

APPENDIX 1D

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (this “Agreement”) is entered into and effective as of this ____ day of _____, 2000, by and between **THE, INC.**, a ____ corporation doing business as The.com (“Buyer”), and **COMPANY**, a ____ corporation (“Seller”).

RECITALS:

A. Seller has operations being conducted by, and software supporting, its “On-Demand” division, which operations are directed to various marketplaces, including custom publishing, training and education, healthcare, financial services, and software and hardware.

B. Buyer, pursuant to this Agreement, is to purchase the operations of On-Demand, including education, distance learning, corporate training, and related educational products and services (collectively, the “Products and Services,” and the operations so conducted are referred to herein as the “Business”).

C. The Products and Services utilize various intellectual property and technology assets of Seller, including an Internet-based software system (“Software System”); an inventory management, order entry, job and workflow tracking, and “look up on line” system using a Seller-designed order processing software system (“OPS”), including a

comprehensive inventory management and order processing system; and a media asset management library system providing access and control of electronic documents which expedites delivery of content and provides a secured storage area for customer documents (“Electronic System” or “ES”).

D. Seller will make available the Technology Assets (as defined herein) used by Seller in its “On-Demand” business, either through transfer, license or service agreements, all as described herein and in the exhibits attached hereto, including an exclusive license to Seller’s Software System and OPS software programs.

E. Buyer desires to purchase from Seller, and Seller desires to sell to Buyer, certain of the assets comprising and used in the Business, for the consideration and upon the other terms and conditions set forth in this Agreement.

AGREEMENT:

NOW, THEREFORE, the parties hereby agree as follows:

1. DEFINITION OF CERTAIN TERMS. Certain capitalized terms used in this Agreement are defined as follows:

“*Adverse Effect*” shall mean with respect to any Person, any adverse change, circumstance or effect that, individually or in the aggregate with all other similar adverse changes, circumstances and effects, is or is reasonably likely to be adverse to the

business, operations, assets, liabilities (including contingent liabilities), properties, financial condition, results of operations or prospects of such Person.

“Affiliate” shall mean, with respect to any Person, any Person directly or indirectly controlling, controlled by, or under common control with such Person. The terms “controlling,” “controlled by,” and “under common control with” mean the possession, direct or indirect, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.

“Agreement” shall mean this Purchase Agreement, the Exhibits hereto, the Schedules hereto and the Related Agreements.

“Assignment of Technology Agreement” shall mean the Assignment of Technology Agreement between Seller and Buyer dated as of the Closing Date and substantially in the form of Exhibit ____.

“Closing” and **“Closing Date”** shall have the meanings set forth in Section 3.

“Common Stock” shall mean the common stock of Buyer, \$.01 par value per share.

“Computers” shall have the meaning set forth in Section 4.9.

“Confidential Information” shall have the meaning set forth in Section 14.5.

“Consent” shall mean any approval, consent, ratification, waiver, or other authorization from any Person, including authorization from lending institutions and Governmental Bodies.

“Consulting Agreement” shall mean the Consulting Agreement between Buyer and _____ dated as of the Closing Date and substantially in the form of Exhibit ____.

“Contract” shall mean any agreement, contract, obligation, promise, or undertaking by or for the benefit of Seller (whether written or oral and whether express or implied) that is legally binding.

“Customer” shall mean the purchasers of the Products and Services from Seller (or affiliates of Seller), whether or not customers on the Closing Date, and shall include the customers of Seller identified as such on Schedule 4.10.

“Customer Contracts” shall mean all written or verbal contracts or arrangements between Seller and its Customers for the purchase by the Customers of the Products and Services from Seller and all obligations on the part of Seller extending beyond the Closing Date, including, but not limited to, those Contracts described in 2.1(b). Customer Contracts shall include the Pending Commitments.

“Customer Files” shall mean the historic data regarding the relationship between Seller and its Customers, such as call reports, credit reports, pricing information,

customer correspondence, commitments to Customers (whether legally binding or otherwise), and other reports and information that are in the custody and control of Seller.

“Data and Records” shall have the meaning set forth in Section 2.1(c).

“Electronic System” and “ES” shall mean the Electronic System software.

“Employment Agreements” shall mean those Employment Agreements between Buyer and each of _____, _____ and _____, dated as of the Closing Date and each substantially in the form of Exhibit ____.

“Encumbrance” shall mean any charge, claim, equitable interest, lien, option, pledge, security interest, right of first refusal or restriction of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

“Entity” shall mean any corporation (including any non-profit corporation), general or limited partnership, limited liability company, joint venture, estate, trust, association or any other type of business organization.

“Escrow Agreement” shall mean the Escrow Agreement escrowing the source codes and object codes of certain of the Software, which Escrow Agreement is between Seller,

Buyer, and the Escrow Agent, dated as of the Closing Date and substantially in the form of Exhibit ____.

“Financial Services Business” shall mean the financial services business operations of On-Demand.

“Governmental Body” shall mean any (a) nation, state, county, city, town, village, district or other jurisdiction of any nature; (b) federal, state, local, municipal, foreign or other government; (c) governmental or quasi-governmental authority of any nature (including any governmental agency, branch, department, official or entity and any court or other tribunal); and (d) body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power of any nature.

“Knowledge” shall mean and refer to the “Knowledge” of individuals and Entities. An individual will be deemed to have “Knowledge” of a particular fact or other matter if (a) such individual is actually aware of such fact or other matter; or (b) a prudent individual could be expected to discover or otherwise become aware of such fact or other matter in the course of conducting a reasonably comprehensive investigation concerning the existence of such fact or other matter.

An Entity will be deemed to have “Knowledge” of a particular fact or other matter if any individual who is serving, or who has at any time served, as a director, officer, partner, executor or trustee of such Person, or in any similar capacity, has, or at any time

had, Knowledge of such fact or other matter. The “Knowledge” of Seller shall mean and include the “Knowledge” of each officer and director of Seller.

“Legal Requirement” shall mean any federal, state, local, municipal, foreign, international, multinational or other Order, constitution, law, ordinance, principle of common law, regulation, statute, or treaty, including without limitation environmental, health and safety laws and regulations, OSHA rules and regulations, and laws and regulations pertaining to employees, employee benefits and ERISA.

“Liability” shall mean debts, obligations, duties or liabilities of every type and trade, known or unknown, accrued or unaccrued, liquidated or unliquidated, matured or unmatured, assertable or unassertable, fixed, contingent, absolute or otherwise.

“License Agreements” shall mean each of the License Agreements between Seller and Buyer, each dated as of the Closing Date, each to be executed and delivered at the Closing, and, as pertains to the Software System and OPS software, being substantially in the form of Exhibit ____, and as pertains to the ES software, being substantially in the form of Exhibit ____.

“Maintenance Agreement” shall mean the Maintenance Agreement between Seller and Buyer dated as of the Closing Date and substantially in the form of Exhibit ____.

“On-Demand” shall mean and refer to the On-Demand division of Seller.

“OPS” shall mean the OPS software.

“Order” shall mean any award, decision, injunction, judgment, writ, decree, order, ruling, subpoena or verdict entered, issued, made or rendered by any court, administrative agency or other Governmental Body or by any arbitrator.

“Ordinary Course of Business” shall mean an action taken by Seller that will be deemed to have been taken in the “Ordinary Course of Business” if such action is consistent with the past practices of Seller and is taken in the ordinary course of the normal day-to-day operations of Seller; and such action is similar in nature and magnitude to actions customarily taken, without the necessity of any authorization by the board of directors, in the ordinary course of the normal day-to-day operations of other Persons that are in the same line of business as Seller.

“Pending Commitments” shall mean pending commitments from Customers to purchase Products and Services from Seller that were received and accepted by Seller in the Ordinary Course of Business prior to the Closing Date but call for delivery after the Closing Date.

“Person” shall mean any individual, Entity, organization, labor union or other entity or Governmental Body.

“Proceeding” shall mean any action, arbitration, audit, hearing, investigation, litigation or suit (whether civil, criminal, administrative, investigative or informal)

commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Body or arbitrator.

