

CACI INTERNATIONAL INC /DE/

FORM 8-K (Unscheduled Material Events)

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Address	1100 N GLEBE ST ARLINGTON, Virginia 22201
Telephone	703-841-7800
CIK	0000016058
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Sector	Technology
Fiscal Year	06/30

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of
the Securities Exchange Act of 1934

Date of Report
February 14, 2000

CACI International Inc
(Exact name of registrant as specified in its Charter)

Delaware
(State or other jurisdiction of incorporation)

0-8401
(Commission File Number)

54-1345888
(IRS Employer Identification No.)

1100 N. Glebe Road
Arlington, Virginia 22201
(Address of principal executive offices) (Zip code)

(703) 841-7800
(Registrant's telephone number, including area code)

ITEM 2. ACQUISITION OF ASSETS.

On February 2, 2000, CACI International Inc announced that it has completed its acquisition of all of the common stock of XEN Corporation, which became effective at 12:01 a.m. EST on February 1, 2000. The total consideration paid by CACI was \$4,258,500; XEN shareholders will receive \$7.886 per share in cash as they surrender their Common Stock. XEN specializes in providing quality systems engineering, engineering design, distance learning, training development, multimedia support, electronic commerce, and data security services to national intelligence organizations, the Department of Defense, and the U.S. Navy. The transaction was funded through borrowings under CACI's existing line of credit with a group of banks.

XEN, which has approximately 70 employees, will be operated as a wholly-owned subsidiary of CACI Technologies, Inc., a wholly-owned subsidiary of CACI. The operations of the new subsidiary will be fully integrated into CACI to achieve the full benefit of the merger for customers and shareholders. XEN's revenues for its fiscal year ended September 30, 1999 were \$8.5 million.

A copy of the Registrant's press release regarding CACI's execution of a Letter of Intent to acquire XEN is attached as an Exhibit to this current report on Form 8-K.

ITEM 7. FINANCIAL STATEMENTS AND EXHIBITS

(a) (1) FINANCIAL STATEMENTS. Restated consolidated financial statements for XEN Corporation for the fiscal year ended September 30, 1999, and Independent Accountant's Report shall be filed not later than 60 days after the date that this initial report on Form 8-K must be filed.

(b) (2) PRO FORMA FINANCIAL INFORMATION. Pro forma financial information relative to the acquisition of XEN corporation for the most recent fiscal year ended June 30, 1999, and for the quarter ended March 31, 2000, shall be filed not later than 60 days after the date that this initial report on Form 8-K must be filed.

(c) EXHIBITS.

99.1 Agreement and Plan of Merger by and among CACI International Inc, CACI Acquisition Corporation, and XEN Corporation dated as of January 28, 2000.

99.2 Press Release dated February 2, 2000, announcing completion of the acquisition of XEN Corporation.

SIGNATURE

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

CACI International Inc
(Registrant)

By: _____ /s/

Jeffrey P. Elefante
Executive Vice President,
General Counsel and Secretary

Exhibit 99.1

CACI International Inc
CACI Acquisition Corporation
XEN Corporation
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AGREEMENT AND PLAN OF MERGER

Agreement and Plan of Merger, dated as of January 28, 2000 (the "Agreement"), by and among **CACI International Inc** , a Delaware corporation ("Parent"), **CACI Acquisition Corporation** , a Delaware corporation and wholly-owned subsidiary of Parent ("Merger Sub") and **XEN Corporation** , a Delaware corporation (the "Company"). Merger Sub and the Company together are sometimes referred to herein as the

"Constituent Corporations."

WITNESSETH

WHEREAS, the respective boards of directors of Parent, Merger Sub and the Company have determined that it is advisable that the Merger Sub be merged with and into the Company (the "Merger") on the terms and conditions set forth herein and in accordance with the provisions of the General Corporation Law of the State of Delaware (the "DGCL");

WHEREAS, Parent, Merger Sub and the Company desire to make certain representations and warranties and other agreements in connection with the Merger;

NOW, THEREFORE, Parent, Merger Sub and the Company hereby agree as follows:

ARTICLE 1

DEFINITIONS

- 1.1 **Certain Matters of Construction** . A reference to an Article, Section, Exhibit or Schedule shall mean an Article of, a Section in, or Exhibit or Schedule to, this Agreement unless otherwise expressly stated. The titles and headings herein are for reference purposes only and shall not in any manner limit the construction of this Agreement which shall be considered as a whole. The words "include," "includes" and "including" when used herein shall be deemed in each case to be followed by the words "without limitation."
- 1.2 **Cross References** . The following terms defined elsewhere in this Agreement in the Sections set forth below shall have the respective meanings therein defined:

<i>Term</i>	<i>Definition</i>
Acquisition Proposals	Section 6.3
Agreement	Preamble
Certificate of Merger	Section 2.1
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Indemnity Threshold	Section 6.5.5
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Third Party Claims	Section 6.5.3

1.3 **Certain Definitions** . As used herein, the following terms shall have the following meanings:

Affiliate: with respect to any Person, any Person which, directly or indirectly, controls, is controlled by, or is under common control with, such.

COBRA : the provisions of Section 4980B of the Code and Part 6 of Title I of ERISA.

Code : the U.S. Internal Revenue Code of 1986, as amended from time to time.

Commercial Software : packaged commercial software programs generally available to the public through retail dealers in computer software or directly from the manufacturer which have been licensed to the Company and which are used in the Company's business but are in no way a component of or incorporated in or specifically required to develop or support any of the Company's products and related trademarks, technology and know-how.

Company Leases : each lease, sublease, license or other agreement under which the Company uses, occupies or has the right to occupy any real property or interest therein that (a) provides for future minimum payments of \$50,000 or more (ignoring any right of cancellation or termination) or (b) the cancellation or termination of which would have a Company Material Adverse Effect.

Company Material Adverse Effect : any materially adverse change in or effect on the financial condition, business, operations, assets, properties, results of operations of the Company.

Company Equity Plan : the Company's Equity Sharing Plan adopted on July 15, 1988, pursuant to which the Company reserved 1,000,000 shares of Common Stock for sale to its selected officers and key employees, who are in a position to contribute substantially to the success of the Company, for the price equal to the greater of (i) the par value per share and (ii) the book value per share as determined from the financial statements of the Company for the fiscal half-year immediately preceding the date of the grant and pursuant to which the shares of Common Stock so granted shall be subject to an agreement by their holder not to sell, assign, transfer, pledge, hypothecate or otherwise dispose of or encumber such shares. Shares of Common Stock granted pursuant to the Company Equity Plan may be repurchased by the Company for the price and under the terms thereof.

Control (including with correlative meaning, controlled by and under common control with): as used with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

Environmental Claim : any notice alleging potential liability (including, without limitation, potential liability for investigatory costs, cleanup costs, response or remediation costs, natural resources damages, property damages, personal injuries, fines or penalties) arising out of, based on or resulting from (a) the presence, or release of any Material of Environmental Concern at any location, whether or not owned by that party or (b) circumstances forming the basis of any violation, or alleged violation, of any Environmental Law.

Environmental Laws : any and all statutes, regulations and ordinances relating to the protection of public health, safety or the environment.

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

ERISA Affiliate : with respect to a party, any member (other than that party) of a controlled group of corporations, group of trades or businesses under common control or affiliated service group that includes that party (as defined for purposes of Section 414(b), (c) and (m) of the Code).

Exchange Act : the Securities Exchange Act of 1934, as amended.

Letter of Intent : the letter dated October 15, 1999 from the Executive Vice President and Chief Financial Officer of Parent to the Chairman and Chief Executive Officer of the Company expressing the companies' intention to effect the merger and related transactions, subject to execution of this Agreement and other matters.

Losses: the amount of any actual damages, liabilities, obligations, deficiencies, losses, expenditures, costs or expenses (including without limitation reasonable attorneys' fees and disbursements). For purposes of determining the amount of any Loss, the amount of any Loss shall be reduced by any insurance proceeds received in respect thereof (in each case net of costs of recovery).

Materials of Environmental Concern : petroleum and its by-products and all substances or constituents that are regulated by, or form the basis of liability under, any Environmental Law.

Parent Material Adverse Effect : any materially adverse change in or effect on the financial condition, business, operations, assets, properties, results of operations or prospects of Parent and its Subsidiaries considered on a consolidated basis.

Permitted Encumbrances : (a) liens for current taxes and other statutory liens and trusts not yet due and payable or that are being contested in good faith, (b) liens that were incurred in the ordinary course of business, such as carriers', warehousemen's, landlords' and mechanics' liens and other similar liens arising in the ordinary course of business, (c) liens on personal property leased under operating leases, (d) liens, pledges or deposits incurred or made in connection with workmen's compensation, unemployment insurance and other social security benefits, or securing the performance of bids, tenders, leases, contracts (other than for the repayment of borrowed money), statutory obligations, progress payments, surety and appeal bonds and other obligations of like nature, in each case incurred in the ordinary course of business, (e) pledges of or liens on manufactured products as security for any drafts or bills of exchange drawn in connection with the importation of such manufactured products in the ordinary course of business, (f) liens under Article 2 of the Uniform Commercial Code that are special property interests in goods identified as goods to which a contract refers, (g) liens under Article 9 of the Uniform Commercial Code that are purchase money security interests, and (h) such imperfections or minor defects of title, easements, rights-of-way and other similar restrictions (if any) as are insubstantial in character, amount or extent, do not materially detract from the value or interfere with the present or proposed use of the properties or assets of the party subject thereto or affected thereby, and do not otherwise adversely affect or impair the business or operations of such party.

Person : an individual, a corporation, an association, a partnership, an estate, a trust and any other entity or organization.

SEC : the Securities and Exchange Commission, or any Governmental Entity succeeding to its functions.

Securities Act : the Securities Act of 1933, as amended.

Subsidiary : any corporation, association, or other business entity a majority (by number of votes on the election of directors or persons holding positions with similar responsibilities) of the shares of capital stock (or other voting interests) of which is owned by Parent, the Company or their respective Subsidiaries, as the

case may be.

