

EXHIBIT A

PURCHASE AND SALE AGREEMENT
(Asset Sale Pursuant to 11 U.S.C. Section 363)

PURCHASE AND SALE AGREEMENT (including all Exhibits and Schedules, as the same may be amended from time to time in accordance with its terms, this "Agreement"), dated as of June [], 2009, by and among THE SCO GROUP, INC., a Delaware corporation ("SCO Group" or the "Company"), SCO OPERATIONS, INC., a Delaware corporation and a wholly owned subsidiary of SCO Group ("SCO Operations"), SCO GLOBAL, INC., a Delaware corporation and a wholly owned subsidiary of SCO Group ("SCO Global"; together with SCO Group and SCO Operations, "Sellers" and each, a "Seller"), and UNXIS, INC., a Delaware corporation ("Purchaser"). Each Seller and Purchaser is referred to in this Agreement as a "Party" and collectively as the "Parties."

RECITALS

The following recitals form the basis for and are incorporated as a part of this Agreement:

- A. Sellers own or hold interests in the Purchased Assets described herein.
- B. On or about September 14, 2007 (the "Petition Date"), SCO Group and SCO Operations (together, the "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware, jointly administered as Case Nos. 07-11337 and 07-11338 (KG) (the "Chapter 11 Cases").
- C. Prior to the date hereof, Purchaser and/or its agent or affiliates, and Sellers have been in discussions and negotiations with respect to the purchase and sale of the Purchased Assets, and Purchaser has engaged, and continues to engage, in due diligence with respect thereto, and in particular, financial information of the Sellers, liabilities in respect of Employees, Acquired Subsidiaries, Purchased Subsidiaries, and export licenses.
- D. Sellers desire to sell, transfer and assign to Purchaser, and Purchaser desires to purchase, acquire and assume from Sellers, on the terms and subject to the conditions set forth in this Agreement and pursuant to Sections 363 and 365 of the Bankruptcy Code, all of the Purchased Assets and Assumed Liabilities, all as more specifically provided in this Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter set forth, and other good and valuable considerations, the receipt and adequacy of which are acknowledged, and intending to be legally bound, the Parties agree as follows:

ARTICLE I

CERTAIN DEFINED TERMS

1.1. Certain Definitions. For purposes of this Agreement, the following terms shall have the meanings specified in this Section 1.1:

"Action" means any claim, action, cause of action or suit (whether in contract or

tort or otherwise), litigation (whether at law or in equity, whether civil or criminal), controversy, assessment, arbitration, mediation or other dispute resolution proceeding, investigation, hearing, charge, complaint, demand, notice or proceeding to, from, by or before any Governmental Authority.

"Acquired Subsidiaries" means the Purchased Subsidiaries for which Purchaser has not made an Opt Out Election or a Subsidiary Asset Election, and "Acquired Subsidiary" means each of them.

"Affiliate" means, with respect to any specified Person at any time, (a) each Person, directly or indirectly controlling, controlled by, or under direct or indirect common control with, such specified Person at such time, (b) each Person who is at such time an officer or director of, or direct or indirect beneficial holder of at least 20% of any class of the equity interests of, such specified person, (c) each Person that is managed by a common group of executive officers and/or directors as such specified Person, (d) the members of the immediate family (i) of each officer, director or holder described in clause (b) and (ii) if such specified Person is an individual, of such specified Person, and (e) each Person of which such specified Person or an Affiliate (as defined in clauses (a) through (d)) thereof will, directly or indirectly, beneficially own at least 20% of any class of equity interests at such time. For the avoidance of doubt, the relationship of a third party to any specified Person as a reseller, distributor, sales representative, marketing agent or similar capacity for such Person shall not, by reason of such relationship alone, be deemed to make such third party an Affiliate of such Person.

"Agreement" shall have the meaning set forth in the preamble to this Agreement.

"Assignment and Assumption" means an assignment and assumption agreement, in form and substance mutually acceptable to Sellers and Purchaser.

"Assumed Contracts" means those Contracts to which a Seller is a party or by which it is bound and set forth on Exhibit A hereto, which Exhibit A may be amended from time to time as provided in Section 7.1(c).

"Assumed Executory Contracts" means the Assumed Contracts and the Assumed Leases.

"Assumed Leases" means unexpired leases for non-residential real property or personalty assumed by the Debtors under the Assumption and Assignment Order.

"Assumed Liabilities" shall have the meaning set forth in Section 2.4.

"Assumption and Assignment Order" means the Final Order of the Bankruptcy Court, in form and substance acceptable to Purchaser, (i) approving the assumption and assignment to Purchaser of the Assumed Executory Contracts, without adequate assurance of future performance liability pursuant to section 365(f)(2) of the Bankruptcy Code, except Purchaser's promise to perform its obligations under the Assumed Contracts following the Closing; (ii) transferring and assigning the Assumed Executory Contracts such that the Assumed Executory Contracts will be in full force and effect from and after the Closing with non-debtor parties being barred and enjoined from asserting against Purchaser, among other things, defaults,

breaches or claim of pecuniary losses existing as of the Closing or by reason of the Closing; and (iii) providing that the provisions of Rules 6004(g) and 6006(d) are waived and there will be no stay of execution under Rule 62(a) of the Federal Rules of Civil Procedure.

"Audited Financials" shall have the meaning set forth in Section 5.5(a)(i).

"AutoZone" means AutoZone, Inc. and "AutoZone Litigation" means that certain case styled *The SCO Group, Inc. v. AutoZone, Inc.*, Case No. CV-S-04-0237-RCJ-LRL in the United States District Court for the District of Nevada and appeals arising therefrom.

"Bankruptcy Code" means Title 11 of the United States Code.

"Bankruptcy Court" means the United States Bankruptcy Court for the District of Delaware, or such other court having jurisdiction over the Chapter 11 Cases originally administered in the United States Bankruptcy Court for the District of Delaware.

"Bill of Sale" means a bill of sale, in form and substance mutually acceptable to Sellers and Purchaser.

"Books and Records" means all material papers and records (in physical, electronic, magnetic or optical format) in the care, custody, or control of Sellers or any Purchased Subsidiary, relating directly or primarily to the Business, including all purchasing and sales records, customer and vendor lists, accounting and financial records, product documentation, product specifications, marketing requirement documents, software release notes or orders and documentation relating to maintenance obligations or other Assumed Liabilities, but excluding minute books, stock transfer records and tax returns (other than those of the Purchased Subsidiaries, which shall be deemed to be included within the definition of Books and Records).

"Business" means the business of Sellers as presently conducted by Sellers, either directly or through the Purchased Subsidiaries, including the business of developing, manufacturing, selling, marketing, supporting, and providing services related to, the Products.

"Business Day" means any day of the year on which national banking institutions in Wilmington, Delaware are open to the public for conducting business and are not required or authorized to close.

"Cash Deposit" means \$250,000.

"CEO" shall have the meaning set forth in Section 4.2(h).

"CFIUS Approval" means the approval (in whatever form is deemed by Purchaser to be sufficient) of the United States Government's Committee on Foreign Investment in the United States to the transactions contemplated by this Agreement.

"Chapter 11 Cases" shall have the meaning set forth in the Recitals to this Agreement.

“Claims” means any and all claims as defined in Section 101(5) of the Bankruptcy Code.

“Closing” shall have the meaning set forth in Section 4.1.

“Closing Date” shall have the meaning set forth in Section 4.1.

“COBRA” shall have the meaning set forth in Section 5.12(d).

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

“Company” shall have the meaning set forth in the preamble to this Agreement.

“Company Technology” means any and all Technology and Intellectual Property used in the operation of the Business by any Seller and/or by any Purchased Subsidiary as conducted prior to Closing or as contemplated by Sellers or by any Purchased Subsidiary prior to Closing to be conducted (including, without limitation, those evidenced by a written business plan, written development plan or computer software code).

“Company Owned Technology” means all Technology and Intellectual Property owned or claimed to be owned by any Seller or by any Purchased Subsidiary.

“Computer Software” means all computer software including: source code; object code; operating systems, applications programs, firmware; files, records and data; product specifications; schematics; logic diagrams; flow charts; algorithms; databases; routines; sub-routines; program and system logic; program architecture; program structure, sequence and organization; listings; screen displays; programmers’ notes; languages; compilers; testing routines and procedures; test results; documentation; operating instructions; technical and user manuals; training materials; all media on which any of the foregoing is recorded; all technology and tools used to design, develop, test, support, maintain and diagnose errors in the computer software; all updates, upgrades, modifications, enhancements, improvements and derivatives of the foregoing; and all other information and technical data related to the ownership, use, design, development, testing, enhancement, support and/or maintenance of the computer software.

“Confidentiality Agreement” means the Confidentiality Agreement, dated as of February 10, 2008, between SCO Group and Stephen Norris Capital Partners, LLC, which Purchaser acknowledges is binding upon it.

“Contract” means any written or oral contract, indenture, note, bond, lease, license or other legally binding agreement or arrangement.

“Contractual Obligation” means, with respect to any Person, liability, obligation, (whether of payment or performance or otherwise) arising under or in connection with any Contract, agreement, deed, mortgage, lease, license, commitment, promise, undertaking, arrangement or understanding, whether written or oral and whether express or implied, or other document or instrument (including but not limited to any document or instrument evidencing or otherwise relating to any Debt) to which or by which such Person is a party or otherwise subject or bound or to which or by which any property, business, operation or right of such Person is

subject or bound.

"Cure Amount" or "Cure Amounts" means any and all sums of money necessary to cure monetary defaults under the Assumed Executory Contracts which are required to be cured under the Bankruptcy Code so that such Assumed Executory Contracts may be assumed by Sellers and assigned to Purchaser in accordance with Section 365 of the Bankruptcy Code.

"Debt" for any Person means all obligations (including but not limited to Contractual Obligations) (a) for borrowed money, (b) evidenced by notes, bonds, debentures or similar instruments, (c) for which interest charges are customarily paid, (d) under conditional sale or other title retention agreements relating to property or assets purchased by such Person, (e) issued or assumed as the deferred purchase price of property or services (other than trade accounts payable), (f) earnouts arising in connection with acquisitions, (g) under capital leases, (h) in respect of interest rate protection agreements, foreign currency exchange agreements or other interest or exchange rate hedging arrangements, (i) as an account party in respect of letters of credit and bankers' acceptances, (j) with respect to any indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise to be secured by) any Encumbrances on property owned or acquired by such Person, (k) in the nature of guarantees of any indebtedness of others, and (l) all accrued interest on any of the foregoing.

