

EXECUTION COPY

ASSET PURCHASE AGREEMENT

AMONG

BCE EMERGIS TECHNOLOGIES, INC.,

BCE EMERGIS INC.

AND

THE FEDERAL HOME LOAN MORTGAGE CORPORATION

Dated as of September 19, 2002

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EXECUTION COPY

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the "Agreement") is made and entered into as of September 19, 2002 (the "Effective Date"), by and among BCE Emergis Technologies, Inc., a Delaware corporation (the "Purchaser"), BCE Emergis Inc., a Canadian corporation (the "Parent"), and the Federal Home Loan Mortgage Corporation, a corporation organized under the federal laws of the United States (the "Seller").

RECITALS

WHEREAS, to lower transaction costs for consumers, the Seller is engaged in a project to develop a fully-integrated electronic mortgage closing, fulfillment and storage solution, known as Omega ("Omega");

WHEREAS, one of the goals of the Parties (as defined herein) is to assist, through Omega and any complementary capabilities developed with respect to or added to Omega from time to time, in the development of industry standards that improve the linkage between the secondary mortgage market and the mortgage origination process, resulting in lower transaction costs to consumers;

WHEREAS, to bring Omega to market and accelerate the broad market acceptance of Omega and any complementary capabilities developed with respect to or added to Omega from time to time, the Seller desires to sell, assign and transfer to the Purchaser, and the Purchaser desires to purchase and acquire from the Seller, the assets relating to or used in the Omega product development effort as they exist on the Effective Date (the "Project"), subject to certain liabilities, as further specified and upon the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1 DEFINITIONS

1.1 Definitions. As used in this Agreement, the following terms, when capitalized, have the meanings set forth below:

"Affiliate" means, with respect to any Person, at any time, any other Person directly or indirectly Controlling, Controlled by, or under common Control with, such Person at such time. Notwithstanding the foregoing, for the purpose of this Agreement, no Governmental Authority shall be considered an Affiliate of any Person.

"Affiliated Party" has the meaning set forth in Section 4.19(b).

“Agreement” has the meaning set forth in the Preamble, and includes all Schedules and Exhibits hereto, as modified, supplemented or amended from time to time, which shall be deemed to be incorporated herein by reference.

“Appraisal Request Date” has the meaning set forth in Section 17.1(a).

“Appraised Amount” has the meaning set forth in Section 17.1(a).

“Appraiser” has the meaning set forth in Section 17.1(a).

“Appraiser’s Certificate” has the meaning set forth in Section 17.1(a)(i).

“Assets” has the meaning set forth in Section 2.1.

“Assignment Agreement” means an assignment and assumption agreement substantially in the form of Exhibit A, pursuant to which the Seller will assign to the Purchaser, and the Purchaser will accept and assume, all of the Seller’s rights and obligations under each of the Contracts included within the definition of Assets.

“Assignment of Existing Services Agreement” means an assignment of existing services agreement substantially in the form of Exhibit B, pursuant to which the Seller will assign to the Purchaser, and the Purchaser or the Purchaser’s Affiliate will accept and assume, all of the Seller’s rights and obligations under the Existing Services Agreement.

“Assumed Liabilities” has the meaning set forth in Section 2.3(a).

“Assumption Notice” has the meaning set forth in Section 14.2(b).

“Bankruptcy Code” has the meaning set forth in Section 13.4.

“Bill of Sale” has the meaning set forth in Section 12.3(a).

“Branding” means the branding elements of the Seller owned by the Seller, including trade names, trademarks, service marks and logos, color schemes, “look and feel” and other designations of origin associated with the Seller (or its products and services).

“Business Day” means any day except Saturday, Sunday and any other day that banks are required or authorized by law to close in New York City.

“Certificate Date” has the meaning set forth in Section 17.1(a)(i).

“Claim Notice” has the meaning set forth in Section 14.2(a).

“Closing” has the meaning set forth in Section 12.1.

“Closing Date” has the meaning set forth in Section 12.1.

“Code” means the Internal Revenue Code of 1986, as amended.

“Competing Application” means an electronic application that (i), in the aggregate, has substantially similar features and utility to any individual Product or Products taken as a whole which Product or Products are distributed by the Omega Company and (ii) would be reasonably expected to divert a material portion of revenue generated from the sale of such individual Product or Products taken as a whole, as applicable, with which such application competes to third parties for use in the U.S. Mortgage Market.

“Confidential Information” has the meaning set forth in Section 6.4(d).

“Consideration” has the meaning set forth in Section 3.1.

“Contract” means any contract, agreement, warranty, guaranty, indenture, note, bond, loan, instrument, lease and sublease, conditional sale contract, mortgage, license, franchise, insurance policy, confirmed purchase order, confirmed sales order, commitment or other arrangement or agreement, and all amendments thereto.

“Control” means, with respect to a particular Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

“Cost Statement” has the meaning set forth in Section 13.5(b).

“Development Costs” has the meaning set forth in Section 13.5(a).

“Direct Claim” has the meaning set forth in Section 14.2(a).

“Disclosing Party” has the meaning set forth in Section 6.4(d).

“Dollars” or **“\$”** refer to the lawful currency of the United States of America.

“Effective Date” has the meaning set forth in the Preamble.

“Equipment” means the items of equipment set forth on Schedule 1.1(c).

“Equity Interest” means any corporate stock, shares, interests, participations, rights or other equivalents of corporate stock, partnership interests, membership interests or any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person, and all warrants, options or other rights to acquire, or convertible into or exchangeable for, any of the foregoing.

“Exceptional Transaction” means any transaction by the Omega Company outside of the ordinary course of its business involving the acquisition by the Omega Company of an Equity Interest or Material Asset of another Person.

“Excluded Assets” has the meaning set forth in Section 2.2.

“Excluded Liabilities” has the meaning set forth in Section 2.4.

“Existing Materials” has the meaning set forth in Section 13.6(a).

"Existing Services Agreement" means the Services Agreement by and between the Seller and the Purchaser dated as of August 17, 2001.

"FCF" means the Gross Revenue (a) minus the sum of (i) the reasonable operating expenses (provided that the access fees the Seller pays to the Omega Company under the terms of the Marketing Agreement shall not be included as an expense offset), inclusive of depreciation and amortization, incurred by the Omega Company and (ii) estimated Taxes that would be paid by the Omega Company if the Omega Company filed separate tax returns as a "C" corporation (under the Code) without regard to prior year losses; (b) plus depreciation and amortization incurred by the Omega Company; (c) minus the change in non-cash working capital of the Omega Company since the end of the previous calendar quarter in the event that such non-cash working capital has increased since the end of the previous calendar quarter (provided that such non-cash working capital does not cause the Omega current assets divided by Omega current liabilities to exceed 1.5), or plus the change in non-cash working capital of the Omega Company since the end of the previous calendar quarter in the event that such non-cash working capital has decreased since the end of the previous calendar quarter; (d) minus reasonable and recurring capital expenditures and other reasonable capital expenditures as may be required by the Omega Company to introduce complementary products to the Omega Company; provided that such capital expenditures shall not include Exceptional Transactions; (e) plus the value of the net proceeds from the disposition of Omega Assets, which value shall be the amount of cash received, or the value of readily marketable promissory notes or readily marketable securities received.

"Fifth Year Payment" means an amount equal to the product of (i) the Fifth Year Payment Specified Percentage of the Recurring EBITDA for the calendar year 2006 times (ii) 6.

"Fifth Year Payment Date" means the date on which the Fifth Year Payment is made, which shall be no later than 30 calendar days following December 31, 2006.

"Fifth Year Payment Specified Percentage" means 11.5% or, if altered in accordance with Section 3.2(b), the percentage calculated in accordance with Section 3.2(b).

"Final Determination" has the meaning set forth in Section 3.5(c)(iv).

"GAAP" means the generally accepted accounting principles consistently applied.

"Governmental Authority" means any federal, state, provincial, local or foreign government, governmental regulator or administrative authority (or subdivision thereof) and any agency or commission or any court, tribunal or judicial or arbitral body that has jurisdiction over a Party's business or its assets.

"Gross Revenue" means the gross revenue, calculated in accordance with GAAP, that is recognized by the Omega Company or by an Affiliate of the Omega Company from the Omega Assets or the use of the Licensed IP in connection therewith, net of commissions related thereto, and received by the Omega Company or an Affiliate of the Omega Company; provided that if any of the Omega Assets are licensed in an arm's length transaction, the license fees shall be included as part of Gross Revenue but, not the gross revenues received by such licensee from such Omega Assets; and provided, further, that the access fees the Seller pays to the Omega

Company under the terms of the Marketing Agreement shall not be included as part of Gross Revenue.

"Guaranty" has the meaning set forth in Section 16.1(a).

"Held for Use" means, with respect to any Intellectual Property, that such Intellectual Property is held by or on behalf of the Seller as of the Closing Date with the intention that such Intellectual Property will be used in the Omega Project for the purposes of pursuing the Omega Business Plan dated April 2002, even if such Intellectual Property is not actually being used in the Omega Project as of the Closing Date.

"Indemnifiable Taxes" means all Taxes, other than any Tax that is imposed as a result of any relationship, connection or nexus, at any point in time, between the recipient of the payment that is subject to the Tax and the jurisdiction of the Governmental Authority imposing the Tax (other than a relationship, connection, or nexus between the recipient of such payment and a Governmental Authority that is not the United States, a state, a local municipality, or a subdivision thereof which arises from the execution of this Agreement and other Purchaser Documents and the performance thereunder).

"Indemnified Party" has the meaning set forth in Section 14.2.

"Indemnifying Party" has the meaning set forth in Section 14.2.

"Intellectual Property" means all intellectual property and proprietary rights throughout the world including, without limitation, such rights in and to (i) trademarks, trade dress and service marks and applications for registration thereof, trade names, logos and slogans and the goodwill associated with any of the foregoing ("Trademarks"); (ii) patents and patent applications ("Patents") and inventions (whether or not patentable); (iii) registered and unregistered copyrights, writings and other works of authorship; (iv) trade secrets, know-how and Confidential Information; (v) Internet domain names; (vi) software, including source code, object code, application programming interfaces, databases (or any portion thereof) and other software-related specifications and documentation, but excluding generally commercially available software and (vii) any legal privileges or claims of infringement associated with any of the foregoing.

"Judgments" means any and all judgments, orders, writs, directives, demands, rulings, decisions, determinations, injunctions, decrees or awards of any Governmental Authority.

"Key Employees" means Management and the Omega Employees set forth in Schedule 1.1(d) hereof.

"Knowledge of the Parent" (and other phrases of similar import) means the actual knowledge of the Persons listed on Schedule 1.1(a), in each case after any such inquiry as may be reasonably necessary regarding the circumstances.

"Knowledge of the Purchaser" (and other phrases of similar import) means the actual knowledge of the Persons listed on Schedule 1.1(a), in each case after any such inquiry as may be reasonably necessary regarding the circumstances.

"Knowledge of the Seller" (and other phrases of similar import) means the actual knowledge of the Persons listed on Schedule 1.1(b), in each case after any such inquiry as may be reasonably necessary regarding the circumstances.

"Lease" has the meaning set forth in Section 4.5(a).

"Legal Requirements" means any and all (i) statutes, laws, ordinances, orders, codes, rules, regulations, published standards, published requirements or published interpretations of any Governmental Authority, (ii) final and non-appealable Judgments and (iii) agreements or consents with any Governmental Authority in order to comply with matters described in (i) or (ii) above.

"License Agreements" has the meaning set forth in Section 4.7(a).

"Licensed IP" means (i) that Intellectual Property (other than Trademarks or Branding) existing as of the date hereof to the extent used or Held for Use by or on behalf of the Seller in the Omega Project as of the Closing Date, other than (x) the Transferred IP and (y) the Intellectual Property listed on Schedule 1.1(e), except that with respect to any such Intellectual Property held under license, such Intellectual Property shall only be "Licensed IP" to the extent the applicable licenses permit the sub-license thereof without consent of the applicable licensor and without any additional charge to the Seller; and (ii) any patents registered by or on behalf of the Seller after the Closing Date in respect of any of the Intellectual Property described in clause (i) to the extent necessary for use of the Assets. Notwithstanding the foregoing, the Licensed IP does not include Intellectual Property that is embedded in or otherwise comprises an application or system external to the Omega Project (including, without limitation, Loan Prospector®), notwithstanding the inclusion in the Omega Project of communication protocols and other subsystems which permit communication with or utilization of such external application or system.

"Licensed Transferred IP" means that portion of the Transferred IP that is used or Held for Use by the Seller under license.

"Lien" means any mortgage, security interest, pledge, hypothecation, assignment, deposit arrangement, encumbrance, easement, lease, third-party interest, lien (statutory or otherwise), charge, preference, priority or security agreement, any option, warrant, attachment or right of first refusal and any preemptive, conversion, put, call, claim or right or restriction on transfer (other than restrictions imposed by applicable securities laws).

"Loan Agreement" means a loan agreement substantially in the form of Exhibit C, pursuant to which, among other things, the Purchaser will agree to issue the Promissory Note to Seller.

"Losses" means all liabilities, Judgments, claims, settlements, losses, damages (including any diminution in value as appropriate), reasonable fees (including reasonable attorneys' and other experts' fees and disbursements), Liens, taxes, penalties, obligations and reasonable expenses.

"Management" means the three directors and one officer listed on Schedule 1.2 under the caption "Management."

"Market Value" has the meaning set forth in Section 17.1(a).

"Marketing Agreement" means a marketing agreement substantially in the form of Exhibit D, pursuant to which the Seller and the Purchaser will agree to cooperate in the marketing of Omega and the Products.

"Material Adverse Effect" means any event, occurrence, state of circumstances or facts or change in the Assets, including without limitation, a deterioration in the condition or quality of the Assets that results in or causes or that may be reasonably expected to have, either alone or together, a material adverse impact on the Project, taken as a whole, except to the extent that such Material Adverse Effect results from or is caused by (i) conditions generally affecting the economy or the industry in which the Project is involved, or (ii) the actions of the Purchaser or the Parent.

"Material Assets" means any assets of another Person acquired by the Omega Company for a price that is at least the greater of (i) \$5,000,000 or (ii) 20% of all Quarterly Payments made to the Seller, prior to any adjustment made in accordance with Section 3.2(c), with respect to the calendar quarters during the calendar year in which the Omega Company acquires such assets.

"Material Contracts" has the meaning set forth in Section 4.8.

"Non-Management Omega Employee" means each of the Omega Employees who is not a member of Management, as listed on Schedule 1.2 under the caption "Non-Management Employees."

"Non-Recurring Portion of Gross Revenue" means: (i) one-time revenue derived by the Omega Company for the provision of services; (ii) one-time revenue derived by the Omega Company from an Affiliate or from a third party to which the Omega Company shall have licensed any Omega Assets; and (iii) net proceeds derived by the Omega Company from the sale of any of the Omega Assets.

"Offer" has the meaning set forth in Section 9.1(b).

"OFHEO" means the Office of Federal Housing Enterprise Oversight, an independent office under the U.S. Department of Housing and Urban Development.

"Omega" has the meaning set forth in the Recitals.

"Omega Assets" means, from time to time, the assets of the Omega Company, including the Assets contributed to the Omega Company by the Purchaser as contemplated by this Agreement and such other assets as from time to time are held by the Omega Company, including without limitation assets related to the capabilities complementary to Omega developed by or added to the Omega Company from time to time and the physical custodial business generated by the Omega Company.

"Omega Company" shall mean BCE Emergis Electronic Mortgage Services, LLC, a Delaware limited liability company and any successor thereto.

"Omega Employee" means each employee of the Project, as listed on Schedule 1.2, whether under the caption "Management" or under the caption "Non-Management Employees."

"Omega Project" means the Omega product development effort in its current stage of development and any in-process research and development undertaken for such development effort through the Closing Date.

"Omega Property" has the meaning set forth in Section 4.5(a).

"Omega Stock" means any capital stock (including common stock or preferred stock) of, or limited liability company membership interests in, the Omega Company, whether now authorized or not, and rights, options or warrants to purchase capital stock, limited liability interests and securities of any type whatsoever that are, or may become, convertible into capital stock or limited liability company membership interests.

"Parent" has the meaning set forth in the Preamble.

"Party" means the Purchaser, the Parent or the Seller, as applicable. "Parties" means the Purchaser, the Parent and the Seller, collectively.

"Patents" has the meaning set forth in the definition of "Intellectual Property".

"Payment" means each of the Quarterly Payments and the Fifth Year Payment.

"Payment Certificate" has the meaning set forth in Section 3.5(b).

"Payment Date" means each of the Quarterly Payment Dates and the Fifth Year Payment Date.

"Payroll Taxes" means all employment, withholding or payroll related taxes, together with any interest or any penalty with respect thereto, imposed by any Governmental Authority.

"Permit" means any permit, authorization, approval, registration, right of way, easement, order, waiver, variance or other license issued, granted, given or otherwise made available by or under the authority of any Governmental Authority.

"Permitted Exceptions" means (a) statutory liens for current taxes, assessments or other governmental charges not yet due and payable or the amount or validity of which is being contested in good faith by appropriate proceedings; (b) mechanics', carriers', workers', repairers' and similar Liens arising or incurred in the ordinary course of business that are not material to the business, operations or financial condition of the property so encumbered; (c) zoning, entitlement and other land use and environmental regulations by Governmental Authorities, provided, that such regulations have not been violated; and (d) such other charges, easements, restrictions, encumbrances and other similar matters affecting title to the Omega Property or Assets which do not, and will not, materially detract from the value of or materially interfere with the use of the Omega Property or the Assets (as of the Effective Date or the Closing Date, as applicable).

"Person" means any individual, partnership, limited liability company, joint venture, firm, corporation, association, business, trust, unincorporated organization or other enterprise or form of organization or any Governmental Authority.

"Proceeding" means any action, suit, hearing, arbitration, inspection, investigation, inquiry, review or other judicial, administrative or other proceeding, at law or in equity, before any Governmental Authority.

"Products" has the meaning set forth in the Marketing Agreement.

"Project" has the meaning set forth in the Recitals.

"Promissory Note" means the Promissory Note substantially in the form of Exhibit E, issued by the Purchaser to the Seller pursuant to the Loan Agreement having an initial aggregate principal amount of \$12,000,000 and guaranteed by the Parent pursuant to Article 16.

"Purchaser" has the meaning set forth in the Preamble.

"Purchaser Documents" has the meaning set forth in Section 5.2.

"Purchaser Indemnified Parties" has the meaning set forth in Section 14.1(a).

"Purchaser Notice" has the meaning set forth in Section 13.5(c).

"Quarterly Payment" has the meaning set forth in Section 3.1(c).

"Quarterly Payment Date" means the date that is seven (7) calendar days following the last Business Day of each calendar quarter from and including the quarter ending September 30, 2002 to and including the quarter ending December 31, 2011; provided, that if such seventh calendar day falls on a day that is not a Business Day, the Quarterly Payment Date shall be the immediately preceding Business Day.

"Quarterly Payment Specified Percentage" means, with respect to any Quarterly Payment for a particular calendar quarter, 50% or, if altered in accordance with Section 3.2(a), the percentage calculated in accordance with Section 3.2(a).

“Recurring EBITDA” means the Gross Revenue minus the reasonable recurring operating expenses of the Omega Company (provided that the access fees the Seller pays to the Omega Company under the terms of the Marketing Agreement shall not be included as an expense offset), minus the Non-Recurring Portion of Gross Revenue.

“Registration Rights Agreement” means a registration rights agreement substantially in the form of Exhibit F, pursuant to which the Omega Company will agree to register the Warrants and the securities for which the Warrants are exercisable.

“Representatives” means the directors, officers, employees, counsel, representatives, accountants and auditors of any Person.

“Residual Knowledge” has the meaning set forth in Section 6.5.

“Retention Bonus Plan” has the meaning set forth in Section 9.4(a).

“Rolled-Over FCF” has the meaning set forth in Section 3.1(c)(i).

“Seller” has the meaning set forth in the Preamble.

“Seller Documents” has the meaning set forth in Section 4.2.

“Seller Indemnified Parties” has the meaning set forth in Section 14.1(b).

“Seller-Owned Transferred IP” means that portion of the Transferred IP that is owned by the Seller.

“Seller’s Notice” has the meaning set forth in Section 3.5(c)(i).

“Selling/Wind Down Party” has the meaning set forth in Section 8.6(a).

“Specified Stock or Assets” has the meaning set forth in Section 8.5(a).

“Subsidiary” means, with respect to any Person, at any time, any other Person directly or indirectly Controlled by such Person at such time.

“Tax” or “Taxes” means all federal, state, local or foreign income, gross receipts, windfall profits, severance, property, production, sales, use, license, excise, franchise, employment, withholding, transfer, payroll, goods and services, value-added or minimum tax, or any other tax, custom, duty, governmental fee, or other like assessment or charge of any kind whatsoever, together with any interest or any penalty, addition to tax or additional amount imposed by any Governmental Authority.

“Tax Return” means any return, report or similar statement required to be filed with respect to any Taxes (including any attached schedules), including, without limitation, any information return, claim or refund, amended return and declaration of estimated Tax.

“Third Party Claim” has the meaning set forth in Section 14.2(a).

"Trademarks" has the meaning set forth in the definition of "Intellectual Property".

"Transfer" means any sale, transfer, assignment, hypothecation, pledge, encumbrance, placement in trust (voting or otherwise) or transfer by operation of law or other disposition, whether direct or indirect, whether voluntary or involuntary, whether by gift, bequest or otherwise.

"Transfer Notice" has the meaning set forth in Section 8.5(a).

"Transferred Employee" has the meaning set forth in Section 9.1(b).

"Transferred IP" means all of the Intellectual Property that is developed directly for and used or Held for Use exclusively in the Omega Project as of the Closing Date including, without limitation, the Intellectual Property listed on Schedule 4.7(a) but expressly excluding the Intellectual Property listed on Schedule 4.7(a)(i), except that with respect to any such Intellectual Property used or Held for Use by the Seller under license, such Intellectual Property shall only be "Transferred IP" to the extent the applicable licenses permit the transfer thereof.

"Transferring Party" has the meaning set forth in Section 8.5(a).

"U.S. Mortgage Market" has the meaning set forth in the Marketing Agreement.

"Use Agreement" means the transition use agreement substantially in the form of Exhibit G, pursuant to which the Seller will agree to allow the Purchaser and the Omega Company to use the premises, Equipment and certain related services for a transition period following the Closing.

"Warrants" means warrants substantially in the form of Exhibit H, pursuant to which the holder(s) thereof will have the right to purchase Omega Stock, for the exercise price, and under the terms and conditions set forth therein.

"Web Site" has the meaning set forth in the Marketing Agreement.

ARTICLE 2 ASSETS TO BE ACQUIRED

2.1 Acquisition and Transfer of Assets. Upon the terms and subject to the conditions set forth herein, at the Closing the Seller shall sell, assign, transfer, convey and deliver to the Purchaser, and the Purchaser shall purchase, acquire and accept from the Seller all of the Seller's right, title and interest in, to and under the assets set forth on Schedule 2.1 (collectively, the "Assets"), free and clear of all Liens except for Permitted Exceptions.

2.2 Excluded Assets. Notwithstanding anything to the contrary contained in Section 2.1, the Parties expressly understand and agree that the Seller is not hereunder selling, assigning, transferring or conveying to the Purchaser any assets, rights or properties not specifically set forth on Schedule 2.1, including, for purposes of clarity, the following assets, rights and properties (collectively, the "Excluded Assets"):

- (a) any receivables;
- (b) any refunds of any Tax for which the Seller is liable pursuant to Section 14.4;
- (c) the proceeds of any insurance coverage in respect of any Excluded Liability;
- (d) all Equipment;
- (e) any domain names or Trademarks used or Held for Use by the Seller in connection with the Project;
- (f) any Intellectual Property that is not Transferred IP;
- (g) the Seller's or any third party's computer network, network connections, security systems or infrastructure that is used either exclusively or together with the Project in other portions of the Seller's business; and
- (h) the assets set forth on Schedule 2.2.

All references herein to Assets shall be deemed to exclude the Excluded Assets.

2.3 Assumed Liabilities.

(a) As of the Closing Date, the Purchaser shall assume and be liable for all liabilities and obligations of the Seller under Contracts assigned to the Purchaser (pursuant to Section 2.1), in each case, to the extent that any such liability or obligation arises out of, is for, or relates to (x) time periods after the Closing, (y) goods or services received after the Closing or (z) transactions or events that occur after the Closing (collectively, the "Assumed Liabilities").

(b) The Parties expressly understand and agree that the Purchaser shall not assume or become liable for any obligations, liabilities or indebtedness of the Seller except for those specifically assumed pursuant to this Section 2.3.

2.4 Excluded Liabilities. The Parties expressly understand and agree that the Purchaser shall not assume or become liable for any obligations, liabilities or indebtedness relating to the Assets on or prior to the Closing, except for (i) obligations and liabilities assumed pursuant to Section 2.3 or pursuant to Section 13.5, and (ii) liabilities or obligations that arise out of, are for, or relate to (x) time periods after the Closing, (y) goods or services received by the Purchaser or the Omega Company after the Closing or (z) transactions or events that occur after the Closing. For purposes of clarity, such obligations and liabilities not assumed (collectively, the "Excluded Liabilities") shall include the following, and all references herein to Assumed Liabilities shall exclude the Excluded Liabilities:

- (a) any liability or obligation in respect of Taxes for which the Seller is liable pursuant to Section 14.4;
- (b) any liability or obligation to the extent relating to an Excluded Asset (including, without limitation, any liability or obligation set forth in Schedule 2.4);

(c) any claims, Judgments, causes of action, demands, notices of violation, deficiencies, costs or expenses (including, without limitation, the fees and expenses of counsel) resulting from or arising out of any act, error or omission of the Seller or any of the brokers, agents, employees, independent contractors or representatives of the Seller prior to the Closing;

(d) fees and expenses paid or payable by, or incurred by or on behalf of the Seller in connection with the negotiation, execution and delivery of this Agreement and the consummation of any other transactions contemplated hereby and thereby;

(e) any obligation of the Seller to indemnify any Person by reason of the fact that such Person was a director, officer, employee, or agent of the Seller or was serving at the request of the Seller as a partner, trustee, director, officer, employee or agent of any entity (except obligations related to Assets or the Transferred Employees that arise out of, are for, or relate to (x) time periods after the Closing, (y) goods or services received by the Purchaser or the Omega Company after the Closing or (z) transactions or events that occur after the Closing);

(f) all liabilities and obligations under Contracts assigned to the Purchaser (pursuant to Section 2.1) that arise out of, are for, or relate to (x) time periods prior to the Closing, (y) goods or services received by the Seller prior to the Closing or (z) transactions or events that occur prior to the Closing; and

(g) any liability or obligation, whether currently in existence or arising hereafter, owed by the Seller to any Affiliate of the Seller.

ARTICLE 3 CONSIDERATION

3.1 Amount and Form of Consideration. In consideration of the sale, assignment and transfer of the Assets upon the terms and conditions set forth in this Agreement, the Purchaser shall assume the liabilities and obligations specified in Section 2.3 on the Closing Date, and shall make the following payments to the Seller and take the following actions (collectively, the "Consideration"), which consideration the Parties acknowledge reflects the difficulty of determining the purchase price for the Assets because Omega is in development and its value is difficult to assess:

(a) the Purchaser shall validly issue and deliver the Promissory Note to the Seller on the Closing Date and, thereafter, the Purchaser shall make payments under the Promissory Note as required by, and otherwise comply with the terms and conditions of, the Promissory Note and the Loan Agreement;

(b) the Purchaser shall cause the Omega Company to validly issue and deliver the Warrants to the Seller on the Closing Date and, thereafter, to comply with the terms of such Warrants;

(c) the Purchaser shall pay the Seller an amount determined as follows on each Quarterly Payment Date (each such payment, a "Quarterly Payment");

(i) with respect to each Quarterly Payment Date occurring on or after September 30, 2002 and before or on January 7, 2005: (x) until clause (y) below applies, an amount equal to the Quarterly Payment Specified Percentage of that portion of the FCF for the calendar quarter immediately preceding such Quarterly Payment Date in excess of \$5,000,000; provided, that if FCF for such calendar quarter does not exceed \$5,000,000, the FCF for such calendar quarter (such FCF, "Rolled-Over FCF") shall be added to, and deemed to be, FCF for each subsequent calendar quarter in the same calendar year until the sum of actual FCF for a calendar quarter plus all Rolled-Over FCF for such calendar year equals or exceeds \$5,000,000 and (y) for each calendar quarter in a calendar year following a calendar quarter for which FCF plus Rolled-Over FCF for such calendar year, if any, equals or exceeds \$5,000,000, an amount equal to the Quarterly Payment Specified Percentage of FCF for such calendar quarter;

(ii) for each Quarterly Payment Date occurring after January 7, 2005 until and including the Quarterly Payment Date with respect to the last calendar quarter of 2011, an amount equal to the Quarterly Payment Specified Percentage of FCF for the calendar quarter immediately preceding such Quarterly Payment Date;

provided, however, that the Purchaser shall also pay any adjustments to Quarterly Payments that are required by a Final Determination made pursuant to Section 3.5 and the Purchaser and the Seller shall pay any adjustments to Quarterly Payments that are required pursuant to Section 3.2(c);

and further provided, that if the Seller transfers any Warrant to a Person that is not an Affiliate of the Seller prior to December 31, 2011 in accordance with the terms of such Warrant, no Quarterly Payment shall be made for the period from and including the date on which such transfer is made; provided, however, that if such transfer occurs during any period for which a Quarterly Payment is calculated, the Purchaser shall pay to the Seller an amount equal to a pro rata portion of the Quarterly Payment for such period, from and including the start of such period to, but excluding, the date on which such transfer was made.

(d) the Purchaser shall pay the Fifth Year Payment on the Fifth Year Payment Date; and

(e) the Seller shall assign all of its rights and obligations under the Existing Services Agreement to the Purchaser or an Affiliate of the Purchaser at the Closing pursuant to the Assignment of Existing Services Agreement, and the Seller and the Purchaser each hereby agree that as of the Closing Date their respective rights and obligations under the Existing Services Agreement will have equal value and that no payments in connection therewith will be due or required to be made from the Seller to the Purchaser or from the Purchaser to the Seller with respect to any period on or after the Closing Date. For purposes of clarity, the Seller will pay any amounts under the Existing Services Agreement that are due and unpaid with respect to all periods prior to the Closing.

3.2 Exceptional Transactions. All Exceptional Transactions shall be funded in full by the Parent or the Purchaser, using no funds or other assets of the Omega Company and, in the event an Exceptional Transaction is consummated at any time, then:

(a) The Quarterly Payment Specified Percentage shall equal:

(i) with respect to the calendar quarter in which such Exceptional Transaction is consummated, the daily weighted average of (A) the Quarterly Payment Specified Percentage immediately prior to consummation of such Exceptional Transaction and (B) the product of (I) the Quarterly Payment Specified Percentage immediately prior to consummation of such Exceptional Transaction times (II) a fraction, the numerator of which is the Market Value of the Omega Company immediately prior to consummation of such Exceptional Transaction and the denominator of which is the Market Value of the Omega Company immediately following consummation of such Exceptional Transaction; and

(ii) with respect to each subsequent calendar quarter (until such time as the Omega Company engages in another Exceptional Transaction) the product of (I) the Quarterly Payment Specified Percentage immediately prior to consummation of such Exceptional Transaction times (II) a fraction, the numerator of which is the Market Value of the Omega Company immediately prior to consummation of such Exceptional Transaction and the denominator of which is the Market Value of the Omega Company immediately following consummation of such Exceptional Transaction.

For the sake of clarity, if the Omega Company engages in more than one Exceptional Transaction in any calendar quarter, (x) the Quarterly Payment Specified Percentage shall be determined as of the consummation of each Exceptional Transaction and the Quarterly Payment Specified Percentage so determined shall apply until the consummation of the next Exceptional Transaction in such calendar quarter and the final Quarterly Payment Specified Percentage for purposes of determining the Quarterly Payment for such calendar quarter shall equal the daily weighted average of such Quarterly Payment Specified Percentages so determined, and (y) for each subsequent calendar quarter (until such time as the Omega Company engages in another Exceptional Transaction) the Quarterly Payment Specified Percentage shall be the Quarterly Payment Specified Percentage calculated upon the consummation of the last Exceptional Transaction to occur.

(b) The Fifth Year Payment Specified Percentage shall equal the daily weighted average, for the period commencing January 1, 2006 and terminating December 31, 2006, of (A) the Fifth Year Payment Specified Percentage immediately prior to the consummation of the Exceptional Transaction and (B) the product of (I) the Fifth Year Payment Specified Percentage immediately prior to the consummation of such Exceptional Transaction times (II) a fraction, the numerator of which is the Market Value of the Omega Company immediately prior to consummation of such Exceptional Transaction and the denominator of which is the Market Value of the Omega Company immediately following consummation of such Exceptional Transaction.

For the sake of clarity, if the Omega Company engages in more than one Exceptional Transaction during the period commencing on the Closing Date and terminating December 31, 2006, the Fifth Year Payment Specified Percentage shall be determined as of the consummation of each Exceptional Transaction and each such Fifth Year Payment Specified Percentage shall apply until the consummation of the next Exceptional Transaction.

(c) With respect to an Exceptional Transaction involving a Material Asset of another Person, because a determination as to the existence of such Material Asset must be made following the end of the calendar year in which the Omega Company acquired such Material Asset, the Parties acknowledge that if one or more Quarterly Payments were made with respect to calendar quarters during such calendar year, the amount of such Quarterly Payment(s) may require adjustment at the end of such calendar year as follows:

(i) Within ninety (90) days of the end of a calendar year in which the Omega Company acquired any asset of another Person, the Parties shall determine whether the asset so acquired was a Material Asset. In the event that such asset was a Material Asset and an Exceptional Transaction therefore occurred during such calendar year, a recalculation for each Quarterly Payment made with respect to calendar quarters in such calendar year shall be made, taking such Exceptional Transaction and the provisions of Section 3.2(a) into account.

(ii) If the results of such recalculation(s) indicate that one or more Quarterly Payments made to the Seller were greater than would have been made had such Exceptional Transaction been taken into account at such time, the difference between such Quarterly Payment(s) actually made and the amount so calculated shall be paid by the Seller to the Purchaser in accordance with Section 3.2(c)(iv).

(iii) If the results of such recalculation(s) indicate that one or more Quarterly Payments made to the Seller were less than would have been made had such Exceptional Transaction been taken into account at such time, the difference between such Quarterly Payment(s) actually made and the amount so calculated shall be paid by the Purchaser to the Seller in accordance with Section 3.2(c)(iv).

(iv) Any payment to be made by the Seller to the Purchaser or the Purchaser to the Seller in accordance with this Section 3.2(c) shall be made by wire transfer to such account as shall be indicated by the Purchaser or the Seller, as the case may be, in writing to the other Party, within 30 days of receipt of such account information.

3.3 Payment of Consideration.

(a) The Consideration contemplated by Section 3.1(a) and (b) shall be paid by execution and delivery of the Promissory Note and the Warrants upon Closing and, thereafter, according to the terms and conditions of the Loan Agreement, the Promissory Note and the Warrants, as applicable.

(b) The Consideration contemplated by Section 3.1(c) and (d) shall be paid by wire transfer to the following account of the Seller:

ABA#: 021033205
Acct#: 021033205
FHLMC WASH
Attn: Orin Schepps -- Omega

or to another account the details of which are provided in a notice by the Seller to the Purchaser within three (3) Business Days prior to the required payment thereof.

The Seller shall have the right, in its sole discretion, to direct that any payment made hereunder be made directly to another Person or to assign its rights to any payment hereunder; provided, however, that no such direction or assignment shall relieve the Seller of any of its responsibilities hereunder.

3.4 Allocation of Purchase Price. The Parties agree to allocate the Assumed Liabilities and the Consideration, as each portion of Consideration is transferred by the Purchaser to the Seller on each of the Closing Date, each Quarterly Payment Date and the Fifth Year Payment Date, in the manner agreed to by the Seller and the Purchaser after the Closing, which the Seller and the Purchaser shall each in good faith work to agree upon promptly after the Closing. The Purchaser and the Seller each agrees to provide the other party with any other information required to complete Internal Revenue Service Form 8594.

3.5 Verification and Adjustment of Payments.

(a) The Purchaser shall deliver (or shall cause the Omega Company to deliver) to the Seller, together with each of its Quarterly Payments, a certificate signed by the President of the Omega Company setting forth the calculation of such Payment, identifying the amounts used in such calculation, and certifying the accuracy of such amounts and such calculation, such certificate to be substantially in the form of Schedule 3.5(a) hereof.

(b) Within ninety (90) days from the end of each calendar year, the Purchaser shall provide a certificate signed by the independent auditors of the Omega Company setting forth the calculation of all Payments due in respect of periods in the previous calendar year, identifying the amounts used in such calculations, and certifying the accuracy of such amounts and such calculations, such certificate to be substantially in the form of Schedule 3.5(b) hereof (the certificate referred to in this Paragraph 3.5(b) and in Paragraph 3.5(a) above each being hereinafter referred to as a "Payment Certificate").

(c) Each of the Payments shall be verified and, if applicable, adjusted according to the following procedure:

(i) The Seller shall have a period of thirty (30) days to review each Payment Certificate following delivery thereof by the Purchaser. The Payment amount will become final and binding upon the Parties on the 31st day following delivery thereof, unless the Seller delivers a written notice (the "Seller's Notice") to the Purchaser prior to such date which specifies in reasonable detail the amount by which and the reasons why it thinks the calculation of the relevant Payment was subject to mathematical errors or was not prepared in accordance with this Agreement.

(ii) If the Seller delivers a Seller's Notice in accordance with Section 3.5(c)(i) then the Parties shall, during the 30-day period beginning on the date of the Purchaser's receipt of the Seller's Notice, seek in good faith to resolve in writing any differences which they may have with respect to the matters specified in the Seller's Notice.

(iii) If the Seller and the Purchaser are unable to resolve all of the Seller's objections within such 30-day period, then such unresolved objections shall be submitted to the independent auditors of the Omega Company for review and final and binding resolution of any and all matters that remain in dispute and that were properly included in the Seller's Notice. The Seller and the Purchaser shall use commercially reasonable efforts to cause such independent auditors to render a decision resolving the matters in dispute within thirty (30) days following the final submission of such matter to the independent auditors for decision following such briefing and other procedures as the independent auditors shall establish. The fees, costs and expenses of the independent auditors (A) shall be borne by the Seller in the proportion that the aggregate dollar amount of such disputed items so submitted that are unsuccessfully disputed by the Seller (as finally determined by the independent auditors) bears to the aggregate dollar amount of such items so submitted and (B) shall be borne by the Purchaser in the proportion that the aggregate dollar amount of such disputed items so submitted that are successfully disputed by the Seller (as finally determined by such independent auditors) bears to the aggregate dollar amount of such items so submitted.

(iv) As soon as practicable and, in any event, within ten (10) Business Days following the date on which a final determination (the "Final Determination") to revise the Payment is made either by (A) the Parties reaching agreement pursuant to Section 3.5(c)(ii) or (B) the independent auditors rendering a decision pursuant to Section 3.5(c)(iii), an adjustment to the Payment previously made shall be satisfied by cash payment. Any such adjustment shall include a payment of interest on the adjustment amount, which shall be accrued from the relevant Payment Date to the date of such payment, at the prime rate applicable from time to time as announced by Citibank, N.A.

(d) The Purchaser shall cause the Omega Company to furnish to the Seller:

(i) within 90 days after the end of each fiscal year of the Omega Company, its audited balance sheet and related statements of income and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by independent public accountants of recognized national standing (without any qualification or exception as to the scope of such audit) to the effect that such financial statements present fairly, in all material respects, the financial condition and results of operations of the Omega Company (on a consolidated basis in the event there are equity interests to be consolidated) in accordance with GAAP consistently applied; and

(ii) within 45 days after the end of each of the first three fiscal quarters of each fiscal year of the Omega Company, its unaudited balance sheet and related statements of income and cash flows as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by one of its financial officers as presenting fairly in all material respects the financial condition and results of operations of the Omega Company (on a consolidated basis in the event there are equity interests to be

consolidated) in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF THE SELLER

As an inducement to the Purchaser and the Parent to enter into this Agreement and to consummate the transactions contemplated hereby, and subject to any exceptions disclosed in the Schedules hereto, the Seller hereby represents and warrants to the Purchaser and the Parent as follows as of each of the Effective Date and the Closing Date:

4.1 Due Organization. The Seller is a corporate instrumentality of the United States created pursuant to an Act of Congress of July 24, 1970 (Title III of the Emergency Home Finance Act of 1970, as amended, 12 U.S.C. §§ 1451-1459), with full power and authority to conduct its business as it is now conducted and as currently proposed to be conducted.

4.2 Authorization of Agreement. The Seller has all requisite corporate power and authority to execute and deliver this Agreement and each other agreement, document, instrument or certificate contemplated by this Agreement or to be executed by the Seller in connection with the consummation of the transactions contemplated hereby or thereby (all such other agreements, documents, instruments and certificates required to be executed by the Seller being hereinafter referred to, collectively, as the "Seller Documents"), and to perform fully all of its obligations and undertakings hereunder and thereunder. The execution and delivery by the Seller of, and the performance by the Seller of its obligations under, this Agreement and each of the Seller Documents has been duly and validly authorized by all necessary corporate action on the part of the Seller and no other corporate proceedings on the part of the Seller are necessary to authorize the execution, delivery or performance by the Seller of this Agreement. This Agreement has been, and each of the Seller Documents will be, on or prior to the Closing Date, duly executed and delivered by the Seller and (assuming the due authorization, execution and delivery by the other parties hereto or thereto) this Agreement constitutes, and each of the Seller Documents when so executed and delivered will constitute, a valid and binding agreement of the Seller, enforceable against Seller in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and to general principles of equity (regardless of whether enforcement is sought in an action in law or at equity).

4.3 Conflicts; Consents of Third Parties.

(a) Subject to receipt of the consents, approvals, notices and waivers referred to in Schedule 4.3, none of the execution and delivery by the Seller of this Agreement and the Seller Documents, the consummation of the transactions contemplated hereby or thereby or the compliance by the Seller with any of the provisions hereof or thereof will (i) violate or conflict with the by-laws or other organizational documents of the Seller; (ii) with or without the giving of notice or the passage of time or both, conflict with, result in the material breach or termination of, require any notice under, constitute a material default under or give any right to terminate, accelerate or modify, any Contract by which the Seller or any of the Assets is bound or to which the Seller or any of the Assets is subject; (iii) constitute a violation of any Legal Requirement

applicable to the Seller or any of its properties or assets; or (iv) result in the creation of any Lien (other than any Lien in favor of the Purchaser) upon any of the Assets.

(b) Except as set forth on Schedule 4.3, no Permit of, or declaration or filing with, or notification to, any Governmental Authority is required on the part of the Seller in connection with the execution and delivery of this Agreement or the Seller Documents, the consummation of the transactions contemplated hereby or thereby or the performance by it of any of its obligations hereunder or thereunder.

4.4 Absence of Certain Developments. Except as set forth on Schedule 4.4, since May 31, 2002:

(a) there has not been any Material Adverse Effect;

(b) there has not been any damage, destruction or loss exceeding \$20,000 individually or \$50,000 in the aggregate, whether or not covered by insurance, with respect to the Assets;

(c) the Seller has not entered into any employment, deferred compensation, severance or similar agreement (nor amended any such agreement) or agreed to increase the compensation payable or to become payable by it to any of the Omega Employees or agreed to increase the coverage or benefits available under any severance pay, termination pay, vacation pay, company awards, salary continuation or disability, sick leave, deferred compensation, bonus or other incentive compensation, insurance, pension or other employee benefit plan, payment or arrangement made to, for or with such Omega Employees (other than normal increases in the ordinary course of business consistent with past practice or that in the aggregate have not resulted in a material increase in the benefits or compensation expense of the Project);

(d) the Seller has not failed to pay or discharge current liabilities relating to the Project within ninety (90) days, except where disputed in good faith by appropriate proceedings;

(e) the Seller has not mortgaged, pledged or subjected to any Lien any of the Assets, or acquired or sold, assigned, transferred, conveyed, leased or otherwise disposed of any property, right or asset or any interest therein that otherwise would have been included as part of the Assets, except for those acquired or sold, assigned, transferred, conveyed, leased or otherwise disposed of in the ordinary course of business consistent with past practice of the Seller;

(f) the Seller has not amended, canceled, terminated, relinquished, waived or released any Contract or right that otherwise would have been included as part of the Assets except in the ordinary course of business consistent with past practice of the Seller and which, in the aggregate, do not have a Material Adverse Effect;

(g) the Seller has not incurred any capital expenditure relating to the Project in excess of \$20,000 individually or \$50,000 in the aggregate; and

(h) the Seller has not committed or agreed to do any of the foregoing.

4.5 Real Property.

(a) The Seller is not the fee owner of any real property used directly and exclusively in the Project. All real property used directly and exclusively in the Project (the “Omega Property”) is identified on Schedule 4.5 and is leased by the Seller under the leases described in Schedule 4.5 (each a “Lease” and, collectively, the “Leases”). Subject to the provisions of the Leases, the Seller has actual and exclusive possession of the leasehold estate in the Omega Property, free and clear of all Liens of any nature whatsoever except Permitted Exceptions.

(b) Each Lease is in full force and effect and is valid and enforceable (assuming such with respect to the landlord) as to the Seller in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors’ rights generally and to general principles of equity; and there is no default under such Lease either by the Seller or, to the Knowledge of the Seller, by any other party thereto, and to the Knowledge of Seller, no event has occurred that, with the lapse of time or the giving of notice or both, would constitute a default under such Lease; and (ii) no previous or current party to such Lease has given notice to the Seller of or, to the Knowledge of the Seller, made a claim with respect to any breach or default by the Seller thereunder.

4.6 Tangible Personal Property.

(a) Except as set forth on Schedule 4.6(a), the Seller has good and marketable title to each item of Equipment, free and clear of any and all Liens, except Permitted Exceptions. Each item of Equipment that had an individual original cost in excess of \$5,000 is in good condition and in a state of good maintenance and repair, subject to ordinary wear and tear, and is suitable for the purposes for which it is currently used in the Project. With regard to items of Equipment that had an individual original cost of \$5,000 or less, such Equipment is collectively not in need of replacement, maintenance or repair that would, in the aggregate, cost more than \$50,000.

(b) Except as set forth on Schedule 4.6(b), no personal property used directly and exclusively in the Project or included in the Assets is subject to a personal property lease.

4.7 Intellectual Property.

(a) Schedule 4.7(a) separately sets forth a list of (i) all agreements under which the Seller uses or has the right to use any material Licensed Transferred IP (the “License Agreements”); (ii) all Patents, registered or material unregistered Trademarks, registered copyrights, unregistered copyrights in the software listed in the second bullet of Schedule 2.1 and domain names in each case, included in the Seller-Owned Transferred IP; and (iii) all material Contracts relating to the Transferred IP.

(b) Except for the Licensed Transferred IP and any know-how and Residual Knowledge comprised within the Transferred IP, the Seller owns and possesses all right, title and interest to the Transferred IP free and clear of all Liens and rights of third parties. Except as set forth in Schedule 4.7(b), the Transferred IP, together with the Residual Knowledge and the

Licensed IP, is all of the material Intellectual Property used by the Seller or Held for Use by or on behalf of the Seller in the Omega Project.

(c) To the Knowledge of the Seller, each of the License Agreements is valid and enforceable and provides the Seller with a right to use the Licensed Transferred IP on the terms set forth therein, subject to the payment of fees as set out in the applicable License Agreement. The Seller has, prior to the date hereof, provided the Purchaser with true and correct copies of the License Agreements.

(d) The Seller has not given or received any notice of a material default or of any event which with the giving of notice, lapse of time or both would constitute a material default under any material agreement relating to the Transferred IP; neither the Seller, nor, to the Knowledge of the Seller, any other party thereto, currently is in material default with regard to any such agreement relating to the Transferred IP, and, except to the extent the same has not caused, and could not be reasonably expected to cause, a Material Adverse Effect, to the Knowledge of the Seller, there exists no condition or event (including, the execution, delivery and performance of this Agreement) which, with the giving of notice or the lapse of time or both, would constitute a default or event of default by the Seller under any such agreement.

(e) There is no pending or, to the Knowledge of the Seller threatened, assertion or claim asserting that the Omega Project infringes upon or misappropriates the rights of any Person in any U.S. Intellectual Property.

(f) Other than with respect to a claim for Patent infringement, the Seller-Owned Transferred IP does not infringe upon the U.S. Intellectual Property of any other party nor are there, to the Knowledge of the Seller, valid grounds for any bona fide claims challenging the ownership, validity or enforceability of any of the Seller-Owned Transferred IP or challenging the Seller's right to use the Licensed Transferred IP in the manner currently used in the Omega Project.

(g) To the Knowledge of the Seller, the Seller-Owned Transferred IP does not infringe upon any U.S. Patents nor are there valid grounds for any bona fide claims that any of the Seller-Owned Transferred IP infringes upon any U.S. Patents when used in the manner currently used in the Omega Project.

(h) To the Knowledge of the Seller, there are no unauthorized uses, disclosures, infringements, or misappropriations by any Person of any Seller-Owned Transferred IP.

(i) The Seller has taken commercially reasonable steps to protect the confidentiality of trade secrets, know-how and Confidential Information comprised within the Seller-Owned Transferred IP.

(j) Except for the representations and warranties contained in this Section 4.7 and Section 4.19, neither the Seller nor any other Person makes any express or implied representation or warranty on behalf of the Seller with respect to the ownership, validity, enforceability or non-infringement of Intellectual Property, including the Transferred IP. For the avoidance of doubt, for purposes of any representation or warranty, other than those set forth in this Section 4.7 or in Section 4.19, that refers to the Assets or any other term that includes Intellectual Property, for

purposes of such representation or warranty the term "Assets" or such other term shall be deemed not to include any Intellectual Property to the extent they relate to Intellectual Property.

4.8 Contracts. Other than the Contracts set forth on Schedule 4.8 (the "Material Contracts"), with respect solely to the Assets and the Project the Seller is not currently a party to any: (a) material Contract not made in the ordinary course of business; (b) Contract with a customer or prospective customer, including any letters of intent or understanding with respect thereto, (c) Contract for the employment of any Omega Employee; (d) franchise, distributorship or sales agency agreement; (e) Contract (other than forwarding, administrative pro-rate and other inter-company service agreements) for the purchase of materials, supplies, services, merchandise or equipment not capable of being fully performed or not terminable without penalty within a period of ninety (90) days; (f) Contract for the sale of any of its assets other than in the ordinary course of business; (g) mortgage, pledge, conditional sales contract, security agreement, factoring agreement or other similar agreement with respect to any of its personal property; (h) consulting Contract; (i) non-competition agreement, (j) confidentiality agreement agreed to by the business unit of Seller responsible for the Project; (k) Contract for the payment or receipt of royalties; (l) Contract relating to any indebtedness for borrowed money, guaranty, surety, line of credit or other loan or financing arrangement; or (m) Contract to which a Governmental Authority is a party; or (n) Contract which is otherwise material to the Project and the Assets. A true, correct and complete copy of each Material Contract has been furnished or made available to the Purchaser. Each of the Material Contracts is as of the Effective Date, and will be as of the Closing Date, valid and binding as to the Seller (assuming such for the other parties thereto), subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and to general principles of equity (regardless of whether enforcement is sought in an action in law or at equity). Except as set forth on Schedule 4.8, the Seller has performed all of the material obligations required to be performed by it to date and there does not exist under any Material Contract, any material event of default or, to the Knowledge of the Seller, event or condition that, after notice or lapse of time or both, would constitute a violation, breach of or event of default thereunder on the part of the Seller or to the Knowledge of the Seller, any other party thereto. On the Closing Date, the Purchaser will succeed to all of the right, title and interest of Seller under each Material Contract assuming the execution and delivery of the Assignment Agreement and the receipt of any required consent by any party other than the Seller.

4.9 Bill of Sale. Except for the Liens set forth on Schedule 4.9, the delivery by the Seller to the Purchaser at the Closing of the Bill of Sale and the other instruments of transfer will vest the Purchaser on the Closing Date with good and marketable title to all of the Assets, free and clear of all Liens except (a) Permitted Exceptions and (b) those Liens created, imposed or granted by the Purchaser.

4.10 Employee Benefits. Schedule 1.2 and Schedule 4.10 collectively set forth a list of all Omega Employees and the position, titles, current remuneration (including salary and bonus), and benefits of such Omega Employees. None of the Omega Employees is represented by any labor organization and, to the Knowledge of the Seller, there is no organizing activity involving the Omega Employees pending or threatened by any labor organization or group of Omega Employees.

4.11 Litigation. There is no Proceeding pending against the Seller or, to the Knowledge of the Seller, threatened, against the Seller, that questions the validity of this Agreement, any Seller Document or any action taken or to be taken by the Seller in connection with, or which seeks to enjoin or obtain monetary damages in respect of, the consummation of the transactions contemplated hereby or thereby. Schedule 4.11 sets forth a true, correct and complete list of all pending or, to the Knowledge of the Seller, threatened Proceedings in which the Seller is a party which directly relate to or materially affect the Project or any of the Assets. There is no outstanding or, to the Knowledge of the Seller, threatened Judgment having a Material Adverse Effect on the Project.

4.12 Compliance with Laws. The Seller is and at all times has been in compliance, in all material respects, with all material Legal Requirements applicable to the operation of the Project or the ownership or use of the Assets. The Seller has not received any notice of violation or alleged violation of any such Legal Requirement by any Governmental Authority and, to the Knowledge of Seller, no such notice has been issued.

4.13 Insolvency Proceedings. No attachments, executions, assignments for the benefit of creditors, receiverships, conservatorships or voluntary or involuntary proceedings in bankruptcy or actions pursuant to any other debtor relief laws or actions by any state or federal regulatory authorities are pending against the Seller or any of its Affiliates.

4.14 No Other Agreement to Sell the Assets. The Seller does not have any legal obligation, absolute or contingent, to any other Person to sell any of the Assets (other than sales in the ordinary course of business) or the Project.

4.15 Potential Conflict of Interest. Except as disclosed on Schedule 4.15, the Seller does not have any material financial interest in any competitor, lessor, lessee, supplier or customer of the Project, except for passive investments representing, in each case, less than 10% of publicly traded securities of any lessor, lessee, supplier or customer whose shares are publicly traded on any securities exchange.

4.16 Absence of Material Adverse Effect. Except as set forth in Schedule 4.16, to the Knowledge of Seller, there is no fact or circumstance having a Material Adverse Effect and that has not been disclosed in this Agreement.

4.17 Brokers. No Person has acted directly or indirectly as a broker, finder or financial advisor for the Seller in connection with the negotiations relating to or the transactions contemplated by this Agreement, and no Person is entitled to any fee or commission or like payment in respect thereof based in any way on any agreement, arrangement or understanding made by or on behalf of the Seller.

4.18 Affiliates. Except as set forth in Schedule 4.18, there is no Contract of any kind between any Affiliate of the Seller, on the one hand, and the Seller, on the other hand, which relates to the Project or as to which any of the Assets may be subject.

4.19 No Other Representations or Warranties.

(a) Except for the representations and warranties contained in this Article 4, neither the Seller nor any other Person makes any other express or implied representation or warranty on behalf of the Seller with respect to the Assets, the Project, Omega or the transactions contemplated by this Agreement.

(b) EXCEPT AS EXPRESSLY SET FORTH IN THIS ARTICLE 4, NO AFFILIATE, THIRD-PARTY VENDOR, CONTRACTOR OR TECHNOLOGY SUPPLIER (EACH, AN "AFFILIATED PARTY") OF THE SELLER, NOR THE SELLER ITSELF, NOR ANY OF THEIR OR ITS RESPECTIVE REPRESENTATIVES, MAKES ANY REPRESENTATION OR WARRANTY TO THE PURCHASER, THE PARENT OR THE OMEGA COMPANY, WHETHER EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ANY WARRANTY OF NON-INFRINGEMENT, OR ANY WARRANTY REGARDING THE USE OF OR INABILITY TO USE, THE ASSETS, THE PROJECT OR OMEGA, OR WITH RESPECT TO THEIR CORRECTNESS, QUALITY, ACCURACY, RELIABILITY, PERFORMANCE, COMPLETENESS, TIMELINESS, CONTINUED AVAILABILITY OR OTHERWISE, OR ANY WARRANTY THAT THE ASSETS, THE PROJECT OR OMEGA WILL CONFORM TO ANY DESCRIPTION THEREOF PROVIDED BY THE SELLER, BE FREE OF ERRORS OR DEFECTS OR PERFORM ANY DESIRED OPERATIONS OR FUNCTIONS. PURCHASER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS ARTICLE IV, THE ASSETS, THE PROJECT, OMEGA AND THE INTELLECTUAL PROPERTY ASSIGNED OR LICENSED HEREUNDER ARE PROVIDED AND DELIVERED ON AN "AS IS" BASIS AT PURCHASER'S SOLE RISK.

