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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

(Mark One)

☒ **Quarterly report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

For the quarterly period ended October 31, 2005

OR

☐ **Transition report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

Commission File Number: 0-14338

AUTODESK, INC.
(Exact name of registrant as specified in its charter)

Delaware	**94-2819853**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**

111 McInnis Parkway
San Rafael, California 94903
(Address of principal executive offices)

Telephone Number (415) 507-5000
(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days:

Yes ☒ No ☐

Indicate by check mark whether the registrant is an accelerated filer (as defined in Rule 12b-2 of the Securities Exchange Act of 1934).

Yes ☒ No ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Securities Exchange Act of 1934).

Yes ☐ No ☒

As of November 30, 2005, there were approximately 230.8 million shares of the Registrant's Common Stock outstanding.

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PART I. FINANCIAL INFORMATION

ITEM 1. FINANCIAL STATEMENTS

AUTODESK, INC.
CONDENSED CONSOLIDATED STATEMENTS OF INCOME
(In thousands, except per share data)
(Unaudited)

	Three Months Ended October 31,		Nine Months Ended October 31,	
	2005	2004	2005	2004
Net revenues:				
License and other	$304,402	$254,450	$ 910,145	$753,404
Maintenance	73,860	45,708	196,220	124,208
Total net revenues	378,262	300,158	1,106,365	877,612
Costs and expenses:				
Cost of license and other revenues	40,762	39,184	119,302	112,885
Cost of maintenance revenues	1,636	4,210	11,075	12,597
Marketing and sales	136,349	113,205	397,765	327,497
Research and development	74,034	59,942	212,881	176,165
General and administrative	32,444	26,837	92,789	76,856
Restructuring	—	2,922	—	14,889
Total costs and expenses	285,225	246,300	833,812	720,889
Income from operations	93,037	53,858	272,553	156,723
Interest and other income, net	3,167	2,801	9,011	7,396
Income before income taxes	96,204	56,659	281,564	164,119
Income tax (provision) benefit	(1,667)	17,411	(35,651)	(8,379)
Net income	$ 94,537	$ 74,070	$ 245,913	$155,740
Basic net income per share	$ 0.41	$ 0.33	$ 1.08	$ 0.69
Diluted net income per share	$ 0.38	$ 0.30	$ 0.99	$ 0.63
Shares used in computing basic net income per share	229,577	227,823	228,687	227,344
Shares used in computing diluted net income per share	249,462	248,045	247,979	245,492

See accompanying Notes to Condensed Consolidated Financial Statements.

AUTODESK, INC.
CONDENSED CONSOLIDATED BALANCE SHEETS
(In thousands)

	October 31, 2005	January 31, 2005
	(Unaudited)	(Audited)
ASSETS		
Current assets:		
Cash and cash equivalents	$ 390,878	$ 517,654
Marketable securities	157,062	15,038
Accounts receivable, net	201,769	196,827
Inventories	15,112	12,545
Deferred income taxes	68,896	14,250
Prepaid expenses and other current assets	26,069	25,483
Total current assets	859,786	781,797
Computer equipment, software, furniture and leasehold improvements, net	60,132	69,566
Purchased technologies and capitalized software, net	16,253	9,319
Goodwill	194,680	166,628
Deferred income taxes, net	141,425	105,061
Other assets	18,353	9,833
	$ 1,290,629	$ 1,142,204
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 62,483	$ 46,234
Accrued compensation	101,980	140,622
Accrued income taxes	40,257	41,549
Deferred revenues	210,684	178,701
Other accrued liabilities	48,019	61,234
Total current liabilities	463,423	468,340
Deferred revenues	32,440	15,528
Other liabilities	17,665	10,258
Commitments and contingencies		
Stockholders' equity:		
Preferred stock	—	—
Common stock and additional paid-in capital	752,748	625,225
Accumulated other comprehensive loss	(7,661)	(2,843)
Deferred compensation	(307)	(269)
Retained earnings	32,321	25,965
Total stockholders' equity	777,101	648,078
	$ 1,290,629	$ 1,142,204

See accompanying Notes to Condensed Consolidated Financial Statements.

AUTODESK, INC.
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)
(Unaudited)

	Nine Months Ended October 31,	
	2005	2004
Operating Activities		
Net income	$ 245,913	$ 155,740
Adjustments to reconcile net income to net cash provided by operating activities:		
Charges for acquired in-process research & development	1,200	—
Depreciation and amortization	33,812	38,581
Stock compensation expense	392	2,915
Net loss on fixed asset disposals	52	321
Tax benefits from employee stock plans	103,545	91,414
Restructuring related charges, net	—	4,773
Changes in operating assets and liabilities	(83,748)	(64,318)
Net cash provided by operating activities	301,166	229,426
Investing Activities		
Net (purchases) sales and maturities of available-for-sale marketable securities	(142,010)	105,238
Capital and other expenditures	(15,318)	(29,291)
Business combinations, net of cash acquired	(52,677)	(11,750)
Other investing activities	79	(1,487)
Net cash (used in) provided by investing activities	(209,926)	62,710
Financing Activities		
Proceeds from issuance of common stock, net of issuance costs	127,110	211,456
Repurchases of common stock	(339,714)	(400,066)
Dividends paid	(3,406)	(10,146)
Net cash used in financing activities	(216,010)	(198,756)
Effect of exchange rate changes on cash and cash equivalents	(2,006)	1,519
Net increase (decrease) in cash and cash equivalents	(126,776)	94,899
Cash and cash equivalents at beginning of year	517,654	282,249
Cash and cash equivalents at end of period	$ 390,878	$ 377,148
Supplemental cash flow information:		
Net cash paid during the period for income taxes	$ 23,522	$ 12,123
Supplemental non-cash investing activity:		
Accounts receivable and other receivable reductions as partial consideration in business combinations	$ 2,371	$ —

See accompanying Notes to Condensed Consolidated Financial Statements.

AUTODESK, INC.
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(In thousands, except share and per share data)

1. Basis of Presentation

The accompanying unaudited condensed consolidated financial statements of Autodesk, Inc. ("Autodesk" or the "Company") as of October 31, 2005 and for the three and nine months ended October 31, 2005 have been prepared in accordance with accounting principles generally accepted in the United States for interim financial information along with the instructions to Form 10-Q and Article 10 of Securities and Exchange Commission ("SEC") Regulation S-X. Accordingly, they do not include all of the information and notes required by generally accepted accounting principles ("GAAP") for annual financial statements. In the opinion of management, all adjustments consisting of normal and recurring entries considered necessary for a fair presentation of the financial position and operating results for the interim periods presented have been included. The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect reported amounts in the financial statements and accompanying notes. These estimates are based on information available as of the date of the unaudited condensed consolidated financial statements. Actual results could differ from those estimates. In addition, the results of operations for the three and nine months ended October 31, 2005 are not necessarily indicative of the results for the entire fiscal year ending January 31, 2006 or for any other period. These unaudited condensed financial statements should be read in conjunction with the consolidated financial statements and related notes, together with management's discussion and analysis of financial position and results of operations contained in Autodesk's fiscal 2005 Annual Report on Form 10-K.

Autodesk reclassified its January 31, 2005 Condensed Consolidated Balance Sheet, conforming it to current year presentation, to properly reflect the long-term portions of certain foreign pension liabilities and restructuring reserves from current liabilities to other liabilities.

2. Recently Issued Accounting Standards

In December 2004, the FASB issued Statement of Financial Accounting Standards No. 123 – revised 2004, "Share-Based Payment" ("SFAS 123R") which replaces Statement of Financial Accounting Standards No. 123 ("SFAS 123") and supersedes APB Opinion No. 25, "Accounting for Stock Issued to Employees." SFAS 123R requires the measurement of all share-based payments to employees, including grants of employee stock options, using a fair-value based method and the recording of such expense in the Company's consolidated statements of income. Autodesk is required to adopt SFAS 123R starting in the first quarter of fiscal 2007. The pro forma disclosures previously permitted under SFAS 123 will no longer be an alternative to financial statement recognition. See Note 4, "Employee Stock Compensation," for the pro forma net income and net income per share amounts for the three and nine months ended October 31, 2005 and 2004, as if the Company had used a fair-value based method similar to the methods required under SFAS 123R to measure compensation expense for employee stock awards. Autodesk believes the adoption of SFAS 123R will result in amounts that are similar to the current pro forma disclosures under SFAS 123 and that the adoption of SFAS 123R will have a material adverse effect on Autodesk's consolidated statements of income and net income per share. This estimated impact is contingent upon many factors including, but not limited to, the Company's market value of its common stock on the date future options are granted.

3. Concentration of Credit Risks and Significant Customers

During the three and nine months ended October 31, 2005, sales to a single distributor represented 11% of Autodesk's total net revenues in each period. During fiscal 2005, sales to this same distributor represented 11% of Autodesk's total net revenues for the three months ended October 31, 2004 and 12% for the nine months ended October 31, 2004. In addition, gross accounts receivable due from this distributor represented 14% and 16% at October 31, 2005 and January 31, 2005, respectively.

4. Employee Stock Compensation

Autodesk accounts for employee stock options using the intrinsic value method of accounting in accordance with Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees" ("APB 25"), as permitted by SFAS 123. As such, no compensation expense is recognized in Autodesk's Condensed Consolidated Statements of Income, other than for stock awards that have exercise prices less than the fair market value of Autodesk's common stock at the date of grant.

The following table illustrates the effect on net income and net income per share if Autodesk had applied the fair value recognition provisions of SFAS 123 to stock-based employee compensation. For purposes of computing pro forma net income, the estimated fair value of options is amortized to expense on a straight-line basis over the options' vesting period. Autodesk utilizes the Black-Scholes option pricing model to compute pro forma net income.

	Three Months Ended October 31,		Nine Months Ended October 31,	
	2005	2004	2005	2004
Net income – as reported	$ 94,537	$ 74,070	$245,913	$155,740
Add: Stock-based employee compensation cost, net of related tax effects, included in the determination of net income as reported	106	2,026	314	2,312
Deduct: Total stock-based employee compensation cost determined under the fair-value based method for all awards, net of related tax effects	(16,450)	(16,559)	(53,856)	(42,806)
Pro forma net income	$ 78,193	$ 59,537	$192,371	$115,246
Net income per share:				
Basic – as reported	$ 0.41	$ 0.33	$ 1.08	$ 0.69
Basic – pro forma	$ 0.34	$ 0.26	$ 0.84	$ 0.51
Diluted – as reported	$ 0.38	$ 0.30	$ 0.99	$ 0.63
Diluted – pro forma	$ 0.32	$ 0.24	$ 0.78	$ 0.48

During the third quarter of fiscal 2006, Autodesk revised its approach to estimating expected volatility on its stock awards granted during the quarter. Expected volatility is one of several assumptions in the Black-Scholes-Merton model used by Autodesk to make an estimate of the fair value of options granted under the Company's stock plans and the rights to purchase shares under the employee stock purchase plan. Prior to the third quarter of fiscal 2006, Autodesk estimated expected volatility solely based on historical stock volatility. Under its current method of estimating expected volatility, Autodesk has considered both the historical volatility in the trading market for its common stock as well as the implied volatility of tradable forward call options to purchase shares of its common stock. The Company believes this approach results in a better estimate of expected volatility.

During the fourth quarter of fiscal 2005, Autodesk modified its approach and updated certain assumptions with respect to determining the estimated fair value of shares granted under the employee qualified stock purchase plan to account for modifications to employee withholdings and the two-year offering period of the plan. The pro forma charges for the three and nine months ended October 31, 2004 have been revised and reflect a decrease of less than $0.1 million and an increase of $0.6 million, respectively, from amounts previously reported for those periods.

5. Income Taxes

During the three months ended October 31, 2005, Autodesk recognized a one-time income tax benefit of $17.6 million. Of this amount, $10.6 million relates to foreign withholding taxes previously accrued which are no longer due, as part of the repatriation of foreign earnings under the American Jobs Creation Act of 2004 ("DRD Legislation"). The remaining $7.0 million related to the lapse of the statute of limitations with respect to certain federal and foreign tax years. During the three months ended July 31, 2005, the Company recognized a one-time income tax benefit of $1.9 million related to an IRS technical correction of the DRD Legislation. During the first quarter of fiscal 2006, Autodesk recognized a one-time income tax benefit of $1.2 million as a result of the resolution and closure of the Company's Franchise Tax Board audit for fiscal 2000 as well as the closure and lapse of the statute of limitations with respect to certain foreign tax years. Absent the impact of these tax benefits, Autodesk's effective income tax rate was 20% in the three and nine months ended October 31, 2005. The effective tax rate for fiscal 2006 is less than the federal statutory rate of 35% due to the extraterritorial income exclusion ("ETI exclusion"), deduction for Domestic Production Activities, research credits, tax benefits from low taxed foreign earnings and the DRD Legislation.

During the three and nine months ended October 31, 2004, Autodesk recognized one-time income tax benefits of $15.5 million related to the DRD legislation and $8.9 million related to income tax audit closures in the third quarter of fiscal 2005. Absent the impact of these tax benefits, Autodesk's effective income tax rate was 20% in the three and nine months ended October 31, 2004. In addition, during the third quarter of fiscal 2005, Autodesk reduced its projected tax rate from 24% to 20% as a result of the new DRD legislation along with the belief that current year foreign earnings of certain subsidiaries will be taxed at a rate lower than previously projected. As a result, Autodesk recorded a cumulative catch-up adjustment of $4.3 million to its tax provision in the third quarter of fiscal 2005 to account for the reduction of its effective tax rate. The effective tax rate for fiscal 2005 is less than the federal statutory rate of 35% due to the ETI exclusion, research credits, tax-exempt interest, tax benefits from low taxed foreign earnings and the DRD legislation.

At October 31, 2005, Autodesk had net deferred tax assets of $210.3 million. Realization of these assets is dependent on its ability to generate approximately $610 million of future taxable income in appropriate tax jurisdictions. The Company believes that sufficient income will be earned in the future to realize these assets.

6. Restricted Financial Instruments

At October 31, 2005, Autodesk had marketable securities totaling $157.1 million, of which $21.5 million related to investments in debt and equity securities that are restricted and held in a rabbi trust under non-qualified deferred compensation plans. The value of restricted assets held in the rabbi trust at January 31, 2005 amounted to $14.3 million. Of the total related deferred compensation liability of $21.5 million at October 31, 2005, $14.8 million was classified as current and $6.7 million was classified as non-current liabilities. The related deferred compensation liability at January 31, 2005 of $14.3 million was classified as current liability. The current and non-current portions of the liability are recorded in the Condensed Consolidated Balance Sheet under "Accrued compensation" and "Other liabilities", respectively.

7. Inventories

Inventories consisted of the following:

	October 31, 2005	January 31, 2005
Raw materials and finished goods, net	$ 12,667	$ 8,256
Demonstration inventory, net	2,445	4,289
	$ 15,112	$ 12,545

Inventories are stated at the lower of standard cost (determined on the first-in, first-out method) or market. Autodesk evaluates quantities on hand and estimates excess and obsolete inventory levels in determining the lower of standard cost or market.

8. Computer Equipment, Software, Furniture and Leasehold Improvements

Computer equipment, software, furniture and leasehold improvements and the related accumulated depreciation were as follows:

	October 31, 2005	January 31, 2005
Computer equipment, software and furniture	$ 203,103	$ 191,656
Leasehold improvements	33,360	32,586
Less: Accumulated depreciation and amortization	(176,331)	(154,676)
	$ 60,132	$ 69,566

9. Purchased Technologies and Capitalized Software

Purchased technologies, capitalized software and the related accumulated amortization were as follows:

	October 31, 2005	January 31, 2005
Purchased technologies	$ 149,908	$ 137,108
Capitalized software	21,780	21,780
	171,688	158,888
Less: Accumulated amortization	(155,435)	(149,569)
Purchased technologies and capitalized software, net	$ 16,253	$ 9,319

Expected future amortization expense for purchased technologies and capitalized software for the remainder of fiscal 2006 and for each of the fiscal years thereafter is as follows:

Period ending January 31,	
2006 – remaining three months	$ 1,453
2007	5,526
2008	4,456
2009	2,936
2010	1,382
2011	500
Total	$16,253

10. Goodwill

The changes in the carrying amount of goodwill during the nine months ended October 31, 2005 are as follows:

	Design Solutions	Media and Entertainment	Total
Balance as of January 31, 2005	$159,063	$ 7,565	$166,628
Additions arising from acquisitions	18,672	9,380	28,052
Balance as of October 31, 2005	$177,735	$ 16,945	$194,680

During the first nine months of fiscal 2006, Autodesk's goodwill balance increased primarily due to the acquisitions of c-plan AG, Colorfront Ltd. and Compass Systems GmbH. See Note 18, "Business Combinations," for a description of these acquisitions.

11. Restructuring Reserves

During the fourth quarter of fiscal 2004, the Board of Directors approved a restructuring plan that resulted in the elimination of 402 positions and the closure of a number of offices worldwide with a total cost of $27.5 million ("Fiscal 2004 Plan"). This plan was designed to improve efficiencies across the organization, reduce operating expense levels to help achieve the Company's targeted operating margins and redirect resources to product development, sales development and other critical areas. Of the $27.5 million, $23.4 million was attributable to one-time termination benefits including severance benefits, medical benefits and outplacement costs. In addition, approximately $4.0 million of the restructuring charges was attributable to lease termination costs, which include losses on operating leases as well as the impairment of related leasehold improvements and equipment. The actions approved under the Fiscal 2004 Plan were completed during the fourth quarter of fiscal 2005. Autodesk estimates that the remaining outstanding liabilities for employee termination costs will be fully paid or substantially settled by the end of fiscal 2006. The remaining outstanding lease termination costs relate to operating lease agreements expiring between the fourth quarter of fiscal 2006 and the fourth quarter of fiscal 2012.

During the second quarter of fiscal 2002, the Board of Directors approved a formal restructuring plan that included employee terminations and the closure of certain facilities worldwide ("Fiscal 2002 Plan"). This plan was designed to reduce the Company's overall operating expense levels. The actions approved under the Fiscal 2002 Plan were completed during the first half of fiscal 2003. The remaining outstanding liabilities relate to on-going lease termination costs for outstanding operating lease agreements expiring between the fourth quarter of fiscal 2006 and the fourth quarter of fiscal 2015.

The following table sets forth the restructuring activities during the nine months ended October 31, 2005.

	Balance at January 31, 2005	Additions	Charges Utilized	Reversals	Balance at October 31, 2005
Fiscal 2004 Plan					
Lease termination costs	$ 2,020	$ —	$1,081	$ —	$ 939
Employee termination costs	4,311	—	4,002	—	309
Fiscal 2002 Plan					
Lease termination costs	6,740	—	1,849	—	4,891
Total	$ 13,071	$ —	$6,932	$ —	$ 6,139
Current portion [1]	$ 7,466				$ 2,160
Non-current portion [1]	5,605				3,979
Total	$ 13,071				$ 6,139

[1] The current and non-current portion of the reserves are recorded in the Condensed Consolidated Balance Sheet under "Other accrued liabilities" and "Other liabilities", respectively.

An analysis of the Fiscal 2004 Plan by reportable segment is included in Note 16, "Segments."

12. Commitments and Contingencies

Guarantees and Indemnifications

In the normal course of business, Autodesk provides indemnifications of varying scopes, including limited product warranties and indemnification of customers against claims of intellectual property infringement made

by third parties arising from the use of its products or services. Autodesk accrues for known warranty and indemnification issues if a loss is probable and can be reasonably estimated. Historically, costs related to these warranties and indemnifications have not been significant, but because potential future costs are highly variable, Autodesk is unable to estimate the maximum potential impact of these indemnities or guarantees on its future results of operations.

In connection with the purchase, sale or license transactions of assets or businesses with third parties, Autodesk has entered into or assumed customary indemnity agreements related to the assets or businesses purchased, sold or licensed. Historically, costs related to these indemnities or guarantees have not been significant, but because potential future costs are highly variable, Autodesk is unable to estimate the maximum potential impact of these indemnities or guarantees on its future results of operations.

As permitted under Delaware law, Autodesk has agreements whereby it indemnifies its officers and directors for certain events or occurrences while the officer or director is, or was, serving at Autodesk's request in such capacity. The maximum potential amount of future payments Autodesk could be required to make under these indemnification agreements is unlimited; however, Autodesk has Directors' and Officers' Liability insurance coverage that is intended to reduce its financial exposure and may enable Autodesk to recover a portion of any future amounts paid. Autodesk believes the estimated fair value of these indemnification agreements in excess of applicable insurance coverage is minimal.

Legal Proceedings

The following is a summary of material pending matters for which there were material developments for the three month period ended October 31, 2005. For a summary of other material current or pending legal proceedings, please refer to Autodesk's fiscal 2005 Form 10-K and Autodesk's quarterly report on Form 10-Q dated July 31, 2005 on file with the SEC.

On August 26, 2005, Telstra Corporation Limited ("Telstra") filed suit in the Federal Court of Australia, Victoria District Registry against Autodesk Australia Pty Ltd. ("AAPL") seeking partial indemnification for claims filed against Telstra by SpatialInfo Pty Limited relating to Telstra's use of certain software in the management of its computer based cable plant records system. At a hearing on October 26, 2005, SpatialInfo received permission from the court to add AAPL as a defendant to its lawsuit against Telstra. Autodesk is currently investigating the allegations and intends to vigorously defend the case. Autodesk cannot determine the expected impact, if any, on its financial position, results of operation or cash flows at this time.

In connection with the Company's anti-piracy program, designed to enforce copyright protection of its software and conducted both internally and through the Business Software Alliance ("BSA"), from time to time it undertakes litigation against alleged copyright infringers or provide information to criminal justice authorities to conduct actions against alleged copyright infringers. Such lawsuits have lead to counter claims alleging improper use of litigation or violation of other local law and have recently increased in frequency, especially in Latin America. On March 1, 2002, Consultores en Computación y Contabilidad, S.C., a Mexican hardware/software reseller and its principals (collectively, "CCC") filed a lawsuit in the Mexico Court in the First Civil Court of the Federal District, against, Autodesk, Adobe Systems, Microsoft and Symantec (all members of the BSA and collectively the "Defendants"). CCC had been the target of a criminal anti-piracy enforcement action carried out by the Mexican police authorities on August 11, 1998 on the basis of a complaint filed by the Defendants in 1997 based on evidence provided to the Defendants that CCC had engaged in software piracy of the Defendants' products. CCC alleged in the lawsuit that it had suffered $100 million in damages to its reputation as a result of the enforcement action, known as "moral damages." CCC did not claim economic damages. On November 11, 2002, the trial court judge ruled in favor of the Defendants, holding that no moral damage occurred, since CCC was unable to prove the illegal nature of the Defendants' actions. After subsequent appeals, all of which were won by the Defendants, a court of appeals held that the Defendants were liable to CCC for "moral" damages, and the court remanded the case to the First Civil Court for a determination of the amount. On September 9, 2005,

CCC filed a damages claim with the First Civil Court, increasing its claim to an amount that has been estimated up to $1.2 billion. Autodesk believes the damages claim has meritorious defenses and is vigorously defending against it. The timing of any final resolution is unknown. Autodesk cannot determine the expected impact, if any, on its financial position, results of operation or cash flows at this time.

In addition, Autodesk is involved in legal proceedings from time to time arising from the normal course of business activities including claims of alleged infringement of intellectual property rights, commercial, employment, piracy prosecution and other matters. In the Company's opinion, resolution of pending matters is not expected to have a material adverse impact on its consolidated results of operations, cash flows or its financial position. However, it is possible that an unfavorable resolution of one or more such proceedings could in the future materially affect the Company's future results of operations, cash flows or financial position in a particular period.

13. Changes in Stockholders' Equity

During the nine months ended October 31, 2005, Autodesk repurchased and retired 9.2 million shares of its common stock at an average repurchase price of $36.82 per share. As a result, common stock and additional paid-in capital and retained earnings were reduced for the nine months ended October 31, 2005 by $103.6 million and $236.1 million, respectively.

14. Comprehensive Income

The changes in the components of other comprehensive income, net of taxes, were as follows:

	Three Months Ended October 31,		Nine Months Ended October 31,	
	2005	2004	2005	2004
Net income	$94,537	$74,070	$245,913	$155,740
Other comprehensive income (loss), net of tax:				
Change in net unrealized gains and losses on available-for-sale securities	—	186	—	(1,197)
Net change in cumulative foreign currency translation adjustment	826	4,903	(4,818)	1,519
Other comprehensive income (loss)	826	5,089	(4,818)	322
Total comprehensive income	$95,363	$79,159	$241,095	$156,062

15. Net Income Per Share

The following table sets forth the computation of the numerators and denominators used in the basic and diluted net income per share amounts:

	Three Months Ended October 31,		Nine Months Ended October 31,	
	2005	2004	2005	2004
Numerator:				
Numerator for basic and diluted net income per share – net income	$ 94,537	$ 74,070	$245,913	$155,740
Denominator:				
Denominator for basic net income per share – weighted average shares	229,577	227,823	228,687	227,344
Effect of dilutive common stock options	19,885	20,222	19,292	18,148
Denominator for dilutive net income per share	249,462	248,045	247,979	245,492

For both the three months ended October 31, 2005 and 2004, options to purchase 0.1 million weighted average shares were excluded from the computation of diluted net income per share. For the nine months ended October 31, 2005 and 2004, options to purchase 0.1 million weighted average shares and 0.4 million weighted average shares, respectively, were excluded from the computation of diluted net income per share. These options were excluded in the computation of basic and diluted net income per share because they had exercise prices greater than the average market prices of common stock during the respective periods and therefore were not dilutive.

16. Segments

Autodesk's operating results are aggregated into two reportable segments: the Design Solutions Segment and the Media and Entertainment Segment. The Location Services Division, which is not included in either reportable segment, is reflected as Other.

The Design Solutions Segment derives revenues from the sale of design software products and services for professionals or consumers who design, build, manage and own building projects or manufactured goods and from the sale of mapping and geographic information systems technology to public and private users. The Design Solutions Segment consists primarily of the following business divisions: Manufacturing Solutions Division, Business Solutions Division, Infrastructure Solutions Division and the Platform Technology Division and Other, which includes Autodesk Collaboration Services. Total sales of AutoCAD and AutoCAD LT (2D design products) accounted for 43% and 41% of consolidated net revenues during the three months ended October 31, 2005 and 2004, respectively. These products accounted for 44% of consolidated net revenues during both the nine months ended October 31, 2005 and 2004. Total sales of 3D design products (Autodesk Inventor products, Autodesk Revit Building products and Autodesk Civil 3D) accounted for 19% and 15% of consolidated net revenues during the three months ended October 31, 2005 and 2004, respectively. These products accounted for 18% and 14% of consolidated net revenues during the nine months ended October 31, 2005 and 2004, respectively.

The Media and Entertainment Segment derives revenues from the sale of its products to creative professionals for a variety of applications, including feature films, television programs, commercials, music and corporate videos, game production, web design and interactive web streaming.

Both reportable segments distribute their respective products primarily through authorized dealers and distributors, and, to a lesser extent, through direct sales to end-users.

Autodesk evaluates each segment's performance on the basis of income from operations before income taxes. Autodesk currently does not separately accumulate and report asset information by segment, except for goodwill, which is disclosed in Note 10, "Goodwill." Information concerning the operations of Autodesk's reportable segments is as follows:

	Three Months Ended October 31,		Nine Months Ended October 31,	
	2005	2004	2005	2004
Net revenues:				
Design Solutions	$333,789	$256,410	$ 972,754	$ 758,977
Media and Entertainment	42,903	43,096	129,253	117,404
Other	1,570	652	4,358	1,231
	$378,262	$300,158	$1,106,365	$ 877,612
Income (loss) from operations:				
Design Solutions	$161,359	$114,909	$ 467,922	$ 343,383
Media and Entertainment	5,495	7,049	23,370	17,152
Unallocated amounts [1]	(73,817)	(68,100)	(218,739)	(203,812)
	$ 93,037	$ 53,858	$ 272,553	$ 156,723

[1] Unallocated amounts primarily relate to corporate expenses and other costs and expenses that are managed outside the reportable segments.

Net revenues attributable to the major divisions within the Design Solutions Segment are as follows:

	Three Months Ended October 31,		Nine Months Ended October 31,	
	2005	2004	2005	2004
Net revenues:				
Platform Technology Division and other	$ 181,261	$ 141,118	$ 539,135	$ 429,585
Manufacturing Solutions Division	63,306	50,450	182,532	139,563
Building Solutions Division	45,097	29,062	125,250	84,976
Infrastructure Solutions Division	44,125	35,780	125,837	104,853
	$ 333,789	$ 256,410	$ 972,754	$ 758,977

Information regarding Autodesk's operations by geographic area is as follows:

	Three Months Ended October 31,		Nine Months Ended October 31,	
	2005	2004	2005	2004
Net revenues:				
U.S.	$ 135,406	$ 116,808	$ 366,378	$ 318,148
Other Americas	24,856	20,193	65,751	55,487
Total Americas	160,262	137,001	432,129	373,635
Europe, Middle East and Africa	133,430	95,825	408,122	303,520
Japan	35,632	30,266	125,627	100,007
Other Asia/Pacific	48,938	37,066	140,487	100,450
Total Asia/Pacific	84,570	67,332	266,114	200,457
Total net revenues	$ 378,262	$ 300,158	$ 1,106,365	$ 877,612

The following table sets forth the Fiscal 2004 Plan activities that relate to each reportable segment during the nine months ended October 31, 2005.

	Design Solutions Segment		Media and Entertainment Segment		Unallocated Amounts		
	Office Closure Costs	Employee Termination Costs	Office Closure Costs	Employee Termination Costs	Office Closure Costs	Employee Termination Costs	Total
Balance at January 31, 2005	$ 942	$ 1,497	$ 803	$ 534	$ 275	$ 2,280	$ 6,331
Additions	—	—	—	—	—	—	—
Charges utilized	(753)	(1,281)	(245)	(534)	(83)	(2,187)	(5,083)
Balance at October 31, 2005	$ 189	$ 216	$ 558	$ —	$ 192	$ 93	$ 1,248

Since the inception of the Fiscal 2004 Plan, the Design Solutions Segment and the Media and Entertainment Segment recorded restructuring charges totaling $11.5 million and $7.0 million, respectively.

17. Financial Instruments

Autodesk uses derivative instruments to manage its earnings and cash flow exposures due to fluctuations in foreign currency exchange rates. Under its risk management strategy, Autodesk uses foreign currency forward and option contracts to manage its exposures of underlying assets, liabilities and other obligations, which exist as part of the ongoing business operations. These foreign currency instruments have maturities of less than three months. Autodesk's general practice is to hedge a majority of its short-term foreign exchange transaction exposures. Contracts are primarily denominated in euros, Swiss francs, Canadian dollars, British pounds and Japanese yen. Autodesk does not enter into any foreign exchange derivative instruments for trading or speculative purposes.

Forwards

Autodesk's forward contracts, which are not designated as hedging instruments under Statement of Financial Accounting Standards No. 133, "Accounting for Derivative Instruments and Hedging Activities" ("SFAS 133"), have average maturities of less than three months. The forward contracts are used to reduce the exchange rate risk associated primarily with receivables and payables. Forward contracts are marked-to-market at the end of each reporting period, with gains and losses recognized as other income or expense to offset the gains or losses resulting from the settlement of the underlying foreign currency denominated receivables and payables.

The notional amounts of foreign currency forward contracts were $24.1 million at October 31, 2005 and $36.2 million at January 31, 2005. While the contract or notional amount is often used to express the volume of foreign exchange contracts, the amounts potentially subject to credit risk are generally limited to the amounts, if any, by which the counterparties' obligations under the agreements exceed the obligations of Autodesk to the counterparties.

Options

In addition to the forward contracts, Autodesk utilizes foreign currency option collar contracts to reduce the exchange rate impact on the net revenue of certain anticipated transactions. These option contracts, which are designated and documented as cash flow hedges and qualify for hedge accounting treatment under SFAS 133, have maturities of less than three months. For cash flow hedges, derivative gains and losses included in comprehensive income are reclassified into earnings at the time the forecasted revenue is recognized or the option expires. The cost of these foreign currency option collars are recorded as other current assets and other accrued liabilities on the Company's condensed consolidated balance sheets.

The notional amounts of foreign currency option contracts were $78.1 million at October 31, 2005 and $52.4 million at January 31, 2005, and the critical terms were generally the same as those of the underlying exposure. Gains, if any, from the effective portion of the option contracts, as determinable under SFAS 133, are recognized as net revenues, while the ineffective portion of the option contract is recorded in interest and other income, net. There were no net settlement gains or losses recorded as net revenues during the three months ended October 31, 2005 and $1.7 million in net settlement gains during the nine months ended October 31, 2005. There were no settlement gains or losses during the three months ended October 31, 2004. Net settlement gains recorded as net revenues were $0.2 million during the nine months ended October 31, 2004. Amounts associated with the cost of the options, which were recorded in interest and other income, net, totaled $0.2 million during both the three months ended October 31, 2005 and October 31, 2004. Cost of the options during both of the nine months ended October 31, 2005 and October 31, 2004 totaled $0.6 million.

18. Business Combinations

The following acquisitions were accounted for under Statement of Financial Accounting Standards No. 141, "Business Combinations." Accordingly, the results of operations for each business acquired are included in the accompanying condensed consolidated statements of income since their acquisition dates, and the related assets and liabilities were recorded based upon their relative fair values at their respective acquisition dates. Pro forma results of operations have not been presented because the effects of the acquisitions were not significant to Autodesk.

c-plan AG ("c-plan")

On June 17, 2005, Autodesk acquired c-plan, a privately-held Swiss company, for $24.1 million. Of this amount, $2.2 million is payable over two years and is contingent on the continued employment of key employees. This amount will be recorded as compensation expense in future periods as it is incurred. Autodesk intends to incorporate c-plan's family of geospatial applications and data management solutions into its Infrastructure Lifecycle Management solution offerings.

Management's preliminary allocation of the purchase consideration, based on a valuation of the acquired assets and liabilities performed in part by a third-party appraiser, is as follows:

Net tangible assets	$ 8,255
Developed technology (5 year useful life)	4,200
Customer relationships (6 year useful life)	2,600
Trade name (2 year useful life)	160
Goodwill	6,995
Deferred revenue	(315)
	$21,895

The goodwill balance of $7.0 million was assigned to the Infrastructure Solutions Division of Autodesk's Design Solutions Segment and is not deductible for tax purposes. This asset is attributed to the premium paid for the established data management products.

The deferred revenue balance of $0.3 million reflects the estimated fair value of the support obligation assumed from c-plan in connection with the acquisition. The Company estimates that the support obligation assumed from c-plan will be fulfilled by the end of fiscal 2006.

Colorfront Ltd. ("Colorfront")

On June 15, 2005, Autodesk acquired certain assets of Colorfront Ltd., a developer of color correction technology for film studios and digital film laboratories, for $15.2 million. Of this amount, $0.7 million is

payable over the next year and is contingent upon the continued employment of a key employee. This amount will be allocated to future compensation expense in the period in which it is incurred. In addition, $0.5 million was recorded as royalty expense during the quarter related to the settlement of a pre-existing royalty agreement with Colorfront.

This acquisition is intended to provide Autodesk with comprehensive new expertise in film laboratory processes, digital post-production, color science, image processing and hardware platform optimization.

Management's allocation of the purchase consideration, which is based on valuations of acquired assets performed by a third-party appraiser, is as follows:

Developed technology (4 year useful life)	$ 3,100
In-process research and development ("IPR&D")	1,200
Customer relationships (3.5 year useful life)	220
Goodwill	9,380
Net tangible assets	100
	$14,000

The value assigned to IPR&D, which was expensed during the current quarter, was determined by identifying projects in areas where technological feasibility had not been achieved and alternative future uses did not exist.

The goodwill balance of $9.4 million, which is deductible for tax purposes, was assigned to the Media and Entertainment Segment. This acquired asset relates to the premium paid for Colorfront's color correction technology, which provides Autodesk with further long-term growth opportunities in the digital film industry.

Compass Systems GmbH ("Compass")

On March 31, 2005, Autodesk acquired certain assets of Compass Systems GmbH ("Compass"), the European-based developer of the Compass family of data management solutions, for $16.5 million. The acquisition is intended to allow Autodesk to more quickly expand its data management solution and deliver on its plans to provide a comprehensive data management solution for small- and medium-size manufacturers. Immediately prior to the acquisition, Compass was owned 50.1% by one of Autodesk's largest resellers.

Management's allocation of the purchase consideration, based on a valuation of acquired assets and liabilities performed in-part by a third-party appraiser, is as follows:

Developed technology (3 year useful life)	$ 3,700
Customer relationships (7 year useful life)	6,550
Backlog	170
Goodwill	5,765
Net tangible assets	357
	$16,542

The goodwill balance of $5.8 million was assigned to the Manufacturing Solutions Division of Autodesk's Design Solutions Segment and is deductible for tax purposes. This asset is attributed to the premium paid for the electronic data management and product data management channel expertise which provides an opportunity for Autodesk to enhance its growth in these markets.

19. Pending Business Combination

During October 2005, Autodesk entered into a definitive agreement to acquire Alias Systems Holdings, Inc. ("Alias"), a privately held developer of 3D graphics technology, for approximately $182 million in cash, subject to an adjustment based on the net working capital of Alias at the time of closing. This acquisition is currently expected to close either late in the fourth quarter of fiscal 2006 or early in the first quarter of fiscal 2007, subject to certain regulatory review and approval and completion of customary closing conditions. Autodesk expects this acquisition to grow its expertise and offerings for the consumer products and automotive design markets as well as for the media and entertainment market.

ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The discussion in our Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") contains trend analyses and other forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. Forward-looking statements consist of, among other things, statements regarding the expected timing of consummation, and financial impact, of the Alias acquisition, the expected impact on Autodesk's consolidated income and net income per share of the adoption of SFAS 123R in the first quarter of fiscal 2007, anticipated future operating margins, net revenues, product backlog, upgrade and maintenance revenues, costs and expenses, including cost of revenues and operating expenses, allowance for bad debts, future income, level of product returns, planned annual release cycles, continuation of our share repurchase program, and short-term and long-term cash requirements, as well as statements involving trend analyses and statements including such words as "we believe" and "plan" and similar expressions. These forward-looking statements are subject to business and economic risks. As such, our actual results could differ materially from those set forth in the forward-looking statements as a result of the factors set forth below, in "Risk Factors Which May Impact Future Operating Results" and in our other reports filed with the Securities and Exchange Commission ("SEC").

Strategy

Our goal is to be the world's leading design software and services company for the building, manufacturing, infrastructure, media and entertainment, and wireless location based services fields. Our focus is to help customers create, manage and share their data and digital assets more effectively and improve efficiencies across the entire lifecycle management process.

We believe that our ability to make technology available to mainstream markets is one of our competitive advantages. By innovating in existing technology categories, we bring powerful design products to volume markets. Our architecture allows for extensibility and integration. Our products are designed to be easy to learn and use, and to provide customers low cost of deployment, low total cost of ownership and a rapid return on investment.

We have created a large global community of resellers, third-party developers and customers, which provides us with a broad reach into volume markets. Our reseller network is extensive, which provides our customers with global resources for the purchase and support of our products as well as resources for effective and cost efficient training services. We have a significant number of registered third-party developers, creating products that run on top of our products, further extending our reach into volume markets. Our installed base of millions of users has made Autodesk products a worldwide design software standard. Users trained on Autodesk products are broadly available both from universities and the existing work force, reducing the cost of training for our customers.

Our growth strategy derives from these core strengths. We continue to increase the business value of our desktop design tools for our customers in a number of ways. We improve the performance and functionality of existing products with each new release, and we have increased the frequency of our releases. Beyond our horizontal design products, we develop products addressing specific vertical market needs. In addition, we believe that migration from our 2D products to our higher priced 3D products presents a significant growth opportunity. While the rate of migration to 3D varies from industry to industry, adoption of 3D design software should increase the productivity of our customers and result in richer design data. However, this migration also poses various risks to us. In particular, if we do not successfully convert our 2D customer base to our 3D products as expected, and sales of our 2D products decrease without a corresponding increase in customer seats of our 3D products, we would not realize the growth we expect and our business would be adversely affected.

Longer term, once the mainstream market has migrated to 3D design, we believe the richer design data created by our 3D products requires better tools for design information management, also known as lifecycle management. We believe that for each author of design information, there are multiple users of that information

downstream. As a result, we are developing and introducing products that will allow downstream users, both within and external to our customer enterprises, to manage and share their designs. Our large installed base provides a unique opportunity to sell additional products to design and engineering departments and to expand our customer base from these design and engineering departments to adjacent departments and into the supply chain.

Expanding our geographic coverage is a key element of our growth strategy. We believe that rapidly growing economies, including those of China, India and Eastern Europe, present significant growth opportunities for the Company. In support of our growth efforts in China, we opened our China Application Development Center (the "Center") during fiscal 2004. With a level of understanding of local markets that could not be obtained from remote operations, the Center develops both products for the worldwide market as well as products to specifically address the Chinese market. In addition, we believe that our products will have a competitive advantage as a result of being engineered locally. We believe our ability to conduct research and development at various locations throughout the world allows us to optimize product development and lower costs. However, international development, whether conducted by us or independent developers on our behalf, involves significant costs and challenges, including whether we can adequately protect our intellectual property and derive significant revenue in areas, such as China, where software piracy is a substantial problem.

Another significant part of our growth strategy is to improve upon our installed base business model. A key element of this strategy is our ability to release major products on an annual basis. Strong annual release cycles have a number of benefits. In particular, they permit us to deliver key performance and functionality improvements to customers on a regular and timely basis. Annual releases also drive annual product retirement programs, thereby reducing the volatility of revenues we have experienced in the past, as both the release of the new version and retirement of the oldest supported version are currently planned to happen on an annual basis. We plan to manage the timing of annual product retirements to synchronize more closely with annual product releases. Volatility may also be reduced through the Autodesk Subscription Program as revenue is recognized ratably over the subscription contract period. Over time, we expect adoption of our subscription program to, by design, reduce the number of customers migrating to newer releases through upgrades or retirements.

We are continually focused on improving productivity and efficiency in all areas of the Company. Doing so will allow us to increase our investment in growth initiatives and improve our profitability. During fiscal 2004, we conducted a rigorous study of our cost structure. Through the services of a major consulting firm, we benchmarked Autodesk metrics against averages of other companies including other leading software companies. As a result of the study, we undertook a restructuring plan that concluded at the end of fiscal 2005, began implementing certain productivity and efficiency initiatives throughout the Company and committed to continuous improvements in our productivity. Over the last fiscal year, our operating margin increased from 18% for the third quarter of fiscal 2005 to 25% for the third quarter of fiscal 2006, while at the same time we continued to invest in growth initiatives. Over the longer term, we intend to continue to balance investments in revenue growth opportunities with our goal of increasing our operating margins.

We generate significant cash flows. Our uses of cash include share repurchases to offset the dilutive impact of our employee stock plans, as well as investments in acquisitions and investments in growth initiatives. We evaluate merger and acquisition and divestiture opportunities to the extent they support our strategy. Our typical acquisitions are intended to provide adjacency to our current products and services, specific technology or expertise and rapid product integration. Additionally, we continue to invest in growth initiatives including product development and sales, market and channel development.

Pending Business Combination

During October 2005, Autodesk entered into a definitive agreement to acquire Alias Systems Holdings, Inc. ("Alias"), a privately held developer of 3D graphics technology, for approximately $182 million in cash, subject to an adjustment based on the net working capital of Alias at the time of closing. This acquisition is currently

expected to close late in the fourth quarter of fiscal 2006 or early in the first quarter of fiscal 2007, subject to certain regulatory review and approval and completion of customary closing conditions. The discussions in this Quarterly Report on Form 10-Q relates to Autodesk as a standalone entity and do not reflect the impact of this acquisition.

Critical Accounting Policies and Estimates

Our condensed consolidated financial statements are prepared in accordance with accounting principles generally accepted in the United States. The preparation of these financial statements requires us to make estimates and assumptions that affect the reported amount of assets, liabilities, net revenues, costs and expenses and related disclosures. We regularly re-evaluate our estimates and assumptions. Actual results may differ from these estimates under different assumptions or conditions.

We believe that of our significant accounting policies, the following policies involve a higher degree of judgment and complexity. Accordingly, these are the policies we believe are the most critical to aid in fully understanding and evaluating our financial condition and results of operations.

Revenue Recognition. Our accounting policies and practices are in compliance with Statement of Position 97-2, "Software Revenue Recognition," as amended, and SEC Staff Accounting Bulletin No. 104, "Revenue Recognition."

We recognize revenue when persuasive evidence of an arrangement exists, delivery has occurred or services have been rendered, the price is fixed or determinable and collection is probable. However, determining whether and when some of these criteria have been satisfied often involves assumptions and judgments that can have a significant impact on the timing and amount of revenue we report.

For multiple element arrangements that include software products, we allocate the sales price among each of the deliverables using the residual method, under which revenue is allocated to undelivered elements based on their vendor-specific objective evidence ("VSOE") of fair value. VSOE is the price charged when that element is sold separately or the price as set by management with the relevant authority. If we do not have VSOE of the undelivered element, we defer revenue recognition on the entire sales arrangement until all elements are delivered. We are required to exercise judgment in determining whether VSOE exists for each undelivered element based on whether our pricing for these elements is sufficiently consistent.

Our assessment of likelihood of collection is also a critical element in determining the timing of revenue recognition.

Our product sales to distributors and resellers are generally recognized at the time title to our product passes to the distributor or reseller, provided all other criteria for revenue recognition are met. This policy is predicated on our ability to estimate sales returns. We are also required to evaluate whether our distributors and resellers have the ability to honor their commitment to make fixed or determinable payments, regardless of whether they collect cash from their customers. If we were to change any of these assumptions or judgments, it could cause a material increase or decrease in the amount of revenue that we report in a particular period.

In addition to product sales, Autodesk recognizes maintenance revenues from our subscription program ratably over the subscription periods. Customer consulting and training revenues are recognized as the services are performed.

Allowance for Doubtful Accounts. We maintain allowances for bad debts for estimated losses resulting from the inability of our customers to make required payments. Our allowance for doubtful accounts was $7.3 million at October 31, 2005 and $7.2 million at January 31, 2005.

Estimated allowances for doubtful accounts are determined based upon historical loss patterns and an evaluation of the potential risk of loss associated with specific problem accounts. The use of different estimates or assumptions could produce different allowance balances. While we believe our existing allowance for doubtful accounts is adequate and appropriate, additional reserves may be required should the financial condition of our customers deteriorate or as unusual circumstances arise.

Product Returns Reserves. With the exception of contracts with certain distributors, our sales contracts do not contain specific product-return privileges. However, we permit our distributors and resellers to return product in certain instances, generally when new product releases supercede older versions. Our product returns reserves were $12.1 million at October 31, 2005 and $15.3 million at January 31, 2005. Product returns as a percentage of applicable revenues were 3.9% and 3.6% for the three months ended October 31, 2005 and 2004, respectively, and 4.2% and 4.6% for the nine months ended October 31, 2005 and 2004, respectively.

The product returns reserve is based on historical experience of actual product returns, estimated channel inventory levels, the timing of new product introductions, channel sell-in for applicable markets and other factors. During the three months ended October 31, 2005 and October 31, 2004, we recorded additions to our product returns reserve of $6.7 million and $5.3 million, respectively, which reduced our revenue. During the nine months ended October 31, 2005 and October 31, 2004, we recorded additions to our product returns reserve of $31.7 million and $25.8 million, respectively, which reduced our revenue.

While we believe our accounting practice for establishing and monitoring product returns reserves is adequate and appropriate, any adverse activity or unusual circumstances could result in an increase in reserve levels in the period in which such determinations are made.

Realizability of Long-Lived Assets. We assess the realizability of our long-lived assets and related intangible assets, other than goodwill, annually during the fourth fiscal quarter, or sooner should events or changes in circumstances indicate the carrying values of such assets may not be recoverable. We consider the following factors important in determining when to perform an impairment review: significant under-performance of a business or product line relative to budget; shifts in business strategies which affect the continued uses of the assets; significant negative industry or economic trends; and the results of past impairment reviews.

In assessing the recoverability of these long-lived assets, we first determine their fair values, which are based on assumptions regarding the estimated future cash flows that could reasonably be generated by these assets. When assessing long-lived assets, we use undiscounted cash flow models which include assumptions regarding projected cash flows. Variances in these assumptions could have a significant impact on our conclusion as to whether an asset is impaired or the amount of the impairment charge. Impairment charges, if any, result in situations where the fair values of these assets are less than their carrying values.

In addition to our recoverability assessments, we routinely review the remaining estimated useful lives of our long-lived assets. Any reduction in the useful life assumption will result in increased depreciation and amortization expense in the quarter when such determinations are made, as well as in subsequent quarters.

We will continue to evaluate the values of our long-lived assets in accordance with applicable accounting rules. As changes in business conditions and our assumptions occur, we may be required to record impairment charges.

Goodwill. As required under Statement of Financial Accounting Standards No. 142, “Goodwill and Other Intangible Assets,” we no longer amortize goodwill, but test goodwill for impairment annually in the fourth quarter or sooner should events or changes in circumstances indicate potential impairment. As changes in business conditions and our assumptions occur, we may be required to record impairment charges.

Deferred Tax Assets. We currently have $210.3 million of net deferred tax assets, mostly arising from net operating losses, including stock option deductions, as well as tax credits, reserves and timing differences for

purchased technologies and capitalized software offset by the establishment of U.S. deferred tax liabilities on unremitted earnings from certain foreign subsidiaries. We perform a quarterly assessment of the recoverability of these net deferred tax assets, which is principally dependent upon our achievement of projected future taxable income of approximately $610 million in specific geographies. Our judgments regarding future profitability may change due to future market conditions and other factors. These changes, if any, may require possible material adjustments to these net deferred tax assets, resulting in a reduction in net income in the period when such determinations are made.