“Products and Services” shall have the meaning set forth in Recital A.

“Purchased Assets” shall have the meaning set forth in Section 2.1.

“Related Agreements” shall mean this Agreement, the License Agreements, the Escrow Agreement, the Assignment of Technology Agreement, the Assignment of Customer Contracts, the Service Agreement, and the Maintenance Agreement.

“Representative” shall mean, with respect to a particular Person, any director, officer, employee, agent, consultant, advisor or other representative of such Person, including legal counsel, accountants and financial advisors.

“Service Agreement” shall mean the Service Agreement between Seller and Buyer dated as of the Closing Date and substantially in the form of Exhibit ____.

“Software” shall mean each of Seller’s Software System, OPS, ES software and all other software that provides links between and among the foregoing software solutions, and the software solutions used in the On-Demand division of Seller.

“Software System” shall mean the Software System software.

“Tax” shall mean any income tax, capital gains tax, value-added tax, payroll tax, sales tax, property tax, gift tax or estate tax, levy, assessment, tariff, duty (including any customs duty), deficiency or other fee, and any related charge or amount (including any fine, penalty, interest or addition to tax), imposed, assessed or collected by or under the authority of any Governmental Authority or payable pursuant to any tax-sharing agreement or any other contract or agreement relating to the sharing or payment of any such tax, levy, assessment, tariff, duty, deficiency or fee.

“Tax Return” shall mean any return (including any information return), report, statement, schedule, notice, form or other document or information filed with or submitted to, or required to be filed with or submitted to, any Governmental Body in connection with the determination, assessment, collection or payment of any Tax or in connection with the administration, implementation or enforcement of or compliance with any Legal Requirement relating to any Tax.

“Technology Assets” shall mean the Software and Trade Secrets which are the subject of this Agreement, all URLs applicable to the Business, all other intellectual property assets including among the Purchased Assets, and all rights to apply for any Patents, Trademarks, Service Marks and Copyrights applicable to the Software System and OPS software.

“Trade Secrets” shall mean all know-how, trade secrets, confidential information, customer lists, software, technical information, data, process technology, plans, forecasts, drawings, and blue prints applicable to the Software or to the Business.

2. SOFTWARE LICENSE; PURCHASE AND SALE OF ASSETS. Upon and subject to the conditions of this Agreement, at the Closing on the Closing Date (as such terms are defined in Section 3), Buyer and Seller shall take the following actions:

2.1 Purchase and Sale. Seller shall sell, transfer, convey, assign and deliver to, or cause to be sold, transferred, conveyed, assigned and delivered to, Buyer, and Buyer shall purchase and acquire from Seller, free and clear of all Encumbrances, the following (the “Purchased Assets”):

(a) Business. All of Seller’s right, title and interest under, in and to the Products and Services, the Business and the Technology Assets.

(b) Customer Contracts. All of Seller’s interest (including all rights, benefits, duties and obligations) in all written or oral contracts, agreements, Pending Commitments or other arrangements or agreements and understandings, with all Customers, including those identified on Schedule 4.10, and all outstanding offers or solicitations to enter into any of the foregoing (“Customer Contracts”).

(c) Data and Records. All Customer data and records of Seller, including Customer Files, customer lists and records, supplier agreements, rebate details, general commercial information, referral sources, research and development reports and records, production reports and records, equipment logs, operating guides and manuals, copies of

financial, accounting and personnel records, correspondence and other similar documents and records (“Data and Records”).

(d) *Technology Assets.* The Technology Assets, including all of the intangible and intellectual property of Seller related to the Technology Assets or otherwise related to the Business, and specifically including the Software and Trade Secrets, the URLs, and all rights to file applications for registration of Trademarks, Trade Names, Services Marks, Copyrights and Patents relating to the Technology Assets.

2.2 *License Agreements.* Seller shall execute and deliver to Buyer the License Agreements pertaining to the Software, being an exclusive License Agreement to use the Software System and OPS Software (with a sublicense from Buyer to Seller, its successors and assigns, to use the Software System and OPS Software in the Financial Services Business), and a non-exclusive License Agreement to use the ES and related software.

2.3 *Assignment of Technology Agreement.* Seller shall execute and deliver to Buyer the Assignment of Technology Agreement.

2.4 *Service Agreement.* Seller shall execute and deliver to Buyer the Service Agreement.

2.5 *Maintenance Agreement.* Seller shall execute and deliver to Buyer the Maintenance Agreement.

2.6 Escrow Agreement. Seller shall execute and deliver to Buyer the Escrow Agreement, duly executed by the Escrow Agent.

2.7 Issuance and Delivery of Buyer Common Stock. Buyer shall issue and deliver to Seller _____ shares of the Common Stock of Buyer, par value \$.01 per share.

3. CLOSING. Consummation of the purchase and sale of the Purchased Assets as contemplated in this Agreement (the “Closing”) shall take place at the offices of Seller, at 10:00 a.m. (Eastern time) on the later of (a) _____, 2000; or (b) that day which is five days after the fulfillment of the conditions precedent described in Sections 9 and 10, unless otherwise agreed by Seller and Buyer (the “Closing Date”). Subject to the provisions of Section 11, failure to consummate the purchase and sale provided for in this Agreement on the date and time and at the place determined pursuant to this Section 3 will not result in the termination of this Agreement and will not relieve any party of any obligation under this Agreement.

4. REPRESENTATIONS AND WARRANTIES OF SELLER. Seller hereby represents and warrants to Buyer, and shall be deemed to represent to Buyer on and as of the Closing on the Closing Date, as follows:

4.1 Corporate Status. Seller is a corporation duly organized, validly existing and in good standing under the laws of _____. Seller has, and at all times has had, full corporate power and authority to own and lease its properties as such properties are now owned and

leased and to conduct its business as and where such business has and is now being conducted. Set forth on Schedule 4.1 are true and complete copies of the articles of incorporation and bylaws of Seller, as amended to the date hereof. Seller is qualified as a foreign corporation in each jurisdiction in which the nature of its business or the ownership of its properties makes such qualification necessary, except where the failure to be so qualified would only require Seller to pay nominal filing fees and penalties in order to be so qualified therein.

4.2 Certain Financial Information.

(a) Seller has delivered to Buyer certain financial information regarding the Business (the “Seller Financial Information”), being unaudited statements of income for each of the fiscal years ended _____, 1999 and 1998, and unaudited interim statements of income for each of the months for the ____-month period ending _____, 2000. The Seller Financial Information fairly presents the revenues generated from the Customer Contracts as of the respective dates of, and for the periods referred to in, the Seller Financial Information, and has been prepared from and is in accordance with the books and records of Seller. The Business sold and transferred to Buyer has (and as of the Closing shall have) no Liabilities of any nature whatsoever except for Pending Commitments under Customer Contracts and other obligations under Customer Contracts incurred in the Ordinary Course of Business.

(b) As is set forth in the Seller Financial Information, for the fiscal year ended _____, 1999, the Business had revenues of \$_____, and for the

____-month period ending _____, 2000, on an annualized basis, the Business had revenues of not less than \$_____; provided, however, Seller does not represent or warrant actual revenues of the Business for the fiscal year ending _____, 2000.

4.3 No Undisclosed Liabilities. The transfer of the Purchased Assets and the Business will be subject to no Liability of any nature whatsoever applicable to Buyer, except for Pending Commitments and related obligations under Customer Contracts incurred in the Ordinary Course of Business, which Customer Contracts shall be completed in the Ordinary Course of Business.