"Debtors" shall have the meaning set forth in the Recitals to this Agreement.

"Employee Plan" means any plan, contract, commitment, program, policy or arrangement providing benefits that is maintained, sponsored, contributed or required to be contributed to by Sellers or any of their Subsidiaries or with respect to which Sellers or any of their Subsidiaries has any Liability, including, without limitation, (i) any "employee benefit plan" (within the meaning of Section 3(3) of ERISA), (ii) any profit-sharing, deferred compensation, bonus, stock option, stock purchase, pension, change of control, welfare or incentive plan, (iii) any plan, contract, commitment, program, policy or arrangement providing for "fringe benefits," (iv) any "multi-employer plan" (within the meaning of Section 3(37) of ERISA) and (v) any Foreign Plan (as defined in Section 5.12(e)).

"Employees" means all individuals, whether or not actively at work as of the date hereof, who are employed or engaged by any Seller or any Purchased Subsidiary in connection with the Business or the development of the Products.

"Encumbrance" means any defect or imperfection in title, encumbrance, lien (statutory or otherwise), hypothecation, interest, claim, Liability, charge, pledge, mortgage, deed of trust, security interest, lease, sublease, license, option, right of recovery, right of first refusal, easement, right-of-way, encroachment, servitude, covenant, condition, proxy, voting trust or agreement or transfer restriction under any shareholder or similar agreement, Tax (including foreign, federal state and local Tax), Order of any Government Authority, of any kind or nature (including (i) any conditional sale or other title retention agreement and any lease having substantially the same effect as any of the foregoing, (ii) any assignment or deposit arrangement in the nature of a security device, (iii) any claim based on any theory that Purchaser is a successor, transferee or continuation of Sellers, the Purchased Subsidiaries or the Business, and (iv) any leasehold interest, license or other right, in favor of a third party or a Seller or

Purchased Subsidiary to use any portion of the Purchased Assets), whether secured or secured, choate or inchoate, filed or unfilled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, contingent or non-contingent, material or non-material, known or unknown.

"Environmental Claim" means any claim, action, cause of action, investigation or notice by any Person alleging Liability (including, without limitation, Liability for investigatory costs, cleanup costs, governmental response costs, monitoring costs, natural resources damage, property damage, personal injury, or penalties) arising out of, based on or resulting from any violation or alleged violation by Sellers or the Purchased Subsidiaries of any Environmental Law or the presence, migration, discharge, release, generation, manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of any Hazardous Substances prior to Closing.

"Environmental Law" means all Laws now or previously in effect regulating, relating to, or imposing liability or standards of conduct concerning air emissions, water discharges, noise emissions, the release or threatened release or discharge of any Hazardous Substances into the environment, the generation, handling, treatment, storage, transport or disposal of any Hazardous Substances, or otherwise concerning pollution or the protection of the outdoor or indoor environment, and employee or human health or safety.

"Equipment" means all machinery, equipment, furniture, trade fixtures, furnishings, vehicles, leasehold improvements, Hardware and other tangible personal property including, without limitation, all artwork, desks, chairs, tables, Hardware, copiers, telephone lines and numbers, facsimile machines and other telecommunication equipment, cubicles and miscellaneous office furnishings and supplies.

"Equity Interests" means (a) any capital stock, share, partnership or membership interest, unit of participation or other similar interest (however designated) in any Person and (b) any option, warrant, purchase right, conversion right, exchange rights or other Contractual Obligation which would entitle any Person to acquire any such interest in such Person or otherwise entitle any Person to share in the equity, profit, earnings, losses of gains of such Person (including stock appreciation, phantom stock, profit participation or other similar rights).

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"Escrow" shall have the meaning set forth in Section 3.2.

"Escrow Agent" means Berger Singerman, P.A.

"Exchange Act" means the Exchange Act of 1934, as amended.

"Excluded Assets" shall have the meaning set forth in Exhibit D hereto.

"Excluded Liabilities" shall have the meaning set forth in Section 2.4.

"Facilities" means any buildings, plants, improvements or structures located on the Real Property.

"Final Order" means an Order as to which the time to file an appeal, a motion for rehearing or reconsideration or a petition for writ of certiorari has expired and no such appeal, motion or petition is pending.

"Financials" shall have the meaning set forth in Section 5.5(a)(iii).

"Foreign Plan" shall have the meaning set forth in Section 5.12(e).

"GAAP" means the accounting principles generally accepted in the United States, including as set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board, and applied consistently throughout the periods involved.

"Government Contract" means any prime or subcontract, license, purchase order, grant, or other agreement between Sellers and the United States Government, or between Sellers and an private entity when the ultimate end-user of Sellers' product or service is the United States Government.

"Government Order" means any order, writ, judgment, injunction, decree, stipulation, ruling, determination or award entered by or with any Governmental Authority.

"Governmental Authority" means any United States federal, state or local or any foreign government, or political subdivision thereof, or any multinational organization or authority or any authority, agency or commission entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power, any court or tribunal (or any department, bureau, or division thereof) or any arbitrator or arbitral body.

"Hardware" means any and all computer and computer-related hardware, including, without limitation, computers, file servers, facsimile servers, scanners, color printers, laser printers and networks.

"Hazardous Substances" means any pollutant, contaminant or hazardous, toxic, biohazardous, or dangerous waste, substance, constituent or material, defined or regulated as such in, or for purposes of, any Environmental Law, including, without limitation, any asbestos, any petroleum, oil (including crude oil or any fraction thereof), any radioactive substance, any polychlorinated biphenyls, any toxin, chemical, microbial matter, and any other substance that may give rise to liability under any Environmental Law.

"IBM" means International Business Machines Corporation and "IBM Litigation" means that certain case styled *The SCO Group, Inc. v. International Business Machines Corporation*, Case No. 2:03CV0294 in the United States District Court for the District of Utah and appeals and remands arising therefrom.

"IBM Agreements" means, collectively, the Software Agreement, Sublicensing Agreement, Substitution Agreement, and letter agreement between IBM and AT&T Technologies, Inc., each dated February 1, 1985, as such agreements have been amended and supplemented from time to time.

"Intellectual Property" means all of the following: the entire right, title and interest in and to all proprietary rights of every kind and nature, throughout the world, including all rights and interests pertaining to or deriving from: (a) registered and unregistered patents and copyrights, copyrightable works, mask work rights, technology, know-how, methods, processes, trade secrets, algorithms, inventions, works of authorship, proprietary data, databases, formulae, research and development information and Computer Software; (b) trademarks, trade names, service marks, service names, brands, trade dress and logos, and the goodwill and activities associated therewith, together with all translations, adaptations, derivations and combinations thereof; (c) domain name rights, rights of privacy and publicity, moral rights, and proprietary rights of any kind or nature, however denominated, throughout the world in all media now known or hereafter created; (d) trade secrets, know-how and confidential information; (e) any and all registrations, applications, recordings, licenses, common-law rights and Contractual Obligations relating to any of the foregoing; and (f) (except as expressly provided in this Agreement) all Actions and rights to sue at law or in equity for past or future infringement or other impairment of any of the foregoing, including the right to receive all proceeds and damages therefrom, and all rights to obtain renewals, reissues, reexaminations, continuations, continuations-in-part, divisions or other extensions of legal protections pertaining thereto.

"Interim Financials" shall have the meaning set forth in Section 5.5(a)(ii).

"Inventory" means all finished goods, work in process, raw materials, goods in transit, goods at customer sites and other inventory or goods held for sale of a Person in all forms, wherever located, now or hereafter existing.

"Law" means any federal, state, local or foreign law, common law, statute, code, decree, order, judgment, directive, ordinance, rule or regulation.

"Lease Assignment" means an assignment and assumption of lease for each of the Facilities included in the Purchased Assets, in form and substance mutually acceptable to Sellers and Purchaser, and "Lease Assignments" means all of them.

"Legal Requirement" means all requirements under Law and as imposed by all Orders and Contractual Obligations.

"Letter of Credit-Balance" means that certain irrevocable letter of credit issued on or before the fifth Business Day after the Bankruptcy Court enters the Sale Order, for the benefit of Sellers in the face amount of \$2,150,000 and expiring on the Termination Date, to be held by Escrow Agent and drawn upon as provided in Section 3.2.

"Letter of Credit-Sun" means that certain irrevocable letter of credit issued at Closing for the benefit of SCO Group in the face amount of \$2,850,000 and expiring on December 31, 2009, to be held by Escrow Agent and drawn upon as provided in Section 3.3, which letter of credit, subject to the foregoing, shall be issued (or confirmed and payable) by the financial institution that issued the Letter of Credit-Balance.

"Liability" means any Debt, liability or obligation (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due) and including all costs and expenses relating thereto.

"Litigated Contract Rights" means the rights of SCO Group, if any, with respect to (a) the IBM Agreements, and (b) the Sequent Agreements.

"Litigated Copyrights" means all copyrights the ownership of which is claimed by SCO Group in the Novell Litigation.

"Material Adverse Effect" means any events, circumstances, development, change or effect that, individually or in the aggregate with all other events, circumstances, developments, changes and effects, has or could reasonably be expected to have: (i) a material adverse effect on the Business or the Purchased Assets (taken as a whole) (excluding, however, any such effect arising out of or in connection with (a) the commencement or pendency of Sellers' bankruptcy cases, (b) general economic conditions, or (c) developments (including orders entered) in connection with any Action brought or maintained by or against any Seller or any Purchased Subsidiary; or (ii) a material adverse effect on the ability of Sellers or the Purchased Subsidiaries to consummate the transactions contemplated by this Agreement.

"Material Contract" shall have the meaning set forth in Section 5.14(a).

"Material Customer" means, subject to the exclusion below, any third party that, separately or together with its Affiliates, acquires from Purchaser or its Affiliates products or services in the Purchaser Business in a good faith, arm's length transaction, or series of related transactions (without restriction on the period of time during which such transactions may occur), for an aggregate cumulative consideration of at least \$7,500 as evidenced by an authentic invoice or similar documentation. A third party that becomes a Material Customer shall remain a Material Customer for so long as such third party remains in a contractual relationship with Purchaser or its Affiliates, whether for monetary or any other consideration whatsoever. By way of example and not by way of limitation:

(a) If a third party acquires a software product from Purchaser or its Affiliate for an initial license fee of \$8,000, payable in two installments, and thereafter pays Purchaser or its Affiliate an annual fee of 20% of such initial license fee (\$1,600) for maintenance and support of such software product, such party shall be a Material Customer by reason of the initial license fee and shall remain a Material Customer for so long as it continues to have a contractual relationship with Purchaser or its Affiliates.