Autodesk is a U.S. based multinational company subject to tax in multiple U.S. and foreign tax jurisdictions. The Company's effective tax rate is based on expected geographic income, statutory rates and enacted tax rules, including transfer pricing. Significant judgment is required in determining the Company's effective tax rate and in evaluating its tax positions on a worldwide basis. The Company believes its tax positions, including intercompany transfer pricing policies, are consistent with the tax laws in the jurisdictions in which it conducts its business. It is possible that these positions may be challenged which may have a significant impact on the Company's effective tax rate.

Restructuring Expenses. During the fourth quarter of fiscal 2004, the Board of Directors approved a restructuring plan that resulted in the elimination of employee positions and the closure of a number of offices worldwide ("Fiscal 2004 Plan"). This plan was designed to improve efficiencies across the organization, reduce operating expense levels to help achieve our targeted operating margins and redirect resources to product development, sales development and other critical areas. The actions approved under this plan were completed by the end of fiscal 2005.

Office closure costs consisted primarily of facility lease termination costs that were based upon projected rental payments through the remaining terms of the underlying operating leases, offset by projected sublease income. The projected sublease income amounts were calculated by using information provided by third-party real estate brokers as well as management judgments and were based on assumptions for each of the real estate markets where the leased facilities were located. If real estate markets worsen and we are not able to sublease the properties as expected, we will record additional expenses in the period when such rental payments are made. This situation occurred during each of fiscal 2005, 2004 and 2003; we therefore recorded additional charges as a result of the inability to sublease abandoned facilities. If the real estate markets subsequently improve, and we are able to sublease the properties earlier or at more favorable rates than projected, we will reverse a portion of the underlying restructuring accruals, which will result in increased net income in the period when such sublease becomes effective.

Stock Option Accounting. We do not record compensation expense when stock option grants are awarded to employees at exercise prices equal to the fair market value of Autodesk common stock on the date of grant. We disclose in Note 4, "Employee Stock Compensation," in the Notes to Condensed Consolidated Financial Statements the expense consistent with the method of Statement of Financial Accounting Standards No. 123, "Accounting for Stock Issued to Employees" ("SFAS 123"). The alternative fair value accounting provided for under SFAS 123 requires use of option valuation models which require the input of highly subjective assumptions, including the expected life of the option and expected future volatility. Changes in the subjective input assumptions can materially affect the fair value estimate. Had we recorded compensation expense from stock option grants, our net income would have been substantially less. We will adopt Statement of Financial Accounting Standards No. 123 – revised 2004, "Share-Based Payment" ("SFAS 123R"), which replaces SFAS 123 and supersedes APB Opinion No. 25, "Accounting for Stock Issued to Employees" ("APB 25") in the first quarter of fiscal 2007. Autodesk believes the adoption of SFAS 123R will result in amounts that are similar to the current pro forma disclosures under SFAS 123 and that the adoption of SFAS 123R will have a material adverse effect on Autodesk's consolidated statements of income and net income per share. The estimated impact is contingent upon many factors including, but not limited to, the market value of Autodesk's common stock on the date future options are granted.

Legal Contingencies. As described in Part II, Item 1, "Legal Proceedings" and Note 12, "Commitments and Contingencies", in the Notes to Condensed Consolidated Financial Statements, we are periodically involved in various legal claims and proceedings. We routinely review the status of each significant matter and assess our potential financial exposure. If the potential loss from any matter is considered probable and the amount can be reasonably estimated, we record a liability for the estimated loss. Because of inherent uncertainties related to these legal matters, we base our loss accruals on the best information available at the time. As additional information becomes available, we reassess our potential liability and may revise our estimates. Such revisions could have a material impact on future quarterly or annual results of operations.

Overview of the Three and Nine Months Ended October 31, 2005

	Three Months Ended October 31, 2005	As a % of Net Revenues	Three Months Ended October 31, 2004	As a % of Net Revenues
			(in millions)	
Net Revenues	$ 378.3	100%	$ 300.2	100%
Cost of revenues	42.4	11%	43.4	14%
Operating expenses excluding restructuring	242.9	64%	200.0	67%
Restructuring	—	—	2.9	1%
Income from Operations	$ 93.0	25%	$ 53.9	18%

	Nine Months Ended October 31, 2005	As a % of Net Revenues	Nine Months Ended October 31, 2004	As a % of Net Revenues
			(in millions)	
Net Revenues	$ 1,106.4	100%	$ 877.6	100%
Cost of revenues	130.4	12%	125.5	14%
Operating expenses excluding restructuring	703.4	63%	580.5	66%
Restructuring	—	—	14.9	2%
Income from Operations	$ 272.6	25%	$ 156.7	18%

Our higher net revenues for the three months ended October 31, 2005 compared to the same period in the prior fiscal year were primarily due to strong new seat, subscription and upgrade revenues. Compared to the three months ended October 31, 2004, new seat revenues increased 22%, while subscription and upgrade revenues increased by 62% and 11%, respectively. Revenue growth was driven by volume growth in most major products as well as growing sales of the higher priced vertical and 3D products. Product sales volume has increased due to the strength of our current product releases, including AutoCAD 2006, Autodesk Inventor products, Autodesk Civil 3D, Autodesk Architectural Desktop and Autodesk Revit products.

Our net revenues were higher for the nine months ended October 31, 2005 compared to the same period in the prior fiscal year primarily due to strong new seat, subscription and upgrade revenues, coupled with the positive effects of changes in foreign currencies, principally driven by the strength of the euro. Compared to the nine months ended October 31, 2004, new seat revenues increased 23%, subscription revenues increased 58% and upgrade revenues increased 17%. Again, revenue growth was driven by volume growth in most major products as well as growing sales of the higher priced vertical and 3D products.

Product backlog is comprised of deferred revenue and current software license product orders which have not yet shipped. The category of current software license product orders which we have not yet shipped consists of orders from customers with approved credit status for currently available license software products and may include orders with current ship dates and orders with ship dates beyond the current fiscal period. Aggregate backlog at October 31, 2005 was approximately $264 million. Of this amount, approximately $21 million related

to current software license product orders which had not yet shipped at the end of the current fiscal quarter. The value of software license product orders that had not yet shipped was approximately $26 million at July 31, 2005, $27 million at April 30, 2005, $32 million at January 31, 2005 and $16 million at October 31, 2004.

We generate a significant amount of our revenue in the United States, Japan, Germany, United Kingdom, Italy, China, France, Korea, Australia and Canada. The growing strength of the U.S. dollar, relative to foreign currencies, did not have a significant impact on operating results during the three months ended October 31, 2005 compared to the same period in the prior fiscal year. However, the weaker value of the U.S. dollar, relative to foreign currencies, had a positive impact of $7 million on operating results for the nine months ended October 31, 2005 as compared to the comparable prior year period. Had exchange rates for the nine months ended October 31, 2004 remained in effect during the nine months ended October 31, 2005, translated international revenue billed in local currencies would have been $12 million lower and operating expenses would have been $5 million lower. Changes in the value of the U.S. dollar may have a significant effect on net revenues and operating expenses in future periods. To reduce this effect for the current quarter, we utilize foreign currency option collar contracts to reduce the current quarter exchange rate impact on the net revenue of certain anticipated transactions.

Our operating expenses increased in absolute dollars during the three and nine months ended October 31, 2005 as compared to the same periods in the prior fiscal year, excluding the effect of restructuring charges during the prior fiscal year, but declined as a percentage of revenue. The increase was due primarily to higher marketing costs associated with trade shows, product launches and branding campaigns, higher salary expense due to higher headcount and annual salary increases as well as higher professional fees related to third-party development activities. Our operating margins are very sensitive to changes in revenues, given the relatively fixed nature of most of our operating expenses, which consist primarily of employee-related expenditures, facilities costs and depreciation and amortization expense. During the remainder of fiscal 2006, we expect operating expenses, excluding restructuring, to increase compared to the same period in the prior fiscal year, as we balance investment in our growth opportunities with our focus on increasing profitability.

Throughout the nine months ended October 31, 2005, we maintained a strong balance sheet, generating $301.2 million of cash from our operating activities as compared to $229.4 million during the same period in the prior fiscal year. We finished the third quarter of fiscal 2006 with $547.9 million in cash, cash equivalents and marketable securities, a higher deferred revenue balance, a higher accounts receivable balance, and a lower days sales outstanding position as compared to the same period in the prior fiscal year. Seventy-six percent, or $185.0 million, of the deferred revenue balance at October 31, 2005 consisted of customer subscription contracts which will be recognized as maintenance revenue ratably over the life of the contracts, which is predominantly one year.

Results of Operations

Net Revenues

	Three Months Ended October 31, 2005	Increase compared to prior year period		Three Months Ended October 31, 2004	Nine Months Ended October 31, 2005	Increase compared to prior year period		Nine Months Ended October 31, 2004
		$	%			$	%	
	(in millions)							
Net revenues:								
License and other	$ 304.4	$49.9	20%	$ 254.5	$ 910.2	$156.8	21%	$ 753.4
Maintenance	73.9	28.2	62%	45.7	196.2	72.0	58%	124.2
	$ 378.3	$78.1	26%	$ 300.2	$ 1,106.4	$228.8	26%	$ 877.6
Net revenues by geographic area:								
Americas	$ 160.3	$23.3	17%	$ 137.0	$ 432.1	$ 58.5	16%	$ 373.6
Europe, Middle East and Africa	133.4	37.6	39%	95.8	408.1	104.6	34%	303.5
Asia Pacific	84.6	17.2	26%	67.4	266.2	65.7	33%	200.5
	$ 378.3	$78.1	26%	$ 300.2	$ 1,106.4	$228.8	26%	$ 877.6
Net revenues by operating segment:								
Design Solutions	$ 333.8	$77.4	30%	$ 256.4	$ 972.8	$213.8	28%	$ 759.0
Media and Entertainment	42.9	-0.2	0%	43.1	129.2	11.8	10%	117.4
Other	1.6	0.9	129%	0.7	4.4	3.2	267%	1.2
	$ 378.3	$78.1	26%	$ 300.2	$ 1,106.4	$228.8	26%	$ 877.6
Net design solutions revenues:								
Platform Technology Division and other	$ 181.3	$40.2	28%	$ 141.1	$ 539.2	$109.6	26%	$ 429.6
Manufacturing Solutions Division	63.3	12.9	26%	50.4	182.5	42.9	31%	139.6
Building Solutions Division	45.1	16.0	55%	29.1	125.3	40.3	47%	85.0
Infrastructure Solutions Division	44.1	8.3	23%	35.8	125.8	21.0	20%	104.8
	$ 333.8	$77.4	30%	$ 256.4	$ 972.8	$213.8	28%	$ 759.0

The increase in net revenues for both the three and nine month periods ended October 31, 2005 was due primarily to strong new seat, subscription and upgrade revenues, along with a favorable product mix shift towards higher priced vertical and 3D products.

Increases in license and other revenues during both the three and nine month periods ended October 31, 2005, as compared to the equivalent prior year periods, were primarily due to increased new seat revenues from most major products as well as increased upgrade revenues. New seat and upgrade revenue increases were driven by volume growth in most major products, growing sales of our higher priced vertical and 3D products, and promotions tied to the anticipated retirement of our AutoCAD 2002-based product series in the first quarter of fiscal 2007. At October 31, 2005, the remaining installed base of the AutoCAD 2002-based products was significantly larger than the installed base of the AutoCAD 2000i-based products at that equivalent time last year. We expect continued growth in new seat and upgrade revenues for the fourth quarter of fiscal 2006. However, as

a result of our decision earlier this year to synchronize our major product retirements and new release launches to occur in the first quarter of each fiscal year, we expect some upgrade revenue related to the retirement of our AutoCAD 2002-based products may move into the first quarter of fiscal 2007, as certain customers delay upgrading to the most current version. We anticipate that AutoCAD 2004-based products will be retired in the first quarter of fiscal 2008. The installed base of AutoCAD 2004-based products is smaller than the installed base of AutoCAD 2002-based products. As a result, in future years, we expect subscription revenue to exceed upgrade revenue, and we expect upgrade revenue to decline.

Revenue from the sales of our services, training and support are immaterial for all periods presented.

Maintenance revenues consist of revenues derived from our subscription program. As a percentage of total net revenues, maintenance revenues were 20% and 15% for the third quarter of fiscal 2006 and fiscal 2005, and 18% and 14% for the first nine months of fiscal 2006 and fiscal 2005. Our subscription program, available to most customers worldwide, continues to attract new and renewal customers by providing them with a cost effective and predictable budgetary option to obtain the productivity benefits of our newest releases and planned annual product release cycle and enhancements. We expect maintenance revenues to continue to increase both in absolute dollars and as a percentage of total net revenues.

Net revenues in the Americas increased during both the three and nine months ended October 31, 2005 from the same period of the prior fiscal year largely due to strong subscription and new seat revenues, offset in part by slightly lower upgrade revenues for the nine month period ended October 31, 2005.

Net revenues in the Europe, Middle East and Africa (“EMEA”) region increased during both the three and nine month periods ended October 31, 2005, as compared to the same periods of the prior fiscal year, primarily due to strong subscription, new seat and upgrade revenues.

Net revenues in Asia/Pacific increased in the third quarter of fiscal 2006 from the same period of the prior fiscal year due primarily to strong new seat revenues and subscription revenues. Asia/Pacific net revenues during the first nine months of fiscal 2006 increased from the same period in the prior fiscal year primarily due to strong new seat revenues, as well as subscription and upgrade revenues.

The increase in the Design Solutions Segment net revenues during the third quarter of fiscal 2006, as compared to the third quarter of fiscal 2005, was primarily due to strong new seat, subscription and upgrade revenues. Maintenance revenue from our subscription program accounted for 21% of Design Solutions Segment revenue for the third quarter of fiscal 2006 and 17% of Design Solutions Segment revenues for the third quarter of fiscal 2005. The increase in the Design Solutions Segment net revenues during the first nine months of fiscal 2006, as compared to the comparable prior year period, was primarily due to strong new seat, subscription and upgrade revenues. Although we have been placing increased focus on vertically-oriented and 3D product lines, sales of AutoCAD, AutoCAD upgrades and AutoCAD LT continue to comprise a significant portion of our net revenues. Such sales, which are reflected in the net revenues for the Platform Technology Division and Other, accounted for 43% of our consolidated net revenues during the three month periods ended October 31, 2005 and 41% during the three months ended October 31, 2004, growing 31% in absolute dollars between the periods. Sales of AutoCAD, AutoCAD upgrades and AutoCAD LT accounted for 44% of our consolidated net revenues during the nine months ended October 31, 2005 and October 31, 2004, and grew 27% in absolute dollars between the periods. Net revenues for our 3D products (Autodesk Inventor products, Autodesk Revit Building products and Autodesk Civil 3D) increased 59% during the three months ended October 31, 2005 and 64% during the nine months ended October 31, 2005, as compared to the same periods in the prior fiscal year. Total sales of 3D design products accounted for 19% and 15% of consolidated net revenues during the three months ended October 31, 2005 and 2004, respectively. These products accounted for 18% and 14% of consolidated net revenues during the nine months ended October 31, 2005 and 2004, respectively. A critical component of our growth strategy is to convert our 2D customer base, including customers of AutoCAD and related vertical industry products, to our higher priced 3D products. However, should sales of 2D products decrease without a corresponding increase in sales of 3D products, our results of operations will be adversely affected.

Net revenues for the Media and Entertainment Segment ("M&E") for the three months ended October 31, 2005 were comparable to the same period in the prior fiscal year. While Advanced Systems sales increased in EMEA and Asia/Pacific and sales of our animation products increased worldwide, Advanced Systems sales in the United States declined in the current quarter, as compared to the same period in the prior fiscal year, due to forced attrition in our sales force. During the nine months ended October 31, 2005, overall M&E net revenues grew 10% as compared to the same period in the prior fiscal year, primarily due to growth in new seat and subscription revenues of our 3ds max product as well as growth in the sales of our Linux-based advanced systems products (flint and smoke), offset in part by the current quarter decline in advanced systems sales in the United States.

International sales accounted for 64% of our net revenues in the third quarter of fiscal 2006 as compared to 61% in the same period of the prior fiscal year. International sales during the first nine months of fiscal 2006 accounted for 67% of our net revenues, as compared to 64% in the same period of the prior fiscal year. We believe that international sales will continue to comprise a significant portion of net revenues. Economic weakness in any of the countries that contribute a significant portion of our net revenues would have a material adverse effect on our business. In addition, although the effect of changes in foreign currencies during the current quarter did not significantly impact revenue in the current quarter as compared to the same quarter in the prior fiscal year, during the nine months ended October 31, 2005, translated international revenues would have been $12 million lower had exchange rates for the nine months ended October 31, 2004 remained in effect. Recent strengthening of the United States dollar, if it were to continue, could significantly impact our future financial results for a given period.

Cost of Revenues

	Three Months Ended October 31, 2005	Increase compared to prior year period		Three Months Ended October 31, 2004	Nine Months Ended October 31, 2005	Increase compared to prior year period		Nine Months Ended October 31, 2004
		$	%			$	%	
	(in millions)							
Cost of revenues:								
License and other	$ 40.8	$ 1.6	4%	$ 39.2	$ 119.3	$ 6.4	6%	$ 112.9
Maintenance	1.6	(2.6)	-62%	4.2	11.1	(1.5)	-12%	12.6
	$ 42.4	$(1.0)	-2%	$ 43.4	$ 130.4	$ 4.9	4%	$ 125.5
As a percentage of net revenues	11%			14%	12%			14%

Cost of license and other revenues includes direct material and overhead charges, royalties, amortization of purchased technology and capitalized software, hosting costs and the labor costs of fulfilling service contracts. Direct material and overhead charges include the cost of hardware sold (primarily workstations manufactured by SGI and IBM for the Media and Entertainment Segment), costs associated with transferring our software to electronic media, printing of user manuals and packaging materials and shipping and handling costs.

Cost of license and other revenues increased during the three and nine months ended October 31, 2005, in comparison to the same periods in the prior fiscal year, due primarily to increased volume and changes in product mix and higher royalty expenses for licensed technology embedded in our products.

Cost of maintenance revenues includes direct costs of our subscription program, amortization of capitalized software and overhead charges. Cost of maintenance revenues decreased during both the three and nine months ended October 31, 2005, as compared to the same periods in the prior fiscal year, due primarily to the cessation of amortization for an information technology system supporting our subscription program. The amortization reduction was partially offset by incremental direct program costs incurred as part of the growth of the subscription program.

Overall cost of revenues continues to decline as a percentage of net revenues due to the amount of fixed costs that are not necessarily impacted by the growth in our sales volumes; however, despite this trend, we expect cost of revenues as a percentage of net revenues to increase in future periods as a result of recording stock-based compensation expense beginning in fiscal 2007, as required by SFAS 123R. Absent stock-based compensation expense, we expect cost of revenues as a percentage of net revenues to decline. Cost of revenues, at least over the near term, are affected by the volume and mix of product sales, changing consulting and hosted service costs, software amortization costs, royalty rates for licensed technology embedded in our products and new customer support offerings.

Marketing and Sales

	Three Months Ended October 31, 2005	Increase compared to prior year period		Three Months Ended October 31, 2004	Nine Months Ended October 31, 2005	Increase compared to prior year period		Nine Months Ended October 31, 2004
		$	%			$	%	
	(in millions)							
Marketing and sales	$ 136.3	$23.1	20%	$ 113.2	$ 397.8	$70.3	21%	$ 327.5
As a percentage of net revenues	36%			38%	36%			37%

Marketing and sales expenses include salaries, dealer and sales commissions, bonus, travel and facility costs for our marketing, sales, order processing, dealer training and support personnel and overhead charges. These expenses also include costs of programs aimed at increasing revenues, such as advertising, trade shows and expositions, and various sales and promotional programs designed for specific sales channels and end users.

The increase of marketing and sales expenses during the third quarter of fiscal 2006 compared to the same period in the prior year was due primarily to $10.8 million of increased marketing and promotion costs related to product launches, trade shows and branding, approximately $8.0 million of higher employee-related costs as well as costs related to a customer information and customer support software project. Marketing and sales expenses increased during the first nine months of fiscal 2006 compared to the same period in the prior fiscal year due primarily to $42.1 million of increased marketing and promotion costs related to product launches, trade shows and branding, $16.9 million of higher employee-related costs as well as costs related to a customer information and customer support software project.

We expect to continue to invest in marketing and sales of our products to develop market opportunities, to promote our competitive position and to strengthen our channel support. In addition, as a result of recording stock-based compensation expense beginning in fiscal 2007, as required by SFAS 123R, we expect marketing and sales expenses to increase both in absolute dollars and as a percentage of net revenues.

Research and Development

	Three Months Ended October 31, 2005	Increase compared to prior year period		Three Months Ended October 31, 2004	Nine Months Ended October 31, 2005	Increase compared to prior year period		Nine Months Ended October 31, 2004
		$	%			$	%	
	(in millions)							
Research and development	$ 74.0	$14.1	24%	$ 59.9	$ 212.9	$36.7	21%	$ 176.2
As a percentage of net revenues	20%			20%	19%			20%

Research and development expenses consist primarily of salaries, benefits, and bonuses for software engineers, contract development fees, purchased in-process technology, depreciation of computer equipment used in software development and overhead charges.

The increase in research and development expenses during the third quarter of fiscal 2006 compared to the same period in the prior year was due primarily to efforts to invest additional resources for a number of products. Employee-related costs increased approximately $5.6 million and professional fees increased approximately $3.4 million in the third quarter of fiscal 2006 as compared to the same period in the prior fiscal year. During the current quarter, we purchased $6.0 million of in-process technology from a single independent software developer for use in our Design Solutions Segment. The in-process technology is intended for future releases of various products that have not yet reached technological feasibility and have no alternative future use.

Research and development expenses during the first nine months of fiscal 2006 compared to the same period in the prior year increased primarily due to efforts to invest additional resources in certain research and development related growth initiatives. Employee-related costs increased approximately $12.2 million and professional fees increased approximately $15.0 million in the first nine months of fiscal 2006 as compared to the same period in the prior fiscal year. During the nine months ended October 31, 2005, we purchased $18.6 million of in-process technology for our Design Solutions Segment from one independent software developer and recognized $1.2 million of in-process research and development costs in connection with our acquisition of Colorfront Ltd.

We expect that research and development spending will continue to increase in absolute dollars in future periods as we continue to invest in product development and continue to acquire new technology. In addition, we expect that research and development spending will increase as a percentage of net revenues in the future as a result of recording stock-based compensation expense beginning in fiscal 2007, as required by SFAS 123R.

General and Administrative

	Three Months Ended October 31, 2005	Increase compared to prior year period		Three Months Ended October 31, 2004	Nine Months Ended October 31, 2005	Increase compared to prior year period		Nine Months Ended October 31, 2004
		$	%			$	%	
				(in millions)				
General and administrative	$ 32.4	$5.6	21%	$ 26.8	$ 92.8	$15.9	21%	$ 76.9
As a percentage of net revenues	9%			9%	8%			9%

General and administrative expenses include our finance, human resources, legal costs and overhead charges.

General and administrative expenses remained relatively flat as a percentage of revenues for both the three and nine months ended October 31, 2005, as compared to the same periods in the prior year, but increased in absolute dollars primarily as a result of higher employee-related and information technology project costs.

Absent the impact of recording stock-based compensation expense beginning in fiscal 2007, as required by SFAS 123R, we expect that general and administrative expenses will modestly decline as a percentage of net revenues in the future yet increase in absolute dollars due to salary increases and continued information technology projects. With the adoption of SFAS 123R and the recording of stock-based compensation expense in fiscal 2007, we expect that general and administrative expenses will increase in absolute dollars and as a percentage of net revenues.

Restructuring

	Three Months Ended October 31, 2005	Increase compared to prior year period $	Increase compared to prior year period %	Three Months Ended October 31, 2004	Nine Months Ended October 31, 2005	Increase compared to prior year period $	Increase compared to prior year period %	Nine Months Ended October 31, 2004
					(in millions)			
Restructuring	$ —	$(2.9)	-100%	$ 2.9	$ —	$(14.9)	-100%	$ 14.9
As a percentage of net revenues	0%			1%	0%			2%

There were no restructuring charges during the three and nine months ended October 31, 2005.

During the fourth quarter of fiscal 2004, the Board of Directors approved a restructuring plan involving the elimination of employee positions and the closure of a number of offices worldwide having a total cost of $27.5 million ("Fiscal 2004 Plan"). This plan was designed to improve efficiencies across the organization, reduce operating expense levels to help achieve our targeted operating margins and redirect resources to product development, sales development and other critical areas. The actions approved under the Fiscal 2004 Plan were completed during the fourth quarter of fiscal 2005. As a result of this plan, we expected to realize pretax savings of approximately $9.3 million per quarter, resulting in an annual savings of approximately $37.0 million to be reflected across each on-going cost and expense line item in the Condensed Consolidated Statements of Income. However, these savings are being used to fund various growth initiatives in line with our corporate strategy, while containing cost increases across each expense category described above.

During the three months ended October 31, 2004, we recorded gross restructuring charges of $2.9 million, of which approximately $2.4 million related to headcount reductions and $0.5 million related to the closure of facilities. During the nine months ended October 31, 2004, we recorded gross restructuring charges of $14.9 million under the Fiscal 2004 Plan. Approximately $11.5 million of this amount related to headcount reductions and approximately $3.5 million related to facility closures. Partially offsetting this charge was a reversal of $0.1 million related to a change in estimates underlying office closure costs originally established under the fiscal 2002 restructuring plan. The underlying liabilities were ultimately settled for less than originally estimated.

For additional information regarding restructuring reserves, see Note 11, "Restructuring Reserves" and Note 16, "Segments," in the Notes to Condensed Consolidated Financial Statements.

Interest and Other Income, Net

The following table sets forth the components of interest and other income, net:

	Three Months Ended October 31,		Nine Months Ended October 31,	
	2005	2004	2005	2004
			(in millions)	
Interest and investment income, net	$ 3.1	$ 1.5	$ 9.1	$ 2.3
Gains (losses) on foreign currency transactions	0.1	0.7	(0.7)	0.1
Realized gains on sales of marketable securities	—	0.2	—	0.5
Other income	—	0.4	0.6	4.5
	$ 3.2	$ 2.8	$ 9.0	$ 7.4

The investment income portion of the "Interest and investment income, net," line item fluctuates based on average cash and marketable securities balances, average maturities and interest rates.

Interest and investment income during the nine months ended October 31, 2004 included $5.1 million of net interest income offset by an accrual of $2.8 million of foreign-based stamp taxes. We determined that certain

money market fund investments were subject to Swiss Transfer Stamp Taxes from August 2000 through the third quarter of fiscal 2005. The impact of this adjustment was not material to previously reported periods.

Other income included $2.4 million recognized during the second quarter of fiscal 2005 resulting from a court settlement related to legal proceedings with Spatial Corp.

Provision for Income Taxes

During the three months ended October 31, 2005, we recognized a one-time income tax benefit of $17.6 million. Of this amount, $10.6 million relates to foreign withholding taxes previously accrued which are no longer due, as part of the repatriation of foreign earnings under the American Jobs Creation Act of 2004 ("DRD Legislation"). The remaining $7.0 million related to the lapse of the statute of limitations with respect to certain federal and foreign tax years. During the three months ended July 31, 2005, we recognized a one-time income tax benefit of $1.9 million related to an IRS technical correction of the DRD Legislation. During the first quarter of fiscal 2006, we recognized a one-time income tax benefit of $1.2 million as a result of the resolution and closure of our Franchise Tax Board audit for fiscal 2000 as well as the closure and lapse of the statute of limitations with respect to certain foreign tax years. Absent the impact of these tax benefits, our effective income tax rate was 20% in the three and nine months ended October 31, 2005. The effective tax rate for fiscal 2006 is less than the federal statutory rate of 35% due to the extraterritorial income exclusion ("ETI exclusion"), deduction for Domestic Production Activities, research credits, tax benefits from low taxed foreign earnings and the DRD Legislation.

During the three and nine months ended October 31, 2004, we recognized one-time income tax benefits of $15.5 million related to the DRD legislation and $8.9 million related to income tax audit closures in the third quarter of fiscal 2005. Absent the impact of these tax benefits, our effective income tax rate was 20% in the three and nine months ended October 31, 2004. In addition, during the third quarter of fiscal 2005, we reduced our projected tax rate from 24% to 20% as a result of the new DRD legislation along with the belief that current year foreign earnings of certain subsidiaries will be taxed at a rate lower than previously projected. As a result, we recorded a cumulative catch-up adjustment of $4.3 million to our tax provision in the third quarter of fiscal 2005 to account for the reduction of our effective tax rate. The effective tax rate for fiscal 2005 is less than the federal statutory rate of 35% due to the ETI exclusion, research credits, tax-exempt interest, tax benefits from low taxed foreign earnings and the DRD legislation.

Our future effective tax rate may be materially affected by the amount of benefits associated with our foreign earnings, which are taxed at rates different from the federal statutory rate, ETI exclusion, deduction for Domestic Production Activities, research credits, tax-exempt interest, DRD Legislation election and changes in the tax law. In addition, our adoption of SFAS 123R in the first quarter of fiscal 2007 may also affect our future effective tax rate.

At October 31, 2005, we had net deferred tax assets of $210.3 million. Realization of these assets is dependent on our ability to generate approximately $610 million of future taxable income in appropriate tax jurisdictions. We believe that sufficient income will be earned in the future to realize these assets.

Business Combinations

We acquire new technology or supplement our existing technology by purchasing businesses focused in specific markets or industries. During the nine months ended October 31, 2005, we acquired the following businesses:

Date	Company	Details
October 2005	Engineering Intent Corporation ("Engineering Intent")	The assets acquired from Engineering Intent provided sales and engineering automation technology designed to help customers 'engineer-to-order' during their sales cycle, thereby reducing costs and allowing for efficient development of customized solutions. The assets acquired were assigned to the Manufacturing Solutions Division of our Design Solutions Segment.
August 2005	Solid Dynamics, SA ("Solid Dynamics")	The acquisition of Solid Dynamics provided kinematics and dynamics physics technology which designers use to simulate the motion of mechanical assemblies without the expense of building physical prototypes, thereby reducing costs and time-to-market. The assets acquired were assigned to the Manufacturing Solutions Division of our Design Solutions Segment.
June 2005	c-plan AG ("c-plan")	The acquisition of c-plan expands our geospatial technology product portfolio and strengthens our market position throughout central Europe. The assets acquired were assigned to the Infrastructure Solutions Division of our Design Solutions Segment.
June 2005	Colorfront Ltd. ("Colorfront")	The assets acquired from Colofront are intended to provide us with comprehensive new expertise in film laboratory processes, digital post-production, color science, image processing and hardware platform organization. The assets acquired were assigned to the Media and Entertainment Segment.
March 2005	Compass Systems GmbH ("Compass")	The assets acquired from Compass allow us to more quickly expand our data management solution and deliver on our plans to provide a comprehensive data management solution for small and medium-size manufacturers. The assets acquired were assigned to the Manufacturing Solutions Division of our Design Solutions Segment.

See Note 18, "Business Combinations," in the Notes to the Condensed Consolidated Financial Statements for additional information on certain of these acquired businesses.

Liquidity and Capital Resources

	Nine Months Ended October 31,	
	2005	2004
	(in millions)	
Net cash provided by operating activities	$ 301.2	$ 229.4
Net cash (used in) provided by investing activities	(209.9)	62.7
Net cash used in financing activities	(216.0)	(198.8)

Our primary source of cash is receipts from revenue. The primary uses of cash are employee-related expenses (compensation and related benefits), general operating expenses (marketing, facilities and overhead) and cost of revenues. In addition, we receive cash proceeds from the exercise of employee stock options and the purchase of employee stock purchase plan shares and use cash to repurchase outstanding Autodesk shares under our share repurchase program.

At October 31, 2005, our principal sources of liquidity were cash, cash equivalents and marketable securities totaling $547.9 million and net accounts receivable of $201.8 million. During the first nine months of fiscal 2006, we generated $301.2 million of cash from operating activities compared to $229.4 million generated during the same period in fiscal 2005. This increase was primarily driven by higher operating earnings, higher accounts payable and deferred revenue balances, partially offset by higher working capital uses of cash related to larger bonus and other incentive compensation amounts paid during the first quarter of fiscal 2006.

During the nine months ended October 31, 2005, we used $209.9 million in net cash for investing activities compared to $62.7 million generated during the same period of fiscal 2005. The increase in cash used in investing activities during the current fiscal period was primarily due to $142.0 million in net purchases of available-for-sale marketable securities with funds repatriated from Europe and Asia to the United States under the DRD Legislation. During the nine months ended October 31, 2005, we repatriated approximately $400 million to the United States under the DRD Legislation. We also used $52.7 million used in business acquisitions (Compass, Colorfront, c-plan, Solid Dynamics and Engineering Intent). During the same period in fiscal 2005, we generated $105.2 million in net proceeds from the maturity and sale of available-for-sale marketable securities, a portion of which were liquidated to fund the repurchase of our common stock.

We used $216.0 million in net cash for financing activities during the nine months ended October 31, 2005, compared to $198.8 million during the same period last year. The major financing uses of cash in both periods were for the repurchase of our common stock and payment of dividends. We repurchased 9.2 million shares of our common stock for $339.7 million during the first nine months of fiscal 2006 and repurchased 21.7 million shares of our common stock for $400.1 million during the same period of fiscal 2005. As of October 31, 2005, 23.0 million shares remained available for repurchase under our stock repurchase program. We currently expect to continue making repurchases under this program. Our dividend payments declined to $3.4 million during the nine months ended October 31, 2005 as compared to $10.1 million during the same period in fiscal 2005. This decline was due to the discontinuance of the payment of cash dividends after the fourth quarter of fiscal 2005. The dividend payment made during the first nine months of fiscal 2006 related to the dividend declaration made during the fourth quarter of fiscal 2005. These financing uses of cash were partially offset by proceeds received from the issuance of common stock under our stock option and stock purchase plans, which amounted to $127.1 million during the nine months of fiscal 2006 and $211.5 million during the same period last year.

Long-term cash requirements, other than normal operating expenses, are anticipated for the development of new software products and incremental product offerings resulting from the enhancement of existing products; financing anticipated growth; the share repurchase program; the acquisition of businesses, software products, or technologies complementary to our business; and capital expenditures, including the purchase and implementation of internal-use software applications.

As noted above, during the nine months ended October 31, 2005, we repatriated approximately $400 million of foreign earnings held by financial institutions outside of the United States under the DRD Legislation. As a result, 62% of our consolidated cash, cash equivalents and marketable securities are held with financial institutions in the United States, as compared to 10% at January 31, 2005. We intend to repatriate up to a total of $500 million of accumulated foreign earnings under the DRD Legislation during fiscal 2006 to the United States where we can more effectively manage our cash and invest in our business. For further discussion of the DRD Legislation, see “Results of Operations—Provision for Income Taxes” above. In addition, $21.5 million of our marketable securities at October 31, 2005 is reserved for deferred compensation.

Our international operations are subject to currency fluctuations. To minimize the impact of these fluctuations, we use foreign currency option contracts to hedge our exposure on anticipated transactions and forward contracts to hedge our exposure on firm commitments, primarily certain receivables and payables denominated in foreign currencies. Our foreign currency instruments, by policy, have maturities of less than three months and settle before the end of each quarterly period. The principal currencies hedged during the nine months ended October 31, 2005 were the euro, Swiss franc, Canadian dollar, British pound and Japanese yen. We

monitor our foreign exchange exposures to ensure the overall effectiveness of our foreign currency hedge positions.

Issuer Purchases of Equity Securities

The purpose of Autodesk's stock repurchase program is to help offset the dilution to net income per share caused by the issuance of stock under our employee stock plans as well as to more effectively utilize excess cash generated from our business. The number of shares acquired and the timing of the purchases are based on several factors, including the level of our cash balances, general business and market conditions, and other investment opportunities. At October 31, 2005, 23.0 million shares remained available for repurchase under the existing repurchase authorization.

The following table provides information about the repurchase of our common stock during the three months ended October 31, 2005:

(Shares in thousands)	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Maximum Number of Shares that May Yet Be Purchased Under the Plans or Programs
August 1-August 31	381	$ 41.23	381	25,803
September 1-September 30	2,843	42.92	2,843	22,960
October 1-October 31	—	—	—	—
Total	3,224 (1)	$ 42.71	3,224 (1)	22,960 (2)

(1) Represents shares purchased in open-market transactions under the stock repurchase plan approved by the Board of Directors in December 2003, authorizing the repurchase of 32.0 million shares. This plan, announced in December 2003, does not have a fixed expiration date.

(2) This amount corresponds to the plan approved by the Board of Directors in December 2004, which authorized the repurchase of an additional 24.0 million shares. This plan, announced in December 2004, does not have a fixed expiration date.

Off-Balance Sheet Arrangements

Other than operating leases, we do not engage in off-balance sheet financing arrangements or have any variable-interest entities. As of October 31, 2005, we did not have any off-balance sheet arrangements as defined in Item 303(a)(4)(ii) of SEC Regulation S-K.

Stock Compensation

We maintain two active stock option plans for the purpose of granting stock options to employees and members of Autodesk's Board of Directors: the 1996 Stock Plan (available only to employees) and the 2000 Directors' Option Plan (available only to non-employee directors). Additionally, there are five expired or terminated plans with options outstanding, including the Nonstatutory Stock Option Plan (available only to non-executive employees and consultants) which was terminated by the Board of Directors in December 2004. The 1996 Plan expires in March 2006. On November 10, 2005, the Company's stockholders approved a new stock plan, the 2006 Employee Stock Plan, as well as amendments to the 2000 Directors' Option Plan (See Item 5, "Other Information," for voting results of these proposals).

In addition to stock option plans, our employees are also eligible to participate in Autodesk's 1998 Employee Qualified Stock Purchase Plan.

Our stock option program is broad-based and designed to promote long-term retention. Essentially all of our employees participate. Approximately 84% of the options we granted during the nine months ended October 31,

2005 were awarded to employees other than our CEO and the four other most highly compensated officers for fiscal 2005, which we refer to as our Named Executive Officers. Options granted under our equity plans during fiscal 2006 vest over periods ranging from one to four years and expire within six to ten years of the date of grant. Options granted prior to fiscal 2006 expire within ten years of the date of grant. The exercise price of the stock options is equal to the closing price of our Common Stock on the Nasdaq National Market on the grant date.

All stock option grants to executive officers are made by the Compensation and Human Resources Committee of the Board of Directors. All members of the Compensation and Human Resources Committee are independent directors, as defined by the listing standards of the Nasdaq National Market. See the "Report of the Compensation and Human Resources Committee of the Board of Directors" in the Proxy Statement for our 2005 Annual Meeting of Stockholders for further information concerning Autodesk's policies and procedures regarding the use of stock options. Grants to our non-employee directors are non-discretionary and are pre-determined by the terms of the 2000 Directors' Option Plan.

Distribution and Dilutive Effect of Options

The following table provides information about the distribution and dilutive effect of our stock options for the named periods:

	Nine months ended October 31, 2005	Fiscal year ended January 31,	
		2005	2004
Net grants during the period as % of outstanding shares	2.1%	3.9%	3.1%
Grants to Named Executive Officers during the period as % of total options granted	16.4% [1]	15.9%	11.7%
Grants to Named Executive Officers during the period as % of outstanding shares	0.4%	0.8%	0.7%
Cumulative options held by Named Executive Officers as % of total options outstanding	24.0%	25.2%	20.9%

[1] The executive staff, which includes the Named Executive Officers, received option grants during the first quarter of fiscal 2006. Employee grants are made throughout the year.

We expect to grant options totaling not more than 2.5% of our outstanding shares during fiscal 2006.

General Option Information

Our stock option activity for the named periods is summarized as follows:

		Options Outstanding	
(Shares in thousands)	Shares Available for Options	Number of Shares	Weighted Average Price Per Share
Options outstanding at January 31, 2004	19,894	52,936	$ 8.40
Granted	(11,550)	11,550	17.52
Exercised	—	(25,445)	8.46
Canceled	2,607	(2,635)	9.46
Additional shares reserved	8,455	—	—
Reduction to shares available for future issuance approved by the Board of Directors in March 2005	(10,000)	—	—
Options outstanding at January 31, 2005	9,406	36,406	11.17
Granted	(6,229)	6,229	31.18
Exercised	—	(9,940)	9.42
Canceled	1,149	(1,320)	15.52
Options outstanding at October 31, 2005	4,326	31,375	$ 15.50

In-the-Money and Out-of-the-Money Option Information

The following table compares the number of shares subject to option grants with exercise prices at or below the closing price of our Common Stock at October 31, 2005 ("in-the-money") with the number of shares subject to option grants with exercise prices greater than the closing price of our Common Stock at the same date ("out-of-the-money"). The closing price of our Common Stock on October 31, 2005 was $45.12 per share.

	Exercisable		Unexercisable		Total	
(Shares in thousands)	Number of Shares	Weighted Average Exercise Price	Number of Shares	Weighted Average Exercise Price	Number of Shares	Weighted Average Exercise Price
In-the-Money	12,871	$ 9.58	18,504	$ 19.63	31,375	$ 15.50
Out-of-the-Money	—	—	—	—	—	—
Total Options Outstanding	12,871	$ 9.58	18,504	$ 19.63	31,375	$ 15.50

Option Grants in Last Fiscal Quarter

There were no options granted to the Named Executive Officers during the three months ended October 31, 2005.

Equity Compensation Plan Information

The following table summarizes the number of outstanding options granted to employees and directors, as well as the number of securities remaining available for future issuance, under these plans at October 31, 2005 (number of securities in thousands):

	(a)	(b)	(c)
Plan category	Number of securities to be issued upon exercise of outstanding options, warrants and rights	Weighted-average exercise price of outstanding options, warrants and rights	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a))
Equity compensation plans approved by security holders [1]	27,411	$ 16.36	18,478 [2]
Equity compensation plans not approved by security holders [3]	3,964	9.61	—
Total	31,375	$ 15.50	18,478

(1) Included in these amounts are 0.1 million securities available to be issued upon exercise of outstanding options with a weighted-average exercise price of $6.87 related to equity compensation plans assumed in connection with previous business mergers and acquisitions. These amounts do not include shares available for future issuance under the 2006 Employee Stock Plan, which does not become effective until March 2006.

(2) This amount includes 14.2 million securities available for future issuance under Autodesk's 1998 Employee Qualified Stock Purchase Plan.

(3) Amounts correspond to Autodesk's Nonstatutory Stock Option Plan, which was terminated by the Board of Directors in December 2004.

Descriptions of each of our compensation plans may be found in the Proxy Statement for our 2005 Annual Meeting of Stockholders.

Risk Factors Which May Impact Future Operating Results

We operate in a rapidly changing environment that involves a number of risks, many of which are beyond our control. The following discussion highlights some of these risks and the possible impact of these factors on future results of operations. If any of the following risks actually occur, our business, financial condition or results of operations may be adversely impacted, causing the trading price of our common stock to decline.

Because we derive a substantial portion of our net revenues from a limited number of products, if these products are not successful, our net revenues will be adversely affected.

We derive a substantial portion of our net revenues from sales of AutoCAD software, including products based on AutoCAD that serve specific vertical markets, upgrades to those products and products that are interoperable with AutoCAD. As such, any factor adversely affecting sales of these products, including the product release cycle, market acceptance, product performance and reliability, reputation, price competition, economic and market conditions and the availability of third-party applications, would likely harm our operating results.

In the Media and Entertainment Segment, our customers' buying patterns are heavily influenced by advertising and entertainment industry cycles, which have resulted in and could have a negative impact on our future operating results. In addition, a significant percentage of the Media and Entertainment Segment's Advanced Systems products rely primarily on workstations manufactured by Silicon Graphics, Inc. ("SGI"). On September 15, 2005, SGI received an opinion from their auditors that the financial condition of SGI raised substantial doubt about its ability to continue as a going concern. Although we have reduced our dependence on SGI workstations for the Advanced Systems products and will continue to do so in the future, the near term failure of SGI to deliver products or product upgrades in a timely manner would likely result in an adverse effect upon our financial results for a given period.

Our operating results fluctuate within each quarter and from quarter to quarter making our future revenues and operating results difficult to predict.

Our quarterly operating results have fluctuated in the past and are likely to do so in the future. These fluctuations could cause our stock price to change significantly or experience declines. Some of the factors that could cause our operating results to fluctuate include the timing of the introduction of new products by us or our competitors, slowing of momentum in upgrade or maintenance revenue, the adoption of the new accounting pronouncement, SFAS 123R, that will require us to record compensation expense for shares issued under our stock plans beginning in the first quarter of fiscal 2007 with a material impact on our results of operations, failure to achieve anticipated levels of customer acceptance of key new applications, unexpected costs or changes in marketing or other operating expenses, changes in product pricing or product mix, platform changes, delays in product releases, timing of product retirements, failure to continue momentum of annual release cycles or to move a significant number of customers from prior product versions in connection with our retirement programs, failure to convert our 2D customer base to 3D products, distribution channel management, changes in sales compensation practices, the timing of large systems sales, failure to effectively implement our copyright legalization programs, especially in developing countries, failure to successfully ingrate Alias after closing, and general economic or political conditions, particularly in countries where we derive a significant portion of our net revenues.

We have also experienced fluctuations in operating results in interim periods in certain geographic regions due to seasonality or regional economic conditions. In particular, our operating results in Europe during the third quarter are usually affected by a slow summer period, and the Asia/Pacific operations typically experience seasonal slowing in the third and fourth quarters.

Our operating expenses are based in part on our expectations for future revenues and are relatively fixed in the short term. Accordingly, any revenue shortfall below expectations could have an immediate and significant

adverse effect on our profitability. Failure to continue to increase operating margins through rigorous cost controls would negatively affect future profitability. Further, gross margins may be adversely affected if our sales of AutoCAD LT, upgrades and advanced systems products, which historically have had lower margins, grow at a faster rate than sales of our higher-margin products.

Changes in existing financial accounting standards or practices or taxation rules or practices may adversely affect our results of operations.

Changes in existing accounting or taxation rules or practices, new accounting pronouncements or taxation rules, or varying interpretations of current accounting pronouncements or taxation practice could have a significant adverse effect on our results of operations or the manner in which we conduct our business. Further, such changes could potentially affect our reporting of transactions completed before such changes are effective. In particular, the FASB issued SFAS 123R which will require us to record stock-based compensation charges to earnings for employee stock option grants commencing in the first quarter of fiscal 2007, using a fair-value-based method for determining such charges. We believe that the adoption of SFAS 123R will materially adversely impact our earnings and may impact the manner in which we conduct our business.

While we believe we currently have adequate internal control over financial reporting, we are required to evaluate our internal control over financial reporting under Section 404 of the Sarbanes-Oxley Act of 2002 and any adverse results from such evaluation could result in a loss of investor confidence in our financial reports and have an adverse effect on our stock price.

Pursuant to Section 404 of the Sarbanes-Oxley Act of 2002 ("Section 404"), we are required to furnish a report by our management on our internal control over financial reporting. The report contains, among other matters, an assessment of the effectiveness of our internal control over financial reporting as of the end of our fiscal year, including a statement as to whether or not our internal control over financial reporting is effective. This assessment must include disclosure of any material weaknesses in our internal control over financial reporting identified by management. Such report must also contain a statement that our auditors have issued an attestation report on management's assessment of such internal controls.

While we have determined in our Management Report on Internal Control over Financial Reporting included in the Annual Report on Form 10-K for the fiscal year ended January 31, 2005, that our internal control over financial reporting was effective as of January 31, 2005, we must continue to monitor and assess our internal control over financial reporting. If our management identifies one or more material weaknesses in our internal control over financial reporting and such weakness remains uncorrected at fiscal year end, we will be unable to assert such internal control is effective at fiscal year end. If we are unable to assert that our internal control over financial reporting is effective at fiscal year end (or if our auditors are unable to attest that our management's report is fairly stated or they are unable to express an opinion on the effectiveness of our internal controls), we could lose investor confidence in the accuracy and completeness of our financial reports, which would likely have an adverse effect on our business and stock price.

Our business could suffer as a result of risks associated with strategic acquisitions and investments like the acquisition of Alias.

We periodically acquire or invest in businesses, software products and technologies that are complementary to our business through strategic alliances, equity investments and the like. For example, during the third quarter of fiscal 2006, we announced the signing of an agreement to acquire Alias Systems, Inc. The risks associated with such acquisitions include, among others, the difficulty of assimilating the operations and personnel of the companies, the failure to realize anticipated revenue and cost projections, the requirement to test and assimilate the internal control processes of the acquired business in accordance with the requirements of Section 404, and the diversion of management's time and attention. In addition, such investments and acquisitions, may involve significant transaction-related costs. We may not be successful in overcoming such risks, and such investments

and acquisitions may negatively impact our business. In addition, such investments and acquisitions have in the past and may in the future contribute to potential fluctuations in quarterly results of operations. The fluctuations could arise from transaction-related costs and charges associated with eliminating redundant expenses or write-offs of impaired assets recorded in connection with acquisitions. These costs or charges, including those relating to the Alias acquisition, could negatively impact results of operations for a given period or cause quarter to quarter variability in our operating results.

Existing and increased competition may reduce our net revenues and profits.

The software industry has limited barriers to entry, and the availability of desktop computers with continually expanding performance at progressively lower prices contributes to the ease of market entry. The markets in which we compete are characterized by vigorous competition, both by entry of competitors with innovative technologies and by consolidation of companies with complementary products and technologies. In addition, some of our competitors have greater financial, technical, sales and marketing and other resources. Furthermore, a reduction in the number and availability of compatible third-party applications may adversely affect the sale of our products. Because of these and other factors, competitive conditions in the industry are likely to intensify in the future. Increased competition could result in continued price reductions, reduced net revenues and profit margins and loss of market share, any of which would likely harm our business.

We believe that our future results depend largely upon our ability to offer products that compete favorably with respect to reliability, performance, ease of use, range of useful features, continuing product enhancements, reputation and price.