4.4 Absence of Certain Events. Since _____, 1999, Seller has not:

(a) made any change in the Business or the manner of conducting the Business, other than changes in the Ordinary Course of Business;

(b) terminated, placed on probation, disciplined, warned or experienced any material dissatisfaction with any officer, supervisory employee or outside salesperson of Seller which could reasonably be expected to have an Adverse Effect on the Business;

(c) experienced any resignations of, or had any disputes involving the employment or agency relationship with any employee or agent of Seller that could reasonably be expected to have an Adverse Effect on the Business;

(d) terminated or amended, or suffered the termination or amendment of, any material contract, lease, agreement, license or other instrument to which it is or was a party which could reasonably be expected to have an Adverse Effect on the On-Demand division of Seller or on the Business;

(e) experienced any event or any aggregation of events which, individually, collectively, or cumulatively, would or could constitute an Adverse Effect on the On-Demand division of Seller or on the Business of Seller, including, by way of example, and not limitation, any general downturn in business operations or prospects, reductions in business from Customers, or other events that might cause revenues for the current fiscal year to be less than \$_____; or

(f) experienced any claim by any employee, agent or other Person as to any ownership interest in the Software, the other Technology Assets, or any of the other Purchased Assets; and Seller has no Knowledge that there exists any facts or circumstances which might give rise to any such claim;

and Seller has:

(g) used its best efforts to preserve the On-Demand division of Seller and the Business and the organization of Seller pertaining thereto, and to keep available, without entering into any binding agreement, the services of Seller's employees, and to preserve the goodwill of the Customers and others having business relationships with Seller; and

(h) continued its On-Demand division and Business and maintained its operations and equipment in the Ordinary Course of Business.

In making the representations and warranties set forth in subsections (g) and (h), Buyer acknowledges that Seller has disclosed to Buyer that Seller is negotiating a sale of its Financial Services Business, a division of On-Demand. Such transaction will not have an Adverse Effect on Seller, the On-Demand division or on the Business.

4.5 Solvency. Seller is not now insolvent, and will not be rendered insolvent by any of the transactions contemplated by this Agreement or otherwise contemplated by Seller. As used in this Section, “insolvent” means that the sum of the present fair saleable value of the assets of Seller does not and will not exceed its Liabilities, and that Seller is able to pay its obligations as they mature.

4.6 Assets Necessary To Conduct Business. Following the consummation of the transactions described herein, including the execution and delivery of the Related Agreements, Buyer will own or have licensed to it all properties and assets, tangible and intangible, including intellectual property and software, which are necessary for Buyer to conduct the Business as heretofore conducted by Seller, and necessary or appropriate for the continued conduct of the Business after the date hereof in substantially the same manner as conducted prior to the date hereof.

4.7 Authority; Consents; Enforcement; Noncontravention; Noncompetes.

(a) Authority. Seller has the corporate power and authority to execute, deliver and perform this Agreement, the Related Agreements and all other certificates or documents contemplated hereby, and has taken all actions required to authorize, execute, deliver and perform this Agreement and the Related Agreements, including approval by its board of directors.

(b) Consents. Except as set forth on Schedule 4.7(b), no consent, approval, action or authorization of any third party is required for the execution, delivery or performance of this Agreement or the Related Agreements by Seller.

(c) Enforcement. This Agreement and the Related Agreements have been duly executed and delivered by Seller and constitute the legal, valid and binding obligations of Seller, enforceable in accordance with their terms.

(d) Noncontravention. The execution and delivery of this Agreement and the Related Agreements by Seller do not violate any provision of the articles of incorporation or bylaws of Seller and will not result in a breach or violation or default of any Legal Requirement, Order or Contract to which Seller is subject or which would result in a breach by Seller under any Contract or other obligation to which it is bound.

(e) Restriction on Competition. Seller is not a party to nor subject to any contract, arrangement or commitment containing covenants by Seller prohibiting or restricting competition in any line of business or activity, or restricting the customers from whom, or the area in which, Seller may solicit or conduct business.

4.8 Books and Records. Prior to the execution of this Agreement, Seller made available to Buyer for its examination the books of account of Seller's Business (the "Books and Records"). The Books and Records are true and complete in all material respects and have been prepared in the usual and customary manner in accordance with sound business practices, including the maintenance of an adequate system of internal controls. There has been duly and completely entered in the Books and Records all receivables and other revenues due or to become due from or to or owing to Seller related to the Business and all Liabilities of Seller by reason of the Business.

4.9 Computer Systems; Software.

(a) **Condition of Computers.** All computers and computer systems owned, leased or used by Seller in connection with the Business (including software, communication links and storage media) (collectively, the "Computers") are described on Schedule 4.9(a) attached hereto and:

(1) are in full operating order and fulfill, in an efficient manner without material downtime or errors, the purposes for which they were acquired, established and are currently used, including 24-hour a day use, 7 days a week ("24/7");

(2) have adequate capacity for the present needs of Buyer in its operations and its acquisition of the Business as contemplated herein and (taking into account the extent to which the computer systems are expandable) foreseeable future needs;

(3) have adequate security, back-ups, duplication, hardware and software support and maintenance (including emergency cover) and trained personnel to ensure that breaches of security, errors and breakdowns are kept to a minimum and that no material disruption will be caused to the Business or any material part thereof in the event of a breach of security, error or breakdown;

(4) are properly established and documented by written technical descriptions and manuals so as to enable them to be used and operated by Seller's personnel and any other reasonably qualified personnel;

(5) are under the sole control of Seller, are located at Seller's main office or at other locations of Seller readily accessible to Buyer, are not shared with, used by or on behalf of or accessible by any other Person and, except for software properly licensed to Seller, are owned by Seller;

(6) are not obsolete and are not likely to be in need of replacement or material upgrading within two years after the date hereof;

(7) comply with and are used in accordance with all material Legal Requirements;

(8) may be used by Seller for the benefit of Buyer, and by Buyer, as contemplated herein and in the Service Agreement, without the consent of any third

Person and will not result in a breach, violation or default regarding any Computers;
and

(9) qualified personnel of Seller have the training and know-how to enable such personnel to use and operate the Computers, and to assist properly trained personnel of Buyer to do so.

(b) Condition of Software. All software used on or stored or resident in the Computers of Seller, including the Software to be licensed to Buyer pursuant to the License Agreements:

(1) performs efficiently in accordance with its specifications and does not contain any defect or feature which may have an Adverse Effect on its performance or the performance of any other software in the future (providing such future software is otherwise compatible);

(2) is lawfully held and used and does not infringe the intellectual property rights of any Person and all copies held have been lawfully made; and

(3) as to the Software, subject to the License Agreements, specifically including the Software System, OPS, ES and Software, such Software:

(A) is owned exclusively by Seller, no other person has the rights therein or rights to the use of the Software, or copies of the Software or source codes, and

complete written listings and written copies of the source codes for the Software are in the possession of Seller;

(B) standard packaged or other software contains all links necessary for the execution of each software program;

(C) standard packaged software is licensed to Seller on an express or implied license that does not require Seller to make any further payments, is not terminable without the consent of Seller, and imposes no material restrictions except as to copying on the use or transfer of the Software;

(D) all other software is licensed to Seller on the terms of such written licenses that do not require payment by Seller of a fixed annual license fee, and, except for reasonable fees for software support, do not require Seller to make further or other payment, are not terminable, and impose no material restrictions except as to copying on the use or transfer of the Software; and

(E) all standard packaged and other software used in the Software is described on Schedule 4.10(b)(3)(E), attached hereto.

(c) *Operation of Computers.* No Person is in a position, by virtue of rights in, knowledge of or access to the Computers, to prevent or impair the proper and efficient functioning of the Computers or to demand any payment in excess of reasonable remuneration for services rendered, or to impose any onerous condition, in order to

preserve the proper and efficient functioning of the Computers in the future. Seller's employees are adequately trained to enable them to use and operate the Computers to the full extent of the capabilities of the Computers without material assistance from any other Person. All Data and Records stored by electronic means are capable of ready access through the Computers. The transactions contemplated in this Agreement will not cause any license agreements as referred to in Section 4.10 to be terminated or the terms varied or any rates or royalties payable to be increased.