ARTICLE 2

THE MERGER

- 2.1 **Procedure for the Merger** . The closing of the transactions contemplated by this Agreement ("Closing") shall take place at the offices of Parent in Arlington, Virginia, commencing at 10:00 a.m. local time on January 28, 2000, or on such other date as the parties may agree after the satisfaction or waiver of all conditions to the obligations of the parties to consummate the transactions contemplated hereby ("Closing Date"). At the Closing, the Merger Sub shall be merged, in accordance with section 251 of the DGCL, with and into the Company, which shall be and is sometimes referred to herein to as the "Surviving Corporation". The Merger shall be effected by filing an agreement of merger, substantially in the form of Exhibit 2.1 attached hereto (the "Agreement of Merger"), with the Secretary of State of Delaware in accordance with section 251(c) of the DGCL. The Agreement of Merger filed shall provide that the Merger will be effective at 12:01 A.M. EST on February 1, 2000 (the "Effective Time").
- 2.2 **Surviving Corporation** .
- 2.2.1 **Corporate Existence** . The Surviving Corporation shall continue its corporate existence under the laws of the State of Delaware. The separate corporate existence of the Merger Sub shall cease at the Effective Time.
- 2.2.2 **Articles of Incorporation and By-laws** . The articles of incorporation of the Company, as in effect immediately prior to the Effective Time, shall be the articles of incorporation of the Surviving Corporation until the same shall be amended thereafter in accordance with the DGCL and such articles of incorporation. The by-laws of the Company, as in effect immediately prior to the Effective Time, shall be the by-laws of the Surviving Corporation until the same shall be amended thereafter in accordance with the DGCL, the articles of incorporation of the Surviving Corporation and such by-laws.
- 2.2.3 **Directors** . As of the Effective Time, Dr. J. P. London and Jeffrey P. Elefante shall be the directors of the Surviving Corporation, to hold office in accordance with the articles of incorporation and by-laws of the Surviving Corporation.
- 2.2.4 **Effect of the Merger** . As of the Effective Time, the effect of the Merger shall be as provided in this Agreement and the applicable provisions of the DGCL. Without limiting the generality of the foregoing, at the Effective Time, all the property, rights, privileges, powers and franchises of the Company and Merger Sub shall vest in the Surviving Corporation, and all debts, liabilities and duties of the Company and Merger Sub shall become the debts, liabilities and duties of the Surviving Corporation.
- 2.3 **Conversion of Stock** .
- 2.3.1 **Stock of the Company** . At the Effective Time, by virtue of the Merger and without any action on the part of the holders thereof, each share of Common Stock, \$0.01 par value per share, of the Company ("Company Common Stock") issued and outstanding immediately prior to the Effective Time (other than Company Common Stock held in the Company's treasury and except any Dissenting Shares) will be canceled and extinguished and be converted automatically into the right to receive payment of the Merger Price Per Share in accordance with the terms and provisions of this Agreement.
- 2.3.2 **Merger Price and Merger Price Per Share** . The aggregate Merger Price shall be Four Million Two Hundred Fifty-Eight Thousand Five Hundred Dollars (\$4,258,500). The Merger Price Per Share shall be Seven Dollars and Eighty-eight and Six-Tenths Cents (\$7.886) Per Share.
- 2.3.3 **Stock of the Merger Sub** . At the Effective Time, each share of the Common Stock, par value \$.10 per share, of the Merger Sub ("Merger Sub Stock") issued and outstanding immediately prior to the Effective Time shall, by virtue of the Merger and without any action on the part of the holder

thereof, be converted into and become one validly issued, fully paid and nonassessable share of Common Stock, \$0.01 par value per share, of the Surviving Corporation.

- 2.4 **Appraisal Rights.** Notwithstanding any other provision herein to the contrary, if appraisal rights are available under the DGCL to holders of shares of Company Common Stock in connection with the Merger, shares of Company Common Stock that are outstanding immediately prior to the Effective Time and that are held by any shareholder who shall have taken the necessary steps under the Delaware Statute to seek appraisal of, and demand payment for, the shares and is otherwise entitled to payment under the DGCL ("Dissenting Shares") shall not be converted into the right to receive the Merger Price Per Share at or after the Effective Time, unless and until the holder of the Dissenting Shares withdraws his or her demand for appraisal or ceases to have a right of appraisal (through failure to perfect or otherwise). If a holder of Dissenting Shares shall withdraw his or her demand for appraisal or shall cease to have a right of appraisal, then, as of the later of the Effective Time or the occurrence of such event, the holder's Dissenting Shares shall be automatically converted into and represent the right to receive the Merger Price Per Share as provided above. Except to the extent otherwise required by the DGCL, Dissenting Shares shall not, after the Effective Time, be entitled to vote for any purpose or be entitled to the payment of dividends or other distributions (except dividends or other distributions payable to stockholders of record prior to the Effective Time).
- 2.5 **Payment of Merger Price .** At or promptly after the Effective Time, Parent on behalf of the Surviving Corporation will send or deliver to each Stockholder two or more copies of a Letter of Transmittal in a form prepared by Parent and approved by the Company. Thereafter, the Parent on behalf of the Surviving Corporation shall pay to each Stockholder who submits a properly completed and executed Letter of Transmittal accompanied by surrender of the certificate or certificates for shares of Company Common Stock for which that Stockholder claims payment, the aggregate amount of the Merger Price Per Share to which that Stockholder is entitled based on the number of shares of Company Common Stock held by such Stockholder [setoff] as set forth in the list provided to Parent by the Company as provided in Section 7.2.7.
- 2.6 **Additional Actions .** If, at any time after the Closing Date, any further action is necessary or desirable to carry out the purposes of this Agreement or to vest, perfect or confirm in the Surviving Corporation title to or ownership or possession of any property, right, privilege, power, franchise or other asset of either Constituent Corporation acquired or to be acquired by reason of, or as a result of, the Merger, the officers and directors of the Company and Merger Sub are fully authorized in the name of their respective corporations or otherwise to take, and will take, all such lawful and necessary action, so long as such action is consistent with this Agreement.

ARTICLE 3

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to Parent and Merger Sub as follows:

- 3.1 **Corporate Status of the Company .** Except as set forth on Schedule 3.1 hereto, the Company is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, with the requisite corporate power to own, operate and lease its properties and to carry on its business as now being conducted. Except as set forth on Schedule 3.1 hereto, the Company is duly qualified or licensed to do business as foreign corporations and are in good standing in all jurisdictions in which the character of the properties owned or held under lease by each or the nature of the business transacted by each makes qualification necessary, except where failure to be so qualified would not have a Company Material Adverse Effect. All jurisdictions in which the Company is qualified to do business are set forth on Schedule 3.1 hereto.
- 3.2 **Capital Stock .**
- 3.2.1 **Authorized Stock of the Company .** The authorized capital stock of the Company consists of 1,000,000 shares of Company Common Stock, of which 540,000 shares were issued and outstanding (excluding 234,650 shares held in Treasury) as of January 28, 2000. All of the outstanding shares of Company Common Stock have been duly authorized and validly issued,

were not issued in violation of any person's preemptive rights, and are fully paid and nonassessable.

3.2.2 Options and Convertible Securities of the Company . Except as set forth on Schedule 3.2, there are no outstanding subscriptions, options, warrants, conversion rights or other rights, securities, agreements or commitments obligating the Company to issue, sell or otherwise dispose of shares of its capital stock, or any securities or obligations convertible into, or exercisable or exchangeable for, any shares of its capital stock. Since March 31, 1999, the Company has not issued, sold or otherwise disposed of any shares of its capital stock, other than pursuant to the Company Equity Plan. Except as set forth on Schedule 3.2, there are no voting trusts or other agreements or understandings to which the Company or any Stockholder is a party with respect to the voting of the shares of Company Common Stock and the Company is not a party to or bound by any outstanding restrictions, options or other obligations, agreements or commitments to sell, repurchase, redeem or acquire any outstanding shares of Company Common Stock or other equity securities of the Company.

3.3 Subsidiaries . The Company has no Subsidiaries.

3.4 Authority for Agreement; Noncontravention

3.4.1 Authority . The Company has the corporate power and authority to enter into this Agreement and to consummate the transactions contemplated hereby and thereby . The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized by the board of directors of the Company and no other corporate proceedings on the part of the Company are necessary to authorize the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby and thereby. This Agreement has been duly executed and delivered by the Company and constitutes valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, subject to the qualifications that enforcement of the rights and remedies created hereby is subject to (a) bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium and other laws of general application affecting the rights and remedies of creditors and (b) general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law).

3.4.2 No Conflict . Except as set forth on Schedule 3.4 hereto, neither the execution and delivery of this Agreement by the Company, nor the performance by the Company of its obligations hereunder, nor the consummation by the Company of the transactions contemplated hereby will (a) conflict with or result in a violation of any provision of the charter documents or by-laws of the Company, (b) with or without the giving of notice or the lapse of time, or both, conflict with, or result in any violation or breach of, or constitute a default under, or result in any right to accelerate or result in the creation of any lien, charge or encumbrance pursuant to, or right of termination under, any provision of any note, mortgage, indenture, lease, instrument or other agreement, permit, concession, grant, franchise, license, judgment, order, decree, statute, ordinance, rule or regulation to which the Company is a party or by which any of them or any of their assets or properties is bound or which is applicable to any of them or any of their assets or properties. No authorization, consent or approval of, or filing with or notice to, any United States or foreign governmental or public body or authority (each a "Governmental Entity") is necessary for the execution and delivery of this Agreement by the Company or the consummation by the Company of the transactions contemplated hereby, except for (i) the filing of the Certificate of Merger with the Secretary of the State of Delaware and (ii) such other consents, authorizations, filings, approvals and registrations which if not obtained or made would not have a Company Material Adverse Effect.

3.5 Financial Statements . The Company has previously furnished Parent with an accurate and complete copy of the balance sheets of the Company as of September 30, 1999, 1998, 1997, and 1996 and the two-month period ended November 30, 1999 and the statements of operations, cash flows and changes in stockholders' equity of the Company for the respective years and the two-month period then ended. The annual financial statements were compiled by Ableson & Company, the Company's certified public accountants. Collectively, the financial statements referred to in the immediately preceding sentence are sometimes referred to herein as the "Company Financial Statements" and the balance sheet of the Company as of

September 30, 1999 is referred to herein as the "Company Balance Sheet." Each of the balance sheets included in the Company Financial Statements (including any related notes) fairly presents in all material respects the financial position of the Company as of its date, and the other statements included in the Company Financial Statements (including any related notes) fairly present in all material respects the results of operations, cash flows and stockholders' equity, as the case may be, of the Company for the periods therein set forth, in each case in accordance with United States generally accepted accounting principles ("GAAP") consistently applied, subject, in the case of the two-month period, to normal year-end adjustments (all except as otherwise stated therein).