Net revenues or earnings shortfalls or the volatility of the market generally may cause the market price of our stock to decline.

The market price for our common stock has experienced significant fluctuations and may continue to fluctuate significantly. The market price for our common stock may be affected by a number of factors, including the following: net revenues or earnings shortfalls, unexpected deviations in results of key performance metrics, and changes in estimates or recommendations by securities analysts; the announcement of new products or product enhancements by us or our competitors; quarterly variations in our or our competitors' results of operations; developments in our industry; one-time events such as acquisitions, divestitures and litigation; and general market conditions and other factors, including factors unrelated to our operating performance or the operating performance of our competitors.

In addition, stock prices for many companies in the technology sector have experienced wide fluctuations that have often been unrelated to the operating performance of such companies. Historically, after periods of volatility in the market price of a company's securities, a company becomes more susceptible to securities class action litigation. This type of litigation is often expensive and diverts management's attention and resources.

Our efforts to develop and introduce new products and service offerings expose us to risks such as limited customer acceptance, costs related to product defects and large expenditures that may not result in additional net revenues.

Rapid technological change, as well as changes in customer requirements and preferences, characterize the software industry. We are devoting significant resources to the development of technologies, like our lifecycle management initiatives, and service offerings to address demands in the marketplace for increased connectivity and use of digital data created by computer-aided design software. As a result, we are transitioning to new business models, requiring a considerable investment of technical and financial resources. Such investments may not result in sufficient revenue generation to justify their costs, or competitors may introduce new products and services that achieve acceptance among our current customers, adversely affecting our competitive position. In particular, a critical component of our growth strategy is to convert our 2D customer base, including customers

of AutoCAD, AutoCAD LT, and related vertical industry products, to our 3D products such as Autodesk Inventor Series or Autodesk Revit. Should sales of AutoCAD, AutoCAD upgrades and AutoCAD LT products decrease without a corresponding conversion of customer seats to 3D products, our results of operations will be adversely affected.

Product development may also be outsourced to third-parties or developed externally and transferred to the Company through business or technology acquisitions. Such externally developed technologies have certain additional risks, including potential difficulties with effective integration into existing products, adequate transfer of technology know-how and ownership and protection of transferred intellectual property.

Additionally, the software products we offer are complex, and despite extensive testing and quality control, may contain errors or defects. These defects or errors could result in the need for corrective releases to our software products, damage to our reputation, loss of revenues, an increase in product returns or lack of market acceptance of our products, any of which would likely harm our business.

We rely on third party technologies and if we are unable to use or integrate these technologies, our product and service development may be delayed.

We rely on certain software that we license from third parties, including software that is integrated with internally developed software and used in our products to perform key functions. These third-party software licenses may not continue to be available on commercially reasonable terms, and the software may not be appropriately supported, maintained or enhanced by the licensors. The loss of licenses to, or inability to support, maintain and enhance any such software could result in increased costs, or in delays or reductions in product shipments until equivalent software could be developed, identified, licensed and integrated, which would likely harm our business.

In addition, for certain of our products and services, we rely on third party hardware and services, like the workstations supplied by SGI. Financial difficulties, product line changes, or even failure of these third parties, like SGI, may impact our ability to deliver such products and services and, as a result, may adversely impact our business.

Disruptions with licensing relationships and third party developers could adversely impact our business.

We license certain key technologies from third parties. Licenses may be restricted in the term or the use of such technology in ways that negatively affect our business. Similarly, we may not be able to obtain or renew license agreements for key technology on favorable terms, if at all, and any failure to do so could harm our business.

Our business strategy has historically depended in part on our relationships with third-party developers, who provide products that expand the functionality of our design software. Some developers may elect to support other products or may experience disruption in product development and delivery cycles or financial pressure during periods of economic downturn. In particular markets, this disruption would likely negatively impact these third-party developers and end users, which could harm our business.

As a result of our strategy of partnering with other companies for product development our product delivery schedules could be adversely affected if we experience difficulties with our product development partners.

We partner with certain independent firms and contractors to perform some of our product development activities. We believe our partnering strategy allows us to, among other things, achieve efficiencies in developing new products and maintaining and enhancing existing product offerings.

Accordingly, our partnering strategy creates a dependency on such independent developers. Independent developers, including those who currently develop products for us in the United States and throughout the world,

may not be able or willing to provide development support to us in the future. In addition, use of development resources through consulting relationships, particularly in non-US jurisdictions with developing legal systems, may be adversely impacted by, and expose us to risks relating to, evolving employment, export and intellectual property laws. These risks could, among other things, expose our intellectual property to misappropriation and result in disruptions to product delivery schedules.

Our international operations expose us to significant regulatory, intellectual property, collections, exchange fluctuations, taxation and other risks, which could adversely impact our future net revenues and increase our net expenses.

We anticipate that international operations will continue to account for a significant portion of our consolidated net revenues and will provide significant support to our overall development efforts. Risks inherent in our international operations include the following: unexpected changes in regulatory practices and tariffs, difficulties in staffing and managing foreign sales and development operations, longer collection cycles for accounts receivable, potential changes in tax laws, tax arrangements with foreign governments and laws regarding the management of data, greater difficulty in protecting intellectual property, possible future limitations upon foreign owned business, and the impact of fluctuating exchange rates between the U.S. dollar and foreign currencies in markets where we do business.

Our international results will also continue to be impacted by economic and political conditions in foreign markets generally or in specific large foreign markets. These factors may adversely impact our future international operations and consequently our business as a whole.

Our risk management strategy uses derivative financial instruments in the form of foreign currency forward and option contracts, for the purpose of hedging foreign currency market exposures, during each quarter, which exist as a part of our ongoing business operations. These instruments provide us some protection against currency exposures for only the current quarter. Significant fluctuations in exchange rates between the U.S. dollar and foreign currency markets may adversely impact our future net revenues.

General economic conditions may affect our net revenues and harm our business.

As our business has grown, we have become increasingly subject to the risks arising from adverse changes in domestic and global economic and political conditions. If economic growth in the United States and other countries' economies is slowed, many customers may delay or reduce technology purchases. This could result in reductions in sales of our products, longer sales cycles, slower adoption of new technologies and increased price competition. In addition, weakness in the end-user market could negatively affect the cash flow of our distributors and resellers who could, in turn, delay paying their obligations to us, which would increase our credit risk exposure. Any of these events would likely harm our business, results of operations and financial condition.

If we do not maintain our relationships with the members of our distribution channel, or achieve anticipated levels of sell-through, our ability to generate net revenues will be adversely affected.

We sell our software products both directly to customers and through a network of distributors and resellers. Our ability to effectively distribute our products depends in part upon the financial and business condition of our reseller network. Computer software dealers and distributors are typically not highly capitalized and have previously experienced difficulties during times of economic contraction and may do so in the future. While we have processes to ensure that we assess the creditworthiness of dealers and distributors prior to our sales to them, if their financial condition were to deteriorate, they might not be able to make repeat purchases. We rely significantly upon major distributors and resellers in both the U.S. and international regions, including one such distributor who accounted for 11% of consolidated net revenues for the three and nine months ended October 31, 2005. Sales to this same distributor accounted for 11% of consolidated net revenues for the three months ended October 31, 2004 and 12% of consolidated net revenues for the nine months ended October 31, 2004. The loss of

or a significant reduction in business with those distributors or resellers or the failure to achieve anticipated levels of sell-through with any one of our major international distributors or large resellers could harm our business. In particular, if one or more of such resellers should be unable to meet their obligations with respect to accounts payable to us, we could be forced to write off such accounts, which could have a material adverse effect on our results of operations in a given period.

Product returns could exceed our estimates and harm our net revenues.

With the exception of contracts with some distributors, our sales contracts do not contain specific product-return privileges. However, we permit our distributors and resellers to return products in certain instances. For example, we generally allow our distributors and resellers to return older versions of products which have been superceded by new product releases. We anticipate that product returns will continue to be affected by product update cycles, new product releases and software quality.

We establish reserves for stock balancing and product rotation. These reserves are based on historical experience, estimated channel inventory levels and the timing of new product introductions and other factors. While we maintain strict measures to monitor these reserves, actual product returns may exceed our reserve estimates, and such differences could harm our business.

If we are not able to adequately protect our proprietary rights, our business could be harmed.

We rely on a combination of patents, copyright and trademark laws, trade secrets, confidentiality procedures and contractual provisions to protect our proprietary rights. Despite such efforts to protect our proprietary rights, unauthorized parties from time to time have copied aspects of our software products or have obtained and used information that we regard as proprietary. Policing unauthorized use of our software products is time-consuming and costly. While we have recovered some revenues resulting from the unauthorized use of our software products, we are unable to measure the extent to which piracy of our software products exists, and software piracy can be expected to be a persistent problem. Furthermore, our means of protecting our proprietary rights may not be adequate, and our competitors may independently develop similar technology.

We may face intellectual property infringement claims that could be costly to defend and result in our loss of significant rights.

As more and more software patents are granted worldwide, as the number of products and competitors in our industry segments grows and as the functionality of products in different industry segments overlap, we expect that software product developers will be increasingly subject to infringement claims. Infringement or misappropriation claims may be asserted against us, and any such assertions could harm our business. Additionally, certain patent holders have become more aggressive in threatening litigation in attempts to obtain fees for licensing the right to use patents. Any such claims or threats, whether with or without merit, could be time-consuming to defend, result in costly litigation and diversion of resources, or could cause product shipment delays or require us to enter into royalty or licensing agreements. In addition, such royalty or license agreements, if required, may not be available on acceptable terms, if at all, which would likely harm our business.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

We have no material changes to the disclosure on this matter made in Item 7A of our report on Form 10-K for the fiscal year ended January 31, 2005.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Our management evaluated, with the participation of our Chief Executive Officer and our Chief Financial Officer, the effectiveness of our disclosure controls and procedures as of the end of the period covered by this Quarterly Report on Form 10-Q. Based on this evaluation, our Chief Executive Officer and our Chief Financial Officer have concluded that our disclosure controls and procedures are effective to ensure that information we are required to disclose in reports that we file or submit under the Securities Exchange Act of 1934 (i) is recorded, processed, summarized and reported within the time periods specified in Securities and Exchange Commission rules and forms, and (ii) is accumulated and communicated to Autodesk's management, including our Chief Executive Officer and our Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure. Our disclosure controls and procedures are designed to provide reasonable assurance that such information is accumulated and communicated to our management. Our disclosure controls and procedures include components of our internal control over financial reporting. Management's assessment of the effectiveness of our internal control over financial reporting is expressed at the level of reasonable assurance because a control system, no matter how well designed and operated, can provide only reasonable, but not absolute, assurance that the control system's objectives will be met.

Changes in Internal Control Over Financial Reporting

There were no changes in our internal controls over financial reporting (as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Securities Exchange Act of 1934, as amended) during the quarter ended October 31, 2005 that have materially affected, or are reasonably likely to materially affect, our internal controls over financial reporting.

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

Information with respect to this Item may be found in Note 12 of the Notes to Condensed Consolidated Financial Statements in this Form 10-Q, which information is incorporated into this Item by reference.

ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

There were no sales of unregistered securities during the nine months ended October 31, 2005.

The information concerning issuer purchases of equity securities required by this Item is incorporated by reference herein to the section of this Report entitled “Issuer Purchases of Equity Securities” in Part I, Item 2 above.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

Not applicable.

ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS

None.

ITEM 5. OTHER INFORMATION

At our Special Meeting of Stockholders held on November 10, 2005, the following proposals were approved by the stockholders.

	Affirmative Votes	Negative Votes	Votes Withheld	Broker Non-Votes
1. Proposal to approve Autodesk’s 2006 Employee Stock Plan and the reservation of 9.65 million shares of Autodesk’s common stock for issuance thereunder.	142,438,789	33,580,192	1,294,605	—
2. Proposal to approve amendments to Autodesk’ 2000 Directors’ Plan, including the reservation of an additional 750,000 shares of Autodesk ‘s common stock for issuance thereunder.	136,938,829	39,069,517	1,305,240	—

ITEM 6. EXHIBITS

Exhibits

The Exhibits listed below are filed as part of this Form 10-Q.

Exhibit 2.1	Agreement and Plan of Merger dated October 4, 2005 by and among Autodesk, Inc., Maytag Acquisition Corporation, Alias Systems Holdings Inc., Accel-KKR Company, LLC and Ontario Teachers' Pension Plan Board.
Exhibit 10.1	Autodesk Inc. 1996 Stock Plan, as amended and restated
Exhibit 10.2	Autodesk, Inc. 2000 Directors' Option Plan, as amended and restated *(incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed on November 15, 2005)*
Exhibit 10.3	Autodesk, Inc. 2006 Employee Stock Plan *(incorporated by reference to Exhibit 10.2 to the Registrant's Current Report on Form 8-K filed on November 15, 2005)*
Exhibit 31.1	Certification of Chief Executive Officer pursuant to Rule 13a-14(a) of the Securities Exchange Act of 1934
Exhibit 31.2	Certification of Chief Financial Officer pursuant to Rule 13a-14(a) of the Securities Exchange Act of 1934
Exhibit 32.1	Certification of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

SIGNATURES

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

Dated: December 7, 2005

AUTODESK, INC.
(Registrant)

/S/ ANDREW D. MILLER

Andrew D. Miller
Vice President, Chief Accounting Officer and Corporate Controller
(Principal Accounting Officer and Duly Authorized Officer)

EXHIBIT 2.1

EXECUTION VERSION

AGREEMENT AND PLAN OF MERGER

BY AND AMONG

AUTODESK, INC.

ALIAS SYSTEMS HOLDINGS INC.

MAYTAG ACQUISITION CORPORATION

ACCEL-KKR COMPANY, LLC

ONTARIO TEACHERS' PENSION PLAN BOARD

AND WITH RESPECT TO ARTICLES VIII, IX AND X ONLY

ACCEL-KKR COMPANY, LLC

AS STOCKHOLDER REPRESENTATIVE

AND

COMPUTERSHARE TRUST COMPANY, INC.

AS ESCROW AGENT

Dated as of October 4, 2005

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THIS AGREEMENT AND PLAN OF MERGER (the "**Agreement**") is made and entered into as of October 4, 2005 by and among Autodesk, Inc., a Delaware corporation ("**Parent**"), Maytag Acquisition Corporation, a Delaware corporation and a wholly-owned subsidiary of Parent ("**Sub**"), Alias Systems Holdings Inc., a Delaware corporation (the "**Company**"), Accel-KKR Company, LLC, a Delaware limited liability company ("**Accel-KKR**") and Ontario Teachers' Pension Plan Board, an Ontario corporation (which, along with Accel-KKR, is a "**Principal Stockholder**," and collectively, the "**Principal Stockholders**"), with respect to **Article VIII**, **Article IX** and **Article X** hereof only, Accel-KKR Company, LLC as stockholder representative (the "**Stockholder Representative**"), and Computershare Trust Company, Inc. as Escrow Agent.

RECITALS

A. The Boards of Directors of each of Parent, Sub and the Company believe it is advisable and in the best interests of each corporation and its respective stockholders that Parent acquire the Company through the statutory merger of Sub with and into the Company (the "**Merger**") and, in furtherance thereof, have approved this Agreement and the Merger.

B. Pursuant to the Merger, among other things, and subject to the terms and conditions of this Agreement, (i) all of the issued and outstanding shares of capital stock of the Company shall be converted into the right to receive the consideration set forth herein, (ii) certain of the issued and outstanding unvested options to purchase shares of capital stock of the Company shall be assumed by Parent and converted into options to purchase shares of common stock of Parent set forth herein and (iii) all issued and outstanding vested options to purchase shares of capital stock of the Company not otherwise exercised prior to, or in connection with, the Merger and certain unvested options to purchase shares of capital stock of the Company not otherwise assumed by Parent pursuant to **Section 1.6(d)** hereof, shall be terminated.

C. A portion of the consideration otherwise payable by Parent in connection with the Merger shall be placed in escrow by Parent as partial security for certain indemnification obligations set forth in this Agreement.

D. The Company and the Principal Stockholders, on the one hand, and Parent and Sub, on the other hand, desire to make certain representations, warranties, covenants and other agreements in connection with the Merger.

E. Immediately following the execution and delivery of this Agreement by the parties hereto, the Company shall obtain the irrevocable approval of the Merger, this Agreement and the transactions contemplated hereby, including each of the matters set forth in **Section 6.7(a)** hereof, pursuant to an Action by Written Consent, in the form attached hereto as **Exhibit A** (the "**Stockholder Written Consent**"), representing the affirmative vote of the voting Company Capital Stock required to approve and authorize the Company's execution and delivery of this Agreement, the Merger, the Related Agreements to which the Company is a party and the other transactions contemplated hereby and thereby, and including each of the Principal Stockholders and each of the directors of the Company in his or her capacity as a stockholder of the Company (the "**Required Stockholder Consent**"), pursuant to and in strict accordance with the applicable provisions of the General Corporation Law of the State of Delaware ("**Delaware Law**") and the Charter Documents.

F. Concurrent with the execution and delivery of this Agreement, as a material inducement to Parent and Sub to enter into this Agreement, (i) Accel-KKR shall have entered into a Non-Competition and Non-Solicitation Agreement, in substantially the form attached hereto as **Exhibit B** (the "**Accel-KKR Non-Competition and Non-Solicitation Agreement**"), with Parent, and (ii) each Person who might receive any payments and/or benefits referred to in **Section 6.26** hereof shall have executed and delivered to Parent a 280G Waiver substantially in the form attached hereto as **Exhibit C** (the "**280G Waiver**"), by which such Person agrees to waive any right or entitlement to the payments and/or benefits referred to in **Section 6.26** hereof, unless the requisite stockholder approval of those payments and/or benefits are obtained pursuant to **Section 6.26** hereof.

NOW, THEREFORE, in consideration of the mutual agreements, covenants and other premises set forth herein, the mutual benefits to be gained by the performance thereof, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and accepted, the parties hereby agree as follows:

ARTICLE I

THE MERGER

1.1 ***The Merger.*** At the Effective Time and subject to and upon the terms and conditions of this Agreement and the applicable provisions of Delaware Law, Sub shall be merged with and into the Company, the separate corporate existence of Sub shall cease, and the Company shall continue as the surviving corporation and as a wholly-owned subsidiary of Parent. The surviving corporation after the Merger is sometimes referred to hereinafter as the "**Surviving Corporation**."

1.2 ***Effective Time***. Unless this Agreement is earlier terminated pursuant to **Section 9.1** hereof, the closing of the Merger (the "**Closing**") will take place on a Business Day as promptly as practicable after the execution and delivery hereof by the parties hereto, and following satisfaction or waiver of the conditions set forth in **Article VII** hereof, at the offices of Autodesk, Inc., 111 McInnis Parkway, San Rafael, California 94903, unless another time or place is mutually agreed upon in writing by Parent and the Company; *provided, however,* that the Closing shall not, in any case, take place prior to the third Business Day following the end of the 45-day period during which Parent may make offers of employment to the Significant Employees as described in **Section 6.13** below and, *provided further, however,* that the Closing shall not occur on a date that is during the last 10 Business Days prior to the last Business Day of a fiscal quarter of Parent. The open of business on the date upon which the Closing actually occurs shall be referred to herein as the "**Closing Date**." On the Closing Date, the parties hereto shall cause the Merger to be consummated by filing a Certificate of Merger in substantially the form attached hereto as **Exhibit D**, with the Secretary of State of the State of Delaware (the "**Certificate of Merger**"), in accordance with the applicable provisions of Delaware Law (the time of such filing by the Secretary of State of the State of Delaware shall be referred to herein as the "**Effective Time**").

1.3 ***Effect of the Merger***. At the Effective Time, the effect of the Merger shall be as set forth in this Agreement and as provided in the applicable provisions of Delaware Law. Without limiting the generality of the foregoing, and subject thereto, at the Effective Time, except as otherwise agreed to pursuant to the terms of this Agreement, all of the property, rights, privileges, powers and franchises of the Company and Sub shall vest in the Surviving Corporation, and all debts, liabilities and duties of the Company and Sub shall become the debts, liabilities and duties of the Surviving Corporation.

1.4 ***Certificate of Incorporation and Bylaws***.

(a) Unless otherwise determined by Parent prior to the Effective Time, the certificate of incorporation of the Surviving Corporation shall be amended and restated as of the Effective Time to be identical to the certificate of incorporation of Sub as in effect immediately prior to the Effective Time (subject to those changes described in **Section 6.25(a)** hereof), until thereafter amended in accordance with Delaware Law and as provided in such certificate of incorporation; *provided, however,* that at the Effective Time, Article I of the certificate of incorporation of the Surviving Corporation shall be amended and restated in its entirety to read as follows: "The name of the corporation is Autodesk Systems Inc."

(b) Unless otherwise determined by Parent prior to the Effective Time, the bylaws of Sub, as in effect immediately prior to the Effective Time, shall be the bylaws of the Surviving Corporation at the Effective Time (subject to those changes described in **Section 6.25(a)** hereof), until thereafter amended in accordance with Delaware Law and as provided in the certificate of incorporation of the Surviving Corporation and such bylaws.

1.5 ***Directors and Officers***.

(a) ***Directors of Surviving Corporation***. Unless otherwise determined by Parent prior to the Effective Time, the directors of Sub immediately prior to the Effective Time shall be the directors of the Surviving Corporation immediately after the Effective Time, each to hold the office of a director of the Surviving Corporation in accordance with the provisions of Delaware Law and the certificate of incorporation and bylaws of the Surviving Corporation until their successors are duly elected and qualified.

(b) ***Officers of Surviving Corporation***. Unless otherwise determined by Parent prior to the Effective Time, the officers of Sub immediately prior to the Effective Time shall be the officers of the Surviving Corporation immediately after the Effective Time, each to hold office in accordance with the provisions of the bylaws of the Surviving Corporation.

(c) ***Directors of Subsidiaries of Surviving Corporation***. Subject to **Section 6.16** and unless otherwise determined by Parent prior to the Effective Time, Parent, the Company and the Surviving Corporation shall cause the directors of Sub immediately prior to the Effective Time or such other individuals identified by Parent prior to the Effective Time to be the directors of any United States or Canadian Subsidiaries immediately after the Effective Time, each to hold office as a

director of such United States or Canadian Subsidiaries in accordance with the provisions of the laws of the United States and Canada and the respective bylaws or equivalent organizational documents of each United States or Canadian Subsidiary.

(d) ***Officers of Subsidiaries of Surviving Corporation***. Subject to **Section 6.16** and unless otherwise determined by Parent prior to the Effective Time, Parent, the Company and the Surviving Corporation shall cause the officers of Sub immediately prior to the Effective Time or such other individuals identified by Parent prior to the Effective Time to be the officers of any United States or Canadian Subsidiaries immediately after the Effective Time, each to hold office as an officer of such United States or Canadian Subsidiaries in accordance with the provisions of the laws of the United States and Canada and the respective bylaws or equivalent organizational documents of each United States or Canadian Subsidiary.

1.6 ***Effect of Merger on the Capital Stock of the Constituent Corporations***.

(a) ***Definitions***. For all purposes of this Agreement, the following terms shall have the following respective meanings:

"***Balance Sheet Adjustment Amount***" shall mean the amount by which (i) (A) the Company's total current assets, as reflected on the Closing Date Balance Sheet, minus (B) the Company's total current liabilities, as reflected on the Closing Date Balance Sheet, which shall include all Estimated Third Party Expenses that have not been paid prior to the Closing Date, exceeds or is less than (ii) the Balance Sheet Target. For the avoidance of doubt, for purposes of the determination of the Closing Date Balance Sheet, Balance Sheet Adjustment Amount and Net Assets at Closing (as defined in **Section 8.6** herein), **Section 1.6(a)(i)** of the Disclosure Schedule sets forth the determination of the Balance Sheet Adjustment Amount as of June 30, 2005 (the "**Trial Run**"). The determination of the Balance Sheet Adjustment Amount and Net Assets at Closing shall take into account only the same components (i.e., line items) of, and adjustments to, the Balance Sheet Adjustment Amount reflected in **Section 1.6(a)(i)** of the Disclosure Schedule. Further to the preceding sentence, the calculation of the Balance Sheet Adjustment Amount was determined, and any such calculation of the Closing Date Balance Sheet and the Net Assets at Closing shall be determined, in good faith and in accordance with the same accounting methods, policies, practices and procedures, with consistent classifications, judgments and estimation methodology, as were used in the preparation of the Trial Run (and without any change in or introduction of any new reserves, except for changes in or introductions of those reserves, if any, for matters arising after the date of the Trial Run that are made in accordance with GAAP consistently applied but which are consistent with the accounting methods, policies, practices, procedures, classifications, judgments or estimation methodologies used in the preparation of the Trial Run). The parties agree that the purpose of preparing and calculating the Balance Sheet Adjustment Amount and Net Assets at Closing hereunder is to measure changes in working capital without the introduction of different accounting methods, policies, practices, procedures, classifications, judgments or estimation methodologies from those used in the preparation of the Trial Run set forth in **Section 1.6(a)(i)** of the Disclosure Schedule.

"***Balance Sheet Target***" shall mean an amount equal to negative $7.7 million.

"***Business Day***" shall mean each day that is not a Saturday, Sunday or other day on which Parent is closed for business or banking institutions located in San Francisco, California are authorized or obligated by law or executive order to close.

"***Closing Date Balance Sheet***" shall mean the unaudited consolidated balance sheet of the Company as of the Closing Date prepared by the Company and delivered to Parent at least three Business Days prior to the Closing Date. The Closing Date Balance Sheet shall be prepared in accordance with GAAP (except that the Closing Date Balance Sheet may omit footnotes and other presentation items that may be required by GAAP) and shall include the adjustments set forth in **Schedule 1.6(a)(i)** hereto consistently applied on a basis consistent with the methodology used to calculate the Trial Run and fairly presenting the Company's good faith estimate (based on the reasonable assumptions used to calculate the Trial Run) of the balance sheet of the Company as of the Closing Date immediately prior to giving effect to the Closing, including without limitation appropriate allowances for any doubtful accounts using the same methodology to determine such allowances as used in the preparation of the Trial Run; *provided, however,* that, if Parent does not agree with the results of the Closing Date Balance Sheet delivered by the Company, Parent and the Company shall use commercially reasonable efforts to resolve such disagreement prior to the Closing Date. If Parent and the Company are unable to resolve such disagreement prior to the Closing Date, the Closing Date Balance Sheet shall be the sheet prepared by the Company and either Parent or the Company shall have the ability to dispute the results of the Closing Date Balance Sheet pursuant to **Section 8.6** below.

"***Closing Stockholder Consent***" shall mean the approval of the holders of 90% of the outstanding shares of Company Capital Stock entitled to vote on this Agreement and the Merger.

"***Code***" shall mean the Internal Revenue Code of 1986, as amended.

"***Company Capital Stock***" shall mean the Company Common Stock and the Company Preferred Stock and any other shares of capital stock, if any, of the Company, taken together.

"***Company Common Stock***" shall mean, collectively, shares of Class A Common Stock, par value $0.01 per share, of the Company and shares of Class B Common Stock, par value $0.01 per share, of the Company.

"***Company Common Stockholder***" shall mean a holder of Company Common Stock.

"***Company Material Adverse Effect***" or "***Material Adverse Effect***" shall mean any change, event, violation, inaccuracy, circumstance or effect (any such item, an "**Effect**") that is, or is reasonably likely to be, materially adverse to the business, assets (whether tangible or intangible), financial condition or results of operations of the entity and its subsidiaries, taken as a whole, other than, with respect to the Company and its Subsidiaries, any Effect (i) that is cured by the Company before the earlier of (A) the Closing Date or (B) the date on which this Agreement is terminated by Parent pursuant to **Article IX** hereof or (ii) to the extent resulting from one or more of the following, individually or in the aggregate:

(A) changes affecting general business or economic conditions, which changes do not disproportionately affect the Company and its Subsidiaries;

(B) acts of terrorism or war, which acts do not disproportionately affect the Company and its Subsidiaries;

(C) changes in United States generally accepted accounting principles;

(D) the taking of any action required or expressly contemplated by this Agreement;

(E) delays in, suspensions of, or cancellations of customer orders or contracts, or disruptions in reseller, supplier, customer, partner or similar business relationships resulting from the announcement or pendency of this Agreement and the Merger and the transactions contemplated hereby; or

(F) resignations of Employees (other than those Significant Employees who have accepted offers of employment with Parent as contemplated by **Section 6.13**) resulting from the announcement or pendency of this Agreement, the Merger and the transactions contemplated hereby.

"***Company Options***" shall mean all issued and outstanding options (including commitments to grant options) to purchase or otherwise acquire Company Capital Stock (whether or not vested).

"***Company Preferred Stock***" shall mean the Preferred Stock, par value $0.01 per share, of the Company.

"***Company Unvested Options***" shall mean any Company Options that are unvested immediately prior to the Effective Time and will remain unvested immediately following the Effective Time.

"***Company Vested Options***" shall mean any Company Options that are vested immediately prior to the Effective Time or that vest in connection with the Closing.

"***Escrow Agent***" shall mean Computershare Trust Company, Inc., or another institution acceptable to Parent and the Stockholder Representative.

"***Escrow Amount***" shall mean an amount equal to USD$36,400,000.

"***Estimated Third Party Expenses***" shall mean the amount of Third Party Expenses incurred, but not yet paid by the Company prior to or at the Closing, including Third Party Expenses incurred prior to the Closing that the Company anticipates will be payable by the Company after the Closing, including all legal, accounting, financial advisory, consulting and all other fees and expenses of third parties who provided services to the Company in connection with the transactions contemplated

herein on or prior to the Closing Date, as estimated by the Company in good faith and based on reasonable assumptions as of the Closing Date; *provided, however,* that, for the avoidance of doubt, any invoices for fees or expenses received by Parent or the Surviving Corporation after the Closing for services provided to the Company or its Subsidiaries on or prior to the Closing Date in connection with the transactions contemplated herein shall be considered Third Party Expenses; *provided further, however,* that any fees, costs, obligations or expenses resulting from or relating to any Parent Optional Action shall not be deemed Estimated Third Party Expenses hereunder.

"***Exchange Ratio***" shall mean the quotient obtained by dividing (i) the Total Consideration less the Preferred Preference by (ii) the Total Outstanding Common Shares, rounded to the nearest one-hundredth (0.01) (with amounts 0.005 and above rounded up).

"***GAAP***" shall mean United States generally accepted accounting principles consistently applied.

"***Knowledge***" or "***Known***" shall mean, (i) with respect to the Company, the actual knowledge of Doug Walker, Joanne Rusnell, Peter Mehlstaeubler, Dave Wharry, James Christopher and David Wexler after appropriate inquiry of those employees who have managerial responsibility in respect of the matter of such inquiry and (ii) with respect to any Principal Stockholder, the actual knowledge of such Principal Stockholder.

"***Lien***" shall mean any lien, pledge, charge, claim, mortgage, security interest or other encumbrance of any sort.

"***Option Exchange Ratio***" shall mean the quotient obtained by dividing (i) the Exchange Ratio by (ii) the Trading Price, rounded to the nearest one-hundredth (0.01) (with amounts 0.005 and above rounded up).

"***Parent Common Stock***" shall mean shares of the common stock, par value $0.01 per share, of Parent, together with the accompanying Preferred Share Purchase Rights.

"***Parent Option***" shall mean any option to purchase shares of Parent Common Stock issued pursuant to the terms of **Section 1.6(d)** hereof in connection with the assumption of a Company Option.

"***Parent Optional Action***" shall mean any action or omission by the Company, Surviving Corporation or any of its Subsidiaries undertaken (or not undertaken) in respect of the assumption of certain Company Options contemplated in **Section 1.6(e)** (including the issuance of the assumption agreements referred to therein), the termination of any employees of the Company or any of its Subsidiaries, or any third party financing secured by Parent in connection with the transactions contemplated herein.

"***Person***" shall mean an individual or entity, including a partnership, a limited liability company, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, or a Governmental Entity (or any department, agency, or political subdivision thereof).

"***Plan***" shall mean Company's 2004 Stock Option Plan.

"***Preferred Preference***" shall mean that amount equal to the sum of the Preferred Preference Per Share for all shares of Company Preferred Stock (including any rights convertible into, or exercisable or exchangeable for, shares of Company Preferred Stock on an as-converted, exercised, or exchanged basis) issued and outstanding immediately prior to the Effective Time, rounded to the nearest one hundredth (0.01) (with amounts 0.005 and above rounded up).

"***Preferred Preference Per Share***" shall mean, for each share of the Total Outstanding Preferred Shares, an amount in cash (without interest) equal to the Liquidation Value (as such term is defined in the Certificate of Incorporation (as amended and/or restated prior to the Closing Date)) together with the accrued and unpaid dividends thereon.

"***Preferred Share Purchase Rights***" shall mean the right to purchase one one-thousandth (0.001) of a share of Parent's Series A Preferred Stock, $0.01 par value per share.

"***Pro Rata Portion***" shall mean, with respect to each holder of Company Preferred Stock, Company Common Stock or those Company Vested Options that are exercised prior to, or in connection with, the Merger or otherwise converted into the right to receive the Option Merger Consideration, an amount equal to the quotient obtained by dividing (i) the amount of cash issuable pursuant to **Sections 1.6(b)** and **1.6(d)** hereof in respect of the Company Preferred Stock, Company Common Stock or such Company Vested Options, owned by such holder as of the Effective Time (plus, in the case of holders of Company Vested Options, the exercise price of such Company Vested Options being converted into the right to receive the Option Merger Consideration) by (ii) the aggregate amount of cash issuable to all holders of Company Preferred Stock, Company Common Stock and such Company Vested Options, pursuant to **Sections 1.6(b)** and **1.6(d)** hereof as of the Effective Time (plus the exercise price of all such Company Vested Options being converted into the right to receive the Option Merger Consideration); *provided, however,* that, for the avoidance of doubt, the sum of the Pro Rata Portions for all holders of Company Preferred Stock, Company Common Stock and such Company Vested Options shall be equal to one.

"***Related Agreements***" shall mean the Reciprocal Confidentiality Agreement, Accel-KKR Non-Competition and Non-Solicitation Agreement, Certificate of Merger, Stockholder Written Consent and 280G Waivers, entered into by the Company or any of the Principal Stockholders in connection with the transactions contemplated herein.

"***SEC***" shall mean the United States Securities and Exchange Commission.

"***Stockholder***" shall mean any holder of any Company Capital Stock immediately prior to the Effective Time, including any holder of a Company Vested Option that, pursuant to **Section 1.6(d)**, is exercised prior to the Effective Time or otherwise converted into the right to receive the Option Merger Consideration.

"***Stockholders Agreement***" shall mean that certain Stockholders Agreement, dated as of June 15, 2004, by and among the Company, the Principal Stockholders and each of the other entities and individuals set forth from time to time on the signature pages thereto, as amended, modified or substituted from time to time.

"***Total Consideration***" shall mean an aggregate amount equal to (i) USD$182,000,000 plus (ii) the Balance Sheet Adjustment Amount (in the event that such amount exceeds the Balance Sheet Target) or minus the Balance Sheet Adjustment Amount (in the event that such amount is less than the Balance Sheet Target).

"***Total Outstanding Common Shares***" shall mean the aggregate number of shares of Company Common Stock (including all shares of Company Common Stock issued upon the exercise of all Company Vested Options and, for the avoidance of doubt, shares of Company Common Stock that would have otherwise been issuable upon exercise of those Company Vested Options that are both (a) not exercised prior to the Effective Time and (b) converted into the right to receive the Option Merger Consideration pursuant to **Section 1.6(d)(ii)**) and any other rights convertible into, or exercisable or exchangeable for, shares of Company Common Stock on an as-converted, exercised, or exchanged basis) issued and outstanding immediately prior to the Effective Time (other than shares of Company Common Stock issuable upon the exercise of Company Unvested Options and Company Common Stock held by the Company as treasury stock). Notwithstanding the foregoing, Total Outstanding Common Shares shall not include any shares of Company Common Stock issuable upon the exercise of Company Options that either expire, are cancelled by the Company or assumed by Parent concurrently with or immediately prior to the Effective Time to the extent not exercised or shares of Company Preferred Stock (including any rights convertible into, or exercisable or exchangeable for, shares of Company Preferred Stock on an as-converted, exercised, or exchanged basis) issued and outstanding immediately prior to the Effective Time.

"***Total Outstanding Preferred Shares***" shall mean the aggregate number of shares of Company Preferred Stock (including any rights convertible into, or exercisable or exchangeable for, shares of Company Preferred Stock on an as-converted, exercised, or exchanged basis) issued and outstanding immediately prior to the Effective Time.

"***Total Outstanding Shares***" shall mean the Total Outstanding Common Shares and the Total Outstanding Preferred Shares.

"***Trading Price***" shall mean the greater of: (i) the average closing sale price of one share of Parent Common Stock as reported on the Nasdaq National Market for the 10 consecutive trading days ending on the date that is three trading days immediately preceding the Closing Date; or (ii) the closing sale price of one share of Parent Common Stock as reported on the Nasdaq National Market for the day immediately preceding the Closing Date, in either case, as adjusted as appropriate to reflect any stock splits, stock dividends, combinations, reorganizations, reclassifications or similar events.

"***United States and Canadian Subsidiaries***" means Alias Systems (US) Holding Company, a Delaware corporation, Alias Systems, Inc., a California corporation, and Alias Systems Corp., and Systemes Alias Quebec Inc.

(b) ***Effect on Capital Stock***. At the Effective Time, by virtue of the Merger and without any action on the part of Parent, Sub, the Company or the holders of shares of Company Capital Stock, each share of Company Capital Stock (excluding, for avoidance of doubt, unexercised Company Options, which shall be treated as provided for in **Section 1.6(d)** below) issued and outstanding immediately prior to the Effective Time, upon the terms and subject to the conditions set forth in this **Section 1.6** and throughout this Agreement, including the escrow provisions set forth in **Article VIII** hereof, will be cancelled and extinguished and will be converted automatically into the right to receive, upon surrender of the Company Stock Certificate representing such shares of Company Capital Stock in the manner provided in **Section 1.8** hereof, that portion of the Total Consideration, without interest, as set forth below:

(i) each outstanding share of Company Preferred Stock will be converted automatically into the right to receive the Preferred Preference Per Share;

(ii) each outstanding share of Company Common Stock will be converted automatically into such amount of cash (without interest) equal to the Exchange Ratio;

(iii) for purposes of calculating the amount of cash payable to each Stockholder pursuant to this **Section 1.6(b)**, all shares of Company Capital Stock held by each Stockholder shall be aggregated on a certificate-by-certificate basis. The amount of cash to be paid to each Stockholder for each share certificate shall be rounded up to the nearest cent;

(iv) notwithstanding anything set forth in this **Section 1.6**, any Dissenting Shares will be treated as set forth in **Section 1.7** hereof; and

(v) each share of Company Capital Stock held in the treasury of the Company immediately prior to the Effective Time shall be canceled and extinguished without any conversion thereof, and no payment shall be made with respect thereto.

(c) ***Payment of Excess Assets***. Any Excess Assets that become final and not subject to challenge pursuant to **Section 8.6** shall be paid by Parent to each Stockholder based on such Stockholder's Pro Rata Portion, as reflected in the Spreadsheet; *provided, however,* that in no event will any share of Company Preferred Stock receive more than its respective Preferred Preference Per Share.

(d) ***Assumption of Certain Company Unvested Options; Termination of Certain Company Options***.

(i) As of the Effective Time, each Company Unvested Option that is outstanding and not cancelled by the Company at or prior to the Effective Time pursuant to **Section 6.9** hereof shall, subject to **Section 1.6(e)**, be assumed by Parent as a Parent Option. Except as otherwise set forth in this Agreement, each Company Unvested Option so assumed by Parent pursuant to this **Section 1.6(d)** shall continue to have, and be subject to, the same terms and conditions set forth in the Plan and the option agreements relating thereto, as in effect immediately prior to the Effective Time, except that (A) such assumed Company Unvested Option will be exercisable for that number of whole shares of Parent Common Stock equal to the product of the number of shares of Company Common Stock that were issuable upon exercise of such Company Unvested Option immediately prior to the Effective Time multiplied by the Option Exchange Ratio, rounded down to the nearest whole number of shares of Parent Common Stock and (B) the per share exercise price for the shares of Parent Common Stock issuable upon exercise of such assumed Company Unvested Option shall be equal to the quotient obtained by dividing the exercise price per share of Company Common Stock at which such assumed Company Unvested Option was exercisable immediately prior to the Closing Date by the Option Exchange Ratio, rounded up to the nearest whole cent and shall otherwise comply with Notice 2005-1 or any subsequent applicable guidance issued prior to the Closing Date (including without limitation Regulation § 1.424-1 to the extent incorporated into Notice 2005-1 or such subsequent guidance), such that the Company Unvested Option so assumed will not be treated as a deferral of compensation subject to Code § 409A.

(ii) As of the Effective Time, each then outstanding Company Option that is either (A) a Company Vested Option or (B) a Company Option held by a Person who is not employed by the Company or one of its Subsidiaries immediately prior to the Effective Time, shall by virtue of the Merger and without any action on the part of Parent, Sub, the Company or the holder thereof, other than the Company delivering any notices required pursuant to the terms of the Plan, terminate; *provided, however,* that for any such Company Options that are Company Vested Options, such Company Vested Options shall be converted into and shall become a right to receive an amount in cash, without interest, with respect to each share subject thereto, equal to the excess, if any, of the Exchange Ratio over the per share exercise price of such Company Option (such amount being hereinafter referred to as the "**Option Merger Consideration**"). For purposes of clarity, the aggregate exercise prices of such Company Vested Options shall be treated as cash and part of current assets for purposes of the Balance Sheet Adjustment Amount. The payment of the Option Merger Consideration to the holder of a Company Option described in this **Section 1.6(d)(ii)** shall be reduced by such Person's Pro Rata Portion of the escrow obligations set forth in **Article VIII**, any income or employment tax withholding required under the Code or any provision of state, local or foreign tax law. To the extent that amounts are withheld pursuant to the preceding sentence, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the holder of such Company Option. Prior to the Effective Time, the Company shall take all action necessary to effect the terminations anticipated by this **Section 1.6(d)(ii)** under any such outstanding Company Options, including any actions required by the Plan.

(iii) Prior to the Effective Time, and subject to the review and approval of Parent, the Company shall take all actions necessary (other than the actions described in **Section 1.6(e)** which shall be the sole responsibility of Parent) to effect the transactions anticipated by this **Section 1.6** under all Company Option agreements and any other plan or arrangement of the Company (whether written or oral, formal or informal), including delivering all required notices.

(e) ***Assumption Agreement***. Following the Closing, Parent shall issue to each holder of a Company Unvested Option to be assumed by Parent pursuant to **Section 1.6(d)** hereof a document evidencing the assumption of such Company Unvested Option, by Parent, and, as a condition to such assumption, each former holder of a Company Unvested Option so assumed by Parent shall acknowledge the receipt of the same in exchange for such holder's Company Unvested Option.

(f) ***Withholding Taxes***. The Company and, on its behalf, Parent and the Surviving Corporation, shall be entitled to deduct and withhold from any consideration payable or otherwise deliverable pursuant to this Agreement to any holder or former holder of Company Capital Stock such amounts as may be required to be deducted or withheld therefrom under any provision of federal, local or foreign tax law or under any applicable legal requirement. To the extent such amounts are so deducted or withheld, such amounts shall be treated for all purposes under this Agreement as having been paid to the Person to whom such amounts would otherwise have been paid.

(g) ***Stockholder Loans***. In the event that any Stockholder has outstanding loans from the Company or any of its Subsidiaries as of the Effective Time, the consideration payable to such Stockholder pursuant to this **Section 1.6** shall be reduced by an amount equal to the sum of the outstanding principal plus accrued interest of such Stockholder's loans as of the Effective Time (the "**Amount Owed**"). Such loans shall be satisfied as to the amount by which the consideration is reduced pursuant to this **Section 1.6(g)**. To the extent the consideration payable to such Stockholder is so reduced, such amount shall be treated for all purposes under this Agreement as having been paid to such Stockholder, and the Amount Owed shall be treated as current assets for purposes of the Balance Sheet Adjustment Amount.

(h) ***Capital Stock of Sub***. Each share of Common Stock of Sub issued and outstanding immediately prior to the Effective Time shall be converted into and exchanged for one validly issued, fully paid and nonassessable share of Common Stock of the Surviving Corporation. Each stock certificate of Sub evidencing ownership of any such shares shall continue to evidence ownership of such shares of capital stock of the Surviving Corporation.

1.7 ***Dissenting Shares***.

(a) Notwithstanding any other provisions of this Agreement to the contrary, any shares of Company Capital Stock held by a holder who has not effectively withdrawn or lost such holder's appraisal rights under Delaware Law (the "**Dissenting Shares**") shall not be converted into or represent a right to receive the applicable consideration for Company Capital Stock set forth in **Section 1.6** hereof, but the holder thereof shall only be entitled to such rights as are provided by Delaware Law.

(b) Notwithstanding the provisions of **Section 1.7(a)** hereof, if any holder of Dissenting Shares shall effectively withdraw or lose (through failure to perfect or otherwise) such holder's appraisal rights under Delaware Law, then, as of the later of the Effective Time and the occurrence of such event, such holder's Dissenting Shares shall automatically be converted into and represent only the right to receive the consideration for Company Capital Stock, as applicable, set forth in **Section 1.6** hereof, without interest thereon, and subject to the provisions of **Section 8.4** hereof, upon surrender of the certificate representing such shares.

(c) The Company shall give Parent (i) prompt notice of any written demand for appraisal of Company Capital Stock received by the Company pursuant to the applicable provisions of Delaware Law and (ii) the opportunity to participate in all negotiations and proceedings with respect to such demands. The Company shall not, except with the prior written consent of Parent, which shall not be unreasonably withheld, make any payment with respect to any such demands or offer to settle or settle any such demands. Any communication to be made by the Company to any Stockholder with respect to such demands shall be submitted to Parent in advance and shall not be presented to any Stockholder prior to the Company receiving Parent's consent, which shall not be unreasonably withheld. Notwithstanding the foregoing, to the extent that Parent, the Surviving Corporation or the Company (y) makes any payment or payments in respect of any Dissenting Shares in excess of the consideration that otherwise would have been payable in respect of such shares in accordance with this Agreement or (z) following the Effective Time, incurs any Losses (including attorneys' and consultants' fees, costs and expenses and including any such fees, costs and expenses incurred in connection with investigating, defending against or settling any action or proceeding) in respect of any Dissenting Shares (excluding payments for such shares) ((y) and (z) together "**Dissenting Share Payments**"), Parent shall be entitled to recover under the terms of **Article VIII** hereof the amount of such Dissenting Share Payments without regard to the Deductible Amount.

1.8 ***Surrender of Certificates***.

(a) ***Exchange Agent***. The Secretary of Parent, or a Person selected by Parent, shall serve as the exchange agent (the "**Exchange Agent**") for the Merger.

(b) ***Parent to Provide Cash***. Immediately following the Closing, Parent shall make available to the Exchange Agent for exchange in accordance with this **Article I** the aggregate amount of cash payable pursuant to **Section 1.6** hereof in exchange for outstanding shares of Company Capital Stock, and, in accordance with **Section 1.8(c)**, the Exchange Agent shall, following the Closing, pay to each Stockholder the amount of cash to which each such Stockholder is entitled under **Sections 1.6(b)** or **1.6(d)(ii)**, as the case may be. Parent will direct the Exchange Agent to immediately distribute at Closing the cash to be received at Closing to those Stockholders who have delivered the Exchange Documents to the Exchange Agent at least 10 days prior to the Closing. Notwithstanding the foregoing, Parent shall deposit into the Escrow Fund, on behalf of

those Stockholders who are obligated to contribute to the Escrow Fund, an amount of cash equal to the Escrow Amount out of the aggregate amount of cash otherwise payable to such Stockholders pursuant to **Section 1.6** hereof; *provided, however,* that the Escrow Amount will not include the Pro Rata Portion of the Escrow Amount for any Stockholder who exercises its appraisal rights pursuant to **Section 1.7**, in which case Parent shall set aside such Stockholder's Pro Rata Portion along with the amount of cash that such Stockholder would otherwise be entitled to receive pursuant to **Section 1.6(b)**. Parent shall be deemed to have contributed on behalf of each such Stockholder his or her Stockholder's Pro Rata Portion of the Escrow Amount to the Escrow Fund, rounded to the nearest cent (with amounts greater than or equal to $0.005 rounded up). If the sum of the Pro Rata Portions (each rounded to the nearest cent) for all Stockholders does not equal the Escrow Amount (and the amount is less than $100.00), then the appropriate amount will be added to or subtracted from the Pro Rata Portion of Accel-KKR such that the sum of the rounded Pro Rata Portions does equal the Escrow Amount.

(c) ***Exchange Procedures***. Concurrently with the delivery of the Information Statement (defined below), Parent, the Company or the Exchange Agent shall mail a letter of transmittal (including related attachments) in the form attached hereto as **Exhibit E** or an option cancellation agreement, as the case may be (the "**Exchange Documents**"), to each Stockholder at the address set forth opposite each such Stockholder's name on the Spreadsheet. After receipt of such Exchange Documents, the Stockholders will surrender the certificates representing their shares of Company Capital Stock, if any, duly endorsed in blank or accompanied by duly executed assignment documents (the "**Company Stock Certificates**") to the Exchange Agent for cancellation together with duly completed and validly executed Exchange Documents. Upon surrender of a Company Stock Certificate, if any, for cancellation to the Exchange Agent, together with such Exchange Documents, duly completed and validly executed in accordance with the instructions thereto, subject to the terms of **Section 1.8(d)** hereof, at the Closing such Stockholder shall be entitled to receive from the Exchange Agent in exchange therefor, the cash amounts (less the amount of cash to be deposited in the Escrow Fund on such holder's behalf pursuant to **Section 1.8(b)** hereof and **Article VIII** hereof) to which such holder is entitled pursuant to **Section 1.6(b)** or **Section 1.6(d)(ii)** hereof, and the Company Stock Certificate, if any, so surrendered shall be cancelled. Until so surrendered, each Company Stock Certificate outstanding after the Effective Time will be deemed, for all corporate purposes thereafter, to evidence only the right to receive the cash amounts payable in exchange for shares of Company Capital Stock (without interest) into which such shares of Company Capital Stock shall have been so converted. No portion of the Total Consideration will be paid to the holder of any unsurrendered Company Stock Certificate with respect to shares of Company Capital Stock formerly represented thereby until the holder of record of such Company Stock Certificate shall surrender such Company Stock Certificate and the Exchange Documents pursuant hereto.