4.10 Customer Contracts. Schedule 4.10 includes the list of Customers and Customer prospects (which prospects Seller believes to be viable prospects), together with a written summary setting forth the terms and conditions of each Customer Contract to which Seller is a party and which involves the Business and all Pending Commitments. Seller has furnished Buyer with a true and complete copy of each written Customer Contract listed on Schedule 4.10. Each such Customer Contract is legal, valid, binding, enforceable and in full force and effect, and shall, as to Buyer, continue to be legal, valid, binding, enforceable and in full force and effect on identical terms following the Closing. No party to any such Customer Contract is in breach or default, and no event has occurred which, with notice or lapse of time, would constitute a breach or default, or permit termination, modification or acceleration, under the Customer Contract; and no party has repudiated any provision of the Customer Contract. All of the Customer Contracts that are specifically set forth on Schedule 4.10 are assignable by Seller to Buyer, and the assignment of Customer Contracts may be made without the Consent of any other Party to the Customer Contract and will not result in a breach, violation or default under any such Customer Contract.

4.11 *Customers of Seller; Conditions Affecting Seller.* Schedule 4.11 sets forth the Customers of Seller by dollar value of aggregate purchases from Seller over the 24 months ended _____, 2000. None of the Customers identified on Schedule 4.11 have terminated their relationship with Seller or otherwise ceased doing business with Seller. Seller has no reason to anticipate that the amount of revenue accounted for by any of the Customers identified on Schedule 4.11 will be materially less in the 12-month period succeeding the Closing Date and following the assignment of the Contracts to Buyer than the amount reflected for such Customers on Schedule 4.11, or the estimated annual projections included within Seller Financial Information. To the Knowledge of Seller, there are no conditions existing with respect to markets, services, facilities, personnel or suppliers to Seller that are likely to have an Adverse Effect on Seller or on Buyer following completion of the transactions described herein. Seller has disclosed to Buyer its Customer Files, including Seller's standard terms and conditions of sale, and identified all Customers that have been granted a deviation from such standard terms and conditions of sale.

4.12 *Technology Assets.*

(a) *Definition of Technology Assets.* The term "Technology Assets" as used in this Agreement shall mean the tangible and intangible intellectual property assets used by Seller in the Business and the assets described in this Section 4.12, each of which asset is related to (and limited to) the Business of Seller, and shall include all of the following:

(1) all right, title and interest Seller may have in “Software System,” “OPS,” “Electronic System” and “ES:”

(2) the Trade Secrets described on Schedule 4.12(a)(2);

(3) the URL “_____ .com” and any other URL applicable to the Business, each as described on Schedule 4.12(a)(3); and

(4) the Software System, OPS, and ES and Software.

(b) *Ownership of Technology Assets.* Seller owns or has the right to use all of the Technology Assets material to the operation of the Business as it is currently conducted. Except for the Technology Assets licensed by Seller as a licensee, as disclosed in Schedule 4.12(b), Seller owns all right, title and interest in and to all the Technology Assets, free and clear of all Encumbrances and other adverse claims, and has the right to use the Technology Assets without payment to a third party. The Technology Assets are free from any claims of employees, agents and other Persons as to any right, title or interest in or to any of the Technology Assets. All Technology Assets are assignable by Seller to Buyer pursuant to the License Agreements, as set forth herein and therein, and the assignment of Technology Assets may be made without the Consent of any Person and will not result in any breach, violation or default under any agreement involving any of the Technology Assets.

(c) *Patents.*

(1) Seller has no patents applicable to the Software or to the Business; and

(2) none of the Products of the Business or the On-Demand division of Seller, nor any process or know-how used by Seller infringes or is alleged to infringe any patent or other proprietary right of any Person.

(d) *Marks*. Except as disclosed on Schedule 4.12(d):

(1) Seller is the owner of all right, title and interest in and to each of the unregistered trademarks, “Software System,” “OPS,” “Electronic System,” and “ES” (the “Marks”), free and clear of all Encumbrances;

(2) none of the Marks have been registered with the United States Patent and Trademark Office;

(3) no Mark has been or is now involved in any opposition, invalidation, cancellation or infringement action and, to the Knowledge of Seller, no such action is threatened against any of the Marks; and

(4) none of the Marks used by Seller infringes or is alleged to infringe any trade name, trademark, or service mark of any Person, nor, to the Knowledge of Seller, is there any potentially interfering trademark or trademark application of any third party.

(e) *Copyrights.*

(1) none of the Software is the subject of any copyright;

(2) none of the Software infringes or is alleged to infringe any copyright of any third party or is a derivative work based on the work of a third party.

(f) *URLs.* Set forth on Schedule 4.12(a)(3) is a complete and accurate list and summary description of each URL applicable to the Business. Seller is the owner of all right, title and interest in and to each of the URLs, free and clear of all Encumbrances.

(g) *Trade Secrets.* Each Trade Secret, and the documentation relating to such Trade Secret, is current, accurate and sufficient in detail and content to identify and explain such Trade Secret and to allow its full and proper use without reliance on the knowledge or memory of any individual. Seller has taken all reasonable precautions to protect the secrecy, confidentiality and value of Seller's Trade Secrets. Seller has good title and an absolute, exclusive right to use the Trade Secrets. The Trade Secrets are not part of the public knowledge or literature, and, to the Knowledge of Seller, have not been used, divulged or appropriated either for the benefit of any other person or to the detriment of Seller. No Trade Secret is subject to any adverse claim or has been challenged or threatened in any way.

(h) *Employee Agreements.* Each former or current employee of Seller has executed a written agreement with Seller that assigns to Seller all rights to any inventions, improvements, discoveries or information relating to Seller. No employee of Seller has entered into any agreement that restricts or limits in any way the scope or type of work in which the employee may be engaged or requires the employee to transfer, assign, or disclose information concerning his work to anyone other than Seller.

4.13 *No Agent or Broker.* No agent or broker or other person acting pursuant to authority given by Seller is entitled to any commission or finder's fee, or other compensation, from Buyer in connection with the transactions contemplated by this Agreement.

4.14 *Notices of Violation.* Seller has received no notice, and, to the Knowledge of Seller, there is no pending notice, of violation of any Legal Requirement, nor the pendency of any Proceedings, threatened or otherwise, which could prohibit, impede, delay or adversely affect the ability of Seller to effect the transactions contemplated in this Agreement or that would have an Adverse Effect on any of the Purchased Assets or Seller, or an Adverse Effect on Buyer following the consummation of the transactions described herein.

4.15 *Investment Intention.*

(a) Seller is acquiring the Common Stock solely for its own account and not with any view to its distribution within the meaning of the Securities Act of 1933 as amended

(the “Act”) or any applicable state securities act. Seller has no present plans to enter into any contract, undertaking, agreement or arrangement for any resale, distribution or other distribution; provided, that with the consent of Buyer, and with an opinion of counsel for Seller satisfactory to Buyer that such transfer is exempt from the registration provisions of the Act and applicable state securities laws, Seller may transfer to its shareholders and employees shares of the Common Stock.

(b) In acquiring the Common Stock, Seller understands and acknowledges that Buyer has a limited operating history and there can be no assurance that Buyer will be profitable or successful; that the investment by Seller in Buyer represents a speculative investment which involves a high degree of risk; and that Seller could lose its entire investment in Buyer.

(c) Seller has been furnished all financial and other information and materials relating to Buyer and its business plan which Seller has requested, and officers of Seller have been afforded the opportunity to ask questions of Buyer’s officers and management concerning Buyer, its business plans and operations, and to obtain additional information necessary to verify the financial information and other materials reviewed by officers of Seller. Buyer has answered all inquiries that Seller and its officers have made concerning Buyer.

(d) Seller acknowledges that the certificate evidencing the Common Stock to be issued to Seller shall contain a legend in substantially the following form:

The securities represented by this certificate have not been registered under the Securities Act of 1933 as amended (the “Act”), and are “restricted securities” as defined in Rule 144 promulgated under the Act. The securities may not be sold or offered for sale or otherwise distributed except pursuant to an effective registration statement for the securities under the Act or in compliance with Rule 144, or pursuant to an opinion of counsel satisfactory to Company that such registration or compliance is not required as to such sale, offer or distribution.