(b) If a third party acquires a software product from Purchaser or its Affiliate for an initial license fee of \$5,000, payable in two installments, and thereafter pays Purchaser or its Affiliate an annual fee of 20% of such initial license fee (\$1,000) for maintenance and support of such software product, such party shall become a Material Customer when the aggregate of payment of the initial license fee and the first three years of maintenance and support fees exceed \$7,500.

Notwithstanding the foregoing, "Material Customer" shall not include IBM, Novell, Red Hat or AutoZone or their Affiliates or any third party that owns, leases or operates, directly or indirectly, at least 10,000 computer servers each of which uses any operating system based to a material extent on the Linux GNU General Public License (GPL) kernel (each, a "Linux Server"). In the event of a dispute between Purchaser and Sellers with respect to whether or not

an entity is an Affiliate of IBM, Novell, Red Hat or AutoZone, or a third party that owns, leases or operates, directly or indirectly, at least 10,000 such Linux Servers, Sellers shall have the burden of proving (by a preponderance of the evidence) that such entity is such an Affiliate of IBM, Novell, Red Hat or AutoZone or that such third party does own, lease, or operate, directly or indirectly, at least 10,000 such Linux Servers, and Purchaser shall not have the burden of proving that such third party is not such an Affiliate of IBM, Novell, Red Hat or AutoZone and does not own, lease, or operate, directly or indirectly, at least 10,000 such Linux Servers.

"Most Recent Balance Sheet Date" shall have the meaning set forth in Section 5.5(a)(i).

"Novell" means Novell, Inc. and "Novell Litigation" means that certain case styled *The SCO Group, Inc. v. Novell, Inc.*, Case No. 2:04CV00139 in the United States District Court for the District of Utah, and appeals and remands arising therefrom.

"Novell APA" means the Asset Purchase Agreement, dated September 19, 1995, between Novell and Santa Cruz Operations, Inc., as the same may have been amended or supplemented from time, and as the terms of which are finally determined in the Novell Litigation.

"Opt Out Election" shall have the meaning set forth in Section 2.6(a).

"Order" means any order, injunction, judgment, decree, ruling, writ, assessment or arbitration award of a Governmental Authority.

"Ordinary Course of Business" means the ordinary and usual course of normal day-to-day operations of the Business in the development, marketing, licensing and support of the Purchased Assets since the Petition Date.

"Organizational Documents" means any certificate or articles of incorporation or formation, memoranda of association, bylaws or other charter or other applicable organizational or governing documents of any Person.

"Party" and "Parties" shall have the meaning set forth in the preamble to this Agreement.

"Pending SCO Litigation" or "Pending SCO Litigation Claims" means any and all claims asserted or to be asserted by SCO Group against Novell in the Novell Litigation, against IBM in the IBM Litigation, against AutoZone in the AutoZone litigation, against Red Hat in the Red Hat litigation, solely during the pendency of such Actions and/or in connection with the settlement of same, including any and all appeals and remands within such Actions, and any and all enforcement Actions brought by SCO Group directly related thereto.

"Permits" means any approvals, authorizations, consents, licenses, permits or certificates of a Governmental Authority.

"Permitted Encumbrances" means (i) any Assumed Liability, and (ii) any easements, covenants, conditions, restrictions and other similar matters of record on real

property, leasehold estates, or personalty that do not, and would not reasonably be expected to, in any material respect detract from the value thereof and do not individually or in the aggregate in any material respect interfere with the present use of the property subject thereto.

“Person” means any individual, corporation, limited liability company, partnership, firm, joint venture, association, joint-stock company, trust, unincorporated organization, Governmental Authority or other entity.

“Petition Date” shall have the meaning set forth in the Recitals to this Agreement.

“Post-Closing Escrow Agreement” means the Post-Closing Escrow Agreement, dated as of the Closing Date, among SCO Group, Purchaser and Escrow Agent, in the form attached hereto as Exhibit H.

“Pre-Closing Escrow Agreement” means the Pre-Closing Escrow Agreement, dated as of the date hereof, among Sellers, Purchaser and Escrow Agent.

“Products” means any and all products set forth in Exhibit B hereto.

“Purchase Price” shall have the meaning set forth in Section 3.1.

“Purchased Assets” shall have the meaning set forth in Section 2.2.

“Purchased Subsidiaries” means (a) SCO Software (UK) Ltd., a United Kingdom corporation, (b) SCO Japan, Ltd., a Japanese corporation, (c) SCO Canada Company, a Canadian corporation, and (d) The SCO Group GmbH, a German corporation, each of which is wholly owned by SCO Group, and “Purchased Subsidiary” means any of them.

“Purchased Subsidiary Documents” shall have the meaning set forth in Section 5.2(b).

“Purchaser” shall have the meaning set forth in the preamble to this Agreement.

“Purchaser Business” shall have the meaning set forth in Section 8.9(a).

“Purchaser Documents” shall have the meaning set forth in Section 6.2.

“Purchaser Material Adverse Effect” shall have the meaning set forth in Section 6.4.

“Purchaser Services” shall have the meaning set forth in Section 8.9(a).

“Real Property” shall have the meaning set forth in Section 5.7(a).

“Real Property Leases” shall have the meaning set forth in Section 5.7(a).

“Red Hat” means Red Hat, Inc. and “Red Hat Litigation” means that certain case styled *Red Hat, Inc. v. The SCO Group, Inc.*, Civil Case No. 03-772 in the United States District Court for the District of Delaware and appeals and remands arising therefrom.

"Registered Intellectual Property" means all Intellectual Property owned or controlled by any Seller or any Purchased Subsidiary relating to the Business that has been registered, or for which an application for registration has been filed, with the United States Patent and Trademark Office, the United States Copyright Office or any other Governmental Authority.

"Requested Party" shall have the meaning set forth in Section 8.6(b).

"Restrictive Covenants" shall have the meaning set forth in Section 8.9(f).

"Rule" or "Rules" means the Federal Rules of Bankruptcy Procedure.

"Sale Hearing" means the hearing of the Bankruptcy Court to approve this Agreement and the transactions contemplated herein.

"Sale Motion" shall have the meaning set forth in Section 7.1(a).

"Sale Order" means the Final Order of the Bankruptcy Court in a form reasonably acceptable to Purchaser, to be entered by the Bankruptcy Court pursuant to sections 363 and 365 of the Bankruptcy Code, (i) providing that the Bankruptcy Court shall retain jurisdiction for the purpose of enforcing the provisions of the Sale Order including, without limitation, compelling delivery of the Purchased Assets to Purchaser and protecting Purchaser against any Encumbrances against Sellers or the Purchased Assets, (ii) approving the sale of the Purchased Assets to Purchaser, free and clear of all Encumbrances (other than Permitted Encumbrances) whatsoever under Section 363 of the Bankruptcy Code and any other applicable sections of the Bankruptcy Code on the terms and conditions set forth in this Agreement including, specifically and without limitation, the release and covenant in Section 12.3, and authorizing Sellers to proceed with this transaction, (iii) stating that any objections timely filed with respect to the sale of the Purchased Assets, which have not been withdrawn, are overruled or the interests of such objections have been otherwise satisfied or adequately provided for by the Bankruptcy Court, (iv) finding that the Purchase Price represents fair value for the Purchased Assets, (v) finding that the sale is in the best interests of Sellers' estates and creditors, (vi) finding, with specific in support thereof, that Purchaser is a good faith purchaser of the Purchased Assets under Section 363(m) of the Bankruptcy Code and that the provisions of Section 363(n) of the Bankruptcy Code have not been violated, (vii) authorizing and directing Sellers to execute, deliver, perform under, consummate and implement this Agreement, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the foregoing, (viii) determining that Purchaser is not a successor to Sellers or otherwise liable for any of the Excluded Liabilities and permanently enjoining each and every holder of any of the Excluded Liabilities from commencing, continuing or otherwise pursuing or enforcing any Action or Encumbrance against Purchaser or the Purchased Assets related thereto, and (ix) Sellers' obligations under the Seller Documents shall be binding upon, and inure to the benefit of, Purchaser, Sellers, Sellers' estates, and their respective trustees, officers, heirs, executors, administrators, successors and assigns, including, without limitation, any such trustee appointed or elected with respect to the Chapter 11 Cases.

"SCO Group" shall have the meaning set forth in the preamble to this Agreement.

"SCO Operations" shall have the meaning set forth in the preamble to this Agreement.

"SCO Global" shall have the meaning set forth in the preamble to this Agreement.

"SEC" means the U.S. Securities and Exchange Commission.

"SEC Reports" shall have the meaning set forth in Section 5.24.

"Seller" and "Sellers" shall have the meaning set forth in the preamble to this Agreement.

"Seller Documents" shall have the meaning set forth in Section 5.2(a).

"Sequent Agreements" means the Software Agreement between Sequent Computer Systems, Inc. and AT&T Technologies, Inc., dated April 18, 1985, as amended and supplemented from time to time, and the Sublicensing Agreement and the Substitution Agreement, each dated January 28, 1986, between Sequent Computer Systems, Inc. and AT&T Technologies, Inc., as such agreements have been amended and supplemented from time to time.

"Subcontracted Services" shall have the meaning set forth in Section 8.8.

"Subsidiaries" means any Persons of which a majority of the outstanding voting securities or other voting equity interests are owned, directly or indirectly, by any of the Sellers.

"Subsidiary Asset Election" shall have the meaning set forth in Section 2.6(a).

"SVRX Licenses" shall have the meaning set forth in the Novell APA, as the terms of which are finally determined in the Novell Litigation.

"SVRX Royalties" shall have the meaning set forth in the Novell APA, as the terms of which are finally determined in the Novell Litigation.

"Tax Return" means any report, return, estimated tax payment, form, declaration, claim for refund, or information return or statement related to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

"Tax" or "Taxes" means (a) any federal, state, local, foreign and other tax, charge, fee, duty (including customs duty), levy or assessment, including any income, gross receipts, net proceeds, alternative or add-on minimum, corporation, ad valorem, turnover, real and personal property (tangible and intangible), sales, use, franchise, excise, value added, stamp, leasing, lease, user, transfer, fuel, excess profits, profits, occupational, premium, interest equalization, windfall profits, severance, license, registration, payroll, environmental (including taxes under Section 59A of the Code), capital stock, capital duty, disability, estimated, gains, wealth, welfare, employee's income withholding, other withholding, unemployment and social security or other tax of whatever kind (including any fee, assessment and other charges in the nature of or in lieu of any tax) that is imposed by any Governmental Authority, (b) any interest, fines, penalties or additions resulting from, attributable to, or incurred in connection with any items

described in this paragraph or any related contest or dispute and (c) any items described in this paragraph that are attributable to another Person for which any of Sellers or any Acquired Subsidiary is liable to pay by Law, by Contract or otherwise, whether or not disputed.