ARTICLE 5

REPRESENTATIONS AND WARRANTIES OF THE PURCHASER AND THE PARENT

As an inducement to the Seller to enter into this Agreement and to consummate the transactions contemplated hereby, and subject to any exceptions disclosed in the Schedules hereto, the Purchaser and the Parent, jointly and severally, hereby represent and warrant to the Seller as follows as of each of the Effective Date and the Closing Date:

5.1 Due Organization. The Purchaser and Parent are corporations, duly organized, validly existing and in good standing under the laws of Delaware and Canada, respectively, with full power and authority to conduct its business now being conducted and as currently proposed to be conducted. As of the Closing, the Omega Company will be duly organized, validly existing and in good standing under the laws of the State of Delaware, with full power and authority to conduct its business as then conducted and as then proposed to be conducted.

5.2 Authorization of Agreement. Each of the Purchaser and the Parent has, and the Omega Company will have as of the Closing, all requisite power and authority to execute and deliver this Agreement and each other agreement, document, instrument or certificate contemplated by this Agreement or to be executed by the Purchaser and Parent and/or the Omega Company, as the case may be, in connection with the consummation of the transactions

contemplated hereby or thereby (all such other agreements, documents, instruments and certificates required to be executed by the Purchaser, the Parent and/or the Omega Company, as the case may be, being hereinafter referred to, collectively, as the "Purchaser Documents"), and to perform fully all of its obligations and undertakings hereunder and thereunder. The execution and delivery by each of the Purchaser, the Parent and the Omega Company, as the case may be, of, and the performance of each of such entities, as the case may be, under, this Agreement and each Purchaser Document has been and, in the case of the Omega Company, will have been as of the Closing, duly and validly authorized by all necessary action on the part of each of the Purchaser, the Parent and/or the Omega Company, as the case may be, and no other proceedings on the part of the Purchaser or the Parent are necessary to authorize the execution, delivery or performance by the Purchaser or the Parent of this Agreement. This Agreement has been, and each of the Purchaser Documents will be, on or prior to the Closing Date, duly executed and delivered by each of the Purchaser, the Parent and/or the Omega Company, as the case may be, and (assuming the due authorization, execution and delivery by the other parties hereto or thereto) this Agreement constitutes, and each of the Purchaser Documents when so executed and delivered will constitute, a valid and binding agreement of the Purchaser, the Parent and/or the Omega Company, as the case may be, enforceable against the Purchaser, the Parent and/or the Omega Company, as the case may be, in accordance with its terms, subject to applicable bankruptcy, insolvency and similar laws affecting creditors' rights generally and to general principles of equity (regardless of whether enforcement is sought in an action at law or in equity).

5.3 Conflicts; Consents of Third Parties.

(a) Subject to receipt of the covenants, approvals and waivers referred to in Schedule 5.3, none of the execution and delivery by any of the Purchaser, the Parent and/or the Omega Company, as the case may be, of this Agreement and the Purchaser Documents, the consummation of the transactions contemplated hereby or thereby or the compliance by the Purchaser, the Parent and the Omega Company, as the case may be, with any of the provisions hereof or thereof will (i) violate or conflict with the by-laws or other organizational documents of the Purchaser, the Parent or the Omega Company; (ii) with or without the giving of notice or the passage of time or both, conflict with, result in the material breach or termination of, constitute a material default under or give any right to terminate, accelerate or modify, any Contract by which the Purchaser, the Parent or the Omega Company, as the case may be, or any of their assets is bound or to which their assets are subject; or (iii) constitute a violation of any Legal Requirement applicable to the Purchaser, the Parent or the Omega Company or any of their properties or assets.

(b) Except as set forth in Schedule 5.3, no Permit of, or declaration or filing with, or notification to, any Governmental Authority is required on the part of the Purchaser, the Parent or the Omega Company, as applicable, in connection with the execution and delivery of this Agreement or the Purchaser Documents, the consummation of the transactions contemplated hereby or thereby or the performance by the Purchaser, the Parent or the Omega Company, as applicable, of any of its obligations hereunder or thereunder with any of the provisions hereof or thereof.

5.4 Litigation. There is no Proceeding pending against the Purchaser, the Parent or the Omega Company or, to the Knowledge of the Purchaser or the Parent, threatened against the Purchaser, the Parent or the Omega Company that questions the validity of this Agreement, any Purchaser Document or any action taken or to be taken by the Purchaser, the Parent or the Omega Company in connection with, or which seeks to enjoin or obtain monetary damages in respect of, the consummation of the transactions contemplated hereby or thereby.

5.5 Brokers. No Person has acted directly or indirectly as a broker, finder or financial advisor for the Purchaser or the Parent in connection with the negotiations relating to or the transactions contemplated by this Agreement and no Person is entitled to any fee or commission or like payment in respect thereof based in any way on agreements, arrangements or understandings made by or on behalf of the Purchaser, the Parent or the Omega Company.

5.6 Parent's Operation of Purchaser. To the Knowledge of the Parent, neither the Purchaser nor the Parent intends to or has any plans to (a) discontinue the business or operations of the Purchaser or (b) sell all or substantially all of the assets or transfer all or substantially all of the Equity Interests of the Purchaser to any Person.

5.7 Solvency. Neither the Parent nor the Purchaser is insolvent and each of them is able to pay its debts as they come due.

5.8 No Other Representations or Warranties. Except for the representations and warranties contained in this Article 5, neither the Purchaser, the Parent nor any other Person makes any other express or implied representation or warranty on behalf of the Purchaser or the Parent with respect to the transactions contemplated by this Agreement.

ARTICLE 6 MUTUAL COVENANTS

6.1 No Inconsistent Action. Whether before, on or after the Closing Date, none of the Purchaser, the Parent or the Seller shall take any action that is materially inconsistent with its obligations under this Agreement, and each Party shall use commercially reasonable efforts to cause each of its Affiliates to refrain from taking any such action.

6.2 Further Actions. Whether before, on or after the Closing Date, each of the Seller, and the Purchaser and the Parent shall execute and deliver such instruments and take such other actions as may reasonably be required to (a) carry out the intent of this Agreement and (b) consummate the transactions contemplated hereby.

6.3 Public Statements. Whether before, on or after the Closing Date, before any Party shall release any information concerning this Agreement, any Seller Document, any Purchaser Document or the transactions contemplated hereby or thereby and which is intended for or may result in public dissemination thereof, it shall so advise and cooperate with the other Parties and shall not release such information without each other Party's consent (which consent shall not be unreasonably withheld), unless (a) such information is otherwise publicly available, (b) the release thereof is requested by a Governmental Authority in a Proceeding or is required by any Legal Requirement by which the relevant Party is bound or subject, (c) with respect to a release by the Seller, the release thereof is requested in connection with briefings with or before

the United States Congress (or any committee or subcommittee thereof) or any other Governmental Authority (including OFHEO) that conducts oversight of the Seller or (d) such information is disclosed by the Seller to potential transferees of the Warrants in connection with discussions regarding potential Transfers thereof.

6.4 Confidentiality. The Confidentiality Agreement between the Seller and the Parent dated January 18, 2001, as amended on February 12, 2002 and on May 31, 2002, is hereby terminated and replaced by the following provisions, which shall apply to (i) the Parent and the Purchaser, on one hand, who for purposes of this Section 6.4 collectively constitute one and the same Party and (ii) the Seller, on the other hand:

(a) Whether on, before or after the Closing, each Party will not, directly or indirectly, at any time (i) communicate or disclose to any third party (other than to its legal and financial advisors, accountants, agents and similar Representatives and then only to the extent necessary for such Persons to fulfill their obligations to such Party and subject to such Persons being aware of the confidential nature of such communication or disclosure), or (ii) use for any purpose other than for the sole purposes of evaluating and completing the transactions contemplated by this Agreement, any Confidential Information of any other Party; provided, that the non-disclosure and non-use obligations of the Purchaser and the Parent set forth in this Section 6.4(a) in respect of any Confidential Information comprised within the Transferred IP shall terminate at the Closing; and provided, further, that the non-use obligations of the Purchaser set forth in this Section 6.4(a) in respect of the Licensed IP shall not limit the right of the Purchaser to use the Licensed IP in accordance with the license granted in Section 13.3 and that the non-use obligations of the Seller set forth in this Section 6.4(a) in respect of any Confidential Information licensed to the Seller pursuant to Section 13.4 shall not limit the right of the Seller to use such Confidential Information in accordance with the license granted in Section 13.4.

(b) Notwithstanding Sections 6.3 and 6.4(a), (i) each Party shall be free to disclose Confidential Information of the other solely as and to the extent that such disclosure is requested by a Governmental Authority in a Proceeding or is required by any Legal Requirement by which the Disclosing Party is bound or subject or as may be required pursuant to the rules of any securities exchange or automatic quotation system, (ii) with respect to the Seller as the Disclosing Party, the Seller shall be free to disclose such information in connection with briefings or Proceedings with or before the United States Congress (or any committee or subcommittee thereof) or any other Governmental Authority (including OFHEO) that conducts oversight of the Seller, and (iii) each Party shall be free to disclose Confidential Information of the other solely as and to the extent that such disclosure is required in order to establish the Disclosing Party's position in any Proceeding arising out of or in relation to the subject matter of this Agreement, including the failure of the transactions contemplated hereby to be consummated. In the event that a Party is requested or becomes legally compelled (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena or other similar process) to disclose such information pursuant to (i) above, such Party will provide the other Party with prompt written notice of such request or requirement so that the other Party may seek a protective order or other appropriate remedy. If such protective order or other remedy is not obtained or the other Party grants a waiver hereunder, such Party may furnish that portion of the information which it is legally compelled to disclose; provided,

however, that in the case of (i) above, such Party and its Representatives shall use their best efforts to obtain reliable assurance that confidential treatment will be accorded the information so disclosed. The Disclosing Party shall, and shall assure that each of its employees or Representatives shall, disclose only that portion of the information that it reasonably believes it is required to disclose pursuant to Sections 6.4(b)(i) and (iii) and only to those Persons that it reasonably believes it is required to disclose such information.

(c) Upon the request of the Purchaser after the Closing Date for any reason, or upon request of either Party upon or after termination of this Agreement, the other Party will promptly deliver to the requesting Party all documents (and all copies thereof) furnished to the such Party or its Representatives by or on behalf of the requesting Party. In the event of such a decision or request, the other Party shall, and shall cause its Representatives to, except as prohibited by applicable Legal Requirements, destroy all other documents containing Confidential Information prepared by it or its Representatives which contain, reflect or are based upon, in whole or in part, the Confidential Information furnished by the requesting Party, and no copy thereof shall be retained. The other Party shall certify in writing to the requesting Party its compliance with this Section 6.4(c). Notwithstanding the return or destruction of the Confidential Information, the Parties and their Representatives will continue to be bound by their obligations hereunder, including the obligation of confidentiality.

(d) For purposes of this Agreement, "Confidential Information" means any information, knowledge or data of a Party (including information set forth in this Agreement) disclosed or otherwise made available (whether on, before or after or after the date hereof) in connection with the transactions contemplated hereby (or the evaluation thereof), including computer software and documentation, databases, source code, object code, data processing, communications or networking systems, practices or procedures or other internal systems or controls (planned or in any stage of development), other technical data, research, business or financial information, plans or strategies, forecasts or forecast assumptions, business practices, operations or procedures, services, marketing or merchandising information respecting such Party or its clients, know-how, financial conditions, investment strategies and the formulation thereof, current or future business partners, products and services, ideas for new products and services, investment transactions, processes, methods, formulae, trade secrets, specifications, drawings, sketches, models, samples, and other similar information, whether made available in written or verbal form and in any manner whatsoever; provided, that in each case Confidential Information shall exclude information that (i) is or becomes part of the public domain without breach of this Agreement by a Party, (ii) was rightfully acquired by the Party seeking to disclose such information (the "Disclosing Party") from a third party (other than a Party) that, to the knowledge of such Party, had a right to disclose it prior to receipt from the Party providing such information and that is not otherwise subject to an obligation of confidentiality, (iii) is subsequently rightfully obtained by the Disclosing Party from a third party (other than a Party) that, to the knowledge of such Party, had a right to disclose it, (iv) is developed independently by the Disclosing Party, without reference to Confidential Information of the other Party or (v) is retained as know-how, skills or experience of a general nature that is retained in the unaided memory of Persons who have had access or exposure to such information (other than such know-how, skills or experience listed on Schedule 6.5, which shall not be excluded from the definition of Confidential Information). In the event of a disputed disclosure, the Disclosing Party shall

bear the burden of proof of demonstrating that the information falls under one of the foregoing exceptions.

(e) Notwithstanding the foregoing, it is understood that the Parties may from time to time provide comments, suggestions and other feedback to each other concerning the Project, the Products or either Party's Confidential Information. Such suggestions, comments and other feedback are provided and received on a purely voluntary basis and, in the absence of a separate agreement executed by the Parties or the applicability of the immediately following proviso, will not create any confidentiality or other obligation and the Party receiving them shall have the right to use them as it elects in its sole discretion, without obligation of any kind to the providing Party; provided that if any such suggestion, comment or feedback is (x) provided in writing and expressly marked as confidential or (y) provided orally and, at such time, the providing Party states that such suggestion, comment or other feedback is confidential and confirms such statement to the other Party within five days of such oral statement, such suggestion, comment or feedback shall be treated as Confidential Information of the providing Party hereunder, subject to clauses (i) through (v) of the proviso in, and the last sentence of, Section 6.4(d).

6.5 Residual Knowledge. Notwithstanding any other provision in this Agreement to the contrary, nothing in this Agreement shall be construed to restrict either the Purchaser or the Seller or their respective Affiliates from using any know-how, skills or experience of a general nature (as distinguished from the tangible embodiment of such know-how, skills or experience) that is retained in the unaided memory of any such Person's current or former employees or consultants who have had access or exposure to information belonging to the other party ("Residual Knowledge"). Notwithstanding the foregoing, Residual Knowledge does not include the know-how, skills or experience listed on Schedule 6.5.

ARTICLE 7 COVENANTS OF THE SELLER

7.1 Access to Documents; Opportunity to Ask Questions. Until the Closing, (i) the Seller shall make available for inspection by the Purchaser and its Representatives during normal business hours, corporate records, books of accounts, Contracts and all other documents related to the Assets or the Project that are reasonably requested by the Purchaser and shall permit the Purchaser and its Representatives reasonable access from time to time to the Assets and the Omega Property, upon reasonable notice and without undue interruption to the Seller's business, in order to permit the Purchaser and such Representatives to make reasonable inspection and examination of the Assets and affairs of the Project and (ii) the Seller shall further cause its Representatives to be available upon reasonable notice to answer reasonable questions of the Purchaser's Representatives concerning the Assets and affairs of the Project, and shall further cause them to make available all relevant books and records in connection with such inspection and examination. Without limitation of the foregoing, prior to the Closing, the Seller shall afford the Purchaser reasonable opportunities to communicate with the Omega Employees.

7.2 Conduct of Project. Until the Closing Date, the Seller shall with respect to the operation of the Project (unless the Purchaser shall otherwise consent in writing or except as otherwise specifically contemplated by this Agreement):

(a) operate in the usual, regular and ordinary manner consistent with past practice, and use commercially reasonable efforts to (i) preserve its present business operations, organization and goodwill, (ii) keep available the services of the Omega Employees and (iii) preserve its present relationships with Persons having business dealings with it and (iv) take commercially reasonable actions to maintain and protect the Seller-Owned Transferred IP and the Licensed IP owned by the Seller consistent with past practices;

(b) maintain its books, accounts and records in the usual, regular and ordinary manner, on a basis consistent with prior years, and comply with all material contractual and other obligations applicable to the operation of the Project;

(c) not enter into any employment, deferred compensation, severance or similar agreement (nor amend any such agreement) or agree to increase the compensation payable or to become payable by it to any of the Omega Employees (other than as set forth in Schedule 4.4 or Schedule 9.4(b)) or agree to increase the coverage or benefits available under any severance pay, termination pay, vacation pay, company awards, salary continuation or disability, sick leave, deferred compensation, bonus or other incentive compensation, insurance, pension or other employee benefit plan, payment or arrangement made to, for or with such Omega Employees (other than normal increases in the ordinary course of business consistent with past practice or that in the aggregate will not result in a material increase in the benefits or compensation expense of the Project);

(d) in each case, in respect of the Project, (i) not incur or become subject to, or agree to incur or become subject to, any obligation or liability (contingent or otherwise), except (A) normal trade or business obligations incurred in the ordinary course of business and consistent with past practice and (B) obligations under Contracts listed on the Schedules hereto as in effect on the Effective Date not to exceed \$20,000 individually or \$50,000 in the aggregate; (ii) except in the ordinary course of business, not discharge or satisfy any Lien or pay any obligation or liability (fixed or contingent); (iii) not subject to any Lien (other than Permitted Exceptions) any of the Assets; (iv) not sell, assign, transfer, convey, lease or otherwise use or dispose of, or agree to sell, assign, transfer, convey, lease or otherwise dispose of, any of the Assets, other than in the ordinary course of business; (v) not cancel or compromise any debt or claim or waive or release any right relating to the Project or the Assets, except for adjustments or settlements made in the ordinary course of business consistent with past practice; (vi) not make or enter into any commitment to make any capital expenditure (other than expenditures made pursuant to the Contracts listed on Schedule 4.8) in excess of \$20,000 individually or \$50,000 in the aggregate; (vii) not enter into any collective bargaining agreement or, through negotiation (the status of which will be regularly communicated to the Purchaser) or otherwise, make any commitment or incur any liability to any labor organization relating to any of the Omega Employees; and (viii) not introduce any material change with respect to the operations of the Project (other than ordinary development activities), including, without limitation, any change in the method of accounting;

(e) comply in all material respects with all applicable Legal Requirements to which the Project or the Assets are subject;

(f) not settle any pending litigation or obtain any releases of threatened Proceedings in relation to the Project or the Assets;

(g) promptly notify the Purchaser of any (i) extraordinary loss suffered by the Seller in relation to the Project, (ii) casualty losses or damages suffered by the Seller with respect to the Assets having an individual replacement cost of more than \$100,000 or an aggregate replacement cost of more than \$100,000 or which would have a Material Adverse Effect, whether or not such losses or damages are covered by insurance or (iii) Proceeding relating to the Assets or the Project that is commenced by or against the Seller;

(h) notify the Purchaser in writing of any action, event, condition or circumstance, or group of actions, events, conditions or circumstances, that results in a Material Adverse Effect, in each case reasonably promptly after the Seller becomes aware of the occurrence of any such action, event, condition or circumstance, or group thereof;

(i) not modify or terminate any Contract relating to the Assets or the Project, other than in the ordinary course of business consistent with past practice; and

(j) not agree to take any action or actions prohibited by any of the foregoing clauses (a) through (i).

7.3 Consents and Conditions.

(a) Prior to the Closing, the Seller shall use commercially reasonable efforts to (i) obtain any required consent of any third-party or Governmental Authority to the transactions contemplated hereby and (ii) cause each of the conditions precedent to the obligations of the Purchaser hereunder to be satisfied.

(b) Prior to the Closing, the Seller shall use commercially reasonable efforts to obtain the consent of any third party or Governmental Authority which is required in order to assign any Contract or Permit (including, without limitation, any claim, right or benefit arising thereunder or resulting therefrom). If any such consent is not obtained prior to the Closing Date, or if an attempted assignment would be ineffective or would adversely affect the ability of the Seller to convey its interest in question to the Purchaser, the Seller will cooperate with the Purchaser in any lawful arrangement to provide that the Purchaser shall receive the interest of the Seller in the benefits under any such Contract or Permit until such consent is obtained. With respect to each of Seller's Contracts with General American Corporation and iLumin Corporation and such Permits, if the Purchaser, in its reasonable judgment, does not find such arrangement to be satisfactory or the Seller is unable to obtain the appropriate consent after using commercially reasonable efforts to do so, such Contract or Permit shall, at the Purchaser's election, be excluded from the Assets being conveyed to the Purchaser hereunder and be deemed an Excluded Asset for purposes of this Agreement. Nothing in this Agreement shall be construed as an attempt to assign any Contract or Permit that is by its terms non-assignable without the consent of the other party thereto. This Section 7.3 is not intended to limit the Purchaser's right under Section 10.2 not to consummate the transactions contemplated by this Agreement in the event the condition contained therein is not satisfied.

7.4 No Breach of Representations and Warranties. The Seller shall not take any action, and the Seller shall use commercially reasonable efforts not to permit any event to occur, which would result in any of the representations and warranties of the Seller contained in this Agreement not being true and correct on and as of the Closing Date with the same force and effect as if such representations and warranties had been made on and as of the Closing Date.

7.5 Updating of Information. Prior to the Closing, the Seller shall promptly deliver to the Purchaser any information concerning any event subsequent to the Effective Date which is necessary to supplement the information contained in or made a part of the representations and warranties contained in this Agreement, or delivered by the Seller pursuant to any of the covenants contained herein, in order that the information contained herein or so delivered be complete and accurate in all material respects, it being understood and agreed that the delivery of such information shall not in any manner constitute a waiver by the Purchaser of any of the conditions precedent to the Closing hereunder, including, without limitation, the conditions contained in Section 7.1.

7.6 No Solicitation or Negotiations. Unless and until this Agreement is terminated, the Seller shall not, nor shall it cause, suffer or permit its Affiliates, shareholders, agents, investment bankers, advisors, or other Representatives to, initiate or solicit, directly or indirectly, any inquiries or the making of any proposal, or engage in negotiations or discussions with any Person (other than the Purchaser), or provide any Confidential Information or data to any Person (other than the Purchaser), with respect to any acquisition, business combination or purchase of any or all of the Assets, or any direct or indirect equity interest in the Project or otherwise facilitate any effort or attempt to seek any of the foregoing. Furthermore, the Seller shall immediately terminate any existing activities, discussions or negotiations with any Person (other than the Purchaser) with respect to any of the foregoing.

ARTICLE 8

COVENANTS OF THE PURCHASER AND THE PARENT

8.1 No Breach of Representations and Warranties. Neither the Parent nor the Purchaser shall take any action, and each shall use its commercially reasonable efforts not to permit any event to occur, which would result in any of the representations and warranties of the Purchaser and Parent contained in this Agreement not being true and correct on and as of the Closing Date with the same force and effect as if such representations and warranties had been made on and as of the Closing Date.

8.2 Consents and Conditions. Prior to the Closing, the Purchaser and the Parent will use commercially reasonable efforts to (a) obtain any required consent of any third-party or Governmental Authority to the transactions contemplated hereby and (b) cause each of the conditions precedent to the obligations of the Seller hereunder to be satisfied.

8.3 Seller's Access to Documents. From and after the Closing Date, the Purchaser shall, and shall cause the Omega Company to, afford to the Seller's Representatives, upon reasonable notice and without undue interruption to the Purchaser's or the Omega Company's business, reasonable access from time to time during normal business hours to the

books, records and accounts of the Project pertaining to its operations prior to the Closing Date for a period of three (3) years (or such longer period as shall be necessary with respect to any Tax period prior to the Closing Date for which the statute of limitations has not expired as of the end of such three-year period) in connection with Tax matters, the Excluded Liabilities and the Excluded Assets. The Seller shall reimburse the Purchaser or the Omega Company, as the case may be, for all reasonable out-of-pocket costs incurred in complying with this Section 8.3.

8.4 Formation of the Omega Company. At the Closing, the Purchaser shall own 100% of the limited liability membership interests in the Omega Company. Immediately after the Closing, the Purchaser shall contribute the Assets to the Omega Company and shall cause the Omega Company to assume the Assigned Liabilities.

8.5 Seller's Right of First Refusal. The Parent and Purchaser hereby agree to comply with, and to cause each of their respective Subsidiaries, including the Omega Company, to comply with the provisions of this Section 8.5 (and the Parties hereby agree that any failure of a Subsidiary of a Party to comply with the terms and conditions of this Section shall constitute a breach of this Agreement on the part of such Party):

(a) None of the Purchaser, the Parent, the Omega Company or any Subsidiary of the Parent shall individually or collectively Transfer Omega Stock constituting 50% or more of the then-issued and outstanding Omega Stock other than the Warrants (or any right or interest therein) or all or substantially all of the Omega Assets (or all or substantially all of the right or interest therein) directly, or indirectly through the Transfer of any Equity Interests in any Subsidiary of the Parent that Controls the Omega Company, to any Person other than the Parent or any Subsidiary of the Parent unless (i) the Purchaser, the Parent, the Omega Company or such Subsidiary, as the case may be (the "Transferring Party"), shall have first given written notice to the Seller of its intent to do so (the "Transfer Notice") and (ii) the sole consideration to be paid to the Transferring Party in such Transfer is cash. The Transfer Notice shall name the proposed transferee, specify the amount of Omega Stock or the amount and type of Omega Assets to be transferred (the "Specified Stock or Assets"), the amount of cash to be paid to the Transferring Party and the other material terms of the proposed Transfer. Subject to the following sentence, the Seller shall have 30 days from the date of receipt of any Transfer Notice to agree to acquire all of the Specified Stock or Assets for the price and upon the material terms specified in the Transfer Notice by giving written notice to the Transferring Party. If the proposed Transfer also includes, directly or indirectly, Equity Interests or assets other than Specified Stock or Assets, the Seller shall have 30 days from the determination of the amount of consideration attributable to such Specified Stock or Assets in accordance with Section 17.1 to agree to acquire all of the Specified Stock or Assets for a price in cash equal to the consideration attributable to such Specified Stock or Assets by giving written notice to the Transferring Party. In the event the Seller delivers such written notice within such period, the Transferring Party shall sell, and the Seller shall purchase, such Specified Stock or Assets as promptly as practicable, but in any event within 30 days of the delivery by the Seller of such written notice.

(b) In the event the Seller fails to exercise its right of first refusal within the relevant 30 day period with respect to all the Specified Stock or Assets, the Transferring Party shall have 180 days thereafter to Transfer the Specified Stock or Assets respecting which the Seller's right of right of first refusal was not exercised to the transferee specified in the Transfer

Notice, at a price and upon material terms no more favorable to the transferee than those specified in the Transfer Notice. In the event the Transferring Party has not so sold such Specified Stock or Assets within said 180 day period, none of the Purchaser, the Parent, the Omega Company, or any Subsidiary of the Parent shall thereafter Transfer any Omega Stock or Omega Assets without first making an offer to the Seller in the manner provided above.

(c) In the event that, in the opinion of counsel reasonably satisfactory to the Purchaser, the acquisition of any Specified Stock or Assets set forth in any Transfer Notice would be contrary to any Legal Requirement to which the Seller is subject, the Seller shall be entitled, upon five (5) days written notice thereof to the Purchaser, to assign its rights under this Section 8.5 to acquire such Specified Stocks or Assets upon the conditions set forth in the Transfer Notice, provided that the Seller remains liable for each of its obligations hereunder, including full and final satisfaction of the purchase price.

(d) The right of first refusal granted under this Section 8.5 shall expire on the fifth anniversary of the Closing Date.

8.6 Sale or Wind Down of Omega. The Parent and Purchaser hereby agree to comply with, and to cause each of their respective Subsidiaries, including the Omega Company, to comply with the provisions of this Section 8.6 (and the Parties hereby agree that any failure of a Subsidiary of a Party to comply with the terms and conditions of this Section shall constitute a breach of this Agreement on the part of such Party):

(a) Subject to the provisions of Section 8.5, each of the Purchaser and the Seller agrees that the Purchaser, the Parent, or any Subsidiary of the Parent that may, from time to time, Control the Omega Company or the Omega Company (as the case may be, the "Selling/Wind Down Party"), may determine, at any time following the Closing and in its sole discretion, to (i) Transfer, directly, or indirectly through the Transfer of any Equity Interests in any Subsidiary of the Parent that Controls the Omega Company, all or substantially all, of the Omega Stock held by the Parent or any Subsidiary of the Parent to a third party other than the Parent or any Subsidiary of the Parent, (ii) cause or approve the Omega Company's Transfer of all or substantially all of the Omega Assets to a third party other than the Parent or any Subsidiary of the Parent, (iii) cause or approve the winding down, liquidation or dissolution of the Omega Company or (iv) cause or approve the cessation by the Omega Company of developing, marketing or supplying Omega to the U.S. residential mortgage market.

(b) In the event that a Selling/Wind Down Party effects a Transfer contemplated by Section 8.6(a)(i) or effects a Transfer contemplated by Section 8.6(a)(ii), the Purchaser shall pay to the Seller, by wire transfer to an account specified by the Seller and/or by delivery of securities, as applicable, within five (5) days of such Transfer, an amount equal to the then applicable Quarterly Specified Percentage of the difference between the gross proceeds received by the Selling/Wind Down Party as a result of such Transfer of Omega Stock or Omega Assets and any reasonable transaction costs associated therewith; provided, that if such Transfer of Omega Stock or Omega Assets, as the case may be, also includes other Equity Interests or assets, the Purchaser shall have fifteen (15) days from the determination of the amount of gross proceeds and expenses attributable to such Omega Stock or Omega Assets in accordance with Section 17.1 to make such payment. In the event the proceeds or any portion thereof received by

the Purchaser are not cash, the Seller shall receive, instead of cash with respect to such proceeds or portion thereof, the applicable Quarterly Specified Percentage of such proceeds.

(c) In the event that the Selling/Wind Down Party takes any of the actions set forth in Section 8.6(a)(iii) or (iv), the Purchaser shall pay to the Seller, by wire transfer to an account specified by the Seller, within five (5) Business Days following the receipt of proceeds from such winding down, liquidation or dissolution, an amount equal to the then applicable Quarterly Specified Percentage of such Market Value.

(d) The Purchaser and the Seller agree that the obligation of the Purchaser to make any payment or payments pursuant to Section 3.1 shall be automatically terminated as of the date payment is made by the Purchaser pursuant to this Section 8.6; provided, however, that such termination shall not relieve the Purchaser from its obligation to make payment with respect to any amounts due and payable pursuant to Section 3.1 prior to such date.

(e) Each of the Omega Company, Parent and Purchaser, as applicable, will use its commercially reasonable efforts to maximize the proceeds of any winding down, liquidation or dissolution of the Omega Company.

(f) The rights of the Seller under this Section 8.6 shall expire on December 31, 2011.

8.7 License of Omega. For such time as Payments continue to be payable hereunder, the Purchaser will not, and will cause the Omega Company and any Affiliate of the Purchaser that may, from time to time, Control the Omega Company not to, directly or indirectly, license any of the Omega Assets, or any complementary capabilities developed by or added to the Omega Company from time to time, to any Affiliate of the Omega Company or any third party except on terms which are commercially reasonable to the Omega Company.

8.8 Incorporation of Omega Company. The Purchaser hereby agrees to, and agrees to cause the Omega Company and any other Person (whether or not an Affiliate of the Purchaser or the Parent) who may, from time to time, Control the Omega Company, prior to the time the Warrants become exercisable in accordance with their terms, to convert the Omega Company from a limited liability company into a "C" corporation organized under the laws of the State of Delaware. Upon such conversion, the total number of shares of capital stock that the Company shall have authority to issue shall be no more than 2,000, all of which shares shall be Common Stock, par value one cent (\$0.01). In connection with such conversion, the Purchaser shall cause the Omega Company to issue no more than 1,000 shares of Common Stock in exchange for all of the limited liability company membership interests in the Omega Company. The Purchaser shall cause the Omega Company to remain such a "C" corporation until all of the Warrants are exercised or expire in accordance with their terms. Any failure of the Omega Company to comply with the terms and conditions of this Section shall constitute a breach of this Agreement on the part of the Purchaser.

8.9 Consideration for Sale of Assets. The Omega Company shall not Transfer any Omega Assets unless the consideration received therefor is cash, promissory notes, or readily marketable securities.

ARTICLE 9
EMPLOYMENT MATTERS

ARTICLE 10
CONDITIONS PRECEDENT TO THE PURCHASER'S OBLIGATIONS

The obligation of the Purchaser to consummate the transactions contemplated hereby on the Closing Date is subject to the satisfaction of the following conditions, unless waived in whole or in part by the Purchaser:

10.1 Accuracy of Representations and Warranties. Each of the representations and warranties of the Seller contained herein shall be true and correct in all material respects on and as of the Closing Date with the same force and effect as though the same had been made on and as of the Closing Date.

10.2 Performance of Covenants. The Seller shall have performed and complied, in all material respects, with the covenants and provisions of this Agreement required to be performed or complied with by it between the Effective Date and the Closing Date.

10.3 No Material Adverse Effect. Since May 31, 2002, there shall not have occurred any change or effect that has had, individually or in the aggregate, a Material Adverse Effect.

10.4 Litigation; Other Events. No preliminary or permanent injunction or other order of any court restraining or prohibiting the consummation of the transactions contemplated hereby shall be in effect. No action, suit or proceedings shall have been instituted or threatened by any Governmental Authority seeking to prohibit, restrict or delay, or to enjoin or obtain monetary damages in respect of, the consummation of the transactions contemplated hereby.

10.5 Consents. The Seller shall have obtained consents of General American Corporation and iLumin Corporation to assign, to the Purchaser, the Contracts with such Persons included in the Assets. The Seller shall have obtained all required consents of any Governmental Authority to the transactions contemplated hereby.

10.6 Officer's Certificate. The Purchaser shall have received a certificate from the Seller certifying the fulfillment of the conditions set forth in Sections 10.1, 10.2 and 10.3, dated the Closing Date, signed by a duly authorized officer thereof.

10.7 Employees. The following Omega Employees will have accepted employment with the Omega Company on terms and conditions reasonably satisfactory to the Purchaser and the Omega Company on or prior to the Closing Date, based on the following categorization as determined by the Purchaser: (i) at least 4 of the 8 Key Employees; (ii) at least 7 of the 15 Omega Employees identified as "Tier 1 Employees" in Schedule 10.7 hereof (including Key Employees); or (iii) at least 14 of 32 of the aggregate Omega Employees.

ARTICLE 11 CONDITIONS PRECEDENT TO THE SELLER'S OBLIGATIONS

The obligation of the Seller to consummate the transactions contemplated hereby on the Closing Date is subject to the satisfaction of the following conditions, unless waived in whole or in part by the Seller:

11.1 Accuracy of Representations and Warranties. Each of the representations and warranties of the Purchaser and the Parent contained herein shall be true and correct in all material respects as of the Closing Date with the same force and effect as though the same had been made on and as of the Closing Date.

11.2 Performance of Covenants. The Purchaser and the Parent shall have performed and complied, in all material respects, with the covenants and provisions in this Agreement required herein to be performed or complied with by it between the Effective Date and the Closing Date.

11.3 Litigation; Other Events. No preliminary or permanent injunction or other order of any court restraining or prohibiting the consummation of the transactions contemplated hereby shall be in effect. No action, suit or proceedings shall have been instituted or threatened by any Governmental Authority seeking to prohibit, restrict or delay, or to enjoin or obtain monetary damages in respect of, the consummation of the transactions contemplated hereby.

11.4 Officer's Certificate. The Seller shall have received certificates from each of the Purchaser and the Parent certifying the fulfillment of the conditions set forth in Sections 11.1 and 11.2, dated the Closing Date, signed in each case by a duly authorized officer thereof.

ARTICLE 12 CLOSING

12.1 Closing Date. Except as hereinafter provided, the closing of the transactions contemplated hereby (the "Closing") shall take place at the offices of the Federal Home Loan Mortgage Corporation, 8200 Jones Branch Drive, McLean, Virginia 22102, on the first Business Day following the date on which all of the conditions contained in Articles 10 and 11 have been satisfied or, in the case of Article 10 waived by the Purchaser, or, in the case of Article 11, waived by the Seller, or at such other place and at such other time and date as may be mutually agreed upon by the Purchaser and the Seller. The date of the Closing is referred to in this Agreement as the "Closing Date."

12.2 Proceedings at Closing. All proceedings to be taken and all documents to be executed and delivered by the Seller in connection with the consummation of the transactions contemplated hereby shall be reasonably satisfactory in form and substance to the Purchaser and its counsel. All proceedings to be taken and all documents to be executed and delivered by the Purchaser in connection with the consummation of the transactions contemplated hereby shall be reasonably satisfactory in form and substance to the Seller and its counsel. All proceedings to be taken and all documents to be executed and delivered by all parties at the Closing shall be deemed to have been taken and executed simultaneously, and no proceedings shall be deemed taken nor any documents executed or delivered until all have been taken, executed and delivered.

12.3 Deliveries by the Seller to the Purchaser. At the Closing, the Seller shall deliver, or shall cause to be delivered, to the Purchaser the following:

(a) a bill of sale in form and substance reasonably satisfactory to the Purchaser (the "Bill of Sale"), duly executed by the Seller;

(b) such Transferred IP and other Assets as can reasonably be delivered electronically, by transmission to Parent's designated data center in the State of Maryland;

(c) executed counterparts to the Assignment Agreement, the Assignment of Existing Services Agreement, the Use Agreement, the Marketing Agreement, the Loan Agreement and the Registration Rights Agreement;

(d) all other such assignments and other instruments or documents if any (including certificates of title) as shall be necessary in the reasonable judgment of the Purchaser to evidence the sale, assignment, transfer and conveyance by the Seller to the Purchaser of the Assets in accordance with the terms hereof; including assignments of the Transferred IP, at Purchaser's cost, in forms suitable for recordation with the United States Patent and Trademark Office or the United States Copyright Office;

(e) a certificate of the Secretary or an Assistant Secretary of the Seller attesting as to the incumbency and signature of each officer of the Seller who shall execute this Agreement or any other Seller Document and a delegation of authority by the Chief Executive Officer of the Seller authorizing the execution of this Agreement by the person(s) signing this Agreement on behalf of Seller;

(f) payment of the aggregate amount set forth in Schedule 9.3(b) for use in accordance with such Schedule and Article 9 hereof and payment of the aggregate amount set forth in Schedule 9.4(b) for use in accordance with such Schedule and Article 9 hereof; and

(g) all books and records directly and primarily relating to the Assets or the Project.

12.4 Deliveries by the Purchaser to the Seller. At the Closing, the Purchaser, and Parent shall deliver, or shall cause the Omega Company to deliver, to the Seller the following, as applicable:

(a) executed counterparts to the Use Agreement, the Assignment Agreement, the Assignment of Existing Services Agreement, the Marketing Agreement, the Loan Agreement and the Registration Rights Agreement;

(b) the Promissory Note;

(c) the Warrants;

(d) all other instruments or documents as shall be necessary in the reasonable judgment of the Seller to evidence the conveyance to the Purchaser of the Assumed Liabilities; and

(e) (i) a certificate of the Secretary or an Assistant Secretary of the Purchaser attesting as to the incumbency and signature of each officer of the Purchaser who shall execute this Agreement or any other Purchaser Document, (ii) a certificate of the Secretary or an Assistant Secretary of the Parent attesting as to the incumbency and signature of each officer of the Parent who shall execute this Agreement or any other Purchaser Document and (iii) a certificate of the Secretary or an Assistant Secretary of the Omega Company attesting as to the incumbency and signature of each officer of the Omega Company who shall execute any Purchaser Document and (iv) a delegation of authority by the Chief Executive Officer of each of the Purchaser and Parent authorizing the execution of this Agreement by the person(s) signing this Agreement on behalf of such Person;

ARTICLE 13 ADDITIONAL POST-CLOSING COVENANTS

13.1 Further Assurances.

(a) From time to time after the Closing Date, the Seller shall, at the sole cost and expense of the Purchaser, execute and deliver such other and further instruments of sale, assignment, transfer and conveyance and take such other and further actions as the Purchaser may reasonably request in order to make all the benefits of any Contracts and rights of the Seller (to the extent such Contracts and rights cannot be transferred to the Purchaser on the Closing Date and the Purchaser elects to close notwithstanding the failure of such Contracts and rights to be transferred) available to the Purchaser until such time as such Contracts and rights are transferred to the Purchaser, to vest in the Purchaser and put the Purchaser in possession of the Assets and to transfer to the Purchaser any Contracts and rights of the Seller relating to the

Assets and assure to the Purchaser the benefits thereof; including cooperating with and assisting the Purchaser in retaining former clients of the Seller after the Closing.

(b) At the Purchaser's expense, the Purchaser will prepare assignments or other appropriate documents to update the chain of title of the Transferred IP and, subsequently, assignments in appropriate form for recording with the relevant Governmental Authority. The recordation of the assignments to the Purchaser of the Transferred IP will be at the Purchaser's sole effort and expense, with reasonable cooperation by the Seller.

13.2 Joint Post-Closing Covenant of the Seller and the Purchaser. The Seller and the Purchaser jointly covenant and agree that from and after the Closing Date, the Seller and the Purchaser will cooperate with each other in defending or prosecuting any action, suit, proceeding, investigation or audit of the other, including, without limitation, (a) the preparation and audit of the Seller's and the Purchaser's Tax Returns for all periods and (b) any audit of the Purchaser or the Seller with respect to the sales Tax imposed by the laws of any states or relating to the transactions contemplated by this Agreement. In furtherance hereof, the Purchaser and the Seller further covenant and agree to respond to all reasonable inquiries related to such matters and to provide, to the extent possible, substantiation of transactions and to make available and furnish appropriate documents and personnel in connection therewith.

13.3 Grant of License to Licensed IP.

(a) Effective automatically upon Closing, the Seller hereby grants to the Purchaser a perpetual, worldwide, non-exclusive (except to the extent expressly provided herein), royalty-free and fully paid-up right and license under the Licensed IP solely in connection with the use of the Seller-Owned Transferred IP except that within the U.S. Mortgage Market, the Licensed IP may be used solely in connection with the operation and use of the Products. In exercising its rights hereunder, notwithstanding Section 6.4, the Purchaser or the Omega Company may disclose to distributors of the Products Confidential Information licensed under this Section 13.3 solely to the extent necessary to use the Licensed IP in connection with the operation and use of the Products; provided that the Purchaser shall obtain, and shall cause the Omega Company to obtain, from each such distributor an agreement in writing to maintain the confidentiality of such Confidential Information and not to use such Confidential Information, in each case substantially in accordance with the terms of Section 6.4, and shall be responsible for, and defend and hold harmless the Seller from, any breach of any such agreement. All rights in or to the Licensed IP not expressly granted hereunder are expressly reserved by the Seller. The Purchaser shall not use the Licensed IP other than in accordance with the license granted herein.

(b) The foregoing license is personal to the Purchaser may not be transferred to any Person except that it may be assigned in connection with (i) the sale of any Company that owns all or substantially all of the Assets, including the Omega Company, or (ii) a sale or contribution of all or substantially all of the Assets. Such license may not be sublicensed to any Person except that it may be sublicensed to (x) Affiliates of the Purchaser and (y) to the extent required to permit customers or distributors to use the Products.

(c) Subject to Section 6.5, for a period of three (3) years following the Closing Date, (i) the rights of the Purchaser to use the Licensed IP shall be exclusive but solely for the purpose of commercializing the Products and (ii) the Seller agrees not to use the Licensed IP to commercialize or establish a business that offers a Competing Application, except that, nothing in the foregoing is intended or shall be construed to restrict the Seller or its Affiliates from (x) offering applications of or with mortgage market participants which may be Competing Applications if such applications are part of a larger service offered by or with such mortgage market participants that includes material services in addition to the services offered by the Products as listed on Schedule 1(a) of the Marketing Agreement as of the Closing Date or (y) from accepting loan or other deliveries from other electronic tools or applications and/or integrating the technologies of the Seller and its Affiliates with or into such tools or applications in order to accept such loan or other deliveries or (z) using, making, selling, further developing (including to incorporate new technology), or otherwise offering any service or application currently used or offered on a commercial basis by the Seller (other than the Omega Project). Nothing in this Section 13.3 shall prohibit the Seller from using the Licensed IP internally for any purpose.

(d) The Purchaser hereby acknowledges and agrees that as between the Seller and the Purchaser, the Seller is the exclusive owner of all right, title and interest in and to the Licensed IP. The Purchaser shall, at the Seller's reasonable request and expense, cooperate with the Seller in obtaining, perfecting and protecting the Seller's ownership and other interests in the Licensed IP. The Purchaser acknowledges and agrees that the Licensed IP may contain or incorporate unique and valuable trade secrets of the Seller. Accordingly, the Parties agree that if the Seller institutes a Proceeding to enforce any of the Purchaser's obligations under the license granted herein, the Seller shall be entitled to injunctive relief without posting of any bond or other security. The foregoing rights shall be in addition to and without prejudice to any other rights that the Seller may have hereunder or applicable law, whether at law or in equity.

(e) The Purchaser (i) shall not take any action to challenge the ownership, validity or enforceability of the Licensed IP, (ii) shall not file any patent application incorporating or disclosing any Licensed IP that is Confidential Information and (iii) shall promptly notify the Seller in writing of any threat, warning or notice of any Proceeding adverse to the Seller's rights in the Licensed IP of which the Purchaser may become aware from time to time. The enforcement and protection, including the decision of whether or not to prosecute infringements, misappropriations or violations of the Licensed IP shall be in the sole discretion and control of the Seller and the Purchaser shall execute such documents and provide such cooperation to the Seller, at the Seller's reasonable expense, as the Seller reasonably may request in this regard.

13.4 Grant Back License. Effective automatically upon Closing, each of the Parent and the Purchaser hereby grants to the Seller and each of its Affiliates, an irrevocable, perpetual, royalty-free, worldwide, non-exclusive, sub-licensable and transferable (as provided below) right and license to (i) any and all patents that cover the use or sale of, or the novel aspects of which are based in whole or in part on any Seller-Owned Transferred IP or Licensed IP and (ii) any know-how and inventions comprised within the Transferred IP as of the Closing Date; provided, however, that, subject to Section 6.5, for a period of three (3) years following the Closing Date, the Seller agrees not to use the Intellectual Property licensed to it under this Section 13.4 to commercialize, or establish a business that offers, a Competing Application,

except that, nothing in the foregoing is intended or shall be construed to restrict the Seller or its Affiliates from (x) offering applications of or with mortgage market participants which may be Competing Applications if such applications are part of a larger service offered by or with such mortgage market participants that includes material services in addition to the services offered by the Products as listed on Schedule 1(a) of the Marketing Agreement as of the Closing Date or (y) from accepting loan or other deliveries from other electronic tools or applications and/or integrating the technologies of the Seller and its Affiliates with or into such tools or applications in order to accept such loan or other deliveries or (z) using, making, selling, further developing (including to incorporate new technology) or otherwise offering any service or application currently used or offered on a commercial basis by the Seller (other than the Omega Project) or from using such Intellectual Property internally for any purpose. The foregoing licenses shall be transferable but only (i) to the extent necessary for the conduct of the business of the Seller (as such business may be conducted from time to time), (ii) in connection with the Transfer of all or substantially all of the business of the Seller, or (iii) in connection with the Transfer of any business unit of the Seller (whether as an asset sale, stock sale or otherwise) that uses the Intellectual Property licensed under this Section 13.6 as of the date of such sale. The parties acknowledge and agree that for purposes of Section 365(n) of the U.S. Bankruptcy Code, 11 U.S.C. § 101, et seq. (the "Bankruptcy Code"), the foregoing licenses are, and shall otherwise be deemed to be, licenses to rights of "intellectual property" as defined therein. Notwithstanding any provision contained herein to the contrary, if the Parent or the Purchaser as licensor of such licenses is under any proceeding under the Bankruptcy Code and the trustee in bankruptcy of the Parent or the Purchaser or the Parent or the Purchaser as a debtor in possession rightfully elects to reject this Agreement, the Seller, as licensee, may, pursuant to 11 U.S.C. § 365(n)(1) and (2), retain any and all rights hereunder granted to it to the maximum extent permitted by applicable Legal Requirements, subject to the payments, if any, specified herein.

13.5 Purchase Price Adjustment. (a) Notwithstanding anything to the contrary herein, including Sections 2.4 and 9.6, the Purchaser shall reimburse the Seller for all liabilities, obligations and all other costs incurred by the Seller related to the development of Omega, the Omega Assets or the Project that arise as of or after July 1, 2002 up to and including the Closing Date ("Development Costs") minus 50% of the gross revenues that the Seller derives from its physical custodial services from July 1, 2002 to and including the Closing Date, but in no event in an amount greater than \$6,000,000.

(b) Within 30 days following the Closing Date, the Seller shall deliver to the Purchaser a written statement detailing all Development Costs of the Seller within the scope of Section 13.5(a) (the "Cost Statement").

(c) The Purchaser shall have a period of 30 days to review the Cost Statement following delivery thereof by the Seller. The amount indicated in the Cost Statement will become final and binding upon the Seller and the Purchaser on the 31st day following delivery thereof, unless the Purchaser delivers a written notice (the "Purchaser Notice") to the Seller prior to such date that specifies in reasonable detail the amount by which and the reasons why it thinks the calculation of the Development Costs indicated in the Cost Statement was subject to mathematical errors or was not prepared in accordance with this Agreement.

(d) If the Purchaser delivers a Purchaser Notice in accordance with Section 13.5(c), then the Seller and the Purchaser shall, during the 30-day period beginning on the date of the Seller's receipt of the Purchaser Notice, seek in good faith to resolve in writing any differences that they may have with respect to the matters specified in the Purchaser Notice.

(e) If the Seller and the Purchaser are unable to resolve all of the Purchaser's objections within such 30-day period, then such unresolved objections shall be submitted to the Seller's independent auditors for review and final and binding resolution of any and all matters that remain in dispute and that were properly included in the Purchaser Notice. The Seller and the Purchaser shall use commercially reasonable efforts to cause the Seller's independent auditors to render a decision resolving the matters in dispute within 30 days following the final submission of such matter to the Seller's independent auditors for decision following such briefing and other procedures as the Seller's independent auditors shall establish. The fees, costs and expenses of the Seller's independent auditors (a) shall be borne by the Purchaser in the proportion that the aggregate dollar amount of such disputed items so submitted that are unsuccessfully disputed by the Purchaser (as finally determined by the Seller's independent auditors) bears to the aggregate dollar amount of such items so submitted and (b) shall be borne by the Seller in the proportion that the aggregate dollar amount of such disputed items so submitted that are successfully disputed by the Purchaser (as finally determined by the Seller's independent auditors) bears to the aggregate dollar amount of such items so submitted.

(f) As soon as practicable and, in any event, within 10 Business Days following the date on which a final determination as to the amount to be paid by the Purchaser pursuant to this Section 13.5 is made either by (i) the expiration of the time period indicated in Section 13.5(c), (ii) the Seller's and the Purchaser's reaching agreement pursuant to Section 13.5(d) or (iii) the Seller's independent auditors' rendering a decision pursuant to Section 13.5(e), the Purchaser shall pay such amount by wire transfer in accordance with the wire transfer instruction provisions of Section 3.3(b).

(g) Any payment made by the Purchaser to the Seller pursuant to this Section 13.5 shall be treated as a purchase price adjustment by the Purchaser and the Seller.

13.6 Branding.

(a) For a period of 30 days following the Closing Date, the Seller hereby grants to each of the Purchaser and the Omega Company a non-exclusive, worldwide, non-transferable, non-sublicenseable, paid-up and royalty-free right and license to use the Branding in existence, and in the manner conducted and used, as of the Signing Date solely for the limited purpose of winding down the use of the Branding in connection with Omega, the Assets or the Project solely in the manner and to the extent such Branding is used as of the Closing Date on existing promotional and advertising materials, stationery, computer and electronic systems, signage, displays, product packaging, Web Sites, e-mail addresses, phone numbers, fax numbers, employee identification and other documents or similar materials (whether in written, electronic, optical or other form) (collectively, "Existing Materials").

(b) The Purchaser, and shall cause the Omega Company to, maintain the high quality control standards for products and services relating to the use of the Branding that are substantially equivalent to or stricter than those standards used by the Seller as of the Closing Date as may be provided in writing by the Seller to the Purchaser and the Omega Company.

(c) The Purchaser (i) on its behalf and, as sole owner of the Omega Company, on behalf of the Omega Company, acknowledges and agrees that it has no right, title or interest in the Branding except for the limited license granted herein and (ii), except as otherwise expressly permitted pursuant to the Marketing Agreement, agrees to and shall discontinue, and shall cause the Omega Company to discontinue, use of the Branding and remove the Branding from all Existing Materials prior to the 31st day following Closing Date, including without limitation uses of the Branding on any terms and conditions or rules for use of the Omega Company's Web Sites and any privacy policy of the Omega Company.

(d) Subject to Section 13.6(c) and except as otherwise expressly permitted pursuant to the Marketing Agreement, (i) the Purchaser shall, and shall cause the Omega Company to, (A) destroy all Existing Materials utilizing any Branding and (b) provide written confirmation of same to the Seller prior to the 31st day following the Closing Date and (ii) on and after the 31st day following the Closing Date, the Purchaser shall not, and shall cause the Omega Company not to, thereafter use any name, legend or mark that is confusingly similar to any Branding.

(e) The Purchaser on its behalf and, as sole owner of the Omega Company, on behalf of the Omega Company, acknowledges that the Branding is the valuable property of the Seller, and that all goodwill arising from the use of the Branding by the Purchaser or the Omega Company shall inure to the benefit of the Seller, and ownership of such goodwill shall vest in the Seller, and otherwise hereby is assigned by the Purchaser, which shall also cause the Omega Company to so assign, as the case may be, to the Seller, without the need for any further action by any of the Parties.

(f) The Purchaser shall not, and shall cause the Omega Company not to, take any action likely to impair the validity or enforceability of the Branding, or diminish the value of the Branding, or otherwise dilute, tarnish, disparage or reflect adversely on the Seller or the Branding, in each case in any jurisdiction.

(g) The Purchase shall if it becomes aware, and shall cause the Omega Company if it becomes aware, of (a) any use or registration by a third party of any word, phrase, symbol, logo, design, character or representation or any combination of any of the foregoing, that is substantially similar to any of the Branding or (b) any claim by a third party of any rights in the Branding, notify the Seller thereof promptly in writing and in any event within 10 days after the Purchaser or the Omega Company, as the case may be, becomes so aware. The obligation contained in this Section 13.6(g) shall only apply in the event that an employee of the Purchaser or the Omega Company, as the case may be, with actual knowledge of the obligation contained in this Section 13.6(g) obtains actual knowledge of such use or claim, and does not impose on either the Purchaser or the Omega Company an obligation to inform its respective employees of such obligation or to otherwise police the Branding.

(h) The rights under this Section 13.6 are limited to the Branding in the identical style, typeface and graphic appearance in which the Branding is used by the Seller as of the Closing Date.

ARTICLE 14 INDEMNIFICATION AND RELATED MATTERS

14.1 Indemnification.

(a) Seller's Indemnity to Purchaser. The Seller shall indemnify, defend and hold harmless the Purchaser, its Affiliates, permitted assigns and successors in interest to the Project and the Assets, and their respective shareholders, officers, directors, employees, and agents (collectively, the "Purchaser Indemnified Parties") from and against any and all Losses that may be asserted against or incurred or suffered by any such Person arising out of, relating to or on account of:

(i) any breach of any representation or warranty made by the Seller in this Agreement; provided, however, that in determining any liability for breach of a representation or warranty under this Section 14.1(a)(i), the express "Knowledge" qualifier in Section 4.7(h) shall be disregarded in determining any such liability;

(ii) any failure by the Seller to carry out, perform, satisfy and discharge any of its covenants or agreements (other than the Use Agreement, the Assignment Agreement, the Assignment of Existing Services Agreement, the Marketing Agreement, the Loan Agreement and the Registration Rights Agreement, each of which will stand on its own), under this Agreement;

(iii) Seller's ownership, use of the Assets or operation of the Project prior to the Closing; or

(iv) any Excluded Liability.

(b) Purchaser's and Parent's Indemnity to Seller. The Purchaser and the Parent, jointly and severally, shall indemnify, defend and hold harmless the Seller, its Affiliates and their respective shareholders, officers, directors, employees and agents (collectively, the "Seller Indemnified Parties") from and against any and all Losses that may be asserted against or incurred or suffered by any such Person arising out of, relating to or on account of:

(i) any breach of any representation or warranty made by the Purchaser or the Parent in this Agreement;

(ii) any failure by the Purchaser or the Parent to carry out, perform, satisfy and discharge any of its covenants or agreements (other than the Use Agreement, the Assignment Agreement, the Assignment of Existing Services Agreement, the Marketing Agreement, the Loan Agreement and the Registration Rights Agreement, each of which will stand on its own) under this Agreement;

(iii) the Purchaser's, the Parent's, the Omega Company's or any of their respective Affiliates' ownership or use of the Assets or operation of the Project as of or subsequent to the Closing; or

(iv) any Assumed Liability.