5. REPRESENTATIONS AND WARRANTIES OF BUYER. Buyer hereby represents and warrants to Seller, and shall be deemed to represent to Seller on and as of the Closing on the Closing Date, as follows:

5.1 Corporate Status. Buyer is a corporation duly incorporated and existing under the laws of the State of _____ and is authorized to transact business therein and in the State of _____, the only other jurisdiction where the nature of Buyer’s business or the ownership of its properties requires such qualification. Buyer has, and at all times has had, full corporate power and authority to own and lease its properties as such properties are now owned and leased and to conduct its business as and where such businesses have and are now being conducted.

5.2 Capitalization; Stock Ownership and Rights.

(a) The authorized capital stock of Buyer, the number of shares issued and outstanding as of the date hereof, and the number that will be issued and outstanding as of the Closing Date, after giving effect to the transactions described herein, are set forth on Schedule ___. All of the shares of Buyer's Common Stock are duly authorized, validly issued, fully paid and nonassessable.

(b) There are no, nor are there any arrangements not yet fully formed, which would result in any, outstanding options, warrants, agreements or other rights entitling any person or entity to purchase or acquire any shares of Buyer's Common Stock, whether unissued, treasury, or issued and outstanding, other than as set forth on Schedule 5.2. There are no outstanding securities of Buyer of any nature whatsoever other than as described on Schedule 5.2.

5.3 Common Stock Validly Issued. The shares of Common Stock of Buyer to be issued to Seller pursuant to this Agreement will be issued in accordance with the terms of this Agreement and are duly authorized and, upon issuance, will be validly issued, fully paid and nonassessable, and free from any Encumbrance except for restrictions imposed by state and federal securities laws.

5.4 Authority; Consents; Enforcement; Noncontravention; Noncompetes.

(a) **Authority.** Buyer has the corporate power and authority to execute, deliver and perform this Agreement, the Common Stock, each of the applicable Related

Agreements, and all other agreements, certificates or documents contemplated hereby, and has taken all actions required to authorize, execute, deliver and perform this Agreement and the applicable Related Agreements, including approval by the board of directors of Buyer.

(b) *Consents.* No consent, action, approval or authorization of or registration, declaration or filing with any Governmental Body is required for the performance of the terms of this Agreement by Buyer.

(c) *Enforcement.* This Agreement and the applicable Related Agreements have been duly executed and delivered by Buyer and constitute the legal, valid and binding obligations of Buyer, enforceable in accordance with their terms.

(d) *Noncontravention.* The execution and delivery of this Agreement and the applicable Related Agreements by Buyer does not violate any provision of the certificate of incorporate or bylaws of Buyer, and will not result in a breach or violation or default under any Order to which Buyer is subject or result in a breach by Buyer under any Contract or obligation to which it is bound. Neither the execution and delivery of this Agreement nor any of the Related Agreements, nor the compliance with, and fulfillment of, the terms, conditions and provisions hereof or thereof, will (a) violate any Legal Requirement of Buyer; or (b) require the Consent or the making by Buyer of any declaration, filing or registration with, any Person.

5.5 Buyer's Financial Statements. Buyer has delivered to Seller the following financial statements (the "Buyer Financial Statements"): (a) audited balance sheets of Buyer as at _____ in each of the years 1998 and 1999; and (b) the related statements of income, changes in stockholders' equity and cash flow for the period then ended. Buyer Financial Statements and notes thereto fairly present the financial position and the results of operation, changes in stockholders' equity and cash flow of Buyer as at the respective dates, and for the periods referred to in, Buyer Financial Statements, all in accordance with GAAP, consistently applied throughout the periods covered by Buyer Financial Statements involved, subject, in the case of interim financial statements, to normal recurring year-end adjustments, the effect of which will not, individually or in the aggregate, be materially adverse, and the absence of notes that, if presented, would not differ materially from those included in Buyer Financial Statements.

5.6 No Agent or Broker. No agent or broker or other person acting pursuant to authority given by Buyer is entitled to any commission or finder's fee, or other compensation, in connection with the transactions contemplated by this Agreement.

6. COVENANTS OF SELLER PRIOR TO CLOSING DATE.

6.1 Access and Investigation. Between the date of this Agreement and the Closing Date, Seller and its Representatives will: (a) afford Buyer and its Representatives full and free access to Sellers' personnel, properties, contracts, books and records, and other documents and data, pertaining to the Business; (b) furnish Buyer and Buyer's Representatives with copies of all such contracts, books and records, and other existing

documents and data pertaining to the Business as Buyer may reasonably request; and (c) furnish Buyer and Buyer's Representatives with such additional information as Buyer may reasonably request.

6.2 Operation of the Business. Between the date of this Agreement and the Closing Date, Seller shall:

(a) conduct the Business only in the Ordinary Course of Business, and, to that end, Seller agrees that it will not waive any rights if such waiver will have an Adverse Effect on the value of the Purchased Assets or on the Business, nor shall Seller terminate any material business relationships with any Customer;

(b) use its best efforts to preserve intact the current organization of the Business, keep available the services of the current employees and agents of the Business and Seller, and maintain the relations and goodwill with suppliers, Customers, landlords, creditors, employees, agents, and others having business relationships both with the Business and with Seller;

(c) confer with Buyer concerning operational matters of a material nature; and

(d) otherwise report periodically to Buyer concerning the condition and operation of the Purchased Assets, and the operation and financial position and results of the Business.

6.3 Notification. Between the date of this Agreement and the Closing Date, Seller will promptly notify Buyer in writing if Seller becomes aware of any fact or condition that causes or constitutes a breach of any of the representations and warranties of Seller, or if Seller becomes aware of the occurrence after the date of this Agreement of any fact or condition that would cause or constitute a breach of any such representation or warranty had such representation or warranty been made as of the time of occurrence or discovery of such fact or condition. During the same period, Seller shall promptly notify Buyer of any breach of any covenant of Seller in this Section 6 or of the occurrence of any event that may make the satisfaction of the conditions in Section 8 impossible or unlikely.

6.4 No Negotiation. Until such time, if any, as this Agreement is terminated pursuant to Section 11, Seller and its Representatives will not, directly or indirectly, solicit, initiate or encourage any inquiries or proposals from, discuss or negotiate with, provide any information to, or consider the merits of any unsolicited inquiries or proposals from, any Person (other than Buyer) relating to any transaction involving the sale of the Business or any of the Purchased Assets, or any of the capital stock of Seller, or any merger, consolidation, business combination or similar transaction including Seller, the Business or the Purchased Assets, other than Seller's anticipated disposition of the Financial Services Division of On-Demand.

6.5 Best Efforts. Between the date of this Agreement and the Closing Date, Seller will use its best efforts to cause the conditions in Section 10 to be satisfied.

7. COVENANTS OF BUYER PRIOR TO CLOSING DATE.

7.1 Best Efforts. Between the date of this Agreement and the Closing Date, Buyer will use its best efforts to cause the conditions in Section 9 to be satisfied.

7.2 Election to Board of Directors. Immediately following the execution of this Agreement, and effective upon the Closing Date, Buyer, by action of its Board of Directors, shall elect _____ to the Board of Directors of Buyer.

8. COVENANTS OF THE PARTIES; CERTAIN UNDERSTANDINGS OF THE PARTIES.

8.1 Transition of the Business; Referral of Inquiries. Seller will cooperate with Buyer to effect the smooth transition of the control and operation of the Business from Seller to Buyer, as contemplated herein, including the retention of the Customers of the Business. Seller further agrees that, following Closing, it will promptly refer to Buyer all inquiries that it may receive regarding the Products and Services, including possible purchases of the Products and Services. Following the Closing Date, Seller shall not sell, manufacture or print the Products and Services.

8.2 Business' Employees. From the Closing Date, Buyer will offer a consulting position to _____ pursuant to the Consulting Agreement, and employ _____, _____ and _____ pursuant to the Employment Agreements, in each case effective upon, and contingent upon, the Closing of the transactions contemplated by this Agreement. Seller will use its

best efforts to assist Buyer in effecting the execution and delivery of such agreements by Messrs. _____, _____, _____ and _____, respectively, including making available reasonable financial assistance or other consideration to the individuals involved.