(d) ***Transfers of Ownership***. If any cash amounts are to be disbursed pursuant to **Section 1.6** hereof to a Person other than the Person whose name is reflected on the Company Stock Certificate surrendered in exchange therefor, it will be a condition of the issuance or delivery thereof that the certificate so surrendered will be properly endorsed and otherwise in proper form for transfer

and that the person requesting such exchange will have paid to Parent or any agent designated by it any transfer or other taxes required by reason of the payment of any portion of the Total Consideration in any name other than that of the registered holder of the certificate surrendered, or established to the satisfaction of Parent or any agent designated by it that such tax has been paid or is not payable.

(e) ***Exchange Agent to Return Cash Consideration***. At any time following the last day of the sixth month following the Effective Time, Parent shall be entitled to require the Exchange Agent to deliver to Parent or its designated successor or assign all cash amounts that have been deposited with the Exchange Agent pursuant to **Section 1.8(b)** hereof, and any and all interest thereon or other income or proceeds thereof, not disbursed to the Stockholders pursuant to **Section 1.8(c)** hereof, and thereafter such Stockholders who did not receive their respective cash consideration shall be entitled to look only to Parent (subject to the terms of **Section 1.8(f)** hereof) only as general creditors thereof with respect to any and all cash amounts that may be payable to such Stockholders pursuant to **Sections 1.6(b)** or **1.6(d)(ii)** hereof upon the due surrender of such Company Stock Certificates, if any, and duly executed Exchange Documents in the manner set forth in **Section 1.8(c)** hereof. No interest shall be payable for the cash amounts delivered to Parent pursuant to the provisions of this **Section 1.8(e)** and which are subsequently delivered to such Stockholders.

(f) ***Investment of Exchange Fund***. The Exchange Agent shall invest the cash in the Exchange Fund as directed by Parent on a daily basis; *provided, however,* that if any such investment or loss thereon shall affect the amounts payable to the Stockholders pursuant to **Section 1.6** hereof, Parent shall pay in cash the full amount of such shortfall. Any interest and other income resulting from such investment shall become a part of the Exchange Fund, and any amounts in excess of the amounts payable to the Stockholders pursuant to **Section 1.6** hereof shall promptly be paid to Parent.

(g) ***No Liability***. Notwithstanding anything to the contrary in this **Section 1.8**, neither the Exchange Agent, the Surviving Corporation, nor any party hereto shall be liable to a holder of shares of Company Capital Stock for any amount paid to a public official pursuant to any applicable abandoned property, escheat or similar law.

1.9 ***No Further Ownership Rights in Company Capital Stock***. The cash amounts paid or to be paid in respect of the surrender for exchange of shares of Company Capital Stock in accordance with the terms hereof shall be deemed to be full satisfaction of all rights and obligations, other than the indemnification rights and obligations arising hereunder, pertaining to such shares of Company Capital Stock, and there shall be no further registration of transfers on the records of the Surviving Corporation of shares of Company Capital Stock which were outstanding immediately prior to the Effective Time. If, after the Effective Time, Company Stock Certificates are presented to the Surviving Corporation for any reason, they shall be canceled and exchanged as provided in this Article I.

1.10 ***Lost, Stolen or Destroyed Certificates***. In the event any Company Stock Certificates shall have been lost, stolen or destroyed, the Exchange Agent shall issue in exchange for such lost, stolen or destroyed certificates, upon the making of an affidavit of that fact by the holder thereof, such cash amount, if any, as may be required pursuant to **Section 1.6** hereof; *provided*, *however*, that Parent may, in its discretion and as a condition precedent to the issuance thereof, require the Stockholder who is the owner of such lost, stolen or destroyed certificates to either (a) deliver a bond in such amount as it may reasonably direct or (b) provide an indemnification agreement in a form and substance acceptable to Parent, against any claim that may be made against Parent or the Exchange Agent with respect to the certificates alleged to have been lost, stolen or destroyed.

1.11 ***Tax Consequences***. Neither party makes any representations or warranties regarding the tax treatment of the Merger or any of the transactions or agreements contemplated hereby, and each party acknowledges that it is relying solely on its own tax advisors in connection with this Agreement, the Merger and the other transactions and agreements contemplated hereby.

1.12 ***Adjustments to Per Share Cash Consideration***. The amount of cash payable to the Stockholders on a per share basis pursuant to **Section 1.6** and any other applicable numbers or amounts shall be adjusted to reflect appropriately the effect of any stock split, reverse stock split, stock dividend (including any dividend or distribution of securities convertible into Company Capital Stock), reorganization, recapitalization, reclassification or other like change with respect to Company Capital Stock occurring or having a record date on or after the date hereof and prior to the Effective Time.

1.13 ***Taking of Necessary Action; Further Action***. If at any time after the Effective Time, any further action is necessary or desirable to carry out the purposes of this Agreement and to vest the Surviving Corporation with full right, title and possession to all assets, property, rights, privileges, powers and franchises of the Company, Parent, Sub, and the officers and directors of the Company, Parent and Sub are fully authorized in the name of their respective corporations or otherwise to take, and will take, all such lawful and necessary action.

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company hereby represents and warrants to Parent and Sub, subject to such exceptions as are specifically disclosed in the disclosure schedule (referencing the appropriate section, subsection, paragraph and subparagraph numbers; *provided, however,* that, other than any exception to **Section 2.10(a)**, each section, subsection, paragraph and subparagraph of the disclosure schedules shall be deemed to incorporate by reference all information disclosed in any other section, subsection, paragraph and subparagraph of the disclosure schedules if the relevance of such disclosure to such other section, subsection, paragraph and subparagraph is reasonably apparent from the face of the disclosure in the disclosure schedule) supplied by the Company to Parent (the "**Disclosure Schedule**") and dated as of the date hereof, on the date hereof and (except where a

representation or warranty is made as of the date hereof or a specific date set forth herein) as of the Closing Date, as though made on the Closing Date, as follows:

2.1 ***Organization of the Company***.

(a) The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. The Company has the corporate power to own its properties and to carry on its business as currently conducted. The Company is duly qualified or licensed to do business and in good standing as a foreign corporation in each jurisdiction in which the character or location of its assets or properties (whether owned, leased or licensed) or the nature of its business make such qualifications necessary, except where the failure to be so qualified or licensed would not have a Company Material Adverse Effect. The Company has made available a true and correct copy of its certificate of incorporation, as amended to date (the "**Certificate of Incorporation**") and bylaws, as amended to date, each in full force and effect on the date hereof (collectively, the "**Charter Documents**"), to Parent. The Board of Directors of the Company has not approved or proposed any amendment to any of the Charter Documents.

(b) **Section 2.1(b)** of the Disclosure Schedule lists the directors and officers of the Company as of the date hereof. Except as set forth in **Section 2.1(b)** of the Disclosure Schedule, the operations now being conducted by the Company are not now conducted by the Company under any other name.

(c) **Section 2.1(c)** of the Disclosure Schedule lists every state or foreign jurisdiction in which the Company has Employees or facilities.

2.2 ***Company Capital Structure***.

(a) The authorized capital stock of the Company consists of 65,000 shares of Company Preferred Stock, 10,000,000 shares of Class A Common Stock, and 1,000,000 shares of Class B Common Stock. As of the date hereof, 57,853 shares of Company Preferred Stock are issued and outstanding, 6,428,200 shares of Class A Common Stock are issued and outstanding, and no shares of Class B Common Stock are issued and outstanding. As of the date hereof, the Company Capital Stock is held by the persons in the amounts set forth in **Section 2.2(a)** of the Disclosure Schedule which further sets forth for each such person the number of shares held, class and/or series of such shares and the number of the applicable stock certificates representing such shares. All outstanding shares of Company Capital Stock are duly authorized, validly issued, fully paid and non-assessable and, except as set forth in **Section 2.2(a)** of the Disclosure Schedule, are not subject to preemptive rights created by statute, the Charter Documents, or any agreement to which the Company is a party or by which it is bound. Except as set forth in **Section 2.2(a)** of the Disclosure Schedule, there are no shares of issued and outstanding Company Common Stock that are unvested or subject to a repurchase option, risk of forfeiture or other condition under any applicable stock restriction agreement or other agreement with the Company.

(b) All outstanding shares of Company Capital Stock and Company Options have been issued or repurchased (in the case of shares that were outstanding and repurchased by the Company or any Stockholder) in compliance with all applicable federal, state and foreign securities laws, rules and regulations, and were issued, transferred and repurchased (in the case of shares that were outstanding and repurchased by the Company or any Stockholder) in accordance with any right of first refusal or similar right or limitation Known to the Company, including those in the Charter Documents. The Company has no other capital stock authorized, issued or outstanding.

(c) Except for the Plan and except as set forth in **Section 2.2(c)** of the Disclosure Schedule, neither the Company nor any of its Subsidiaries has adopted, sponsored or maintained any stock option plan or any other plan or agreement providing for equity compensation to any person. The Company has reserved 1,100,000 shares of Company Common Stock for issuance to employees and directors of, and consultants to, the Company in connection with the exercise of Company Options granted under the Plan. As of the date hereof, (i) 981,510 shares are issuable upon the exercise of currently outstanding, unexercised Company Options granted under the Plan, (ii) no shares have been issued upon the exercise of Company Options previously granted under the Plan and remain outstanding as of the date hereof and (iii) 128,210 shares remain available for future grant. **Section 2.2(c)** of the Disclosure Schedule sets forth for each Company Option outstanding as of the date hereof, the name of the holder of such Company Option, the domicile address of such holder, the number of shares of Company Capital Stock issuable upon the exercise of such Company Option, the exercise price of such Company Option, the date of grant of such Company Option, the vesting schedule for such Company Option, including the extent vested to date and whether the vesting of such Company Option is subject to acceleration as a result of the transactions contemplated by this Agreement or any other events (including a complete description of any such acceleration provisions), and whether such option is a nonstatutory option or intended to qualify as an incentive stock option as defined in Section 422 of the Code. The terms of the Plan and the applicable agreements for each Company Option permit the assumption or substitution for Parent Options as provided in this Agreement, without the consent or approval of the holders of such securities (other than as contemplated by **Section 1.6(e)**) the Stockholders or otherwise and without any acceleration of the exercise schedules or vesting provisions in effect for such Company Options. True and complete copies of all forms of agreements and instruments relating to or issued under the Plan (including any agreements and instruments that differ materially in substance from such forms) have been made available to Parent, and, except as indicated in the copies made available to Parent, such agreements and instruments have not been amended, modified or supplemented, and there are no agreements to amend, modify or supplement such agreements or instruments from the forms thereof made available to Parent (except for such amendments, modifications or supplements that are required by this Agreement). Except as set forth in **Section 2.2(c)** of the Disclosure Schedule, as of the date hereof, all holders of Company Options are current employees of the Company.

(d) **Section 2.2(d)** of the Disclosure Schedule sets forth as of June 30, 2005 the outstanding principal, accrued interest and applicable rate of interest of all outstanding Stockholder loans described in **Section 1.6(g)** hereof.

(e) As of the date hereof, except for the Company Options and except as set forth in **Section 2.2(e)** of the Disclosure Schedule, there are no options, warrants, calls, rights, convertible securities, commitments or agreements of any character, written or oral, to which the Company or any of its Subsidiaries is a party or by which the Company is bound obligating the Company to issue, deliver, sell, repurchase or redeem, or cause to be issued, delivered, sold, repurchased or redeemed, any shares of the capital stock of the Company or obligating the Company to grant, extend, accelerate the vesting of, change the price of, otherwise amend or enter into any such option, warrant, call, right, commitment or agreement. Except as set forth in **Section 2.2(e)** of the Disclosure Schedule, as of the date hereof, there are no outstanding or authorized stock appreciation, phantom stock or other similar rights with respect to the Company or any of its Subsidiaries. Except as contemplated hereby and in the Stockholders Agreement, there are no voting trusts, proxies, or other agreements or understandings with respect to the voting stock of the Company or any of its Subsidiaries to which the Company or any of its Subsidiaries is a party or, to the Knowledge of the Company, otherwise. Except as set forth in **Section 2.2(e)** of the Disclosure Schedule, there are no agreements to which the Company or any of its Subsidiaries is a party relating to the registration, sale or transfer (including agreements relating to rights of first refusal, co-sale rights or "drag-along" rights) of any Company Capital Stock. As a result of the Merger and, subject to **Section 1.6(e)** hereof, Parent will be the sole record and beneficial holder of all issued and outstanding Company Capital Stock and all rights to acquire or receive any shares of Company Capital Stock, whether or not such shares of Company Capital Stock are outstanding.

2.3 ***Subsidiaries***.

(a) **Section 2.3(a)(i)** of the Disclosure Schedule lists each entity in which, as of the date hereof, the Company owns any shares of capital stock or any interest in, or controls, directly or indirectly, any other corporation, limited liability company, partnership, association, joint venture or other business entity. **Section 2.3(a)(ii)** of the Disclosure Schedule lists each corporation, limited liability company, partnership, association, joint venture or other business entity of which, as of the date hereof, the Company owns, directly or indirectly, more than 50% of the stock or other equity interest entitled to vote on the election of the members of the board of directors or similar governing body (each, a "**Subsidiary**"). Except as set forth in **Section 2.3(a)(iii)** of the Disclosure Schedule, other than the Subsidiaries, the Company does not have any subsidiaries or affiliated companies and does not otherwise own any shares of capital stock or any interest in, or control, directly or indirectly, any other corporation, limited liability company, partnership, association, joint venture or other business entity. Each entity listed on **Section 2.3(a)(iii)** of the Disclosure Schedule that is no longer in existence has been duly dissolved in accordance with its charter documents and the laws of the jurisdiction of its incorporation or organization and there are no outstanding liabilities or obligations (outstanding, contingent or otherwise), including taxes, with respect to any such entity. Each Subsidiary is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or organization. Each Subsidiary has the corporate power to own its properties and to carry on its business as currently conducted. Each Subsidiary is duly qualified or licensed to do business and in good standing as a foreign corporation in each jurisdiction in which the character or location of its assets or properties (whether owned, leased or

licensed) or the nature of its business make such qualifications necessary, except where the failure to be so qualified or licensed would not have a Material Adverse Effect. A true and correct copy of each Subsidiary's charter documents and bylaws, each as amended to date and in full force and effect on the date hereof, has been made available to Parent. **Section 2.3(a)(iii)** of the Disclosure Schedule lists the directors and officers of each Subsidiary as of the date hereof. The operations now being conducted by each Subsidiary are not now conducted under any other name. All of the outstanding shares of capital stock of each Subsidiary are directly or indirectly owned of record and beneficially by the Company or one of its Subsidiaries. All outstanding shares of capital stock of each Subsidiary are duly authorized, validly issued, fully paid and non-assessable and not subject to preemptive rights created by statute, the charter documents or bylaws of such Subsidiary, or any agreement to which such Subsidiary is a party or by which it is bound, and have been issued in material compliance with all applicable legal requirements.

(b) There are no options, warrants, calls, rights, commitments or agreements of any character, written or oral, to which any Subsidiary is a party or by which it is bound obligating the Subsidiary to issue, deliver, sell, repurchase or redeem, or cause to be issued, sold, repurchased or redeemed, any shares of the capital stock of such Subsidiary or obligating such Subsidiary to grant, extend, accelerate the vesting of, change the price of, otherwise amend or enter into any such option, warrant, call right, commitment or agreement. There are no outstanding or authorized stock appreciation, phantom stock or other similar rights with respect to any of the Subsidiaries. Neither the Company nor any Subsidiary has agreed or is obligated to make any future investment in or capital contribution to any Person.

2.4 ***Authority***. The Company has all requisite power and authority to enter into this Agreement and any Related Agreements to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and any Related Agreements to which the Company is a party and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action on the part of the Company, and no further action is required on the part of the Company to authorize the Agreement and any Related Agreements to which it is a party and the transactions contemplated hereby and thereby, subject only to the approval of this Agreement by the Stockholders. This Agreement and the Merger have been unanimously approved by the Board of Directors of the Company as of the date hereof. This Agreement and each of the Related Agreements to which the Company is a party have been duly executed and delivered by the Company and assuming the due authorization, execution and delivery by the other parties hereto and thereto, constitute the valid and binding obligations of the Company enforceable against it in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights generally and limitations on the availability of equitable remedies.

2.5 ***No Conflict***. Except as set forth in **Section 2.5** of the Disclosure Schedule, the execution and delivery by the Company of this Agreement and any Related Agreements to which the Company is a party, and the consummation of the transactions contemplated hereby and thereby, will not (x) materially conflict with or result in any material violation of or default under (with or

without notice or lapse of time, or both) or (y) give rise to a right of termination, cancellation, modification or acceleration of any obligation or loss of any benefit under or result in an expiration of, or (z) require the payment of any additional amounts or consideration other than ongoing fees, royalties, payments or other consideration which the Company or any of its Subsidiaries, as the case may be, would otherwise be required to pay had the transactions contemplated by this Agreement not occurred under (any such event, a "**Conflict**") (a) any provision of the Charter Documents or the organizational documents of any of its Subsidiaries, as amended, (b) any mortgage, indenture, lease, contract, covenant, plan, insurance policy or other agreement, instrument, arrangement, understanding or commitment, permit, concession, franchise or license (each a "**Contract**" and collectively the "**Contracts**") required to be disclosed pursuant to **Section 2.16(a)** (or any other Contract which, if terminated, modified or replaced to cure such Conflict, would result in a substantial, additional expense to the Company), to which the Company or any of its Subsidiaries is a party or by which any of their respective properties or assets (whether tangible or intangible) are bound, or (c) any judgment, order, decree, statute, law, ordinance, rule or regulation applicable to the Company or any of its Subsidiaries or any of their respective properties or assets (whether tangible or intangible). **Section 2.5** of the Disclosure Schedule sets forth all necessary consents, waivers and approvals of parties to any Contracts required to be disclosed pursuant to **Section 2.16(a)** for any such Contract to remain in full force and effect after the Effective Time (subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights generally and limitations on the availability of equitable remedies) other than as a result of any Person's act or omission after the Closing.

2.6 ***Governmental Consents***.

(a) No consent, notice, waiver, approval, order or authorization of, or registration, declaration or filing with any court, administrative agency or commission or other federal, state, county, local or other foreign governmental authority, instrumentality, agency or commission (each, a "**Governmental Entity**"), is required by the Company or any of its Subsidiaries in connection with the execution and delivery of this Agreement and any Related Agreements to which the Company or any of its Subsidiaries is a party or the consummation of the transactions contemplated hereby and thereby, except for (i) the filing of the Notification and Report Forms with the United States Federal Trade Commission ("**FTC**") and the Antitrust Division of the United States Department of Justice ("**DOJ**") required by the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended ("**HSR Act**") and the expiration or termination of the applicable waiting period under the HSR Act; (ii) such consents, waivers, approvals, orders, authorizations, registrations, declarations and filings as may be required under any other foreign merger control regulations identified in **Section 2.6** of the Disclosure Schedule, including those as may be required under the Competition Act (Canada) (the "**Competition Act**") and the Investment Canada Act (the "**IC Act**"); (c) such other consents, waivers, approvals, orders, authorizations, registrations, declarations and filings which if not obtained or made would not be material to the Company and its Subsidiaries taken as a whole or materially adversely affect the ability of the parties hereto to consummate the Merger within the time frame in which the Merger would otherwise be consummated in the absence of the need for such consent, waiver, approval, order, authorization, registration, declaration or filing; (d) the filing of the

Certificate of Merger with the Secretary of State of the State of Delaware; and (e) the adoption of this Agreement and approval of the transactions contemplated by this Agreement by the Stockholders.

(b) The aggregate value of the assets of the Company and its affiliates (as that term is defined in the Competition Act) in Canada does not exceed CA $72,100,000, determined as of June 30, 2005 and in such manner as is prescribed for purposes of the Competition Act.

(c) The gross revenues from sales in, from or into Canada of the Company and its affiliates (as that term is defined in the Competition Act), determined for the year ended June 30, 2005 and in such manner as is prescribed for purposes of the Competition Act, do not exceed CA $87,480,000.

2.7 ***Company Financial Statements***. **Section 2.7** of the Disclosure Schedule sets forth the Company's (a) (i) audited consolidated balance sheet as of June 25, 2004, and the related consolidated statements of income, cash flow and stockholders' equity for the 10 day period then ended, and (ii) audited combined balance sheet as of June 15, 2004 and the related combined statements of income and cash flow for the period from June 28, 2003 to June 15, 2004 (the "**Year-End Financials**"), and (b) unaudited consolidated balance sheet as of June 30, 2005 (the "**Balance Sheet Date**"), and the related unaudited consolidated statements of income, cash flow and stockholders' equity for the twelve (12) months and five days then ended (the "**Interim Financials**"). Except as set forth in **Section 2.7** of the Disclosure Schedule, the Year-End Financials and the Interim Financials (collectively referred as the "**Financials**") have been prepared in accordance with GAAP consistently applied on a consistent basis throughout the periods indicated and consistent with each other (except that the Interim Financials do not contain footnotes and other presentation items that may be required by GAAP). Except as set forth in **Section 2.7** of the Disclosure Schedule, the Financials present fairly in all material respects the Company's consolidated financial condition, operating results and cash flows as of the dates and during the periods indicated therein, subject in the case of the Interim Financials to normal year-end adjustments, which are not material in amount or significance in any individual case or in the aggregate. The methodology described in **Section 1.6(a)(i)** of the Disclosure Schedule for calculating the Trial Run is consistent with the methodology used by the Company to prepare the Financials, subject to any exception specifically described in **Schedule 1.6(a)(i)**. The Company's unaudited consolidated balance sheet as of the Balance Sheet Date is referred to hereinafter as the "**Current Balance Sheet**."

2.8 ***Internal Controls***. Except as set forth in **Section 2.8** of the Disclosure Schedule, the Company and each of its Subsidiaries has established and documented, and maintains, adheres to and enforces a system of internal accounting controls which are effective in providing assurance regarding the reliability of financial reporting and the preparation of financial statements in accordance with GAAP (including the Financials), including policies and procedures that (a) require the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the Company and its Subsidiaries, (b) provide assurance that

transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP, and that receipts and expenditures of the Company and its Subsidiaries are being made only in accordance with appropriate authorizations of management and the Board of Directors of the Company and (c) provide assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the assets of the Company and its Subsidiaries. Except as set forth in **Section 2.8** of the Disclosure Schedule, neither the Company nor any of its Subsidiaries (including any Employee thereof) nor the Company's independent auditors has identified, and the Company does not have any Knowledge of, (x) any significant deficiency or material weakness in the system of internal accounting controls utilized by the Company and its Subsidiaries, (y) any fraud, whether or not material, that involves the Company management or other Employees who have a role in the preparation of financial statements or the internal accounting controls utilized by the Company and its Subsidiaries or (z) any claim or allegation regarding any of the foregoing.

2.9 ***No Undisclosed Liabilities***. Except as set forth in **Section 2.9** of the Disclosure Schedule, neither the Company nor any of its Subsidiaries has any liability, indebtedness, obligation, expense, claim, deficiency, guaranty or endorsement of any type, whether accrued, absolute, contingent, matured, unmatured or other, in each case which would be required to be reflected on a balance sheet prepared in accordance with GAAP, except for those which (a) have been reflected in the Current Balance Sheet, (b) were incurred in the ordinary course of business consistent with past practices since the Balance Sheet Date and prior to the date hereof, or (c) have arisen since the date hereof and are not prohibited by **Section 5.1** hereof.

2.10 ***No Changes***. Except as set forth in **Section 2.10** of the Disclosure Schedule, (a) since the Balance Sheet Date, neither the Company nor any of its Subsidiaries has been subject to any event or suffered any change that has had or is reasonably expected to have a Company Material Adverse Effect and (b) since the Balance Sheet Date but prior to the date hereof, neither the Company nor any of its Subsidiaries has:

(i) entered into any transaction except in the ordinary course of business as conducted on that date and consistent with past practices;

(ii) entered into any modifications, amendments or changes to the Company's Charter Documents or the organizational documents of any Subsidiary;

(iii) made any capital expenditure, transaction or commitment exceeding $75,000 individually;

(iv) paid, discharged, waived or satisfied, in any amount in excess of $75,000 in any one case, any claim, liability, right or obligation (absolute, accrued, asserted or unasserted, contingent or otherwise of the Company or any of its Subsidiaries), other than payments, discharges or satisfactions in the ordinary course of business of liabilities reflected or reserved against in the Current Balance Sheet;

(v) suffered any destruction of, damage to, or loss of any material assets (whether tangible or intangible), material business or material customer of the Company or any of its Subsidiaries (whether or not covered by insurance);

(vi) been subject to any material employment dispute, including claims or matters raised by any individual, Governmental Entity, or workers' representative organization, bargaining unit or union, regarding, claiming or alleging labor trouble, wrongful discharge or any other unlawful employment or labor practice or action with respect to the Company or any of its Subsidiaries;

(vii) adopted or changed their accounting methods or practices (including any change in depreciation or amortization policies or rates) other than as required by GAAP;

(viii) adopted or changed any election in respect of Taxes, adopted or changed any accounting method in respect of Taxes, entered into an agreement or settlement of any claim or assessment in respect of Taxes, or extended or waived the limitation period applicable to any claim or assessment in respect of Taxes;

(ix) written down the value of inventory or written off notes or accounts receivable in excess of $75,000 in any one case;

(x) declared, set aside or paid a dividend or other distribution (whether in cash, stock or property) in respect of any Company Capital Stock or the capital stock of any Subsidiary, or approved any split, combination or reclassification in respect of any shares of Company Capital Stock or the capital stock of any Subsidiary, or approved any issuance or authorization of any issuance of any other securities in respect of, in lieu of or in substitution for shares of Company Capital Stock or the capital stock of any Subsidiary, or directly or indirectly repurchased, redeemed, or acquired any shares of Company Capital Stock or the capital stock of any Subsidiary (or options, warrants or other rights convertible into, exercisable or exchangeable therefor), except in accordance with the agreements evidencing Company Options;

(xi) other than in the ordinary course of business (A) increased the salary or other compensation (including equity based compensation) payable to any of their respective officers, directors, employees or consultants or (B) declared, paid or committed to pay (whether in cash or equity) any severance payment, termination payment, bonus, special remuneration or other additional or similar salary or compensation (including equity based compensation), in each case to any of their respective officers, directors, employees or consultants;

(xii) entered into, amended or terminated any Material Contract to which they are a party other than in the ordinary course of business;

(xiii) sold, leased, licensed or otherwise disposed of any of their material assets (whether tangible or intangible) or other material properties, except for agreements with customers entered into in the ordinary course of business;

(xiv) created any security interest in any of their assets or properties (whether tangible or intangible);

(xv) made any loan to or guaranteed any indebtedness of any Person (except for advances to employees for travel and business expenses in the ordinary course of business consistent with past practices), or purchased any debt securities of any Person or entered into any amendment to the terms of any such outstanding loan agreement;

(xvi) incurred any indebtedness for borrowed money (other than under outstanding loan agreements), amended the terms of any such outstanding loan agreement, or issued or sold any debt securities of the Company or any of its Subsidiaries;

(xvii) waived or released any material right or material claim, including any waiver, release or other compromise of any significant account receivable of the Company or any of its Subsidiaries;

(xviii) commenced or settled any lawsuit, or other formal investigation against the Company or any of its Subsidiaries relating to any of their businesses, properties or assets, or, to the Knowledge of the Company, received notice of the threat of any such lawsuit or other formal investigation;

(xix) received any formal written notice of any claim with respect to the ownership, interest or right by any Person other than the Company or any of its Subsidiaries in the Company Intellectual Property owned by or developed or created by the Company or any of its Subsidiaries or of infringement by the Company or any of its Subsidiaries of any other Person's Intellectual Property;

(xx) except for issuances of Company Capital Stock upon the exercise of Company Options issued under the Plan, issued, sold, transferred or granted, (A) any shares of Company Capital Stock or shares of capital stock of any of its Subsidiaries or securities convertible into, or exercisable or exchangeable for, shares of Company Capital Stock or shares of capital stock of any of its Subsidiaries, or (B) any subscriptions, warrants, options, rights or securities to acquire any of the foregoing;

(xxi) other than Standard Form Agreements entered into in the ordinary course of business (A) sold, leased, licensed or transferred any Company Intellectual Property or executed, modified or amended any agreement with respect to Company Intellectual Property with any Person or with respect to the Intellectual Property of any Person, (B) purchased or licensed any Intellectual Property or executed, modified or amended any agreement with respect to the Intellectual Property of any Person, (C) entered into any agreement or modification or amendment of an existing agreement with respect to the development of any Intellectual Property with a third party, or (D) changed the pricing or royalties set or charged by the Company or any of its Subsidiaries to its customers or licensees or the pricing or royalties set or charged by Persons who have licensed Intellectual Property to the Company or any of its Subsidiaries, in each case (A) – (D), other than in the ordinary course of business consistent with past practice, not to exceed $75,000 in any one case;

(xxii) entered into any agreement (other than Standard Form Agreements entered into in the ordinary course of business) or modification to any Contract pursuant to which any other party is or was granted marketing, distribution, development, delivery, manufacturing or similar rights to any Company Products or Technology of the Company or any of its Subsidiaries, except for those Contracts entered in the ordinary course of business consistent with past practice in an amount not to exceed $75,000 in any one case;

(xxiii) purchased or sold any interest in real property, granted any security interest in any real property, entered into or renewed, amended or modified any lease, license, sublease or other occupancy of any Leased Real Property or other real property;

(xxiv) acquired, or agreed to acquire by merging or consolidating with, or by purchasing any assets or equity securities of, or by any other manner, any business or corporation, partnership, association or other business organization or division thereof, or acquired or agreed to acquire any assets or any equity securities that are material, individually or in the aggregate, to the business of the Company or its Subsidiaries;

(xxv) adopted or amended any Company Employee Plan, or executed or amended any Employee Agreement (other than the execution of the Company standard offer letter);

(xxvi) executed any strategic alliance, affiliate or joint marketing arrangement or agreement, in each such case, in an amount in excess of $75,000 in any one case;

(xxvii) other than in connection with the transactions contemplated by this Agreement, entered into any action to accelerate the vesting schedule of any Company Options;

(xxviii) hired, promoted, demoted or terminated or otherwise changed the employment status or title of any Employees, other than in the ordinary course of business;

(xxix) issued or agreed to issue any refunds, credits, allowances or other concessions with customers with respect to amounts collected by or owed to the Company in excess of $75,000; or

(xxx) agreed to do any of the things described in the preceding clauses (i) through (xxix) of this **Section 2.10** (other than negotiations with Parent and its representatives regarding the transactions contemplated by this Agreement and any Related Agreements).

2.11 ***Accounts Receivable***.

(a) The Company has made available to Parent a list of all accounts receivable, whether billed or unbilled, of the Company and its Subsidiaries as of the Balance Sheet Date, together with an aging schedule (of only billed accounts receivable) indicating a range of days elapsed since invoice.

(b) All of the accounts receivable, whether billed or unbilled, of the Company and its Subsidiaries arose in the ordinary course of business and are carried at values determined in accordance with GAAP consistently applied. No Person (except for those set forth on **Section 2.11(b)** of the Disclosure Schedule) has any Lien on any accounts receivable of the Company and its Subsidiaries other than those relating to the Company's credit line with Canadian Imperial Bank of Commerce, and no request or agreement for deduction or discount has been made with respect to any accounts receivable of the Company and its Subsidiaries.

2.12 ***Tax Matters***.

(a) ***Definition of Taxes***. For the purposes of this Agreement, the term "**Tax**" or, collectively, "**Taxes**" shall mean (i) any and all federal, state, provincial, local and foreign taxes, assessments and other governmental charges, duties, impositions, installments and liabilities, including taxes based upon or measured by gross receipts, income, profits, sales, use and occupation, capital and value added goods and services, ad valorem, transfer, franchise, withholding, payroll, recapture, employment, excise and property taxes as well as public imposts, fees and social security charges (including health, unemployment, workers' compensation and pension insurance), together with all interest, penalties and additions imposed with respect to such amounts, (ii) any liability for the payment of any amounts of the type described in clause (i) of this **Section 2.12(a)** as a result of being a member of an affiliated, consolidated, combined or unitary group for any period, and (iii) any liability for the payment of any amounts of the type described in clauses (i) or (ii) of this **Section 2.12(a)** as a result of any express or implied obligation to indemnify any other person or as a result of any obligation under any agreement or arrangement with any other person with respect to such amounts and including any liability for taxes of a predecessor entity.

(b) ***Tax Returns and Audits***. Except as set forth in **Section 2.12(b)** of the Disclosure Schedule:

(i) The Company and each of its Subsidiaries have (a) prepared and timely filed all required federal, state, provincial, local and foreign returns, estimates, information statements, elections, forms, transfer pricing studies and reports ("**Returns**") relating to any and all Taxes concerning or attributable to the Company or any of its Subsidiaries or their respective operations and such Returns are true and correct and have been completed in accordance with applicable law and (b) timely paid all Taxes required to be paid, whether or not shown to be due on such Returns.

(ii) The Company and each of its Subsidiaries have paid, withheld or reported with respect to their respective Employees and other third parties and from any related Person, all federal, state, provincial and foreign income Taxes and social security charges and similar fees, Federal Insurance Contribution Act, Federal Unemployment Tax Act, Canada Pension Plan, Employment Insurance Act (Canada) and other Taxes required to be paid or withheld, and have timely paid such Taxes over to the appropriate authorities.

(iii) Neither the Company nor any of its Subsidiaries has any Tax deficiency outstanding, assessed or proposed against the Company or any of its Subsidiaries, nor has the Company or any of its Subsidiaries executed any waiver of any statute of limitations on or extending the period for the assessment or collection of any Tax.

(iv) No audit or other examination of any Return of the Company or any of its Subsidiaries is presently in progress, nor has the Company or any of its Subsidiaries been notified in writing of any request for such an audit or other examination.

(v) As of the Balance Sheet Date, neither the Company nor any of its Subsidiaries had any liabilities for unpaid Taxes, whether asserted or unasserted, contingent or otherwise, which have not been accrued or reserved on the Current Balance Sheet. Neither the Company nor any of its Subsidiaries has incurred any liability for Taxes since the Balance Sheet Date other than in the ordinary course of business.

(vi) The Company has made available to Parent or its legal counsel, copies of all significant Returns for the Company and its Subsidiaries filed for all periods since June 30, 2004.

(vii) There are (and immediately following the Effective Time there will be) no Liens on the assets of the Company or any of its Subsidiaries relating to or attributable to Taxes other than Liens for Taxes not yet due and payable. Neither the Company nor any of its Subsidiaries has Knowledge of any basis for the assertion of any claim relating or attributable to Taxes which, if adversely determined, would result in any Lien on the assets of the Company or any of its Subsidiaries.

(viii) Neither the Company nor any of its Subsidiaries (a) has ever been a member of an affiliated group (within the meaning of Code §1504(a)) filing a consolidated federal income Tax Return (other than a group the common parent of which was Company), (b) is a party to any Tax sharing, indemnification or allocation agreement, (c) has any liability for the Taxes of any person (other than Company or any of its Subsidiaries), under Treasury Regulation § 1.1502-6 (or any similar provision of state, local or foreign law), as a transferee or successor, by contract or agreement, or otherwise or (d) is a party to any joint venture, partnership or other arrangement that could be treated as a partnership for Tax purposes.

(ix) The Company is not a "United States Real Property Holding Corporation" within the meaning of Section 897(c)(2) of the Code.

(x) No adjustment relating to any Return filed by the Company or any of its Subsidiaries has been proposed formally or, to the Knowledge of the Company, informally by any Tax authority to the Company or any of its Subsidiaries or any representative thereof.

(xi) Neither the Company nor any of its Subsidiaries has constituted either a "distributing corporation" or a "controlled corporation" in a distribution of stock intended to qualify for tax-free treatment under Section 355 of the Code (x) in the two years prior to the date of this Agreement or (y) in a distribution which could otherwise constitute part of a "plan" or "series of related transactions" (within the meaning of Section 355(e) of the Code) in conjunction with the Merger.

(xii) None of the Company or any of its Subsidiaries has engaged in a "reportable transaction" as set forth in Treasury Regulation Section 1.6011-4(b)(2), or any transaction that is the same or substantially similar to one of the types of transactions that the Internal Revenue Service has determined to be a Tax avoidance transaction and identified by notice, regulation, or other form of published guidance as a listed transaction, as set forth in Treasury Regulation Section 1.6011-4(b)(2).

(xiii) Neither the Company nor any of its Subsidiaries is subject to Tax in any jurisdiction other than its place of incorporation or formation by virtue of having a permanent establishment or other place of business or by virtue of having a source of income in that jurisdiction. Neither the Company nor any of its Subsidiaries is liable for any Tax as the agent of any other person or business or constitutes a permanent establishment or other place of business of any other person, business or enterprise for any Tax purpose.

(xiv) Neither the Company nor any of its Subsidiaries will be required to include any income or gain or exclude any deduction or loss from taxable income as a result of (a) any change in method of accounting under Section 481(c) of the Code, closing agreement under Section 7121 of the Code, deferred intercompany gain or excess loss account under Treasury Regulations under Section 1502 of the Code (or in each case, under any similar provision of applicable law), (b) installment sale or open transaction disposition or (c) prepaid amount received on or prior to the Closing Date to the extent that such amount is reflected as an asset without any corresponding or offsetting liability on the Current Balance Sheet.

(xv) The Company has provided to Parent all documentation relating to, and is in full compliance with all terms and conditions of, any Tax exemption, Tax holiday or other Tax reduction agreement or order of a territorial or non-U.S. government with respect to the Company and each of its Subsidiaries. The consummation of the transactions contemplated by this Agreement will not have any adverse effect on the continued validity and effectiveness of any such Tax exemption, Tax holiday, or other Tax reduction agreement or order.

(xvi) The Company and each of its Subsidiaries have in their possession official foreign receipts for any Taxes paid to it by any foreign Tax authorities.

(xvii) No Company Stockholder holds shares of Company Capital Stock that are non-transferable and subject to a substantial risk of forfeiture within the meaning of Section 83 of the Code with respect to which a valid election under Section 83(b) of the Code has not been made, and no payment to any Company Stockholder of any portion of the consideration payable

pursuant to this Agreement will result in compensation or other income to such Company Stockholder with respect to which Parent, the Company or any subsidiary of Parent or the Company would be required to deduct or withhold any taxes.

(xviii) None of the Company nor its Subsidiaries has deducted any amount in computing its income in a taxation year which may be included in a subsequent taxation year under section 78 of the Income Tax Act (Canada).

(xix) No circumstances exist which would make any of the Company or its Subsidiaries subject to the application of any of sections 79 to 80.04 of the Income Tax Act (Canada).

(xx) None of the Company or its Subsidiaries has acquired property or services from, or disposed of property or provided services to, a person with whom it does not deal at arm's length (within the meaning of the Income Tax Act (Canada)) for an amount that is other than the fair market value of such property or services, or has been deemed to have done so for purposes of the Income Tax Act (Canada).

(c) ***Executive Compensation Tax***. Except as set forth in **Section 2.12(c)** of the Disclosure Schedule, there is no contract, agreement, plan or arrangement to which the Company or any of its Subsidiaries is a party, including the provisions of this Agreement, covering any Employee of the Company or any of its Subsidiaries, which, individually or collectively, could give rise to the payment of any amount that would not be deductible pursuant to Sections 280G, 404 or 162(m) of the Code.

2.13 ***Restrictions on Business Activities*** . There is no judgment, injunction, order or decree to which the Company or any of its Subsidiaries is a party or otherwise binding upon the Company or any of its Subsidiaries which has or may reasonably be expected to have the effect of prohibiting or impairing any current business practice of the Company or any of its Subsidiaries, any acquisition of property (tangible or intangible) by the Company or any of its Subsidiaries, the conduct of business by the Company or any of its Subsidiaries, or otherwise limiting the freedom of the Company or any of its Subsidiaries to engage in any line of business or to compete with any Person. In addition, except as disclosed in **Section 2.13** of the Disclosure Schedule, neither the Company nor any of its Subsidiaries has entered into any agreement under which the Company or any of its Subsidiaries is restricted from selling, licensing, manufacturing or otherwise distributing any of its Technology or Company Products or from providing services to customers or potential customers or any class of customers, in any geographic area, during any period of time, or in any segment of the market.

2.14 ***Title to Properties; Absence of Liens and Encumbrances; Condition of Equipment***.

(a) Neither the Company nor any of its Subsidiaries owns any real property, nor has the Company or any of its Subsidiaries ever owned any real property. **Section 2.14(a)** of the Disclosure Schedule sets forth a list of all real property currently leased, subleased or licensed by or

from the Company or any of its Subsidiaries or otherwise used or occupied by the Company or any of its Subsidiaries for the operation of their business (the "**Leased Real Property**"), the name of the lessor, licensor, sublessor, master lessor and/or lessee, the date and term of the lease, license, sublease or other occupancy right and each amendment thereto, and, with respect to any current lease, license, sublease or other occupancy right, the aggregate annual rental payable thereunder as of the date hereof.

(b) The Company has made available to Parent true, correct and complete copies of all leases, lease guaranties, subleases, agreements for the leasing, use or occupancy of, or otherwise granting a right in or relating to the Leased Real Property, including all amendments, terminations and modifications thereof ("**Lease Agreements**"); and there are no other Lease Agreements for real property affecting the Leased Real Property or to which the Company or any of its Subsidiaries is bound, other than those identified in **Section 2.14(a)** of the Disclosure Schedule. All such Lease Agreements are valid and effective in accordance with their respective terms, except for such instances of non-compliance or failures to be in full force and effect as could not reasonably be expected to materially affect the ability of the Company or any of its Subsidiaries to obtain the benefit of such leases, and, except as set forth in **Section 2.14(b)** of the Disclosure Schedule, there is not, under any of such Lease Agreements, any existing default, past due rentals or event of default (or event which with notice or lapse of time, or both, would constitute a default). Neither the Company nor any of its Subsidiaries has received any written notice of a default, alleged failure to perform, or any offset or counterclaim with respect to any such Lease Agreement, which has not been fully remedied and withdrawn or waived by the landlord. The Company or any of its Subsidiaries currently occupies all of the Leased Real Property for the operation of its business except as set forth in **Section 2.14(b)** of the Disclosure Schedule. There are no other parties occupying, or with a right to occupy, the Leased Real Property, except as set forth in **Section 2.14(b)** of the Disclosure Schedule. Neither the Company nor any of its Subsidiaries owes brokerage commissions or finders fees with respect to any such Leased Real Property not reflected on the Closing Date Balance Sheet.

(c) Neither the operation of the Company or any of its Subsidiaries on the Leased Real Property nor, to the Company's Knowledge, such Leased Real Property, including the improvements thereon, violate in any material respect any applicable building code, zoning requirement, ordinance, rule, regulation or statute relating to such property or operations thereon, and any such non-violation is not dependent on so-called non-conforming use exceptions.

(d) Except as set forth in **Section 2.14(d)** of the Disclosure Schedule, the Company and each of its Subsidiaries has good and valid title to, or, in the case of leased properties and assets, valid leasehold interests in, all of its tangible properties and assets, real, personal and mixed, used or held for use in its business, free and clear of any Liens, except (i) as reflected in the Current Balance Sheet, (ii) Liens for Taxes not yet due and payable or being contested in good faith through appropriate proceedings for which adequate reserves have been established, (iii) such imperfections of title and encumbrances, if any, which do not detract materially from the value or interfere with the present use of the property subject thereto or affected thereby and (iv) statutory liens to secure landlords, lessors or renters under leases or rental agreements and that are confined to property located at the Leased Real Property (collectively, the "**Permitted Liens**").

(e) The material items of equipment owned or leased by the Company or any of its Subsidiaries (i) are adequate for the conduct of the business of the Company and its Subsidiaries as currently conducted, and (ii) are in good operating condition in all material respects, subject to normal wear and tear.

2.15 ***Intellectual Property***.

(a) ***Definitions***. For all purposes of this Agreement, the following terms shall have the following respective meanings:

"***Active Customers***" means those customers of the Company or its Subsidiaries that have paid for, received or are entitled to receive, any Company Product or service offered by the Company or any of its Subsidiaries.

"***Actual Knowledge of the Company"*** means the actual knowledge of Joanne Rusnell, Peter Mehlstaeubler, Doug Walker and Mary Ruijs.

"***Business***" means the operation of the businesses of the Company and its Subsidiaries as currently conducted by the Company and its Subsidiaries as of the date hereof, including the design, development, use, import, branding, advertising, promotion, marketing, manufacture, support, provision and sale or license of any Current Company Product or services, and further including the design, development, use, import, branding, advertising, promotion, marketing, manufacture, support, provision and sale or license of any Proposed Company Product.

"***Commercial Code***" means generally commercially available binary code (other than development tools and development environments) where available for an average cost of not more than $5,000 for a perpetual license for a single user or work station (or $50,000 in the aggregate for all users and work stations).

"***Company Intellectual Property***" means any and all Intellectual Property that is owned by or exclusively licensed to the Company or its Subsidiaries. All Company Intellectual Property that is an Intellectual Property Right (other than Trade Secrets) that are material to the conduct of the Business (including services provided by the Company or any of its Subsidiaries) and the business as proposed by the Company to be conducted in existence as of the date of this Agreement are identified in **Section 2.15(a)(i)** of the Disclosure Schedule. For the sake of clarity, an item of Technology that is owned by a third Person (such as a CDROM, tape, box, etc.) is not Company Intellectual Property even if such Technology contains embodiments of Intellectual Property Rights that are owned by the Company or its Subsidiaries. In that case, only Intellectual Property Rights, and not the Technology, are included in the definition of Company Intellectual Property

"*Company Products*" means Software and any products that are or have been in the preceding five (5) years offered for sale, lease or license by the Company or any of its Subsidiaries.

"***Company Registered Intellectual Property***" means Registered Intellectual Property that is owned or filed in the name of the Company or any of its Subsidiaries.

"***Current Company Products"*** means those Company Products that are as of the date hereof offered for sale, lease or license by the Company or any of its Subsidiaries.

"***Intellectual Property***" means Technology (as defined below) and Intellectual Property Rights.

"***Intellectual Property Rights***" means, collectively, all of the following intangible legal rights in any and all jurisdictions throughout the world, whether or not filed, perfected, registered or recorded and whether now or hereafter existing, filed, issued or acquired: (i) issued patents, pending patent applications, patent disclosures, and patent rights, including any and all continuations, continuations in part, divisionals, provisionals, reissues, reexaminations, utility, model and design patents or any extensions thereof, inventions, invention disclosures, discoveries and improvements, with respect to patentable subject matter ("**Patent**"); (ii) works of authorship and rights associated with works of authorship, including copyrights, copyright applications, copyright registrations, circuit topographies, codes, software and Moral Rights; (iii) mask works and other non-patentable inventions, discoveries and improvements; (iv) rights in trademarks, trademark registrations, and applications therefore, trade names, business names, brand names, service marks, service names, logos, or trade dress, and general intangibles of a like nature or other indications of source and any goodwill symbolized by or associated with such marks ("**Trademarks**"); (v) rights relating to trade secrets (including those trade secrets defined in the United States Uniform Trade Secrets Act, and under corresponding statutory and common law of any country in the world or under any treaty), confidential business, technical and know how information inventions, invention disclosures, blueprints, drawings, specifications, designs, plans, proposals, discoveries, improvements, concepts, ideas, compositions, inventor's notes, methods, processes, formulae, techniques, technical data, business and marketing plans and other proprietary or non-public business information, including customer lists, research and development information (whether or not patentable), excluding any rights in respect of any of the foregoing that comprise or are protected by Patents ("**Trade Secret**"); (vi) Internet domain names, World Wide Web URLs or addresses, any goodwill associated therewith and any other rights relating thereto granted by any governmental or quasi governmental authority, including Internet domain name registrars ("**Domain Name**"); (vii) claims, causes of action, defenses, and rights to sue for past infringement relating to the enforcement of any of the foregoing; (viii) any goodwill symbolized by or associated with any of the foregoing; and (ix) all other intellectual or proprietary rights that are enforceable in any and all jurisdiction throughout the world.

"***IP Contract***" means any Contract to which the Company or any of its Subsidiaries is a party that relates to any Intellectual Property Rights other than (i) in-license Contracts of public or Open Source Technology listed in **Section 2.15(y)** of the Disclosure Schedule, (ii) in-license

Contracts for Commercial Code, and (iii) Standard Form Agreements. Notwithstanding, IP Contracts shall (1) be limited to those Contracts entered into on or after January 1, 2000, together with such other Contracts that to the Actual Knowledge of the Company are within the scope of the foregoing definition, and (2) exclude any terminated or expired Contracts under which, to the Actual Knowledge of the Company, the Company has no present or future performance obligations.

"***Moral Rights***" means any right to claim authorship to or to object to any distortion, mutilation, or other modification or other derogatory action in relation to a work, whether or not such would be prejudicial to the author's reputation, and any similar right, such as recognition of authorship or access to work, existing under common or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or generally referred to as a "moral right."

"***Object Code***" shall mean computer software, substantially or entirely in binary form, which is intended to be directly executable by a computer after suitable processing and linking but without the intervening steps of compilation or assembly.

"***Proposed Company Products***" means those software products that constitute or are designed or intended by the Company to be incorporated into the Scheduled Product Releases.

