



# **FORM 10-Q**

## **SYMANTEC CORP - SYMC**

**Filed: February 09, 2009 (period: January 02, 2009)**

Quarterly report which provides a continuing view of a company's financial position

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UNITED STATES SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549  
**Form 10-Q**

(Mark One)

- QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF  
THE SECURITIES EXCHANGE ACT OF 1934**  
For the Quarterly Period Ended January 2, 2009
- or
- TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF  
THE SECURITIES EXCHANGE ACT OF 1934**  
For the Transition Period from        to

Commission File Number 000-17781

**Symantec Corporation**

*(Exact name of the registrant as specified in its charter)*

**Delaware**

*(State or other jurisdiction of  
incorporation or organization)*

**20330 Stevens Creek Blvd.,  
Cupertino, California**  
*(Address of principal executive offices)*

**77-0181864**

*(I.R.S. employer  
identification no.)*

**95014-2132**  
*(Zip Code)*

**Registrant's telephone number, including area code:  
(408) 517-8000**

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

- Large accelerated filer     Accelerated filer     Non-accelerated filer     Smaller reporting company

(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes  No

Shares of Symantec common stock, \$0.01 par value per share, outstanding as of January 30, 2009:  
820,984,915 shares.

**SYMANTEC CORPORATION**  
**FORM 10-Q**  
**Quarterly Period Ended January 2, 2009**  
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## PART I. FINANCIAL INFORMATION

Item 1. *Financial Statements*

**SYMANTEC CORPORATION**  
**CONDENSED CONSOLIDATED BALANCE SHEETS**

	<u>January 2,</u> <u>2009</u>	<u>March 28,</u> <u>2008</u>
	(Unaudited)	*
(In thousands)		
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 1,449,033	\$ 1,890,225
Short-term investments	79,888	536,728
Trade accounts receivable, net	927,048	758,200
Inventories	27,419	34,138
Deferred income taxes	181,003	193,775
Other current assets	<u>278,737</u>	<u>316,852</u>
Total current assets	2,943,128	3,729,918
Property and equipment, net	972,240	1,001,750
Acquired product rights, net	510,474	648,950
Other intangible assets, net	1,278,665	1,243,524
Goodwill	4,955,678	11,207,357
Investment in joint venture	116,602	150,000
Long-term deferred income taxes	4,399	55,304
Other long-term assets	<u>60,884</u>	<u>55,291</u>
Total assets	<u>\$ 10,842,070</u>	<u>\$ 18,092,094</u>
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Accounts payable	\$ 213,474	\$ 169,631
Accrued compensation and benefits	387,535	431,345
Current deferred revenue	2,512,319	2,661,515
Income taxes payable	92,616	72,263
Short-term borrowing	—	200,000
Other current liabilities	<u>264,897</u>	<u>264,832</u>
Total current liabilities	3,470,841	3,799,586
Convertible senior notes	2,100,000	2,100,000
Long-term deferred revenue	406,293	415,054
Long-term deferred tax liabilities	73,801	219,341
Long-term income taxes payable	510,969	478,743
Other long-term liabilities	<u>89,473</u>	<u>106,187</u>
Total liabilities	6,651,377	7,118,911
Stockholders' equity:		
Common stock	8,202	8,393
Additional paid-in capital	8,955,257	9,139,084
Accumulated other comprehensive income	154,023	159,792
Accumulated (deficit) earnings	<u>(4,926,789)</u>	<u>1,665,914</u>
Total stockholders' equity	<u>4,190,693</u>	<u>10,973,183</u>
Total liabilities and stockholders' equity	<u>\$ 10,842,070</u>	<u>\$ 18,092,094</u>

\* Derived from audited financials

The accompanying Notes to Condensed Consolidated Financial Statements are an integral part of these financial statements.

**SYMANTEC CORPORATION**  
**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**

	Three Months Ended		Nine Months Ended	
	January 2, 2009	December 28, 2007	January 2, 2009	December 28, 2007
	(Unaudited)			
	(In thousands, except per share data)			
Net revenues:				
Content, subscriptions, and maintenance	\$ 1,196,938	\$ 1,167,443	\$ 3,668,645	\$ 3,371,126
Licenses	<u>317,016</u>	<u>347,808</u>	<u>1,013,641</u>	<u>963,552</u>
Total net revenues	1,513,954	1,515,251	4,682,286	4,334,678
Cost of revenues:				
Content, subscriptions, and maintenance	200,338	204,355	630,982	619,593
Licenses	8,289	10,304	27,134	31,434
Amortization of acquired product rights	<u>90,209</u>	<u>84,502</u>	<u>261,772</u>	<u>262,924</u>
Total cost of revenues	<u>298,836</u>	<u>299,161</u>	<u>919,888</u>	<u>913,951</u>
Gross profit	1,215,118	1,216,090	3,762,398	3,420,727
Operating expenses:				
Sales and marketing	580,708	627,980	1,840,510	1,791,672
Research and development	204,701	225,293	655,185	671,928
General and administrative	83,508	82,600	261,112	254,850
Amortization of other purchased intangible assets	60,647	54,996	171,677	168,847
Restructuring	45,805	23,305	72,600	51,883
Impairment of goodwill	7,005,702	—	7,005,702	—
Impairment of assets held for sale	16,849	6,142	43,053	92,688
Patent settlement	<u>(9,900)</u>	<u>—</u>	<u>(9,900)</u>	<u>—</u>
Total operating expenses	<u>7,988,020</u>	<u>1,020,316</u>	<u>10,039,939</u>	<u>3,031,868</u>
Operating (loss) income	(6,772,902)	195,774	(6,277,541)	388,859
Interest income	4,676	19,997	34,966	59,997
Interest expense	(6,511)	(7,477)	(22,792)	(20,385)
Other income (expense), net	<u>16,571</u>	<u>(2,348)</u>	<u>7,728</u>	<u>883</u>
(Loss) income before income taxes and loss from joint venture	(6,758,166)	205,946	(6,257,639)	429,354
Provision for income taxes	31,620	74,056	188,455	151,890
Loss from joint venture	<u>16,471</u>	<u>—</u>	<u>33,398</u>	<u>—</u>
Net (loss) income	<u>\$ (6,806,257)</u>	<u>\$ 131,890</u>	<u>\$ (6,479,492)</u>	<u>\$ 277,464</u>
Net (loss) income per share — basic	\$ (8.23)	\$ 0.15	\$ (7.76)	\$ 0.32
Net (loss) income per share — diluted	\$ (8.23)	\$ 0.15	\$ (7.76)	\$ 0.31
Weighted-average shares outstanding — basic	826,959	859,997	834,774	875,971
Weighted-average shares outstanding — diluted	826,959	876,221	834,774	893,794

The accompanying Notes to Condensed Consolidated Financial Statements are an integral part of these financial statements.

**SYMANTEC CORPORATION**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**

	Nine Months Ended	
	January 2, 2009	December 28, 2007
	(Unaudited)	
	(In thousands)	
<b>OPERATING ACTIVITIES:</b>		
Net (loss) income	\$ (6,479,492)	\$ 277,464
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation and amortization	626,402	618,404
Stock-based compensation expense	123,130	121,151
Impairment of assets held for sale	42,719	93,888
Deferred income taxes	(53,267)	(178,647)
Income tax benefit from the exercise of stock options	17,088	27,730
Excess income tax benefit from the exercise of stock options	(16,197)	(18,307)
Loss from joint venture	33,398	—
Realized and other than temporary impairment loss on investments	2,410	—
Impairment of goodwill	7,005,702	—
Other	14,263	3,253
Net change in assets and liabilities, excluding effects of acquisitions:		
Trade accounts receivable, net	(157,069)	(165,392)
Inventories	5,835	9,224
Accounts payable	(20,279)	(13,249)
Accrued compensation and benefits	(44,638)	83,794
Deferred revenue	(49,006)	9,466
Income taxes payable	(17,569)	215,462
Other assets	67,752	58,856
Other liabilities	(37,641)	1,186
Net cash provided by operating activities	1,063,541	1,144,283
<b>INVESTING ACTIVITIES:</b>		
Purchase of property and equipment	(215,232)	(209,129)
Proceeds from sales of property and equipment	39,547	—
Cash payments for business acquisitions, net of cash and cash equivalents acquired	(1,045,240)	(1,150,683)
Purchases of available-for-sale securities	(222,850)	(825,104)
Proceeds from sales of available-for-sale securities	679,345	830,903
Net cash used in investing activities	(764,430)	(1,354,013)
<b>FINANCING ACTIVITIES:</b>		
Repurchase of common stock	(599,894)	(1,299,976)
Net proceeds from sales of common stock under employee stock benefit plans	189,020	164,162
Proceeds from short-term borrowing	—	200,000
Repayment of short-term borrowing	(200,000)	—
Excess income tax benefit from the exercise of stock options	16,197	18,307
Repayment of other long-term liability	(5,622)	(9,913)
Tax payments related to restricted stock issuance	(14,986)	(3,742)
Net cash used in financing activities	(615,285)	(931,162)
Effect of exchange rate fluctuations on cash and cash equivalents	(125,018)	66,347
Decrease in cash and cash equivalents	(441,192)	(1,074,545)
Beginning cash and cash equivalents	1,890,225	2,559,034
Ending cash and cash equivalents	\$ 1,449,033	\$ 1,484,489

The accompanying Notes to Condensed Consolidated Financial Statements are an integral part of these financial statements.

**SYMANTEC CORPORATION**  
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**  
**(Unaudited)**

**Note 1. Basis of Presentation**

The condensed consolidated financial statements of Symantec Corporation (“we,” “us,” and “our” refer to Symantec Corporation and all of its subsidiaries) as of January 2, 2009 and March 28, 2008 and for the three and nine months ended January 2, 2009 and December 28, 2007 have been prepared in accordance with the instructions for Form 10-Q pursuant to the rules and regulations of the Securities and Exchange Commission (“SEC”) and, therefore, do not include all information and notes normally provided in audited financial statements. In the opinion of management, the condensed consolidated financial statements contain all adjustments, consisting only of normal recurring items, except as otherwise noted, necessary for the fair presentation of our financial position and results of operations for the interim periods. The condensed consolidated balance sheet as of March 28, 2008 has been derived from the audited consolidated financial statements, however it does not include all disclosures required by generally accepted accounting principles. These condensed consolidated financial statements should be read in conjunction with the Consolidated Financial Statements and Notes thereto included in our Annual Report on Form 10-K for the fiscal year ended March 28, 2008. The results of operations for the three and nine months ended January 2, 2009 are not necessarily indicative of the results to be expected for the entire fiscal year. All significant intercompany accounts and transactions have been eliminated.

We have a 52/53-week fiscal accounting year. Unless otherwise stated, references to three and nine months ended in this report relate to fiscal periods ended January 2, 2009 and December 28, 2007. The three months ended January 2, 2009 and December 28, 2007 both consisted of 13 weeks. The nine months ended January 2, 2009 consisted of 40 weeks while the nine months ended December 28, 2007 consisted of 39 weeks.

***Significant accounting policies***

The following represents an update for the nine months ended January 2, 2009 to the significant accounting policies described in our Annual Report on Form 10-K for the fiscal year ended March 28, 2008.

***Fair Value of Financial Instruments***

Effective July 4, 2008, we adopted Financial Accounting Standards Board (“FASB”) Statement of Financial Accounting Standards No. 157, *Fair Value Measurements*, for all of our financial assets and liabilities are recognized or disclosed at fair value on a recurring and nonrecurring basis (FASB Staff Position (“FSP”) FAS No. 157-1 eliminates leasing transactions from scope and FSP FAS No. 157-2 defers the effective date for one year for nonfinancial assets and liabilities measured at fair value on a nonrecurring basis). See Note 2 of the Notes to Condensed Consolidated Financial Statements for further discussion.

***Goodwill and Other Intangible Assets***

Our methodology for allocating the purchase price relating to purchase acquisitions is determined through established valuation techniques. Goodwill is measured as the excess of the cost of the acquisition over the sum of the amounts assigned to tangible and identifiable intangible assets acquired less liabilities assumed. We review goodwill for impairment on an annual basis and whenever events or changes in circumstances indicate the carrying value of goodwill may not be recoverable. In testing for a potential impairment of goodwill, we estimate the fair value of our businesses to which goodwill relates and determine the carrying value (book value) of the assets and liabilities related to those businesses. The first step in the goodwill impairment analysis is to determine if the estimated fair value is less than the carrying value of each reporting unit or business. If the estimated fair value is in fact, less than the carrying value for a particular business, then we are required to perform a second step in the goodwill impairment analysis to estimate the fair value of all identifiable assets and liabilities of the business, in a manner similar to a purchase price allocation for an acquired business to determine the estimated fair value of goodwill. Only after this process is completed is the amount of any goodwill impairment determined.

SYMANTEC CORPORATION

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Prior to performing our second step in the goodwill impairment analysis, we assessed long-lived assets for impairment. Such long-lived assets included tangible and intangible assets recorded in accordance with SFAS No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets* and SFAS No. 86, *Accounting for the Costs of Computer Software to Be Sold, Leased or Otherwise Marketed*. Our preliminary conclusion is that such long-lived assets were not impaired as of January 2, 2009.

The process of evaluating the potential impairment of goodwill requires significant judgment at many points during the analysis. In determining the carrying value of the reporting units, we had to apply judgment to allocate the assets and liabilities, such as accounts receivable and property and equipment, based on specific identification or relevant driver.

In estimating the fair value of the businesses with recognized goodwill for the purposes of our annual or periodic analyses, we make estimates and judgments about the future cash flows of these businesses. Although our cash flow forecasts are based on assumptions that are consistent with the plans and estimates we are using to manage the underlying businesses, there is significant judgment in determining the cash flows attributable to these businesses over their estimated remaining useful lives.

***Recent accounting pronouncements***

In June 2008, the FASB issued Emerging Issues Task Force (“EITF”) Issue No. 07-5, *Determining Whether an Instrument (or an Embedded Feature) Is Indexed to an Entity’s Own Stock*. EITF Issue No. 07-5 provides guidance on evaluating whether an equity-linked financial instrument (or embedded feature) is indexed to the company’s own stock, including evaluating the instrument’s contingent exercise and settlement provisions. EITF Issue No. 07-5 is effective for fiscal years beginning after December 15, 2008. We are currently assessing the impact of EITF Issue No. 07-5 on our consolidated financial statements.

In May 2008, the FASB issued FSP Accounting Principles Board (“APB”) No. 14-1, *Accounting for Convertible Debt Instruments That May Be Settled in Cash upon Conversion (Including Partial Cash Settlement)*. The FSP will require the issuer of convertible debt instruments with cash settlement features to separately account for the liability and equity components of the instrument. The debt will be recognized at the present value of its cash flows discounted using the issuer’s nonconvertible debt borrowing rate at the time of issuance. The equity component will be recognized as the difference between the proceeds from the issuance of the note and the fair value of the liability. The FSP will also require an accretion as interest expense of the resultant debt discount over the expected life of the debt. The transition guidance requires retrospective application to all periods presented, and does not grandfather existing instruments. The guidance will be effective for fiscal years beginning after December 15, 2008, and interim periods within those years. As such, we will adopt the FSP in the first quarter of fiscal year 2010. Upon adoption, we expect the increase in non-cash interest expense recognized on our consolidated financial statements, and the decrease in deferred tax assets recognized on our consolidated financial statements, to be significant.

In December 2007, the FASB issued SFAS No. 141R, *Business Combinations*. This standard changes the accounting for business combinations by requiring that an acquiring entity measures and recognizes identifiable assets acquired and liabilities assumed at the acquisition date fair value with limited exceptions. The changes include the treatment of acquisition related transaction costs, the valuation of any noncontrolling interest at the acquisition date fair value, the recording of acquired contingent liabilities at acquisition date fair value and the subsequent re-measurement of such liabilities after acquisition date, the recognition of capitalized in-process research and development, the accounting for acquisition-related restructuring cost accruals subsequent to the acquisition date, and the recognition of changes in the acquirer’s income tax valuation allowance. SFAS No. 141R is effective for fiscal years beginning after December 15, 2008, with early adoption prohibited. If the current level of acquisitions activity continues, we expect the implementation of SFAS No. 141R to have a material impact on our consolidated financial statements when it becomes effective. The accounting treatment related to pre-acquisition uncertain tax positions will change when SFAS No. 141R becomes effective, which will be in first quarter of our

## SYMANTEC CORPORATION

## NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

fiscal year 2010. At such time, any changes to the recognition or measurement of uncertain tax positions related to pre-acquisition periods will be recorded through income tax expense, where currently the accounting treatment would require any adjustment to be recognized through the purchase price.

In September 2006, the FASB issued SFAS No. 157, *Fair Value Measurements*, which defines fair value, establishes guidelines for measuring fair value and expands disclosures regarding fair value measurements. SFAS No. 157 does not require any new fair value measurements but rather eliminates inconsistencies in guidance found in various prior accounting pronouncements and is effective for fiscal years beginning after November 15, 2007. In February 2008, the FASB issued FSP No. 157-2, *The Effective Date of FASB Statement No. 157*, which delays the effective date of SFAS No. 157 for all nonfinancial assets and nonfinancial liabilities, except those that are recognized or disclosed at fair value in the financial statements on a recurring basis (at least annually), until fiscal years beginning after November 15, 2008, and interim periods within those fiscal years. These nonfinancial items include assets and liabilities such as reporting units measured at fair value in a goodwill impairment test and nonfinancial assets acquired and liabilities assumed in a business combination. Effective March 29, 2008, we adopted SFAS No. 157 for financial assets and liabilities recognized at fair value on a recurring basis. The partial adoption of SFAS No. 157 for financial assets and liabilities did not have a material impact on our consolidated financial position, results of operations or cash flows. In October 2008, the FASB issued FSP No. FAS 157-3, *Determining the Fair Value of a Financial Asset When the Market for That Asset Is Not Active*. FSP No. FAS 157-3 provides examples to illustrate key considerations in determining the fair value of a financial asset when the market for that financial asset is not active. FSP No. FAS 157-3 is effective upon issuance. The adoption of the FSP did not have a material impact on our consolidated financial statements. See Note 2 for information and related disclosures regarding our fair value measurements.

**Note 2. Financial Instruments**

We measure financial assets and liabilities at fair value based upon exit price, representing the amount that would be received on the sale of an asset or paid to transfer a liability, as the case may be, in an orderly transaction between market participants. As such, fair value may be based on assumptions that market participants would use in pricing an asset or liability. SFAS No. 157 (as impacted by FSP Nos. 157-1, 157-2 and 157-3) establishes a consistent framework for measuring fair value on either a recurring or nonrecurring basis whereby inputs, used in valuation techniques, are assigned a hierarchical level. The following are the hierarchical levels of inputs to measure fair value:

- *Level 1:* Observable inputs that reflect quoted prices (unadjusted) for identical assets or liabilities in active markets.
- *Level 2:* Inputs reflect quoted prices for identical assets or liabilities in markets that are not active; quoted prices for similar assets or liabilities in active markets; inputs other than quoted prices that are observable for the assets or liabilities; or inputs that are derived principally from or corroborated by observable market data by correlation or other means.
- *Level 3:* Unobservable inputs reflecting our own assumptions incorporated in valuation techniques used to determine fair value. These assumptions are required to be consistent with market participant assumptions that are reasonably available.

## SYMANTEC CORPORATION

## NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

The following table summarizes our financial assets and liabilities measured at fair value on a recurring basis, by level within the fair value hierarchy:

	As of January 2, 2009			Total
	Level 1	Level 2	Level 3	
(In thousands)				
Assets:				
Cash equivalents:				
Money market funds	\$ 263,904	\$ —	\$ —	\$ 263,904
Bank securities and deposits	—	35,980	—	35,980
Short-term investments:				
Government notes	—	49,968	—	49,968
Asset-backed securities	—	17,176	—	17,176
Corporate notes	—	9,007	—	9,007
Equity investments(1)	3,737	—	—	3,737
Deferred compensation plan assets(2)	—	10,534	—	10,534
	<u>\$ 267,641</u>	<u>\$ 122,665</u>	<u>\$ —</u>	<u>\$ 390,306</u>

- (1) Equity investments relate to our investments in the securities of other public companies. Such investments are included in Short-term investments.
- (2) Deferred compensation plan assets are fund-of-funds and consist primarily of corporate equity securities. Such assets are included in Other current assets.

Certain financial assets and liabilities are not included in the table above because they are measured at fair value on a nonrecurring basis. These assets and liabilities include our non-public equity investments, convertible senior notes and bond hedge (including the derivative call option).

The effective date of FSP FAS No. 157-2 for measuring fair value of nonfinancial assets and liabilities which are recognized or disclosed at fair value on a nonrecurring basis is the fiscal year starting April 4, 2009 and interim periods within that fiscal year. This deferral applies to us for such items as nonfinancial assets and liabilities initially measured at fair value in a business combination but not measured at fair value in subsequent periods, nonfinancial long-lived and intangible asset groups measured at fair value for an impairment assessment, reporting units measured at fair value as part of a goodwill impairment test, and nonfinancial restructuring liabilities.

**SYMANTEC CORPORATION**

**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

**Note 3. Balance Sheet Information**

	As of	
	January 2, 2009	March 28, 2008
(In thousands)		
<i>Property and equipment, net:</i>		
Computer hardware and software	\$ 1,020,874	\$ 925,156
Office furniture and equipment	207,651	292,306
Buildings	492,199	492,857
Leasehold improvements	248,403	276,116
	1,969,127	1,986,435
Less: accumulated depreciation and amortization	(1,073,661)	(1,079,468)
	895,466	906,967
Land	76,774	94,783
Property and equipment, net	<u>\$ 972,240</u>	<u>\$ 1,001,750</u>

**Note 4. Comprehensive Income (Loss)**

The components of comprehensive (loss) income are as follows:

	Three Months Ended		Nine Months Ended	
	January 2, 2009	December 28, 2007	January 2, 2009	December 28, 2007
(In thousands)				
Net (loss) income	\$ (6,806,257)	\$ 131,890	\$ (6,479,492)	\$ 277,464
Other comprehensive (loss) income:				
Reclassification adjustment	—	—	(4,824)	—
Change in cumulative translation adjustment, net of tax	(27,732)	100	607	12,401
Change in unrealized gain (loss) on available-for-sale securities, net of tax	(825)	3,574	(1,552)	4,154
Total other comprehensive (loss) income	(28,557)	3,674	(5,769)	16,555
Comprehensive (loss) income	<u>\$ (6,834,814)</u>	<u>\$ 135,564</u>	<u>\$ (6,485,261)</u>	<u>\$ 294,019</u>

The reclassification adjustment relates to the realization of a foreign exchange translation resulting from the legal liquidation of foreign entities.

Accumulated other comprehensive income as of January 2, 2009 and March 28, 2008 primarily consisted of foreign currency translation adjustments.

**Note 5. Acquisitions**

***MessageLabs Purchase***

On November 14, 2008, we completed the acquisition of MessageLabs Group Limited (“MessageLabs”), a nonpublic United Kingdom-based provider of managed services to protect, control, encrypt, and archive electronic communications. The acquisition complements our software-as-a-service (“SaaS”) business. In exchange for all

## SYMANTEC CORPORATION

## NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

voting equity interests, we paid \$630 million in cash excluding cash acquired, which included acquisition-related costs of \$8 million. No equity interests were issued. Of the aggregate purchase price, \$20 million was allocated to tangible assets; \$30 million to tax liabilities; \$170 million to intangibles — consisting of \$131 million in other intangible assets for customer relationships and tradenames and \$39 million in acquired product rights for developed technology; and the remaining \$470 million resulted in goodwill. The amount allocated to acquired product rights is being amortized over a weighted-average period of 4 years. The amount allocated to other intangible assets is being amortized over a weighted-average period of 8 years. Goodwill, none of which is deductible for tax purposes, resulted primarily from our expectation of synergies from the integration of MessageLabs product offerings with our product offerings. The results of operations for MessageLabs, since the date of acquisition, were included as part of the Services segment. Supplemental proforma information for MessageLabs is not material to our financial results and therefore not included. In addition, the purchase price is subject to an adjustment of up to an additional \$13 million in cash due to estimates in the initial purchase price that have yet to be finalized.

***PC Tools Purchase***

On October 6, 2008, we completed the acquisition of PC Tools Pty Ltd. (“PC Tools”), a nonpublic Australia-based provider of security and systems software. The acquisition complements our consumer security software business. In exchange for all voting equity interests, we paid \$262 million in cash excluding cash acquired, which included acquisition-related costs. No equity interests were issued. Of the aggregate purchase price, \$11 million was allocated to tangible assets, \$23 million to tax liabilities, \$101 million to intangibles — consisting of \$66 million in other intangible assets for customer relationships and tradenames and \$35 million in acquired product rights for developed technology; and the remaining \$173 million resulted in goodwill. The amount allocated to acquired product rights is being amortized over a weighted-average period of 5 years. The amount of \$35 million allocated to other intangible assets is being amortized over a weighted-average period of 6 years while the remaining amount of \$31 million has an indefinite life. Goodwill, most of which is deductible for tax purposes, resulted primarily from our expectation of synergies from the integration of PC Tools’ product offerings with our product offerings. The results of operations for PC Tools, since the date of acquisition, were included as part of the Consumer Products segment. Supplemental proforma information for PC Tools is not material to our financial results and therefore not included. In addition, the purchase price is subject to a contingent consideration adjustment of up to an additional \$30 million in cash if PC Tools achieves certain billings and expense targets for the six month period ending on April 3, 2009.

***nSuite Purchase***

On August 8, 2008, we completed the acquisition of nSuite Technologies, Inc. (“nSuite”), a nonpublic Massachusetts-based provider of connection broker technology. The acquisition complements our endpoint virtualization portfolio and strategy. The connection broker technology of nSuite is utilized in an endpoint virtualization platform to validate users, perform basic security functions, connect users with the correct applications and manage the transfer of virtual resources within the data center. In exchange for all voting equity interests, we paid \$20 million in cash, which included acquisition-related costs. No equity interests were issued. Of the aggregate purchase price, \$5 million was allocated to acquired product rights for developed technology, and the remaining \$15 million resulted in goodwill. The amount allocated to acquired product rights is being amortized over a weighted-average period of 6 years. Goodwill, all of which is deductible for tax purposes, resulted primarily from our expectation of synergies from the integration of nSuite’s product offerings with our product offerings. The results of operations for nSuite, since the date of acquisition, were included as part of the Security and Compliance segment. Supplemental proforma information for nSuite is not material to our financial results and therefore not included.

**SYMANTEC CORPORATION****NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)*****SwapDrive Purchase***

On June 6, 2008, we completed the acquisition of SwapDrive, Inc. (“SwapDrive”), a nonpublic Washington D.C.-based provider of online storage products. SwapDrive was acquired to strengthen and expand the Norton consumer portfolio by leveraging online backup and storage platform technologies. In exchange for all voting equity interests, we paid \$124 million in cash, which included acquisition-related costs. No equity interests were issued. Of the aggregate purchase price, \$6 million was allocated to tangible assets; \$40 million was allocated to intangibles — consisting of \$8 million in other intangible assets for customer relationships and \$32 million in acquired product rights for developed technology; and the remaining \$78 million resulted in goodwill. The amount allocated to acquired product rights is being amortized over a weighted-average period of 5 years. The amount allocated to other intangible assets is being amortized over a weighted-average period of 8 years. Goodwill, none of which is deductible for tax purposes, resulted primarily from our expectation of synergies from the integration of SwapDrive’s product offerings with our product offerings. The results of operations for SwapDrive, since the date of acquisition, were included as part of the Consumer Products segment. Supplemental proforma information for SwapDrive is not material to our financial results and therefore not included.

***AppStream Purchase***

On April 18, 2008, we completed the acquisition of AppStream, Inc. (“AppStream”), a nonpublic Palo Alto, California-based provider of endpoint virtualization software. AppStream was acquired to complement our endpoint management and virtualization portfolio and strategy. AppStream’s application streaming technology provides an on-demand delivery mechanism that leverages application virtualization to enable greater flexibility and control. In exchange for all voting equity interests, we paid \$53 million in cash, which included acquisition-related costs. No equity interests were issued. Of the aggregate purchase price, \$15 million was allocated to tangible assets, \$11 million to acquired product rights for developed technology, and the remaining \$27 million resulted in goodwill. The amount allocated to acquired product rights is being amortized over a weighted-average period of 5 years. Goodwill, none of which is deductible for tax purposes, resulted primarily from our expectation of synergies from the integration of AppStream’s product offerings with our product offerings. The results of operations for AppStream, since the date of acquisition, were included as part of the Security and Compliance segment. Supplemental proforma information for AppStream is not material to our financial results and therefore not included.

**Note 6. Investment in Joint Venture**

On February 5, 2008, Symantec formed Huawei-Symantec, Inc. (“joint venture”) with a subsidiary of Huawei Technologies Co., Ltd. (“Huawei”). The joint venture is domiciled in Hong Kong with principal operations in Chengdu, China. We contributed cash of \$150 million, licenses related to certain intellectual property and other intangible assets in exchange for 49% of the outstanding common shares of the joint venture. The joint venture will develop, manufacture, market and support security and storage appliances to global telecommunications carriers and enterprise customers. Huawei contributed its telecommunications storage and security business assets, engineering, sales and marketing resources, personnel, and licenses related to intellectual property in exchange for a 51% ownership interest in the joint venture.

The contribution of assets to the joint venture was accounted for at its carrying value. The historical carrying value of the assets contributed by Symantec comprised a significant portion of the net assets of the joint venture. As a result, our carrying value of the investment in the joint venture exceeded our proportionate share in the underlying net assets of the joint venture by approximately \$75 million upon formation of the joint venture. As the contributions for both Symantec and Huawei were recorded at historical carrying value by the joint venture, this basis difference is attributable to the contributed identified intangible assets. The basis difference is being amortized over a weighted-average period of 9 years, the estimated useful lives of the underlying identified intangible assets to which the basis difference is attributed.

**SYMANTEC CORPORATION**

**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

We account for our investment in the joint venture under the equity method of accounting. Under this method, we record our proportionate share of the joint venture's net income or loss based on the quarterly financial statements of the joint venture. We record our proportionate share of net income or loss one quarter in arrears. In determining our share of the joint venture's net income or loss, we adjust the joint venture's reported results to recognize the amortization expense associated with the basis difference. For the nine months ended January 2, 2009, we recorded a loss of approximately \$33 million related to our share of the joint venture's net loss, including the amortization of the basis difference described above, for the joint venture's period ended September 30, 2008. This loss is included in the accompanying Condensed Consolidated Statements of Operations under the caption "Loss from joint venture." The carrying value of our investment in the joint venture as of January 2, 2009 was approximately \$117 million.

Summarized unaudited statement of operations information for the joint venture and the calculation of our share of the joint venture's loss are as follows:

	Three Months Ended September 30, 2008	For the Period from February 5, 2008 to September 30, 2008
	(In thousands)	
Net revenues	\$ 5,927	\$ 6,396
Gross margin	1,512	1,126
Net loss, as reported by the joint venture	\$ (29,114)	\$ (56,712)
Symantec's ownership interest	49%	49%
Symantec's proportionate share of net loss	(14,266)	(27,789)
Adjustment for amortization of basis difference	(2,205)	(5,609)
Loss from joint venture	\$ (16,471)	\$ (33,398)

**Note 7. Goodwill, Acquired Product Rights, and Other Intangible Assets**

**Goodwill**

We account for goodwill and other intangible assets in accordance with SFAS No. 142. In accordance with SFAS No. 142, we allocate goodwill to our reporting units, which are the same as our operating segments, except for the Services operating segment, which includes the reporting units SaaS and Other Services. Goodwill is allocated as follows:

	Consumer Products	Security and Compliance	Storage and Server Management (In thousands)	Services	Total Company
Balance as of March 28, 2008	\$ 102,810	\$ 4,080,717	\$ 6,665,734	\$ 358,096	\$ 11,207,357
Operating segment reclassification(1)	—	(84,376)	—	84,376	—
Goodwill acquired through business combinations(2)	251,281	43,078	—	470,280	764,639
Goodwill adjustments(3)	4,420	(3,336)	(6,347)	(5,353)	(10,616)
Goodwill impairment	—	(2,533,448)	(3,942,900)	(529,354)(4)	(7,005,702)
Balance as of January 2, 2009	\$ 358,511	\$ 1,502,635	\$ 2,716,487	\$ 378,045	\$ 4,955,678

(1) In the first quarter of fiscal year 2009, we moved Altiris services from the Security and Compliance segment to the Services segment. As a result of this reclassification, the above adjustment was made in accordance with SFAS No. 142.

**SYMANTEC CORPORATION**

**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

- (2) See Note 5 for acquisitions.
- (3) Reflects adjustments made to goodwill of prior acquisitions as a result of tax adjustments, primarily related to stock-based compensation.
- (4) Includes impairment of \$442 million in Other Services reporting unit and \$87 million in SaaS reporting unit.

In accordance with SFAS No. 142, we apply a fair value based impairment test to the net book value of goodwill and indefinite-lived intangible assets on an annual basis and, if certain events or circumstances indicate that an impairment loss may have been incurred, on an interim basis. The analysis of potential impairment of goodwill requires a two-step process. The first step is the estimation of fair value. If step one indicates that impairment potentially exists, the second step is performed to measure the amount of impairment, if any. Goodwill impairment exists when the estimated fair value of goodwill is less than its carrying value.

During our quarter ended January 2, 2009, based on a combination of factors, including the current economic environment and a decline in our market capitalization, we concluded that there were sufficient indicators to require us to perform an interim goodwill impairment analysis. For the purposes of this analysis, our estimates of fair value are based on a combination of the income approach, which estimates the fair value of our reporting units based on the future discounted cash flows, and the market approach, which estimates the fair value of our reporting units based on comparable market prices. As of the date of this filing, we have not completed this analysis due to the complexities involved in determining the implied fair value of the goodwill of each reporting unit. However, based on the work performed to date, we have concluded that an impairment loss is probable and can be reasonably estimated. Accordingly, we have recorded a non-cash goodwill impairment charge of approximately \$7 billion, representing our best estimate of the impairment loss, during the third quarter of fiscal 2009.

We expect to finalize our goodwill impairment analysis during the fourth quarter of fiscal 2009. There could be material adjustments to the goodwill impairment charge when the goodwill impairment test is completed. Any adjustments to our preliminary estimates as a result of completing this evaluation will be recorded in our financial statements for the fiscal year ended April 3, 2009.

***Acquired product rights, net***

Acquired product rights subject to amortization are as follows:

	<b>As of January 2, 2009</b>			
	<b>Gross Carrying Amount</b>	<b>Accumulated Amortization</b>	<b>Net Carrying Amount</b>	<b>Weighted-Average Remaining Life</b>
	(In thousands)			
Developed technology	\$ 1,780,207	\$ (1,301,750)	\$ 478,457	1 year
Patents	75,595	(43,578)	32,017	3 years
	<u>\$ 1,855,802</u>	<u>\$ (1,345,328)</u>	<u>\$ 510,474</u>	<u>1 year</u>

  

	<b>As of March 28, 2008</b>			
	<b>Gross Carrying Amount</b>	<b>Accumulated Amortization</b>	<b>Net Carrying Amount</b>	<b>Weighted-Average Remaining Life</b>
	(In thousands)			
Developed technology	\$ 1,655,895	\$ (1,045,383)	\$ 610,512	2 years
Patents	71,313	(32,875)	38,438	3 years
	<u>\$ 1,727,208</u>	<u>\$ (1,078,258)</u>	<u>\$ 648,950</u>	<u>2 years</u>

During the three months ended January 2, 2009 and December 28, 2007, amortization expense for acquired product rights was \$90 million and \$85 million, respectively. During the nine months ended January 2, 2009 and

**SYMANTEC CORPORATION**

**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

December 28, 2007, amortization expense for acquired product rights was \$262 million and \$263 million, respectively. Amortization of acquired product rights is included in Cost of revenues in the Condensed Consolidated Statements of Operations.

Amortization expense for acquired product rights, based upon our existing acquired product rights and their current useful lives as of January 2, 2009, is estimated to be as follows (*in thousands*):

Remainder of fiscal 2009	\$ 91,039
2010	229,795
2011	98,514
2012	56,164
2013	23,437
Thereafter	<u>11,525</u>
Total	<u>\$ 510,474</u>

***Other intangible assets, net***

Other intangible assets are as follows:

	As of January 2, 2009			
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Weighted-Average Remaining Life
(In thousands)				
Customer base	\$ 1,834,652	\$ (686,020)	\$ 1,148,632	5 years
Definite-lived tradenames	125,263	(48,513)	76,750	6 years
Indefinite-lived tradenames	<u>53,283</u>	<u>—</u>	<u>53,283</u>	Indefinite
	<u>\$ 2,013,198</u>	<u>\$ (734,533)</u>	<u>\$ 1,278,665</u>	<u>5 years</u>

	As of March 28, 2008			
	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount	Weighted-Average Remaining Life
(In thousands)				
Customer base	\$ 1,661,683	\$ (526,512)	\$ 1,135,171	5 years
Definite-lived tradenames	125,203	(38,933)	86,270	7 years
Indefinite-lived tradenames	<u>22,083</u>	<u>—</u>	<u>22,083</u>	Indefinite
	<u>\$ 1,808,969</u>	<u>\$ (565,445)</u>	<u>\$ 1,243,524</u>	<u>6 years</u>

During the three months ended January 2, 2009 and December 28, 2007, amortization expense for other intangible assets was \$61 million and \$55 million, respectively. During the nine months ended January 2, 2009 and December 28, 2007, amortization expense for other intangible assets was \$172 million and \$169 million, respectively. Amortization of other intangible assets is included in Operating expenses in the Condensed Consolidated Statements of Operations.

**SYMANTEC CORPORATION**

**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

Amortization expense for other intangible assets, based upon our existing other intangible assets and their current useful lives as of January 2, 2009, is estimated to be as follows (*in thousands*):

Remainder of fiscal 2009	\$ 61,428
2010	244,464
2011	243,701
2012	241,609
2013	239,640
Thereafter	194,540
<b>Total(1)</b>	<b>\$ 1,225,382</b>

(1) Does not include Indefinite-lived tradenames as they are not subject to amortization.

**Note 8. Line of Credit**

In July 2006, we entered into a five-year \$1 billion senior unsecured revolving credit facility that expires in July 2011. Borrowings under the facility bear interest, at our option, at either a rate equal to the bank's base rate or a rate equal to LIBOR plus a margin based on our leverage ratio, as defined in the credit facility agreement. In connection with the credit facility, we must maintain certain covenants, including a specified ratio of debt to earnings (before interest, taxes, depreciation, amortization and impairments) as well as various other non-financial covenants.

On November 29, 2007, we borrowed \$200 million under this credit agreement to partially finance our acquisition of Vontu with an interest rate of 4.7075% per annum due and payable quarterly. During the first quarter of fiscal 2009, we repaid the entire Line of Credit principal amount of \$200 million plus accrued interest of \$3 million. Total interest expense associated with this borrowing was approximately \$6 million. As of January 2, 2009, we were in compliance with all required covenants, and there was no outstanding balance on the credit facility.

**Note 9. Assets Held for Sale**

In accordance with the provisions of SFAS No. 144, land and buildings held for sale are classified on our Condensed Consolidated Balance Sheets as Other current assets. We believe that these sales will be completed no later than the third quarter of fiscal 2010. The following table summarizes the changes in assets held for sale:

	<u>As of March 28, 2008</u>	<u>Added Properties</u>	<u>Sold Properties</u>	<u>Reclassified Properties and Adjustments</u>	<u>As of January 2, 2009</u>
	(In thousands)				
Assets held for sale	\$ 39,568	\$ 107,082	\$ (38,203)	\$ (44,165)	\$ 64,282

In December 2008, following a review of our real estate holdings, we decided to retain two buildings we had previously committed to sell. As a result, on the January 2, 2009 Condensed Consolidated Balance Sheet, these buildings were reclassified at their fair value to the "Property and equipment, net" caption rather than the "Other current assets" caption, where they had been classified previously.