8.3 Further Assurances. Each of the parties agrees that it will do all such further acts, assignments, transfers and conveyances as may be required to complete the transactions contemplated herein. After the date hereof, at the expense of Buyer, Seller shall, and shall use its best efforts to cause any necessary third party to, execute such documents and do such acts and things as Buyer may reasonably require for the purpose of giving to Buyer the full benefit of all the provisions of this Agreement and as may be reasonably required to complete the transactions contemplated herein.

8.4 Proration of Expenses and Other Charges of the Business. On the Closing Date, all charges of the Business will be apportioned so that all charges attributable to the period prior to the Closing Date shall be borne by Seller and such part of the relevant charges attributable to the period after the Closing Date shall be borne by Buyer and paid as set forth in the Service Agreement from revenues received by Buyer generated by Customer Contracts following the Closing. Buyer will be responsible for all bills for all Customer Contracts completed on and after the Closing Date and will remit Seller's portion to Seller in accordance with the Service Agreement. All revenues, royalties and similar sums receivable in respect of the Business shall be apportioned between Buyer and Seller on like terms.

8.5 Filing of Taxes; Payment. Seller shall for all periods through the Closing Date (a) prepare and timely file (including extensions) all Tax Returns that it is required to file under all applicable laws; (b) timely pay all Taxes it is required to pay; (c) withhold and timely pay over to the applicable authorities all Taxes that it is required to withhold and pay over; and (d) pay all Taxes on any sales and the income and gain, if any, that it realizes on the transactions contemplated by this Agreement, including the sale of the Purchased Assets.

8.6 Issuance of New Securities. Buyer, during the period of time set forth in subsection (c), below, hereby grants to Seller the right of first refusal to purchase a pro rata share of New Securities (as defined below) which Buyer may, from time to time, propose to issue and sell. Seller's pro rata share, for purposes of this right of first refusal, is a ratio of the number of shares of Common Stock owned by Seller immediately prior to the issuance of New Securities to the total number of shares of Common Stock outstanding immediately prior to the issuance of New Securities, assuming exercise of all then outstanding rights, options and warrants to acquire Common Stock of Buyer. This right of first refusal shall be subject to the following provisions:

(a) "New Securities" shall mean any capital stock, including the Common Stock and preferred stock of Buyer, whether now authorized or not, and rights, options and warrants to purchase such capital stock and securities of any type whatsoever that are, or may become, convertible into capital stock; provided that the term "New Securities" shall not include (i) securities issued pursuant to the acquisition of another Entity or business segment of any such Entity by Buyer by merger, purchase of substantially all the assets

or otherwise; (ii) borrowings from financial institutions or other persons, provided that such borrowings do not have equity features including warrants, options or other rights to purchase capital stock and are not convertible into capital stock of Buyer; (iii) securities issued to employees, consultants, officers or directors of Buyer pursuant to any stock option, stock purchase or stock bonus plan, agreement or arrangement approved by the Board of Directors of Buyer; (iv) securities issued in connection with obtaining lease financing or capital equipment purchases, provided that such financings or purchases do not have equity features as set forth above; (v) securities issued in a public offering pursuant to a registration under the Securities Act; (vi) securities issued in connection with any stock split, stock dividend or recapitalization of Buyer; (vii) securities issued in connection with corporate partnering transactions on terms approved by the Board of Directors of Buyer; and (viii) any right, option or warrant to acquire any security convertible into securities excluded from the definition of New Securities pursuant to this subsection.

(b) In the event Buyer proposes to undertake an issuance of New Securities, it shall give Seller written notice of its intention, describing the type of New Securities, their price and the general terms upon which Buyer proposes to issue the same. Seller shall have 30 days after any such notice is actually delivered to agree to purchase Seller's pro rata share of New Securities for the price and upon the terms specified in the notice by giving written notice to Buyer and stating therein the quantity of New Securities to be purchased.

(c) The right of first refusal granted under this Agreement shall expire upon, and shall not be applicable to, the earlier to occur of the first sale of Common Stock or other securities of Buyer to the public effective pursuant to a registration statement filed with, and declared effective by, the Securities and Exchange Commission under the Securities Act of 1933, as amended, and that date which is two years from the Closing Date.

8.7 Board of Directors. For a period of three years following the Closing Date, Seller shall have the right to designate, by action of its Board of Directors, an individual for election to Buyer's Board of Directors, which individual shall be reasonably acceptable to Buyer and its Board of Directors. Buyer agrees, acting through its Board of Directors and officers, to use its best efforts to the end that such individual shall be nominated for election to the Board of Directors of Buyer and so elected.

8.8 Non-Competition Agreement.

(a) Following the Closing on the Closing Date, Seller shall not, nor allow any of Seller's Affiliates to, engage, directly or indirectly, world-wide, in the manufacture and/or sale of the Products and Services, including, by way of example but not by way of limitation, the business of offering or providing electronic file management, custom publishing and/or demand printing to the academic, distant learning, and corporate education marketplaces, nor shall Seller, nor any of Seller's Affiliates, license, transfer or otherwise allow the use of the Software System or OPS Software for any such purpose. The terms of this Section 8.8 shall not prohibit Seller from continuing the Financial Services Business in its present form, nor shall the terms of this Section 8.8 prohibit

Seller from transferring its Financial Services Business to another Entity. In the event of any transfer of the Financial Services Business, the successor likewise would not be constrained pursuant to the provisions of this Section 8.8 from continuing the Financial Services Business in its present form. The terms of this Section 8.8 shall not prohibit or limit Seller from offering, providing or selling electronic file management, custom publishing and/or demand printing to customers not in the academic, distant learning or corporate education marketplaces.

(b) The terms of the prohibitions set forth in this Section 8.8 shall expire on the earlier of the tenth anniversary of this Agreement or the date that Buyer, its successors and assigns, permanently ceases to engage in the business of offering or providing electronic file management, custom publishing and demand printing.

(c) Seller acknowledges that a violation of the prohibitions set forth in this Section 8.8 may cause Buyer irreparable harm which may not be adequately compensated for by money damages. Seller therefore agrees that, in the event of any actual or threatened violation of the prohibitions set forth in this Section 8.8, Buyer, in addition to any other remedies it may have, shall be entitled to a temporary restraining order and to preliminary and final injunctive relief against Seller or any Affiliate of Seller to prevent any violations, without the necessity of posting a bond. Further, it is agreed that the running of such 10-year time period shall be tolled during the time of any dispute between the parties as to enforcement of any prohibition set forth in this Section 8.8. It is the intent and understanding of each party hereto that, in any action before any court or agency legally empowered to enforce the prohibitions set forth herein, if any term,

restriction, covenant or promise in this Section 8.8 is found to be unreasonable and for that reason unenforceable, then such term, restriction, covenant or promise shall be deemed modified to the extent necessary to make it enforceable by such court or agency.

8.9 Assignment of Customer Contracts. Effective on and as of the Closing on the Closing Date, for the consideration set forth herein, Seller shall be deemed to assign and shall assign to Buyer, its successor and assigns, all of Seller's right, title and interest in and to the Customer Contracts, and each of them, all revenues associated therewith, all Customer Files and all Pending Commitments.

9. CONDITIONS PRECEDENT TO BUYER'S OBLIGATION TO CLOSE. Buyer's obligation to consummate the transactions contemplated herein, and to take the actions required to be taken by Buyer, at the Closing, is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Buyer, in whole or in part):

9.1 Accuracy of Representations. All of the representations and warranties of Seller in this Agreement (considered collectively), and each of such representations and warranties (considered individually), must have been accurate in all material respects as of the date of this Agreement, and must be accurate in all material respects as of the Closing Date as if made on the Closing Date.

9.2 Seller Performance; Related Agreements. All of the covenants and obligations that Seller is required to perform or to comply with pursuant to this Agreement at or prior

to the Closing (considered collectively), and each of these covenants and obligations (considered individually), must have been duly performed and complied with in all material respects; and Seller shall have executed and delivered each of the Related Agreements.