"***Registered Intellectual Property***" shall mean Intellectual Property Rights that have been registered, filed, certified or recorded with or by any Governmental Entity.

"***Scheduled Product Releases***" means each and every new version or release of a Company Product or new product that is presently contemplated by the Company to be offered for sale, lease or license by the Company or any Subsidiary any time after the date hereof through and including December 31, 2006.

"***Software***" means any and all (i) computer programs, including any and all software implementations of algorithms, models and methodologies, whether in Source Code or Object Code, (ii) databases and compilations, including any and all data and collections of data, whether machine readable or otherwise, (iii) descriptions, flow-charts and other work product used to design, plan, organize and develop any of the foregoing and (iv) all User Documentation, including user manuals and training materials, relating to any of the foregoing, in each case developed, owned or distributed by the Company or any of its Subsidiaries.

"***Source Code***" shall mean human readable computer software and code, in form other than Object Code form or machine readable form, including related programmer comments and annotations, help text, data and data structures, object-oriented and other code, which may be printed out or displayed in human readable form.

"***Standard Form Agreement***" shall mean (i) customer licenses; (ii) conductor participation agreements; (iii) reseller agreements; (iv) affiliate provider agreements; (v) contracted services agreements; (vi) system integrator agreements; (vii) other standard form agreements used by

the Company in the course of its business; and (viii) non-exclusive non-disclosure agreements, in each of (i)-(vii) that do not materially differ in substance from the Company's standard forms included in **Section 2.15(a)(ii)** of the Disclosure Schedule.

"***Technology***" shall mean any or all tangible embodiments of the following: (i) works of authorship including, without limitation, computer programs in any form, including but not limited to, Source Code and Object Code, whether embodied in software, firmware or otherwise, development tools, documentation, designs, files, records, data and all media on which any of the foregoing is recorded, all mask works; (ii) inventions (whether or not patentable), improvements, and technology; (iii) proprietary and confidential information, trade secrets and know how; (iv) databases, data compilations and collections, customer lists and technical data; (v) logos, trade names, trade dress, trademarks and service marks; and (vi) all instantiations and disclosures of the foregoing in any form and embodied in any media, and all documentation related to the foregoing.

"***User Documentation***" means explanatory and informational materials concerning the Company Products (and/or Proposed Company Products to the extent in existence as of the Closing), in printed or electronic format, which the Company or any Subsidiary has released for distribution to end users with such Company Products, which may include manuals, descriptions, user and/or installation instructions, diagrams, printouts, listings, flow-charts and training materials, contained on visual media such as paper or photographic film, or on other physical storage media in machine readable form.

(b) **Section 2.15(b)** of the Disclosure Schedule (i) lists all Company Registered Intellectual Property as of the date hereof and (ii) lists any current proceedings or actions relating to any of the Company Registered Intellectual Property before any court or tribunal (including the United States Patent and Trademark Office (the "**PTO**"), the Canadian Intellectual Property Office (the "**CIPO**") or equivalent authority anywhere in the world) in which any of the Company Registered Intellectual Property is involved.

(c) All necessary registration, maintenance and renewal fees in connection with Company Registered Intellectual Property presently due have been paid and all necessary documents and certificates in connection with such Company Registered Intellectual Property have been filed with the relevant patent, copyright, trademark or other authorities in the United States, Canada or foreign jurisdictions, as the case may be, for the purposes of maintaining such Company Registered Intellectual Property. Each item of Company Registered Intellectual Property (other than Patents) that is not an application is, valid and subsisting. With respect to Company Registered Intellectual Property that is a Patent, each such item of Company Registered Intellectual Property (that is not a Patent application) is, valid and subsisting; *provided*, *however*, no representation is made to Patent invalidity that results from any reason other than (i) a failure to disclose to the applicable patent or other relevant governmental organization prior art that was known, or should have been known in the exercise of reasonable diligence, or (ii) any act, statement or failure to act by or on behalf of the Company. There are no actions that must be taken by any Person within 120 days of the date hereof, including the payment of any registration, maintenance or renewal fees or the filing of any documents, applications or certificates for the purposes of maintaining, perfecting or preserving or renewing any Company Registered Intellectual Property

(d) **Section 2.15(d)** of the Disclosure Schedule lists all Current Company Products. Except as set forth in **Section 2.15(d)** of the Disclosure Schedule, for each Company Product that constitutes or includes Intellectual Property Rights that are owned by the Company or any of its Subsidiaries, the Company and each of its Subsidiaries have taken appropriate measures to make all such Company Intellectual Property Registered Intellectual Property.

(e) Except as set forth in **Section 2.15(e)** of the Disclosure Schedule, as of the Closing Date, all Company Intellectual Property that is owned by the Company or any of its Subsidiaries will be fully transferable, alienable or licensable by the Surviving Corporation and/or Parent without restriction and without payment of any kind to any third party, subject to Permitted Liens.

(f) Each item of Company Intellectual Property owned by the Company or any of its Subsidiaries, including all Company Registered Intellectual Property listed in **Section 2.15(b)** of the Disclosure Schedule, is free and clear of any Liens other than Permitted Liens.

(g) The Company is the sole owner or exclusive licensee of all Intellectual Property Rights (other than Domain Names) in Company Intellectual Property, subject to Permitted Liens.

(h) Except as set forth in **Section 2.15(h)** of the Disclosure Schedule, to the extent that any Intellectual Property material to the Business (including services provided by the Company or any of its Subsidiaries) and the business as proposed by the Company to be conducted (including without limitation the Current Company Products and Proposed Company Products (to the extent in existence as of the Closing)) has been developed or created independently or jointly by any Person other than the Company or any of its Subsidiaries for which the Company or any of its Subsidiaries has provided funding or compensation for such development or creation, the Company or such Subsidiary, as the case may be, has a written Contract with such Person with respect thereto, and the Company or such Subsidiary, as the case may be, thereby has obtained a valid and enforceable assignment sufficient to transfer ownership of, and are the exclusive owners of, all such Intellectual Property Rights therein (including the right to seek future and unrecovered past damages with respect to third party infringers) by operation of law or by valid assignment, and, has obtained the waiver, to the maximum extent permitted under applicable law, of all applicable Moral Rights. With respect to any such assignment of Registered Intellectual Property, the Company or such Subsidiary, as the case may be, and, to the maximum extent provided for by, and in accordance with, applicable laws and regulations, the Company or such Subsidiary, as the case may be, has recorded each such assignment with the relevant Governmental Entity, including the PTO, the U.S. Copyright Office, CIPO or their respective equivalents in any relevant foreign jurisdiction, as the case may be.

(i) Except for Permitted Liens and excluding Domain Names, no third party owns or has any right to own (contingent or otherwise) any of the Company Intellectual Property that is owned by the Company or any of its Subsidiaries. Except as set forth in **Section 2.15(i)** of the

Disclosure Schedule, neither the Company nor any of its Subsidiaries has (i) since January 1, 2000, or to the Actual Knowledge of the Company, transferred ownership of, or granted any exclusive license of or exclusive right to use, or authorized the retention of any exclusive rights to use or joint ownership of, any Intellectual Property Rights that is or was Company Intellectual Property and material to the conduct of the Business (including services provided by the Company or any of its Subsidiaries) and the business as proposed by the Company to be conducted, to any other Person or (ii) permitted the Company's or any of its Subsidiaries' rights in Company Registered Intellectual Property or Copyrights or Trademarks owned by the Company or its Subsidiaries to lapse or enter into the public domain since January 1, 2002, except for Intellectual Property Rights expiring at the end of their statutory term (as applicable).

(j) Except as set forth in **Section 2.15(j)** of the Disclosure Schedule, there is no IP Contract pursuant to which the Company or its Subsidiaries has granted any Person any right, license or permission to use any of the Trademarks which are part of the Company Intellectual Property other than non-exclusive licenses under Contracts where the right of the other Person to use such Trademarks is or will be within six (6) months from the date hereof terminated or expired, or is subject to an unqualified right of termination in favor of the Company or its Subsidiaries as applicable exercisable within six (6) months of the date hereof. Except as set forth in **Section 2.15(j)** of the Disclosure Schedule, none of such marks has since January 1, 2002 been, or is now, involved in any opposition or cancellation proceedings, nor are any such proceedings threatened to the Knowledge of the Company.

(k) The (i) Company Intellectual Property (ii) the public or Open Source Technology listed in **Section 2.15(y)** of the Disclosure Schedule, (iii) Commercial Code and (iv) the licenses set forth on **Section 2.15(l)** of the Disclosure Schedule, constitute all of the material Intellectual Property Rights used in, necessary to or that otherwise would be infringed by, the conduct of the business of the Company and its Subsidiaries as it currently is conducted, including the design, development, manufacture, use, import, support and sale or license of any products or services provided by the Company or any of its Subsidiaries. To the Knowledge of Company, **Section 2.15(k)** of the Disclosure Schedule sets forth a list of any third party software that Company and/or any of its Subsidiaries expects to use with, or that is otherwise required by, any Proposed Company Product, excluding only software for which the Company is licensed for such Proposed Company Product use and which software is already disclosed in **Section 2.15(l)** or **Section 2.15(y)** of the Disclosure Schedule.

(l) **Section 2.15(l)** of the Disclosure Schedule lists all IP Contracts that (i) relate to Active Customers, (ii) provide the Company or any Subsidiaries any license or right to any Intellectual Property Right of a third party that is material to the Business (including services provided by the Company or any of its Subsidiaries) and the business as proposed by the Company to be conducted, or (iii) are otherwise material to the Business (including services provided by the Company or any of its Subsidiaries) and the business as proposed by the Company to be conducted.

(m) Except for Contracts to which the Company or any of its Subsidiaries is a party that may provide ownership or license rights to improvements or derivative works created in violation of the terms of such Contract, no third party that has licensed Intellectual Property or Intellectual Property Rights to the Company or any of its Subsidiaries has ownership rights or license rights to improvements or derivative works made by the Company or any of its Subsidiaries in or to such third party Intellectual Property. The Company or any of its Subsidiaries has not created any improvements or derivative works in violation of the terms of any Contract.

(n) Except for Contracts disclosed pursuant to any subsection of **Section 2.15** of the Disclosure Schedule, and except for obligations under Standard Form Agreements entered into in the ordinary course of business, neither the Company nor any of its Subsidiaries is a party to any Contract pursuant to which the Company or such Subsidiary, as applicable, has any material obligations (whether or not contingent) relating to Intellectual Property which obligations have not been performed, waived or satisfied.

(o) There are no Contracts between the Company or any of its Subsidiaries and any other Person with respect to Company Intellectual Property or other Intellectual Property used in and/or necessary to the conduct of the business as it is currently conducted or contemplated by the Company or any of its Subsidiaries to be conducted under which there is any material unresolved dispute regarding the scope of such agreement, or performance under such agreement including with respect to any payments to be made or received by the Company or any of its Subsidiaries thereunder.

(p) The operation of the business of the Company and its Subsidiaries as it has been and is currently conducted, or is contemplated to be conducted, by the Company and its Subsidiaries, including the design, development, use, import, branding, advertising, promotion, marketing, manufacture, support and sale or license of any Company Product has, not, does not and will not, when conducted in substantially the same manner by Parent and/or Surviving Corporation following the Closing (including without limitation the design, development, use, import, branding, advertising, promotion, marketing, manufacture, support and sale or license of any Proposed Company Product) infringe or misappropriate any Intellectual Property Rights of any Person, violate any similar right of any Person (including any right to privacy or publicity), or constitute unfair competition or trade practices under the laws of any jurisdiction. Neither the Company nor any of its Subsidiaries has received notice from any Person in the past five years claiming that such operation or any act, Company Product or Intellectual Property of the Company or any of its Subsidiaries, infringes or misappropriates any Intellectual Property Rights of any Person or constitutes unfair competition or trade practices under the laws of any jurisdiction (nor does the Company have Knowledge of any valid basis therefor). Notwithstanding, the Company makes no representations under this Section with respect to: (1) any copyright infringement or trade secret misappropriation arising from software authored by, or modifications made by, or for, Parent and/or Surviving Corporation following Closing; (2) any Patent infringement relating to a Proposed Company Product where Parent (or any of the officers and directors of Surviving Corporation) has actual knowledge of such Patent infringement prior to marketing or selling such Proposed Company Product; (3) any

Patent infringement relating to any Proposed Company Product that (i) was not substantially developed as of Closing, and (ii) Parent fails to subject such Proposed Company Product to Patent infringement review in a manner consistent with Parent's own Patent infringement review practices for its own products of a similar nature; nor (4) any future products of, or new services offered by, the Parent and/or Surviving Corporation, other than the Proposed Company Products.

(q) Neither this Agreement nor the transactions contemplated by this Agreement, will result in or purport to result, pursuant to any Contract to which the Company or any of its Subsidiaries is a party, in any of the following, to the extent the following would not have occurred in the absence of this Agreement or the transactions contemplated hereby: (i) Parent, any of its subsidiaries or the Surviving Corporation granting to any third party any right to or with respect to any Intellectual Property Rights owned by, or licensed to, any of them, (ii) Parent, any of its subsidiaries or the Surviving Corporation, being bound by, or subject to, any non-compete or other material restriction on the operation or scope of their respective businesses, or (iii) Parent, any of its subsidiaries or the Surviving Corporation being obligated to pay any royalties or other material amounts, or offer any discounts, to any third party in excess of those payable by, or required to be offered by, any of them, respectively.

(r) To the Knowledge of the Company, there are no legal opinions to the effect that any of the subject matters of the Intellectual Property Rights in the Company Intellectual Property may be or are invalid or unenforceable, or official actions or other notices from any Governmental Entity that any of the subject matters or claims of pending applications for registration constituting any of such Company Intellectual Property are unregistrable.

(s) Except as disclosed in **Section 2.15(s)** of the Disclosure Schedule, to the Knowledge of the Company, no Person is infringing or misappropriating any Company Intellectual Property.

(t) Each of the Company and its Subsidiaries has taken reasonable steps that are required or necessary to protect the Company's rights in confidential information and trade secrets of the Company and any of its Subsidiaries or provided by any other Person to the Company or any of its Subsidiaries. Without limiting the foregoing, (i) each of the Company and its Subsidiaries has, and enforces, a policy requiring each current employee and former employee employed by the Company or its Subsidiaries in the five years preceding the Effective Date, to execute proprietary information, confidentiality and assignment agreements substantially in the Company's standard form for employees (a copy of which is attached as **Schedule 2.15(t)(i)** hereto (the "**Employee Proprietary Information Agreement**")), (ii) each of the Company and its Subsidiaries has, and enforces, a policy requiring each current consultant or contractor and former consultant or contractor engaged by the Company or its Subsidiaries in the past five years preceding the Effective Date to execute a consulting agreement containing proprietary information, confidentiality and assignment provisions substantially in the Company's standard form for consultants or contractors (a copy of which is attached as **Schedule 2.15(t)(ii)** hereto (the "**Consultant Proprietary Information Agreement**")) and (iii) except as set forth in **2.15(t)(iii)** of the Disclosure Schedule, all such current

and former employees, consultants and contractors of the Company or any Subsidiary who have modified, developed or enhanced Company Products, Proposed Company Products (to the extent in existence as of the Closing), User Documentation, or have contributed to the creation of services offered or proposed by the Company to be offered by the Company or any of its Subsidiaries, or Intellectual Property Rights therein during the five (5) years preceding the Effective Date have executed an Employee Proprietary Information Agreement or a Consultant Proprietary Information Agreement, as appropriate. All current and former employees of the Company or any Subsidiary (in the five (5) years preceding the Effective Date) that are or were, at the time of employment, residents of Canada or whose employment relationships are or were governed by applicable laws in Canada have executed written agreements with the Company or its Subsidiaries that waive, to the maximum extent permitted under applicable law, for the benefit of the Company or its Subsidiaries, as appropriate, all applicable Moral Rights in any works of authorship relating to the business of the Company or its Subsidiaries, including but not limited to (to the extent applicable and where such waiver is permitted under applicable law) the right to the integrity of the work, the right to be associated with the work as its author by name or under a pseudonym and the right to remain anonymous.

(u) Except as disclosed in **Section 2.15(u)** of the Disclosure Schedule, no Company Intellectual Property owned by the Company or its Subsidiaries, Company Product or Proposed Company Product (in each case, to the Knowledge of Company only with respect to Intellectual Property licensed to Company or its Subsidiaries) is subject to any proceeding or outstanding decree, order, judgment or settlement agreement or stipulation that restricts in any manner the use, provision, transfer, assignment or licensing thereof by the Company or any of its Subsidiaries or may affect the validity, use or enforceability of such Company Intellectual Property.

(v) Except as set forth in **Section 2.15(v)** of the Disclosure Schedule, the Company and its Subsidiaries have the exclusive right to bring actions against any Person that is infringing any Intellectual Property Rights that are Company Intellectual Property and to retain for themselves any damages recovered in any such action.

(w) To the Knowledge of the Company, no (i) Company Product or publication of the Company or any of its Subsidiaries, (ii) material published or distributed by the Company or any of its Subsidiaries, or (iii) conduct or statement of the Company or any of its Subsidiaries (including published or public statements of their employees, agents and representatives) constitutes obscene material, a material defamatory statement or material, material false advertising or otherwise materially violates any similar law or regulation.

(x) During the five (5) year period preceding the date hereof and to the Actual Knowledge of the Company, no government funding, facilities or resources of a university, college, other educational institution or research center was used in the development of the Company Intellectual Property. No Governmental Entity, university, college, other educational institution or research center has any claim or right in or to the Company Intellectual Property. **Schedule 2.15(x)**of the Disclosure Schedule sets forth the government entities, universities, colleges,

research centers, and other educational institutions of which, to the Knowledge of the Company, any current or former employee, consultant or independent contractor of the Company or any of its Subsidiaries who was involved in, or who contributed to, the creation or development of any Company Products or Proposed Company Products (to the extent in existence as of the Closing), was an employee during a period of time that such employee, consultant or independent contractor was also performing such services for the Company or any of its Subsidiaries.

(y) Except as set forth in **Section 2.15(y)** of the Disclosure Schedule, no Company Intellectual Property or Intellectual Property of a third party or in the public domain that constitutes open source, public source or freeware Intellectual Property, or any modification or derivative thereof, including any version of any software licensed pursuant to any GNU general public license or limited general public license or other software that is licensed pursuant to a license that purports to require the distribution of, or access to, Source Code or purports to restrict one's ability to charge for distribution of software (collectively "**Open Source**"), was used in, incorporated into, integrated or bundled with any Intellectual Property that is, or was, incorporated in or used in the development or compilation of any Current Company Products or Proposed Company Products (to the extent in existence as of the Closing) or otherwise distributed by the Company or any of its Subsidiaries. **Section 2.15(y)** of the Disclosure Schedule sets forth a list of all Open Source that is included in, or provided or distributed with, any Current Company Products or Proposed Company Products (to the extent in existence as of Closing) and for each use of Open Source: (i) a description of the functionality of the Open Source, (ii) the applicable license terms, (iii) the applicable Current Company Products or Proposed Company Products (to the extent in existence as of the Closing), and (iv) to the Knowledge of the Company, the copyright holder(s) of such Open Source.

(z) Except as set forth in **Section 2.15(l)** of the Disclosure Schedule, or pursuant to a Standard Form Agreement, and warranties implied by law, since January 1, 2000 and to the Actual Knowledge of the Company, neither the Company nor any of its Subsidiaries has given any material warranties or indemnities relating to Current Company Products, Proposed Company Products or services offered or provided by the Company or any of its Subsidiaries. The Company and its Subsidiaries are in material compliance with all warranties applicable to the Company Products only as and to the extent that such warranties are enforceable against the Company and its Subsidiaries (and/or the Surviving Corporation) as of the Closing Date. The Company has no material obligation or duty to warrant, indemnify, reimburse, hold harmless, guaranty or otherwise assume or incur any obligation or Liability or provide a right of rescission in each case with respect to the infringement or misappropriation by the Company or any of its Subsidiaries or such other Person of the Intellectual Property of any third Person.

(aa) **Section 2.15(aa)** of the Disclosure Schedule sets forth the Scheduled Product Releases and the estimated release date for each such release. The Company has a good faith reasonable belief that it can achieve the release of such Scheduled Product Releases substantially in accordance with such estimated release date schedule and is not currently aware of any change in its circumstances or other fact that has occurred that would cause it to believe that it will be unable to substantially meet such release schedule.

(bb) Other than (i) as expressly required under a Standard Form Agreement (including Exhibits thereto entered into in the ordinary course of business) or (ii) under an enforceable written agreement entered into with customers or third party developers in the ordinary course of business (which agreements provide (1) portions of Source Code that do not disclose any material Trade Secrets (e.g., templates, sample code, learning materials, programmer documentation, APIs, interfaces, etc.), (2) provide a limited non-exclusive right to use such Source Code and (3) contains commercially reasonable confidentiality protections for such Source Code (collectively, "**Ordinary Source Code Licenses**")), neither the Company, any of its Subsidiaries, nor any other Person acting on any of their behalf has disclosed, delivered or licensed to any Person, agreed to disclose, deliver or license to any Person, or permitted the disclosure or delivery to any escrow agent or other Person of, any Source Code that is embodied in any Current Company Product or Proposed Company Product. No event has occurred, and no circumstance or condition exists, that (with or without notice or lapse of time, or both) will, or would reasonably be expected to, result in the disclosure or delivery by the Company, any of its Subsidiaries or any Person acting on their behalf to any Person of any Source Code that is Company Intellectual Property, except pursuant to a Standard Form Agreement or Ordinary Source Code License. **Section 2.15(bb)** of the Disclosure Schedule identifies each IP Contract (and other Contracts to the Actual Knowledge of the Company) to which the Company or any of its Subsidiaries is a party pursuant to which the execution of this Agreement or any of the other transactions contemplated by this Agreement, could result in the release from escrow of any Source Code that is Company Intellectual Property owned by Company or any of its Subsidiaries. Except pursuant to **Section 2.15(bb)** of the Disclosure Schedule or pursuant to a Standard Form Agreement or Ordinary Source Code License, Source Code that is Company Intellectual Property has never been removed from the Company's (or its Subsidiaries') owned or leased premises. Except pursuant to Standard Form Agreements or other non-exclusive "end user licenses" entered into in the ordinary course of business consistent with commercially reasonable practices which provide restricted rights to copy and use the Object Code of any Current Company Product or Proposed Company Product, no Person has been provided a copy of the Object Code of any of the Company Products or Proposed Company Products by the Company or any of its Subsidiaries.

(cc) All Current Company Products and services that have been provided by Company or any of its Subsidiaries perform in all material respects in accordance with their advertised, displayed, distributed or published specifications. The Company Products will operate with the operating platforms and hardware specified in **Section 2.15(cc)** of the Disclosure Schedule, provided that they are used in accordance with the applicable User Documentation. Notwithstanding, Company makes no representations in this section with respect to any defects, malfunctions or nonconformities or any failure of a Company Product that have been effectively disclaimed or limited under applicable Law (including any enforceable Contract).

(dd) Except for code that is intentionally included by the Company or its Subsidiaries to protect the Company Products from unauthorized reproduction, use or piracy, or to limit the functionality of the Company Products in accordance with the applicable User Documentation or that is limited for the customer under the applicable sales or license terms in the

version, release, edition, or level purchased or obtained by the customer (e.g., "Unlimited," "Complete," "Personal Learning Edition," demo or sample versions, student or education edition, etc.), all Company Products, Proposed Company Products (to the extent in existence as of the Closing) and Company Intellectual Property (owned by the Company, and all parts thereof) (and to the Knowledge and the Actual Knowledge of the Company, Company Products, Proposed Company Products and Company Intellectual Property licensed to the Company or any of its Subsidiaries) are free of any disabling codes or instructions, timer, copy protection device, clock, counter or other limiting design or routing and any "back door," "time bomb," "Trojan horse," "worm," "drop dead device," "virus" or other software routines or hardware components that in each case permit unauthorized access or the unauthorized disablement or unauthorized erasure of such Company Product or Company Intellectual Property (or all parts thereof) or data or other software of users or, except in the case of unreleased products, otherwise cause them to be incapable of being used in the full manner contemplated in the applicable User Documentation and applicable sales or license terms ("**Contaminants**").

(ee) To the Knowledge and Actual Knowledge of the Company, there are no "Critical Problems" with the Current Company Products other than those disclosed in writing to Parent. For the purposes of the foregoing, "Critical Problem" means a problem, defect, malfunction, nonconformity or error which has been (or should reasonably be) assigned the most critical level of error for the Company's internal tracking and reporting systems (level 0) or that is otherwise characterized as a "fix or fail" problem, in each case in a manner consistent with past practices and reasonable industry standards. Without limiting the foregoing, there have been, and are, no claims asserted against the Company, any of its Subsidiaries or (to the Knowledge and Actual Knowledge of Company any of their distributors) related to the Company Products or Company Intellectual Property and the Company and its Subsidiaries have not received notice nor has any Knowledge regarding any requirements to recall any Company Products.

(ff) The User Documentation associated with any Current Company Product contains no misstatements that would reasonably be expected to result in damage or loss to the data, software or systems of users, or otherwise result in Liability to the Company or any of its Subsidiaries.

(gg) Since January 1, 2000 and prior thereto to the Actual Knowledge of the Company, all installation services, programming services, integration services, repair services, maintenance services, support services, training services, upgrade services and other services that have been performed by the Company or any Subsidiary were preformed in material conformity with the terms and requirements of all applicable warranties and other applicable Contracts and with all applicable Laws.

(hh) The Company and its Subsidiaries have sufficient research and development in progress to make all Scheduled Product Releases, and thereafter to continue to add features to the Company Products and Proposed Company Products consistent with past practices, provided that the Surviving Corporation continues to invest in the same level and quality of resources in such research and development after Closing.

(ii) The Company and its Subsidiaries have information technology systems sufficient to operate the business as it is currently conducted and as contemplated by the Company to be conducted in the one year period following the date hereof. The Company and its Subsidiaries have taken reasonable steps and implemented reasonable procedures to ensure that information technology systems used in connection with the operation of the Company and its Subsidiaries are free from Contaminants. The Company and its Subsidiaries have taken all reasonable steps to safeguard the information technology systems utilized in the operation of the business of the Company and its Subsidiaries. Except as set forth in **Section 2.15(ii)** of the Disclosure Schedule, since January 1, 2000 and to the Actual Knowledge of Company, there have been no successful unauthorized intrusions or breaches of the security of the information technology systems. The Company and its Subsidiaries have implemented or are in the process of implementing (or in the exercise of reasonable business judgment have determined that implementation is not yet in the best interest of the Company and its Subsidiaries) in a timely manner any and all security patches or security upgrades that are generally available for the Company's information technology systems.

(jj) The Company and its Subsidiaries have materially complied with all applicable laws and their respective privacy policies relating thereto. True and correct copies of all privacy policies of the Company and its Subsidiaries are attached to **Section 2.15(jj)** of the Disclosure Schedule. The transactions contemplated by this Agreement (including the disclosures made by the Company or its Subsidiaries in the course of the due diligence in anticipation of the transactions contemplated by this Agreement) are not in material breach of applicable privacy laws or regulations or the respective internal privacy policies of the Company or its Subsidiaries. There is no complaint to or audit, proceeding, investigation or claim against, or to the Knowledge of the Company threatened against, any of the Company or its Subsidiaries or their businesses by the Office of the Privacy Commission of Canada or any other Governmental Entity, or by any Person in respect of the collection, use or disclosure of personal information by any Person in connection with the Company or its Subsidiaries or their businesses.

(kk) **Section 2.15(kk)** of the Disclosure Schedule sets forth an accurate and complete list of all Domain Names registered by or in the name of the Company or its Subsidiaries or used in the business of the Company or its Subsidiaries ("**Owned Domain Names**"). The Company and its Subsidiaries are the sole registrants of all right, title and interest in and to the Owned Domain Names, in each case free and clear of any and all Liens (other than Permitted Liens), covenants, conditions and restrictions or other adverse claims or interests of any kind or nature, and none of the Company or its Subsidiaries has received any notice or claim (whether written or oral) challenging the right to use or continue to use the Owned Domain Names, or suggesting that any other Person has any claim or legal or beneficial ownership with respect thereto. None of the Company or its Subsidiaries has granted any person any right, license or permission to use any of the Owned Domain Names.

2.16 ***Agreements, Contracts and Commitments***. Except as set forth in **Section 2.16(a)** of the Disclosure Schedule:

(a) as of the date hereof, neither the Company nor any of its Subsidiaries is a party to, nor is it bound by any of the following (each, a "**Material Contract**" and collectively, the "**Material Contracts**"):

(i) any Employee Agreement, or any similar contractor, consulting or sales agreement, contract, or commitment with a firm or other organization that is significant to the Company or any of its Subsidiaries;

(ii) any stock option plan, stock appreciation rights plan or stock purchase plan, any of the benefits of which will be increased, or the vesting of benefits of which will be accelerated, by the occurrence of any of the transactions contemplated by this Agreement or the value of any of the benefits of which will be calculated on the basis of any of the transactions contemplated by this Agreement;

(iii) any fidelity or surety bond or completion bond;

(iv) any lease of real or personal property having a value in excess of $75,000 individually;

(v) any agreement of indemnification or guaranty;

(vi) any agreement, contract or commitment relating to capital expenditures and involving future payments in excess of $75,000 individually;

(vii) any agreement, contract or commitment relating to the disposition or acquisition of assets or any interest in any business enterprise outside the ordinary course of the Company's and its Subsidiaries' business;

(viii) any mortgages, indentures, guarantees, loans or credit agreements, security agreements or other agreements or instruments relating to the borrowing of money or extension of credit;

(ix) any purchase order or contract for the purchase of materials involving in excess of $75,000 individually;

(x) any material construction contracts;

(xi) any dealer, distribution, strategic alliance, affiliate or development agreement, or any joint marketing agreement in which the payments received or paid by the Company or any of its Subsidiaries exceed $75,000 individually;

(xii) any agreement, contract or commitment to alter the Company's interest in any Subsidiary, corporation, association, joint venture, partnership or business entity in which the Company directly or indirectly holds any interest;

(xiii) any sales representative, original equipment manufacturer, manufacturing, value added, remarketer, reseller, or independent software vendor, or other agreement for use or distribution of the products, technology or services of the Company or any of its Subsidiaries (excluding Standard Form Agreements);

(xiv) any nondisclosure, confidentiality or similar agreement that is still in effect, other than those entered into with any actual or prospective customer or vendor in the ordinary course of business consistent with past practices (excluding Standard Form Agreements); or

(xv) any other agreement, contract or commitment (excluding Standard Form Agreements) that involves $75,000 individually per annum or more and is not cancelable without penalty within 30 days.

(b) Except as set forth in **Section 2.16(b)** of the Disclosure Schedule, each Material Contract, IP Contract, Standard Form Agreement and other Contract with third parties to which the Company or any of its Subsidiaries is a party or any of their respective properties or assets (whether tangible or intangible) is subject (the "**Standard Contracts**") is a valid and binding agreement of the Company or any of its Subsidiaries, as the case may be, enforceable against such Person in accordance with its terms, and is in full force and effect with respect to the Company or the applicable Subsidiary and, to the Knowledge of the Company, any other party thereto, in each case subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights generally and limitations on the availability of equitable remedies. The Company and each of its Subsidiaries are in material compliance with and have not materially breached, violated or defaulted under, or received written notice that they have materially breached, violated or defaulted under, any of the terms or conditions of any Material Contract, IP Contract, Standard Form Agreements, Contract with a Major Customer, or Standard Contract, nor, to the Knowledge of the Company, is any party obligated to the Company or any of its Subsidiaries pursuant to any such Material Contract, IP Contract, Standard Form Agreement, Contract with a Major Customer, or Standard Contract subject to any material breach, violation or default thereunder, nor does the Company have Knowledge of any event that with the lapse of time, giving of notice or both would constitute such a breach, violation or default by the Company, its Subsidiaries or any such other party not disclosed in **Section 2.16(b)** of the Disclosure Schedule. True and complete copies of each Material Contract disclosed in the Disclosure Schedule or required to be disclosed pursuant to this **Section 2.16** have been made available to Parent; *provided*, *however*, that notwithstanding the foregoing, it is understood that the Company shall not be required to list in **Section 2.16(b)** of the Disclosure Schedule or make available to Parent any Material Contract described in **Sections 2.16(a)(v)** (with respect to Intellectual Property only), **2.16(a)(xiii)** and **2.16(a)(xiv)** unless (i) such Material Contract was entered into after January 1, 2000 or (ii) the Company has Actual Knowledge of such Material Contract.

(c) The Company and each of its Subsidiaries have fulfilled all material obligations required to have been performed by the Company or any Subsidiary prior to the date hereof pursuant to each Material Contract, IP Contract, Standard Form Agreement or Standard Contract to which the Company or any of its Subsidiaries is a party or any of their respective properties or assets (whether tangible or intangible) is bound.

(d) As of the date hereof, there are no disputes or disagreements, and the Company has no Knowledge as of the date hereof of any threatened disputes or disagreements, with respect to any Material Contract to which the Company or any of its Subsidiaries is a party or any of their respective properties or assets (whether tangible or intangible) is subject.

(e) The Material Contracts and IP Contracts to which the Company or any of its Subsidiaries is a party or any of their respective properties or assets (whether tangible or intangible) is subject which constitute licenses of goods, services or rights from third parties that are incorporated in any products, services or rights which the Company or its Subsidiaries sublicense to their customers are fully sublicenseable without any further payment to any Person, except as identified in **Section 2.16(e)** of the Disclosure Schedule. Except as disclosed in **Section 2.16(e)** of the Disclosure Schedule, no royalties, fees, honoraria, volume-based, milestone or other payments are payable by the Company or any of its Subsidiaries to any Person by reason of the ownership, use, sale, licensing, distribution or other exploitation of any Intellectual Property relating to the conduct or operation of the Business or the delivery or provision of any products, services or rights delivered or provided thereby or thereunder, except for obligations relating solely to end-user operating systems and application software, the license of which is obtained with the acquisition or license thereof.

(f) Except as may be set forth in **Section 2.16(f)** of the Disclosure Schedule, none of the Company or any of its Subsidiaries has granted any other Person any exclusive right to manufacture, have manufactured, assemble, license, sublicense or sell any Company Products or Proposed Company Products or to provide the services or proposed services of the business of the Company or any of its Subsidiaries.

(g) All outstanding indebtedness for borrowed money of the Company or its Subsidiaries may be prepaid without penalty.

2.17 ***Interested Party Transactions.*** Except as set forth in **Section 2.17** of the Disclosure Schedule, no officer, director or Principal Stockholder of the Company or any of its Subsidiaries (nor any ancestor, sibling, descendant or spouse of any of such Persons, or any trust, partnership or corporation in which any of such Persons has control), has or has had, directly or indirectly, (a) any interest in any entity which furnishes or sells, services, products, technology or Intellectual Property that the Company or any of its Subsidiaries furnishes or sells, (b) any interest in any entity that purchases from or sells or furnishes to the Company or any of its Subsidiaries, any goods or services, or (c) any interest in, or is a party to, any IP Contract or Material Contract; provided, however, that ownership of no more than five percent (5%) of the outstanding voting stock of a publicly traded corporation shall not be deemed to be an "interest in any entity" for purposes of this **Section 2.17**. To the Knowledge of the Company, other than the Stockholders Agreement, there are no agreements, contracts, or commitments with regard to contribution or indemnification between or among any of the Stockholders.

2.18 ***Governmental Authorization***. Each material consent, license, permit, grant or other authorization (a) pursuant to which the Company or any of its Subsidiaries currently operates or holds any interest in any of their respective properties or (b) which is required for the operation of the Company or any of its Subsidiaries' business as currently conducted (collectively, "**Company Authorizations**") has been issued or granted to the Company or any of its Subsidiaries, as the case may be. The Company Authorizations are in full force and effect in all material respects and constitute all Company Authorizations required to permit the Company and its Subsidiaries to operate or conduct their respective businesses or hold any interest in their respective properties or assets in all material respects.

2.19 ***Litigation***. Except as set forth in **Section 2.19** of the Disclosure Schedule, there is no material action, suit, claim for damages or proceeding of any nature pending, or to the Knowledge of the Company as of the date hereof, threatened, against the Company or any of its Subsidiaries, their properties (tangible or intangible) or any of their officers or directors. Except as set forth in **Section 2.19** of the Disclosure Schedule, there is no formal investigation or other proceeding pending or, to the Knowledge of the Company as of the date hereof, threatened, against the Company or any of its Subsidiaries, any of their respective properties (tangible or intangible) or any of their officers or directors by or before any Governmental Entity, in each case which could reasonably be expected to result in any material liability to the Company or any of its Subsidiaries. No Governmental Entity has at any time prior to the date hereof challenged or questioned the legal right of the Company or its Subsidiaries to conduct their respective operations as presently or previously conducted. There is no basis for any action, suit or claim for damages by either of the Principal Stockholders or, as of the Closing, any director or officer of the Company or any of its Subsidiaries against the Company, and, to the Knowledge of the Company, there is no basis for any action, suit or claim for damages by either of the Principal Stockholders or any director or officer of the Company or any of its Subsidiaries for which they would be entitled to indemnification pursuant to the Charter Documents or any policy or policies of directors' and officers' liability insurance held by the Company; *provided, however,* that, for the avoidance of doubt, nothing in this **Section 2.19** shall limit any rights that either of the Principal Stockholders or any director or officer of the Company and any of its Subsidiaries may have to make a claim for indemnification pursuant to the Charter Documents or such directors' and officers' liability insurance.

2.20 ***Minute Books***. The minutes of the Company and each of its Subsidiaries containing records of all significant actions taken by the Stockholders, the Board of Directors of the Company and its Subsidiaries (and any committees thereof) since the time of incorporation of the Company and each of its Subsidiaries, as the case may be, have been made available to Parent for review. At the Closing, the minute books of the Company and each of its Subsidiaries will be in the possession of the Company.

2.21 ***Environmental Matters***.

(a) ***Hazardous Material***. Neither the Company nor any of its Subsidiaries: (i) operates or has operated any underground storage tanks at any property that the Company or any of

its Subsidiaries has at any time owned, operated, occupied or leased, or (ii) has released (except in compliance with applicable environmental laws) any amount of any substance that has been designated by any Governmental Entity or by applicable federal, state or local law to be radioactive, toxic, hazardous or otherwise a danger to health, reproduction or the environment, including PCBs, asbestos, petroleum, and urea-formaldehyde and all substances listed as hazardous substances pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, or defined as a hazardous waste pursuant to the United States Resource Conservation and Recovery Act of 1976, as amended, and the regulations promulgated pursuant to said laws (a "**Hazardous Material**"), but excluding office and janitorial supplies properly and safely maintained. No Hazardous Materials are present in, on or under any property, including the land and the improvements, ground water and surface water thereof, that the Company or any of its Subsidiaries has at any time owned, operated, occupied or leased, except as would not be reasonably likely to result in material liability to the Company or any of its Subsidiaries.

(b) ***Hazardous Materials Activities***. Neither the Company nor any of its Subsidiaries has transported, stored, used, manufactured, disposed of, released or exposed their employees or others to Hazardous Materials in material violation of any law or in a manner that would result in material liability to the Company or any of its Subsidiaries, nor has the Company or any of its Subsidiaries disposed of, transported, sold, or manufactured any product containing a Hazardous Material (any or all of the foregoing being collectively referred to herein as "**Hazardous Materials Activities**") in violation in any material respect of any rule, regulation, treaty or statute promulgated by any Governmental Entity to prohibit, regulate or control Hazardous Materials or any Hazardous Material Activity.

(c) ***Permits***. The Company and each of its Subsidiaries currently hold all material environmental approvals, permits, licenses, clearances and consents (the "**Environmental Permits**") necessary for the conduct of their Hazardous Material Activities and other businesses of each of the Company and each of its Subsidiaries as such activities and businesses are currently being conducted and as currently contemplated to be conducted.

(d) ***Environmental Liabilities***. No action, proceeding, revocation proceeding, amendment procedure, writ, injunction or claim is pending, or, to the Knowledge of the Company, threatened, concerning any Environmental Permit, Hazardous Material or any Hazardous Materials Activity of the Company or any of its Subsidiaries. The Company has no Knowledge of any fact or circumstance which could result in any environmental litigation or material liability which could reasonably be expected to impose upon the Company or any of its Subsidiaries any material environmental liability.

(e) ***Reports and Records***. The Company and each of its Subsidiaries have made available to Parent all records in the Company's or each such Subsidiary's possession concerning the Hazardous Materials Activities of the Company and each of its Subsidiaries relating to their business and all environmental audits and environmental assessments of any Leased Real Property conducted at the request of, or otherwise in the possession of the Company or any of its Subsidiaries. The Company and each of its Subsidiaries have complied with all environmental disclosure obligations imposed by applicable law with respect to this transaction.

2.22 ***Brokers' and Finders' Fees; Third Party Expenses***. Except as set forth in **Section 2.22** of the Disclosure Schedule, neither the Company nor any of its Subsidiaries has incurred, nor will it incur, directly or indirectly, any liability for brokerage or finders' fees or agents' commissions, fees related to investment banking or similar advisory services or any similar charges in connection with the Agreement or any transaction contemplated hereby, nor will Parent or the Surviving Corporation incur, directly or indirectly, any such liability based on arrangements made by or on behalf of the Company. **Section 2.22** of the Disclosure Schedule sets forth the principal terms and conditions of any agreement, written or oral, with respect to such fees.

2.23 ***Employee Benefit Plans and Compensation***.

(a) ***Definitions***. For all purposes of this Agreement, the following terms shall have the following respective meanings:

"***Company Employee Plan***" shall mean any plan, program, policy, contract, agreement or other arrangement providing for severance, termination pay, deferred compensation, performance awards, stock or stock-related awards, welfare benefits, material fringe benefits or other material employee benefits, whether funded or unfunded, including each "employee benefit plan," within the meaning of Section 3(3) of ERISA which is or has been maintained, contributed to, or required to be contributed to, by the Company or any of its Subsidiaries for the benefit of any Employee, or with respect to which the Company or any of its Subsidiaries has or may have any liability or obligation and any International Employee Plan.

"***COBRA***" shall mean the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

"***DOL***" shall mean the United States Department of Labor.

"***Employee***" shall mean any current or former employee, consultant, independent contractor or director of the Company or any of its Subsidiaries.

"***Employee Agreement***" shall mean, other than a Company Employee Plan or an International Employee Plan, each material management, employment, severance, separation, settlement, consulting, contractor, relocation, repatriation, expatriation, loan, visa, work permit or other agreement, or contract (including, any offer letter or any agreement providing for acceleration of Company Options, or any other agreement providing for compensation or benefits) between the Company or any of its Subsidiaries and any Employee.

"***ERISA***" shall mean the Employee Retirement Income Security Act of 1974, as amended.

"***International Employee Plan***" shall mean each employee benefit plan that has been adopted or maintained by the Company or any of its Subsidiaries, whether formally or informally or with respect to which the Company or any of its Subsidiaries will or may have any liability with respect to Employees who perform services outside the United States.

"***IRS***" shall mean the United States Internal Revenue Service.

"***Pension Plan***" shall mean each Company Employee Plan that is an "employee pension benefit plan," within the meaning of Section 3(2) of ERISA.

"***WARN***" shall mean the Worker Adjustment and Retraining Notification Act.

(b) ***Schedule***. **Section 2.23(b)(i)** of the Disclosure Schedule contains an accurate and complete list of each Company Employee Plan, each Employee Agreement under each Company Employee Plan, and each Employee Agreement as of the date hereof that, with respect to all of the above, cover current Employees or to which the Company or its Subsidiaries has or could have any liability**.** Neither the Company nor any of its Subsidiaries has, as of the date hereof, made any plan or commitment to establish any new Company Employee Plan or Employee Agreement or to materially modify any Company Employee Plan or Employee Agreement (except to the extent required by law or to conform any such Company Employee Plan or Employee Agreement to the requirements of any applicable law, in each case as previously disclosed to Parent in writing, or as required by this Agreement, and except for any such decisions made or actions taken in the ordinary course of business), or to enter into any Company Employee Plan or Employee Agreement except for any such decisions made or actions taken in the ordinary course of business. **Section 2.23(b)(ii)** of the Disclosure Schedule sets forth a table setting forth the name and base salary of each employee of the Company and each of its Subsidiaries as of the date hereof. **Section 2.23(b)(iii)** of the Disclosure Schedule contains an accurate and complete list of all Employees that have an existing consulting or advisory relationship with the Company or any of its Subsidiaries to which the Company or its Subsidiaries has or could have any liability.

(c) ***Documents***. With respect to only such items that cover current Employees or to which the Company or its Subsidiaries has or could have any liability, the Company and each of its Subsidiaries have provided to Parent (i) correct and complete copies of all documents embodying each Company Employee Plan and each Employee Agreement including all amendments thereto, all related trust documents, and the most recent summary plan description together with the summary(ies) of material modifications thereto, if any (ii) the three most recent annual reports (Form Series 5500 and all schedules and financial statements attached thereto), if any, required under ERISA or the Code in connection with each Company Employee Plan, (iii) if the Company Employee Plan is funded, the most recent annual and periodic accounting of Company Employee Plan assets, (iv) all material written agreements and contracts relating to each Company Employee Plan, including administrative service agreements and group insurance contracts, (v) each affirmative action plan, if applicable, (vi) all material communications to any Employee relating to any Company Employee Plan and any proposed Company Employee Plan, in each case, relating to any amendments, terminations, establishments, increases or decreases in benefits, acceleration of

payments or vesting schedules or other events that would result in any liability to the Company or any of its Subsidiaries, (vii) all correspondence to or from any Governmental Entity relating to any Company Employee Plan, (viii) sample COBRA forms and related notices, (ix) all policies pertaining to fiduciary liability insurance covering the fiduciaries for each Company Employee Plan, (x) all discrimination tests for each Company Employee Plan for the three most recent plan years, (xi) all registration statements, annual reports (Form 11-K and all attachments thereto) and prospectuses prepared in connection with each Company Employee Plan, if applicable, and (xii) the most recent IRS determination or opinion letter issued with respect to each Company Employee Plan, if applicable.

(d) ***Employee Plan Compliance***. Each Company Employee Plan has been established and maintained, in all material respects, in accordance with its terms and in compliance with all applicable laws, statutes, orders, rules and regulations, including ERISA or the Code. Any Company Employee Plan intended to be qualified under Section 401(a) of the Code has obtained a favorable determination letter (or opinion letter, if applicable) as to its qualified status under the Code, and to the Knowledge of the Company, no event or omission has occurred that could adversely affect the qualified status of any such Company Employee Plan, and any such plan may be terminated without incurring any surrender, liquidation or material administrative charges. Except as disclosed on **Section 2.23(d)** of the Disclosure Schedule, any Company Employee Plan intended to be registered under the Income Tax Act (Canada) has been registered and, to the Knowledge of the Company, no event has occurred that would result in the revocation of the registration of such Company Employee Plan (where applicable). To the Knowledge of the Company, no "prohibited transaction," within the meaning of Section 4975 of the Code or Sections 406 and 407 of ERISA, and not otherwise exempt under Section 408 of ERISA, has occurred with respect to any Company Employee Plan that would result in any material liability. There are no material actions, suits or claims pending or, to the Knowledge of the Company, threatened (other than routine claims for benefits) against any Company Employee Plan or against the assets of any Company Employee Plan. There are no material audits, inquiries or proceedings pending or, to the Knowledge of the Company, threatened by the IRS, DOL, or any other Governmental Entity with respect to any Company Employee Plan. The Company and each of its Subsidiaries have timely made all contributions and other payments required by and due under the terms of each Company Employee Plan.

(e) ***No Pension Plan***. Neither the Company nor any of its Subsidiaries has any liability with respect to any Pension Plan subject to Section 302 of Title I of ERISA, Title IV of ERISA or Section 412 of the Code. Neither the Company nor any of its Subsidiaries has, or ever had, any liabilities with respect to any defined benefit pension plan, whether or not registered under the Income Tax Act (Canada).

(f) ***Collectively Bargained, Multiemployer and Multiple-Employer Plan***. The Company and its Subsidiaries have no liability with respect to any multiemployer plan (as defined in Section 3(37) of ERISA).

(g) ***No Post-Employment Obligations***. Except as disclosed in **Section 2.23(g)** of the Disclosure Schedule, of the Disclosure Schedule, no Company Employee Plan or Employee Agreement provides, or reflects or represents any liability to provide, post-termination or retiree life insurance, health or other employee welfare benefits to any person for any reason, except as may be required by COBRA or other applicable law.

(h) ***Effect of Transaction***. Except as disclosed in **Section 2.23(h)** of the Disclosure Schedule, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will (i) result in any payment (including severance, golden parachute, bonus or otherwise), becoming due to any Employee, (ii) result in any forgiveness of indebtedness of an Employee, (iii) materially increase any benefits otherwise payable by the Company or any Subsidiary to an Employee or (iv) result in the acceleration of the time of payment or vesting of any such benefits to an Employee except as required under Section 411(d)(3) of the Code.

(i) ***Employment Matters***. The Company and each of its Subsidiaries are in compliance in all material respects with all applicable foreign, federal, state and local laws, rules and regulations respecting employment, employment practices, terms and conditions of employment, employee safety and health and wages and hours, and in each case, with respect to Employees, in all material respects: (i) have withheld and reported all amounts required by law or by agreement to be withheld and reported with respect to wages, salaries and other payments to Employees, (ii) are not liable for any arrears of wages, severance pay or any Taxes or any penalty for failure to comply with any of the foregoing, and (iii) are not liable for any payment to any trust or other fund governed by or maintained by or on behalf of any governmental authority, with respect to unemployment compensation benefits, social security or other benefits or obligations for Employees (other than, in each case, routine payments to be made in the normal course of business and consistent with past practice). Except as disclosed in **Section 2.23(i)** of the Disclosure Schedule, there are no material actions, suits, claims or administrative matters pending or, to the Knowledge of the Company as of the date hereof, threatened against the Company, any of its Subsidiaries, or any of their Employees relating to any Employee Agreement. There are no pending or, to the Knowledge of the Company, threatened material claims or actions against the Company, any of its Subsidiaries, any Company trustee or any trustee of any Subsidiary under any worker's compensation policy. To the Knowledge of the Company, neither the Company nor any Subsidiary has direct or indirect material liability with respect to any misclassification of any person as an independent contractor rather than as an employee, or with respect to any employee leased from another employer.