SFAS No. 144 provides that a long-lived asset classified as held for sale should be measured at the lower of its carrying amount or fair value less cost to sell and thus we have recorded impairment losses of \$17 million and \$43 million during the three and nine months ended January 2, 2009, respectively.

During the second quarter of fiscal 2009, we sold two of our properties previously classified as assets held for sale for cash proceeds of \$40 million. The gain and the loss on the sales were not significant.

**SYMANTEC CORPORATION**
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**
**Note 10. Stock Repurchases**

For the three months ended January 2, 2009, we repurchased 16.1 million shares of our common stock at prices ranging from \$10.34 to \$13.60 per share for an aggregate amount of \$200 million. For the nine months ended January 2, 2009, we repurchased 35.1 million shares of our common stock at prices ranging from \$10.34 to \$22.64 per share for an aggregate amount of \$600 million. As of January 2, 2009, an aggregate of \$400 million remained authorized for future repurchases from the June 14, 2007 stock repurchase plan.

**Note 11. Earnings Per Share**

The components of earnings per share are as follows:

	Three Months Ended		Nine Months Ended	
	January 2, 2009	December 28, 2007	January 2, 2009	December 28, 2007
	(In thousands, except per share data)			
<b>Net (loss) income per share — basic:</b>				
Net (loss) income	\$ (6,806,257)	\$ 131,890	\$ (6,479,492)	\$ 277,464
Net (loss) income per share — basic	\$ (8.23)	\$ 0.15	\$ (7.76)	\$ 0.32
Weighted average outstanding common shares	826,959	859,997	834,774	875,971
<b>Net (loss) income per share — diluted:</b>				
Net (loss) income	\$ (6,806,257)	\$ 131,890	\$ (6,479,492)	\$ 277,464
Net (loss) income per share — diluted	\$ (8.23)	\$ 0.15	\$ (7.76)	\$ 0.31
Weighted-average outstanding common shares	826,959	859,997	834,774	875,971
Shares issuable from assumed exercise of options	—	14,687	—	16,396
Dilutive impact of restricted stock and restricted stock units	—	1,537	—	1,427
Total weighted-average shares outstanding — diluted	826,959	876,221	834,774	893,794

The following potential common shares were excluded from the computation of diluted earnings per share, as their effect would have been anti-dilutive:

	Three Months Ended		Nine Months Ended	
	January 2, 2009	December 28, 2007	January 2, 2009	December 28, 2007
	(In thousands)			
Stock options	70,086	62,768	61,333	61,570
Restricted stock units	9,015	17	1,796	15
Dilutive impact of assumed conversion of Senior Notes using the treasury stock method	—	—	201	—
	79,101	62,785	63,330	61,585

For the three and nine months ended January 2, 2009 and December 28, 2007, the effect of the warrants issued and options purchased in connection with the convertible senior notes were excluded for the reasons discussed in

**SYMANTEC CORPORATION**

**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

Note 9 of Notes to Consolidated Financial Statements in our Annual Report on Form 10-K for the fiscal year ended March 28, 2008.

**Note 12. Stock-based Compensation**

We currently have in effect certain stock purchase plans, stock award plans, and equity incentive plans, as described in detail in Note 15 of Notes to Consolidated Financial Statements in our Annual Report on Form 10-K for the fiscal year ended March 28, 2008. These plans were amended in several respects during the second quarter of fiscal 2009. At our 2008 Annual Meeting held in September 2008, our stockholders approved (a) the amendment of our 2004 Equity Incentive Plan to reserve an additional 50,000,000 shares of our common stock for issuance thereunder, and (b) the adoption of our 2008 Employee Stock Purchase Plan including the reservation of 20,000,000 shares of common stock for issuance thereunder, with the first purchase period thereunder to commence on February 16, 2009. The 2008 Employee Stock Purchase Plan replaces the 1998 Employee Stock Purchase Plan, as amended, which terminates pursuant to its terms on January 1, 2009 subject to completion of the final purchase period under the 1998 Employee Stock Purchase Plan on February 15, 2009.

**Valuation of stock-based awards**

Changes in the Black-Scholes valuation assumptions and our estimated forfeiture rate may change the estimate of fair value for stock-based compensation and the related expense recognized. There have not been any material changes to our stock-based compensation expense due to changes in our valuation assumptions of stock-based awards as described in detail in Note 15 of Notes to Consolidated Financial Statements in our Annual Report on Form 10-K for the fiscal year ended March 28, 2008. The net effect of the forfeiture rate adjustment based upon actual results was a decrease to our stock-based compensation expense for the three and nine months ended January 2, 2009 by approximately \$10 million.

**SYMANTEC CORPORATION**
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The following table sets forth the total stock-based compensation expense recognized in our Condensed Consolidated Statements of Operations for the three and nine months ended January 2, 2009 and December 28, 2007:

	Three Months Ended		Nine Months Ended	
	January 2, 2009	December 28, 2007	January 2, 2009	December 28, 2007
	(In thousands, except per share data)			
Cost of revenues — Content, subscriptions, and maintenance	\$ 2,403	\$ 2,987	\$ 8,545	\$ 9,940
Cost of revenues — Licenses	636	890	2,370	2,832
Sales and marketing	14,731	14,013	52,263	42,433
Research and development	10,951	14,431	38,104	43,439
General and administrative	4,914	7,097	21,848	22,507
Total stock-based compensation expense	33,635	39,418	123,130	121,151
Tax benefit associated with stock-based compensation expense	8,788	10,076	34,173	29,788
Net effect of stock-based compensation expense on operations	<u>\$ 24,847</u>	<u>\$ 29,342</u>	<u>\$ 88,957</u>	<u>\$ 91,363</u>
Net effect of stock-based compensation expense on earnings per share — basic	<u>\$ 0.03</u>	<u>\$ 0.03</u>	<u>\$ 0.11</u>	<u>\$ 0.10</u>
Net effect of stock-based compensation expense on earnings per share — diluted	<u>\$ 0.03</u>	<u>\$ 0.03</u>	<u>\$ 0.11</u>	<u>\$ 0.10</u>

As of January 2, 2009, total unrecognized compensation expense adjusted for estimated forfeitures related to unvested stock options, Restricted Stock Units (“RSUs”), and Restricted Stock Agreements (“RSAs”), was \$94 million, \$91 million, and \$0.1 million, respectively, which is expected to be recognized over the remaining weighted-average vesting periods of 2.3 years for stock options, 2.2 years for RSUs, and 0.1 years for RSAs.

The weighted-average fair value per stock option granted during the nine months ended January 2, 2009 and December 28, 2007, including assumed options, was \$5.29 and \$6.12, respectively. The total intrinsic value of options exercised during the nine months ended January 2, 2009 and December 28, 2007, including assumed options, was \$101 million and \$116 million, respectively.

The weighted-average fair value per RSU granted during the nine months ended January 2, 2009 and December 28, 2007, including assumed RSUs, was \$19.67 and \$19.45 respectively. The fair value of RSUs granted for the nine months ended January 2, 2009 and December 28, 2007 was \$186 million and \$68 million, respectively. The total fair value of RSUs that vested during the nine months ended January 2, 2009 and December 28, 2007, including assumed RSUs, was \$50 million and \$14 million, respectively.

**Note 13. Restructuring**

Our restructuring costs consist of severance, benefits, facilities and other costs. Severance and benefits generally include severance, stay-put or one-time bonuses, outplacement services, health insurance coverage, effects of foreign currency exchange and legal costs. Facilities’ costs generally include rent expense less expected sublease income, lease termination costs, asset abandonment costs and the effects of foreign currency exchange. Other costs generally include relocation, consulting services and asset impairments. Restructuring expenses generally do not impact a particular reporting segment and are included in the “Other” reporting segment.

SYMANTEC CORPORATION

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

Restructuring charges were \$46 million and \$23 million for the three months ended January 2, 2009 and December 28, 2007, respectively. Charges for the fiscal 2009 period were primarily for severance and benefits related to the headcount reduction action in the 2009 Restructuring Plan. Charges for the fiscal 2008 period were primarily for severance and benefits related to headcount reduction action in the 2008 Restructuring Plan. Restructuring charges were \$73 million and \$52 million for the nine months ended January 2, 2009 and December 28, 2007, respectively. Restructuring charges for the fiscal 2009 period were primarily for severance and benefits related to the first action in the 2009 Restructuring Plan and second action in the 2008 Restructuring Plan. Restructuring charges for the fiscal 2008 period were primarily for severance and benefits related to the first action in the 2008 Restructuring Plan and the first action in the 2007 Restructuring Plan.

**2009 Restructuring Plan (“2009 Plan”)**

In third quarter of fiscal 2009, management approved and initiated the following restructuring events to:

- *Reduce operating costs through a worldwide headcount reduction.* Charges related to this action are for severance and benefits. These actions were initiated in the third quarter of fiscal 2009 and are expected to be substantially completed in fiscal 2010. Total remaining costs are not expected to be material.
- *Consolidate facilities.* Charges related to this action will primarily be other charges associated with moving costs. These actions have not been initiated and costs are expected to be substantially recognized in fiscal 2010.

**2008 Restructuring Plan (“2008 Plan”)**

In third quarter of fiscal 2008, management approved and initiated the following restructuring events to:

- *Reduce operating costs through a worldwide headcount reduction.* This action was initiated in the third quarter of fiscal 2008 and was substantially completed in the fourth quarter of fiscal 2008. Charges related to this action are for severance and benefits. Total remaining costs are not expected to be material.
- *Reduce operating costs, implement management structure changes, optimize the business structure and discontinue certain products.* Charges related to these actions are for severance and benefits and asset impairments. These actions were initiated in the third quarter of fiscal 2008 and are expected to be completed in fiscal 2010. Total remaining costs for the 2008 Plan are estimated to range from \$10 million to \$20 million.
- *Outsource certain back office functions worldwide.* Charges related to these actions are for severance and benefits and other consulting costs. These actions were initiated in the second quarter of fiscal 2009 and are expected to be completed in fiscal 2011. Total remaining costs, primarily for severance, benefits and outsourcing transition and transformation costs, are estimated to range from \$30 million to \$50 million.

**Prior and Acquisition-Related Restructuring Plans**

*Prior Year Restructuring Plans*

*2007 Restructuring Plan.* In fiscal 2007, management approved and initiated the following restructuring events to:

- *Reduce operating costs through a worldwide headcount reduction.* This action was initiated and substantially completed in the first quarter of fiscal 2008. Charges related to this action are for severance and benefits. Total remaining costs are not expected to be material.
- *Consolidate and exit certain facilities related to earlier acquisitions.* Restructuring liabilities related to excess facilities are expected to be paid through the second quarter of fiscal 2010 and are not material as of January 2, 2009. Total remaining costs are not expected to be material.

**SYMANTEC CORPORATION**

**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

*2006 Restructuring Plan.* In fiscal 2006, management approved and initiated a plan to consolidate and exit certain facilities. Restructuring liabilities related to excess facilities are expected to be paid through the fourth quarter of fiscal 2018. Total remaining costs are not expected to be material.

*Acquisition-Related Restructuring Plans*

Restructuring liabilities related to acquisitions as of January 2, 2009 were \$10 million, consisting primarily of excess facilities obligations related to the Veritas acquisition and Vontu acquisitions. Acquisition-related restructuring liabilities are expected to be paid between fiscal 2011 and fiscal 2014. Total remaining costs are not expected to be material.

	Restructuring Liability					Cumulative Incurred to Date
	March 28, 2008	Costs, Net of Adjustments(1)	Cash Payments	Non-Cash Settlements	January 2, 2009	
	(In thousands)					
<b>2009 Restructuring Plan:</b>						
Severance	\$ —	\$ 37,020	\$ (19,010)	\$ —	\$ 18,010	\$ 37,020
<b>2008 Restructuring Plan:</b>						
Severance	16,337	15,260	(27,366)	—	4,231	56,885
Asset impairments	—	2,687	—	(2,687)	—	2,687
Other	—	8,833	(8,833)	—	—	8,833
<b>Prior Years &amp; Acquisition Restructuring Plans:</b>						
Severance	20	1,873	(950)	—	943	119,581
Facilities	14,263	6,927	(8,483)	—	12,707	43,080
<b>Total</b>	<b>\$ 30,620</b>	<b>\$ 72,600</b>	<b>\$ (64,642)</b>	<b>\$ (2,687)</b>	<b>\$ 35,891</b>	
<b>Balance Sheet:</b>						
Other current liabilities	\$ 24,062				\$ 30,137	
Other long-term liabilities	6,558				5,754	
	<u>\$ 30,620</u>				<u>\$ 35,891</u>	

(1) Total net adjustments or reversals for the three and nine months ended January 2, 2009 were not significant.

**Note 14. Income Taxes**

The effective tax rate was approximately (0.5)% and 36% for the three month periods and (3)% and 35% for the nine months ended January 2, 2009 and December 28, 2007, respectively. The tax expense for the three and nine months ended January 2, 2009 includes a \$44 million tax benefit associated with the \$7 billion impairment of goodwill, materially impacting the overall effective tax rate. The effective tax rates for all periods otherwise reflect the benefits of lower-taxed foreign earnings, domestic manufacturing tax incentives, and research and development credits, offset by state income taxes and non-deductible stock-based compensation. The provision for the three months ended January 2, 2009 reflects a revised forecast tax rate for the year of 34% prior to taking into consideration the goodwill impairment, and a resulting 3% benefit to true-up estimated taxes provided in the first two quarters of the year. The provision for the nine months ended January 2, 2009 is 31% prior to taking into consideration the goodwill impairment, reflecting non-recurring tax benefits recorded in the June and September quarters (including a \$5 million tax benefit in the June 2008 quarter related to a favorable Irish settlement; a \$7 million tax benefit in the September 2008 quarter from interest savings as a result of the IRS agreement on the treatment of the 2005 dividend from a Veritas international subsidiary; and a \$5 million tax benefit in the September 2008 quarter from favorable prior year items including the retroactive reinstatement of the U.S. federal research credit).

**SYMANTEC CORPORATION**

**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

The \$44 million net tax benefit arising from the impairment of goodwill consists of a \$100 million tax benefit from elements of tax deductible goodwill, net of a \$56 million tax provision resulting from an increase in our valuation allowances on certain deferred tax assets that will require an extended period of time to realize. As a result of the impairment of goodwill, we have cumulative pre-tax book losses, as measured by the current and prior two years. We considered the negative evidence of this cumulative pre-tax book loss position on our ability to continue to recognize deferred tax assets that are dependent upon future taxable income for realization. We considered the following as positive evidence: the vast majority of the goodwill impairment is not deductible for tax purposes and thus will not result in tax losses; we have a strong, consistent taxpaying history; we have substantial U.S. federal income tax carryback potential; we have substantial amounts of scheduled future reversals of taxable temporary differences from our deferred tax liabilities. We have concluded that this positive evidence outweighs the negative evidence and, thus, that those deferred tax assets not otherwise subject to a valuation allowance are realizable on a “more likely than not” basis.

We file income tax returns in the U.S. on a federal basis and in many U.S. state and foreign jurisdictions. Our two most significant tax jurisdictions are the U.S. and Ireland. Our tax filings remain subject to examination by applicable tax authorities for a certain length of time following the tax year to which those filings relate. Our 2000 through 2007 tax years remain subject to examination by the IRS for U.S. federal tax purposes, and our 2004 through 2008 tax years remain subject to examination by the appropriate governmental agencies for Irish tax purposes. Other significant jurisdictions include California, Japan, and India. As of January 2, 2009, we continue to be under examination by the IRS, for the Veritas U.S. federal income taxes for the 2002 through 2005 tax years.

On March 29, 2006, we received a Notice of Deficiency from the IRS claiming that we owe additional taxes, plus interest and penalties, for the 2000 and 2001 tax years based on an audit of Veritas. The incremental tax liability asserted by the IRS was \$867 million, excluding penalties and interest. On June 26, 2006, we filed a petition with the U.S. Tax Court protesting the IRS claim for such additional taxes. The IRS answered our petition on August 30, 2006, at which point the dispute was docketed for trial. In the March 2007 quarter, we agreed to pay \$7 million out of \$35 million originally assessed by the IRS in connection with several of the lesser issues covered in the assessment. The IRS also agreed to waive the assessment of penalties. During July 2008, we completed the trial phase of the Tax Court case, which dealt with the remaining issue covered in the assessment. At trial, the IRS changed its position with respect to this remaining issue, which decreased the remaining amount at issue from \$832 million to \$545 million, excluding interest. We filed our post-trial briefs in October 2008 and rebuttal briefs in November 2008 with the U.S. Tax Court.

We strongly believe the IRS’ position with regard to this matter is inconsistent with applicable tax laws and Treasury regulations in existence for the years at issue, and that our previously reported income tax provision for the years in question is appropriate. If, upon resolution, we are required to pay an amount in excess of our provision for this matter, based upon current accounting authority, the incremental amounts due would be accounted for principally as additions to the cost of the Veritas purchase price. Any incremental interest accrued subsequent to the date of the Veritas acquisition would be recorded as an expense in the period the matter is resolved.

The accounting treatment related to pre-acquisition unrecognized tax benefits will change when SFAS No. 141R becomes effective, which will be in the first quarter of our fiscal year 2010. At such time, any changes to the recognition or measurement of unrecognized tax benefits related to pre-acquisition periods will be recorded through income tax expense, where currently the accounting treatment would require any adjustment to be recognized through the purchase price as an increase or decrease to goodwill.

In July 2008, we reached an agreement with the IRS concerning our eligibility to claim a lower tax rate on a distribution made from a Veritas foreign subsidiary prior to the July 2005 acquisition. The distribution was intended to be made pursuant to the American Jobs Creation Act of 2004, and therefore eligible for a 5.25% effective U.S. federal rate of tax, in lieu of the 35% statutory rate. The final impact of this agreement is not yet known since this relates to the taxability of earnings that are otherwise the subject of the tax years 2000-2001 transfer pricing dispute which in turn is being addressed in the U.S. Tax Court. To the extent that we owe taxes as a result of the

**SYMANTEC CORPORATION**

**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**

transfer pricing dispute, we anticipate that the incremental tax due from this negotiated agreement will decrease. We currently estimate that the most probable outcome from this negotiated agreement will be \$13 million or less, for which an accrual has already been made. As previously disclosed in Form 10-K for the fiscal year ended March 28, 2008, we made a payment of \$130 million to the IRS for this matter in May 2006. We have applied \$110 million of this payment as a deposit on the outstanding transfer pricing matter for the tax years 2000-2001.

We continue to monitor the progress of ongoing income tax controversies and the impact, if any, of the expected tolling of the statute of limitations in various taxing jurisdictions. Considering these facts, we do not currently believe there is a reasonable possibility of any significant change to our total unrecognized tax benefits within the next twelve months.

**Note 15. Litigation**

See Note 14 for a discussion of our tax litigation with the IRS relating to the 2000 and 2001 tax year of Veritas.

On July 7, 2004, a purported class action complaint entitled Paul Kuck, et al. v. Veritas Software Corporation, et al. was filed in the United States District Court for the District of Delaware. The lawsuit alleges violations of federal securities laws in connection with Veritas' announcement on July 6, 2004 that it expected results of operations for the fiscal quarter ended June 30, 2004 to fall below earlier estimates. The complaint generally seeks an unspecified amount of damages. Subsequently, additional purported class action complaints have been filed in Delaware federal court, and, on March 3, 2005, the Court entered an order consolidating these actions and appointing lead plaintiffs and counsel. A consolidated amended complaint ("CAC"), was filed on May 27, 2005, expanding the class period from April 23, 2004 through July 6, 2004. The CAC also named another officer as a defendant and added allegations that Veritas and the named officers made false or misleading statements in press releases and SEC filings regarding the company's financial results, which allegedly contained revenue recognized from contracts that were unsigned or lacked essential terms. The defendants to this matter filed a motion to dismiss the CAC in July 2005; the motion was denied in May 2006. In April 2008, the parties filed a stipulation of settlement, which if approved by the Court will resolve the matter. On July 31, 2008, the Court held a final approval hearing and, on August 5, 2008, the Court entered an order approving the settlement. An objector to the fees portion of the settlement has lodged an appeal. As of March 28, 2008, we have recorded an accrual in the amount of \$21.5 million for this matter and, pursuant to the terms of the settlement, we established a settlement fund of \$21.5 million on May 1, 2008.

After Veritas announced in January 2003 that it would restate its financial results as a result of transactions entered into with AOL Time Warner in September 2000, numerous separate complaints purporting to be class actions were filed in the United States District Court for the Northern District of California alleging that Veritas and some of its officers and directors violated provisions of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). The complaints contain varying allegations, including that Veritas made materially false and misleading statements with respect to its 2000, 2001 and 2002 financial results included in its filings with the SEC, press releases and other public disclosures. A consolidated complaint entitled In Re VERITAS Software Corporation Securities Litigation was filed by the lead plaintiff on July 18, 2003. On February 18, 2005, the parties filed a Stipulation of Settlement in the class action. On March 18, 2005, the Court entered an order preliminarily approving the class action settlement. Pursuant to the terms of the settlement, a \$35 million settlement fund was established on March 25, 2005. Veritas' insurance carriers provided for the entire amount of the settlement fund. In July 2007, the Court of Appeals vacated the settlement, finding that the notice of settlement was inadequate. The matter was returned to the District Court for further proceedings, including reissuance of the notice, and the District Court again approved the settlement and dismissed the matter.

We are also involved in a number of other judicial and administrative proceedings that are incidental to our business. Although adverse decisions (or settlements) may occur in one or more of the cases, it is not possible to estimate the possible loss or losses from each of these cases. The final resolution of these lawsuits, individually or in the aggregate, is not expected to have a material adverse effect on our financial condition or results of operations.

SYMANTEC CORPORATION

NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)

During the third quarter of fiscal 2009, we settled a patent lawsuit in which the result was a gain of approximately \$10 million reflected in the Condensed Consolidated Statement of Operations under the caption “Patent settlement.”

**Note 16. Segment Information**

During the first quarter of fiscal 2009, we changed our reporting segments to better align our operating structure. Altiris services that were formerly included in the Security and Compliance segment were moved to the Services segment. This move is a result of operational changes in our Services segment and the continued integration of our Altiris business. We revised the segment information for the prior year to conform to the new presentation. As of January 2, 2009, our five operating segments are:

- *Consumer Products.* Our Consumer Products segment focuses on delivering our Internet security, PC tuneup, and backup products to individual users and home offices.
- *Security and Compliance.* Our Security and Compliance segment focuses on providing large, medium, and small-sized businesses with solutions for endpoint security and management, compliance, archiving, messaging management, and data loss prevention solutions that allow our customers to secure, provision, and remotely access their laptops, PCs, mobile devices, and servers.
- *Storage and Server Management.* Our Storage and Server Management segment focuses on providing enterprise and large enterprise customers with storage and server management, backup, and data protection solutions across heterogeneous storage and server platforms.
- *Services.* Our Services segment provides customers with leading IT risk management services and solutions to manage security, availability, performance and compliance risks across multi-vendor environments. Our services include consulting, business critical, education, SaaS and managed security services.
- *Other.* Our Other segment is comprised of sunset products and products nearing the end of their life cycle. It also includes general and administrative expenses; amortization of acquired product rights, other intangible assets, and other assets; goodwill impairment charges; charges such as stock-based compensation and restructuring; and certain indirect costs that are not charged to the other operating segments.

Our reportable segments are the same as our operating segments. The accounting policies of the segments are described in our Annual Report on Form 10-K for the fiscal year ended March 28, 2008. There are no intersegment sales. Our chief operating decision maker evaluates performance based on direct profit or loss from operations before income taxes not including nonrecurring gains and losses, foreign exchange gains and losses, and miscellaneous other income and expenses. Except for goodwill, as disclosed in Note 7, the majority of our assets are not discretely identified by segment. The depreciation and amortization of our property, equipment, and leasehold improvements are allocated based on headcount, unless specifically identified by segment.

**SYMANTEC CORPORATION**
**NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS — (Continued)**
**Segment information**

The following table presents a summary of our operating segments:

	<u>Consumer Products</u>	<u>Security and Compliance</u>	<u>Storage and Server Management</u>	<u>Services</u>	<u>Other</u>	<u>Total Company</u>
	(In thousands)					
<b>Three months ended January 2, 2009:</b>						
Net revenues	\$ 432,290	\$ 394,612	\$ 568,484	\$ 118,199	\$ 369	\$ 1,513,954
Percentage of total net revenues	29%	26%	37%	8%	0%	100%
Operating income (loss)	224,350	106,738	300,395	4,126	(7,408,511)	(6,772,902)
Operating margin of segment	52%	27%	53%	3%	*	
Depreciation and amortization expense	4,120	5,751	11,764	3,914	189,286	214,835
<b>Three months ended December 28, 2007:</b>						
Net revenues	\$ 440,206	\$ 410,250	\$ 561,694	\$ 102,606	\$ 495	\$ 1,515,251
Percentage of total net revenues	29%	27%	37%	7%	0%	100%
Operating income (loss)	224,974	82,576	253,834	(3,219)	(362,391)	195,774
Operating margin of segment	51%	20%	45%	(3)%	*	
Depreciation and amortization expense	1,763	6,389	14,891	2,363	175,505	200,911
<b>Three months ended period over period comparison:</b>						
Operating income (loss)	\$ (624)	\$ 24,162	\$ 46,561	\$ 7,345	\$ (7,046,120)	\$ (6,968,676)
Operating income percentage year over year change	0%	29%	18%	*	*	
<b>Nine months ended January 2, 2009:</b>						
Net revenues	\$ 1,342,275	\$ 1,241,251	\$ 1,755,949	\$ 341,536	\$ 1,275	\$ 4,682,286
Percentage of total net revenues	29%	27%	37%	7%	0%	100%
Operating income (loss)	735,158	250,325	914,451	1,347	(8,178,822)	(6,277,541)
Operating margin of segment	55%	20%	52%	0%	*	
Depreciation and amortization expense	10,128	18,753	37,972	9,648	549,901	626,402
<b>Nine months ended December 28, 2007:</b>						
Net revenues	\$ 1,297,464	\$ 1,186,441	\$ 1,575,231	\$ 274,478	\$ 1,064	\$ 4,334,678
Percentage of total net revenues	30%	28%	36%	6%	0%	100%
Operating income (loss)	685,133	191,826	627,825	(35,961)	(1,079,964)	388,859
Operating margin of segment	53%	16%	40%	(13)%	*	

Depreciation and amortization expense	5,154	19,569	45,248	7,787	540,646	618,404
<b>Nine months ended period over period comparison:</b>						
Operating income (loss)	\$ 50,025	\$ 58,499	\$ 286,626	\$ 37,308	\$ (7,098,858)	\$ (6,666,400)
Operating income percentage year over year change	7%	30%	46%	104%	*	

\* Percentage not meaningful

## **Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations**

### **Forward-Looking Statements and Factors That May Affect Future Results**

The discussion below contains forward-looking statements, which are subject to safe harbors under the Securities Act of 1933, as amended, or the Securities Act, and the Exchange Act. Forward-looking statements include references to our ability to utilize our deferred tax assets, as well as statements including words such as "expects," "plans," "anticipates," "believes," "estimates," "predicts," "projects," and similar expressions. In addition, statements that refer to projections of our future financial performance, anticipated growth and trends in our businesses and in our industries, the anticipated impacts of acquisitions, and other characterizations of future events or circumstances are forward-looking statements. These statements are only predictions, based on our current expectations about future events and may not prove to be accurate. We do not undertake any obligation to update these forward-looking statements to reflect events occurring or circumstances arising after the date of this report. These forward-looking statements involve risks and uncertainties, and our actual results, performance, or achievements could differ materially from those expressed or implied by the forward-looking statements on the basis of several factors, including those that we discuss in Risk Factors, set forth in Part I, Item 1A, of our annual report on Form 10-K for the fiscal year ended March 28, 2008. We encourage you to read that section carefully.

### **Fiscal Calendar**

We have a 52/53-week fiscal accounting year. Unless otherwise stated, references to three and nine month ended periods in this report relate to fiscal periods ended January 2, 2009 and December 28, 2007. The January 2, 2009 and December 28, 2007 quarters both consisted of 13 weeks. The nine months ended January 2, 2009 consisted of 40 weeks while the nine months ended December 28, 2007 consisted of 39 weeks.

## **OVERVIEW**

### **Our Business**

Symantec is a global leader in providing security, storage and systems management solutions to help businesses and consumers secure and manage their information. We provide customers worldwide with software and services that protect, manage and control information risks related to security, data protection, storage, compliance, and systems management. We help our customers manage cost, complexity and compliance by protecting their IT infrastructure as they seek to maximize value from their IT investments.

Despite a challenging economic environment, Symantec delivered solid revenue performance for the three and nine months ended January 2, 2009 due to the recurring nature of our business and the mission-critical nature of our storage, backup, data loss prevention and archiving products. In addition, we continued to tightly manage expenses. Foreign currency negatively impacted our fiscal 2009 third quarter results compared to the year ago period.

### **Our Operating Segments**

Our operating segments are significant strategic business units that offer different products and services, distinguished by customer needs. Since the March 2008 quarter, we have operated in five operating segments: Consumer Products, Security and Compliance, Storage and Server Management, Services, and Other. During the June 2008 quarter, we changed our reporting segments to better align our operating structure, resulting in the Altiris services that were formerly included in the Security and Compliance segment being moved to the Services segment. We revised the segment information for the prior year to conform to the new presentation. For further descriptions of our operating segments, see Note 16 of the Notes to Condensed Consolidated Financial Statements in this quarterly report. Our reportable segments are the same as our operating segments.

### **Financial Results and Trends**

Revenue for the three months ended January 2, 2009 declined slightly compared to the three months ended December 28, 2007. Revenue declined in the Europe, Middle East, Africa ("EMEA") region and in our Security and Compliance and Consumer Products segments for the three months ended January 2, 2009. The global economic

slowdown increased competitive pricing pressures and led to longer lead times in the sales of some of our products. If the challenging economic conditions affecting global markets continue or deteriorate further, we may experience slower or negative revenue growth and our business and operating results might suffer. In light of these economic conditions, we will continue to align our cost structure with our revenue expectations.

During the nine months ended January 2, 2009, we delivered revenue growth across all of our geographic regions as compared to the same periods last year and experienced revenue growth in all of our segments.

Our net loss was \$6.8 billion and \$6.5 billion, for the three and nine months ended January 2, 2009, respectively, as compared to our net income of \$132 million and \$277 million for the three and nine months ended December 28, 2007, respectively. The lower net income for fiscal 2009 periods as compared to the same periods last year was primarily due to a non-cash impairment charge related to goodwill of approximately \$7 billion.

Fluctuations in the U.S. dollar compared to foreign currencies negatively impacted our international revenue by approximately \$56 million during the three months ended January 2, 2009 and positively impacted our international revenue by \$98 million during the nine months ended January 2, 2009, in each case as compared to the same period last year. We are unable to predict the extent to which revenues in future periods will be impacted by changes in foreign currency exchange rates. If our level of international sales and expenses increase in the future, changes in foreign exchange rates may have a potentially greater impact on our revenues and operating results.

During our quarter ended January 2, 2009, based on a combination of factors, including the current economic environment and a sustained decline in our market capitalization, we concluded that there were sufficient indicators to require us to perform an interim goodwill impairment analysis. Although we have not yet completed this analysis, we have concluded that an impairment loss is probable and can be reasonably estimated. Accordingly, we have recorded a \$7 billion non-cash goodwill impairment charge during the third quarter of fiscal 2009.

We expect to finalize the goodwill impairment analysis during the fourth quarter of fiscal 2009. There could be material adjustments to the goodwill impairment charge when the goodwill impairment test is completed.

### **Critical Accounting Estimates**

Other than the changes set forth below, there have been no changes in our critical accounting estimates during the nine months ended January 2, 2009, as compared to the critical accounting estimates disclosed in Management's Discussion and Analysis of Financial Condition and Results of Operations included in our Annual Report on Form 10-K for the fiscal year ended March 28, 2008.

#### ***Income Taxes***

In July 2008, we reached an agreement with the Internal Revenue Service ("IRS") concerning our eligibility to claim a lower tax rate on a distribution made from a Veritas foreign subsidiary prior to the July 2005 acquisition. The distribution was intended to be made pursuant to the American Jobs Creation Act of 2004, and therefore eligible for a 5.25% effective U.S. federal rate of tax, in lieu of the 35% statutory rate. The final impact of this agreement is not yet known since this relates to the taxability of earnings that are otherwise the subject of the tax years 2000-2001 transfer pricing dispute which in turn is being addressed in the U.S. Tax Court. To the extent that we owe taxes as a result of the transfer pricing dispute, we anticipate that the incremental tax due from this negotiated agreement will decrease. We currently estimate that the most probable outcome from this negotiated agreement will be \$13 million or less, for which an accrual has already been made. As previously disclosed in Form 10-K for the fiscal year ended March 28, 2008, we made a payment of \$130 million to the IRS for this matter in May 2006. We applied \$110 million of this payment as a deposit on the outstanding transfer pricing matter for the tax years 2000-2001.

#### ***Fair Value of Financial Instruments***

Beginning in the first fiscal quarter of 2009, the assessment of fair value for our financial instruments is based on the provisions of SFAS No. 157. SFAS No. 157 establishes a fair value hierarchy that is based on three levels of inputs and requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value.

As of January 2, 2009, our financial instruments measured at fair value on a recurring basis included \$390 million of assets. Our cash equivalents, which primarily consist of money market funds and bank securities total \$300 million which is 77% of our total financial instruments measured at fair value on a recurring basis.

As of January 2, 2009, \$268 million were classified as Level 1, most of which represents investments in money market funds. These were classified as Level 1 because their valuations were based on quoted prices for identical securities in active markets. Determining fair value for Level 1 instruments generally does not require significant management judgment.

As of January 2, 2009, \$123 million were classified as Level 2, \$36 million and \$50 million (22% together of total financial instruments fair valued on a recurring basis) of which represent investments in bank securities and government notes, respectively. These were classified as Level 2 because their valuations were based on pricing models with all significant inputs derived from or corroborated by observable market prices for identical securities in markets with insufficient volume or infrequent transactions (less active markets). Level 2 inputs also generally include non-binding market consensus prices that are corroborated by observable market data; quoted prices for similar instruments; model-derived valuations in which all significant inputs are observable or can be derived principally from or corroborated with observable market data for substantially the full term of the assets or liabilities or quoted prices for similar assets or liabilities. The level of judgment and subjectivity involved with Level 2 instruments generally includes:

- Determining which instruments are most similar to the instrument being priced and identifying a sample of similar securities based on the coupon rates, maturity, issuer, credit rating, and instrument type, and subjectively selecting an individual security or multiple securities that are deemed most similar to the security being priced. For our financial instruments classified as Level 2 at January 2, 2009, identical securities were used for determining fair value.
- Determining whether a market is considered active. An assessment of an active market for marketable securities generally takes into consideration trading volume for each instrument type or whether a trading market exists for a given instrument. Our Level 2 financial instruments were so classified due to either low trading activity in active markets or no active market existed. Where no active market existed, amortized cost was used and was assumed to equate to fair value because of the short maturities.
- Determining which model-derived valuations to use in determining fair value. When observable market prices for identical securities or similar securities are not available, we may price marketable securities using: non-binding market consensus prices that are corroborated with observable market data; or pricing models, such as discounted cash flow approaches, with all significant inputs derived from or corroborated with observable market data. In addition, the credit ratings for issuers of debt instruments in which we are invested could change, which could lead to lower fair values. During the third quarter of 2009, the fair value of \$17 million of fixed-income securities was determined using benchmark pricing models for identical or similar securities.

As of January 2, 2009, we have no financial instruments with unobservable inputs as classified in Level 3 under the SFAS No. 157 hierarchy. Level 3 instruments generally would include unobservable inputs to the valuation methodology that are significant to the measurement of fair value of assets or liabilities. The determination of fair value for Level 3 instruments requires the most management judgment and subjectivity.

#### ***Valuation of goodwill, intangible assets and long-lived assets***

When we acquire businesses, we allocate the purchase price to tangible assets and liabilities and identifiable intangible assets acquired. Any residual purchase price is recorded as goodwill. The allocation of the purchase price requires management to make significant estimates in determining the fair values of assets acquired and liabilities assumed, especially with respect to intangible assets. These estimates are based on historical experience and information obtained from the management of the acquired companies. These estimates can include, but are not limited to, the cash flows that an asset is expected to generate in the future, the appropriate weighted-average cost of capital, and the cost savings expected to be derived from acquiring an asset. These estimates are inherently

uncertain and unpredictable. In addition, unanticipated events and circumstances may occur which may affect the accuracy or validity of such estimates.

We review goodwill for impairment on an annual basis and whenever events or changes in circumstances indicate the carrying value of goodwill may not be recoverable. In testing for a potential impairment of goodwill, we allocate goodwill to our various businesses to which the acquired goodwill relates; estimate the fair value of our businesses to which goodwill relates; and determine the carrying value (book value) of the assets and liabilities related to those businesses. The first step in the goodwill impairment analysis is to determine if the estimated fair value is less than the carrying value of each reporting unit. If the estimated fair value is in fact, less than the carrying value for a particular business, then we are required to perform a second step in the goodwill impairment analysis to estimate the fair value of all identifiable assets and liabilities of the business, in a manner similar to a purchase price allocation for an acquired business. Only after this process is completed is the amount of any goodwill impairment determined.

Prior to performing our second step in the goodwill impairment analysis, we are required to assess long-lived assets for impairment. Such long-lived assets included tangible and intangible assets recorded in accordance with SFAS No. 144, *Accounting for the Impairment of Long-Lived Assets* and SFAS No. 86, *Accounting for the Costs of Computer Software to Be Sold, Leased or Otherwise Marketed*. Our preliminary conclusion is that such long-lived assets were not impaired as of January 2, 2009.

The process of evaluating the potential impairment of goodwill requires significant judgment at many points during the analysis. In determining the carrying value of the reporting units, we had to apply judgment to allocate the assets and liabilities, such as accounts receivable and property and equipment, based on specific identification or relevant driver.

In estimating the fair value of the businesses with recognized goodwill for the purposes of our annual or periodic analyses, we make estimates and judgments about the future cash flows of these businesses. Although our cash flow forecasts are based on assumptions that are consistent with the plans and estimates we are using to manage the underlying businesses, there is significant judgment in determining the cash flows attributable to these businesses over their estimated remaining useful lives.

## RESULTS OF OPERATIONS

### Total Net Revenues

	Three Months Ended				Nine Months Ended			
	January 2, 2009	December 28, 2007	Change in		January 2, 2009	December 28, 2007	Change in	
			\$	%			\$	%
Net revenues	\$ 1,513,954	\$ 1,515,251	\$ (1,297)	0%	\$ 4,682,286	\$ 4,334,678	\$ 347,608	8%

Net revenues decreased slightly for the three months ended January 2, 2009, as compared to the same period last year, primarily due to a \$31 million decrease in Licenses revenues. This decrease was partially offset by a \$29 million increase in Content, subscriptions, and maintenance revenues. This net decrease was primarily driven by decreased revenues in our Security and Compliance segment partially offset by increased revenues in our Services segment. Foreign currencies had a negative impact on net revenues for the three months ended January 2, 2009 as compared to the same period last year due to the strengthening U.S. dollar compared to the prior year period. Furthermore, the global economic slowdown has increased competitive pricing pressure and lead time to close on sales for some of our products. While we cannot predict the intensity or duration of this slowdown, we believe the recurring nature of our business and the mission-critical nature of our products position us well in this challenging environment.

Net revenues increased for the nine months ended January 2, 2009, as compared to the same period last year, primarily due to a \$298 million increase in Content, subscriptions, and maintenance revenues coupled with a \$50 million increase in Licenses revenues. These increases were primarily related to increased revenues in our Storage and Server Management and Services segments. In addition, revenues for the nine months ended January 2,

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2009 benefited from additional amortization of deferred revenue of approximately \$75 million as a result of the fiscal 2009 period comprising one more week than the fiscal 2008 period.

The revenue changes for the three and nine months ended January 2, 2009 discussed above are further described in the discussions that follow.