"Technology" means all inventions, works of authorship, discoveries, developments, innovations, know-how, ideas, concepts, research and development, information, formulae, compositions, methods, processes, techniques, data, designs, models, drawings, schematics, specifications, blueprints, customer and supplier lists, pricing and cost information, business and marketing plans and proposals, documentation and manuals, Computer Software, Hardware, integrated circuits and integrated circuit masks, electronic, electrical and mechanical equipment and all other forms of technology, including improvements, modifications, works in progress, derivatives or changes, whether tangible or intangible, embodied in any form, whether or not protectible or protected by patent, copyright, mask, work right, trade secret Law or otherwise, and all notes, notebooks, reports, summaries, memoranda and other documentation and materials recording any of the foregoing.

"Termination Date" shall mean the date that is 90 days from the date hereof or such later date as the Parties shall mutually agree, provided, however, that no Party shall have any obligation to so agree to extend such date.

"Transfer Taxes" shall have the meaning set forth in Section 11.6.

"Transition Agreements" shall have the meaning set forth in Section 8.8.

"Transition Period" shall have the meaning set forth in Section 8.8.

"WARN" means the Worker Adjustment and Retraining Notification Act of 1988, as amended, and any similar state Law, and the rules and regulations thereunder.

1.2. Terms Defined Elsewhere in this Agreement. Capitalized terms that are defined in this Agreement other than in Section 1.1 shall have the meanings given to them where they are defined.

1.3. Other Definitional and Interpretive Matters.

(a) Unless otherwise expressly provided, for purposes of this Agreement, the following rules of interpretation shall apply:

(i) Calculation of Time Period. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day.

(ii) Dollars. Any reference in this Agreement to \$ shall mean U.S. dollars.

(iii) Exhibits/Schedules. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any matter or item disclosed on one schedule shall be deemed to have been disclosed on each other schedule only where such matter or item's relevance is readily apparent on the face of such item. Any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein shall be defined as set forth in this Agreement.

(iv) Gender and Number. Any reference in this Agreement to gender shall include all genders, and words imparting the singular number only shall include the plural and vice versa.

(v) Headings. The provision of a Table of Contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Agreement. All references in this Agreement to any "Section" are to the corresponding Section of this Agreement unless otherwise specified.

(vi) Herein. The words such as "herein," "hereinafter," "hereof" and "hereunder" refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires.

(vii) Including. The words such as "includes" and "including" mean "including without limitation."

(b) The Parties have participated jointly in the negotiation and drafting of this Agreement and, if an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement.

ARTICLE II

PURCHASE AND SALE OF PURCHASED ASSETS; ASSUMPTION OF ASSUMED LIABILITIES

2.1. Purchase and Sale. On the terms and subject to the conditions set forth in this Agreement (including the payment of the Purchase Price pursuant to Article III) and except as otherwise expressly provided herein, at the Closing, Purchaser shall purchase, acquire and accept from Sellers, and Sellers shall sell, transfer, assign, convey and deliver to Purchaser, free and clear of all Claims, Encumbrances and other interests, whether arising prior to or subsequent to the Petition Date and prior to the Closing (except for the Assumed Liabilities and the Permitted Encumbrances), each Seller's and each Purchased Subsidiary's right, title and interest of every kind and nature, owned, licensed or leased by Sellers or the Purchased Subsidiaries (including indirect and other forms of beneficial ownership) as of the Closing Date, whether tangible or intangible, real or personal and wherever located and by whomever possessed, in and to the Purchased Assets.

2.2. Purchased Assets. As used in this Agreement, "Purchased Assets" means all assets used or held for use by any Seller or any Purchased Subsidiary in the Business, as the same shall exist at and as of the Closing, whether or not any of such assets have any value for accounting purposes or are reflected on the Financials (as defined in Section 5.5(a) below), including, but not limited to, the following assets, but excluding the Excluded Assets described in Section 2.3:

(a) deposits made by any of the Sellers or Purchased Subsidiaries under any Assumed Executory Contracts;

(b) all Equity Interests and other interests of SCO Group in each of the Purchased Subsidiaries;

(c) all tangible personal property, supplies, computers, printers, Equipment, relating to the Business, including all furniture, fixtures, goods and other similar assets, including the fixed assets described on Exhibit C hereto;

(d) all Assumed Executory Contracts assumed and assigned to Purchaser pursuant to the Assumption and Assignment Order or other order of the Bankruptcy Court, including all right, title and interest of Sellers in and to the Litigated Contract Rights, as finally determined in the Novell Litigation;

(e) all Company Technology, including without limitation all right, title and interest of the Sellers in and to the Litigated Copyrights, as finally determined in the Novell Litigation (and subject to ARTICLE XII hereof);

(f) all (i) customer and client lists, vendor lists, catalogues, data relating to vendors, promotion lists and marketing data and other compilations of names and requirements related to the Business; (ii) telephone numbers, internet addresses and web sites related to the Business; and (iii) other material information related to the Business;

(g) all general intangibles relating to the Business;

(h) all Inventory related to the Business;

(i) all Products;

(j) originals of the Books and Records, provided that Sellers may retain copies of such Books and Records;

(k) all governmental and other Permits, to the extent assignable, used in or relating to the Business;

(l) (except as otherwise expressly provided in this Agreement) all rights to recover past, present and future damages from third parties for the breach, infringement or misappropriation, as the case may be, of any of the foregoing; and

(m) all goodwill associated with the foregoing.

In the event that the rights of Sellers or of any Purchased Subsidiary to the Company Technology and related Purchased Assets are expanded through Sellers' appeal of prior rulings in the Novell Litigation, and subsequent trial or other proceedings, those expanded rights will also be transferred to Purchaser as part of this transaction (including subject to ARTICLE XII hereof) without further payment by Purchaser.

2.3. Excluded Assets. Nothing contained herein shall be deemed to sell, transfer, assign or convey the Excluded Assets to Purchaser, and Sellers and the Purchased Subsidiaries shall retain all right, title and interest to, in and under the Excluded Assets. The Excluded Assets shall include United States Patent No. 6,931,544, "Method and Apparatus for Executing Multiple Java™ Applications on a Single Java™ Virtual Machine," issued August 16, 2005, and all foreign counterparts thereof, and all extensions, reissues, and reexaminations thereof (collectively the "Java Patent"); provided, however, that if the Java Patent is owned by any Seller, or any Affiliate of any Seller, on December 31, 2009, then all right, title and interest in, to and under such Java Patent shall immediately and automatically become vested in, owned by, and assigned and transferred to Purchaser, without any further act or deed or consideration being required of Purchaser. In furtherance therewith, Sellers shall execute and deliver to Purchaser at Closing a patent assignment in form and substance acceptable to Purchaser and suitable for recordation in the U.S. Patent and Trademark Office, which Purchaser agrees not to record or seek to enforce at any time prior to January 1, 2010. Sellers shall be entitled to sell, assign, transfer or otherwise convey for fair value such Java Patent, free and clear of any claim of Purchaser, on or before December 31, 2009; and if any such sale, assignment, transfer or other conveyance for fair value occurs on or before December 31, 2009, Sellers shall give Purchase prompt written notice thereof and shall provide to Purchase such documentary evidence thereof as Purchaser may reasonably require, and upon the receipt of such notice and documentary evidence, Purchaser shall promptly return to Sellers any and all originals of the patent assignment described herein, marked for cancellation, and shall destroy any and all copies of such patent assignment except for copies retained solely for archival purposes.

2.4. Assumed Liabilities. On the terms and subject to the conditions set forth in this Agreement, at the Closing, Purchaser shall assume irrevocably the following Liabilities of Sellers (the "Assumed Liabilities"):

(a) All Liabilities related to the Purchased Assets, to the extent such Liabilities are expressly set forth in Schedule 2.4(a); and

(b) All executory obligations under the Assumed Executory Contracts first arising after the Closing.

2.5. Excluded Liabilities. Notwithstanding anything in this Agreement to the contrary, except for the Assumed Liabilities specifically described in Section 2.4, Purchaser shall not assume, be liable for, or have responsibility with respect to, and shall be deemed not to have assumed, be liable for, or have any responsibility with respect to, any Liabilities of Sellers or Purchased Subsidiaries, whether known or unknown, absolute or contingent, accrued or unaccrued, due or to become due (collectively, the "Excluded Liabilities"), which Excluded Liabilities include, without limitation:

- (a) Any Liabilities arising out of or relating to Excluded Assets, including Liabilities first arising or accruing prior to Closing under Assumed Executory Contracts;
- (b) Any Contracts of the Subsidiaries and all Liabilities arising thereunder, other than Assumed Executory Contracts and related Liabilities as set forth in Section 2.4(b);
- (c) Except as provided in Article IX, any Liabilities with respect to all employee benefit plans, policies, agreements and arrangements of Sellers, including all employee plans, and any Liability to or in respect of, or arising out of or in connection with, the employment by any of the Sellers or cessation of employment with any of the Sellers of any employees or independent contractors or former employees or independent contractors of any of the Sellers, including any severance obligations that arise on or prior to the Closing Date;
- (d) Any Liabilities for (i) Taxes of or payable by Sellers (including all Liabilities for Taxes relating to the Purchased Assets) for any Tax periods (or portions thereof), and (ii) Transfer Taxes;
- (e) Any Liabilities incurred in the Ordinary Course of Business and existing prior to the filing of the Chapter 11 Cases that are subject to compromise under the Bankruptcy Code;
- (f) Any Debt of Sellers or of any Purchased Subsidiary that is not specifically included as an Assumed Liability;
- (g) Any Liabilities in connection with any Action, including without limitation any Liabilities in connection with the Novell Litigation, the IBM Litigation, the AutoZone Litigation and the Red Hat Litigation;
- (h) Any Liabilities for SVRX Royalties under any Contracts that are determined in any Action to be SVRX Licenses as a result of a final determination in the Novell Litigation that SCO Group is the owner of the Litigated Copyrights;
- (i) Any Liabilities arising prior to the Closing under Environmental Law or related to the presence or release of any Hazardous Substance at any property prior to the Closing; and
- (j) All other Liabilities, accrued expenses or accounts payable of Sellers or Purchased Subsidiaries arising from or associated with the Business or the Purchased Assets arising from events, facts or circumstances occurring before the Closing, except to the extent expressly identified as an Assumed Liability.