(c) Maximums. Notwithstanding any other provision to the contrary herein, the aggregate liability of the Seller under Section 14.1(a)(i) or the Purchaser and the Parent under Section 14.1(b)(i), as applicable, shall not exceed: (i) \$3,000,000 for breaches of representations and warranties other than the representations and warranties set forth in Section 4.7 and (ii) \$6,000,000 for breaches of the representations and warranties set forth in Section 4.7; provided that (A) for every \$1.00 applied to breaches under clause (i), the \$6,000,000 maximum amount set forth in clause (ii) shall be reduced by \$1.00, (B) for every \$1.00 paid by the Seller to the Omega Company pursuant to Section 6.4(c) of the Marketing Agreement, the \$6,000,000 maximum amount set forth in clause (ii) shall be reduced by \$1.00, (C) for every \$1.00 applied to breaches under clause (ii) that exceed, in the aggregate, \$3,000,000, the \$3,000,000 maximum amount set forth in clause (i) shall be reduced by \$1.00, and (D) to the extent indemnification is sought under Section 14.1(a)(i) or 14.1(b)(i), the Indemnifying Party shall be required to provide indemnification only at such time as the aggregate liability for all Losses for which indemnification is sought exceeds on a cumulative basis \$250,000, in which event the Indemnifying Party shall indemnify the Indemnified Party for the entire amount of such Losses.

(d) Notwithstanding anything to the contrary in this Agreement, this Section 14.1 shall not apply to any Losses concerning or relating to Tax matters, which shall be governed exclusively by Section 14.4.

(e) Time Limit. No claim for indemnity under Section 14.1(a)(i) or 14.1(b)(i) shall be permitted after the expiry of the relevant survival period indicated in Section 17.2.

14.2 Procedures for Indemnification. The party or parties making a claim for indemnification under this Agreement is referred to as the "Indemnified Party" and the party or parties against whom such claims are asserted under this Agreement is referred to as the "Indemnifying Party." All claims by an Indemnified Party shall be asserted and resolved only as follows:

(a) In the event that (i) any claim or demand for which an Indemnifying Party would be liable to an Indemnified Party hereunder is asserted against or sought to be collected from such Indemnified Party by a third party (such claim or demand, a "Third Party Claim") or (ii) any Indemnified Party hereunder should have a claim or demand against any Indemnifying Party hereunder which does not involve a claim or demand being asserted against or sought to be collected from it by a third party (such claim or demand a "Direct Claim"), the Indemnified Party shall with reasonable promptness notify in writing the Indemnifying Party of such claim or demand and the amount or the estimated amount thereof to the extent then feasible to determine (which estimate shall not be conclusive of the final amount of such claim or demand) (a "Claim Notice"); provided, however, that any failure to give such notice will not waive any rights of the Indemnified Party except to the extent the rights of the Indemnifying Party are actually prejudiced as a result of such delay or lack of detail.

(b) In the event of a Third Party Claim, the Indemnifying Party shall have the right, exercisable by delivery of written notice (an "Assumption Notice") to the Indemnified Party within fourteen (14) days of receipt of the Claim Notice, to assume the defense of such Third Party Claim, using counsel selected by the Indemnifying Party and reasonably acceptable to the Indemnified Party; provided, that the Indemnifying Party shall not have the right to assume or continue defense of a Third Party Claim if the Indemnified Party shall have been or shall be advised by counsel in writing that, under applicable standards of professional responsibility, a conflict will arise in the event both the Indemnified Party and the Indemnifying Party are represented by the same counsel with respect to the Third Party Claim, in which case such Indemnified Party shall have the right to control the defense of such Third Party Claim and all Losses reimbursable hereunder in connection therewith shall be reimbursed by the Indemnifying Party from time to time upon written demand of the Indemnified Party. In addition, if the Indemnifying Party fails to give the Indemnified Party the Assumption Notice within the above-stated time period, the Indemnified Party shall have the right to assume control of the defense of the Third Party Claim and all Losses reimbursable hereunder in connection therewith shall be reimbursed by the Indemnifying Party from time to time upon the written demand of the Indemnified Party. If an Indemnifying Party assumes the defense of a Third Party Claim, no settlement shall be made without the prior written consent of the Indemnified Party, which consent shall not be unreasonably withheld. So long as the Indemnifying Party is diligently defending such Third Party Claim, the Indemnified Party shall not compromise or settle such Third Party Claim without the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld. If the Indemnifying Party does not assume the defense of such Third Party Claim in accordance with the terms hereof or does not pursue such defense with reasonable diligence, the Indemnified Party may defend against such Third Party Claim in such manner as it may deem appropriate, including settling such Third Party Claim on such terms as the Indemnified Party may deem appropriate (after giving prior written notice of the same to the Indemnifying Party and obtaining the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld), and the Indemnifying Party will promptly reimburse the Indemnified Party for its Losses in accordance with the provisions of this Article 14.

(c) In the event of a Direct Claim, if the Indemnifying Party gives written notice to the Indemnified Party within thirty (30) days of receipt of a Claim Notice that it does not dispute such claim, the amount of such claim shall be conclusively deemed a liability of the Indemnifying Party hereunder and shall be paid to the Indemnified Party immediately.

14.3 Satisfaction of Indemnification Obligations. Any indemnification obligations shall be satisfied through the payment by the Indemnifying Party to the Indemnified Party of an amount in cash equal to the indemnifiable Loss.

14.4 Certain Tax Matters.

(a) Except as set forth in Section 2.3, (i) the Seller shall be liable for and shall pay, and shall indemnify the Purchaser and its Affiliates on an after-Tax basis against, all Taxes applicable to the Project or the Assets, to the extent attributable to taxable years or periods (or portions thereof) ending on or prior to the Closing Date and (ii) the Purchaser shall be liable for and shall pay, and shall indemnify the Seller and its Affiliates on an after-Tax basis against, all

Taxes (i) applicable to the Project or the Assets, to the extent attributable to taxable years or periods (or portions thereof) ending after the Closing Date.

(b) Any sales Tax, use Tax, real property transfer or gains Tax, documentary stamp Tax or similar Tax attributable to the sale or transfer of the Project or the Assets shall be paid by Purchaser when due, regardless of whether liability for such Tax is imposed by law upon the Purchaser or the Seller. At the request of the Seller, the Purchaser shall timely sign and deliver such certificates or forms as may be necessary or appropriate to establish an exemption from (or otherwise reduce), or make a report with respect to, such Taxes.

(c) The Seller or the Purchaser, as the case may be, shall provide reimbursement for any Tax paid by the Purchaser or the Seller, respectively, all or a portion of which is the responsibility of the other in accordance with the terms of Section 2.3(a), Section 2.3(b) or this Section 14.4. Within a reasonable time prior to the payment of any said Tax, the Party paying such Tax shall give notice to the other Party of the Tax payable and the portion which is the liability of each Party, although failure to do so will not relieve the other Party from its liability hereunder.

(d) It is the intention of the Parties to this Agreement that neither the Omega Company nor the relationship between the Purchaser and the Seller resulting from the Seller Documents will be characterized as a partnership for purposes of all matters relating to Taxes.

14.5 LIMITATION OF LIABILITY. EXCEPT FOR (I) LOSSES CAUSED BY WILLFUL MISCONDUCT, OR (II) LOSSES ARISING OUT OF THE BREACH OF SECTION 6.4 (CONFIDENTIALITY), IN NO EVENT SHALL ANY PARTY HAVE ANY LIABILITY TO ANOTHER PARTY OR ANY OTHER PERSON ENTITLED TO MAKE A CLAIM UNDER THIS AGREEMENT FOR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING SUCH DAMAGES FOR LOST PROFITS OR REVENUES, INJURY TO PROPERTY OR REPUTATION, LOSS OF DATA, LOSS OF USE OR CLAIMS OF THIRD PARTIES), ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT OR THE PERFORMANCE OR BREACH HEREOF OR THE SUBJECT MATTER HEREOF, REGARDLESS OF THE FORM OF ACTION, WHETHER BASED ON STATUTE OR ARISING IN CONTRACT, INDEMNITY, WARRANTY, STRICT LIABILITY OR TORT (INCLUDING NEGLIGENCE), AND REGARDLESS OF WHETHER SUCH PARTY HAS REASON TO KNOW OR IN FACT KNOWS OF THE POSSIBILITY OF SUCH DAMAGES. FOR GREATER CERTAINTY ANY AMOUNTS PAID BY A PARTY IN RESPECT OF A THIRD PARTY CLAIM SHALL CONSTITUTE DIRECT DAMAGES.

14.6 Exclusivity of Remedies. Each Party agrees that the other Parties shall be entitled to an injunction to prevent breaches of the provisions of this Agreement and to enforce specifically this Agreement and its terms and provisions, including without limitation, the provisions of Sections 6.3, 6.4, 7.6, 8.5 and 17.4. However, the sole remedy of Seller, the Purchaser and the Parent for monetary indemnification or monetary damages to which it may be entitled for breaches of the representations, warranties, covenants and agreements contained in this Agreement or for any other action arising out of, or in connection with, this Agreement, shall

be claims made in accordance with Section 14.1, 14.2 and 14.4 and subject to the limitations of Sections 14.1, 14.2, 14.4 and 14.5, as applicable.

ARTICLE 15

TERMINATION

15.1 Termination.

(a) This Agreement may be terminated by:

- (i) the written agreement of the Purchaser and the Seller;
- (ii) the Purchaser only if any of the conditions set forth in Article 10 becomes incapable of fulfillment and is not waived by the Purchaser;
- (iii) the Seller only if any of the conditions set forth in Article 11 becomes incapable of fulfillment and is not waived by the Seller; or
- (iv) the Purchaser or the Seller on or after September 30, 2002 if the Closing has not occurred prior to such date.

(b) Notwithstanding the foregoing, the provisions of Sections 6.3, 6.4, 16.1 and 17.4 shall survive any termination of this Agreement.

15.2 Liabilities After Termination. Upon any termination of this Agreement pursuant to Section 15.1, no Party shall thereafter have any further liability or obligation hereunder (except under Section 6.3, 6.4, 16.1 and 17.4); provided, however, that no such termination shall relieve any Party of any liability for any breach of this Agreement prior to the date of such termination.

ARTICLE 16

GUARANTY

16.1 Guaranty by Parent.

(a) Parent irrevocably guarantees (as primary obligor and not merely as surety) all of the Purchaser's and Omega Company's representations, warranties, covenants, indemnification obligations and all payments required to be made by the Purchaser or the Omega Company pursuant to this Agreement and each other Purchaser Document, including without limitation pursuant to the Promissory Note (the "Guaranty").

(b) The Guaranty shall not be affected in any way by the absence of any action by the Seller to obtain satisfaction from the Purchaser or the Omega Company, as the case may be.

(c) The Parent's obligations pursuant to this Section 16.1 shall be unconditional, irrespective of any lack of capacity of the Purchaser or Omega Company, as the case may be, or any lack of validity or enforceability of any other provision of this Agreement or any other Purchaser Document, and the Guaranty shall not be affected in any way by any variation, extension, waiver, compromise or release of any or all of the obligations of the Purchaser or Omega Company, as the case may be, hereunder or thereunder.

(d) The Guaranty is a continuing guaranty and shall remain in full force and effect until all obligations of the Purchaser, Parent and the Omega Company have been satisfied.

(e) If the Purchaser or Omega Company merges or consolidates with or into another entity, loses its separate legal identity or ceases to exist, the Parent shall nonetheless continue to be liable for those items listed in this Section 16.1.

(f) The Guaranty shall not be affected by the existence of any bankruptcy, insolvency, reorganization or similar proceedings involving the Purchaser or Omega Company, by any change in Legal Requirements or by any present or future action of any Governmental Authority amending, varying, reducing or otherwise affecting, or purporting to amend, vary, reduce or otherwise affect, any of the obligations of the Purchaser under this Agreement or any other Purchaser Document or by any other circumstance that might otherwise constitute a legal or equitable discharge or defense of a surety or a guarantor.

(g) The Parent waives all requirements as to promptness, diligence, presentment, demand for payment, protest and notice of any kind with respect to the Guaranty and this Agreement or any other Purchaser Document.

(h) Each payment under this Guaranty shall be made without withholding on account of Taxes unless withholding is required by applicable law. If applicable law requires withholding, Parent shall give notice to that effect to the Seller, make the necessary withholding and make timely payment of the amount withheld to the appropriate Governmental Authority. All Taxes so withheld shall be paid before penalties attach thereto or interest accrues thereon. If any such penalties or interest nonetheless become due, Parent shall make prompt payment thereof to the appropriate Governmental Authority. If Seller pays any amount in respect of Indemnifiable Taxes on any payment due from Parent hereunder, or penalties or interest thereon, Parent shall reimburse the Seller in U.S. dollars for that payment on demand. If Parent pays any such Taxes or penalties or interest thereon, it shall deliver official Tax receipts evidencing the payment or certified copies thereof to the Seller not later than the thirtieth day after payment. If any Taxes withheld or paid by the Seller in accordance with the foregoing are Indemnifiable Taxes, Parent shall forthwith pay to the Seller such additional amount as is necessary to ensure that the net amount actually received by the Seller free and clear of Indemnifiable Taxes is equal to the amount that the Seller would have received had no taxes been withheld or paid by the Seller.

ARTICLE 17

MISCELLANEOUS

17.1 Determination of Certain Amounts.

(a) The “Market Value” of the Omega Company at a specified time, the amount of consideration attributable to Specified Stock or Assets as contemplated by Section 8.5(a), the value of the gross proceeds and expenses attributable to Omega Stock or Omega Assets as contemplated by Section 8.6(b) and the value of any non-cash consideration contemplated by Section 8.9 for purposes of determining FCF (each, an “Appraised Amount”) shall, in each case, be an amount determined by agreement of the Purchaser and the Seller or, if agreement between the Purchaser and the Seller cannot be reached within fifteen (15) days of the commencement of negotiations to determine such Appraised Amount, such Appraised Amount shall be determined by an independent nationally recognized investment banking firm experienced in valuing businesses and, if applicable, the type of non-cash consideration in question (an “Appraiser”) jointly chosen by the Purchaser and the Seller or, if the Purchaser and the Seller cannot agree on the selection of an Appraiser within fifteen (15) days of the commencement of the selection process, then each of the Purchaser and the Seller shall choose an Appraiser within fifteen (15) days of the end of such 15-day period, and the Appraised Amount shall be the value agreed upon by such Appraisers or, if the two Appraisers cannot so agree, the value of a third Appraiser, which third Appraiser shall be chosen by the two Appraisers (the date on which the latest appointment made pursuant to this Section 17.1(a) takes place, the “Appraisal Request Date”).

(i) The Appraiser(s) shall be directed to deliver an appraiser’s certificate (an “Appraiser’s Certificate”) to each of the Purchaser and the Seller on or before the thirtieth day (the “Certificate Date”) after the Appraisal Request Date, which Appraiser’s Certificate shall set forth the determination of the Appraised Amount as of the time in question; provided that the effectiveness of an Appraiser’s Certificate shall not be prejudiced if it is received after the Certificate Date.

(ii) The Appraised Amount shall be as set forth in such Appraiser’s Certificate. The Purchaser shall pay each such Appraiser’s fees and expenses.

(b) To the fullest extent permitted by law, the determination of an Appraised Amount made pursuant to this Section 17.1 shall be final and binding on the Purchaser and the Seller for purposes of this Agreement and shall not be subject to any challenge or appeal in any judicial, arbitral or other proceeding, regardless of the manner of appraisal, reasoning provided in the Appraiser’s Certificate or outcome.

(c) The Purchaser shall provide, and shall take all necessary action to cause its Affiliates, including the Omega Company, to provide, the Appraiser(s) with such information concerning the Omega Company as may be reasonably requested by the Appraiser(s) for purposes of the evaluation contemplated hereby.

17.2 Survival of Representations, Warranties and Covenants. The representations and warranties contained in this Agreement shall survive the execution and delivery of this Agreement and the Closing for a period of eighteen (18) months from the Closing Date, other than (a) a breach of any representation or warranty related to any Tax matter, which shall survive until the expiration of the statute of limitations for such Tax matter and (b) a breach of any representation or warranty contained in Section 4.7, which shall survive for a period of twenty-four (24) months. Notwithstanding the foregoing, to the extent that a claim based on any inaccuracy or alleged inaccuracy of a representation or warranty is brought within the time period specified in this Section 17.2, the representation and warranty which underlies such claim will survive solely with respect to such claim until the final resolution of such claim. The covenants contained herein shall survive for the applicable period of the statute of limitations with respect thereto.

17.3 Entire Agreement. This Agreement constitutes the entire and only agreement between the Parties with respect to the subject matter hereof and supercedes all prior and contemporaneous agreements, commitments or understandings, whether written or verbal, that the Parties may have with respect to the subject matter hereof.

17.4 Governing Law; Consent to Jurisdiction; Waiver of Jury Trial.

(a) Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York applicable to contracts to be performed fully within the State of New York. However, the Uniform Computer Information Transactions Act (or any substantially similar law that may be enacted by the State of New York) will not apply to this Agreement or the performance of it, and instead the laws of the State of New York as they exist without reference to the Uniform Computer Information Transactions Act will apply.

(b) Consent to Jurisdiction. Any action or proceeding, however characterized, relating to or arising out of this transaction, or in connection with the subject matter hereof shall be maintained in the state courts located in the Borough of Manhattan, City of New York or in the United States District Court for the Southern District of New York, and the Parties, each for itself, its successors and permitted assigns, hereby irrevocably submits to the jurisdiction of such courts for the purposes of any such action or proceeding and irrevocably agrees to be bound by any judgment rendered thereby in connection with this Agreement. The Purchaser and the Parent each shall appoint CT Corporation as agent to receive on such Person's behalf service of process in any proceeding in any such court by entering into an appropriate agreement as of the date of the Closing, and the Parties agree that any process or other paper to be served in connection with any action or proceeding under this Agreement shall, if delivered, sent or mailed in accordance with Section 17.7, constitute good, proper and sufficient service thereof.

(c) WAIVER OF JURY TRIAL. EACH PARTY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT, AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

17.5 Expenses. Each of the Parties shall bear its own expenses (including, without limitation, fees and disbursements of its counsel, accountants and other experts) incurred by it in connection with the preparation, negotiation, execution, delivery and performance of this Agreement, each of the other documents and instruments executed in connection with or contemplated by this Agreement and the consummation of the transactions contemplated hereby and thereby.

17.6 Rules of Construction.

(a) The headings of the Articles and Sections of this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

(b) Any term defined herein in the singular form shall have a comparable meaning when used in the plural form, and vice versa.

(c) Whenever the context requires, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice-versa.

(d) When used herein, the words "hereof," "herein," "hereunder" and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement.

(e) References to the Preamble, Recitals, Articles, Sections, Schedules or Exhibits shall refer respectively to the preamble, recitals, articles, sections, schedules or exhibits of this Agreement, unless otherwise expressly provided.

(f) Disclosure of an item in response to one Section of this Agreement shall constitute disclosure and response to every Section of this Agreement, notwithstanding the fact that no express cross-reference is made.

(g) Any Schedule or Exhibit may be amended from time to time by written agreement of the Parties.

(h) References to capitalized terms in any Schedule or Exhibit that are not defined therein shall have the meaning ascribed to them in this Agreement, except where the circumstance indicates otherwise.

(i) When used herein, the terms "include," "includes," and "including" are not limiting.

(j) Unless the context requires otherwise, derivative forms of any term defined herein shall have a comparable meaning to that of such term.

(k) Each Party has cooperated in the drafting and preparation of this Agreement; accordingly, in any construction of any provision hereof, such provision shall not be construed against any Party on the grounds that such Party was the drafter thereof.

17.7 Notices. Except as otherwise expressly provided herein, all notices required or permitted to be sent hereunder, including any requests and other communications, to a Party hereunder shall be in writing and sufficient if delivered by hand, by registered or certified mail (postage prepaid with return receipt requested), by overnight courier service or by facsimile with telephone confirmation of receipt by the addressee, in each case addressed as follows:

If to the Seller, to:

Federal Home Loan Mortgage Corporation
8200 Jones Branch Drive
McLean, VA 22102
Attention: Senior Vice President — Business Development
Phone: 703-903-4200
Fax: 703-903-4205

with a copy to:

Federal Home Loan Mortgage Corporation
8200 Jones Branch Drive
McLean, VA 22102
Attention: Associate General Counsel — Business Development
Phone: 703-903-2600
Fax: 703-903-2885

If to the Purchaser, to:

BCE Emergis Technologies, Inc.
3200 Northline Avenue, Suite 245
Greensboro, NC 27408
Attention: President
Phone: 341-548-1000
Fax: 341-548-8828

with a copy to:

BCE Emergis Inc.
Bureau 2200
1155, boul. René-Lévesque O.
Montréal (Québec), Canada
H3B 4T3
Attention: Corporate Secretary
Phone: 514-868-2200
Fax: 514-868-2340

If to the Parent, to:

BCE Emergis Inc.
Bureau 2200
1155, boul. René-Lévesque O.
Montréal (Québec), Canada
H3B 4T3
Attention: President
Phone: 514-868-2200
Fax: 514-868-2283

with a copy to:

BCE Emergis Inc.
Bureau 2200
1155, boul. René-Lévesque O.
Montréal (Québec), Canada
H3B 4T3
Attention: Corporate Secretary
Phone: 514-868-2200
Fax: 514-868-2340

or to such other address as the Party to whom notice is to be given may have furnished to the other Parties in writing in accordance herewith. Each such notice shall be effective when so delivered by hand, on the fifth Business Day following the date on which such communication is sent when delivered by registered or certified mail and on the first Business Day following the date on which such communication is sent when delivered by overnight courier service or sent by facsimile with telephone confirmation of receipt by the addressee.

17.8 Severability. If any one or more of the provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired. In the case of any such invalidity, illegality or unenforceability, the Parties agree to use their commercially reasonable efforts to achieve the purpose of such provision by a new legally valid and enforceable stipulation.

17.9 Binding Effect; No Assignment. This Agreement and the rights and obligations hereunder shall not be assignable or transferable by any Party without the prior written consent of the other Parties. Any instrument purporting to make an assignment in violation of this Section 17.9 shall be null and void *ab initio*. All covenants, agreements, representations, warranties and undertakings in this Agreement made by and on behalf of any Party shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Nothing in this Agreement shall create or be deemed to create any third party beneficiary rights in any Person not party to this Agreement.

17.10 Amendments and Waivers. Except as expressly stated herein, neither this Agreement nor any terms hereof may be amended, waived, discharged or terminated unless such amendment, waiver, discharge or termination is in writing signed by each of the Parties or, in the case of a waiver, by the Party waiving compliance.

17.11 Non-Waiver and Other Remedies. No failure or delay on the part of any Party in exercising any right, power or privilege hereunder and no course of dealing among the Parties shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder. The rights, powers and remedies herein expressly provided are cumulative and not exclusive of any rights, powers or remedies which the Parties may otherwise have at law or in equity. No notice to or demand on a Party in any case shall entitle such Party to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of any other Party to any other or further action in any circumstances without notice or demand.

17.12 No Third Party Rights. Nothing contained herein, express or implied, is intended or shall be construed to confer upon or give any Person, other than the Parties hereto, any rights or remedies under or by reason of this Agreement.

17.13 Counterparts. This Agreement may be executed in any number of counterparts and each such counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.

17.14 Interpretation. Notwithstanding anything to the contrary herein, if any portion of this Agreement states that the Assets are transferred or are otherwise free and clear of Liens, the Parties acknowledge and agree that, for purposes of any such provision, the Assets shall be deemed not to include the Licensed Transferred IP and the parties acknowledge and agree that the Licensed Transferred IP is transferred subject to the rights of third Parties, including the rights of the Person licensing such Intellectual Property to the Seller.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date and year first above written.

BCE EMERGIS TECHNOLOGIES, INC.

By: R. Alan Neely
Name: R. Alan Neely
Title: President

BCE EMERGIS INC.

By: R. Alan Neely
Name: R. Alan Neely
Title: President USA

FEDERAL HOME LOAN MORTGAGE
CORPORATION

By: Peter Maselli
Name: Peter Maselli
Title: Senior Vice President - Mortgage Services

e-route inc.
as the Corporation

and

TD MORTGAGE CORPORATION

and

CANADIAN IMPERIAL BANK OF COMMERCE

and

FÉDÉRATION DES CAISSES DESJARDINS DU QUÉBEC

and

NATIONAL BANK OF CANADA

and

ROYAL BANK OF CANADA

and

THE TORONTO-DOMINION BANK

and

THE BANK OF NOVA SCOTIA
as Vendors

and

BCE EMERGIS INC.
as Purchaser

SHARE PURCHASE AGREEMENT

dated as of April 19, 2002

Stikeman Elliott

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SHARE PURCHASE AGREEMENT

Share Purchase Agreement dated April 19, 2002, between TD Mortgage Corporation, a corporation governed by the Laws of Canada, Canadian Imperial Bank of Commerce, a Canadian chartered bank, Fédération des caisses Desjardins du Québec, a body corporate governed by the Laws of Quebec, National Bank of Canada, a Canadian chartered bank, Royal Bank of Canada, a Canadian chartered bank, The Toronto-Dominion Bank, a Canadian chartered bank and The Bank of Nova Scotia, a Canadian chartered bank (collectively, the "**Vendors**"), BCE Emergis Inc., a corporation incorporated under the laws of Canada ("**Purchaser**") and e-route inc., a corporation incorporated under the *Canada Business Corporations Act* (the "**Corporation**").

WHEREAS the Corporation is in the business of providing an electronic bill presentment service;

WHEREAS Purchaser is a B2B e-commerce infrastructure provider;

WHEREAS Purchaser wishes to acquire, and Vendors wish to sell, all of the shares of the Corporation.

NOW, THEREFORE, this Agreement sets forth the terms and conditions upon which Purchaser will purchase, and Vendors will sell, all of the shares of the Corporation.

ARTICLE 1 INTERPRETATION

1.1 Defined Terms.

As used in this Agreement, the following terms have the following meanings:

"**Affiliate**" has the meaning specified in the *Canada Business Corporations Act*.

"**Agreement**" means this share purchase agreement and all schedules and instruments in amendment or confirmation of it; and the expressions "**Article**" and "**Section**" followed by a number mean and refer to the specified Article or Section of this Agreement.

"**Authorization**" means, with respect to any Person, any order, permit, approval, waiver, licence or similar authorization of any Governmental Entity having jurisdiction over the Person.

"**BCE Emergis Liability**" means all amounts owing by the Corporation to Purchaser including pursuant to that certain implementation and services agreement dated May 31, 1999 between Purchaser and the Corporation (the "**Implementation and Services Agreement**"), and any GST payable on such amounts.

"Biller Integration Software" has the meaning specified in the Restated and Amended Document Acquiring Intermediary Agreements.

"Books and Records" means all books of account, tax records, sales and purchase records, customer and supplier lists, computer software, formulae, business reports, plans and projections and all other documents, files, correspondence and other information of the Corporation whether in writing or electronic form, but for greater certainty does not include any such materials which are the property of any Vendor.

"Business Day" means any day other than a Saturday, Sunday or other day on which the principal commercial banks in Toronto, Ontario are not open for business during normal business hours.

"Closing" means the completion of the transaction of purchase and sale contemplated in this Agreement.

"Closing Date" means April 19, 2002 or such later date as may be agreed to by Purchaser and Vendors.

"Closing Date Balance Sheet" means the balance sheet of the Corporation forming part of the Closing Date Financial Statements.

"Consent" means the consent of a contracting party to a change in control of the Corporation if required by the terms of any Contract.

"Contracts" means all agreements to which the Corporation is a party including all contracts, leases of personal property and commitments of any nature, written or oral, including (i) forward commitments by the Corporation for supplies or materials entered into in the Ordinary Course and (ii) restrictive agreements and negative covenant agreements which the Corporation has with its employees, past or present.

"Corporate Records" means the corporate records of the Corporation, including (i) all constating documents and by-laws, (ii) all minutes of meetings and resolutions of shareholders and directors (and any committees), and (iii) the share certificate books, securities register, register of transfers and register of directors.

"Corporation" has the meaning specified in the initial description of the parties hereto.

"Employee Plans" means all the employee benefit, fringe benefit, supplemental employment benefit, bonus, incentive, profit sharing, termination, notice, severance, change of control, pension, retirement, stock option, stock purchase, stock appreciation, health, welfare, medical, dental, disability, life insurance and similar plans, programmes, arrangements or practices relating to the current or former employees, officers or directors of the Corporation maintained, sponsored or funded by the Corporation, whether written or oral, funded or unfunded, insured or self-insured, registered or unregistered.

"Emergis Shares" means the common shares of Purchaser.

"**Financial Statements**" shall mean the financial statements for the Corporation consisting of a balance sheet as at October 31, 2001 and the accompanying statements of income, retained earnings and changes in financial position for the 12 month period ended October 31, 2001 and notes to the financial statements, a copy of which financial statements is annexed hereto as Schedule 3.2(v).

"**GAAP**" means, at any time, accounting principles generally accepted in Canada, including those set out in the Handbook of the Canadian Institute of Chartered Accountants.

"**Governmental Entity**" means any (i) multinational, federal, provincial, state, municipal, local or other governmental or public department, central bank, court, commission, board, bureau, agency or instrumentality, domestic or foreign, (ii) any subdivision or authority of any of the foregoing, or (iii) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the above.

"**Guarantee**" means the guarantee of Purchaser in favour of each of the Vendors in the form of the guarantee annexed hereto as Schedule 6.3(c)(vii).

"**Intellectual Property Assets**" means all Intellectual Property Rights owned or licensed by the Corporation. For greater certainty, however, Intellectual Property Assets shall not include any Intellectual Property Rights owned by or licensed by Persons (other than the Corporation) to any Vendor.

"**Intellectual Property Rights**" means all the rights of the Corporation in the following, whether protected, created or arising under the laws of Canada or any foreign, state or other jurisdiction:

- (i) business names, trade names, trademarks and service marks (whether registered or unregistered, including any applications for registration of any of the foregoing), logos, Internet domain names, trade dress rights and general intangibles of a like nature, together with the goodwill associated with any of the foregoing (collectively, "**Marks**");
- (ii) patents, patent rights and all applications therefor, including any and all continuation, divisional, continuation-in-part, or reissue patent applications or patents issuing thereon (collectively, "**Patents**");
- (iii) topographies, codes, software, copyrightable works, including but not limited to all registrations and applications therefor (collectively, "**Copyrights**"); and
- (iv) know-how, inventions, discoveries, concepts, ideas, methods, processes, formulae, technical data, confidential information and other proprietary information, including customer lists, excluding any rights in respect of any of the foregoing that comprise or are protected by Copyrights or Patents (collectively, "**Trade Secrets**").

"Interim Financial Statements" means the unaudited balance sheet of the Corporation as at March 31, 2002 and the accompanying unaudited statement of income of the Corporation for the four (4) month period then ended and all notes in respect thereof.

"Interim Period" means the period between the close of business on the date of this Agreement and the Closing.

"ITA" means the Income Tax Act (Canada), as amended.

"Laws" shall mean (i) all constitutions, treaties, laws, statutes, codes, ordinances, orders, decrees, rules, regulations, and municipal by-laws, whether domestic, foreign or international; and (ii) all judgments, orders, writs, injunctions, decisions, rulings, decrees, and awards of any Governmental Entity; in each case binding on or affecting the Party or Person referred to in the context in which such word is used; and **"Law"** shall mean any one of them.

"Lease" means the lease of the Leased Property.

"Leased Property" means the premises located at 21 Melinda Street, Suite 600, Toronto, Ontario.

"Lien" means any mortgage, charge, pledge, hypothecation, security interest, assignment, lien (statutory or otherwise), title retention agreement or arrangement, restrictive covenant or other encumbrance of any nature or any other arrangement or condition which, in substance, secures payment or performance of an obligation.

"Non-BCE Emergis Liabilities" means all debt or other liabilities (including, but not limited to, employee termination costs and Taxes) of the Corporation reflected in the Closing Date Balance Sheet, except for the BCE Emergis Liability.

"Ordinary Course" means, with respect to an action taken by a Person, that such action is consistent with the past practices of the Person and is taken in the ordinary course of the normal day-to-day operations of the Person.

"Parties" means the Corporation, Vendors and Purchaser and any other Person who may become a party to this Agreement.

"Permitted Liens" means Liens for Taxes, assessments or governmental charges or levies on property not yet due and delinquent.

"Person" means a natural person, partnership, limited liability partnership, corporation, joint stock company, trust, unincorporated association, joint venture or other entity or Governmental Entity, and pronouns have a similarly extended meaning.

"Purchaser" has the meaning in the initial description of the parties hereto.

"Required Consents" means those Consents and Authorizations listed and described in Schedule 3.2(c) and Schedule 3.2(e).

"Shareholders Agreement" means the shareholders agreement of the Corporation made as of May 1, 2000 with the amendments from the Amending Agreements made as of May 1, 2000 and September 21, 2000, among the Corporation and the shareholders listed therein.

"Vendors" has the meaning in the initial description of the parties hereto.

1.2 Other Defined Terms.

In addition to the defined terms in Section 1.1, each of the following capitalized terms shall have the meaning ascribed thereto in the corresponding Sections:

<u>Terms</u>	<u>Section</u>
Articles of Incorporation	2.7
Bylaws	2.8
CCRA	8.7(6)
Claim	3.1(e)
Closing Date Balance Sheet Estimate	2.3
Closing Date Financial Statements	2.5(a)
Closing Date Financial Statements Estimate	2.3
Confidentiality Agreement	2.7
Copyrights	2.8
Damages	1.1
Dispute	8.1
Excess	0
Final Date	2.5(d)
GST	2.5(d)
Implementation and Services Agreement	3.2(cc)(vii)
Indemnified Party	1.1
Indemnifying Party	0
Marks	0
Material Contracts	1.1
Milestones	3.2(q)
Notice	2.7
Notice of Dispute	0
Notice Period	2.5(c)
Patents	2.9
Prior Level	8.3(3)
Pro-Rata Share	1.1
Proportionate Payment	2.7
Purchase Price	2.6
Purchased Shares	2.2
R&D Credit or Refund	2.1
	3.2(cc)(xii)

<u>Terms</u>	<u>Section</u>
Release Letters	5.7
Restated and Amended Document Acquiring Intermediary Agreements	6.1(d)(viii)
Several Representations and Covenants	8.4
Shortfall	2.5(d)
Taxes	3.2(cc)(i)
Tax Returns	3.2(cc)(ii)
Third Party Accountants	2.5(c)
Third Party Claim	8.7(1)
Trade Secrets	1.1
Waiver	8.3(3)

1.3 Gender and Number.

Any reference in this Agreement to gender includes both genders and the neutral, and words importing the singular number only shall include the plural and vice versa.

1.4 Headings, etc.

The provision of a table of contents, the division of this Agreement into Articles and Sections and the insertion of headings are for convenient reference only and are not to affect its interpretation.

1.5 Currency.

All references in this Agreement to dollars, unless otherwise specifically indicated, are expressed in Canadian currency.

1.6 Knowledge.

Where any representation or warranty contained in this Agreement is expressly qualified by reference to the knowledge of Vendors or the Corporation, it shall be deemed to refer to the actual knowledge of the members of the board of directors, and senior officers of the Corporation, and to the knowledge they shall have had after making appropriate enquiry internally within the Corporation.

1.7 Accounting Terms.

All accounting terms not specifically defined in this Agreement shall be interpreted in accordance with GAAP.

1.8 Incorporation of Schedules.

The schedules attached to this Agreement shall, for all purposes of this Agreement, form an integral part of it.

1.9 Interpretation.

All uses of the terms Marks, Patents, Copyrights and Trade Secrets in Section 3.2(s) shall mean Marks, Patents, Copyrights and Trade Secrets that are Intellectual Property Assets. All references in this Agreement to the ITA shall be deemed to be made to the ITA, as now enacted or as it may from time to time be amended, re-enacted or replaced, and in the case of any such amendment, re-enactment or replacement, any references herein to the ITA and to amounts to be withheld pursuant thereto shall be read as referring to such amended, re-enacted or replaced provisions.

1.10 List of Schedules.

The following is a list of the Schedules attached and incorporated herein by reference:

Schedule 2.6	Pro-Rata Share
Schedule 2.7	
Schedule 3.1(d)	Purchased Shares
Schedule 3.2(a)	Jurisdictions
Schedule 3.2(c)	Consents
Schedule 3.2(e)	Authorizations
Schedule 3.2(j)	Conduct of Business
Schedule 3.2(q)	Material Contracts
Schedule 3.2(s)	Intellectual Property
Schedule 3.2(t)	Biller Integration Software
Schedule 3.2(v)	Financial Statements
Schedule 3.2(w)	Liabilities
Schedule 3.2(x)	Bank Accounts
Schedule 3.2(z)	Insurance
Schedule 3.2(aa)	Litigation
Schedule 3.2(cc)(iv)	Assessments
Schedule 5.7	Form of Release Letter
Schedule 6.1(d)(v)	Vendors' Legal Opinion
Schedule 6.1(d)(x)	Form of BIS license agreement
Schedule 6.1(f)	Form of Release
Schedule 6.1(g)	Form of Shareholders' Release
Schedule 6.3(c)(vii)	Form of Guarantee of Purchaser
Schedule 6.3(e)	Purchaser's Legal Opinion
Schedule 6.3(h)	Form of Release
Schedule 6.3(i)	Form of Shareholders Release

ARTICLE 2

PURCHASED SHARES AND PURCHASE PRICE

2.1 Purchase and Sale.

Subject to the terms and conditions of this Agreement, each Vendor agrees to sell, assign and transfer or cause to be sold, assigned or transferred to Purchaser and Purchaser agrees to purchase from each Vendor on the Closing Date, all (but not less than all) of its shares in the

capital of the Corporation as set forth in Schedule 3.1(d), which shares together with the shares of the other Vendors constitute all (but not less than all) of the issued and outstanding shares in the capital of the Corporation (collectively, the "**Purchased Shares**").

2.2 Purchase Price.

The aggregate purchase price (the "**Purchase Price**") payable by Purchaser to Vendors for the Purchased Shares shall be: (i) (as defined in Section 2.7), less (ii) the amount of the Non-BCE Emergis Liabilities, the whole subject to adjustment in accordance with Sections 2.5 and 2.9.

2.3 Closing Date Financial Statements Estimate.

Five (5) calendar days prior to the Closing Date, the Corporation shall prepare and deliver to Purchaser a projected unaudited closing date balance sheet (the "**Closing Date Balance Sheet Estimate**") and a projected unaudited statement of income for the period between November 1, 2001 to the Closing Date (together, the "**Closing Date Financial Statements Estimate**"), which shall include the estimated Non-BCE Emergis Liabilities of the Corporation as of the close of business on the Closing Date. The Closing Date Financial Statements Estimate shall be prepared in accordance with GAAP (as applicable to projections) applied on a basis consistent with the preparation of the Financial Statements of the Corporation (except for GST payable which shall, notwithstanding prior practice of the Corporation, be accounted for in accordance with GAAP).

2.4 Payment of the Purchase Price.

Purchaser shall pay the Purchase Price to or to the order of Vendors or to such Persons as the Vendors direct Purchaser in writing by bank draft, certified cheque or wire transfer of immediately available funds to accounts designated in writing by each Vendor as follows:

- (a) on the Closing Date, an amount equal to (i), less (ii) the Non-BCE Emergis Liabilities as set forth in the Closing Date Balance Sheet Estimate; and
- (b) the balance of the Purchase Price shall be paid as provided for in Section 2.7.

2.5 Closing Date Financial Statements; Adjustment to Purchase Price.

- (a) Within thirty (30) calendar days following the Closing Date (or such other date as is mutually agreed to by Vendors and Purchaser in writing), Vendors will cause to be prepared and delivered to Purchaser, at Vendors' expense, audited closing date financial statements (the "**Closing Date Financial Statements**") which shall include the Non-BCE Emergis Liabilities of the Corporation as of the close of business on the Closing Date. The Closing Date Financial Statements are to be prepared in accordance with GAAP applied on a basis consistent with the preparation of the Financial Statements of the Corporation. The auditors may not be the same as the Third Party Accountants.

- (b) Purchaser and the Corporation shall provide Vendors and the auditor of such statements with access to all books and records and relevant personnel for the purpose of preparing and reporting on the Closing Date Financial Statements.
- (c) Purchaser may dispute any matter in the Closing Date Financial Statements by sending a notice ("**Notice of Dispute**") to Vendor (which Notice of Dispute must state with reasonable detail the nature of the dispute) within twenty (20) Business Days of the delivery of the Closing Date Financial Statements to Purchaser. Senior representatives of Purchaser and Vendors shall promptly meet within twenty (20) Business Days of the date of the Notice of Dispute to use their reasonable efforts to resolve amicably any matters identified in the Notice of Dispute. If any such dispute shall not have been resolved by such individuals within twenty (20) Business Days following the date on which the Notice of Dispute is given, then such unresolved matter shall be referred to Ernst & Young (the "**Third Party Accountants**"). The Parties shall use their reasonable efforts to ensure that the determination of the Third Party Accountants shall be made within thirty (30) calendar days after the matter has been referred to them.

If no Notice of Dispute is given within the twenty (20) Business Day delay prescribed above, then upon the expiry of such period the Closing Date Financial Statements shall be deemed to be final. If a Notice of Dispute is given in accordance with this Section 2.5, then the Closing Date Financial Statements, as amended by agreement of the Parties or decision of the Third Party Accountants, shall be deemed to be final as of and from the date of the agreement of the Parties or the decision of the Third Party Accountants, as the case may be.

The fees and disbursements of the Third Party Accountants shall be shared equally by Purchaser on the one hand and Vendors on the other.

- (d) The Purchase Price shall be adjusted downward or upward on a dollar for dollar basis on the date the Closing Date Financial Statements become or are deemed to become final and binding on the Parties in accordance with this Section 2.5 (the "**Final Date**"), by the amount by which the Non-BCE Emergis Liabilities reflected on the Closing Date Balance Sheet exceeds ("**Excess**") or is less ("**Shortfall**") than the Non-BCE Emergis Liabilities reflected on the Closing Date Balance Sheet Estimate, as the case may be. Vendors shall reimburse Purchaser for any Excess and Purchaser shall pay to Vendors an amount equal to the Shortfall, as the case may be, by bank draft, certified cheque or wire transfer of immediately available funds, in each case within one (1) Business Day from the Final Date.

2.6 Vendor's Pro-Rata Share.

Any payments to be made to or by all Vendors or to such Persons as the Vendors direct pursuant to this Agreement shall be made in accordance with the proportions set out beside each of their respective names in Schedule 2.6 ("**Pro-Rata Share**").

2.10 Pricing of Emergis Shares.

- (a) If Purchaser elects to pay all or any part _____ in Emergis Shares, such Emergis Shares shall be issued at a price equal to the 5 day average closing price of Emergis Shares on The Toronto Stock Exchange for the 5 trading days ending immediately preceding the date of any _____.
- (b) The Emergis Shares which may be issued pursuant to Sections 2.7 and 2.9 shall be validly issued and outstanding as fully paid and non-assessable, shall be listed on The Toronto Stock Exchange and shall be issued in compliance with or exempt from applicable prospectus and registration requirements under applicable Canadian securities laws. Such Emergis Shares shall be immediately freely tradeable under applicable securities laws and rules of stock exchanges upon which the Emergis Shares are listed.

**ARTICLE 3
REPRESENTATIONS AND WARRANTIES OF VENDORS**

3.1 Several Representations and Warranties of Vendors.

Each Vendor severally represents and warrants as to itself as follows to Purchaser and acknowledges that Purchaser is relying upon such representations and warranties in connection with the purchase by Purchaser of the Purchased Shares:

- (a) **Incorporation and Qualification.** It is existing under its jurisdiction of incorporation and has the corporate power to own and operate its property, carry on its business and enter into and perform its obligations under this Agreement.
- (b) **Validity of Agreement.** The execution, delivery and performance by it of this Agreement:
 - (i) have been duly authorized by all necessary corporate action on its part;
 - (ii) do not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) result in a material breach or a violation of, or conflict with, or allow any other Person to exercise any rights under, any of the terms or provisions of any material contracts or instruments to which it is a party or, its constating documents or by-laws;
 - (iii) will not result in a breach of any Authorization held by it which might prevent a Vendor from transferring its Purchased Shares to the Purchaser hereunder; and
 - (iv) will not result in the violation of any Law.
- (c) **Execution and Binding Obligation.** This Agreement has been duly executed and delivered by, and constitutes a legal, valid and binding obligation of it, enforceable against it in accordance with its terms subject only to any limitation under applicable Laws relating to (i) bankruptcy, winding-up, insolvency, arrangement and other similar Laws of general application affecting the enforcement of creditors' rights, and (ii) the discretion that a court may exercise in the granting of equitable remedies such as specific performance and injunction.
- (d) **Title to Purchased Shares.** It or an Affiliate (the name of which Affiliate is identified in Schedule 3.1(d)) is the registered and beneficial owner of the number and class of shares set out beside its name in Schedule 3.1(d), with a good title thereto, free and clear of all Liens.
- (e) **Absence of Claims.** At the date hereof, in connection with its business relationship with the Corporation or with Purchaser relating to the Corporation's business, (i) it has no claim or demand ("Claim"), and is not aware of any facts or

circumstances that would give rise to a Claim by it at the date hereof, for Damages against Purchaser or the Corporation, and (ii) to its knowledge, no Person has any Claim (actual, pending or threatened) for Damages against Purchaser or the Corporation.

- (f) **Residence of Vendors.** It is not a non-resident of Canada for the purposes of the ITA.

3.2 Representations and Warranties of the Corporation.

The Corporation represents and warrants as follows to Purchaser and acknowledges that Purchaser is relying upon such representations and warranties in connection with the purchase by Purchaser of the Purchased Shares:

- (a) **Incorporation and Qualification.** The Corporation is a corporation incorporated, organized and existing under the Laws of its jurisdiction of incorporation and has the corporate power to own and operate its property, carry on its business as currently conducted and as proposed to be conducted and enter into and perform its obligations under this Agreement. The Corporation is duly qualified, licensed or registered to carry on business in the jurisdictions listed in Schedule 3.2(a). The jurisdictions listed in Schedule 3.2(a) include all jurisdictions in which the nature of the assets or the business of the Corporation, makes such qualification necessary or where the Corporation owns or leases any material assets or conducts any material business.
- (b) **No Default.** The Corporation is not in breach, default or violation (and no event has occurred that with notice or the lapse of time or both would constitute a breach, default or violation) of any term, condition or provision of its constating documents or by-laws.
- (c) **Validity of Agreement.** Except for the Consents disclosed in Schedule 3.2(c), the execution, delivery and performance by the Corporation of this Agreement:
 - (i) do not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) result in a breach or a violation of, or conflict with, or allow any other Person to exercise any rights under, any of the terms or provisions of its constating documents or by-laws or any Contracts or instruments to which the Corporation is a party or pursuant to which any of its assets or property may be affected; and
 - (ii) will not result in a breach of, or cause the termination or revocation of, any Authorization held by the Corporation necessary to the ownership or the operation of the business of the Corporation.
- (d) **Execution and Binding Obligation.** This Agreement has been duly executed and delivered by, and constitutes a legal, valid and binding obligation of the Corporation, enforceable against the Corporation in accordance with its terms

subject only to any limitation under applicable Laws relating to (i) bankruptcy, winding-up, insolvency, arrangement and other similar Laws of general application affecting the enforcement of creditors' rights, and (ii) the discretion that a court may exercise in the granting of equitable remedies such as specific performance and injunction.

(e) **Required Authorizations.** There is no requirement by the Corporation to make any filing with, give any notice to, or obtain any Authorization of, any Governmental Entity or Person as a condition to the lawful completion of the transactions contemplated by this Agreement, except for the filings, notifications and Authorizations described in Schedule 3.2(e) or that relate solely to the identity of Purchaser or the nature of the business carried on by Purchaser.

(f) **Authorized and Issued Capital.** The authorized capital of the Corporation consists of an unlimited number of common shares of which 7,650 common shares (and no more) have been duly issued and are outstanding as fully paid and non-assessable registered in the names of Vendors set forth in Schedule 3.1(d); such shares constitute all of the Purchased Shares.

All of the Purchased Shares have been issued in compliance with all applicable Laws including, without limitation, applicable securities Laws.

(g) **Subsidiaries.** The Corporation has no subsidiaries and holds no shares or other ownership, equity or proprietary interests in any other Person.

(h) **No Other Agreements to Purchase.** Except for Purchaser's right under this Agreement, no Person (including, without limitation the employees and shareholders of the Corporation) has any written or oral agreement, option or warrant or any right or privilege (whether by Law, pre-emptive or contractual) capable of becoming such for (i) the purchase or acquisition from Vendors of any of the Purchased Shares, or (ii) the purchase, subscription, allotment or issuance of any of the unissued shares, options, warrants or other securities of the Corporation.

(i) **Corporate Records.** The Corporate Records are complete and accurate, and contain copies of all of the articles, by-laws and resolutions adopted by the shareholders and directors of the Corporation since the date of its incorporation, all of which have been duly passed. Other than the Shareholders' Agreement and the Operating Agreement made as of May 1, 2000 among the Corporation and its shareholders, as amended, the Corporation is not subject to, or affected by, any unanimous shareholders agreement.

(j) **Conduct of Business.** Except as disclosed in Schedule 3.2(j), since October 31, 2001, the Corporation has not:

(i) made or assumed any commitment, obligation or liability which is outside the Ordinary Course in excess of \$10,000;

- (ii) transferred to any Person any rights to the Intellectual Property Assets, except in connection with sales of the Corporation's products or services in the Ordinary Course;
- (iii) terminated, entered into, amended or otherwise modified any agreements pursuant to which any Person is granted marketing, distribution or similar rights of any type or scope or any third party royalty rights with respect to any products of the Corporation, or entered into or amended any strategic alliance, license or sub-license agreement, or joint development agreement;
- (iv) terminated, entered into, amended or otherwise modified in any material respect any contract, agreement or commitment, including any Material Contract;
- (v) sold or otherwise in any way alienated or disposed of any of its assets other than in the Ordinary Course;
- (vi) split, combined or reclassified any of its shares, or issued, granted, redeemed, retired, repurchased or otherwise acquired shares in its capital or any options, warrants, rights, bonds, debentures, notes or other corporate security, or reserved, declared, made or paid any dividend, or made any other distributions or appropriations of profits or capital;
- (vii) discharged any secured or unsecured obligation or liability (whether accrued, absolute, contingent or otherwise), other than obligations and liabilities discharged in the Ordinary Course;
- (viii) waived or cancelled any material claim, account receivable, trade account, or right outside the Ordinary Course or made any gift;
- (ix) except as provided for in Section 5.7, terminated the employment of any officer or employee or granted any severance, notice or termination pay to any officer or any other employee, except termination and payments disclosed in Schedule 3.2(j);
- (x) made any change in the rate or form of compensation or remuneration payable or to become payable to any of its shareholders, directors, officers, employees or agents which is outside the Ordinary Course;
- (xi) entered into any change of control agreement with any of its shareholders, directors, officers, employees or agents;
- (xii) made any change in its accounting principles and practices as utilized in the preparation of the Financial Statements or the Interim Financial Statements, or granted to any customer any special allowance or discount, or changed its pricing, credit or payment policies, other than in the Ordinary Course;

- (xiii) made any individual capital expenditure in excess of \$25,000;
 - (xiv) made any loan or advance, or assumed, guaranteed or otherwise became liable with respect to the liabilities or obligations of any Person;
 - (xv) modified its constating instruments, by-laws or capital structure;
 - (xvi) removed any auditor;
 - (xvii) purchased or otherwise acquired any corporate security or proprietary, participatory or profit interest in any Person;
 - (xviii) incurred any indebtedness other than to trade creditors in the Ordinary Course;
 - (xix) except as provided for in Section 5.7, settled any litigation or claim requiring payment by the Corporation in excess of \$10,000; or
 - (xx) authorized, agreed or otherwise committed to any of the foregoing.
- (k) **Compliance with Laws.** The Corporation is conducting its business in compliance with all applicable Laws, other than acts of non-compliance which, in the aggregate, are not material.
- (l) **Authorizations.** The Corporation owns, holds, possesses or lawfully uses in the operation of its business, all Authorizations which are necessary for it to conduct its business, as presently or previously conducted or for the ownership and use of its assets in compliance with all applicable Laws. Each such Authorization is valid, subsisting and in good standing, and the Corporation is not in default or in breach of any such Authorization and, to the knowledge of Vendors, no proceeding is pending or threatened to revoke or limit any such Authorization.
- (m) **Title to the Assets.** The Corporation owns (with good title) all of the properties and assets (whether tangible or intangible) including all the properties and assets reflected as being owned by the Corporation in the financial Books and Records. The Corporation has legal and beneficial ownership of such assets free and clear of all Liens, except for Permitted Liens.
- (n) **Condition of Tangible Assets.** The equipment and tangible personal property of the Corporation are in good operating condition and repair having regard to their use and age and are adequate and suitable for the uses to which they are being put. None of such equipment and tangible personal property is in need of maintenance or repairs, except for normal maintenance and repairs that are not material in nature or cost.
- (o) **No Owned Property.** The Corporation is not the owner or lessee of, or subject to any agreement or option to own or lease, any buildings, plants, structures,

vehicles or real property or any interest in any buildings, plants, structures, vehicles or real property, other than the Leased Property.

- (p) **Lease.** The Corporation is not a party to, or under any agreement to become a party to, any lease with respect to real property other than the Lease, which expired on January 31, 2002 and in respect of which property the lessor has permitted the Corporation to continue to occupy up to April 30, 2002.
- (q) **Material Contracts.** Except for the Contracts described in Schedule 3.2(q) (collectively, the "**Material Contracts**"), the Lease, the Contracts referred to in Section 3.2(s), and the insurance policies set out in Schedule 3.2(z), the Corporation is not a party to or bound by:
 - (i) any distributor, sales, advertising, agency or manufacturer's representative Contract;
 - (ii) any continuing Contract for the purchase of materials, supplies, equipment or services;
 - (iii) any Contract that expires or that may be renewed at the option of any Person other than the Corporation, as the case may be, so as to expire more than one year after the date of this Agreement;
 - (iv) any trust indenture, mortgage, promissory note, loan agreement or other Contract for the borrowing of money, any currency exchange, commodities or other hedging arrangement or any leasing transaction of the type required to be capitalized in accordance with GAAP;
 - (v) any Contract for capital expenditures;
 - (vi) any confidentiality, secrecy or non-disclosure Contract or any Contract limiting the freedom of the Corporation to engage in any line of business, compete with any other Person, operate its assets at maximum production capacity or otherwise conduct its business;
 - (vii) any Contract pursuant to which the Corporation is a lessor of any machinery, equipment, motor vehicles, office furniture, fixtures or other personal property;
 - (viii) any Contract with any Person with whom the Corporation, or any of Vendors does not deal at arm's length within the meaning of the ITA;
 - (ix) any agreement of guarantee, support, indemnification, assumption or endorsement of, or any similar commitment with respect to, the obligations, liabilities (whether accrued, absolute, contingent or otherwise) or indebtedness of any other Person; or
 - (x) any other Contract made out of the Ordinary Course.

True, accurate and complete copies of the Material Contracts have been delivered to Purchaser.

- (r) **No Breach of Material Contracts.** The Corporation has performed all of the obligations required to be performed by it and is entitled to all benefits under, and is not alleged to be in default of any Material Contract to which it is a party, except as disclosed to Purchaser and possibly in connection with or in respect of the BCE Emergis Liability. Each of the Material Contracts is in full force and effect, unamended, and there exists no default or event of default or event, occurrence, condition or act (including the purchase of the Purchased Shares) which, with the giving of notice, the lapse of time or the happening of any other event or condition, would become a default or event of default under any Material Contract. True, correct and complete copies of all Material Contracts have been delivered to Purchaser.
- (s) **Intellectual Property Assets.** Attached as Schedule 3.2(s) is a list of Intellectual Property Assets owned by or licensed to the Corporation in carrying on its businesses (other than "off the shelf" licenses). Schedule 3.2(s) also includes complete and accurate particulars of all registrations or applications for registration of the Intellectual Property Assets, as well as particulars (including a description of the underlying agreements) of any interest in the Intellectual Property Assets enjoyed by third parties. Subject only to any third party interests listed in Schedule 3.2(s) the Corporation is the beneficial and unconditional owner of its Intellectual Property Assets, free and clear of all Liens, and is not a party to or bound by any Contract or other obligation that limits or impairs its ability to use, sell, transfer, assign or convey, or that otherwise affects, its Intellectual Property Assets, nor has any Person been granted any interest in or right to use all or any portion of such Intellectual Property Assets. For greater certainty, Vendors acknowledge that they have no rights in or to any Intellectual Property Assets developed by the Corporation, except as set out in Schedule 3.2(s) and their rights to use the Webdoks Mark. To the Corporation's knowledge, there is no infringement or violation of any of the rights of the Corporation in the Intellectual Property Assets. To the Corporation's knowledge, the conduct of the business of the Corporation does not infringe upon the patents, trade marks, licenses, trade names, business names, copyright or other industrial or intellectual property rights, domestic or foreign, of any other third party.
- (t) **Biller Integration Software.** Other than as disclosed in Schedule 3.2(t), the Corporation has not distributed copies of the Biller Integration Software to any Person.
- (u) **Books and Records.** All accounting and financial Books and Records have been fully, properly and accurately kept and completed in all material respects. The Books and Records and other data and information are not recorded, stored, maintained, operated or otherwise wholly or partly dependent upon or held by any means (including any electronic, mechanical or photographic process,

whether computerized or not) which are not available to the Corporation in the Ordinary Course.