***Content, subscriptions, and maintenance revenues***

	Three Months Ended				Nine Months Ended			
	January 2, 2009	December 28, 2007	Change in		January 2, 2009	December 28, 2007	Change in	
			\$	%			\$	%
	(\$ in thousands)							
Content, subscriptions, and maintenance revenues	\$ 1,196,938	\$ 1,167,443	\$ 29,495	3%	\$ 3,668,645	\$ 3,371,126	\$ 297,519	9%
Percentage of total net revenues	79%	77%			78%	78%		

Content, subscriptions, and maintenance revenues increased for the three and nine months ended January 2, 2009 as compared to the same periods last year primarily due to an increase in revenue from the Storage and Server Management and Services segments. For the three and nine months ended January 2, 2009, Storage and Server Management increased by \$29 million and \$135 million, respectively, and Services increased by \$22 million and \$87 million, respectively. The increase in these two segments' revenue is largely attributable to demand for our Storage and Server Management products and consulting services as a result of increased demand for security and storage solutions. This increased demand was driven by the proliferation of structured and unstructured data, and increasing sales of services in conjunction with our license sales as a result of our focus on offering our customers a more comprehensive IT solution. Furthermore, growth in our customer base through acquisitions and new license sales results in an increase to Content, subscriptions, and maintenance revenues because a large amount of our customers renew their annual maintenance contracts. Content, subscriptions, and maintenance revenues from our Consumer Products and Security and Compliance segments decreased by approximately \$12 million and \$9 million, respectively, for the three months ended January 2, 2009 and increased by approximately \$33 million and \$43 million, respectively, during the nine months ended January 2, 2009.

***Licenses revenues***

	Three Months Ended				Nine Months Ended			
	January 2, 2009	December 28, 2007	Change in		January 2, 2009	December 28, 2007	Change in	
			\$	%			\$	%
	(\$ in thousands)							
Licenses revenues	\$ 317,016	\$ 347,808	\$ (30,792)	(9)%	\$ 1,013,641	\$ 963,552	\$ 50,089	5%
Percentage of total net revenues	21%	23%			22%	22%		

Licenses revenues decreased for the three months ended January 2, 2009 as compared to the same period last year primarily due to a decrease of \$22 million in revenue related to our Security and Compliance products. This decrease is primarily a result of the challenging economic environment and a decline in demand from small and medium businesses.

Licenses revenues increased for the nine months ended January 2, 2009 as compared to the same period last year primarily due to an increase of \$46 million in revenue related to our Storage and Server Management products. These increases are a result of increased demand for storage solutions driven by the proliferation of structured and unstructured data.

*Net revenue and operating income by segment*

*Consumer Products segment*

	Three Months Ended				Nine Months Ended				
	January 2,	December 28,	Change in		January 2,	December 28,	Change in		
	2009	2007	\$	%	2009	2007	\$	%	
(\$ in thousands)									
Consumer Products revenues	\$ 432,290	\$ 440,206	\$ (7,916)	(2)%	\$ 1,342,275	\$ 1,297,464	\$ 44,811	3%	
Percentage of total net revenues	29%	29%			29%	30%			
Consumer Products operating income	\$ 224,350	\$ 224,974	\$ (624)	0%	\$ 735,158	\$ 685,133	\$ 50,025	7%	
Percentage of Consumer Products revenues	52%	51%			55%	53%			

Consumer Products revenues decreased for the three months ended January 2, 2009 as compared to the same period last year primarily due to a decrease from our core consumer security products in the retail channel and to a lesser extent due to the unfavorable impact of foreign currencies on the U.S. dollar. This decrease was partially offset by an increase in revenue for our consumer services and our PC Tools security products. The revenue from our consumer products is generally recognized ratably over the 12 months after the product is sold.

Consumer Products revenues increased for the nine months ended January 2, 2009 as compared to the same period last year primarily due to an increase from our core consumer security products in our electronic channels and to a lesser extent due to a favorable impact of foreign currencies on the U.S. dollar. In addition, Consumer Products revenues increased from the sale of our consumer services and our the integration of acquired security products.

Our electronic channel sales are derived from OEMs, subscriptions, upgrades, online sales, and renewals. For the three and nine months ended January 2, 2009, electronic channel revenue grew \$26 million and \$121 million, respectively, as compared to the same periods last year. Electronic sales constituted 81% and 79% of Consumer Products revenues for the three and nine months ended January 2, 2009 as compared to 74% and 73%, respectively, for the same periods last year.

Operating income for this segment decreased slightly for the three months ended January 2, 2009 as compared to the same period last year, as the decrease in total expenses did not fully offset the decrease in revenue. Operating income for this segment increased for the nine months ended January 2, 2009 as compared to the same period last year, as revenues increased while expenses decreased. Our operating expenses for the three and nine months ended January 2, 2009 benefited from our continued cost containment measures.

*Security and Compliance segment*

	Three Months Ended				Nine Months Ended				
	January 2,	December 28,	Change in		January 2,	December 28,	Change in		
	2009	2007	\$	%	2009	2007	\$	%	
(\$ in thousands)									
Security and Compliance revenues	\$ 394,612	\$ 410,250	\$ (15,638)	(4)%	\$ 1,241,251	\$ 1,186,441	\$ 54,810	5%	
Percentage of total net revenues	26%	27%			27%	28%			
Security and Compliance operating income	\$ 106,738	\$ 82,576	\$ 24,162	29%	\$ 250,325	\$ 191,826	\$ 58,499	30%	
Percentage of Security and Compliance revenues	27%	20%			20%	16%			

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Security and Compliance revenues decreased for the three months ended January 2, 2009 as compared to the same period last year primarily due to decrease in revenue from sales of endpoint security products to small and medium businesses. This decrease was partially offset by increased revenues from our successful integration of acquired products into our product portfolio during fiscal 2009.

Security and Compliance revenues increased for the nine months ended January 2, 2009 as compared to the same period last year as a result of strong demand for endpoint management products and archiving solutions, as well as the successful integration of acquired products into our product portfolio during fiscal 2009.

Operating income for the Security and Compliance segment increased for both the three and nine months ended January 2, 2009 as compared to the same period last year, as expenses grew at a slower rate than revenues. Our operating expenses for the three and nine months ended January 2, 2009 also benefited from our continued cost containment measures.

*Storage and Server Management segment*

	Three Months Ended				Nine Months Ended			
	January 2, 2009	December 28, 2007	Change in		January 2, 2009	December 28, 2007	Change in	
	\$	\$	\$	%	\$	\$	\$	%
(\$ in thousands)								
Storage and Server Management revenues	\$ 568,484	\$ 561,694	\$ 6,790	1%	\$ 1,755,949	\$ 1,575,231	\$ 180,718	11%
Percentage of total net revenues	37%	37%			37%	36%		
Storage and Server Management operating income	\$ 300,395	\$ 253,834	\$ 46,561	18%	\$ 914,451	\$ 627,825	\$ 286,626	46%
Percentage of Storage and Server Management revenues	53%	45%			52%	40%		

Storage and Server Management revenues increased for the three months ended January 2, 2009 as compared to the same period last year primarily due to an increase in sales of core enterprise products related to standardization and simplification of data center infrastructures and disaster recovery. Offsetting this increase were decreases in sales of our backup products to small and medium businesses and in sales of our availability products to large enterprises.

Storage and Server Management revenues increased for the nine months ended January 2, 2009 as compared to the same period last year due to a \$190 million increase in sales of products related to the standardization and simplification of data center infrastructures, increased demand for products supporting high availability and disaster recovery and due to the proliferation of structured and unstructured data.

Operating income for the Storage and Server Management segment increased for the three and nine months ended January 2, 2009 as compared to the same period, last year, as revenue growth was coupled with a decrease in expenses for the segment. Also, our operating expenses for the three and nine months ended January 2, 2009 also benefited from our continued cost containment measures.

*Services segment*

	Three Months Ended				Nine Months Ended			
	January 2, 2009	December 28, 2007	Change in		January 2, 2009	December 28, 2007	Change in	
			\$	%			\$	%
Services revenues	\$ 118,199	\$ 102,606	\$ 15,593	15%	\$ 341,536	\$ 274,478	\$ 67,058	24%
Percentage of total net revenues	8%	7%			7%	6%		
Services operating income (loss)	\$ 4,126	\$ (3,219)	\$ 7,345	*	\$ 1,347	\$ (35,961)	\$ 37,308	104%
Percentage of Services revenues	3%	(3)%			0%	(13)%		

\* Percentage not meaningful

Services revenues increased for the three months ended January 2, 2009 as compared to the same period last year primarily due to an increase in software as a service revenues as a result of our November 14, 2008 acquisition of MessageLabs. The remaining increase in revenues was in our consulting services and Business Critical Services, as a result of increased demand for more comprehensive software implementation assistance and increased demand for our Business Critical Services. Customers are increasingly purchasing our service offerings in conjunction with the purchase of our products and augmenting the capabilities of their own IT staff with our onsite consultants.

Services revenues increased for the nine months ended January 2, 2009 as compared to the same period last year primarily due to an increase in consulting services and Business Critical Services, as a result of increased demand as described above.

Operating income for the Services segment increased for both the three and nine months ended January 2, 2009, as revenue growth exceeded expense growth for the segment.

*Other segment*

	Three Months Ended				Nine Months Ended			
	January 2, 2009	December 28, 2007	Change in		January 2, 2009	December 28, 2007	Change in	
			\$	%			\$	%
Other revenues	\$ 369	\$ 495	\$ (126)	(25)%	\$ 1,275	\$ 1,064	\$ 211	20%
Percentage of total net revenues	0%	0%			0%	0%		
Other operating loss	\$ (7,408,511)	\$ (362,391)	\$ (7,046,120)	*	\$ (8,178,822)	\$ (1,079,964)	\$ (7,098,858)	*

\* Percentage not meaningful

Revenue from our Other segment is comprised primarily of sunset products and products nearing the end of their life cycle. Our Other segment also includes general and administrative expenses; amortization of acquired product rights, other intangible assets, and other assets; goodwill impairment charges; charges such as stock-based compensation and restructuring; and certain indirect costs that are not charged to the other operating segments. The operating loss of our Other segment for the three and nine months ended January 2, 2009 primarily consists of the \$7 billion charge related to impairment of goodwill that was incurred in the three months ended January 2, 2009.

### Net revenues by geographic region

	Three Months Ended				Nine Months Ended			
	January 2,	December 28,	Change in		January 2,	December 28,	Change in	
	2009	2007	\$	%	2009	2007	\$	%
(\$ in thousands)								
Americas (U.S., Canada and Latin America)	\$ 827,872	\$ 779,817	\$ 48,055	6%	\$ 2,511,149	\$ 2,295,736	\$ 215,413	9%
Percentage of total net revenues	55%	51%			54%	53%		
EMEA (Europe, Middle East, Africa)	\$ 474,532	\$ 524,981	\$ (50,449)	(10)%	\$ 1,512,553	\$ 1,443,270	\$ 69,283	5%
Percentage of total net revenues	31%	35%			32%	33%		
Asia Pacific/Japan	\$ 211,550	\$ 210,453	\$ 1,097	1%	\$ 658,584	\$ 595,672	\$ 62,912	11%
Percentage of total net revenues	14%	14%			14%	14%		
Total net revenues	\$ 1,513,954	\$ 1,515,251			\$ 4,682,286	\$ 4,334,678		

Americas revenues increased in the three and nine months ended January 2, 2009 as compared to the same periods last year primarily due to increased revenues related to our Storage and Server Management, Security and Compliance, and Services segments, as a result of increased demand as discussed above coupled with the convergence of endpoint security and management. In addition, for the three and nine months ended January 2, 2009 as compared to the same period last year, Americas revenues related to our Consumer Products segment increased driven by demand for our Consumer Products suites.

EMEA revenues decreased for the three months ended January 2, 2009 as compared to the same period last year, primarily due to decreased revenues related to our Consumer Products and Security and Compliance segments of \$45 million, as a result of a strengthening U.S. dollar and a decrease in endpoint security product sales to small and medium sized businesses. EMEA revenues increased for the nine months ended January 2, 2009 as compared to the same period last year primarily due to increased revenues related to our Storage and Server Management and Services segments. This increase is due to continuing demand for products related to the standardization and simplification of data center infrastructures, the proliferation of structured and unstructured data, and increasing sales of services in conjunction with our license sales as a result of our focus on offering our customers a more comprehensive IT solution.

Asia Pacific/Japan revenues remained constant for the three months ended January 2, 2009 as compared to the same period last year. Revenues related to our Consumer Products and Services segments decreased as a result of a strengthening U.S. dollar and decreased prior period demand for Consumer Products. This decrease was offset by an increase in revenues related to our Storage and Server Management segment as a result of increased demand discussed above. Asia Pacific/Japan revenues increased for the nine months ended January 2, 2009 as compared to the same period last year primarily due to increased revenues related to our Storage and Server Management and Services segments. This increase is due to continuing demand for products related to the standardization and simplification of data center infrastructures, the proliferation of structured and unstructured data, and increasing sales of services in conjunction with our license sales as a result of our focus on offering our customers a more comprehensive IT solution.

Our international sales are and will continue to be a significant portion of our net revenues. As a result, net revenues will continue to be affected by foreign currency exchange rates as compared to the U.S. dollar. The recent trend of the strengthening U.S. dollar as compared to foreign currencies over the prior year period has had a negative impact on net revenues for the three months ended January 2, 2009 as compared to the same period last year. However, for the nine months ended January 2, 2009 foreign currencies had a favorable impact on net revenues as compared to the same period last year as the recent trend in the strengthening U.S. dollar has not yet exceeded the revenue benefit realized in the first half of fiscal 2009 from a weaker U.S. dollar. While the current global economic slowdown has continued to result in a strengthening U.S. dollar, we are unable to predict the extent to which revenues in future periods will be impacted by changes in foreign currency exchange rates. If international sales

become a greater portion of our total sales in the future, changes in foreign currency exchange rates may have a potentially greater impact on our revenues and operating results.

**Cost of Revenues**

	Three Months Ended				Nine Months Ended			
	January 2,	December 28,	Change in		January 2,	December 28,	Change in	
	2009	2007	\$	%	2009	2007	\$	%
	(\$ in thousands)							
Cost of revenues	\$ 298,836	\$ 299,161	\$ (325)	0%	\$ 919,888	\$ 913,951	\$ 5,937	1%
Gross margin	80%	80%			80%	79%		

Cost of revenues consists primarily of the amortization of acquired product rights, fee-based technical support costs, the costs of billable services, payments to OEMs under revenue-sharing arrangements, manufacturing and direct material costs, and royalties paid to third parties under technology licensing agreements.

Gross margin remained stable for the three months ended January 2, 2009 as compared to the same period last year. For the nine months ended January 2, 2009 as compared to the same period last year gross margin increased slightly primarily due to higher revenues and, to a lesser extent, lower OEM royalty payments, partially offset by a year over year increase in technical support costs.

**Cost of content, subscriptions, and maintenance**

	Three Months Ended				Nine Months Ended			
	January 2,	December 28,	Change in		January 2,	December 28,	Change in	
	2009	2007	\$	%	2009	2007	\$	%
	(\$ in thousands)							
Cost of content, subscriptions, and maintenance	\$ 200,338	\$ 204,355	\$ (4,017)	(2)%	\$ 630,982	\$ 619,593	\$ 11,389	2%
As a percentage of related revenue	17%	18%			17%	18%		

Cost of content, subscriptions, and maintenance consists primarily of fee-based technical support costs, costs of billable services, and payments to OEMs under revenue-sharing agreements. Cost of content, subscriptions, and maintenance as a percentage of related revenue for the three months and nine months ended January 2, 2009 as compared to the same period last year decreased one percentage point. The decrease is primarily driven by lower OEM royalties and lower distribution costs partially offset by a year-over-year increase in technical support costs.

**Cost of licenses**

	Three Months Ended				Nine Months Ended			
	January 2,	December 28,	Change in		January 2,	December 28,	Change in	
	2009	2007	\$	%	2009	2007	\$	%
	(\$ in thousands)							
Cost of licenses	\$ 8,289	\$ 10,304	\$ (2,015)	(20)%	\$ 27,134	\$ 31,434	\$ (4,300)	(14)%
As a percentage of related revenue	3%	3%			3%	3%		

Cost of licenses consists primarily of royalties paid to third parties under technology licensing agreements and manufacturing and direct material costs. Cost of licenses remained stable as a percentage of the related revenue for the three and nine months ended January 2, 2009 as compared to the same periods last year. Increases in royalties were offset by lower manufacturing and distribution costs.

**Amortization of acquired product rights**

	Three Months Ended				Nine Months Ended			
	January 2,	December 28,	Change in		January 2,	December 28,	Change in	
	2009	2007	\$	%	2009	2007	\$	%
	(\$ in thousands)							
Amortization of acquired product rights	\$ 90,209	\$ 84,502	\$ 5,707	7%	\$ 261,772	\$ 262,924	\$ (1,152)	0%
Percentage of total net revenues	6%	6%			6%	6%		

Acquired product rights are comprised of developed technologies and patents from acquired companies. The increase in amortization for the three months ended January 2, 2009 as compared to the same period last year is primarily due to the amortization associated with the SwapDrive, PC Tools and MessageLabs acquisitions during the fiscal 2009 period. The decrease in amortization for the nine months ended January 2, 2009 as compared to the same periods last year is primarily due to the APM business divestiture in the fiscal 2008 period and decreasing amortization associated with the Veritas and BindView acquisitions offset in part by amortization associated with SwapDrive, PC Tools and MessageLabs acquisitions during the fiscal 2009 periods.

**Operating Expenses**

**Operating expenses overview**

As discussed above under “Fiscal Calendar,” our operating expenses for the nine months ended January 2, 2009 compared to the same period last year were adversely impacted by an additional week during fiscal 2009. Our international expenses during the three and nine months ended January 2, 2009 were favorably impacted by the strengthening of the U.S. dollar compared to foreign currencies during the same period last year and by the 2009 restructuring plan. In addition, our ongoing cost and expense discipline positively contributed to our increased operating margins for the fiscal 2009 periods.

**Sales and marketing expenses**

	Three Months Ended				Nine Months Ended			
	January 2,	December 28,	Change in		January 2,	December 28,	Change in	
	2009	2007	\$	%	2009	2007	\$	%
	(\$ in thousands)							
Sales and marketing	\$ 580,708	\$ 627,980	\$ (47,272)	(8)%	\$ 1,840,510	\$ 1,791,672	\$ 48,838	3%
Percentage of total net revenues	38%	41%			39%	41%		

As a percent of net revenues, sales and marketing expenses decreased to 38% and 39% for the three and nine months ended January 2, 2009 as compared to 41% for both the three and nine months ended December 28, 2007 after taking into account the items discussed above under “Operating expenses overview.”

**Research and development expenses**

	Three Months Ended				Nine Months Ended			
	January 2,	December 28,	Change in		January 2,	December 28,	Change in	
	2009	2007	\$	%	2009	2007	\$	%
	(\$ in thousands)							
Research and development	\$ 204,701	\$ 225,293	\$ (20,592)	(9)%	\$ 655,185	\$ 671,928	\$ (16,743)	(2)%
Percentage of total net revenues	14%	15%			14%	16%		

As a percent of net revenues, research and development expenses decreased to 14% for both the three and nine months ended January 2, 2009 as compared to 15% and 16% for the three and nine months ended December 28, 2007, respectively, after taking into account the items discussed above under “Operating expenses overview.”

**General and administrative expenses**

	Three Months Ended				Nine Months Ended			
	January 2,	December 28,	Change in		January 2,	December 28,	Change in	
	2009	2007	\$	%	2009	2007	\$	%
	(\$ in thousands)							
General and administrative	\$ 83,508	\$ 82,600	\$ 908	1%	\$ 261,112	\$ 254,850	\$ 6,262	2%
Percentage of total net revenues	6%	5%			6%	6%		

As a percent of net revenues, general and administrative expenses were 6% for both the three and nine months ended January 2, 2009 as compared to 5% and 6% for the three and nine months ended December 28, 2007, respectively, after taking into account the items discussed above under “Operating expenses overview.”

**Amortization of other purchased intangible assets**

	Three Months Ended				Nine Months Ended			
	January 2,	December 28,	Change in		January 2,	December 28,	Change in	
	2009	2007	\$	%	2009	2007	\$	%
	(\$ in thousands)							
Amortization of other purchased intangible assets	\$ 60,647	\$ 54,996	\$ 5,651	10%	\$ 171,677	\$ 168,847	\$ 2,830	2%
Percentage of total net revenues	4%	4%			4%	4%		

Other purchased intangible assets are comprised of customer bases and tradenames. Amortization for the three and nine months ended January 2, 2009 compared to the same periods last year remained relatively stable.

**Restructuring**

	Three Months Ended				Nine Months Ended			
	January 2,	December 28,	Change in		January 2,	December 28,	Change in	
	2009	2007	\$	%	2009	2007	\$	%
	(\$ in thousands)							
Severance	\$ 37,525	\$ 23,235			\$ 54,152	\$ 41,862		
Facilities & Other	8,280	70			18,448	10,021		
Restructuring	\$ 45,805	\$ 23,305	\$ 22,500	97%	\$ 72,600	\$ 51,883	\$ 20,717	40%
Percentage of total net revenues	3%	2%			2%	1%		

In the third quarter of fiscal 2009, management approved and initiated a restructuring plan (the “2009 Plan”) to reduce operating costs through a headcount reduction and facility consolidation. Costs for both the three and nine months ended January 2, 2009 were \$37 million related to severance and benefit costs. Severance payments related to the 2009 Plan are expected to be substantially completed in fiscal 2010. Total remaining severance costs related to the reduction in force are expected to be insignificant. Costs related to the facility consolidation have not been recognized as of January 2, 2009, and the costs are expected to be substantially recognized in fiscal 2010.

In fiscal 2008, management approved and initiated a restructuring plan (the “2008 Plan”) to reduce operating costs, outsource certain back office functions worldwide, implement management structure changes, optimize the business structure and discontinue certain products. Projects within the 2008 Plan began in the third quarter of fiscal 2008 and severance payments are expected to be completed in fiscal 2010. Severance and benefits costs were \$15 million, and other costs, primarily for asset impairments and consulting services, were \$12 million for the nine months ended January 2, 2009. Total remaining costs for the 2008 Plan are estimated to range from \$40 to \$70 million.

We do not expect costs relating to plans prior to the 2008 Plan to have a significant impact on future net income.

**Impairment of goodwill and Impairment of assets held for sale**

	Three Months Ended				Nine Months Ended			
	January 2,	December 28,	Change in		January 2,	December 28,	Change in	
	2009	2007	\$	%	2009	2007	\$	%
	(\$ in thousands)							
Impairment of goodwill	\$ 7,005,702	\$ —	\$ 7,005,702	NA	\$ 7,005,702	\$ —	\$ 7,005,702	NA
Percentage of total net revenues	463%	0%			150%	0%		
Impairment of assets held for sale	\$ 16,849	\$ 6,142	\$ 10,707	174%	\$ 43,053	\$ 92,688	\$ (49,635)	(54)%
Percentage of total net revenues	1%	0%			1%	2%		

In accordance with SFAS No. 142, we evaluate goodwill for impairment at least annually and any time business conditions indicate a potential change in recoverability. Based on a combination of factors, including the current economic environment and a decline in our market capitalization, during the third quarter of fiscal 2009 we concluded that there were sufficient indicators to require us to perform an interim goodwill impairment analysis. As of the filing of this report, we have not completed this analysis. We have concluded, however, that an impairment loss can be reasonably estimated. Accordingly, we have recorded a \$7 billion non-cash goodwill impairment charge in the financial statements for the three and nine months ended January 2, 2009.

We expect to finalize the goodwill impairment analysis in connection with the completion of our financial statements for the fiscal year ended April 3, 2009. There could be material adjustments to the goodwill impairment charge when the goodwill impairment test is completed.

During the three and nine months ended January 2, 2009, we recognized an impairment of \$17 million and \$43 million on certain land and buildings classified as held for sale. SFAS No. 144 provides that a long-lived asset classified as held for sale should be measured at the lower of its carrying amount or fair value less cost to sell.

During the three and nine months ended December 28, 2007, we determined that the APM business in the Storage and Server Management segment (formerly the Data Center Management segment) did not meet the long-term strategic objectives of the segment. As a result, we recognized additional losses related to the impairment of assets of \$6 million and \$93 million, respectively, related to our disposition of this business.

**Patent settlement**

	Three Months Ended				Nine Months Ended			
	January 2,	December 28,	Change in		January 2,	December 28,	Change in	
	2009	2007	\$	%	2009	2007	\$	%
	(\$ in thousands)							
Patent settlement	\$ (9,900)	\$ —	\$ (9,900)	NA	\$ (9,900)	\$ —	\$ (9,900)	NA
Percentage of total net revenues	1%				0%			

During the third quarter of fiscal 2009, we settled a patent lawsuit in which the result was a gain of approximately \$10 million reflected in the Condensed Consolidated Statement of Operations under the caption "Patent settlement."

**Non-operating Income and Expense**

	Three Months Ended				Nine Months Ended			
	January 2,	December 28,	Change in		January 2,	December 28,	Change in	
	2009	2007	\$	%	2009	2007	\$	%
	(\$ in thousands)							
Interest income	\$ 4,676	\$ 19,997			\$ 34,966	\$ 59,997		
Interest expense	(6,511)	(7,477)			(22,792)	(20,385)		
Other income (expense), net	16,571	(2,348)			7,728	883		
Total	\$ 14,736	\$ 10,172	\$ 4,564	45%	\$ 19,902	\$ 40,495	\$ (20,593)	(51)%
Percentage of total net revenues	1%	1%			0%	1%		

The decrease in interest income during the three and nine months ended January 2, 2009 as compared to the same periods last year is primarily due to lower average cash balances outstanding and a lower average yield on our invested cash and short-term investment balances.

Interest expense for the three months and nine months ended January 2, 2009 as compared to the same period last year remained flat. The increase in other income (expense), net related to a gain on foreign currency.

**Provision for income taxes**

	Three Months Ended				Nine Months Ended			
	January 2,	December 28,	Change in		January 2,	December 28,	Change in	
	2009	2007	\$	%	2009	2007	\$	%
	(\$ in thousands)							
Provision for income taxes	\$ 31,620	\$ 74,056	\$ (42,436)	(57)%	\$ 188,455	\$ 151,890	\$ 36,565	24%
Effective income tax rate	(0.5)%	36%			(3)%	35%		

The effective tax rate was approximately (0.5)% and 36% for the three month periods and (3)% and 35% for the nine months ended January 2, 2009 and December 28, 2007, respectively. The tax expense for the three and nine months ended January 2, 2009 includes a \$44 million tax benefit associated with the impairment of goodwill of \$7 billion, materially impacting the overall effective tax rate. The effective tax rates for all periods otherwise reflect the benefits of lower-taxed foreign earnings, domestic manufacturing tax incentives, and research and development credits, offset by state income taxes and non-deductible stock-based compensation. The provision for the three months ended January 2, 2009 reflects a revised forecast tax rate for the year of 34% prior to taking into consideration the goodwill impairment, and a resulting 3% benefit to true-up estimated taxes provided in the first two quarters of the year. The provision for the nine months ended January 2, 2009 is 31% prior to taking into consideration the goodwill impairment, reflecting non-recurring tax benefits recorded in the June and September quarters (including a \$5 million tax benefit in the June 2008 quarter related to a favorable Irish settlement; a \$7 million tax benefit in the September 2008 quarter from interest savings as a result of the IRS agreement on the treatment of the 2005 dividend from a Veritas international subsidiary; and a \$5 million tax benefit in the September 2008 quarter from favorable prior year items including the retroactive reinstatement of the U.S. federal research credit).

The \$44 million net tax benefit arising from the impairment of goodwill consists of a \$100 million tax benefit from elements of tax deductible goodwill, net of a \$56 million tax provision resulting from an increase in our valuation allowances on certain deferred tax assets that will require an extended period of time to realize. As a result of the impairment of goodwill, we have cumulative pre-tax book losses, as measured by the current and prior two years. We considered the negative evidence of this cumulative pre-tax book loss position on our ability to continue to recognize deferred tax assets that are dependent upon future taxable income for realization. We considered the following as positive evidence: the vast majority of the goodwill impairment is not deductible for tax purposes and thus will not result in tax losses; we have a strong, consistent taxpaying history; we have substantial U.S. federal

income tax carryback potential; we have substantial amounts of scheduled future reversals of taxable temporary differences from our deferred tax liabilities. We have concluded that this positive evidence outweighs the negative evidence and, thus, that those deferred tax assets not otherwise subject to a valuation allowance are realizable on a “more likely than not” basis.

**Loss from joint venture**

	Three Months Ended				Nine Months Ended			
	January 2,	December 28,	Change in		January 2,	December 28,	Change in	
	2009	2007	\$	%	2009	2007	\$	%
	(\$ in thousands)							
Loss from joint venture	\$ (16,471)	\$ —	\$ (16,471)	NA	\$ (33,398)	\$ —	\$ (33,398)	NA

On February 5, 2008, Symantec formed Huawei-Symantec, Inc. (“joint venture”) with a subsidiary of Huawei Technologies Co., Ltd. (“Huawei”). The joint venture is domiciled in Hong Kong with principal operations in Chengdu, China. The joint venture develops, manufactures, markets and supports security and storage appliances to global telecommunications carriers and enterprise customers.

As described further in Note 6 of the Notes to Condensed Consolidated Financial Statements in this quarterly report, we account for our investment in the joint venture under the equity method of accounting. Under this method, we record our proportionate share of the joint venture’s net income or loss based on the quarterly financial statements of the joint venture. We record our proportionate share of net income or loss one quarter in arrears. For the nine months ended January 2, 2009, we recorded a loss of approximately \$33 million related to our share of the joint venture’s net loss incurred for the period from February 5, 2008 (its date of inception) to September 30, 2008.

**LIQUIDITY AND CAPITAL RESOURCES**

**Sources of Cash**

We have historically relied on cash flow from operations, borrowings under a credit facility and issuances of convertible notes and equity securities for our liquidity needs. Key sources of cash are provided by operations, existing cash, cash equivalents, short-term investments, and our revolving credit facility.

In the second quarter of fiscal 2007, we entered into a five-year \$1 billion senior unsecured revolving credit facility that expires in July 2011. In order to be able to draw on the credit facility, we must maintain certain covenants, including a specified ratio of debt to earnings (before interest, taxes, depreciation, amortization and impairments) as well as various other non-financial covenants. As of January 2, 2009, we were in compliance with all required covenants, and there was no outstanding balance on the credit facility.

As of January 2, 2009, we had cash and cash equivalents of \$1.4 billion and short-term investments of \$80 million resulting in a net liquidity position defined as unused availability of the credit facility, cash and cash equivalents and short-term investments of approximately \$2.5 billion.

We believe that our existing cash balances, the cash that we generate from operations and our borrowing capacity will be sufficient to satisfy our anticipated cash needs for working capital and capital expenditures for at least the next 12 months.

**Uses of Cash**

Our principal cash requirements include working capital, capital expenditures and payments of taxes. In addition, we regularly evaluate our ability to repurchase stock, pay long-term debts and acquire other businesses.

*Line of Credit.* During the first quarter of fiscal 2009, we repaid the entire \$200 million principal amount plus \$3 million of accrued interest related to our senior unsecured revolving credit facility.

*Acquisition-Related.* We generally use cash to fund the acquisition of other businesses and, from time to time, use our revolving credit facility when necessary. In the third quarter of fiscal 2009, we acquired PC Tools for

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\$239 million and MessageLabs for \$619 million, net of cash acquired. In the second quarter of fiscal 2009, we acquired nSuite for \$20 million, net of cash acquired. In the first quarter of fiscal 2009, we acquired AppStream for \$49 million and SwapDrive for \$117 million, net of cash acquired.

During the third quarter of fiscal 2008, we used approximately \$298 million to complete our acquisition of Vontu, which was partially financed by our \$200 million borrowing under our unsecured revolving credit facility. Furthermore, in the first quarter of fiscal 2008, we acquired the outstanding common stock of Altiris, Inc. and paid \$841 million, net of cash acquired, which reflects \$165 million of cash acquired and \$17 million of cash paid for transaction costs.

*Stock Repurchases.* In the third quarter of fiscal 2009, we repurchased 16 million shares, or \$200 million, of our common stock. For the first three quarters of fiscal 2009, we repurchased 35 million shares, or \$600 million, of our common stock. As of January 2, 2009, \$400 million remained authorized for future repurchases from the 2007 Stock Repurchase Plan.

### **Cash Flows**

The following table summarizes, for the periods indicated, selected items in our Condensed Consolidated Statements of Cash Flows:

	<b>Nine Months Ended</b>	
	<b>January 2, 2009</b>	<b>December 28, 2007</b>
	<b>(In thousands)</b>	
Net cash provided by (used in):		
Operating activities	\$ 1,063,541	\$ 1,144,283
Investing activities	(764,430)	(1,354,013)
Financing activities	(615,285)	(931,162)

#### ***Operating Activities***

Net cash provided by operating activities of \$1.1 billion during the nine months ended January 2, 2009 primarily resulted from a net loss of \$6.5 billion adjusted for non-cash items — goodwill impairment of \$7.0 billion, depreciation and amortization charges of \$626 million and stock-based compensation expense of \$123 million. These amounts were partially offset by an increase in our Trade accounts receivable which is in line with our normal seasonal trends.

Net cash provided by operating activities during the nine months ended December 28, 2007 resulted largely from net income of \$277 million, adjusted for non-cash depreciation and amortization charges of \$618 million, an impairment of assets of \$94 million, and non-cash stock-based compensation expense of \$121 million. These amounts were partially offset by an increase in our Trade accounts receivable which is in line with our normal seasonal trends. Income taxes payable also increased by \$215 million, primarily due to the FIN 48 implementation and Altiris acquisition during the first quarter of fiscal 2008.

#### ***Investing Activities***

Net cash used in investing activities of \$764 million for the nine months ended January 2, 2009 was primarily due to \$1.0 billion paid for acquisitions and \$215 million paid for capital expenditures, partially offset by net proceeds of \$456 million from the sale of short-term investments which were used to partially fund acquisitions.

The \$1.4 billion cash used in investing activities for the nine months ended December 28, 2007 was primarily due to \$1.1 billion used to fund the purchase of Altiris and Vontu, net of cash acquired. Additionally, we had purchases of short-term investments of \$825 million and capital expenditures of \$209 million, which were partially offset by sales of short-term investments of \$831 million.

### ***Financing Activities***

Net cash used in financing activities of \$615 million for the nine months ended January 2, 2009 was primarily due to stock repurchases of 35.1 million shares of our common stock under the plan announced in June 2007 for \$600 million and the repayment of \$200 million on our senior unsecured revolving credit facility, partially offset by net proceeds of \$189 million received from the issuance of our common stock through employee stock plans.

Net cash used in financing activities was \$931 million for the nine months ended December 28, 2007, primarily due to the repurchase of 70 million shares of our common stock, under the plans announced in January 2007 and June 2007, for \$1.3 billion. This amount was partially offset by the net proceeds of \$164 million received from the issuance of our common stock through employee stock plans and \$200 million borrowed from our five-year, \$1.0 billion senior unsecured revolving credit facility.

### **Contractual Obligations**

There have been no significant changes in our contractual obligations during the nine months ended January 2, 2009, as compared to the contractual obligations disclosed in Management's Discussion and Analysis of Financial Condition and Results of Operations, set forth in Part II, Item 7, of our Annual Report on Form 10-K for the fiscal year ended March 28, 2008.

### **Item 3. *Quantitative and Qualitative Disclosures about Market Risk***

There have been no significant changes in our market risk exposures during the nine months ended January 2, 2009 as compared to the market risk exposures disclosed in *Management's Discussion and Analysis of Financial Condition and Results of Operations*, set forth in Part II, Item 7A, of our Annual Report on Form 10-K for the fiscal year ended March 28, 2008.

### **Item 4. *Controls and Procedures***

#### *(a) Evaluation of Disclosure Controls and Procedures*

The SEC defines the term "disclosure controls and procedures" to mean a company's controls and other procedures that are designed to ensure that information required to be disclosed in the reports that it files or submits under the Exchange Act is recorded, processed, summarized, and reported, within the time periods specified in the SEC's rules and forms. "Disclosure controls and procedures" include, without limitation, controls and procedures designed to ensure that information required to be disclosed by an issuer in the reports that it files or submits under the Exchange Act is accumulated and communicated to the issuer's management, including its principal executive and principal financial officers, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure. Our Chief Executive Officer and our Chief Financial Officer have concluded, based on an evaluation of the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) of the Securities Exchange Act of 1934, as amended) by our management, with the participation of our Chief Executive Officer and our Chief Financial Officer, that our disclosure controls and procedures were effective as of the end of the period covered by this report.

#### *(b) Changes in Internal Control over Financial Reporting*

There were no changes in our internal control over financial reporting during the three months ended January 2, 2009 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

#### *(c) Limitations on Effectiveness of Controls*

Our management, including our Chief Executive Officer and Chief Financial Officer, does not expect that our disclosure controls and procedures or our internal controls will prevent all errors and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. Because of the inherent

limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within our Company have been detected.

## PART II. OTHER INFORMATION

### Item 1. *Legal Proceedings*

Information with respect to this Item may be found in Note 15 of Notes to Condensed Consolidated Financial Statements in this Form 10-Q, which information is incorporated into this Part II, Item 1 by reference.

### Item 1A. *Risk Factors*

A description of the risks associated with our business, financial condition, and results of operations is set forth in Part I, Item 1A, of our Annual Report on Form 10-K for the fiscal year ended March 28, 2008. There have been no material changes in our risks from such description, other than the addition of the following risk factor:

***The recent global economic crisis may harm our business, operating results and financial condition.***

The recent global economic crisis has caused a tightening in the credit markets, increases in the rates of default and bankruptcy, and extreme volatility in credit, equity and fixed income markets. These macroeconomic developments could negatively affect our business, operating results or financial condition under a number of different scenarios. For example, current or potential customers may delay or forgo decisions to license new products or additional instances of existing products, upgrade their existing hardware or operating environments (which upgrades are often a catalyst for new purchases of our software), or purchase services. Customers may also have difficulties in obtaining the requisite third-party financing to complete the purchase of our products and services. The current economic environment could also subject us to increased credit risk should customers be unable to pay us, or delay paying us, for previously purchased products and services. In addition, weakness in the market for end users of our products could harm the cash flow of our distributors and resellers who could then delay paying their obligations to us. This would further increase our credit risk exposure and, potentially, cause delays in our recognition of revenue on sales to these customers.

In addition, financial institution difficulties and/or failures may make it more difficult either to utilize our existing debt capacity or otherwise obtain financing for our operations, investing activities (including potential acquisitions) or financing activities. Specific economic trends, such as declines in the demand for PCs, servers, and other computing devices, or softness in corporate information technology spending, could have an even more direct, and harmful, impact on our business. Finally, our cash and our investment portfolio, which includes short-term debt securities, is generally subject to general credit, liquidity, counterparty, market and interest rate risks that may be exacerbated by the recent global financial crisis. Our investment in our joint venture could also become impaired. If the banking system or the fixed income, credit or equity markets continue to deteriorate or remain volatile, our cash and our investment portfolio may be impacted and the values and liquidity of our investments could be harmed.

**Item 2. Unregistered Sales of Equity Securities and Use of Proceeds**

Stock repurchases during the three months ended January 2, 2009 were as follows:

**ISSUER PURCHASES OF EQUITY SECURITIES**

	<u>Total Number of Shares Purchased</u>	<u>Average Price Paid per Share</u>	<u>Total Number of Shares Purchased Under Publicly Announced Plans or Programs</u>	<u>Maximum Dollar Value of Shares That May Yet Be Purchased Under the Plans or Programs (In millions)</u>
October 4, 2008 to October 31, 2008	—	\$ —	—	\$ 600
November 1, 2008 to November 28, 2008	16,070,300	\$ 12.45	16,070,300	\$ 400
November 29, 2008 to January 2, 2009	—	\$ —	—	\$ 400
Total	<u>16,070,300</u>	\$ 12.45	<u>16,070,300</u>	

For information regarding our stock repurchase programs, see Note 10 of Notes to Condensed Consolidated Financial Statements, which information is incorporated herein by reference.