2.6. Purchased Subsidiaries.

- (a) The parties acknowledge that (i) a portion of the Purchased Assets are presently owned and/or held by the Purchased Subsidiaries and (ii) the outstanding Equity Interests in the Purchased Subsidiaries are included in the Purchased Assets. Sellers further acknowledge and agree that (1) Purchaser has not completed its due diligence with respect to the Purchased Assets including, without limitation, the Purchased Subsidiaries and (2) Purchaser

intends, subject to Sections 8.1 and 8.5, to continue to exercise its right to make such investigations of the properties, businesses and operations of each of the Purchased Subsidiaries and to examine the books and records thereof. Subject to the completion of such due diligence and in its sole and absolute discretion, Purchaser may elect (A) not to purchase the outstanding Equity Interests in one or more of the Purchased Subsidiaries (with respect to each Purchased Subsidiary, an "Opt Out Election"), and/or (B) to purchase the portion of the Purchased Assets owned by the one or more of the Purchased Subsidiaries from such Purchased Subsidiaries (with respect to each Purchased Subsidiary, a "Subsidiary Asset Election"), each of which Opt Out Election and Subsidiary Asset Election shall be made not less than three Business Days prior to the Closing Date by written notice to Sellers setting forth its election with respect to each Purchased Subsidiary. In the event that Purchaser makes one or more Subsidiary Asset Elections, SCO Group, as the holder of all of the Equity Interests in each Purchased Subsidiary, shall cause the applicable Purchased Subsidiaries to sell, assign, transfer and convey to Purchaser the Purchased Assets owned and/or held by such Purchased Subsidiaries at Closing, subject to the terms and conditions of this Agreement. In the event that Purchaser makes an Opt Out Election with respect to one or more Purchased Subsidiaries, Sellers shall have no obligation to sell to Purchaser and Purchaser shall have no obligation to purchase the Equity Interests held by SCO Group in such Purchased Subsidiaries. The Parties hereby agree that the exercise of any Opt Out Election and/or Subsidiary Asset Election shall not result in the increase or decrease of the Purchase Price.

(b) Sellers acknowledge and agree that at the Closing, SCO Group, as the record and beneficial holder of all of the outstanding Equity Interests in the Purchased Subsidiaries, shall transfer to Purchaser all of its right, title and interest in and to such Equity Interests, free and clear of all Claims and Encumbrances, in each of the Purchased Subsidiaries in which Purchaser has not made an Opt Out Election or a Subsidiary Asset Election. Sellers hereby agree that prior to the Closing they shall take any and all action as may be necessary so that as of the Closing, such Purchased Subsidiaries shall not hold any cash or other Excluded Assets and not have any Excluded Liabilities. The Parties hereby agree that such transfer to Purchaser of such Equity Interests in the Purchased Subsidiaries shall not result in the increase or decrease of the Purchase Price.

ARTICLE III

CONSIDERATION

3.1. Purchase Price. The aggregate purchase price for the Purchased Assets is (i) \$5,250,000 (the "Purchase Price"), payable by delivery of (a) the Cash Deposit, (b) the Letter of Credit-Balance and (c) the Letter of Credit-Sun, and (ii) assumption of the Assumed Liabilities. Prior to the date hereof, an affiliate of Purchaser delivered \$250,000 to Escrow Agent to be held pursuant to an escrow agreement, dated as of June 9, 2009, among such affiliate, Sellers and Escrow Agent, and (1) concurrently with the execution and delivery of this Agreement, such affiliate has directed Escrow Agent to continue to hold such \$250,000, which shall be deemed to be the Cash Deposit hereunder, and (2) on or before the fifth Business Day after the entry by the Bankruptcy Court of the Sale Order Purchaser will deliver to Escrow Agent the Letter of Credit-Balance, which Cash Deposit and Letter of Credit-Balance shall be held and released as provided.

in Section 3.2. At the Closing, Purchaser shall deliver to Escrow Agent the Letter of Credit-Sun, which shall be held and released as provided in Section 3.3.

3.2. Cash Deposit and Letter of Credit-Balance. Concurrently with the execution and delivery of this Agreement by Purchaser and Sellers, Purchaser is deemed to have deposited (as described in Section 3.1) with Escrow Agent, the Cash Deposit, and on or before the fifth Business Day after the entry by the Bankruptcy Court of the Sale Order, Purchase will deposit with Escrow Agent the Letter of Credit-Balance, which Cash Deposit and Letter of Credit-Balance shall be held and released in accordance with the terms of the Pre-Closing Escrow Agreement and this Agreement. The Cash Deposit and the Letter of Credit-Balance (the Cash Deposit, together with the Letter of Credit-Balance, if and when delivered to Escrow Agent, the "Escrow") will be released by Escrow Agent and delivered to either Purchaser or Sellers as follows:

(a) If the Closing occurs, the Escrow shall be delivered to Sellers at Closing and Sellers shall be entitled to draw on the Letter of Credit-Balance on or after the Closing Date.

(b) If this Agreement is terminated by Purchaser pursuant to Section 4.4(b), the Escrow shall be returned to Purchaser and Sellers shall have no rights with respect thereto.

(c) If this Agreement is terminated by Sellers due to a breach by Purchaser pursuant to Section 4.4(f), (i) the Cash Deposit shall be delivered to Sellers, and (ii) the Letter of Credit-Balance shall be returned to Purchaser and Sellers shall have no rights with respect thereto.

(d) If this Agreement is terminated for any reason other than by Sellers pursuant to Section 4.4(f), the Escrow shall be returned to Purchaser and Sellers shall have no rights with respect thereto.

3.3. Letter of Credit-Sun. Concurrently with the Closing, Purchaser will deposit with Escrow Agent the Letter of Credit-Sun, which Letter of Credit-Sun will be held and released in accordance with the terms and provisions of the Post-Closing Escrow Agreement and this Agreement. The Letter of Credit-Sun will be drawn by Escrow Agent and paid to Novell, or released by Escrow Agent and delivered to Purchaser, as follows:

(a) As used herein, the term "District Court Sun Agreement Judgment" means that portion of the Final Judgment entered on November 20, 2008 by the U.S. District Court, District of Utah, Central Division, that Novell is entitled to payment from SCO Group in connection with the 2003 agreement between SCO Group and Sun Microsystems, Inc. (the "Sun Agreement"). If following the Closing and on or before August 31, 2009, the District Court Sun Agreement Judgment is affirmed in whole or in part by the United States Court of Appeals for the Tenth Circuit (the "Appeals Court") as a result of the appeal by SCO Group of the District Court Sun Agreement Judgment (the "Appeal"), then Escrow Agent shall be authorized and directed by SCO Group to draw on such Letter of Credit-Sun on behalf of and in the name of SCO Group to the extent required to satisfy such payment obligation to Novell determined in the Appeal (subject to paragraph (c) below); provided that Purchaser, in its sole discretion and at its sole cost and expense, may elect to require SCO Group to seek further appellate review of such

ruling of the Appeals Court and, in such event, (i) Purchaser shall direct and control such further appeal efforts with counsel of its choosing and SCO Group shall cooperate with Purchaser and such counsel and take any and all such action as may be necessary or desirable in connection with such seeking and prosecuting such appeals, and (ii) Escrow Agent shall continue to hold the Letter of Credit-Sun and neither SCO Group nor Escrow Agent on behalf of SCO Group shall be entitled to draw on the Letter of Credit-Sun unless and until such time as a final non-appealable judgment with respect to such payment obligation has been entered. Thereafter, Escrow Agent shall be authorized and directed by SCO Group to draw on the Letter of Credit-Sun on behalf of and in the name of SCO Group, subject to the limitations set forth in this Section 3.3.

(b) If following the Closing and on or prior to August 31, 2009, the District Court Sun Agreement Judgment is reversed and/or remanded in whole or in part, then Escrow Agent shall continue to hold the Letter of Credit-Sun and the Letter of Credit-Sun may not be drawn on until such time as a final, non-appealable judgment is entered with respect to the payment obligation of SCO Group to Novell with respect to the Sun Agreement (or such earlier time as Purchaser shall agree in its reasonable discretion). So long as the Letter of Credit-Sun is in effect and subject to being drawn on under the terms of this Section for payment of any amounts that may be determined to be owed and payable by SCO Group to Novell with respect to the Sun Agreement, SCO Group agrees that Purchaser, in its sole discretion and at its sole cost and expense, may direct and control the litigation between SCO Group and Novell regarding the Sun Agreement, including settlement discussions and appeals, with counsel of Purchaser's choosing and SCO Group shall cooperate with Purchaser and such counsel and take any and all such action as may be necessary or desirable in connection with such seeking and prosecuting such appeals; provided that Purchaser may not settle such litigation without the prior written consent of SCO Group if the settlement (i) is for an amount greater than the face amount of the Letter of Credit-Sun, or (ii) is for or involves non-monetary consideration or non-monetary judicial relief, including, but not limited to, promises by any Seller to do or forbear from doing any act or the granting of equitable remedies, or (iii) involves, requires, or implies admissions of wrongful acts (whether civil or criminal) by any Seller.

(c) Notwithstanding anything in clause (a) or (b) above to the contrary: (i) the monies so drawn by SCO Group or Escrow Agent on behalf of and in the name of SCO Group shall be used solely to pay Novell in accordance with the final judgment of the applicable court; (ii) in the event that the amount determined in a final, non-appealable judgment to be owed by SCO Group to Novell is less than the face amount of the Letter of Credit-Sun, then only such amount that is so determined to be owed and payable by SCO Group to Novell may be drawn on the Letter of Credit-Sun and paid to Novell on behalf of and in the name of SCO Group, and the remaining balance of the Letter of Credit-Sun may be terminated and cancelled by Purchaser; (iii) in the event that an amount in excess of the face amount of the Letter of Credit-Sun is owed and payable to Novell, Purchaser shall have no obligation to pay all or any portion of such excess; and (iv) in the event that (A) on or prior to August 31, 2009 the District Court Sun Agreement Judgment is neither affirmed in whole or in part nor reversed and/or remanded in whole or in part, or (B) for any reason whatsoever, the Letter of Credit-Sun is not drawn by SCO Group or Escrow Agent on behalf of and in the name of SCO Group on or before December 31, 2009, the Letter of Credit-Sun shall terminate and SCO Group shall have no rights with respect thereto and Purchaser shall have no obligation to pay such portion of the Purchase Price.

