided herein, the prevailing party shall be entitled to recover from the non-prevailing party his reasonable costs and expenses. The costs and fees of the arbitration shall be paid by the non-prevailing party. The Arbitrator may grant any remedy appropriate including, without limitation, injunctive relief or specific performance. Prior to the appointment of the Arbitrator, any party may seek temporary equitable or injunctive relief from the Orange County Superior Court which shall be effective until a final decision is rendered by the Arbitrator.

13.14 **Attorneys' Fees**. In the event of any arbitration or proceeding arising out of or related to this Agreement, the prevailing party shall be entitled to recover from the losing party all of its costs and expenses incurred in connection with such arbitration or proceeding, including court costs and reasonable attorneys' fees, whether or not such arbitration or proceeding is prosecuted to judgment.

13.15 **Interpretation**. In this Agreement, unless a clear contrary intention appears:

- (a) The words "hereof", "herein" and "hereunder" and words of similar import refer to this Agreement as a whole and not to any particular provision of this Agreement;
- (b) Reference to any gender includes each other gender and the neuter;
- (c) All terms defined in the singular shall have the same meanings in the plural and *vice versa*;
- (d) The word "person" means any individual, firm, corporation, trust, association, company, limited liability company, joint stock company, partnership, joint venture, Governmental Authority or other entity or enterprise;
- (e) Reference to any person includes such person's heirs, executors, personal representatives, administrators, successors and assigns; provided, however, that nothing contained in this clause (e) is intended to authorize any assignment not otherwise permitted by this Agreement;

(f) Reference to a person in a particular capacity or capacities excludes such person in any other capacity;

(g) Reference to any contract or agreement means such contract or agreement as amended, supplemented or modified from time to time in accordance with the terms thereof;

(h) All references to Articles, Sections, and Exhibits shall be deemed to be references to the Articles and Sections of this Agreement and the Exhibits attached hereto which are made a part hereof and incorporated herein by reference;

(i) The word "including" (and with correlative meaning "include") means including, without limiting the generality of any description preceding such term;

(j) With respect to the determination of any period of time, the word "from" means "from and including" and the words "to" and "until" each means "to but excluding";

(k) Reference to any Law means such Law as amended, modified, codified, reenacted, supplemented or superseded in whole or in part, and in effect from time to time;

(l) The word "knowledge", when used in any representation, covenant or warranty of either of the parties hereto contained herein, means the actual knowledge of any officer, director or member of senior management of, or other person performing similar functions for, such party;

(m) Where any provision of this Agreement refers to action to be taken by any person, or which such person is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by such person; and

(n) No provision of this Agreement shall be interpreted or construed against either of the parties hereto solely because that party or its legal representative drafted such provision.

[Signature Page Follows]

IN WITNESS WHEREOF, each of the parties hereto has duly executed this Asset Purchase Agreement as of the date first above written.

BUYER

_____, a _____ corporation

By: _____

Title: _____

SELLER

_____, a _____ corporation

By: _____

Title: _____

FOR THE PURPOSES OF SECTION 11.1 ONLY

LIST OF SCHEDULES

- 1.1(a) - Equipment
- 1.1(b) - Office Furniture
- 1.1(c) - Leases
- 1.1(d) - General Contracts
- 1.1(f) - Authorizations
- 1.1(g) - Intellectual Property
- 1.1(h) - Liquid Assets
- 1.3 - Excluded Assets
- 2 - Assumed Liabilities
- 4.4 - Required Government Consents
- 4.5 - Required Contract Consents
- 4.12 - Exceptions to Financial Statements
- 4.14 - Vendors and Customers
- 4.15 - Litigation
- 4.18(a) - List of Employees and Consultants
- 4.18(b) - Employment and Consulting Agreements
- 4.19(a) - Insurance Policies
- 4.19(b) - Insurance Notices
- 4.20 - Additional Assets Needed
- 4.22 - Other Contracts
- 9.1 - Allocation of Purchase Price

EXCLUDED ASSETS

1. Any and all cash, commercial paper, certificates of deposit and other bank deposits, treasury bills and other cash equivalents, accounts receivable and any and all equity interests owned by Seller in any person;
2. Any and all life insurance policies of officers and directors of Seller;
3. Any and all financial statements, tax returns and related guidelines;
4. Any and all refunds or credits, if any, of taxes (of any nature) paid by or due to or from Seller;
5. The minute books, stock transfer books and corporate seals of Seller;
6. Any and all rights (including indemnification) and claims and recoveries under litigation of Seller against third parties arising out of or relating to events prior to the Closing Date (except claims receivable for rejected Inventory);
7. Any and all rights of Seller with respect to refunds with respect to the cancellation of any insurance policies or contracts;
8. All records of Seller prepared in connection with the sale of the Business, including the bids and other information received from third parties in respect thereof and analyses relating to the Business;
9. Assets under any of the Plans which relate to employees of the Business who do not become Transferred Employees;
10. All rights related to Excluded Liabilities; and
11. Seller's rights under this Agreement and the documents referred to herein.
12. _____ copier - _____ model

EQUIPMENT

Schedule 1.1(a)

OFFICE FURNITURE

LEASES

GENERAL CONTRACTS

Schedule 1.1(d)

AUTHORIZATIONS

INTELLECTUAL PROPERTY

LIQUID ASSETS

ASSUMED LIABILITIES

REQUIRED GOVERNMENT CONSENTS

REQUIRED CONTRACT CONSENTS

VENDORS AND CUSTOMERS

EXCEPTIONS TO FINANCIAL STATEMENTS

LITIGATION

LIST OF EMPLOYEES AND CONSULTANTS

EMPLOYMENT AND CONSULTING AGREEMENTS

INSURANCE POLICIES

INSURANCE NOTICES

ADDITIONAL ASSETS NEEDED

OTHER CONTRACTS

ALLOCATION OF PURCHASE PRICE

Furniture, Equipment and Fixtures	\$ _____
Goodwill	\$ _____
TOTAL PURCHASE PRICE	\$ _____