**Item 6. Exhibits**

Exhibit Number	Exhibit Description	Incorporated by Reference				Filed with this 10-Q
		Form	File Number	Exhibit	File Date	
2.01*	Agreement and Plan of Merger among Symantec Corporation, Atlas Merger Corp. and Altiris, Inc. dated January 26, 2007					X
31.01	Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002					X
31.02	Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act of 2002					X
32.01†	Certification of Chief Executive Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002					X
32.02†	Certification of Chief Financial Officer pursuant to Section 906 of the Sarbanes-Oxley Act of 2002					X

\* The exhibits and schedules to this agreement have been omitted pursuant to Item 601(b)(2) of Regulation S-K. We will furnish copies of any of the exhibits and schedules to the SEC upon request.

† This exhibit is being furnished rather than filed, and shall not be deemed incorporated by reference into any filing, in accordance with Item 601 of Regulation S-K.



**EXHIBIT INDEX**

<u>Exhibit Number</u>	<u>Exhibit Description</u>	<u>Form</u>	<u>File Number</u>	<u>Exhibit</u>	<u>File Date</u>	<u>Filed with this 10-Q</u>
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\* The exhibits and schedules to this agreement have been omitted pursuant to Item 601(b)(2) of Regulation S-K. We will furnish copies of any of the exhibits and schedules to the SEC upon request.

† This exhibit is being furnished rather than filed, and shall not be deemed incorporated by reference into any filing, in accordance with Item 601 of Regulation S-K.

**AGREEMENT AND PLAN OF MERGER**  
**AMONG**  
**SYMANTEC CORPORATION,**  
**ATLAS MERGER CORP.**  
**AND**  
**ALTIRIS, INC.**

**JANUARY 26, 2007**

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## AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER (this “**Agreement**”) is made and entered into as of January 26, 2007 (the “**Agreement Date**”) by and among Symantec Corporation, a Delaware corporation (“**Acquiror**”), Atlas Merger Corp., a Delaware corporation and a wholly owned subsidiary of Acquiror (“**Merger Sub**”), and Altiris, Inc., a Delaware corporation (the “**Company**”).

### RECITALS

A. The parties intend that, subject to the terms and conditions hereinafter set forth, Merger Sub shall merge with and into the Company (the “**Merger**”), with the Company to be the surviving corporation of the Merger (the “**Surviving Corporation**”), on the terms and subject to the conditions of this Agreement and pursuant to the Certificate of Merger substantially in the form attached hereto as Exhibit A (the “**Certificate of Merger**”) and the applicable provisions of the laws of the State of Delaware.

B. Subject to the terms and conditions set forth herein, the Boards of Directors of Acquiror, Merger Sub and the Company have determined that the Merger is in the best interests of their respective companies and stockholders and have approved and declared advisable the Merger, this Agreement and the other transactions contemplated by this Agreement. Subject to the terms and conditions set forth herein, the Board of Directors of the Company has determined to recommend to its stockholders the adoption of this Agreement.

C. Concurrently with the execution and delivery of this Agreement, and as a material inducement to Acquiror’s willingness to enter into this Agreement, each stockholder of the Company listed on Exhibit B-1 attached hereto is executing and delivering to Acquiror a Voting Agreement substantially in the form attached hereto as Exhibit B-2 (the “**Voting Agreement**”) pursuant to which, subject to the terms and conditions set forth therein, such stockholder has agreed to vote all shares of the Company’s capital stock owned by it in favor of adoption of this Agreement and to give Acquiror an irrevocable proxy to do the same.

D. Concurrently with the execution and delivery of this Agreement, and as a material inducement to Acquiror’s willingness to enter into this Agreement, certain employees of the Company are executing and delivering to Acquiror an Employment Agreement (the “**Employment Agreement**”), in each case to become effective upon the Closing.

E. Acquiror, Merger Sub and the Company desire to make certain representations, warranties, covenants and agreements in connection with the Merger and to prescribe various conditions to the Merger.

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties, covenants and conditions contained herein, the parties hereby agree as follows:

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ARTICLE 1  
CERTAIN DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set forth below.

“**Acquiror Common Stock**” means the Common Stock, \$0.01 par value per share, of Acquiror.

“**Acquiror Restricted Stock Unit**” means the right to receive a share of Acquiror Common Stock on a future date.

“**Affiliate**” means with respect to any Person, another Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such first Person, where “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of a Person, whether through the ownership of voting securities, by Contract, as trustee or executor, or otherwise.

“**Alternative Transaction**” means, with respect to the Company, any of the following transactions (other than the Merger):

(a) any acquisition or purchase from the Company by any Person or Group of more than a 15% interest in the total outstanding voting securities of the Company or any tender offer or exchange offer that if consummated would result in any Person or Group beneficially owning securities representing 15% or more of the total outstanding voting power of the Company, or any merger, consolidation, business combination, share exchange or similar transaction involving the Company pursuant to which the stockholders of the Company immediately preceding such transaction hold securities representing less than 85% of the total outstanding voting power of the surviving or resulting entity of such transaction (or parent entity of such surviving or resulting entity); (b) any sale, lease, exchange, transfer, exclusive license or disposition of assets (including capital stock or other ownership interests in Subsidiaries) representing 15% or more of the aggregate fair market value of the consolidated assets of the Company and its Subsidiaries taken as a whole; (c) any liquidation or dissolution of the Company; or (d) any extraordinary dividend, whether of cash or other property.

“**Alternative Transaction Proposal**” means any offer, proposal or indication of interest (whether binding or non-binding), or any public announcement of an intention to make any offer, proposal or indication of interest, to the Company or Company Stockholders regarding an Alternative Transaction.

“**Antitrust Filings**” means notification and report forms relating to the transactions contemplated by this Agreement filed with the United States Federal Trade Commission and the Antitrust Division of the United States Department of Justice as required by the HSR Act, as well as comparable pre-merger notification forms required by the merger notification or control laws and regulations of any applicable jurisdiction.

“**Antitrust Laws**” means federal, state or foreign statutes, rules, regulations, orders or decrees that are designed to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade.

“**Applicable Law**” means with respect to any Person, any federal, state, foreign, local, municipal or other law, statute, ordinance, code, permit, rule or regulation issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Authority and any orders, writs, injunctions, awards, judgments and decrees applicable to such Person or its Subsidiaries, their business or any of their respective assets or properties.

“**Balance Sheet Date**” means September 30, 2006, the date of the Company Balance Sheet.

“**Business Day**” shall mean a day (a) other than Saturday or Sunday, and (b) on which commercial banks are open for business in San Francisco, California.

“**Cash Amount Per Share**” means \$33.00.

“**Change in Recommendation**” means the withholding or withdrawal (or the amendment, qualification or modification in a manner adverse to Acquiror) of the Company Board’s recommendation in favor of adoption of this Agreement, and, in the case of a tender or exchange offer made by a third party directly to the Company Stockholders, a failure to recommend (other than a “stop, look and listen” letter or similar communication of the type contemplated by Rule 14d-9(f) under the Exchange Act in place thereof) that Company Stockholders reject such tender or exchange offer; provided, however, that the delivery of any notice from the Company to Acquiror specified in Section 5.2(c) or Section 5.2(d)(iii) will not be deemed to be or constitute a Change of Recommendation.

“**Closing**” means the closing of the transactions contemplated hereby.

“**Closing Date**” means a time and date to be specified by the parties (but in no event later than three Business Days unless otherwise agreed by the parties) after the satisfaction or waiver of the conditions set forth in Article 8 (excluding conditions that by their terms are to be satisfied on the Closing Date, but subject to the satisfaction or waiver of such conditions).

“**COBRA**” means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

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

“**Company Acquisition**” means, an Alternative Transaction; provided that for purposes of this definition of “Company Acquisition,” (a) each reference to “15%” in the definition of “Alternative Transaction” shall be deemed to be a reference to “40%”, (b) each reference to “85%” in the definition of “Alternative Transaction” shall be deemed to be a reference to “60%”, and (c) clause (d) of the definition of “Alternative Transaction” shall be disregarded.

“**Company Balance Sheet**” means the Company’s unaudited balance sheet as of September 30, 2006 included in the Company Financial Statements.

“**Company Board**” means the board of directors of the Company.

“**Company Business**” means the business of the Company and the Company Subsidiaries as presently conducted.

“**Company Capital Stock**” means the capital stock of the Company.

“**Company Charter Documents**” means the Certificate of Incorporation (including any Certificates of Designation) and Bylaws of the Company, each as amended to date.

“**Company Common Stock**” means the Common Stock, \$0.0001 par value per share, of the Company.

“**Company ESPP**” means the 2002 Employee Stock Purchase Plan of the Company.

“**Company Option Plans**” means the 1998 Stock Option Plan, 2002 Stock Plan and 2005 Stock Plan of the Company, collectively.

“**Company Optionholders**” means the holders of Company Options.

“**Company Options**” means options to purchase shares of Company Common Stock, whether or not under the Company Option Plans.

“**Company Preferred Stock**” means the Preferred Stock, par value \$0.0001 per share, of the Company.

“**Company Restricted Stock Unit**” means the right to receive a share of Company Common Stock on a future date.

“**Company Securityholders**” means the Company Stockholders, Company Optionholders and Company Warrantholders, collectively.

“**Company Stockholders**” means the holders of shares of Company Common Stock.

“**Company Subsidiary**” means a Subsidiary of the Company.

“**Company Warrantholders**” means the holders of Company Warrants.

“**Company Warrants**” means warrants to purchase shares of Company Capital Stock.

“**Confidentiality Agreement**” means that certain Confidentiality Agreement by and between Acquiror and the Company dated as of January 9, 2007.

“**Contract**” means any written or oral legally binding contract, agreement, instrument, commitment, obligation or undertaking (including subcontracts, leases, subleases, licenses, sublicenses, mortgages, notes, guarantees, indentures, warranties, guarantees, insurance policies, benefit plans and individual purchase orders).

**“Delaware Law”** means the Delaware General Corporation Law.

**“Debt”** means the outstanding amount of (a) indebtedness for borrowed money, (b) amounts owing as deferred purchase price for the purchase of any property, (c) indebtedness evidenced by any bond, debenture, note, mortgage, indenture or other debt instrument or debt security, (d) accounts payable to trade creditors and other accrued expenses, in each case not arising in the ordinary course of business, (e) amounts owing under any capitalized or synthetic leases, (f) obligations secured by any Encumbrances, (g) contingent reimbursement obligations under letters of credit, and (h) guarantees or sureties with respect to any indebtedness or obligation of a type described in clauses (a) through (g) above of any Person, of the Company and Company Subsidiaries.

**“Dissenting Shares”** shall mean any shares of Company Capital Stock that are issued and outstanding immediately prior to the Effective Time and in respect of which appraisal rights shall have been perfected in accordance with Delaware Law in connection with the Merger.

**“Documentation”** means, collectively, programmers’ notes or logs, source code annotations, user guides, manuals, instructions, software architecture designs, layouts, any know-how, and any other designs, plans, drawings, documentation, materials, supplier lists, software source code and object code, net lists, photographs, development tools, blueprints, media, memoranda and records that are primarily related to or otherwise necessary for the use and exploitation of any products of the Company or Company Subsidiaries, whether in tangible or intangible form, whether owned by the Company or Company Subsidiaries or held by the Company or Company Subsidiaries under any licenses or sublicenses or similar grants of rights.

**“Effective Time”** means the time of the filing of the Certificate of Merger (or such later time as may be mutually agreed in writing by the Company and Acquiror and specified in the Certificate of Merger).

**“Encumbrance”** means, with respect to any asset, any mortgage, deed of trust, lien, pledge, charge, security interest, title retention device, collateral assignment, restriction or other encumbrance of any kind in respect of such asset (including any restriction on the voting of any security, any restriction on the transfer of any security or other asset, any restriction on the receipt of any income derived from any asset, any restriction on the use of any asset and any restriction on the possession, exercise or transfer of any other attribute of ownership of any asset).

**“ERISA”** means the Employee Retirement Income Security Act of 1974, as amended.

**“ERISA Affiliate”** means any entity which is a member of: (a) a “controlled group of corporations,” as defined in Section 414(b) of the Code; (b) a group of entities under “common control,” as defined in Section 414(c) of the Code; or (c) an “affiliated service group,” as defined in Section 414(m) of the Code, or treasury regulations promulgated under Section 414(o) of the Code, any of which includes the Company.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended, including the rules and regulations promulgated thereunder.

“**Exchange Ratio**” means the quotient obtained by dividing (a) \$33.00 by (b) the average of the closing sale prices of Acquiror Common Stock as quoted on NASDAQ for the ten consecutive trading days ending with the trading day that is one trading day prior to the Closing Date.

“**Form Agreement**” means any Contract that does not deviate in any material respect from the “form of” such Contract made available by the Company to Acquiror and labeled as the “form of” such Contract.

“**Freely Terminable Agreement**” means any Contract that the Company or any Company Subsidiary has the right to terminate, (a) without cause, (b) upon 30 days or less notice, and (c) without Liability to the Company or any Company Subsidiaries.

“**GAAP**” means United States generally accepted accounting principles applied on a consistent basis.

“**Governmental Authority**” shall mean any supranational, national, state, municipal, local or foreign government, any court, tribunal, arbitrator, administrative agency, commission or other governmental official, authority or instrumentality, in each case whether domestic or foreign, or any quasi-governmental body exercising any regulatory, Taxing or other governmental or quasi-governmental authority.

“**Group**” means the definition ascribed to such term under Section 13(d) of the Exchange Act, the rules and regulations thereunder and related case law.

“**HSR Act**” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

“**IAS**” means International Accounting Standards applied on a consistent basis.

“**Immediate Family Member**” has the meaning ascribed to such term under Item 404(a) of Regulation S-K promulgated under the Securities Act and Exchange Act.

“**Intellectual Property**” means, collectively, all industrial and intellectual property rights, throughout the world, including patents, patent applications, patent rights, trademarks, trademark registrations and applications therefor, trade dress rights, trade names, service marks, service mark registrations and applications therefor, and any and all goodwill associated with and symbolized by the foregoing items, Internet domain name registrations, Internet and World Wide Web URLs or addresses, copyrights, copyright registrations and applications therefor, mask work rights, mask work registrations and applications therefor, franchises, licenses, inventions, trade secrets, know-how, customer lists, supplier lists, proprietary processes and formulae, technology, software source code and object code, algorithms, net lists, architectures, structures, screen displays, photographs, images, layouts, development tools, designs, blueprints, specifications, technical drawings (or similar information

in electronic format) and all documentation and media constituting, describing or relating to the foregoing, including manuals, programmers' notes, memoranda and records.

**“knowledge”** means, with respect to any Person that is an entity, the knowledge of such Person's executive officers with respect to any fact, circumstance, event or other matter in question after reasonable inquiry of the senior employees of such entity who have administrative or operational responsibility for the matter in question (it being understood that such reasonable inquiry does not include circulation of director and officer questionnaires for the current proxy season since that process has not yet occurred as of the Agreement Date).

**“Liabilities”** means debts, liabilities and obligations, whether accrued or fixed, absolute or contingent, matured or unmatured, determined or determinable, known or unknown, including those arising under any law, action or governmental order and those arising under any Contract.

**“Material Adverse Change”** and **“Material Adverse Effect”** when used in connection with an entity, means any change, event, circumstance, condition or effect, (each, an **“Effect”**) that is or is reasonably likely to be, individually or in the aggregate, materially adverse to the condition (financial or otherwise), assets (including intangible assets), business, operations or results of operations of such entity and its subsidiaries, taken as a whole, except to the extent that any such Effect is proximately caused by: (a) changes in general economic conditions or changes affecting the industry generally in which such entity operates (provided that such changes do not affect such entity disproportionately as compared to companies operating in the same industry in which such entity operates); (b) changes in the trading volume or trading prices of such entity's capital stock in and of themselves (provided that such exclusion shall not apply to any underlying Effect that may have caused such change in trading prices or volumes); (c) acts of war or terrorism (provided that such acts do not affect such entity disproportionately as compared to companies operating in the same industry in which such entity operates); (d) changes in applicable law or GAAP; (e) any failure to meet analysts estimates or expectations as to revenue, earnings or other financial performance (provided that such exclusion shall not apply to any underlying Effect that may have caused such failure); or (f) the announcement or the execution of this Agreement or the pendency or consummation of the Merger.

**“Merger Sub Common Stock”** means the Common Stock, \$0.001 par value per share, of Merger Sub.

**“NASDAQ”** means the Nasdaq Stock Market.

**“Permitted Encumbrances”** means: (a) statutory liens for Taxes that are not yet due and payable; (b) statutory liens to secure obligations to landlords, lessors or renters under leases or rental agreements; (c) deposits or pledges made in connection with, or to secure payment of, workers' compensation, unemployment insurance or similar programs mandated by Applicable Law; (d) statutory liens in favor of carriers, warehousemen, mechanics and materialmen, to secure claims for labor, materials or supplies and other like liens; (e) Encumbrances imposed on the underlying fee interest in leased property; or (f) Encumbrances that do not materially interfere with the use or operation of the property subject thereto.

“**Person**” means any natural person, corporation, company, limited liability company, general partnership, limited liability partnership, trust, estate, proprietorship, joint venture, association, organization, entity or Governmental Authority.

“**Proxy Statement**” means the proxy statement to be filed by the Company with the SEC in connection with the solicitation of proxies from Company Stockholders for the Company Stockholder Approval (as defined in Section 3.3(a)), as amended or supplemented.

“**Sarbanes Act**” means the Sarbanes-Oxley Act of 2002.

“**SEC**” means the Securities and Exchange Commission.

“**Securities Act**” means the Securities Act of 1933, as amended, including the rules and regulations promulgated thereunder.

“**Subsidiary**” means any corporation, association, business entity, partnership, limited liability company or other Person of which the Company or Acquiror, as the case may be, either alone or together with one or more Subsidiaries or by one or more other Subsidiaries (a) directly or indirectly owns or controls securities or other interests representing more than 50% of the voting power of such Person, or (b) is entitled, by Contract or otherwise, to elect, appoint or designate directors constituting a majority of the members of such Person’s board of directors or other governing body.

“**Superior Proposal**” means, with respect to the Company, a *bona fide* written Alternative Transaction Proposal, which the Company Board has in good faith determined (after consultation with its outside legal counsel and a financial advisor of national standing), taking into account all legal, financial, regulatory, timing and other aspects of the proposal (including the need for and contingency of any financing) and the identity of the Person making the proposal, (a) to be more favorable, from a financial point of view, to the Company Stockholders (in their capacities as stockholders) than the terms of this Agreement, (b) provides for consideration consisting exclusively of cash and/or publicly-traded equity securities, and (c) is reasonably capable of being consummated on the terms proposed; provided that, for purposes of this definition of “Superior Proposal” each reference to “15%” or “85%” in the definition of “Alternative Transaction” shall be deemed to be a reference to “50%”.

“**Tax**” (and, with correlative meaning, “**Taxes**” and “**Taxable**”) shall mean (a) any income, alternative or add-on minimum tax, gross income, estimated, gross receipts, sales, use, ad valorem, value added, transfer, franchise, capital stock, profits, license, registration, withholding, payroll, social security (or equivalent), employment, unemployment, disability, excise, severance, stamp, occupation, premium, property (real, tangible or intangible), environmental or windfall profit tax, custom duty or other tax, 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 (whether disputed or not) imposed by any Governmental Authority responsible for the imposition of any such tax (domestic or foreign) (each, a “**Tax Authority**”), (b) any liability for the payment of any amounts of the type described in clause (a) of this sentence as a result of being a member of an affiliated, consolidated, combined, unitary or aggregate group for any Taxable period, and (c) any liability for the payment of any amounts of

the type described in clause (a) or (b) of this sentence as a result of being a transferee of or successor to any Person or as a result of any express or implied obligation to assume such Taxes or to indemnify any other Person.

“**Tax Return**” shall mean any return, statement, report or form (including estimated Tax returns and reports, withholding Tax returns and reports, any schedule or attachment, and information returns and reports) required to be filed with respect to Taxes.

“**Transaction Expenses**” means all costs and expenses incurred in connection with the Merger and this Agreement and the transactions contemplated hereby (including any fees and expenses of legal counsel, financial advisors, investment bankers and accountants).

“**Unvested Company Options**” means any Company Options that may be forfeited to or repurchased by the Company under the terms of any Contract with the Company (including, without limitation, any stock option agreement, or stock option exercise agreement, or restricted stock purchase agreement).

“**Unvested Company Shares**” means any Company Common Stock that may be forfeited to or repurchased by the Company under the terms of any Contract with the Company (including, without limitation, any stock option agreement, or stock option exercise agreement, or restricted stock purchase agreement).

Other capitalized terms defined elsewhere in this Agreement and not defined in this Article 1 shall have the meanings assigned to such terms in this Agreement.

## ARTICLE 2 THE MERGER

### 2.1 Conversion of Shares.

(a) Conversion of Merger Sub Common Stock. At the Effective Time, each share of Merger Sub Common Stock that is issued and outstanding immediately prior to the Effective Time shall be converted into one validly issued, fully paid and nonassessable share of Common Stock, \$0.0001 par value per share, of the Surviving Corporation, and the shares of the Surviving Corporation into which the shares of Merger Sub Common Stock are so converted shall be the only shares of Company Common Stock that are issued and outstanding immediately after the Effective Time.

### (b) Conversion or Assumption of Company Securities.

(i) Company Common Stock. Subject to the terms and conditions of this Agreement, at the Effective Time, each share of Company Common Stock that is issued and outstanding immediately prior to the Effective Time (other than Dissenting Shares and shares to be canceled pursuant to Section 2.1(c)) shall, by virtue of the Merger and without the need for any further action on the part of the holder thereof (except as expressly provided herein), be converted into and represent the right to receive an amount of cash, without interest, equal to the Cash Amount Per Share. The amount of cash each Company Stockholder is entitled to receive for the shares of Company Common Stock held by such Company Stockholder shall be rounded

to the nearest cent and computed after aggregating cash amounts for all shares of Company Common Stock held by such Company Stockholder.

(ii) Company Options. Subject to the terms and conditions of this Agreement, at the Effective Time, each Company Option that is issued and outstanding immediately prior to the Effective Time, whether or not then exercisable, will be assumed by Acquiror and converted into an option to purchase Acquiror Common Stock (collectively, “**Assumed Options**”). Each Company Option so assumed and converted will continue to have, and be subject to, the same terms and conditions, except that (A) each converted Company Option shall be exercisable (or will become exercisable in accordance with its terms) for that number of whole shares of Acquiror Common Stock equal to the product of the number of shares of Company Common Stock that were subject to such Company Option immediately prior to the Effective Time (whether vested or unvested) multiplied by the Exchange Ratio (rounded down to the nearest whole share) and (B) the per share exercise price for the shares of Acquiror Common Stock issuable upon exercise of such converted Company Option shall be equal to the quotient determined by dividing the exercise price per share of Company Common Stock at which such Company Option was exercisable immediately prior to the Effective Time by the Exchange Ratio (rounded up to the nearest whole cent). The conversion of Company Options provided for in this Section 2.1(b)(ii) with respect to any Company Options that are intended to be “incentive stock options” (as defined in Section 422 of the Code) shall be effected in a manner consistent with Section 424(a) of the Code and otherwise in a manner designed to preserve incentive stock option treatment to the extent permitted by Applicable Law.

(iii) Company Restricted Stock Units. Subject to the terms and conditions of this Agreement, at the Effective Time, each Company Restricted Stock Unit that is issued and outstanding immediately prior to the Effective Time will be assumed by Acquiror and converted into an Acquiror Restricted Stock Unit (collectively, “**Assumed Restricted Stock Units**”). Each Company Restricted Stock Unit so assumed and converted will continue to have, and be subject to, the same terms and conditions, except that each converted Company Restricted Stock Unit shall be for that number of whole shares of Acquiror Common Stock equal to the product of the number of shares of Company Common Stock that were subject to the Company Restricted Stock Unit immediately prior to the Effective Time multiplied by the Exchange Ratio (rounded down to the nearest whole share).

(iv) Company Warrants. Subject to the terms and conditions of this Agreement, at the Effective Time, each Company Warrant that is issued and outstanding immediately prior to the Effective Time shall, by virtue of the Merger and without the need for any further action on the part of the holder thereof (except as expressly provided herein), be converted into and represent the right to receive an amount of cash, without interest, equal to the product of (A) the number of shares of Company Common Stock subject to such Company Warrant immediately prior to the Effective Time (whether vested or unvested) multiplied by (B) the Cash Amount Per Share, less the exercise price per share attributable to such Company Warrant; provided, however, that the Surviving Corporation and Acquiror shall be entitled to deduct and withhold from such payment made to the holder of a Company Warrant the amount of withholding for Taxes required to be deducted and withheld as a result of the transactions contemplated by this Section 2.1(b)(iv); provided further, that the right of the Company Warrant holder to receive such cash shall remain subject to the same terms and conditions set

forth in such Company Warrant. The amount of cash each Company Warrantholder is entitled to receive for the Company Warrants held by such Company Warrantholder shall be rounded to the nearest cent and computed after aggregating cash amounts for all Company Warrants held by such Company Warrantholder.

(c)Cancellation of Company-Owned Stock. Notwithstanding Section 2.1(b), each share of Company Capital Stock held by the Company or any Company Subsidiaries immediately prior to the Effective Time shall be canceled and extinguished without any conversion thereof.

(d)Adjustments. In the event of any stock split, reverse stock split, stock dividend (including any dividend or distribution of securities convertible into capital stock), reorganization, reclassification, combination, recapitalization or other like change with respect to the Company Capital Stock occurring after the Agreement Date and prior to the Effective Time, all references in this Agreement to specified numbers of shares of any class or series affected thereby, and all calculations provided for that are based upon numbers of shares of any class or series (or trading prices therefor) affected thereby, shall be equitably adjusted to the extent necessary to provide the parties the same economic effect as contemplated by this Agreement prior to such stock split, reverse stock split, stock dividend, reorganization, reclassification, combination, recapitalization or other like change.

(e)Continuation of Vesting and Repurchase Rights. If there are any Unvested Company Shares issued and outstanding immediately prior to the Effective Time, then the right to recover or extinguish such Unvested Company Shares under the terms of any Contract with the Company shall be assigned to Acquiror and the cash payable upon conversion of such Unvested Company Shares in the Merger (the “**Unvested Cash**”) shall be, in place of such Unvested Company Shares, equally subject to such right assigned to Acquiror and shall be withheld by Acquiror and paid without interest to the holders of such Unvested Company Shares if and to the extent such assigned right expires unexercised by Acquiror pursuant to the terms of the applicable Contract with the Company; provided, however, that the Surviving Corporation and Acquiror shall be entitled to deduct and withhold from such payments the amount of withholding imposed for Taxes as required by Applicable Law; provided further, that a portion of such newly vested cash so distributed may be treated as imputed interest and will be so treated to the extent required under the Code and the regulations promulgated thereunder; provided further, that for administrative convenience, Acquiror may in its discretion make all such required payments of newly vested cash according to its normal payroll schedule following the date within a month upon which such cash became vested. Notwithstanding the foregoing, if any such holder paid for Unvested Company Shares with promissory notes, Unvested Cash which vests shall first be applied towards repayment of accrued interest and then outstanding principal under such promissory notes before being distributed to such holder. The Company shall take all actions that may be reasonably necessary to ensure that, from and after the Effective Time, Acquiror (or its assignee) is entitled to exercise any such right assigned hereunder, such that any Unvested Cash shall be returned to Acquiror without payment to such holder (other than payment of the original purchase price of any Unvested Company Shares converted into Unvested Cash upon exercise of the applicable right by Acquiror according to the terms of the Contract with the Company governing such Unvested Company Shares as of immediately prior to the Effective Time).

(f) Dissenting Shares. Dissenting Shares shall not be converted into the right to receive the Cash Amount Per Share, and the holders thereof shall be entitled to only such rights as are granted by Section 262 of the Delaware Law; provided, however, that if any such Company Stockholder shall fail to perfect or shall effectively waive, withdraw or lose such stockholder's rights under Section 262 of the Delaware Law, such stockholder's shares of Company Common Stock in respect of which such stockholder would otherwise be entitled to receive fair value under Section 262 of the Delaware Law shall thereupon be deemed to have been converted, at the Effective Time, into the right to receive the Cash Amount Per Share.

2.2 Effects of the Merger. At and upon the Effective Time:

(a) the separate existence of Merger Sub shall cease and Merger Sub shall be merged with and into the Company, and the Company shall be the surviving corporation of the Merger pursuant to the terms of this Agreement and the Certificate of Merger;

(b) the Certificate of Incorporation of the Surviving Corporation shall be amended in its entirety to read as set forth in the Certificate of Merger, until thereafter amended as provided by Delaware Law;

(c) the Bylaws of the Surviving Corporation shall be amended in their entirety to read as the Bylaws of Merger Sub, until thereafter amended as provided by Delaware Law;

(d) the officers of Merger Sub immediately prior to the Effective Time shall be appointed as the officers of the Surviving Corporation immediately after the Effective Time until their respective successors are duly appointed;

(e) the members of the Board of Directors of Merger Sub immediately prior to the Effective Time shall be appointed as the members of the Board of Directors of the Surviving Corporation immediately after the Effective Time until their respective successors are duly elected or appointed and qualified; and

(f) the Merger shall, from and after the Effective Time, have all of the effects provided by Delaware Law.

2.3 Tax Consequences and Withholding.

(a) The parties intend that the Merger shall be treated as a Taxable purchase of securities of the Company pursuant to the Code. However, Acquiror makes no representations or warranties to the Company or to any Company Securityholder regarding (i) the Tax treatment of the Merger or (ii) any of the Tax consequences to the Company or any Company Securityholder of this Agreement, the Merger or any of the other transactions or agreements contemplated hereby. The Company and, by virtue of the Company Stockholders adopting this Agreement, the Company Stockholders, acknowledge that the Company and the Company Stockholders are relying solely on their own Tax advisors in connection with the Merger, this Agreement and the other transactions or agreements contemplated hereby.

(b) Acquiror or Acquiror's agent shall be entitled to deduct and withhold from the amounts payable pursuant to this Agreement to any Company Securityholder, any amounts required to be deducted and withheld under the Code, or any other provision of Applicable Law, with respect to the making of such payment. To the extent that amounts are so withheld, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Company Securityholder in respect of whom such deduction and withholding was made.

2.4 Further Assurances. At and after the Effective Time, the officers and directors of Acquiror and the Surviving Corporation will be authorized to execute and deliver, in the name and on behalf of the Company and Merger Sub, any deeds, bills of sale, assignments or assurances and to take and do, in the name and on behalf of the Company and Merger Sub, any other actions and things to vest, perfect or confirm of record or otherwise in the Surviving Corporation any and all right, title and interest in, to and under any of the rights, properties or assets acquired or to be acquired by the Surviving Corporation as a result of, or in connection with, the Merger.

### ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as set forth in the disclosure letter of the Company addressed to Acquiror, dated as of the Agreement Date and delivered to Acquiror concurrently with the parties' execution of this Agreement (the "**Company Disclosure Letter**") referencing a representation or warranty herein (it being understood that (i) the Company Disclosure Letter shall be arranged in sections and subsections corresponding to the sections and subsections contained in this Article 3, (ii) the disclosures in any section or subsection of the Company Disclosure Letter shall qualify the applicable representations and warranties in the corresponding section or subsection of this Article 3 and, in addition, the representations and warranties in other sections or subsections in this Article 3 to the extent it is reasonably apparent on the face of such disclosures that such disclosures are applicable to such other sections or subsections, and (iii) such disclosures in the Company Disclosure Letter relating to the representations and warranties in this Article 3 shall also be deemed to be representations and warranties made by the Company under this Article 3), the Company represents and warrants to Acquiror as follows:

3.1 Organization and Good Standing. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. The Company has the corporate power and authority to own, operate and lease its properties and to carry on the Company Business. The Company is duly qualified or licensed to do business, and is in good standing (to the extent that such concept is applicable), in each jurisdiction where the character of the properties owned, leased or operated by it or the nature of its activities makes such qualification or licensing necessary, except where the failure to be so qualified and in good standing, individually or in the aggregate with any such other failures, would not reasonably be expected to be material to the Company and the Company Subsidiaries, taken as a whole; without limiting the foregoing, the Company is so qualified or licensed and in good standing (to the extent that such concept is applicable) in each jurisdiction listed on Schedule 3.1 of the Company Disclosure Letter. The Company has made available to Acquiror's legal counsel true

and complete copies of the Company Charter Documents. The Company is not in violation of the Company Charter Documents.

### 3.2 Company Subsidiaries.

(a)Organization and Good Standing. Schedule 3.2(a) of the Company Disclosure Letter sets forth a true, correct and complete list of all Company Subsidiaries. Each Company Subsidiary is a corporation duly organized, validly existing and in good standing (to the extent that such concept is applicable) under the laws of its jurisdiction of organization. Each Company Subsidiary has the corporate power and authority to own, operate and lease its properties and to carry on its business. Each Company Subsidiary is duly qualified or licensed to do business, and is in good standing, in each jurisdiction where the character of the properties owned, leased or operated by it or the nature of its activities makes such qualification or licensing necessary, except where the failure to be so qualified and in good standing, individually or in the aggregate with any such other failures, would not reasonably be expected to be material to the Company and the Company Subsidiaries, taken as a whole; without limiting the foregoing, each respective Company Subsidiary is so qualified or licensed and in good standing (to the extent that such concept is applicable) in each jurisdiction listed on Schedule 3.2(a) of the Company Disclosure Letter. The Company has made available to Acquiror's legal counsel true and complete copies of the currently effective Certificate of Incorporation and Bylaws (or other comparable charter documents) of each Company Subsidiary, each as amended to date. Each Company Subsidiary is not in violation of its Certificate of Incorporation or Bylaws (or other comparable charter documents), each as amended to date.

(b)Ownership. The Company is the owner of all of the issued and outstanding shares of capital stock of each Company Subsidiary and all such shares are duly authorized, validly issued, fully paid and nonassessable. All of the issued and outstanding shares of capital stock of each Company Subsidiary are owned by the Company free and clear of all Encumbrances (other than Permitted Encumbrances) and are not subject to any preemptive right or right of first refusal created by statute, the Certificate of Incorporation and Bylaws (or other comparable charter documents), as applicable, of such Company Subsidiary or any agreement to which such Company Subsidiary is a party or by which it is bound. There are no stock appreciation rights, options, warrants, calls, rights, legally binding commitments, conversion privileges or preemptive or other rights or agreements outstanding to purchase or otherwise acquire any shares of capital stock of a Company Subsidiary or any securities or debt convertible into or exchangeable for capital stock of a Company Subsidiary or obligating the Company or any Company Subsidiary to grant, extend or enter into any such option, warrant, call, right, legally binding commitment, conversion privilege or preemptive or other right or agreement. Other than the Company Subsidiaries set forth in Schedule 3.2(a) of the Company Disclosure Letter, the Company does not have any Company Subsidiary or any equity or ownership interest (or any interest convertible or exchangeable or exercisable for, any equity or ownership interest), whether direct or indirect, in any Person. As of the Agreement Date, the Company is not contractually obligated to make nor is it bound by any agreement or contractual obligation to make any investment in or capital contribution in or on behalf of any other Person.

### 3.3 Power, Authorization and Validity.

(a) Power and Authority. Subject to adoption of this Agreement by holders of a majority of the outstanding shares of Company Common Stock (the “**Company Stockholder Approval**”), the Company has all requisite corporate power and authority to enter into, execute, deliver and perform its obligations under this Agreement and to consummate the Merger and the other transactions contemplated hereby. As of the Agreement Date, the Company Board, by resolutions duly adopted (and not thereafter modified or rescinded) by the unanimous vote of the full Company Board, has (i) determined that this Agreement and the terms and conditions of the Merger and this Agreement are fair to, advisable and in the best interests of the Company and the Company Stockholders, (ii) approved and adopted this Agreement and the Merger, and (iii) directed that the adoption of this Agreement be submitted to the Company Stockholders for consideration and recommended that all of the Company Stockholders adopt this Agreement. The Company Stockholder Approval is the only vote of the holders of any class or series of Company Capital Stock necessary to adopt this Agreement and consummate the Merger and the other transactions contemplated hereby under the Company Charter Documents and Applicable Law.

(b) No Governmental Consents. No consent, approval, order, authorization, release or waiver of, or registration, declaration or filing with, any Governmental Authority, is necessary or required to be made or obtained by the Company to enable the Company to lawfully execute and deliver, enter into, and perform its obligations under, this Agreement or to consummate the Merger, except for (i) the filing of the Certificate of Merger with the Delaware Secretary of State and appropriate documents with the relevant authorities of other states in which Company is qualified to do business, (ii) such filings and notifications as may be required to be made by the Company in connection with the Merger under the HSR Act and other applicable Antitrust Laws and the expiration or early termination of applicable waiting periods under the HSR Act and such Antitrust Laws, (iii) the filing with the SEC of the Proxy Statement and such reports and filings under the Exchange Act and the rules and regulations thereunder as may be required in connection with this Agreement and the transactions contemplated hereby, (iv) such other filings and notifications as may be required to be made by the Company under federal, state or foreign securities laws or the rules and regulations of NASDAQ, and (v) such other consents, approvals, orders, authorizations, releases, waivers, registrations, declarations or filings that if not made or obtained would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of the Company to consummate the Merger or have a Material Adverse Effect on the Company.

(c) Enforceability. This Agreement has been duly executed and delivered by the Company, and assuming the due execution and delivery of this Agreement by Acquiror and Merger Sub, constitutes the valid and binding obligations of the Company, enforceable against the Company in accordance with its terms, subject to the effect of (i) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to rights of creditors generally and (ii) rules of law and equity governing specific performance, injunctive relief and other equitable remedies.

(d) Takeover Laws. Assuming the truth of the representation and warranty contained in Section 4.5, the adoption of this Agreement and the approval of the Merger and the

transactions contemplated hereby by the Company Board referred to in Section 3.3(a) constitute all of the approvals that are necessary to render inapplicable to this Agreement, the Merger, and the transactions contemplated hereby the provisions of Section 203 of Delaware Law and represent the only actions necessary to ensure that Section 203 of Delaware Law do not and will not apply to the execution, delivery, or performance of this Agreement or the consummation of the Merger or other transactions contemplated hereby. To the knowledge of the Company, no other state takeover or other similar statute or regulation is applicable to this Agreement or the Merger.

### 3.4 Capital Structure of the Company.

(a) The authorized capital stock of the Company consists solely of 100,000,000 shares of Company Common Stock, of which 2,000,000 shares are designated as Class B non-voting Common Stock, and 5,000,000 shares of Company Preferred Stock. As of the close of business on January 24, 2007, a total of 29,386,546 shares of Company Common Stock, no shares of Class B non-voting Common Stock and no shares of Company Preferred Stock are issued and outstanding. The Company has reserved (i) an aggregate of 5,798,098 shares of Company Common Stock for issuance pursuant to the Company Option Plans (including shares subject to outstanding Company Options) and (ii) an aggregate of 3,125,213 shares of Company Common Stock for issuance pursuant to the Company ESPP. As of the close of business on January 24, 2007, (i) a total of 2,300,853 shares of Company Common Stock are subject to outstanding Company Options, (ii) a total of 1,459,998 shares of Company Common Stock are subject to outstanding Company Warrants, (iii) a total of 1,490,289 shares of Company Common Stock are reserved for future grant and issuance under the Company Option Plans (excluding shares subject to outstanding Company Options), and (iv) a total of 2,454,329 shares of Company Common Stock are reserved for future grant and issuance under the Company ESPP. Except for Company Options and Company Warrants, there are no stock appreciation rights, options, warrants, calls, rights, legally binding commitments, conversion privileges or preemptive or other rights or Contracts outstanding to purchase or otherwise acquire any shares of Company Capital Stock or Company Voting Debt or any securities or debt convertible into or exchangeable for Company Capital Stock or Company Voting Debt or obligating the Company to grant, extend or enter into any such option, warrant, call, right, legally binding commitment, conversion privilege or preemptive or other right or Contract. In the period from January 24, 2007 through the Agreement Date, (i) the Company has not issued shares of Company Capital Stock other than pursuant to the exercise of Company Options or Company Warrants that were issued and outstanding on January 24, 2007 and (ii) the Company has not issued any Company Options or Company Warrants.