(j) ***Labor***. No work stoppage or labor strike against the Company or any of its Subsidiaries is pending, or to the Knowledge of the Company, threatened against the Company or any of its Subsidiaries. The Company has no Knowledge of any activities or proceedings of any labor union to organize any Employees. There are no material actions, suits, claims, labor disputes or grievances pending or, as of the date hereof, threatened or relating to any labor matters involving any Employee, including charges of unfair labor practices. Neither the Company nor any of its Subsidiaries has engaged in any unfair labor practices within the meaning of the National Labor

Relations Act or any similar legislation, whether domestic or foreign, that would result in any material liability. Neither the Company nor any of its Subsidiaries is presently, nor has it been in the past, a party to, or bound by, any collective bargaining agreement or union contract with respect to Employees, and no collective bargaining agreement is being negotiated by the Company or any of its Subsidiaries. Prior to the date hereof, within the past year, neither the Company nor any of its Subsidiaries has incurred any material liability or obligation under WARN or any similar state or local law that remains unsatisfied.

(k) ***No Interference or Conflict***. To the Knowledge of the Company, no stockholder, officer or Employee of the Company or any of its Subsidiaries is obligated under any contract or agreement or subject to any judgment, decree, or order of any court or administrative agency that would interfere with such person's efforts to promote the interests of the Company or any of its Subsidiaries or that would interfere with the Company's business. Neither the execution nor delivery of this Agreement, nor the carrying on of the Company's business as presently conducted nor any activity of such officers or Employees in connection with the carrying on of the Company's business or any of its Subsidiaries' businesses as presently conducted will, to the Knowledge of the Company, conflict with or result in a breach of the terms, conditions, or provisions of, or constitute a default under, any contract or agreement under which any of such officers or Employees is now bound.

(l) ***No Controlled Group Liabilities***. Neither the Company nor any of its Subsidiaries has incurred any material liability with respect to any "employee benefit plan" (as defined in Section 3(3) of ERISA) solely by reason of being treated as a single employer under Section 414(b), (c), (m) or (o) of the Code with any entity other than the Company and its Subsidiaries.

2.24 ***Insurance***. **Section 2.24** of the Disclosure Schedule lists all insurance policies and fidelity bonds covering the assets, business, equipment, properties, operations, employees, officers and directors of the Company or any of its Subsidiaries, including the type of coverage, the carrier, the amount of coverage, the term and the annual premiums of such policies as of the date hereof. There is no material claim by the Company or any of its Subsidiaries pending under any of such policies or bonds as to which coverage has been questioned, denied or disputed or that the Company or any of its Subsidiaries has a reason to believe will be denied or disputed by the underwriters of such policies or bonds. In addition, there is no pending claim as of the date hereof of which its total value (inclusive of defense expenses) could reasonably be expected to exceed the policy limits. All premiums due and payable under all such policies and bonds have been paid (or if installment payments are due, will be paid if incurred prior to the Closing Date), and the Company and each of its Subsidiaries are otherwise in material compliance with the terms of such policies and bonds (or other policies and bonds providing substantially similar insurance coverage). Neither the Company nor any of its Subsidiaries has ever maintained, established, sponsored, participated in or contributed to any self-insurance plan that would reasonably be expected to result in any material liability.

2.25 ***Compliance with Laws***. The Company and each of its Subsidiaries is in material compliance with, has not materially violated, and has not received any notices of material violation with respect to, any foreign, federal, state or local statute, law or regulation.

2.26 ***Export Control Laws***. The Company and each of its Subsidiaries has at all times conducted its export transactions in accordance with (y) all applicable U.S. export and reexport controls, including the United States Export Administration Act and Regulations and Foreign Assets Control Regulations and (z) all other applicable import/export controls in other countries in which the Company conducts business. Without limiting the foregoing:

(a) The Company and each of its Subsidiaries have obtained all export licenses, license exceptions and other consents, notices, waivers, approvals, orders, authorizations, registrations, declarations, classifications and filings with any Governmental Entity required for (i) the export and reexport of products, services, software and technologies and (ii) releases of technologies and software to foreign nationals located in the United States and abroad ("**Export Approvals**");

(b) The Company and each of its Subsidiaries are in compliance with the terms of all applicable Export Approvals;

(c) There are no pending or, to the Company's Knowledge, threatened claims against the Company or any Subsidiary with respect to such Export Approvals;

(d) No Export Approvals for the transfer of export licenses to Parent or the Surviving Corporation are required, or such Export Approvals can be obtained expeditiously without material cost;

(e) Neither the Company nor any of its Subsidiaries engages in any boycott activities; and

(f) **Section 2.26(f)** of the Disclosure Schedule sets forth the true, complete and accurate export control classifications applicable to the Company's products, services, software and technologies.

2.27 ***Foreign Corrupt Practices Act***. Neither the Company nor any of its Subsidiaries (including any of their officers, directors, agents, employees or other Person associated with or acting on their behalf) has, directly or indirectly, taken any action which would cause it to be in violation of the Foreign Corrupt Practices Act of 1977, as amended, or any rules or regulations thereunder (the "**FCPA**"), used any corporate funds for unlawful contributions, gifts, entertainment or other unlawful expenses relating to political activity, made, offered or authorized any unlawful payment to foreign or domestic government officials or employees, whether directly or indirectly, or made, offered or authorized any bribe, rebate, payoff, influence payment, kickback or other similar unlawful payment, whether directly or indirectly. The Company has established sufficient internal controls and procedures to ensure compliance with the FCPA and has made all such documentation available to Parent.

2.28 ***Substantial Customers and Suppliers***.

(a) **Section 2.28(a)** of the Disclosure Schedule lists the 15 largest customers (the "**Major Customers**") of the Company and its Subsidiaries on the basis of bookings for the 12-month period ending on the Balance Sheet Date. The Company and its Subsidiaries are seeking to renew those Contracts with Major Customers that otherwise terminate within the next six months or are otherwise seeking to provide for continuing business relationships with such Major Customers in a manner consistent with the Company's past practices. As of the date hereof, there are no disputes or disagreements, and the Company has no Knowledge of any threatened disputes or disagreements, with any Major Customer that would reasonably be expected to lead to a termination, non-renewal or any other cancellation of any Contract with such Major Customer. True and complete copies of each Contract with a Major Customer have been made available to Parent.

(b) **Section 2.28(b)** of the Disclosure Schedule lists the 15 largest suppliers of the Company and its Subsidiaries on the basis of cost of goods or services purchased for the 12 month period ending on the Balance Sheet Date.

(c) Except as disclosed in **Section 2.28(c)** of the Disclosure Schedule, no such customer or supplier has (i) ceased or materially reduced its purchases from or sales or provision of services to the Company and its Subsidiaries since the beginning of such 12 month period to the date hereof or (ii) to the Knowledge of the Company, threatened to cease or materially reduce such purchases or sales or provision of services during such 12 month period to the date hereof.

2.29 ***Complete Copies of Materials***. The Company has made available to Parent or its designees true and complete copies of each document listed on the Disclosure Schedule.

2.30 ***Soliciting Materials***. The information furnished on or in any document mailed, delivered or otherwise furnished to Stockholders by the Company in connection with the solicitation of their consent to this Agreement and the Merger, will not contain, at or prior to the Effective Time, any untrue statement of a material fact and will not omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which made, not misleading.

2.31 ***Required Vote***. The Company's Board of Directors has, at a meeting duly called and held or by written consent, (a) approved and declared advisable this Agreement and approved each Related Agreement to which it is a party, (b) determined that the transactions contemplated hereby and thereby are advisable, fair to and in the best interests of the Stockholders, (c) resolved to recommend adoption of this Agreement, the Merger and the other transactions contemplated hereby and thereby to the Stockholders and (d) directed that this Agreement be submitted to the Stockholders for their approval and authorization. The affirmative vote of a majority of all outstanding shares of each class or series of Company Capital Stock, voting together as a single class

on an as converted basis, are the only votes of the Stockholders of any class or series of Company Capital Stock necessary to approve and authorize the Company's execution and delivery of this Agreement, the Merger, the Related Agreements to which the Company is a party and the other transactions contemplated hereby and thereby.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE PRINCIPAL STOCKHOLDERS

Each of the Principal Stockholders, severally but not jointly, hereby represents and warrants to Parent and Sub, subject to such exceptions as are specifically disclosed in the Disclosure Schedule and dated as of the date hereof, on the date hereof and as of the Closing Date, as though made on the Closing Date, as follows:

3.1 ***Ownership of Company Capital Stock***. Such Principal Stockholder is the sole record and beneficial owner of the Company Capital Stock designated as being owned by such Principal Stockholder opposite such Principal Stockholder's name in **Section 2.2(a)** of the Disclosure Schedule, except as otherwise noted in **Section 2.2(a)** of the Disclosure Schedule. Such Company Capital Stock owned by such Principal Stockholder is not subject to any Liens (other than Permitted Liens) or to any rights of first refusal of any kind, and such Principal Stockholder has not granted any rights to purchase such Company Capital Stock to any other Person. Such Principal Stockholder has the sole right to transfer such Company Capital Stock to Parent. Such Company Capital Stock constitutes all of the Company Capital Stock owned, beneficially or of record, by such Principal Stockholder, and such Principal Stockholder has no options, warrants or other rights to acquire Company Capital Stock. Upon the Effective Time, in exchange for the consideration paid pursuant to **Section 1.6** hereof, Parent will receive good title to such Company Capital Stock, subject to no Liens (other than Permitted Liens) retained, granted or permitted by such Principal Stockholder or the Company.

3.2 ***Absence of Claims by the Principal Stockholders***. As of the date hereof, (a) such Principal Stockholder does not have any claim against the Company or any of its Subsidiaries whether contingent or unconditional, fixed or variable under any contract or on any other basis whatsoever, whether in equity or at law, and (b) there is no action, suit or claim for which such Principal Stockholder would be entitled to indemnification in its capacity as a director of the Company or otherwise pursuant to the Charter Documents or any policy or policies of directors' and officers' liability insurance held by the Company, other than as set forth in **Section 3.2** of the Disclosure Schedule.

3.3 ***Litigation***. There is no action, suit, claim or proceeding of any nature pending, or to the Knowledge of such Principal Stockholder, threatened, against such Principal Stockholder, arising out of or relating to (a) such Principal Stockholder's beneficial ownership of Company Capital Stock or rights to acquire Company Capital Stock, (b) such Principal Stockholder's capacity as a Stockholder, (c) the transactions contemplated by this Agreement, (d) any contribution of assets (tangible and

intangible) by such Principal Stockholder (or any of its affiliates) to the Company (or any of its affiliates), or (e) any other agreement between such Principal Stockholder (or any of its affiliates) and the Company (or any of its affiliates). There is no investigation or other proceeding pending or, to the Knowledge of such Principal Stockholder, threatened, against such Principal Stockholder arising out of or relating to the matters noted in clauses (a) through (e) of the preceding sentence by or before any Governmental Entity. There is no action, suit, claim or proceeding pending or, to the Knowledge of such Principal Stockholder, threatened, against such Principal Stockholder with respect to which such Principal Stockholder has a contractual right or a right pursuant to Delaware Law to indemnification from the Company related to facts and circumstances existing prior to the date hereof.

3.4 ***Authority***. Such Principal Stockholder, if it is an entity, has all requisite power and authority or, if such Principal Stockholder is an individual, has capacity to enter into this Agreement and any Related Agreements to which it or he, as the case may be, is a party and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and any Related Agreements to which such Principal Stockholder is a party and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action, if applicable, on the part of such Principal Stockholder, and no further action is required on the part of such Principal Stockholder to authorize the Agreement and any Related Agreements to which it or he is a party and the transactions contemplated hereby and thereby. This Agreement and each of the Related Agreements to which such Principal Stockholder is a party has been duly executed and delivered by such Principal Stockholder, and assuming the due authorization, execution and delivery by the other parties hereto and thereto, constitute the valid and binding obligations of such Principal Stockholder, enforceable against each such party in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium, and similar laws affecting creditors' rights generally and limitation on the availability of equitable remedies.

3.5 ***No Conflict***. The execution and delivery by such Principal Stockholder of this Agreement and any Related Agreements to which such Principal Stockholder is a party and the consummation of the transactions contemplated hereby and thereby will not Conflict with (a) any provision of the charter documents of such Principal Stockholder, (b) any material Contract to which such Principal Stockholder or any of its properties or assets is subject, or (c) any judgment, order, decree, statute, law, ordinance, rule or regulation applicable to such Principal Stockholder or its properties or assets, except in each such case as would not reasonably be expected to have a material adverse effect on the ability of such Principal Stockholder to consummate the transactions described herein.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF PARENT AND SUB

Each of Parent and Sub hereby represents and warrants to the Company that on the date hereof and as of the Closing Date, as though made on the Closing Date, as follows:

4.1 ***Organization***. Parent is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Sub is a corporation duly organized, validly existing and in good standing under the laws of Delaware.

4.2 ***Authority***. Each of Parent and Sub has all requisite corporate power and authority to enter into this Agreement and any Related Agreements to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution and delivery by each of Parent and Sub of this Agreement and any Related Agreements to which it is a party and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action on the part of Parent and Sub, and no approval of Parent's stockholders is required for the authorization or consummation of the transactions contemplated hereby and thereby. This Agreement and any Related Agreements to which Parent and Sub are parties have been duly executed and delivered by Parent and Sub and constitute the valid and binding obligations of Parent and Sub, enforceable against each of Parent and Sub in accordance with their terms.

4.3 ***Consents***. No consent, waiver, approval, order or authorization of, or registration, declaration or filing with, any Governmental Entity, or any third party is required by or with respect to Parent or Sub in connection with the execution and delivery of this Agreement and any Related Agreements to which Parent or Sub is a party or the consummation of the transactions contemplated hereby and thereby, except for (a) such consents, waivers, approvals, orders, authorizations, registrations, declarations and filings as may be required under applicable securities laws; (b) the filing of the Notification and Report Forms with the FTC and DOJ required by the HSR Act and the expiration or termination of the applicable waiting period under the HSR Act and such consents, waivers, approvals, orders, authorizations, registrations, declarations and filings as may be required under the foreign merger control regulations identified in **Section 4.3** of the Disclosure Schedule, (c) such consents, waivers, approvals, orders, authorizations, registrations, declarations and filings which, if not obtained or made, would not materially adversely affect the ability of the parties hereto to consummate the Merger within the time frame in which the Merger would otherwise be consummated in the absence of the need for such consent, approval, order, authorization, registration, declaration or filing and (d) the filing of the Certificate of Merger with the Secretary of State of the State of Delaware.

4.4 ***Capital Resources***. Parent has sufficient capital resources to pay the Total Consideration in immediately available funds and to consummate all of the transactions contemplated by this Agreement and the Related Agreements.

4.5 ***Soliciting Materials***. The information regarding Parent or Sub provided in writing by Parent or Sub to the Company for the express purpose of including such information in any documents mailed, delivered or otherwise furnished to Stockholders by the Company in connection with the solicitation of their consent to this Agreement and the Merger, will not contain, at or prior to the Effective Time, any untrue statement of a material fact and will not omit to state any material fact necessary in order to make the statements made therein, in light of the circumstances under which made, not misleading.

4.6 ***Investment Canada Act***. Parent is a "WTO investor" as that term is defined in the IC Act.

ARTICLE V

CONDUCT PRIOR TO THE EFFECTIVE TIME

5.1 ***Conduct of Business of the Company***. Except as specifically required or expressly contemplated by this Agreement pursuant to **Article VI** below, during the period from the date of this Agreement and continuing until the earlier of the termination of this Agreement or the Effective Time, the Company agrees to use its commercially reasonable efforts (i) to conduct the business of the Company and its Subsidiaries, except to the extent that Parent shall otherwise consent in writing, in the usual, regular and ordinary course of business consistent with past practices in substantially the same manner as heretofore conducted, (ii) to pay the debts and Taxes of the Company and its Subsidiaries when due (subject to Parent's review and consent to the filing of any Tax Return (other than immaterial Tax Returns), as set forth in **Section 5.1(e)** below), and (iii) to the extent consistent with such business, to seek (A) to preserve intact the present business organizations of the Company and its Subsidiaries, (B) to keep available the services of the present officers and Employees of the Company and its Subsidiaries (other than performance-based terminations in the ordinary course of business consistent with past practices) and (C) to preserve consistent with past practices the relationships of the Company and its Subsidiaries with customers, suppliers, distributors, resellers, channel partners, licensors, licensees, and others having business dealings with them (other than terminations of immaterial relationships in the ordinary course of business consistent with past practices), all with the goal of preserving the goodwill and ongoing businesses of the Company and its Subsidiaries at the Effective Time. The Company shall promptly notify Parent of (y) any material event or occurrence or emergency outside of the ordinary course of business consistent with past practices of the Company or (z) any event or action that the Company would reasonably expect to materially decrease the value of the Company that arises during the period from the date of this Agreement and continuing until the earlier of the termination of this Agreement or the Effective Time. Except as expressly contemplated by this Agreement and except as expressly set forth in **Section 5.1** of the Disclosure Schedule, neither the Company nor any of its Subsidiaries shall, without the prior written consent of Parent in accordance with **Section 5.3** hereof, from and after the date of this Agreement until the earlier of the termination of this Agreement or the Effective Time:

(a) cause or permit any modifications, amendments or changes to the Charter Documents or the organizational documents of any Subsidiary;

(b) undertake any capital expenditure, transaction or commitment of more than $75,000 in excess of the Company's capital expenditure budget as set forth in **Section 5.1(b)** of the Disclosure Schedule;

(c) pay, discharge, waive or satisfy, in an amount in excess of $150,000 in any one case, any claim, liability, right or obligation (absolute, accrued, asserted or unasserted, contingent or otherwise), other than the payment, discharge or satisfaction in the ordinary course of business consistent with past practices of liabilities reflected or reserved against in the Current Balance Sheet;

(d) adopt or change accounting methods or practices (including any change in depreciation or amortization policies or rates) other than as required by GAAP;

(e) make or change any material election in respect of Taxes, adopt or change any accounting method in respect of Taxes, enter into any agreement, settle any claim or assessment in respect of Taxes, consent to any extension or waiver of the limitation period applicable to any claim or assessment in respect of Taxes or file any significant Return unless a copy of such Return has been delivered to Parent for review a reasonable time prior to filing, and Parent has approved such Return;

(f) revalue any of its assets (whether tangible or intangible) in an amount that exceeds $75,000 in any one case, including writing down the value of inventory or writing off notes or accounts receivable;

(g) declare, set aside, or pay any dividends on or make any other distributions (whether in cash, stock or property) in respect of any Company Capital Stock or the capital stock of any Subsidiary, or split, combine or reclassify any Company Capital Stock or the capital stock of any Subsidiary or issue or authorize the issuance of any other securities in respect of, in lieu of or in substitution for, shares of Company Capital Stock or the capital stock of any Subsidiary, or directly or indirectly repurchase, redeem or otherwise acquire any shares of Company Capital Stock or the capital stock of any Subsidiary (or options, warrants or other rights convertible into, exercisable or exchangeable for, Company Common Stock or the capital stock of any Subsidiary) except in accordance with the agreements evidencing Company Options;

(h) except for immaterial amendments to any Company Employee Plan or immaterial changes to the compensation of any officer, director, employee or advisor, (i) adopt or amend any Company Employee Plan, (ii) enter into or amend any Employee Agreement other than for non- managerial Employees in the ordinary course of business consistent with past practices, (iii) increase or otherwise change the salary, wage rates, or other compensation (including equity based compensation) payable or to become payable to any officer, director, employee or advisor, or (iv) make any declaration, payment or commitment or obligation of any kind for the payment of a severance payment, termination payment, non- scheduled bonus, special remuneration or other

additional salary or compensation (including equity based compensation) to any such person, except payments made pursuant to existing arrangements on the date hereof and disclosed in **Section 5.1(h)** of the Disclosure Schedule, or (vi) materially amend any deferred compensation plan within the meaning of Section 409A of the Code and Internal Revenue Service Notice 2005-1, except to the extent necessary to meet the requirements of such Section or Notice;

(i) other than entering into (y) Standard Form Agreements entered into in the ordinary course of business consistent with past practices or (z) agreements relating solely to Commercial Code entered into in the ordinary course of business consistent with past practices, (A) sell, lease, license or otherwise dispose of or grant any security interest in any of its properties or assets, including the sale of any accounts receivable of the Company or any of its Subsidiaries, except for the sale of properties or assets (whether tangible or intangible) which are not Intellectual Property Rights and only in the ordinary course of business and consistent with past practices, (B) transfer to any Person any ownership rights to any Company Intellectual Property (other than Technology which is the physical embodiment of Company Intellectual Property licensed to such Person), (C) enter into any agreement or modify or amend any existing agreement with respect to any Company Intellectual Property with any Person or with respect to any Intellectual Property Rights of any Person (including any services agreements related to such agreements) except in the ordinary course of business consistent with past practices and not involving expenditure(s) that exceed $75,000, (D) enter into any exclusive distribution, marketing or sales agreements, including any agreement that the Company would otherwise be required to disclose pursuant to **Section 2.15(h)**, (E) enter into any agreement that the Company would otherwise be required to disclose pursuant to **Section 2.13, 2.15(bb)** or **2.15(q)** or similar obligations to provide Source Code for Maya, StudioTools, MotionBuilder, Image Studio, SketchBook Pro to any third party, or any similar non- compete, (F) purchase or license any Intellectual Property or enter into any agreement or modify or amend any existing agreement with respect to the Intellectual Property of any Person, other than in the ordinary course of business consistent with past practice in an amount not to exceed $75,000 in any one case, (G) enter into any agreement or modify or amend any existing agreement with respect to the development of any Intellectual Property with a third party, (H) enter into any agreement in which the Company or any Subsidiary provides an indemnification or warranty in excess of those offered for similar transactions as disclosed in **Section 2.15(l)** of the Disclosure Schedules; (I) enter into any agreement relating to any Intellectual Property standards-body; (J) enter into any agreement in which the Company or any Subsidiary covenants not to solicit any person for employment or other work; (K) enter into any agreement in which the Company grants any Patent License or enters into any cross- license with respect to Patents, or otherwise agrees not assert any Patent against any third party; or (L) enters into any exclusive license agreement of any scope with respect to any Company Intellectual Property;

(j) issue or agree to issue any refunds, credits, allowances or other concessions with customers with respect to amounts collected by or owed to the Company in excess of $75,000 individually;

(k) except for advances to employees for travel and business expenses in the ordinary course of business consistent with past practices, make any loan to any Person or purchase debt securities of any Person or amend the terms of any outstanding loan agreement;

(l) incur any indebtedness (other than any borrowing against the Company's credit line with Canadian Imperial Bank of Commerce, the obligation to reimburse employees for travel and business expenses or indebtedness incurred in connection with the purchase of goods and services in the ordinary course of the Company's business consistent with past practices), amend the terms of any outstanding loan agreement, guarantee any indebtedness of any Person, issue or sell any debt securities or guarantee any debt securities of any Person;

(m) waive or release any right or claim of the Company or any of its Subsidiaries (other than immaterial rights or claims), including any write-off or other compromise of any account receivable of the Company or any of its Subsidiaries in excess of $75,000 individually;

(n) commence or settle any lawsuit, or, except in the ordinary course of business consistent with past practices, threaten any lawsuit or proceeding or other investigation by or against the Company or any Subsidiary or relating to any of their businesses, properties or assets;

(o) issue, grant, deliver or sell or authorize or propose the issuance, grant, delivery or sale of, or purchase or propose the purchase of, any Company Capital Stock or the capital stock of any Subsidiary or any securities convertible into, exercisable or exchangeable for, or subscriptions, rights, warrants or options to acquire, or other agreements or commitments of any character obligating any of them to issue or purchase any such shares or other convertible securities, except for the issuance of Company Common Stock pursuant to the exercise of outstanding Company Options (including any amendments to such Company Options as are mutually agreed to by Parent and Company);

(p) enter into or amend any Contract pursuant to which any other party is granted marketing, distribution, development, delivery, manufacturing or similar rights of any type or scope with respect to any Products, except for any non- exclusive Contracts in the ordinary course of business consistent with past practices not to exceed $75,000 in any one case;

(q) enter into any agreement to purchase or sell any interest in real property, grant any security interest in any real property, enter into any lease, sublease, license or other occupancy agreement with respect to any real property or alter, amend, modify or terminate any of the terms of any Lease Agreements;

(r) (i) terminate, (ii) except in the ordinary course of business consistent with past practices, amend or otherwise modify or (iii) violate the terms of, or make any payments resulting from agreed upon early termination of, any of the Contracts set forth or described in the Disclosure Schedule;

(s) acquire or agree to acquire by merging or consolidating with, or by purchasing any assets or equity securities of, or by any other manner, any business or any corporation, partnership, association or other business organization or division thereof, or otherwise acquire or agree to acquire any assets or any equity securities, that are material individually or in the aggregate, to the business of the Company or any of its Subsidiaries;

(t) enter into any joint marketing arrangement or agreement (other than in the ordinary course of business consistent with past practices), strategic alliance or affiliate agreement;

(u) take any action to accelerate or otherwise modify the vesting schedule of any of the outstanding Company Options or Company Common Stock;

(v) terminate any Employees (other than performance- based terminations in the ordinary course of business consistent with past practices);

(w) alter, or enter into any commitment to alter, its interest in any Subsidiary, corporation, association, joint venture, partnership or business entity in which the Company or any Subsidiary directly or indirectly holds any interest;

(x) cancel, amend (other than in connection with the addition of customers and suppliers to such insurance policies from time to time in the ordinary course of business consistent with past practices) or renew any insurance policy of the Company or any Subsidiary;

(y) undertake any other expenditure, transaction or commitment exceeding $75,000 individually outside of the ordinary course of business consistent with past practices; or

(z) take, commit, or agree in writing or otherwise to take, any of the actions described in **Section 5.1(a)** through **Section 5.1(y)** hereof.

5.2 No Solicitation.

(a) Until the earlier of (y) the Effective Time or (z) the date of termination of this Agreement pursuant to the provisions of **Section 9.1** hereof, neither the Company nor the Principal Stockholders shall (nor shall the Company or the Principal Stockholders permit, as applicable, any of their respective officers, directors, employees, stockholders, agents, representatives or affiliates to), directly or indirectly, take any of the following actions with any party other than Parent and its designees: (i) solicit, encourage, seek, support, initiate or participate in any inquiry, negotiations or discussions, or enter into any agreement, with respect to any offer or proposal to acquire all or any material part of the business, properties or technologies of the Company and its Subsidiaries, or any material amount of the Company Capital Stock or capital stock of any Subsidiary (whether or not outstanding), whether by merger, purchase of assets, tender offer, license of Company Intellectual Property (except for Standard Form Agreements entered into in the ordinary course of business) or otherwise, or effect any such transaction, (ii) disclose any information not customarily disclosed to any person concerning the business, technologies or properties of the Company and its Subsidiaries,

or afford to any Person access to their respective properties, technologies, books or records, not customarily afforded such access, (iii) assist or cooperate with any person to make any proposal to purchase all or any part of the Company Capital Stock or assets of the Company and its Subsidiaries, or (iv) enter into any agreement with any person providing for the acquisition of the Company (other than inventory in the ordinary course of business) or any of its Subsidiaries, whether by merger, purchase of assets, license of Company Intellectual Property (except Standard Form Agreements entered into in the ordinary course of business), tender offer or otherwise. The Company shall immediately cease and cause to be terminated any such negotiations, discussion or agreements (other than with Parent) that are the subject matter of clause (i), (ii), (iii) or (iv) above. In the event that the Company or any Principal Stockholder shall receive, prior to the Effective Time or the termination of this Agreement in accordance with **Section 9.1** hereof, any offer, proposal, or request, directly or indirectly, of the type referenced in clause (i), (iii), or (iv) above, or any request for disclosure or access as referenced in clause (ii) above, the Company or such Principal Stockholder, as applicable, shall immediately (A) suspend any discussions with such offeror or party with regard to such offers, proposals, or requests and (B) promptly, and in any event within 24 hours, notify Parent thereof, including information as to the identity of the offeror or the party making any such offer or proposal and the specific terms of such offer or proposal, as the case may be, and such other information related thereto as Parent may reasonably request.

(b) The parties hereto agree that irreparable damage would occur in the event that the provisions of this **Section 5.2** were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed by the parties hereto that Parent shall be entitled to an immediate injunction or injunctions, without the necessity of proving the inadequacy of money damages as a remedy and without the necessity of posting any bond or other security, to prevent breaches of the provisions of this **Section 5.2** and to enforce specifically the terms and provisions hereof in any court of the United States or any state having jurisdiction, this being in addition to any other remedy to which Parent may be entitled at law or in equity. Without limiting the foregoing, it is understood that any violation of the restrictions set forth above by any officer, director, agent, representative or affiliate of the Company shall be deemed to be a breach of this Agreement by the Company.

5.3 Procedures for Requesting Parent Consent. If the Company desires to take an action which would be prohibited pursuant to **Section 5.1** hereof without the written consent of Parent, prior to taking such action the Company shall request such written consent by sending an e-mail or facsimile to the following individuals, each of whom shall use commercially reasonable efforts to reply within five (5) Business Days to such request for written consent (it being understood that the written consent of only one such individual shall be required prior to the Company taking such action); *provided*, *however*, that for purposes of Section 5.1(c) only, consent shall have been deemed received by the Company if Parent does not notify the Company within ten (10) Business Days of such request that it does not consent to such action:

Carl Bass
Telephone: (415) 507-5000
Facsimile: (415) 507-5100
E-mail address: carl.bass@autodesk.com

Pascal Di Fronzo
Telephone: (415) 507-6662
Facsimile: (415) 507-5100
E-mail address: pascal.di.fronzo@autodesk.com

ARTICLE VI

ADDITIONAL AGREEMENTS

6.1 Access to Information.

(a) Until the earlier of (y) the Effective Time or (z) the date of termination of this Agreement pursuant to the provisions of **Section 9.1** hereof, the Company shall afford Parent and its accountants, counsel and other representatives, reasonable access during the Company's regular business hours and upon reasonable notice (in any case subject to the Reciprocal Confidentiality Agreement and any restrictions imposed by applicable law) to (i) all reasonable information concerning the business, properties and personnel of the Company and its Subsidiaries that Parent may reasonably request, and (ii) all management-level Employees and reasonable access to such other Employees of the Company and its Subsidiaries that Parent may reasonably request for integration and retention planning. The Company agrees to provide to Parent copies of internal financial statements (including Tax Returns and supporting documentation) promptly upon request. No information or knowledge obtained in any investigation pursuant to this **Section 6.1** or otherwise shall affect or be deemed to modify any representation or warranty contained herein or the conditions to the obligations of the parties to consummate the Merger in accordance with the terms and provisions hereof. Notwithstanding the foregoing, to the extent that the Company or its Subsidiaries, as the case may be, may not disclose under applicable law, the personnel records of the Company or any of its Subsidiaries relating to individual performance or evaluation records, medical histories or other information of employees of the Company or any of its Subsidiaries located outside the United States, Parent shall not have access to such information.

(b) Until the earlier of (y) the Effective Time or (z) the date of termination of this Agreement pursuant to the provisions of **Section 9.1** hereof, any communications regarding matters related to the transactions contemplated hereby between Parent, Sub, the Company, the Subsidiaries or their respective representatives and any of the employees, customers and suppliers of the Company and its Subsidiaries shall be conducted in a manner consistent with applicable law and an integration process that is reasonably acceptable to Parent and the Company. In addition, Parent and the Company agree to use commercially reasonably efforts to discuss a customer communication process with the Major Customers to the extent consistent with applicable law.

(c) To the extent consistent with Parent's regular record retention policies, Parent shall not, and shall not permit the Surviving Corporation to, for a period of seven years following the Closing Date, destroy or otherwise dispose of any of the books and records of the Company or its Subsidiaries for any period prior to the Closing Date, unless such destruction or disposal has been consented to in writing by the Principal Stockholders or Parent has provided reasonable prior notice to the Stockholder Representative and offers to surrender to the Stockholder Representative such books and records or any portion thereof that Parent or the Company may intend to destroy or dispose of. The Stockholder Representative shall have access to such properties, books, contracts, commitments and records as afforded to it by the discovery procedures established pursuant to **Section 8.4(i)** and **Section 8.4(j)**.

6.2 ***Confidentiality.*** Each of the parties hereto hereby agrees that the information obtained in any investigation pursuant to **Section 6.1** hereof, or pursuant to the negotiation and execution of this Agreement or the effectuation of the transactions contemplated hereby, shall be governed by the terms of the Reciprocal Confidentiality Agreement effective as of June 14, 2005 (the "**Reciprocal Confidentiality Agreement**"), between the Company and Parent. Until the earlier of (y) the Effective Time or (z) the date of termination of this Agreement pursuant to the provisions of **Section 9.1** hereof, the exchange of information between the parties for integration planning shall be conducted in substantially the same manner as the parties have done prior to the date hereof. In this regard, the Company acknowledges that the Parent Common Stock is publicly traded and that any information obtained during the course of its due diligence could be considered to be material non- public information within the meaning of federal and state securities laws. Accordingly, the Company and the Principal Stockholders acknowledge and agree not to engage in any discussions, correspondence or transactions in the Parent Common Stock in violation of applicable securities laws.

6.3 ***Public Disclosure.*** Neither the Company, the Principal Stockholders nor any of their respective representatives shall issue any statement or communication to any third party (other than its agents that are bound by confidentiality restrictions) regarding the subject matter of this Agreement or the transactions contemplated hereby, including, if applicable, the termination of this Agreement and the reasons therefor, without the consent of Parent; *provided, however,* that, the Principal Stockholders shall have the right to disclose summary information about this Agreement or the transactions contemplated hereby (y) to the extent that Parent has previously publicly disclosed such information or (z) as part of its or their (or their legal advisors, representatives, Affiliates, partners, investors, officers or employees, directors, consultants and agents) normal fundraising, marketing, informational and reporting activities. Until the earlier of (a) the Effective Time or (b) the date of termination of this Agreement pursuant to the provisions of **Section 9.1** hereof, Parent, Sub and any of their respective representatives shall not issue any statement or communication to any third party (other than its agents that are bound by confidentiality restrictions) regarding the subject matter of this Agreement or the transactions contemplated hereby, including, if applicable, the termination of this Agreement and the reasons therefor, without the consent of the Stockholder Representative, except that this restriction shall be subject to Parent's obligation to comply with applicable securities laws and the rules of the Nasdaq Stock Market, in which case

Parent or any of its representatives, as applicable, shall use commercially reasonable efforts to consult with the Company regarding any such required statement or communication unless explicitly prohibited by law.

6.4 ***Reasonable Efforts.*** Subject to the terms and conditions provided in this Agreement, each of the parties hereto shall use commercially reasonable efforts to take promptly, or cause to be taken promptly, all actions, and to do promptly, or cause to be done promptly, all things necessary, proper or advisable under applicable laws and regulations to consummate and make effective the transactions contemplated hereby, to cause all conditions to be satisfied, to obtain all necessary waivers, consents, approvals and other documents required to be delivered hereunder, and to effect all necessary registrations and filings and to remove any injunctions or other impediments or delays, legal or otherwise, in each case in order to consummate and make effective the transactions contemplated by this Agreement; *provided, however,* that Parent shall not be required to agree to (a) any license, sale or other disposition or holding separate (through establishment of a trust or otherwise) of any shares of capital stock or of any business, assets or properties of Parent, its subsidiaries or affiliates or of the Company or its Subsidiaries, (b) the imposition of any limitation on the ability of Parent, its subsidiaries or affiliates or the Company or its Subsidiaries to conduct their respective businesses or own any capital stock or assets or to acquire, hold or exercise full rights of ownership of their respective businesses and, in the case of Parent, the businesses of the Company and its Subsidiaries, or (c) the imposition of any impediment on Parent, its subsidiaries or affiliates or the Company or its Subsidiaries under any statute, rule, regulation, executive order, decree, order or other legal restraint governing competition, monopolies or restrictive trade practices (any such action described in (a), (b) or (c), an "**Action of Divestiture**").

6.5 ***Notification of Certain Matters.*** Until the earlier of (y) the Effective Time or (z) the date of termination of this Agreement pursuant to the provisions of **Section 9.1** hereof, the Company, on the one hand, and Parent, on the other hand, shall seek to give prompt, and in any event within 24 hours, notice to the other, of: (a) the occurrence or non- occurrence of any material event or the obtaining of any knowledge which is likely to cause any material representation or warranty of the Company or any Principal Stockholder, respectively and as the case may be, on the one hand, or Parent or Sub, on the other hand, contained in this Agreement to be materially untrue or inaccurate at or prior to the Effective Time, and (b) any failure of the Company or any Principal Stockholder, as the case may be, on the one hand, or Parent, on the other hand, to materially comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder; *provided, however,* that the delivery of any notice pursuant to this **Section 6.5** shall not (y) limit or otherwise affect any remedies available under this Agreement to the party receiving such notice or (z) constitute an acknowledgment or admission of a breach of this Agreement. In addition, during the period from the date of this Agreement and continuing until the earlier of the termination of this Agreement or the Effective Time, the Company shall give prompt notice to Parent in the form of an updated Disclosure Schedule of (a) any changes relating to the disclosures contained in **Section 2.15(b)** of the Disclosure Schedule with respect to any current proceedings or actions relating to any of the Company Registered Intellectual Property before any court or tribunal (including the PTO, the CIPO or equivalent authority anywhere in the world) in which any of the

Company Registered Intellectual Property is involved, or (b) any changes relating to the disclosures contained in **Section 2.15(e)** of the Disclosure Schedule with respect to actions that must be taken by any Person within 120 days of the date hereof, including the payment of any registration, maintenance or renewal fees or the filing of any documents, applications or certificates for the purposes of maintaining, perfecting or preserving or renewing any Company Registered Intellectual Property. No disclosure by the Company or the Principal Stockholders pursuant to this **Section 6.5** shall be deemed to amend or supplement the Disclosure Schedule or prevent or cure any misrepresentations, breach of warranty or breach of covenant.

6.6 ***Additional Documents and Further Assurances.*** Each party hereto, at the reasonable request of another party hereto, shall use commercially reasonable efforts to execute and deliver such other instruments as may be necessary for effecting completely the consummation of the Merger and the transactions contemplated hereby.

6.7 ***Stockholder Approval.***

(a) Immediately following the execution of this Agreement, the Company shall have obtained and delivered a Stockholder Written Consent setting forth the irrevocable approval of the Merger, this Agreement and the transactions contemplated hereby by the Required Stockholder Consent, which shall also include and constitute the irrevocable approval by the Stockholders of (i) the escrow and indemnification obligations of the Stockholders set forth in **Article VIII** hereof, (ii) the deposit of cash equal to the Escrow Amount into the Escrow Fund and (iii) the appointment of Accel-KKR Company, LLC as the Stockholder Representative.

(b) The Company shall promptly, but in no event later than 10 Business Days after the date hereof (or promptly following notice of Parent's approval of the materials described below, if later):

(i) deliver notice to its Stockholders of the approval by the Stockholders of the Merger, this Agreement and the transactions contemplated hereby, including each of the matters set forth in **Section 6.7(a)** hereof, pursuant to and in accordance with the applicable provisions of Delaware Law and the Charter Documents (the "**Stockholder Notice**"); and

(ii) provide to each Stockholder whose consent was not obtained concurrent with the execution of this Agreement, an information statement including information regarding the Company, the terms of the Merger and this Agreement, and the recommendation of the Board of Directors in favor of the Merger, this Agreement and the transactions contemplated hereby, including each of the matters set forth in **Section 6.7(a)** hereof (the **"Information Statement**"), and submit the Merger, this Agreement and the transactions contemplated hereby, including each of the matters set forth in **Section 6.7(a)** hereof, to all such remaining Stockholders for approval and adoption by written consent pursuant to the Stockholder Written Consent, as provided by Delaware Law and the Charter Documents.

(c) Notwithstanding the foregoing, the Company shall give the Stockholders sufficient notice prior to the Closing such that no Stockholder will be able to exercise appraisal or similar rights if such Stockholder has not perfected such rights prior to Closing, pursuant to the applicable provisions of Delaware Law. The Company shall use commercially reasonable efforts to cause Stockholders holding no more than five percent (5%) of the Total Outstanding Shares to continue to have a right to exercise appraisal or similar rights under applicable law with respect to their Company Capital Stock by virtue of the Merger.

(d) Any materials to be submitted to the Stockholders in connection with the solicitation of their adoption and approval of this Agreement and approval of the Merger, including each of the matters set forth in **Section 6.7(a)** (the "**Soliciting Materials**"), shall be subject to review and approval by Parent and shall include information regarding the Company, the terms of the Merger and this Agreement, and the recommendation of the Board of Directors of the Company in favor of the adoption and approval of this Agreement and approval of the Merger and the transactions contemplated hereby, including each of the matters set forth in **Section 6.7(a)** hereof. The Company will promptly advise Parent in writing if, at any time prior to the Closing, the Company shall obtain knowledge of any facts that might make it necessary or appropriate to amend or supplement the Soliciting Materials in order to make statements contained or incorporated by reference therein not misleading or to comply with applicable law. Anything to the contrary contained herein notwithstanding, the Company shall not include in the Soliciting Materials any information with respect to Parent or its affiliates or associates, unless the form and content of such information has been consented to in writing by Parent prior to such inclusion.

(e) The Board of Directors of the Company shall not alter, modify, change or revoke its approval of this Agreement, the Merger and the transactions contemplated hereby, including each of the matters set forth in **Section 6.7(a)** hereof nor its recommendation to the Stockholders to adopt and approve this Agreement and approve the Merger and the transactions contemplated hereby, including each of the matters set forth in **Section 6.7(a)** hereof.

6.8 ***Merger Notification.***

(a) To the extent applicable, as soon as may be reasonably practicable, the Company and Parent (and any applicable Stockholder of the Company) shall each use its commercially reasonable efforts to make (and assist and cooperate with the other to make) all filings, notices, petitions, statements, registrations and submissions of information, application or submission of other documents required by any Governmental Entity in connection with the Merger and the transactions contemplated hereby, including: (i) Notification and Report Forms with the FTC and DOJ as required by the HSR Act and (ii) filings required by the merger notification or control laws or regulations of any other applicable jurisdictions identified in **Section 6.8** of the Disclosure Schedule. Each of Parent and the Company shall cause all documents that it is responsible for filing with any Governmental Entity under this **Section 6.8** to comply in all material respects with applicable law.

(b) The Company and Parent (and/or any applicable Stockholder) each shall use commercially reasonable efforts to promptly (i) supply the others with any information that reasonably may be required in order to effectuate such filings and (ii) supply any additional information that reasonably may be required by the competition or merger control authorities of any other jurisdiction and that the parties may reasonably deem appropriate. Except where prohibited by applicable law, Parent and the Company shall, to the extent reasonably practicable, consult with the other party prior to taking a position with respect to any such filing, shall permit the other party, to the extent reasonably practicable, to review and discuss in advance, and consider in good faith, the views of such party in connection with any analyses, appearances, presentations, memoranda, briefs, white papers, other materials, arguments, opinions and proposals before making or submitting any of the foregoing to any Governmental Entity in connection with any investigations or proceedings in connection with this Agreement or the transactions contemplated hereby, coordinate with each other, to the extent reasonably practicable, in preparing and providing such information and promptly provide the other party (and its counsel) copies of all filings, presentations and submissions (and a summary of oral presentations) made by such party with any Governmental Entity in connection with this Agreement and the transactions contemplated hereby. Where applicable, Parent shall have principal control over the strategy for interacting with such Governmental Entities in connection with the matters contained in this **Section 6.8**.

(c) Each party hereto shall notify the other promptly upon the receipt of (i) any comments from any officials of any Governmental Entity in connection with any filings made pursuant hereto and (ii) any request by any officials of any Governmental Entity for amendments or supplements to any filings made pursuant to, or information provided to comply in all materials respect with, applicable law. Whenever any event occurs that is required to be set forth in an amendment or supplement to any filing made pursuant to **Section 6.8(a)**, each party will promptly inform the other parties hereto of such occurrence, and the Company and Parent will cooperate with each other in filing with the applicable Governmental Entity such amendment or supplement.

6.9 ***Termination of Certain Company Options***. The Company shall terminate all Company Vested Options not otherwise exercised prior to, or in connection with, the consummation of the Merger, if any, and all Company Unvested Options not otherwise assumed by Parent, as of immediately prior to the Effective Time. The foregoing shall be accomplished in accordance with the terms of the Plan or such other applicable agreement or contractual obligations, as the case may be, including, without limitation, any notice requirements contained therein or required by virtue thereof.

6.10 ***Consents***. At the request and direction of Parent, the Company shall use commercially reasonable efforts to obtain all necessary consents, waivers and approvals of any parties to any Contract (that is identified by Parent) as are required thereunder in connection with the Merger. Such consents, modifications, waivers and approvals shall be in substantially the form attached hereto as **Exhibit F**. In the event the Merger does not close for any reason, Parent shall not have any liability to the Company, the Stockholders or any other Person for any costs, claims, liabilities or damages resulting from the Company seeking to obtain such consents, modifications, waivers and approvals.

6.11 ***Terminated Agreements***. The Company shall use commercially reasonable efforts to terminate each of the Contracts listed by Parent on **Schedule 7.2(g)** hereof (the "**Terminated Agreements**"), effective as of and contingent upon the Closing, including sending all required notices, such that each such agreement shall be of no further force or effect immediately following the Effective Time. Upon the Closing, the Company shall have paid all amounts owed under the Terminated Agreements (as a result of the termination of the Terminated Agreements or otherwise), and the Surviving Corporation will not incur any claim, liability or obligation (absolute, accrued, asserted or unasserted, contingent or otherwise) under any Terminated Agreement following the Closing Date. In the event the Merger does not close for any reason, Parent shall not have any liability to the Company, the Stockholders or any other Person for any costs, claims, liabilities or damages resulting solely from the Company seeking to obtain such terminations.

6.12 ***Proprietary Information and Inventions Assignment Agreement***. Each Person who becomes a consultant or contractor of the Company or any Subsidiary after the date hereof and prior to the Closing shall be required by the Company to enter into and execute, a Consultant Proprietary Information Agreement with the Company and each of its Subsidiaries enforceable and effective as of such consultant or contractor's first date of service.

6.13 ***New Employment Arrangements for Significant Employees***. Within 45 days following the date hereof, Parent shall act in good faith to make reasonable offers of employment (which offers will be on terms that are reasonably consistent with the terms offered to employees of Parent who are similarly situated in terms of job level, function and responsibility) to no more than twenty (20) Employees of the Company to be identified by Parent (the "**Significant Employees**"). Such employment will, if agreed to by each such Significant Employee: (a) be set forth in offer letters on Parent's standard form (each, an "**Offer Letter**"), and be "at- will" to the extent that the jurisdictions in which such Significant Employees are located recognizes "at- will" employment arrangements, (b) be subject to and in compliance with Parent's applicable policies and procedures, including employment background checks and the execution of Parent's employee proprietary information agreement, governing employment conduct and performance, and, if required by applicable law, the applicable policies and procedures governing such Employee's current employment with the Company, (c) have terms, including the position and salary, which will be determined by Parent, (d) include, if applicable and so determined by Parent, a waiver by the Significant Employee of any future severance or equity- based compensation to which such Significant Employee may otherwise have been entitled and (e) supersede any prior express or implied employment agreements, arrangement or offer letter in effect prior to the Closing Date.

6.14 ***New Employment Benefits***. Employees shall be eligible to receive employee benefits consistent with Parent's applicable human resources policies and, if required by applicable law, the Company's existing plans and employee benefits. Parent will or will cause the Surviving Corporation or appropriate subsidiary of Parent to give Employees full credit under such policies for

prior service at the Company for purposes of eligibility, entitlement and determination of the level of benefits under Parent's benefit plans, programs or policies; provided, however, that such credit does not result in duplication of benefits.

6.15 ***Agreements and Documents Delivered at Signing.*** Parent, the Company and each of the Principal Stockholders shall use their respective commercially reasonable efforts to cause each Related Agreement to which it is a party and which it executed prior to or concurrent with the execution of this Agreement, including each Stockholder Written Consent and the Accel-KKR Non- Competition and Non- Solicitation Agreement, to remain in full force and effect through the Closing Date.

6.16 ***Resignation of Officers and Directors.*** Except for any resignations that would trigger any monetary liabilities for the Company or its Subsidiaries in the jurisdictions in which such officers and directors reside, the Company shall, prior to the Closing, (a) cause each officer and director of the Company and each United States and Canadian Subsidiary to execute a resignation letter in the form attached hereto as **Exhibit G** (the "**Director and Officer Resignation Letter**") (which shall also include such officer or director's resignation for any other Subsidiary of the Company in which such person is an officer or director), effective as of the Effective Time and (b) use its commercially reasonable efforts to cause each officer and director of each of the Subsidiaries other than the United States and Canadian Subsidiaries to execute a Director and Officer Resignation Letter, effective as of the Effective Time.

6.17 ***S-8 Registration.*** Within 60 days after the Closing Date, Parent will use commercially reasonable efforts to file with the SEC a registration statement on Form S-8, if available for use by Parent, registering that number of shares of Parent Common Stock equal to the number of shares of Parent Common Stock issuable upon the exercise of all Company Options assumed by Parent pursuant to **Section 1.6(d)** hereof that are eligible to registered on Form S-8.