- 3.6 **Absence of Material Adverse Changes** . Except as set forth on Schedule 3.6 hereto, since the date of the Letter of Intent, the Company has not suffered any Company Material Adverse Effect, nor has there occurred or arisen any event, condition or state of facts of any character that could reasonably be expected to result in a Company Material Adverse Effect; *provided, however* , that any change arising out of conditions affecting the economy or industry of the Company in general which does not affect the Company in a materially disproportionate manner relative to other participants in the economy or such industry shall not be deemed to constitute a Company Material Adverse Effect. Since the date of the Letter of Intent, there have been no dividends or other distributions declared or paid in respect of, or any repurchase or redemption by the Company of, any of the shares of capital stock of the Company, or any commitment relating to any of the foregoing.
- 3.7 **Absence of Undisclosed Liabilities** . Except as set forth on Schedule 3.7, neither the Company has any material liabilities or obligations, fixed, accrued, contingent or otherwise (collectively, "Liabilities"), that are not fully reflected or provided for on, or disclosed in the notes to, the balance sheets included in the Company Financial Statements, except (i) Liabilities incurred in the ordinary course of business since the date of the Company Balance Sheet, none of which individually or in the aggregate has had or could reasonably be expected to have a Company Material Adverse Effect, (ii) Liabilities permitted or contemplated by this Agreement, and (iii) Liabilities expressly disclosed on the Schedules delivered hereunder.
- 3.8 **Compliance with Applicable Law, Charter and By-Laws** . Each of the Company has all requisite licenses, permits and certificates from all Governmental Entities (collectively, "Permits") necessary to conduct its business as currently conducted, and to own, lease and operate its properties in the manner currently held and operated, except as set forth on Schedule 3.8 hereto or except where the failure to have such Permit could not reasonably be expected to have a Company Material Adverse Effect. All of the Company's Permits are in full force and effect. Each of the Company is in compliance in all material respects with all the terms and conditions related to such Permits. There are no proceedings in progress, pending or, to the knowledge of the Company, threatened, which may result in revocation, cancellation, suspension, or any material adverse modification of any of such Permits. The business of the Company is not being conducted in violation of any applicable law, statute, ordinance, regulation, rule, judgment, decree, order, Permit, concession, grant or other authorization of any Governmental Entity, except for any violations that, in the aggregate, do not and could not reasonably be expected to have a Company Material Adverse Effect or prevent or materially delay the consummation of the transactions contemplated hereby. The Company is not in default or violation of any material provision of its charter documents or its by-laws.
- 3.9 **Litigation and Audits** . Except for any claim, action, suit or proceeding set forth on Schedule 3.9 or 3.10 hereto, (a) there is no investigation by any Governmental Entity with respect to the Company pending or, to the knowledge of the Company, threatened, nor has any Governmental Entity indicated to the Company an intention to conduct the same; (b) there is no claim, action, suit, arbitration or proceeding pending or, to the knowledge of the Company, threatened against or involving the Company, or any of its or their assets or properties, at law or in equity, or before any arbitrator or Governmental Entity, that, if adversely determined, either singly or in the aggregate, would have a Company Material Adverse Effect or prevent or materially delay the consummation of the transactions contemplated hereby; and (c) there are no judgments, decrees, injunctions or orders of any Governmental Entity or arbitrator outstanding against the Company.
- 3.10 **Tax Matters** .
- 3.10.1 **Filing of Returns** . Except as set forth on Schedule 3.10 hereto, the Company have prepared and filed on a timely basis with all appropriate governmental authorities all material returns in respect of Taxes that they are required to file on or prior to the Closing, and all such returns are correct and

complete in all material respects.

- 3.10.2 **Payment of Taxes** . Except as set forth on Schedule 3.10, the Company have paid in full all Taxes due on or before the Closing and, in the case of Taxes accruing on or before the Closing that are not due on or before the Closing, the Company has made adequate provision in its books and records and financial statements for such payment.
- 3.10.3 **Withholding** . Except as set forth on Schedule 3.10, the Company have withheld from each payment made to any of its present or former employees, officers and directors all amounts required by law to be withheld and has, where required, remitted such amounts within the applicable periods to the appropriate governmental authorities.
- 3.10.4 **Assessments** . Except as set forth on Schedule 3.10, there are no assessments of the Company with respect to Taxes that have been issued and are outstanding. Except as set forth on Schedule 3.10, no Governmental Entity has examined or audited the Company in respect of Taxes. Except as set forth on Schedule 3.10, neither the Company has received any indication in writing from any Governmental Entity that an assessment in respect of the Company is proposed. Except with respect to the matters set forth on Schedule 3.10 hereof, neither the Company has executed or filed any agreement extending the period of assessment or collection of any Taxes.
- 3.10.5 **Access to Returns** . Parent has been provided with a copy of or access to all federal, state, local and foreign income Tax returns filed by the Company since January 1, 1997. Parent has been provided with a copy of or access to all assessments, extensions and waivers resulting from any audits of the Company by a Governmental Entity in respect of Taxes, and all such assessments and related penalties and interest have been paid in full unless being contested in good faith by the Company.
- 3.10.6 **Definition of Taxes** . As used herein, "Taxes" means all taxes, levies and other assessments, including all income, sales, use, goods and services, value added, capital, capital gains, net worth, transfer, profits, withholding, payroll, employer health, excise, real property and personal property taxes, and any other taxes, assessments or similar charges in the nature of a tax including unemployment insurance payments and workers compensation premiums, together with any installments with respect thereto, and any interest, fines and penalties, imposed by any Governmental Entity (including federal, state, municipal and foreign Governmental Entities), and whether disputed or not.

3.11 **Employee Benefit Plans** .

- 3.11.1 **List of Plans** . Schedule 3.11 hereto contains a correct and complete list of all pension, profit sharing, retirement, deferred compensation, welfare, legal services, medical, dental or other employee benefit or health insurance plans, life insurance or other death benefit plans, disability, stock option, stock purchase, stock compensation, bonus, vacation pay, severance pay and other similar plans, programs or agreements, and every material written personnel policy, relating to any persons employed by the Company or in which any person employed by the Company is eligible to participate and which is currently maintained or that was maintained at any time in the last five calendar years by the Company or any ERISA Affiliate (collectively, the "Company Plans"). The Company has made available to Parent complete copies, as of the date hereof, of all of the Company Plans that have been reduced to writing, together with all documents establishing or constituting any related trust, annuity contract, insurance contract or other funding instrument, and summaries of those that have not been reduced to writing. The Company has made available to Parent complete copies of current plan summaries, employee booklets, personnel manuals and other material documents or written materials concerning the Company Plans that are in the possession of the Company as of the date hereof. Except as set forth on Schedule 3.11, the Company does not have any "defined benefit plans" as defined in Section 3(35) of ERISA.
- 3.11.2 **ERISA** . Neither the Company nor any ERISA Affiliate of the Company has incurred any "withdrawal liability" calculated under Section 4211 of ERISA and there has been no event or circumstance which would cause them to incur any such liability. Except as set forth in Schedule 3.11, neither the Company nor any ERISA Affiliate of the Company has ever maintained a Company Plan providing health or life insurance benefits to former employees, other than as

required pursuant to Section 4980B of the Code or to any state law conversion rights. No plan previously maintained by the Company or its ERISA Affiliates which was subject to Title IV of ERISA has been terminated; no proceedings to terminate any such plan have been instituted within the meaning of Subtitle C of Title IV of ERISA; and no reportable event within the meaning of Section 4043 of said Subtitle C of Title IV of ERISA with respect to which the requirement to file a notice with the Pension Benefit Guaranty Corporation has not been waived has occurred with respect to any such Company Plan, and no liability to the Pension Benefit Guaranty Corporation has been incurred by the Company or its ERISA Affiliates. Except as set forth on Schedule 3.11, with respect to all the Company Plans, the Company and every ERISA Affiliate of the Company are in material compliance with all requirements prescribed by all statutes, regulations, orders or rules currently in effect, and have in all material respects performed all obligations required to be performed by them. Neither the Company nor any ERISA Affiliate of the Company, nor to the Company's knowledge any of their directors, officers, employees or agents, nor any trustee or administrator of any trust created under the Company Plans, has engaged in or been a party to any "prohibited transaction" as defined in Section 4975 of the Code and Section 406 of ERISA which could subject the Company or its Affiliates, directors or employees or the Company Plans or the trusts relating thereto or any party dealing with any of the Company Plans or trusts to any tax or penalty on "prohibited transactions" imposed by Section 4975 of the Code. Except as set forth on Schedule 3.11, neither the Company Plans nor the trusts created thereunder has incurred any "accumulated funding deficiency," as such term is defined in Section 412 of the Code and regulations issued thereunder, whether or not waived.

3.11.3 Plan Determinations . Except as set forth in Schedule 3.11, each Company Plan intended to qualify under Section 401(a) of the Code has been determined by the Internal Revenue Service to so qualify, and the trusts created thereunder have been determined to be exempt from tax under Section 501(a) of the Code; copies of all determination letters have been delivered to the Company; and, to the knowledge of the Company, nothing has occurred since the date of such determination letters which might cause the loss of such qualification or exemption. With respect to each Company Plan which is a qualified profit sharing plan, all employer contributions accrued for plan years ending prior to the Closing under the Company Plan terms and applicable law have been made.

3.11.4 Funding . Except as set forth on Schedule 3.11:

- (a) all contributions, premiums or other payments due or required to be made to the Company Plans as of the date hereof have been made as of the date hereof or are properly reflected on the Company Balance Sheet;
- (b) there are no actions, liens, suits or claims pending or, to the knowledge of the Company, threatened (other than routine claims for benefits) with respect to any Company Plan;
- (c) to the knowledge of the Company, no event has occurred, and there exists no condition or set of circumstances, which presents a material risk of a partial termination (within the meaning of Section 411(d)(3) of the Code) of any Company Plan;
- (d) each Company Plan that is a "group health plan" (as defined in Section 607(1) of ERISA) has been operated at all times in substantial compliance with the provisions of COBRA and any applicable, similar state law; and
- (e) with respect to any Company Plan that is qualified under Section 401(k) of the Code, individually and in the aggregate, no event has occurred, and to the knowledge of the Company, there exists no condition or set of circumstances in connection with which the Company could be subject to any liability that is reasonably likely to have a Company Material Adverse Effect (except liability for benefits claims and funding obligations payable in the ordinary course) under ERISA, the Code or any other applicable law.