9.3 Consulting Agreement with _____. Buyer shall have entered into the Consulting Agreement with _____.

9.4 Employment Agreements. Buyer shall have entered into the Employment Agreements with _____, _____ and _____.

9.5 Customer Contracts. The Customer Contracts shall have been assigned to Buyer in form and substance acceptable to Buyer.

9.6 Consents. Each of the Consents identified on Schedule 4.7(b) must have been obtained and must be in full force and effect.

9.7 Other Documents. Buyer must have received each of the Related Agreements, duly executed, and such other documents as it may reasonably request for the purpose of (a) consummating the transactions contemplated hereby; (b) enabling its counsel to provide the opinion referred to in Section 12.2(c); (c) evidencing the accuracy of any of the representations and warranties of Seller; (d) evidencing the performance by Seller of, or the compliance by Seller with, any covenant or obligation required to be performed or

complied with by it; (e) evidencing the satisfaction of any condition referred to in this Section 9; or (f) otherwise facilitating the consummation or performance of any of the transactions contemplated herein.

9.8 No Proceedings. Since the date of this Agreement, there must not have been commenced or threatened against Buyer, or against any Person affiliated with Buyer, any Proceeding (a) involving any challenge to, or seeking damages or other relief in connection with, any of the transactions contemplated herein; or (b) that may have the effect of preventing, delaying, making illegal, or otherwise interfering with any of the transactions contemplated herein.

9.9 No Prohibition. Neither the consummation nor the performance of any of the transactions contemplated herein will, directly or indirectly (with or without notice or lapse of time), materially contravene, or conflict with, or result in a material violation of, or cause Buyer or any Person affiliated with Buyer to suffer any material adverse consequence under, (a) any applicable Legal Requirement or Order; or (b) any Legal Requirement or Order that has been published, introduced, or otherwise proposed by or before any Governmental Body.

10. CONDITIONS PRECEDENT TO SELLER'S OBLIGATION TO CLOSE. Seller's obligation to consummate the transactions contemplated herein and to take the other actions required to be taken by Seller at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Seller, in whole or in part):

10.1 Accuracy of Representations. All of Buyer's representations and warranties in this Agreement (considered collectively), and each of these representations and warranties (considered individually), must have been accurate in all material respects as of the date of this Agreement and must be accurate in all material respects as of the Closing Date as if made on the Closing Date.

10.2 Buyer's Performance. All of the covenants and obligations that Buyer is required to perform or to comply with pursuant to this Agreement at or prior to the Closing (considered collectively), and each of these covenants and obligations (considered individually), must have been performed and complied with in all material respects.

10.3 Issuance and Delivery of Buyer Common Stock. Buyer shall have issued and delivered _____ shares of its Common Stock, \$.01 par value per share, to Seller.

10.4 Other Documents. Seller must have received such other documents as Seller may reasonably request for the purpose of (a) enabling its counsel to provide the opinion referred to in Section 12.1(d); (b) evidencing the accuracy of any representation or warranty of Buyer; (c) evidencing the performance by Buyer of, or the compliance by Buyer with, any covenant or obligation required to be performed or complied with by Buyer; (d) evidencing the satisfaction of any condition referred to in this Section 10; or (e) otherwise facilitating the consummation of any of the transactions contemplated herein.

10.5 Election to Board of Directors. Buyer agrees to nominate _____ (or such other individual who shall be reasonably satisfactory to Buyer), for a period of three years following the Closing, or for so long as Seller and its transferees own not less than 50% of the Common Stock issued to them pursuant to this Agreement, and Buyer shall deliver at Closing written agreements of Messrs. _____ and _____, as directors and stockholders of Buyer, to use their best efforts, including voting shares of stock in their name, for the election of _____ (or such other individual designated by Seller) to Buyer's Board of Directors.

11. TERMINATION.

11.1 Termination Events. This Agreement may, by notice given prior to or at the Closing, be terminated:

(a) by either Buyer or Seller if the other has committed a breach of any provision of this Agreement and such breach has not been waived;

(b) (i) by Buyer if any of the conditions in Section 9 has not been satisfied as of the Closing Date or if satisfaction of such a condition is or becomes impossible (other than through the failure of Buyer to comply with its obligations under this Agreement) and Buyer has not waived such condition on or before the Closing Date; or (ii) by Seller, if any of the conditions in Section 10 has not been satisfied as of the Closing Date or if satisfaction of such a condition is or becomes impossible (other than through the failure

of Seller to comply with its obligations under this Agreement) and Seller has not waived such condition on or before the Closing Date;

(c) by mutual consent of Buyer and Seller; or

(d) by either Buyer or Seller if the Closing has not occurred (other than through the failure of any party seeking to terminate this Agreement to comply fully with its obligations under this Agreement) on or before _____, 2000, or such later date as the parties may agree upon.

11.2 *Effect of Termination.* Each party's right of termination under this Section 11 is in addition to any other rights it may have under this Agreement or otherwise, and the exercise of a right of termination will not be an election of remedies. If this Agreement is terminated pursuant to Section 11.1, all further obligations of the parties under this Agreement will terminate, except that the obligations in Section 14.5 will survive; provided, however, that if this Agreement is terminated by a party because of the breach of the Agreement by the other party or because one or more of the conditions to the terminating party's obligations under this Agreement is not satisfied as a result of the other party's failure to comply with its obligations under this Agreement, the terminating party's right to pursue all legal remedies will survive such termination unimpaired.

12. DELIVERIES AND ACTIONS TO BE TAKEN AT CLOSING.

12.1 Deliveries by Seller. At the Closing, Seller shall deliver to Buyer (duly executed where appropriate):

(a) *Seller's Resolutions.* Certified copies of resolutions of the shareholders, if required, and the board of directors of Seller approving this Agreement and the transactions contemplated hereby in form reasonably acceptable to Buyer.

(b) *Related Agreements.* Each of the Related Agreements shall be executed and delivered to Buyer in form reasonably satisfactory to Buyer.

(c) *Possession of Purchased Assets.* Possession of all the Purchased Assets shall be delivered to Buyer, in form reasonably satisfactory to Buyer.

(d) *Opinion of Counsel.* An opinion of counsel for Seller in form reasonably satisfactory to Buyer.

12.2 Deliveries by Buyer. At the Closing, Buyer shall deliver to Seller (duly executed where appropriate):

(a) *Buyer's Resolutions.* Certified copies of the resolutions of the Board of Directors of Buyer approving the transactions contemplated by this Agreement, in form reasonably satisfactory to Seller.

(b) Issuance of Common Stock. The Common Stock of Buyer shall be issued and delivered to Seller.

(c) Opinion of Counsel. An opinion from counsel for Buyer in form reasonably satisfactory to Seller.

13. INDEMNIFICATION.

13.1 Indemnification by Seller. Seller shall indemnify Buyer, and its officers and directors, against, and hold them harmless from, losses, claims, damages, actions, suits, demands, costs and other expenses, including attorneys' fees, which may be made against or incurred by any of them resulting from or arising out of or in any way connected with any misrepresentation, breach or nonfulfillment of any representation or warranty made by Seller in regard to title to the Software, specifically including Sections _____, _____, _____ and _____ of this Agreement.

13.2 Remedies. Upon the occurrence of any event for which Buyer or any of its officers or directors are entitled to indemnification under this Agreement, Buyer shall notify Seller of the type of claim and its estimated amount, if such amount can be estimated. Within 20 business days following such notice, Seller shall provide Buyer, in reasonable detail, the reasons why Seller does not believe that the claim constitutes a claim involving indemnification under this Agreement or, alternatively, the method by which Seller shall resolve the claim. Seller shall allow Buyer and its Representatives

access to Seller's records so as to allow Buyer to evaluate the claim and Seller's response to the claim. In the event the claim involved a third-party claim, Seller shall have the right to assume and control, at its expense, the defense of such third-party claim and any settlement thereof, provided that it promptly assumes such defense and acknowledges in writing its obligation to indemnify Buyer and its officers and directors in accordance with the terms of this Agreement. Buyer shall have all of the rights and remedies available to it at law, in equity or otherwise and, as to third-party claims, Buyer, at its expense, may assume or participate in the defense of any such claim which it, in its discretion, believes may have a material impact on Buyer.