6.18 ***401(k) Plan.*** Parent hereby agrees that Parent shall, until such time as Parent determines otherwise, or shall cause the Company to, continue to maintain the Maytag Employee Plan that is intended to qualify as a "cash or deferred arrangement" under Section 401(k) of the Code (the "**401(k) Plan**"), and that the 401(k) Plan shall not be amended, except and only to the extent that any such amendment may be required to comply with applicable law or as necessary for Parent to assume sponsorship of, freeze or facilitate the merger of the 401(k) Plan into the Parent's 401(k) Plan.

6.19 ***Closing Date Balance Sheet.*** The Company shall use commercially reasonable efforts to prepare and deliver the Closing Date Balance Sheet not less than three Business Days prior to the Closing Date.

6.20 ***Expenses.*** Whether or not the Merger is consummated, all fees and expenses incurred in connection with the Merger including all legal, accounting, financial advisory, consulting and all other fees and expenses of third parties incurred by a party in connection with the negotiation and effectuation of the terms and conditions of this Agreement and the transactions contemplated

hereby ("**Third Party Expenses**"), shall be the obligation of the respective party incurring such fees and expenses; provided, however, that any Third Party Expenses resulting from a Parent Optional Action shall solely be the responsibility of Parent. The Company shall use commercially reasonable efforts to provide Parent with a statement of Estimated Third Party Expenses showing in reasonable detail any unpaid Third Party Expenses incurred by the Company as of the Closing Date, or anticipated to be payable by the Company after the Closing Date but incurred on or prior to the Closing Date, not less than three Business Days prior to the Closing Date in the form attached hereto as **Exhibit H** (the "**Statement of Expenses**"). The Statement of Expenses will reflect all Third Party Expenses incurred on or prior to the Closing Date or expected to be incurred on or prior to the Closing Date by the Company as a result of the negotiation and effectuation of this Agreement and the transactions contemplated hereby (including any Third Party Expenses incurred on or prior to the Closing Date that the Company anticipates will be payable after the Closing). Any Third Party Expenses incurred prior to the Closing that are not reflected on the Statement of Expenses, and thus are not part of the Estimated Third Party Expenses ("**Excess Third Party Expenses**"), shall be paid out of the Escrow Amount and shall not be subject to the Deductible Amount. The Company shall use its commercially reasonable efforts to pay prior to the Closing all Third Party Expenses incurred prior to the Closing (including any Third Party Expenses of any Subsidiary) and shall instruct all third parties who provided services to the Company in connection with the transactions contemplated herein (a) to provide invoices to the Company on or before the Closing Date for any such services provided or anticipated to be provided to the Company on or prior to the Closing Date by such third parties in connection with the transactions contemplated herein and (b) to not incur any further fees or expenses in connection with the transactions contemplated herein without Parent's prior written consent. Notwithstanding the foregoing, all filing fees relating to any filing by the Company or Parent under the HSR Act shall be paid by Parent, and the Company and Parent shall share equally in the payment of any filing fees relating to any filing by the Company or Parent under any other Antitrust Laws.

6.21 ***Spreadsheet.*** The Company shall use commercially reasonable efforts to deliver to Parent and the Exchange Agent a spreadsheet (the "**Spreadsheet**") substantially in the form attached hereto as **Schedule 6.21**, which spreadsheet shall be certified as complete and correct by the Chief Executive Officer and Chief Financial Officer of the Company as of the Closing Date and shall include, among other things, as of the Closing, (a) all Stockholders (including holders of Company Vested Options who are required to exercise such Company Vested Options prior to the Effective time) and their respective addresses, indicating the number of shares of Company Capital Stock held by such persons (including whether such shares are Company Common Stock or Company Preferred Stock and the respective certificate numbers) and the liquidation preference applicable to each share of Company Preferred Stock), the date of acquisition of such shares, the Exchange Ratio and Pro Rata Portion applicable to each holder, the amount of cash to be deposited into the Escrow Fund on behalf of each holder, and such other information relevant thereto or which the Exchange Agent may reasonably request, and (b) all holders of Company Unvested Options that Parent has agreed to assume and their respective addresses, the number of shares of Company Capital Stock underlying each such Company Unvested Option, the grant dates of such Company Unvested Options and the vesting arrangement with respect to such Company Unvested Options and indicating whether such

Company Unvested Options are intended to be incentive stock options or non- qualified stock options, the Option Exchange Ratio and such other similar information relevant thereto or which Parent may reasonably request, it being understood that Parent shall have responsibility for determining the Option Exchange Ratio. The Company shall use commercially reasonable efforts to deliver the Spreadsheet to Parent at least three Business Days prior to the Closing Date.

6.22 ***Release of Liens.*** The Company shall use commercially reasonable efforts to file all agreements, instruments, certificates and other documents, in form and substance reasonably satisfactory to Parent, that are necessary or appropriate to effect the release of all Liens set forth in **Schedule 6.22** hereto).

6.23 ***FIRPTA Compliance.*** On the Closing Date, the Company shall deliver to Parent a properly executed statement (a "**FIRPTA Compliance Certificate**") in a form reasonably acceptable to Parent for purposes of satisfying Parent's obligations under Treasury Regulation Section 1.1445-2(c)(3).

6.24 ***Insurance Approval.*** The Company shall use commercially reasonable efforts to deliver to Parent at least five days prior to the Closing Date, a letter in a form acceptable to Parent validly executed by an officer of the Company, which authorizes Parent's insurance broker to act as the Company's insurance broker of record with respect to all insurance policies held by the Company.

6.25 ***Director and Officer Liability and Indemnification.***

(a) From and after the Effective Time, Parent shall, and shall cause the Surviving Corporation to fulfill and honor in all respects the obligations of the Company pursuant to any indemnification agreements between the Company and its current and former directors and officers (the "**Indemnified Company Officers and Directors**") in effect on the date hereof and listed in **Section 6.25(a)** of the Disclosure Schedule, and any indemnification provisions under the Charter Documents as in effect on the date hereof. Parent shall cause the certificate of incorporation and bylaws of the Surviving Corporation to contain provisions with respect to exculpation and indemnification that are at least as favorable to the Indemnified Company Officers and Directors as those contained in the Charter Documents as in effect on the date hereof, which provisions will not be amended, repealed or otherwise modified for a period of six years from the Effective Time in any manner that would adversely affect the rights thereunder of individuals who, immediately prior to the Effective Time, were directors, officers, employees or agents of the Company, unless such modification is required by applicable law.

(b) Parent shall, and shall cause the Surviving Corporation to, maintain in effect for not less than six years after the Effective Time a policy or policies of directors' and officers' liability insurance no less favorable in all material respects to that maintained by or on behalf of the Company and its Subsidiaries as of the most recent renewal and on the date hereof with respect to claims arising from actual or alleged wrongful act or omission occurring prior to the Effective Time for which a claim has not been made against any director or officer of the Company or any director

or officer of a Subsidiary prior to the Effective Time; *provided, however,* that if the aggregate annual premiums for such insurance at any time during such six year period exceed 150% of the per annum rate of premium currently paid by the Company and its Subsidiaries for such insurance on the date of this Agreement, then Parent will, and will cause the Surviving Corporation to, provide the maximum coverage that will then be available at an annual premium equal to 150% of such rate.

6.26 ***Section 280G Stockholder Approval.*** The Company shall submit for approval by such number of Stockholders as is required by the terms of Section 280G(b)(5)(B) so as to render the parachute payment provisions of Section 280G of the Code inapplicable to any and all accelerated vesting payments, benefits, options and/or stock provided pursuant to agreements, contracts or arrangements that might otherwise result, separately or in the aggregate, in the payment of any amount and/or the provision of any benefit that would not be deductible by reason of Section 280G of the Code, with such stockholder vote to be obtained in a manner which satisfies all applicable requirements of Section 280G(b)(5)(B) of the Code and the regulations promulgated thereunder.

6.27 ***Company's Audited Financial Statements.*** The Company shall use its commercially reasonable efforts to cause its management and its independent auditors (a) to timely complete the audit of the Company Financial Statements for the fiscal year ended June 30, 2005 and (b) deliver such Company Financial Statements to Parent as soon as reasonably possible after the date hereof.

6.28 ***Proposed Company Products Escrow.*** The Parties shall enter into a joint order escrow agreement with a mutually agreeable nationally recognized software and technology escrow agent, pursuant to which Company shall deposit reasonably available information concerning the Proposed Company Products (including Source Code relating thereto). In the event of a dispute under Article VIII relating to the Proposed Company Products, each Party and their legal representatives shall have reasonable access to such information subject to mutually agreed upon confidentiality obligations solely for use by such party in connection with such dispute and such access provision may be enforced by a court of competent jurisdiction or arbitration tribunal if a Party refuses to grant such access (and such court or arbitration tribunal shall award attorneys fees and expenses to the prevailing party in the event of a dispute concerning a Party's right to access such information). Such escrow agreement shall expire (x) upon termination of the Agreement if there is no Closing, and otherwise (y) 43 months after the actual Effective Date. The Parties agree to extend such date as reasonably necessary until all disputes under Article VIII are fully resolved and settled. Upon any expiration or termination of the escrow where the Agreement has been terminated or otherwise prior to Closing, the escrow materials shall be returned solely to the Company. Otherwise, upon any expiration or termination of the escrow after Closing, such materials shall be returned solely to Surviving Corporation or its designee or successor.

ARTICLE VII

CONDITIONS TO THE MERGER

7.1 ***Conditions to Obligations of Each Party to Effect the Merger.*** The respective obligations of the Company, Parent and Sub to effect the Merger shall be subject to the satisfaction, at or prior to the Effective Time, of the following conditions:

(a) ***No Order; Injunctions; Restraints; Illegality***. No Governmental Entity shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, executive order, decree, injunction, order or other legal restraint (whether temporary, preliminary or permanent) which is in effect and which has the effect of making the Merger illegal or otherwise prohibiting or preventing consummation of the Merger.

(b) ***Regulatory Approvals/HSR Act***. All waiting periods under the HSR Act relating to the transactions contemplated hereby shall have expired or terminated early, and all material foreign antitrust approvals required to be obtained prior to the Merger in connection with the transactions contemplated hereby shall have been obtained.

7.2 ***Conditions to the Obligations of Parent and Sub.*** The obligations of Parent and Sub to effect the Merger shall be subject to the satisfaction at or prior to the Effective Time of each of the following conditions, any of which may be waived, in writing, exclusively by Parent or Sub:

(a) ***Representations, Warranties and Covenants***.

(i) The representations and warranties of the Company and the Principal Stockholders in this Agreement (A) shall have been true and correct in all material respects on the date hereof (other than the representations and warranties of the Company and the Principal Stockholders as of a specified date, which shall be true and correct in all material respects as of such date) and (B) shall be true and correct on and as of the Closing Date as though such representations and warranties were made on and as of such date (other than the representations and warranties of the Company and the Principal Stockholders as of a specified date, which shall be true and correct in all material respects as of such date), except, with respect to clause (A), for breaches or inaccuracies not known by the Company on the date such representations and warranties were made and which do not have Material Adverse Effect on the Company and, with respect to this clause (B), for breaches or inaccuracies that do not have a Material Adverse Effect on the Company; *provided, however,* that, for purposes of this **Section 7.2(a)(i)**, "known by the Company" shall mean the actual knowledge of Doug Walker, Joanne Rusnell, Peter Mehlstaeubler, Dave Wharry, James Christopher and David Wexler; *provided further, however,* that the representations and warranties of the Company and the Principal Stockholders set forth in the second and third sentences of **Section 2.2(a)**, the third and fourth sentences of **Section 2.2(c)**, **Section 2.2(e), Section 2.3(b)**, the third sentence of **Section 2.4**, **Section 2.7**, **Section 2.22** and **Section 2.31** of this Agreement shall be true and correct in all material respects on and as of the Closing Date as though such representations and warranties were made on and as of such date. For purposes of determining the accuracy of such representations and warranties, (y) if a particular clause in a representation or warranty is qualified by a Material Adverse Effect qualifier, such clause shall be true and correct and (z) any update of or modification to the Disclosure Schedule made or purported to have been made after the date of this Agreement shall be disregarded.

(ii) The Company and the Principal Stockholders shall have performed and complied in all material respects with the covenants and obligations under this Agreement required to be performed and complied with by such parties as of the Closing.

(b) ***Stockholder Approval.*** Stockholders constituting the Required Stockholder Consent shall have approved the Merger, this Agreement and the transactions contemplated hereby, including each of the matters set forth in **Section 6.7(a)** hereof.

(c) ***Appraisal Rights.*** Stockholders holding no more than five (5%) percent of the Total Outstanding Shares shall have perfected or continue to have a right to exercise appraisal or similar rights under applicable law with respect to their Company Capital Stock by virtue of the Merger.

(d) ***Requisite Board Approval.*** This Agreement, the Merger and the transactions contemplated hereby shall have been unanimously approved by the Board of Directors of the Company, which approval shall not have been revoked.

(e) ***Litigation.*** There shall be no material action, suit, order, injunction or proceeding of any material nature pending, or, in the case of a Governmental Entity, overtly threatened, against Parent or the Company or any Subsidiary, their respective properties or any of their respective officers, directors or subsidiaries, wherein an unfavorable judgment, decree or order would prevent the performance of this Agreement or the consummation of any of the transactions contemplated hereby, declare unlawful the transactions contemplated by this Agreement, cause such transactions to be rescinded or otherwise seeking any of the results set forth in **Section 7.1(a)** hereof or, in the case of a Governmental Entity, seeking an Action of Divestiture.

(f) ***Third Party Consents.*** The Company shall have delivered to Parent all necessary consents, waivers and approvals of parties to any Contract set forth on **Schedule 7.2(f)** hereto and each such consent, waiver or approval shall have been obtained pursuant to the terms set forth on **Schedule 7.2(f)**, as applicable.

(g) ***Termination of Agreements.*** The Company shall have terminated each of those agreements listed on **Schedule 7.2(g)** hereto effective as of and contingent upon the Closing and, from and after the Closing, each such agreement shall be of no further force or effect on **Schedule 7.2(g)**, as applicable.

(h) ***New Employment Arrangements.*** Eighty percent (80%) of the Significant Employees who accepted offers of employment from Parent pursuant to **Section 6.13** shall not have notified (whether formally or informally) Parent or the Company of such employee's intention of leaving the employ of Parent or the Company following the Effective Time.

(i) ***Resignation of Officers and Directors.*** Parent shall have received a duly executed Director and Officer Resignation Letter in the form of **Exhibit G** hereto from each of the officers and directors of the Company and each United States and Canadian Subsidiary effective as of the Effective Time.

(j) ***Spreadsheet.*** Parent and the Exchange Agent shall have received from the Company three Business Days prior to the Closing Date the Spreadsheet described in **Section 6.21**, which shall have been certified as of the Closing Date as complete and correct by the Chief Executive Officer and the Chief Financial Officer of the Company on behalf of the Company.

(k) ***Release of Liens.*** The Company shall have filed all agreements, instruments, certificates and other documents, in form and substance reasonably satisfactory to Parent, that are necessary or appropriate to effect the release of all Liens set forth in **Schedule 7.2(k)** hereto.

(l) ***Legal Opinion.*** Parent shall have received a legal opinion from legal counsel to the Company in the form attached hereto as **Exhibit I**.

(m) ***Certificate of the Company.*** Parent shall have received a certificate from the Company, validly executed by the Chief Executive Officer and Chief Financial Officer of the Company for and on the Company's behalf, to the effect that, as of the Closing, the conditions to the obligations of Parent and Sub set forth in this **Section 7.2** have been satisfied (unless otherwise waived by Parent or Sub).

(n) ***Certificate of Secretary of Company.*** Parent shall have received a certificate, validly executed by the Secretary of the Company, certifying as to (i) the terms and effectiveness of the Charter Documents, (ii) the valid adoption of resolutions of the Board of Directors of the Company (whereby the Merger and the transactions contemplated hereunder were approved by the Board of Directors) and (iii) that the Required Stockholder Consent shall have been obtained, adopting and approving the Merger, this Agreement and the consummation of the transactions contemplated hereby.

(o) ***Certificate of Good Standing.*** Parent shall have received a (i) long- form certificate of good standing from the Secretary of State of the State of Delaware which is dated within two Business Days prior to Closing with respect to the Company, (ii) a long- form certification of good standing (or similar certification) from the jurisdiction where each of the significant Subsidiaries of the Company is incorporated or otherwise organized and (iii) a Certificate of Status of Foreign Corporation of each of the Company and each of its significant Subsidiaries from the applicable Governmental Entity in each jurisdiction where it is qualified or licensed to do business, all of which are dated within two Business Days prior to the Closing.

(p) ***FIRPTA Certificate.*** Parent shall have received a copy of the FIRPTA Compliance Certificate, validly executed by a duly authorized officer of the Company.

(q) ***Section 280G Stockholder Approval.*** Any agreements, contracts or arrangements that may result, separately or in the aggregate, in the payment of any amount or the provision of any benefit that would not be deductible by reason of Section 280G of the Code shall have submitted for approval by such number of stockholders of Company as is required by the terms of Section 280G in order for such payments and benefits not to be deemed parachute payments under Section 280G of the Code, with such approval to be obtained in a manner which satisfies all applicable requirements of Section 280G(b)(5)(B) of the Code and the Treasury Regulations thereunder, including Q-7 of Section 1.280G-1 of such Treasury Regulations, and, in the absence of such stockholder approval, none of those payments or benefits shall be paid or provided, pursuant to the 280G Waivers.

(r) ***Audited Financial Statements.*** Parent shall have received a copy of the Company's audited consolidated balance sheet as of June 30, 2005, and the related consolidated statements of income, cash flow and stockholders' equity for the 12 month period then ended, audited by KPMG LLP, the Company's auditors.

7.3 ***Conditions to Obligations of the Company and the Principal Stockholders.*** The obligations of the Company and each of the Principal Stockholders to effect the Merger shall be subject to the satisfaction at or prior to the Effective Time of each of the following conditions, any of which may be waived, in writing, exclusively by the Company:

(a) ***Representations, Warranties and Covenants.***

(i) The representations and warranties of Parent and Sub in this Agreement (A) shall have been true and correct in all material respects on the date hereof (other than the representations and warranties of Parent and Sub as of a specified date, which shall be true and correct in all material respects as of such date) and (B) shall be true and correct on and as of the Closing Date as though such representations and warranties were made on and as of such date (other than the representations and warranties of Parent and Sub as of a specified date, which shall be true and correct in all material respects as of such date), except, with respect to clause (A), for breaches or inaccuracies not known by Parent or Sub on the date such representations and warranties were made and which do not have Material Adverse Effect on Parent and, with respect to this clause (B), for breaches or inaccuracies that do not have a Material Adverse Effect on Parent; provided, however, that the representations set forth in the second sentence of **Section 4.2** of this Agreement shall be true and correct in all material respects on and as of the Closing Date as though such representation were made on and as of such date. For purposes of determining the accuracy of such representations and warranties, (y) if a particular clause in a representation or warranty is qualified by a Material Adverse Effect qualifier, such clause shall be true and correct and (z) any update of or modification to the Disclosure Schedule made or purported to have been made after the date of this Agreement shall be disregarded.

(ii) Parent and Sub shall have performed and complied in all material respects with the covenants and obligations under this Agreement required to be performed and complied with by such parties as of the Closing.

(b) ***Certificate of Parent.*** Company shall have received a certificate executed on behalf of Parent and Sub by an officer for and on its behalf to the effect that, as of the Closing, the conditions to the obligations of the Company and the Principal Stockholders set forth in this **Section 7.3** have been satisfied (unless otherwise waived by the Company).

(c) ***Certificate of Secretary of Sub.*** The Company shall have received a certificate, validly executed by the Secretary of Sub, certifying as to (i) the terms and effectiveness of the

Charter Documents, (ii) the valid adoption of resolutions of the Board of Directors of Sub (whereby the Merger and the transactions contemplated hereunder were approved by the Board of Directors of Sub) and (iii) that the consent from Parent shall have been obtained, adopting and approving the Merger, this Agreement and the consummation of the transactions contemplated hereby.

ARTICLE VIII

SURVIVAL OF REPRESENTATIONS AND WARRANTIES; ESCROW

8.1 ***Survival of Representations and Warranties.*** The representations, warranties and covenants of the Company and the Principal Stockholders contained in this Agreement or in any certificate delivered pursuant to this Agreement, shall survive for a period of 24- months following the Closing Date (the date of expiration of such 24- month period, the "**Survival Date**"); provided, however, that in the event of fraud with respect to a representation or warranty, such representation or warranty shall survive indefinitely with respect to the Person committing such fraud; provided further, however, that the representations and warranties of the Company contained in **Section 2.15** (Intellectual Property) hereof shall survive for a period of 42 months following the Closing Date and the representations and warranties of the Company contained in **Section 2.2** (Company Capital Structure) and **Section 2.12** (Tax Matters) hereof shall survive until the expiration of the applicable statute of limitations, respectively. The representations and warranties of Parent and Sub contained in this Agreement, the Related Agreements or in any certificate or other instrument delivered pursuant to this Agreement shall terminate at the Closing.

8.2 ***Indemnification.***

(a) Subject to the limitations set forth in this **Article VIII**, by virtue of the Merger, the Stockholders agree to severally (based on their Pro Rata Portion) and not jointly, indemnify and hold harmless Parent and its officers, directors, affiliates, employees, agents and representatives, including the Surviving Corporation, but not any Stockholders (the "**Parent Indemnified Parties**"), against all losses, liabilities, damages, deficiencies, costs, interest, awards, judgments, penalties and expenses, including reasonable attorneys' and consultants' fees and expenses and including any such expenses incurred in connection with investigating, defending against or settling any of the foregoing (but excluding incidental, consequential or punitive damages, any liability for lost profits or any "multiple of profits" or "multiple of cash flow" or similar valuation methodology used in calculating the amount of any Losses, or any loss in value of Parent equity market capitalization or loss of equity value in the Company) (hereinafter individually a "**Loss**" and collectively "**Losses**"), incurred or sustained by the Parent Indemnified Parties, or any of them (including the Surviving Corporation), as a result of (i) any breach or inaccuracy of a representation or warranty of the Company or the Principal Stockholders contained in this Agreement, any Related Agreements or in any certificate delivered by or on behalf of any Person other than Parent or Sub pursuant to this Agreement, (ii) any failure by the Company or the Principal Stockholders (other than Parent or Sub) to perform or comply with any covenant applicable to any of them contained in this Agreement, any Related Agreements or any certificates delivered pursuant to this Agreement, (iii) any fraud related

to this Agreement, any Related Agreement or any certificates delivered pursuant to this Agreement on the part of the Company or any Principal Stockholder, (iv) any Dissenting Share Payments, (v) any Excess Third Party Expenses, or (vi) without limiting the foregoing, any IP Matter and any other matter disclosed on **Schedule 8.2(a)** hereto. The Stockholders (including the Principal Stockholders and any officer or director of the Company) shall not have any right of contribution, indemnification or right of advancement from the Surviving Corporation or Parent with respect to any Loss claimed by a Parent Indemnified Party.

(b) For the purpose of determining both the existence of, and the amount of the Loss resulting from, a breach or inaccuracy of a representation or warranty of the Company, the Principal Stockholders or any other Person contained in this Agreement, any "materiality" or "Material Adverse Effect" or words of similar import (excluding the term "Material Contract") contained in such representation or warranty giving rise to the claim of indemnity hereunder which has the effect of making such representation or warranty less likely to result in a breach of such representation or warranty shall in each case be disregarded and without effect (as if such standard or qualification were deleted from such representation or warranty).

(c) Any Person committing fraud shall be liable for, and shall indemnify and hold the Parent Indemnified Parties harmless for, any Losses incurred or sustained by the Parent Indemnified Parties, or any of them (including the Surviving Corporation), directly or indirectly, as a result of such fraud committed by such Person even if such fraud was discovered after the Survival Date.

(d) Nothing in the Agreement shall limit the right of Parent or any other Parent Indemnified Party to pursue remedies under any Related Agreement against the parties thereto.

(e) The amount of any Loss subject to indemnification under **Section 8.2(a)** shall be calculated net of any amounts to the extent, but only to the extent, reflected, specifically allowed or reserved for in the Closing Date Balance Sheet. Any amounts recovered for a Loss or claim under any clause contained in **Section 8.2(a)** shall reduce amounts that may be subsequently recovered under another clause in **Section 8.2(a)** or otherwise pursuant to this Agreement for the same Loss or claim.

(f) Subject to the restrictions and limitations set forth in this **Article VIII**, the indemnification provided by **Section 8.2(a)** shall be the sole and exclusive remedy for (i) any Losses or claims of the Parent Indemnified Parties or other amounts with respect to any misrepresentation or inaccuracy in, or breach of, any representations or warranties or any breach or failure in performance on or prior to Closing of any covenants or agreements made by the Company and the Principal Stockholders, as the case may be, in this Agreement, the Related Agreements or in any exhibit or schedules hereto or thereto or any certificate or other document delivered hereunder, and (ii) any other claims or amounts relating to or arising from (A) this Agreement, (B) any of the agreements, documents and certificates executed and delivered in connection herewith, (C) the transactions contemplated by any of the foregoing, and (D) any information, document or material furnished or made available to Parent and its representatives and affiliates relating to the Company and its Subsidiaries or their business, ownership, operations, management or assets including information,

document or material contained in certain "data rooms," management presentations or electronic communications. The representations and warranties in **Articles II** and **III** by the Company and the Principal Stockholders (including, in both cases, any representations and warranties in any Related Agreements or in any certificate delivered by or on behalf of the Company or the Principal Stockholders, as the case may be) constitute the sole and exclusive representations and warranties of the Company and its Subsidiaries and the Principal Stockholders, in connection with the transactions contemplated hereby, and the Parent Indemnified Parties understand, acknowledge and agree that, subject to **Section 8.2(c)**, any other representations and warranties of any kind or nature expressed or implied that are not included in **Articles II** and **III** (including without limitation any other representations and warranties relating to the future or historical financial condition, results of operations, assets or liabilities of the Company or its Subsidiaries or the Principal Stockholders) are specifically disclaimed by the Company and the Principal Stockholders.

(g) Subject to **Section 8.3** below, a Parent Indemnified Party's sole recourse shall be claims against the Escrow Account as provided herein; *provided*, *however*, that the Stockholders shall be severally liable (based on their respective Pro Rata Portion) in respect of (i) breaches of the representations and warranties contained in **Section 2.15** (Intellectual Property) initially discovered by the Parent Indemnified Parties following the Survival Date (but in any event prior to the end of survival of such representations and warranties set forth in **Section 8.1** above) and (ii) for breaches of the representations and warranties contained in **Section 2.2** (Capital Structure) and **Section 2.12** (Tax Matters) (but in any event prior to the end of survival of such representations and warranties set forth in **Section 8.1** above), in each case subject to the limitations set forth in this **Article VIII**.

8.3 ***Maximum Payments; Remedy.***

(a) Except as set forth in **Section 8.3(b)** and **Section 8.3(c)** hereof, the maximum amount a Parent Indemnified Party may recover from a Stockholder pursuant to the indemnity set forth in **Section 8.2** hereof for Losses shall be limited to such Stockholder's Pro Rata Portion of the Escrow Fund; provided, however, that except as set forth in **Section 8.3(b)** and **Section 8.3(c)** hereof, the liability of each of the Stockholders for breaches of the representations and warranties contained in **Section 2.2** (Company Capital Structure) and **Section 2.12** (Tax Matters) hereof shall be limited to a dollar amount equal to the aggregate proceeds (including such Stockholder's Pro Rata Portion of the Escrow Amount) received by such Stockholder.

(b) Notwithstanding anything to the contrary set forth in this Agreement, nothing in this Agreement shall limit the liability of any Person (other than Parent and its affiliates) (and the Escrow Fund shall not be the exclusive remedy) in respect of Losses arising out of any fraud committed by such Person.

(c) Notwithstanding anything to the contrary set forth in this Agreement, nothing herein shall limit the liability of each of the Stockholders, including the Principal Stockholders, in respect of Losses arising out of any fraud on the part of the Company or any of its Subsidiaries or any other Stockholder; *provided, however,* that the indemnification liability for such Losses shall be several and not joint.

(d) Nothing in this **Article VIII** shall limit the liability of the Company or the Principal Stockholders for any breach of any representation, warranty or covenant contained in this Agreement, any Related Agreements or in any certificates or other instruments delivered pursuant to this Agreement if the Merger does not close.

(e) Notwithstanding anything to the contrary herein, the parties hereto agree and acknowledge that any Parent Indemnified Party may bring a claim for indemnification for any Loss under this **Article VIII** notwithstanding the fact that such Parent Indemnified Party had knowledge of the breach, event or circumstance giving rise to such Loss prior to the Closing or waived any condition to the Closing related thereto.

(f) Notwithstanding anything to the contrary herein, nothing shall prohibit Parent from seeking and obtaining recourse against any Stockholder in the event that Parent issues more than the portion of the Purchase Price to which such Stockholder is entitled pursuant to **Article I** of this Agreement.

8.4 ***Escrow Arrangements.***

(a) ***Escrow Fund***. By virtue of this Agreement and as sole security for the indemnity obligations provided for in **Section 8.2(a)** hereof (except as set forth in **Section 8.3** above), at the Effective Time, Parent will deposit with the Escrow Agent the Escrow Amount without any act of the Stockholders, such deposit of the Escrow Amount to constitute an escrow fund to be governed by the terms set forth herein. The Escrow Amount (plus any interest paid on such Escrow Amount in accordance with **Section 8.4(f)(ii)** hereof) (collectively, the "**Escrow Fund**") shall be available to compensate the Parent Indemnified Parties for any claims by such parties for any Losses suffered or incurred by them and for which they are entitled to recovery under this **Article VIII**. The Escrow Agent may execute this Agreement following the date hereof and prior to the Closing, and such later execution, if so executed after the date hereof, shall not affect the binding nature of this Agreement as of the date hereof between the other signatories hereto.

(b) ***Deductible Amount***.

(i) Notwithstanding any provision of this Agreement to the contrary, except as set forth in the second sentence of this **Section 8.4(b)**, a Parent Indemnified Party may not recover any Losses under **Section 8.2(a)(i)** hereof unless and until one or more Officer's Certificates identifying such Losses that Parent has actually incurred or sustained under **Section 8.2(a)(i)** hereof in excess of $250,000 in the aggregate (the "**Deductible Amount**") has or have been delivered to the Escrow Agent or the Stockholder Representative as provided in **Section 8.4(g)** hereof, in which case Parent shall be entitled to recover all Losses so identified in excess of the Deductible Amount.

(ii) Notwithstanding the foregoing, Parent shall be entitled to recover for, and the Deductible Amount shall not apply as a threshold to, any and all claims or payments made with respect to all Losses resulting from any breach of any representation or warranty set forth in **Section 2.2** (Company Capital Structure) or in **Section 2.12** (Tax Matters) hereof.

(iii) For the purposes hereof, "**Officer's Certificate**" shall mean a certificate signed by any officer of Parent: (A) stating that a Parent Indemnified Party has incurred or sustained, or reasonably anticipates that it will incur or sustain Losses, (B) specifying in reasonable detail the amount of such Losses which are subject to a valid indemnity claim hereunder (e.g., the amount of the Loss is greater than the Deductible Amount) and (C) specifying in reasonable detail the individual items of Losses included in the amount so stated, the date each such item was paid, sustained, incurred, or properly accrued, or the basis for such anticipated liability, and, if applicable, the nature of the misrepresentation, breach of warranty or covenant to which such item is related.

(c) ***Satisfaction of Claims.*** Except to the extent that the Losses resulted from fraud committed by any Person, claims by a Parent Indemnified Party for Losses pursuant to this Agreement shall be satisfied (a) first, from the Escrow Fund and (b) second, against the Stockholders directly, on a several basis (it being understood and agreed that a Parent Indemnified Party may only proceed against the Stockholders on a several basis and only in respect of a breach of a representation or warranty contained in **Section 2.2** (Company Capital Structure), **Section 2.12** (Tax Matters) and **Section 2.15** (Intellectual Property) and then only in accordance with the provisions and limitations set forth herein (including, without limitation, the restrictions set forth in **Section 8.3** above)). In addition, notwithstanding anything to the contrary herein, and for the avoidance of doubt, the Stockholders, including the Principal Stockholders, shall be liable for, and shall severally indemnify and hold the Parent Indemnified Parties harmless for, any Losses incurred or sustained by the Parent Indemnified Parties, or any of them (including the Surviving Corporation), as a result of any fraud committed by the Company or any of its Subsidiaries or any Stockholder even if such fraud was discovered after the Survival Date.

(d) ***Partial Distribution of Escrow Fund.*** On the first anniversary of the Closing Date, the Escrow Agent shall deliver to the Stockholders (in proportion to their respective Pro Rata Portions) an amount of the Escrow Fund equal to the difference of (i) $3,000,000 of the Escrow Fund minus (ii) the excess, if any, of (A) the aggregate amount of all Losses specified in an Officer's Certificate delivered to the Escrow Agent prior to the first anniversary of the Closing Date, in respect to an actual, pending, threatened or reasonably anticipated Loss arising prior to the date of the first anniversary of the Closing Date, which are Unresolved Claims (as defined below) as of the first anniversary of the Closing Date over (B) $33,400,000.

(e) ***Escrow Period; Distribution upon Termination of Escrow Periods.*** Subject to the following requirements, the Escrow Fund shall be in existence immediately following the Effective Time and shall terminate at 5:00 p.m., local time at Parent's corporate headquarters in California, on the second anniversary of the Closing Date (the "**Escrow Period**"), and the Escrow Agent shall distribute the funds in the Escrow Fund to the Stockholders immediately upon such termination; *provided, however*, that the Escrow Fund shall not terminate with respect to any amount in respect of any unsatisfied claims specified in any Officer's Certificate ("**Unresolved Claims**") delivered to the Escrow Agent and the Stockholder Representative prior to the Escrow Period termination date with respect to facts and circumstances existing prior to the Survival Date with respect to such claims, and any such amount shall not be distributed to the Stockholders at such time.

As soon as all such claims have been resolved, the Escrow Agent shall deliver to the Stockholders the remaining portion of the Escrow Fund, if any, not required to satisfy such Unresolved Claims. No claims may be asserted against the Escrow Fund after the Survival Date. Deliveries of the Escrow Amount out of the Escrow Fund to the Stockholders pursuant to this **Section 8.4(e)** shall be made in proportion to their respective Pro Rata Portions of the remaining amounts in the Escrow Fund, with the amount delivered to each Stockholder rounded to the nearest one hundredth (0.01) (with amounts 0.005 and above rounded up).

(f) ***Protection of Escrow Fund.***

(i) The Escrow Agent shall hold and safeguard the Escrow Fund during the Escrow Period, shall treat such fund as a trust fund in accordance with the terms of this Agreement and shall hold and dispose of the Escrow Fund only in accordance with the terms of this **Article VIII**. The Escrow Agent shall hold (and shall be directed by Parent and the Stockholder Representative) the Escrow Amount, together with any and all interest, income and gains (collectively, "**Interest**") accrued thereon, in a separate and distinct account in the name of Computershare Trust Company, Inc., as the escrow agent for the parties hereto, subject to the terms and conditions of this Agreement.

(ii) The Escrow Amount shall be invested in Federated U.S. Treasury Obligation Funds with maturities of not more than 30 days and any interest paid on such Escrow Amount shall be added to the Escrow Fund and become a part thereof. For any period of time before such Federated U.S. Treasury Obligation Funds can be purchased by the Escrow Agent or after such bills mature, the Escrow Amount shall be invested in a business money market account of the Escrow Agent (or another nationally recognized banking institution) and any interest paid on such Escrow Amount shall be added to the Escrow Fund and become a part thereof and available for satisfaction of claims. For tax reporting and withholding purposes, each Stockholder shall be treated as having received and contributed to the Escrow Fund income earned on such Stockholder's Pro Rata Portion of the Escrow Fund, and shall be liable and responsible for any Taxes due with respect to such income.

(g) ***Claims for Indemnification.***

(i) Upon receipt by the Escrow Agent at any time on or before the last day of the Escrow Period of an Officer's Certificate, the Escrow Agent shall, subject to the provisions of **Section 8.4(h)** and **Section 8.4(i)** hereof, and subject to final resolution of the claim as set forth herein, deliver to Parent, as promptly as practicable, by wire transfer to an account or accounts designated by Parent in the Officer's Certificate, an amount of the Escrow Funds from the Escrow Account equal to the amount of Losses already incurred or sustained by a Parent Indemnified Party and claimed in the Officer's Certificate and finally resolved in accordance herewith.

(ii) In the event that a Parent Indemnified Party pursues a claim directly against any Principal Stockholder or any other Person as permitted by **Section 8.4(c)**, subject to the provisions of **Section 8.3(b), Section 8.4(g)** and **Section 8.4(h)** hereof, each Person from whom

indemnification is sought (an "**Indemnifying Party**") shall promptly, and in no event later than 30 days after delivery of an Officer's Certificate to each such Indemnifying Party, wire transfer to the Parent Indemnified Party an amount of cash equal to the amount of the Loss incurred or sustained.

(iii) If the Stockholder Representative (or the Indemnifying Party in the event that indemnification is being sought hereunder directly from such Indemnifying Party) does not object to either the claim made in the Officer's Certificate or the amount of Losses, whether actual or anticipated, claimed thereunder in writing within the 30 day period after delivery by the Parent of the Officer's Certificate (with confirmation of receipt), such failure to so object shall be an irrevocable acknowledgment by the Stockholder Representative and the Stockholders (or such Indemnifying Party) that the Parent Indemnified Party is entitled to the full amount of the claim for Losses set forth in such Officer's Certificate.

(h) ***Objections to Claims against the Escrow Fund.*** At the time of delivery of any Officer's Certificate to the Escrow Agent, a duplicate copy of such certificate shall be delivered to the Stockholder Representative (and the Indemnifying Party in the event that indemnification is being sought hereunder directly from such Indemnifying Party), and Parent shall also deliver to the Escrow Agent written proof of delivery to the Stockholder Representative of a copy of such Officer's Certificate (which proof may consist of, among other things, a photocopy of the registered or certified mail or overnight courier receipt or the signed receipt if delivered by hand). For a period of 30 days after the Escrow Agent's receipt of such proof of delivery to the Stockholder Representative, the Escrow Agent shall make no delivery to Parent of any Escrow Amount pursuant to **Section 8.4(g)** hereof unless the Escrow Agent shall have received written authorization from the Stockholder Representative to make such delivery. After the expiration of such 30 day period, subject to the limitations set forth in **Section 8.4(g)** hereof, the Escrow Agent shall make delivery by wire transfer to an account or accounts designated by Parent in the Officer's Certificate an amount of cash from the Escrow Fund equal to the amount of Losses already incurred or sustained by Parent and claimed in the Officer's Certificate, and the Escrow Agent shall make similar delivery of an amount of cash from the Escrow Fund equal to the amount of anticipated Losses claimed in the Officer's Certificate once such anticipated Losses are actually incurred or sustained by Parent; *provided, however,* that no such payment or delivery may be made if the Stockholder Representative shall object in a written statement to either the claim made in the Officer's Certificate or the amount of Losses, whether actual or anticipated, claimed thereunder (an "**Objection Notice**"), and such Objection Notice shall have been delivered to the Escrow Agent prior to the expiration of such 30 day period.

(i) ***Resolution of Conflicts; Arbitration.***

(i) In case the Stockholder Representative delivers an Objection Notice in accordance with **Section 8.4(h)** hereof, or in the event that indemnification is being sought hereunder directly from an Indemnifying Party, if such Indemnifying Party shall object to any claim or claims made in any Officer's Certificate to recover claims directly from such Indemnifying Party within 30 days after delivery of such Officer's Certificate, the Stockholder Representative (or such

objecting Indemnifying Party) and Parent shall attempt in good faith to agree upon the rights of the respective parties with respect to each of such claims. If the Stockholder Representative (or such objecting Indemnifying Party) and Parent should so agree, a memorandum setting forth such agreement shall be prepared and signed by both parties and, in the case of a claim against the Escrow Fund, shall be furnished to the Escrow Agent and, in the case of a claim directly against the Principal Stockholders, to the Principal Stockholders. The Escrow Agent shall be entitled to rely on any such memorandum and make distributions from the Escrow Fund in accordance with the terms thereof.

(ii) If no such agreement can be reached after good faith negotiation and prior to 30 days after delivery of an Objection Notice, either Parent or the Stockholder Representative (or the objecting Indemnifying Party) may demand arbitration of the matter unless the amount of the Loss that is at issue is the subject of a pending litigation with a third party, in which event arbitration shall not be commenced until such amount is ascertained or both parties agree to arbitration, and in either such event the matter shall be settled by arbitration conducted by one arbitrator mutually agreeable to Parent and the Stockholder Representative (or the objecting Indemnifying Party). In the event that, within 30 days after submission of any dispute to arbitration, Parent and the Stockholder Representative (or the objecting Indemnifying Party) cannot mutually agree on one arbitrator, then, within 15 days after the end of such 30 day period, Parent and the Stockholder Representative (or the objecting Indemnifying Party) shall each select one arbitrator. The two arbitrators so selected shall select a third arbitrator who shall have relevant industry experience.

(iii) Any such arbitration shall be held in Marin County, California, under the rules then in effect of the American Arbitration Association. The arbitrator(s) shall determine how all expenses relating to the arbitration shall be paid, including the respective expenses of each party, the fees of each arbitrator and the administrative fee of the American Arbitration Association. The arbitrator or arbitrators, as the case may be, shall set a limited time period and establish procedures designed to reduce the cost and time for discovery while allowing the parties an opportunity, adequate in the sole judgment of the arbitrator or majority of the three arbitrators, as the case may be, to discover relevant information from the opposing parties about the subject matter of the dispute. The arbitrator, or a majority of the three arbitrators, as the case may be, shall rule upon motions to compel or limit discovery and shall have the authority to impose sanctions, including attorneys' fees and costs, to the same extent as a competent court of law or equity, should the arbitrators or a majority of the three arbitrators, as the case may be, determine that discovery was sought without substantial justification or that discovery was refused or objected to without substantial justification. The decision of the arbitrator or a majority of the three arbitrators, as the case may be, as to the validity and amount of any claim in such Officer's Certificate shall be final, binding, and conclusive upon the parties to this Agreement and the Stockholders and any Indemnifying Party. Such decision shall be written and shall be supported by written findings of fact and conclusions which shall set forth the award, judgment, decree or order awarded by the arbitrator(s), and the Escrow Agent shall be entitled to rely on, and make distributions from the Escrow Fund in accordance with, the terms of such award, judgment, decree or order as applicable. Within 15 days of a decision of the arbitrator(s) requiring payment by one party to another, such party shall make the payment to such other party, including any distributions out of the Escrow Fund, as applicable.

(iv) Judgment upon any award rendered by the arbitrator(s) may be entered in any court having jurisdiction. The foregoing arbitration provision shall apply to any dispute among the Stockholders (including the Principal Stockholders) or any Indemnifying Party and the Parent Indemnified Parties under this **Article VIII** hereof, whether relating to claims upon the Escrow Fund or to the other indemnification obligations set forth in this **Article VIII**.

(j) ***Third- Party Claims.*** In the event Parent becomes aware of a third party claim (a "**Third Party Claim**") which Parent reasonably believes may result in a demand against the Escrow Fund or for other indemnification pursuant to this **Article VIII**, Parent shall notify the Stockholder Representative (or, in the event indemnification is being sought hereunder directly from an Indemnifying Party, such Indemnifying Party) of such claim, and the Stockholder Representative shall be entitled on behalf of the Stockholders (or, in the event indemnification is being sought hereunder directly from an Indemnifying Party, such Indemnifying Party shall be entitled), at their expense, to participate in, but not to determine or conduct, the defense of such Third Party Claim. Parent shall have the right in its sole discretion to conduct the defense of, and to settle, any such Third Party Claim. Parent agrees to act reasonably and in good faith in response to any Third Party Claims. Furthermore, to the extent that Parent is entitled to indemnification hereunder, and subject to the other limitations set forth herein, the amount paid in respect of settlement of any such Third Party Claim shall be a Loss that Parent is entitled to recover hereunder; *provided, however,* that amounts that are paid in any such settlement that are not reasonable shall not be recoverable by Parent hereunder. If there is a Third Party Claim that, if adversely determined would give rise to a right of recovery for Losses hereunder, then, subject to the other limitations set forth in this **Article VIII**, any out-of-pocket amounts incurred or sustained by the Parent Indemnified Parties in reasonable defense of such Third Party Claim, regardless of the outcome of such claim, shall be deemed Losses hereunder. In the event that the Stockholder Representative has consented in writing to any such settlement, the Stockholders (including the Principal Stockholders) shall have no power or authority to object under any provision of this **Article VIII** (other than, for the avoidance of doubt, with respect to fraud) to the amount paid in respect of settlement that is within the scope of such written consent of any such Third Party Claim by Parent against the Escrow Fund, or against the Stockholders directly, as the case may be, with respect to such settlement (it being understood that the Stockholder Representative shall not be subject to any obligation, reasonable or otherwise, to consent to any such settlement and shall have no liability for failure to consent to any such settlement).

(k) ***Escrow Agent's Duties.***

(i) The Escrow Agent shall be obligated only for the performance of such duties as are specifically set forth herein, and as set forth in any additional written escrow instructions which the Escrow Agent may receive after the date of this Agreement which are signed by an officer of Parent and the Stockholder Representative, and may rely and shall be protected in

relying or refraining from acting on any instrument reasonably believed to be genuine and to have been signed or presented by the proper party or parties. The Escrow Agent shall not be liable for any act done or omitted hereunder as Escrow Agent while acting in good faith and in the exercise of reasonable judgment, and any act done or omitted pursuant to the advice of legal counsel shall be conclusive evidence of such good faith.

(ii) The Escrow Agent is hereby expressly authorized to disregard any and all warnings given by any of the parties hereto or by any other Person, excepting only orders or process of courts of law, and is hereby expressly authorized to comply with and obey orders, judgments or decrees of any court, awards of arbitrators and joint written instructions of Parent and the Stockholder Representative. In case the Escrow Agent obeys or complies with any such order, judgment or decree of any court, award of arbitrator or instructions, the Escrow Agent shall not be liable to any of the parties hereto or to any other Person by reason of such compliance, notwithstanding any such order, judgment, decree or award being subsequently reversed, modified, annulled, set aside, vacated or found to have been entered without jurisdiction.

(iii) The Escrow Agent shall not be liable in any respect on account of the identity, authority or rights of the parties executing or delivering or purporting to execute or deliver this Agreement or any documents or papers deposited or called for hereunder.

(iv) The Escrow Agent shall not be liable for the expiration of any rights under any statute of limitations with respect to this Agreement or any documents deposited with the Escrow Agent.

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

(vi) If any controversy arises between the parties to this Agreement, or with any other party, concerning the subject matter of this Agreement, its terms or conditions, the Escrow Agent will not be required to determine the controversy or to take any action regarding it. The Escrow Agent may hold all documents and the Escrow Amount and may wait for settlement of any such controversy by final appropriate legal proceedings or other means as, in the Escrow Agent's discretion, may be required, despite what may be set forth elsewhere in this Agreement. In such event, the Escrow Agent will not be liable for damages. Furthermore, the Escrow Agent may at

its option, file an action of interpleader requiring the parties to answer and litigate any claims and rights among themselves. The Escrow Agent is authorized to deposit with the clerk of the court all documents and the Escrow Amounts held in escrow, except all costs, expenses, charges and reasonable attorney fees incurred by the Escrow Agent due to the interpleader action (the "**Agent Interpleader Expenses**") and which the parties agree to pay as follows: 50% to be paid by Parent and 50% to be paid by the Stockholders on the basis of the Stockholders' respective Pro Rata Portions; *provided, however*, that in the event any Stockholder fails to timely pay his or her Pro Rata Portion of the Agent Interpleader Expenses, the parties agree that Parent may at its option pay such Stockholder's Pro Rata Portion of the Agent Interpleader Expenses and recover an equal amount from such Stockholder's Pro Rata Portion of the Escrow Fund. Upon initiating such action, the Escrow Agent shall be fully released and discharged of and from all obligations and liability imposed by the terms of this Agreement.

(vii) The parties and their respective successors and assigns agree jointly and severally to indemnify and hold Escrow Agent harmless against any and all losses, claims, damages, liabilities, and expenses, including reasonable costs of investigation, counsel fees, including allocated costs of in-house counsel and disbursements that may be imposed on Escrow Agent or incurred by Escrow Agent in connection with the performance of his/her duties under this Agreement, including any litigation arising from this Agreement or involving its subject matter, other than those arising out of the gross negligence or willful misconduct of the Escrow Agent (the "**Agent Indemnification Expenses**") as follows: 50% to be paid by Parent and 50% to be paid by the Stockholders on the basis of the Stockholders' respective Pro Rata Portions; *provided, however*, that in the event any Stockholder fails to timely pay his or her Pro Rata Portion of the Agent Indemnification Expenses, the parties agree that Parent may at its option pay such Stockholder's Pro Rata Portion of the Agent Indemnification Expenses and recover an equal amount from such Stockholder's Pro Rata Portion of the Escrow Fund.

(viii) The Escrow Agent may resign at any time upon giving at least 30 days written notice to the Parent and the Stockholder Representative; *provided, however*, that no such resignation shall become effective until the appointment of a successor escrow agent which shall be accomplished as follows: Parent and the Stockholder Representative shall use their commercially reasonable efforts to mutually agree on a successor escrow agent within 30 days after receiving such notice. If the parties fail to agree upon a successor escrow agent within such time, the Escrow Agent shall have the right to deposit the escrowed property to a court of competent jurisdiction for the appointment of a successor escrow agent authorized to do business in the State of California. The successor escrow agent shall execute and deliver an instrument accepting such appointment, and it shall, without further acts, be vested with all the estates, properties, rights, powers, and duties of the predecessor escrow agent as if originally named as escrow agent. Upon appointment of a successor escrow agent, the Escrow Agent shall be discharged from any further duties and liability under this Agreement.