3.4. Purchaser Ability to Perform. In connection with the filing of the Sale Motion, Purchaser will demonstrate to the reasonable satisfaction of Sellers and the Bankruptcy Court, that Purchaser is, as of the Sale Hearing, prepared to close and pay the Purchase Price at Closing, and provide adequate assurance of future performance under the Assumed Executory Contracts, subject to satisfaction of the conditions to its obligation to close including, without limitation, receipt of CFIUS Approval.

ARTICLE IV

CLOSING AND TERMINATION

4.1. Closing Date. Subject to the satisfaction of each of the conditions set forth in Sections 10.1, 10.2 and 10.3 hereof (or the waiver thereof by the Party entitled to waive that condition), the closing of the purchase and sale of the Purchased Assets and the assumption of the Assumed Liabilities provided for in Article II hereof (collectively, the "Closing") shall take place at or prior to 5:00 p.m. local Miami, Florida time on the Business Day selected by Purchaser that is after the Sale Order is entered and in any event by no later than the Termination Date, or such other date as Sellers and Purchaser shall mutually agree, subject to satisfaction of all conditions to Closing in this Agreement including, without limitation, Sections 10.1, 10.2 and 10.3. The Closing shall take place at the offices of Berger Singerman, P.A., 200 South Biscayne Boulevard, Suite 1000, Miami, Florida 33131 (or at such other place as the Parties may designate in writing). The date on which the Closing shall be held is referred to in this Agreement as the "Closing Date." For purposes of determining what constitutes Purchased Assets, the Closing shall be deemed to have occurred at 11:59 p.m. local New York time as of the place of Closing on the Business Day prior to the Closing Date.

4.2. Conditions of Purchaser's Obligation to Close. At or before the Closing, Purchaser shall have received:

- (a) the Bill of Sale, duly executed by Sellers;
- (b) the Assignment and Assumption, duly executed by Sellers;
- (c) a Lease Assignment, duly executed by the applicable Seller that holds the leasehold interest as tenant in each such Facility;
- (d) a certificate or certificates representing all of the outstanding Equity Interests in each of the Purchased Subsidiaries for which Purchaser has not made an Opt Out Election or a Subsidiary Asset Election, together with instruments of transfer necessary to transfer to Purchaser all of the Equity Interests in each such Purchased Subsidiary, free and clear of all Claims and Encumbrances, and the corporate seals, minute books, stock records and other corporate books and records for each such Purchased Subsidiary;
- (e) with respect to each of the Purchased Subsidiaries for which Purchaser has made a Subsidiary Asset Election, (i) a Bill of Sale, (ii) an Assignment and Assumption, and (iii) a Lease Assignment if such Purchased Subsidiary is party to a lease with respect to a Facility, each duly executed by such Purchased Subsidiary; and with respect to each such Purchased Subsidiary, a copy of a termination agreement, effective on or before the Closing Date, between

such Purchased Subsidiary and the Sellers pursuant to which termination agreement the agency agreement between such Purchased Subsidiary and any Seller (or any similar agreement between or among such parties) is terminated and of no further force and effect;

(f) to the extent that Company Technology is a Purchased Asset, duly executed assignments of (i) any patents, patent applications, registered trademarks and applications for trademark registration owned by any Seller that are included in such Company Technology, in forms suitable for recording in the United States Patent and Trademark Office, (ii) any copyright registrations and applications for copyright registration owned by any Seller that are included in such Company Technology, in forms suitable for recording in the United States Copyright Office, and (iii) any domain name registrations and applications for domain name registration owned by any Seller that are included in such Company Technology, in forms suitable for transfer of such domain names;

(g) an employment agreement, in form and substance reasonably satisfactory to Purchaser, duly executed and delivered by (i) each of the Persons set forth in Part I of Exhibit E hereto and (ii) not less than the number, as set forth in Part II of Exhibit E, of Persons within each group identified in Part II of Exhibit E, pursuant to which each such Person shall be employed by Purchaser effective as of the Closing Date;

(h) a copy of a non-compete agreement, in form and substance reasonably satisfactory to Purchaser, effective on or before the Closing Date, duly executed and delivered by the Chief Executive Officer of SCO Group as of the date hereof (the "CEO"), pursuant to which the CEO covenants and agrees that during the period the CEO is employed by such Seller or an affiliate thereof and for a period ending on the earlier of (i) two years after the CEO ceases to be employed by such Seller or any Affiliate of a Seller and (ii) five years after the Closing Date, the CEO shall not engage in competition with the business of Purchaser with the same substantive terms and geographic scope as set forth in Section 8.9 hereof, which agreement shall expressly designate Purchaser and its Affiliates as third party beneficiaries thereof and be assignable to Purchaser or its Affiliates at the request of Purchaser;

(i) a certificate signed by an authorized officer of Sellers on behalf of all Sellers, dated the Closing Date, certifying that the conditions set forth in Section 10.1(a)-(f) have been satisfied;

(j) a copy of all orders of the Bankruptcy Court pertaining to the transactions contemplated herein, including the Sale Order;

(k) to the extent required by any applicable Government Authority, Novation and/or Change of Name Agreements as set forth in Federal Acquisition Regulation Part 42.12 related to any of the Assumed Contracts that are considered to be Government Contracts, or other evidence satisfactory to Purchaser (in Purchaser's sole and complete discretion) that transfer and/or assignment of any Government Contract is acceptable to, and will not be opposed by, the United States Government;

(l) the Post-Closing Escrow Agreement, duly executed by SCO Group and Escrow Agent; and

(m) all other instruments of conveyance and transfer, in form and substance reasonably acceptable to Purchaser, as may be necessary to convey the Purchased Assets to Purchaser.

4.3. Conditions of Sellers' Obligation to Close. At or before the Closing, Sellers (or, with respect to the Letter of Credit-Sun, the Escrow Agent) shall have received:

- (a) the Escrow from Escrow Agent;
- (b) the Post-Closing Escrow Agreement, duly executed by Purchaser and Escrow Agent, and the Letter of Credit-Sun;
- (c) the Assignment and Assumption, duly executed by Purchaser;
- (d) the Lease Assignments, if applicable, duly executed by Purchaser;
- (e) a certificate signed by an authorized officer of Purchaser, dated the Closing Date, certifying that the conditions set forth in Section 10.2(a)-(b) have been satisfied; and
- (f) all other instruments of conveyance and transfer, in form and substance reasonably acceptable to Sellers, as may be necessary to convey the Purchased Assets to Purchaser.

4.4. Termination of Agreement. This Agreement may be terminated prior to the Closing as follows:

- (a) by mutual written consent of Sellers and Purchaser;
- (b) by Purchaser, if the Sale Order is not entered, or is validly and effectively stayed by Court order pending a timely-filed appeal;
- (c) by Purchaser, if any of the conditions to the obligations of Purchaser set forth in Sections 10.1 and 10.3 shall have become incapable of fulfillment other than as a result of a breach by Purchaser of any covenant or agreement contained in this Agreement, and such condition is not waived by Purchaser;
- (d) by Purchaser, if there shall be a breach by any Seller of any representation or warranty, or any covenant or agreement contained in this Agreement which would result in a failure of a condition set forth in Section 10.1 or 10.3, and which breach cannot be cured or has not been cured by the earlier of (i) 30 days after the giving of written notice by Purchaser to such Seller of such breach and (ii) the Termination Date;
- (e) by Sellers, if any condition to the obligations of Sellers set forth in Sections 10.2 and 10.3 shall have become incapable of fulfillment other than as a result of a breach by any Sellers of any covenant or agreement contained in this Agreement, and such condition is not waived by Sellers;

(f) by Sellers, if there shall be a breach by Purchaser of any representation or warranty, or any covenant or agreement contained in this Agreement which would result in a failure of a condition set forth in Section 10.2 or 10.3, and which breach cannot be cured or has not been cured by the earlier of (i) 30 days after the giving of written notice by Sellers to Purchaser of such breach and (ii) the Termination Date;

(g) by either Purchaser or Seller, if any Governmental Authority (other than the Bankruptcy Court) having competent jurisdiction issues a final and non-appealable order, decree or ruling restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement; or

(h) by Purchaser or Sellers, if the Closing shall not have occurred by the close of business on the Termination Date; provided that, any delay was not caused by any party seeking such termination or by the failure of any such party to comply with any provision of this Agreement.

4.5. Procedure Upon Termination. In the event of termination by Purchaser or Sellers, or both, pursuant to Section 4.4 hereof, written notice thereof shall forthwith be given to the other Party or Parties, and this Agreement shall terminate, and the purchase of the Purchased Assets hereunder shall be abandoned, without further action by Purchaser or Sellers. If this Agreement is terminated as provided herein each Party shall use reasonable efforts to destroy or redeliver all documents, work papers and other material of any other Party relating to the transactions contemplated hereby, whether so obtained before or after the execution hereof, to the Party furnishing the same; and the same shall remain subject to the confidentiality provisions set forth in Section 8.5.

4.6. Effect of Termination.

(a) If this Agreement is validly terminated as provided herein, then each of the Parties shall be relieved of its duties and obligations arising under this Agreement effective on the date of such termination and such termination shall be without liability to Purchaser or Sellers; provided, however, that the obligations of the Parties set forth in this Section 4.6 and Section 8.7 hereof shall survive any such termination and shall be enforceable hereunder.

(b) If this Agreement is terminated as provided herein, the Escrow shall be released to the appropriate Party pursuant to Section 3.2 and upon such delivery, Escrow Agent shall be released of all obligations as provided in the Pre-Closing Escrow Agreement.

(c) If this Agreement is terminated by Sellers pursuant to Section 4.4(f), Sellers shall be entitled to receive the Cash Deposit as liquidated damages and not as a penalty as Sellers' sole and exclusive remedy as a result of such a termination.

(d) The Confidentiality Agreement shall survive any termination of this Agreement and nothing in Sections 4.4, 4.5 or 4.6 shall relieve Purchaser or Sellers of their respective obligations under the Confidentiality Agreement.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF SELLERS

To induce Purchaser to enter into and perform this Agreement and to consummate the transactions contemplated hereby, each Seller hereby jointly and severally represents and warrants to Purchaser as follows (and subject to exceptions as listed in the attached Schedules, the Parties agreeing that only Schedules pertaining to the Purchased Assets subject to this Agreement will be so attached):

5.1. Organization. Schedule 5.1(a) sets forth for each Seller and each Purchased Subsidiary its name and jurisdiction of organization. Each Seller and each Purchased Subsidiary is (a) an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, and (b) duly qualified to do business and in good standing in each jurisdiction in which it owns or leases Real Property and in each other jurisdiction in which the failure to so qualify has not had and is not reasonably likely to have a Material Adverse Effect.