(b) Schedule 3.4(b) of the Company Disclosure Letter sets forth as of the close of business on January 24, 2007, all holders of Unvested Company Shares, and for each such Company Stockholder, (i) the number of Unvested Company Shares held, (ii) the material terms of the Company's rights to repurchase such Unvested Company Shares, (iii) the schedule on which such rights lapse and (iv) whether such repurchase rights lapse in full or in part as a result of any of the transactions contemplated by this Agreement or upon any other event or condition. All issued and outstanding shares of Company Common Stock have been duly authorized and validly issued, are fully paid and nonassessable, were not issued in violation of and are not subject to any right of rescission, right of first refusal or preemptive right, and have

been offered, issued, sold and delivered by the Company in compliance with all requirements of Applicable Law and all requirements set forth in applicable Contracts. There is no Liability for dividends accrued and unpaid by the Company. As of the Agreement Date, there are no shares of Company Common Stock held in treasury by the Company or any Company Subsidiaries.

(c)Schedule 3.4(c)-1 of the Company Disclosure Letter sets forth as of the close of business on January 24, 2007, for each Company Option, (i) the name of the holder of such Company Option, (ii) the exercise price per share of such Company Option, (iii) each holder of outstanding Company Options that is not an employee of the Company or any Subsidiary (including non-employee directors, former employees, consultants, advisory board members, vendors, service providers or other similar persons), (iv) the number of shares covered by such Company Option, (v) the term of such Company Option, (vi) the vesting schedule for such Company Option and the extent such Company Option is vested as of January 24, 2007, (vii) whether such Company Option is an incentive stock option under Section 422 of the Code, (viii) the terms of any accelerated vesting or exercisability of any Company Options, and (ix) which Company Option Plan (if any) such Company Option was granted under. The terms of the Company Option Plans permit the conversion of Company Options into cash as provided in this Agreement, without the consent or approval of the holders of such Company Options, the Company Stockholders or otherwise and except as set forth in Section 3.4(c) of the Company Disclosure Letter, without acceleration of the exercise schedule or vesting provisions in effect for such Company Options.

Schedule 3.4(c)-2 of the Company Disclosure Letter sets forth as of the close of business on January 24, 2007, for each Company Warrant, (i) the name of the holder of such Company Warrant, (ii) the exercise price per share of such Company Warrant, (iii) the number and kind of shares covered by such Company Warrant, (iv) the vesting schedule for such Company Warrant, (v) the extent such Company Warrant is vested as of January 24, 2007, (vi) whether such Company Warrant was issued in connection with the performance of services, and (vii) whether the exercisability of such Company Warrant shall be accelerated in any manner by any of the transactions contemplated by this Agreement or upon any other event or condition and the extent of acceleration, if any. All issued and outstanding Company Options and Company Warrants were issued by the Company in material compliance with all requirements of Applicable Law and all requirements set forth in applicable Contracts and were not issued in material violation of and are not subject to any right of rescission, right of first refusal or preemptive right. True and correct copies of the Company Option Plans, the standard agreement under each Company Option Plan, each agreement for each Company Option that does not conform to the standard agreement under such Company Option Plan and each Company Warrant have been made available by the Company to Acquiror's legal counsel, and such plans and agreements have not been amended, modified or supplemented since being made available, and there are no agreements, understandings or commitments to amend, modify or supplement such plans or agreements in any case from those made available.

(d)Company Debt. No bonds, debentures, notes or other Debt of the Company or any Company Subsidiaries (i) having the right to vote on any matters on which stockholders may vote (or which is convertible into, or exchangeable for, securities having such right) or (ii) the value of which is any way based upon or derived from capital or voting stock of the Company (collectively, "**Company Voting Debt**"), is issued or outstanding as of the Agreement Date. Schedule 3.4(d) to the Company Disclosure Letter accurately lists all Debt of Company and Company Subsidiaries, including, for each item of Debt, the agreement governing

the Debt and the interest rate, maturity date and whether or not such Debt is secured. All Debt may be prepaid at the Closing without penalty under the terms of the agreements governing such Debt.

(e)No Other Rights. The Company Charter Documents do not provide, and the Company is not a party to or otherwise bound by any Contract providing, registration rights, rights of first refusal, preemptive rights, co-sale rights or other similar rights applicable to any securities of the Company or any Company Subsidiary issued and outstanding as of the Agreement Date. The Company is not a party to any Contract regarding the voting of any outstanding securities of the Company (other than the Voting Agreements).

3.5No Conflict. Neither the execution and delivery of this Agreement by the Company, nor the consummation of the Merger or any other transaction contemplated hereby: (a) conflicts with, or (with or without notice or lapse of time, or both) results in a termination, breach, impairment or violation of, or constitutes a default under, or requires a consent, waiver or approval of any Person under, (i) any provision of the Company Charter Documents or other comparable charter documents of any Company Subsidiary, each as currently in effect, (ii) subject to compliance with the requirements described in clauses (i)-(iv) of Section 3.3(b), in any material respect, any Applicable Law applicable to the Company, any Company Subsidiary or any of their respective assets or properties, (iii) any Company Material Contract (as defined in Section 3.12) to which the Company or any Company Subsidiary is a party or by which the Company or any Company Subsidiary or any of their respective assets or properties are bound, or (iv) any privacy policy of the Company or any Company Subsidiary (except in the cases of clause (iii) or (iv), where such conflicts, terminations, breaches, impairments, violations or defaults, or failures to obtain such consents, waivers or approvals, individually or in the aggregate, would not reasonably be expected to be material to the Company and the Company Subsidiaries, taken as a whole); or (b) will result in the creation of any material Encumbrance on any of the material properties or assets of the Company and the Company Subsidiaries, taken as a whole.

### 3.6SEC Filings.

(a)SEC Reports. The Company has filed with the SEC all registration statements, prospectuses, reports, forms, statements, schedules, certifications and other documents (including exhibits and all other items incorporated by reference) required to be filed or furnished by the Company since January 1, 2005 (all such required registration statements, prospectuses, reports, forms, statements, schedules, certifications and other documents, including those that the Company may file subsequent to the Agreement Date, are referred to herein as the “**Company SEC Documents**”), and, to the Company’s knowledge, all such Company SEC Documents in the form filed with the SEC are available on the SEC’s EDGAR website. As of their respective dates, the Company SEC Documents (i) were prepared in accordance and complied in all material respects with the requirements of the Securities Act, the Exchange Act and the rules and regulations of the SEC promulgated thereunder applicable to such Company SEC Documents (ii) did not at the time they were filed (or if amended or superseded by a filing prior to the Agreement Date, then on the date of such filing) contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not

misleading, except to the extent corrected prior to the Agreement Date by a subsequently filed Company SEC Document. None of the Company Subsidiaries is required to file any forms, reports or other documents with the SEC.

(b)Financial Statements. Each of the consolidated financial statements (including, in each case, any related notes thereto) contained in the Company SEC Documents (the “**Company Financial Statements**”), including each Company SEC Document filed after the Agreement Date until the Closing, (i) was prepared in accordance with GAAP (except in the case of unaudited interim financial statements, as may be permitted by the SEC on Form 10-Q or Form 8-K) applied on a consistent basis throughout the periods involved (except as may be indicated in the notes thereto), and (ii) fairly presented, in all material respects, the consolidated financial position of Company and the Company Subsidiaries as at the respective dates thereof and the consolidated results of Company’s and the Company Subsidiaries’ operations and cash flows for the periods indicated (except that the unaudited interim financial statements were subject to normal and recurring year-end and quarter-end adjustments which were not material). Except as reflected in the Company Balance Sheet (or described in the notes thereto), neither the Company nor any of the Company Subsidiaries has any Liabilities of any nature that would be required by GAAP to be reflected on a consolidated balance sheet of the Company and the Company Subsidiaries, or described in the notes thereto, and that are, individually or in the aggregate, material to the business, results of operations or financial condition of the Company and its Subsidiaries taken as a whole, except (i) Liabilities incurred since the Balance Sheet Date in the ordinary course of business consistent with past practice which are not material in nature or amount and do not result from any breach of Contract, tort or violation of any Applicable Law, (ii) Liabilities under the Company Material Contracts (as defined in Section 3.12 below) set forth on Schedule 3.6(b) of the Company Disclosure Letter or under any Contracts entered into to by the Company or any of the Company Subsidiaries subsequent to the Agreement Date not in violation of Section 5.2(a) below, (iii) Liabilities reserved against in the Company Balance Sheet (but only to the extent of such reserves), and (iv) Liabilities for Transaction Expenses. The books and records of the Company and each Subsidiary have been, and are being, maintained in all material respects in accordance with applicable legal and accounting requirements and the Company Financial Statements are consistent with such books and records.

(c)Sarbanes Act. The Company is in compliance in all material respects with the applicable provisions of the Sarbanes Act and the related rules and regulations promulgated under such act or the Exchange Act, in each case, as currently in effect. Since January 1, 2005, no party has submitted any complaint to the Audit Committee of the Company Board pursuant to the procedures established in accordance with Section 10A(m)(4) of the Exchange Act. To the Company’s knowledge, there are no material violations of the Company’s code of conduct, adopted pursuant to NASDAQ Rule 4350(n). As of the date hereof, no attorney representing the Company or any of its Subsidiaries has reported any material violation to the Company’s chief legal officer, chief executive officer, or any committee of the Company Board, including any qualified legal compliance committee, as contemplated by the rules set forth in 17 CFR Part 205.

(d)Controls. The Company has established and maintains a system of internal accounting controls that complies with Section 13(b)(2)(B) of the Exchange Act. There are no “significant deficiencies” or “material weaknesses” (as defined by the Public Company Accounting Oversight Board) in the design or operation of the Company’s internal controls and

procedures which could adversely affect the Company's ability to record, process, summarize and report financial data. To the Company's knowledge, there is no fraud, whether or not material, that involves management or other current or former employees of the Company or any of the Company Subsidiaries who have a role in the Company's internal controls over financial reporting. The Company has established and maintains "disclosure controls and procedures" (as defined in Rule 13a-15 promulgated under the Exchange Act), and such disclosure controls and procedures are effective for the purpose for which they were established. Each of the principal executive officer of the Company and the principal financial officer of the Company (or each former principal executive officer of the Company and each former principal financial officer of the Company, as applicable) has made all certifications required by Sections 302 and 906 of the Sarbanes Act and the rules and regulations promulgated thereunder with respect to the Company SEC Reports. The Company has established and maintains "internal control over financial reporting" (as defined in Rule 13a-15 promulgated under the Exchange Act) and such internal control over financial reporting are effective in providing reasonable assurance regarding the reliability of the Company's financial reporting and the preparation of the Company's financial statements in accordance with GAAP.

(e)Amendments. The Company has heretofore made available to Acquiror a complete and correct copy of any amendments or modifications, which have not yet been filed with the SEC but which are required to be filed, to agreements, documents or other instruments which previously had been filed by the Company with the SEC pursuant to the Securities Act or the Exchange Act. No "material contract" (as such term is defined in Item 601(b)(10) of Regulation S-K promulgated by the SEC) filed as an exhibit to the Company SEC Documents has been amended or modified, except for amendments or modifications so furnished or which have been filed as an exhibit to a subsequently dated Company SEC Document. The Company has heretofore made available to Acquiror a complete and correct copy of any comment letters or similar correspondence received by the Company from the SEC for the Company's three prior fiscal years and current fiscal year. The SEC has not provided comments to the Company in connection with any Company SEC Documents that to the Company's knowledge remain unresolved and are material. No investigation by the SEC with respect to the Company or any of the Company Subsidiaries is pending or, to the knowledge of the Company, threatened.

(f)Proxy Statement. The information supplied by the Company for inclusion in the Proxy Statement shall not at the time the Proxy Statement is filed with the SEC contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein not misleading. The information supplied by the Company for inclusion or incorporation by reference in the Proxy Statement shall not, on the date the Proxy Statement is mailed to Company Stockholders, or at the time of the meeting of Company Stockholders to consider the Company Stockholder Approval (the "**Company Stockholders' Meeting**"), contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not false or misleading, or omit to state any material fact necessary to correct any statement in any earlier communication with respect to the solicitation of proxies for the Company Stockholders' Meeting which has become false or misleading. The Proxy Statement will comply as to form in all material respects with the provisions of the Exchange Act and the rules and regulations thereunder. Notwithstanding the

foregoing, the Company makes no representation or warranty with respect to any information supplied by Acquiror or Merger Sub that is contained in the Proxy Statement.

3.7 Litigation. (a) There is no action, suit, arbitration, mediation, proceeding, investigation or filed claim pending against the Company or any Company Subsidiary or any of their respective assets or properties (or to the knowledge of the Company, against any executive officer, director or senior employee of the Company or any Company Subsidiary in their capacity as such) before any Governmental Authority, arbitrator or mediator, nor, to the knowledge of the Company, has any such action, suit, arbitration, mediation, proceeding, investigation or filed claim been threatened, and (b) there is no judgment, decree, injunction, rule or order of any Governmental Authority, arbitrator or mediator outstanding against the Company or any Company Subsidiary (or, to the knowledge of the Company, against any executive officer, director or senior employee of the Company or any Company Subsidiary in their capacity as such), except in the case of clause (a) or (b), where such pending or threatened actions, suits, arbitrations, mediations, proceedings, claims or investigations, or any such judgments, decrees, injunctions, rules or orders, individually or in the aggregate, are not, and would not reasonably be expected to be, material to the Company and the Company Subsidiaries, taken as a whole. Neither the Company nor any Company Subsidiary has any material action, suit, arbitration, mediation, proceeding, investigation or filed claim pending against any Governmental Authority or other Person. There has not been since January 1, 2005, nor are there currently pending, any material internal investigations or material inquiries being conducted by the executive management of the Company or the Company Board (or any committee thereof), or any third party at the request of any of the foregoing, concerning any financial, accounting, Tax, conflict of interest, illegal activity, fraudulent or deceptive conduct or other misfeasance or malfeasance issues.

### 3.8 Compliance with Laws.

(a) Applicable Laws. Neither the Company nor any Company Subsidiary is in violation of or default under, or has been in violation of or default under, any Applicable Law in any material respect (which such violation or default has not been fully remedied). Neither the Company nor any of the Company Subsidiaries has received any written notice or other written communication from any Governmental Authority asserting that the Company or any of its Subsidiaries has failed to comply, or is not in compliance, in any material respect, with Applicable Law (which such failure to comply or non-compliance has not been fully remedied) and to the Company's knowledge, no investigation or review of the Company or any of the Company Subsidiaries with respect to the foregoing by any Governmental Authority is pending or threatened.

(b) Governmental Permits. The Company and each Company Subsidiary holds all material permits, licenses and approvals from, and has made all material filings with, government (and quasi-governmental) agencies and authorities, that are necessary and/or legally required to be held by it to conduct the Company Business without any violation of Applicable Law ("**Governmental Permits**"), the Company and each Company Subsidiary has materially complied, and is now in material compliance, with all Governmental Permits, and all such Governmental Permits are valid and in full force and effect. Neither the Company nor any Company Subsidiary has received any written notice or other written communication from any

Governmental Authority regarding (i) any actual or possible material violation of any Governmental Permit or any failure to comply with any material term or requirement of any Governmental Permit (which such violation or failure to comply has not been fully remedied) or (ii) any actual or possible revocation, withdrawal, suspension, cancellation, termination or material modification of any Governmental Permit.

(c)Unlawful Payments. Neither the Company nor any Company Subsidiary nor the Company's knowledge, any director, officer, agent or employee of the Company or any Company Subsidiary, has, for or on behalf of the Company or any Company Subsidiary, (i) used any funds for unlawful contributions, gifts, entertainment or other unlawful expenses relating to political activity or (ii) made any unlawful payment to foreign or domestic government officials or employees or to foreign or domestic political parties or campaigns or violated any provision of the Foreign Corrupt Practices Act of 1977, as amended.

(d)Export Control Laws. The Company and each Company Subsidiary has conducted its export transactions in accordance in all material respects with applicable provisions of United States export control laws and regulations, including but not limited to the Export Administration Act and implementing Export Administration Regulations. Without limiting the foregoing: (i) the Company and each Company Subsidiary has obtained all export licenses and other approvals required for exports by the Company or such Company Subsidiary of products, software and technologies from the United States; (ii) the Company and each Company Subsidiary is in material compliance with the terms of all export licenses or other approvals applicable to the Company or such Company Subsidiary; (iii) there are no pending or, to the knowledge of the Company, threatened claims against the Company or any Company Subsidiary with respect to such export licenses or other approvals; (iv) there are no actions, conditions or circumstances pertaining to the Company's or any Subsidiary's exports of products or technology that would reasonably be expected to give rise to any future claims; and (v) no consents or approvals for the transfer of export licenses to Acquiror are required, except for such consents and approvals that can be obtained expeditiously without material cost.

(e)NASDAQ. The Company is in material compliance with the applicable criteria for continued listing of the Company Common Stock on NASDAQ, including all applicable corporate governance rules and regulations.

### 3.9 Taxes.

(a) The Company and each Company Subsidiary (and any consolidated, combined, unitary or aggregate group for Tax purposes of which the Company or any Company Subsidiary is or has been a member), have properly completed and timely filed all material Tax Returns required to be filed by them and have timely paid all material Taxes due and owing (whether or not shown on any Tax Return). All such Tax Returns are complete and accurate and were prepared in compliance with all Applicable Law in all material respects. The Company has made available to Acquiror correct and complete copies of all Tax Returns and examination reports and statements of deficiencies assessed against or agreed to by the Company or any of its Company Subsidiaries.

(b) The Company and each Company Subsidiary has established an adequate accrual or reserve in accordance with GAAP for the payment of all income Taxes and all other material Taxes payable in respect of the periods or portions thereof prior to the Balance Sheet Date (which accrual or reserve as of the Balance Sheet Date is fully reflected on the Company Balance Sheet), and has no Liability for income Taxes or other material Taxes for periods or portions of periods prior to the Balance Sheet Date in excess of the accruals or reserves so established. Neither the Company nor any Company Subsidiary has any Liability for unpaid Taxes accruing after the Balance Sheet Date except for Taxes arising in the ordinary course of business consistent with past practice subsequent to the Balance Sheet Date. The Company's Tax personnel have not made a determination and do not have any current plan, intention, or expectation to change the Company's Tax reserve as a result of the Company's adoption of FASB Interpretation No. 48.

(c) No deficiencies for any Tax have been threatened, claimed or proposed in writing or assessed against the Company or any Company Subsidiary. Neither the Company nor any Company Subsidiary has received any written notification from any Tax Authority regarding any issues that (a) are currently pending before such Tax Authority regarding the Company or any Company Subsidiary, or (b) have been raised by such Tax Authority and not yet finally resolved. No Tax Return of the Company or any Company Subsidiary is under audit by any Tax Authority. All past audits (if any) have been completed and fully resolved to the satisfaction of the applicable Tax Authority conducting such audit and all Taxes determined by such audit to be due from the Company or any Company Subsidiary have been paid in full to the applicable Tax Authority. No Tax liens are currently in effect against any of the assets of the Company or any Company Subsidiary other than liens that arise by operation of Applicable Law for Taxes not yet due and payable. There is not in effect any waiver by the Company or any Company Subsidiary of any statute of limitations with respect to any Taxes. Neither the Company nor any Company Subsidiary has consented to extend to a date later than the Agreement Date the period in which any Tax may be assessed or collected by any Tax Authority.

(d) The Company and each Company Subsidiary have complied (and until the Closing Date will comply) with all Applicable Law relating to the payment and withholding of Taxes (including withholding of Taxes pursuant to Sections 1441, 1442, 1445 and 1446 of the Code or similar provisions under any foreign law), have, within the time and in the manner prescribed by law, withheld from employee wages and paid over to the proper Tax Authority (or are properly holding for such timely payment) all amounts required to be so withheld and paid over under all Applicable Law (including Federal Insurance Contribution Act, Medicare Federal Unemployment Tax Act, federal and state income Taxes and relevant state income and employment Tax withholding laws), and has timely filed all withholding Tax Returns, for all periods through and including the Closing Date.

(e) Neither the Company nor any Company Subsidiary has filed any disclosures under Section 6662 of the Code or comparable provisions of state, local or foreign law to prevent the imposition of penalties with respect to any Tax reporting position taken on any Tax Return.

(f) Neither the Company nor any Company Subsidiary has consummated, has participated in, or is currently participating in any transaction which was or is a "Tax shelter"

transaction as defined in Sections 6662 or 6111 of the Code or the Treasury Regulations promulgated thereunder. Neither the Company nor any Company Subsidiary has participated in, nor are any of them currently participating in, a “Listed Transaction” or a “Reportable Transaction” within the meaning of Section 6707A(c) of the Code or Treasury Regulation Section 1.6011-4(b), or any transaction requiring disclosure under a corresponding or similar provision of state, local, or foreign law.

(g) Neither the Company nor any Company Subsidiary has ever been a member of a consolidated, combined, unitary or aggregate group of which the Company was not the ultimate parent corporation.

(h) Neither the Company nor any Company Subsidiary has any Liability for the Taxes of any Person (other than the Company or any Company Subsidiary) under Section 1.1502-6 of the Treasury Regulations (or any similar provision of state, local or foreign law) as a transferee or successor, by contract or otherwise.

(i) The Company for itself and for each Company Subsidiary has disclosed in Schedule 3.9(i) of the Company Disclosure Letter the amount of any deferred gain or loss arising out of any intercompany transaction within the meaning of Section 1.1502-13 of the Treasury Regulations.

(j) Neither the Company nor any Company Subsidiary will be required to include any item of income in, or exclude any item of deduction from, Taxable income for any Taxable period (or portion thereof) ending after the Closing Date as a result of any (i) change in method of accounting for a Taxable period ending on or prior to the Closing Date; (ii) “closing agreement” described in Section 7121 of the Code (or any corresponding or similar provision of state, local, or foreign Tax law); (iii) intercompany transactions or any excess loss account described in Treasury Regulations under Section 1502 of the Code (or any corresponding or similar provision of state, local, or foreign Tax law); (iv) installment sale or open transaction disposition made on or prior to the Closing Date; or (v) prepaid amount received or accrued on or prior to the Closing Date.

(k) Neither the Company nor any Company Subsidiary has incurred a dual consolidated loss within the meaning of Section 1503 of the Code.

(l) No claim has ever been made by a Governmental Authority in a jurisdiction where the Company or any of its Company Subsidiaries does not file Tax Returns that the Company or any of its Subsidiaries is or may be subject to Taxation by that jurisdiction. Neither the Company nor any of its Company Subsidiaries has a permanent establishment in any country outside of its country of incorporation.

(m) None of the Tax attributes (including net operating loss carry forwards and general business Tax credits) of either the Company or any Company Subsidiary is limited by Sections 269, 382, 383, 384 or 1502 of the Code (or any comparable provisions of foreign, state, local or municipal law).

(n) Each of the Company and each Company Subsidiary has in its possession official foreign government receipts for any Taxes paid by it to any foreign Tax Authorities.

(o) Schedule 3.9(o) of the Company Disclosure Letter sets forth a complete and accurate list of all material agreements, rulings, settlements or other Tax documents relating to Tax incentives between Company or any Subsidiary and any Governmental Authority. The Company and its Company Subsidiaries are in compliance with the requirements for any applicable Tax holidays or incentives and none of the Tax holidays or incentives will be jeopardized by the transaction contemplated in this Agreement.

(p) The Company has made available to Acquiror all contemporaneous documentation prepared for Section 6662 of the Code (or similar provision under foreign law) supporting the transfer pricing with any of the foreign Company Subsidiaries for the three most recent taxable years for which the Company has filed income Tax Returns.

(q) Neither the Company nor any Company Subsidiary is a party to or bound by any Tax sharing, Tax indemnity, or Tax allocation agreement nor does the Company or any Company Subsidiary have any Liability or potential Liability to another party under any such agreement.

(r) Neither the Company nor any Company Subsidiary has constituted either a “distributing corporation” or a “controlled corporation” in a distribution of stock qualifying for Tax-free treatment under Section 355 of the Code (a) in the two years prior to the Agreement Date or (b) in a distribution that could otherwise constitute part of a “plan” or “series of related transactions” (within the meaning of Section 355(e) of the Code) in conjunction with the Merger.

(s) The Company has made available to Acquiror true, correct and complete copies of all election statements under Section 83(b) of the Code, together with evidence of timely filing of such election statement with the appropriate Internal Revenue Service Center, that are in the Company’s (or any Company Subsidiary’s) possession or subject to the Company’s (or any Company Subsidiary’s) control with respect to any Unvested Company Shares or other property issued by the Company to any of its (or any Company Subsidiary’s) employees, non-employee directors, consultants or other service providers.

(t) To the Company’s knowledge, each of the Company’s and its Subsidiaries’ “nonqualified deferred compensation plans” within the meaning of Code Section 409A (and associated United States Treasury Department guidance) comply with or are exempt from Code Section 409A (and associated United States Treasury Department guidance); specifically each such “nonqualified deferred compensation plan” that is subject to Code Section 409A has been administered in good faith and operated in compliance with Code Section 409A (and associated Treasury Department guidance), and no such “nonqualified deferred compensation plan” that is not subject to Code Section 409A has been materially modified within the meaning of Code Section 409A (and associated Treasury Department guidance). No event has occurred that would be treated by Section 409(A)(b) as a transfer of property for purposes of Section 83 of the Code. Each Company Option has been issued at not less than 100% of fair market value on the date of grant. Schedule 3.9 of the Company Disclosure Letter lists all “nonqualified deferred compensation plans” (within the meaning of Section 409A of the Code) to which the Company or any Subsidiary is a party.

(u) There is no agreement, plan, arrangement or other Contract covering any current or former employee or other service provider of the Company or any Company Subsidiary or ERISA Affiliate to which the Company and/or any Company Subsidiary is a party or by which the Company and/or any Company Subsidiary is bound that, considered individually or considered collectively with any other such agreements, plans, arrangements or other Contracts, will, or could reasonably be expected to, as a result of the transactions contemplated hereby (whether alone or upon the occurrence of any additional or subsequent events), give rise directly or indirectly to the payment of any amount that could reasonably be expected to be non-deductible under Section 162 of the Code (or any corresponding or similar provision of state, local or foreign Tax law) or characterized as a “parachute payment” within the meaning of Section 280G of the Code (or any corresponding or similar provision of state, local or foreign Tax law).

### 3.10 Title to Properties.

(a) The Company and each Company Subsidiary has good and valid title to all of their respective assets and personal properties (including those shown on the Company Balance Sheet, except assets and personal properties sold or otherwise disposed of since the date thereof in the ordinary course of business), free and clear of all Encumbrances, except (a) Permitted Encumbrances and (b) mortgages deeds of trust, security interests or other encumbrances on title related to indebtedness reflected on the consolidated financial statements of the Company included in the Company SEC Documents. All properties used in the operations of the Company Business are reflected on the Company Balance Sheet to the extent required under GAAP to be so reflected.

(b) Neither the Company nor any Company Subsidiary owns any real property. Schedule 3.10(b) to the Company Disclosure Letter is a complete and correct list of all material real property and interests in real property leased by the Company or any Company Subsidiary, excluding in all cases premises involving payments of less than \$250,000 per annum (each such property or interest, a “**Leased Real Property**”). With respect to Leased Real Property, (i) the Company or the Company Subsidiary, as applicable, has a valid leasehold interest in such Leased Real Property which affords the Company or such Company Subsidiary peaceful and undisturbed leasehold possession of the Leased Real Property that is the subject of the lease, free and clear of all Encumbrances other than Permitted Encumbrances, and (ii) neither the Company nor any Company Subsidiary has subleased, licensed or otherwise granted any Person the right to use or occupy such Leased Real Property or any portion thereof. The Company has made available to Acquiror true, correct and complete copies of all leases, subleases and other Contracts under which the Company and/or any Company Subsidiary uses or occupies or has the right to use or occupy, now or in the future, any Leased Real Property, including all modifications, amendments and supplements thereto. The Company and the Company Subsidiaries have adequate rights of ingress and egress into any real property used in the operation of their respective businesses.

(c) The tangible personal property and equipment of each of the Company and each Company Subsidiary that are used in the operations of their respective businesses are (i) reasonably suitable for the uses to which they are currently employed, (ii) in working operating condition and repair, subject to normal wear and tear, (iii) regularly and properly

maintained, (iv) not obsolete, dangerous or in need of renewal or replacement, except for renewal or replacement in the ordinary course of business, consistent with past practice, (v) to the knowledge of the Company, free from any material defects, and (vi) to the extent leased, subject to a fully effective lease that affords the Company or such Company Subsidiary peaceful and undisturbed leasehold possession of the personal property that is the subject of the lease.

(d) To the knowledge of the Company, the Company and the Company Subsidiaries are not in violation of any zoning, building, safety or environmental ordinance, regulation or requirement applicable to the operation of the Leased Real Properties, except for such violations that are not material to the Company or any of the Company Subsidiaries, nor has the Company or any of the Company Subsidiaries received any notice of violation of any such ordinance, regulation or requirement with which it has not complied.

(e) For the avoidance of doubt, the representations and warranties set forth in this Section 3.10 do not apply to Intellectual Property, which matters are specifically addressed in Section 3.14.

3.11 Absence of Certain Changes. Since the Balance Sheet Date to and including the Agreement Date, the Company and the Company Subsidiaries, taken as a whole, have operated their business in the ordinary course consistent with its past practices, and since such date there has not been any:

(a) Material Adverse Change or any change, event, circumstance, condition or effect that would reasonably be expected to result in a Material Adverse Change, in each case, with respect to the Company;

(b) amendment or change in the Certificate of Incorporation or Bylaws (or other comparable charter documents) of the Company or any Company Subsidiary (except as required by Applicable Law (as determined in good faith by the Company following consultation with its outside legal counsel) and except for immaterial amendments or changes to the charter documents of Company Subsidiaries);

(c) incurrence, creation or assumption by the Company or any Company Subsidiary of (i) any Encumbrance on any of its assets or properties (other than Permitted Encumbrances) or (ii) any Debt (other than permitted borrowing under a Contract set forth on Schedule 3.12(g) of the Company Disclosure Letter);

(d) except as set forth in Section 3.11(h) of the Company Disclosure Letter, acceleration or release of any vesting condition to the right to exercise any Company Option, Company Warrant or other right to purchase or otherwise acquire any shares of Company Capital Stock, or any acceleration or release of any right to repurchase shares of Company Capital Stock upon the stockholder's termination of employment or services with it or pursuant to any right of first refusal;

(e) purchase, sale, pledge, disposition of, transfer, lease, license, or Encumbrance, or authorization of the purchase, sale, pledge, disposition, transfer, lease, license, or Encumbrance (other than a Permitted Encumbrance or pursuant to transactions by or among the Company and the Company Subsidiaries) of, any property or assets material to the Company

or any of the Company Subsidiaries taken as a whole, other than the sale or non-exclusive license of its products or services to its customers (including OEMs, distributors and resellers) in the ordinary course of business consistent with past practice;

(f) damage, destruction or loss of any property or asset material to the Company and the Company Subsidiaries taken as a whole (normal wear and tear excluded), whether or not covered by insurance (except where insurance proceeds fully covering such damage, destruction or loss have been received);

(g) declaration, setting aside or payment of any dividend on, or the making of any other distribution in respect of, the Company Capital Stock, or any split, combination or recapitalization of its capital stock or any direct or indirect redemption, purchase or other acquisition of any of the Company Capital Stock or any change in any rights, preferences, privileges or restrictions of any of the Company's outstanding securities (other than repurchases of stock in accordance with the Company Option Plans or applicable Contracts in connection with the termination of service of employees or other service providers);

(h) (i) increase in the base salary, incentive compensation (including stock awards, stock option grants or stock appreciation rights), severance or retention benefits or perquisites payable or to become payable to directors or executive officers of the Company (other than increases pursuant to the terms of an existing Contract set forth on Schedule 3.12(a) of the Company Disclosure Letter or increases not in excess of 10% of base salary granted pursuant to performance reviews held in the ordinary course of business consistent with past practice), and neither the Company nor any Company Subsidiary has entered into any Contract to grant or provide (nor has granted or provided) any severance, acceleration of vesting or other similar benefits to any of such persons (other than pursuant to the terms of an existing Contract set forth on Schedule 3.12(a) of the Company Disclosure Letter), (ii) increase in the compensation or benefits payable to its other employees (other than increases pursuant to the terms of an existing Contract or increases not in excess of 10% of base salary granted pursuant to performance reviews held in the ordinary course of business consistent with past practice), (iii) amendment or entry into of any employment or consulting Contract with any officer or director (except in the ordinary course of business pursuant to a standard offer letter with no severance, retention or acceleration provisions), (iv) adoption of any plan or arrangement to provide compensation or benefits to any employees, directors or consultants, or amendment of any Company Benefit Arrangements (except in each case as was required under ERISA, or the Code, or Applicable Law), or (v) material amendment to any deferred compensation plan within the meaning of Section 409A of the Code and Internal Revenue Service Notice 2005-1 or Company Options, except to the extent as was necessary to meet the good faith compliance requirements of such Section or Notice;

(i) change in the identity of the Chief Executive Officer or any Vice President (who is an executive officer) of the Company, any termination of employment of a material number of employees of the Company and the Company Subsidiaries, or any organized labor dispute or claim of unfair labor practices involving the Company or the Company Subsidiaries;

(j) making by the Company or any Company Subsidiary of any loan, advance or capital contribution to, or any investment in, any of its executive officers, directors or 10% stockholders or any firm or business enterprise in which the Company had knowledge that any such Person had a direct or indirect material interest at the time of such loan, advance, capital contribution or investment (other than reasonable and normal advances to employees for *bona fide* expenses that are incurred in the ordinary course of business consistent with the Company's past practices);

(k) entering into, amendment of, relinquishment, termination or nonrenewal by it of any Company Material Contract other than in the ordinary course of its business consistent with the Company's past practices;

(l) change in the manner in which it extends discounts, credits or warranties to customers other than changes in the ordinary course of business consistent with past practices, which changes were immaterial to the Company Business, taken as a whole;

(m) entering into by it of any transaction or Contract that by its terms requires or contemplates a current and/or future financial commitment, expense (inclusive of overhead expense) or obligation on its part that involves in excess of \$1,000,000 or that is not entered into in the ordinary course of its business consistent with its past practices;

(n) making or entering into any Contract with respect to any acquisition, sale or transfer of any material asset of the Company and the Company Subsidiaries, taken as a whole (other than such Contracts by or among the Company and the Company Subsidiaries);

(o) any material change in accounting policies or procedures, except as required by GAAP or IAS (including any change in depreciation or amortization policies or rates or revenue recognition policies), or any revaluation of any of its material assets;

(p) any deferral of the payment of any accounts payable other than in the ordinary course of business, consistent with past practices, or in an amount in excess of \$250,000;

(q) commencement or settlement (or agreement to settle) of any litigation, action, suit, proceeding, claim, arbitration or mediation (except where the amount in controversy did not exceed \$500,000 and did not involve injunctive or other equitable relief);

(r) entry into any Contract that would be required to be disclosed as an off-balance sheet arrangement under GAAP; or

(s) announcement of, or any entry into any Contract to do, any of the things described in the preceding clauses (a) through (r) (other than negotiations and agreements with Acquiror and its representatives regarding the transactions contemplated by this Agreement).

3.12 Contracts, Agreements, Arrangements, Commitments and Undertakings. Schedules 3.12(a)-(s) of the Company Disclosure Letter set forth a list of each of the following Contracts to which the Company or any Company Subsidiary is a party or to which the Company

or any Company Subsidiary or any of their respective assets or properties is bound (each a “**Company Material Contract**”):

(a) any Contract that is a “material contract” (as such term is defined in Item 601(b)(10) of Regulation S-K promulgated by the SEC);

(b) any Contract (other than real and personal property leases which are covered by subsection (p) below) that requires by its terms payments (whether fixed, contingent or otherwise) by it in an aggregate annual amount of \$750,000 or more;

(c) any dealer, distributor, OEM (original equipment manufacturer), VAR (value added reseller), sales representative or similar Contract (other than any Form Agreement or Freely Terminable Agreement) under which any third party is authorized to sell, sublicense, lease, distribute or market any of its products, services or technology;

(d) any Contract providing for the development of any software, content (including textual content and visual, photographic or graphics content), technology or intellectual property for (or for the benefit or use of) it, or providing for the purchase by or license to (or for the benefit or use of) it of any software, content (including textual content and visual, photographic or graphics content), technology or intellectual property, which software, content, technology or intellectual property is in any manner incorporated (or is contemplated by it to be incorporated) into any product of it (other than software generally available to the public at a per copy license fee of less than \$10,000);

(e) any joint venture or partnership Contract that involves a sharing of revenues, profits, cash flows, expenses or losses with any other party or a payment of royalties to any other party in amounts in excess of \$1,000,000 per annum (other than Contracts which are covered under subsection (c) above and Freely Terminable Agreements);

(f) (i) any Contract for or relating to the employment by it of any director, officer, employee or consultant or any other type of Contract with any of its officers, employees or consultants that is not terminable by it on 30 days or less notice without cost or other Liability, (ii) any Contract requiring it to make a cash payment to any director, officer, employee or consultant on account of the Merger, or (iii) any Contract with any director, officer, employee or consultant that is entered into in connection with this Agreement;

(g) any indenture, mortgage, trust deed, promissory note, loan agreement, security agreement, guarantee or other Contract for or with respect to the borrowing of money, a line of credit, any currency exchange, commodities or other hedging arrangement, or a leasing transaction of a type required to be capitalized in accordance with GAAP, in each case involving an aggregate principal amount of underlying Debt, currency exchange, exposure under commodities or hedging arrangements or capitalized lease, as applicable, in excess of \$1,000,000;

(h) any Contract that restricts it from (i) engaging in any material aspect of its business, (ii) participating or competing in any line of business or market, (iii) freely setting prices for its products, services or technologies (including most favored customer pricing provisions), (iv) engaging in any business in any market or geographic area or that grants any

exclusive rights, rights of refusal, rights of first negotiation or similar rights to any party, or (v) soliciting current or potential suppliers or customers (except in the case of clauses (iii) and (iv) for such provisions contained in customer agreements involving non-Significant Customers that, individually or in the aggregate, are not material to the Company Business);

(i) any Contract still in effect relating to the sale, issuance, grant, exercise, award, purchase, repurchase or redemption of any shares of Company Capital Stock or any Company Options, Company Warrants or other rights to purchase or otherwise acquire any such shares of Company Capital Stock, Company Options or Company Warrants, except for those Contracts conforming in all material respects to the standard agreements under such Company Option Plan;

(j) any Contract with any labor union or any collective bargaining agreement or similar Contract with its employees;

(k) any Contract of guarantee, assumption or endorsement of, or any similar commitment with respect to, the Debt or performance obligations of any other Person;

(l) any Contract providing for indemnification of any director or officer of the Company or any Company Subsidiary;

(m) any Contract (i) to the Company's knowledge, in which its officers, directors or 10% stockholders is directly or indirectly interested (whether as a party or otherwise) (other than offer letters, stock option and restricted stock purchase agreements, non-disclosure agreements or invention assignment agreements entered into in the ordinary course of business that are on the Company's standard forms (as made available to Acquiror's counsel) without material modifications) or (ii) with any Person with whom it does not deal at arm's length;

(n) any Contract pursuant to which it has acquired a business or entity, or all or substantially all of the assets of a business or entity, whether by way of merger, consolidation, purchase of stock, purchase of assets, license or otherwise, which Contract is still in effect and has ongoing obligations on the part of the parties thereto, or any Contract pursuant to which it has any material ownership interest in any other Person (other than the Company Subsidiaries);

(o) any Contract with a Governmental Authority (other than customer agreements involving payments of less than \$100,000 per annum) or any material Governmental Permit;

(p) any Contract pursuant to which it has purchased any real property, or any Contract pursuant to which it is a lessor or lessee of any real property or personal property involving payments in excess of \$250,000 per annum;

(q) any Contract with any investment banker, broker, advisor or similar party, or any accountant, legal counsel or other Person retained by it in connection with this Agreement and the transactions contemplated hereby;

(r) any settlement or litigation "standstill" agreement, or any tolling agreement, in each case, which is still in effect and has ongoing obligations on the party or the

parties thereto (other than settlement agreements entered into in the ordinary course of business with employees upon the termination of their employment where all material obligations of the Company have been fully performed by the Company (it being understood that anti-disparagement and confidentiality provisions and mutual releases shall not be considered material obligations of the Company for this purpose)); or

(s) any Contract under which the Company's entering into this Agreement or the consummation of the Merger (i) requires the procurement of any consent, waiver or novation from a third party or (ii) grants a third party termination rights or other material rights.