- (v) **Financial Statements.** The Financial Statements and the Interim Financial Statements have been prepared in accordance with GAAP (except for GST paid) applied on a basis consistent with those of previous fiscal years and fairly and accurately represent in all material respects the assets and liabilities and the results of operations of the Corporation, and the changes in the financial position of the Corporation all as at the dates and for the periods therein specified.

True, correct and complete copies of the Financial Statements and the Interim Financial Statements are attached as Schedule 3.2(v).

- (w) **No Liabilities.** Except as disclosed in this Agreement and Schedule 3.2(w) or reflected or reserved against in the balance sheet forming part of the Interim Financial Statements, to its knowledge, the Corporation has no material liabilities or obligations of any nature (whether absolute, accrued, contingent or otherwise) except for current liabilities incurred in the Ordinary Course since October 31, 2001.
- (x) **Bank Accounts and Powers of Attorney.** Schedule 3.2(x) is a correct and complete list showing (i) the name of each bank in which the Corporation has an account or safety deposit box and the names of all Persons authorized to draw on the account or to have access to the safety deposit box, and (ii) the names of all Persons holding powers of attorney from the Corporation. Copies of the powers of attorney have been provided to Purchaser.
- (y) **Employee Plans.** The Corporation has no Employee Plan.
- (z) **Insurance.** Schedule 3.2(z) contains a list of insurance policies which are maintained by the Corporation setting out, in respect of each policy, a description of the type of policy, the name of insurer, the coverage allowance, the expiration date, the annual premium and any pending claims. The Corporation is not in default with respect to any of the provisions contained in the insurance policies, the payment of any premiums under any insurance policy nor has it failed to give any notice or to present any claim under any insurance policy in a due and timely fashion. Copies of all insurance policies of the Corporation have been delivered to Purchaser.
- (aa) **Litigation.** Except as described in Schedule 3.2(aa), there are no (i) actions, suits or proceedings, at law or in equity, by any Person (including, without limitation, the Corporation), (ii) arbitration or alternative dispute resolution process, or (iii) any administrative or other proceeding by or before (or to the knowledge of the Corporation any investigation by) any Governmental Entity, pending, or, to the knowledge of the Corporation, threatened against or affecting the Corporation, the business or assets of the Corporation. The Corporation is not subject to any judgment, order or decree entered in any lawsuit or proceeding nor has the

Corporation settled any claim prior to being prosecuted in respect of it. The Corporation is not the plaintiff or complainant in any action, suit or proceeding.

(bb) **Subsidies.** The Corporation has not granted any volume rebates, discounts, subsidies or any other similar arrangements with respect to its services to any of its customers, nor has it agreed or promised to do so.

(cc) **Tax Matters:**

(i) **Definition of Taxes.** For the purposes of this Agreement, the term "**Tax**" or, collectively, "**Taxes**" shall mean (A) any and all federal, state, provincial, municipal, local and foreign taxes, assessments and other governmental charges, duties, impositions and liabilities including Canada, Quebec and other government pension plan premiums or contributions and unemployment insurance contributions and employment insurance contributions and workman's compensation and deductions at source, including taxes based upon or measured by gross receipts, income, profits, sales, purchases, capital use and occupation, goods and services, and value added, provincial sales tax, ad valorem, transfer, franchise, withholding, customs duties, payroll, recapture, employment, excise and property taxes, together with all interest, penalties, fines and additions imposed with respect to such amounts and (B) any liability for the payment of any amounts of the type described in clause (A) of this Section 3.2(cc)(i) as a result of any express or implied obligation to indemnify any other Person or as a result of any obligations under any agreements or arrangements with any other Person with respect to such amounts and including any liability for taxes of a predecessor entity.

(ii) **Computation, Preparation and Payment.** The Corporation has correctly computed all Taxes, prepared and duly and timely filed all federal, state, provincial, municipal, local and foreign returns, estimates, information statements, elections, designations, reports and any other related filings ("**Tax Returns**"), required to be filed by it, has timely paid all Taxes which are or may become due and payable and has made adequate provision in the Financial Statements for the period ended October 31, 2001 and on the Interim Financial Statements for the period ended December 31, 2001. The Corporation has made adequate and timely instalments of Taxes required to be made.

(iii) **Accrued Taxes.** Since December 31, 2001, the Corporation has only incurred liabilities for Taxes in the Ordinary Course.

(iv) **Status of Assessments.** All Tax Returns of the Corporation have been assessed through and including each of the dates set forth in Schedule 3.2(cc)(iv) annexed hereto, and there are no outstanding waivers of any limitation periods or agreements providing for an extension of time for the filing of any Tax Return or the payment of any Tax by the

Corporation or any outstanding objections to any assessment or reassessment of Taxes. Any deficiencies proposed as a result of such assessments or reassessments of the Tax Returns through and including the dates set forth in Schedule 3.2(cc)(iv) annexed hereto have been paid and settled.

- (v) **Withholdings.** The Corporation has withheld from each payment made to any of its past and present shareholders, directors, officers, employees and agents the amount of all Taxes and other deductions required to be withheld and has paid such amounts when due, in the form required under the appropriate Laws, or made adequate provision for the payment of such amounts to the proper receiving authorities. The amount of Tax withheld but not remitted by the Corporation will be retained in its accounts and will be remitted by it to the appropriate authorities when due.
- (vi) **Collection and Remittance.** The Corporation has collected from each receipt from any of the past and present customers (or other Persons paying amounts to the Corporation) the amount of all Taxes (including goods and services tax and provincial sales taxes) required to be collected and has paid and remitted such Taxes when due, in the form required under the appropriate Laws or made adequate provision for the payment of such amounts to the proper receiving authorities. The amount of Tax collected but not remitted by the Corporation will be retained in its accounts and remitted by it to the appropriate authorities when due.
- (vii) **Goods and Services and Provincial Sales Tax.** Other than goods and services tax under the *Excise Tax Act* ("GST") in connection with the BCE Emergis Liability, the Corporation has paid all GST and goods and services tax payable under any provincial sales tax legislation.
- (viii) **Assessments.** The Corporation is not or, to the knowledge of the Corporation, will not be subject to any assessments, reassessment, levies, penalties or interest with respect to Taxes, which will result in any liability on its part in respect of any period terminating on or prior to the Closing Date.
- (ix) **Jurisdictions of Taxation.** The Corporation has not been and is not currently required to file any returns, reports, elections, designations or other filings with any taxation authority other than the federal taxation authorities of Canada and the taxation authorities of the Province of Ontario.
- (x) **Related Party Transactions.** The Corporation has not acquired property from a non-arm's length Person within the meaning of the ITA for consideration the value of which is less than the fair market value of the property in circumstances, which could subject it to a liability under Section 160 of the ITA.

- (xi) **Forgiveness of Debt.** The Corporation has not at any time benefited from a forgiveness of debt or entered into any transaction or arrangement (including conversion of debt into shares of its share capital) which could have resulted in the application of Section 80, 80.01, 80.02, 80.03 or 80.04 of the ITA.
- (xii) **Research and Development Tax Credits and Expenditures.** All refund of taxes or credits claimed with respect to research and development ("R&D Credit or Refunds") were claimed by the Corporation in accordance with the provisions of the ITA and the relevant provincial legislation and the Corporation has satisfied at all relevant times the relevant criteria and conditions entitling it to such R&D Credit or Refunds.
- (xiii) **Tax Returns.** The Corporation has made available to Purchaser or its legal counsel, copies of all foreign, federal, state, provincial, municipal and local income and all state and local sales and use Tax Returns for the Corporation filed for all periods terminating on or after October 31, 1998.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES OF PURCHASER

4.1 Representations and Warranties of Purchaser.

Purchaser represents and warrants as follows to Vendors and acknowledges and confirms that Vendors are relying on such representations and warranties in connection with the sale by Vendors of the Purchased Shares:

- (a) **Incorporation and Corporate Power.** Purchaser is a corporation incorporated, in good standing and existing under the Laws of its jurisdiction of incorporation and has the corporate power and authority to enter into and perform its obligations under this Agreement. Purchaser is a reporting issuer in good standing in Ontario and Quebec and its common shares are listed and posted for trading on The Toronto Stock Exchange.
- (b) **Validity of Agreement.** The execution, delivery and performance by Purchaser of this Agreement:
 - (i) have been duly authorized by all necessary corporate action on the part of Purchaser;
 - (ii) do not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) result in a breach or a violation of, or conflict with, any of the terms or provisions of its constating documents or by-laws or any contracts or instruments to which it is a party or pursuant to which any of its assets or property may be affected; and

- (iii) will not result in the violation of any Law.
- (c) **Execution and Binding Obligation.** This Agreement has been duly executed and delivered by Purchaser and constitutes a legal, valid and binding obligation of Purchaser, enforceable against it in accordance with its terms subject only to any limitation under applicable Laws relating to (i) bankruptcy, winding-up, insolvency, arrangement and other similar Laws of general application affecting the enforcement of creditors' rights, and (ii) the discretion that a court may exercise in the granting of equitable remedies such as specific performance and injunction.
- (d) **Purchaser as Principal.** As at the date hereof, Purchaser is acquiring the Purchased Shares as principal for its own account and has no arrangement or agreement with any other Person with respect to the sale of the Corporation, its business, assets or operations.
- (e) **Required Authorizations.** There is no requirement on the part of the Purchaser to make any filing with, give any notice to, or obtain any Authorization of, any Governmental Entity or Person as a condition to the lawful completion of the transactions contemplated by this Agreement.
- (f) **BCE Emergis Liability.** Purchaser has not taken any action, which could result in a forgiveness of the BCE Emergis Liability for purposes of the ITA.
- (g) **Absence of Claims.** At the date hereof, in connection with its business relationship with the Corporation or with any Vendor relating to the Corporation's business, (i) Purchaser has no Claim, and is not aware of any facts or circumstances that would give rise to a Claim by Purchaser at the date hereof, for Damages against any Vendor or the Corporation, and (ii) to the knowledge of Purchaser, no Person has any Claim (actual, pending or threatened) for Damages against any Vendor or the Corporation.

ARTICLE 5 PRE-CLOSING COVENANTS OF THE PARTIES

5.1 Conduct of Business Prior to Closing.

- (1) Except as contemplated by this Agreement, each of the Vendors shall use its respective commercially reasonable efforts to take such actions which are within its control or subject to its influence to cause the Corporation to conduct, and the Corporation shall, during the Interim Period conduct, its business in the Ordinary Course and, without limiting the generality of the foregoing, each Vendor shall use its respective commercially reasonable efforts to take such actions which are within its control or subject to its influence to cause the Corporation not to, and the Corporation shall not:
 - (a) make or assume any commitment, obligation or liability which is outside the Ordinary Course;

- (b) transfer to any Person any rights to the Intellectual Property Assets, except in connection with sales of the Corporation's products or services in the Ordinary Course;
- (c) terminate, enter into, amend or otherwise modify any agreements pursuant to which any Person is granted marketing, distribution or similar rights of any type or scope or any third party royalty rights with respect to any products of the Corporation, or enter into or amend any strategic alliance, license or sub-license agreement, or joint development agreement;
- (d) terminate, enter into, amend or otherwise modify in any material respect any Material Contract;
- (e) sell or otherwise in any way alienate or dispose of any of its assets, other than in the Ordinary Course;
- (f) split, combine or reclassify any of its shares, or issue, grant, redeem, retire, repurchase or otherwise acquire shares in its capital or any options, warrants, rights, bonds, debentures, notes or other corporate security, or reserve, declare, make or pay any dividend, or make any other distributions or appropriations of profits or capital;
- (g) discharge any secured or unsecured obligation or liability (whether accrued, absolute, contingent or otherwise), other than obligations and liabilities discharged in the Ordinary Course;
- (h) waive or cancel any material claim, account receivable, trade account or right outside the Ordinary Course or make any gift;
- (i) make any change in the rate or form of compensation or remuneration payable to or to become payable to any of its shareholders, directors, officers, employees or agents which is outside the Ordinary Course;
- (j) enter into any change of control agreement with any of its shareholders, directors, officers, employees or agents;
- (k) make any change in its accounting principles and practices as utilized in the preparation of the Financial Statements or the Interim Financial Statements, or grant to any customer any special allowance or discount, or change its pricing, credit or payment policies, other than in the Ordinary Course or as may be required by GAAP;
- (l) make any individual capital expenditure in excess of \$25,000;
- (m) make any loan or advance, or assume, guarantee, endorse or otherwise become liable with respect to the liabilities or obligations of any Person;
- (n) modify its constating instruments, by-laws or capital structure;

- (o) remove any accountants;
 - (p) purchase or otherwise acquire any corporate security or proprietary, participatory or profit interest in any Person;
 - (q) incur any indebtedness other than to trade creditors in the Ordinary Course;
 - (r) settle any litigation or claim requiring payment by the Corporation in excess of \$10,000; and
 - (s) authorize, agree or otherwise commit to any of the foregoing.
- (2) During the Interim Period, each Vendor shall use its respective commercially reasonable efforts to take such actions which are within its control or subject to its influence to cause the Corporation to and the Corporation shall (except as otherwise authorized or contemplated in this Agreement):
- (a) carry on its business in the Ordinary Course and maintain its assets and properties in the Ordinary Course, reasonable wear and tear excepted;
 - (b) promptly repair, restore or replace any of its material assets and properties in the Ordinary Course;
 - (c) comply in all material respects with all Laws;
 - (d) pay its debts and Taxes, except for the BCE Emergis Liability, when due and pursue collection of its account receivables in the Ordinary Course;
 - (e) completely and accurately prepare in all material respects all tax returns and file them when due;
 - (f) pay and perform all of its material obligations when due, except for the BCE Emergis Liability;
 - (g) use all commercially reasonable efforts consistent with past practice and policies to preserve relationships with customers, suppliers, distributors, licensors, licensees and others having business dealings with it;
 - (h) promptly notify Purchaser of the commencement of any proceeding by or against the Corporation or any threatened proceeding of which Vendors have knowledge that relates to the Corporation or any of its assets and properties, or the transactions contemplated by this Agreement;
 - (i) take all commercially reasonably necessary actions to be in compliance with all of its agreements, contracts and commitments; and
 - (j) undertake its obligations and duties under this Section 5.1(2) with the goal of preserving unimpaired the goodwill and ongoing business of the Corporation at the Closing.

5.2 Access for Due Diligence.

- (1) The Corporation shall (i) permit Purchaser and its employees, counsel, accountants or other representatives, during the Interim Period, without undue interference to the ordinary conduct of the business of the Corporation to have reasonable access during normal business hours and upon reasonable notice to (a) the premises of the Corporation, (b) the assets of the Corporation and, in particular, to any information, including all Books and Records whether retained by Vendors, the Corporation or otherwise, (c) all Contracts and the Lease, and (d) the senior personnel of the Corporation, and (ii) furnish to Purchaser or its employees, counsel, accountants or other representatives such financial and operating data and other information with respect to the assets and business of the Corporation as Purchaser shall from time to time reasonably request.
- (2) No investigations made by or on behalf of Purchaser, whether under this Section 5.2 or any other provision of this Agreement, shall have the effect of waiving, diminishing the scope of, or otherwise affecting any representation or warranty made in this Agreement.

5.3 Request for Required Consents.

The Corporation shall use its commercially reasonable efforts to obtain, prior to Closing, all of the Required Consents. Such Required Consents shall be upon such terms as are acceptable to Purchaser, acting reasonably. Purchaser will co-operate in obtaining such Required Consents.

5.4 Filings and Required Consents.

Each of Vendors, the Corporation and Purchaser, as promptly as practicable after the execution of this Agreement, will (i) make, or cause to be made, all such filings and submissions under all Laws applicable to it, as may be required for it to consummate the purchase and sale of the Purchased Shares in accordance with the terms of this Agreement, and (ii) use commercially reasonable efforts to obtain, or take such actions which are within its control or subject to its influence to cause to be obtained, all Required Consents necessary or advisable to be obtained by it in order to consummate such transfer. Each of Vendors, the Corporation and Purchaser will co-ordinate and co-operate with one another in obtaining such Required Consents including, without limitation, providing each other with all notices and information supplied to or filed with any Governmental Entity (except for notices and information which Vendors, the Corporation or Purchaser, in each case acting reasonably, considers confidential and sensitive which may be filed on a confidential basis), and all notices and correspondence received from any Governmental Entity (except for notices and correspondence which the Vendors, acting reasonably, consider confidential and sensitive).

5.5 Notice of Untrue Representation or Warranty.

Each Vendor and the Corporation shall, within a reasonable delay, notify Purchaser, and Purchaser shall, within a reasonable delay, notify Vendors, upon any representation or warranty made by it contained in this Agreement becoming untrue or incorrect during the Interim Period. Any such notification shall set out particulars of the untrue or incorrect

representation or warranty and details of any actions being taken by the applicable Vendor, the Corporation or Purchaser, as the case may be, to rectify that state of affairs.

5.6 Exclusive Dealing.

During the Interim Period, Vendors and the Corporation shall not, directly or indirectly, solicit, initiate, or encourage any inquiries or proposals from, or negotiate with or provide any non-public information to any Person (other than Purchaser) relating to any transaction involving the sale of any shares of the Corporation or the sale of all or substantially all of the business or any material part of the assets of the Corporation (other than as permitted in this Agreement). If Vendors, the Corporation or any of their affiliates, employees, officers, directors, representatives or agents shall during the Interim Period receive, or become aware of, any proposal relating to any transaction involving the sale of any shares of the Corporation or the sale of all or substantially all of the business or any material part of the assets of the Corporation (other than as permitted under this Agreement), Vendors or the Corporation, as the case may be, shall no later than two days after such receipt or becoming aware thereof notify Purchaser in writing that such proposal has been made and shall, in any such written notice to Purchaser, indicate to the extent permitted in reasonable detail the identity of the offeror and the terms and conditions of such proposal and shall thereafter promptly update Purchaser of any development thereto.

5.7 Termination of Employees.

The Corporation shall terminate the employment of all employees of the Corporation, whether full-time, part-time, casual, contract or otherwise, shall terminate the services of all consultants or independent contractors retained by the Corporation, and shall discharge any and all liabilities in connection therewith on or prior to Closing and such liabilities shall constitute Non-BCE Emergis Liabilities. The Corporation shall use reasonable efforts to ensure that each such former employee shall execute a release letter (the "Release Letters"), a copy of the form of which is attached Schedule 5.7.

5.8 Fulfillment of Conditions.

Each Party shall use its commercially reasonable efforts to cause the conditions stipulated in Article 6 which are within its control or subject to its influence to be satisfied on or prior to the Closing Date.

ARTICLE 6 CONDITIONS OF CLOSING

6.1 Conditions for the Benefit of Purchaser.

The purchase and sale of the Purchased Shares is subject to the following conditions to be fulfilled or performed at or prior to the Closing Date, which conditions are for the exclusive benefit of Purchaser and may be waived, in whole or in part, by Purchaser in its sole discretion:

- (a) **Truth of Representations and Warranties.** The representations and warranties of Vendors and the Corporation contained in this Agreement shall be true and correct as of the Closing Date with the same force and effect as if such representations and warranties had been made on and as of such date and each Vendor and the Corporation shall have executed and delivered a certificate of a senior officer to that effect. The receipt of such certificate and the Closing shall not constitute a waiver by Purchaser of any of the representations and warranties of Vendors and the Corporation, which are contained in this Agreement.
- (b) **Performance of Covenants.** Vendors and the Corporation shall have fulfilled or complied with all covenants contained in this Agreement to be fulfilled or complied with by them at or prior to the Closing, and each Vendor and the Corporation shall have executed and delivered a certificate of a senior officer to that effect. The receipt of such certificate and the Closing shall not constitute a waiver by Purchaser of any of the covenants of Vendors or the Corporation, which are contained in this Agreement.
- (c) **Required Consents.** All Required Consents shall have been obtained on terms acceptable to Purchaser, acting reasonably.
- (d) **Deliveries.** Vendors shall deliver or cause to be delivered to Purchaser the following:
 - (i) share certificates representing the Purchased Shares duly endorsed in blank for transfer, or accompanied by irrevocable security transfer powers of attorney duly executed in blank, in either case by the holders of record;
 - (ii) certified copies of (i) the constating documents and by-laws of the Corporation, and (ii) any resolutions of the shareholders and the board of directors of the Corporation approving the entering into and completion of the transaction(s) contemplated by this Agreement;
 - (iii) a certificate of status, compliance, good standing or like certificate with respect to the Corporation issued by appropriate government officials of its jurisdiction of incorporation;
 - (iv) the certificates referred to in Section 6.1(a) and Section 6.1(b);
 - (v) an opinion of counsel to Vendors and the Corporation substantially in the form set forth in Schedule 6.1(d)(v) relating to the Corporation;
 - (vi) a duly executed resignation effective as at Closing of each director and officer of the Corporation specified by Purchaser in writing at least one (1) Business Day prior to Closing;

- (vii) duly executed releases from the employees of the Corporation with respect to any amounts or obligations owed by the Corporation to them, in the form of the Release Letters contemplated in Section 5.7;
 - (viii) duly executed Restated and Amended Document Acquiring Intermediary Agreements between the Corporation and each of the Vendors (the "Restated and Amended Document Acquiring Intermediary Agreements") in the form tabled by the parties thereto at Closing;
 - (ix) duly executed Restated and Amended Document Presenting Intermediary Agreements between the Corporation and each of the Vendors in the form tabled by the parties thereto at Closing; and
 - (x) duly executed BIS license agreements between the Corporation and each of the Vendors that currently host the Biller Integration Software as contemplated by the Restated and Amended Document Acquiring Intermediary Agreements referred to at (viii) above substantially in the form set forth in Schedule 6.1(d)(x).
- (e) **No Legal Action.** No action or proceeding shall be pending or threatened by any Person (other than Purchaser) in any jurisdiction, to enjoin, restrict or prohibit any of the transactions contemplated by this Agreement or the right of the Corporation to conduct its business after Closing on substantially the same basis as heretofore conducted.
- (f) **Release.** Directors and officers of the Corporation shall have released Purchaser and the Corporation from any and all liabilities and obligations Purchaser and the Corporation may have towards them, by executing a release in the form of the release attached hereto as Schedule 6.1(f).
- (g) **Shareholders' Release.** Vendors shall have released Purchaser and the Corporation from any and all liabilities and obligations they may have towards Vendors under the Implementation and Services Agreement, by executing a release in the form of the release attached hereto as Schedule 6.1(g).

6.2 Termination by Purchaser.

If any of the conditions set forth in Section 6.1 have not been fulfilled or waived at or prior to April 19, 2002 or any obligation or covenant of Vendors or the Corporation to be performed at or prior to Closing has not been observed or performed by April 19, 2002, then Purchaser may terminate this Agreement by notice in writing to Vendors and the Corporation, and in such event Purchaser shall be released from all obligations save and except for its obligations under Sections 10.3, 10.4 and 10.6 which shall survive. Vendors and the Corporation shall be released from their obligations unless Purchaser can show that the condition or conditions for which Purchaser terminated this Agreement were reasonably capable of being performed or caused to be performed by Vendors or the Corporation. If Purchaser waives compliance with any of the conditions, obligations or covenants contained in this Agreement, the waiver will be without prejudice to any of its rights of termination in the

event of non-fulfilment, non-observance or non-performance of any other condition, obligation or covenant in whole or in part. Purchaser's right of termination under this Article 6 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. Except as otherwise provided herein, nothing in Article 6 shall limit or affect any other rights or causes of action Purchaser may have with respect to the representations, warranties, covenants and indemnities in its favour contained in this Agreement.

6.3 Conditions for the Benefit of Vendors.

The purchase and sale of the Purchased Shares is subject to the following conditions to be fulfilled or performed at or prior to the Closing, which conditions are for the exclusive benefit of Vendors and may be waived, in whole or in part, by Vendors in their sole discretion:

- (a) **Truth of Representations and Warranties.** The representations and warranties of Purchaser contained in this Agreement shall be true and correct as of the Closing Date with the same force and effect as if such representations and warranties had been made on and as of such date and Purchaser shall have executed and delivered a certificate of a senior officer to that effect. The receipt of such certificate and the Closing shall not constitute a waiver by Vendors of any of the representations and warranties of Purchaser, which are contained in this Agreement. Upon the delivery of such certificate, the representations and warranties of Purchaser shall be deemed to have been made on and as of the Closing Date with the same force and effect as if made on and as of such date.
- (b) **Performance of Covenants.** Purchaser shall have fulfilled or complied with all covenants contained in this Agreement to be fulfilled or complied with by it at or prior to the Closing, and Purchaser shall have executed and delivered a certificate of a senior officer to that effect. The receipt of such certificate and the Closing shall not constitute a waiver by Vendors of any of the covenants of Purchaser, which are contained in this Agreement.
- (c) **Deliveries.** Purchaser shall deliver or cause to be delivered to Vendors the following:
 - (i) certified copies of (i) the constating documents and by-laws of Purchaser and (ii) all resolutions of the board of directors of the Purchaser approving the entering into and completion of the transactions contemplated by this Agreement;
 - (ii) a certificate of status, compliance, good standing or like certificate with respect to Purchaser issued by appropriate government officials of the jurisdiction of its incorporation;
 - (iii) the certificates referred to in Section 6.3(a) and Section 6.3(b);

- (iv) duly executed Restated and Amended Document Acquiring Intermediary Agreements between the Corporation and each of the Vendors in the form tabled by the parties thereto at Closing;
 - (v) duly executed Restated and Amended Document Presenting Intermediary Agreements between the Corporation and each of the Vendors in the form tabled by the parties thereto at Closing;
 - (vi) duly executed BIS license agreements between the Corporation and each of the Vendors that currently host Biller Integration Software as contemplated by the Restated and Amended Document Acquiring Intermediary Agreements referred to at Section 6.3(c)(iv) above, substantially in the form set forth in Schedule 6.1(d)(x); and
 - (vii) a duly executed Guarantee of Purchaser in favour of each of the Vendors substantially in the form set forth in Schedule 6.3(c)(vii).
- (d) **No Legal Action.** No action or proceeding shall be pending or threatened by any Person (other than Vendors or the Corporation) in any jurisdiction, to enjoin, restrict or prohibit any of the transactions contemplated by this Agreement or the right of the Corporation to conduct its respective business after Closing on substantially the same basis as heretofore operated.
- (e) **Legal Opinion.** An opinion of counsel to Purchaser substantially in the form set forth in Schedule 6.3(e).
- (f) **Payment of Purchase Price.** Purchaser shall have paid the Purchase Price to Vendors required to be paid at Closing in accordance with Section 2.4.
- (g) **Required Consents.** All Required Consents shall have been obtained on terms acceptable to Vendors, acting reasonably.
- (h) **Release.** Purchaser and the Corporation shall have released the directors and officers of the Corporation from any and all liabilities and obligations they may have towards Purchaser and the Corporation by executing a release, in the form of the release attached hereto as Schedule 6.3(h).
- (i) **Shareholders' Release.** Purchaser and the Corporation shall have released the Vendors from any and all liabilities and obligations they may have towards Purchaser and the Corporation under the Implementation and Services Agreement, by executing a release, in the form of the release attached hereto as Schedule 6.3(i).

6.4 Termination by Vendors.

If any of the conditions set forth in Section 6.3 have not been fulfilled or waived by all Vendors at or prior to April 19, 2002 or any obligation or covenant of Purchaser to be performed at or prior to Closing has not been observed or performed by April 19, 2002, then Vendors may

terminate this Agreement by notice in writing to Purchaser, and in such event Vendors shall be released from all obligations hereunder save and except for their obligations under Sections 10.3, 10.4 and 10.6 which shall survive. Purchaser shall be released from its obligations unless Vendors can show that the condition or conditions for which Vendors terminated this Agreement were reasonably capable of being performed or caused to be performed by Purchaser. If all Vendors waive compliance with any of the conditions, obligations or covenants contained in this Agreement, the waiver will be without prejudice to any of their rights of termination in the event of non-fulfilment, non-observance or non-performance of any other condition, obligation or covenant in whole or in part. Vendors' right of termination under this Article 6 is in addition to any other rights they may have under this Agreement or otherwise, and the exercise of a right of termination will not be an election of remedies. Except as otherwise provided herein, nothing in Article 6 shall limit or affect any other rights or causes of action Vendors may have with respect to the representations, warranties, covenants and indemnities in their favour contained in this Agreement.

ARTICLE 7 CLOSING

7.1 Date, Time and Place of Closing.

The completion of the transaction of purchase and sale contemplated by this Agreement shall take place at the offices of Stikeman Elliott in Toronto, Ontario at 10:00 a.m. (Toronto time) on the Closing Date or at such other place, on such other date and at such other time as may be agreed upon in writing by Vendors and Purchaser.

ARTICLE 8 INDEMNIFICATION

8.1 Vendors Indemnification in Favour of Purchaser.

Subject to Sections 8.3, 8.4 and 8.5, Vendors shall severally indemnify and save Purchaser harmless of and from any loss, liability, claim, damage or expense (whether or not involving a third-party claim) including legal expenses (collectively, "**Damages**") suffered by, imposed upon or asserted against Purchaser or the Corporation as a result of, in respect of, connected with, or arising out of, under, or pursuant to:

- (a) any failure of Vendors or the Corporation to perform or fulfil any of their covenants under this Agreement;
- (b) any breach or inaccuracy of any representation or warranty given by Vendors or the Corporation contained in this Agreement;
- (c) any liabilities or obligations of the Corporation of any nature (whether absolute, accrued, contingent or otherwise) arising on or after the Closing Date in respect of any fact, condition or circumstance existing or occurring on or prior to the Closing Date, other than (i) the BCE Emergis Liability, (ii) liabilities or

obligations reflected in or reserved against in the Closing Date Balance Sheet Estimate, or (iii) in respect of any such fact, condition or circumstance which becomes such a liability or obligation of the Corporation as a result of a change of Law on or subsequent to the Closing Date or an act or omission to act by Purchaser or any affiliate including the Corporation on or after the Closing Date.

For greater certainty, if Purchaser makes a claim against Vendors for Damages pursuant to this Section 8.1, Vendors shall not be entitled to and hereby waive any right to make any claim against the Corporation in respect of any such Damages, other than any Damages relating to the failure of the Corporation to perform or fulfil any of its covenants required to be performed or fulfilled by it on or after the Closing Date.

8.2 Purchaser Indemnification in Favour of Vendors.

Subject to Section 8.3, Purchaser shall indemnify and save Vendors harmless of and from any Damages suffered by, imposed upon or asserted against Vendors as a result of, in respect of, connected with, or arising out of, under or pursuant to:

- (a) any failure of Purchaser to perform or fulfil any covenant of Purchaser under this Agreement; and
- (b) any breach or inaccuracy of any representation or warranty given by Purchaser contained in this Agreement.

8.3 Time Limitations.

- (1) The representations and warranties of the Corporation, Vendors and Purchaser contained in this Agreement shall survive the Closing and, notwithstanding the Closing and any investigation made by or on behalf of Purchaser or Vendors, as the case may be, shall continue for a period of one (1) year after the Closing, except that:
 - (a) the representations and warranties set out in Sections 3.1, and 3.2(a), 3.2(d), 3.2(h) and the first paragraph of Section 3.2(f) shall survive the Closing and continue in full force and effect without limitation of time;
 - (b) the representations and warranties set out in Sections 4.1(a) to 4.1(c) shall survive the Closing and continue in full force and effect without limitation of time;
 - (c) the representations and warranties set out in Section 3.2(cc) shall survive for a period of 30 days after the expiration of the statute of limitations applicable to claims relating to such matters, without having regard to any waivers given by Purchaser, other than a Waiver given upon the prior written approval or deemed approval of Vendors pursuant to Section 8.3(3); and
 - (d) a claim for any breach of any of the representations and warranties of Vendors or Purchaser contained in this Agreement involving fraud or fraudulent misrepresentation shall survive and continue in full force and effect without limitation of time.

- (2) The obligation of indemnification set out in Section 8.1 and 8.2 shall survive the Closing, except for the obligation of indemnification arising from any incorrectness in, or breach of, any representation or warranty made by Vendors or Purchaser which shall be subject to the limitations regarding survival of representations and warranties set forth in Section 8.3(1) and to the limitations in Sections 8.4 and 8.5.
- (3) Promptly after receiving a request for a waiver from a Governmental Entity with respect to Taxes (a "Waiver"), Purchaser and/or the Corporation shall request by email and fax from Vendors their prior written approval with respect to such waiver (setting out the time by which the Vendors should respond), which approval shall not be unreasonably withheld or delayed by Vendors. If four (4) or more Vendors provide written approval to Purchaser and/or Corporation to execute and deliver the Waiver within the lesser of (the "Notice Period"): (i) five (5) Business Days of Purchaser's and/or the Corporation's request; or (ii) five (5) Business Days before Purchaser or the Corporation must respond to the relevant Governmental Entity, then all of the Vendors shall be deemed to have given to Purchaser their prior written approval with respect to the execution and delivery of the Waiver. If less than four (4) Vendors provide their written approval to execute the Waiver within the Notice Period, then all of the Vendors shall be deemed to have withheld their prior written approval with respect to the execution and delivery of the Waiver, and Purchaser and/or Corporation shall not execute and deliver the said Waiver. Any Vendor who fails to respond within the Notice Period shall be deemed to have provided its prior written approval to Purchaser and/or Corporation to execute and deliver the Waiver.

8.4 Allocation of Responsibility.

The representations, warranties and covenants of each Vendor herein are several representations, warranties and covenants of each such Vendor (collectively, the "**Several Representations and Covenants**"). Accordingly, the particular Vendor making the Several Representations and Covenants will be solely liable for such Several Representations and Covenants as they pertain to itself, but not as they pertain to any other Vendor.

8.5 Limitation on Damages.

The amount of any Damages payable to Purchaser hereunder by a Vendor shall be limited to an amount equal to the aggregate of: (i) such Vendor's Pro-Rata Share of \$6,900,000; and (ii) the amount of Damages actually received by such Vendor hereunder. No claim for indemnity may be made by the Purchaser hereunder until the aggregate amount of Damages subject to such claims exceeds \$50,000.

Notwithstanding any other provision of this Agreement, Purchaser shall have no claim for Damages against or indemnification from any Vendor whether or not hereunder in respect of the status or provisions of any Technology Associate Agreement listed in Schedule 3.2(q).

8.6 Notification.

Promptly upon obtaining knowledge thereof, a party being indemnified hereunder (the "**Indemnified Party**") shall notify a party providing indemnification hereunder (the

"Indemnifying Party") of any cause which the Indemnified Party has determined has given or could give rise to indemnification under this Article 8 (a "Notice"). With the exception of a Third Party Claim (which shall be dealt with in accordance with Section 8.7), in the event of a dispute, claim, question or difference arising out of or relating to the cause referred to in the Notice (a "Dispute"), the Indemnified Party(ies) and the Indemnifying Party(ies) shall negotiate with each other in good faith in an attempt to resolve the Dispute. If the Indemnified Party(ies) and the Indemnifying Party(ies) cannot resolve the Dispute within 20 days of receipt of the Notice, then either party may refer the Dispute to a court of competent jurisdiction. The omission so to notify the Indemnifying Party(ies) shall not relieve the Indemnifying Party(ies) from any duty to indemnify and hold harmless which otherwise might exist with respect to such cause unless the notification occurs after the expiration of the applicable time limit as set out in Section 8.3 and unless (and only to that extent) the omission to notify materially prejudices the ability of the Indemnifying Party(ies) to exercise its right to defend provided in this Article 8.

8.7 Defense of Third Party Claim.

- (1) If any legal proceeding shall be instituted or any claim or demand shall be asserted by a third party against the Indemnified Party(ies) (each a "Third Party Claim"), then the Indemnifying Party(ies) shall have the right, after receipt of the Indemnified Party's notice under Section 8.6 and upon giving notice to the Indemnified Party within not more than fifteen (15) calendar days of such receipt, to conduct the defense of the Third Party Claim at its own cost and expense with counsel of its own selection, provided that:
 - (a) the Indemnified Party(ies) shall at all times have the right to participate in the said defense at its own cost and expense;
 - (b) the Third Party Claim seeks only monetary damages and does not seek any injunctive or other relief against the Indemnified Party(ies); and
 - (c) legal counsel chosen by the Indemnifying Party(ies) is satisfactory to the Indemnified Party(ies), acting reasonably.

Amounts payable by the Indemnifying Party(ies) pursuant to a Third Party Claim shall be paid in accordance with the terms of the settlement or, final non-appealable judgment.

- (2) The Indemnifying Party(ies) shall not be permitted to compromise and settle or to cause a compromise and settlement of any Third Party Claim, without the prior written consent of the Indemnified Party(ies), unless:
 - (a) the terms of the compromise and settlement require only the payment of money and do not require the Indemnified Party(ies) or the Corporation to admit any wrongdoing or take or refrain from taking any action; and
 - (b) the Indemnified Party(ies) receives, as part of the compromise and settlement, a legally binding and enforceable unconditional satisfaction or release, which is in form and substance satisfactory to the Indemnified Party(ies), acting reasonably,

from any and all obligations or liabilities it may have with respect to the Third Party Claim.

- (3) If the Indemnifying Party(ies) fails within not more than 15 calendar days from receipt of the notice of a Third Party Claim to give notice of its intention to conduct the defense of the Third Party Claim in accordance with Section 8.6, then the Indemnifying Party(ies) shall be deemed to have waived its right to participate in the Third Party Claim and the Indemnified Party(ies) shall have the right (but not the obligation) to undertake or to cause the Indemnifying Party(ies) to undertake the defense of the Third Party Claim and compromise and settle the Third Party Claim on behalf, for the account and at the risk and expense of the Indemnifying Party(ies).
- (4) Where the Indemnifying Party(ies) conducts the defence of a Third Party Claim, the Indemnified Party will use its reasonable efforts to make available to the Indemnifying Party(ies) those employees whose assistance, testimony or presence is necessary to assist the Indemnifying Party(ies) in evaluating and participating in the defense of any such claims.
- (5) With respect to any Third Party Claim at the request of the Indemnifying Party(ies), the Indemnified Party(ies) shall make available to the Indemnifying Party(ies) or its representatives on a timely basis all documents, records and other materials in the possession of the Indemnified Party(ies), at the expense of the Indemnifying Party(ies), reasonably required by the Indemnifying Party(ies) for its use in defending any such claim and shall otherwise cooperate on a timely basis with the Indemnifying Party(ies) in the defence of such claim.
- (6) With respect to any Third Party Claim by the Canada Customs and Revenue Agency ("CCRA") or any other similar provincial governmental body in respect of income, corporate, sales, excise, or other tax in respect of which a Lien against the property of the Indemnified Party(ies) has been registered or deemed registered under any Tax Law, the Indemnifying Party's right to so defend the Proceeding shall only apply after payment of the re-assessment.

8.8 Mitigation and Exclusive Remedies.

Nothing contained in this Agreement shall affect the obligation of a Party seeking indemnification to take commercially reasonable steps to mitigate its losses. The provisions of Article 8 shall apply to any claim for breach of covenant, representation, warranty or other provision of this Agreement (other than a claim for specific performance or injunctive relief) and all such claims and recourses shall be subject to the limitations and other provisions applicable thereto under this Article 8.

ARTICLE 9 POST-CLOSING COVENANTS

9.1 Further Assurances.

From time to time after the Closing Date, each Party shall, at the request of any other Party, execute and deliver such additional conveyances, transfers and other assurances as may be reasonably required to effectively transfer the Purchased Shares to Purchaser and carry out the intent of this Agreement.

9.2 Status of Purchaser.

In addition to the requirements of Section 2.10, Purchaser may only pay in Emergis Shares if Purchaser is at the time of any such payment a reporting issuer in good standing in Ontario and Quebec and its common shares (including the Emergis Shares to be paid) are listed and posted for trading on The Toronto Stock Exchange.

9.3 Tax Returns

Vendors will be responsible for and will cause to be prepared and duly filed all Tax Returns of the Corporation for all the periods ending on or before the Closing Date and for which Tax Returns have not been filed as of such date. All such Tax Returns of the Corporation to be filed after the Closing Date shall be submitted to Purchaser no later than 30 days prior to the due date and filing thereof, and Purchaser shall have the right to review and approve those Tax Returns (without limiting the indemnification obligations of Vendors under this Agreement), provided that approval shall not be unreasonably withheld. Upon approval of Purchaser (which shall be provided prior to the due date of the relevant Tax Returns), such Tax Returns shall be filed by the Corporation with applicable tax authorities, and a copy of such Tax Returns shall be sent to Vendors. Purchaser shall be responsible for and will cause to be prepared and duly filed all Tax Returns of the Corporation for all periods commencing on or subsequent to the Closing Date, and such returns shall be on a basis which is consistent with the Tax Returns of the Corporation for prior periods, unless a contrary position is required by law.

ARTICLE 10 MISCELLANEOUS

10.1 Notices.

All notices and other communications pursuant to this Agreement shall be in writing and shall be deemed given if delivered personally, telecopied, sent by nationally-recognized overnight courier or mailed by registered or certified mail (return receipt requested), postage prepaid, to the Parties at the addresses set forth below or to such other address as the Party to whom notice is to be given may have furnished to the other Parties hereto in writing in accordance herewith. Any such notice or communication shall be deemed to have been delivered and received (A) in the case of personal delivery, on the date of such delivery, (B) in the case of telecopiers, on the date sent if confirmation of receipt is received and such notice is also promptly mailed by registered or certified mail (return receipt requested), (C) in the case of

a nationally-recognized overnight courier in circumstances under which such courier guarantees next Business Day delivery, on the next Business Day after the date when sent and (D) in the case of mailing, on the third Business Day following that on which the piece of mail containing such communication is posted:

- (a) If to Purchaser, or the Corporation after Closing, at:

BCE EMERGIS INC.

1155 René-Lévesque Blvd West
Suite 2200
Montreal, Quebec
H3B 4T3

Attention: Monique Mercier
Telephone: (514) 868-2351
Facsimile: (514) 868-2340

With a copy to Stikeman Elliott at:

1155 René-Lévesque Blvd West
Suite 4000
Montreal, Quebec
H3B 3V2

Attention: Peter Castiel
Telephone: (514) 397-3000
Facsimile: (514) 397-3222

- (b) If to TD Mortgage Corporation, at:

33 Bloor Street East
4th Floor
Toronto, Ontario
M4W 3H1

Attention: Jeff Van Duynhoven
Telephone: (416) 983-7777
Facsimile: (416) 944-6603

- (c) If to Canadian Imperial Bank of Commerce, at:

199 Bay Street
Commerce Court West
11th Floor
Toronto, Ontario
M5L 1A2

Attention: Debbie Milstein
Vice President, Consumer Deposits & Payments

Telephone: (416) 304-2631
Facsimile: (416) 980-3768

With a copy to Senior Vice President and Deputy General Counsel
Legal Division
CIBC
at:

199 Bay Street
Commerce Court West, 15th Floor
Toronto, Ontario
M5L 1A2

Facsimile: (416) 368-9826

(d) If to Fédération des Caisses Desjardins du Québec, at:

1 Complexe Desjardins
South Tower, 18th Floor
C.P. 7, succursale Desjardins
Montreal, Quebec
H5B 1B2

Attention: Jean-François Mérette

Telephone: (514) 281-7076
Facsimile: (514) 847-2961

(e) If to National Bank of Canada, at:

600 rue de la Gauchetière Ouest
27th Floor
Montreal, Quebec
H3B 4L2

Attention: André Piette

Telephone: (514) 394-5000 # 5518
Facsimile: (514) 394-9563

(f) If to Royal Bank of Canada, at:

200 Bay Street
9th Floor, South Tower
Toronto, Ontario
M5J 2M2

Attention: Senior Vice President
Treasury Management and Trade

Telephone: (416) 974-9878
Facsimile: (416) 974-9577

cc: 1 Place Ville Marie
4th Floor, East Wing
Montreal, Quebec
H3C 3A9

Attention: Senior Vice President and Deputy General Counsel
Royal Bank Law Group

Telephone: (514) 874-6610
Facsimile: (514) 874-0241

(g) If to The Toronto-Dominion Bank, at:

33 Bloor Street East
4th Floor
Toronto, Ontario
M4W 3H1

Attention: Jeff Van Duynhoven

Telephone: (416) 983-7777
Facsimile: (416) 944-6603

(h) If to The Bank of Nova Scotia, at:

20 Richmond Street East
5th Floor
Toronto, Ontario
M5C 2R9

Attention: Robert Grant
Senior Vice President

Telephone: (416) 866-4873
Facsimile: (416) 866-6504

- (i) If to any of (b)-(h) above, with a copy to Osler, Hoskin Harcourt LLP at:

P.O. Box 50
Suite 6100
1 First Canadian Place
Toronto, Ontario
M5X 1B8

Attention: Andrew Aziz and Andrew MacDougall

Telephone: (416) 362-2111

Facsimile: (416)-862-6666

10.2 Time of the Essence.

Time shall be of the essence of this Agreement.

10.3 Brokers.

Vendors shall indemnify and save harmless Purchaser and Corporation from and against any and all claims, losses and costs whatsoever for any commission or other remuneration payable or alleged to be payable to any broker, agent or other intermediary who purports to act or have acted for Vendors or the Corporation. Purchaser shall indemnify and save harmless Vendors from and against any and all claims, losses and costs whatsoever for any commission or other remuneration payable or alleged to be payable to any broker, agent or other intermediary who purports to act or have acted for Purchaser. These indemnities shall not be subject to any of the limitations set out in Article 8 of this Agreement.

10.4 Confidentiality; Announcements.

This Agreement will be subject to the provisions of the Non Disclosure Agreement dated as of January 11, 2002 among the Corporation, Vendors and Purchaser. Neither the Corporation, Vendors, Purchaser nor any of their directors, officers, employees and their respective representatives will make any public disclosure at any time prior to or after the Closing concerning the matters set forth in this Agreement or the transactions contemplated hereby without the prior written consent of the other Parties, except if required for legal, securities Laws or other regulatory reasons or in connection with the obtaining of Consents or otherwise as required to complete the transactions contemplated hereby. If and when Purchaser and Vendors desire to make such public disclosure at or after Closing, all Parties will have an opportunity to review and comment on any such disclosure in advance of public release, and Purchaser will accommodate the reasonable requests of Vendors with respect to the content thereof.

10.5 Third Party Beneficiaries.

Vendors, the Corporation and Purchaser intend that this Agreement shall not benefit or create any right or cause of action in, or on behalf of, any Person other than the Parties to this Agreement and no Person, other than the Parties to this Agreement shall be entitled to rely on the provisions of this Agreement in any action, suit, proceeding, hearing or other forum.

10.6 Expenses.

Incident to the negotiation, preparation and execution of this Agreement and the agreements contemplated hereby, including, without limitation, legal and accounting fees and expenses: (a) the Purchaser shall pay for its own fees and expenses; (b) Vendors shall pay for their own fees and expenses; and (c) the Corporation shall pay for its own fees and expenses.

10.7 Amendments.

This Agreement may only be amended, supplemented or otherwise modified by written agreement signed by Vendors and Purchaser.

10.8 Waiver.

- (1) No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision (whether or not similar), nor shall such waiver be binding unless executed in writing by the Party to be bound by the waiver.
- (2) No failure on the part of Vendors or Purchaser to exercise, and no delay in exercising any right under this Agreement shall operate as a waiver of such right; nor shall any single or partial exercise of any such right preclude any other or further exercise of such right or the exercise of any other right.

10.9 Non-Merger.

Except as otherwise expressly provided in this Agreement, the covenants, representations and warranties shall not merge on and shall survive the Closing (except for the Corporation's covenants, representations and warranties, which shall not survive the Closing) and, notwithstanding such Closing and any investigation made by or on behalf of any Party, shall continue in full force and effect. Closing shall not prejudice any right of one Party against any other Party in respect of anything done or omitted under this Agreement or in respect of any right to damages or other remedies.

10.10 Entire Agreement.

This Agreement together with the agreements referred to herein constitute the entire agreement between the Parties with respect to the transactions contemplated in this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties. There are no representations, warranties, covenants, conditions or other agreements, express or implied, collateral, statutory or otherwise, between the Parties in connection with the subject matter of this Agreement except as specifically set forth herein and therein and neither Vendors nor Purchaser has relied or is relying on any other

information, discussion or understanding in entering into and completing the transactions contemplated in this Agreement.

10.11 Successors and Assigns.

This Agreement shall become effective when executed by Vendors, Purchaser and Corporation, and after that time shall be binding upon and enure to the benefit of Vendors, Purchaser and their respective successors and permitted assigns. Neither this Agreement nor any of the rights or obligations under this Agreement shall be assignable or transferable by Vendors without the prior written consent of the Purchaser. Purchaser may assign and transfer this Agreement and any of its rights and obligations under this Agreement to an Affiliate without the prior written consent of the Vendors, provided that Purchaser shall not by reason of any such assignment and transfer be released from its obligations hereunder.

10.12 Severability.

If any provision of this Agreement shall be determined by an arbitrator or any court of competent jurisdiction to be illegal, invalid or unenforceable, that provision shall be severed from this Agreement and the remaining provisions shall continue in full force and effect.

10.13 Governing Law.

This Agreement shall be governed by and interpreted and enforced in accordance with the Laws of the Province of Ontario and the federal Laws of Canada applicable therein. The Parties hereby attorn to the courts of the Province of Ontario.

10.14 Counterparts.

This Agreement may be executed in any number of counterparts (including counterparts by facsimile) and all such counterparts taken together shall be deemed to constitute one and the same instrument.

IN WITNESS WHEREOF the parties have executed this Share Purchase Agreement as of the date first written above.

"PURCHASER"

"CORPORATION"

BCE EMERGIS INC.

e-route inc.

By: W Brian Edwards

By: _____

Name: W. Brian Edwards

Name: _____

Title: Vice Chairman and Chief Executive Officer

Title: _____

Date: April 19, 2002

Date: _____

"VENDORS"

TD MORTGAGE CORPORATION

TD MORTGAGE CORPORATION

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

CANADIAN IMPERIAL BANK OF
COMERCE

CANADIAN IMPERIAL BANK OF
COMERCE

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

IN WITNESS WHEREOF the parties have executed this Share Purchase Agreement as of the date first written above.

"PURCHASER"

BCE EMERGIS INC.

By: _____

Name: _____

Title: _____

Date: _____

"CORPORATION"

e-route inc.

By: *R. Whitwham*

Name: ROD WHITWHAM

Title: C.E.O.

Date: Apr. 19/02

"VENDORS"

TD MORTGAGE CORPORATION

By: *R. Whitwham*

Name: ROD WHITWHAM

Title: V.P. e. BANK

Date: Apr. 19/02

TD MORTGAGE CORPORATION

By: _____

Name: _____

Title: _____

Date: _____

CANADIAN IMPERIAL BANK OF COMERCE

By: _____

Name: _____

CANADIAN IMPERIAL BANK OF COMERCE

By: _____

Name: _____

IN WITNESS WHEREOF the parties have executed this Share Purchase Agreement as of the date first written above.

"PURCHASER"

BCE EMERGIS INC.

By: _____

Name: _____

Title: _____

Date: _____

"CORPORATION"

e-route inc.

By: _____

Name: _____

Title: _____

Date: _____

"VENDORS"

TD MORTGAGE CORPORATION

By: _____

Name: _____

Title: _____

Date: _____

TD MORTGAGE CORPORATION

By: _____

Name: _____

Title: _____

Date: _____

**CANADIAN IMPERIAL BANK OF
COMERCE**

By: C. Delaney

Name: C. DELANEY

Title: SVP

Date: April 23, 2002

**CANADIAN IMPERIAL BANK OF
COMERCE**

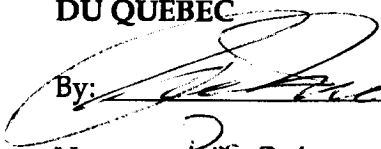
By: Debbie Milstein

Name: Debbie Milstein

Title: Vice President

Date: April 23, 2002

**FÉDÉRATION DES CAISSES DESJARDINS
DU QUÉBEC**

By:  _____

Name: PIERRE MORAN

Title: SENIOR VP

Date: _____

**FÉDÉRATION DES CAISSES DESJARDINS
DU QUÉBEC**

By: _____

Name: _____

Title: _____

Date: _____

NATIONAL BANK OF CANADA

By: _____

Name: _____

Title: _____

Date: _____

NATIONAL BANK OF CANADA

By: _____

Name: _____

Title: _____

Date: _____

ROYAL BANK OF CANADA

By: _____

Name: _____

Title: _____

Date: _____

ROYAL BANK OF CANADA

By: _____

Name: _____

Title: _____

Date: _____

THE TORONTO-DOMINION BANK

By: _____

Name: _____

Title: _____

Date: _____

THE TORONTO-DOMINION BANK

By: _____

Name: _____

Title: _____

Date: _____

**FÉDÉRATION DES CAISSES DESJARDINS
DU QUÉBEC**

By: _____

Name: _____

Title: _____

Date: _____

**FÉDÉRATION DES CAISSES DESJARDINS
DU QUÉBEC**

By: _____

Name: _____

Title: _____

Date: _____

NATIONAL BANK OF CANADA

By: _____

Name: ANDRÉ PIETÉ

Title: DIRECTOR

Date: April 17, 2002

NATIONAL BANK OF CANADA

By: _____

Name: Michel Jean

Title: SVP eCommerce

Date: April 17, 2002

ROYAL BANK OF CANADA

By: _____

Name: _____

Title: _____

Date: _____

ROYAL BANK OF CANADA

By: _____

Name: _____

Title: _____

Date: _____

THE TORONTO-DOMINION BANK

By: _____

Name: _____

THE TORONTO-DOMINION BANK

By: _____

Name: _____

**FÉDÉRATION DES CAISSES DESJARDINS
DU QUÉBEC**

By: _____

Name: _____

Title: _____

Date: _____

**FÉDÉRATION DES CAISSES DESJARDINS
DU QUÉBEC**

By: _____

Name: _____

Title: _____

Date: _____

NATIONAL BANK OF CANADA

By: _____

Name: _____

Title: _____

Date: _____

NATIONAL BANK OF CANADA

By: _____

Name: _____

Title: _____

Date: _____

ROYAL BANK OF CANADA

By: R. Horton

Name: R. Horton

Title: S.V.P.

Date: April 19/02

ROYAL BANK OF CANADA

By: E.M. Stewart

Name: E.M. Stewart

Title: V-P, Global Services

Date: Apr. 19/02

THE TORONTO-DOMINION BANK

By: _____

Name: _____

Title: _____

Date: _____

THE TORONTO-DOMINION BANK

By: _____

Name: _____

Title: _____

Date: _____

THE TORONTO-DOMINION BANK

By: _____

Name: _____

Title: _____

Date: _____

THE BANK OF NOVA SCOTIA

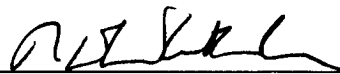
By: _____

Name: _____

Title: _____

Date: _____

THE TORONTO-DOMINION BANK

By: 

Name: **ROD WHITWHAM**

Title: **V. P. e. BANK**

Date: **Apr. 19/02**

THE BANK OF NOVA SCOTIA

By: _____

Name: _____

Title: _____

Date: _____

Title:

Date:

THE TORONTO-DOMINION BANK

By: _____

Name: _____

Title: _____

Date: _____

THE BANK OF NOVA SCOTIA

By: J. D. Brown

Name: J. D. BROWN

Title: SENIOR VICE PRESIDENT

Date: _____

Title:

Date:

THE TORONTO-DOMINION BANK

By: _____

Name: _____

Title: _____

Date: _____

THE BANK OF NOVA SCOTIA

By: R. Frank

Name: R Frank

Title: SR Asst Secty & VP

Date: _____

EMERGIS PHARMACY SYSTEMS INC.
as Purchaser

and

NDCHEALTH PHARMACY SYSTEMS AND SERVICES, ULC
as Vendor

and

NDCHEALTH CORPORATION

as NDC

and

EMERGIS INC.
as Emergis

ASSET PURCHASE AGREEMENT

dated March 17, 2005

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ASSET PURCHASE AGREEMENT

~~Asset Purchase Agreement dated March 17, 2005, between EMERGIS PHARMACY~~
SYSTEMS INC., a corporation incorporated under the Laws of Canada ("**Purchaser**"),
NDCHEALTH PHARMACY SYSTEMS AND SERVICES, ULC, an unlimited liability
company incorporated under the Laws of the Province of Nova Scotia ("**Vendor**"),
NDCHEALTH CORPORATION, a corporation incorporated under the Laws of Delaware
("**NDC**"), and **EMERGIS INC.**, a corporation incorporated under the Laws of Canada
("**Emergis**").