3.12 Employment-Related Matters .

3.12.1 Labor Relations . Except to the extent set forth on Schedule 3.12 hereto: (a) neither the Company is a party to any collective bargaining agreement or other contract or agreement with any labor

organization or other representative of any of the employees of the Company; (b) there is no labor strike, dispute, slowdown, work stoppage or lockout that is pending or threatened against or otherwise affecting the Company, and neither the Company has experienced the same; (c) neither the Company has closed any plant or facility, effectuated any layoffs of employees or implemented any early retirement or separation program at any time, nor has the Company planned or announced any such action or program for the future with respect to which the Company has any material liability; and (d) all salaries, wages, vacation pay, bonuses, commissions and other compensation due from the Company to the employees of the Company before the date hereof have been paid or accrued in all material respects as of the date hereof.

- 3.12.2 **Employee List** . The Company has heretofore delivered to Parent a list (the "Employee List") dated as of January 7, 2000 containing the name of each employee of the Company and each such employee's position, starting employment date and annual salary. The Employee List is correct and complete as of the date of the Employee List. No third party has asserted any claim, or, to the knowledge of the Company, has any reasonable basis to assert any valid claim, against the Company that either the continued employment by, or association with, the Company of any of the present officers or employees of, or consultants to, the Company contravenes any agreements or laws applicable to unfair competition, trade secrets or proprietary information.

3.13 **Environmental** .

- 3.13.1 **Environmental Laws** . Except for matters which, individually or in the aggregate, would not have a Company Material Adverse Effect, (a) the Company is in compliance with all applicable Environmental Laws in effect on the date hereof; (b) the Company has not received any written communication that alleges that the Company is not in compliance in all material respects with all applicable Environmental Laws in effect on the date hereof; (c) to the knowledge of the Company, there are no circumstances that may prevent or interfere with compliance in the future with all applicable Environmental Laws; (d) all material Permits and other governmental authorizations currently held by the Company pursuant to the Environmental Laws are in full force and effect, the Company are in compliance with all of the terms of such Permits and authorizations, and no other Permits or authorizations are required by the Company for the conduct of its and their business on the date hereof; and (e) the management, handling, storage, transportation, treatment, and disposal by the Company of all Materials of Environmental Concern has been in compliance with all applicable Environmental Laws.
- 3.13.2 **Environmental Claims** . Except as set forth on Schedule 3.13 hereto and except for Environmental Claims which, individually or in the aggregate, would not have a Company Material Adverse Effect, there is no Environmental Claim pending or, to the knowledge of the Company, threatened against or involving the Company or against any person or entity whose liability for any Environmental Claim the Company has or may have retained or assumed either contractually or by operation of law.
- 3.13.3 **No Basis for Claims** . Except for matters which, individually or in the aggregate, would not have a Company Material Adverse Effect, to the knowledge of the Company, there are no past or present actions or activities by the Company, or any circumstances, conditions, events or incidents, including the storage, treatment, release, emission, discharge, disposal or arrangement for disposal of any Material of Environmental Concern, that could reasonably form the basis of any Environmental Claim against the Company or against any person or entity whose liability for any Environmental Claim the Company may have retained or assumed either contractually or by operation of law.

- 3.14 **No Broker's or Finder's Fees** . Except as disclosed in Schedule 3.14, the Company has not paid or become obligated to pay any fee or commission to any broker, finder, financial advisor, intermediary, employee, or director in connection with the transactions contemplated by this Agreement.

3.15 **Assets Other Than Real Property** .

- 3.15.1 **Title** . The Company has good and marketable title to all of the tangible assets shown on the Company Balance Sheet, in each case, free and clear of any mortgage, pledge, lien, security interest, lease or other encumbrance (collectively, "Encumbrances"), except for (a) assets disposed

of since the date of the Company Balance Sheet in the ordinary course of business and in a manner consistent with past practices, (b) liabilities, obligations and Encumbrances reflected in the Company Balance Sheet or otherwise in the Company Financial Statements, (c) Permitted Encumbrances, and (d) liabilities, obligations and Encumbrances set forth on Schedule 3.15 hereto.

3.15.2 **Inventory.** Except as set forth on Schedule 3.15, the inventory reflected on the Company Balance Sheet contains no material amount of slow-moving or obsolete amount items that have not been reserved for. The value at which such inventories are carried on the Company Balance Sheet reflect the normal inventory valuation policies of the Company and are carried in accordance with GAAP, consistently applied.

3.15.3 **Accounts Receivable .** Except as set forth on Schedule 3.15, all receivables shown on the Company Balance Sheet and all receivables accrued by the Company since the date of the Company Balance Sheet, have been collected or are collectible in all material respects in the aggregate amount shown, less any allowances for doubtful accounts reflected therein, and, in the case of receivables arising since the date of the Company Balance Sheet, any additional allowance in respect thereof calculated in a manner consistent with the allowance reflected in the Company Balance Sheet.

3.15.4 **Condition .** All material plant, equipment and personal property owned by the Company and regularly used in its and their businesses is in good operating condition and repair, ordinary wear and tear excepted.

3.16 **Real Property .**

3.16.1 **Company Real Property .** The Company does not own any real property.

3.16.2 **Company Leases .** Schedule 3.16 hereto lists all of the Company Leases. Complete copies of the Company Leases, and all material amendments thereto (which are identified on Schedule 3.16), have been made available by the Company to Parent. The Company Leases grant leasehold estates free and clear of all Encumbrances granted by or caused by the actions of the Company. To the knowledge of the Company, the Company Leases are in full force and effect and are binding and enforceable against each of the parties thereto in accordance with their respective terms. Except as set forth on Schedule 3.16, neither the Company nor, to the knowledge of the Company, any other party to a Company Lease, has committed a material breach or default under any Company Lease, nor has there occurred any event that with the passage of time or the giving of notice or both would constitute such a breach or default, nor are there any facts or circumstances that would reasonably indicate that the Company is likely to be in material breach or default thereunder. Schedule 3.16 correctly identifies each Company Lease the provisions of which would be materially and adversely affected by the transactions contemplated hereby and each Company Lease that requires the consent of any third party in connection with the transactions contemplated hereby. No material construction, alteration or other leasehold improvement work with respect to the real property covered by any of the Company Leases remains to be paid for or to be performed by the Company. No Company Leases have an unexpired term which including any renewal or extensions of such term provided for in the Company Lease could exceed fifty years.

3.16.3 **Condition .** All buildings, structures and fixtures, or parts thereof, used by the Company in the conduct of its business are in good operating condition and repair, ordinary wear and tear excepted, and are insured with coverages that are usual and customary for similar properties and similar businesses or are required, pursuant to the terms of the Company Leases, to be insured by third parties.

3.17 **Agreements, Contracts and Commitments .**

3.17.1 **Company Agreements .** Except as set forth on Schedule 3.17 hereto or any other Schedule hereto, the Company is not a party to:

- (a) any bonus, deferred compensation, pension, severance, profit-sharing, stock option, employee stock purchase or retirement plan, contract or arrangement or other employee benefit plan or arrangement;

- (b) any employment agreement with any present employee, officer, director or consultant (or former employees, officers, directors and consultants to the extent there remain at the date hereof obligations to be performed by the Company);
- (c) any agreement for personal services or employment with a term of service or employment specified in the agreement or any agreement for personal services or employment in which the Company has agreed on the termination of such agreement to make any payments greater than those that would otherwise be imposed by law;
- (d) any agreement of guarantee or indemnification in an amount that is material to the Company taken as a whole;
- (e) any agreement or commitment containing a covenant limiting or purporting to limit the freedom of the Company to compete with any person in any geographic area or to engage in any line of business;
- (f) any lease other than the Company Leases under which the Company is lessee that involves payments of \$25,000 or more per annum or is material to the conduct of the business of the Company;
- (g) any joint venture or profit-sharing agreement (other than with employees);
- (h) except for trade indebtedness incurred in the ordinary course of business and equipment leases entered into in the ordinary course of business, any loan or credit agreements providing for the extension of credit to the Company or any instrument evidencing or related in any way to indebtedness incurred in the acquisition of companies or other entities or indebtedness for borrowed money by way of direct loan, sale of debt securities, purchase money obligation, conditional sale, guarantee, or otherwise that individually is in the amount of \$25,000 or more;
- (i) any license agreement, either as licensor or licensee, involving payments (including past payments) of \$25,000 in aggregate or more, or any material distributor, dealer, reseller, franchise, manufacturer's representative, or sales agency or any other similar material contract or commitment;
- (j) any agreement granting exclusive rights to, or providing for the sale of, all or any portion of the Company Proprietary Rights;
- (k) any agreement or arrangement providing for the payment of any commission based on sales other than to employees of the Company;
- (l) any agreement for the sale by the Company or its Subsidiaries of materials, products, services or supplies that involves future payments to the Company of more than \$25,000;
- (m) any agreement for the purchase by the Company of any materials, equipment, services, or supplies, that either (i) involves a binding commitment by the Company to make future payments in excess of \$25,000 and cannot be terminated by it without penalty upon less than three months' notice or (ii) was not entered into in the ordinary course of business;
- (n) any agreement or arrangement with any third party to develop any intellectual property or other asset expected to be used or currently used or useful in the business of the Company;
- (o) any agreement or commitment for the acquisition, construction or sale of fixed assets owned or to be owned by the Company that involves future payments by it of more than \$25,000;
- (p) any agreement or commitment to which present or former directors, officers or Affiliates of the Company (or directors or officers of an Affiliate of the Company) are also parties;
- (q) any agreement not described above (ignoring, solely for this purpose, any dollar amount

thresholds in those descriptions) involving the payment or receipt by the Company of more than \$100,000, other than the Company Leases; or

- (r) any agreement not described above that was not made in the ordinary course of business and that is material to the financial condition, business, operations, assets, results of operations or prospects of the Company.

3.17.2 **Validity** . Except as set forth on Schedule 3.17, to the knowledge of the Company, all contracts, leases, instruments, licenses and other agreements required to be set forth on Schedule 3.17 are valid and in full force and effect and the Company has not, nor, to the knowledge of the Company, has any other party thereto, breached any provision of, or defaulted under the terms of any such contract, lease, instrument, license or other agreement, except for any breaches or defaults that, in the aggregate, would not be expected to have a Company Material Adverse Effect or have been cured or waived. Schedule 3.17 identifies each contract and other document set forth on Schedule 3.17 or disclosed by the Company on another Schedule hereto that requires the consent of a third party in connection with the transactions contemplated hereby.

3.18 **Intellectual Property** .