A true and complete copy of each agreement or document required by these subsections (a)-(s) of this Section 3.12 to be listed on Schedule 3.12 of the Company Disclosure Letter has been made available to Acquiror's legal counsel. All Company Material Contracts are in written form.

### 3.13 No Default; No Restrictions.

(a) The Company or the applicable Company Subsidiary has performed all of the material obligations required to be performed by it under each Company Material Contract. Each of the Company Material Contracts is in full force and effect. There exists no default or event of default or event, occurrence, condition or act, on the part of or attributable to the Company or any Company Subsidiary or to the knowledge of the Company, on the part of or attributable to any other contracting party, which, with or without the giving of notice or the lapse of time, would reasonably be expected to (i) become a material default or event of default under any Company Material Contract or (ii) give any third party (A) the right to declare a material default or exercise any material remedy under any Company Material Contract, (B) the right to a material rebate or reimbursement under any Company Material Contract, (C) the right to accelerate the maturity or performance of any material obligation of the Company or any of the Company Subsidiaries under any Company Material Contract, or (D) the right to cancel, terminate or adversely modify any Company Material Contract. To the knowledge of the Company, neither the Company nor any Company Subsidiary has received any written notice regarding any material violation or breach of or default under, or intention to cancel or materially adversely modify, any Company Material Contract where the subject matter of such notice remains pending and unresolved.

(b) Except as listed in Schedule 3.12(h) of the Company Disclosure Letter, neither the Company nor any Company Subsidiary is a party to, and to the Company's knowledge, no asset or property of the Company or any Subsidiary is bound or affected by, any judgment, injunction, order, decree, Contract (noncompete or otherwise) that restricts or prohibits, or purports to restrict or prohibit, the Company or any Company Subsidiary or, following the Effective Time, the Surviving Corporation or Acquiror, from (i) engaging in any material aspect of the Company Business, (ii) participating or competing in any line of business or market, (iii) freely setting prices for the products, services or technologies of the Company and Company Subsidiaries (including most favored customer pricing provisions), (iv) engaging in any business in any market or geographic area or that grants any exclusive rights, rights of refusal, rights of first negotiation or similar rights to any party, or (v) soliciting current or potential suppliers or customers (except in the case of clauses (iii) and (iv) for such provisions

contained in customer agreements involving non-Significant Customers that, individually or in the aggregate, are not material to the Company Business).

### 3.14 Intellectual Property.

(a) To the Company's knowledge, the Company and each Company Subsidiary (i) owns or (ii) has the valid right or license to use, and, to the extent that it does any of the following, to develop, make, have made, offer for sale, sell, import, copy, modify, create derivative works of, distribute, license, and/or dispose of all Intellectual Property used in the conduct of the Company Business (such Intellectual Property being hereinafter collectively referred to as the "**Company IP Rights**") and such Company IP Rights are sufficient for such conduct of the Company Business. As used in this Agreement, "**Company-Owned IP Rights**" means Company IP Rights that are or are purportedly owned or exclusively licensed to the Company or any Subsidiary; and "**Company-Licensed IP Rights**" means Company IP Rights that are not Company-Owned IP Rights.

(b) Neither the execution, delivery and performance of this Agreement nor the consummation of the Merger and the other transactions contemplated by this Agreement shall, in accordance with their terms: (i) constitute a material breach of or default under any instrument, license or other Contract governing any Company IP Right (collectively, the "**Company IP Rights Agreements**") (except where such breaches, individually or in the aggregate, would not reasonably be expected to be material to the Company and the Company Subsidiaries, taken as a whole); (ii) cause the forfeiture or termination of, or give rise to a right of forfeiture or termination of, any Company IP Right (except where such forfeitures or terminations, individually or in the aggregate, would not reasonably be expected to be material to the Company and the Company Subsidiaries, taken as a whole); or (iii) materially impair the right of the Company or the Surviving Corporation or any Company Subsidiary to use, develop, make, have made, offer for sale, sell, import, copy, modify, create derivative works of, distribute, license, and/or dispose of any Company IP Right or portion thereof (except where such impairments, individually or in the aggregate, would not reasonably be expected to be material to the Company and the Company Subsidiaries, taken as a whole). There are no royalties, honoraria, fees or other payments (other than salaries payable to employees and independent contractors not contingent on or related to use of their work product) as a result of the use, license-in, manufacture, sale, offering for sale, copying, distribution, or disposition of any Company IP Rights that are incorporated into, integrated or bundled with any of the Company Products or Services by the Company or any Company Subsidiary that shall become payable by the Company or any Company Subsidiary as a result of the consummation of the transactions contemplated by this Agreement. After the Closing, all Company-Owned IP Rights will be fully transferable, alienable or licensable by the Surviving Corporation and Acquiror without restriction and without payment of any kind to any third party.

(c) Schedule 3.14(c) of the Company Disclosure Letter sets forth a list (by name and version number) of each of the products and services currently produced, manufactured, marketed, licensed, sold, or distributed by the Company and the Company Subsidiaries and each product and service currently under development by the Company or any Company Subsidiary that the Company intends to make generally commercially available within six months after the Agreement Date (each a "**Company Product or Service**"). To the

Company's knowledge, neither the operation of the Company Business nor the use, development, manufacture, marketing, licensing, sale, offering for sale, distribution, or intended use of any Company Product or Service (i) violates (or will violate) any license or other Contract between the Company or such Company Subsidiary and any third party, or (ii) infringes or misappropriates (or will infringe or misappropriate) any Intellectual Property right of any other party. There is no pending or threatened, claim or litigation contesting the validity, ownership or right of the Company or any Company Subsidiary to exercise any Company IP Right, nor is there any legitimate basis for any such claim. Neither the Company nor any Company Subsidiary has received any written notice from a third party (or any other notice from a third party of which the Company's internal legal department personnel have actual knowledge) asserting that the operation of the Company Business or the development, manufacture, marketing, licensing, sale offering for sale, distribution or intended use of the Company Products or Services conflicts with or infringes (or will conflict with or infringe) the rights of any other party, nor is there any legitimate basis for any such assertion. Neither the Company nor any Company Subsidiary has received any written notice from any third party offering a license under any such third party patents. None of the Company-Owned IP Rights, the Company Products or Services, the Company or any of the Company Subsidiaries is subject to any proceeding or outstanding order, contract or stipulation (i) restricting in any manner the use, distribution, transfer, or licensing by the Company or any Company Subsidiaries of any Company-Owned IP Rights or any Company Product or Service (other than any pricing restrictions), or which may affect the validity, use or enforceability of any such Company-Owned IP Rights or Company Product or Service, or (ii) restricting the conduct of the Company Business in order to accommodate Intellectual Property rights of a third party.

(d) To the Company's knowledge, no current or former employee, consultant or independent contractor of the Company or any Company Subsidiary: (i) is in material violation of any term or covenant of any employment contract, patent disclosure agreement, invention assignment agreement, nondisclosure agreement, noncompetition agreement or any other Contract with any other party by virtue of such employee's, consultant's or independent contractor's being employed by, or performing services for, the Company or any Company Subsidiary or using trade secrets or proprietary information of others without permission; or (ii) has developed any technology, software or other copyrightable, patentable or otherwise proprietary work for the Company or any Company Subsidiary that is subject to any Contract under which such employee, consultant or independent contractor has assigned or otherwise granted to any third party any rights (including Intellectual Property) in or to such technology, software or other copyrightable, patentable or otherwise proprietary work. To the Company's knowledge, neither the employment of any employee of the Company or any Company Subsidiary, nor the use by the Company or any Company Subsidiary of the services of any consultant or independent contractor subjects the Company or such Company Subsidiary to any Liability to any third party for improperly soliciting such employee, consultant or independent contractor to work for the Company or such Company Subsidiary, whether such Liability is based on contractual or other legal obligations to such third party.

(e) The Company and each Company Subsidiary has taken all commercially reasonable steps to protect, preserve and maintain the secrecy and confidentiality of all confidential or non-public information included in the Company IP Rights and to preserve and maintain all the Company's and the Company Subsidiaries' interests, proprietary rights and trade

secrets in the Company IP Rights. All current and former officers, employees, consultants and independent contractors of the Company and any Company Subsidiary having access to material proprietary information of the Company or such Company Subsidiary, its customers or business partners and inventions owned by the Company or such Company Subsidiary have executed and delivered to the Company or such Company Subsidiary an agreement regarding the protection of such proprietary information and the assignment of inventions to the Company or such Company Subsidiary (in the case of proprietary information of the Company's or such Company Subsidiary's customers and business partners, to the extent required by such customers and business partners). The Company has secured valid written assignments from all of the Company's and the Company Subsidiaries' current and former consultants, independent contractors and employees who were involved in, or who contributed to, the creation or development of any material Company-Owned IP Rights, of the rights to such contributions that may be owned by such persons or that the Company does not already own by operation of law. No current or former employee, officer, director, consultant or independent contractor of the Company or any Company Subsidiary has any right, license, claim or interest whatsoever in or with respect to any Company-Owned IP Rights. Schedule 3.14(e) of the Company Disclosure Letter sets forth a list and description of all technology, software or Intellectual Property owned by a third party (other than software generally available to the public at a per copy license fee of less than \$10,000) that is incorporated into, integrated or bundled with any of the Company Products or Services (including any patent licensed by a third party to Company or any Company Subsidiary pursuant to a license agreement which requires payment (solely for rights under such patent) based upon the sale or distribution of any of the Company Products or Services) ("**Third Party Product Technology**") and identifies each Contract pursuant to which the Company licenses the Third Party Product Technology.

(f) Schedule 3.14(f) of the Company Disclosure Letter contains a true and complete list of (i) all registrations made throughout the world by or on behalf of the Company or any Company Subsidiary of any patents, copyrights, mask works, trademarks, service marks, Internet domain names or Internet or World Wide Web URLs or addresses with any Governmental Authority or quasi-governmental authority, including Internet domain name registries, (ii) all applications, registrations, filings and other formal written governmental actions made or taken pursuant to Applicable Law by the Company or any Company Subsidiary to secure, perfect or protect its interest in the Company IP Rights, including all patent applications (excluding unpublished patent applications), copyright applications, mask work applications and applications for registration of trademarks and service marks, including intent-to-use applications, and where applicable the jurisdiction in which each of the items of the Company IP Rights has been applied for, filed, issued or registered, and (iii) all inter parties proceedings or actions before any court or tribunal (including the United States Patent and Trademark Office) or equivalent authority anywhere else in the world) related to any of the Company IP Rights (collectively, the "**Company Registered Intellectual Property**"). All registered patents, trademarks, service marks, Internet domain names, Internet or World Wide Web URLs or addresses, copyrights and mask work rights held by the Company or any Company Subsidiary are valid, enforceable and subsisting, and the Company or such Company Subsidiary is the record owner thereof. Schedule 3.14(f) of the Company Disclosure Letter sets forth a list of all actions that are required to be taken by the Company or its Subsidiaries within 120 days of the Agreement Date with respect to any of the Company Registered Intellectual Property in order to avoid prejudice to, impairment or abandonment of such Company Registered

Intellectual Property. The Company and the Company Subsidiaries are the exclusive owner of all trademarks and trade names used in connection with the operation or conduct of the Company Business, including the sale, licensing, distribution or provision of any Company Products or Services by the Company or any of the Company Subsidiaries. The Company owns exclusively, and has good title to, all copyrighted works which the Company or any of the Company Subsidiaries owns or purports to own.

(g) The Company and the Company Subsidiaries own all right, title and interest in and to all Company-Owned IP Rights free and clear of all liens, pledges and security interests (other than Permitted Encumbrances).

(h) No license or other Contract to which the Company is a party and pursuant to which any person is authorized to use any Company-Owned IP Rights grants any third party exclusive rights to or under any Company-Owned IP Rights or grants any third party the right to sublicense any of such Company-Owned IP Rights (provided that the right to resell a software product, without the right to reproduce such product, shall not be considered a sublicense right). Neither the Company nor any of the Company Subsidiaries has transferred ownership of any material Intellectual Property that is or was owned by the Company or any of the Company Subsidiaries to any third party.

(i) Neither the Company nor any Company Subsidiary nor any other party acting on its behalf has disclosed or made available to any party, or permitted the disclosure or delivery to any escrow agent or other party of, any Company Source Code (as defined below). No event has occurred, and no circumstance or condition exists, that (with or without notice or lapse of time, or both) shall, or would reasonably be expected to, result in the disclosure or delivery by the Company or any Company Subsidiary or any other party acting on its behalf to any party of any Company Source Code. Schedule 3.14(i) of the Company Disclosure Letter identifies each Contract pursuant to which the Company or any Company Subsidiary has deposited, or is or may be required to deposit, with an escrow agent or other party, any Company Source Code and further describes whether the execution of this Agreement or the consummation of the Merger, in and of itself, would reasonably be expected to result in the release from escrow of any Company Source Code. As used in this Section 3.14(i), “**Company Source Code**” means, collectively, any human readable software source code, or any material portion or aspect of the software source code that constitutes a Company Product currently marketed by the Company or any Company Subsidiary.

(j) To the Company’s knowledge, there is no unauthorized use, disclosure, infringement or misappropriation of any Company IP Rights by any third party, including any employee or former employee of the Company or any Company Subsidiary.

(k) All Company Products or Services provided by or through the Company or any Company Subsidiary to customers on or prior to the Closing Date conform in all material respects (to the extent required in Contracts with such customers) to applicable contractual commitments, express warranties and representations provided to customers in such Contracts, and neither Company nor any Company Subsidiary has any material Liability (and, to the knowledge of the Company or any Company Subsidiary, there is no legitimate basis for any present or future action, suit, proceeding, hearing, investigation, charge, complaint, claim or

demand against the Company or any Company Subsidiary giving rise to any material Liability relating to the foregoing Contracts) for replacement or repair thereof or other damages in connection therewith in excess of any reserves therefor reflected on the Company Balance Sheet. The Company has a policy and procedure for tracking material bugs, errors and defects of which it becomes aware in any Company Products or Services, and maintains a database covering the foregoing. For all software used by the Company and the Company Subsidiaries in providing Company Products or Services, or in developing or making available any of the Company Products or Services, the Company and the Company Subsidiaries have used reasonable business judgment in determining whether or not to implement security patches or upgrades that are generally available for that software.

(l) No government funding or facilities of a university, college, other educational institution or educational research center was used in the development of the Company Products or Services, computer software programs or applications owned by the Company or any Company Subsidiary. To the Company's knowledge, no current or former employee, consultant or independent contractor of the Company or any Company Subsidiary who was involved in, or who contributed to, the creation or development of any Company IP Rights has performed services for the government, for a university, college or other educational institution or for an educational research center during a period of time during which such employee, consultant or independent contractor was also performing services for the Company or any Company Subsidiary whereby the performance of such services has caused such government, university, college, educational institution or educational research center to obtain rights to any material Company-Owned IP Rights.

(m) Schedule 3.14(m) lists all material Open Source Materials incorporated or integrated by the Company or any Company Subsidiary into any Company Product, and describes the manner in which such material Open Source Materials were incorporated or integrated into such Company Product (such description shall include whether (and if so, how) the Open Source Materials were modified or distributed by the Company or any Company Subsidiary). As used in this Section 3.14(m), "**Open Source Materials**" means any software that (i) is generally publicly distributed without charge, in source code form, and under a license that authorizes each licensee to modify and distribute such software and sublicense such rights to other parties without charge (e.g., Linux). Open Source Materials includes without limitation software licensed under the GNU's General Public License (GPL) or Lesser/Library GPL, the Mozilla Public License, the Netscape Public License, the Sun Community Source License, the Sun Industry Standards License, the BSD License, and the Apache License. The Company is in material compliance with the terms and conditions of all applicable licenses for such Open Source Materials.

(n) With such exceptions as would not, individually or in the aggregate, reasonably be expected to be material to the Company and the Company Subsidiaries, taken as a whole, neither the Company nor any Company Subsidiary has (i) incorporated Open Source Materials into, or combined Open Source Materials with, the Company Products; (ii) distributed Open Source Materials in conjunction with any Company Products; or (iii) used Open Source Materials, in such a way that, as a result of (i), (ii), or (iii), grants, or purports to grant, to any third party, any rights or immunities under any Company-Owned Software (including using any Open Source Materials in a manner that requires any Company-Owned Software to be

(A) disclosed or distributed in source code form, (B) be licensed for the purpose of making derivative works, or (C) be redistributable at no charge). As used in this Section 3.14(n), “**Company-Owned Software**” means any software included in any Company Product that is constitutes Company-Owned IP Rights.

(o) Except as set forth in Section 3.14(o) of the Company Disclosure Letter, neither the Company nor any Subsidiary is now a member or promoter of, or a contributor to, any industry standards body or any similar organization that requires or obligates any of the Company or any Company Subsidiary to grant or offer to any other Person any license or right to any Company-Owned IP Rights.

3.15 Certain Transactions and Agreements. Except as disclosed in the Company’s proxy statement for its 2006 Annual Meeting of Stockholders as filed with the SEC on or about April 26, 2006 (the “**2006 Proxy Statement**”), to the knowledge of the Company, (a) none of the officers or directors (or Immediate Family Members thereof) or 10% stockholders of the Company has any direct or indirect ownership interest in any firm or corporation that competes with, or does business with, or has any material contractual arrangement with, the Company or any Company Subsidiary (except with respect to any interest in less than 5% of the stock of any corporation whose stock is publicly traded), (b) none of the officers or directors (or Immediate Family Members thereof) or 10% stockholders of the Company a party to, or otherwise directly or indirectly interested in, any Company Material Contract (except for normal compensation for services as an officer or director that have been disclosed to Acquiror in the Company Disclosure Letter), and (c) none of the employees of the Company or any Company Subsidiary otherwise has a conflict of interest in violation of the Company’s code of conduct.

### 3.16 Employees, ERISA and Other Compliance.

(a) The Company and each Company Subsidiary is in compliance in all material respects with Applicable Law and Contracts relating to employment, discrimination in employment, terms and conditions of employment, compensation matters, worker classification (including the proper classification of employees as exempt employees and nonexempt employees under the Fair Labor Standards Act), wages, hours and occupational safety and health and employment practices, including the Immigration Reform and Control Act, and is not engaged in any unfair labor practice. The Company has withheld all amounts required by law or by agreement to be withheld from the wages, salaries, and other payments to employees; and is not liable for any material arrears of wages, compensation, Taxes, penalties or other sums for failure to comply with any of the foregoing. The Company has paid in full to all employees, independent contractors and consultants all wages, salaries, commissions, bonuses, material benefits and other compensation due to or on behalf of such employees, independent contractors and consultants, when such amounts became due and payable. The Company is not liable for any material payment to any trust or other fund or to 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 normal course of business and consistently with past practice). To the knowledge of the Company and each of its Subsidiaries there are no material pending claims against the Company or any of its Subsidiaries under any workers compensation plan or policy or for long term disability. There are no controversies pending or, to the knowledge of the Company, threatened, between the Company and any of its

employees, which controversies have or would reasonably be expected to result in an action, suit, proceeding, claim, arbitration or investigation before any Governmental Authority. A complete list of all employees, officers and consultants of the Company and the Company Subsidiaries and their current title, compensation (base compensation and bonuses) is set forth on Schedule 3.16(a) of the Company Disclosure Letter. To the knowledge of the Company, all employees of the Company or any of the Company Subsidiaries are legally permitted to be employed by the Company or such Company Subsidiary in the jurisdiction in which such employee is employed in their current job capacities for the maximum period allowed under Applicable Law. To the knowledge of the Company, all independent contractors providing services to the Company or any of the Company Subsidiaries have been properly classified as independent contractors for purposes of federal and applicable state Tax laws, laws applicable to employee benefits and other Applicable Law. The Company and the Company Subsidiaries do not have any employment or consulting Contracts currently in effect that are not terminable at will (other than agreements with the purpose of providing for the confidentiality of proprietary information or assignment of inventions).

(b) Neither the Company nor any Company Subsidiary (i) is now, or has ever been, subject to a union organizing effort, (ii) is subject to any collective bargaining agreement with respect to any of its employees, (iii) is subject to any other Contract with any trade or labor union, employees' association or similar organization, and (iv) has any current labor disputes. To the knowledge of the Company, the Company and the Company Subsidiaries each has good labor relations, and has no knowledge of any facts indicating that the consummation of the Merger shall have a material adverse effect on such labor relations, and has no knowledge that any of its key employees intends to leave their employ. There are no pending, or threatened, efforts to certify any Person as the collective bargaining agent of all or some of the employees of the Company or any Company Subsidiary.

(c) The Company has no Company Benefit Arrangement which constitutes, or has since the enactment of ERISA, constituted, (i) a "multiemployer plan" as defined in Section 3(37) of ERISA, (ii) a "multiple employer plan" as defined in ERISA or Code Section 413(c), or (iii) a "funded welfare plan" within the meaning of Code Section 419. No pension plan of the Company is subject to Title IV of ERISA.

(d) (i) Schedule 3.16(d) of the Company Disclosure Letter lists, with respect to the Company and any trade or business (whether or not incorporated) which is treated under Code Section 414(b) or (c) as a single employer with the Company (an "ERISA Affiliate") each employment, consulting, severance or other similar Contract (except offer letters providing for at-will employment which do not provide for severance, acceleration, or post-termination benefits except as required by Applicable Law), each "employee benefit plan" as defined in Section 3(3) of ERISA, each loan to an employee in excess of \$10,000 and each plan or arrangement providing for insurance coverage (including any self-insured arrangements that are clearly identified as such), workers' benefits, vacation benefits, severance benefits, retention, disability benefits, death benefits, hospitalization benefits, relocation benefits, cafeteria benefits, child care benefits, sabbatical, retirement benefits, deferred compensation, profit-sharing, bonuses, stock options, stock purchase, phantom stock, stock appreciation or other forms of incentive compensation or post-retirement insurance, compensation or benefits for employees, consultants or directors that is currently in effect, maintained or contributed to by the Company,

any Company Subsidiary or any ERISA Affiliate and which covers any employee or former employee of the Company or any Company Subsidiary. Such Contracts, plans and arrangements as are described in this Section 3.16(d) are hereinafter collectively referred to as “**Company Benefit Arrangements**”.

(ii) Except, in each case, as would not individually or in the aggregate result in a material liability to the Company and the Company Subsidiaries, taken as a whole, each Company Benefit Arrangement has been maintained in compliance in all material respects with its terms and with the requirements prescribed by any Applicable Law that is applicable to such Company Benefit Arrangement. Unless otherwise indicated in Schedule 3.16(d) of the Company Disclosure Letter, with respect to each such Company Benefit Arrangement that is an “employee pension benefit plan” as defined in Section 3(2) of ERISA that is intended to qualify under Section 401(a) of the Code, the Company has received a favorable opinion, advisory, notification and/or determination letter, as applicable, that such plan satisfied the requirements of the Uruguay Round Agreements Act, the Uniformed Services Employment and Reemployment Rights Act of 1994, the Small Business Job Protection Act of 1996 and the Taxpayer Relief Act of 1997 (collectively referred to as “**GUST**”), the Tax Reform Act of 1986, the IRS Restructuring and Reform Act of 1998 and the Community Renewal Tax Relief Act of 2000 (a copy of which letter(s) have been made available to Acquiror and its counsel), and nothing has occurred since the issuance of such opinion, advisory, notification and/or determination letter, as applicable, which would reasonably be expected to cause the loss of the Tax-qualified status of such Company Benefit Arrangement. Each Company Benefit Arrangement can be amended, terminated or otherwise discontinued after the Effective Time in accordance with its terms, without liability to Acquiror and/or the Merger Sub (other than ordinary administrative expenses typically incurred in a termination event). No suit, administrative proceeding, action or other litigation has been brought, or to the knowledge of the Company, is threatened, against or with respect to any such Company Benefit Arrangement, including any audit or inquiry by the Internal Revenue Service or United States Department of Labor. No Company Benefit Arrangement is subject to any surrender fees or services fees upon termination other than the normal and reasonable administrative fees associated with the termination of benefit plans. No Company Benefit Arrangement that is an “employee welfare benefit plan” as defined in Section 3(1) of ERISA is self-insured.

(iii) The Company has made available to Acquiror and its legal counsel a complete and correct copy and description of each Company Benefit Arrangement, including all plan documents, adoption agreements, and amendments and restatements thereto executed since inception of such Company Benefit Arrangement, current trust documents, current financial statements, current insurance policies, current vendor contracts, current employee booklets, current summary plan descriptions, summary of material modifications and other authorizing documents, and any material employee communications relating thereto.

(iv) The Company has timely filed and made available to Acquiror and its legal counsel the two most recent annual reports (Form 5500) for each Company Benefit Arrangement that is subject to ERISA and Code reporting requirements, including all attachments, schedules, financial statements and accountants’ opinions attached thereto.

(v) To the knowledge of the Company, no suit, administrative proceeding, action or other litigation has been brought, or to the knowledge of the Company or any Company Subsidiary, is threatened against or with respect to any Company Benefit Arrangement, including any audit or inquiry by the Internal Revenue Service or the U.S. Department of Labor. Neither the Company nor any Company Subsidiary has ever been a participant in any “prohibited transaction” within the meaning of Section 406 of ERISA with respect to any employee pension benefit plan (as defined in Section 3(2) of ERISA) that the Company or such Company Subsidiary sponsors as employer or in which the Company or such Company Subsidiary participates as an employer which was not otherwise exempt pursuant to Section 408 of ERISA and regulatory guidance thereunder (including any individual exemption granted under Section 408(a) of ERISA) or that could result in an excise Tax under the Code or the assessment of a civil penalty under Section 502(i) of ERISA.

(vi) All contributions due from the Company with respect to any of the Company Benefit Arrangements have been timely made under the terms of the applicable Company Benefit Arrangement, ERISA, the Code and any other Applicable Law, or there is a period of time remaining for such contributions to be timely made except to the extent failure to make such contributions would result in a material liability to the Company.

(vii) No Company Benefit Arrangement (other than life insurance arrangements) provides post-termination or retiree welfare benefits to any person for any reason, except as may be required by COBRA or other Applicable Law.

(e) To the knowledge of the Company each Company Benefit Arrangement, to the extent applicable, is in compliance, in all material respects, with the continuation coverage requirements of Section 4980B of the Code, Sections 601 through 608 of ERISA, the applicable health care continuation and notice provisions of COBRA and the regulations (including proposed regulations) thereunder.

(f) Schedule 3.16(f) of the Company Disclosure Letter lists each Person who the Company reasonably believes is, with respect to the Company, any Subsidiary and/or any ERISA Affiliate, a “disqualified individual” (within the meaning of Section 280G of the Code and the regulations promulgated thereunder). No benefit payable or that may become payable by the Company or any Company Subsidiary pursuant to any Company Benefit Arrangement or as a result of, in connection with or arising under this Agreement or the Agreement of Merger shall constitute a “parachute payment” (as defined in Section 280G(b)(2) of the Code) that is subject to the imposition of an excise Tax under Section 4999 of the Code or that would not be deductible by reason of Section 280G of the Code. Unless otherwise indicated in Schedule 3.16(f) of the Company Disclosure Letter, neither the Company nor any Company Subsidiary is a party to any: (i) Contract with any Person (A) the benefits of which are contingent, or the terms of which are materially altered, upon the occurrence of a transaction involving the Company in the nature of the Merger, (B) providing any term of employment or compensation guarantee, or (C) providing severance benefits or other benefits after the termination of employment of such employee regardless of the reason for such termination of employment; or (ii) Company Benefit Arrangement, any of the benefits of which shall be increased, or the vesting of benefits of which shall be accelerated, by the occurrence of the Merger, or any event subsequent to the Merger such as the termination of employment of any person, or the value of

any of the benefits of which shall be calculated on the basis of any of the transactions contemplated by this Agreement. Neither the Company nor any of the Company Subsidiaries has any obligation to pay any material amount or provide any material benefit to any former employee or officer, other than obligations (i) for which the Company has established a reserve (or purchased an insurance policy listed in [Schedule 3.19](#) of the Company Disclosure Letter) for such amount on the Company Balance Sheet and (ii) pursuant to Contracts entered into after the Balance Sheet Date and disclosed on [Schedule 3.16\(g\)](#) of the Company Disclosure Letter.

(g) To the knowledge of the Company no employee or consultant of the Company or any Company Subsidiary is in material violation of (i) any Contract or (ii) any restrictive covenant relating to the right of any such employee or consultant to be employed by the Company or such Company Subsidiary or to use trade secrets or proprietary information of others.

(h) Each Company Benefit Arrangement that has been established or maintained, or that is required to be maintained or contributed to by the law or applicable custom or rule of the relevant jurisdiction, outside of the United States (each such Company Benefit Arrangement, a “**Foreign Plan**”) is listed in [Schedule 3.16\(h\)](#) of the Company Disclosure Letter. With respect to each Foreign Plan, (i) to the knowledge of the Company, such Foreign Plan has been administered in all material respects at all times in accordance with its terms and Applicable Law and regulations, (ii) to the knowledge of the Company, there are no pending investigations by any governmental body involving such Foreign Plan, and no pending claims (except for claims for benefits payable in the normal operation of such Foreign Plan), suits or proceedings against such Foreign Plan or asserting any rights or claims to benefits under such Foreign Plan, (iii) to the knowledge of the Company, the consummation of the transactions contemplated by this Agreement will not by itself create or otherwise result in any liability with respect to such Foreign Plan other than the triggering of payment to participants, and (iv) except as required by Applicable Law, no condition exists that would prevent the Company or any of the Company Subsidiaries from terminating or amending any Foreign Plan at any time for any reason in accordance with the terms of each such Foreign Plan (other than normal expenses typically incurred in a termination event).

(i) In the past two years, there has been no “mass layoff,” “employment loss,” or “plant closing” as defined by the Workers Adjustment and Retraining Notification Act (the “**WARN Act**”) in respect of the Company.

(j) The Company has made available to Acquiror true and complete copies of all election statements under Section 83(b) of the Code that are in the Company’s possession or subject to its control with respect to any unvested securities or other property issued by the Company or any ERISA Affiliate to any of their respective employees, non-employee directors, consultants and other service providers.

(k) [Schedule 3.16\(k\)](#) of the Company Disclosure Letter lists as of the Agreement Date each employee of the Company and any Company Subsidiary who is currently on leave from the Company or a Company Subsidiary and the date that is currently anticipated to be the date that they will return to service.

3.17 Advisor Fees. Except for fees payable to Goldman, Sachs & Co. as set forth in engagement letter between the Company and Goldman, Sachs & Co. dated August 8, 2006 (the “**Engagement Letter**”), a true, correct and complete version of which has been provided by the Company to Acquiror, neither the Company nor any Affiliate of the Company is obligated for the payment of any fees or expenses of any investment banker, broker, advisor or similar party in connection with the origin, negotiation or execution of this Agreement or in connection with the Merger, and Acquiror will not incur any liability to any such investment banker, broker, advisor or similar party as a result of this Agreement, the Merger or any act or omission of the Company.

3.18 Insurance. The Company and the Company Subsidiaries maintain the policies of insurance and bonds set forth in Schedule 3.18 of the Company Disclosure Letter. Schedule 3.18 sets forth the name of the insurer under each such policy and bond, the type of policy or bond, the coverage amount and any applicable deductible as of the Agreement Date. There is no material claim pending under any of such policies or bonds as to which coverage has been questioned, denied or disputed by the underwriters of such policies or bonds. All premiums due and payable under all such policies and bonds have been timely paid, and the Company and each Company Subsidiary is otherwise in compliance with the terms of such policies and bonds. All such policies and bonds remain in full force and effect, and neither the Company nor any Company Subsidiary has any knowledge of any threatened termination of, or material premium increase with respect to, any of such policies or bonds. Each of the Company and each Company Subsidiary has made available to Acquiror correct and complete copies of all such policies of insurance and bonds.

### 3.19 Environmental Matters.

(a) The Company, each Company Subsidiary and their respective predecessors and affiliates are in material compliance with all applicable Environmental Laws (as defined below), which compliance includes the possession by the Company or such Company Subsidiary of all material permits and other governmental authorizations required under applicable Environmental Laws and compliance, in all material respects, with the terms and conditions thereof. Neither the Company nor any Company Subsidiary has received any written notice or other communication, whether from a Governmental Authority, citizens groups, employee or otherwise, that alleges that the Company or such Company Subsidiary is not in compliance, in any material respect, with any applicable Environmental Law. To the knowledge of the Company, no current or prior owner of any property leased or possessed by the Company or any Company Subsidiary has received any written notice or other communication, whether from a Governmental Authority, citizens group, employee or otherwise, that alleges that such current or prior owner or the Company or such Company Subsidiary is not in compliance, in any material respect, with any applicable Environmental Law.

(b) For purposes of this Section 3.19: (i) “**Environmental Law**” means any federal, state or local statute, law, regulation or other legal requirement relating to pollution, protection of the environment (including ambient air, surface water, ground water, land surface or subsurface strata) or exposure of any individual to Materials of Environmental Concern, including any law or regulation relating to emissions, discharges, releases or threatened releases of Materials of Environmental Concern or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Materials of

Environmental Concern; and (ii) “**Materials of Environmental Concern**” include chemicals, pollutants, contaminants, wastes, toxic substances, petroleum and petroleum products and any other substance that is currently regulated by an Environmental Law or that is otherwise a danger to health, reproduction or the environment.

### 3.20 Customers and Suppliers.

(a) As of the Agreement Date, neither the Company nor any Company Subsidiary has any outstanding material disputes concerning its products and/or services with any customer or distributor who, in the year ended December 31, 2006, was one of the 20 largest sources of revenues for the Company and the Company Subsidiaries, taken as a whole, during such periods (each, a “**Significant Customer**”) that would reasonably be expected to result in a material deterioration in, or termination of, the relationship between the Company or any Company Subsidiary and such Significant Customer. Each Significant Customer is listed on Schedule 3.20(a) of the Company Disclosure Letter. As of the Agreement Date, neither the Company nor any of the Company Subsidiaries has received any written notice from any Significant Customer that such customer shall not continue as a customer of the Company (or the Surviving Corporation or Acquiror) after the Closing or that such customer intends to terminate or materially adversely modify the existing Contracts with the Company.

(b) As of the Agreement Date, neither the Company nor any Company Subsidiary has any outstanding material dispute concerning products and/or services provided by any supplier who, in the year ended December 31, 2006, was one of the 10 largest suppliers of products and/or services to the Company and the Company Subsidiaries, based on amounts actually paid by the Company and the Company Subsidiaries during such periods (each, a “**Significant Supplier**”) that would reasonably be expected to result in a material deterioration in, or termination of, the relationship between the Company or any Company Subsidiary and such Significant Supplier. Each Significant Supplier is listed on Schedule 3.20(b) of the Company Disclosure Letter. As of the Agreement Date, neither the Company nor any of the Company Subsidiaries has received any written notice from any Significant Supplier that such supplier shall not continue as a supplier to the Company (or the Surviving Corporation or Acquiror) after the Closing or that such supplier intends to terminate or materially adversely modify the existing Contracts with the Company.

3.21 Privacy. The Company and each Company Subsidiary has complied with the Company’s privacy policies in effect as of the Agreement Date and, to the Company’s knowledge, the Company and each Company Subsidiary have not failed to comply in all material respects with all Applicable Law relating to (a) the privacy of users of the Company Products or Services and all Internet websites owned, maintained or operated by the Company and the Company Subsidiaries (collectively, the “**Company Websites**”), and (b) the collection, storage and transfer of any personally identifiable information collected by the Company and the Company Subsidiaries or by third parties having authorized access to the Company’s and the Company Subsidiaries’ records. No material claims have been asserted or, to the knowledge of the Company, are threatened, against the Company or any of the Company Subsidiaries by any person or entity alleging a violation of such person’s or entity’s privacy, personal or confidentiality rights under the privacy policies of the Company or the Company Subsidiaries.

3.22Fairness Opinion. The Company Board has received an opinion from Goldman, Sachs & Co., dated as of the Agreement Date, to the effect that, as of the Agreement Date and based on and subject to the matters set forth in the opinion, the Cash Amount Per Share to be received by the holders of Company Common Stock in the Merger is fair, from a financial point of view, to such holders.

#### ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF ACQUIROR

Acquiror represents and warrants to the Company as follows:

4.1Organization and Good Standing. Each of Acquiror and Merger Sub is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has the corporate power and authority to own, operate and lease its properties and to carry on its business as now conducted and as presently proposed to be conducted. Each of Acquiror and Merger Sub is duly qualified or licensed to do business, and is in good standing (to the extent that such concept is applicable), in each jurisdiction where the character of the properties owned, leased or operated by it or the nature of its activities makes such qualification or licensing necessary, except where the failure to be so qualified or licensed would not individually or in the aggregate be material to Acquiror's or Merger Sub's ability to consummate the Merger or to perform their respective obligations under this Agreement. Acquiror has made available to the Company true and complete copies of the currently effective Certificate of Incorporation and Bylaws of Acquiror and Merger Sub, each as amended to date. Neither Acquiror nor Merger Sub is in violation of its Certificate of Incorporation or Bylaws, each as amended to date.

#### 4.2Power, Authorization and Validity.

(a)Power and Authority. Acquiror has all requisite corporate power and authority to enter into, execute, deliver and perform its obligations under this Agreement and to consummate the Merger and the other transactions contemplated hereby. The execution, delivery and performance by Acquiror of this Agreement and all other agreements, transactions and actions contemplated hereby have been duly and validly approved and authorized by all necessary corporate action on the part of Acquiror. Merger Sub has all requisite corporate power and authority to enter into, execute, deliver and perform its obligations under this Agreement and to consummate the Merger and the other transactions contemplated hereby. The execution, delivery and performance by Merger Sub of this Agreement and all other agreements, transactions and actions contemplated hereby have been duly and validly approved and authorized by all necessary corporate action on the part of Merger Sub.

(b)No Governmental Consents. No consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Authority, is necessary or required to be made or obtained by Acquiror or Merger Sub to enable Acquiror and Merger Sub to lawfully execute and deliver, enter into, and perform their respective obligations under this Agreement or to consummate the Merger, except for (i) the filing of the Certificate of Merger with the Delaware Secretary of State and appropriate documents with the relevant authorities of other states in which Acquiror is qualified to do business, (ii) such filings and notifications as

may be required to be made by Acquiror in connection with the Merger under the HSR Act and other applicable Antitrust Laws and the expiration or early termination of applicable waiting periods under the HSR Act and such Antitrust Laws, (iii) the filing with the SEC of such reports and filings under the Exchange Act and the rules and regulations thereunder as may be required in connection with this Agreement and the transactions contemplated hereby, (iv) such other filings and notifications as may be required to be made by Acquiror or Merger Sub under federal, state or foreign securities laws or the rules and regulations of NASDAQ, and (v) such other consents, approvals, orders, authorizations, releases, waivers, registrations, declarations or filings that if not made or obtained would not, individually or in the aggregate, reasonably be expected to materially affect the ability of Acquiror or Merger Sub to consummate the Merger or have a Material Adverse Effect on Acquiror.