RECITALS

WHEREAS Vendor is a leading provider of software and solutions to pharmacies located in Canada which includes providing pharmacy software and solutions that automate the prescription fulfillment process and an integrated point-of-sale solution for in-store operations (the "**Systems Business**");

WHEREAS Purchaser is a wholly-owned subsidiary of Emergis and Vendor is an indirect wholly-owned subsidiary of NDC;

AND WHEREAS this Agreement sets forth the terms and conditions upon which Purchaser will purchase from Vendor, and Vendor will sell to Purchaser, all of the assets and operations of the Systems Business.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

ARTICLE 1 INTERPRETATION

1.1 Defined Terms

As used in this Agreement, the following terms have the following meanings:

- (a) "**Accounts Receivable**" means all accounts receivable, trade accounts, notes receivable, book debts and other debts due to Vendor in connection with the Systems Business.
- (b) "**Affiliate**" means, with respect to any Person, any other Person, directly or indirectly, controlling, controlled by, or under common control with, the first such Person. Without limiting the generality of the foregoing, a Person is considered to be in control of or to be controlled by another Person if such Person holds 50% or more of the outstanding voting equity interest in such other Person or such other Person holds 50% or more of its outstanding voting equity interest, or is otherwise entitled to vote in such a manner as to control the direction of the activities of such Person.
- (c) "**Agreement**" means this asset purchase agreement and all instruments which amend or confirm this asset purchase agreement; and the expressions "**Article**" and "**Section**"

followed by a number mean and refer to the specified Article or Section of this Agreement.

- (d) **~~"Ancillary Agreements" means the Transitional Services Agreement, the License Agreement and the Outsourcing Agreement.~~**
- (e) "Authorization", with respect to any Person, means any order, permit, certificate of authorization, approval, registration, waiver, license or similar authorization of any Governmental Entity having jurisdiction over such Person.
- (f) "Balance Sheet Date" means November 26, 2004.
- (g) "Books and Records" means all books of account, sales and purchase records, customer and supplier lists, all owned Intellectual Property of Vendor, business reports, plans and projections and all other documents, files, correspondence and other information owned by Vendor or which it has the right to use or exploit in connection with the Systems Business, whether in written or electronic form.
- (h) "Closing" means the completion of the purchase and sale transaction contemplated in this Agreement.
- (i) "Consent" means the unconditional written consent of a contracting party to or as a result of the transactions contemplated by this Agreement if required by the terms of any Contract between such contracting party and Vendor.
- (j) "Contracts" means the following agreements, contracts, purchase orders, undertakings or commitments, written or oral, to which Vendor in connection with the Systems Business is bound or to which it is a party, whether written or oral:
 - (i) all agreements, contracts, purchase orders, undertakings or commitments with customers of the Systems Business, including those listed on Schedule 4.1(x) of the Disclosure Letter; and
 - (ii) all agreements, contracts, purchase orders, undertakings or commitments listed in Schedule 1.1(j) of the Disclosure Letter.
- (k) "Current Assets" shall mean the sum of Accounts Receivable (excluding, for greater certainty, any Tax refunds receivable by Vendor) of Vendor in connection with the Systems Business and Prepaid Expenses (if any), in each case (i) net of applicable reserves (if any) established in accordance with GAAP and (ii) calculated in accordance with GAAP and Section 3.3(a).
- (l) "Current Liabilities" shall mean the sum of the accounts payable and accruals of Vendor in connection with the Systems Business including, without limitation, wages, vacation, bonuses and employee benefits for Transferred Employees and deferred revenue accounts, in each case calculated in accordance with GAAP and Section 3.3(a).
- (m) "Damages" means any loss, liability, claim, damage (excluding incidental, consequential, aggravated, exemplary or punitive damages, except to the extent

claimed in a Third Party Claim, but not excluding lost profits), expense or interest (whether or not involving a **Third Party Claim**) including reasonable costs, fees and expenses of legal counsel (~~without reduction for tariff rates or similar reductions~~) and other advisors and experts.

- (n) "Disclosure Letter" means the disclosure letter dated the date hereof delivered by Vendor and NDC to Purchaser and Emergis.
- (o) "Environmental Laws" means all applicable Laws with Governmental Entities relating to public health, pollution or the protection of the environment, including civil responsibility for acts or omissions with respect to the environment, and all Authorizations issued pursuant to such Laws.
- (p) "Equipment" shall mean the equipment listed in Schedule 1.1(p) of the Disclosure Letter.
- (q) "Financial Information Documents" means the information and statements set forth in Schedule 4.1(s) of the Disclosure Letter.
- (r) "GAAP" means, at any time, generally accepted accounting principles in Canada including those set out in the Handbook of the Canadian Institute of Chartered Accountants in force at such time, unless reference is specifically made to US GAAP, in which case "GAAP" means United States generally accepted accounting principles.
- (s) "Governmental Entity" means any (i) multinational, federal, provincial, state, municipal, local or other governmental or public department, central bank, court, arbitral body with legal jurisdiction, commission, board, bureau, agency or instrumentality, domestic or foreign, (ii) any subdivision or authority of any of the foregoing or (iii) any quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the above.
- (t) "Intellectual Property" means domestic and foreign: (i) patents, applications for patents and reissues, divisions, continuations, renewals, extensions and continuations-in-part of patents or patent applications; (ii) business information, inventions (whether patentable or not), invention disclosures, improvements, discoveries, trade secrets, confidential information, know-how, methods, processes, designs, technology, technical data, schematics and customer lists, and documentation relating to any of the foregoing; (iii) copyrights, copyright registrations and applications for copyright registration; (iv) designs, design registrations and design registration applications; (v) trade names, business names, common law trade-marks, trade dress and logos (excluding the elements and words "NDC" and "National Data" or any variation thereof), and the goodwill associated with any of the foregoing; (vi) Software; and (vii) any other intellectual property and industrial property.
- (u) "Inventory" shall mean all inventories listed in Schedule 1.1(u) of the Disclosure Letter.
- (v) "ITA" means the *Income Tax Act* (Canada) and the regulations thereunder.

- (w) "Laws" means (i) all constitutions, treaties, laws, statutes, codes, ordinances, principles of common law, orders, decrees, rules, regulations and municipal by-laws, whether domestic, foreign or international, (ii) all judgments, orders, writs, injunctions, decisions, rulings, decrees and awards of any Governmental Entity and (iii) all policies, practices and guidelines of any Governmental Entity which, although not actually having the force of law, are considered by such Governmental Entity as requiring compliance as if having the force of law, in each case binding on or affecting the Party or Person referred to in the context in which such word is used.
- (x) "Lease" means the lease of the Leased Properties described in Schedule 4.1(k) of the Disclosure Letter.
- (y) "Leased Properties" means the premises listed and described in Schedule 4.1(k) of the Disclosure Letter.
- (z) "Lien" means any security interest, purchase money security interest, mortgage, charge, pledge, prior claim, hypothec, assignment, lien (statutory or otherwise including for Taxes), Bank Act security, servitude, easement, restrictive covenant, conditional sale, capital lease, title retention agreement, restrictive covenant or other encumbrance, arrangement or condition of any nature which, in substance, secures payment or performance of an obligation.
- (aa) "Ordinary Course" means, with respect to an action taken by Vendor, that such action is (i) consistent with the past practices of Vendor in connection with the Systems Business or is part of the normal development of the Systems Business and (ii) is taken in the ordinary course of the normal operations of Vendor in connection with the Systems Business.
- (bb) "Parties" means each of Vendor, Purchaser, NDC and Emergis and any other Person who may become a party to this Agreement.
- (cc) "Person" means a natural person, partnership, corporation, limited liability company, unlimited liability company, joint stock company, trust, unincorporated association, joint venture or other entity or Governmental Entity, and pronouns have a similarly extended meaning.
- (dd) "Prepaid Expenses" shall mean the expenses of Vendor in connection with the Systems Business which have been paid for by it in advance of the period for which the related goods are to be delivered or services are to be performed.
- (ee) "Prime Rate" means the annual rate of interest set from time to time by the Royal Bank of Canada as a reference rate then in effect for determining interest rates on commercial demand loans made by it in Canadian dollars.
- (ff) "Purchaser's Core Representations" means the representations and warranties of Purchaser in Sections 4.2(a) (Incorporation and Corporate Power) and 4.2(b)(i) and (ii) (Validity of Agreement).

- (gg) "Required Consents" means (i) all Consents required under Material Contracts (other than Contracts that are Material Contracts solely by virtue of being described under Section 4.1(n)(xv)), and (ii) all consents from Governmental Entities which are identified in Schedule 1.1(gg) of the Disclosure Letter, that are required to consummate the transactions contemplated in this Agreement or to transfer the Authorizations identified therein to the benefit of Purchaser.
- (hh) "Software" means computer software and programs (both source code and object code form), all proprietary rights in the computer software and programs and all documentation and other materials related to the computer software and programs.
- (ii) "Vendor's Core Representations" means the representations and warranties of Vendor and NDC in Sections 4.1(a)(i) and 4.1(a)(ii) (Incorporation and Qualification), 4.1(c)(A) (Title to Purchased Assets), 4.1(d) (No Other Agreements to Purchase), 4.1(e)(i), 4.1(e)(ii)(A) (Validity of Agreement), 4.1(p)(v) (Intellectual Property) and 4.1(aa) (No Brokers, Etc.).
- (jj) "Working Capital" means the amount equal to the difference between the aggregate Current Assets as shown on the Working Capital Statement and the aggregate Current Liabilities as shown on the Working Capital Statement, expressed as a positive amount where the Current Assets exceed the Current Liabilities and expressed as a negative amount where the Current Liabilities exceed the Current Assets.

1.2 Other Defined Terms

In addition to the defined terms in Section 1.1, each of the following capitalized terms shall have the meaning ascribed thereto in the corresponding Section:

<u>Defined Term</u>	<u>Section</u>
Actions or Orders	4.1(w)
Assumed Liabilities	2.5
Closing Date	9.1
Competitive Business	6.2
Customer	6.3(a)
Emergis	Appearances
Enterprise Software	6.7(b)
Excluded Liabilities	2.5
Holdback Amount	3.2(c)
Holdback Claim	3.4(a)
Holdback Period	3.4(a)
Indemnified Party	10.6
Indemnifying Party	10.6
License Agreement	8.1(b)(ix)
Material Contracts	4.1(n)
NDC	Appearances
NDC-Licensed IP	4.1(p)(i)
NDC-Owned IP	4.1(p)(i)

<u>Defined Term</u>	<u>Section</u>
Notice	10.7
Objection to Holdback Claim	3.4(a)
Outsourcing Agreement	8.1(b)(xi)
Prospective Customer	6.3(a)
Purchase Price	3.1
Purchase Price Reduction	3.3(c)
Purchased Assets	2.1
Purchaser	Appearances
Purchaser's Closing Certificate	8.3(a)
Rights	2.3
SPA	10.4(c)
Systems Business	Recitals
Tax (or Taxes)	4.1(z)(i)
Third Party Auditors	3.3(e)
Third Party Claim	10.8(a)
Transferred Employee	5.1
Transferred Independent Contractor	5.3
Transitional Services Agreement	8.1(b)(viii)
Unpaid Balance	3.4(b)
Vendor	Appearances
Vendor-Licensed IP	4.1(p)(i)
Vendor-Owned IP	4.1(p)(i)
Vendor's Closing Certificates	8.1(a)
Working Capital Statement	3.3(a)

1.3 Knowledge

Where any representation or warranty contained in this Agreement is expressly qualified by reference to the knowledge of Vendor, it shall be deemed to refer to the actual knowledge of:

- (a) any of the officers or directors of NDC, and any of Trinal Lindsell, Susan Pipars and David Clark; or
- (b) any of the officers or directors of Vendor or any of George Otty or Barbara Wilson, in each case after due inquiry.

1.4 General

- (a) **Gender and Number.** Any reference in this Agreement to gender includes all genders (including neuter) and words denoting the singular number only shall include the plural and *vice versa*.

- (b) **Headings, Etc.** The provision of a table of contents, the division of this Agreement into Articles and Sections and the insertion of headings are for convenient reference **only and shall not affect the interpretation of this Agreement.**
- (c) **Currency.** All references in this Agreement to dollars or to "\$", unless otherwise specifically indicated, are to the currency of Canada.
- (d) **Accounting Terms.** All accounting terms not specifically defined in this Agreement shall be interpreted in accordance with GAAP.
- (e) **Legal Representation; No Presumption Against Purchaser.** Each Party acknowledges that such Party has been represented by counsel in connection with the negotiation and execution of this Agreement and related matters, and that the terms of this Agreement and related matters have been negotiated by it. Any rule of Law or any legal decision that would require interpretation of any claimed ambiguities in this Agreement against the Party that drafted it has no application and any such right is expressly waived by the Parties.
- (f) **Day Not a Business Day; Calculation of Delays.** If an action is required to be taken hereunder no later than a day which is not a business day in the jurisdiction in which such action must be taken, then such action shall instead be required to be taken no later than the next succeeding business day. If any action may be taken within, or any right or obligation is to expire at the end of, a period of days under this Agreement, then the day which is the reference day in calculating such period shall be excluded.
- (g) **Overlapping Representations.** Any representation and warranty given by a Party in this Agreement shall not be deemed to be limited or qualified solely because a similar or more general representation and warranty given by such Party in this Agreement is limited or qualified.

ARTICLE 2

PURCHASE AND SALE

2.1 Purchase and Sale of Purchased Assets

Subject to the terms and conditions of this Agreement, Vendor shall sell, assign, convey and transfer to Purchaser as of Closing on the Closing Date, and Purchaser shall purchase and acquire from Vendor as of Closing on the Closing Date, the following properties, assets, undertaking, business and operations owned by Vendor or to which it is entitled in connection with the Systems Business (collectively, the "**Purchased Assets**"):

- (a) the Equipment;
- (b) the Inventory;
- (c) the right, title and interest of Vendor in and to all of its Accounts Receivable;

- (d) the right, title and interest of Vendor in, to and under the Contracts, including the Lease for the premises at Suite 186 (only), 4664 Lougheed Highway, Burnaby, British Columbia;
- (e) **the Books and Records;**
- (f) the right, title and interest of Vendor in, to and under the Authorizations, to the extent transferable by Law;
- (g) the Vendor-Owned IP;
- (h) the Prepaid Expenses; and
- (i) the goodwill of the Systems Business, including, without limitation:
 - (i) the names Vendor uses in Canada to market its products and services in connection with the Systems Business, including, without limitation, "APS" and "Osprey" (but not including "NDC" or "National Data"); and
 - (ii) all customer lists, files, data and information relating to past and present customers and prospective customers of the Systems Business.

2.2 Instruments of Conveyance

In order to effect more fully and completely the sale, assignment, conveyance and transfer of the Purchased Assets pursuant to this Agreement, Vendor shall deliver to Purchaser such bills of sale, deeds of sale, assignments and instruments of conveyance as requested by Purchaser, acting reasonably, to permit the assignment, transfer and conveyance from Vendor to Purchaser and the acquisition by Purchaser from Vendor of all right, title and interest in, to and under the Purchased Assets, the whole with effect as of the Closing Date.

2.3 Assignment of Contracts

Nothing in this Agreement shall be construed as a sale, assignment, conveyance or transfer of, or an attempt to sell, assign, convey or transfer, any Contracts, Accounts Receivable, Authorizations or other Purchased Assets (collectively, the "**Rights**") if:

- (a) such Right is not saleable, assignable, conveyable or transferable without the consent of another Person (if such consent has not been obtained) and such sale, assignment, conveyance or transfer or attempted sale, assignment, conveyance or transfer would constitute a breach of such Right; or
- (b) the remedies for the enforcement of such Right available to Vendor would not pass to Purchaser.

In order, however, that the full value of any Right may be realized for the benefit of Purchaser, Vendor shall, at its expense and at the request and under the direction of Purchaser, in the name of Vendor or as otherwise specified by Purchaser, acting reasonably, take all such action and do or cause to be done all such things which are necessary and advisable from

Vendor in order that the obligations of Vendor in connection with such Right may be performed in such manner that the value of such Right shall be preserved and shall enure to the **exclusive benefit of Purchaser, and that the collection of moneys due and payable to Purchaser in connection with such Right shall be received by Purchaser. Vendor shall promptly pay over to Purchaser all moneys collected by or paid to or for Vendor in respect of every Right.**

Purchaser may at any time thereafter request a sale, assignment, conveyance or transfer of any Right notwithstanding that the third party consent necessary for such sale, assignment and transfer has not been obtained.

2.4 Consent to Assignments

Vendor shall use commercially reasonable efforts to obtain all third party consents to the sale, assignment, transfer and conveyance by Vendor to Purchaser of the Rights and the re-issuance in the name and for the benefit of Purchaser of Authorizations to replace non-transferable Authorizations of the Systems Business on substantially the same terms. Purchaser shall cooperate in obtaining such consents. If any Person whose consent is required does not consent to the sale, assignment, transfer and conveyance of a Right from Vendor to Purchaser or to the re-issuance of Authorizations, then Vendor shall, to the extent permitted by Law and to the extent the same does not constitute a breach of Contract, carry out and comply with the terms and provisions of any such Right as agent for Purchaser at Purchaser's expense and for Purchaser's exclusive benefit.

If the Consent for the assignment of the MediSpan license referred to (directly or by cross-reference) in Schedule 4.1(p)(D) of the Disclosure Letter cannot be obtained by Closing on terms satisfactory to Purchaser, acting reasonably, Vendor shall, by no later than Closing purchase at the entire cost and expense of Vendor a replacement license from MediSpan in the name of Purchaser on terms satisfactory to Purchaser, acting reasonably, which terms (including the making of periodic license payments) shall be substantially the same as those applicable to Vendor (or NDC) under the current MediSpan license.

If any of the Consents for the assignment of the other Intellectual Property referred to (directly or by cross-reference) in Schedule 1.1(gg) of the Disclosure Letter is not obtained by Closing, Vendor shall use commercially reasonable efforts to obtain such Consents within 45 days after Closing, failing which Vendor shall promptly purchase replacement licenses in the name of Purchaser at the entire cost and expense of Vendor, on terms satisfactory to Purchaser, acting reasonably, which terms for each such license (including the making of periodic license payments) shall be substantially the same as those applicable to Vendor (or NDC) under its current license.

2.5 Assumption of Liabilities

Subject to the completion of the transaction of sale, assignment, transfer and purchase contemplated hereunder, but with effect from Closing on the Closing Date, Purchaser hereby agrees, as part of the consideration for the Purchased Assets, to assume, discharge, satisfy, perform and fulfill in a timely manner, in accordance with their terms, all of the following liabilities and obligations of Vendor (collectively, the "Assumed Liabilities"):

- (a) the liabilities and obligations of Vendor accruing after the Closing under the Contracts and the Authorizations, other than for defaults or breaches thereunder on or prior to the Closing Date; and
- (b) the Current Liabilities of Vendor in connection with the Systems Business, but only to the extent reflected on the Working Capital Statement.

For greater certainty, Purchaser will not assume or be liable for, and Vendor will retain and remain responsible for, all of Vendor's and the Systems Business' debts, liabilities and obligations of any nature whatsoever other than the Assumed Liabilities, whether accrued, absolute or contingent, whether known or unknown, whether due or to become due, whether related to the Purchased Assets or otherwise, and regardless of when asserted (collectively, the "Excluded Liabilities"). Without in any way limiting the foregoing, the Excluded Liabilities specifically include each of the following:

- (i) all liabilities of Vendor under this Agreement or any Ancillary Agreement;
- (ii) all liabilities of Vendor for Taxes, including deductions at source, withholdings and Taxes arising out of the consummation of the transactions contemplated by this Agreement (including, without limitation, sales and transfer Taxes imposed on Vendor by Law);
- (iii) all liabilities of Vendor arising out of or in connection with the breach of any Contract included in the Purchased Assets occurring on or prior to the Closing Date or arising out of or in connection with the failure to obtain any Required Consent;
- (iv) all liabilities under benefit plans for the employees of Vendor;
- (v) all liabilities of Vendor for expenses or fees incident to or arising out of the negotiation, preparation, approval, or authorization of this Agreement and the Ancillary Agreements and the consummation (or preparation for the consummation) of the transactions contemplated hereby and thereby (including, without limitation, all attorneys' and accountants' fees, brokerage fees, consultants' fees and finders' fees);
- (vi) all liabilities arising under any claims or actions pending or threatened against Vendor or the Purchased Assets as of the Closing Date or arising thereafter but related to or arising out of the operation of the Systems Business on or prior to the Closing Date;
- (vii) all liabilities arising out of any duty or violation of any Environmental Laws by Vendor or any Environmental Liabilities with respect to actions or omissions occurring on or prior to the Closing Date, including the presence of any hazardous substance on any of the Leased Properties;
- (viii) all liabilities arising out of any violation of any Laws by Vendor on or prior to the Closing Date;

- (ix) all liabilities arising out of any claim for product liability, breach of product warranty or torts resulting from any sales of products and/or services by **Vendor on or prior to the Closing Date;**
- (x) **any liability for debt or any other liability or obligation of Vendor that does not relate to, or arise from, the Systems Business or the Purchased Assets;**
- (xi) any liabilities related to the assets which are not Purchased Assets;
- (xii) any liabilities relating to bulk sales Laws applicable to the transactions contemplated by this Agreement;
- (xiii) any debt or loan due to Persons acting at non-arm's length to Vendor, including direct and indirect shareholders and Affiliates of shareholders and the directors and officers thereof; and
- (xiv) any bonuses to management employees or any incentives, bonuses, indemnities in lieu of notice of termination, change of control awards, severance or other payments of any nature to the Transferred Employees arising out of the transactions contemplated herein.

2.6 Source Code Escrow

NDC shall continue to hold the master source code escrow agreement with Fort Knox in NDC's name, and shall administer on behalf of Purchaser all rights and obligations of Vendor or NDC thereunder to the extent required for Purchaser to fulfill its obligations and exercise its rights with its customers and enjoy the benefits under Contracts in existence on the Closing Date that require the source code to be placed in escrow (and for which the source code was placed in escrow pursuant to such source code escrow agreement), the whole until Purchaser can find suitable alternative escrow arrangements. Fees payable by NDC to Fort Knox (or its successor) relating to such rights and obligations, not to exceed US\$1,000 per year, shall be reimbursed by Purchaser to NDC within 10 days of submission of proof of payment thereof by NDC.

2.7 Contract for the Supply of Data

Vendor shall maintain the Contract between it and IMS of Canada Limited for the collection and transfer of pharmaceutical data from customers' stores, the accounts of which are transferred hereunder, and Purchaser shall provide the data from the existing pharmacies during the term of such Contract to the extent provided by such pharmacies in substantially the same manner that such data is currently provided by Vendor and in the manner of delivery required under the current Contract. Purchaser shall pay all amounts (including rebates) owned to pharmacies as consideration for the sale of such data and Vendor shall promptly transfer all revenue it receives from IMS to Purchaser with respect to the collection and transfer of such data. Vendor shall not amend or renew such Contract with IMS without the prior written consent of Purchaser, which consent may be withheld for any reason or without reason.

2.8 Amounts Received on or after Closing Date

All cash collected on or after the Closing Date from Accounts Receivable or accounts receivable relating to the Systems Business conducted by Purchaser on or after the Closing Date shall belong to, and if received by Vendor, shall be received for the benefit and the account of, Purchaser and Vendor shall, on a weekly basis, transfer and remit to Purchaser all such amounts received by or paid to Vendor on or after the Closing Date.

ARTICLE 3 PURCHASE PRICE

3.1 Purchase Price

The purchase price (the "Purchase Price") payable by Purchaser for the Purchased Assets is the aggregate of Cdn\$2,500,000 (subject to reduction pursuant to Section 3.3) and the amount of the Assumed Liabilities.

3.2 Payment of the Purchase Price

Subject to any adjustment in accordance with Section 3.3, Purchaser shall pay the Purchase Price as follows:

- (a) Cdn\$2,000,000, by bank draft, certified cheque or wire transfer of immediately available funds, on the Closing Date, to an account designated by Vendor 48 hours prior to the Closing Date;
- (b) by the assumption of the Assumed Liabilities; and
- (c) the balance of the Purchase Price in the amount of Cdn\$500,000 (the "Holdback Amount"), to be held and disbursed in accordance with Section 3.4.

3.3 Adjustment to Purchase Price

- (a) **Working Capital Statement.** Purchaser shall deliver to Vendor as soon as practicable after the Closing Date, but in any event within 60 days of the Closing Date, a statement (the "Working Capital Statement") showing the Working Capital of the Systems Business transferred to Purchaser, prepared as of the close of business on the day prior to the Closing Date. The Working Capital Statement shall be prepared in accordance with US GAAP applicable to financial statements that form part of the consolidated statements of a parent company applied on a basis consistent with the preparation of the November 26, 2004 balance sheet in the Financial Information Documents and consistent with the principles and assumptions set forth in Schedule 3.3(a) of the Disclosure Letter.
- (b) **Cooperation.** Upon reasonable request, each Party shall provide to the other Party and its auditors access to the accounting books and records with respect to the Systems Business in the possession of such Party and its appropriate personnel as they relate to the Systems Business, and cooperate fully with such other Party to the extent required to assist in the preparation and review of the Working Capital Statement.

- (c) **Adjustment to Purchase Price.** The Purchase Price shall be reduced on a dollar-for-dollar basis by the amount, if any, (the "Purchase Price Reduction") by which the Current Liabilities exceed the Current Assets, determined by reference to the Working Capital Statement as originally delivered or, in the event of a dispute thereon, as revised pursuant to Section 3.3(f). Any amounts denominated in US currency or Canadian currency that must be converted into the other such currency for the purpose of this Section 3.3, shall be so converted based on the Bank of Canada's daily noon rate for the exchange of Canadian dollars into US dollars (or the reciprocal thereof, as the context may require) on the date prior to the date hereof.
- (d) **Objection to Working Capital Statement.** Within 20 days following delivery of the Working Capital Statement, Vendor shall notify Purchaser in writing if it has any objections to the Working Capital Statement. The notice of objection must state in reasonable detail the basis of each objection and the approximate amounts in dispute. Vendor shall be deemed to have accepted the Working Capital Statement and the determination of Working Capital if no notice of objection is received by Purchaser within such period of 20 days.
- (e) **Settlement of Dispute.** If Vendor has any objection to the Working Capital Statement and the determination of Working Capital in accordance with Section 3.3(d), then the Parties will work expeditiously and in good faith in an attempt to resolve such dispute within a further period of 20 days after the date of the notification of such dispute, failing which the dispute may be submitted by any Party for final determination to PricewaterhouseCoopers LLP (Montreal) (or if they are unable or unwilling to act, by such firm of auditors as shall be mutually agreeable to the Parties or, if the Parties are unable to so agree within 10 days of their first attempt thereat, by a firm of auditors selected by a judge of the Superior Court of Quebec, District of Montreal) (the "Third Party Auditors"). The Parties shall use commercially reasonable efforts to cause the Third Party Auditors to complete their work within 30 days of their engagement. The Third Party Auditors shall allow each Party to present its position regarding the Working Capital Statement and the determination of Working Capital, and each Party shall have the right to present additional documents, materials and other information, and make an oral presentation to the Third Party Auditors regarding the dispute.
- (f) **Revised Working Capital.** Promptly following the resolution of any dispute in accordance with Section 3.3(e), Purchaser shall deliver to Vendor a revised Working Capital Statement and a revised determination of the Working Capital which shall reflect the resolution of any dispute in accordance with Section 3.3(e), shall be final and binding upon the Parties upon delivery thereof and shall not be subject to appeal, absent manifest error. The delivery of such revised Working Capital Statement and the revised Working Capital shall not limit or affect any other rights or causes of action any Party may have with respect to the representations, warranties, covenants and indemnities contained in this Agreement.
- (g) **Payment of Purchase Price Reduction.** If there is a Purchase Price Reduction as finally determined in accordance with this Section 3.3, then Purchaser shall deduct from the Holdback Amount otherwise payable pursuant to Section 3.4, the amount of the Purchase Price Reduction, provided, however, that if the amount of the then

balance of the Holdback Amount is less than the Purchase Price Reduction, then Vendor and NDC shall, jointly and severally (solidarily), pay to Purchaser the amount of such shortfall within two business days of a written demand therefor.

- (h) **Fees and Expenses.** Vendor and Purchaser shall each bear the fees and expenses of their respective auditors and other professional advisors in preparing, reviewing or settling upon the Working Capital Statement. In the case of a dispute and the retention of Third Party Auditors to determine such dispute, the fees and expenses of the Third Party Auditors shall be borne as to 50% by Vendor and as to 50% by Purchaser.

3.4 Holdback Amount

- (a) Purchaser, acting in good faith, shall be entitled, at any time between the Closing Date and the 90th day after the Closing Date (the "Holdback Period"), to send Vendor (on behalf of both Vendor and NDC) written notice that a specified matter giving rise to, or which reasonably could give rise to, a *bona fide* claim for indemnification from Vendor or NDC for Damages pursuant to this Agreement or any Ancillary Agreement (whether or not the matter giving rise to such Damages has been finally adjudicated) has come to Purchaser's attention, that it wishes to set off all or part of such Damages (or potential Damages), against the then balance of the Holdback Amount and generally specifying the amount and origins of such claim (the "Holdback Claim"). Vendor shall have a period of 30 days from receipt of the Holdback Claim to object to the Holdback Claim by written notice to Purchaser (the "Objection to Holdback Claim").
- (b) If Purchaser receives an Objection to Holdback Claim within such 30-day period, then no release to Vendor shall be made of an amount of the Holdback Amount equal to the lesser of (i) the then balance of the Holdback Amount and (ii) the amount of all Damages as estimated or specified by Purchaser in the Holdback Claim plus interest thereon at the rate specified in Section 10.6 from the date of the Notice of the Holdback Claim (the "Unpaid Balance"). The Unpaid Balance may be updated by Purchaser from time to time to take into account further accruals of interest. Upon receipt by the applicable Parties of any final judgment for which any delays for appeal have expired or upon execution by the applicable Parties of any binding settlement with respect to the matter which gave rise to the claim for Damages (whether such final judgment or binding settlement occurs during the Holdback Period or thereafter), Purchaser shall be entitled to keep by way of compensation and set off all or a portion of the Unpaid Balance up to the amount specified as payable to Purchaser or Emergis in such judgment or settlement (including any interest specified) and the Holdback Amount shall be reduced by the amount so compensated and set off.
- (c) If Purchaser does not receive any Objection to Holdback Claim within such 30-day period, then it may immediately keep by way of compensation and set off the Unpaid Balance against an equivalent amount of the applicable Damages.
- (d) Purchaser shall pay to Vendor, without notice or demand, by bank draft, certified cheque or wire transfer of immediately available funds to the account of Vendor designated by it pursuant to Section 3.2(a) on the day after the end of the Holdback

Period, the then balance of the Holdback Amount, less any amount subject to unresolved Holdback Claims on such date. Such payment shall also include interest thereon at the Prime Rate plus 1% from the Closing Date to the date of payment. In addition, if on such date the Working Capital Statement has not been finalized, and the issue of whether there will be a Purchase Price Reduction or the quantum of the Purchase Price Reduction has not been resolved, then an amount of the Holdback Amount equal to the amount of the Purchase Price Reduction indicated from the initial draft of the Working Capital Statement shall be maintained by Purchaser as part of the Holdback Amount until final resolution of such dispute, then disbursed, together with interest thereon at the Prime Rate plus 1% from the Closing Date to the date of payment, or kept by Purchaser, in whole or in part, in accordance with the terms of the resolution of such dispute.

- (e) For greater certainty, (i) subject to the provisions of Section 10.7, the failure of Purchaser to send a Holdback Claim pursuant to this Section shall not constitute a waiver of its rights to claim Damages pursuant to this Agreement or an admission that it is not entitled to claim any such Damages and (ii) if Damages exceed the associated Unpaid Balance, then Vendor and NDC shall continue to be obligated for the difference.

3.5 Allocation of Purchase Price

The Purchase Price shall be allocated among the Purchased Assets as set forth in Schedule 3.5 of the Disclosure Letter. The allocation of the Purchase Price shall be final and binding upon the Parties for all purposes, including, without limitation, the filing of all Tax or other returns and the preparation of all financial statements and other documents and records.

3.6 Transfer Taxes

Purchaser shall be liable and shall pay all sales, goods and services, transfer, use and other such Taxes, registration fees or other like charges properly payable upon and in connection with the sale, assignment, conveyance and transfer of the Purchased Assets from Vendor to Purchaser hereunder.

Without limiting the generality of the foregoing, Purchaser shall complete a return of Tax payable on tangible personal property by the purchaser of a business ("FIN 426") under the *Social Service Tax Act* (British Columbia) based on the allocation of the Purchase Price set out in Schedule 3.5 of the Disclosure Letter and shall file such return and remit the Tax payable thereunder within 10 days of the Closing.

3.7 Tax Elections

- (a) Purchaser and Vendor will on or before Closing jointly execute an election, in the prescribed form and containing the prescribed information, to have subsection 167(1) of the *Excise Tax Act* (Canada) apply to the sale and purchase of the Purchased Assets so that no tax is payable in respect of such sale and purchase under Part IX of the *Excise Tax Act* (Canada). Purchaser will file such election with the Canada Revenue Agency within the time prescribed by the *Excise Tax Act* (Canada). Notwithstanding such election, in the event it is determined by the Canada Revenue Agency that there

is a liability of Purchaser to pay, or of Vendor to collect and remit, the federal Goods and Services Tax on all or part of the Purchased Assets, such federal Goods and Services Tax and any penalty and interest that may be assessed against Vendor shall be forthwith paid by Purchaser to the Canada Revenue Agency or to Vendor for remittance to the Canada Revenue Agency.

- (b) Purchaser and Vendor will in a timely fashion jointly execute an election under section 22 of the ITA and any analogous provincial legislation which is applicable as to the sale of the Accounts Receivable of Vendor to Purchaser hereunder. Purchaser and Vendor will designate therein the applicable portion of the Purchase Price for the Purchased Assets allocated to the Accounts Receivable (based on Section 3.5 and Schedule 3.5 of the Disclosure Letter) as the consideration paid by Purchaser therefor and will each file such election with the Canada Revenue Agency and any applicable provincial taxation authority with their respective Tax returns for their respective taxation years that include the date hereof.
- (c) Purchaser and Vendor will in a timely fashion jointly make an election under subsections 20(24) and 20(25) of the ITA and under applicable analogous provincial legislative provisions in respect of amounts for future obligations assumed by Purchaser as deferred revenue and will file such election with the Canada Revenue Agency and any applicable provincial authority with their respective Tax returns for their respective taxation years that include the Closing Date. Vendor and Purchaser acknowledge that part of the Purchased Assets are transferred to Purchaser as a payment by Vendor to Purchaser in consideration for the assumption by Purchaser of such future obligations of Vendor.
- (d) The Parties agree that no portion of the Purchase Price is specifically allocated to a restrictive covenant hereunder. Purchaser and Vendor shall, at the request of Vendor, elect in prescribed form to apply paragraph 56.4(3)(b), a provision proposed in clause 24.1(1) of the February 27, 2004 draft technical amendments to the ITA or any replacement or successor provision (including any analogous provincial legislative provision) in the form and manner prescribed by such provision, and comply with all other requirements necessary to give effect thereto.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties of Vendor and NDC

Vendor and NDC jointly and severally (solidarily) with each other represent and warrant to Purchaser and Emergis as follows as of the date hereof, and acknowledge and confirm that Purchaser and Emergis are relying upon such representations and warranties in connection with the purchase by Purchaser of the Purchased Assets notwithstanding any investigation by Purchaser or Emergis:

- (a) **Incorporation and Qualification**
 - (i) NDC is a corporation duly and validly incorporated, organized and existing under the Laws of its jurisdiction of incorporation and has the corporate power

and authority to own and sell its property and enter into and perform its obligations ~~under this Agreement and each Ancillary Agreement~~ to which it is a party.

(ii) **Vendor is an unlimited liability company duly and validly incorporated, organized, in good standing and existing** under the Laws of its jurisdiction of incorporation and has the corporate power to own and operate its property, carry on the Systems Business as currently conducted and enter into and perform its obligations under this Agreement and each Ancillary Agreement to which it is a party.

(iii) Vendor is duly qualified, licensed or registered to carry on the Systems Business in the jurisdictions listed in Schedule 4.1(a) of the Disclosure Letter. The jurisdictions listed in Schedule 4.1(a) of the Disclosure Letter include all jurisdictions in which the nature of the Purchased Assets or the Systems Business makes such qualification necessary or in which Vendor owns or leases any material assets or conducts any material business in connection with the Systems Business, except where the failure to be so qualified, licensed or registered would not be materially adverse to the Systems Business taken as a whole.

(b) **Execution and Binding Obligation.** This Agreement and each Ancillary Agreement to which either of Vendor or NDC is a party has been duly executed and delivered by, and constitutes a legal, valid and binding obligation of Vendor or NDC, as applicable, enforceable against it in accordance with its terms subject only to any limitation under applicable Laws relating to (i) bankruptcy, winding-up, insolvency, arrangement and other similar Laws of general application affecting the enforcement of creditors' rights and (ii) the discretion that a court may exercise in the granting of extraordinary remedies such as specific performance and injunction.

(c) **Title to, and Condition and Sufficiency of, the Purchased Assets.** Except for (i) the assets set forth in Schedule 4.1(c) of the Disclosure Letter (all of which will be used to provide the services to Purchaser under the Transitional Services Agreement), (ii) the Vendor-Licensed IP (as defined in Section 4.1(p)), (iii) the NDC-Owned IP (as defined in Section 4.1(p)), (iv) the NDC-Licensed IP (as defined in Section 4.1(p)), and (v) fixtures belonging to the landlord of the Leased Properties (which fixtures are subject to a valid leasehold interest in favour of Vendor):

(A) Vendor has legal and beneficial ownership of (with good, valid and sole title) or has a valid leasehold interest in, or valid license under "shrink-wrap" license agreements for, all of the Purchased Assets, and all of the Purchased Assets located on or in the Leased Properties, free and clear of all Liens;

(B) the Purchased Assets constitute all of the assets necessary to conduct the Systems Business as currently conducted on the date hereof; and

- (C) no Person with whom Vendor in connection with the Systems Business does not deal at arm's length within the meaning of the ITA, has any right to, or any interest in, any asset owned or used by Vendor in connection with the Systems Business, conducts any part of the Systems Business, or renders services, provides products or shares equipment, Software or infrastructure in connection with the Systems Business.

Without limitation to the above, all Contracts listed in the Disclosure Letter (other than NDC-Licensed IP) under a name other than Vendor's have been validly assigned to Vendor and are currently (and will continue to be at Closing) validly in the name of Vendor. None of NDC or its Affiliates (other than Vendor) provide software and solutions to pharmacies located in Canada which include pharmacy software and solutions that automate the prescription fulfillment process and an integrated point-of-sale solution for in-store operations, other than through the Enterprise Software with NDC's US customers that have pharmacy operations in Canada.

Except for the employees of NDC and Vendor required to provide the services pursuant to the Transitional Services Agreement, License Agreement and Outsourcing Agreement, no employees of Vendor, NDC or any Affiliate are required in order for Vendor to conduct the Systems Business as currently conducted, other than the employees of Vendor in connection with the Systems Business identified in Schedule 4.1(v) of the Disclosure Letter. NDC owns (with good and valid title) all of the NDC-Owned IP and has the right to grant Purchaser a license thereof pursuant to and in accordance with the License Agreement. NDC has a valid license of the NDC-Licensed IP and has the right to grant Purchaser a sublicense thereof pursuant to and in accordance with the terms of the License Agreement. The tangible assets (including the Equipment) which form part of the Purchased Assets are in an operating condition sufficient, together with the equipment utilized to perform the services under the Transitional Services Agreement, License Agreement and Outsourcing Agreement, to conduct the Systems Business in the manner in which it is currently being conducted. To Vendor's knowledge, none of such tangible assets is in need of maintenance or repairs, except for normal maintenance and repairs that are not material in nature or cost. All material items of Equipment are listed in Schedule 1.1(p) of the Disclosure Letter, which Schedule also indicates whether such items are owned or leased by Vendor in connection with the Systems Business.

- (d) **No Other Agreements to Purchase.** Except for Purchaser's rights under this Agreement, no Person has any written or oral agreement, option (including rights of first refusal and rights of first offer) or warrant, or any right or privilege (whether by Law, pre-emptive or contractual) capable of becoming such for the purchase of any of the Purchased Assets, other than Inventory in the Ordinary Course.
- (e) **Validity of Agreement.** Except for the Consents disclosed in Schedule 4.1(e) of the Disclosure Letter, the execution, delivery and performance by each of Vendor and NDC of this Agreement and each Ancillary Agreement to which it is a party:
- (i) have been duly authorized by all necessary corporate action on its part;

- (ii) do not (or would not with the giving of notice, the lapse of time, or both, or the happening of any other event or condition) result in a breach or a violation of, or conflict with, or allow any other Person to exercise any rights under, any of the terms or provisions of (A) its ~~constituting documents or by-laws~~ or (B) any material contracts or instruments to which it is a party or pursuant to which any of its assets, business or share capital may be affected (including, in respect of Vendor, the Contracts);
 - (iii) will not result in a breach of, or cause the termination or revocation of, any Authorization which is to be transferred to Purchaser hereunder or which is necessary to the ownership or operation of the Systems Business; and
 - (iv) will not result in the violation of any Law.
- (f) **Required Authorizations.** Except as set forth in Schedule 4.1(f) of the Disclosure Letter, there is no requirement of Vendor or NDC to make any filing with, give any notice to, or obtain or maintain any Authorization of, any Governmental Entity as a condition to the lawful completion of the transactions contemplated by this Agreement or the continued operation of the Systems Business by Purchaser after the Closing.
- (g) **Conduct of Systems Business in Ordinary Course.** Except as disclosed in Schedule 4.1(g) of the Disclosure Letter or as reflected in the Financial Information Documents for the period ended November 26, 2004, Vendor has carried on the Systems Business in the Ordinary Course since May 28, 2004 and, without limiting the generality of the foregoing, Vendor in connection with the Systems Business has not:
 - (i) made or assumed any commitment, obligation or liability which is outside the Ordinary Course;
 - (ii) ceased to operate its properties and carry on the Systems Business as carried on since May 28, 2004;
 - (iii) transferred to any Person any rights to the Intellectual Property owned, held or used by it, except in connection with sales of its products or services in the Ordinary Course;
 - (iv) terminated, entered into, amended or otherwise modified in any material respect any Material Contract other than in the Ordinary Course;
 - (v) sold or otherwise in any way alienated or disposed of any of its assets other than in the Ordinary Course;
 - (vi) waived or cancelled any material claim, Account Receivable or right outside the Ordinary Course;
 - (vii) made any change in its accounting principles, policies and practices as utilized in the preparation of the Financial Information Documents;

- (viii) terminated the employment of any manager or officer or granted any severance or termination pay to any **director, manager, officer or any other employee;**
 - (ix) ~~incurred any indebtedness other than to trade creditors in the Ordinary Course;~~
 - (x) delayed the payment of **Current Liabilities, other than in the Ordinary Course;**
 - (xi) granted to any customer any special allowance or discount, or changed its pricing, credit or payment policies, other than in the Ordinary Course; or
 - (xii) authorized, agreed or otherwise committed to any of the foregoing.
- (h) **No Material Adverse Change.** Except as disclosed in Schedule 4.1(h) of the Disclosure Letter, since the Balance Sheet Date, there has been no material adverse change in the Systems Business or the assets, liabilities, operations, properties, results of operation, prospects or condition (financial or otherwise) of Vendor in connection with the Systems Business (excluding changes caused by or resulting from regulatory changes, general economic conditions or market conditions) and, to the knowledge of Vendor, no event has occurred or circumstances exist which may result in such a material adverse change.
- (i) **Compliance with Laws.** Except as disclosed on Schedule 4.1(i) of the Disclosure Letter:
- (i) Vendor has conducted and is continuing to conduct the Systems Business in compliance with all applicable Laws except (but without limitation to paragraph (ii) below) to the extent any such non-compliance with Laws would not materially adversely affect the Systems Business as a whole; and
 - (ii) to Vendor's knowledge, it has conducted and is continuing to conduct the Systems Business in compliance with all applicable Laws pertaining to privacy and the protection of personal information, Laws of similar import and Laws relating to health care.
- (j) **Affiliate Transactions**
- (i) Except as set forth in Schedule 4.1(j) of the Disclosure Letter, there are no Contracts between Vendor in connection with the Systems Business, on one hand, and any (i) current or former officer, director or employee of Vendor or any Affiliate, on the other hand (other than employment agreements and terminations and releases entered into in the Ordinary Course), or (ii) Affiliate of Vendor, on the other hand.
 - (ii) Except as referred to or contemplated in the Transitional Services Agreement and the License Agreement, (i) no Affiliate of Vendor provides or causes to be provided to Vendor any assets, services, facilities or benefits that are used in the Systems Business and (ii) Vendor in connection with the Systems Business does not provide or cause to be provided to any of its Affiliates any assets, services, facilities or benefits.

- (k) **Premises and Lease.** Vendor in connection with the Systems Business does not own or operate any property or assets, carry on any business, sell any product or perform any services which is or are provided at or from any premises or location other than the Leased Properties. Vendor in connection with the Systems Business is not a party to, or under any agreement to become a party to, any lease with respect to real property other than the Lease, a description of which being set forth on Schedule 4.1(k) of the Disclosure Letter. The Lease is in good standing, creates a good and valid interest in the Leased Properties and is in full force and effect. With respect to the Lease, (i) all rents and additional rents have been paid, (ii) no waiver, indulgence or postponement of the lessee's obligations has been granted by the lessor and (iii) there exists no event of default under the Lease.
- (l) **Inventories.** The Inventories do not include any items which are slow-moving, below standard quality or of a quality or quantity not usable or saleable in the Ordinary Course other than those items which have been written down in the Financial Information Documents. Inventories (other than Inventories which have been written down in the Financial Information Documents) have been valued in the Financial Information Documents at the lower of cost or net realizable value on an average cost basis. The inventory levels of Vendor in connection with the Systems Business have been maintained at levels sufficient for (but not materially in excess required for) the continuation of the Systems Business in the Ordinary Course.
- (m) **Accounts Receivable.** All Accounts Receivable are *bona fide*, have arisen in the Ordinary Course, have been properly recorded in the Ordinary Course and, subject to reserves for doubtful accounts recorded in the Ordinary Course and to be reflected in the Working Capital Statement in a manner consistent with the reserves reflected in the Financial Information Documents, are, to Vendor's knowledge, good and collectible in full when due.
- (n) **Material Contracts.** Except for the Contracts disclosed in Schedule 4.1(n) of the Disclosure Letter, the Lease, the Contracts disclosed in Sections 4.1(p) and 4.1(x) and the Contracts disclosed in Schedule 4.1(v) of the Disclosure Letter (all such Contracts disclosed or required to be disclosed being the "Material Contracts"), Vendor in connection with the Systems Business is not a party to or bound by:
- (i) any distribution, advertising, agency, franchise or manufacturer's representative Contract, in each case involving an expenditure of greater than Cdn\$5,000 per annum;
 - (ii) any ongoing Contract for sales (including customer contracts), the purchase of materials, supplies, equipment or services involving in the case of any such Contract more than Cdn\$50,000 over the term of the Contract (excluding the cost to terminate), or any exclusive supply Contracts or exclusive client Contracts;
 - (iii) any Contract providing for vendor rebates in the form of cash or subsidized facilities;

- (iv) any Contract granting "most-favoured nation" terms;
- (v) any Contracts that **provide for liquidated damages or that have indemnification obligations of Vendor, in each case greater than Cdn\$50,000;**
- (vi) any Contract that expires, or that **may be renewed at the option of any Person** other than Vendor in connection with the Systems Business so as to expire more than three years after the date of this Agreement;
- (vii) any trust indenture, mortgage, deed of hypothec, promissory note, loan agreement or other Contract for the borrowing of money, any currency exchange, swaps, commodities or other hedging or derivative arrangement, or any leasing transaction of the type required to be capitalized in accordance with GAAP;
- (viii) any Contract for capital expenditures in excess of Cdn\$10,000 in the aggregate;
- (ix) any Contract pursuant to which Vendor is a lessor of any machinery, equipment, motor vehicles, office furniture, fixtures or other personal property with a value in excess of Cdn\$25,000;
- (x) except for any Contract with Purchaser or any Affiliates thereof, any confidentiality, secrecy or non-disclosure Contract or any Contract limiting the freedom of Vendor in connection with the Systems Business to engage in any line of business, compete with any other Person, solicit employees or clients, operate its assets at maximum production capacity or otherwise conduct the Systems Business;
- (xi) any Contract involving any continuing representation, warranty or indemnification obligation of Vendor to any other Person, other than in the Ordinary Course;
- (xii) any Contract of guarantee, support, indemnification, assumption or endorsement of, or any similar commitment with respect to, the obligations, liabilities (whether accrued, absolute, contingent or otherwise) or indebtedness of any other Person;
- (xiii) any partnership, joint venture or alliance Contracts;
- (xiv) any Contract with any Person with whom Vendor, NDC or any of their Affiliates does not deal at arm's length within the meaning of the ITA; or
- (xv) any other Contract made out of the Ordinary Course.

For greater certainty, to the extent the Lease, the Contracts disclosed in Sections 4.1(p) and 4.1(x) and the Contracts disclosed in Schedule 4.1(v) of the Disclosure Letter contain provisions described in items (i) and (xv) above, such provisions are disclosed in Schedule 4.1(n) of the Disclosure Letter.

(o) **No Breach of Material Contracts.** Except as disclosed on Schedule 4.1(o) of the Disclosure Letter, Vendor in connection with the Systems Business has performed all obligations required to be performed by it and is entitled to all benefits under, and is not alleged to be in default of, any Material Contract to which it is a party (other than Contracts that are Material Contracts solely by virtue of being described under Section 4.1(n)(xv)). Each of the Material Contracts (other than Contracts that are Material Contracts solely by virtue of being described under Section 4.1(n)(xv)) is in full force and effect and there exists no actual or alleged material default or event of default or event, occurrence, condition or act (including the purchase of the Purchased Assets) which, with the giving of notice, the lapse of time, or both, or the happening of any other event or condition, would become a default or event of default under any Material Contract (other than Contracts that are Material Contracts solely by virtue of being described under Section 4.1(n)(xv)). Except as disclosed on Schedule 4.1(o) of the Disclosure Letter, true, correct and complete copies of all Material Contracts (as amended) have been delivered to Purchaser. The Contracts listed in Schedule 4.1(x) of the Disclosure Letter constitute all of the pharmacy contracts in relation to the Systems Business in Canada.

(p) **Intellectual Property**

- (i) Attached as Schedule 4.1(p)(A) of the Disclosure Letter is a list of Intellectual Property owned by Vendor in connection with the Systems Business (the "Vendor-Owned IP"); attached as Schedule 4.1(p)(B) of the Disclosure Letter is a list of Intellectual Property licensed to Vendor in connection with the Systems Business which will be sub-licensed or assigned to Purchaser for use in the System Business or relicensed to Purchaser, on or before the Closing Date (the "Vendor-Licensed IP"); attached as Schedule 4.1(p)(C) of the Disclosure Letter is a list of the Intellectual Property owned by NDC which will be licensed to Purchaser for use in the Systems Business pursuant to the License Agreement (the "NDC-Owned IP"); and attached as Schedule 4.1(p)(D) of the Disclosure Letter is a list of the Intellectual Property licensed from third parties by NDC which will be sub-licensed or assigned to Purchaser, or relicensed to Purchaser, on or before the Closing Date (the "NDC-Licensed IP"), all of which Intellectual Property constitutes all of the Intellectual Property used by Vendor in connection with the Systems Business.
- (ii) The Vendor-Owned IP has not been the subject of registrations or applications for registration of statutory Intellectual Property rights in any jurisdiction.
- (iii) Vendor in connection with the Systems Business has the right to use all the Intellectual Property listed in Schedules 4.1(p)(A), (B), (C) and (D) of the Disclosure Letter in the manner and to the extent currently used by it in carrying on the Systems Business. To Vendor's knowledge, Vendor and NDC have taken all reasonable steps to protect their respective rights in and to the Vendor-Owned IP and the NDC-Owned IP, respectively, in accordance with industry practice.

- (iv) Except as set forth in the applicable license agreements with third parties for the Vendor-Licensed IP and the NDC-Licensed IP, copies of which have been **provided to Purchaser, Vendor in connection with the Systems Business is not a party to or bound by any Contract or other obligation that limits or impairs** its ability to use, sell, transfer, assign or convey, or that otherwise affects, any of the Intellectual Property described in Schedules 4.1(p)(A), (B), (C) or (D) of the Disclosure Letter. Except as set forth in the License Agreement or the applicable license agreements with third parties for Vendor-Licensed IP and NDC-Licensed IP, copies of which have been provided to Purchaser, Vendor in connection with the Systems Business is not obligated to pay any royalties, fees or other compensation to any Person in respect of its ownership, use or license of any Intellectual Property described in Schedules 4.1(p)(A), (B), (C) or (D) of the Disclosure Letter.
- (v) The operation of the Systems Business as currently conducted does not infringe upon the Intellectual Property rights in Canada of any Person. No claims have been asserted or, to Vendor's knowledge, are threatened by any Person alleging that the conduct of Systems Business, including the use of the Intellectual Property described in Schedules 4.1(p)(A) and (C) of the Disclosure Letter, infringes upon any of the Intellectual Property rights in Canada of such Person. To the knowledge of Vendor, there are no valid grounds for any such *bona fide* claims by any such Persons alleging a conflict with or infringement of their Intellectual Property rights in Canada. Vendor is not aware of any state of facts that casts doubt on the validity or enforceability of any such Intellectual Property described in Schedules 4.1(p)(A) and (C) of the Disclosure Letter.
- (vi) Subject to obtaining any necessary third party consents and the execution of the License Agreement, the transactions contemplated by this Agreement and the Ancillary Agreements and the continued operation of the Systems Business will not violate or breach the terms of any Intellectual Property license, or entitle any other party to any such Intellectual Property license to terminate or modify it, or otherwise adversely affect the rights of Vendor in connection with the Systems Business under it.
- (vii) Except as set forth in parts (vii) of Schedules 4.1(p)(A) and (C) of the Disclosure Letter, to the knowledge of Vendor, no Person is currently infringing in Canada any of the Intellectual Property described in Schedules 4.1(p)(A) or (C) of the Disclosure Letter.
- (viii) All of the Intellectual Property identified in Schedules 4.1(p)(A) and (C) of the Disclosure Letter which is Software operates in all material respects within its specifications for the purposes for which it was intended and in a good workmanlike manner without material error or defect.
- (ix) Except as set forth in parts (ix) of Schedules 4.1(p)(A) and (C) of the Disclosure Letter, none of the Software which is part of the Vendor-Owned IP or NDC-Owned IP contains any open source, copyleft or community source code, including any libraries or code licensed under the General Public License,

Lesser General Public License or any other license agreement or arrangement obliging Vendor in connection with the Systems Business or NDC to make **source code publicly available, whether or not approved by the Open Source Initiative.**

- (x) The source code for the Software described in Schedules 4.1(p)(A) and (C) of the Disclosure Letter (excluding software customized for specific customers not material to the Systems Business) is documented (either externally or within the code) including through the use of product management user requirements and specifications, where applicable, and by way of development comments within the source code. Such specifications have typically been provided by project management staff, developers or customers. The Intellectual Property relating to such Software does not contain any intentionally created and undisclosed program routine, device or other feature, including viruses, worms, bugs, time locks, trojan horses or back doors, in each case that is designed to delete, disable, deactivate, interfere with or otherwise harm such Software, or any virus or other intentionally created, undocumented contaminant that may, or may be used to, access, modify, delete, damage or disable any hardware, system or data.
- (xi) Except as set forth in Schedule 4.1(p)(A) or (C) of the Disclosure Letter, all current and former employees and consultants of Vendor in connection with the Systems Business whose duties or responsibilities relate to the Systems Business have entered into confidentiality, intellectual property assignment and proprietary information agreements with and in favour of Vendor in connection with the Systems Business in the form provided to Purchaser and each such Person has waived its non-assignable rights (including moral rights) to any Intellectual Property created by it on behalf of Vendor in connection with the Systems Business.
- (xii) The domain names used in connection with the Systems Business are ZADALL.COM and NDCHEALTH.COM.
- (q) **Product and Service Warranties.** Schedule 4.1(q) of the Disclosure Letter sets forth complete and accurate copies of the written warranties and guarantees by Vendor in connection with the Systems Business currently in effect with respect to its products and services. Except as disclosed in Schedule 4.1(q) of the Disclosure Letter, there are no oral warranties outstanding. There have not been any material deviations from such warranties and guarantees.
- (r) **Books and Records.** All accounting and financial Books and Records have been fully, properly and accurately kept and completed in all material respects. The Books and Records and other data and information are not recorded, stored, maintained, operated or otherwise wholly or partly dependent upon or held by any means (including any electronic, mechanical or photographic process, whether computerized or not) which is not available to Vendor in connection with the Systems Business in the Ordinary Course.