3.18.1 **Right to Intellectual Property** . Except as set forth on Schedule 3.18 hereto, the Company owns, or has perpetual, fully paid, worldwide rights to use, all patents, trademarks, trade names, service marks, copyrights, and any applications therefor, maskworks, net lists, schematics, technology, know-how, computer software programs or applications (in both source code and object code form), and tangible or intangible proprietary information or material (excluding Commercial Software) that are used in the business of the Company as currently conducted (the "Company Proprietary Rights").

3.18.2 **No Conflict** . Set forth on Schedule 3.18 is a complete list of all patents, trademarks, registered copyrights, trade names and service marks, and any applications therefor, included in the Company Proprietary Rights, specifying, where applicable, the jurisdictions in which each such Company Proprietary Right has been issued or registered or in which an application for such issuance and registration has been filed, including the respective registration or application numbers and the names of all registered owners. Except as set forth on Schedule 3.18, none of the Company's currently marketed software products has been registered for copyright protection with the United States Copyright Office or any foreign offices nor has the Company been requested to make any such registration. Set forth on Schedule 3.18 is a complete list of all material licenses, sublicenses and other agreements as to which the Company is a party and pursuant to which the Company or any other person is authorized to use any Company Proprietary Right (excluding End-User Licenses) or other trade secret material to the business of the Company, and includes the identity of all parties thereto, a description of the nature and subject matter thereof, the applicable royalty and the term thereof. The Company is not in violation of any license, sublicense or agreement described on such list except such violations as do not materially impair the Company rights under such license, sublicense or agreement. Except as disclosed in this Article 3, the execution and delivery of this Agreement by the Company, and the consummation of the transactions contemplated hereby, will neither cause the Company to be in violation or default under any such license, sublicense or agreement, nor entitle any other party to any such license, sublicense or agreement to terminate or modify such license, sublicense or agreement. Except as set forth on Schedule 3.18, the Company is the sole and exclusive owner or licensee of, with all right, title and interest in and to (free and clear of any and all liens, claims and encumbrances), the Company Proprietary Rights, and has sole and exclusive rights (and is not contractually obligated to pay any compensation to any third party in respect thereof) to the use thereof or the material covered thereby in connection with the services or products in respect of which the Company Proprietary Rights are being used. No claims with respect to the Company Proprietary Rights have been asserted or, to the knowledge of the Company, are threatened by any person nor are there any valid grounds for any bona fide claims to the effect that the manufacture, sale, licensing or use of any of the products of the Company as now manufactured, sold or licensed or used or proposed for manufacture, use, sale or licensing by the Company infringes on any copyright, patent, trademark, service mark or trade secret, against the use by the Company of any trademarks, service marks,

trade names, trade secrets, copyrights, patents, technology, know-how or computer software programs and applications used in the Company's business as currently conducted or as proposed to be conducted by the Company, or challenging the ownership by the Company, or the validity or effectiveness of any of the Company Proprietary Rights. All material registered trademarks, service marks and copyrights held by the Company are valid and subsisting. To the knowledge of the Company there is no material unauthorized use, infringement or misappropriation of any of the Company Proprietary Rights by any third party, including any employee or former employee of the Company. No Company Proprietary Right or product of the Company is subject to any outstanding decree, order, judgment, or stipulation restricting in any manner the licensing thereof by the Company. Except as set forth in Schedule 3.18, the Company has not entered into any agreement (other than exclusive distribution agreements) under which the Company are restricted from selling, licensing or otherwise distributing any of its products to any class of customers, in any geographic area, during any period of time or in any segment of the market. The Company's products, packaging and documentation contain copyright notices sufficient to maintain copyright protection on the copyrighted portions of the Company Proprietary Rights.

3.18.3 **Employee Agreements** . Except as set forth on Schedule 3.18, each employee, officer and consultant of the Company has executed a confidentiality agreement in substantially the form attached hereto as Schedule 3.18.3, providing the Company with title and ownership to the Company Proprietary Rights developed or used by the Company in its business. To the knowledge of the Company, no employee, officer or consultant of the Company is in violation of any term of any employment or consulting contract, proprietary information and inventions agreement, non-competition agreement, or any other contract or agreement relating to the relationship of any such employee, officer or consultant with the Company or any previous employer.

3.19 **Insurance Contracts** . Schedule 3.19 hereto lists all contracts of insurance and indemnity in force at the date hereof with respect to the Company. Such contracts of insurance and indemnity and those shown in other Schedules to this Agreement (collectively, the "Company Insurance Contracts") insure against such risks, and are in such amounts, as appropriate and reasonable considering the Company's property, business and operations. All of the Company Insurance Contracts are in full force and effect, with no default thereunder by the Company which could permit the insurer to deny payment of claims thereunder. The Company has not received notice from any of its insurance carriers that any insurance premiums will be materially increased in the future or that any insurance coverage provided under the Company Insurance Contracts will not be available in the future on substantially the same terms as now in effect. The Company has not received or given a notice of cancellation with respect to any of the Company Insurance Contracts.

3.20 **Banking Relationships** . Schedule 3.20 hereto shows the names and locations of all banks and trust companies in which the Company or any of its Subsidiaries has accounts, lines of credit or safety deposit boxes and, with respect to each account, line of credit or safety deposit box, the names of all persons authorized to draw thereon or to have access thereto.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB

Parent and Merger Sub, jointly and severally, represent and warrant to the Company as follows:

4.1 **Corporate Status of Parent and its Subsidiaries** . Parent and each of its Subsidiaries is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, with the requisite corporate power to own, operate and lease its properties and to carry on its business as now being conducted.

4.2 **Authorized Stock of Merger Sub** . The authorized capital stock of Merger Sub consists of 1,000 shares of Merger Sub Stock, of which 100 shares are issued and outstanding. All of the outstanding shares of Merger Sub Stock have been duly authorized and validly issued, were not issued in violation of any person's preemptive rights, and are fully paid and nonassessable.

4.3 **Authority for Agreement; Noncontravention** .

4.3.1 **Authority of Parent** . Each of Parent and Merger Sub has the corporate power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by the boards of directors of Parent and Merger Sub and no other corporate proceedings on the part of Parent or Merger Sub are necessary to authorize the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby. This Agreement and the other agreements contemplated hereby to be signed by Parent or Merger Sub have been duly executed and delivered by Parent and Merger Sub, as the case may be, and constitute valid and binding obligations of Parent and Merger Sub, as the case may be, enforceable against Parent and Merger Sub in accordance with their terms, subject to the qualifications that enforcement of the rights and remedies created hereby and thereby are subject to (a) bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium and other laws of general application affecting the rights and remedies of creditors and (b) general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law).

4.3.2 **No Conflict** . Except as set forth on Schedule 4.3.2 hereto, neither execution and delivery of this Agreement by Parent or Merger Sub, nor the performance by Parent or Merger Sub of its obligations hereunder, nor the consummation by Parent or Merger Sub of the transactions contemplated hereby will (a) conflict with or result in a violation of any provision of the charter documents or by-laws of Parent (including Merger Sub), or (b) with or without the giving of notice or the lapse of time, or both, conflict with, or result in any violation or breach of, or constitute a default under, or result in any right to accelerate or result in the creation of any lien, charge or encumbrance pursuant to, or right of termination under, any provision of any note, mortgage, indenture, lease, instrument or other agreement, Permit, concession, grant, franchise, license, judgment, order, decree, statute, ordinance, rule or regulation to which Parent, Merger Sub or any of Parent's other Subsidiaries is a party or by which any of them or any of their assets or properties is bound or which is applicable to any of them or any of their assets or properties. No authorization, consent or approval of, or filing with or notice to, any Governmental Entity is necessary for the execution and delivery of this Agreement by Parent or Merger Sub or the consummation by Parent or Merger Sub of the transactions contemplated hereby, except for (i) the filing of the Certificate of Merger with the Secretary of State of the State of Delaware and (ii) such other consents, authorizations, filings, approvals and registrations which if not obtained or made would not have a Parent Material Adverse Effect.

4.4 **SEC Statements, Reports and Documents** . Parent has timely filed all required forms, reports, statements and documents with the SEC since January 1, 1993. Parent heretofore has delivered or made available to the Company true and complete copies of (a) its Annual Reports on Form 10-K for the fiscal years ended June 30, 1998 and 1999, respectively, (b) its Quarterly Report on Form 10-Q for the fiscal quarter September 30, 1999, respectively, (c) all proxy statements relating to Parent's meetings of stockholders (whether annual or special) held since June 30, 1997, (d) all other forms, reports, statements and documents filed or required to be filed by it with the SEC since June 30, 1997, and (e) all amendments and supplements to all such reports and registration statements filed by Parent with the SEC (the documents referred to in clauses (a), (b), (c), (d) and (e) being hereinafter referred to as the "Parent Reports"). As of their respective dates, the Parent Reports complied in all material respects with all applicable requirements of the Securities Act and the Exchange Act and the rules and regulations promulgated thereunder, and did not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. The financial statements (including any related notes) of Parent included in the Parent Reports were prepared in conformity with GAAP applied on a consistent basis (except as otherwise stated in the financial statements), and present fairly the consolidated financial position, results of operations and changes in financial position of Parent and its consolidated Subsidiaries as of the dates and for the periods indicated, subject, in the case of unaudited interim consolidated financial statements, to (i) the absence of certain notes thereto and (ii) normal year-end audit adjustments which are not in the aggregate material. The consolidated balance sheet of Parent and its subsidiaries at June 30, 1999, including the notes thereto, is hereinafter referred to as the "Parent Balance Sheet."

4.5 **Absence of Material Adverse Changes** . Since the date of the Parent Balance Sheet, Parent has not suffered

any Parent Material Adverse Effect, nor has there occurred or arisen any event, condition or state of facts of any character that could reasonably be expected to result in a Parent Material Adverse Effect.

- 4.6 **Litigation and Audits** . Except for any claim, action, suit or proceeding disclosed in the Parent Reports or set forth on Schedule 4.6 hereto, (a) there is no investigation by any Governmental Entity with respect to Parent pending or, to the knowledge of Parent, threatened, nor has any Governmental Entity indicated to Parent or any of its Subsidiaries an intention to conduct the same, and (b) there is no claim, action, suit, arbitration or proceeding pending or threatened against or involving Parent or any of its Subsidiaries, or any of its or their assets or properties, at law or in equity, or before any arbitrator or Governmental Entity, in each case that, if adversely determined, either singly or in the aggregate, would prevent or materially delay the consummation of the transactions contemplated hereby.