(c)Enforceability. This Agreement has been duly executed and delivered by Acquiror and Merger Sub, and assuming the due execution and delivery of this Agreement by the Company, constitutes the valid and binding obligations of Acquiror, enforceable against Acquiror in accordance with its terms, subject to the effect of (i) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to rights of creditors generally and (ii) rules of law and equity governing specific performance, injunctive relief and other equitable remedies. This Agreement constitutes the valid and binding obligations of Merger Sub, enforceable against Merger Sub in accordance with its terms, subject to the effect of (i) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to rights of creditors generally and (ii) rules of law and equity governing specific performance, injunctive relief and other equitable remedies.

4.3No Conflict. Neither the execution and delivery of this Agreement by Acquiror or Merger Sub, nor the consummation of the Merger or any other transaction contemplated hereby, conflicts with, or (with or without notice or lapse of time, or both) results in a termination, breach, impairment or violation of, or constitutes a default under, or requires a consent, waiver or approval of any Person under, (a) any provision of the Certificate of Incorporation or Bylaws of Acquiror or Merger Sub, each as currently in effect, (b) any Applicable Law applicable to Acquiror, Merger Sub or any of their respective material assets or properties, or (c) any Contract to which Acquiror or Merger Sub is a party or by which Acquiror or Merger Sub or any of their respective assets or properties are bound, except in the cases of clauses (b) and (c) where such conflict, termination, breach, impairment, violation or default, or failure to obtain such consent, waiver or approval, would not be material to Acquiror's or Merger Sub's ability to consummate the Merger or to perform their respective obligations under this Agreement.

4.4Financing. Acquiror has, and will have available to it upon the Effective Time, sufficient funds to consummate the transactions contemplated by this Agreement, including payment in full of the amounts payable to the Company Securityholders under Article 2.

4.5Stock Ownership. As of the Agreement Date, neither Acquiror nor Merger Sub beneficially own any shares of Company Capital Stock. Neither Acquiror nor Merger Sub, nor any of their "Affiliates" or "Associates", has been an "interested stockholder" of the Company at any time within three years of the Agreement Date, as those terms are used in Section 203 of the Delaware Law.

4.6No Prior Merger Sub Operations. Merger Sub was formed solely for the purpose of effecting the Merger and has not engaged in any business activities or conducted any operations other than in connection with the transactions contemplated hereby.

4.7Proxy Statement. The information supplied by Acquiror for inclusion in the Proxy Statement shall not at the time the Proxy Statement is filed with the SEC contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein not misleading. The information supplied by Acquiror for inclusion or incorporation by reference in the Proxy Statement shall not, on the date the Proxy Statement is mailed to Company Stockholders, or at the time of the Company Stockholders' Meeting, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not false or misleading, or omit to state any material fact necessary to correct any statement in any earlier communication with respect to the solicitation of proxies for the Company Stockholders' Meeting which has become false or misleading. Notwithstanding the foregoing, Acquiror makes no representation or warranty with respect to any information supplied by the Company that is contained in the Proxy Statement.

## ARTICLE 5 COMPANY COVENANTS

During the time period from the Agreement Date until the earlier to occur of (a) the Effective Time or (b) the termination of this Agreement in accordance with the provisions of Article 9, the Company covenants and agrees with Acquiror as follows:

### 5.1Preparation of SEC Documents; Company Stockholders' Meeting.

(a)Proxy Statement. As soon as reasonably practicable following the Agreement Date, the Company shall prepare and file with the SEC the Proxy Statement. No filing of, or amendment or supplement to, the Proxy Statement will be made by the Company without providing Acquiror and its counsel a reasonable opportunity to review and comment thereon and reflecting therein all reasonable comments proposed by Acquiror and its counsel. The Company will promptly advise Acquiror, of the time when the definitive form of the Proxy Statement has been filed with the SEC or any supplement or amendment has been filed, the issuance of any stop order, or any oral or written request by the SEC for amendment of the Proxy Statement or comments thereon and responses thereto or requests by the SEC for additional information and will promptly provide Acquiror with copies of any written communication from the SEC or any state securities commission. The Company will respond in good faith to any comments of the SEC and will cause the Proxy Statement to be mailed to its stockholders as soon as reasonably practicable. If at any time prior to the Effective Time any event or information (including any Change in Recommendation) relating to the Company, or any of its Affiliates, officers or directors, should be discovered by Acquiror or the Company which should be set forth in an amendment or supplement to the Proxy Statement, so that such document would not include any misstatement of a material fact or omit to state any material fact necessary to make the statements therein not misleading, the party which discovers such information shall promptly notify the other parties hereto and an appropriate amendment or supplement describing

such information shall be promptly filed with the SEC and, to the extent required by Applicable Law, disseminated to the Company Stockholders.

(b)Company Stockholders' Meeting. The Company shall, as soon as reasonably practicable following the Agreement Date, take all action necessary in accordance with the Company Charter Documents and Applicable Law to duly give notice of, convene and hold the Company Stockholders' Meeting. Unless there has been a Change in Recommendation pursuant to Section 5.2(d), the Company will use reasonable best efforts to obtain the Company Stockholder Approval, including by using reasonable best efforts to solicit from its stockholders proxies in favor of the adoption of this Agreement. Notwithstanding anything to the contrary contained in this Agreement, the Company may adjourn or postpone the Company Stockholders' Meeting to the extent necessary to ensure that any necessary supplement or amendment to the Proxy Statement is provided to its stockholders in advance of a vote on the adoption of this Agreement, or, if, as of the time for which the Company Stockholders' Meeting is originally scheduled, there are insufficient shares of Company Common Stock represented (either in person or by proxy) to constitute a quorum necessary to conduct the business of such meeting. The Company shall ensure that the Company Stockholders' Meeting is called, noticed, convened, held and conducted, and that all proxies solicited by the Company in connection with the Company Stockholders' Meeting are solicited in compliance with the Company Charter Documents and Applicable Law. Without the prior written consent of Acquiror, adoption of this Agreement (including adjournment of the Company Stockholders' Meeting, if necessary, if a quorum is present, to solicit additional proxies if there are not sufficient votes in favor of adoption of this Agreement), is the only matter which the Company shall propose to be acted on by the Company Stockholders at the Company Stockholders' Meeting. Notwithstanding anything to the contrary contained herein, unless this Agreement has been terminated in accordance with its terms, adoption of this Agreement shall be submitted by the Company to the Company Stockholders at the Company Stockholders' Meeting.

(c)Board Recommendation. Except to the extent expressly permitted by Section 5.2(d), (i) the Company Board shall recommend that its stockholders vote in favor of the adoption of this Agreement at the Company Stockholders' Meeting, (ii) the Proxy Statement shall include a statement to the effect that the Company Board has recommended that the Company Stockholders vote in favor of adoption of this Agreement at the Company Stockholders' Meeting, and (iii) neither the Company Board nor any committee thereof shall withdraw, amend or modify, or propose or resolve to withdraw, amend or modify in a manner adverse to Acquiror, the recommendation of the Company Board that the Company Stockholders vote in favor of the adoption of this Agreement.

#### 5.2No Solicitation.

(a)Alternative Transaction. The Company shall not and will cause the Company Subsidiaries not to, (i) permit any of its or its subsidiaries' officers, directors, attorneys or financial advisors (or its or its subsidiaries' other employees, agents or representatives who have the authority to act on behalf of the Company or the Company Subsidiaries regarding any Alternative Transaction) (collectively, "**Representatives**") to, directly or indirectly, solicit, initiate, seek, endorse, recommend or support, or knowingly encourage or facilitate, any inquiry, proposal or offer from, furnish any non-public information to, or participate in any discussions or

negotiations with, or enter into any agreement with, any party or group regarding any Alternative Transaction (except to disclose the existence of the provisions of this Section 5.2), (ii) approve, endorse or recommend any Alternative Transaction (except to the extent specifically permitted by Section 5.2(d)), or (iii) enter into any letter of intent or similar document or any contract, agreement or commitment (whether binding or not) contemplating or otherwise relating to any Alternative Transaction Proposal. The Company will, and will cause its Subsidiaries and Representatives to, immediately cease any and all existing activities, discussions or negotiations with any third parties conducted heretofore with respect to any Alternative Transaction Proposal, and, upon Acquiror's request, shall request the prompt return or destruction of all confidential information previously furnished to any Person with which the Company, its Subsidiaries or Representatives have engaged in any such activities within the 12-month period preceding the Agreement Date. The Company will, and will cause its Subsidiaries and Representatives to, use reasonable best efforts to enforce (and will not waive any provisions of) any confidentiality or standstill agreement (or any similar agreement) to which the Company or any of its Subsidiaries is a party relating to any such Alternative Transaction Proposal. Any breach of the foregoing provisions of this subsection by any of the Company Subsidiaries or Representatives shall be deemed to be a breach by the Company.

(b)Notification. As promptly as practicable (and in any event within 24 hours) after receipt by the Company, any of its Subsidiaries or Representative of any Alternative Transaction Proposal or any request for non-public information relating in any way to any Alternative Transaction Proposal, the Company shall provide Acquiror with oral and written notice of the material terms and conditions of such Alternative Transaction Proposal or request, and the identity of the Person or Group making any such Alternative Transaction Proposal or request and a copy of material written materials provided to it in connection with such Alternative Transaction Proposal. Thereafter, the Company shall keep Acquiror informed on a current basis in all material respects regarding the status and details of any such Alternative Transaction Proposal or request (including substantive modifications or proposed substantive modifications), including by providing to Acquiror a copy of material written materials setting forth such modifications or proposed modifications. The Company shall provide Acquiror with 48 hours prior notice (or such lesser prior notice as is provided to the Company Board) of any meeting of the Company Board at which it is reasonably expected to consider any Alternative Transaction Proposal or Alternative Transaction, including to consider whether such Alternative Transaction Proposal is a Superior Proposal.

(c)Superior Proposal. Notwithstanding anything to the contrary contained in the provisions of Section 5.2(a), in the event that prior to the time that Company Stockholder Approval has been obtained, the Company receives a *bona fide* written Alternative Transaction Proposal that was not solicited in, or submitted as a result of a, violation of Section 5.2(a)(i) hereof that the Company Board determines in good faith (after consultation with its outside legal counsel and its financial advisor) is, or is reasonably likely to become, a Superior Proposal, the Company or the Company Board may then take the following actions, but only if (i) (A) the Company Board determines in good faith, after consultation with its outside legal counsel, that it is required to do so to comply with its fiduciary obligations to the Company Stockholders under Applicable Law, and (B) the Company has given Acquiror prior written notice that the Company Board has made the determination set forth in the immediately preceding clause (A), and (ii) the

Company shall have provided to Acquiror the information regarding such Alternative Transaction Proposal as set forth in the first two sentences of Section 5.2(b).

(i) Furnish non-public information to the Person or Group making such Alternative Transaction Proposal, provided that (A) the Company first shall have received from such Person an executed confidentiality agreement in substantially the same form as the Confidentiality Agreement, which confidentiality agreement shall not include any provision having the actual or purported effect of restricting the Company from fulfilling its obligations under this Agreement or the Confidentiality Agreement and shall also require such Person to agree to customary employee non-solicitation provisions covering at least 12 months from execution of such confidentiality agreement and (B) contemporaneously with furnishing any such non-public information to such Person or Group, it furnishes such non-public information to Acquiror (to the extent such non-public information has not been previously so furnished to Acquiror); and

(ii) Engage in discussions or negotiations (including negotiation of appropriate documentation) with such Person or Group with respect to such Alternative Transaction Proposal.

(d) Change in Recommendation. Solely in response to the receipt of a *bona fide* written Alternative Transaction Proposal that was not solicited in, or submitted as a result of a, violation of Section 5.2(a)(i) hereof that the Company Board determines in good faith, after consultation with its outside legal counsel and financial advisors, to be a Superior Proposal, the Company Board may make a Change in Recommendation, if all of the following conditions in clauses (i) through (vi) are met:

(i) the Superior Proposal has been made and has not been withdrawn;

(ii) the Company Stockholder Approval has not yet been obtained;

(iii) the Company has (A) provided to Acquiror three Business Days' prior written notice which shall state expressly (1) that it has received a Superior Proposal, (2) the material terms and conditions of the Superior Proposal, a copy of all negotiated draft agreements relating thereto, and the identity of the Person or Group of Persons making the Superior Proposal, and (3) that it intends to effect a Change in Recommendation and the manner in which it intends to do so, (B) provided to Acquiror (to the extent not previously provided) a copy of all non-public information made available to the Person or Group making the Superior Proposal in connection with such Superior Proposal, and (C) during the aforementioned three Business Day period, if requested by Acquiror, engaged in good faith negotiations with Acquiror with respect to any amendments Acquiror proposes to make to this Agreement such that the Superior Proposal would no longer be a Superior Proposal;

(iv) Acquiror shall not have, within the aforementioned three Business Day period, made, and not withdrawn, a *bona fide* written offer that the Company Board has in good faith determined (after consultation with its outside legal counsel and its

financial advisor) results in the Alternative Transaction Proposal that had been determined to be a Superior Proposal no longer being a Superior Proposal; and

(v) the Company Board has determined in good faith, after consultation with its outside legal counsel, that, in light of such Superior Proposal and the results of any negotiations with Acquiror as contemplated by subsection (iii) above and any *bona fide* written offer from Acquiror contemplated by subsection (iv) above, the Company Board is required to effect a Change in Recommendation to comply with its fiduciary duties to the Company Stockholders under Applicable Law.

(e)Tender Offer Rules. Nothing contained in this Agreement shall prohibit the Company or the Company Board from taking and disclosing to its stockholders a position contemplated by Rules 14d-9 and 14e-2(a) promulgated under the Exchange Act; provided that the Company shall not effect, or disclose pursuant to such rules or otherwise a position which constitutes, a Change in Recommendation unless specifically permitted pursuant to the terms of Section 5.2(d).

### 5.3 Maintenance of Business.

(a) The Company shall, and shall cause each of the Company Subsidiaries to, exercise reasonable best efforts to carry on the Company Business in the ordinary course consistent with its past practices, including with respect to the payment of debts, Taxes, and other Liabilities when due (subject to good faith disputes over such debts, Taxes or other Liabilities), and in such regard shall provide the access to information contemplated in Section 5.7 hereof.

(b) The Company shall, and shall cause each of the Company Subsidiaries to, use its reasonably diligent efforts to assure that each of its Contracts (other than with Acquiror) entered into after the Agreement Date will not require the procurement of any consent, waiver or novation in connection with, or terminate as a result of, the consummation of, the Merger.

(c) The Company shall perform the additional covenants set forth on Schedule 5.3(c) of the Company Disclosure Letter.

5.4 Conduct of Business. The Company shall not, and shall not permit any of the Company Subsidiaries to, take any of the following actions without Acquiror's prior written consent:

(a) (i) incur any indebtedness for borrowed money or guarantee, assume or endorse such indebtedness of another Person, except for (A) indebtedness for borrowed money under or guarantees with respect to indebtedness under any existing debt obligation or existing line of credit set forth in Schedule 3.12(g) of the Company Disclosure Letter, (B) indebtedness of, by and among the Company and any direct or indirect wholly-owned Company Subsidiary, or (C) guarantees of indebtedness under corporate credit cards held by employees in the ordinary course of business, consistent with past practices; or (ii) guarantee, assume or endorse the performance obligations of another Person;

(b) (i) lend any money, other than reasonable and normal advances to employees for bona fide expenses that are incurred in the ordinary course of business consistent with its past practices (provided that no proceeds of any such advances are used directly or indirectly to purchase shares of Company Capital Stock); (ii) make any material investments in or material capital contributions to, any Person (other than a direct or indirect wholly-owned Company Subsidiary); (iii) forgive or discharge in whole or in part any outstanding loans or advances; or (iv) prepay any indebtedness except in the ordinary course of business consistent with past practice;

(c) (i) other than the entry into Contracts providing for commercial sales of (or OEM, distribution or reseller arrangements with respect to) the Company Products or Services, in each case in the ordinary course of business and consistent with past practice, enter into any Company Material Contract specified in subsections (a), (b), (c), (d), (e), (h), (j), (l), (m), (o) or (q) of Section 3.12, or (ii) materially breach, terminate (other than allowing expiration according to its terms, including failure to renew), materially and adversely amend, or otherwise materially and adversely modify or waive any of the material terms of, any Company Material Contract (it being understood that actions otherwise permitted by the terms of the other subsections of this Section 5.4 shall not be deemed to constitute a violation of this clause (ii));

(d) purchase, sell, pledge, dispose of, transfer, lease, license or encumber, or authorize the sale, pledge, disposition, transfer, lease, license or Encumbrance (other than a Permitted Encumbrance) of, any property or assets material to the Company and the Company Subsidiaries, taken as a whole, other than the sale or non-exclusive license of its products or services to its customers (including OEMs, distributors and resellers) in the ordinary course of business consistent with past practice;

(e) other than as expressly permitted by subsection (i) of this Section 5.4, (i) increase the base salary, incentive compensation (including stock awards, stock option grants or stock appreciation rights), severance or retention benefits or perquisites payable, or to become payable, to directors or executive officers of the Company (other than increases pursuant to the terms of a Contract in effect on the Agreement Date and set forth on Schedule 3.12(a) of the Company Disclosure Letter or increases not in excess of 10% of base salary granted pursuant to performance reviews held in the ordinary course of business consistent with past practice) nor enter into any Contract to grant or provide (nor grant or provide) any severance, acceleration of vesting or other similar benefits to any of such persons (other than pursuant to the terms of an existing Contract set forth on Schedule 3.12(a) of the Company Disclosure Letter or as required by Applicable Law (as determined by the Company in good faith after consultation with its and Acquiror's outside legal counsel)), (ii) increase the compensation or benefits payable or to become payable to its other employees (other than increases pursuant to the terms of a Contract in effect on the Agreement Date or increases not in excess of 10% of base salary granted pursuant to performance reviews held in the ordinary course of business consistent with past practice) nor enter into any Contract to grant or provide (nor grant or provide) any severance, acceleration of vesting or other similar benefits to any of such persons (other than pursuant to the terms of an existing Contract set forth on Schedule 5.4(e) of the Company Disclosure Letter or as required by Applicable Law (as determined by the Company in good faith after consultation with its and Acquiror's outside legal counsel)), (iii) amend or enter into any employment or consulting Contract with any officer or director (except in the ordinary course of business

pursuant to a standard offer letter with no severance, retention or acceleration provisions), (iv) adopt any plan or arrangement to provide compensation or benefits to any employees, directors or consultants, or amend any Company Benefit Arrangements (except in each case as required under ERISA, or the Code, or Applicable Law), or (v) materially amend any deferred compensation plan within the meaning of Section 409A of the Code and Internal Revenue Service Notice 2005-1 or Company Options except to the extent necessary to meet the good faith compliance requirements of such Section or Notice;

(f) make any material change in accounting policies or procedures, except as required by GAAP or IAS;

(g) declare, set aside or pay any cash or stock dividend or other distribution (whether in cash, stock or property) in respect of its capital stock, or redeem, repurchase or otherwise acquire any of its capital stock or other securities (except for the repurchase of stock from its employees, directors, consultants or contractors in connection with the termination of their services in accordance with the terms of Contracts granting such repurchase rights), or pay or distribute any cash or property to any of its stockholders or securityholders or make any other cash payment to any of its stockholders or securityholders;

(h) terminate, waive or release any material right or claim, other than any termination, waiver or release of any such right or claim (i) under customer (including OEM, distributor and reseller) Contracts with respect to Company Products or Services that are immaterial to the Company Business and (ii) that does not involve any Significant Customer;

(i) issue, sell, create or authorize any shares of its capital stock of any class or series or any other of its securities, or issue, grant or create any warrants, obligations, subscriptions, options, convertible securities, or other commitments to issue shares of its capital stock or any securities that are potentially exchangeable for, or convertible into, shares of its capital stock, other than (i) the issuance of shares of Company Capital Stock pursuant to the exercise of Company Options or Company Warrants outstanding on the Agreement Date, and (ii) the issuance of Company Options to newly hired employees in the ordinary course of business, consistent with past practices (provided that such Company Options (A) will have customary share amounts and vesting terms, consistent with past practices, (B) will not accelerate upon the occurrence of the Merger or any subsequent event (provided, however, that should the Merger not occur, such restriction on acceleration may cease to apply), and (C) will have exercise prices equal to fair market value on the date of grant).

(j) subdivide, split, combine or reverse split the outstanding shares of its capital stock of any class or series or enter into any recapitalization affecting the number of outstanding shares of its capital stock of any class or series or affecting any other of its securities;

(k) merge, consolidate or reorganize with, acquire, or enter into any other business combination with any corporation, partnership, limited liability company or any other entity (other than Acquiror or Merger Sub), acquire a substantial portion of the assets of any such entity, or enter into any Contract for such purpose;

(l) amend its Certificate of Incorporation or Bylaws or other comparable charter documents (except as required by Applicable Law (as determined in good faith by the Company following consultation with its and Acquiror's outside legal counsel) and except for immaterial amendments or changes to the charter documents of Company Subsidiaries);

(m) (i) license any of its technology or Intellectual Property (except for licenses made, and the entry into Contracts providing for commercial sales of, and OEM, distribution and reseller relationships with respect to, the Company Products or Services, in each case, in the ordinary course of business consistent with its past practices) or (ii) other than licenses of software generally available to the public at a per copy license fee of less than \$10,000, enter into any Contract to acquire or license Intellectual Property that (A) may not be canceled without penalty by the Company or the Company Subsidiaries upon notice of 30 days or less and (B) requires by its terms payments by the Company or the Company Subsidiaries in an amount in excess of \$1,000,000 per annum or involves terms which materially restrict the Company or any of the Company Subsidiaries, or (iii) transfer or provide a copy of any source code of the Company to any Person other than (A) to employees or consultants of the Company or any of its Subsidiaries who have a reasonable need to access such source code in the course of performance of their duties for the Company or any such Subsidiary or (B) pursuant to pre-existing obligations arising from existing customer agreements;

(n) materially change any insurance coverage;

(o) (i) agree to any audit assessment by any Tax Authority with respect to income Taxes or any material audit assessment with respect to other Taxes, (ii) file any income Tax Return, any other material Tax Return or any amendment to any income or other material Tax Return unless copies of such Tax Return or amendment have first been delivered to Acquiror for its review at a reasonable time prior to filing, (iii) except as required by Applicable Law, make or change any material election in respect of Taxes or adopt or change any material accounting method in respect of Taxes, or (iv) enter into any closing agreement, settle any claim or assessment in respect of income Taxes or other material Taxes, surrender any right to claim a refund of Taxes, or consent to any extension or waiver of the limitation period applicable to any claim or assessment in respect of income Taxes or other material Taxes;

(p) except as set forth in Schedule 5.4(p) of the Company Disclosure Letter, modify or change the exercise or conversion rights or exercise or purchase prices of any of its capital stock, any of its stock options, warrants or other securities, or accelerate or otherwise modify (i) the right to exercise any option, warrant or other right to purchase any of its capital stock or other securities or (ii) the vesting or release of any shares of its capital stock or other securities from any repurchase options or rights of refusal held by it or any other party or any other restrictions;

(q) (i) except as set forth in Schedule 5.4(q) of the Company Disclosure Letter, initiate any litigation, action, suit, proceeding, claim or arbitration (other than (A) for the routine collection of bills or to enforce its rights under this Agreement and (B) to enforce Company-Owned IP Rights against current or former employees or individual contractors/consultants), it being understood that with respect to any litigation, action, suit, proceeding, claim or arbitration for which the prior written consent of Acquiror is required under

this clause (i), (x) such consent will not be unreasonably withheld or delayed, (y) such consent will be granted or denied within three Business Days following the receipt by Acquiror from the Company of all information reasonably necessary to make an informed decision on such consent, and (z) Acquiror will exercise reasonable best efforts to make available appropriate personnel to review such information as quickly as reasonably practicable, or (ii) settle or agree to settle any litigation, action, suit, proceeding, claim or arbitration (except in either case where the amount in controversy does not exceed \$500,000 and does not involve injunctive or other equitable relief);

(f) (i) pay, discharge or satisfy, in an amount in excess of \$500,000 in any one case or \$1,000,000 in the aggregate, any Liability arising otherwise than in the ordinary course of business, other than (1) the payment, discharge or satisfaction of Liabilities reflected or reserved against in the Company Balance Sheet and (2) the payment, discharge or satisfaction of Transaction Expenses, or (ii) make any capital expenditures, capital additions or capital improvements that, individually or in the aggregate, materially deviate from those scheduled to be made prior to the End Date under the Company's capital expense budget for the 2007 fiscal year attached as Schedule 5.4(r)(ii) to the Company Disclosure Letter;

(s) materially change the manner in which it extends warranties, discounts or credits to customers, other than changes in the ordinary course of business consistent with past practices, which changes are immaterial to the Company Business, taken as a whole; or

(t) agree to do any of the things described in the preceding clauses (a)-(s).

For purposes of this Section 5.4, "Company Material Contract" includes any Contract arising subsequent to the Agreement Date that would have been required to be listed on the Company Disclosure Letter pursuant to Section 3.12 had such Contract been in effect on the Agreement Date.

#### 5.5 Advice of Changes.

(a) Closing Conditions. The Company shall promptly advise Acquiror in writing of (i) any event occurring subsequent to the Agreement Date that would render any representation or warranty of the Company contained in Article 3 untrue or inaccurate such that the condition set forth in Section 8.3(a) would not be satisfied, (ii) any breach of any covenant or obligation of the Company pursuant to this Agreement such that the condition set forth in Section 8.3(b) would not be satisfied, or (iii) any Material Adverse Change in the Company; provided, however, that the delivery of any notice pursuant to this Section 5.5 shall not be deemed to (1) modify any representation or warranty contained herein, (2) supplement or modify the Company Disclosure Letter or (3) limit or otherwise affect the remedies available hereunder to Acquiror or the conditions to Acquiror's obligation to consummate the Merger.

(b) Litigation. The Company shall notify Acquiror in writing promptly after the Company Board or any executive officer or senior legal department member of the Company is notified in writing of any material claim, action, suit, arbitration, mediation, proceeding or investigation by or before any court, arbitrator or arbitration panel, board or governmental agency, initiated by or against it, or known by the Company to be threatened against the Company or any Company Subsidiary.

## 5.6 Reasonable Best Efforts.

(a) Governmental and Third Party Approvals. Upon the terms and subject to the conditions set forth in this Agreement, the Company agrees to use its reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other parties in doing, all things necessary, proper or advisable under Applicable Law to consummate and make effective, in the most expeditious manner practicable, the Merger, including using reasonable best efforts to (i) make all required Antitrust Filings and, as reasonably requested by Acquiror, obtain all other necessary actions or non-actions, waivers, consents and approvals from Governmental Authorities, make all necessary registrations and filings and take all reasonable steps as may be necessary to obtain an approval or waiver from, or to avoid an action or proceeding by, any Governmental Authority, (ii) cooperate with Acquiror to determine an appropriate process to identify any, and thereafter seek to obtain any so identified, consents, approvals or waivers from third parties necessary to consummate the Merger, (iii) defend any lawsuits or other legal proceedings, whether judicial or administrative, brought by third parties (and not Governmental Authorities) challenging this Agreement or the consummation of the Merger, including promptly seeking to have reversed any stay or temporary restraining order resulting from such lawsuits or proceedings entered by any court or other Governmental Authority, and (iv) execute and deliver any additional instruments necessary to consummate the Merger. In furtherance and not in limitation of the foregoing, the Company shall make an appropriate filing of a Notification and Report Form pursuant to the HSR Act with respect to the transactions contemplated hereby as promptly as practicable after the Agreement Date and to supply as promptly as practicable any additional information and documentary material that may be requested pursuant to the HSR Act and to take all other actions reasonably necessary to cause the expiration or termination of the applicable waiting periods under the HSR Act, and under comparable merger notification regulations of any foreign or other Governmental Authority, as soon as practicable. Subject to Applicable Law relating to the exchange of information, Acquiror shall have the right to review in advance, and to the extent reasonably practicable the Company will consult Acquiror on, all the information relating to the Company and its Subsidiaries that appears in any filing made with, or written materials submitted to, any Governmental Authority or third party in connection with the Merger and the other transactions contemplated by this Agreement.

(b) Notification. The Company shall keep Acquiror reasonably apprised of the status of matters relating to the completion of the Merger and work cooperatively in connection with obtaining all required approvals or consents of any Governmental Authority (whether domestic, foreign or supranational). In that regard, the Company shall without limitation use its reasonable best efforts to (i) promptly notify Acquiror of, and if in writing and requested by Acquiror, furnish Acquiror with copies of (or, in the case of material oral communications, advise the other orally of) any communications or filings from or with any Governmental Authority (whether domestic, foreign or supranational) with respect to the Merger or any of the other transactions contemplated by this Agreement, (ii) permit Acquiror to review and discuss in advance, and consider in good faith the views of Acquiror in connection with, any proposed written (or any material proposed oral) communication with any such Governmental Authority with respect to the Merger or any of the other transactions contemplated by this Agreement, (iii) to the extent practicable, not participate in any meeting with any such Governmental Authority with respect to the Merger or any of the other transactions contemplated

by this Agreement unless it consults with Acquiror in advance and to the extent permitted by such Governmental Authority gives Acquiror the opportunity to attend and participate thereat, and (iv) furnish Acquiror with such necessary information and reasonable assistance as Acquiror may reasonably request in connection with its preparation of necessary filings or submissions of information to any such Governmental Authority. The Company may, as it deems advisable and necessary, reasonably designate any competitively sensitive material provided to Acquiror under this Section 5.6 as “outside counsel only.” Such material and the information so designated and contained therein shall be given only to the outside legal counsel of the recipient and will not be disclosed by such outside counsel to employees, officers, or directors of the recipient unless express written consent is obtained in advance from the Company or its legal counsel.

(c) State Takeover Statutes. In connection with and without limiting the foregoing, the Company shall (i) take all action reasonably necessary to ensure that no state takeover statute or similar statute or regulation is or becomes applicable to this Agreement or the Merger and (ii) if any state takeover statute or similar statute or regulation becomes applicable to this Agreement or the Merger, take all action reasonably necessary to ensure that such transactions may be consummated as promptly as practicable on the terms required by, or provided for, in this Agreement and otherwise to minimize the effect of such statute or regulation on this Agreement or the Merger. Prior to the Effective Time, the Company shall not take any action to render inapplicable or to exempt any third Person from, any state takeover law or state law that purports to limit or restrict business combinations or the ability to acquire or vote shares of capital stock unless (i) required to do so by order of a court of competent jurisdiction or (ii) the Company Board has determined in good faith, after consultation with its outside legal counsel, that, in light of a Superior Proposal with respect to the Company, it is required to take such action to comply with its fiduciary duties to the Company Stockholders under Applicable Law.

5.7 Access to Information. Except as set forth in Schedule 5.7 to the Company Disclosure Letter, subject to the Confidentiality Agreement and Applicable Law, the Company shall, and shall cause each of its Subsidiaries to, afford to Acquiror and to the officers, employees, accountants, counsel, financial advisors and other representatives of Acquiror, reasonable access at all reasonable times on reasonable notice during the period prior to the Effective Time to all their properties, books, contracts, commitments, personnel and records (provided, that such access shall not unreasonably interfere with the business or operations of the Company and its Subsidiaries) and, during such period and subject to the Confidentiality Agreement and Applicable Law, the Company shall, and shall cause each of its Subsidiaries to, make available promptly to Acquiror (i) a copy of each report, schedule, registration statement and other document filed by it during such period pursuant to the requirements of federal or state securities laws and (ii) all other information concerning its business, properties and personnel as Acquiror may reasonably request; provided, however, that with respect to any documents or other information subject to the attorney-client privilege, the Company shall reasonably cooperate with Acquiror to develop procedures (such as a common legal interest agreement) to allow such documents and information to be shared with Acquiror and its advisors without waiving such attorney-client privilege. No review pursuant to this Section 5.7 shall affect or be deemed to modify any representation or warranty contained herein, the covenants or agreements of the parties hereto or the conditions to the obligations of the parties hereto under this Agreement.

5.8Confidentiality. The Company will hold and keep confidential, and will cause its officers and employees and will direct its accountants, counsel, financial advisors and other authorized representatives and Affiliates to hold and keep confidential, any non-public information in accordance with the terms of the Confidentiality Agreement, which Confidentiality Agreement will remain in full force and effect.

5.9Public Announcements. The Company will use reasonable best efforts to consult with Acquiror before issuing, and will provide Acquiror the opportunity to review and comment upon, and use reasonable best efforts to agree on, any press release or other public statements to be made by the Company with respect to the Merger, and shall not issue any such press release or make any such public statement prior to such consultation, except as the Company may reasonably determine is required by Applicable Law, court process or by obligations pursuant to any listing agreement with any national securities exchange or stock market. In addition, except to the extent disclosed in or consistent with the Proxy Statement in accordance with the provisions of Section 5.1 or prior communications consented to in accordance with this Section 5.9, the Company shall not issue any press release or otherwise make any public statement or disclosure concerning Acquiror's business, financial condition or results of operations without the consent of Acquiror, which consent shall not be unreasonably withheld or delayed, except as the Company may reasonably determine is required by Applicable Law, court process or by obligations pursuant to any listing agreement with any national securities exchange or stock market. Notwithstanding the foregoing, and for the avoidance of doubt, it is not intended that this Section 5.9 shall apply to the matters set forth in Section 5.1 and Section 5.2 hereof (including with respect to a Change in Recommendation), which shall be exclusively governed thereby. The initial press release to be issued with respect to the transactions contemplated by this Agreement shall be in the form agreed to by the Company and Acquiror.

#### 5.10Employee Benefits.

(a)Termination of Benefit Plans. To the extent requested in writing by Acquiror no later than ten Business Days prior to the Closing Date, the Company shall take (or cause to be taken) all actions necessary to terminate, effective no later than the date immediately preceding the Closing Date, any Company Benefit Arrangement that contains a cash or deferred arrangement intended to qualify under Section 401(k) of the Code (the "**Company 401(k) Plans**") in accordance with the provisions of the Company 401(k) Plans and Applicable Law. If Acquiror requests that the Company 401(k) Plans be terminated, the Company Board shall adopt resolutions authorizing the termination of the Company 401(k) Plans effective no later than the day immediately preceding the Closing Date, such resolutions to subject to the reasonable review and approval by Acquiror's counsel. Upon the request of Acquiror, the Company shall terminate (or cause to be terminated) any and all group severance, separation, retention and salary continuation plans, programs, agreements or arrangements prior to the Closing Date (other than agreements that by their terms cannot be unilaterally terminated by Company and Contracts listed on Schedule 5.10(a) of the Company Disclosure Letter).

(b)Company ESPP. The Company shall terminate the Company ESPP prior to the Effective Time. To the extent any offering period under the Company ESPP is in progress prior to such termination, the Company shall ensure that such offering period ends immediately prior to such termination, and that each participant's accumulated contributions for such offering

period are applied towards the purchase of Company Common Stock immediately prior to such termination unless the participant has previously withdrawn from such offering period in accordance with the terms of such plan.

(c) The Company will consult with Acquiror (and consider in good faith the advice of Acquiror) prior to sending any material notices or other communication materials to its employees regarding the matters described in this Section 5.10 and any other matters relative to the entry into the Agreement or the effects of the Merger.

5.11 Section 16 Matters. Prior to the Effective Time, the Company shall take all such steps as may be required (to the extent permitted under Applicable Law) to cause any dispositions of Company Common Stock (including derivative securities with respect to Company Common Stock) resulting from the transactions contemplated by this Agreement by each individual who is subject to the reporting requirements of Section 16(a) of the Exchange Act with respect to the Company to be exempt under Rule 16b-3 promulgated under the Exchange Act. The Company acknowledges that all such above reference dispositions are compensatory in nature.

## ARTICLE 6 ACQUIROR COVENANTS

During the time period from the Agreement Date until the earlier to occur of (a) the Effective Time or (b) the termination of this Agreement in accordance with the provisions of Article 9, Acquiror covenants and agrees with the Company as follows:

6.1 Advice of Changes. Acquiror shall promptly advise the Company in writing of (a) any event occurring subsequent to the Agreement Date that would render any representation or warranty of Acquiror or Merger Sub contained in Article 4 untrue or inaccurate such that the condition set forth in Section 8.2(a) would not be satisfied and (b) any breach of any covenant or obligation of Acquiror or Merger Sub pursuant to this Agreement such that the condition set forth in Section 8.2(b) would not be satisfied; provided, however, that the delivery of any notice pursuant to this Section 6.1 shall not be deemed to (i) modify any representation or warranty contained herein or (ii) limit or otherwise affect the remedies available hereunder to the Company or the conditions to the Company's obligation to consummate the Merger.

### 6.2 Reasonable Best Efforts.

(a) Governmental and Third Party Approvals. Upon the terms and subject to the conditions set forth in this Agreement, Acquiror agrees to use its reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other parties in doing, all things necessary, proper or advisable under Applicable Law to consummate and make effective, in the most expeditious manner practicable, the Merger, including using reasonable best efforts to (i) make all required Antitrust Filings and, as reasonably requested by the Company, obtain all other necessary actions or non-actions, waivers, consents and approvals from Governmental Authorities, make all necessary registrations and filings and take all reasonable steps as may be necessary to obtain an approval or waiver from, or to avoid an action or proceeding by, any Governmental Authority, (ii) cooperate with the

Company to determine an appropriate process to identify any consents, approvals or waivers from third parties necessary to consummate the Merger, (iii) subject to Section 6.2(d), defend any lawsuits or other legal proceedings, whether judicial or administrative, brought by third parties challenging this Agreement or the consummation of the Merger, including promptly seeking to have reversed any stay or temporary restraining order resulting from such lawsuits or proceedings entered by any court or other Governmental Authority, (iv) execute and deliver any additional instruments necessary to consummate the Merger, and (v) cooperate with the Company in the preparation of the Proxy Statement, including the provision to the Company of any information required under Applicable Law to be included in such Proxy Statement. In furtherance and not in limitation of the foregoing, Acquiror shall make an appropriate filing of a Notification and Report Form pursuant to the HSR Act with respect to the transactions contemplated hereby as promptly as practicable after the Agreement Date and to supply as promptly as practicable any additional information and documentary material that may be requested pursuant to the HSR Act and to take all other actions reasonably necessary to cause the expiration or termination of the applicable waiting periods under the HSR Act, and under comparable merger notification regulations of any foreign or other Governmental Authority, as soon as practicable. Subject to Applicable Law relating to the exchange of information, the Company shall have the right to review in advance, and to the extent reasonably practicable Acquiror will consult the Company on, all the information relating to Acquiror and its Subsidiaries that appears in any filing made with, or written materials submitted to, any Governmental Authority or third party in connection with the Merger and the other transactions contemplated by this Agreement.

(b)Notification. Acquiror shall keep the Company reasonably apprised of the status of matters relating to the completion of the Merger and work cooperatively in connection with obtaining all required approvals or consents of any Governmental Authority (whether domestic, foreign or supranational). In that regard, Acquiror shall without limitation use its reasonable best efforts to (i) promptly notify the Company of, and if in writing and requested by the Company, furnish the Company with copies of (or, in the case of material oral communications, advise the other orally of) any communications or filings from or with any Governmental Authority (whether domestic, foreign or supranational) with respect to the Merger or any of the other transactions contemplated by this Agreement, (ii) permit the Company to review and discuss in advance, and consider in good faith the views of Company in connection with, any proposed written (or any material proposed oral) communication with any such Governmental Authority with respect to the Merger or any of the other transactions contemplated by this Agreement, (iii) to the extent practicable, not participate in any meeting with any such Governmental Authority with respect to the Merger or any of the other transactions contemplated by this Agreement unless it consults with the Company in advance and to the extent permitted by such Governmental Authority gives the Company the opportunity to attend and participate thereat, and (iv) furnish the Company with such necessary information and reasonable assistance as the Company may reasonably request in connection with its preparation of necessary filings or submissions of information to any such Governmental Authority. Acquiror may, as it deems advisable and necessary, reasonably designate any competitively sensitive material provided to the Company under this Section 6.2 as “outside counsel only.” Such material and the information so designated and contained therein shall be given only to the outside legal counsel of the recipient and will not be disclosed by such outside counsel to employees, officers, or directors of

the recipient unless express written consent is obtained in advance from Acquiror or its legal counsel.