- (s) **Financial Information Documents.** The Financial Information Documents in Parts A, D and E of Schedule 4.1(s) of the Disclosure Letter have been prepared in accordance with **US GAAP applicable to financial statements that form part of the consolidated financial statements of a parent company, applied on a basis consistent with those of previous fiscal years** and fairly, accurately and completely disclose in all material respects (i) the assets, liabilities and obligations (whether accrued, contingent, absolute or otherwise, including deferred revenue), income, losses, retained earnings, reserves and financial position of Vendor in connection with the Systems Business, (ii) the results of operations of the Systems Business, and (iii) the changes in the financial position of Vendor in connection with the Systems Business, all as at the dates and for the periods therein specified. The revenue details per customer that are set forth in the Financial Information Documents fairly, accurately and completely disclose in all material respects the fees and revenues in respect of each customer of Vendor in connection with the Systems Business for the periods ending on the dates specified therein.

The *pro forma* Financial Information Documents set forth in Parts F and J of Schedule 4.1(s) of the Disclosure Letter were prepared based on assumptions that were fair and reasonable at the time of preparation and which continue to be fair and reasonable as of the date hereof.

The information contained in Parts B, G, H, I and K of Schedule 4.1(s) of the Disclosure Letter is complete and accurate in all material respects.

True, correct and complete copies of the Financial Information Documents are attached as Schedule 4.1(s) of the Disclosure Letter.

- (t) **Environmental Matters.** Except as disclosed on Schedule 4.1(t) of the Disclosure Letter, Vendor is and at all times Vendor has been, and the real properties formerly owned, leased or used by Vendor in connection with the Systems Business have at all times been, in compliance with Environmental Laws, except where non-compliance would not have a material adverse effect on the Systems Business taken as a whole.

(u) **Authorizations**

- (i) Schedule 4.1(u) of the Disclosure Letter contains a complete and accurate list of:
- (A) all of the Authorizations necessary to permit Vendor in connection with the Systems Business to lawfully conduct, operate or occupy the Systems Business and the Leased Properties in the manner it currently conducts, operates or occupies such Systems Business and Leased Properties, and to own its assets, except (but without limitation to paragraph (B) below) for any Authorizations the absence of which would not have a material adverse effect on the Systems Business taken as a whole; and
 - (B) to Vendor's knowledge, all of the Authorizations required under Laws pertaining to privacy, the protection of personal information or health

care necessary to permit Vendor to lawfully conduct, operate or occupy the Systems Business and the Leased Properties in the manner it ~~currently conducts, operates or occupies the Systems Business and Leased Properties, and to own its assets.~~

Vendor in connection with the Systems Business holds all such Authorizations listed or required to be listed in Schedule 4.1(u) of the Disclosure Letter, each of which is valid, in full force and effect.

- (ii) Vendor in connection with the Systems Business is, and at all times in the last two years has been, in material compliance with all of the terms and requirements of each Authorization identified or required to be identified in Schedule 4.1(u) of the Disclosure Letter.
- (iii) No event has occurred or circumstance existed that has or may (with or without notice or lapse of time, or both) (A) constitute or result directly or indirectly in a violation of or a failure to comply with any term or requirement of any Authorization listed or required to be listed in Schedule 4.1(u) of the Disclosure Letter or (B) result directly or indirectly in the revocation, withdrawal, suspension, cancellation or termination of, or any modification to, any Authorization listed or required to be listed in Schedule 4.1(u) of the Disclosure Letter or threat thereof.
- (iv) Vendor in connection with the Systems Business has not, within the last two years, received any notice or other communication (whether oral or written) from any Governmental Entity or any other Person regarding (A) any actual, alleged, possible or potential violation of or failure to comply with any term or requirement of any Authorization listed or required to be listed in Schedule 4.1(u) of the Disclosure Letter or (B) any actual, proposed, possible or potential revocation, withdrawal, suspension, cancellation, termination of, or modification to, any Authorization listed or required to be listed in Schedule 4.1(u) of the Disclosure Letter.
- (v) All applications required to have been filed for the renewal of the Authorizations listed or required to be listed in Schedule 4.1(u) of the Disclosure Letter have been duly filed on a timely basis with the appropriate Governmental Entity, and all other filings required to have been made with respect to such Authorizations have been duly made on a timely basis with the appropriate Governmental Entity.
- (v) **Employees.** Vendor in connection with the Systems Business has complied, and is in compliance, in all material respects, with all applicable Laws relating to employment and labour matters, including any provision thereof relating to wages, hours of work, vacation pay, overtime pay, pay equity, occupational health and safety and conditions of employment.

Except as set forth in Schedule 4.1(v) of the Disclosure Letter:

- (i) ~~there is no collective agreement in force with respect to the employees of Vendor in connection with the Systems Business, no collective agreement is currently being negotiated by it, no union or employee bargaining agent holds bargaining rights with respect to any employees of Vendor, and there are no current or, to Vendor's knowledge, threatened attempts to organize or establish any trade union or employee association with respect to Vendor in connection with the Systems Business, nor have there been any such attempts within the past five years;~~
- (ii) Vendor in connection with the Systems Business has not engaged in any unfair labour practice, within the meaning of applicable labour Laws. There is no unfair labour practice complaint pending or, to Vendor's knowledge, threatened against Vendor in connection with the Systems Business and there is no labour strike, slow down, work stoppage or lockout in effect or, to Vendor's knowledge, threatened against Vendor in connection with the Systems Business, nor has there been any such event within the past five years;
- (iii) all amounts due and owing or accrued due but not yet owing for all salary, wages, bonuses, commissions, vacation pay, pension benefits or other employee benefits (including benefits relating to tuition fee reimbursements under Vendor's educational assistance plan, if any) have been paid or, if accrued, are reflected in the Books and Records;
- (iv) Vendor in connection with the Systems Business is not subject to any claim from past or current employees, including for wrongful dismissal, constructive dismissal or any other claim, complaint or litigation relating to employment, discrimination or termination of employment of any of its employees or former employees or relating to any failure to hire a candidate for employment;
- (v) there is no order pursuant to any Law requiring the taking of any action or the refraining from taking any action in respect of any employee or former employee of Vendor in connection with the Systems Business;
- (vi) there are no outstanding loans made by Vendor in connection with the Systems Business to any employee or former employee thereof (other than travel advances or advances against commission of less than Cdn\$5,000 each); and
- (vii) to Vendor's knowledge, no employee has any plans to terminate his or her employment with Vendor.

Schedule 4.1(v) of the Disclosure Letter contains a correct and complete list of each director, officer, employee, independent contractor, agent and consultant of Vendor in connection with the Systems Business, whether actively at work or not, their salaries, wage rates, commissions and consulting fees, bonus arrangements, benefits, positions, status as full-time or part-time employees and length of service along with a list of all employment agreements and all service agreements of Vendor in connection with the Systems Business with their employees and consultants, as the case may be. Except as

set forth in Schedule 4.1(v) of the Disclosure Letter, no such employee has any agreement as to length of notice, severance or termination payment required to ~~terminate his employment.~~

(w) **Litigation.** Except as described in Schedule 4.1(w) of the Disclosure Letter, there are no, and have not been at any time in the last three years and, to the knowledge of Vendor, any time in the fourth or fifth year prior to the date hereof, any:

- (i) actions, claims, suits or proceedings by any Person (including Vendor);
- (ii) arbitration or alternative dispute resolution processes;
- (iii) any administrative or other proceedings by or before (or, to the knowledge of Vendor, any investigation by) any Governmental Entity, or
- (iv) any judgment, order or decree entered in any lawsuit or proceeding or settlement of any claim prior to being prosecuted,

(collectively, "Actions or Orders") pending against or affecting Vendor in connection with the Systems Business, and, to the knowledge of Vendor, no Actions or Orders have been threatened against Vendor in connection with the Systems Business in the last five years. All lawyers' letters or other notices of claims dated within the last three years with respect to the matters set forth in Schedule 4.1(w) of the Disclosure Letter have been provided to Purchaser. Vendor in connection with the Systems Business is not the plaintiff or complainant in any action, claim, suit or proceeding.

(x) **Customers and Suppliers.** Schedule 4.1(x) of the Disclosure Letter contains (i) a list of all the current customers of Vendor in connection with the Systems Business with details of its products currently used by such customers and the committed rates per year for such customers for the duration of their respective Contracts with Vendor, and (ii) the top 10 "suppliers" (which, for clarification, include "vendors" in this Agreement) of Vendor in connection with the Systems Business (determined on the basis of cost of goods and services purchased) for the current fiscal year. Except as set forth in Schedule 4.1(x), of the Disclosure Letter, all current customers and suppliers of Vendor in connection with the Systems Business have written binding Contracts with Vendor, true, correct and complete copies of which have been provided to Purchaser, as well as copies of all invoices issued to such customers and received from such suppliers for the last month. All such written Contracts set forth all of the terms and conditions applicable to the supply of goods and services to such customers including, without limitation, pricing terms, and there are no other written or oral undertakings or engagements of Vendor with respect to such customers. Since the Balance Sheet Date, except as disclosed in Schedule 4.1(x) of the Disclosure Letter, none of the current customers or current suppliers of Vendor in connection with the Systems Business has ceased to do business with it. To Vendor's knowledge, no such customer or supplier is threatened with bankruptcy or insolvency. Except as disclosed in Schedule 4.1(x) of the Disclosure Letter, Vendor has no reason to believe that there will be any diminution of business (including rates, volume and the number of pharmacies committed under Contracts with chain stores), customers or suppliers after Closing.

Except as disclosed in Schedule 4.1(x) of the Disclosure Letter, no current customer of Vendor in connection with the Systems Business has given notice to Vendor of its ~~intention to discontinue its relationship with Vendor or to cease using or purchasing the products or services of Vendor or to alter in a manner adverse to the interests of~~ Vendor the price(s), quantity or terms upon which it will purchase products or services from Vendor. No Contracts with customers require the provision of disaster recovery services within a delay of less than six hours. Vendor, in connection with the Systems Business, is in full compliance with any "most-favoured nation" obligations set forth in its Contracts with its customers and suppliers.

(y) **Residence of Vendor.** Vendor is not a non-resident of Canada for the purposes of the ITA.

(z) **Tax Matters**

(i) **Definition of Taxes.** For the purposes of this Agreement, the term "Tax" or, collectively, "Taxes" shall mean (A) any and all federal, state, provincial, municipal, local and foreign taxes, assessments and other governmental charges, duties, impositions and liabilities including Canada Pension Plan and provincial pension plan contributions, unemployment insurance contributions and employment insurance contributions, worker's compensation and deductions at source, including taxes based on or measured by gross receipts, income, profits, sales, capital, use, occupation, goods and services, value added, *ad valorem*, transfer, franchise, withholding, customs duties, payroll, recapture, employment, excise and property taxes, together with all interest, penalties, fines and additions imposed with respect to such amounts and (B) any liability for the payment of any amounts of the type described in paragraph (A) above as a result of any express or implied obligation to indemnify any other Person or as a result of any obligations under any agreements or arrangements with any other Person with respect to such amounts and including any liability for Taxes of a predecessor entity.

(ii) **Collection and Remittance.** Other than as listed in Schedule 4.1(y) of the Disclosure Letter, Vendor in connection with the Systems Business has collected from each receipt from any of the past and present customers (or other Persons paying amounts to Vendor in connection with the Systems Business) the amount of all Taxes (including goods and services tax and provincial sales taxes) required to be collected and has paid and remitted such Taxes when due, in the form required under the appropriate legislation or made adequate provision for the payment of such amounts to the proper receiving authorities. The amount of Tax collected but not remitted by Vendor in connection with the Systems Business will be retained in the appropriate accounts and remitted by Vendor to the appropriate authorities when due.

(iii) **Jurisdictions of Taxation.** Vendor in connection with the Systems Business has not been and is not currently required to file any returns, reports, elections, designations or other filings with any taxation authority located in any jurisdiction outside Canada.

- (iv) **G.S.T. and Provincial Sales Tax Registration.** Vendor is a registrant within the meaning of Part IX of the *Excise Tax Act* (Canada) and its registration number is 863 163 929 RT0001. Vendor is registered as a vendor pursuant to the *Social Service Tax Act* (British Columbia) and its registration number is R1 808 48.
- (aa) **No Brokers, Etc.** No broker, finder, agent or similar intermediary has acted on behalf of Vendor, NDC or any of their Affiliates in connection with this Agreement or the transactions contemplated hereby, and there are no brokerage commissions, finders' fees or similar fees or commissions payable by them in connection herewith.
- (bb) **Completeness of Statements.** No statement, certificate, information representation or warranty of Vendor or NDC contained in this Agreement, the Disclosure Letter or furnished by or on the behalf of Vendor or NDC to Purchaser, pursuant hereto or thereto, or in connection with the transactions contemplated herein (excluding information furnished to Purchaser subsequently corrected in writing and presented to Purchaser prior to Closing) contains or will contain any untrue statement of a material fact. There is no fact known to Vendor or NDC that has specific application to Vendor that can reasonably materially adversely affect the assets, business, financial condition, operations or results of operations of Vendor in connection with the Systems Business that has not been set forth in this Agreement or in the Disclosure Letter.

NDC shall deliver to Purchaser and Emergis on the date hereof certificates to be signed by the General Counsel of NDC as to the accuracy of the representations and warranties of Vendor and NDC herein.

4.2 Representations and Warranties of Purchaser and Emergis

Purchaser and Emergis jointly and severally (solidarily) represent and warrant to Vendor as follows as of the date hereof and acknowledge and confirm that Vendor is relying on such representations and warranties in connection with the sale by Vendor of the Purchased Assets notwithstanding any investigation by Vendor:

- (a) **Incorporation and Corporate Power.** Each of Purchaser and Emergis is a corporation duly and validly incorporated, organized and existing under the Laws of its jurisdiction of incorporation and has the corporate power and authority to own and sell its property and to enter into and perform its obligations under this Agreement and each Ancillary Agreement to which it is a party.
- (b) **Validity of Agreement.** The execution, delivery and performance by each of Purchaser and Emergis of this Agreement and each Ancillary Agreement to which it is a party:
 - (i) have been duly authorized by all necessary corporate action on its part;
 - (ii) do not (or would not with the giving of notice, the lapse of time, or both, or the happening of any other event or condition) result in a breach or violation of, or conflict with, or allow any other Person to exercise any rights under, any terms or provisions of its constating documents or by-laws; and

(iii) will not result in the violation of any Law.

- (c) **Execution and Binding Obligation.** This Agreement and each Ancillary Agreement to which either of Purchaser or Emergis is a party have been duly executed and delivered by it and constitute a legal, valid and binding obligation of it, enforceable against it in accordance with their terms subject only to any limitation under applicable Laws relating to (i) bankruptcy, winding-up, insolvency, arrangement and other similar Laws of general application affecting the enforcement of creditors' rights and (ii) the discretion that a court may exercise in the granting of extraordinary remedies such as specific performance and injunction.
- (d) **Required Authorizations.** There is no requirement of Purchaser, Emergis or any of their Affiliates to make any filing with, give any notice to, or obtain any Authorization of, any Governmental Entity as a condition to the lawful completion of the transactions contemplated by this Agreement and each Ancillary Agreement to which it is a party.
- (e) **G.S.T. Registration.** Purchaser is a registrant within the meaning of Part IX of the *Excise Tax Act* (Canada) and its registration number is 852 306 430 RT0001.

ARTICLE 5
EMPLOYEES

ARTICLE 6
NON-COMPETITION COVENANTS OF VENDOR AND NDC

6.1 Directly or Indirectly; Vendor

For the purposes of this Article 6, the phrase "directly or indirectly" in respect of a Person shall include actions or omissions by such Person in any capacity whatsoever including as an employer, principal, agent, joint venturer, partner, shareholder or other equity holder, independent contractor, licensor, licensee, franchiser, franchisee, distributor, consultant,

supplier or trustee or by and through any corporation, cooperative, partnership, trust, unincorporated association or otherwise or actions or omissions by Affiliates of such Person.

~~For greater certainty, references in this Article 6 to Vendor with respect to periods prior to the date hereof include all predecessors of Vendor.~~

6.2 Non-Competition

For a period of five years following the Closing, neither Vendor nor NDC shall, on its own behalf or on behalf of or in connection with any Person, directly or indirectly, carry on, be engaged in, have any financial or other interest in or be otherwise commercially involved in any endeavour, activity or business in all or any part of any province or territory of Canada that provides software, services or solutions (including information networks) that are competitive with the Systems Business, as the Systems Business has been carried on by Vendor and/or NDC or any Affiliate on and prior to the date hereof (the "**Competitive Business**").

For a period of one year following Closing, neither NDC nor Vendor shall, directly or indirectly, dispose of, or enter into a binding agreement to dispose of, all or any substantial part of their systems business in the United States or any other country outside of Canada to any Person without obtaining from such Person a covenant in favour of Purchaser and Emergis (i) to not use any of the assets in such sale in a manner that would be a breach of the first paragraph of this Section 6.2 had such Section included and bound such acquiror in addition to Vendor and NDC and (ii) to require any subsequent acquiror of such systems business or any substantial part thereof to provide a covenant similar to the one described in this Section in favour of Purchaser and Emergis.

6.3 Non-Solicitation of Customers

For a period of five years following the Closing, neither Vendor nor NDC shall, on its own behalf or on behalf of any other Person, directly or indirectly, in connection with any endeavour, activity or business in all or any part of any province or territory of Canada which is a Competitive Business:

- (a) canvass or solicit the business of (or procure or assist the canvassing or soliciting of the business of) any (i) Person who is at the time of the canvassing or solicitation or was at any time during the 24 months preceding the canvassing or solicitation a customer of Vendor in connection with the Systems Business, Purchaser, Emergis or any of their Affiliates (a "**Customer**") or (ii) any Person canvassed or solicited at any time in the 24 months prior to the Closing Date by or for Vendor in connection with the Systems Business, Purchaser, Emergis or any of their Affiliates (a "**Prospective Customer**");
- (b) accept (or procure or assist the acceptance of) any business from any Customer or Prospective Customer; or
- (c) supply (or procure or assist the supply of) any goods or services to any Customer or Prospective Customer.

Neither Vendor nor NDC shall be in breach of Section 6.3(a) by (i) issuing a general advertisement through a public media (including its website) as long as it was not specifically

directed at the Canadian market, or (ii) activities of NDC and Affiliates permitted under the Supplier Agreement (as defined in the SPA).

6.4 ~~Non-Solicitation of Employees and Consultants of Purchaser~~

For a period of 18 months following the Closing Date, neither Vendor nor NDC shall, on its own behalf or on behalf of or in connection with any other Person, directly or indirectly, hire, employ, offer employment to, or solicit the employment or engagement of, or otherwise entice away from the employment or engagement of Purchaser, Emergis or any of their Affiliates:

- (a) any individual who is currently employed in the Systems Business or is at any time during such 18 months employed in the systems business as carried on by Purchaser, Emergis or any of their Affiliates; or
- (b) any consultant who is currently engaged by the Systems Business or is at any time during such 18 months engaged by Purchaser, Emergis or any of their Affiliates for services in the systems business as carried on by them,

whether or not such individual or consultant would commit any breach of his, her or its contract or terms of employment or engagement as a result thereof, but excluding (i) employees and consultants whose employment or engagement with Purchaser, Emergis or any Affiliate thereof has been terminated (or not renewed) by Purchaser, Emergis or any Affiliate thereof, other than as a result of a breach of this Section, and (ii) any individual or consultant employed or engaged in the systems business as carried on by Emergis or Affiliates (other than Transferred Employees) who solicits NDC or Vendor for employment or engagement without having been influenced to do so by NDC or Vendor. Notwithstanding the foregoing exceptions, none of NDC, Vendor or any of their Affiliates may solicit (i) any consultant listed in Schedule 6.4 of the Disclosure Letter while any such consultant is under engagement with Purchaser or any Affiliate and for a period of 90 days after the end of such engagement or (ii) B. Gordy for a period of 18 months following the Closing Date.

Neither Vendor nor NDC shall be in breach of its non-solicitation obligations in this Section 6.4 by issuing a general solicitation of employment through public media (including its website) as long as the employees and consultants identified in this Section 6.4 were not specifically targeted.

6.5 Non-Solicitation of Employees of Vendor

During the term of the Lease assigned to Purchaser and for a period of six months following its termination, neither Purchaser nor Emergis shall, on its own behalf or on behalf of or in connection with any other Person, directly or indirectly hire, employ, offer employment to or solicit the employment or engagement of or otherwise entice away from the employment of Vendor or NDC any individual who is currently employed by (or will at any time during such term be employed by) Vendor or NDC in the same building as the Lease whether or not such individual would commit any breach of his, her or its contract or terms of employment as a result thereof, but excluding (i) employees whose employment or engagement with NDC or Vendor has been terminated (or not renewed) by NDC or Vendor, other than as a result of a

breach of this Section, (ii) any employee of Vendor or NDC who solicits Purchaser or Emergis for employment without having been influenced to do so by Purchaser and (iii) any employee of Vendor listed on Schedule 5.1 of the Disclosure Letter who did not accept employment with Purchaser on Closing.

Neither Purchaser nor Emergis shall be in breach of its non-solicitation obligations in this Section 6.5 by issuing a general solicitation of employment through public media (including its website) as long as the employees and consultants identified in this Section 6.5 were not specifically targeted.

6.6 Non-Interference

Subject to the exceptions and time limitations set forth in Sections 6.3 and 6.4 above, neither Vendor nor NDC shall on its own behalf or on behalf of or in connection with any other Person in connection with a Competitive Business, directly or indirectly, interfere or attempt to persuade or attempt to persuade any Customer, Prospective Customer, employee, consultant or supplier of Purchaser, Emergis or any of their Affiliates to discontinue or alter in an adverse manner such Person's relationship with Purchaser, Emergis or any of their Affiliates in connection with the Competitive Business.

6.7 Exceptions

Neither Vendor nor NDC shall be in default under its covenants pursuant to this Article 6 solely:

- (a) by virtue of holding as a passive investor not more than 5% (including shares held by any Persons acting jointly or in concert with Vendor or NDC) of the issued and outstanding shares of a corporation, the shares of which are listed on a recognized stock exchange; or
- (b) by the use of the Enterprise Software for customers in Canada in circumstances where such customer is a U.S. based customer (or an Affiliate thereof) of NDC or one of its Affiliates and such customer wishes to use a single system for all of its North American operations. For the purposes hereof, "Enterprise Software" means the NDCHealth EnterpriseRx pharmacy systems, which is a centrally maintained file and centrally processed system and any successor or replacement thereof with the same centrally maintained filing and processing system.

6.8 Reasonableness

Vendor and NDC expressly acknowledge that the covenants in this Article 6 are reasonable and valid in all respects in the circumstances, agree that such covenants should be interpreted in such manner as to be effective and valid under applicable Law and irrevocably waive (and irrevocably agree not to raise) as a defense any issue of reasonableness (including the reasonableness of the duration and scope of such covenants or territory of applicability) in any proceeding to enforce any provision of such covenants. If any covenant or provision of this Article 6 is determined by a court of competent jurisdiction to be illegal, invalid or unenforceable, such covenant or provision shall be ineffective only to the extent of such illegality, invalidity or unenforceability and such illegality, invalidity or unenforceability shall not affect

or impair the remaining covenants and provisions of this Article 6 which shall remain in full force and effect, the intention of the Parties being to provide for the legitimate and reasonable protection of the interests of Purchaser, Emergis and their Affiliates by providing, without limitation, for the broadest scope, the longest duration and the widest territory allowable by Law. If any one or more of the provisions in this Article 6 shall for any reason be held to be excessively broad as to duration, geographical scope, activity or subject, such provisions shall be construed by limiting or reducing it or them so as to be enforceable to the maximum extent permitted under applicable Law.

The Parties agree that the covenants given by Vendor and NDC in this Article 6 are for good and valuable consideration.

ARTICLE 7

PRE-CLOSING COVENANTS OF THE PARTIES

7.1 Conduct of Business Prior to Closing

Vendor and NDC, except as expressly permitted by this Agreement or with the prior written consent of Purchaser, shall, between the date hereof and the Closing Date, conduct the Systems Business in the Ordinary Course and, without limiting the generality of the foregoing, Vendor and NDC shall not take any affirmative action or omit to take any action within their reasonable control, as a result of which action or omission any of the changes or events listed in Section 4.1(g) would be likely to occur.

7.2 Access for Due Diligence

Vendor and NDC shall continue to permit Purchaser and its employees, counsel, auditors or other representatives, between the date hereof and the Closing Date, to conduct their due diligence investigation of the Systems Business in the manner previously conducted by them.

7.3 Filings and Consents

Each of Vendor, NDC and Purchaser, as promptly as practicable after the execution of this Agreement, shall (a) make, or cause to be made, all such filings and submissions under all Laws applicable to it, as may be required for it to consummate the purchase and sale of the Purchased Assets in accordance with the terms of this Agreement and (b) use commercially reasonable efforts to obtain, or cause to be obtained, all Consents necessary or advisable to be obtained by it in order to consummate such transactions. Consents shall be upon such terms as are acceptable to Purchaser, acting reasonably. Purchaser shall have the right to contact and communicate with customers of Vendor, the form and content of such communications to be coordinated with Vendor in advance. Vendor shall have the right to participate in such communications. Purchaser shall have the right to participate in all communications (including meetings) between Vendor and its customers with respect to the solicitation of their Consents.

7.4 Notice of Untrue Representation or Warranty

Vendor and NDC shall promptly notify Purchaser, and Purchaser shall promptly notify Vendor, upon any representation or warranty made by such Party contained in this

Agreement becoming untrue or incorrect between the date hereof and the Closing Date. Any such notification shall set out particulars of the untrue or incorrect representation or warranty and details of any actions being taken by the applicable Party to rectify that state of affairs.

7.5 Exclusive Dealing

Between the date hereof and the Closing Date, neither Vendor nor NDC shall, directly or indirectly, solicit, initiate or encourage any inquiries or proposals from, discuss or negotiate with, provide any non-public information to, or consider the merits of any inquiries or proposals from, any Person (other than Purchaser) relating to any transaction involving the sale of any shares of Vendor or the sale or other direct or indirect (including by way of amalgamation or license) disposition of all or any part of the Systems Business or any part of the assets of Vendor other than sales of inventory in the Ordinary Course.

7.6 Satisfaction of Conditions

Each Party shall use commercially reasonable efforts to ensure the satisfaction of the conditions in Article 8, the satisfaction of which it has some influence over. Each Party shall cooperate fully in the other Parties' efforts to satisfy the conditions in Article 8.

ARTICLE 8 **CONDITIONS OF CLOSING**

8.1 Conditions for the Benefit of Purchaser

The purchase and sale of the Purchased Assets is subject to the following conditions to be fulfilled or performed at or prior to the Closing Date, which conditions are for the exclusive benefit of Purchaser and may only be waived, in whole or in part, by Purchaser in writing in its sole discretion:

- (a) **Truth of Representations and Warranties and Performance of Covenants.** Each of:
 - (i) the representations and warranties of Vendor and NDC which are Vendor Core Representations shall have been true and correct in all respects on the date hereof and shall be true and correct in all respects on the Closing Date with the same force and effect as if made at and as of the Closing Date and as though Closing Date was substituted for the date hereof or similar terms throughout such representations and warranties;
 - (ii) the other representations and warranties of Vendor and NDC made pursuant to this Agreement (disregarding all materiality, material adverse effect, knowledge or similar qualifications therein) shall have been true and correct in all respects on the date hereof, other than breaches that are not material to the business, assets, liabilities, operations, properties, results of operation, prospects or condition (financial or otherwise) of the Systems Business, taken as a whole, and shall be true and correct in all such respects on the Closing Date with the same force and effect as if made at and as of the Closing Date and as though Closing Date was substituted for the date hereof or similar terms throughout such representations and warranties; and

- (iii) the covenants contained in this Agreement to be performed by Vendor and by NDC on or prior to the Closing Date shall have been performed in all material respects and none of Vendor or NDC shall be in material breach of any agreement on its part contained in this Agreement;

and Purchaser shall have received certificates confirming the foregoing, signed for and on behalf of Vendor and NDC by senior officers or directors of Vendor and NDC, in each case in form and substance reasonably satisfactory to Purchaser and Purchaser's counsel (the "Vendor's Closing Certificates"). The receipt of the Vendor's Closing Certificates and the consummation of Closing shall not constitute a waiver by Purchaser or an amendment of any of the representations and warranties or covenants of Vendor or NDC which are contained in this Agreement. The materiality qualifications permitted to be in the Vendor's Closing Certificates pursuant to paragraphs (ii) and (iii) above are solely for purposes of determining whether this condition has been satisfied, and shall not be deemed to have so qualified the representations, warranties or covenants referred to therein. Upon delivery of the Vendor's Closing Certificates, the representations and warranties of Vendor and of NDC shall be deemed to have also been made on and as of the Closing Date and as though Closing Date was substituted for the date hereof or similar terms throughout such representations and warranties, except as may be qualified in the Vendor's Closing Certificates.

- (b) **Deliveries.** Vendor and NDC, as the case may be, shall deliver or cause to be delivered to Purchaser the following:

- (i) certified copies of (A) the constating documents and by-laws of Vendor, and (B) directors resolutions of Vendor and NDC and, in the case of Vendor, its shareholder resolution, approving the entering into and completion of the transactions contemplated by this Agreement;
- (ii) a recent certificate of status, compliance, good standing or similar certificate with respect to each of Vendor and NDC issued by the appropriate government officials of its jurisdiction of incorporation;
- (iii) Consents shall have been obtained with (i) each of the "Chains" of pharmacies, (ii) each of the two independent contractors listed in Schedule 6.4 of the Disclosure Letter, (iii) the assignment of the Lease for Suite 186 and (iv) the assignment of the MediSpan license agreement referred to in Schedule 4.1(p)(D) of the Disclosure Letter (or the reissuance of the License in the name of Purchaser in accordance with Section 2.4), in each case in form and substance satisfactory to Purchaser, acting reasonably;
- (iv) a bill of sale evidencing the purchase of the Purchased Assets between Purchaser and Vendor in a form satisfactory to the Parties;
- (v) an assumption agreement for the assumption of the Assumed Liabilities between Purchaser and Vendor in a form satisfactory to the Parties;
- (vi) the election referred to in Section 3.7(a);

- (vii) a duplicate copy of the certificate obtained by Vendor pursuant to section 99 of the *Social Service Tax Act* (British Columbia) stating that all Taxes collected by Vendor have been paid;
 - (viii) the **Transitional Services Agreement between Purchaser and NDC in the form of Exhibit "A"** attached to this Agreement (the "**Transitional Services Agreement**");
 - (ix) the License Agreement between Purchaser, Emergis and NDC in the form of Exhibit "B" attached to this Agreement (the "**License Agreement**");
 - (x) employment agreements with a minimum of all but two of the Transferred Employees on the one hand, and Purchaser on the other hand, in forms satisfactory to each such employee and Purchaser, respectively;
 - (xi) the POS Outsourcing Agreement between Purchaser and NDC in the form of Exhibit "C" attached to this Agreement (the "**Outsourcing Agreement**");
 - (xii) a confirmation letter agreement between NDC and Vendor confirming that all assets that are Purchased Assets but have previously been held by NDC or Affiliates have been transferred to Vendor for fair value, in a form satisfactory to Purchaser, acting reasonably; and
 - (xiii) the Vendor's Closing Certificates.
- (c) **No Legal Action.** No action or proceeding shall be pending or threatened by any Person (other than Purchaser or Emergis) in any jurisdiction, to enjoin, restrict or prohibit any of the transactions contemplated by this Agreement or the right of Purchaser to conduct the Systems Business after Closing on substantially the same basis as previously conducted.
- (d) **No Material Change.** Since the Balance Sheet Date (i) there shall have been no material adverse change in the business, assets, liabilities, operations, properties, results of operation, prospects or condition (financial or otherwise) of Vendor in connection with the Systems Business (excluding changes caused by or resulting from regulatory changes, general economic conditions or market conditions) and (ii) no event shall have occurred which shall have had or, in the judgment of Purchaser, shall have threatened to have a material adverse effect on Vendor in connection with the Systems Business, its business, assets, liabilities, operations, properties, results of operation, prospects or condition (financial or otherwise) or their value or utility to Purchaser (excluding changes caused by or resulting from regulatory changes, general economic conditions or market conditions).

8.2 Termination by Purchaser

If any of the conditions set forth in Section 8.1 have not been satisfied, or waived by Purchaser, on or prior to the tenth day after the date hereof, or it becomes reasonably apparent that any of such conditions cannot be satisfied on or before such date, then Purchaser may terminate this Agreement by notice in writing to Vendor, provided, however, that Purchaser

shall not be entitled to terminate this Agreement if the failure or impossibility of satisfaction of the condition was as a result of the breach by Purchaser of any of its obligations under this Agreement.

Upon termination of this Agreement by Purchaser pursuant to this Section 8.2, Purchaser shall be released from all obligations hereunder, other than its obligations under Sections 11.7 and 11.9 which shall survive any termination of this Agreement. Vendor and NDC shall only be released from their obligations hereunder (other than their obligations under Sections 11.7 and 11.9 which shall survive any termination of this Agreement) if the failed condition for which Purchaser has terminated this Agreement was not capable of being satisfied or caused to be satisfied by Vendor or NDC notwithstanding their commercially reasonable efforts.

Purchaser's right of termination pursuant to this Section 8.2 is in addition to any other rights it may have under this Agreement (including to seek indemnification for breaches of the representations, warranties or covenants), and the exercise of a right of termination will not be an election of remedies.

8.3 Conditions for the Benefit of Vendor

The purchase and sale of the Purchased Assets is subject to the following conditions to be fulfilled or performed at or prior to Closing, which conditions are for the exclusive benefit of Vendor and may only be waived, in whole or in part, by Vendor in writing in its sole discretion:

- (a) **Truth of Representations and Warranties and Performance of Covenants.** Each of:
 - (i) the representations and warranties of Purchaser and Emergis (A) which are Purchaser's Core Representations or (B) made pursuant to this Agreement that are qualified by a reference to materiality, GAAP, material adverse effect or a similar phrase shall, in each case, have been true and correct in all respects on the date hereof and shall be true and correct in all respects on the Closing Date with the same force and effect as if made at and as of the Closing Date and as though Closing Date was substituted for the date hereof or similar terms throughout such representations and warranties;
 - (ii) the other representations and warranties of Purchaser and Emergis made pursuant to this Agreement shall have been true and correct in all material respects on the date hereof and shall be true and correct in all material respects on the Closing Date with the same force and effect as if made at and as of the Closing Date and as though Closing Date was substituted for the date hereof or similar terms throughout such representations and warranties; and
 - (iii) the covenants contained in this Agreement to be performed by Purchaser and by Emergis on or prior to the Closing Date shall have been performed in all material respects and neither Purchaser nor Emergis shall be in material breach of any agreement on its part contained in this Agreement,

and Vendor shall have received a certificate confirming the foregoing, signed for and on behalf of Purchaser and Emergis by a senior officer or director of Purchaser and Emergis, in form and substance reasonably satisfactory to Vendor and Vendor's counsel (the "**Purchaser's Closing Certificate**"). The receipt of the Purchaser's Closing Certificate and the consummation of Closing shall not constitute a waiver by Vendor or an amendment of any of the representations and warranties or covenants of Purchaser and Emergis which are contained in this Agreement. The materiality qualifications permitted to be in the Purchaser's Closing Certificate pursuant to paragraphs (ii) and (iii) above are solely for purposes of determining whether this condition has been satisfied, and shall not be deemed to have so qualified the representations, warranties or covenants referred to therein. Upon delivery of the Purchaser's Closing Certificate, the representations and warranties of Purchaser and Emergis shall be deemed to have also been made on and as of the Closing Date and as though Closing Date was substituted for the date hereof or similar terms throughout such representations and warranties, except as may be qualified in the Purchaser's Closing Certificate.

- (b) Deliveries. Purchaser shall deliver or cause to be delivered to Vendor the following:
- (i) certified copies of (A) the constating documents and by-laws of Purchaser, and (B) a resolution of the board of directors of each of Purchaser and Emergis approving the entering into and completion of the transactions contemplated by this Agreement;
 - (ii) a recent certificate of compliance, good standing or similar certificate with respect to each of Purchaser and Emergis issued by the appropriate government officials of the jurisdiction of its incorporation;
 - (iii) the Transitional Services Agreement;
 - (iv) the License Agreement;
 - (v) the Outsourcing Agreement;
 - (vi) a bill of sale evidencing the purchase of the Purchased Assets between Purchaser and Vendor in a form satisfactory to the Parties;
 - (vii) an assumption agreement for the assumption of the Assumed Liabilities between Purchaser and Vendor in a form satisfactory to the Parties;
 - (viii) the election referred to in Section 3.7(a);
 - (ix) BC FIN 426 Form duly completed;
 - (x) the Purchaser's Closing Certificate; and
 - (xi) the Purchase Price payable on Closing pursuant to Section 3.2(a).

- (c) **No Legal Action.** No action or proceeding shall be pending or threatened by any Person (other than Vendor) in any jurisdiction, to enjoin, restrict or prohibit any of the ~~transactions contemplated by this Agreement.~~

8.4 Termination by Vendor

If any of the conditions set forth in Section 8.3 have not been satisfied, or waived by Vendor, on or prior to the tenth day after the date hereof, or it becomes reasonably apparent that any of such conditions cannot be satisfied on or prior to such date, then Vendor may terminate this Agreement by notice in writing to Purchaser, provided, however, that Vendor shall not be entitled to terminate this Agreement if the failure or impossibility of satisfaction of the condition was as a result of the breach by Vendor or NDC of any of its obligations under this Agreement.

Upon termination of this Agreement by Vendor pursuant to this Section 8.4, Vendor and NDC shall be released from all obligations hereunder, other than their obligations under Sections 11.7 and 11.9 which shall survive any termination of this Agreement. Purchaser and Emergis shall only be released from their obligations hereunder (other than its obligations under Sections 11.7 and 11.9 which shall survive any termination of this Agreement) if the failed condition for which Vendor has terminated this Agreement was not capable of being satisfied or caused to be satisfied by Purchaser and Emergis notwithstanding its commercially reasonable efforts.

Vendor's right of termination pursuant to this Section 8.4 is in addition to any other rights Vendor may have under this Agreement (including to seek indemnification for breaches of the representations, warranties or covenants), and the exercise of a right of termination will not be an election of remedies.

ARTICLE 9 **CLOSING**

9.1 Date, Time and Place of Closing

The Closing shall take place at the offices of Stikeman Elliott LLP, 1155 René-Lévesque Blvd. West, Suite 4000, Montreal, Quebec H3B 3V2, at 10:00 a.m. (eastern time) on the second day after the conditions to Closing set forth in Article 8 (excluding conditions that, by their terms, cannot be satisfied until the Closing) have been satisfied (or waived by the Party entitled to waive such condition) or at such other place, on such other date and at such other time as may be agreed upon in writing between Vendor and Purchaser (the date the Closing occurs being referred to herein as the "Closing Date").

ARTICLE 10 **INDEMNIFICATION**

10.1 Indemnification in Favour of Purchaser and Emergis

Vendor and NDC shall jointly and severally (solidarily) indemnify and save Purchaser and Emergis harmless of and from any Damages suffered by, imposed upon or asserted against

Purchaser, Emergis and their subsidiaries and their respective officers, directors, employees and agents as a result of, in respect of, connected with, or arising out of, under, or pursuant to:

- (a) ~~any failure of either of Vendor or NDC to perform or fulfill any of its covenants under this Agreement or any of the Ancillary Agreements to which it is a party;~~
- (b) any breach or inaccuracy of any representation or warranty given by Vendor or NDC contained in this Agreement or any of the Ancillary Agreements; and
- (c) any failure of Vendor to transfer legal and beneficial ownership of the Purchased Assets to Purchaser free and clear of all Liens.

For purposes of calculating Damages pursuant to this Article 10, the representations and warranties given by Vendor and NDC shall be deemed to have been made without the inclusion of limitations or qualifications as to knowledge or materiality, such as the words "knowledge", "aware", "material", "immaterial" and "in all material respects" or words of similar import.

10.2 Indemnification in Favour of Vendor and NDC

Purchaser and Emergis shall jointly and severally (solidarily) indemnify and save Vendor and NDC harmless of and from any Damages suffered by, imposed upon or asserted against Vendor or NDC, their officers, directors, employees and agents as a result of, in respect of, connected with, or arising out of, under or pursuant to:

- (a) any failure of either of Purchaser or Emergis to perform or fulfill any of its covenants under this Agreement or any Ancillary Agreement to which it is a party; and
- (b) any breach or inaccuracy of any representation or warranty given by Purchaser or Emergis contained in this Agreement or any Ancillary Agreement to which it is a party.

10.3 Time Limitations

- (a) The representations and warranties of Vendor and NDC contained in this Agreement shall survive Closing and, notwithstanding Closing and any investigation made by or on behalf of Purchaser, shall continue for a period of 18 months after Closing, except that:
 - (i) Vendor's Core Representations shall survive Closing and continue in full force and effect without limitation of time;
 - (ii) a claim for any breach of any of the representations and warranties of Vendor and NDC contained in this Agreement involving fraud or fraudulent or willful misrepresentation shall survive and continue in full force and effect without limitation of time.
- (b) The representations and warranties of Purchaser and Emergis contained in this Agreement shall survive Closing and, notwithstanding Closing and any investigation

made by or on behalf of Vendor, shall continue for a period of 18 months after Closing, except that:

- (i) ~~Purchaser's Core Representations shall survive Closing and continue in full force and effect without limitation of time; and~~
 - (ii) a claim for any breach of any representations and warranties of Purchaser and Emergis contained in this Agreement involving fraud or fraudulent or willful misrepresentation shall survive and continue in full force and effect without limitation of time.
- (c) The obligations of indemnification set out in Sections 10.1 and 10.2 shall survive Closing and a claim for indemnification in respect thereof may be made at any time, except for the obligations of indemnification arising from any incorrectness in, or breach of, any representation or warranty made by Vendor, NDC, Purchaser or Emergis, as the case may be, in respect of which a claim for indemnification shall be made within the time limitations regarding survival of representations and warranties set forth in Section 10.3(a) or 10.3(b), as the case may be.

10.4 Limitation on Damages

- (a) The indemnification obligations of Vendor and NDC pursuant to Section 10.1(b) shall not be applicable until the aggregate Damages with respect to all indemnification claims pursuant to Section 10.1(b) exceed Cdn\$75,000, in which event the indemnification obligations of Vendor and NDC shall apply solely to the aggregate amount of such Damages which exceed such Cdn\$75,000.
- (b) The indemnification obligations of Purchaser and Emergis pursuant to Section 10.2(b) shall not be applicable until the aggregate Damages with respect to all indemnification claims pursuant to Section 10.2(b) exceed Cdn\$75,000, in which event the indemnification obligations of Purchaser and Emergis shall apply solely to the aggregate amount of such Damages which exceed such Cdn\$75,000.
- (c) The aggregate amount of Damages on account of indemnification obligations of any Party (Vendor and NDC being considered one Party and Purchaser and Emergis being considered one Party for these purposes) pursuant to Section 10.1(b) or 10.2(b), as the case may be, shall not exceed the Purchase Price, as adjusted pursuant to Section 3.3, less any Available Systems Agreement Indemnification Obligation (as defined in the Share Purchase Agreement of concurrent date among Emergis Networks Systems Inc., NDC of Canada Inc., NDC and Emergis - the "SPA") previously paid by such Party or its Affiliates pursuant to the SPA. As indicated in Section 10.4(c) of the SPA, indemnification payments by a Party or its Affiliates under the SPA shall be deemed to have been taken first from the available indemnification limits under the SPA before taken from any Available Systems Agreement Indemnification Obligation.

The provisions of Sections 10.4(a) to 10.4(c) shall not apply in respect of Damages relating to indemnification claims with respect to Vendor' Core Representations (other than the representations at Sections 4.1(c) and 4.1(p)(v), to which the provisions of Sections 10.4(a) and

10.4(c) shall apply), Purchaser's Core Representations or claims based on fraud or fraudulent or willful misrepresentations.

10.5 Further Limitations on Indemnification

The obligation of indemnification shall be further subject to and limited by each of the following qualifications:

- (a) Damages payable by Vendor and NDC shall be determined after deduction of any provision or reserve for the matters giving rise to such Damages and which is specifically identified for such matters in the Financial Information Documents for the year ended May 28, 2004 or in the November 26, 2004 Financial Information Documents or as an adjustment to Working Capital in the Working Capital Statement;
- (b) Damages payable by an Indemnifying Party shall be determined after deduction of any insurance proceeds actually received by the Indemnified Party;
- (c) Damages shall be determined after deduction of any actual monetary Tax benefits received by way of decrease in Taxes payable or a refund of Tax paid by the Indemnified Party in the year the indemnification for such Damages was paid arising in respect of such Damages, as set forth in a certificate of the Chief Financial Officer or Director of Taxation of the Indemnified Party. For greater certainty, (i) an increase in a Tax loss pool shall not be considered as a Tax benefit received unless and to the extent such Tax loss pool actually reduces Taxes payable in the year the indemnification for such Damages was payable, and (ii) the Indemnifying Party shall not be entitled to question whether the Indemnified Party prepared its Tax Returns in a reasonable manner;
- (d) Vendor shall be given a reasonable opportunity, which in any event shall not exceed 10 days after receipt of a notice to Vendor, to remedy any breach of representation, warranty or covenant set out in Sections 4.1(c) (Title to, and Condition and Sufficiency of, the Purchased Assets), 4.1(f) (Required Authorizations), 4.1(i) (Compliance with Laws), 4.1(j) (Affiliate Transactions), 4.1(q) (Product and Service Warranties) or 4.1(aa) (No Brokers, Etc.), provided, however, that if such breach is not remedied within such 10-day period and Vendor is then continuing to work diligently to cure the breach, then Vendor shall be given a further reasonable period of time to remedy the breach as long as Purchaser is not prejudiced by the grant of such additional time;
- (e) No Party shall be required to indemnify any other Party more than once in respect of any particular amount of Damages caused by a matter giving rise to indemnification, even if such matter may be considered under several provisions of this Agreement; and
- (f) No Party shall be required to indemnify any other Party in respect of any Damage to the extent (but only to the extent) such Damage would not have arisen had such other Party used its commercially reasonable efforts to mitigate the Damages from and after the time it was aware of such Damages (provided that the costs associated with such mitigation shall form part of the Damages).

10.6 Obligation to Reimburse

The amount of any Damages suffered or incurred by a Party being indemnified hereunder (the "**Indemnified Party**") shall accrue interest at a rate per annum equal to the Prime Rate plus 1%, compounded annually, from the date that the Notice (as defined in Section 10.7) was deemed to be received by the Indemnifying Party in respect of such Damages until payment in full by the Party providing for indemnification hereunder (the "**Indemnifying Party**").

10.7 Notification

Promptly upon obtaining knowledge thereof, the Indemnified Party shall notify the Indemnifying Party of any cause which the Indemnified Party has determined has given or could give rise to indemnification under this Article 10 (a "**Notice**"). The omission to so notify the Indemnifying Party shall not relieve the Indemnifying Party from any duty to indemnify and hold harmless which otherwise might exist with respect to such cause unless, but only to the extent that, the failure to notify the Indemnifying Party on a timely basis prejudices the Indemnifying Party's right to defend against the claim for indemnification.

10.8 Defense of Third Party Claim

- (a) If any legal proceeding shall be instituted or any claim or demand shall be asserted by a third party against the Indemnified Party (each a "**Third Party Claim**"), then the Indemnifying Party shall have the right, after receipt of the Indemnified Party's Notice under Section 10.7 and upon giving notice to the Indemnified Party within 30 days of such receipt (or such shorter period if the Indemnified Party advises the Indemnifying Party that litigation has been filed and a responsive pleading is due within such shorter period) to defend the Third Party Claim at its own cost and expense with counsel of its own selection, provided that:
- (i) the Indemnified Party shall at all times have the right to fully participate in the defense at its own cost and expense (provided, however, that defence costs and expenses of the Indemnified Party prior to the date the Indemnifying Party validly exercises its right to defend the Third Party Claim shall be reimbursed by the Indemnifying Party to the Indemnified Party);
 - (ii) the Third Party Claim seeks only monetary damages and does not seek any injunctive or other relief against the Indemnified Party;
 - (iii) the Third Party Claim is not of a penal nature;
 - (iv) the Indemnifying Party unconditionally acknowledges in writing that it will indemnify and hold the Indemnified Party harmless with respect to the full amount of the Third Party Claim (subject to the limitations in this Article 10);
 - (v) legal counsel chosen by the Indemnifying Party is satisfactory to the Indemnified Party, acting reasonably (the Parties agreeing that the choice of any national Canadian law firm, that is free of conflict with respect to the matter, with more than 200 attorneys shall be deemed satisfactory); and

- (vi) the amount claimed in the Third Party Claim is not less than the deductibles set forth in Sections 10.4(a) and 10.4(b) or greater than the cap set forth in **Section 10.4(c).**

Amounts payable by the Indemnifying Party pursuant to a Third Party Claim shall be paid in accordance with the terms of the settlement or final non-appealable judgment.

- (b) The Indemnifying Party shall not be permitted to compromise and settle or to cause a compromise and settlement of any Third Party Claim without the prior written consent of the Indemnified Party, unless:
 - (i) the terms of the compromise and settlement require only the payment of money and do not require the Indemnified Party to admit any wrongdoing, take or refrain from taking any action, acknowledge any rights of the third Person making the Third Party Claim or waive any rights that the Indemnified Party may have against such third Person making the Third Party Claim; and
 - (ii) the Indemnified Party receives, as part of the compromise and settlement, a legally binding and enforceable unconditional satisfaction or release, which is in form and substance satisfactory to the Indemnified Party, acting reasonably, from any and all obligations or liabilities it may have with respect to the Third Party Claim.
- (c) Notwithstanding Section 10.8(b), the Indemnifying Party shall not be permitted to compromise and settle or to cause a compromise and settlement of any Third Party Claim relating to Taxes without the prior written consent of the Indemnified Party (not to be unreasonably withheld) if such compromise and settlement may have a material impact upon Taxes of the Indemnified Party for any period ending after the Closing Date.
- (d) If the Indemnifying Party fails to give notice of its intention to participate in the Third Party Claim in accordance with Section 10.8(a), then the Indemnifying Party shall be deemed to have waived its right to participate in the Third Party Claim and the Indemnified Party shall have the right (but not the obligation) to undertake the defense of the Third Party Claim and compromise and settle the Third Party Claim on behalf, for the account and at the risk and expense of the Indemnifying Party.
- (e) If the Indemnifying Party participates in the defence of a Third Party Claim, then the Indemnified Party will use its reasonable efforts to make available to the Indemnifying Party those employees whose assistance, testimony or presence is necessary to assist the Indemnifying Party in evaluating and participating in the defense of any such claims.
- (f) The Indemnified Party shall, at the request of the Indemnifying Party, make available to the Indemnifying Party or its representatives on a timely basis all documents, records and other materials in the possession of the Indemnified Party, at the expense of the Indemnifying Party, reasonably required by the Indemnifying Party for its use in defending any Third Party Claim, the defence of which it has elected to participate

in, and the Indemnified Party shall otherwise cooperate on a timely basis with the Indemnifying Party in the defence of such claim.

- (g) ~~The Indemnifying Party's right to defend any Third Party Claim in respect of any Tax or other liability enforceable by Lien against the property of or any amount receivable by the Indemnified Party shall only apply after payment to the applicable Governmental Entity or other Person of the amount due in respect thereof.~~

10.9 Damages as Adjustment of Purchase Price

Any amount of Damages payable under this Article 10 by Purchaser or Emergis to Vendor or NDC, or by Vendor or NDC to Purchaser or Emergis, shall be deemed to be an adjustment to the Purchase Price.

10.10 Sole Remedy

The rights of indemnification set forth under this Agreement shall be the sole remedies of the Parties hereto and the parties to the Ancillary Agreements, without prejudice, however, to a Party's right to seek specific performance or injunctive relief in a court of applicable jurisdiction.

ARTICLE 11 MISCELLANEOUS

11.1 Further Assurances

From time to time after the Closing Date, each Party shall, at the request of any other Party, execute and deliver such additional conveyances, transfers and other assurances and do all such other acts or things as may be reasonably required to effectively transfer the Purchased Assets to Purchaser and carry out the purposes and intent of this Agreement. Without limitation to the foregoing, if after the Closing Date it is determined that any of the assets to be sold hereby to Purchaser were owned by NDC or other Affiliates at Closing, then NDC and Vendor shall take all necessary steps to cause such Purchased Assets to be promptly transferred to Purchaser, at the entire cost of NDC and Vendor and without any further consideration being payable by Purchaser.

11.2 Public Disclosure

None of Vendor, NDC, Purchaser or Emergis or any of their respective representatives or Affiliates will make any public disclosure at any time concerning the matters set forth in this Agreement or the transactions contemplated hereby without the prior written consent of the other Parties, except as required by Law. Emergis and NDC shall issue on the Closing a press release disclosing the transactions contemplated herein in a form mutually acceptable to Purchaser and NDC.

11.3 Change of Name

Purchaser shall:

- (a) within 90 days of the Closing Date (or sooner if reasonably practicable), remove the elements and words "NDC" and "National Data" from all correspondence with customers and suppliers such as invoices, purchase orders, business cards and letterhead; and
- (b) as and when replaced in the normal course of business, remove the elements and words "NDC" and "National Data" from all other materials (such as written Contracts) where such elements and words are embedded.

11.4 Access to Books and Records

- (a) For a period of six years from the Closing Date or for such longer period required by applicable Law as Vendor may from time to time notify Purchaser, Purchaser shall retain all original accounting Books and Records left in its possession on the Closing Date, and which relate to periods prior to the Closing Date. So long as any such Books and Records are retained by Purchaser pursuant to this Agreement, Vendor shall have the reasonable right to inspect and to make copies (at its own expense) of them at any time upon reasonable request during normal business hours and upon reasonable notice for proper purposes including preparation of its Tax Returns, preparation of its financial statements, Tax audits or defence or prosecution of litigation with third parties or assessments and reassessments by Tax authorities. Such inspection and copying shall be without undue interference to the business operations of Purchaser. Purchaser shall have the right to have its representatives present during any such inspection.
- (b) Vendor may retain (i) one copy of the materials provided or made available in connection with the purchase and sale of the Purchased Assets, together with a copy of all documents referred to in such materials, (ii) all internal correspondence and memoranda in connection with the sale of the Purchased Assets, (iii) a copy of all financial information and all other accounting records prepared or used in connection with the preparation of the financing statements of the Systems Business, and (iv) any other material received prior to the Closing Date, the whole subject to the confidentiality obligations in Section 11.7.

11.5 Notices

All notices and other communications pursuant to this Agreement shall be in writing and shall be deemed given if delivered personally, telecopied, sent by a nationally-recognized overnight courier or mailed by registered or certified mail (return receipt requested), postage prepaid, to the Parties at the addresses set forth below or to such other address as the Party to whom notice is to be given may have furnished to the other Parties in writing in accordance with this Section 11.5. Any such notice or communication shall be deemed to have been delivered and received (a) in the case of personal delivery, on the date of such delivery, (b) in the case of telecopier, on the date sent if confirmation of receipt is received, (c) in the case of such a nationally-recognized overnight courier in circumstances under which such courier guarantees next business day delivery, on the next business day after the date when sent and (d) in the case of mailing, on the seventh business day following that on which the envelope containing such communication is posted:

- (a) If to Purchaser or Emergis, at:

EMERGIS INC.
1000 de Stigny
Suite 600
Longueuil, Québec
J4K 5B1 Canada

Attention: The President and CEO

Facsimile: (450) 928-6344

with a copy to the Corporate Secretary

- (b) If to Vendor or NDC, at:

NDCHEALTH CORPORATION
NDC Plaza
Atlanta, Georgia
30329-2010 U.S.A.

Attention: General Counsel

Facsimile: (404) 728-2780

11.6 Time of the Essence

Time shall be of the essence of this Agreement.