(l) ***Fees.*** All fees of the Escrow Agent for performance of its duties hereunder shall be paid by Parent in accordance with the fee schedule of the Escrow Agent attached hereto as

Exhibit J. It is understood that the fees and usual charges agreed upon for services of the Escrow Agent shall be considered compensation for ordinary services as contemplated by this Agreement. In the event that the conditions of this Agreement are not promptly fulfilled, or if the Escrow Agent renders any service not provided for in this Agreement but that has been requested by an officer of Parent, or if the parties request a substantial modification of the terms of the Agreement, or if any controversy arises, or if the Escrow Agent is made a party to, or intervenes in, any litigation pertaining to the Escrow Fund or its subject matter, the Escrow Agent shall be reasonably compensated for such extraordinary services and reimbursed for all costs, attorney's fees, including allocated costs of in- house counsel, and expenses occasioned by such default, delay, controversy or litigation.

(m) ***Successor Escrow Agents***. Any corporation into which the Escrow Agent in its individual capacity may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Escrow Agent in its individual capacity shall be a party, or any corporation to which substantially all the corporate trust business of the Escrow Agent in its individual capacity may be transferred, shall be the Escrow Agent under this Escrow Agreement without further act.

8.5 ***Stockholder Representative.***

(a) By virtue of the approval of the Merger and this Agreement by the Stockholders, each of the Stockholders shall be deemed to have agreed to appoint Accel-KKR Company, LLC as its agent and attorney-in-fact, as the Stockholder Representative for and on behalf of the Stockholders to give and receive notices and communications, to authorize payment to any Parent Indemnified Party from the Escrow Fund in satisfaction of claims by any Parent Indemnified Party, to object to such payments, to agree to, negotiate, enter into settlements and compromises of, and demand arbitration and comply with orders of courts and awards of arbitrators with respect to such claims, to assert, negotiate, enter into settlements and compromises of, and demand arbitration and comply with orders of courts and awards of arbitrators with respect to, any other claim by any Parent Indemnified Party against any Stockholder or by any such Stockholder against any Parent Indemnified Party or any dispute between any Parent Indemnified Party and any such Stockholder, in each case relating to this Agreement or the transactions contemplated hereby, and to take all other actions that are: (i) necessary or appropriate in the judgment of the Stockholder Representative for the accomplishment of the foregoing; (ii) specifically mandated by the terms of this Agreement; or (iii) necessary or appropriate in the judgment of the Stockholder Representative to enforce the rights provided to the Stockholders by this Agreement. Such agency may be changed by the Stockholders from time to time upon not less than 30 days prior written notice to Parent; *provided, however*, that the Stockholder Representative may not be removed unless holders of a two- thirds interest of the Escrow Fund agree to such removal and to the identity of the substituted agent. Notwithstanding the foregoing, a vacancy in the position of Stockholder Representative may be filled by the holders of a majority in interest of the Escrow Fund. No bond shall be required of the Stockholder Representative, and the Stockholder Representative shall not receive any compensation for its services. Notices or communications to or from the Stockholder Representative shall constitute notice to or from the Stockholders (including the Principal Stockholders).

(b) The Stockholder Representative shall not be liable for any act done or omitted hereunder as Stockholder Representative while acting in good faith and in the exercise of reasonable judgment. The Stockholders on whose behalf the Escrow Amount was contributed to the Escrow Fund shall indemnify the Stockholder Representative and hold the Stockholder Representative harmless against any loss, liability or expense incurred without bad faith on the part of the Stockholder Representative and arising out of or in connection with the acceptance or administration of the Stockholder Representative's duties hereunder, including the reasonable fees and expenses of any legal counsel retained by the Stockholder Representative ("**Stockholder Representative Expenses**"). Following the termination of the Escrow Period, the resolution of all Unresolved Claims and the satisfaction of all claims made by Parent Indemnified Parties for Losses, the Stockholder Representative shall have the right to recover Stockholder Representative Expenses from the Escrow Fund prior to any distribution to the Stockholders, and prior to any such distribution, shall deliver to the Escrow Agent a certificate setting forth the Stockholder Representative Expenses actually paid, sustained or incurred, or reasonably anticipated to be paid, sustained or incurred. A decision, act, consent or instruction of the Stockholder Representative, including an amendment, extension or waiver of this Agreement pursuant to **Section 9.3** and **Section 9.4** hereof, shall constitute a decision of the Stockholders and shall be final, binding and conclusive upon the Stockholders; and the Escrow Agent and Parent may rely upon any such decision, act, consent or instruction of the Stockholder Representative as being the decision, act, consent or instruction of the Stockholders. The Escrow Agent and Parent are hereby relieved from any liability to any person for any acts done by them in accordance with such decision, act, consent or instruction of the Stockholder Representative, other than with respect to acts of Parent or the Escrow Agent that constitute bad faith, fraud, gross negligence or willful misconduct.

(c) In addition, the Stockholder Representative shall deduct $500,000 or such greater amount determined to be reasonable by the Stockholder Representative (and set forth in a written notice delivered by the Stockholder Representative to Parent at least three (3) days prior to the Closing Date) (the "**Expenses Reserve Amount**") from the Total Consideration to be distributed to the Stockholders, which Expenses Reserve Amount shall be deposited by the Stockholder Representative into an escrow account (the "**Expenses Escrow Account**") maintained by an escrow agent determined by the Stockholder Representative (and set forth in a written notice delivered to Parent) at least three (3) days prior to the Closing Date (the "**Expenses Escrow Agent**") pursuant to this **Section 8.5(c)**. Such Expenses Escrow Account shall be governed by an escrow agreement to be executed by the Expenses Escrow Agent and the Stockholder Representative (the "**Expenses Escrow Agreement**"). The Stockholder Representative may use the funds in the Expenses Escrow Account to pay the expenses incurred by the Stockholder Representative under the authorization granted in this Agreement (including, without limitation, any out-of-pocket expenses incurred as Stockholder Representative (whether in respect of indemnification claims, the defense thereof or otherwise)). Any Expenses Reserve Amount remaining after payment of all of the Stockholder Representative's expenses following the later of (A) the resolution of all indemnification claims

under this **Article VIII** and the determination by the Stockholder Representative that such funds are no longer necessary in connection with indemnification claims that may be brought hereunder and (B) the payment of the maximum amount recoverable by Parent from the Stockholders, if any, shall be distributed to the Stockholders on a pro rata basis (based on their Pro Rata Portion); *provided*, *however*, that in the sole discretion of the Stockholder Representative, any or all of the Expenses Reserve Amount may be earlier distributed to the Stockholders. All matters relating to the Expenses Escrow Account, to the extent not referred to in this Agreement, shall be governed by the Expenses Escrow Agreement, *provided*, *however*, that in the event of any conflict between the terms of this Agreement and the Expenses Escrow Agreement, the terms of this Agreement shall be controlling. The Expenses Escrow Agent shall hold, invest, reinvest and disperse the Expenses Escrow Account in accordance with the terms of the Expenses Escrow Agreement and the Expenses Escrow Account shall not be used for any purposes other than as set forth in this **Section 8.5(c)** and shall not be available to the Parent or any other Parent Indemnified Party to satisfy any claims hereunder.

8.6 ***Adjustment to Consideration.***

(a) If, within 15 days following the Closing Date, Parent or the Stockholder Representative (each, an "**Electing Party**") notifies the other party (the "**Non- Electing Party**") that it is disputing the results of the Closing Date Balance Sheet that was used to determine the Balance Sheet Adjustment Amount pursuant to **Section 1.6(a)**, such Electing Party shall, within 45 days following the Closing Date, cause to be prepared and delivered to the Non- Electing Party, an unaudited balance sheet of the Surviving Corporation as of the Closing Date (the "**Adjusted Balance Sheet**"). The Adjusted Balance Sheet will be prepared in accordance with GAAP (except that the Adjusted Balance Sheet may omit footnotes and other presentation items that may be required by GAAP and shall include the adjustments set forth in **Schedule 1.6(a)(i)** hereto and in all events shall be consistent with the last two sentences of the definition of Balance Sheet Adjustment Amount above) consistently applied on a basis consistent with the calculation of the Trial Run and presenting such Electing Party's good faith estimate of the balance sheet of the Surviving Corporation as of the close of business on the day immediately prior to the Closing. In the event that, pursuant to the terms of this **Section 8.6**, it is finally determined that the amount of (i) the Company's total current assets (as defined by and as determined in accordance with GAAP) at the Closing Date as reflected on the Adjusted Balance Sheet minus (ii) the Company's current liabilities (as defined by and as determined in accordance with GAAP) at the Closing Date as reflected on the Adjusted Balance Sheet (collectively, the "**Net Assets at Closing**") exceeds (iii) the Balance Sheet Adjustment Amount, then an amount equal to such difference (the "**Excess Assets**") shall be paid to the Stockholders pursuant to **Section 1.6(c)**. In the event that, pursuant to the terms of this **Section 8.6** it is determined that the Net Assets at Closing is less than the Balance Sheet Adjustment Amount, then an amount equal to such difference (the "**Excess Liabilities**") shall be paid to Parent out of the Escrow Fund in accordance with the terms of **Section 8.4** hereof on a dollar-for-dollar basis, and the Deductible Amount shall not apply to Parent's right to payment for Excess Liabilities from the Escrow Fund. Parent shall, at the request of the Stockholder Representative if the Stockholder Representative is the Electing Party, prepare the Adjusted Balance Sheet on behalf of the Electing Party. Parent shall give and shall cause the Surviving Corporation to give the

Stockholder Representative and its accountant reasonable access during Parent's regular business hours to those books and records and work papers of the Surviving Corporation in the possession or control of Parent or the Surviving Corporation and, in the event that the Stockholder Representative is the Non-Electing Party, any personnel of Parent or the Surviving Corporation who prepared the Adjusted Balance Sheet, for purposes of resolving any disputes concerning the Adjusted Balance Sheet and the calculation of the Net Assets at Closing.

(b) The Non- Electing Party shall have 45 days following delivery of the Adjusted Balance Sheet during which to notify the Electing Party in writing (the "**Notice of Objection**") of any good faith objections to the calculation of the Adjusted Balance Sheet or the Net Assets at Closing, as it affects such calculation, setting forth a reasonably specific and detailed description of its objections and the dollar amount of each objection. If the Non- Electing Party objects to the Adjusted Balance Sheet or the Electing Party's calculation of Net Assets at Closing as reflected thereon, Parent and the Stockholder Representative shall attempt to resolve any such objections within 15 days of the receipt by the Electing Party of the Notice of Objection.

(c) If the Electing Party and the Non- Electing Party are unable, using their commercially reasonable efforts, to resolve any such dispute within the 15 day period following receipt of the Notice of Objection referred to in **Section 8.6(b)** hereof, the Electing Party and the Non-Electing Party shall submit the dispute to a partner in the audit practice of any nationally recognized accounting firm that is mutually and reasonably agreeable to both parties (who shall not have any material relationship to either party) (the "**Independent Accounting Firm**"). Each of the parties to this Agreement shall, and shall cause their respective affiliates and representatives to, provide full cooperation to the Independent Accounting Firm. The Independent Accounting Firm shall (i) act in its capacity as an expert and not as an arbitrator, (ii) consider only those matters as to which there is a dispute between the parties and (iii) be instructed to reach its conclusions regarding any such dispute within 30 days after its appointment and provide a written explanation of its decision. In the event that the Electing Party and the Non-Electing Party submit any dispute to an Independent Accounting Firm, each such party may submit a "position paper" to the Independent Accounting Firm setting forth the position of such party with respect to such dispute, to be considered by such Independent Accounting Firm as it deems appropriate. Any expenses relating to the engagement of the Independent Accounting Firm (the "**Independent Accounting Firm Expenses**") shall be paid by Parent and fifty percent (50%) of such expenses shall be paid by the Stockholders; *provided, however*, that in the event any Stockholder fails to timely pay his or her Pro Rata Portion of the Independent Accounting Firm Expenses, the parties agree that Parent may at its option pay such Stockholder's Pro Rata Portion of the Independent Accounting Firm Expenses and recover an equal amount (which shall be deemed an Agreed- Upon Loss) from such Stockholder's Pro Rata Portion of the Escrow Fund. Other than the manner of payment of the Independent Accounting Firm Expenses, the Electing Party shall be responsible for all other fees and expenses of such Electing Party, all reasonable fees and expenses incurred in the preparation and delivery of the Adjusted Balance Sheet, and all reasonable fees and expenses of the Non- Electing Party to respond and, if applicable, object to the Adjusted Balance Sheet or the Net Assets at Closing.

(d) If the Non- Electing Party does not deliver a Notice of Objection in accordance with **Section 8.6(b)** hereof (i.e., within a 15 day period), the Adjusted Balance Sheet (together with the Electing Party's calculation of Net Assets at Closing reflected thereon), shall be deemed to have been accepted by all of the parties to this Agreement. In the event that the Non- Electing Party delivers a Notice of Objection in accordance with the provisions above and the Electing Party and the Non- Electing Party are able to resolve such dispute by mutual agreement, the Adjusted Balance Sheet, together with the calculation of Net Assets at Closing reflected thereon, to the extent modified by mutual agreement of such parties, shall be deemed to have been accepted by all of the parties to this Agreement.

(e) In the event that the Non- Electing Party delivers a Notice of Objection in accordance with the provisions set forth above and the Electing Party and the Non- Electing Party are unable to resolve such dispute by mutual agreement, the determination of the Independent Accounting Firm shall be final and binding on the parties, and the Adjusted Balance Sheet, together with the Electing Party's calculation of Net Assets at Closing reflected thereon, to the extent modified by the Independent Accounting Firm, shall be deemed to have been accepted by all of the parties to this Agreement.

(f) Subject to the foregoing provisions, the calculation of Net Assets at Closing reflected on any such Adjusted Balance Sheet shall be conclusive and binding on all of the parties to this Agreement for purposes of this **Section 8.6**, no further adjustments shall be made thereto and none of Parent, the Stockholder Representative or the Stockholders shall have any further right to challenge such calculation of Net Assets at Closing, whether pursuant to the terms of this **Section 8.6** or otherwise.

ARTICLE IX

TERMINATION, AMENDMENT AND WAIVER

9.1 ***Termination.*** Except as provided in **Section 9.2** hereof, this Agreement may be terminated and the Merger abandoned at any time prior to the Closing:

(a) by mutual written agreement of the Company and Parent;

(b) by Parent or the Company if the Closing Date shall not have occurred by 90 days following the date of this Agreement (which date shall automatically be extended to the six-month anniversary of the date of this Agreement if the Closing Date shall not have occurred as a result of a failure to satisfy any of the conditions set forth in **Section 7.1(a)**, **Section 7.1(b)** or **Section 7.2(e)(ii)**); provided, however, that the right to terminate this Agreement under this **Section 9.1(b)** shall not be available to any party whose action or failure to act has been a principal cause of or resulted in the failure of the Merger to occur on or before such date and such action or failure to act constitutes breach of this Agreement;

(c) by Parent if any Governmental Entity shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation, executive order, decree, injunction, order or other legal restraint which is in effect and which has the effect of making the Merger illegal;

(d) by Parent if there shall be any action taken, or any statute, rule, regulation or order enacted, promulgated or issued or deemed applicable to the Merger by any Governmental Entity, which would require an Action of Divestiture;

(e) by Parent if it is not in material breach of its obligations under this Agreement and there has been a material breach of any representation, warranty, covenant or agreement of the Company or the Principal Stockholders contained in this Agreement such that the conditions set forth in **Section 7.2(a)** hereof would not be satisfied, and such breach has not been cured within 10 calendar days after written notice thereof to the Company and the applicable Principal Stockholder; provided, however, that no cure period shall be required for a breach which by its nature cannot be cured; or

(f) by the Company if none of the Company, any of its Subsidiaries or the Principal Stockholders is in material breach of their respective obligations under this Agreement and there has been a material breach of any representation, warranty, covenant or agreement of Parent contained in this Agreement such that the conditions set forth in **Section 7.3(a)** hereof would not be satisfied, and such breach has not been cured within 10 calendar days after written notice thereof to Parent; provided, however, that no cure period shall be required for a breach which by its nature cannot be cured.

9.2 ***Effect of Termination.*** In the event of termination of this Agreement as provided in **Section 9.1** hereof, this Agreement shall forthwith become void and there shall be no liability or obligation on the part of Parent, the Company or the Principal Stockholders, or their respective officers, directors or stockholders, if applicable; *provided*, *however*, that each party hereto and each Person shall remain liable for any breaches of this Agreement or the Related Agreements; and *provided further*, *however*, that, the provisions of **Section 6.2** (Confidentiality), **Section 6.3** (Public Disclosure), **Section 6.20** (Expenses) hereof, **Article X** (General Provisions) hereof and this **Section 9.2** shall remain in full force and effect and survive any termination of this Agreement pursuant to the terms of this **Article IX**.

9.3 ***Amendment.*** No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by Parent, the Company and the Stockholder Representative. For purposes of this **Section 9.3**, the Stockholders (including the Principal Stockholders) agree that any amendment of this Agreement signed by the Stockholder Representative shall be binding upon and effective against the Stockholders whether or not they have signed such amendment.

9.4 ***Extension; Waiver.*** At any time prior to the Closing, Parent, on the one hand, and the Company and the Stockholder Representative, on the other hand, may, to the extent legally allowed, (a) extend the time for the performance of any of the obligations of the other party hereto, (b) waive any inaccuracies in the representations and warranties made to such party contained herein or in any

document delivered pursuant hereto, and (c) waive compliance with any of the covenants, agreements or conditions for the benefit of such party contained herein. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party. No waiver of any provision hereunder or any breach or default thereof shall extend to or affect in any way any other provision or prior or subsequent breach or default. For purposes of this **Section 9.4**, the Stockholders (including the Principal Stockholders) agree that any extension or waiver signed by the Stockholder Representative shall be binding upon and effective against all Stockholders whether or not they have signed such extension or waiver.

ARTICLE X

GENERAL PROVISIONS

10.1 ***Notices.*** All notices, demands and other communications hereunder shall be in writing and shall be deemed given (a) when delivered personally or by commercial messenger or courier service, (b) the day following the day (except if not a business day then the next business day) on which the same has been delivered prepaid to a reputable national overnight air courier service, (c) the third business day following the day on which the same is sent by certified or registered mail (return receipt requested), postage prepaid or (d) when transmitted via telecopy (or other facsimile device) to the number set out below if the sender on the same day sends a confirming copy of such notice by a recognized overnight delivery service (charges prepaid). Notices, demands and other communications hereunder, in each case to the respective parties, shall be sent to the applicable address set forth below (or at such other address for a party as shall be specified by like notice or, if specifically provided for elsewhere in this Agreement such as **Section 5.3**, by email):

(a) if to Parent or Sub, to:

Autodesk, Inc.
111 McInnis Parkway
San Rafael, California 94903
Attention: General Counsel
Facsimile No.: (415) 507-5100

with a copy to:

Wilson Sonsini Goodrich & Rosati
Professional Corporation
650 Page Mill Road
Palo Alto, California 94304
Attention: Martin W. Korman, Esq.
Facsimile No.: (650) 493-6811

(b) if to the Company or the Stockholder Representative, to:

Accel-KKR Company, LLC
2500 Sand Hill Road, Suite 100
Menlo Park, CA 94025
Attention: Tom Barnds and Ben Bisconti
Facsimile No.: (650) 289-2461

with a copy to:

Kirkland & Ellis LLP
200 East Randolph Dr.
Suite 5400
Chicago, Illinois 60601
Attention: Jeffrey Seifman, P.C.
Facsimile No: (312) 861-2200

(c) If to the Principal Stockholders, to the addresses set forth in **Section 10.1** of the Disclosure Schedule with a copy to:

Kirkland & Ellis LLP
200 East Randolph Dr.
Suite 5400
Chicago, Illinois 60601
Attention: Jeffrey Seifman, P.C.
Facsimile No: (312) 861-2200

(d) If to the Escrow Agent, to:

Computershare Trust Company, Inc.
350 Indiana Street, Suite 800
Golden, Colorado 80401
Attention: Corporate Trust
Telephone No.: (303) 262-0707
Facsimile No: (303) 262-0700

10.2 ***Interpretation.*** The words "include," "includes" and "including" when used herein shall be deemed in each case to be followed by the words "without limitation." The phrase "made available to Parent" when used herein shall be deemed to mean that such information has been delivered to Parent or its designee or otherwise made available to Parent or its designee in an unrestricted and unredacted form in the online data room hosted by IntraLinks, Inc. or at other locations. The phrase "in the ordinary course of business" when used herein shall be deemed to mean in the ordinary course of business consistent with past practice. The table of contents and the

section and other headings and subheadings contained in this Agreement and the exhibits hereto are solely for the purpose of reference, are not part of the agreement of the parties hereto, and shall not in any way affect the meaning or interpretation of this Agreement or any exhibit hereto. All references to "$" shall be deemed references to United States dollars. Unless the context otherwise requires, any reference to a "Section," "Exhibit," or "Disclosure Schedule" shall be deemed to refer to a section of this Agreement, exhibit to this Agreement or a disclosure schedule to this Agreement, as applicable. The words "hereof," "herein" and "hereunder" and words of similar import referring to this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. English shall be the governing language of this Agreement.

10.3 ***Counterparts.*** This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party, it being understood that all parties need not sign the same counterpart. Any counterpart may be executed by facsimile signature, and such facsimile signature shall be deemed an original.

10.4 ***Entire Agreement; Assignment.*** This Agreement, the Exhibits hereto, the Disclosure Schedule, the Confidential Disclosure Agreement, and the documents and instruments and other agreements among the parties hereto referenced herein: (a) constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements and understandings both written and oral, among the parties with respect to the subject matter hereof, (b) except as expressly provided herein, are not intended to confer upon any other person any rights or remedies hereunder, and (c) shall not be assigned by operation of law or otherwise, except that Parent may assign its rights and delegate its obligations hereunder to its affiliates as long as Parent remains liable for all of Parent's obligations hereunder as if there was no such assignment. Notwithstanding **Section 10.4(b)**, the Stockholder Representative may on behalf of the Stockholders enforce the right of the Stockholders to receive payment of the Total Consideration pursuant to **Article I** hereof and any other rights hereunder and to seek recovery on behalf of the Stockholders with respect thereto.

10.5 ***Severability.*** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law. In the event that any provision of this Agreement or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement will continue in full force and effect and the application of such provision to other persons or circumstances will be interpreted so as reasonably to effect the intent of the parties hereto. The parties further agree to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the economic, business and other purposes of such void or unenforceable provision.

10.6 ***Governing Law; Exclusive Jurisdiction.*** Except to the extent a provision of **Article I** of this Agreement is required by law to be governed by Delaware Law, all other provisions of this Agreement shall be governed by and construed in accordance with the laws of the State of

California, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof. Subject to **Section 8.4(i)** hereof, each of the parties hereto irrevocably consents to the exclusive jurisdiction and venue of any court within Marin County, State of California, in connection with any matter based upon or arising out of this Agreement or the matters contemplated herein, agrees that process may be served upon them in any manner authorized by the laws of the State of California for such persons and waives and covenants not to assert or plead any objection which they might otherwise have to such jurisdiction, venue and such process. Subject to **Section 8.4(i)** hereof, and except as may be required under Delaware Law with respect to those provisions of **Article I** of this Agreement that are mandatorily governed by Delaware Law, each party agrees not to commence any legal proceedings related hereto except in such courts.

10.7 ***Rules of Construction.*** The parties hereto agree that they have been represented by counsel during the negotiation and execution of this Agreement and, therefor, waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

10.8 ***Waiver of Jury Trial.*** EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY AND ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT, OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF ANY PARTY HERETO IN NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT HEREOF.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, Parent, Sub, the Company, the Principal Stockholders, the Escrow Agent and the Stockholder Representative have caused this Agreement to be signed, all as of the date first written above.

AUTODESK, INC.

By: /s/ Carol Bartz

Name: Carol Bartz
Title: Chairman, Chief Executive Officer and President

ALIAS SYSTEMS HOLDINGS, INC.

By: /s/ Doug Walker

Name: Doug Walker
Title: President and CEO

MAYTAG ACQUISITION CORPORATION

By: /s/ Carl Bass

Name: Carl Bass
Title: President

COMPUTERSHARE TRUST COMPANY, INC.

By: /s/ John M. Wahl

Name: John M. Wahl
Title: Corporate Trust Officer

By: /s/ Kellie Gwinn

Name: Kellie Gwinn
Title: Vice President

PRINCIPAL STOCKHOLDERS

ACCEL-KKR COMPANY, LLC

By: /s/ Thomas C. Barnds

Name: Thomas C. Barnds
Its: Managing Director

ONTARIO TEACHERS' PENSION PLAN BOARD

By: /s/ Rosemary Zigrossi

Name: Rosemary Zigrossi

Its: Vice President, Venture Capital

STOCKHOLDERS' REPRESENTATIVE:

ACCEL-KKR COMPANY, LLC

By: /s/ Benjamin Bisconti

Name: Benjamin Bisconti
Its: Managing Director

AUTODESK, INC.

1996 STOCK PLAN[1]

1. Purposes of the Plan. The purposes of this Stock Plan are:

- to attract and retain the best available personnel for positions of substantial responsibility,
- to provide additional incentive to Employees, and
- to promote the success of the Company's business.

Options granted under the Plan may be Incentive Stock Options or Nonstatutory Stock Options, as determined by the Administrator at the time of grant.

2. Definitions. As used herein, the following definitions shall apply:

(a) "Administrator" means the Board or any of its Committees as shall be administering the Plan, in accordance with Section 4 of the Plan.

(b) "Applicable Laws" means the legal requirements relating to the administration of stock option plans under U. S. state corporate laws, U.S. federal and state securities laws, the Code and the applicable laws of any foreign country or jurisdiction where Options will be or are being granted under the Plan.

(c) "Board" means the Board of Directors of the Company.

(d) "Code" means the Internal Revenue Code of 1986, as amended.

(e) "Committee" means a Committee appointed by the Board in accordance with Section 4 of the Plan.

(f) "Common Stock" means the Common Stock of the Company.

(g) "Company" means Autodesk, Inc., a Delaware corporation.

(h) "Continuous Status as an Employee" means that the employment relationship with the Company, its Parent, or any Subsidiary, is not interrupted or terminated. Continuous Status as an Employee shall not be considered interrupted in the case of (i) any leave of absence approved by the Company or (ii) transfers between locations of the Company or between the Company, its Parent, any Subsidiary, or any successor. A leave of absence approved by the Company shall include sick leave, military leave, or any other personal leave approved by an authorized representative of the

[1] As amended by the Company's Board of Directors on September 2, 2005.

Company. For purposes of Incentive Stock Options, no such leave may exceed ninety days, unless reemployment upon expiration of such leave is guaranteed by statute or contract. If reemployment upon expiration of a leave of absence approved by the Company is not so guaranteed, on the 181st day of such leave any Incentive Stock Option held by the Optionee shall cease to be treated as an Incentive Stock Option and shall be treated for tax purposes as a Nonstatutory Stock Option.

(i) "Director" means a member of the Board.

(j) "Disability" means total and permanent disability as defined in Section 22(e)(3) of the Code.

(k) "Employee" means any person, including Officers and Directors, employed by the Company or any Parent or Subsidiary of the Company. Neither service as a Director nor payment of a director's fee by the Company shall be sufficient to constitute "employment" by the Company.

(l) "Exchange Act" means the Securities Exchange Act of 1934, as amended.

(m) "Fair Market Value" means, as of any date, the value of Common Stock determined as follows:

(i) If the Common Stock is listed on any established stock exchange or national market system, including without limitation The Nasdaq National Market or The Nasdaq SmallCap Market of The Nasdaq Stock Market, its Fair Market Value shall be the closing sales price for such stock (or the closing bid, if no sales were reported) as quoted on such exchange or system for the date of such determination, as reported in *The Wall Street Journal* or such other source as the Administrator deems reliable;

(ii) If the Common Stock is regularly quoted by a recognized securities dealer but selling prices are not reported, the Fair Market Value of a Share of Common Stock shall be the mean between the high bid and low asked prices for the Common Stock on the date of determination, as reported in *The Wall Street Journal* or such other source as the Administrator deems reliable;

(iii) In the absence of an established market for the Common Stock, the Fair Market Value shall be determined in good faith by the Administrator.

(n) "Incentive Stock Option" means an Option intended to qualify as an incentive stock option within the meaning of Section 422 of the Code and the regulations promulgated thereunder.

(o) "Insiders" means individuals subject to Section 16 of the Exchange Act.

(p) [intentionally omitted].

(q) "Nonstatutory Stock Option" means an Option not intended to qualify as an Incentive Stock Option.

(r) "Notice of Grant" means a written or electronic notice evidencing certain terms and conditions of an individual Option grant. The Notice of Grant is part of the Option Agreement.

(s) "Officer" means a person who is an officer of the Company within the meaning of Section 16 of the Exchange Act and the rules and regulations promulgated thereunder.

(t) "Option" means a stock option granted pursuant to the Plan.

(u) "Option Agreement" means a written or electronic agreement between the Company and an Optionee evidencing the terms and conditions of an individual Option grant. The Option Agreement is subject to the terms and conditions of the Plan.

(v) "Optioned Stock" means the Common Stock subject to an Option.

(w) "Optionee" means an Employee who holds an outstanding Option.

(x) "Parent" means a "parent corporation," whether now or hereafter existing, as defined in Section 424(e) of the Code.

(y) "Plan" means this 1996 Stock Plan, as amended.

(z) [intentionally omitted].

(aa) [intentionally omitted].

(bb) "Rule 16b-3" means Rule 16b-3 of the Exchange Act or any successor to Rule 16b-3, as in effect when discretion is being exercised with respect to the Plan.

(cc) "Section 16(b)" means Section 16(b) of the Securities Exchange Act of 1934, as amended.

(dd) "Share" means a share of the Common Stock, as adjusted in accordance with Section 14 of the Plan.

(ee) [intentionally omitted].

(ff) "Subsidiary" means a "subsidiary corporation", whether now or hereafter existing, as defined in Section 424(f) of the Code.

3. Stock Subject to the Plan. Subject to the provisions of Section 14 of the Plan, the maximum aggregate number of Shares which may be optioned and sold under the Plan is 7,000,000 shares, plus (a) an annual increase to be made on the last day of the immediately preceding fiscal year equal to the lesser of (i) 10,000,000 Shares, (ii) 3.5% of the Issued Shares (as defined below) on such date or (iii) a lesser amount determined by the Board, (b) any Shares which have been reserved but unissued under the Company's 1987 Stock Option Plan ("1987 Plan") as of the date of stockholder approval of the original adoption of this Plan not to exceed 3,000,000 Shares, and

(c) any Shares returned to the 1987 Plan as a result of termination of options under the 1987 Plan not to exceed 18,000,000 Shares; provided, however, that as of March 10, 2005, the foregoing annual 3.5% increase shall be eliminated; and provided further, that a total of 18,873,625 shares (8,873,625 of which were added on January 31, 2005 as a result of Section 3(a) hereof) shall be eliminated from the aggregate number of shares which may be optioned and sold under the Plan. "Issued Shares" shall mean the number of shares of Common Stock of the Company outstanding on such date plus any shares reacquired by the Company during the fiscal year that ends on such date.

If an Option expires or becomes unexercisable without having been exercised in full, the unpurchased Shares which were subject thereto shall become available for future grant or sale under the Plan (unless the Plan has terminated); provided, however, that Shares that have actually been issued under the Plan shall not be returned to the Plan and shall not become available for future distribution under the Plan.

4. Administration of the Plan.

(a) Procedure.

(i) Multiple Administrative Bodies. If permitted by Rule 16b-3, the Plan may be administered by different bodies with respect to Directors, Officers who are not Directors, and Employees who are neither Directors nor Officers.

(ii) Administration With Respect to Directors and Officers Subject to Section 16(b). With respect to Option grants made to Employees who are also Officers or Directors subject to Section 16(b) of the Exchange Act, the Plan shall be administered by (A) the Board, if the Board may administer the Plan in a manner complying with the rules under Rule 16b-3, or (B) a committee designated by the Board to administer the Plan, which committee shall be constituted to comply with the rules under Rule 16b-3. Once appointed, such Committee shall continue to serve in its designated capacity until otherwise directed by the Board. From time to time the Board may increase the size of the Committee and appoint additional members, remove members (with or without cause) and substitute new members, fill vacancies (however caused), and remove all members of the Committee and thereafter directly administer the Plan, all to the extent permitted by the rules under Rule 16b-3.

(iii) Administration With Respect to Other Persons. With respect to Option grants made to Employees who are neither Directors nor Officers of the Company, the Plan shall be administered by (A) the Board or (B) a committee designated by the Board, which committee shall be constituted to satisfy Applicable Laws. Once appointed, such Committee shall serve in its designated capacity until otherwise directed by the Board. The Board may increase the size of the Committee and appoint additional members, remove members (with or without cause) and substitute new members, fill vacancies (however caused), and remove all members of the Committee and thereafter directly administer the Plan, all to the extent permitted by Applicable Laws.

(b) Powers of the Administrator. Subject to the provisions of the Plan, and in the case of a Committee, subject to the specific duties delegated by the Board to such Committee, the Administrator shall have the authority, in its discretion:

(i) to determine the Fair Market Value of the Common Stock, in accordance with Section 2(m) of the Plan;

(ii) to select the Employees to whom Options may be granted hereunder;

(iii) to determine whether and to what extent Options are granted hereunder;

(iv) to determine the number of shares of Common Stock to be covered by each Option granted hereunder;

(v) to approve forms of agreement for use under the Plan;

(vi) to determine the terms and conditions, not inconsistent with the terms of the Plan, of any award granted hereunder. Such terms and conditions include, but are not limited to, the exercise price, the time or times when Options may be exercised (which may be based on performance criteria), any vesting acceleration or waiver of forfeiture restrictions, and any restriction or limitation regarding any Option or the shares of Common Stock relating thereto, based in each case on such factors as the Administrator, in its sole discretion, shall determine;

(vii) to construe and interpret the terms of the Plan and awards granted pursuant to the Plan;

(viii) to prescribe, amend and rescind rules and regulations relating to the Plan, including rules and regulations relating to sub-plans established for the purpose of qualifying for preferred tax treatment under foreign tax laws;

(ix) to modify or amend each Option (subject to Section 6(d) and Section 16(c) of the Plan), including the discretionary authority to extend the post-termination exercisability period of Options longer than is otherwise provided for in the Plan;

(x) to authorize any person to execute on behalf of the Company any instrument required to effect the grant of an Option previously granted by the Administrator;

(xi) to determine the terms and restrictions applicable to Options; and

(xii) to make all other determinations deemed necessary or advisable for administering the Plan.

(c) Effect of Administrator's Decision. The Administrator's decisions, determinations and interpretations shall be final and binding on all Optionees and any other holders of Options.

5. Eligibility. Incentive Stock Options and Nonstatutory Stock Options may be granted to Employees.

6. Limitations.

(a) Each Option shall be designated in the written option agreement as either an Incentive Stock Option or a Nonstatutory Stock Option. However, notwithstanding such designation, to the extent that the aggregate Fair Market Value of the Shares with respect to which Incentive Stock Options are exercisable for the first time by the Optionee during any calendar year (under all plans of the Company and any Parent or Subsidiary) exceeds $100,000, such Options shall be treated as Nonstatutory Stock Options.

(b) Neither the Plan nor any Option shall confer upon an Optionee any right with respect to continuing the Optionee's employment or consulting relationship with the Company, nor shall they interfere in any way with the Optionee's right or the Company's right to terminate such employment or consulting relationship at any time, with or without cause.

(c) The following limitations shall apply to grants of Options to Employees:

(i) No Employee shall be granted, in any fiscal year of the Company, Options to purchase more than 1,000,000 Shares.

(ii) In connection with his or her initial employment, an Employee may be granted Options to purchase up to an additional 1,000,000 Shares which shall not count against the limit set forth in subsection (i) above.

(iii) The foregoing limitations shall be adjusted proportionately in connection with any change in the Company's capitalization as described in Section 14.

(iv) If an Option is cancelled in the same fiscal year of the Company in which it was granted (other than in connection with a transaction described in Section 14), the cancelled Option will be counted against the limits set forth in subsections (i) and (ii) above

(d) The exercise price for an Option may not be reduced without the consent of the Company's stockholders. This shall include, without limitation, a repricing of the Option as well as an Option exchange program whereby the Optionee agrees to cancel an existing Option in exchange for an Option.

7. Term of Plan. Subject to Section 20 of the Plan, the Plan shall become effective upon the earlier to occur of its adoption by the Board or its approval by the stockholders of the Company as described in Section 20 of the Plan. It shall continue in effect for a term of ten (10) years unless terminated earlier under Section 16 of the Plan.

8. Term of Option. The term of each Option shall be stated in the Notice of Grant; provided, however, the term shall be seven (7) years from the date of grant or such shorter term as may be provided in the Notice of Grant.

9. Option Exercise Price and Consideration.

(a) Exercise Price. The per share exercise price for the Shares to be issued pursuant to exercise of an Option shall be no less than 100% of the Fair Market Value per Share on the date of grant.

(b) Waiting Period and Exercise Dates. At the time an Option is granted, the Administrator shall fix the period within which the Option may be exercised and shall determine any conditions which must be satisfied before the Option may be exercised. In so doing, the Administrator may specify that an Option may not be exercised until either the completion of a service period or the achievement of performance criteria with respect to the Company or the Optionee.

(c) Form of Consideration. The Administrator shall determine the acceptable form of consideration for exercising an Option, including the method of payment. In the case of an Incentive Stock Option, the Administrator shall determine the acceptable form of consideration at the time of grant. Such consideration may consist entirely of:

(i) cash;

(ii) check;

(iii) promissory note;

(iv) other Shares which (A) in the case of Shares acquired upon exercise of an option, have been owned by the Optionee for more than six months on the date of surrender, and (B) have a Fair Market Value on the date of surrender equal to the aggregate exercise price of the Shares as to which said Option shall be exercised;

(v) delivery of a properly executed exercise notice together with such other documentation as the Administrator and the broker, if applicable, shall require to effect an exercise of the Option and delivery to the Company of the sale or loan proceeds required to pay the exercise price;

(vi) a reduction in the amount of any Company liability to the Optionee, including any liability attributable to the Optionee's participation in any Company-sponsored deferred compensation program or arrangement;

(vii) any combination of the foregoing methods of payment; or

(viii) such other consideration and method of payment for the issuance of Shares to the extent permitted by Applicable Laws.

10. Exercise of Option.

(a) Procedure for Exercise; Rights as a Stockholder. Any Option granted hereunder shall be exercisable according to the terms of the Plan and at such times and under such conditions as determined by the Administrator and set forth in the Option Agreement and the Notice of Grant.

An Option may not be exercised for a fraction of a Share.

An Option shall be deemed exercised when the Company receives: (i) written or electronic notice of exercise (in accordance with the Option Agreement) from the person entitled to exercise the Option, and (ii) full payment for the Shares with respect to which the Option is exercised. Full payment may consist of any consideration and method of payment authorized by the Administrator and permitted by the Option Agreement and the Plan. Shares issued upon exercise of an Option shall be issued in the name of the Optionee or, if requested by the Optionee, in the name of the Optionee and his or her spouse. Until the stock certificate evidencing such Shares is issued (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), no right to vote or receive dividends or any other rights as a stockholder shall exist with respect to the Optioned Stock, notwithstanding the exercise of the Option. The Company shall issue (or cause to be issued) such stock certificate promptly after the Option is exercised and, in the Company's discretion, may be held in book form by the Company or in a brokerage account, as determined by the Administrator. No adjustment will be made for a dividend or other right for which the record date is prior to the date the stock certificate is issued, except as provided in Section 14 of the Plan.

Exercising an Option in any manner shall decrease the number of Shares thereafter available, both for purposes of the Plan and for sale under the Option, by the number of Shares as to which the Option is exercised.

(b) Termination of Employment Relationship. Upon termination of an Optionee's Continuous Status as an Employee, other than upon the Optionee's death or Disability, the Optionee may exercise his or her Option within such period of time as is specified in the Notice of Grant to the extent that he or she is entitled to exercise it on the date of termination (but in no event later than the expiration of the term of such Option as set forth in the Notice of Grant). In the absence of a specified time in the Notice of Grant, the Option shall remain exercisable for three (3) months following the Optionee's termination. If, on the date of termination, the Optionee is not entitled to exercise his or her entire Option, the Shares covered by the unexercisable portion of the Option shall revert to the Plan. If, after termination, the Optionee does not exercise his or her Option within the time specified by the Administrator, the Option shall terminate, and the Shares covered by such Option shall revert to the Plan.

(c) Disability of Optionee. Upon termination of an Optionee's Continuous Status as an Employee as a result of the Optionee's Disability, the Optionee may exercise his or her Option at any time within twelve (12) months (or such other period of time as is determined by the Administrator) from the date of termination, but only to the extent that the Optionee is entitled to exercise it on the date of termination (and in no event later than the expiration of the term of the Option as set forth in the Notice of Grant). If, on the date of termination, the Optionee is not entitled

to exercise his or her entire Option, the Shares covered by the unexercisable portion of the Option shall revert to the Plan. If, after termination, the Optionee does not exercise his or her Option within the time specified herein, the Option shall terminate, and the Shares covered by such Option shall revert to the Plan.

(d) Death of Optionee. In the event of the death of an Optionee, the Option shall become fully exercisable, including as to Shares for which it would not otherwise be exercisable and may be exercised at any time within twelve (12) months (or such other period of time as is determined by the Administrator) following the date of death (but in no event later than the expiration of the term of such Option as set forth in the Notice of Grant), by the Optionee's estate or by a person who acquired the right to exercise the Option by bequest or inheritance. If, after death, the Optionee's estate or a person who acquired the right to exercise the Option by bequest or inheritance does not exercise the Option within the time specified herein, the Option shall terminate, and the Shares covered by such Option shall revert to the Plan.

(e) Rule 16b-3. Options granted to individuals subject to Section 16 of the Exchange Act (Insiders) must comply with the applicable provisions of Rule 16b-3 and shall contain such additional conditions or restrictions as may be required thereunder to qualify for the maximum exemption from Section 16 of the Exchange Act with respect to Plan transactions.

11. [intentionally omitted].

12. [intentionally omitted].

13. Non-Transferability of Options. An Option may not be sold, pledged, assigned, hypothecated, transferred, or disposed of in any manner other than by will or by the laws of descent or distribution and may be exercised, during the lifetime of the Optionee, only by the Optionee.

14. Adjustments Upon Changes in Capitalization, Dissolution, Merger or Asset Sale.

(a) Changes in Capitalization. Subject to any required action by the stockholders of the Company, the number of Shares covered by each outstanding Option, and the number of Shares which have been authorized for issuance under the Plan but as to which no Options has yet been granted or which have been returned to the Plan upon cancellation or expiration of an Option, the annual fiscal year limit on how many Options may be granted to an Employee under Section 6(c) hereof, as well as the price per Share covered by each outstanding Option, shall be proportionately adjusted for any increase or decrease in the number of issued Shares resulting from a stock split, reverse stock split, stock dividend, combination or reclassification of the Common Stock, or any other increase or decrease in the number of issued Shares effected without receipt of consideration by the Company; provided, however, that conversion of any convertible securities of the Company shall not be deemed to have been "effected without receipt of consideration." Such adjustment shall be made by the Board, whose determination in that respect shall be final, binding and conclusive. Except as expressly provided herein, no issuance by the Company of Shares of stock of any class, or securities convertible into Shares of stock of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number or price of Shares subject to an Option.

(b) Dissolution or Liquidation. In the event of the proposed dissolution or liquidation of the Company, the Administrator shall notify each Optionee as soon as practicable prior to the effective date of such proposed transaction. The Administrator in its discretion may provide for an Optionee to have the right to exercise his or her Option until ten (10) days prior to such transaction as to all of the Optioned Stock covered thereby, including Shares as to which the Option would not otherwise be exercisable. In addition, the Administrator may provide that any Company repurchase option applicable to any Shares purchased upon exercise of an Option shall lapse as to all such Shares, provided the proposed dissolution or liquidation takes place at the time and in the manner contemplated. To the extent it has not been previously exercised, an Option will terminate immediately prior to the consummation of such proposed action.

(c) Merger or Asset Sale. In the event of a merger of the Company with or into another corporation, or the sale of substantially all of the assets of the Company, each outstanding Option shall be assumed or an equivalent option or right substituted by the successor corporation or a Parent or Subsidiary of the successor corporation, or in the event that the successor corporation refuses to assume or substitute for the Option, the Optionee shall have the right to exercise the Option as to all of the Optioned Stock, including Shares as to which it would not otherwise be exercisable. If an Option is exercisable in lieu of assumption or substitution in the event of a merger or sale of assets, the Administrator shall notify the Optionee in writing or electronically that the Option shall be fully exercisable for a period of fifteen (15) days from the date of such notice, and the Option shall terminate upon the expiration of such period. For the purposes of this paragraph, the Option shall be considered assumed if, following the merger or sale of assets, the option confers the right to purchase or receive, for each Share of Optioned Stock subject to the Option immediately prior to the merger or sale of assets, the consideration (whether stock, cash, or other securities or property) received in the merger or sale of assets by holders of Common Stock for each Share held on the effective date of the transaction (and if holders were offered a choice of consideration, the type of consideration chosen by the holders of a majority of the outstanding Shares); provided, however, that if such consideration received in the merger or sale of assets was not solely common stock of the successor corporation or its Parent, the Administrator may, with the consent of the successor corporation, provide for the consideration to be received upon the exercise of the Option for each Share of Optioned Stock subject to the Option, to be solely common stock of the successor corporation or its Parent equal in fair market value to the per share consideration received by holders of Common Stock in the merger or sale of assets.

15. Date of Grant. The date of grant of an Option shall be, for all purposes, the date on which the Administrator makes the determination granting such Option, or such other later date as is determined by the Administrator. Notice of the determination shall be provided to each Optionee within a reasonable time after the date of such grant.

16. Amendment and Termination of the Plan.

(a) Amendment and Termination. The Board may at any time amend, alter, suspend or terminate the Plan.

(b) Stockholder Approval. The Company shall obtain stockholder approval of any Plan amendment to the extent necessary and desirable to comply with Rule 16b-3 or with

Sections 162(m) or 422 of the Code (or any successor rule or statute or other applicable law, rule or regulation, including the requirements of any exchange or quotation system on which the Common Stock is listed or quoted). Such stockholder approval, if required, shall be obtained in such a manner and to such a degree as is required by the applicable law, rule or regulation.

(c) Effect of Amendment or Termination. No amendment, alteration, suspension or termination of the Plan shall impair the rights of any Optionee, unless mutually agreed otherwise between the Optionee and the Administrator, which agreement must be in writing and signed by the Optionee and the Company.

17. Conditions Upon Issuance of Shares.

(a) Legal Compliance. Shares shall not be issued pursuant to the exercise of an Option unless the exercise of such Option and the issuance and delivery of such Shares shall comply with all relevant provisions of law, including, without limitation, the Securities Act of 1933, as amended, the Exchange Act, the rules and regulations promulgated thereunder, Applicable Laws, and the requirements of any stock exchange or quotation system upon which the Shares may then be listed or quoted, and shall be further subject to the approval of counsel for the Company with respect to such compliance.

(b) Investment Representations. As a condition to the exercise of an Option, the Company may require the person exercising such Option to represent and warrant at the time of any such exercise that the Shares are being purchased only for investment and without any present intention to sell or distribute such Shares if, in the opinion of counsel for the Company, such a representation is required.

18. Liability of Company.

(a) Inability to Obtain Authority. The inability of the Company to obtain authority from any regulatory body having jurisdiction, which authority is deemed by the Company's counsel to be necessary to the lawful issuance and sale of any Shares hereunder, shall relieve the Company of any liability in respect of the failure to issue or sell such Shares as to which such requisite authority shall not have been obtained.

(b) Grants Exceeding Allotted Shares. If the Optioned Stock covered by an Option exceeds, as of the date of grant, the number of Shares which may be issued under the Plan without additional stockholder approval, such Option shall be void with respect to such excess Optioned Stock, unless stockholder approval of an amendment sufficiently increasing the number of Shares subject to the Plan is timely obtained in accordance with Section 16(b) of the Plan.

19. Reservation of Shares. The Company, during the term of this Plan, will at all times reserve and keep available such number of Shares as shall be sufficient to satisfy the requirements of the Plan.

20. Stockholder Approval. Continuance of the Plan shall be subject to approval by the stockholders of the Company within twelve (12) months before or after the date the Plan is adopted. Such stockholder approval shall be obtained in the manner and to the degree required under applicable federal and state law.

Exhibit 31.1

CERTIFICATION

I, Carol A. Bartz, certify that:

1. I have reviewed this report on Form 10-Q of Autodesk, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
    a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
    b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
    c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
    d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
    a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
    b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: December 7, 2005

/S/ CAROL A. BARTZ

Carol A. Bartz
Chairman, Chief Executive Officer and President

CERTIFICATION

I, Alfred J. Castino, certify that:

1. I have reviewed this report on Form 10-Q of Autodesk, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
    a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
    b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
    c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
    d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
    a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
    b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: December 7, 2005

/S/ ALFRED J. CASTINO

Alfred J. Castino
Senior Vice President and Chief Financial Officer
(Principal Financial Officer)

CERTIFICATION OF CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER
PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

Based on my knowledge, I, Carol A. Bartz, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report of Autodesk, Inc. on Form 10-Q for the quarterly period ended October 31, 2005 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in such Form 10-Q fairly presents in all material respects the financial condition and results of operations of Autodesk, Inc.

December 7, 2005

/S/ CAROL A. BARTZ
Carol A. Bartz
Chairman, Chief Executive Officer and President

Based on my knowledge, I, Alfred J. Castino, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report of Autodesk, Inc. on Form 10-Q for the quarterly period ended October 31, 2005 fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in such Form 10-Q fairly presents in all material respects the financial condition and results of operations of Autodesk, Inc.

December 7, 2005

/S/ ALFRED J. CASTINO
Alfred J. Castino
Senior Vice President and Chief Financial Officer