ARTICLE 5

CONDUCT PRIOR TO THE EFFECTIVE TIME

- 5.1 **Conduct of Business of the Company** . Except as set forth on Schedule 5.1 hereto, between the date of this Agreement and the Effective Time or the date, if any, on which this Agreement is earlier terminated pursuant to its terms, the Company and each of its Subsidiaries shall, except to the extent that Parent shall otherwise consent in writing, (i) carry on its business in the usual, regular and ordinary course in substantially the same manner as heretofore conducted, pay its debts and taxes when due subject to good faith disputes over such debts or taxes, pay or perform other material obligations when due subject to good faith disputes over such obligations, and use all reasonable efforts consistent with past practices and policies to preserve intact the Company's present business organizations, keep available the services of its present officers and employees and preserve its relationships with customers, suppliers and others having business relationships with it, to the end that the Company's and each of its Subsidiaries' goodwill and ongoing business be unimpaired at the Effective Time, and (ii) promptly notify Parent of any event or occurrence not in the ordinary course of business of the Company and each of its Subsidiaries which will have or could reasonably be expected to have a Company Material Adverse Effect. In addition, between the date of this Agreement and the Effective Time or the date, if any, on which this Agreement is earlier terminated pursuant to its terms, the Company and each of its Subsidiaries shall not, except to the extent that Parent shall otherwise consent in writing:
- (a) amend its charter documents or by-laws;
 - (b) declare or pay any dividends or distributions on the Company's outstanding shares of capital stock nor purchase, redeem or otherwise acquire for consideration any shares of the Company's capital stock or other securities except in accordance with agreements existing as of the date hereof;
 - (c) issue or sell any shares of its capital stock, effect any stock split or otherwise change its capitalization as it exists on the date hereof, or issue, grant, or sell any options, stock appreciation or purchase rights, warrants, conversion rights or other rights, securities or commitments obligating it to issue or sell any shares of its capital stock, or any securities or obligations convertible into, or exercisable or exchangeable for, any shares of its capital stock, other than the issuance of shares of Company Common Stock pursuant to the conversion, exercise or exchange of securities therefor outstanding as of the date hereof in accordance with their terms;
 - (d) borrow or agree to borrow any funds or voluntarily incur, or assume or become subject to, whether directly or by way of guaranty or otherwise, any obligation or Liability, except obligations incurred in the ordinary course of business consistent with past practices;
 - (e) pay, discharge or satisfy any claim, obligation or Liability in excess of \$25,000 (in any one case) or \$50,000 (in the aggregate), other than the payment, discharge or satisfaction in the ordinary course of business of obligations reflected on or reserved against in the Company Balance Sheet, or incurred since the date of the Company Balance Sheet in the ordinary course of business consistent with past practices or in connection with this transaction;
 - (f) except as required by applicable law, adopt or amend in any material respect, any agreement or plan (including severance arrangements) for the benefit of its employees;

- (g) sell, mortgage, pledge or otherwise encumber or dispose of any of its assets which are material, individually or in the aggregate, to the business of the Company and its Subsidiaries, except in the ordinary course of business consistent with past practices;
- (h) acquire by merging or consolidating with, or by purchasing any equity interest in or a material portion of the assets of, any business or any corporation, partnership interest, association or other business organization or division thereof, or otherwise acquire any assets which are material, individually or in the aggregate, to the business of the Company and its Subsidiaries, except in the ordinary course of business consistent with past practices;
- (i) subject to Section 5.1(o), increase the following amounts payable or to become payable: (i) the salary of any of its directors or officers, other than increases in the ordinary course of business consistent with past practices and not exceeding, in any case, ten percent (10%) of the director's or officer's salary on the date hereof, (ii) any other compensation of its directors or officers, including any increase in benefits under any bonus, insurance, pension or other benefit plan made for or with any of those persons, other than increases that are provided in the ordinary course of business consistent with past practices to broad categories of employees and do not discriminate in favor of the aforementioned persons, and (iii) the compensation of any of its other employees, consultants or agents except in the ordinary course of business consistent with past practices;
- (j) dispose of, permit to lapse, or otherwise fail to preserve the rights of the Company or any of its Subsidiaries to use the Company Proprietary Rights or enter into any settlement regarding the breach or infringement of, any Company Proprietary Rights, or modify any existing rights with respect thereto, other than in the ordinary course of business consistent with past practices, and other than any such disposal, lapse, failure, settlement or modification that does not have and could not reasonably be expected to have a Company Material Adverse Effect;
- (k) sell, or grant any right to exclusive use of, all or any part of the Company Proprietary Rights;
- (l) enter into any contract or commitment or take any other action that is not in the ordinary course of its business or could reasonably be expected to have an adverse impact on the transactions contemplated hereunder or that would have or could reasonably be expected to have a Company Material Adverse Effect;
- (m) amend in any material respect any agreement to which the Company or any of its Subsidiaries is a party the amendment of which will have or could reasonably be expected to have a Company Material Adverse Effect;
- (n) waive, release, transfer or permit to lapse any claims or rights (i) that has a value, or involves payment or receipt by it, of more than \$25,000 or (ii) the waiver, release, transfer or lapse of which would have or could reasonably be expected to have a Company Material Adverse Effect;
- (o) take any action that would materially decrease the Company's net worth, *provided, however*, that payments by the Company of reasonable legal and accounting fees related to the Merger shall not be deemed to be a breach of this Section 5.1(o);
- (p) make any change in any method of accounting or accounting practice other than changes required to be made in order that the Company's financial statements comply with GAAP; or
- (q) agree, whether in writing or otherwise, to take any action described in this Section 5.1.

5.2 **Conduct of Business of Parent** . Between the date of this Agreement and the Effective Time or the date, if any, on which this Agreement is earlier terminated pursuant to its terms, Parent and each of its Subsidiaries shall not, except to the extent that the Company shall otherwise consent in writing, take any action that would materially impair Parent's ability to pay the aggregate Merger Price or otherwise to perform its obligations under this Agreement.

ARTICLE 6

ADDITIONAL AGREEMENTS

- 6.1 **Exclusivity** . From and after the date of this Agreement until the earlier of the Effective Time or the termination of this Agreement in accordance with Article 9 hereof, [but in any event at least seventy-five (75) days after the date of the Letter of Intent,] the Company and its Subsidiaries will not, directly or indirectly, through their respective affiliates, agents, officers and directors, directly or indirectly, solicit, initiate, or participate in discussions or negotiations or otherwise cooperate in any way with, or provide any information to, any corporation, partnership, person, or other entity or group concerning any tender offer, exchange offer, merger, business combination, sale of substantial assets, sale of shares of capital stock, or similar transaction involving the Company or any of its Subsidiaries (all such transactions being referred to herein as "Acquisition Proposals"). Notwithstanding the foregoing, the Company may furnish information concerning its business, properties, or assets to and enter into negotiations with a corporation, partnership, person, or other entity or group, if the party receives an unsolicited Acquisition Proposal and outside counsel to the Company advises the Company's board of directors in writing that the board's fiduciary responsibilities under applicable law require that such information be provided or negotiations be held with the person presenting the Acquisition Proposal in order to avoid a breach of such fiduciary responsibilities. Notwithstanding the foregoing, in the event that the Company at any time after the date of the Letter of Intent and before the earlier of the Effective Time or the termination of this Agreement in accordance with Article 9 hereof, accepts an Acquisition Proposal from any person or entity other than Parent, or the board of directors of the Company fails, for any reason, to authorize and recommend to the stockholders of the Company the entering into this Agreement and the consummation of the transactions contemplated hereby, or the board of directors of the Company withdraws or modifies such authorization or recommendation, the Parent shall be entitled, upon demand submitted in a form of a notice to the Company (the "Demand Notice") setting forth the costs and expenses incurred by the Parent or Merger Sub in connection with the due diligence efforts related to transactions contemplated hereby (the "Due Diligence Costs"), to the payment of the Due Diligence Costs up to the total amount of \$50,000. The Company shall pay Due Diligence Costs within ten (10) days of the receipt of the Demand Notice.
- 6.2 **Expenses** . If the Company pays or incurs in connection with the Merger any costs and expenses for fees and disbursement of consultants, investment bankers and other financial advisors, counsel and accountants, in excess of \$30,000, the amount of the excess over \$30,000 shall be deducted from the aggregate Merger Price and shall reduce *pro rata* the Merger Price Per Share, so that the stockholders of the Company shall bear the excess cost. Parent shall be responsible for the costs and expenses incurred by the Parent and the Merger Sub in connection with the Merger, including fees and disbursements of consultants, investment bankers and other financial advisors, counsel and accountants. None of the parties of any of their Affiliates shall be responsible for any of the costs and expenses of the other parties, except that Parent, Merger Sub and/or any of their Affiliates may in their sole discretion determine the manner in which they wish to share the costs and expenses incurred by Parent and Merger Sub in connection with the Merger.
- 6.3 **Indemnification.**
- 6.3.1 **Indemnification.** Subject to the terms of this Section 6.3, from and after the Closing Date, Parent, the Surviving Corporation, each Subsidiary or Affiliate of Parent and their respective directors, officers, employees, Affiliates, representatives, successor and assigns (collectively "Indemnified Parties") shall be entitled to payment and reimbursement of the full amount of Loss suffered, incurred or paid by any Indemnified Party, by reason of, in whole or in part, any misrepresentation or inaccuracy in, or breach of, any representation or warranty made by the Company in this Agreement or any Exhibits or Schedules hereto or the certificates delivered pursuant to this Agreement (each such representation or warranty would read as if all qualifications as to materiality and knowledge were deleted therefrom and each such representation or warranty would read as if made by such Stockholder).
- 6.3.2 **Indemnification Representative.** The Company hereby appoints, and by adopting and approving this Agreement and the Merger, the Stockholders shall be deemed to appoint, David Deltano (the "Stockholder Representative"), with full and unqualified power to delegate to one or more Persons the authority granted to him hereunder, to act as each of their agent and attorney-in-fact, with full power of substitution, with authority.
- (a) to receive and to accept on behalf of each Stockholder any notice from the Company given in accordance with the terms of this Section 6.3 (and any notice given to the

Stockholder Representative shall be deemed to have been given to each Stockholder);

- (b) to give on behalf of each Stockholder any notice, representation, demand, or other communication that it may be necessary, desirable, or otherwise appropriate to give to secure and to preserve for each Stockholder the benefit of any policy or policies of insurance, surety, indemnification, or other reimbursement for any amount for which the Stockholder may be liable directly or indirectly under this Agreement ("Indemnification Insurance");
- (c) to cooperate with any and all Indemnified Parties to investigate, negotiate, settle, and compromise any claim of any Indemnified Party asserted under this Agreement *to the extent and only to the extent* that any liability of any Stockholder established or confirmed thereby is covered by Indemnification Insurance, and to execute on behalf of any Stockholder any agreement, instrument, or other document that, in the sole discretion of the Stockholder Representative, is necessary, desirable, or otherwise appropriate to effect any such settlement or compromise;

provided, however, that the Stockholder Representative shall have no liability or obligation to any Indemnified Party otherwise than and to the extent his individual liability as a Stockholder.