11.7 Confidentiality

Except as required by Law, Vendor, NDC and their respective Affiliates will maintain all information relating to the Systems Business, all information of Purchaser and Emergis and all information relating to the transactions contemplated by this Agreement (including the Agreement itself) strictly in confidence and will not disclose to any Person or make public or authorize the disclosure of any such information and will not use such information for any purpose unless the specific information is now or hereafter publicly disclosed other than as a result of breach of this provision.

11.8 Third Party Beneficiaries

The Parties intend that this Agreement shall not benefit or create any right, stipulation for the benefit of, delegation open for acceptance by, or cause of action in favour of, any Person other than the Parties and their respective successors and permitted assigns and no Person, other than the Parties, shall be entitled to rely on the provisions of this Agreement in any action, suit, proceeding, hearing or other forum.

11.9 Expenses

Purchaser and Emergis shall pay for their own fees and expenses and Vendor and NDC shall pay for their own fees and expenses which are, in each case, incident to the negotiation, preparation and execution of this Agreement, the transactions and the agreements contemplated hereby, including legal and accounting fees and expenses.

11.10 Amendments

This Agreement may only be amended, supplemented or otherwise modified by written agreement signed by all Parties.

11.11 Waiver

No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision (whether or not similar) or a future waiver of the same provisions, nor shall such waiver be binding unless executed in writing by the Party to be bound by the waiver.

No failure on the part of Vendor or Purchaser or Emergis to exercise, and no delay in exercising any right under this Agreement shall operate as a waiver of such right; nor shall any single or partial exercise of any such right preclude any other or further exercise of such right or the exercise of any other right.

11.12 Non-Merger

Except as otherwise expressly provided in this Agreement, the covenants, representations and warranties shall not merge on and shall survive Closing and, notwithstanding such Closing and any investigation made by or on behalf of any Party, shall continue in full force and effect. Closing shall not prejudice any right of one Party against any other Party in respect of anything done or omitted under this Agreement or in respect of any right to Damages or other remedies.

11.13 Entire Agreement

This Agreement constitutes the entire agreement between the Parties with respect to the transactions contemplated in this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties including the Letter of Intent and attached Term Sheet signed in December, 2004 between NDC and Emergis, as amended and the Mutual Non-Disclosure Agreement between NDC and Emergis dated August 21, 2002, as amended on November 22, 2004. There are no representations, warranties, covenants, conditions or other agreements, express or implied, collateral, statutory or otherwise, among the Parties in connection with the subject matter of this Agreement except as specifically set forth herein and no Party has relied or is relying on any other information, discussion or understanding in entering into and completing the transactions contemplated in this Agreement.

11.14 Successors and Assigns

~~This Agreement shall be binding upon and enure to the benefit of the Parties and their respective successors and permitted assigns. Neither this Agreement nor any of the rights or obligations under this Agreement shall be assignable or transferable by Vendor or NDC without the prior written consent of Purchaser.~~ Any Party may assign and transfer this Agreement and the Ancillary Agreements and any of its rights and obligations under this Agreement and the Ancillary Agreements, in whole or in part, to an Affiliate thereof without the prior written consent of the other Parties, provided that the assigning Party shall not, by reason of any such assignment and transfer, be released from its obligations hereunder or thereunder. Purchaser and Emergis may assign their rights under this Agreement and the Ancillary Agreements, in whole or in part, without consent, to any subsequent purchaser of Purchaser, Emergis, the Systems Business, or any material portion thereof, whether any such sale is structured as a sale of shares, a sale of assets, a merger or otherwise provided that such purchaser (and any guarantor of such purchaser's obligations under any purchase agreement) expressly agrees to assume all obligations thereunder of the assignor arising after the date of the assignment and to be bound by the terms thereof.

11.15 Severability

If any provision of this Agreement shall be determined by any court of competent jurisdiction to be illegal, invalid or unenforceable, that provision shall be severed from this Agreement and the remaining provisions shall continue in full force and effect.

11.16 Responsibility of NDC and Emergis

NDC is jointly and severally (solidarily) liable with Vendor, as principal obligor and not as a surety, with respect to all of the representations, warranties, covenants, indemnities and agreements of Vendor contained in this Agreement and in each Ancillary Agreement.

Emergis is jointly and severally (solidarily) liable with Purchaser, as principal obligor and not as a surety, with respect to all of the representations, warranties, covenants, indemnities and agreements of Purchaser contained in this Agreement and in each Ancillary Agreement.

11.17 Governing Law

This Agreement shall be governed by and interpreted and enforced in accordance with the Laws of the Province of Québec and the federal Laws of Canada applicable therein. Each Party shall instruct its counsel on any proceedings related to this Agreement or any Ancillary Agreement that all written pleadings and oral arguments of such counsel be in the English language.

11.18 Counterparts

This Agreement may be executed in any number of counterparts (including counterparts by facsimile) and all such counterparts taken together shall be deemed to constitute one and the same instrument.

[INTENTIONALLY BLANK - SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF the Parties have executed this Purchase Agreement as of the date first written above.

EMERGIS PHARMACY SYSTEMS INC.

By: [Signature]
Name: JOHN VALENTINI
Title: Chief Financial Officer

NDCHEALTH PHARMACY SYSTEMS AND SERVICES ULC

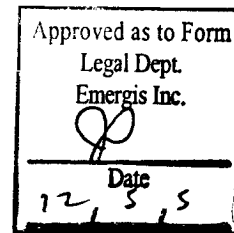
By: [Signature]
Name: Randolph L. M. Hutto
Executive Vice President
Title: _____

NDCHEALTH CORPORATION

By: [Signature]
Name: Randolph L. M. Hutto
Executive Vice President
Title: _____

EMERGIS INC.

By: [Signature]
Name: FRANÇOIS CÔTÉ
Title: President & CEO



AMENDMENT NO 1 TO
ASSET PURCHASE AGREEMENT

Amendment No 1 to Asset Purchase Agreement dated April 19, 2005, between NDCHEALTH PHARMACY SYSTEMS AND SERVICES, ULC, an unlimited liability company incorporated under the Laws of the Province of Nova Scotia ("Vendor"), NDCHEALTH CORPORATION, a corporation incorporated under the Laws of Delaware ("NDC"), and EMERGIS INC., a corporation incorporated under the Laws of Canada ("Emergis").

RECITALS

WHEREAS the parties to this Amendment No 1 to Asset Purchase Agreement, along with Emergis Pharmacy Systems Inc. (the "**Purchaser**"), entered into an Asset Purchase Agreement dated March 17, 2005 (the "**Asset Purchase Agreement**") whereby Purchaser agreed to purchase from Vendor, and Vendor agreed to sell to Purchaser, all of the assets and operations of the Systems Business (as defined in the Asset Purchase Agreement);

WHEREAS Purchaser assigned its rights and obligations under the Asset Purchase Agreement to Emergis;

WHEREAS the Parties have agreed to certain amendments to the Asset Purchase Agreement and to certain other agreements, the whole as set forth in this Amendment No 1 to Asset Purchase Agreement ("**Amendment Agreement**").

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

ARTICLE 1
INTERPRETATION

1.1 General

- (a) **Defined Terms.** Capitalized terms used in this Amendment Agreement not otherwise defined in this Amendment Agreement shall have the meanings ascribed to them in the Asset Purchase Agreement.
- (b) **Headings, Etc.** The division of this Amendment Agreement into Articles and Sections and the insertion of headings are for convenient reference only and shall not affect the interpretation of this Amendment Agreement.
- (c) **Currency.** All references in this Amendment Agreement to dollars or to "\$", unless otherwise specifically indicated, are to the currency of Canada.

ARTICLE 2
AMENDMENTS

2.1 Purchase Price and Holdback Amount

Subject to any reductions pursuant to Section 3.3 of the Asset Purchase Agreement, the Purchase Price is hereby amended to be Cdn\$2,250,000 and the Holdback Amount is hereby amended to be Cdn\$450,000. As a result of such amendments (and the assignment of Purchaser's rights under the Asset Purchase Agreement to Emergis), Sections 2.1 and 2.2 of the Asset Purchase Agreement are hereby replaced in their entirety with the following:

2.1 Purchase Price

The purchase price (the "**Purchase Price**") payable by Emergis for the Purchased Assets is the aggregate of Cdn\$2,250,000 (subject to reduction pursuant to Section 3.3) and the amount of the Assumed Liabilities.

2.2 Payment of the Purchase Price

Subject to any reduction in accordance with Section 3.3, Emergis shall pay the Purchase Price as follows:

- (a) Cdn\$1,800,000, by bank draft, certified cheque or wire transfer of immediately available funds, on the Closing Date, to an account designated by Vendor 48 hours prior to the Closing Date;
- (b) by the assumption of the Assumed Liabilities; and
- (c) the balance of the Purchase Price in the amount of Cdn\$450,000 (the "**Holdback Amount**"), to be held and disbursed in accordance with Section 3.4.

2.2 Delay to Prepare First Draft of Working Capital Statement

Notwithstanding Section 3.3(a) of the Asset Purchase Agreement, the period for Purchaser to prepare and deliver the Working Capital Statement shall be as soon as practicable but in any event within 45 days after delivery by Vendor or NDC to Emergis of information sufficient to prepare the Working Capital Statement.

2.3 Commencement of Holdback Period

Notwithstanding Section 3.4(a) of the Asset Purchase Agreement, the Holdback Period shall commence on the date hereof and shall end 75 days after Vendor or NDC delivers to Emergis of information sufficient to prepare the Working Capital Statement.

RUA

2.4 Termination Dates

The termination dates set forth in Sections 8.2 and 8.4 of the Asset Purchase Agreement are hereby amended to be April 20, 2005.

2.5 Graphical User Interfaces

Article 11, MISCELLANEOUS, of the Asset Purchase Agreement is hereby amended by the insertion of the following Sections 11.1A and 11.1B immediately after Section 11.1:

11.1A Cost Reimbursement for Graphical User Interfaces

Vendor shall reimburse Emergis for 50% of the costs incurred by Emergis, directly or through third Persons, including developers, to develop Graphical User Interfaces for the OSPREY Software, to a maximum of Cdn\$100,000 of such costs (for greater certainty, a maximum of Cdn\$50,000 of which will be reimbursed to Emergis by Vendor). Such reimbursable costs will include, without limitation, costs of developers employed by Emergis using Emergis' standard rates, the fees and expenses of third Person contractors used in such development work and other direct out-of-pocket expenses of Emergis related to such work.

Vendor shall reimburse Emergis for such costs for which Vendor is responsible under this Section within 30 days of receipt of an invoice therefor from Emergis. Any amount unpaid on such invoice within 30 days of receipt of it by Vendor shall bear interest at the rate set forth in Section 10.5 commencing on the day after such due date.

11.1B Intellectual Property and Vendor Assistance

All Intellectual Property created by or on behalf of Emergis as a result of such developmental work shall be owned by Emergis, subject to the rights of third Persons (other than Vendor, NDC and their Affiliates).

Vendor, NDC and their Affiliates shall use their reasonable efforts to provide, to the extent available, any assistance which may be requested by Emergis in the development of such Graphical User Interfaces in addition to the services provided under the Transitional Services Agreement, such services to be charged at the standard rates of Vendor, NDC and their Affiliates' for the same or similar services.

ARTICLE 3 **MISCELLANEOUS**

3.1 Waiver

Emergis hereby waives the condition in its favour at Section 8.1(b)(iii) of the Asset Purchase Agreement that the consent of London Drugs (as a "Chain" pharmacy) be obtained.

3.2 Asset Purchase Agreement

Except as specifically set forth in this Amendment Agreement, the Asset Purchase Agreement remains in force and effect, unamended.

3.3 Responsibility of NDC

NDC is jointly and severally (solidarily) liable with Vendor, as principal obligor and not as a surety, with respect to all of the covenants and agreements of Vendor contained in this Amendment Agreement.

3.4 Governing Law

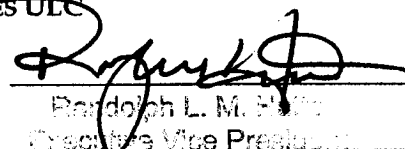
This Amendment Agreement shall be governed by and interpreted and enforced in accordance with the Laws of the Province of Québec and the federal Laws of Canada applicable therein. Each Party shall instruct its counsel on any proceedings related to this Amendment Agreement that all written pleadings and oral arguments of such counsel be in the English language.

3.5 Counterparts

This Amendment Agreement may be executed in any number of counterparts (including counterparts by facsimile) and all such counterparts taken together shall be deemed to constitute one and the same instrument.

IN WITNESS WHEREOF the parties have executed this Amendment Agreement as of the date first written above.

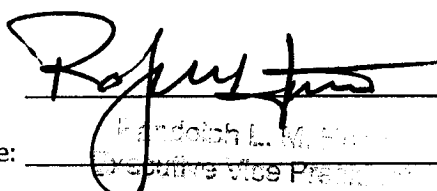
NDCHEALTH PHARMACY SYSTEMS AND
SERVICES ULC

By: 
Name: Randolph L. M. H. H.
Title: Executive Vice President

EMERGIS INC.

By: _____
Name: _____
Title: _____

NDCHEALTH CORPORATION

By: 
Name: Randolph L. M. H. H.
Title: Executive Vice President

3.2 Asset Purchase Agreement

Except as specifically set forth in this Amendment Agreement, the Asset Purchase Agreement remains in force and effect, unamended.

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IN WITNESS WHEREOF the parties have executed this Amendment Agreement as of the date first written above.

**NDCHEALTH PHARMACY SYSTEMS AND
SERVICES ULC**

By: _____

Name: _____

Title: _____

EMERGIS INC.

By: _____

Name: JOHN GUILLOT

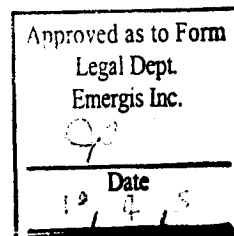
Title: ACTING CEO

NDCHEALTH CORPORATION

By: _____

Name: _____

Title: _____



ASSET PURCHASE AGREEMENT

Among

FISERV, INC.,

FISERV E-LENDING SOLUTIONS, INC.,

EMERGIS INC.,

EMERGIS TECHNOLOGIES, INC.

and

EMERGIS ELECTRONIC MORTGAGE SERVICES, LLC

Dated as of May 9, 2005

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II	Disclosure Schedule

ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT dated as of May 9, 2005, among FISERV, INC., a Wisconsin corporation ("**Fiserv**"), FISERV E-LENDING SOLUTIONS, INC., a Delaware corporation ("**Fiserv Buyer**" or "**Buyer**"), a wholly-owned subsidiary of Fiserv Solutions, Inc. and an indirect subsidiary of Fiserv, EMERGIS INC., a Canadian corporation ("**Emergis**"), EMERGIS TECHNOLOGIES, INC., a Delaware corporation ("**Technologies**"), and EMERGIS ELECTRONIC MORTGAGE SERVICES, LLC, a Delaware limited liability company ("**Seller**").

WHEREAS, Seller is engaged in providing services to lenders in the mortgage services industry (the "**Business**"); and

WHEREAS, Seller desires to sell to Buyer, and Buyer wishes to acquire from Seller, certain assets, properties and liabilities relating to the Business, which constitute all of the assets of Seller necessary to the operation or conduct of the Business;

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter set forth, the parties agree as follows:

ARTICLE 1 – TRANSFER OF ASSETS, PURCHASE PRICE, CLOSING, ETC.

SECTION 1.01 Transfer of Assets.

- (a) **Assets.** The assets, properties and business of Seller to be sold, conveyed, transferred and delivered by Seller to Buyer pursuant to this Section 1.01(a) are referred to in this Agreement as the "**Assets**". On the terms and subject to the conditions hereinafter set forth, on the Closing Date (as hereinafter defined), Seller will sell, convey, transfer and deliver to Buyer, and Buyer will purchase from Seller, for the purchase price provided in Section 1.04 hereof, all the following assets and properties of Seller as the same shall exist on the Closing Date, except the Excluded Assets (defined below):
- (i) all the tangible personal property, inventories, prepayments, rights relating to deposits and prepaid expenses, claims for refunds and rights to offset in respect thereof, deferred items, computer systems, financial models, work in process, supplies, leaseholds, leasehold improvements, fixtures, machinery and equipment of Seller existing on the Closing Date that are either (A) attributable to, used or useful in or otherwise reasonably necessary to, or for use primarily in connection with, the operation or conduct of the Business or (B) otherwise listed in Section 1.01(a)(i) of the Disclosure Schedule;
 - (ii) all real properties owned by the Seller for use in connection with the operation of the Business and listed in Section 1.01(a)(ii) of the Disclosure Schedule;

- (iii) the Business Intellectual Property and Business Registered Intellectual Property Rights, together with the goodwill and the business appurtenant thereto and any rights, claims, remedies, choses in action or other rights relating to or deriving from any of the foregoing after the Closing Date;
- (iv) all flowcharts, specifications, designs, file layouts, descriptions, manuals and data of Seller used in connection with the intellectual property referred to in Section 1.01(a)(iii) above;
- (v) all catalogues, brochures, sales literature, promotional material and other selling material used in connection with the operation or conduct of the Business;
- (vi) copies of all books and records and all data, files, documents, papers, agreements, books of account and other records pertaining to the Assets or to the Business which are located at the offices or used in connection with the Assets or the Business including records relating to the Current Employees of the Business to be employed by Buyer immediately after the Closing Date, client and customer lists and records, referral sources, research and development reports and records, production reports and records, service and warranty records, equipment logs, operating guides and manuals, financial and accounting records, creative materials, advertising materials, promotional materials, studies, reports, correspondence and other similar documents and records;
- (vii) all rights (whether written or oral) of Seller arising after the Closing Time under all contracts, agreements, licenses, leases, agreements relating to the borrowing or extension of credit and other agreements to which Seller is a party which are listed, or if oral described, in Section 1.01(a)(vii) of the Disclosure Schedule (the "Contracts");
- (viii) any consent, license, registration or permit issued, granted or otherwise made available by any Governmental Entity (defined below) (a "Governmental Authorization") relating to the Business, and all pending applications therefor or renewals thereof, in each case to the extent transferable to Buyer, except Governmental Authorizations and pending applications or renewals thereof required for the Seller other than in connection with the Business; and
- (ix) any other assets or rights of every kind or nature, real or personal, tangible or intangible, which are owned and attributable to, used by Seller or useful in connection with or otherwise reasonably necessary to, or for use primarily in connection with, the operation or conduct of the Business.

Without limiting the generality of the foregoing, the Assets shall, except as set forth in subsection (b) below, include all assets set forth in a detailed list to be prepared and furnished by Seller to Buyer at or prior to the Closing Date, which list will be comprised of the assets listed on Schedule 1.01(a)(i), as updated to reflect all such assets as may have been acquired or developed by Seller and attributable to, used or useful in or otherwise reasonably necessary to, or for use

primarily in connection with, the operation or conduct of the Business since the date of such list and which would be included on a list prepared in like manner as of the Closing Date, except any such assets which may have been disposed of since said date in the ordinary course of business and consistent with past practice.

- (b) **Excluded Assets.** Anything herein contained to the contrary notwithstanding, the following assets and properties of Seller (the “**Excluded Assets**”) are specifically excluded from the Assets and shall be retained by Seller after the Closing Date:
- (i) all cash on hand and cash equivalents, including bank accounts, temporary cash investments (except for petty cash funds maintained at the offices of the Business) and any deferred credit;
 - (ii) claims for refunds of Taxes (as hereinafter defined) for periods ending on or prior to the Closing Date;
 - (iii) all trade accounts receivable and other rights to payment from customers of Seller with respect to periods prior to the Closing Time and the full benefit of all security for such accounts or rights to payment, including all trade accounts receivable in respect of goods shipped or products sold or services rendered to customers of Seller prior to the Closing Time, and any claim, remedy or other right related to any of the foregoing;
 - (iv) all accounts receivable from any Seller Affiliate;
 - (v) claims or rights against third parties relating to liabilities or obligations which are not assumed by Buyer hereunder;
 - (vi) all rights in connection with and assets of the Employee Plans (as hereinafter defined);
 - (vii) all rights of Seller under this Agreement, the Bill of Sale, Assignment and Assumption Agreement and the Transition Services Agreement (as hereinafter defined);
 - (viii) rights under insurance policies, including rights to any cancellation value on the Closing Date;
 - (ix) Seller’s corporate organizational records and documents, including minute books and corporate seals, and all records that Seller is required by law to retain in its possession; and
 - (x) the assets set forth in Section 1.01(b)(x) of the Disclosure Schedule.

SECTION 1.02 Instruments of Conveyance and Transfer.

Subject to Section 1.03 below, on the Closing Date Seller shall execute and deliver to Buyer (a) a bill of sale in the form included in the Bill of Sale, Assignment and Assumption Agreement annexed hereto as Exhibit A (the “**Bill of Sale, Assignment and Assumption Agreement**”), transferring to Buyer the properties and assets to be acquired by Buyer and the liabilities to be

assumed by Buyer under the terms of this Agreement, (b) assignments of all Business Intellectual Property to be assigned to Buyer pursuant to this Agreement and (c) such other bills of sale, instruments of assignment and other appropriate documents as may be reasonably requested by Buyer or Seller in order to carry out the intentions and purposes of this Agreement.

SECTION 1.03 Nonassignable Contracts. Nothing in this Agreement shall be construed as an attempt or agreement to assign (a) any Contract which is nonassignable without the consent of the other party or parties thereto unless such consent shall have been given (subject, however, to the rights of Buyer under Section 4.01(g) hereof). In order, however, that the full value of every contract and claim of the character described in clauses (a) and (b) above and all claims and demands on such Contracts may be realized, Seller will use its commercially reasonable efforts to obtain approval to assignment. Pending the obtaining of such approval to assignment during the current term of such Contracts, the parties shall cooperate with each other in any reasonable lawful arrangements necessary or proper (x) in order that the rights and obligations of Seller under such contracts shall be preserved (which shall not include any extensions or renewal of the term of such Contracts) and (y) for, and to facilitate, the collection of the moneys due and payable, and to become due and payable, to Seller in and under every such contract and claim and in respect of every such claim and demand, and Seller shall hold the same for the benefit of and shall pay the same over promptly to Buyer.

SECTION 1.04 Purchase Price.

- (a) The purchase price (the "**Purchase Price**") for the Assets shall be US\$13,750,000 in cash, without interest, subject to an increase or reduction equal to the Final Adjustment Figure (as hereinafter defined).
- (b) **Preliminary Adjustment Figure.** Not less than three days nor more than ten days prior to the Closing Date, Seller shall deliver to Fiserv and Buyer a schedule (the "**Preliminary Schedule**") setting forth, in reasonable detail and as of the date of the Preliminary Schedule, Seller's estimate of the amount (positive or negative) of Closing Prepaid Expenses as of the Closing Date, which amount shall be the amount by which the purchase price payable at Closing shall be increased or decreased (such amount being referred to herein as the "**Preliminary Adjustment Figure**"). The term "**Closing Prepaid Expenses**" shall include the following: the aggregate book value of prepaid expenses and balance amounts due by Seller under the capital lease listed in Section 1.04(b) of the Disclosure Schedule which will be paid in full by Seller prior to Closing, less the aggregate book value of deferred revenue as of the Closing Date, as set forth on a statement prepared from the accounting records of Emergis which accounting records were prepared in accordance with Canadian generally accepted accounting principles ("**GAAP**") and consistent with the Business Financial Information (as hereinafter defined).
- (c) **Preparation of Statement of Financial Position.** As promptly as practicable following the Closing, but in no event later than 60 days subsequent to the Closing Date, Fiserv and Buyer shall deliver to Seller a schedule (the "**Final Schedule**") of Fiserv's and Buyer's calculation of the amount (positive or negative) of the Closing Prepaid Expenses (the aggregate adjustment amount

being hereinafter referred to as the "**Final Adjustment Figure**") as set forth on Buyer's statement of financial position immediately prior to the Closing Time ("**Statement of Financial Position**"). If Seller disputes the correctness of the Final Schedule or of the Statement of Financial Position, Seller shall notify Fiserv and Buyer of its objections within 20 days after delivery of the Final Schedule and shall set forth in reasonable detail in such notice the reason for Seller's objections. If Seller fails to deliver such notice within such time period, Seller shall be deemed to have accepted the Final Adjustment Figure and the Statement of Financial Position. If Seller delivers such notice, Fiserv, Buyer and Seller shall endeavor in good faith to resolve their dispute over the determination of the Final Adjustment Figure or the Statement of Financial Position, as the case may be, within 20 days after receipt of such notice by Fiserv and Buyer. If they are unable to do so within such 20-day period, the dispute shall be submitted to an audit partner experienced in the mortgage services industry of PricewaterhouseCoopers LLP ("**PWC**") so long as PWC is independent of both Fiserv and Seller, or, if PWC shall cease to be independent of Fiserv and Seller, another independent nationally-recognized accounting firm in the United States as shall be mutually acceptable to Fiserv, Buyer and Seller (PWC or such firm, an "**Independent Accountant**"), who shall act as an expert and not as an arbitrator, and who shall resolve the dispute within ten days. The decision of the Independent Accountant as to the Final Adjustment Figure shall be final and binding upon the parties. The expense of the Independent Accountant shall be borne by Fiserv and Buyer, on the one hand, and Seller, on the other hand, in proportion to the relative difference between such party's position and the determination of the Independent Accountant, as determined by the Independent Accountant. Fiserv, Buyer and Seller shall cooperate with the other party in the determination of the Final Adjustment Figure and the Statement of Financial Position, including allowing Seller reasonable access during normal business hours upon notice after the Closing to the accounting and other representatives and advisors of the Business and its books and records for the purposes of making such determination. Within three business days following final determination of the Final Adjustment Figure and the Statement of Financial Position, Seller shall pay Buyer in immediately available funds the amount by which the Final Adjustment Figure is less than the Preliminary Adjustment Figure or, as the case may be, Buyer shall pay Seller the amount by which the Final Adjustment Figure is greater than the Preliminary Adjustment Figure.

SECTION 1.05 **Closing.** The closing of the transactions contemplated by this Agreement (the "**Closing**") shall take place at the offices of Buyer, 255 Fiserv Drive, Brookfield, WI 53045 within ten business days after the date hereof, at 8:00 a.m., local time, or at such other place or at such other date or time as Seller and Buyer may mutually agree (such date and time of Closing herein called the "**Closing Date**"); it being understood and agreed that for all purposes the Closing shall be effective as of 11:59 p.m. on the Closing Date (the "**Closing Time**").

SECTION 1.06 Payments to Seller.

On the Closing Date, in full consideration for the sale, conveyance, transfer and delivery to Buyer of the Assets hereinafter, subject to the assumption of liabilities provided for herein, Buyer shall:

(a) pay to Seller by wire transfer of immediately available funds an aggregate of US\$12,000,000 in cash, as adjusted pursuant to Section 1.04 to take into account the Preliminary Adjustment Figure, without interest; and

(b) on the date which is six months from the Closing Date, Buyer shall pay to Seller by wire transfer of immediately available funds an aggregate amount of US\$1,750,000, without interest, subject to reduction as set forth in Section 5.02(d).

SECTION 1.07 Assumption of Liabilities. On the Closing Date, Buyer shall execute and deliver to Seller an assumption agreement, in the form included in the Bill of Sale, Assignment and Assumption Agreement, pursuant to which, subject to Section 1.08 below, Buyer shall assume and agree to pay, perform and discharge when due the liabilities and obligations of Seller with respect to the Business (a) of any kind or nature, whether absolute, contingent or otherwise, which are liabilities or obligations accruing after the Closing Date under the terms of a Contract, (b) that arise after the Closing Date and pertain to events occurring after the Closing Date or (c) that arise from any claim asserted after the Closing Date relating to the representations set forth in Section 2.01(h)(xiii) to the extent that such claim does not constitute a breach of such representations (the “Assumed Liabilities”).

SECTION 1.08 Non-Assumption of Liabilities. Buyer is not assuming, and shall not be deemed to have assumed, any liabilities or obligations of Seller of any kind or nature whatsoever, except as expressly provided above in Section 1.07 hereof. In no event shall Buyer be deemed to have assumed, or taken any Asset subject to, any liability arising on or prior to the Closing Date. Anything in Section 1.07 or elsewhere in this Agreement to the contrary notwithstanding, and without limiting the generality of the foregoing, it is hereby agreed that Buyer is not assuming any liability and shall have no obligation for or with respect to any liability or obligation of Seller (a) subject to Section 3.06, under any employee or retiree benefit plan of Seller, including (i) accrued collections under any said plan and (ii) other collections from employees of Seller, (b) any Taxes of Seller, its subsidiaries or affiliates or for which Seller or any of its subsidiaries or affiliates is or may be liable, without regard to when such Tax is due or payable with respect to periods prior to the Closing Time, or (c) arising out of any action, suit or proceeding based upon an event occurring or a claim arising (i) on or prior to the Closing Date or (ii) after the Closing Date in the case of claims in respect of services delivered by Seller on or prior to the Closing Date and attributable to acts performed or omitted by Seller on or prior to the Closing Date (except in the case of (ii) above for any claim asserted after the Closing Date relating to the representations set forth in Section 2.01(h)(xiii) hereof to the extent that such claim does not constitute a breach of such representations).

SECTION 1.09 Allocation of Purchase Price.

(a) **Allocation.** After a thorough analysis of the transaction and arms' length negotiations between the parties, Buyer, Seller and Technologies agree that the Purchase Price shall be allocated among the Assets as follows:

- (i) any amount required to be treated as interest pursuant to Section 1274 of the Code shall be treated as interest;
 - (ii) an amount equal to the net book value as set forth on the Statement of Financial Position of each item of cash, receivables, prepaid items, fixed assets and other assets (other than Section 197 intangibles, as defined in the Code) shall be allocated to such item;
 - (iii) an amount equal to the net book value as set forth on the Statement of Financial Position of capitalized software shall be allocated to such item; and
 - (iv) any remaining amount, shall be allocated to customer lists and goodwill as determined by the Buyer.
- (b) **Cooperation.** Buyer and Technologies will prepare and timely file their respective Forms 8594 with respect to the sale of the Assets and payments hereunder in accordance with this Section 1.09. Buyer, Seller and Technologies shall cooperate in the preparation of such forms. For purposes of the preparation of Form 8594, the name, address and taxpayer identification number of Buyer is as follows:

Name: Fiserv e-Lending Solutions, Inc.

Address: 255 Fiserv Drive
Brookfield, WI 53045

T.I.N.: 20-2791478

and with respect to Technologies is:

Name: Emergis Technologies, Inc.

Address: c/o CT Corporation Systems
1209 Orange Street
Wilmington, Delaware 19801
U.S.A.

T.I.N.: 56-2118414

Buyer, Seller and Technologies shall promptly give the other parties notice, in accordance with Section 7.05 herein, of any changes in the foregoing information prior to the due date of any Form 8594.

- (c) **Binding Effect.** Buyer, Seller and Technologies shall be bound by the allocation as set forth in this Section 1.09, and shall apply such allocation for all purposes, including determining any Tax, shall prepare and file all Tax Returns, including Form 8594, in a manner consistent with such allocations, and shall not take any position inconsistent with such allocation in any Tax Return, proceeding before

any Taxing authority or otherwise. In the event that any allocation hereunder is questioned, audited or disputed by any Taxing authority, the party receiving notice thereof shall promptly notify and consult with the other parties concerning the strategy for the resolution thereof, and shall keep the other parties apprised of the status of such question, audit or dispute and the resolution thereof.

SECTION 1.10 Further Assurances. If at any time after the Closing Date, Buyer or Seller shall consider or be advised that any further deeds, assignments or assurances in law or any other acts are necessary, desirable or proper (a) to vest, perfect or confirm, of record or otherwise, in Buyer, the title to Assets acquired by reason of, or as a result of, this Agreement, or (b) otherwise to carry out the purposes of this Agreement, each of Buyer and Seller agrees to cooperate with each other and their respective representatives in connection with any steps required to be taken as part of their respective obligations under this Agreement, and shall execute and deliver all such property, deeds, assignments and assurances in law and do all acts necessary, desirable or proper to vest, perfect or confirm title to such property or rights in Buyer and otherwise to carry out the purposes of this Agreement and that the proper officers and directors of Buyer are fully authorized in the name of Seller or otherwise to take any and all such action.

ARTICLE 2 – REPRESENTATIONS AND WARRANTIES

SECTION 2.01 Representations and Warranties of Seller. Except as otherwise set forth in the Disclosure Schedule (the “**Disclosure Schedule**”) annexed hereto as Schedule II, Seller, Technologies and Emergis, jointly and severally, represent and warrant to, and agree with, Fiserv and Buyer as follows:

- (a) **Organization and Qualification, etc.** Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, has corporate power and authority to own all of its properties and assets and to carry on its business as it is now being conducted, and is duly qualified to do business and is in good standing in each other jurisdiction as set forth in Section 2.01(a) of the Disclosure Schedule where the failure to so qualify would have a Material Adverse Effect (as hereinafter defined). The copies of Seller’s respective Certificate of Formation and Limited Liability Company Operating Agreement, as amended to date, which have been delivered to Fiserv and Buyer, are complete and correct, and such instruments, as so amended, are in full force and effect at the date hereof.

“**Material Adverse Effect**” for purposes of this Agreement when used with respect to any party or the Assets means any change in, or effect on, or series of related changes in, or related effects on, the business of such party as currently conducted by such party or such Assets, taken as a whole, that is materially adverse to the results of its operations or financial or other condition before giving effect to the transactions contemplated by this Agreement and other than such changes or effects generally affecting the industry of such party or the economy of the United States.

- (b) **Authority Relative to Agreement.** Seller, Technologies and Emergis have the power and authority to execute and deliver this Agreement and to consummate the transactions contemplated on the part of Seller, Technologies and Emergis hereby. Technologies has the power and authority to execute and deliver the FIRPTA Affidavit substantially in the form annexed hereto as Exhibit B (the "**FIRPTA Affidavit**") and to consummate the transactions contemplated on the part of Technologies thereby. No other legally required proceedings on the part of Seller, Technologies or Emergis are necessary to authorize the execution and delivery of this Agreement, or the consummation by Seller, Technologies or Emergis of the transactions contemplated hereby. No other legally required proceedings on the part of Technologies are necessary to authorize the execution and delivery of the FIRPTA Affidavit or the consummation by Technologies of the transactions contemplated thereby. This Agreement has been duly executed and delivered by Seller, Technologies and Emergis and, assuming the due authorization, execution and delivery of this Agreement by Fiserv and Buyer, is a valid and binding agreement of Seller, Technologies and Emergis enforceable against Seller, Technologies and Emergis in accordance with its terms, except as such enforcement is subject to the effect of (i) any applicable bankruptcy, insolvency, reorganization or similar laws relating to or affecting creditors' rights generally and (ii) general principles of equity, including concepts of materiality, reasonableness, good faith and fair dealing, and other similar doctrines affecting the enforceability of agreements generally (regardless of whether considered in a proceeding in equity or at law).
- (c) **Non-Contravention.** Except as set out in Section 2.01(c) of the Disclosure Schedule, the execution and delivery of this Agreement by Seller, Technologies and Emergis do not and upon the giving of notice as required under the contract or law set forth in Section 2.01(c) of the Disclosure Schedule, the consummation by Seller, Technologies and Emergis of the transactions contemplated hereby will not (i) violate any provision of the Articles of Incorporation or By-Laws of Technologies or Emergis, or violate any provision of the Certificate of Formation or Limited Liability Company Operating Agreement of Seller, or (ii) violate, or result, with the giving of notice or the lapse of time or both, in a violation of, any provision of, or result in the acceleration of or entitle any party to accelerate (whether after the giving of notice or lapse of time or both) any obligation under, or result in the creation or imposition of any material lien, charge, pledge, security interest or other encumbrance upon any of the property of the Business or Assets pursuant to any provision of, any mortgage or lien or material lease, agreement, license or instrument or any order, arbitration award, judgment or decree to which Seller, Technologies or Emergis on behalf of the Business is a party or by which any of the Assets is bound, and do not and will not violate or conflict with any other material restriction of any kind or character to which the Business is subject or by which any of the Assets may be bound, and the same does not and will not constitute an event permitting termination of any such mortgage or lien or material lease, agreement, license or instrument to which Seller on behalf of the Business is a party or (iii) violate, in any material respect, any law, ordinance or regulation to which Seller on behalf of the Business or the Assets is subject.

- (d) **Government Approvals.** Except as set forth in Section 2.01(d) of the Disclosure Schedule, no Governmental Authorization is required for the execution and delivery of this Agreement by Seller and the consummation by Seller of the transactions contemplated hereby, except (x) as may be necessary as a result of any facts or circumstances relating solely to Fiserv or Buyer or (y) where the failure to obtain such consents, authorizations or approvals or to make such filings or registrations would not prevent the consummation of the transactions contemplated hereby.
- (e) **Financial Information.** Seller has previously furnished Fiserv and Buyer with true and complete copies of (i) unaudited statements of financial position of the Business as of December 31, 2004 and March 31, 2005, certified by the President and the Chief Financial Officer of Seller, and (ii) the unaudited statements of contribution margin of the Business for the twelve-month period ending December 31, 2004 and the three-month period ending March 31, 2005 as set out in Section 2.01(e) of the Disclosure Schedule (collectively, the "**Business Financial Information**"). Such Business Financial Information has been prepared for internal management purposes and has been prepared from the accounting records of Emergis which accounting records were prepared in accordance with GAAP consistently applied, and presents fairly the financial information of the Business as of and for the respective periods then ended.
- (f) **Absence of Certain Changes or Events.** Since December 31, 2004, Seller with respect to the Business has not, except set forth in Section 2.01(f) of the Disclosure Schedule:
- (i) incurred any obligation or liability (fixed or contingent) except normal trade or business obligations incurred in the ordinary course of business and consistent with past practice;
 - (ii) discharged or satisfied any lien, security interest or encumbrance or paid any obligation or liability (fixed or contingent), other than in the ordinary course of business and consistent with past practice;
 - (iii) mortgaged, pledged or subjected to any lien, security interest or other encumbrance any of the Assets (other than Permitted Exceptions (as hereinafter defined)), other than in the ordinary course of business and consistent with past practice;
 - (iv) transferred, leased or otherwise disposed of any of its assets or properties or acquired any assets or properties, other than in any case in the ordinary course of business and consistent with past practice;
 - (v) cancelled or compromised any debt or claim other than in the ordinary course of business and consistent with past practice;
 - (vi) waived or released, under any contract, rights of Seller with respect to the Business having value to the Business, other than in any case in the ordinary course of business and consistent with past practice;

- (vii) transferred or granted any rights under any concessions, leases, licenses, agreements or intellectual property, other than in the ordinary course of business and consistent with past practice;
- (viii) other than in the ordinary course of business and consistent with past practice, made or granted any wage or salary increase applicable to any group or classification of employees generally, paid any bonuses, entered into any employment contract with any officer or employee or made any loan to, or entered into any transaction of any other nature with, any officer or employee of Seller employed in the Business;
- (ix) entered into any transaction, contract or commitment with respect to the Business, except those listed, or which pursuant to the terms hereof are not required to be listed, on the Disclosure Schedule, this Agreement and the transactions contemplated hereby, and those entered into in the ordinary course of business and consistent with past practice;
- (x) suffered any casualty loss or damage (whether or not such loss or damage shall have been covered by insurance) which affects in any material respect its ability to conduct its business;
- (xi) suffered any labor trouble or claim of wrongful discharge, discrimination or other unlawful labor practice or action;
- (xii) changed any accounting method or practice (including any change in depreciation or amortization policies or rates) of Seller with impact on the Business;
- (xiii) commenced or threatened to commence any lawsuit or proceeding against a third party;
- (xiv) received any written notice of any claim of ownership by a third party of Intellectual Property included in the Assets or of infringement by the Seller's use of the Assets of any third party's intellectual property rights;
- (xv) negotiated or agreed to do any of the things described in the preceding clauses (i) through (xiv) (other than negotiations with Fiserv, Buyer and their representatives regarding the transactions contemplated by this Agreement); or
- (xvi) suffered any Material Adverse Effect.

"Permitted Exceptions" shall mean (i) mechanic's, materialman's, warehouseman's and carrier's liens and purchase money security interests arising in the ordinary course of business; (ii) liens for Taxes not yet payable; (iii) liens for Taxes and other claims, the validity of which Seller on behalf of the Business is contesting in good faith; (iv) zoning, entitlement, building and other land use regulations; (v) covenants, conditions, restrictions, easements and other similar matters of record; (vi) liens for workers compensation, unemployment insurance

and other benefits incurred in the ordinary course of business; (vii) imperfections of title, liens, security interests, claims and other charges and encumbrances the existence of which would not have individually or in the aggregate an Adverse Effect.

"Adverse Effect" means any change in, or effect on, or series of related changes in, or related effects on, the Business or the Assets as currently conducted that would result in the incurrence of damages or liability of the sum of US\$50,000 or more. For greater clarity, the definition of Adverse Effect shall not be considered when determining the occurrence of a Material Adverse Effect.

(g) **Title to Properties; Absence of Liens and Encumbrances, etc.** Seller has good and marketable title to all of the Assets, free and clear of any liens, charges, pledges, security interests or other encumbrances (other than Permitted Exceptions), except as reflected in the Business Financial Information.

(h) **Intellectual Property.**

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

(A) **"Technology"** means any or all of the following: (I) works of authorship including computer programs, algorithms, routines, source code and executable code, whether embodied in software or otherwise, documentation, designs, files, records and data; (II) inventions (whether or not patentable), improvements and technology; (III) proprietary and confidential information, including technical data and customer and supplier lists, trade secrets, show how, know how and techniques; (IV) databases, data compilations and collections and technical data; (V) processes, tools, devices, methods, prototypes, schematics, net lists, test methodologies and hardware development tools; and all instantiations of the foregoing in any form and embodied in any media.

(B) **"Intellectual Property Rights"** means any or all of the following and all rights in, arising out of, or associated therewith: (I) all patents and utility models and applications therefor and all reissues, divisions, re-examinations, renewals, extensions, provisionals, continuations and continuations-in-part thereof, and equivalent or similar rights anywhere in the world in inventions and discoveries including without limitation invention disclosures (**"Patents"**); (II) all trade secrets and other rights in know-how and confidential or proprietary information (**"Trade Secrets"**); (III) all copyrights, copyrights registrations and applications therefor and all other rights corresponding thereto (**"Copyrights"**); (IV) all industrial designs and any registrations and applications therefor; (V) all rights in World Wide Web addresses and domain names and applications and registrations therefor, all trade names, trade

dress, logos, common law trademarks and service marks, trademark and service mark registrations and applications therefor and all goodwill associated therewith ("Trademarks"); and (VI) any similar, corresponding or equivalent rights to any of the foregoing.

(C) "Business Intellectual Property" means any Technology and Intellectual Property Rights included in the Assets and listed in Section 1.01(a)(iii) of the Disclosure Schedule.

(D) "Registered Intellectual Property Rights" means all: (I) Patents, including applications therefor; (II) registered Trademarks, applications to register Trademarks, including intent-to-use applications, or other registrations or applications related to Trademarks; (III) Copyrights registrations and applications to register Copyrights; and (IV) any other Technology that is the subject of an application, certificate, filing, registration or other document issued by, filed with, or recorded by, any state, government or other public legal authority at any time.

(ii) Business Products. Section 2.01(h)(ii) of the Disclosure Schedule contains a complete and accurate list (by name) of all products, software or service offerings of the Business (collectively, the "Business Products") that have been sold, distributed or otherwise disposed of in the three-year period preceding the date hereof or which the Business intends to sell, distribute or otherwise dispose of in the future, including any products, software or service offerings under development.

(iii) Registered Intellectual Property Rights. Section 2.01(h)(iii) of the Disclosure Schedule lists all Registered Intellectual Property Rights owned by, filed in the name of or applied for by Seller on behalf of the Business as of the date of this Agreement included in or related to the Assets (the "Business Registered Intellectual Property Rights") and lists any proceedings or actions before any court, tribunal (including the United States Patent and Trademark Office (the "PTO") or equivalent authority anywhere in the world) related to any of the Business Registered Intellectual Property Rights or Business Intellectual Property. All necessary documents and certificates in connection with such Business Registered Intellectual Property Rights have been filed with the PTO or the United States Copyright Office or equivalent authorities in foreign jurisdictions, as the case may be, for the purposes of maintaining the Business Registered Intellectual Property Rights. As of the Closing Date, except as disclosed in Section 2.01(h)(iii) of the Disclosure Schedule, there are no actions that must be taken by Seller in relation to the Assets within 120 days of the Closing Date in order to obtain, perfect, preserve, renew or maintain the Business Registered Intellectual Property Rights, including the payment of any registration, maintenance or renewal fees or

the filing of any responses to PTO office actions, documents, applications or certificates.

- (iv) **Licensed Business Intellectual Property.** Section 2.01(h)(iv) of the Disclosure Schedule lists all Business Intellectual Property licensed to Seller.
- (v) **Valid Assignment.** Except as set forth in Schedule 2.01(h)(iii) and (iv), in each case in which Seller on behalf of the Business has acquired any Business Registered Intellectual Property Rights from any person, Seller has obtained a valid and enforceable assignment sufficient to irrevocably transfer all rights in such Business Intellectual Property to the maximum extent provided for by, and in accordance with, applicable laws and regulations, Seller has recorded each such assignment of a Business Registered Intellectual Property Right assigned to the Seller with the PTO or the United States Copyright Office or equivalent authorities outside the United States.
- (vi) **No Invalidity, Etc.** Seller has no knowledge of any facts or circumstances that would render any Business Intellectual Property invalid or unenforceable. To Seller's knowledge, no person is infringing or misappropriating any Business Intellectual Property. Seller has not received notice from any person claiming that Seller's use of the Business Intellectual Property infringes or misappropriates any Intellectual Property Right of any person or constitutes unfair competition or trade practices under the laws of any jurisdiction (nor does Seller have knowledge of any basis therefor).
- (vii) **Confidentiality.** Seller has taken all steps that reasonably are required to protect Seller's rights in confidential information and Trade Secrets related to the Assets. Without limiting the foregoing, Seller on behalf of the Business has and enforces a policy requiring each employee, consultant and contractor to execute proprietary information, confidentiality, and assignment agreements, and except as set forth in Schedule 2.01(h)(vii), all current employees, consultants and contractors of Seller, on behalf of the Business have executed such an agreement. The Business has in place project management policies that require back-up procedures to be followed, including daily storage to a back-up server and at least weekly transmission to an off-site storage facility, that are reasonable in the circumstances. Policies and procedures are in place to assure that Seller maintains adequate possession and control of all Business Intellectual Property that may be being worked on by employees, consultants or contractors off-site.
- (viii) **Transferability.** All Business Intellectual Property will be fully transferable, alienable or licensable by Seller and/or Fiserv or Buyer without restriction and without payment of any kind to any third party, on

identical terms immediately following the Closing as those applicable to Seller prior to the Closing.

- (ix) **No Liens.** Each item of Business Intellectual Property is free and clear of any liens except for non-exclusive licenses granted to end-user customers in the ordinary course of business and the rights of any third parties in Business Intellectual Property licensed to Seller, as disclosed in Section 2.01(h)(iv) of the Disclosure Schedule.
- (x) **No Transfer of Rights.** Except as disclosed in Section 2.01(h)(x) of the Disclosure Schedule, Seller has not transferred ownership of, or granted any exclusive license of or right to use, or authorized the retention of any exclusive rights to use or joint ownership of, any Technology or Intellectual Property Right that is or was Business Intellectual Property, to any other person.
- (xi) **Exclusive Rights.** All Business Intellectual Property attributable to, used or useful in or otherwise reasonably necessary to, or for use primarily in connection with, the operation or conduct of the Business as presently conducted or currently contemplated to be conducted by Seller was written and created solely by either (A) employees of Seller assigned to the Business acting with the scope of their employment or (B) by third parties who have validly and irrevocably assigned all of their rights, including Intellectual Property Rights therein, to Seller, and to the knowledge of Seller, no person owns or has any rights to any of the Business Intellectual Property, except for the rights of third parties in Business Intellectual Property licensed to Seller as disclosed in Section 2.01(h)(iv) of the Disclosure Schedule.
- (xii) **All Necessary Rights.** Except as listed in Section 2.01(h)(xii) of the Disclosure Schedule, the Business Intellectual Property constitutes all the Technology, Intellectual Property Rights and Business Registered Intellectual Property Rights attributable to, used in or otherwise reasonably necessary to, or for use primarily in connection with, the operation or conduct of the Business as it currently is conducted on the date of this Agreement, and as it is currently planned or contemplated to be conducted by Seller, including the design, development, manufacture, use, import and sale of Business Products.
- (xiii) **No Infringement.** The use of the Assets by the Seller as they are currently used, or is presently proposed to be used, by Seller does not and will not when conducted by Fiserv or Buyer in substantially the same manner following the Closing, infringe or misappropriate any Intellectual Property Right of any former employee or consultant of the Business or, to the knowledge of Seller, any other person, violate any right of any former employee or consultant of the Business or, to the knowledge of Seller, any other person (including any right to privacy or publicity).

- (xiv) **No Proceedings.** No Business Intellectual Property or service of the Business is subject to any proceeding or outstanding decree, order, judgment or settlement agreement or stipulation that restricts in any manner the use, transfer or licensing thereof by Seller or may affect the validity, use or enforceability of such Business Intellectual Property.
- (xv) **IP Contracts.** Other than "shrink-wrap" and similar publicly available commercial binary code end-user licenses having an initial purchase price of US\$5,000 or less each, Section 2.01(h)(xv) of the Disclosure Schedule lists all contracts, licenses and agreements to which Seller on behalf of the Business is a party with respect to any Technology or Intellectual Property Rights included in the Assets (the "**IP Contracts**"). Seller is not in breach of nor has Seller failed to perform under any of the IP Contracts and, to Seller's knowledge: (A) no other party to any such IP Contract is in breach thereof or has failed to perform thereunder, and (B) there are no disputes regarding the scope of or performance under such IP Contracts, including with respect to any payments to be made or received by Seller thereunder.
- (xvi) **No Grants, Assignments.** Neither this Agreement nor the transactions contemplated by this Agreement, including the assignment of the Contracts to Fiserv or Buyer, as provided hereunder, will result in (A) either Seller's, Fiserv's or Buyer's granting to any person any right or license to any Technology or Intellectual Property Right owned by, or licensed to, any of them; (B) either Seller's, Fiserv's or Buyer's being bound by, or subject to, any non-compete or other restriction on the operation or scope of their respective businesses; or (C) either Seller's, Fiserv's or Buyer's being obligated to pay any royalties or other amounts to any person in excess of those payable by Seller, Fiserv or Buyer, respectively.

(i) **Contracts.**

- (i) True and complete copies of all written Contracts have been provided and made available to Fiserv, Buyer or its counsel. Except as set forth in Section 2.01(i)(i) of the Disclosure Schedule, Seller has not been notified in writing of any claim that any Contract is not valid and enforceable in accordance with its terms for the periods state therein, or that there is under any such Contract any existing default or event of default or event which with notice or lapse of time or both would constitute such a default, except for any such claim or default which would not have individually or when taken together with all such other claims or defaults referred to in this Section 2.01(i) an Adverse Effect.
- (ii) Section 2.01(ii) of the Disclosure Schedule sets forth a list of the Business' top 15 clients according to revenue for the year ended December 31, 2004.
- (iii) Seller neither has nor is transferring under this Agreement or the transactions contemplated hereby any outstanding obligation to provide

any services or provide any rights or assets to Federal Home Loan Mortgage Corporation ("**Freddie Mac**") under any prior or current agreement between Seller and, among others, Freddie Mac, except as provided in that certain Distribution Agreement entered into on October 29, 2003 between Seller and Freddie Mac, among others, and that certain Asset Purchase Agreement between Seller and Freddie Mac, among others, entered into on September 19, 2002, provided however, that with regard to the Asset Purchase Agreement referenced in this subsection (iii), the rights transferred to Buyer shall only be those rights set forth in Section 1.01(vii) of the Disclosure Schedule.

- (j) **Litigation.** There are no actions, suits or proceedings with respect to the Assets pending against Seller of which Seller is aware at law or in equity, or before or by any federal, state, municipal, foreign or other governmental or regulatory department, commission, board, bureau, agency or instrumentality (individually, a "**Governmental Entity**"), nor, to the knowledge of Seller, has Seller received any notice or threat of any such actions, suits or proceedings with respect to the Business. There is no investigation pending or, to the knowledge of Seller, threatened against Seller, its properties or any of its officers or directors by or before a Governmental Entity with respect to the Assets. Section 2.01(i) of the Disclosure Schedule sets forth, with respect to any such pending or threatened action, suit, proceeding or investigation, the forum, the parties thereto, the subject matter thereof and the amount of damages claimed or other remedy requested. No Governmental Entity has at any time challenged or questioned the legal right of the Seller to offer or sell any of its products or services in the present manner or style thereof.
- (k) **Labor Controversies.** Except as would not reasonably be expected to have in the aggregate an Adverse Effect:
 - (i) Seller is not aware of any material employment dispute between Seller and any employees assigned to the Business or any unresolved labor union grievances or unfair labor practice or labor arbitration proceedings pending or, to the knowledge of Seller, threatened, related to the Current Employees and, to the knowledge of Seller, there are not and during the last two years prior to the date hereof there have not been any formal or informal organizing efforts by a labor organization and/or group of Current Employees and Seller is not presently, nor has it been in the past, a party to, or bound by, any collective bargaining agreement or union contract with respect to such employees and no collective bargaining agreement is being negotiated by Seller with respect to such employees;
 - (ii) Seller with respect to the Current Employees is in compliance in all material respects, and has not received notice of, nor, to the knowledge of Seller, has there been threatened any claim that Seller has not complied in all material respects, with all laws relating to the employment of labor, including provisions thereof relating to wages, hours, collective bargaining, the payment of social security and similar Taxes, equal

employment opportunity, employment discrimination and employment safety with respect to the Business, nor has Seller received notice of or, to the knowledge of Seller, has there been threatened any claim that it is liable for any arrears of wages or any Taxes or penalties for failure to comply with any of the foregoing; and Seller in respect of the Current Employees is 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 routine payments to be made in the ordinary course of business and consistent with past practice) and there are no pending, or to the knowledge of Seller threatened or reasonably anticipated claims or actions against Seller with respect to the Business under any worker's compensation policy or long-term disability policy; and

- (iii) Seller does not have the obligation to, maintain, establish, sponsor, participate in or contribute to any international or foreign employee benefit plan with respect to the Business other than benefit plans of Emergis.

- (l) **Use of Real Property.** Seller has not received any notice of violation of any applicable zoning or building regulation, ordinance or other law, order, regulation or requirement with respect to the use of any real property pursuant to any lease set out in Schedule 1.01(a)(vii) of the Disclosure Schedule (the "**Leased Property**") (representations and warranties with respect to environmental matters being set forth in Section 2.01(m) hereof) or any written notice of default under any lease, contract, commitment, license or permit, relating to the use and operation of the Leased Property, in either case which could reasonably be expected to have in the aggregate an Adverse Effect and, to the knowledge of Seller, there is no such violation or default which would have in the aggregate an Adverse Effect. Seller has not received any written notice that the Leased Property owned or covered by a lease set forth in Section 1.01(a)(vii) of the Disclosure Schedule hereto does not conform in all material respects with all applicable ordinances, codes, regulations and requirements, and Seller has not received any written notice that any law or regulation presently in effect or condition precludes or restricts continuation of the present use of such properties by the Business.

- (m) **Environmental Matters.**

- (i) **Hazardous Materials.** Seller has not with respect to the Leased Property: (A) operated any underground storage tanks at any property that Seller has at any time owned, operated, occupied or leased; or (B) illegally released in violation of applicable law any material 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 or the environment, including PCBs, asbestos, petroleum, 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. In connection with the Business, no Hazardous Materials have been released in violation of any applicable law, as a result of the actions of Seller, or, to Seller's knowledge, as a result of any actions of any third party or otherwise, in, on or under any property, including the land and the improvements, ground water and surface water thereof, that Seller has at any time owned, operated, occupied or leased.

- (ii) **Hazardous Materials Activities.** Seller has not transported, stored, used, manufactured, disposed of, released or exposed its employees assigned to the Business or others to Hazardous Materials in violation of any law in effect on or before the Closing Date, nor has Seller on behalf of the Business disposed of, transported, sold or manufactured any product containing a Hazardous Material (any or all of the foregoing being collectively referred to as "**Hazardous Materials Activities**") in violation of any rule, regulation, treaty or statute promulgated by any Governmental Entity in effect prior to or as of the date hereof to prohibit, regulate or control Hazardous Materials or any Hazardous Material Activity.
- (iii) **Permits.** Seller currently holds all environmental approvals, permits, licenses, clearances and consents (the "**Environmental Permits**") necessary for the conduct of Seller's Hazardous Materials Activities and other businesses of Seller as such activities and businesses are currently being conducted.
- (iv) **Environmental Liabilities.** No action, proceeding, revocation proceeding, amendment procedure, writ, injunction or claim is pending, or, to Seller's knowledge, threatened concerning any Environmental Permit, Hazardous Material or any Hazardous Materials Activity of Seller with respect to the Business. Seller is not aware of any fact or circumstance that could involve the Business in any environmental litigation or impose upon the Business any environmental liability.