(c)State Takeover Statutes. In connection with and without limiting the foregoing, Acquiror shall (i) take all action reasonably necessary to ensure that no state takeover statute or similar statute or regulation is or becomes applicable to this Agreement or the Merger and (ii) if any state takeover statute or similar statute or regulation becomes applicable to this Agreement or the Merger, take all action reasonably necessary to ensure that such transactions may be consummated as promptly as practicable on the terms required by, or provided for, in this Agreement and otherwise to minimize the effect of such statute or regulation on this Agreement or the Merger.

(d)Antitrust Restraints. Notwithstanding anything in this Agreement to the contrary, if any administrative or judicial action or proceeding is instituted (or threatened to be instituted) by any Governmental Authority challenging any transaction contemplated by this Agreement as violative of any Antitrust Laws, it is expressly understood and agreed that: (i) Acquiror shall not have any obligation to litigate or contest, or continue to litigate or contest, any administrative or judicial action or proceeding brought by, or any decree, judgment, injunction or other order, whether temporary, preliminary or permanent issued in favor of, any Governmental Authority asserting that the Merger, or any aspect thereof, is in violation of any Antitrust Law; and (ii) Acquiror shall be under no obligation to make proposals, execute or carry out agreements, enter into consent decrees or submit to orders providing for (A) the sale, divestiture, license or other disposition or holding separate (through the establishment of a trust or otherwise) of any assets or categories of assets of Acquiror or any of its affiliates or the Company or the Company Subsidiaries, (B) the imposition of any limitation or regulation on the ability of Acquiror or any of its affiliates to freely conduct their business or own such assets, or (C) the holding separate of the shares of Company Capital Stock or any limitation or regulation on the ability of Acquiror or any of its affiliates to exercise full rights of ownership of the shares of Company Capital Stock, to such extent as would be reasonably likely to (1) adversely impact in any material respect the benefits expected to be derived by Acquiror from the Merger, including with respect to products, services or technologies of the Company, Acquiror or their respective Subsidiaries, including existing products, services or technologies, or (2) otherwise adversely impact in any material respect any business line of Acquiror or its Subsidiaries (any of the foregoing, an “**Antitrust Restraint**”).

6.3Confidentiality. Acquiror will hold and keep confidential, and will cause its officers and employees and will direct its accountants, counsel, financial advisors and other authorized representatives and Affiliates to hold and keep confidential, any non-public information in accordance with the terms of the Confidentiality Agreement, which Confidentiality Agreement will remain in full force and effect.

Acquiror also covenants and agrees with the Company as follows:

6.4Employee Benefits. As promptly as reasonably practicable after the Effective Time, Acquiror shall enroll those persons who were employees of the Company or its Subsidiaries immediately prior to the Effective Time and who remain employees of the Surviving Corporation or its Subsidiaries or become employees of Acquiror following the

Effective Time (“**Continuing Employees**”) in Acquiror’s employee benefit plans for which such employees are eligible (which could, in Acquiror’s sole discretion, include Company Benefit Arrangements continued by Acquiror after the Effective Time) (the “**Acquiror Plans**”), including its medical plans, dental plans, life insurance plans and disability plans, pursuant to the terms of the applicable Acquiror Plans, on substantially similar terms applicable to employees of Acquiror who are similarly situated based on levels of responsibility. Without limiting the generality of the foregoing, Acquiror shall recognize the prior service with the Company of each of the Continuing Employees (i) for all purposes in connection with Acquiror’s PTO policy, severance policy, 401(k) plan, medical plans, dental plans, life insurance plans and disability plans and (ii) for all purposes in connection with all other Acquiror Plans (to the extent permitted by the terms of the applicable Acquiror Plans); it is understood that for purposes of the foregoing Acquiror Plans, even in situations where the prior service with the Company is so recognized by Acquiror, the benefit levels under such Acquiror Plans may nevertheless depend in part on the grade or position of the Continuing Employees with Acquiror, all as set forth under the terms of the applicable Acquiror Plans. Notwithstanding anything in this Section 6.4 to the contrary, this Section 6.4 shall not operate to (a) duplicate any benefit provided to any Continuing Employee or to fund any such benefit not previously funded, (b) require Acquiror to continue in effect any Company Benefit Arrangement or any severance plan or other employee benefit plan of Acquiror (or prevent the amendment, modification or termination thereof) following the Effective Time for Acquiror’s employees, including the Continuing Employees, or (c) be construed to mean the employment of the Continuing Employees is not terminable by Acquiror at will at any time, with or without cause, for any reason or no reason. Acquiror shall also perform the additional covenants set forth on Schedule 6.4 hereto.

#### 6.5 Indemnification of Company Directors and Officers.

(a) If the Merger is consummated, then until the sixth anniversary of the Effective Time, Acquiror shall, and shall cause the Surviving Corporation to, fulfill and honor in all respects the obligations of the Company to its directors and officers as of immediately prior to the Effective Time (the “**Company Indemnified Persons**”) pursuant to any indemnification provisions under the Company’s or any Company Subsidiary’s Certificate of Incorporation or Bylaws as in effect on the Agreement Date and pursuant to the terms of any indemnification agreements between the Company or such Company Subsidiary on the one hand, and such Company Indemnified Person on the other hand, in each case existing as of the Agreement Date (the “**Company Indemnification Provisions**”), with respect to claims arising out of acts or omissions occurring at or prior to the Effective Time. In connection therewith Acquiror shall advance expenses to the Company Indemnified Persons as incurred to the fullest extent provided for under the Company Indemnification Provisions, provided the person to whom expenses are advanced provides an undertaking to repay such advances if it is ultimately determined that such person is not entitled to indemnification pursuant to the terms of the Company Indemnification Provisions or under Applicable Law. Any claims for indemnification made under this Section 6.5(a) on or prior to the sixth anniversary of the Effective Time shall survive such anniversary until the final resolution thereof.

(b) For a period of six years from and after the Effective Time, Acquiror shall, and shall cause the Surviving Corporation to, maintain in effect, to the extent available, directors’ and officers’ liability insurance covering those persons who are currently covered by

the Company's directors' and officers' liability insurance policy in an amount and on terms no less advantageous, when taken as a whole, to those applicable to the current directors and officers of the Company; provided, however, Acquiror may fulfill its obligations under this Section 6.5(b) by purchasing a policy of directors' and officers' insurance or a "tail" policy under the Company's existing directors' and officers' insurance policy, in either case which (i) has an effective term of six years from the Effective Time, (ii) covers only those persons who are currently covered by the Company's directors' and officers' insurance policy in effect as of the Agreement Date and only for actions and omissions occurring on or prior to the Effective Time, and (iii) contains terms and conditions (including, without limitation, coverage amounts) that are no less advantageous, when taken as a whole, to those applicable to the current directors and officers of the Company, provided further, that in no event shall Acquiror or the Surviving Corporation be required to expend an annual premium for any such coverage in excess of 200% of the annual premium currently paid by the Company under its directors' and officer's liability insurance policy in effect as of the Agreement Date, and if the cost for any such coverage is in excess of such amount, Acquiror or the Surviving Corporation shall only be required to maintain such coverage as is available for such amount.

(c) This Section 6.5 shall survive the consummation of the Merger, is intended to benefit each Company Indemnified Person, shall be binding on all successors and assigns of the Surviving Corporation and Acquiror, and shall be enforceable by the Company Indemnified Persons.

6.6 Assumption of Company Securities; Form S-8. Acquiror shall take such actions as are reasonably necessary for the assumption of the Company Options and Company Restricted Stock Units pursuant to Section 2.1(b)(ii)-(iii), including the reservation for issuance and authorization for listing on NASDAQ of the shares of Acquiror Common Stock subject to Assumed Options and Assumed Restricted Stock. Acquiror shall file a registration statement on Form S-8 for the shares of Acquiror Common Stock issuable with respect to Assumed Options and Assumed Restricted Stock Units eligible for registration on such form as soon as reasonably practicable (and no later than three Business Days) after the Effective Time and shall exercise reasonable best efforts to maintain the effectiveness of such registration statement for so long as any of such Assumed Options or Assumed Restricted Stock Units remains outstanding.

## ARTICLE 7 CLOSING MATTERS

7.1 The Closing. Subject to termination of this Agreement as provided in Article 9, the Closing shall take place at the offices of Fenwick & West LLP, Silicon Valley Center, 801 California Street, Mountain View, California, on the Closing Date. Concurrently with the Closing or at such later date and time as may be mutually agreed in writing by the Company and Acquiror, the Certificate of Merger shall be filed with the Delaware Secretary of State in accordance with Delaware Law.

7.2 Exchange of Certificates.

(a) Exchange Fund. As soon as reasonably practicable after the Effective Time, Acquiror shall deposit with Computershare Trust Company, Inc. (the "**Exchange Agent**")

the aggregate amount of cash consideration, in immediately available funds, payable pursuant to Section 2.1(b) (the “**Exchange Fund**”). The Exchange Fund will be held by the Exchange Agent in trust in a separate fund for the benefit of Company Stockholders and will be distributed to Company Stockholders in exchange for outstanding Company Common Stock in accordance with Article 2 hereof, subject to the provisions of Section 2.1(e) (regarding the continuation of vesting and repurchase rights).

(b) Exchange Procedures. As soon as reasonably practicable (and no later than two Business Days) after the Effective Time, Acquiror shall instruct the Exchange Agent to mail to each holder of record of certificates or instruments evidencing the Company Common Stock that were outstanding immediately prior to the Effective Time (collectively, the “**Certificates**”) and which were converted into the right to receive cash pursuant to Section 2.1(b), (i) a letter of transmittal (that shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon proper delivery of the Certificates to the Exchange Agent) and (ii) instructions for use in effecting the surrender of the Certificates in exchange for cash, which letter of transmittal and instructions shall be in the customary form used by Acquiror and the Exchange Agent (provided that Acquiror will provide the Company with a reasonable opportunity to review and comment thereon). Upon surrender of Certificates for cancellation to the Exchange Agent together with such letter of transmittal, duly completed and validly executed in accordance with the instructions thereto, and such other documents as may reasonably be required by the Exchange Agent (including any required Form W-9 or Form W-8), the holders of such Certificates shall be entitled to receive in exchange therefor a check in the amount of U.S. dollars that such holders have the right to receive pursuant to Section 2.1(b) subject to the provisions of Section 2.1(e) (regarding the continuation of vesting and repurchase rights), and the Certificates so surrendered shall forthwith be canceled. Until so surrendered, outstanding Certificates will be deemed from and after the Effective Time, for all corporate purposes, to evidence only the right to receive upon surrender thereof a check in the amount of U.S. dollars that the holders thereof have the right to receive pursuant to Section 2.1(b) subject to the provisions of Section 2.1(e) (regarding the continuation of vesting and repurchase rights). No interest will be paid or accrued on any cash payable to holders of Certificates. In the event of a transfer of ownership of shares of Company Common Stock that is not registered in the transfer records of the Company, a check in the amount of U.S. dollars that the holder thereof has the right to receive pursuant to Section 2.1(b) subject to the provisions of Section 2.1(e) (regarding the continuation of vesting and repurchase rights), may be issued to a transferee if the Certificate representing such shares of Company Common Stock is presented to the Exchange Agent, accompanied by all documents required to evidence and effect such transfer and by evidence that any applicable stock transfer Taxes have been paid.

(c) Lost, Stolen or Destroyed Certificates. In the event that any Certificates shall have been lost, stolen or destroyed, the Exchange Agent shall issue and pay in exchange for such lost, stolen or destroyed Certificates, upon the making of an affidavit of that fact by the holder thereof, a check in the amount of U.S. dollars into which the Company Common Stock represented by such Certificates were converted pursuant to Section 2.1(b) subject to the provisions of Section 2.1(e) (regarding the continuation of vesting and repurchase rights); provided, however, that Acquiror or the Exchange Agent may, in its discretion and as a condition precedent to the issuance of such cash, require the owner of such lost, stolen or destroyed Certificates to deliver a bond in such sum as it may reasonably direct as indemnity against any

claim that may be made against Acquiror, the Surviving Corporation or the Exchange Agent with respect to the Certificates alleged to have been lost, stolen or destroyed.

(d)Termination of Exchange Fund. Any portion of the Exchange Fund which remains undistributed to the former holders of Company Common Stock for six months after the Effective Time shall be delivered to Acquiror, upon demand, and any such holders of Company Common Stock who have not theretofore complied with the provisions of this Section 7.2 shall thereafter look only to Acquiror and the Surviving Corporation for the cash to which they are entitled pursuant to Section 2.1(b) subject to the provisions of Section 2.1(e) (regarding the continuation of vesting and repurchase rights), without any interest thereon.

(e)No Further Ownership Rights in Company Securities. All cash paid in accordance with the terms hereof with respect to Company Common Stock and Company Warrants shall be deemed to have been paid in full satisfaction of all rights pertaining to such Company Common Stock and Company Warrants, and there shall be no further registration of transfers on the records of the Surviving Corporation of Company Common Stock and/or Company Warrants that were outstanding immediately prior to the Effective Time. If after the Effective Time Certificates are presented to the Surviving Corporation for any reason, they shall be canceled and exchanged as provided in this Article 7.

(f)No Liability. Notwithstanding anything to the contrary in this Section 7.2, neither the Exchange Agent, Acquiror, the Company, the Surviving Corporation nor any party hereto shall be liable to a holder of Company Common Stock, Company Options or Company Warrants for any amount properly paid to a public official pursuant to any applicable abandoned property, escheat or similar Applicable Law.

## ARTICLE 8 CONDITIONS TO OBLIGATIONS OF THE PARTIES

8.1 Conditions to Each Party's Obligation to Effect the Merger. The respective obligations of each party to this Agreement to effect the Merger shall be subject to the satisfaction at or prior to the Closing of each of the following conditions:

(a)Company Stockholder Approval. The Company Stockholder Approval shall have been obtained, as required by Delaware Law and the Company's Certificate of Incorporation and Bylaws, each as in effect on the date of such approval.

(b)Antitrust Compliance. (i) All applicable waiting periods (and any extensions thereof) applicable to the Merger under the HSR Act shall have expired or early termination of such waiting periods shall have been granted and (ii) the approvals under antitrust, competition or similar laws of Germany shall have been obtained, in each case without any condition or requirements requiring or calling for any Antitrust Restraint.

(c)No Injunctions or Restraints. No judgment, order, injunction, decree, statute, law, ordinance, rule or regulation, or other legal restraint or prohibition (whether temporary, preliminary or permanent), entered, enacted, promulgated, enforced or issued by any court or other Governmental Authority of competent jurisdiction, shall be in effect which prohibits, makes illegal or enjoins the consummation of the Merger.

8.2 Additional Conditions to Obligations of the Company. The obligation of the Company to effect the Merger shall be subject to the satisfaction at or prior to the Closing of each of the following conditions, any of which may be waived in writing by the Company:

(a) Accuracy of Representations and Warranties.

(i) The representations and warranties of Acquiror set forth herein (other than in Sections 4.2(a) and (c)) (A) that are qualified as to Material Adverse Effect shall be true and correct and (B) that are not so qualified as to Material Adverse Effect shall be true and correct, in each case both when made and at and as of the Closing Date, as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date), except to the extent that the failure of any such representations and warranties referred to in clause (B) to be so true and correct does not have, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on Acquiror or a material adverse effect on Acquiror's ability to consummate the Merger. At the Closing, the Company shall have received a certificate to such effect signed on behalf of Acquiror by a duly authorized executive officer of Acquiror.

(ii) The representations and warranties of Acquiror set forth in Sections 4.2(a) and (c) shall be true and correct both when made and at and as of the Closing Date, as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date). At the Closing, the Company shall have received a certificate to such effect signed on behalf of Acquiror by a duly authorized executive officer of Acquiror.

(b) Covenants. Acquiror shall have performed and complied in all material respects with its covenants under this Agreement on or before the Closing (to the extent that such covenants require performance by Acquiror on or before the Closing). At the Closing, the Company shall have received a certificate to such effect signed on behalf of Acquiror by a duly authorized executive officer of Acquiror.

8.3 Additional Conditions to Obligations of Acquiror and Merger Sub. The respective obligations of Acquiror and Merger Sub to effect the Merger shall be subject to the satisfaction at or prior to the Closing of each of the following conditions, any of which may be waived in writing by Acquiror and Merger Sub:

(a) Accuracy of Representations and Warranties.

(i) The representations and warranties of the Company set forth herein (other than in Sections 3.3(a), (c) and (d) and Section 3.4(a)) (A) that are qualified as to Material Adverse Effect shall be true and correct and (B) that are not so qualified as to Material Adverse Effect shall be true and correct, in each case both when made and at and as of the Closing Date, as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date), except to the extent that the failure of any such representations and warranties referred to in clause (B) to be so true and correct does not have, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company. At the Closing, Acquiror shall have received a certificate to such effect signed on behalf of the Company by a duly authorized executive officer of the Company.

(ii) The representations and warranties of the Company set forth in Sections 3.3(a), (c) and (d) shall be true and correct both when made and at and as of the Closing Date, as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date). The representations and warranties of the Company set forth in Section 3.4(a) shall be true and correct both when made and at and as of the Closing Date, as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date), except with respect to deviations in the Company's actual fully diluted capitalization (including outstanding Company Capital Stock, Company Options and Company Warrants) from the Company's fully diluted capitalization as set forth in Sections 3.4(a) by an amount that does not exceed one percent of such fully diluted capitalization. At the Closing, Acquiror shall have received a certificate to such effect signed on behalf of the Company by a duly authorized executive officer of the Company.

(b) Covenants. The Company shall have performed and complied in all material respects with its covenants under this Agreement at or before the Closing (to the extent that such covenants require performance by the Company at or before the Closing). At the Closing, Acquiror shall have received a certificate to such effect signed on behalf of the Company by a duly authorized executive officer of the Company.

(c) No Material Adverse Change. There shall not be any Material Adverse Change in the Company which is continuing, whether or not resulting from a breach in any representation, warranty or covenant in this Agreement. At the Closing Acquiror shall have received a certificate to such effect signed on behalf of the Company by a duly authorized executive officer of the Company.

(d) No Litigation. (A) No suit, action, proceeding, application or counterclaim shall be pending by any Governmental Authority wherein an unfavorable injunction, judgment, order, decree, ruling or charge would (i) prevent, restrain or prohibit the consummation of the Merger, (ii) cause the Merger to be rescinded, or (iii) result in any Antitrust Restraint, (B) no such injunction, judgment, order, decree, ruling or charge shall be in effect nor shall any Applicable Law have been enacted having any such effect, and (C) no Governmental Authority shall have notified the parties in writing of, and not withdrawn, any intent on its part to seek such injunction, judgment, order, decree, ruling or charge having any such effect.

## ARTICLE 9

### TERMINATION, AMENDMENT AND WAIVER

9.1 Termination. This Agreement may be terminated at any time prior to the Effective Time by action taken or authorized by the Board of Directors of the terminating party or parties, which action (A) in the case of Section 9.1(a), Section 9.1(b)(i), Section 9.1(b)(ii), Section 9.1(c) and Section 9.1(d), may be taken or authorized before or after the Company Stockholder Approval, (B) in the case of Section 9.1(e) and Section 9.1(f), may be taken or authorized only before the Company Stockholder Approval, and (C) in the case of Section 9.1(b)(iii), may be taken or authorized only after the Company Stockholders' Meeting where a vote was taken:

(a) by mutual written consent of the Company and Acquiror, if the Board of Directors of each so determines;

(b) by written notice of either the Company or Acquiror (as authorized by the Board of Directors of the Company or Acquiror, as applicable) to the other party:

(i) if the Merger shall not have been consummated by July 31, 2007 (the “**End Date**”); provided, however, that if the Merger shall not have been consummated by the End Date, but on such date, all of the conditions to Closing set forth in Article 8 (other than conditions that by their nature are only to be satisfied as of the Closing and other than the conditions set forth in Section 8.1(b)) have been satisfied or waived in writing, then the End Date shall be extended until October 31, 2007; provided, further, that the right to terminate this Agreement under this Section 9.1(b)(i) shall not be available to any party whose failure to comply with, or breach of, any provision of this Agreement has been a proximate cause of, or resulted in, the failure of the Merger to be consummated by such date;

(ii) if a Governmental Authority of competent jurisdiction shall have issued an order, decree or ruling or taken any other action (including the failure to have taken an action), in any case having the effect of permanently restraining, enjoining or otherwise prohibiting the consummation of the Merger, which order, decree, ruling or other action is final and nonappealable; or

(iii) if the Company Stockholder Approval shall not have been obtained at the Company Stockholders’ Meeting, or at any adjournment or postponement thereof, at which a vote thereon was taken;

(c) by the Company (as authorized by the Company Board), by written notice to Acquiror, following a breach of any representation, warranty, covenant or agreement on the part of Acquiror set forth in this Agreement, such that the conditions set forth in Section 8.2(a) or Section 8.2(b) would not be satisfied as of the time of such breach and such breach shall be incapable of being cured or shall not have been cured in all material respects within 20 Business Days after written notice thereof shall have been received by Acquiror;

(d) by Acquiror (as authorized by its Board of Directors), by written notice to the Company, following a breach of any representation, warranty, covenant or agreement on the part of the Company set forth in this Agreement, such that the conditions set forth in Section 8.3(a) or Section 8.3(b) would not be satisfied as of the time of such breach and such breach shall be incapable of being cured or shall not have been cured in all material respects within 20 Business Days after written notice thereof shall have been received by the Company;

(e) by the Company (as authorized by its Board of Directors), by written notice to the Acquiror, if (i) the Company Board shall have effected a Change in Recommendation pursuant to Section 5.2(d), (ii) the Company shall have paid to Acquiror the Termination Fee described in Section 9.3(a), and (iii) the Company shall have publicly announced its intention to accept or enter into the Superior Proposal which was the subject of such Change in Recommendation; or

(f) by Acquiror (as authorized by its Board of Directors), by written notice to the Company, if the Company, the Company Board or any committee thereof, for any reason, shall have (i) materially breached its obligation to give notice of, convene and hold the Company Stockholders' Meeting in accordance with Section 5.1(b), (ii) failed to include in the Proxy Statement distributed to the Company Stockholders the recommendation of the Company Board that such stockholders adopt this Agreement, (iii) effected a Change in Recommendation, (iv) approved any Alternative Transaction or recommended that the Company Stockholders approve or accept any Alternative Transaction (without the prior written consent of Acquiror), (v) the Company shall have entered into a letter of intent in violation of this Agreement or any Contract accepting any Alternative Transaction Proposal (without the prior written consent of Acquiror), (vi) failed to reconfirm the recommendation of the Company Board that Company Stockholders adopt this Agreement within ten Business Days of receipt of a written request from Acquiror to do so following the occurrence of any Alternative Transaction Proposal, or (vii) failed, within ten Business Days after any tender or exchange offer relating to Company Common Stock commenced by any third Person shall have been first published, sent or given, to have sent to its security holders pursuant to Rule 14e-2 promulgated under the Exchange Act a statement disclosing that the Company Board recommends rejection of such tender offer or exchange offer.

9.2 Effect of Termination. In the event of termination of this Agreement as provided in Section 9.1 hereof and any payment of a Termination Fee, this Agreement shall forthwith become void and there shall be no liability on the part of any of the parties, except (a) as set forth in Sections 5.8 and 6.3 (Confidentiality), this Section 9.2 (Effect of Termination) and Section 9.3 (Payments), as well as Article 10 (Miscellaneous) (other than Section 10.1) to the extent applicable to such surviving sections, each of which shall survive termination of this Agreement, and (b) that nothing herein shall relieve any party from any further liability for any willful or intentional breach of any representation or warranty of such party contained herein or any breach of any covenant or agreement of such party contained herein. No termination of this Agreement shall affect the obligations of the parties contained in the Confidentiality Agreement, all of which obligations shall survive termination of this Agreement in accordance with their terms. Payments made pursuant to Section 9.3 (Payments) shall be in addition to any other rights, remedies and relief of the parties hereto or with respect to the subject matter of this Agreement.

### 9.3 Payments.

#### (a) Payments by the Company.

(i) Termination Fee. In the event that this Agreement is terminated by the Company pursuant to Section 9.1(e), the Company shall pay Acquiror a fee equal to \$37,500,000 (the "**Termination Fee**") as provided in Section 9.1(e). In the event that this Agreement is terminated by Acquiror pursuant to Section 9.1(f), the Company shall promptly, but in no event later than two Business Days after the date of such termination, pay Acquiror the Termination Fee. In the event that this Agreement is terminated pursuant to Section 9.1(b)(iii), the Company shall pay Acquiror the Termination Fee if (A) following the Agreement Date and prior to such termination, an Alternative Transaction Proposal with respect to the Company (1) shall have been publicly announced by any Person, (2) shall have been made to the Company Stockholders by any Person, or (3) shall have been made to the Company by any Person and subsequently been publicly announced or disclosed, and in each case such Alternative

Transaction Proposal shall not have been withdrawn, and (B) within 12 months following termination of this Agreement, any Company Acquisition with respect to the Company is consummated or the Company enters into a Contract providing for any Company Acquisition, in which case such fee payment is to be made concurrently with the earlier of the consummation of such Company Acquisition or the execution of such Contract, as applicable.

(ii) Acquiror Expenses. In the event that this Agreement is terminated pursuant to Section 9.1(b)(iii), the Company shall promptly, but in no event later than two days after the date of such termination, reimburse Acquiror for its Transaction Expenses, not to exceed \$2,000,000. The amount of any Transaction Expenses reimbursed by the Company to Acquiror shall be credited against any subsequent payment required to be made by the Company to Acquiror of the Termination Fee pursuant to Section 9.3(a)(i) above.

(b) Interest and Costs. All payments under this Section 9.3 shall be made by wire transfer of immediately available funds to an account designated by Acquiror. The Company acknowledges that the agreements contained in this Section 9.3 are an integral part of the transactions contemplated by this Agreement and that, without these agreements, Acquiror would not enter into this Agreement. Accordingly, if the Company fails to pay in a timely manner the amounts due pursuant to this Section 9.3 and, in order to obtain such payment, Acquiror makes a claim that results in a judgment against the Company, the Company shall pay to Acquiror its reasonable costs and expenses (including reasonable attorneys' fees and expenses) in connection with such suit, together with interest on the amounts set forth in this Section 9.3 at the rate of interest per annum publicly announced by Bank of America as its prime rate, as in effect on the date such payment was required to be made. Payment of the fees described in this Section 9.3 shall not be in lieu of damages incurred in the event of breach of this Agreement, to the extent permitted by Section 9.2.

9.4 Amendment. Subject to compliance with Applicable Law, this Agreement may be amended by the parties at any time before or after the Company Stockholder Approval; provided, however, that after the occurrence of either the Company Stockholder Approval there may not be, without further approval of the stockholders of the Company, any amendment of this Agreement that changes the amount or the form of the consideration to be delivered to the holders of Company Common Stock hereunder, or which by Applicable Law otherwise expressly requires the further approval of such stockholders. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto and duly approved by the parties' respective Boards of Directors or a duly designated committee thereof.

9.5 Extension; Waiver. At any time prior to the Effective Time, a party may, subject to the proviso of Section 9.4 (and for this purpose treating any waiver referred to below as an amendment), (a) extend the time for the performance of any of the obligations or other acts of the other parties hereto, (b) waive any inaccuracies in the representations and warranties of the other parties contained in this Agreement or in any document delivered pursuant to this Agreement or (c) waive compliance by the other party hereto with any of the agreements or conditions contained in this Agreement. Any agreement on the part of a 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. Any extension or waiver given in compliance with this Section 9.5 or failure to insist

on strict compliance with an obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

ARTICLE 10  
MISCELLANEOUS

10.1 Expiration of Representations and Warranties. None of the representations, warranties, covenants and agreements in this Agreement or in any instrument delivered pursuant to this Agreement, including any rights arising out of any breach of such representations, warranties, covenants and agreements, shall survive the Effective Time.

10.2 Notices. All notices and other communications hereunder shall be in writing and shall be deemed given on (i) the date of delivery, if delivered personally or by commercial delivery service, or (ii) on the date of confirmation of receipt (or the next Business Day, if the date of confirmation of receipt is not a Business Day), if sent via facsimile (with confirmation of receipt), to the parties hereto at the following address (or at such other address for a party as shall be specified by like notice):

If to Acquiror or Merger Sub:

Symantec Corporation  
20330 Stevens Creek Blvd.  
Cupertino, CA 95014  
Attention: Arthur F. Courville, Sr. V.P., Corporate Legal Affairs  
Fax Number: (408) 517-8121

with a copy to:

Fenwick & West LLP  
Silicon Valley Center  
801 California Street  
Mountain View, CA 94041  
Attention: Daniel J. Winnike, Esq.  
Douglas N. Cogen, Esq.  
Andrew Y. Luh, Esq.  
Fax Number: (650) 988-8500

If to the Company:

Altiris, Inc.  
588 West 400 South  
Lindon, UT 84042  
Attention: Craig Christensen, Vice President and General Counsel  
Fax Number: (801) 805-2589

with a copy to:

Wilson Sonsini Goodrich & Rosati, P.C.

2795 East Cottonwood Parkway  
Suite 300  
Salt Lake City, UT 84121-6928  
Attention: Martin W. Korman, Esq.  
Robert G. O'Connor, Esq.  
Lawrence M. Chu, Esq.  
Fax Number: (801) 993-6499

10.3 Governing Law. This Agreement and any disputes arising out of or related to this Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware.

10.4 Jurisdiction. In any action or proceeding between any of the parties arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement, each of the parties hereto: (a) irrevocably and unconditionally consents and submits, for itself and its property, to the exclusive jurisdiction and venue of any Delaware State court (or, in the case of any claim as to which the federal courts have exclusive subject matter jurisdiction, the Federal court of the United States of America, sitting in Delaware); (b) agrees that all claims in respect of such action or proceeding must be commenced, and may be heard and determined, exclusively in such Delaware State court (or, if applicable, such Federal court); (c) waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any such action or proceeding in such Delaware State court (and, if applicable, such Federal court); and (d) waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in such Delaware State court (or, if applicable, such Federal court). Each of the parties hereto agrees that a final judgment in any such action or proceeding and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 10.2. Nothing in this Agreement shall affect the right of any party to this Agreement to serve process in any other manner permitted by Applicable Law.

10.5 Entire Agreement. This Agreement, together with the exhibits and schedules hereto, constitutes the entire understanding and agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements or understandings, inducements or conditions, express or implied, written or oral, between the parties with respect hereto other than the Confidentiality Agreement. The express terms hereof control and supersede any course of performance or usage of the trade inconsistent with any of the terms hereof.

10.6 Third Party Beneficiary Rights. No provisions of this Agreement are intended, nor shall be interpreted, to provide or create any third party beneficiary rights or any other rights of any kind in any client, customer, employee, affiliate, stockholder, partner or any party hereto or any other Person unless specifically provided otherwise herein and, except as so provided, all provisions hereof shall be personal solely between the parties to this Agreement; except that Section 6.5 is intended to benefit the Company Indemnified Persons, who shall be third party beneficiaries for purposes of such Section.

10.7 Assignment; Binding Upon Successors and Assigns. This Agreement shall inure to the benefit of any successor to, or assignee of, all or substantially all of the business and assets of Acquiror. Except as set forth in the preceding sentence, no party hereto may assign any of its rights or obligations hereunder without the prior written consent of the other parties hereto. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Any assignment in violation of this provision shall be void.

10.8 Severability. If any provision of this Agreement, or the application thereof, shall for any reason and to any extent be invalid or unenforceable, then the remainder of this Agreement and the application of such provision to other persons or circumstances shall be interpreted so as reasonably to effect the intent of the parties hereto. The parties further agree to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that shall achieve, to the extent possible, the economic, business and other purposes of the void or unenforceable provision.

10.9 Remedies; Specific Performance. Except as otherwise expressly provided herein, any and all remedies herein expressly conferred upon a party hereunder shall be deemed cumulative with and not exclusive of any other remedy conferred hereby or by law on such party, and the exercise of any one remedy shall not preclude the exercise of any other. The parties agree that irreparable damage would occur and that the parties would not have any adequate remedy at law in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in the Court of Chancery of the State of Delaware, this being in addition to any other remedy to which they are entitled at law or in equity.

10.10 Interpretation; Rules of Construction. When a reference is made in this Agreement to Exhibits, such reference shall be to an Exhibit to this Agreement unless otherwise indicated. When a reference is made in this Agreement to Sections, such reference shall be to a Section of this Agreement unless otherwise indicated. When a reference is made in this Agreement to Articles, such reference shall be to an Article of this Agreement unless otherwise indicated. The words "include", "includes" and "including" when used herein shall be deemed in each case to be followed by the words "without limitation". The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. All terms defined in this Agreement shall have the defined meanings when used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. References to the Subsidiaries of an entity shall be deemed to include all direct and indirect Subsidiaries of such entity. References to a Person are also to its permitted successors and assigns. Any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented,

including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. The parties hereto agree that they have been represented by legal counsel during the negotiation and execution of this Agreement and, therefore, waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document shall be construed against the party drafting such agreement or document. The one percent threshold established by the parties with respect to the Company's capitalization in Section 8.3(a)(ii) hereof shall not, in and of itself, constitute an economic benchmark for determining whether any Effect shall be deemed to be material in relation to the Company or shall be deemed to constitute a Material Adverse Effect on the Company.

10.11 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original as regards any party whose signature appears thereon and all of which together shall constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all parties reflected hereon as signatories.

10.12 Expenses. Whether or not the Merger is successfully consummated, each party shall bear its respective Transaction Expenses, unless otherwise expressly provided herein.

10.13 Attorneys' Fees. Should suit be brought to enforce or interpret any part of this Agreement, the prevailing party shall be entitled to recover, as an element of the costs of suit and not as damages, reasonable attorneys' fees to be fixed by the court (including costs, expenses and fees on any appeal). The prevailing party shall be entitled to recover its costs of suit, regardless of whether such suit proceeds to final judgment.

10.14 No Joint Venture. Nothing contained in this Agreement shall be deemed or construed as creating a joint venture or partnership between any of the parties hereto. No party is by virtue of this Agreement authorized as an agent, employee or legal representative of any other party. No party shall have the power to control the activities and operations of any other and their status is, and at all times shall continue to be, that of independent contractors with respect to each other. No party shall have any power or authority to bind or commit any other party. No party shall hold itself out as having any authority or relationship in contravention of this Section 10.14.

10.15 Confidentiality. The Company and Acquiror each confirm that they have entered into the Confidentiality Agreement and that they are each bound by, and shall abide by, the provisions of such Confidentiality Agreement; provided, however, that Acquiror shall not be bound by such Confidentiality Agreement after the Closing. If this Agreement is terminated, the Confidentiality Agreement shall remain in full force and effect, and all copies of documents containing confidential information of a disclosing party shall be returned by the receiving party to the disclosing party or be destroyed, as provided in the Confidentiality Agreement.

10.16 Waiver of Jury Trial. EACH PARTY HERETO ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES

ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (I) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (II) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (III) EACH PARTY MAKES THIS WAIVER VOLUNTARILY AND (IV) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.16.

[SIGNATURE PAGE NEXT]

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

SYMANTEC CORPORATION

ALTIRIS, INC.

By: /s/ John W. Thompson

By: /s/ Gregory S. Butterfield

Name: John W. Thompson

Name: Gregory S. Butterfield

Title: Chairman and Chief Executive Officer

Title: President and Chief Executive Officer

ATLAS MERGER CORP.

By: /s/ Arthur F. Courville

Name: Arthur F. Courville

Title: President and Chief Executive Officer

[SIGNATURE PAGE TO AGREEMENT AND PLAN OF MERGER]

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## List of Schedules and Exhibits to Agreement and Plan of Merger

The following is a list of the exhibits and schedules to the Agreement and Plan of Merger among Symantec, Atlas Merger Corp. and Altiris, Inc., which schedules and exhibits have been omitted from this Exhibit 2.01 pursuant to Item 601(b)(2) of Regulation S-K. Symantec undertakes to furnish supplementally to the SEC, upon request, a copy of any omitted schedule or exhibit.

### Exhibits

Exhibit A	Certificate of Merger
Exhibit B-1	List of Stockholders
Exhibit B-2	Voting Agreement

### Schedules

Schedule 3.1	Company Disclosure Letter (see below)
Schedule 6.4	Employee Benefits

### Company Disclosure Letter

Schedule 3.1	Organization and Good Standing
Schedule 3.2 (a) and (b)	Company Subsidiaries
Schedule 3.3	Power, Authorization and Validity
Schedule 3.4 (a), (b), (c)-2, (d) and (e)	Capital Structure of the Company
Schedule 3.5	No Conflict
Schedule 3.6 (a), (b), (c), (d) and (e)	SEC Filings
Schedule 3.7	Litigation
Schedule 3.8 (a), (b), (d) and (e)	Compliance with Laws
Schedule 3.9 (c), (g), (l), (m), (q) and (u)	Taxes
Schedule 3.10 (b)	Title to Properties
Schedule 3.11 (a), (c), (d), (e), (f), (g), (h), (j), (k), (m), (n), (q) and (s)	Absence of Certain Changes
Schedule 3.12 (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r) and (s)	Contracts, Agreements, Arrangements, Commitments and Undertakings
Schedule 3.13 (a) and (b)	No Default, No Restrictions
Schedule 3.14 (a), (b), (c), (d), (e), (f), (h), (i), (j), (k), (m) and (o)	Intellectual Property
Schedule 3.15	Certain Transactions and Agreements
Schedule 3.16 (a), (b), (d)(i), (d)(ii), (d)(iii), (d)(v), (f), (h), (h)(i) and (k)	Employees, ERISA and Other Compliance
Schedule 3.17	Advisor Fees
Schedule 3.18	Insurance
Schedule 3.19	Environmental Matters
Schedule 3.20 (a) and (b)	Customers and Suppliers

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Schedule 3.21  
Schedule 3.22  
Schedule 5.3 (c)  
Schedule 5.4 (c), (e), (g), (m), (p), (q) and (r)  
Schedule 5.7

Privacy  
Fairness Opinion  
Maintenance of Business  
Conduct of Business  
Access to Information

## CERTIFICATION

I, John W. Thompson, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Symantec Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 9, 2009

/s/ JOHN W. THOMPSON

**John W. Thompson**

*Chairman of the Board and Chief Executive Officer*

## CERTIFICATION

I, James A. Beer, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Symantec Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 9, 2009

/s/ JAMES A. BEER

**James A. Beer**

*Executive Vice President and Chief Financial Officer*

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

I, John W. Thompson, Chairman and Chief Executive Officer of Symantec Corporation (the "Company"), do hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge: (i) the Company's quarterly report on Form 10-Q for the period ended January 2, 2009, to which this Certification is attached (the "Form 10-Q"), fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934, as amended, and (ii) the information contained in the Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: February 9, 2009

/s/ JOHN W. THOMPSON

**John W. Thompson**

*Chairman of the Board and Chief Executive Officer*

This Certification which accompanies the Form 10-Q is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Form 10-Q), irrespective of any general incorporation language contained in such filing.

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

I, James A. Beer, Executive Vice President and Chief Financial Officer of Symantec Corporation (the “Company”), do hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge: (i) the Company’s quarterly report on Form 10-Q for the period ended January 2, 2009, to which this Certification is attached (the “Form 10-Q”), fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934, as amended, and (ii) the information contained in the Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: February 9, 2009

/s/ JAMES A. BEER

**James A. Beer**

*Executive Vice President and Chief Financial Officer*

This Certification which accompanies the Form 10-Q is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of the Company under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Form 10-Q), irrespective of any general incorporation language contained in such filing.

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