6.3.3 **Claims for Indemnification.** Upon obtaining knowledge of any facts, claim or demand which has given rise to, or could reasonably give rise to, a claim for indemnification hereunder (referred to herein as an "Indemnification Claim"), the Indemnified Party shall promptly give written notice of such facts, claim or demand ("Notice of Claim") to the party from whom indemnification is sought (the "Indemnifying Party"). So long as the Notice of Claim is given by the Indemnified Party in the Claims Period specified in Section 6.3.6, no failure or delay by the Indemnified Party in the giving of a Notice of Claim shall reduce or otherwise affect the Indemnified Party's right to indemnification except to the extent that the Indemnifying Party has been prejudiced thereby.

6.3.4 **Defense by Indemnifying Party.** In the event of a claim or demand asserted by a third party (a "Third Party Claim"), the Indemnifying Party acting through the Indemnification Representative, if applicable, shall have the right, but not the obligation, exercisable by written notice to the Indemnified Party within 10 days of the date of the Notice of Claim concerning the commencement or assertion of any Third Party Claim, to participate in the defense of such Third Party Claim. The Indemnified Party shall not settle such Third Party Claim without the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed.

6.3.5 **Limitation on Liability for Indemnity .** The Indemnified Parties shall not be entitled to indemnification pursuant to this Section 6.5 until the aggregate amount of all losses, expenses, liabilities and other damages suffered by the Indemnified Parties exceeds \$100,000 (including attorney's fees and expenses incurred in connection therewith) (the "Indemnity Threshold") whereupon the Indemnified Parties shall be entitled to indemnification hereunder for the aggregate amount of all of such losses, expenses, liabilities and other damages suffered by the Indemnified Parties or any Indemnified Party, in excess of \$100,000 in the aggregate. The Indemnity Threshold shall be determined without regard to any materiality qualification contained in any representation or warranty. The liability of any Stockholder with respect to any claim under this Section 6.3 shall not exceed a *pro rata* portion of the amount of the claim equal to that Stockholder's proportion of the total Merger Price; and the aggregate liability of any Stockholder under this Section 6.3 shall not in any event exceed the aggregate Merger Price Per Share to which that Stockholder is entitled pursuant to Section 2.3.1. The aggregate liability of all the Stockholders for indemnification under this Section 6.3 shall not exceed \$1,000,000.

6.3.6 **Claims Period .** Any claim for indemnification under this Section 6.5 must be asserted by written notice on or before the date that is 18 months after the Closing Date with respect to all other Losses.

6.4 **Access and Information .** The parties shall afford to each other and to their respective officers, employees, accountants, counsel and other authorized representatives full and complete access, upon 24 hours advance telephone notice, during regular business hours, throughout the period prior to the earlier of the Effective

Time or the termination of this Agreement pursuant to its terms, to their offices, properties, books and records and shall use reasonable efforts to cause their respective representatives and independent public accountants to furnish to each other such additional financial and operating data and other information as to their respective businesses, customers, vendors and properties and those of their Subsidiaries as either party may from time to time reasonably request. In the event of a claim for indemnification pursuant to Section 6.3, the parties shall cooperate in any investigation of relevant facts, and each Indemnified Party shall afford to the Indemnifying Parties (and to any authorized representative of an insurer providing applicable Indemnification Insurance) reasonable access as provided in the first sentence of this paragraph.

- 6.5 **Public Disclosure** . Except as otherwise required by law, any press release or other public disclosure of information regarding the proposed transaction (including the negotiations with respect to the Merger and the terms and existence of this Agreement) shall be developed by Parent, subject to the Company's review. The Company and Parent agree that each party's non-disclosure obligations contained in the Letter of Intent shall remain in full force and effect in accordance with the terms thereof and hereof.
- 6.6 **No Solicitation of Employees** . Parent and the Company agree that between the date of this Agreement and the Effective Time or the date one year after the date, if any, on which this Agreement is earlier terminated pursuant to its terms, whichever period is longer, neither party shall solicit, induce or recruit any of the other party's employees to leave their employment, otherwise than in response to general advertisements or solicitations not directed specially to employees of the other party.
- 6.7. **Further Assurances** .
- 6.7.1 **Generally** . Subject to terms and conditions herein provided and to the fiduciary duties of the board of directors and officers of any party, each of the parties agrees to use its commercially reasonable efforts to take, or cause to be taken, all action and to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate and make effective this Agreement and the transactions contemplated hereby. In case at any time any further action, including, without limitation, the obtaining of waivers and consents under any agreements, material contracts or leases and the execution and delivery of any licenses or sublicenses for any software, is necessary, proper or advisable to carry out the purposes of this Agreement, the proper officers and directors of each party to this Agreement are hereby directed and authorized to use their reasonable best efforts to effectuate all required action.
- 6.7.2 **Novation of the Material Contracts** . Each party agrees to use its best reasonable efforts to effect the novation of each contract of the Company, if any, that may require novation under its terms or under applicable laws or regulations as a result of the transactions contemplated by this Agreement, and further agrees to provide all documentation necessary to effect each such novation, including, without limitation, all instruments, certifications, requests, legal opinions, audited financial statements, and other documents required by Part 42 of the Federal Acquisition Regulation to effect a novation of any contract with the Government of the United States. In particular and without limiting the generality of the foregoing, the Company shall continue to communicate with responsible officers of the Government of the United States from time to time as may be appropriate and permissible, to request speedy action on any and all requests for consent to novation.

ARTICLE 7

CONDITIONS PRECEDENT

- 7.1 **Conditions Precedent to the Obligations of Each Party** . The obligations of the parties hereto to effect the Merger shall be subject to the fulfillment at or prior to the Closing of the following conditions:
- 7.1.1 **Stockholder Approval** . This Agreement and the transactions contemplated hereby shall have been approved by the requisite vote under applicable law of the stockholders of the Company.
- 7.1.2 **Board of Directors Consents** . This Agreement and the Merger and the other transactions contemplated hereby shall have been approved by the board of directors of each of Company, Parent and Merger Sub.

- 7.1.3 **Illegality.** There shall not have been any action taken, and no statute, rule or regulation shall have been enacted, by any state or federal government agency since the date of this Agreement that would prohibit or materially restrict the Merger or any other material transaction contemplated hereby.
- 7.1.4 **Government Consents.** All filings with and notifications to, and all approvals and authorizations of, third parties (including, without limitation, Governmental Entities) required for the consummation of the Merger and the other material transactions contemplated hereby shall have been made or obtained and all such approvals and authorizations obtained shall be effective and shall not have been suspended, revoked or stayed by action of any Governmental Entity.
- 7.1.5 **No Injunction .** No injunction or restraining or other order issued by a court of competent jurisdiction that prohibits or materially restricts the consummation of the Merger or the other transactions contemplated hereby shall be in effect (each party agreeing to use all reasonable efforts to have any injunction or other order immediately lifted), and no action or proceeding shall have been commenced or threatened in writing seeking any injunction or restraining or other order that seeks to prohibit, restrain, invalidate or set aside consummation of the Merger or any of the other transactions contemplated hereby.

7.2 **Conditions Precedent to Obligation of Parent and Merger Sub to Effect the Merger .** The obligation of Parent and Merger Sub to effect the Merger shall be subject to the fulfillment or waiver at or prior to the Closing of the following additional conditions:

- 7.2.1 **Representations and Warranties .** The representations and warranties of the Company contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date, except for changes contemplated by this Agreement and except for those representations and warranties which address matters only as of a particular date (which shall remain true and correct as of such date), with the same force and effect as if made on and as of the Closing Date, except in all such cases, for such breaches, inaccuracies or omissions of such representations and warranties which have neither had nor reasonably would be expected to have a Company Material Adverse Effect; and the Company shall have delivered to Parent a certificate to that effect, dated the date of the Closing and signed on behalf of the Company by the President and Chief Financial Officer of the Company.
- 7.2.2 **Agreements and Covenants .** The Company shall have performed in all material respects all of its agreements and covenants set forth herein that are required to be performed at or prior to the Closing Date; and the Company shall have delivered to Parent a certificate to that effect, dated as of the Closing Date and signed on behalf of the Company by the President and Chief Financial Officer of the Company.
- 7.2.3 **Cash Assets.** The Company shall at the Closing Date have cash assets of at least \$1,300,000.
- 7.2.4 **Legal Opinion .** Parent and Merger Sub shall have received an opinion from Testa, Hurwitz & Thibault LLP, counsel to the Company, in substantially the form attached hereto as Exhibit 7.2.4 hereto.
- 7.2.5 **Closing Documents .** The Company shall have delivered to Parent the Company closing certificate and such closing documents as the Parent shall reasonably request (other than additional opinions of counsel). The Company closing certificate, dated as of the Closing Date, duly executed by the Company's secretary, shall certify as to (i) the signing authority, incumbency and specimen signature of the signatories of this Agreement and other documents signed on behalf of the Company in connection herewith, (ii) the resolutions adopted by the board of directors of the Company authorizing and approving the execution, delivery and performance of this Agreement and the other documents executed in connection herewith and the consummation of the transactions contemplated hereby and thereby and state that such resolutions have not been modified, amended, revoked or rescinded and remain in full force and effect, and (iii) the certificate of incorporation and by-laws of the Company.
- 7.2.6 **Third Party Consents .** All third party consents or approvals listed in Schedule 7.2.6 hereto shall have been obtained by the Company and shall be effective and shall not have been suspended,

revoked, or stayed by action of any such third party.

7.2.7 **Payment List** . The Company shall have delivered to Parent a list (the "Payment List") of the persons entitled to payment of any of the Merger Price as of the Closing Date, showing for each such person the amount of Common Stock owned of record, the amount of any promissory note or other monetary obligation of the person to the Company which may be set off against or otherwise deducted from the payment otherwise due to that person, and the address to which documentation relating to the transaction contemplated by this Agreement should be sent.

7.2.8 **Diligence Review** . Parent and its accountants and attorneys shall have conducted a diligence investigation of all matters related to the business of the Company and its Subsidiaries deemed relevant by Parent or its accountants and attorneys to such diligence investigation, and the results of such diligence investigation shall have been satisfactory to Parent.