(n) **Compliance with Law; Restrictions on Business Activities.**

- (i) **No Defaults.** Seller is not in default with respect to any order of any Governmental Authority or arbitration board or tribunal to which it is a party with respect to the Business or, to the knowledge of Seller, to which Seller is subject and which applies to the Assets, and, to the knowledge of Seller, Seller has not been notified in writing that it is in violation of any laws, ordinances, governmental rules or regulations to which it is subject with respect to the Assets or that it has failed to obtain any licenses,

permits, franchises or other governmental authorizations necessary to the ownership and use of the Assets.

- (ii) **Immigration Matters.** Seller has on file a valid Form I-9 for each employee assigned to the Business hired by Seller on or after November 7, 1986 and continuously employed after November 6, 1986 or the applicable date of hire. To the knowledge of Seller, all employees of Seller assigned to the Business are (A) United States citizens, or lawful permanent residents of the United States, (B) aliens whose right to work in the United States is unrestricted, (C) aliens who have valid, unexpired work authorizations issued by the Attorney General of the United States (Immigration and Naturalization Service) or (D) aliens who have been continually employed by Seller since November 6, 1986 or the applicable date of hire. Seller has not been the subject of an immigration compliance or employment visit from, nor has Seller been assessed any fine or penalty by, or been the subject of any order or directive of, the United States Department of Labor or the Attorney General of the United States (Immigration and Naturalization Service) with respect to employees assigned to the Business.
- (iii) **Restrictions on Business Activities.** There is no judgment, injunction, order or decree to which Seller is a party with respect to the Assets which restricts the conduct of the Business by Seller. None of the Contracts restrict the conduct of the Business by Seller.
- (iv) **Employees.** To the knowledge of Seller, no Current Employee (A) is in material violation of any term of its employment contract or in violation of any patent disclosure agreement or non-competition agreement or any restrictive covenant to a former employer relating to the right of any such employee to be employed by Seller because of the nature of the Business or presently proposed to be conducted by Seller or to the use of trade secrets or proprietary information of others with the Seller to which it is a party or (B) has given notice to Seller that such employee intends to terminate his or her employment with Seller.
- (v) **Governmental Authorization.** Seller possesses all material Governmental Authorizations (A) pursuant to which Seller currently operates or holds any interest in any of the Assets (B) which is required for the operation of the Assets or the holding of any such interest, other than such consents, licenses, permits, grants or authorizations the failure to obtain which would not, either individually or in the aggregate, have an Adverse Effect ("**Business Authorizations**"), which Business Authorizations are in full force and effect and constitute all Business Authorizations required to permit Seller to operate or conduct the Business or hold any interest in the Assets.

(o) **Employee Benefits.**

- (i) **Employee Plans.** Section 2.01(o)(i) of the Disclosure Schedule sets forth a list identifying each “employee pension benefit plan” as defined in Section 3(2) of the Employee Retirement Income Security Act of 1974, as amended (“**ERISA**”), including any “multiemployer plan”, as defined in Section 3(37) of ERISA, (the “**Pension Plans**”) and a list identifying each “employee welfare benefit plan”, as defined in Section 3(1) of ERISA, (the “**Welfare Plans**”) that, in either case, are maintained, administered or contributed to by Seller with respect to employees assigned to the Business, or which cover any employee or former employee of Seller assigned to the Business. Collectively, the Pension Plans and Welfare Plans are hereinafter referred to as the “**Employee Plans**”. Except as otherwise identified in Section 2.01(o)(i) of the Disclosure Schedule, (A) no Employee Plan is maintained, administered or contributed to by any entity other than Seller, and (B) no Employee Plan is maintained under any trust arrangement which covers any employee benefit arrangement which is not an Employee Plan.
- (ii) **Delivery of Copies of Plans, Documents, etc.** Seller has delivered or has caused to be delivered to Fiserv and Buyer true and complete copies of (A) the Employee Plans (including related trust agreements, custodial agreements, insurance contracts, investment contracts and other funding arrangements, if any, and adoption agreements, if any), (B) any amendments to Employee Plans, (C) general written interpretations of the Employee Plans provided to all employees, (D) material general employee communications by the plan administrator of any Employee Plan (including, but not limited to, summary plan descriptions and summaries of material modifications, as defined under ERISA) provided within the last three months, and (E) the 2004 annual reports (being the only reports in Emergis’ possession) (e.g., the complete Form 5500 series) prepared in connection with each Employee Plan (if such report was required), including all attachments (including the audited financial statements, if any) and (F) the three most recent actuarial valuation reports prepared in connection with each Employee Plan (if any such report was required).
- (iii) **No Change in Benefits.** There has been no amendment to, written interpretation or announcement (whether or not written) by Seller relating to, or change in employee participation or coverage under any Employee Plan, that would increase materially the expense of maintaining such Employee Plan above the level of expense incurred in respect of such Employee Plan for the most recent plan year with respect to Employee Plans. There has been no amendment to, written interpretation or announcement (whether or not written) by Seller or Emergis relating to, or change in employee participation or coverage under the Emergis employee bonus plan of 2005 attached hereto as Exhibit E (the “**Emergis Employee Bonus Plan**”). The execution of this Agreement and the consummation of the transactions contemplated hereby do not and will not

constitute an event under any Employee Plan, which either alone or upon the occurrence of a subsequent event will or may result in any payment, acceleration, vesting or increase in benefits to any employee, former employee or director of Seller assigned to the Business.

- (iv) **Compliance.** Each Employee Plan has been maintained in compliance with its terms and the requirements prescribed by any and all statutes, orders, rules and regulations, including but not limited to, ERISA and the Code, which are applicable to such Employee Plan.
- (v) **Qualification, etc.** Each Pension Plan is “qualified” within the meaning of Section 401(a) of the Code, and has been qualified during the period from the date of its adoption to the date of this Agreement, and each trust created thereunder is tax-exempt under Section 501(a) of the Code. Seller has delivered or caused to be delivered to Fiserv and Buyer the latest determination letters of the Internal Revenue Service relating to each Pension Plan. Such determination letters have not been revoked. Furthermore, there are no pending proceedings or, to the knowledge of Seller, threatened proceedings in which the “qualified” status of any Pension Plan is at issue and in which revocation of the determination letter has been threatened. Each such Pension Plan has not been amended or operated, since the receipt of the most recent determination letter, in a manner that would adversely affect the “qualified” status of the Plan. No distributions have been made from any of the Pension Plans that would violate in any respect the restrictions under Treasury Regulation Section 1.401(a)(4)-5(b), and none will have been made by the Closing Date.
- (vi) **No Claims.** There are no pending or, to the knowledge of Seller, threatened (A) claims, suits or other proceedings by any Current Employees or the beneficiaries, spouses or representatives of any of them, other than ordinary and usual claims for benefits by participants or beneficiaries, or (B) suits, investigations or other proceedings by any federal, state, local or other governmental agency or authority, of or against any Employee Plan, the assets held thereunder, the trustee of any such assets or Seller relating to any of the Employee Plans. If any of the actions described in this subsection are initiated prior to the Closing Date, Seller shall notify Fiserv of such action prior to the Closing Date.
- (vii) **No Prohibited Transactions.** Seller has not engaged (A) in any transaction or acted or failed to act in a manner that violates the fiduciary requirements of Section 404 of ERISA, or (B) in any “prohibited transaction” within the meaning of Section 406(a) or 406(b) of ERISA, or of Section 4975(c) of the Code, with respect to any Employee Plans, and will not so engage, act or fail to act prior to the Closing Date. Furthermore, to the knowledge of Seller, no other “party in interest”, as defined in Section 3(14) of ERISA, or “disqualified person”, as defined in Section 4975(e)(2) of the Code, has engaged in any such “prohibited transaction”.

- (viii) **No Liability.** No liability has been incurred by Seller or by a trade or business, whether or not incorporated, which is deemed to be under common control or affiliated with Seller within the meaning of Section 4001 of ERISA or Section 414(b), (c), (m) or (o) of the Code (an "**ERISA Affiliate**") for any Tax, penalty or other liability with respect to any Employee Plan and, to the knowledge of Seller, such Plans do not expect to incur any such liability prior to the Closing Date.
- (ix) **Required Contributions.** Seller has made all required contributions under each Pension Plan on a timely basis or, if not yet due, adequate accruals therefore have been provided for in the financial statements. No Pension Plan has incurred any "accumulated funding deficiency" within the meaning of Section 302 of ERISA or Section 412 of the Code and no Pension Plan has applied for or received a waiver of the maximum funding standards imposed by Section 412 of the Code.
- (x) **PBGC.** Except for required premium payments, no liability to the Pension Benefit Guaranty Corporation (the "**PBGC**") has been incurred by Seller with respect to any Pension Plan that has not been satisfied in full, and no event has occurred and there exists no condition or set of circumstances that could result in the imposition of any such liability. Seller has complied, or will comply, with all requirements for premium payments, including any interest and penalty charges for late payment, due to PBGC on or before the Closing Date with respect to each Pension Plan for which any premiums are required. No proceedings to terminate, pursuant to Section 4042 of ERISA, have been instituted or, to the knowledge of Seller, are threatened by the PBGC with respect to any Pension Plan (or any Pension Plan maintained by an ERISA Affiliate). There has been no termination or partial termination, as defined in Section 411(d) of the Code and the regulations thereunder, of any Pension Plan. No reportable event, within the meaning of Section 4043 of ERISA, has occurred with respect to any Pension Plan.
- (xi) **Benefit Obligations.** As of the date of this Agreement, with respect to each Pension Plan which is covered by Title IV of ERISA and which is not a multiemployer plan, the current value of the accumulated benefit obligations (based on the actuarial assumptions that would be utilized upon termination of such Pension Plan) do not exceed the current fair value of the assets of such Pension Plan. There has been (A) no material adverse change in the financial condition of any such Pension Plan, (B) no change in actuarial assumptions with respect to such Pension Plan as a result of plan amendment, written interpretations, announcements, change in applicable law or otherwise which, individually or in the aggregate, would result in the value of any such Pension Plan's accrued benefits exceeding the current value of such Pension Plan's assets.
- (xii) **No Multiemployer Plan.** Neither Seller nor any ERISA Affiliate has ever maintained, adopted or established, contributed or been required to

contribute to, or otherwise participated or been required to participate in, nor will they become obligated to do so through the Closing Date, any "multiemployer plan" (as defined in Section 3(37) of ERISA) with respect to employees of Seller assigned to the Business. No amount is due from, or owed by, Seller or any ERISA Affiliate on account of a "multiemployer plan" (as defined in Section 3(37) of ERISA) or on account of any withdrawal therefrom.

- (xiii) **No Post-Retirement Benefits.** No Employee Plan provides benefits, including any severance or other post-employment benefit, salary continuation, termination, death, disability or health or medical benefits (whether or not insured), life insurance or similar benefit with respect to current or former employees (or their spouses or dependents) of Seller assigned to the Business beyond their retirement or other termination of service other than (A) coverage mandated by applicable law, (B) death, disability or retirement benefits under any Pension Plan, (C) deferred compensation benefits accrued as liabilities on the Business Financial Information, (D) benefits, the full cost of which is borne by the current or former employee (or his or her beneficiary) or (E) as expressly contemplated by this Agreement.
- (xiv) **COBRA.** Seller has complied with, and satisfied, the requirements of Part 6 of Subtitle B of Title I of ERISA and Section 4980(B) of the Code, and all regulations thereunder ("**COBRA**") with respect to each Employee Plan that is subject to the requirements of COBRA. Each Employee Plan that is a group health plan, within the meaning of Section 9805(a) of the Code, has complied with and satisfied the applicable requirements of Sections 9801 and 9802 of the Code.
- (xv) **HIPAA Administrative Simplification.** Each Employee Plan that is a health plan within the meaning of Section 1171(5) of Part C, Title XI of the Social Security Act, has complied with and satisfied the applicable requirements of Part C, Title XI of the Social Security Act and the regulations applicable thereto.
- (p) **Insurance.** Section 2.01(p) of the Disclosure Schedule lists the amount and kinds of insurance as to which Seller has insurance policies, contracts or fidelity bonds relating to the Assets or the Business. All such insurance policies, contracts and bonds are in full force and effect.
- (q) **Taxes.**
 - (i) **Compliance Generally.** Seller and Technologies (A) have duly and timely filed or caused to be filed with the appropriate authorities all material Tax Returns of, related to or including the Business, including its income, assets, payroll or operations, and properly included the items related thereto in such Tax Returns, which Tax Returns are true, correct and complete in all material respects, and (B) has duly and timely paid or caused to be paid to the appropriate authorities all material Taxes that are

due and payable on or before the Closing Date, and has properly accrued on its books and records in accordance with GAAP any Tax which was not then due. Seller and Technologies have complied with all applicable laws, rules and regulations relating to the reporting, payment, collection, remittance and withholding of material Taxes and has duly and timely collected or withheld, paid over and reported to the appropriate authorities all material amounts required to be so collected or withheld, paid over and reported under all applicable laws. Section 2.01(q)(i) of the Disclosure Schedule sets forth a list of each jurisdiction where Seller and Technologies file a Tax Return relating to the Business and the type of Tax Returns filed during the past five years. Seller and Technologies have made available for review by Fiserv and Buyer true, correct and complete copies of all Tax Returns filed by or with respect to Seller and Technologies relating to the Business during the past five years and of all correspondence to or from a Taxing authority relating thereto and with respect to any Proceeding (as hereinafter defined).

- (ii) **Disregarded Entity.** Seller is disregarded as an entity separate from Technologies for federal Tax and all applicable state and local income and franchise Tax purposes to the extent such state and local taxing jurisdictions follow the federal rules with respect thereto.
- (iii) **No Audit.** Except as set forth in Section 2.01(q)(iii) of the Disclosure Schedule, there is no pending audit, examination, investigation, dispute, proceeding or claim relating to any Tax on Seller and Technologies relating to the Business (collectively, a "**Proceeding**").
- (iv) **Taxes Defined.** For purposes of this Agreement, "**Taxes**" means all federal, state, provincial, local and foreign taxes, charges, fees, levies, deficiencies or other assessments of whatever kind or nature (including all net income, gross income, gross receipts, sales, goods and services, use, ad valorem, transfer, franchise, profits, license, withholding, payroll, employment, unemployment, employment insurance, Canada Pension Plan and provincial pension plan contributions and other deductions at source, excise, estimated, severance, stamp, occupation, real property, personal property, intangible property, occupancy, recording, minimum, environmental, windfall profits or other taxes, customs, duties, fees, assessments or charges of any kind whatsoever), including any liability therefor as a transferee (including under Section 6901 of the Code), as a result of Treasury Regulation Section 1.1502-6, or in each case, any similar provision under applicable law, or as a result of any Tax sharing or similar agreement, together with any interest, penalties, additions to tax or additional amounts imposed by any Taxing authority (domestic or foreign).
- (v) **Tax Return Defined.** As used herein, "**Tax Return**" includes any return, declaration, report, claim for refund or credit, information return or statement, and any amendment to any of the foregoing, including any

consolidated, combined or unitary return or other document (including any related or supporting information or schedule), filed or required to be filed with any federal, state, provincial, local or foreign governmental entity or agency in connection with the determination, assessment, collection or payment of Taxes or the administration of any laws, regulations or administrative requirements relating to Taxes or ERISA.

- (vi) Seller is not a registrant for the purposes of the Canadian federal Goods and Services Tax.
- (r) **Sufficiency of Assets.** The Assets and the services to be provided under the Transition Services Agreement by Seller Affiliates (which services can be made available by using software or intellectual property that is not specific to the Business and for which an equivalent is available on the commercial market) and the Excluded Assets constitute all of the assets, contracts, agreements and properties of Seller either attributable to or used primarily in connection with, or otherwise reasonably necessary for, the operation or conduct of the Business by the Seller on the Closing Date (except, for greater clarity, for the assets listed in Section 1.01(b) (x) of the Disclosure Schedule which Buyer is not purchasing and for which Buyer will provide replacement at its own cost). It is understood that Seller is not knowledgeable of the available commercial assets and services used by Buyer or Fiserv in the operation of its business and Seller is not making any representation as to the available commercial assets and services that Buyer or Fiserv will have to acquire or develop in order to perform the services referred to in the Transition Services Agreement at the expiry of its term.
- (s) **Brokers.** All negotiations relative to this Agreement and the transactions contemplated hereby have been carried out by Seller directly with Fiserv and Buyer, without the intervention of any other person on behalf of Seller in such manner as to give rise to any valid claim by any other person against Seller for a finder's fee, brokerage commission or similar payment.
- (t) **Representations.** None of the representations or warranties made by Seller (as modified by the Disclosure Schedule), nor any statement made in the Disclosure Schedule or certificate furnished by Seller pursuant to this Agreement contains any untrue statement of a material fact.

SECTION 2.02 Representations and Warranties of Fiserv and Buyer.

Fiserv and Buyer each represent and warrant to, and agree with, Seller, Technologies and Emergis as follows:

- (a) **Organization and Qualification, etc.** Each of Fiserv and Buyer are corporations duly organized, validly existing and in good standing under the laws of the State of Wisconsin and Delaware, respectively, and each has corporate power and authority to own its properties and assets and to carry on its business as it is now being conducted. Each of Fiserv and Buyer is duly qualified to do business and is in good standing in each jurisdiction where the failure to be so qualified would have a Material Adverse Effect.

- (b) **Authority Relative to Agreement.** Each of Fiserv and Buyer has the corporate power and authority to execute and deliver this Agreement and to consummate the transactions contemplated on its part hereby. The execution and delivery by Fiserv and Buyer of this Agreement and the consummation by each of them of the transactions contemplated on its part hereby have been duly authorized by their respective Board of Directors. No other corporate proceedings on the part of Fiserv or Buyer are necessary to authorize the execution and delivery of this Agreement by Fiserv or Buyer or the consummation by Fiserv or Buyer of the transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by Fiserv and Buyer, and, assuming the due authorization, execution and delivery at the Closing Date of this Agreement by Seller, are their valid and binding agreements, enforceable against Fiserv and Buyer, as applicable, in accordance with its terms, except as such enforcement is subject to the effect of (i) any applicable bankruptcy, insolvency, reorganization or similar laws relating to or affecting creditors' rights generally and (ii) general principles of equity, including concepts of materiality, reasonableness, good faith and fair dealing and other similar doctrines affecting the enforceability of agreements generally (regardless of whether considered in a proceeding in equity or at law).
- (c) **Non-Contravention.** The execution and delivery of this Agreement by Fiserv and Buyer do not and the consummation by Fiserv and Buyer of the transactions contemplated hereby and thereby will not (i) violate any provision of the Articles of Incorporation or By-laws of Fiserv or Buyer, as the case may be, or (ii) violate, or result, with the giving of notice or the lapse of time or both, in a violation of, any provision of, or result in the acceleration of or entitle any party to accelerate (whether after the giving of notice or lapse of time or both) any obligation under, or result in the creation or imposition of any material lien, charge, pledge, security interest or other encumbrance upon any of the property of Fiserv or Buyer pursuant to any provision of, any mortgage or lien or material lease, agreement, license or instrument or any order, arbitration award, judgment or decree to which Fiserv or Buyer is a party or by which any of their respective assets is bound and do not and will not violate or conflict with any other material restriction of any kind or character to which Fiserv or Buyer is subject or by which any of its assets may be bound, and the same does not and will not constitute an event permitting termination of any such mortgage or lien or material lease, agreement, license or instrument to which Fiserv or Buyer is a party or (iii) violate in any material respect any law, ordinance or regulation to which Fiserv or Buyer is subject, except, in each case or cases, for any such violation, acceleration, creation, imposition, conflict or termination which would not prevent the consummation of the transactions contemplated hereby by Fiserv or Buyer.
- (d) **Government Approvals.** No consent, authorization, order or approval of, or filing or registration with, any governmental commission, board or other regulatory body is required for or in connection with the execution and delivery of this Agreement by Fiserv and Buyer and the consummation by Fiserv and Buyer of the transactions contemplated hereby and thereby, except (x) as may be necessary as a result of any facts or circumstances relating solely to Seller or (y) where the failure to obtain such consents, authorizations or approvals or to make

such filings or registrations would not prevent the consummation of the transactions contemplated hereby.

- (e) **Brokers.** All negotiations relative to this Agreement and the transactions contemplated hereby have been carried out by Fiserv and Buyer directly with Seller, without the intervention of any person on behalf of Fiserv or Buyer in such manner as to give rise to any valid claim by any person against Fiserv or Buyer for a finder's fee, brokerage commission or similar payment.

ARTICLE 3 – ADDITIONAL COVENANTS AND AGREEMENTS

SECTION 3.01 Conduct of Business. During the period from the date hereof to the Closing Date, except as otherwise contemplated by this Agreement, Seller shall conduct the Business according to its ordinary and usual course of business and use its commercially reasonable efforts to preserve substantially intact the Business and Assets, keep available the services of Seller's employees assigned to the Business and maintain its present relationships with licensors, suppliers, distributors, customers and others having significant business relationships with it. Seller shall cause representatives of the Business to confer with representatives of Fiserv and Buyer to keep them informed with respect to the general status of the on-going operations of the Business.

SECTION 3.02 Access to Information by Fiserv and Buyer. Fiserv and Buyer may prior to the Closing Date have reasonable access to the Business and Assets and information concerning its financial and legal condition as Fiserv and Buyer deem reasonably necessary or advisable in connection with the consummation of the transactions contemplated hereby, provided that such access shall be upon reasonable notice addressed to Marc Filion during normal business hours and shall not interfere with normal operations of the Business and shall be in compliance with Seller's policies and procedures. Seller agrees to cause the Business to permit Fiserv and Buyer and their authorized representatives, including Deloitte & Touche LLP, to have or cause them to be permitted to have, after the date hereof and until the Closing Date, access to the premises, books and records of the Business during normal business hours upon reasonable request, and Seller will cause the employees of Seller assigned to the Business to furnish Fiserv and Buyer with such financial and operating data and other information, in all cases that is readily available, with respect to the Business and Assets as Fiserv and Buyer shall from time to time reasonably request, provided however that no request for such access, data or information shall be addressed to any person other than Marc Filion. Without limiting the foregoing, between the date of this Agreement and the Closing Date, Seller shall permit Fiserv's and Buyer's representatives to meet with the Controller of Seller and officers of Seller responsible for the Business Financial Information, the internal controls of Seller and the disclosure controls and procedures of Seller to discuss such matters as Fiserv and Buyer may deem reasonably necessary or appropriate for Fiserv and Buyer to satisfy their obligations under Sections 302 and 906 of the Sarbanes-Oxley Act of 2002 and any rules and regulations relating thereto.

SECTION 3.03 Confidentiality. Seller covenants and agrees that, for a period of four years following the Closing Date, it will hold all information concerning the Business, and all information concerning Fiserv and Buyer received by Seller

from Fiserv or Buyer (other than information which (i) becomes generally available to the public, (ii) was available to Seller on a non-confidential basis prior to its disclosure by Fiserv or Buyer, as the case may be, or (iii) becomes available to Seller or, prior to the Closing Date, the Business, on a non-confidential basis from a source other than Fiserv or Buyer that is not prohibited from disclosing such information to such persons by a contractual, legal or fiduciary obligation) on a confidential basis, not use themselves or voluntarily disclose (other than pursuant to legal process after an opportunity to restrict or otherwise limit disclosure) to others any such information, upon request promptly return every document furnished by Fiserv or Buyer, as the case may be, in connection herewith and any copies thereof it may have made and to destroy any summaries, compilations or similar documents it may have made or derived from such material and have its representatives promptly return such documents and copies and destroy such summaries, compilations or similar documents (other than copies reasonably necessary for financial, accounting or tax purposes, and one copy for archival purposes until the later of (i) the expiration of the period defined in Section 5.01 hereof or (ii) settlement or final determination of a claim under this Agreement). Seller further covenants and agrees that it will keep confidential and not use trade secrets of the Business, the Assets, Fiserv or Buyer.

SECTION 3.04 Consents and Authorizations. As soon as practicable, each of the parties hereto will commence to take all commercially reasonable actions to obtain all authorizations, consents, orders and approvals of all third parties and of all federal, state and local regulatory bodies and officials which may be or become necessary for its execution and delivery of, and the performance of its obligations pursuant to, this Agreement and will cooperate fully with the other parties in promptly seeking to obtain all such authorizations, consents, orders and approvals.

SECTION 3.05 Non-Assignable Licenses, Leases and Contracts. Seller shall use its commercially reasonable efforts to obtain and deliver to Fiserv or Buyer, as the case may be, at or prior to the Closing Date such consents or waivers as are required in order that any contract listed in Section 1.01(a)(vii) of the Disclosure Schedule which would be breached or violated, or would give any other party the right to cancel the same, as a result of the consummation of the transactions contemplated hereby, shall not be so breached or violated or result in such right of cancellation. Seller shall use its commercially reasonable efforts to obtain and deliver to Fiserv or Buyer, as the case may be, at or prior to the Closing Date such consents or waivers as shall be reasonably requested by Fiserv or Buyer, as the case may be, for any contracts not required to be listed on the Disclosure Schedule which, as a result of the consummation of the transactions contemplated hereby, would be breached or violated or would give any other party the right to cancel the same, in order that such contracts shall not be so breached or violated or result in such right of cancellation.

SECTION 3.08 Taxes.

- (a) Seller and Technologies will duly and timely file all Tax Returns required to be filed with respect to the Business for all periods ending on or prior to the Closing Date, duly and timely pay all Taxes required to be paid on or prior to the Closing Date and accrue on Seller's and Technologies' books and records in accordance with GAAP any Tax of or relating to the Business, its income, assets, payroll or operations which is not then due. Such Tax Returns shall be true, correct and complete in all material respects, shall be prepared on a basis consistent with prior Tax Returns of Seller and Technologies with respect to the Business. Seller and Technologies shall duly and timely withhold or collect, pay over and report to the appropriate authority any Taxes required to be withheld or collected by Seller and Technologies with respect to the Business on or before the Closing Date under all applicable laws.
- (b) Buyer and Seller agree to use commercially reasonable efforts in good faith to minimize or eliminate any Taxes payable under the Excise Tax Act of Canada (the "Excise Act") with respect to the Closing by, among other things, making such elections and taking such actions as may be provided for under the Excise Act, including without limitation, preparing a joint election in a timely manner under Section 167 of the Excise Act, and taking such other actions as may be reasonably requested by the Buyer in connection with the Closing.

SECTION 3.09 Accounts.

- (a) **Accounts Receivable.** For the period that is four (4) calendar months following the Closing, Buyer shall collect and pay to Seller, within thirty (30) days following the end of each calendar month, all amounts received during that calendar month that were accrued by Seller prior to the Closing which are listed on Section 3.09(a) of the Disclosure Schedule. Unless otherwise specified by a third party, all amounts received by Buyer shall be applied to the oldest invoice submitted by Seller to the third party. For the period that begins after the fourth calendar month following the Closing, Buyer shall collect amounts received from third parties that were accrued by Seller prior to Closing which are listed in Section 3.09(a) of the Disclosure Schedule, and pay to Seller, within thirty (30) days following the end of each calendar month, one-half of the amounts received from third parties during each such calendar month. Seller, Technologies and Emergis shall have no right to collect or attempt to collect any amounts due from any third party in connection with the Assets whether the amounts were accrued prior to the Closing or otherwise. Notwithstanding the foregoing, Buyer acknowledges that any accounts receivable due by Buyer to Seller and accrued by Seller prior to Closing shall be paid by Buyer to Seller in full in accordance with their terms.
- (b) **Accounts Payable.** Following the Closing, Seller shall be liable for all amounts payable that Seller accrued or should have accrued in accordance with GAAP without regard to materiality prior to the Closing. Buyer shall promptly pay such accounts payable as they become due in the ordinary course of business and offset such amount against any amount due and payable under this Agreement or otherwise pursuant to the transactions contemplated by this Agreement, including, without limitation, the Transition Services Agreement.

ARTICLE 4 – CONDITIONS PRECEDENT

SECTION 4.01 **Conditions Precedent to the Obligations of Fiserv and Buyer.**

The obligations of Fiserv and Buyer to consummate the transactions contemplated by this Agreement are subject to the satisfaction or waiver by Fiserv and Buyer prior to or at the Closing Date of each of the following conditions:

- (a) **Accuracy of Representations and Warranties.** The representations and warranties of Seller, Technologies and Emergis contained in this Agreement, in the Disclosure Schedule or in any closing certificate or document delivered to Fiserv and Buyer pursuant hereto shall be true and correct in all material respects if not qualified by materiality, Adverse Effect or Material Adverse Effect, or true and correct if so qualified, as of the date of this Agreement and on and as of the Closing Date as though made at and as of that time other than such representations and warranties as are specifically made as of another date, and Seller, Technologies and Emergis shall have delivered to Fiserv and Buyer a certificate to that effect.

- (b) **Compliance with Covenants.** Seller, Technologies and Emergis shall have performed and complied in all material respects with all covenants of this Agreement to be performed or complied with by it on or prior to the Closing Date, and Seller, Technologies and Emergis shall each have delivered to Fiserv and Buyer a certificate to that effect.
- (c) **All Proceedings to be Satisfactory.** Fiserv and Buyer and their counsel shall have received certified or other copies of all documents relating to Seller, the Business and the Assets incident to the transactions contemplated hereby as Fiserv, Buyer or said counsel may reasonably request and such documents shall be reasonably satisfactory in form and substance to Fiserv, Buyer and said counsel.
- (d) **Tax Matters.** Technologies shall have delivered to Fiserv and Buyer a FIRPTA Affidavit substantially in the form of Exhibit B annexed hereto with respect to Technologies, signed by Technologies under penalties of perjury. Technologies understands that such affidavits will be retained by Fiserv and Buyer and will be made available to the Internal Revenue Service upon request.
- (e) **Tax Election.** Seller shall have delivered to Fiserv and Buyer a Canada Customs and Revenue Agency Form 44 "Election Concerning the Acquisition of a Business or Part of a Business" executed by Seller, to be retained by Fiserv and Buyer and made available to the Canada Customs and Revenue Agency upon request.
- (f) **Legal Actions or Proceedings.** No legal action or proceeding shall have been instituted after the date hereof against Seller or against Fiserv or Buyer, arising by reason of the transactions contemplated by this Agreement, which is reasonably likely (i) to restrain, prohibit or invalidate the consummation of the transactions contemplated by this Agreement or (ii) to have a Material Adverse Effect.
- (g) **Consents.** On or prior to the Closing Date, Seller shall have obtained the consents or waivers to the transactions contemplated by this Agreement set forth in Exhibit C annexed hereto.
- (h) **Other Arrangements.** Seller and Buyer shall have entered into the Transition Services Agreement in substantially the form of Exhibit D annexed hereto (the "**Transition Services Agreement**").
- (i) **Supporting Documents.** On or prior to the Closing Date, Fiserv, Buyer, and their counsel shall have received copies of the following supporting documents:
 - (i) (A) copies of the Certificate of Formation of Seller and all amendments thereto, certified as of a recent date by the Secretary of State of Delaware and (B) a certificate of said Secretary dated as of a recent date as to the due incorporation and good standing of Seller and (if available in the state of incorporation of Seller) listing all documents of Seller on file with said Secretary; and

- (ii) certificates of the Secretary or an Assistant Secretary of Seller, dated the Closing Date, and certifying substantially to the effect (A) that attached thereto is a true and complete copy of the Limited Liability Company Operating Agreement of Seller as in effect on the date of such certification and at all times since January 1, 2004; (B) that the Certificate of Formation of Seller have not been amended since the date of the last amendment referred to in the certificate delivered pursuant to clause (i)(A) above; and (C) as to the incumbency and specimen signature of any officer of Seller executing any certificate or instrument furnished pursuant hereto, and a certificate by another officer of Seller as to the incumbency and signature of the officer signing the certificate referred to in this paragraph (ii).

All such documents shall be reasonably satisfactory in form and substance to Fiserv, Buyer and their counsel.

SECTION 4.02 Conditions Precedent to the Obligations of Seller. The obligations of Seller to consummate the transactions contemplated by this Agreement are subject to the satisfaction or waiver by Seller prior to or at the Closing Date of each of the following conditions:

- (a) **Accuracy of Representations and Warranties.** The representations and warranties of Fiserv and Buyer contained in this Agreement or in any closing certificate or document delivered to Seller pursuant hereto shall be true and correct on and as of the Closing Date as though made on and as of that date, other such representations and warranties as are specifically made as of another date, and Fiserv and Buyer shall each have delivered to Seller a certificate to that effect.
- (b) **Compliance with Covenants.** Each of Fiserv and Buyer shall have performed and complied in all material respects with all covenants of this Agreement to be performed or complied with by Fiserv and/or Buyer on or prior to the Closing Date, and Fiserv and Buyer shall each have delivered to Seller a certificate to such effect.
- (c) **All Proceedings to be Satisfactory.** Seller and its counsel shall have received all such counterpart originals or certified or other copies of all documents relating to Fiserv and Buyer incident to the transactions contemplated hereby as Seller and said counsel may reasonably request and such documents shall be reasonably satisfactory in form and substance to Seller and said counsel.
- (d) **Legal Actions or Proceedings.** No legal action or proceeding shall have been instituted that is reasonably likely to (i) restrain, prohibit or otherwise affect the consummation of the transactions contemplated hereby or (ii) have a Material Adverse Effect.
- (e) **Transition Services Agreement.** Seller and Buyer shall have entered into the Transition Services Agreement.

- (f) **Consents.** On or prior to the Closing Date, Seller shall have obtained the consents or waivers to the transactions contemplated by this Agreement set forth in Exhibit C annexed hereto.
- (g) **Supporting Documents.** On or prior to the Closing Date, Seller and their counsel shall have received copies of the following supporting documents:
- (i) (A) copies of the Articles of Incorporation of Fiserv and the Certificate of Incorporation of Buyer, and all amendments thereto, certified as of a recent date by the Department of Financial Institutions of the State of Wisconsin and the Secretary of State of the State of Delaware, respectively, and (B) a certificate of said agencies dated as of a recent date as to the status of Fiserv and Buyer; and
 - (ii) a certificate of the Secretary or an Assistant Secretary of each of Fiserv and Buyer dated the Closing Date and certifying substantially to the effect (A) that attached thereto is a true and complete copy of the By-laws of the particular company as in effect on the date of such certification and at all times since January 1, 2004 or its date of incorporation, if more recent; (B) that attached thereto is a true and complete copy of resolutions adopted by the Board of Directors of the particular company authorizing the execution, delivery and performance of this Agreement and that all such resolutions are still in full force and effect and are all the resolutions adopted in connection with the transactions contemplated by this Agreement; (C) that the Articles of Incorporation of the particular corporation have not been amended since the date of the last amendment referred to in the certificate delivered pursuant to clause (i)(A) above; and (D) as to the incumbency and specimen signature of each officer of the particular company executing this Agreement and a certification by another officer of such company as to the incumbency and signature of the officer signing the certificate referred to in this paragraph (ii).

All such documents shall be reasonably satisfactory in form and substance to Seller and their counsel.

ARTICLE 5 – SURVIVAL; INDEMNIFICATION

SECTION 5.01 Survival. Subject to the limitations and other provisions of this Agreement, the representations and warranties of the parties contained herein shall survive the Closing Date and shall remain in full force and effect until April 30, 2006, except with respect to the representations and warranties contained in Section 2.01(o) and Section 2.01(q) of this Agreement which shall survive until three months after the expiration of the applicable statute of limitations (including any waivers or extensions thereof), and except with respect to the representations and warranties contained in Section 2.01(g) which shall survive until the expiration of the applicable statute of limitations.

SECTION 5.02 General Indemnity.

- (a) **Seller, Technologies and Emergis Indemnity.** Subject to the terms and conditions of this Article V, Seller, Technologies and Emergis hereby agree to indemnify and hold Fiserv and Buyer and their respective affiliates harmless from and against all damages to and liabilities of Fiserv or Buyer, as the case may be, (including those resulting from or relating to demands, claims, actions or causes of action, assessments or other losses, costs and expenses relating thereto, interest and penalties thereon and reasonable attorneys' fees and related disbursements and other expenses in respect thereof) by reason of or resulting from (i) a breach of any representation or warranty of Seller, Technologies or Emergis contained in or made pursuant to this Agreement, (ii) the failure of Seller, Technologies or Emergis duly to perform or observe any term, provision or covenant or agreement to be performed or observed by it pursuant to this Agreement or (iii) any actions, suits or proceedings listed in the Disclosure Schedule or any actions, suits or proceedings brought by third parties not so listed but related to events occurring or actions taken on or prior to the Closing Date, or (iv) any liability or obligation of Seller, Technologies or Emergis of any kind or nature (including those described in Section 1.08) arising prior to the Closing Date not expressly assumed by Buyer pursuant to Section 1.07 hereof (except in the case of (iv) above for any liability of Seller for any claim not asserted prior to Closing relating to the representation set forth in Section 2.01(h)(xiii) hereof, to the extent that such claim does not constitute a breach of such representation).
- (b) **Fiserv Indemnity.** Subject to the terms and conditions of this Article V, Fiserv and Buyer hereby agree to indemnify, defend and hold Seller, Technologies and/or Emergis harmless from and against all damages to and liabilities of Seller, Technologies and/or Emergis (including those resulting from or relating to demands, claims, actions or causes of action, assessments or other losses, costs and expenses relating thereto, interest and penalties thereon and reasonable attorneys' fees and related disbursements and other expenses in respect thereof) by reason of or resulting from (i) a breach of any representation or warranty of Fiserv and/or Buyer contained in or made pursuant to this Agreement, (ii) any failure of Fiserv and/or Buyer duly to perform or observe any term, provision, covenant or agreement to be performed or observed by Fiserv or Buyer, as the case may be, pursuant to this Agreement, (iii) any liability expressly assumed by Buyer pursuant to Section 1.07 hereof, or (iv) the conduct of the Business by Buyer subsequent to the Closing Date.
- (c) **Exclusive Remedy.** The parties hereby acknowledge and agree that their sole and exclusive remedy with respect to any and all claims relating to the subject matter of this Agreement (other than a claim for fraud or for specific performance of the terms of this Agreement) shall be pursuant to the indemnification provisions set forth in this Article V.
- (d) **Set-Off.** Buyer shall only be entitled to set-off, recoup or deduct any amounts owed to it hereunder or pursuant to any other agreement binding it to the Seller entered into in connection with the transactions contemplated by this Agreement (including, for greater clarity, any amounts owed under the Transition Services Agreement), of any nature whatsoever, against an aggregate maximum amount of

\$1,000,000, being a portion of the amount of \$1,750,000 to which Seller is entitled from the Purchaser pursuant to Section 1.06(b) of this Agreement. Notwithstanding the foregoing, Buyer shall have the right to set off the amounts specifically contemplated in Section 3.09(b). For clarity, this subsection (d) shall not affect the rights of any party under the Transition Services Agreement.

- (e) **Further Limitations.** Except for actions required to be taken by Fiserv or Buyer pursuant to this Agreement, Seller, Technologies and/or Emergis shall have no liability under any provision of this Agreement for any liabilities and damages to the extent that such liabilities and damages relate to actions taken or not taken by Fiserv or Buyer after the Closing Date. The parties shall take all reasonable steps to mitigate all liabilities and damages upon and after becoming aware of any event that could reasonably be expected to give rise to such liabilities and damages. In no event shall any party be liable for consequential, incidental, exemplary or punitive damages including damages for loss of profit.

SECTION 5.03 Third Party Claims. If any claim, assertion or proceeding by or in respect of a third party is made against an indemnified party or any event in respect of a third party occurs, and if the indemnified party intends to seek indemnity with respect thereto under this Article V or to apply any damage or liability arising therefrom to the US\$120,000 amount referred to in Section 5.04, the indemnified party shall promptly notify the indemnifying party of such claim in writing. The indemnifying party shall have 30 days after receipt of such notice to undertake, conduct and control, through counsel of its own choosing and at its expense, the settlement or defense thereof, and the indemnified party shall cooperate with it in connection therewith; provided, however, that (a) the indemnifying party shall permit the indemnified party to participate in such settlement or defense through counsel chosen by the indemnified party, provided that the fees and expenses of such counsel shall be borne by the indemnified party, (b) the indemnified party shall not, without the prior written consent of the indemnifying party, settle or compromise any claim or consent to the entry of any judgment which does not include as an unconditional term thereof the giving by the claimant or the plaintiff to the indemnifying party a release from all liability in respect of such claim and (c) nothing herein shall require any indemnified party to consent to the entry of any order, injunction or consent decree materially affecting its ability to conduct its business operations after the date thereof. So long as the indemnifying party is reasonably contesting any such claim in good faith, the indemnified party shall have the right to pay or settle any such claim, provided, however, that in such event it shall waive any right to indemnity therefor by the indemnifying party. If the indemnifying party does not notify the indemnified party within 30 days after the receipt of the indemnified party's written notice of a claim of indemnity hereunder that it elects to undertake the defense thereof, the indemnified party shall have the right to contest, settle or compromise the claim in the exercise of its reasonable judgment, provided that no payment or settlement may be made without the consent of the indemnifying party, not to be unreasonably withheld or delayed, failing which it shall waive any right to indemnity by the indemnifying party.

SECTION 5.04 Limitation on Indemnities. No claim for indemnification will be made by Fiserv and/or Buyer or by Seller, Technologies and/or Emergis under Section 5.02(a) (except with regard to a claim by Fiserv and/or Buyer pursuant to Section 2.01(q)) or (b) hereof with respect to any individual item of liability or damage unless and to the

extent that the aggregate of all such claims by Fiserv and/or Buyer or by Seller, Technologies and/or Emergis, as the case may be, shall be in excess of US\$120,000, whereupon Fiserv and/or Buyer or Seller, Technologies and/or Emergis, as the case may be, shall only be liable for such claims, damages and liabilities in excess of US\$120,000; provided that, for clarity, Seller, Technologies and/or Emergis shall be liable for all such claims, damages and liabilities arising out of or related to Section 2.01(q). The maximum aggregate liability of Seller, Technologies and/or Emergis its affiliates and its officers, directors and representatives and those of its affiliates arising under this Agreement shall not exceed the following amounts and shall be limited to the following periods, after the expiration of which neither Seller, Technologies or Emergis shall have any liability under this Agreement:

- (a) US\$6,875,000 from the Closing until the day that is six months following the Closing, provided, however, that for all claims under Section 2.01(e), the amount shall in no event exceed US\$3,437,000;
- (b) US\$3,437,500 from the day after the day that is six months following the Closing until the day that is 12 months following the Closing (only up to the portion of such amount not reached towards the liability limit amount set forth in subsection (a) above), provided, however that for all claims under Section 2.01(e), the amount shall in no event exceed US\$0;
- (c) US\$6,875,000 from the Closing until the day that is thirty-six months following the Closing for claims under Section 2.01(g) (only up to the portion of such amount not reached towards the liability limit amounts set forth in subsections (a) and (b) above);
- (d) US\$3,437,500 from the day that is after thirty-six months following the Closing until the applicable limitation period at law for claims under Section 2.01(g) (only up to the portion of such amount not reached towards the liability limit amounts set forth in subsections (a), (b) and (c) above);
- (e) US\$1,000,000 from the day after the day that is 12 months following the Closing until three months after the expiration of the applicable statute of limitations (including any waivers or extensions thereof) for all claims arising under Section 2.01(o) and Section 2.01(q), provided, however, that the liability limit set forth in this subsection (c) shall be in addition to and not counted towards the liability limit amounts set forth in subsections (a) and (b) above; and
- (f) US\$0 after the expiry of the periods referred to in subsections (a), (b), (c), (d) and (e) above, as applicable.

Payments by an indemnifying party pursuant to Section 5.02 shall be limited to the amount of any liability or damage that remains after deducting therefrom any insurance proceeds to which the indemnified party pursuant to Section 5.02 is entitled and any indemnity, contribution or other similar payment to which the indemnified party is entitled from any third party with respect thereto. Notwithstanding anything to the contrary contained in this Agreement, no claim by any party hereto may be asserted, nor may any action be commenced against any party hereto, for breach of any representation, warranty, covenant or agreement unless notice thereof is received in writing describing in reasonable detail the damages incurred

on or before the date on which the representation, warranty, covenant or agreement on which such claim or action is based ceases to survive as set forth in Section 5.01.

SECTION 5.05 Effect on the Purchase Price. Any payment made under Article V shall constitute an adjustment to the Purchase Price for all purposes, including federal, state and local Tax as well as financial accounting purposes, except as otherwise required by GAAP for financial accounting purposes only.

**ARTICLE 6 –
TERMINATION; AMENDMENT; WAIVER**

SECTION 6.01 Termination. This Agreement may be terminated and the transactions contemplated by this Agreement may be abandoned at any time prior to the Closing Date:

- (a) by mutual consent of Fiserv and Buyer, on the one hand, and Seller, Technologies and Emergis, on the other hand; or
- (b) by either Fiserv and Buyer, on the one hand, or Seller, Technologies and Emergis, on the other hand, if (i) the Closing Date shall not have occurred on or before May 30, 2005 (provided that the right to terminate this Agreement under this Section 6.01(b) shall not be available to any party whose failure to fulfill, or cause to be fulfilled, any obligation under this Agreement has been the cause of or resulted in the failure of the Closing Date to occur on or before such time) or (ii) any court of competent jurisdiction or other governmental body shall have issued an order, decree or ruling or taken any other action (which order, decree or ruling the parties shall use their commercially reasonable efforts to lift or reverse) permanently restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement and such order, decree, ruling or other action shall have become final and nonappealable, provided, however, if a proceeding shall have been initiated by a governmental entity to restrain, enjoin or otherwise prohibit the transactions contemplated by this Agreement, and such proceeding is continuing on the date six months after the date referred to in clause (b)(i) above, then either Fiserv and Buyer, on the one hand, or Seller, Technologies and Emergis, on the other hand, in addition to any other recourses it may have, may terminate this Agreement and abandon the transactions contemplated by this Agreement provided that such terminating party shall have caused any such proceeding to be dismissed as to all parties thereto.

SECTION 6.02 Effect of Termination. Nothing contained in this Section 6.02 shall relieve any party from liability for any breach of this Agreement, and (i) the Confidentiality Agreement between Fiserv and Seller dated October 28, 2004, and (ii) the Confidentiality Agreement between Fiserv and Emergis dated February 28, 2005 (together, the "Confidentiality Agreements") shall survive the termination and abandonment of this Agreement.

SECTION 6.03 Amendment. This Agreement may not be amended except by an instrument in writing signed on behalf of all the parties.

SECTION 6.04 Extension; Waiver. At any time prior to the Closing Date, Fiserv and Buyer, on the one hand, or Seller, Technologies or Emergis, on the other hand, may (a) extend the time for the performance of any of the obligations or other acts of the other party, (b) waive any inaccuracies in the representations and warranties of the other party contained herein or in any document, certificate or writing delivered pursuant hereto or (c) to the extent permitted by applicable laws, waive compliance by the other party with any of the agreements or conditions contained herein. Any agreement on the part of any party to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party.

ARTICLE 7 – MISCELLANEOUS

SECTION 7.01 Expenses, Etc. Whether or not the transactions contemplated by this Agreement are consummated, none of the parties shall have any obligation to pay any of the fees and expenses of the other parties incident to the negotiation, preparation and execution of this Agreement, including the fees and expenses of counsel, accountants and other experts. Seller and Technologies shall pay any Taxes related to the transactions contemplated hereby; provided however, that Seller and Technologies, on the one hand, and Buyer, on the other hand, shall split equally the sale, use, transfer and other similar Taxes incurred in connection with the transactions contemplated hereby. Seller and Technologies shall duly and timely file all Tax Returns required to be filed in connection with such Taxes. Seller and Technologies shall give Fiserv a copy of each such Tax Return relating to any sales, use, transfer or other similar Taxes for its review and comment prior to filing and shall give Fiserv a copy of such Tax Returns as filed, together with proof of payment of the Taxes shown thereon to be payable. Each of Fiserv and Buyer, on the one hand, and Seller, Technologies and Emergis, on the other hand, will indemnify the other parties, and hold them harmless from and against any claims for finders' fees or brokerage commissions in relation to or in connection with such transactions as a result of any agreement or understanding between such indemnifying party and any third party.

SECTION 7.02 Execution in Counterparts. For the convenience of the parties, this Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

SECTION 7.03 Notices. All notices and other communications which are required or may be given pursuant to the terms of this Agreement shall be in writing, shall be effective when received, and shall in any event be deemed to have been received (a) when delivered, if delivered personally or by commercial delivery service, (b) three business days after deposit with the U.S. Mail or Canadian Mail, if mailed by registered or certified mail (return receipt requested), (c) one business day after the business day of timely deposit with a recognized national courier service for next day delivery (or two business days after such deposit if timely deposited for second business day delivery), if delivered by such means or (d) one business day after delivery by facsimile transmission with copy by U.S. Mail or Canadian Mail, if sent via facsimile plus mail copy (with acknowledgement of complete transmission), to the parties as follows:

If to Seller, Emergis or Technologies, to:

Emergis, Inc.
Emergis Technologies, Inc.
Emergis Electronic Mortgage Services, LLC
1000, rue de Sérigny
6e étage
Longueuil (Québec)
J4K 5B1

Telephone Number: 450-928-6000
FAX: 450-928-6019

Attention: Corporate Secretary

With a copy to:

Ogilvy Renault
1981 McGill College Avenue, suite 1100
Montréal (Québec)
H3A 3C1

Telephone Number: (514) 847-4495
FAX: (514) 286-5474

Attention: Francis R. Legault

If to Fiserv or Buyer, to:

Fiserv, Inc.
Fiserv e-Lending Solutions, Inc.
255 Fiserv Drive
Brookfield, WI 53045

or

P.O. Box 979
Brookfield, WI 53008-0979

Telephone Number: 262-879-5000
FAX: 262-879-5245

Attention: Kenneth R. Jensen

With a copy to:

Charles W. Sprague
Fiserv, Inc.
255 Fiserv Drive
Brookfield, WI 53045

or

P.O. Box 979
Brookfield, WI 53008-0979

Telephone Number: 262-879-5517
FAX: 262-879-5532

or such other address or addresses as any party shall have designated by notice in writing to the other parties.

SECTION 7.04 Entire Agreement. This Agreement, its Exhibits and Schedules and the Confidentiality Agreement constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements and understandings, oral and written, among the parties hereto with respect to the subject matter hereof. No representation, warranty, promise, inducement or statement of intention has been made by any party hereto which is not embodied in this Agreement, and no party shall be bound by, or be liable for, any alleged representation, warranty, promise, inducement or statement of intention not embodied herein or therein.

SECTION 7.05 Applicable Law and Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to conflict of law provisions that would defer to the laws of another jurisdiction. The rights and obligations of the parties hereunder shall be governed by and determined in accordance with such laws. Except as otherwise set forth in this Agreement, any claim or action seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall be brought in the District Court for the Southern District of New York, or the Supreme Court of New York, as appropriate, so long as such court shall have subject matter jurisdiction over such claim or action, and each of the parties irrevocably consents to the jurisdiction of such court (and of the appropriate appellate courts from such court) in any such claim or action and irrevocably waives, to the fullest extent permitted by law any objection that it may now or hereafter have to the laying of the venue of any such claim or action in any such court or that any such claim or action that is brought in any such court has been brought in an inconvenient forum. Process in any such claim or action may be served on any party anywhere in the United States or, in the case of Emergis, in Canada, whether within or without the jurisdiction of any such court. Without limiting the foregoing, each party consents to the service of process on such party by delivery in the manner provided in Section 7.03, which shall be effective service of process.

SECTION 7.06 Binding Effect; Benefits. This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and assigns. Notwithstanding anything contained in this Agreement to the contrary, nothing in this

Agreement, expressed or implied, is intended to confer on any person other than the parties or their respective successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

SECTION 7.07 Assignability. Neither this Agreement nor any of the parties' rights hereunder shall be assignable by any party without the prior written consent of the other parties.

SECTION 7.08 Prevailing Party. Each Party in any suit or action brought by a Party against any other Party to enforce the terms of this Agreement or any rights or obligations hereunder shall be entitled to receive reimbursement of its out-of-pocket costs, expenses and internal attorneys' fees and disbursements, including the costs and expenses of experts expended, actually incurred in connection with such suit or action in proportion to the extent that such Party has prevailed in the final determination of such suit or action, as determined by the final judgment.

SECTION 7.09 Public Announcements. Fiserv and Buyer, on the one hand, and Seller, on the other hand, will consult with each other before issuing any press release or otherwise making any public statement with respect to the transactions contemplated herein and shall not issue any such press release or make any such public statement without the approval of the others, unless counsel has advised such party that such release or other public statement must be issued immediately and the issuing party has not been able, despite its good faith efforts, to secure the prior approval of the other parties.

SECTION 7.10 Invalid Provisions. If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future law, rule or regulation, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision has never comprised a part hereof. The remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

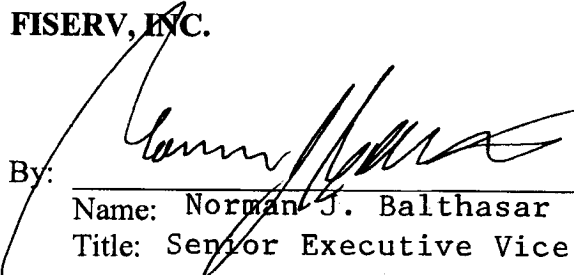
SECTION 7.11 Knowledge. In this Agreement, any reference to the knowledge of the Seller or to the Seller being aware of certain facts or circumstances shall be deemed to be a reference to the actual knowledge of Marc Filion, Carlos Carreiro, Kevin Green and James Aber being aware of such facts or circumstances. Fiserv and Buyer understand that none of such individuals is individually making any representation or warranty to Buyer or Fiserv and that such individuals shall have no individual liability in connection with matters covered by Article 2 hereof.

SECTION 7.12 Interpretation. Time is of the essence of this Agreement. Unless otherwise qualified, references in this Agreement to "Article", "article", "Section" or "section" are to provisions of this Agreement and a reference thereto includes any subparts. The Table of Contents and the descriptive headings of the articles and sections, or of or in the Exhibits and Schedules, are inserted for convenience only and are not a part of this Agreement. As used herein, the singular includes the plural, the plural includes the singular, and words in one gender include the others. As used herein, the terms "herein", "hereunder" and

“hereof” refer to the whole of this Agreement, and “include”, “including” and similar terms are not words of limitation.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

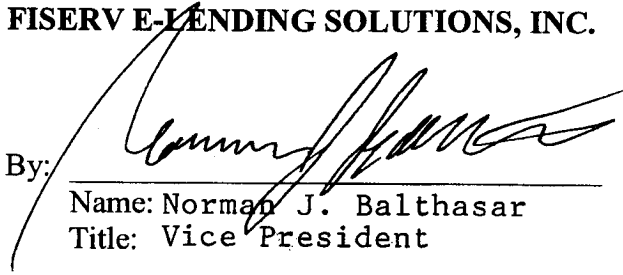
FISERV, INC.

By: 

Name: Norman J. Balthasar

Title: Senior Executive Vice President

FISERV E-LENDING SOLUTIONS, INC.

By: 

Name: Norman J. Balthasar

Title: Vice President

EMERGIS INC.

By: _____

Name:

Title:

EMERGIS TECHNOLOGIES, INC.

By: _____

Name:

Title:

**EMERGIS ELECTRONIC
MORTGAGE SERVICES, LLC**

By: _____

Name:

Title:

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

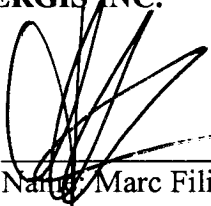
FISERV, INC.

By: _____
Name:
Title:

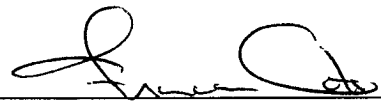
FISERV E-LENDING SOLUTIONS, INC.

By: _____
Name:
Title:

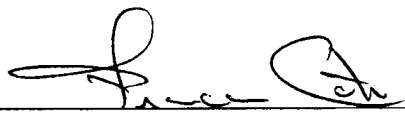
EMERGIS INC.

By:  _____
Name: Marc Fillion
Title: Executive Vice-President, Business
Development and Corporate Strategy

EMERGIS TECHNOLOGIES, INC.

By:  _____
Name: François Côté
Title: Chief Executive Officer

**EMERGIS ELECTRONIC
MORTGAGE SERVICES, LLC**

By:  _____
Name: François Côté
Title: Chairman

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