5.2. Authorization.

(a) Each Seller has full corporate power and authority to execute and deliver this Agreement and each other agreement, document, instrument or certificate to be executed by such Seller in connection with the consummation of the transactions contemplated by this Agreement (the "Seller Documents"), to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. Upon entry of the Sale Order, and subject to obtaining any third party consents required under Intellectual Property Licenses that are not obviated by the Sale Order, the execution, delivery and performance by each Seller of this Agreement and each of the Seller Documents, have been duly authorized by all necessary action on the part of each Seller. This Agreement and each Seller Document has been (or, in the case of Seller Documents to be entered into at or prior to the Closing, will be) duly executed and delivered by each Seller and is (or, in the case of Seller Documents to be entered into at or prior to the Closing, will be) a legal, valid and binding obligation of such Seller, enforceable against each such Seller in accordance with its terms.

(b) Each Purchased Subsidiary has power and authority to execute and deliver each agreement, document, instrument or certificate to be executed by such Purchased Subsidiary in connection with the consummation of the transactions contemplated by this Agreement (the "Purchased Subsidiary Documents"), to perform its obligations thereunder and to consummate the transactions contemplated thereby, in the event that Purchaser makes a Subsidiary Asset Election with respect to such Purchased Subsidiary. Each Purchased Subsidiary Document will be duly executed and delivered by each Purchased Subsidiary party thereto and will be a legal, valid and binding obligation of such Purchased Subsidiary, enforceable against such Purchased Subsidiary in accordance with its terms.

5.3. Authorization of Governmental Authorities and Third Parties. Except for the entry of the Sale Order and the Assumption and Assignment Order, the CFIUS Approval and any approvals in the form of novation agreements, as described in United States Federal Acquisition Regulation Part 42.12, issued by the United States Government in its contracting capacity, and as

set forth on Schedule 5.3, no consent, waiver, approval, Order, Permit or authorization of, or declaration or filing with, or notification to, any Person or Governmental Authority is required on the part of any Seller in connection with the execution and delivery of this Agreement or the Seller Documents, the compliance by any Seller with any of the provisions hereof or thereof, the consummation of the transactions contemplated hereby without any material delay, the performance by any Seller of its obligations hereunder, or the taking by any Seller of any other action contemplated hereby. Except as set forth on Schedule 5.3, no consent, waiver, approval, Order, Permit or authorization of, or declaration or filing with, or notification to, any Person or Governmental Authority is required on the part of any Purchased Subsidiary in connection with the execution and delivery of the Purchased Subsidiary Documents by the Purchased Subsidiaries party thereto, or the compliance by any Purchased Subsidiary with any of the provisions thereof.

5.4. Capitalization; Ownership.

(a) The authorized capital stock of each Seller is as set forth on Schedule 5.4(a). All of the issued and outstanding capital stock of SCO Operations and SCO Global is owned, beneficially and of record, by SCO Group, free and clear of all Claims and Encumbrances. All of the outstanding shares of capital stock of each Seller have been duly authorized, validly issued, and are fully paid and non-assessable. None of the Sellers has violated the Securities Act of 1933, as amended, any state "blue sky" or securities laws, any other similar Legal Requirement or any preemptive or other similar rights of any Person in connection with the issuance or redemption of any of its Equity Interests.

(b) The authorized Equity Interests of each of the Purchased Subsidiaries is as set forth in Schedule 5.4(b). All of the outstanding Equity Interests of each of the Purchased Subsidiaries is owned, beneficially and of record, by SCO Group, free and clear of all Claims and Encumbrances. All of the outstanding Equity Interests of each of the Purchased Subsidiaries have been duly authorized, validly issued, and are fully paid and non-assessable. The issuance of such Equity Interests did not and does not violate any securities laws applicable to the issuance of the Equity Interests of such Purchased Subsidiaries, or any other similar Legal Requirement or any preemptive or other similar rights of any Person in connection with the issuance or redemption of any of its Equity Interests. There are outstanding no securities convertible into, exchangeable for, or carrying the right to acquire, equity securities or any of the Purchased Subsidiaries, or subscriptions, warrants, options, calls, rights (pre-emptive or other) or other arrangements or commitments obligating any of the Purchased Subsidiaries to issue or dispose of any of its Equity Interests or any ownership therein.

5.5. Financial Statements.

(a) "Financials" shall mean, collectively:

(i) the audited consolidated balance sheet of Sellers as of October 31, 2008 (the "Most Recent Balance Sheet Date"), October 31, 2007 and October 31, 2006 and the related audited consolidated statements of income, cash flow and changes in stockholders' equity of Sellers for such fiscal years, as filed by the Company with its Annual Reports with the SEC (collectively, the "Audited Financials");

(ii) the unaudited consolidated balance sheet of Sellers for the most recently completed fiscal quarters subsequent to the Audited Financials and the related unaudited consolidated statement of income, cash flow and changes in stockholders' equity of Sellers for such quarters, all as filed by the Company with its Quarterly Reports with the SEC (the "Interim Financials"); and

(iii) monthly unaudited financial statements of Sellers in the form customarily prepared by management for internal use for each complete month from the Most Recent Balance Sheet Date through the date of this Agreement (the "Monthly Financials," and together with the Audited Financials and Interim Financials, collectively the "Financials").

(b) Except as disclosed on Schedule 5.5, the Financials (including any notes thereto) (a) are complete and correct and were prepared in accordance with the books and records of Sellers, (b) have been prepared in accordance with GAAP, consistently applied (subject, in the case of the unaudited Financials, to normal year-end audit adjustments, the effect of which will not, individually or in the aggregate, be materially adverse, and the absence of notes) and (c) fairly present in all material respects the consolidated financial position of Sellers as at the respective dates thereof and the consolidated results of the operations of Sellers and changes in financial position for the respective periods covered thereby.

5.6. Purchased Assets. Each Seller and each Purchased Subsidiary has good and marketable title to or a transferable right in, or, in the case of property held under a lease, license or other Contractual Obligation, an enforceable leasehold interest or license in, or right to use, the Purchased Assets. The Purchased Assets are not subject to any Encumbrances other than Permitted Encumbrances. The Purchased Assets (including the Assumed Executory Contracts) constitute all of the assets and properties used, necessary or required to operate the Business in the ordinary course.

5.7. Real Property.

(a) Schedule 5.7 (a) sets forth a list of all real property owned by each of the Sellers and Purchased Subsidiaries and specifies those Sellers and Purchased Subsidiaries which occupy such property if different from the owners and describes each leasehold interest in real property leased, subleased by, licensed or with respect to which a right to use or occupy has been granted to or by any Seller or Purchased Subsidiary (such leased real property together with such owned real property, the "Real Property"), and specifies the lessor(s) of such leased property, the Seller or Purchased Subsidiary occupying such leased property, and identifies each lease or any other Contractual Obligation under which such property is leased (the "Real Property Leases"). Except as described on Schedule 5.7(a) there are no written or oral subleases, licenses, concessions, occupancy agreements or other Contractual Obligations granting to any other Person the right of use or occupancy of the Real Property and there is no Person (other than any Seller or any Purchased Subsidiary and any lessor(s) of leased Real Property) in possession of the leased Real Property. With respect to each Real Property Lease that is a sublease, the representations and warranties set forth in Section 5.7(b) are true and correct with respect to the underlying lease.

(b) The Real Property Leases do not impose material restrictions on any portion of the Business other than radius or use restrictions described on Schedule 5.7(b) that do not materially interfere with the Business. No Seller or Purchased Subsidiary is obligated to pay any leasing or brokerage commission as a result of the transactions contemplated hereby. There is no pending or threatened eminent domain taking affecting any of the Real Property. The Sellers have delivered to Purchaser true, correct and complete copies of the Real Property Leases including all amendments, modifications, notices or memoranda of lease thereto and all estoppel certificates or subordinations, non-disturbance and attornment agreements related thereto in Sellers' possession or under its control, if any.

(c) None of the Facilities currently existing on the Real Property encroaches upon the real property of any other Person, and no facility of any other Person encroaches upon the Real Property. Each Facility is supplied with utilities and other services (including gas, electricity, water, drainage, sanitary sewer, storm sewer, fire protection and telephone) necessary for the operation of such Facility as the same is currently operated or currently contemplated to be operated; and each parcel of Real Property abuts on, and has direct vehicular access to, a public road, or has access to a public road via a permanent irrevocable appurtenant easement benefiting the parcel of Real Property, in each case, to the extent necessary for the conduct of the Business.

(d) All Permits necessary in connection with the construction upon, and current and currently contemplated use and operation of, the Real Property and the lawful occupancy thereof have been issued by the appropriate Governmental Authorities. The current and currently contemplated use of the Real Property is in all material respects, in accordance with the certificates of occupancy relating thereto and the terms of any such Permits. The Real Property and its current and currently contemplated use, occupancy and operation by Sellers and Purchased Subsidiaries and the Facilities located thereon do not (i) constitute a nonconforming use under any applicable building, zoning, subdivision or other land use or similar Legal Requirements or (ii) otherwise violate or conflict with any covenants, conditions, restrictions or other Contractual Obligations, including the requirements of any applicable Encumbrance.

5.8. Equipment. All Equipment included in the Purchased Assets is, in all materials respects, (a) adequate and suitable for its present and intended uses, (b) in working order, operating condition and state of repair, subject to normal and customary wear and tear, (c) without known material defects, and (d) maintained in accordance with normal Seller and Purchased Subsidiary practice.

5.9. Intellectual Property.

(a) Schedule 5.9(a) contains a true and complete list of all Registered Intellectual Property. All such Registered Intellectual Property is currently in compliance with formal Legal Requirements (including payment of filing, examination and maintenance fees and proofs of use) and are not subject to any unpaid maintenance fees or taxes or actions due within 90 days after the Closing. There are no proceedings or actions before any court or tribunal (including the United States Patent and Trademark Office or equivalent authority anywhere in the world) related to any such Registered Intellectual Property other than those set forth in

Schedule 5.9(a). No Seller or Subsidiary has claimed any status in the application for or registration of any Registered Intellectual Property that would not be applicable to Purchaser.

(b) Except as set forth on Schedule 5.9(b):

(i) Sellers and each Purchased Subsidiary owns, or otherwise has the transferable right to use, all Company Technology, including without limitation the Litigated Copyrights.