13.3 *Failure by Seller to Defend.* If Seller fails to assume promptly the defense of any third-party claim at Seller's expense and if Seller fails to acknowledge its obligation to indemnify Buyer and its officers and directors, as provided herein, Buyer may assume the defense of such claim, at Seller's expense, and in all regards Seller shall reasonably cooperate with Buyer at Seller's expense. Such claim may be defended, paid, settled or otherwise disposed of in such manner as Buyer shall in its discretion determine without in any manner impairing the indemnification obligations of Seller under this Agreement.

13.4 *Obligations of Seller in Defending Claim.* If Seller assumes the defense of any third-party claim, Seller shall take all reasonable steps necessary in the defense or settlement of such claim, and shall furnish to Buyer a copy of all written communications concerning such claim, including copies of all pleadings, motions, judgments and other documents filed in court. Buyer agrees to cooperate reasonably with Seller in such defense, at Seller's expense. Seller shall not, in the defense of any third-party claim,

consent to entry of any judgment or enter into any settlement, except in each instance with the prior consent of Buyer, unless such judgment or settlement includes as an unconditional term thereof the giving by any claimant of a release from all liability in respect of such third-party claim to Buyer.

13.5 *Indemnification by Buyer.* Buyer shall indemnify Seller against, and hold Seller harmless from, all claims or damages incurred by Seller resulting from any misrepresentation or breach of any of the representations or warranties made by Buyer in this Agreement. Upon an occurrence of any event for which Seller may be entitled to indemnification under this Agreement, Seller shall have all the rights and remedies available to it as Buyer and its officers and directors have against Seller, subject to the same limitations and procedures imposed upon Buyer under the terms of this Section 13.

14. MISCELLANEOUS PROVISIONS.

14.1 *Amendment; Waiver.* This Agreement may be amended, modified or superseded only by a written instrument signed by all of the parties to this Agreement. No party shall be deemed to have waived compliance by another party of any provision of this Agreement unless such waiver is contained in a written instrument signed by the waiving party and no waiver that may be given by a party will be applicable except in the specific instance for which it is given. The failure of any party to enforce at any time any of the provisions of this Agreement or to exercise any right or option contained in this Agreement or to require at any time performance of any of the provisions of this Agreement, by the other party shall not be construed to be a waiver of such provisions

and shall not affect the validity of this Agreement or any of its provisions or the right of such party thereafter to enforce each provision of this Agreement. No course of dealing shall operate as a waiver or modification of any provision of this Agreement or otherwise prejudice such party's rights, powers and remedies.

14.2 *Agreement Non-Assignable; Binding Effect.* Neither party shall assign any of its rights or obligations under this Agreement, whether by operation of law or otherwise, without obtaining the prior consent of the other party to this Agreement. Subject to the foregoing, all of the provisions of this Agreement shall be binding upon and shall inure to the benefit of and be enforceable by the parties to this Agreement and their respective successors and assigns.

14.3 *Construction and Interpretation of Agreement.*

(a) Section titles or captions in this Agreement are included for purposes of convenience only and shall not be considered a part of this Agreement in construing or interpreting any of its provisions.

(b) When used in this Agreement, the word "including" shall have its normal common meaning and any list of items that may follow such word shall not be deemed to represent a complete list.

(c) The parties have participated jointly in the negotiation and drafting of this Agreement. If any ambiguity or question of intent or interpretation arises, no presumption

or burden of proof shall arise favoring or disfavoring either party by virtue of the authorship of any of the provisions of this Agreement.

(d) Unless the context otherwise requires, when used in this Agreement, the singular shall include the plural, the plural shall include the singular, and all nouns, pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, as the identity of the Person or Persons may require.

(e) The parties do not intend that this Agreement shall confer on any third party any right, remedy or benefit or that any third party shall have any right to enforce any provision of this Agreement.

14.4 Severability of Provisions. If a court in any proceeding holds any provision of this Agreement or its application to any Person or circumstance invalid, illegal or unenforceable, the remainder of this Agreement, or the application of such provision to Persons or circumstances other than those to which it was held to be invalid, illegal or unenforceable, shall not be affected, and shall be valid, legal and enforceable to the fullest extent permitted by law, but only if and to the extent such enforcement would not materially and adversely frustrate the parties' essential objectives as expressed in this Agreement. Furthermore, in lieu of any such invalid or unenforceable term or provision, the parties intend that the court add to this Agreement a provision as similar in terms to such invalid or unenforceable provision as may be valid and enforceable, so as to effect the original intent of the parties to the greatest extent possible.

14.5 Confidentiality of Certain Information. To and until the Closing on the Closing Date:

(a) The parties and their Representatives shall hold and keep confidential all information which is proprietary in nature and non-public or confidential, in whole or in part (the “Confidential Information”) which any of them may receive from the other party concerning such other party. Confidential Information shall include, by way of example but not by way of limitation, all books and records of the other party, all financial information concerning the other party, and all similar information. Failure to mark any of the Confidential Information as non-public, proprietary or confidential shall not affect its status as Confidential Information under the terms of this Agreement. Confidential Information shall not include any information in the possession of the receiving party (i) that is developed by such party without reference to and independent of any Confidential Information; (ii) is learned from a third party not under any duty of confidence to the disclosing party or (iii) becomes part of the public domain through no fault of the receiving party.

(b) Neither of the parties nor their Representatives, without the prior consent of the other party, shall disclose or use any such Confidential Information, in whole or in part, except in connection with the performance of the transactions described in this Agreement. Unless otherwise required by law, none of the parties shall disclose any Confidential Information acquired as a result of this Agreement to any person or entity, other than its respective counsel and other representatives, and such other third parties (such as bankers and lessors) with whom it must communicate to consummate the

transactions described by this Agreement. If the Closing does not occur, each party will destroy or return to the other party all copies of documents that contain the other party's Confidential Information.

14.6 Exhibits and Schedules. All Exhibits and Schedules to this Agreement shall constitute part of this Agreement and shall be deemed to be incorporated in this Agreement by reference and made a part of this Agreement as if set out in full at the point where first mentioned.

14.7 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Agreement and all of which, when taken together, shall be deemed to constitute one and the same agreement.

14.8 Entire Agreement. This Agreement embodies the entire agreement and understanding of the parties related to its subject matter and supersedes the letter of intent between the parties and all prior proposals, understandings, agreements, correspondence, arrangements and contemporaneous oral agreements relating to subject matter of this Agreement. No party has made any representation, promise, inducement or statement of intention that has not been embodied in this Agreement.

14.9 Further Assurances. Each party shall execute and deliver such additional documents or take such additional actions as may be requested by another party to this Agreement if such requested document or action is reasonably necessary to effect the transactions described in this Agreement.

14.10 Governing Law. This Agreement shall be governed by, and shall be construed and enforced in accordance with, the laws of the _____, governing contracts to be wholly performed within such state, without giving effect to any conflict-of-law rule or principle of such state.

14.11 Public Announcement. Each party shall coordinate with the other party in regard to press releases and other public announcements regarding this Agreement.

14.12 Notices. All notices, requests, consents, approvals, waivers, demands and other communications required or permitted to be given or made under this Agreement shall be in writing and shall be deemed delivered to the parties (a) on the date of personal delivery or transmission by facsimile transmission; (b) on the first business day following the date of delivery to a nationally recognized overnight courier service; or (c) on the third business day following the date of deposit in the United States Mail, postage prepaid, by certified mail, in each case, addressed as follows (or to such other address, person or entity as any party may designate by notice to the others in accordance herewith):

If to Buyer:

With a copy to:

If to Seller:

With a copy to:

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first written above.

Buyer:

The, Inc.,

Doing Business as The.com

a _____ corporation

By: _____

Name: _____

Its: _____

Seller:

Company

a _____ corporation

By: _____

Name: _____

Its: _____