7.2.9 **Consulting Agreement** . The Company shall have entered into written consulting agreement with George Adaniya, in form and substance reasonably satisfactory to Parent.

7.3 **Conditions to Obligations of the Company to Effect the Merger** . The obligation of the Company to effect the Merger shall be subject to the fulfillment or waiver at or prior to the Closing of the following additional conditions:

7.3.1 **Representations and Warranties** . The representations and warranties of Parent and Merger Sub contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date, except for changes contemplated by this Agreement and except for those representations and warranties which address matters only as of a particular date (which shall remain true and correct as of such date), with the same force and effect as if made on and as of the Closing Date, except in all such cases, for such breaches, inaccuracies or omissions of such representations and warranties which have neither had nor reasonably would be expected to have a Parent Material Adverse Effect; and Parent shall have delivered to the Company a certificate to that effect, dated the date of the Closing and signed on behalf of Parent by the President and Chief Financial Officer of Parent.

7.3.2 **Agreements and Covenants** . Parent and Merger Sub shall have performed in all material respects all of their agreements and covenants set forth herein that are required to be performed at or prior to the Closing Date; and Parent shall have delivered to the Company a certificate to that effect, dated as of the Closing Date and signed on behalf of Parent by the President and Chief Financial Officer of Parent.

7.3.3 **Legal Opinion** . The Company shall have received opinions from Jeffrey P. Elefante, Executive Vice President of Parent, and Foley, Hoag & Eliot LLP , counsel to Parent, in substantially the forms attached hereto as Exhibit 7.3.3.

7.3.4 **Closing Documents** . Parent and Merger Sub shall have delivered to the Company closing certificates of Parent and Merger Sub and such other closing documents as the Company shall reasonably request (other than additional opinions of counsel). Each of the closing certificates of Parent and Merger Sub, dated as of the Closing Date, duly executed by the secretary of Parent and Merger Sub, respectively, shall certify as to (i) the signing authority, incumbency and specimen signature of the signatories of this Agreement and other documents signed on behalf of Parent and Merger Sub in connection herewith, (ii) the resolutions adopted by the board of directors of the Parent and Merger Sub authorizing and approving the execution, delivery and performance of this Agreement and the other documents executed in connection herewith and the consummation of the transactions contemplated hereby and thereby and state that such resolutions have not been modified, amended, revoked or rescinded and remain in full force and effect, and (iii) the Certificate of Incorporation and By-Laws of the Parent and Articles of Incorporation and By-Laws Merger Sub.

7.3.5 **Material Adverse Effect** . Since the date of this Agreement, Parent shall not have suffered a Parent Material Adverse Effect.

7.3.6 **Payment of Purchase Price** . The Parent shall have made provisions acceptable to the Company

for payment of the aggregate Merger Price pursuant to the provisions of Section 2.4.2 hereof.

- 7.3.7 **Indemnification Insurance** . The Company or the Stockholders shall have obtained Indemnification Insurance with respect to their respective obligations under Section 6.3 on terms satisfactory to the Stockholder Representative.

ARTICLE 8

SURVIVAL OF REPRESENTATIONS

8.1 Survival of Representations

- 8.1.1 **The Company's Representations** . All representations and warranties made by the Company in this Agreement or any certificate or other writing delivered by the Company or any of its Affiliates pursuant hereto or in connection herewith shall survive the Closing and any investigation at any time made by or on behalf of Parent and shall terminate on the date which is 18 months after the Effective Time (except that Indemnified Party claims pending on such date continue until resolved). The covenants made by the Company in this Agreement or any certificate or other writing delivered by the Company or any of its Affiliates pursuant hereto or in connection herewith shall survive the Closing and any investigation at any time made by or on behalf of Parent.
- 8.1.2 **Parent's Representations** . All representations and warranties made by Parent and Merger Sub in this Agreement or any certificate or other writing delivered by Parent, Merger Sub or any of their respective Affiliates pursuant hereto or in connection herewith shall survive the Closing and any investigation at any time made by or on behalf of the Company and shall terminate on date that is eighteen (18) months after the Effective Time (except that Company claims pending on that date shall continued until resolved). The covenants made by the Parent in this Agreement or any certificate or other writing delivered by the Parent, Merger Sub and their respective Affiliates pursuant hereto or in connection herewith shall survive the Closing and any investigation at any time made by or on behalf of the Company.

ARTICLE 9

OTHER PROVISIONS

- 9.1 **Termination Events** . This Agreement may be terminated and the Merger abandoned at any time prior to the Effective Time:
- (a) by mutual written consent of Parent and the Company;
 - (b) by Parent if there has been a breach of any representation, warranty, covenant or agreement contained in this Agreement on the part of the Company and such breach has not been cured within ten business days after written notice to the Company (provided, that neither Parent nor Merger Sub is in material breach of the terms of this Agreement, and provided further, that no cure period shall be required for a breach which by its nature cannot be cured) such that the conditions set forth in Section 7.2.1 or Section 7.2.2 hereof, as the case may be, will not be satisfied;
 - (c) by Parent, if the Company or its board of directors shall have (*i*) withdrawn, modified or amended in any material respect its approval of this Agreement or the transactions contemplated herein, or (*ii*) taken any public position inconsistent with its approval or recommendation, including, without limitation, having failed (without the consent of Parent) after a reasonable period of time to reject or disapprove any Acquisition Proposal (or after a reasonable period of time to recommend to its shareholders such rejection or disapproval), and in that event the Company shall pay to Parent the Due Diligence Costs pursuant to Section 6.3;
 - (d) by the Company if there has been a breach of any representation, warranty, covenant or agreement contained in this Agreement on the part of Parent or Merger Sub and such breach has not been cured within ten business days after written notice to Parent (provided, that the Company is not in

material breach of the terms of this Agreement, and provided further, that no cure period shall be required for a breach which by its nature cannot be cured) such that the conditions set forth in Section 7.3.1 or Section 7.3.2 hereof, as the case may be, will not be satisfied;

- (e) by the Company, if the Company accepts an Acquisition Proposal for any reason, including pursuant to a good-faith determination by its Board of Directors, after consulting with counsel, that not to accept the Acquisition Proposal would constitute a breach of the Directors' fiduciary duty under DGCL *provided, however*, that in that event the Company shall pay to Parent the Due Diligence Costs pursuant to Section 6.3;
- (f) by any party hereto if: (i) there shall be a final, non-appealable order of a federal or state court in effect preventing consummation of the Merger; (ii) there shall be any final action taken, or any statute, rule, regulation or order enacted, promulgated or issued or deemed applicable to the Merger by any Governmental Entity which would make consummation of the Merger illegal or which would prohibit Parent's or Merger Sub's ownership or operation of all or a material portion of the business or assets of the Company, or compel Parent or Merger Sub to dispose of or hold separate all or a material portion of the business or assets of the Company or Parent or Merger Sub as a result of the Merger; (iii) if the Company's stockholders do not approve this Agreement and the transactions contemplated hereby at the Company Meeting; or
- (g) by any party hereto if the Merger shall not have been consummated by February 29, 2000, provided that the right to terminate this Agreement under this Section 9.1(g) shall not be available to any party whose failure to fulfill any material obligation under this Agreement has been the cause of, or resulted in, the failure of the Effective Time to occur on or before such date.

9.2 **Notices** . All notices and other communications hereunder shall be in writing and shall be deemed given if delivered by hand sent via a reputable nationwide courier service or mailed by registered or certified mail (return receipt requested) to the parties at the following addresses (or at such other address for a party as shall be specified by like notice) and shall be deemed given on the date on which so hand-delivered or on the third business day following the date on which so mailed or sent:

To Parent and Merger Sub :

CACI International Inc
1100 North Glebe Road
Arlington, VA 22201
Attention: Dr. J. P. London, Chairman

with copies to:

Jeffrey P. Elefante
Executive Vice President, General Counsel and Secretary
CACI International Inc
1100 North Glebe Road
Arlington, VA 22201

David W. Walker, Esq.
Foley, Hoag & Eliot LLP
One Post Office Square
Boston, MA 02109

To the Company :

XEN Corporation
9990 Lee Highway
Suite 530
Fairfax, VA 22030
Attention:

with copies to:

Kathy A. Fields, Esq.

By: /s/ Randall H. Millar

CACI Completes Acquisition of XEN Corporation

Synergies in Information Security and Electronic Commerce for Growth in Intelligence Markets

Arlington, Va., February 2, 2000 -- CACI International Inc (NASDAQ: CACI) announced today it has completed the acquisition of all of the outstanding shares of XEN Corporation (XEN), a privately held Delaware company.

XEN is headquartered in Fairfax, Virginia, with other offices in Denver, Colorado. XEN provides quality systems engineering, engineering design, distance learning, training development, multimedia support, electronic commerce, and data security services to national intelligence organizations, the Department of Defense, and the U.S. Navy. XEN's revenues for its fiscal year ending September 30, 1999 were \$8.5 million.

L. Kenneth Johnson, President, CACI, Inc., stated that "This addition of XEN's capabilities to ours will enable us to continue the growth of our work for the intelligence community. We continue to see significant opportunity for CACI in this area as the breadth of our offerings expands."

CACI International Inc (<http://www.caci.com>) is an information technology products and services provider specializing in developing and integrating systems, software, and networks and providing intelligence, e-commerce, and information assurance services to government agencies and commercial enterprises worldwide. Celebrating 38 years in business, the company has approximately 4,300 employees and operates out of more than 90 offices in the U.S. and Europe.

There are statements made above which do not address historical facts and, therefore, could be interpreted to be forward-looking statements as that term is defined in the Private Securities Litigation Reform Act of 1995. Such statements are subject to factors that could cause actual results to differ materially from anticipated results. The factors that could cause actual results to differ materially from those anticipated include, but are not limited to, the following: changes in interest rates; the risks and uncertainties associated with client interest in and purchases of new products and/or services; continued funding of U.S. Government or other public sector projects in the event of a priority need for funds; government contract procurement (such as bid protest) and termination risks; individual business decisions of our clients; paradigm shifts in technology; competitive factors such as pricing pressures and/or competition to hire and retain employees; our ability to complete acquisitions and/or divestitures appropriate to achievement of our strategic plans; and other risks described in the Company's Securities and Exchange Commission filings.

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For investor information contact:

David Dragis
Investor Relations Director
(703) 841-7835
ddragics@caci.com

For other information contact:

Jody Brown
Vice President Public Relations
(703) 841-7801
jbrown@caci.com

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