(ii) With respect to all Company Owned Technology: (A) Sellers or one or more Purchased Subsidiaries, as the case may be, own such Company Owned Technology exclusively and has good title thereto, free and clear of any Encumbrances (except Permitted Encumbrances) and no other party has any rights thereto (other than Permitted Encumbrances); and (B) all Company Owned Technology is valid and enforceable and no third party has asserted that any Company Technology is not valid or enforceable.

(iii) The consummation of the transactions contemplated by this Agreement will not alter, encumber, impair or extinguish any Company Technology, or impair the right of Purchaser to develop, use, sell, license or dispose of, or to bring any action for the infringement of, any Company Technology.

(iv) To the extent that any Company Owned Technology was originally owned or created by or for any third party, including any predecessor of any Seller or of any Purchased Subsidiary: (A) such Seller or such Purchased Subsidiary has a written Contract with such third party with respect thereto, pursuant to which such Seller or such Purchased Subsidiary, as the case may be, has obtained complete, unencumbered and unrestricted ownership and is the exclusive owner of, all such Company Owned Technology by valid assignment or otherwise; (B) the consummation of the transactions contemplated hereby does not violate such third-party Contracts; (C) such third parties have not retained and do not have any rights or licenses with respect to such Company Owned Technology; and (D) no basis exists for such third party to challenge or object to this Agreement or the transactions contemplated hereby.

(v) The consummation of the transactions contemplated hereby will not cause Purchaser to grant to any third party any rights to any Company Owned Technology, or incur any royalty or other obligation to any third party, other than those obligations that Sellers or Purchaser would have had if such transactions had not taken place.

(vi) Neither any Seller nor any Purchased Subsidiary has transferred ownership of, or granted any license under or right to use, or authorized the retention of any license or right to use, any Company Technology to any other Person other than licenses to past and existing (A) consultants engaged by Sellers or a Purchased Subsidiary, (B) manufacturers or other vendors providing goods or services to Sellers or a Purchased Subsidiary, and (C) resellers, distributors, and customers of Sellers.

(vii) The Company Technology is sufficient for, and constitutes all Technology and Intellectual Property that is used in, necessary for or would otherwise be infringed, misappropriated or otherwise violated by, the conduct of the business of Sellers and

the Purchased Subsidiaries immediately following the Closing in substantially the same manner as currently conducted by Sellers and the Purchased Subsidiaries, or as contemplated to be conducted by Sellers and the Purchased Subsidiaries as evidenced by a written business plan, written development plan or computer software code of a Seller or a Purchased Subsidiary.

(viii) No government funding or facilities of a university, college, or other educational institution or non-profit research center was used in the creation or development of the Company Owned Technology. No current or former employee, consultant or independent contractor who contributed to the creation or development of any Company Owned Technology performed services for a governmental entity, university, college, or other educational institution or non-profit research center during a period of time during which such employee, consultant or independent contractor was also performing services for a Seller or a Purchased Subsidiary used in the creation or development of the Company Owned Technology.

(ix) Sellers and the Purchased Subsidiaries have, and as a result of the transactions contemplated hereby, Purchaser will have, the right to use, pursuant to valid licenses, all Computer Software development tools, library functions, compilers and all other third-party Computer Software that are used by Sellers and the Purchased Subsidiaries in the Business to create, modify, compile, operate or support any Computer Software in substantially the same manner as such Computer Software development tools, library functions, compilers and other third-party Computer Software is used by Sellers and the Purchased Subsidiaries in the Business as currently conducted.

(x) No Computer Software owned by or licensed to any Seller or any Purchased Subsidiary that is incorporated or embedded in any Product has been combined by any Seller or any Purchased Subsidiary with any third-party Computer Software, including Computer Software subject to an open source license, in such a manner that, solely as a result of such combination: (A) restrictions are placed on the rights of Sellers and the Purchased Subsidiaries to license, sublicense, resell or distribute such Product, (B) restrictions are placed on the rights of Sellers and the Purchased Subsidiaries to charge license fees for the sublicense, resale or distribution of any Product, (C) any Seller or any Purchased Subsidiary is required to make available the source code for any Product to any third parties to which any Seller or any Purchased Subsidiary distributes such Product in non-source code form, (D) neither any Seller nor any Purchased Subsidiary may claim copyright or other Intellectual Property rights in any derivative works made by such Seller or such Purchased Subsidiary from any Product, or (E) Sellers and the Purchased Subsidiaries are prohibited from restricting the persons by which, or the purposes for which, any Product may be used.

(xi) Schedule 5.9(b)(xi) lists all Contracts to which any Seller or any Purchased Subsidiary is a party with respect to the ownership of, or the licensing by, such Seller or such Purchased Subsidiary of any Company Owned Technology, other than non-exclusive licenses granted to (A) end user customers, (B) consultants engaged by a Seller or a Purchased Subsidiary, (C) manufacturers or other vendors providing goods or services to a Seller or a Purchased Subsidiary, and (D) distributors and resellers, in each case in the ordinary course of business.

(xii) Neither (A) the operation of the Business, including the making, using, selling, licensing and distribution of the Products, by any Seller or any Purchased Subsidiary, nor (B) the Company Technology, did or do: (I) infringe or misappropriate the Intellectual Property of any Person; (II) violate the rights of any Person (including rights to privacy or publicity); or (III) constitute by themselves unfair competition or trade practices, under the laws of any jurisdiction in which any Seller or any Purchased Subsidiary does or has done business. Neither any Seller nor any Purchased Subsidiary has received any written notice or otherwise has knowledge of any pending or threatened claim, action, suit, order or proceeding alleging that the operation of the Business or any services provided, processes used or products manufactured, used, imported, offered for sale or sold by any Seller or any Purchased Subsidiary infringes, misappropriates or otherwise violates any Intellectual Property rights of any Person or constitutes unfair competition or trade practices under the laws of any jurisdiction in which any Seller or any Purchased Subsidiary does or has done business.

(xiii) There are no Contracts between any Seller or any Purchased Subsidiary and any other Person regarding the ownership, assignment, license, distribution, resale or use of Company Technology under which there is any dispute or any threatened dispute regarding the scope of such Contract or performance under such Contract.

(xiv) No Person has challenged, infringed, misappropriated or otherwise violated any Company Technology (subject to ARTICLE XII hereof).

(xv) Sellers and the Purchased Subsidiaries have exercised reasonable care, including taking reasonable steps, to maintain the confidentiality of all trade secrets that are Company Technology and no such trade secrets have been disclosed other than to employees, representatives and agents of Sellers or any Purchased Subsidiary, all of whom are bound by written confidentiality agreements, or to third parties under a written obligation of confidentiality in favor of Sellers and the Purchased Subsidiaries. Sellers are not aware of any breach of any such confidentiality agreements, except as set forth on Schedule 5.9(b)(xv).

(xvi) Schedule 5.9(b)(xvi) lists all third parties to which any Seller or any Purchased Subsidiary has disclosed, or provided access to, the source code to any Computer Software that is Company Owned Technology, and, for each third party listed in Schedule 5.9(b)(xvi), such schedule identifies the Computer Software source code that was provided or disclosed; provided that such schedule shall not include any individuals who: (A) are or were consultants of any Seller or any Purchased Subsidiary, (B) received access to such source code only under a written obligation of confidentiality to any Seller or any Purchased Subsidiary, and (C) no longer have (as of the date of this Agreement) access to or possession of any copy of such source code.

(xvii) Each Seller and each Purchased Subsidiary has and enforces a policy requiring each employee and consultant of such Seller or such Purchased Subsidiary to execute a proprietary rights and confidentiality agreement substantially in the form previously provided to Purchaser and all current and former employees and consultants of any Seller or any Purchased Subsidiary who have created or modified any Company Owned Technology have executed such an agreement assigning all of such employees' and consultants' rights in and to such Company Technology to such Seller or such Purchased Subsidiary, as applicable.

(xviii) No Company Technology is subject to any proceeding or outstanding decree, order, judgment, or stipulation that restricts in any manner the transfer thereof to Purchaser as contemplated hereby, or that adversely affects the validity, use or enforceability of such Company Technology. No exclusive rights have been granted by any Seller or any Purchased Subsidiary to any third party with respect to any Company Technology.

(xix) To the extent that any Seller or any Purchased Subsidiary has distributed or licensed any Product to an end user pursuant to any form of encryption key: (A) such Seller or such Purchased Subsidiary, as the case may be, has a written agreement with each such end user requiring such end user to protect the confidentiality of such key; (B) Schedule 5.9(xix) contains a true and complete list of all third parties to whom any Seller or any Purchased Subsidiary has disclosed such keys; and (C) no third party has had access to any such keys, except pursuant to clause (B) above.

(xx) All services provided or products manufactured, used, imported, offered for sale or sold by any Seller or any Purchased Subsidiary comply in all material respects with the warranties made by Sellers or the Purchased Subsidiaries to their customers. There are no outstanding claims, or the basis for such claims, for breach of warranties by any Seller or any Purchased Subsidiary in connection with their services or the Products. There is no problem, defect or issue with respect to any of such services or Products which does, or may reasonably be expected to, adversely affect the value or functionality of such services or Products.

5.10. Compliance with Law; Permits.

(a) Each Seller and each Purchased Subsidiary is in compliance in all material respects with all Laws and Legal Requirements currently in effect and applicable to such Seller or Purchased Subsidiary.

(b) Each Seller and Purchased Subsidiaries has been duly granted all Permits under all material Legal Requirements necessary for the conduct of the Business as currently conducted and contemplated to be conducted. Schedule 5.10 describes each Permit affecting, or relating to, the Business. Except as disclosed on Schedule 5.10, the Permits are valid and in full force and effect, and no Seller or Purchased Subsidiary is in breach or default under any such Permit, and no basis exists which, with notice or lapse of time or both, would constitute any such breach, violation nor default and subject to Purchaser's performance of any requirements on its behalf to be performed, the Permits will continue after Closing to be valid and in full force and effect as to those portions of the Purchased Assets to which the Permit relate.

5.11. Tax Matters.

(a) All Tax Returns of Sellers and the Purchased Subsidiaries required to be filed on or before the Closing Date have been timely filed in accordance with applicable Laws, and each such Tax Return is accurate and complete in all material respects. Each of the Sellers and each Purchased Subsidiary has timely paid all Taxes due with respect to the taxable periods covered by such Tax Returns. No claim has ever been made by a Governmental Authority in a jurisdiction where any of the Sellers or any Purchased Subsidiary did not file a Tax Return that it is or may be subject to taxation by that jurisdiction. Sellers and the Purchased Subsidiaries have